

MAY 11, 2021

**PLAN COMMISSION
CITY OF MISHAWAKA, INDIANA**

The regular meeting of the Mishawaka Plan Commission was held Tuesday, May 11, 2021, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Chris Jamrose, Murray Winn, Dale "Woody" Emmons, Matt Lentsch, Chris Tordi, Dale Freeman, Kathleen White-Gadacz. Absent: Chris Niedbalski and Nick Troiola. In addition to members of the public, the following were also in attendance: Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mr. Lentsch explained the Rules of Procedure.

The Minutes of the April 13, 2021, meeting, were approved as presented.

Conflict of Interest was not declared.

PUBLIC HEARING:

PLAT #21-02

A request submitted by Shavehead Properties LLC & S.E.R. Real Estate, LLC seeking approval of the one (1) lot "Inserv Minor Subdivision".

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the applicants. He said the owner would like to make improvements to the property and get paving done.

Mr. Shearon said the owner got costs for underground drainage system and will buy the property to the south and put in a retention pond; that's the reason for the subdivision.

Mr. Lentsch asked where the retention basin would be. Mr. Shearon said along the south property line between the existing property line and the south property line.

Mr. Lentsch asked if it would be near the street. Mr. Shearon said it will run the length of the property.

Mr. Lentsch closed the Public Hearing on Plat #21-02.

Staff Recommendation

*The Planning Department recommends **approval** of the Preliminary and Final Replat for the "Inserv Minor Subdivision" pending submittal of a revised and executed plat for recordation. This recommendation is based upon the fact that the subdivision plat meets all of the requirements of Section 133-73 / Preliminary Plat and Section 133-76 / Final Plat of the City of Mishawaka Subdivision Control Ordinance.*

MOTION: Dale Freeman moved to approve Plat #21-02. Kathleen White-Gadacz seconded; motion carried with a vote of 7-0.

PLAT #21-03

A request submitted by GW Mishawaka II LLC seeking approval of the two (2) lot "GW Grape Road Subdivision".

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Blvd., South Bend, appeared on behalf of the applicant. He said the request is to create two new out lots in front of different retail spots along Grape Road.

Mr. Huber said in their development of this plat they have had multiple negotiations with staff and as part of that they have worked with Engineering to identify a new common access to the center. He said they will eliminate the access along Grape Road and build a new one between the two out lots. Mr. Huber said their client owns the two lots and ABC Warehouse owns the lot in the middle.

Mr. Huber said in comments from Engineering, they would like to see the relocation of the entry drive. He said for them to do that, it will require a new retail easement agreement contract for the plaza for all the properties. That requires additional negotiations with ABC Warehouse. There is interest on both sides. Mr. Huber said they will work with Engineering to determine what that easement may look like. Those comments will be incorporated into a new REA agreement.

Ms. Jamrose asked if we have a commitment from ABC Warehouse to make this happen?

Mitch Goltz on behalf of GW Mishawaka, 2211 N. Elston, Chicago, said they have been working with ABC Warehouse and they are on the line. He said they have been working with them for nearly 2 years including this access plan and they are in support of seeing this done and we're close to getting this done.

Missy Sertz, Director of Real Estate, 2711 Hartland, MI, said they have been working with them on this for quite some time. She said in theory and in concept they think will bring life to the center.

Mr. Prince asked what was the purpose of the subdivision. Mr. Huber said they will modify the plat to identify easements and create the two parcels. He said the plat would address some of these issues. They have to have the plat further developed showing easements and access and the client is willing to see this happen.

Mr. Prince said he thinks from the City's perspective wherever the access is it should be fully in place before the lots are occupied. The new construction and access is needed and the development of these lots are required. Mr. Huber said they do understand that and can work with the prospective users.

Mr. Lentsch said the way he sees it from his perspective, he would be remiss if we didn't make it conditional on further working out details of easement and access with Engineering. Mr. Prince said let's talk about the legal aspects. He said if the plat meets the ordinance, you need to approve it. The issue is movement of the drive and that will be dictated by site plan review process. Mr. Prince said we want to give them the opportunity to work forward with the agreements.

Mr. Prince said they will have to come back for individual site plans, but the access agreement will likely be private between the entities and likely identified in the legal description.

Mr. Goltz said there is support to see this go forward and appreciates the feedback.

Mr. Winn said looking at the preliminary plan you can't really tell what the distance is from the rear portion of the lots to the existing buildings. What is the distance?

Mr. Huber said they are honoring the existing drive that is the north/south access drive.

Mr. Lentsch asked if there would be just the one curb cut off of Grape. Mr. Huber said will be a full curb cut access.

Mr. Lentsch closed the Public Hearing on Plat #21-03.

Staff Recommendation

*The Planning Department recommends **approval** of the Preliminary and Final Replat for the "GW Grape Road Minor Subdivision" pending submittal of a revised and executed plat for recordation. This recommendation is based upon the fact that the subdivision plat meets all of the requirements of Section 133-73 / Preliminary Plat and Section 133-76 / Final Plat of the City of Mishawaka Subdivision Control Ordinance.*

MOTION: Murray Winn moved to approve Plat #21-03. Chris Tordi seconded; motion carried with a vote of 7-0.

PETITION #21-04 A request submitted by Hack Properties, LLC, seeking to vacate the alley north of Brown Avenue between Forest Avenue and Benton Street.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, said Hack Properties has acquired five lots on Brown Avenue. He said the alley has never been improved and the City would support a vacation as it's never been there and would add some property to the property owners to the north and south.

Mr. Lang said there are four homes under construction to the south of the alley. He said they just received a variance for the fifth home earlier this evening.

In Favor

Paul Johnson, 626 W. Brown Avenue, said he's been mowing that for 26 years and is in favor of it being vacated.

Mr. Lentsch closed the Public Hearing on Petition #21-04.

Staff Recommendation

Staff recommends in favor of Petition 21-04 to vacate the first 16' wide east-west alley lying north of Brown Avenue running approximately 300' and bound on the east by the west right-of-way line of Forest Avenue and on the west by the east right-of-way line of Benton Street. The alley is adjacent to Lots 11 through 24 of Liberty Gardens. 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 alley is currently unimproved and has remained as such since being platted in 1928.*
- 2) *The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient. The alley does not provide access to any adjacent*

existing structures, and will not be utilized for the new houses being constructed to the south.

- 3) *The street 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. The existing right-of-way is currently unimproved. Utility easements will remain in place.*
- 5) *This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.*

MOTION: Dale Freeman moved to forward Petition #21-04 to the Common Council with a favorable recommendation. Dale "Woody" Emmons seconded; motion carried with a vote of 7-0.

PETITION #21-05 A request submitted by GW Mishawaka II, LLC, seeking to rezone **5603 Grape Road** from C-7 Automobile Oriented Restaurant Commercial to C-4 Automobile Oriented Commercial District.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Boulevard, South Bend, appeared on behalf of the Petitioner. He said he was here a few months ago to rezone this property to C-7. Mr. Huber said since then some reshuffling has happened and they are looking to get this property zoned to C-4 to allow an oil change business to locate there.

Mr. Huber said Discount Tire is located to the north and there are multiple other C-4 uses along the Grape Road corridor and this use would be compatible.

Mr. Lentsch closed the Public Hearing on Petition #21-05.

Staff Recommendation

*The Planning Department recommends **in favor** of Petition #21-05 to rezone the property formerly addressed as 5603 Grape Road to C-4 Automobile Oriented Commercial District. This recommendation is based upon the following findings of fact:*

1. *Existing Conditions. As Grape Road is a busy commercial corridor, the majority of the properties in the immediate vicinity are commercial in use and would be compatible to the area;*
2. *Character of Buildings - The character of the buildings in the area are predominantly commercial*
3. *The most desirable/highest and best use - Because the parcel is located adjacent to another automobile use, Discount Tire to the north, the rezoning to C-4 Automobile Oriented Commercial District is a desirable use for this property;*
4. *Conservation of property values - The proposed rezoning should not be injurious to property values in the surrounding area as Grape Road is the commercial corridor with permits multiples commercial uses; and*

5. *Comprehensive Plan - The 2000 Mishawaka Comprehensive Plan identifies the area as General Commercial, and given its location along Grape Road, the proposed commercial use is consistent with the Plan.*

MOTION: Kathleen White-Gadacz moved to forward Petition #21-05 to the Common Council with a favorable recommendation. Murray Winn seconded; motion carried with a vote of 7-0.

PETITION #21-06 A request submitted by Pizza Hut of America, Inc., seeking to rezone **2777 Lincolnway East** from C-1 General Commercial District to C-7 Automobile Oriented Restaurant Commercial.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Boulevard, South Bend, appeared on behalf of the Petitioner. He said they are requesting to rezone the former Pizza Hut from C-1 to C-7 to permit a drive-thru restaurant. The property is adjacent to McDonald's and Mariellen Avenue.

Mr. Huber said earlier at the Board of Zoning Appeals meeting they were granted several variances to reduce side yard setbacks and parking requirements, but needs the C-7 zoning for a new development. He said given the neighborhood, they feel this is an appropriate use.

Mr. Lentsch asked what the difference is between C-1 and C-7 zoning. Mr. Prince said it's the drive-thru component as they are more intensive. The parking requirements and landscaping are the same. He said the issues are developmental here and not the use.

Mr. Tordi asked what the percentage of business is drive-thru. Mr. Huber said it's about an 80/20 split with 80% being drive-thru. He said they received a variance for a decrease in parking spaces from 35 to 26 as the site is narrow and difficult given the size of the site. The restaurant being proposed is the smallest offered by the franchise and will have an extra-long stacking lane.

Mr. Huber said as discussed with Engineering, they asked to remove the access on Lincolnway and move it to Mariellen and they are agreeable to that. They want a safe design.

Mr. Lentsch asked if this is something that will affect McDonald's. Mr. Huber said the existing drive in the back will remain.

Mr. Lentsch closed the Public Hearing on Petition #21-06.

Staff Recommendation

Staff recommends in **favor** of rezoning Petition 21-06 to rezone approximately 0.64 acres of property located at 2777 Lincoln Way East from C-1 General Commercial to C-7 Auto Oriented Restaurant Commercial to allow for the construction of a restaurant with drive-thru facilities. This recommendation is based on the following findings of fact:

1. *Existing Conditions – The subject property consists of a vacant commercial structure and is located at the southwest corner of the Lincoln Way East and Mariellen Avenue. Lincoln Way East is a highly travelled corridor providing major east-west access through the City of Mishawaka and South Bend. Adjacent land uses include a hotel and multi-tenant commercial shopping center to the north, restaurants with drive-*

thru facilities to the west and east, and a public utility sanitary sewer lift station to the south.

- 2. Character of Buildings – The character of the buildings in the area are predominantly single and multi-tenant commercial including a hotel, retail, and restaurants.*
- 3. The most desirable/highest and best use – Because of the property's location and the adjacent existing commercial zoning and development, the most desirable use of the property is commercial.*
- 4. Conservation of property values – The proposed rezoning should not be injurious to property values in the surrounding area. The proposed restaurant with drive-thru and other C-7 Auto Oriented Restaurant Commercial uses are compatible with the adjacent existing uses.*
- 5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.*

MOTION: Kathleen White-Gadacz moved to forward Petition #21-06 to the Common Council with a favorable recommendation. Chris Tordi seconded; motion carried with a vote of 7-0.

ADJOURNMENT: 7:37 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner