

APRIL 13, 2021

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 13, 2021, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Chris Tordi, Larry Stillson, and Joel Dendiu. Absent: Marcia Wells. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mr. Stillson explained the Rules of Procedure.

The Minutes of the March 9, 2021, meeting, were approved as distributed.

Mr. Krueger indicated he received a Notice for Appeal #21-05. He owns the building around the corner. He said he has no prejudice in the appeal. No other Conflicts were declared.

PUBLIC HEARING:

APPEAL #21-02 An appeal submitted by Jeffrey and Deborah Van Poppel requesting a Developmental Variance for **713 Prism Valley Drive** to permit an accessory structure with a 1' side yard setback.

Jeffrey Van Poppel, 713 Prism Valley Drive, said he was here in December for a 2' setback for a shed next to his house. He said he has decided to come back for an additional 1' setback. Mr. Van Poppel said he can't put the shed in the back yard because of the ditch and must put it next to the house.

Mr. Stillson closed the Public Hearing on Appeal #21-02.

Staff Recommendation

*Staff recommends **approval** of Appeal #21-02 to allow a shed at 713 Prism Valley Dr with a 1' side yard setback. 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 side yards are larger than the ordinance requires to begin with, which provides room to maneuver around the shed and still remain on their property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the rear yard is not suitable for the shed due to the elevation change and drainage easement.*

MOTION: Mr. Dendiu moved to approve Appeal #21-02. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #21-03 An appeal submitted by Tiffany Fowler requesting a Developmental Variance for **401 East Grove Street** to permit a solid fence with a 0' exterior side yard setback.

Tiffany Fowler, 401 East Grove Street, said there is a chain link fence outside of the property line that's been there at least 17 years. She said she wanted to put up a privacy fence where the chain link fence it, but would like the privacy fence at the property line.

Mr. Stillson closed the Public Hearing on Appeal #21-03.

Staff Recommendation

*Staff recommends **approval** of Appeal #21-03 to allow a 6' solid fence with a 0' exterior side yard setback at 401 E Grove. 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 will be in line with a garage that has 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: Joel Dendiu moved to approve Appeal #21-03. Chris Tordi seconded; motion carried with a vote of 4-0.

APPEAL #21-04 An appeal submitted by Trion LLC an Indiana Limited Liability Company requesting a Use Variance for **110-112 North Main Street** to permit a tattoo studio on a portion of the second floor.

Charles Trippel, 2002 Linden Avenue, Mishawaka, said he is the owner of the property and is asking for a Use Variance to permit a tattoo studio on the 2nd floor of the building. He said Luis Salinas who is the proposed operator of the studio is also in attendance.

Mr. Krueger asked if the use required any licensing. Mr. Salinas said he would be getting the proper licenses once approved.

Mr. Stillson closed the Public Hearing on Appeal #21-04.

Staff Recommendation

The Planning Staff recommends approval of Appeal #21-04 to allow for a tattoo studio, in the C-3 City Center Commercial 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 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 a variety of 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 commercial zoned properties;*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

MOTION: Joel Dendiu moved to forward Appeal #21-04 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #21-05 An appeal submitted by Morgan E. Mick requesting a Developmental Variance for **1803 Lincolnway West** to allow a new home with a 20' front yard setback and 10' exterior side yard setback.

No one appeared to present the Appeal. The Board unanimously approved continuing the item to the May 11, 2021, meeting.

APPEAL #21-06 An appeal submitted by RUDRA Twenty Six, LLC, requesting a Developmental Variance for **1333 and 1335 Lincolnway East** to allow a reduction in the required number of parking spaces from ten to eight for a proposed two tenant building. *Appellant requests the item be continued to the May 11, 2021, meeting.*

The Board unanimously approved the request to continue the item to May 11, 2021, meeting.

APPEAL #21-07 An appeal submitted by Wellpet, LLC, requesting a Developmental Variance for **1121 and 1025 West Eleventh Street** to allow an 88' tall building with an 18' rear yard setback.

Steve Stein, Process Plus, 135 Merchant Street, Cincinnati, OH, Doug Mitchell and Robert Tashijan from Wellpet were in attendance.

Mr. Stein said Wellpet is proposing to build a new dryer tower facility and upgrading facilities to meet FDA and other food practice requirements. He said in order to do this, they needed a new building and one of the benefits in doing so is it gave them the opportunity to install state-of-the art odor control.

Mr. Dendiu asked if there were new regulations. Mr. Stein said they have found over the past several years the FDA has gotten more strict on pet food production. They are looking at potential sources of contamination and in order to do that, taking an older facility and investing in this to make the product better and stay viable in the market.

Mr. Dendiu asked was percentage of odor reduction are you talking about. Mr. Stein said it's very subjective to analyze odors. They have hired experts to design the equipment.

Mr. Tashijan said they have had several different presentations and had some pilot equipment and had third party testing of their existing system and the newer system. He said they presented to Council over the past several weeks and have been working with Mr. Emmons for a presentation to the neighbors.

Mr. Tashijan said the building is a big function for them and will help product more and in a better format and allow for growth.

Mr. Prince said the Fire Department had concerns with the overhead lines and access to the facility and he wanted to make sure that communication takes place.

Mr. Stein said he met with the Fire Marshall this morning and went over their concerns. They also had additional items and they are working on them to accommodate their needs as it's important to address those issues.

Mr. Stillson closed the Public Hearing on Appeal #21-07.

Staff Recommendation

Planning Staff recommends approval of Appeal 21-07 to allow Variance to allow increased building height and reduced rear yard setback for a building addition at Wellpet. 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. The increased height allows for improved odor control results. Furthermore, 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. The requested variances will not impact the adjacent area that include similar industrial uses.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. The increased building height and reduced setback will allow the business to meet the requirements for current Good Manufacturing Practices (cGMP).*

MOTION: Chris Tordi moved to approve Appeal #21-07. Charles Krueger seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:26 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner