

MAY 13, 2014

**PLAN COMMISSION
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Plan Commission was held Tuesday, May 13, 2014, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Gary West, Matt Lentsch, Dale "Woody" Emmons, Murray Winn, Don McCampbell, Nick Troiola, and Rosemary Klaer. Absent: Ross Portolese and Edward Salyer. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Peg Strantz, and Kari Myers.

Mr. Winn explained the Rules of Procedure.

The Minutes of the April 8, 2014 and April 16, 2014 meetings were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

PLAT #14-04 A request submitted by S & D Realty, Inc., seeking approval of the two (2) lot Jefferson & Byrkit Minor Subdivision.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan St., South Bend, appeared on behalf of S & D Realty. He said the property is located at the northwest corner of Jefferson and Byrkit and used to be a trailer park that was removed several years ago.

Mr. Lang said S & D Realty is tendering an offer for purchase of the corner parcel for a future gas station/convenience store and this is the first step in isolating that parcel.

Mr. Lang said they have received comments from Engineering and have made the necessary changes.

Mr. Emmons asked if this property is owned by Bob Stephens. Mr. Lang said yes.

Mr. Emmons asked if this parcel has anything to do with the lots that were subdivided. Mr. Lang said no, this property is located to the south of those lots.

Mr. Winn closed the Public Hearing on Plat #14-04.

Staff Recommendation

Provided the aforementioned items are addressed, the Planning Department recommends approval of the Preliminary and Final Plat for the Jefferson & Byrkit Minor Subdivision because it meets the requirements identified within the City of Mishawaka Zoning Subdivision Control Ordinances.

MOTION: Nick Troiola moved to approve Plat #14-04. Rosemary Klaer seconded; motion carried with a vote of 7-0.

PETITION #14-05 A request submitted by Capital Avenue Properties, LLC, requesting a PUD Amendment for the Walker Planned Unit Development (west side of Capital Avenue, north side of Grande Vista Parkway) to allow for the addition of drive-thru facilities, and off-street parking ratio of 10 spaces per 1,000 sqft of gross building floor area.

Daryl Knip, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Petitioners. He said this parcel was annexed as part of the Walker property and has a PUD zoning with C-1 uses. Mr. Knip said they want to amend the zoning on .79 acres to allow for the following amendments: drive-thru facility, parking rate of 10 per 1,000 sqft, and amend the setback along the north property line.

Mr. Knip said the owner is in agreement with staff recommendations with the exception of access. He said they understand the issues with access and have tried to design the access without traffic spilling out onto the roadway.

Mr. Lentsch asked Mr. Knip to explain why he had concerns and wanted to change the access. Mr. Knip said the concern is that this is a small parcel next to larger parcels and without an individual access, they aren't sure how the west will be developed and how access will come into this site. He said the road is under construction and the site is a right-in/right-out access.

Mr. Lentsch said what is proposed is a temporary access. Mr. Knip said they want it to be a permanent access long term, and staff wants temporary access.

Mr. Prince said when all this property was brought into the city a small piece of the property was divided by the new road. That property was sold to Mr. Becker and this is a separate stand-alone parcel and we cannot land lock this property; but we have to provide access and we've had extensive negotiations with this. Mr. Prince said if you will recall, Eyeglass World and Barnes & Noble couldn't come to an agreement on a common shared access. In the future, this area will be developed with hotels, restaurants and other services and the developer is saying the more curb cuts the better and that's what they want. Everyone wants a curb cut onto their property and this works against that flow.

Mr. Prince said on a permanent basis it needs to go away and it may be 10 years, but we need to plan for that long term decision. He said imagine if Costco were to build on the property behind; everyone would try to access that property thru this small property.

Mr. Lentsch asked Mr. Knip what his take on this was. Mr. Knip said the concern is not knowing how the parcel to the west will be developed, when it will be developed and Mr. Becker is concerned he will not have control over the access. Will it be a short drive, long drive, easy drive for his customers?

Mr. Prince said Mr. Becker has an option on the adjacent property, but he may not have that option in the future and that's why he's concerned. There could still be negotiations and Mr. Becker is concerned he would have no say in those negotiations.

Mr. Emmons said it was his understanding there is no current project in the works. Mr. Knip said that is correct; this is just a proposal and they are trying to look at this as a stand-alone.

Mr. Lentsch said this gives temporary access and it could be ten years more. Mr. Knip said yes.

Mr. Lentsch asked why this isn't acceptable. Mr. Knip said it could be.

Mr. Prince said if a permanent access was approved now; there would be no way to change the access in the future. Ken said this way works fine as a temporary access to the site.

Mr. Lentsch said the difference is the recommendation in the staff report that Mr. Knip is arguing is that Mr. Knip wants the access to be permanent and staff is saying it should be temporary at this point. Mr. Knip said yes.

In Favor

John Piraccini, Coldwell Banker Commercial, said he was appearing on behalf of Mr. Becker. He said whether Mr. Becker buys the adjacent property or not, there will be separate entities owning the two properties. He said his concern was there is no guarantee where the curb cut will be. Mr. Piraccini said Mr. Becker is willing to work with someone, but doesn't want to be hand-tied and won't know where the cut will be and doesn't want to be forced into it.

Mr. Piraccini said Mr. Becker wants to use this piece of property as a catalyst. He said he isn't asking the City to pay for a right-in/right-out. He feels strongly that he wants it permanent because he can't control what will happen to the west. Mr. Piraccini said if Mr. Becker does buy it, there will be some conversation as to what will work.

Mr. Winn closed the Public Hearing on Petition #14-05.

Staff Recommendation

Staff recommends in favor of PET 14-05 amending a 0.79 acre parcel of land located at northwest corner of Capital Avenue & Grande Vista Parkway within the Walker PUD to allow for drive-thru restaurant facility. All previous PUD conditions shall be retained as part of this PUD with the following amendments:

1. *Required off-street parking for the proposed drive thru-facility lot shall be a ratio of (10) parking spaces per 1000 sf of gross building floor area.*
2. *Required building setback along the northwest lot line along Capital Avenue shall be a minimum of 25-ft for the proposed drive-thru facility lot.*
3. *Required pavement setback along the northwest lot line along Capital Avenue shall be a minimum of 5-ft for the proposed drive-thru facility lot.*
4. *The proposed access drive may be utilized on a temporary basis up until the time the adjacent parcel is developed. At that time, the temporary access drive shall be removed and a common access drive for both lots shall be provided. Appropriate easements shall be created at that time.*

This recommendation is based on the following findings of fact:

1. *The subject parcel is located within a commercial planned unit development.*
2. *The area is currently vacant land. However, because the property is located within a commercial PUD, the character of the buildings within the surrounding area will be commercial.*

3. *Because of the parcels' location and the proposed future commercial development in the area, the highest and best use for the property is commercial in nature.*
4. *The proposed zoning will not be injurious to property values in the surrounding neighborhood, because vast majority of adjacent property remains undeveloped. The proposed extension of City infrastructure will actually add value to adjacent properties.*
5. *This specific property was guided as commercial in the joint Comprehensive Plan Amendment prepared jointly by both St. Joseph County and the City of Mishawaka, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The continued change and expansion of the commercial areas of the City are commensurate to the City's status as a regional area of commerce. The substantial residential growth that occurred in the unincorporated County (the unincorporated area of Granger) also contributes to the need/demand for services.*

MOTION: Dale "Woody" Emmons moved to forward Petition #14-05 as submitted by Petitioner to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion *fails* with a vote of 2-5 (*West, Winn, McCampbell, Troiola, Klaer*).

MOTION: Nick Troiola moved to forward Petition #14-05 to the Common Council with a favorable recommendation subject to the conditions of approval as outlined by Planning Staff. Gary West seconded; motion carried with a vote of 5-2 (*Emmons, Lentsch*).

PETITION #14-06 A request submitted by Lawrence and Susanne Silverman and Diane Gaughan to rezone **2340 Schumacher Drive** from I-1 Light Industrial District to C-9 Automotive Sales Commercial District.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Petitioners. Mr. Ballard said the petitioners desire to rezone in order to sell the property and renovate the existing building as automotive detailing. He said the intent is to remodel the parking lot in a wooded portion of the property and the woods will be used to maintain a buffer between the residential properties to the east. Mr. Ballard also said the adjacent properties are similar to the proposed use.

Mr. Emmons asked if the business will be detailing cars and will they be steam cleaning engines. Mr. Ballard said he believes they will be doing tasks like that. He said Hall Chrysler is the contingent purchaser and those types of operations will be dealt with according to ordinances. He said they won't go in and dump waste from their processes. They have to remodel the building and there will be extensive work.

In Favor

Mark Shue, General Manager and Managing Partner from Hall Chrysler and Ryan Campbell, CFO, said they are looking to purchase the property and the change in zoning is a better suited use for the property. He said right now, it could be doing industrial work and the intent is to modernize the facility.

Mr. Shue also said they don't steam clean engines. He said they plan on using the building for storage, cleaning, waxing, parts department, and so forth and extra parking. He said on the east side of the property they will take down the 6' fence and create a large berm green space so they can't see the residential properties. Hopefully, customers will just see cars. Mr. Shue said the property is dated and their primary focus is storage.

Opposition

Cheryl Swan, 2411 N. Main Street, said the Schumacher woods are right behind her home and she's assuming the building is the old Indiana Wiping Cloth. She said they would be going into a wooded portion. She asked if it would cut into the existing larger woods. Ms. Swan said when she purchased her home she purchased it mainly because of the nice woods and no houses behind her.

Ms. Swan also said they can already hear the car lot. She asked how much more would they be affected by the business being expanded.

Ms. Swan said she was concerned about her property value. She said she didn't think anyone can take any more property devaluation and was surprised when they didn't take their homes during the widening of Main Street.

Mr. Lentsch asked Ms. Swan if she understood the property was already zoned industrial and a lot of different things could go in there; its set up to be a business. Mr. Prince said virtually any manufacturing contracting office could be there, and there are two different properties that the woods are located on.

Mr. Prince said they are proposing to remove a good bit of the woods and you can ask to keep some, and they are sensitive to that fact that there are residences along there and the ordinance only requires a fence. They have committed to doing more.

Ms. Swan said she doesn't know who owns the woods and wondered if it was "protected". Mr. Prince said it's just a private piece of property that's zoned industrial.

Mr. Lentsch asked Ms. Swan if she understood the property was privately owned and could be developed.

Mr. Shue said it matters to them to be good neighbors. He also said Ms. Swan's property doesn't directly abut the property.

Mr. Emmons asked how large of a buffer would be provided. Mr. Shue said on the north end they want to take a large retaining pond and take the material they remove from the parking lot and construct a berm and block out as much of the houses as they can. He said the last thing they want is for the neighbors to have to look out and see cars. It's the right thing to do.

Mr. Emmons asked if it would be a substantial area or just 4 or 5 feet. Mr. Shue said they want it to look natural and nice; not just a fence wall.

Mr. Winn closed the Public Hearing on Petition #14-06.

Staff Recommendation

The Planning Department recommends approval of Petition 14-06 to rezone property located at 2340 Schumacher Drive from I-1 Light Industrial to C-9 Automotive Sales. This recommendation is based upon the following findings of fact:

- 1. Given the property's close proximity to industrial and commercially zoned property the C-9 zoning would be compatible with the surrounding commercial properties and the existing automotive sales use located to the south.*

2. *Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as an industrial project, staff feels that the most desirable use for this property is the C-9 Automotive Sales zoning.*
3. *Because the parcel is located adjacent to commercial properties and adjacent to existing auto sales uses, the C-9 zoning classification would be compatible and is a desirable use for this property;*
4. *The C-9 zoning classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding commercial area by further expanding commercial development in the area.*
5. *The proposed C-9 Automobile Oriented Restaurant Commercial zoning is consistent with the City's Comprehensive Plan which indicated general commercial for this area.*

MOTION: Matt Lentsch moved to forward Petition #14-06 to the Common Council with a favorable recommendation. Don McCampbell seconded; motion carried with a vote of 7-0.

PETITION #14-07 A request submitted by Beacon Health Systems, Inc., Memorial Health Systems, Inc., Capital Avenue Properties, LLC, Mary A. Golata, Golata Family Trust, and Golata Charitable Remainder Unitrust to vacate public right of way(s) more specifically Evergreen Road (between Toll Road and Capital Avenue).

Daryl Knip, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Petitioners. He said all of the adjacent property owners are part of the petition and support the vacation.

Mr. Knip said Evergreen Road is not utilized and it bisects the property owned by Beacon and as they work on their development plans, they would like to vacate this road.

Mr. Winn closed the Public Hearing on Petition #14-07.

Staff Recommendation

Staff recommends in favor of Petition 14-07 to vacate a and release utility rights of a portion of Evergreen Road running north/south located northwest between the I-80/90 Toll Road and Capital Avenue This recommendation is based on the following findings of fact:

- 1) *The vacation will not hinder the growth or orderly development of the neighborhood. The vacation will allow for improved growth and orderly development of the neighborhood.*
- 2) *The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.*
- 3) *The alley does not provide access to any church, school, public building or place and thus will not hinder the public's access to any of the aforementioned destination;*
- 4) *The proposed vacation will not hinder the use of any public way, utility or place.*

- 5) *This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.*

MOTION: Don McCampbell moved to forward Petition #14-07 to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion carried with a vote of 7-0.

PETITION #14-08 A request submitted by Mark E. Skibinski requesting to rezone **1709 Elder Road** from I-2 Heavy Industrial District to R-1 Single Family Residential District.

Mark Skibinski, 1709 Elder Road, said he was just building a garage and found out it was zoned industrial and needs rezoned to R-1. Mr. Skibinski said it will be built way back behind the house and will be used to store cars and such.

Mr. Winn asked how deep the property was. Mr. Skibinski said about 300'. The garage will be 135' from the back of the house; there's plenty of room.

Mr. Emmons asked if his house was residential. Mr. Skibinski said yes. When the contractor went to pull the permit, that's when he found out it was zoned industrial.

Mr. Winn closed the Public Hearing on Petition #14-08.

Staff Recommendation

*The Planning Department recommends **approval** of Petition 14-08 to rezone 1709 Elder Road from I-2 Heavy Industrial District to R-1 Single Family Residential District. This recommendation is based upon the following findings of fact:*

- 1. There are some industrial zonings in the neighborhood, but the neighborhood surrounding the property to the north, south, and east are used as single family dwellings, and its historic use as a single family dwelling would be compatible to the area;*
- 2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, and the potential of development as an industrial project, staff feels that the most desirable use for this property is its historical single-family use;*
- 3. Because the parcel is located in an area of residential uses, the rezoning to R-1 Single-Family Residential is a desirable use for this property;*
- 4. As opposed to the range of potential industrial development that could occur with its current zoning, rezoning this property to the R-1 Single-family Residential classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding residential neighborhood; and,*
- 5. The City's Comprehensive Plan calls for industrial use, however, the Plan calls for low density residential immediately to the south and to the east, and its historic use as a*

single family home is compatible and consistent with the historic residential uses in the area.

MOTION: Dale "Woody" Emmons moved to forward Petition #14-08 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 7-0.

PETITION #14-09 A request submitted by the City of Mishawaka requesting to vacate public right-of-way.

Ken Prince, City Planner, presented the Petition on behalf of the City. He said when the City purchased properties on the east side of Main Street it was to protect the cemetery.

Mr. Prince said the area they are looking to vacate is the area where the road is jogged. The right-of-way is a few feet behind the sidewalk and they desire to install a fence. He said the cemetery cannot create plots, but can plant a flower garden. This is cleaning up of paperwork.

Mr. Winn closed the Public Hearing on Petition #14-09.

Staff Recommendation

Staff recommends in favor of Petition 14-09 to vacate the portion of Main Street between Jefferson Blvd & Edgar Ave. This recommendation is based on the following findings of fact.

- 1) The vacation will not hinder the growth or orderly development of the neighborhood. The vacation will allow for improved growth and orderly development of the neighborhood.*
- 2) The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.*
- 3) The right-of-way to be vacated does not provide access to any church, school, public building or place and thus will not hinder the public's access to any of the aforementioned destination;*
- 4) The proposed vacation will not hinder the use of any public way, utility or place.*
- 5) This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.*

MOTION: Rosemary Klaer moved to forward Petition #14-09 to the Common Council with a favorable recommendation. Don McCampbell seconded; motion carried with a vote of 7-0.

ADJOURNMENT: 7:50 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner