

SEPTEMBER 14, 2021
PLAN COMMISSION
CITY OF MISHAWAKA, INDIANA

The regular meeting of the Mishawaka Plan Commission was held Tuesday, September 14, 2021, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Murray Winn, Dale "Woody" Emmons, Chris Tordi, Dale Freeman, and Kathleen White-Gadacz. 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. Tordi explained the Rules of Procedure.

The Minutes of the August 10, 2021, meeting, were approved as presented.

Conflict of Interest was not declared.

PUBLIC HEARING:

PETITION #21-13 A petition submitted by MFD II, LLC (Miller Family Development, LLC) requesting to amend the Whispering Pines Planned Unit Development to remove the restriction as a senior-only complex to become market-rate, non-age restricted.

Dennis Miller, 806 Green Pine Court, Mishawaka, said he was the operating partner in MFD II. He said he built and operated these apartments in the last 20 years and they are trying to retire. Mr. Miller said they weren't aware this was a restriction, it was what they wanted when they built it. They have a full house and their main concern is their buyer's lender would like the senior restriction removed. Mr. Miller said he heard this week that Social Security is dropping and he is concerned as they have a number of seniors who are on Social Security and if that gets cut, the price of rent goes up and it would be difficult to operate a senior only property. The request is to remove the restriction so the buyer can do market rate rent to non-seniors.

Mr. Tordi asked if it was filled with seniors now. Mr. Miller said yes. They are allowed a 20% under age, but that is like family members, but doesn't think he has any right now.

Mr. Emmons said if we remove the restriction of seniors only, he understands the cost, the rate to live there, they would want to be more costly. Mr. Miller said it is already at market rate and it would be the same rate for senior or non-seniors to live there. He said they are only taking the senior restriction away.

Mr. Emmons said he didn't understand the restriction if the rent would be the same. Mr. Miller said the buyers don't want to be senior only in case Social Security lowers the amount they pay.

Mr. Emmons said he doesn't see the benefit of taking away a facility for seniors. Mr. Miller said seniors can still rent.

Mr. Prince said by removing the age restriction any age can move in, not just seniors. It's not a low-income project or subsidized project. It's market rate and removing the age restrictions.

Mr. Emmons said he knows that some seniors like the age restriction and asked if Mr. Miller had any seniors complain about removing the restriction. Mr. Miller said some have commented, but not complained; they are renters and not owners. They can continue to live there. He said the buyer wants the ability to keep it full.

Ms. Gadacz asked if the lender was requiring this. Mr. Miller said yes, he wanted to keep it seniors only.

Mr. Emmons asked if the developer was out of state. Mr. Miller said yes and they have several properties in Indiana.

Ms. Gadacz asked if he knew if every lender would require this or just this lender. Mr. Miller said he doesn't know.

In Favor

Peter Jankowski, broker for the deal, 3327 Montmartre Circle, West Bloomfield, MI, said the purchaser of the property wants to maintain the property and keep tenants who love their tenancy. But this is not anything to do with the rent. Mr. Miller said he could raise the rent as high as he wants. This is opening up the property to anyone; not just 55 and up.

Mr. Jankowski said the lender needs them to be able to fill vacancies in case there was a drop in occupancy and if they don't have anyone over 55 and on the list, they can fill with younger people. He said you have to provide assurances up front to make the buyer feel "warm and fuzzy". It's an annoyance, but something the purchaser has to deal with.

Opposition

Diane Dothmeier, 801 Spruce Court, said she moved in in July and she's found it to be a wonderful place and there's always a waiting list. She said she was fortunate to be able to get in here. Ms. Dothmeier said she finds it very safe, quiet and comfortable and the people that live there are kind. She said she works full time and people do their own thing.

Ms. Dothmeier said she sees residents enjoying their freedom sitting outside and chatting; some have wheelchairs and walkers. She said there won't be a time that 55 and over won't need a place; it's the perfect lifestyle for her. Ms. Dothmeier said this is what her age group needs and there's not enough for that purpose and she would like for it to remain for folks 55 and over to have a place.

Conrad Roberts, 928 Corby Street, said he feels the people that are living there now are very nice people and has meet several. He thinks it would be a mistake to put any age in there. He feels it would bring problems.

Rebuttal

Mr. Miller said he can't rent to those under 55, but if those under 55 live with their parents, they can live there.

Mr. Emmons said he noticed in the statement that it says senior only property, 55 and older since 2002 that the Fair Housing Act allows 20% of occupants to be under 55. He said he interprets as being able to lease to those under 55.

Mr. Prince said the Commission's role and it's being driven by the lender, and if they have the intent to change to under 55. He said they may have no intent to change that, but the bank may be looking 15 years down the line and hedging their bet in case the market changes. Mr. Prince said that may be what is driving that and there may be no intent. He said he would like to have that clarification before the Council meeting. Mr. Prince said it makes sense not to discriminate if he's taking care of a son, and not sure how they came up with 20%, but that doesn't bother him.

Mr. Emmons said he was looking for clarification.

Mr. Jankowski said he would like to provide clarification. He said they are not planning an overhaul of the property and will be run like the current ownership. With the price they are paying, they can't afford to empty the complex out and they are not trying to displace anyone and want to be a good community partner. They don't want to allow any riff-raff and have a good screening process.

Ms. Dothmeier said she understands what you are saying about age. If others are allowed that are younger, it changes a bit, it may deter the older generation from coming in and not choose to come here.

Mr. Miller said he appreciates what Ms. Dothmeier said; it's a good place for seniors, but in the same token, there's no place else for it to go. To him that's a good thing.

Mr. Miller said they have had a couple of younger people living with parents and had some minor problems because of it; that's why they made it senior only. He said at some point it may have to change and it may as well be now.

Mr. Tordi closed the Public Hearing on Petition #21-13.

Mr. Freeman said he is reading the letter provided by Mr. Miller saying 20% of occupants; lessees? He said there may need to be clarification before Council. Mr. Prince said he would never be checking anyone's ages. That would be brought up by the property owner and not considered a zoning violation.

Ms. Gadacz said the new owners would be smart to keep as is as it would be less trouble with older ages, but it should be the right of the property owner to do as they please with age.

Staff Recommendation

*Staff recommends **approval** of Petition 21-13 to amend the Whispering Pines Planned Unit Development (PUD), approved in 2000, to remove the senior citizen only age restriction.*

The recommendation is based on the following findings of fact:

- 1. Existing Conditions – The property is currently developed as apartment buildings, with other multi-family complex in the area.*
- 2. Character of Buildings in Area – There are other multi-family complexes in the area east of Hickory and north of McKinley.*
- 3. The Most Desirable/Highest and Best Use – Due to the property's location near other multi-family developments, and accessible to a nearby retail center (Town &*

Country), the similar proposed use will be compatible with the existing adjacent land uses.

4. *Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area because the use is very similar and the physical site is not changing.*
5. *Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for multi-family residential (apartment complexes and nursing facilities) as currently exists to the south and west.*

MOTION: Kathleen White-Gadacz moved to forward Petition #21-13 to the Common Council with a favorable recommendation. Motion dies due to a lack of a second.

MOTION: Murray Winn moved to forward Petition #21-13 to the Common Council with an unfavorable recommendation. Dale “Woody” Emmons seconded. With a vote of 4-1 (*Gadacz*) the Petition is forwarded to the Common Council with no recommendation.

PETITION #21-14 A petition submitted by GLC-MAP McKinley Trust requesting to rezone **422 West McKinley Avenue** from C-4 Automobile Oriented Commercial District to C-1 General Commercial District.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the petitioner. He said they received a Use Variance earlier this evening from the Board of Zoning Appeals.

Mr. Ballard said they would like to rezone the property to C-1 to allow for the redevelopment of the property for a new building with three (3) tenants; one being a restaurant with drive-thru, retail and sit-down restaurant.

Mr. Tordi closed the Public Hearing on Petition #21-14.

Staff Recommendation

Staff recommends in **favor** of rezoning Petition 21-14 to rezone a 1.62 acre area located at 422 W. McKinley Avenue from C-4 Automobile Oriented Commercial District and C-2 Shopping Center Commercial District to C-1 General Commercial District to allow for the construction of a three tenant commercial building including a restaurant with drive-thru facilities, a retail store, and a dine-in restaurant. This recommendation is based on the following findings of fact:

1. *Existing Conditions – The subject property consists of an automobile sales business and is located along McKinley Avenue. This road is a highly travelled commercial corridor providing major east-west access through the City. Adjacent land uses include a multi-tenant commercial shopping center to the north; a restaurant with drive-thru to the west; a multi-tenant commercial building, electronic cigarette retailer, and insurance office to the south across W. McKinley Avenue; and an automatic car wash facility, current under construction, to the east.*

2. *Character of Buildings – The character of the buildings in the area are predominantly single and multi-tenant commercial.*
3. *The most desirable/highest and best use – Because of the parcel’s location and existing commercial development along McKinley Avenue, 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 area. The proposed uses for multi-tenant commercial building and other permitted C-1 General 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: Dale Freeman moved to forward Petition #21-14 to the Common Council with a favorable recommendation. Dale “Woody” Emmons seconded; motion carried with a vote of 5-0.

PETITION #21-15 A petition submitted by Stephen J. and Joellen Miller requesting to rezone **821 West Jefferson Boulevard** from R-1 Single Family Residential District and C-1 General Commercial District to C-6 Linear Office Commercial District.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the petitioners. Mr. Lang said Mr. Miller has had his guitar studio there for at least 20 years and is in the process of retiring and wants to sell. He said the corner parcel is zoned C-1 General Commercial and has been used as a parking lot. The house is zoned R-1 Single Family residential.

Mr. Lang said they would like to continue to house a low impact use such as hair salon or insurance office. He said he met with staff and felt the C-6 zoning would be a good fit; low impact and can continue to be used as it has been, with improvements to the parking lot.

Mr. Emmons asked if the parking lot continue to be used as such and could the house be an office use. Mr. Lang said yes, or a salon.

Mr. Emmons asked if an office could build something else. Mr. Prince said C-6 does permit family homes. The C-1 lot at the corner would permit a bar or restaurant, but is not appropriate. The C-6 is the most logical use for that property and could still make improvements to the home.

Ms. Gadacz asked if they were living there. Mr. Lang said no, it’s just being used as a studio.

Mr. Winn asked if the parking lot needed to be paved. Mr. Prince said they added gravel and if changed to a real office, it would need to be brought up to current commercial standards.

Mr. Winn asked if retention would be required. Mr. Prince said yes.

Mr. Tordi closed the Public Hearing on Petition #21-15.

Staff Recommendation

Staff recommends in **favor** of rezoning Petition 21-15 to rezone 0.23 acres (84' x 120') of property located at 821 W Jefferson Blvd from C-1 General Commercial and R-1 Single Family Residential to C-6 Linear Office Commercial to allow for the continuation of a commercial business at this location. This recommendation is based on the following findings of fact:

1. *Existing Conditions* – The subject property consists of a single family home that has been used as a business for the past 20 years, and is located on West Jefferson Blvd which includes other commercial uses, although single family homes are immediately adjacent.
2. *Character of Buildings* – The character of the buildings in the area are predominantly single family homes, but there is also a small multi-family building, and various commercial businesses between Jefferson and Forest Avenue including a convenience store, bar, and auto sales.
3. *The most desirable/highest and best use* – Because of the property’s history of commercial use and current configuration, 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 C-6 Linear Office Commercial District was selected because the permitted uses are compatible with the existing adjacent uses.
5. *Comprehensive Plan* – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided low density residential development within this property, however recognizes the areas of commercial to both the east and west. Therefore, the proposed zoning is not in conflict with the Comprehensive Plan

MOTION: Murray Winn moved to forward Petition #21-15 to the Common Council with a favorable recommendation. Kathleen White-Gadacz seconded; motion carried with a vote of 5-0.

PLAT #21-09 A request submitted by Bittersweet Plaza, LLC, seeking approval of the four (4) lot “Bittersweet Plaza Minor Subdivision”.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the applicant. He said they are simply seeking approval of the four (4) lot subdivision.

Mr. Ballard said last month they received variances for setback, parking, landscaping, etc. Comments have been addressed.

Mr. Tordi closed the Public Hearing on Plat #21-09.

Staff Recommendation

The Planning Department recommends **approval** of the Preliminary and Final Plat for the "Bittersweet Plaza 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: Kathleen White-Gadacz moved to approve Plat #21-09. Murray Winn seconded; motion carried with a vote of 5-0.

REPLAT #21-01 A request submitted by Donna Groves seeking approval of the one (1) lot "Seeberger's Broadway Addition Groves' Replat" at **610 West Marion Street**.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the applicant. Mr. Lang said this is the merging of two lots into one so the owner can build a garage.

Mr. Tordi closed the Public Hearing on Replat #21-01.

Staff Recommendation

The Planning Department recommends **approval** of the Preliminary and Final Replat for "Seeberger's Broadway Addition Groves' Replat". This recommendation is based on the fact that the replat meets all the requirements of Section 133-107 (Preliminary Replat) and Section 133- 110 (Final Replat) of the City of Mishawaka Subdivision Control Ordinance.

MOTION: Murray Winn moved to approve Replat #21-01. Dale Freeman seconded; motion carried with a vote of 5-0.

DESIGN REVIEW:

DR #21-02 A request submitted by TB Bremen LLC requesting a waiver from the Mishawaka Design Review Ordinance Section 105-169 Exterior Signage Materials to allow aluminum skirting on monument sign base at Taco Bell, **3615 Bremen Highway**.

Diana Chambers, Commercial Signs, 404 E. Hawthorne Street, Ft. Wayne, IN, appeared on behalf of Taco Bell. She said they are asking to be allowed to keep the aluminum skirting that was sent in with the signage permit applications. Ms. Chambers said they found out after the sign was installed without a masonry base. She said the masonry base is not in Taco Bell standards and going back after the fact would be costly as they would need to remove the sign and put in a new base.

Mr. Prince said it should have been caught when the permits came in. He said the sign is attractive and wanted to come back through the review process and the waiver is appropriate in this case. Mr. Prince said it's our fault and we want to dot the I's and cross the t's.

Ms. Chambers said it is aluminum and should hold up nearly as well as brick.

Mr. Emmons asked what is there now. Mr. Prince said it's aluminum. Staff made a mistake and should have caught it and now it's a problem as it's installed.

Mr. Tordi closed the Public Hearing on Design Review #21-02.

Staff Recommendation

The Planning Staff recommends approval of Design Review Waiver #21-02 to keep the sign at 3615 Bremen Hwy without a masonry base. Since the error was on the City, this one time approval is in the best interest of both parties. In the future, we can show that the owner/sign company went through a process to have the sign approved, rather than treating it as simply an oversight, in order to maintain the integrity of the freestanding sign corridor overlay districts.

MOTION: Kathleen White-Gadacz moved to approve Design Review #21-02. Dale Freeman seconded; motion carried with a vote of 5-0.

**SITE PLAN:
SP #21-04**

A request for final site plan approval for a 2,088 sqft Valvoline oil change facility at **5603 Grape Road**.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Boulevard, South Bend, appeared on behalf of the applicant. He said the property is the former Fitness USA on Grape Road.

Mr. Huber said if you recall, this property was rezoned to C-7 and then rezoned to C-4. They were in negotiations with the City for the plat creating outlots. He said they were limited to providing one access to this site; they had proposed two. Mr. Huber said the property owner is working with the owners to the south on the relocation of the exit onto Grape Road. This new access will provide better and safer service. As of today, the owners have an agreement on a final amendment to the original easement documents which will allow them to purpose what is proposed. Mr. Huber said they can't do anything further until the plats are recorded.

Mr. Huber said the site plan is for the north section. He said they did receive comments and wanted to let you know that the document being shown shows some of those revisions. The City didn't locate the additional 20' ROW dedication, and have since done that. They are in the process of finalizing the rest of the comments and have no issues with them.

Mr. Winn asked what would be the traffic flow for service. Mr. Huber said you will come in the primary entrance on the north side and driving into the service bays is one way, but you can access the site from either way.

Staff Recommendation

*Staff recommends that the request for final site plan for Valvoline Oil - a 2,180 sq. ft. instant oil lube and service business - be **approved**. A revised plan set addressing all departmental review comments shall be provided prior to recordation of the plans or issuance of any permits. This recommendation is based on the fact that the site plan meets all the requirements of Section 137-35 Final Site Plan approval.*

MOTION: Dale Freeman moved to approve Site Plan #21-04. Dale "Woody" Emmons seconded; motion carried with a vote of 5-0.

NEW BUSINESS:

Mr. Prince said as many are aware, Matt Lentsch, the current President, has accepted a position out of state and has resigned. The Mayor will be filling that position. We are

asking the commission to reappoint officers. Mr. Tordi is the Vice President and acting President this evening.

Mr. Prince thanked Matt for his many years of service to the City and wishes him well.

ELECTION OF OFFICERS:

MOTION: Dale "Woody" Emmons moved to nominate Chris Tordi as President. Dale Freeman seconded; motion carried with a vote of 4-0 (*Tordi*).

MOTION: Dale "Woody" Emmons moved to nominate Dale Freeman as Vice-President. Chris Tordi seconded; motion carried with a vote of 4-0 (*Freeman*).

ADJOURN: 7:53 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner