

JANUARY 12, 2021

**BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA**

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, January 12, 2021, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Marcia Wells, and Joel Dendiu. Absent: Chris Tordi and Larry Stillson. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

The meeting was turned over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Charles Krueger moved to nominate Marcia Wells as Chairman. Joel Dendiu seconded; motion carried with a vote of 3-0.

MOTION: Charles Krueger moved to nominate Larry Stillson as Vice-Chairman. Joel Dendiu seconded; motion carried with a vote of 3-0.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the December 8, 2020, meeting, were approved as distributed.

Conflict of Interest was not declared.

APPEAL #20-56 An appeal submitted by S & L Properties, LLC, requesting a Developmental Variance for **5520 N Main Street** for a reduction in the required number of parking spaces for the Culver's Restaurant.

No one appeared to present the request. The Board unanimously approved continuing the item to the February 9, 2021, meeting.

APPEAL #20-57 An appeal submitted by Mader Enterprises, LLC, requesting a Developmental Variance for **2424 East Fifth Street** to omit the required 7' high screening fence along the north and west property lines.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Blvd, South Bend, IN, appeared on behalf of Mader Enterprises. He said the Appellant is proposing a small expansion. The use will remain the same and the impact will be minimal. He said there is adequate parking provided on-site and they don't anticipate from the expansion.

Mr. Huber said the ordinance requires a 7' fence on the north and west and that's what they are requesting the variance from. He said there is existing screening along the north edge

with a fence and trees and the west abuts the alley and there's not a lot of room to install the fence thus pushing parking further west. Mr. Huber said the requirement of the fence would require significant redesign of the parking lot.

Mr. Prince read Letters of Support from Robert Roose, 2408 E. Fifth Street, and The Pletcher/Castor Household, 350 S. Hodson Avenue.

Mrs. Wells closed the Public Hearing on Appeal #20-57.

Staff Recommendation

Planning Staff recommends approval of Appeal #20-57 to omit the required 7' opaque fence along the north and west property lines. 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 the use of the property will remain the same;*
- 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 building addition represents an improvement to the property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property as installing the fence along the west property line would require significant parking lot redesign and possible reduction in the required 10 parking spaces, and installing a fence along the north property line would add cost to the project without any discernable benefit.*

MOTION: Joel Dendiu moved to approve Appeal #20-57. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #20-58 An appeal submitted by Bokhart Properties, LLC, requesting a Use Variance for **403 and 411 South Main Street** to allow tattoo, piercing, and art gallery in the I-1 Light Industrial zoning and a Developmental Variance for reduction of parking spaces.

Maurice Bokhart, 16400 Kern Road, Mishawaka, appeared as well as Maria Ortega who will be leasing the property.

Mr. Bokhart said he has nearly an entire city block, but actually little parking and he recently purchased 403 S. Main street. He said Ms. Ortega's business is by appointment only with one full-time and two part-time employees and 10 spaces would be more parking than required at 411 S. Main Street to serve the needs of 403 S. Main Street.

Mr. Bokhart said it's zoned I-1 which is in sync with its proposed use as an art gallery and tattoo business. He said Ms. Ortega's services are in the \$200 to \$1,000 range. Mr. Bokhart said tattoo businesses can be scary, but this is an artistry.

Mr. Krueger asked Ms. Ortega if she had rules about the condition of people; are they inebriated? Maria Ortega, Berrien Center, MI, said she does not work on people who are under the influence.

Ms. Ortega said she has been a tattoo artist for 10 years, and has always been gifted with art. She said tattoos are often more than just a tattoo. They can help people feel better

about themselves. Ms. Ortega said she also offers nipple tattoo for women who have had a breast removed due to cancer. She said she owned her own shop in Niles for 7 years and most of her customers were in the South Bend/Mishawaka area.

Mr. Dendiu said Engineering had comments regarding parking. Mr. Bokhart said he's dealing with stormwater and removal of the connector. That was approved before and then the person who was going to purchase the property could no longer go forward.

Mrs. Wells closed the Public Hearing on Appeal #20-58.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-58 to allow for tattoo, piercing, and art gallery, in an I-1 Light Industrial District, subject to an administrative site plan being submitted addressing above comments. 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 and/or improvements to the existing structure;*
- 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 adjacent properties are zoned for industrial and/or commercial uses.*
- 3. The need for the variance arises from some condition peculiar to the property in that Tattoo is a Use Variance or Conditional Use regardless of the underlying zoning.*
- 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 zoning does not allow for specific uses within industrial zoned properties;*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Joel Deniu moved to forward Appeal #20-58 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0.

ADJOURNMENT: 6:19 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner