

NOVEMBER 10, 2020
BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 10, 2020, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Chris Tordi, Marcia Wells, Joel Dendiu. Absent: Larry Stillson. In addition to members of the public, the following we also in attendance: Ken Prince, David Bent, Derek Spier, Christa Hill, and Kari Myers.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the October 13, 2020, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #20-49 An appeal submitted by Martin J. O'Connor requesting a Developmental Variance for **702 West Broadway Street** to allow a 6' chain link fence with a 0' exterior side yard setback.

Martin O'Connor, 702 W. Broadway, said he is requesting to put up a 6' chain link fence. He said he has a German Shepherd that can easily jump the existing chain link fence and it's a safety concern.

Mr. O'Connor said for some reason, people are coming by and trying to pet and provoke the dog. He said it's for the safety of not only his dog, but other people.

Mrs. Wells asked if it was a chain link fence. Mr. O'Connor said yes.

Mrs. Wells closed the Public Hearing on Appeal #20-49.

Staff Recommendation

Staff recommends **approval** of Appeal #20-49 to allow a 6' chain link fence with a 0' exterior side yard setback at 702 W Broadway. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the fence is replacing a shorter fence that had been there for many years; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant would have to give up additional space if the fence was moved even with the house.

MOTION: Charles Krueger moved to approve Appeal #20-49. Joel Dendiu seconded; motion carried with a vote of 4-0.

APPEAL #20-50 An appeal submitted by Darlene K. Ballard requesting a Use Variance for **509 East Lawrence Street** to allow a two-unit dwelling in R-1 Single Family Residential zoning to remain.

Darlene Ballard, 509 E. Lawrence Street, Mishawaka, and her sister, Jamie, presented the request. Jamie said her sister is selling the property and it has been a duplex since at least 1966 and would like the Use Variance in order to remain a duplex.

Mr. Dendiu asked if Ms. Ballard had a buyer. Jamie said yes.

Mrs. Wells closed the Public Hearing on Appeal #20-50.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-50 to allow a Use Variance for a duplex in the R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because no physical changes are being made to the property;*
- 2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property has been used in this way for many years, without any problems that we know of;*
- 3. The need for the variance arises from some condition peculiar to the property in that the property was built as a duplex, or was at least converted by 1966, but the zoning was never changed to match the use;*
- 4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building has been used as a duplex since at least 1966; and*
- 5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.*

MOTION: Chris Tordi moved to forward Petition #20-50 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #20-51 An appeal submitted by John Cocquyt (owner) and Blueprint BCS, LLC (lessee) requesting a Conditional Use Permit for **1032 East Twelfth Street** to allow sand mining in I-2 Heavy Industrial zoning.

Matthew Cain, HRP Construction, 5777 Cleveland Road, South Bend, appeared on behalf of the request. He said he has read the recommendations and they are grateful to be heard by this Board. Mr. Cain said he is asking that the hours of operation be amended to 7:00 a.m. which is concurrent with the start of municipal projects.

Mrs. Wells asked Mr. Cain to explain what sand mining is. Mr. Cain said the site is made up of natural soils and sand and sometime in the past, perhaps the 1950's, mining was performed at the site. He said there is a shallow pond on the property and they wish to make the pond deeper and mining sand would be the primary means to do so. He said itself is good construction material for building sites.

Mr. Tordi asked if there was noise associated with the mining and why are you asking to amend the hours. Mr. Prince said when they submitted the application it was during normal business hours and we thought the hours should be limited to business hours to do the AHEPA housing facility to the east. He said Mr.

Cain is asking to start at 7 and he said he is correct that our normal construction projects start at 7:00 a.m.

Mrs. Wells asked if there are residential properties reasonably close by. Mr. Prince said there is hundreds of feet between this site and the AHEPA facility. He said there is going to be noise generated and normal business hours shouldn't be a problem. Mr. Prince also said the Kroger loading dock is equal distance from AHPEA.

Mrs. Wells said she assumes normal business hours are Monday through Friday. Mr. Prince said we don't want to be enforcement on that and it wouldn't be out of line for them to work on Saturday.

Mr. Tordi asked about the noise. Mr. Cain said there are a significant number of mature trees around the site with a roadway through it. He said to the north there are no neighbors and noise would be basically truck noise and there is no processing or rock crushing. Mr. Cain said you dig out the sand with a back hoe and put in a dump truck.

Mr. Cain said they would be mining on the east side of the property. Mr. Prince noted they would have the ability to excavate within 50' of the west property line.

Mr. Tordi asked if the mining would take place where the pond is now. Mr. Cain said yes.

Mr. Dendiu asked if he knew why the mining stopped in the 1950's. Mr. Cain said he didn't know.

Mr. Dendiu asked how long the mining would go on. Mr. Cain said this particular request is fueled by one City contract and they hope to do that within the next year. He also said it isn't anticipated that this will be ongoing all the time. Mr. Cain said the request identifies an estimated volume of sand to be removed.

Mr. Cain also said the site has been an active construction site off and on and they just haven't been mining and it's appropriate to ask permission.

Mr. Dendiu asked about dust or floating debris. Mr. Cain said to our benefit it's coming from below the water table; it's wet. He said there would be times they need to let it dry before loading.

Mr. Krueger said in the long run, he's concerned about what happens to this property when it's done; how will it be used. Mr. Prince said we don't look at ponds as a detriment. The fact is they will have a deeper pond and not sure what opportunities would present themselves. He said if there was a long pond, it might be conducive to have an apartment complex to build with a pond as a amenity and overall it could be a positive and not a negative.

Mrs. Wells asked Mr. Cain if he was aware of the conditions. Mr. Cain said yes.

In Favor

Jeff Wells, HRP Construction, 5777 Cleveland Road, South Bend, said they are the operating contractor who will be mining the sand primarily for a City job. The property has been vacant for the last 40 years and hoping they can improve the site. He said they will manage and have people on site.

In Opposition

Todd Jensen, AHEPA Development Director, Robert Dine, AHEPA Construction Consultant, and Angela Magrames, AHEPA Board of Directors, phoned in to the meeting.

Mr. Jensen said their main concern is for their residents who are over 62. He said he thinks if he was living next door to this operation, 7:00 a.m. is a pretty early start and would like to see it kept at 8:00 a.m.

Mr. Jensen said Mr. Cain mentioned the schedule would be perhaps a year or longer. Would that mean 2 months worth of work? Does it mean it won't be constant work, 12 hours a day for a year or 1/6th of the time would be actually pulling sand out of the pond.

Mr. Cain said it is a fair summarization that only the removal of native soil is the particular activity that is new and needs approval. Mr. Cain said the site has been used as a construction yard for some time and he would point out the site to the north is the City's recycling center. He wouldn't expect the level of activity to significantly increase or be louder than what you have already experienced. There may be days with more activity, but maybe not louder.

Mr. Cain said it's an accurate statement that there may be two months of heavy activity over the next year. He said they typically run construction operations when daylight hours permit, 7:00 a.m. to 3:30 p.m. weekdays and they are getting to that time of year where that doesn't permit that. Mr. Cain said they hope to begin this work in December and would like permission to do it at 7:00 a.m., but a fair amount of activity would begin at 8:00 a.m. due to daylight.

Mr. Jensen said it sounds like to start in December, then you would go through the winter months; is it seasonal or does weather not matter. Mr. Cain said the weather matters due to public safety with trucks on the road. If it's significantly below freezing you can't really mine wet sand. If it's dry and in the 30's, it doesn't prohibit them from continuing to work.

Mr. Jensen asked if it was just sand at the bottom of the pond and you're just scooping it out and putting in a truck. Will there be blasting or dynamite? Mr. Cain said no, we are digging sand out of a hole with a back hoe and putting in a truck. No blasting.

Angela Magrames said she's concerned as they do have older residents who don't wake up until 8:30 to 9:00 normally and like to sleep with their windows open. She said they have a beautiful walking track that comes within 3' of the fence and you would be stopping the residents and their walking club from walking. Ms. Magrames said there may be blowing sand.

Mr. Cain said under this permit they would not be permitted to dig within 50' of the property line and they have to maintain the fence and trees that are there. He said they want to be a good neighbor and the work they intend is largely on the east half of the property. Mr. Cain said he understands their concerns and the work is not particularly loud.

Mr. Dine said for his edification, they have a site that was operational in 1950's and he understands they want to get conditional change for mining. He said you are making an exception, because you are going to do mining and what kind of permitting process do you need to go through with IDEM or the state to do this type of work? It doesn't fall under the industrial zoning classification, would it not be judicious to have all the permits in place before coming to the city for the exception? He said he was asking in terms of the processes.

Mr. Cain said the recommendation in the report from the city is they do spell out the requirements and they have to seek a Rule 5 permit which relates to erosion control.

Mr. Cain said relating to zoning, it does refer to this activity and outlines method of approval for this use. He said he understands the questions. Mr. Cain said part of identifying every requirement and talking to the city and they are the local authority. They advised there are a number of things they have to present and this is one of those steps. The zoning ordinance outlines the process as to how to go about it.

Mr. Cain said it doesn't identify in what order the approvals have to take place. He said an engineering firm will process all permitting.

Mr. Dine said he isn't trying to drive in a wedge, but doesn't understand how something from the 1950's can be brought forth. He then asked Mr. Prince if the Comprehensive Plan needed to be updated.

Mr. Prince said looking at records from the 1950's there was an approved a permit from then. There was no conditional use. He said this zoning ordinance was adopted in 1966 and what occurred before that time, he doesn't know and they are essentially starting over. Mr. Prince said the heavy industrial zoning existed then and in terms of allowing the mining, it's really an over-excavation of the site. Mr. Prince said

from a zoning perspective, we don't have a definition of pulling sand out of a box. There are no explosives or digging, just an over-excavation of the site.

Mr. Prince said the I-2 zoning very specifically identifies it as a conditional use, not permitted by right, and he thinks the people adopting the ordinance were smart to think it requires an extra step. He said it is customary to have this zoning approval before going to the state because if they were denied here, there's no point in going through the more expensive approvals.

Mr. Dine asked Mr. Cain if there were going to use crushing machines. Will there be loud noise? Mr. Cain said they do not need to process or crush or screen it.

Mr. Dine said their main concern are their senior adults. He said he has witnessed when there is a strange noise or activity, there are some folks who have anxiety attacks and we help them understand what is going on. Mr. Dine said they do have a change in environment and that their folks are going to have to be cognizant of and is hopeful that if things get crazy, our property manager and maybe others, may contact you and perhaps calm the noise.

Mr. Cain said HRP is primarily a public works construction company and the backbone of their work is primarily working in residential streets. He said they are well versed in trying to be a good neighbor in explaining things and said by all means contact him if there is a problem.

Mrs. Wells closed the Public Hearing on Appeal #20-51.

Staff Recommendation

The staff recommends in favor Appeal 20-51 to allow a sand mining operation in the northern 6 acres of 1032 E Twelfth St. subject to the following conditions:

- 1) Rule 5 Notice of Intent (NOI), a Stormwater Pollution Prevention Plan (SWPPP), and Erosion Control Bond Erosion Control;*
- 2) Paved (may be asphalt) drive minimum 100'; and*
- 3) An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the preliminary site plan as submitted.*
- 4) The hours of operation will be limited to 8am-8pm.*

This recommendation is based upon the following findings of fact:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. The property on which the tower is to be located is adjacent to industrial, commercial, and recreational uses, with residential uses. Screening/buffering is present between the residential area and the mining location. The site is currently fenced.*
- 2. The use and value of the area adjacent to the property included in the conditional use permit will not be affected in a substantially adverse manner. The adjacent area consists primarily of industrial, office, and commercial development, with adequate screening/buffering between the proposed mining operation and the residential properties to the east.*
- 3. The conditions of approval shall mitigate any potentially adverse impact of the proposed use upon the adjacent properties. There is no dewatering, so a pump will not be constantly running.*
- 4. Adequate measures will be taken to provide proper utilities, drainage, paved access roads, and fencing for safety precautions. Additional landscape buffering will not be required due existing vegetation providing adequate screening.*

5. *The granting of this conditional use is in the best interests of the community. This historic use of this site has been mining. The current condition of the site would not allow for redevelopment without major investment. The City will benefit by using the sand mined at this location in local projects.*

MOTION: Joel Dendiu moved to forward Petition #20-51 to the Common Council with a favorable recommendation. Chris Tordi seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:48 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner