

NOVEMBER 9, 2021

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 9, 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, Marcia Wells, Larry Stillson, and Joel Dendiu. In addition to members of the public, the following were also in attendance: David Bent, Derek Spier, Christa Hill, and Kari Myers.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the October 12, 2021, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #21-29

An appeal submitted by The Vineyard Church, Inc., requesting a Use Variance for **635 East Twelfth Street** Indiana, to allow a parking lot for a mobile medical clinic. *Continued from the October 12, 2021, meeting.*

Jeffrey Schaffer, Abonmarche Consultants, 315 W. Jefferson Blvd, South Bend, appeared on behalf of Vineyard Church and said several reps from the church were in attendance as well.

Mr. Schaffer said the property was donated to Vineyard Church and they have a presence in this part of town with a number of outreach programs. He said eventually, they would like to put a permanent presence on this property, but aren't there yet.

Mr. Schaffer said another non-profit reached out to use as a mobile medical clinic. He said they have done a temporary run the past few weeks and so far has gone well. He said the unit sees 2-3 patients per day, one at a time. It is a low traffic use. That is how this application has evolved over time.

Mr. Schaffer said they are asking to use the property in this way for a period of up to a year.

Mr. Schaffer said the second follow-up item is a gravel driveway to allow the unit to get on and off of the property.

Mr. Tordi said staff recommended a one year approval; are you ok with that. Mr. Schaffer said they are ok with that and a year makes sense. He said at this time, Vineyard is working on fundraising.

Mr. Krueger asked if this was related to COVID testing. Mr. Schaffer said no, it's a non profit that works with young men and women on medical issues. Nothing related to COVID.

Mrs. Wells closed the Public Hearing on Appeal #21-29.

Staff Recommendation

The Planning Staff recommends approval of Appeal #21-29 to allow a parking lot with a driveway approach from Michigan Ave. for a regularly schedule mobile medical clinic at 635 E Twelfth Street for a period of time. 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 minimal improvements will be made to the site, and the use will be on a pre-arranged scheduled;*
- 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 also have large parking areas to support the number of residents;*
- 3. The need for the variance arises from some condition peculiar to the property in that this use is meant to be temporary until a permanent structure can be built;*
- 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 temporary uses in any zoning district. The eventual use of community center is permitted by right; and*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates apartment complexes and nursing facilities for this area.*

MOTION: Chris Tordi moved to forward Appeal #21-29 to the Common Council with a favorable recommendation subject to a one-year time limit. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-30 An appeal submitted by The Vineyard Church, Inc., requesting a Developmental Variance for **635 East Twelfth Street** to allow a gravel parking lot for the use of a mobile medical clinic. *Continued from the October 12, 2021, meeting.*

Jeffrey Schaffer, Abonmarche Consultants, 315 W. Jefferson Blvd, South Bend, appeared on behalf of Vineyard Church. He said they would like to do a gravel driveway to allow the medical unit to get in and off the property. He said the first couple of times they did it on the grass, they needed a tow truck to get it out. He said it would be only for the unit as they expect patients will park on the street.

Mrs. Wells said 2-4 patients? Mr. Schaffer said 1-2 cars at a time. He said thus far, the traffic has been light.

Mr. Dendiu asked if there will be signs directing patients to park on the street. Mr. Schaffer said no.

Mr. Tordi asked if Vineyard Church will be maintaining the property. Mr. Schaffer said yes.

Mrs. Wells asked if the approval was for one year, were they ok with that. Mr. Schaffer said yes.

Mrs. Wells said we can get through for a year and see how it goes. Mr. Schaffer said they are hopeful they will soon be coming in with a site plan for a permanent presence.

Mrs. Wells closed the Public Hearing on Appeal #21-30.

Staff Recommendation

Staff recommends **approval** of Appeal #21-30 to allow a gravel driveway for the duration of the associated Use Variance. 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 minimal improvements will be made to the site;
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 request represents an investment in the neighborhood on a piece of property that has sat vacant for a number of years; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because this would be temporary until the eventual use of a community center can be designed and built.

MOTION: Joel Dendiu moved to approve Appeal #21-30. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #21-37 An appeal submitted by G.J. and Nicholas Bickel requesting a Developmental Variance for **507 East Seventeenth Street** to allow a 30' X 50' accessory structure.

GJ Bickel, 23652 Greenleaf Blvd, Elkhart, IN, said he is co-owner of the property with his son. He said they would like to build a 30' X 50' building on the property. He said the property is very deep, 287', and there is nothing back there to interfere.

Mr. Bickel said they will set back on the east side for the 15' easement and also on the south end of the property there's another easement for drainage. He said he talked to the sewer people and they are going to do some clean up and work with them and won't infringe on their property in any way.

Mr. Bickel said the building will be set back 70' from the existing garage and will be used for general storage. He said he just sold a couple of properties and he has a lot of stuff.

Opposition

David Wallisch, 619 Lovechio, said he has a property that would be affected and the garage would be bigger than houses that are there. He also said there is a business being run out of this property. He said his concern there would be a business there and aside from changing the character of the area, that's a big building.

Mrs. Wells said the request is just for the garage. It isn't up to the Board what goes on inside the building, but said she understands his concern.

Rebuttal

Mr. Bickel said if he understands correctly, Mr. Wallisch is concerned about the size of the building. He said where his building sits on the south end of the property, the great big retention pond is behind it and there are no homes there. If you go to the west, the next property from the retention pond got approval for a 30' X 50' pole barn a few years back.

Mr. Bickel said there won't be a business run out of the building; just being used for general storage. He said at the south end where the retention pond is, the property to the west has a pole barn and the property to the west is set so far back from 18th Street that it will not visually impact them.

Mr. Krueger asked how will the building be accessed. Is there a driveway? Mr. Bickel said the driveway will go along the east side of the property and will be concrete drive all the way back to the building.

Mr. Krueger asked how many doors would the building have. Mr. Bickel said one on the north end.

Mrs. Wells closed the Public Hearing on Appeal #21-37.

Staff Recommendation

*The Staff recommends **approval** of Appeal #21-37 to construct a 1,500 sqft (30' X 50'), 14' tall accessory structure. 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 size of the structure is proportionate to the size of the lot, and will store items normally stored outside getting them out of view of adjacent properties; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant could build several 720 sqft structures on the lot, but it is more practical to build one large structure to accommodate his items.*

MOTION: Joel Dendiu moved to approve Appeal #21-37. Chris Tordi seconded; motion carried with a vote of 5-0.

APPEAL #21-38 An appeal submitted by David A. Nufer LLC requesting various Developmental Variances for **710 and 720 West Edison Road** to allow for reduction in parking spaces, pavement setbacks, and landscaping due to a proposed subdivision.

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. He said the property is Parkwood Auto Spa and the laundromat. He said there is an entity interested in purchasing the car wash facility and in order to clean up paperwork, they will split the property into 2 lots.

Mr. Shearon said the variance for parking is for the lot with the auto spa. He said we can't put parking in front of the building due to the existing vacuum spaces. This is to comply with the ordinance as they subdivide the property.

In Favor

Joe Grabil, 700 Lincolnway West, Mishawaka, said he is a neighboring property owner and is in favor of this use. He said they have been good neighbors and keep up the property.

Mrs. Wells closed the Public Hearing on Appeal #21-38.

Staff Recommendation

The Planning Staff recommends approval of Appeal 21-38 to allow for a reduction in the required pavement setbacks, landscaping, and number of parking spaces for Lots 1 and 2 of the proposed Dev HT Edison Road Minor Subdivision. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The buildings and site improvements are existing and the variances will allow for the property to be subdivided to establish new legal lots of record. With the reduction in the required number of parking spaces for Lot 2, adequate parking will be provided per the minimal demand of the car wash facilities. The reduction in the landscaping between the proposed lots will allow the configuration of the existing parking lot and access drives to remain. Landscaping is present along portions of the perimeter of the two lots.*
- 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. Conditions, such as the pavement setbacks, landscaping, and screening, currently exist and will be maintained on the property. The only new issue being addressed with the appeal is for the proposed split of the property which affects the interior lot line locations. All improvements along the perimeter of the site are existing and are not proposed to be changed.*
- 3. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property. Existing conditions such as pavement, building placement, and existing landscaping do not adhere to the required developmental standards feasible in order to establish separate lots within an existing commercial development.*

MOTION: Charles Krueger moved to approve Appeal #21-39. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-39 An appeal submitted by GLC-MAP McKinley Trust requesting a Developmental Variance for **410-420 West McKinley Avenue** to allow for a reduction in parking spaces to due to proposed subdivisions.

Jeffrey Schaffer, Abonmarche Consultants, 315 W. Jefferson Blvd., South Bend, appeared on behalf of the Appellants. He said this is a large parking lot in an old shopping center and rather than open parking that is doing no one any use, they plan on redeveloping a new site on part of the parking lot area. Mr. Schaffer said consequently, that reduces the parking count for the shopping center. He said he has been working with staff and they feel confident there should be sufficient parking even when the vacant spaces fill up.

Mrs. Wells closed the Public Hearing on Appeal #21-39.

Staff Recommendation

The Planning Staff recommends approval of Appeal 21-39 to allow for a reduction in the required number of parking spaces for an existing multi-tenant commercial building (410-424 W. McKinley Avenue) at the McKinley Commons shopping plaza. A minimum parking ratio of 3.7 spaces per 1,000 sq. ft. of gross floor area will be permitted. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The number of parking spaces that will remain due to the proposed outlot development and recently completed city streetscape project should provide adequate parking for the existing multi-tenant commercial building. The existing parking lot is currently oversized and not presently or historically been used to maximum capacity.*
- 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 proposed outlot development that results in the need for the variance represents new investment within an existing shopping plaza and should generate additional interest to the area resulting in a positive economic impact for the shopping plaza.*
- 3. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property. Requiring parking spaces be provided per ordinance in excess of demand will limit the full economic potential that can be gained from additional commercial development.*

MOTION: Chris Tordi moved to approve Appeal #21-39. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-40 An appeal submitted by Cinemark USA, Inc., requesting a Use Variance for **6424 Grape Road** to allow an indoor shooting range as part of retail firearm sales business in C-2 Shopping Center Commercial District.

Kevin Alee, Shoot Point Blank, 10930 Deerfield Rd., Cincinnati, OH, said they would like to open an indoor gun range. He said they operate all over the country and are continuing to grow. He said over 75,000 people were educated last year in basic gun safety online and in person. They provide retail sales, indoor gun range and education classrooms; a 15,000 sqft facility.

Mr. Dendiu asked if most of your other stores are this close to other facilities. Can you speak to that? Mr. Alee said in Arlington, TX, they are next to Aldi Foods and contiguous to residential. He said in Carmel, IN, they are in more of an industrial district. In Naperville they are across the street from residential and have had no issues.

Mr. Alee said they are good corporate citizens and good neighbors and will do what it takes here. This is a socially responsible site and not near daycare or schools and feel this is a site tucked back by themselves.

Opposition

Ronald DeWinter, 1013 Lincolnway West, Mishawaka, said it bothers him to have another gun store. We all remember the shooting in northern Mishawaka recently. He said he wants to know what percentage will be used for the range and for gun sales. He also wants to know if they will be selling automatic weapons.

Mr. Alee said no automatic weapons will be sold as it is illegal to sell them. He also said they will not be renting automatic weapons in their store.

Mr. DeWinter asked if they will be selling fully automatic weapons. Mr. Alee said no, not federally allowed.

Mr. DeWinter said his daughter lives in South Bend and a bullet went through her house due to a drug deal. He said we have to start somewhere to control guns in the community and to have a franchise come in and sell guns.

Mr. Alee said the gun range is 9,000 sqft, retail sales 3,000 sqft, and (2) 1,500 sqft classrooms. He said they have full time employee that does nothing but recruit police officers and secret service train in their facilities; they want their presence in the store. Mr. Alee said retail is smaller than any part of the store. Also, this is not a franchise.

Mr. DeWinter said all this will do is put guns in more peoples hands. He asked the Board to deny their appeal and also turn down the gun sales. He said you have a chance to make a decision for the people in this community, but you hide behind safety.

Rebuttal

Mr. Alee said he didn't have a rebuttal, but have submitted letters from other entities.

Mrs. Wells closed the Public Hearing on Appeal #21-40.

Mr. Krueger said he shares the thoughts about the use of weapons. It is entirely legal and he thinks we can't stand in the way of the law. They have a legal right to do this, but he does have concerns about the escalating use of weapons.

Mr. Stillson said he is also concerned about firearms in the community, but he does not believe denying this appeal is a solution to the problem. He said we are not legislators and we cannot legislate laws to stop a problem. We are simply here to serve as a board and hear appeals.

Staff Recommendation

*The Planning Staff recommends **approval** of Appeal 21-40 to allow a use variance for an indoor shooting range within a new single tenant commercial building. The building, which will also include retail gun sales and classrooms, is to be located on a 4.38 acre property with a current address of 6424 Grape Road. This recommendation is based on the following findings of fact:*

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed uses, including the indoor shooting range, are consistent and compatible with adjacent multi-tenant retail center, restaurants, hotels, and cemetery. The building design and construction will meet all required local, State, and Federal safety standards required in the industry. The range areas will include additional reinforced concrete and insulation, steel, bulletproof glass, self-healing ballistic rubber, bullet traps, and a specialty designed ventilation system.*

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 proposed business will be constructed adjacent to and within property currently zoned for commercial use. Adjacent properties are currently developed with a mix of retail, restaurant, hotel, and cemetery uses. No residential uses or residentially zoned properties are located within the immediate area. Excluding the activities associated with the indoor shooting range, a majority of the business will be retail in nature similar to other nearby retail and commercial uses.*
3. *The need for the variance arises from some condition peculiar to the property. The C-2 Shopping Center Commercial District only permits the proposed retail gun sales and instructional classes by right. The proposed indoor shooting range is a conditional use in the I-1 Light Industrial District and I-2 Heavy Industrial District.*
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. The indoor shooting range is an essential component of the future tenant's business operations, and if not approved, the proposed development will not proceed.*
5. *The approval will not substantially interfere with the Mishawaka 2000 Comprehensive Plan. The Plan, created in 1990, guided general commercial development within this property. The proposed uses are consistent with the Comprehensive Plan.*

MOTION: Chris Tordi moved to forward Appeal #21-40 to the Common Council with a favorable recommendation. Joel Dendiu seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:40 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner