

**MAY 11, 2010**

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 11, 2010, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Jim Trippel, Don McCampbell, Ross Portolese, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: John Gourley, Ken Prince, Peg Strantz, and Kari Myers.

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The minutes of the April 13, 2010, meeting, were approved as distributed.

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Don McCampbell explained the Rules of Procedure.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #10-12** An appeal submitted by Peter Kariuki and Carmen Barnett requesting a Developmental Variance for **403 South Laurel Street**, to allow a recently constructed deck with an 8' front building setback to remain.

Carmen Barnett, 403 S. Laurel Street, presented the appeal. She said they have made repairs to the house as needed and built the new deck to cover the steps that were falling apart and were unaware a permit was needed. She said they got a permit last summer to put up a fence and thought that would cover a deck as well.

Jim Trippel asked if the deck was on the same footprint as the previous stairs. Ms. Barnett said no, it extends 2' farther out.

Ross Portolese asked if she obtained a building permit to add the deck. Ms. Barnett said no, she didn't know they needed one.

Don McCampbell closed the Public Hearing on Appeal #10-12.

Rosemary Klaer asked if people are being told that the permit covers only the job listed on the permit and additional permits would be required if they intend to do other work. Ken Prince said you can't predict what people will do in the future.

**Staff Recommendation**

*Staff recommends approval of Appeal 10-12 for 403 Laurel Street to allow an unroofed porch with an eight (8) foot front (east) yard setback to remain as constructed. 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;*

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 deck will not be roofed, thus lessening the visual impact of the encroachment. The deck will improve the curb appeal of the home, making the neighborhood more desirable.*
  
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the prior deteriorating cement porch was 10 feet from the front property line. By not allowing the owners the ability to modify the front entrance of the home without encroaching into the required setback would cause increased access difficulties for the occupants, mail carriers and even emergency personnel. Furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

**MOTION:** Ross Portolese moved to approve Appeal #10-12. Jim Trippel seconded; motion carried with a vote of 5-0.

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**APPEAL #10-13** An appeal submitted by John J. Coussens requesting various Developmental Variances for **4917 Grape Road**, to allow the replacement of the south face of the existing off-premise sign with LED copy; variance from the required setback of the sign from the residential property to the north; variance from the required separation from the off-premise sign to the north; variance for non-conforming height of 45'; and variance for non-conforming size of the sign.

Anthony Zappia, 52582 SR 933N, South Bend, appeared representing Mr. Coussens and Burkhart Advertising. Mr. Zappia said they are requesting permission to remove the south face only of the billboard on the property and replace it with a digital face. There will be no size or location changes of the sign. He said the technology is identical to the sign located at South Bend Avenue and Ironwood in South Bend.

Mr. Zappia said LED refers to light emitting diode and the sign can be changed approximately eight times per minute. He said Mishawaka Ordinance permits digital display; the issue is that the sign must be able to meet the current provisions of the ordinance. In this case, it does not meet the requirements on setback from residential property, required separation from other off-premise signs, height, and size of the sign. It did meet all codes when originally installed. Mr. Zappia said there will be no negative impact on nearby businesses or residences. The sign will not be animated. He also indicated staff has given a favorable recommendation to the request.

Don McCampbell asked if the rate at which the sign message changes can be adjusted or will the message change every 8 seconds. Terry O'Brien, 15480 Sienna Court, Granger, said the message will be static, then fading as the message changes. He said the 8 second message change adheres to INDOT regulations, but the rate of change can be adjusted. He said it will not be animated like Drive N Shine or Sonic.

Mr. Trippel asked what kind of message the sign would display. Mr. O'Brien said local businesses will advertise on the billboard.

Mr. Trippel said in other words, you are going to sell display on the sign. Mr. O'Brien said correct.

Mr. McCampbell closed the Public Hearing on Appeal #10-13.

### **Staff Recommendation**

*The Staff recommends in favor of Appeal 10-13 to allow for various developmental variances to allow for the removal and replacement of the south face of an existing off-premise sign with a digital changeable message face. Specifically the existing sign is legally non-conforming relative to height, sign area, separation from residential property, and separation from other off-premise signs. The recommendation is based upon the following Finding of Facts:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because all construction will be completed in accordance with all applicable state and local building codes. Furthermore, the sign face replaces the face of an existing off premise sign. The sign is located on property where the surrounding property is owned by the same person.*
- 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 total square footage of the proposed sign face equals the previous non-conforming face. The sign is located on property where the surrounding property is owned by the same person. The owner is in a unique position to judge the merit and liability of having this increased scope relative to the nonconforming sign.*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because it ordinance doesn't take into account the specific merits of a properties location and context. In this case, the property owner has limited the replacement of faces to the south face only, away from his residentially zoned property.*

**MOTION:** Ross Portolese moved to approve Appeal #10-13. Jim Trippel seconded; motion carried with a vote of 3-2 (Krueger, Klaer).

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**APPEAL #10-14** An appeal submitted by Grape Road BMC Partners, L.P. requesting a Sign Variance for **7121 Grape Road**, to allow an additional freestanding sign and a directional sign on the property.

Jared Lynch, Site Enhancement Services, 6001 Nimtz Parkway, South Bend, appeared on behalf of Grape Road BMC Partners, L.P.

Mr. Lynch said Brown Mackie College is seeking a variance to permit an additional freestanding sign, a monolith ground sign that will be located at the main entrance to the building. The sign will be non-illuminated. The college has no direct frontage on Cleveland or Grape and the sign will act as a way-finding device and guide those entering the property.

Mr. Krueger asked if this was the J.C. Penney sign. Mr. Lynch said no.

Mr. McCampbell closed the Public Hearing on Appeal #10-14.

Mr. Trippel asked Ken Prince if there was any limit on the signage. Mr. Prince said there is no limit on building signs, but the freestanding sign requires the variance.

Mr. Trippel asked if it exceeded the building's roof line. Mr. Prince said yes, it is above the eave, but would not be noticeable from the road.

### **Staff Recommendation**

*Staff recommends approval of Appeal #10-14 to allow a second freestanding, non-illuminated, monument sign at 7121 Grape Road measuring 18' high by 12' wide. The recommendation is based on the following Findings of Fact:*

- 1. The 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 of the sign;*
- 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 sign will not be illuminated, will be at least 190 feet to closest, county residential property; will be approximately 450 feet from Grape Road; and will be 600 feet from Cleveland; and*
- 3. Because of the property's untypical location on 2.6 acres in the farthest corner away from street frontage of an 11.8 acre PUD, strict application of the terms of the On-Premise Sign Standards Ordinance will result in a practical difficulty in the use of the property because the Ordinance does not take into account untypical situations for properties that do not have street frontage requiring signage.*

**MOTION:** Rosemary Klaer moved to approve Appeal #10-14. Charles Krueger seconded; motion carried with a vote of 5-0.

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### **APPEAL #10-15**

An appeal submitted by Ironwood Enterprises, LLC requesting the following variances for property located at **301 East Day Road**: Use Variance to permit temporary TOMO and PET imaging trailers to be located on the property; Developmental Variances to allow for a reduction in the number of parking spaces, and for reduced rear building setback.

Mark Reinhard, Engineering Resources, Inc., 9835 Auburn Rd., Ft. Wayne, appeared on behalf of the Appellants. Mr. Reinhard said that Dr. Del Pilar will be relocating to another building and renovations at this address will begin in June which will provide innovative cancer care.

Mr. Reinhard said regarding the parking variance, there is parking on the south side of the building, but the expansion will be taking those spaces. He said the property to the east is also owned by Rans Development and will be used to create an adjoining parking lot. The zoning ordinance requires 4 spaces per 1,000 sf of floor space, and the request is for 3 spaces per 1,000 sf. The new parking lot to the east will be connected to provide cross access.

Mr. Reinhard said they are requesting a 24' rear yard setback; the ordinance requires 30'.

Mr. Reinhard said the Use Variance is for state-of-the-art PET scan and cancer treatment. He said when the building renovation and expansion is complete, the trailers will be removed. He expects them to be on site for no more than one year.

Mr. Trippel asked if there are any legal documents set up to provide for the parking to the east. Ryan Rans, 54401 26<sup>th</sup> Street, South Bend, said there will be a 15 year lease giving Cancer Care Partners control over the property to build an additional 40 parking spaces and will be tied to the lease of the property.

Mr. Trippel asked if the trailers would be coming and going. Mr. Reinhard said no. The trailers will remain on the property until the building is completed.

Mr. McCampbell closed the Public Hearing on Appeal #10-15.

Mr. Trippel asked if the requested parking will be adequate. Mr. Prince said they will be providing 3 spaces per 1,000 sf of floor space and that is adequate. He said he didn't want them to building more parking spaces than was necessary.

### **Staff Recommendation**

*The Staff recommends approval of Appeal 10-15 to provide 121 parking spaces from the required 250 and to reduce the required rear yard setback from 30' to 27'. 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; furthermore, the proposed parking will be supplemented by the adjacent parking lot to the east, which will be in common ownership with the office building. The 3' rear building setback is much less of an impact compared to how this site could have been developed based on the fact that it is a corner lot and that a 5' side yard could have been a potential;*
- 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 proposed common campus parking are anticipated to be sufficient for the proposed uses and again the 27' setback from the rear property line will allow for adequate light, air, and green space to buffer the single story office to the south;*
- 3. Strict application of the terms of the Ordinance will result in practical difficulties in the use of the property because the ordinance wasn't drafted to envision the shared use of parking between two sites. In addition, the fact that this lot is a corner lot contributes to the validity of a 27 foot rear yard setback. .*

*The staff recommends in favor Appeal 10-15 for a use variance to allow for two accessory temporary mobile diagnostic unit trailers on the property as depicted on the site plan. This recommendation is based upon the following findings of fact:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the temporary trailers will be located in the middle of the site in excess of required building setbacks and will be located in an area that will also be used for parking when the trailers are not in use;*
- 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 trailer will be used intermittently and are not permanent. The potential existing where the trailers will be upgraded and replaced over time;*
- 3. The need for the variance does arise from a condition peculiar to the property involved. The way that the present ordinance is structured, this variance is necessary because there is no flexibility to allow for a temporary trailers on the property other than a trailer that is for the construction industry which is incidental to erection of buildings;*
- 4. The strict application of the terms of this chapter does constitute an unnecessary hardship if applied to this property in that a particular temporary use such as diagnostic trailers could not be utilized on the property unless part of the primary permanent structure.*

5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan because the area is identified as Service Commercial, the commercial development and the medical office use, including the diagnostic trailers are consistent with the designated developmental pattern in the area.*

**MOTION:** Jim Trippel moved to forward Appeal #10-15 Use Variance to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

**MOTION:** Ross Portolese moved to approve Appeal #10-15 Developmental Variances. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #10-16** An appeal submitted by Gates Automotive Group on behalf of University Park Mall LLC requesting a Use Variance for **6501 Grape Road**, to permit off-site Used Car Sales for ten (10) days in June and ten (10) days in August, with temporary signage including banners and cold air balloons, and a mobile office facility for business transactions and securing of valuables.

Clint Emberton of Gates, 636 W. McKinley Avenue, appeared to request a Use Variance to hold a used car sale in the J C Penney parking lot north of the mall. He said the mall management has approved the location of the sale as long as they received zoning approval from the City. The site will provide ample parking for car stock, employee parking, vendors, and customers.

Mr. Emberton said the community anticipates this off-site event and it will have a positive impact on the automobile buying public. The off-site sale will also give Gates a reprieve while their McKinley campus undergoes an extensive four month renovation.

Mr. McCampbell asked Mr. Emberton if he had reviewed the conditions of approval set forth by the staff. Mr. Emberton said yes he had perused them. Mr. McCampbell asked if Gates would be able to comply and Mr. Emberton said yes.

Mr. Portolese asked if they would have banners. Mr. Emberton said no, but perhaps signage attached to the tent or a cold air balloon.

Mr. Portolese asked if this type of sale had been approved for this location before. Mr. Emberton said no, not at the mall, but several years ago at Hickory and Edison.

Mr. McCampbell closed the Public Hearing on Appeal #10-16.

### **Staff Recommendation**

*The staff recommends in **favor** of Appeal 10-16, Use Variance, to allow for the temporary use of a portion of the University Park Mall parking lot for an off-site car sales event. The event proposes utilizing two inflated cold air balloons, two (2) tents, mobile office facility, and temporary signage. The Use Variance is subject to the following conditions:*

### **USES:**

- *The event shall be limited to the display and sales of automobiles and light trucks for ten (10) days in June and ten (10) days in August, 2010.*

**SITE PLAN:**

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, balloons, temporary lighting, and other related temporary improvements subject to staff review and approval. Written approval of the site plan/layout shall be required from University Park Mall, LLC.*

**ACCESS/TRAFFIC CONTROL REQUIREMENTS:**

- *Access to the event use shall be through existing mall entrances. Additional restrictions may be requested by the City of Mishawaka the Director of Engineering as deemed appropriate as part of the review of a site plan/layout. The City of Mishawaka Police Department may also request any modifications to layout, parking, access, or attention devices during the event if it is deemed problematic to through traffic, or any safety issue is identified.*

**SETBACKS:**

- *All tents, display/parking areas, portable toilets and large inflatable balloons shall be setback a minimum of 25 feet from any road right-of-way and 10 feet from any internal access drive.*

**SIGNAGE/ATTENTION DEVICES:**

- *A plan identifying the location and type of all signage/attention devices shall be submitted subject to staff review and approval. A maximum of two (2) temporary signs no larger than 4' X 8' shall be permitted on Grape Road. A maximum of two temporary signs shall be permitted along State Road 23. A maximum of one (1) inflatable air balloon may be located on the site provided it is secured to the ground. All signs and attention getting devices shall not flash or be animated where they are overtly distracting to the motoring public. Internal directional signs shall also be permitted as necessary provided they are not visible from surrounding major roadways.*

*This recommendation is based upon the following findings of fact:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the development is temporary and will maintain certain minimum developmental standards as outlined herein;*
- 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 area is surrounded by commercial development;*
- 3. The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to hold their event at this site and maintain sales volume while the McKinley Campus is undergoing a major renovation; and*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial.*

**MOTION:** Jim Trippel moved to forward Appeal #10-16 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

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**APPEAL #10-17** An appeal submitted by Gates Automotive Group requesting a Use Variance for **636 West McKinley Avenue**, to permit three (3) temporary trailers for office use during the renovation of the Gates dealership building.

Clint Emberton of Gates, 636 W. McKinley Avenue, presented the appeal. He said they are requesting approval to use three (3) temporary trailers for office facilities while the building is undergoing extensive renovations. He also said the trailers would be set completely within their property boundaries. Mr. Emberton said during the four-month renovation period, staff will be displaced.

Mr. Emberton said the renovations are being required by their franchise agreement with Chevrolet. Gates has been located in this community for nearly 50 years and this request is critical to ensure the smooth operation of their business.

Mr. Krueger asked if the renovation would be complete in four months. Mr. Emberton said yes.

Mr. McCampbell closed the Public Hearing on Appeal #10-17.

Mr. Krueger asked Mr. Prince what happens if the renovation isn't complete in the anticipated time frame. Mr. Prince said the length of time the trailers can stay will run concurrent with the renovations. That way, for whatever reason, if there was an act of God and it takes eight months, the trailers can stay.

#### **Staff Recommendation**

*The staff recommends in **favor** Appeal 10-17 to allow for the installation of three (3) 12' X 44' temporary modular units to be used as offices based upon the following findings of fact:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the temporary buildings will meet all applicable setback requirements of the C-4 Automobile Oriented Commercial Zoning District;*
- 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 car sales office use currently exists on site;*
- 3. The need for the variance arises from some condition peculiar to the property involved because the existing office building will be undergoing a major renovation and office space is needed on site during the construction period;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because by definition this type of temporary structure may not be used for business offices; and*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the sales office is consistent with the Comprehensive Plan.*

**MOTION:** Rosemary Klaer moved to forward Appeal #10-17 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6.42 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner