

DECEMBER 14, 2010

BOARD OF ZONING APPEALS  
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, December 14, 2010, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Jim Trippel, Don McCampbell, Ross Portolese (arrived at 6:09 p.m.), and Rosemary Klaer. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: John Gourley, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

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The Minutes of the November 9, 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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Mr. McCampbell read a letter from Senior Planner, Greg Shearon, indicating the applicant, Mohamed Zackria, had requested to continue Appeal #10-44 to the January, 2011, hearing to address site planning issues.

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**PUBLIC HEARING:**

**APPEAL #10-42** An appeal submitted by Helman Commercial Realty LLC, an Indiana Limited Liability Company, requesting a Use Variance for **1017 East Jefferson Boulevard**, to allow an auto detail shop within a C-1 General Commercial property.

Max Helman, 17299 Pencross, Granger, presented the appeal. He said his original request was for an auto detail shop, but found out today that the deal fell through and would now like to amend the request to include all C-4 uses. He said if approved, he would comply with all rules and regulations.

Mr. McCampbell asked Ken Prince about this change of request. Mr. Prince said the Board can continue as they see fit, but if he wants to rezone the property to C-4 Automobile Oriented Commercial District it would be a separate process.

Mr. Trippel confirmed with Mr. Prince that the property is zoned C-1 General Commercial. Mr. Prince said that is correct and with this request Dr. Helman is limited to what he asked for in his request.

Dr. Helman said he would continue with his request for the auto detail use variance as originally presented.

Mr. Trippel asked Dr. Helman if he was prepared to follow all of staff's recommendations. Dr. Helman said yes.

Mr. McCampbell closed the Public Hearing on Appeal #10-42.

Mr. Trippel asked Mr. Prince about the conditions of approval. Mr. Prince said the items would need to be completed prior to the auto detail shop going in.

### **Staff Recommendation**

*The Staff recommends in favor of Appeal 10-42, a use variance to allow for an auto detail shop at 1017 E. Jefferson Boulevard subject to the following conditions:*

- 1. Use variance shall be limited to an automobile detail shop. No outside storage of materials and/or vehicle parts shall be permitted.*
- 2. An oil/grit interceptor shall be installed.*
- 3. A site plan shall be submitted detailing sanitary sewer layout with installation of the oil/grit interceptor. Plan shall include its size, location with respect to interior plumbing, and verify that restroom plumbing is down stream of unit.*
- 4. Signage on this site needs to be located a safe distance from the Jefferson Boulevard right-of-way, and shall adhere to signage standards for the C-4 Automobile Oriented Commercial district.*
- 5. Site shall comply with commercial landscape requirements. Landscaping shall be added as needed.*
- 6. Any building modification shall be submitted to the Planning and Building departments for review and all appropriate building permits shall be obtained.*

*This recommendation is based on the following reasons:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the surrounding industrial and commercial uses that currently operate there. The proposed use is consistent with the existing C-4 Automobile Oriented Commercial properties within the area.*
- 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 of the mixed commercial/industrial nature of the area.*
- 3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties. A use variance would allow the proposed automobile commercial use, while still protecting the commercial zoning for future use.*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current C-1 General Commercial zoning would not allow for the proposed automobile oriented commercial uses.*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Rosemary Klaer moved to forward Appeal #10-42 to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 3-0.

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**APPEAL #10-43** An appeal submitted by Judy Pruski requesting a Use Variance to allow a softball/baseball training facility at **1802 West Sixth Street**, and a Developmental Variance to allow for a reduction in parking spaces.

Jeff Holland, 2017 W. 6<sup>th</sup> Street, presented the request. He said the building where his softball training facility is currently located was foreclosed upon and he would like to relocate the

facility a few blocks away. Mr. Holland said the training facility has indoor batting cages and more where the kids can train.

Mr. Holland also said he is requesting a variance for a reduction in the required number of parking spaces. He said there is no place on the property to add more.

Mr. McCampbell asked Mr. Holland if he had seen the conditions of approval. Mr. Holland said yes and indicated the portion of the building they would occupy is the far east end of the property with vacant building space between him and the body shop.

Mr. Trippel asked how many people usually attend. Mr. Holland said maybe 12-15 at any given time plus coaches.

Mr. Trippel asked if the 27 existing parking spaces were adequate. Mr. Holland said yes.

Mr. McCampbell closed the Public Hearing on Appeal #10-43.

### **Staff Recommendation**

*The Staff recommends in favor of Appeal 10-43, allowing a use variance for a softball and baseball training facility at 1802 West Sixth Street, subject to the following conditions:*

- 1. A site plan shall be submitted to the Department of City Planning addressing landscaping, parking, drainage and surface requirements;*
- 2. Previous conditions for the automotive use variance shall apply;*
- 3. Required improvements to the property shall be completed by July 2011;*
- 4. Freestanding Signage is limited to one unilluminated monument style sign, one for each of the two users, with a display area of no greater than four (4) feet high by eight (8) feet wide/ 32 square feet, and with a total sign height not to exceed five (5) feet and with permits secured from Building and Planning Departments;*
- 5. Façade/wall signage for the entire site is limited to three (3), with letter height not to exceed 12 inches and ten (10) square feet of display area; and*
- 6. Temporary signage is prohibited.*

*This recommendation is based on the following reasons:*

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the surrounding commercial and residential uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.*
- 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 of the mixed commercial/industrial/residential nature of the area along the railroad tracks. The recommended conditions will also ensure that the proposed business will not affect the residential neighborhood to the south and north.*
- 3. The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties to the west and east. A use variance would allow the proposed baseball and softball training facility use, while still protecting the industrial zoning for future use and also protecting the residential users to the north and south.*

4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 Light Industrial zoning would not allow for the proposed athletic training facility.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as Industrial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

**MOTION:** Jim Trippel moved to forward Appeal #10-43 Use Variance to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 4-0.

**MOTION:** Jim Trippel moved to approve Appeal #10-43 Developmental Variance. Rosemary Klaer seconded; motion carried with a vote of 4-0.

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**APPEAL #10-45** An appeal submitted by Anthony Shane Galloway and Karyn Jaye Galloway requesting a Developmental Variance for **5126 Breeze Wood Drive**, to allow a home addition with a 40.5' front building setback.

Shane Galloway, 5126 Breeze Wood Drive, presented his appeal. Mr. Galloway said he and his wife purchased the foreclosed home and would like to add an additional stall on the garage to store their personal belongings. Mr. Galloway said the new garage will improve the look of the house.

Mr. Galloway said the reason for the variance is that the lot was originally platted with a 50' front setback, thus requiring this request.

### **Opposition**

Dennis Hagye, 656 Bay View Drive, asked if everyone in the neighborhood had been notified of this request. He said his concern was that the neighbors were not informed of this.

Mr. McCampbell said the City has duly notified the neighbors and the Galloway's have provided signatures of multiple neighbors approving of their request.

Mr. Prince said 23 notices were mailed to neighbors and 2 were returned.

### **Rebuttal**

Mr. Galloway said they followed the City requirements for notification.

Mr. Prince read a letter of support from Tracy Shepard, 645 Misty Harbour Court.

Mr. McCampbell closed the Public Hearing on Appeal #10-45.

Mr. Trippel asked Mr. Prince about the 50' setback. Mr. Prince said the lot was platted with a 50' front building setback and that's why this variance is appropriate. Mr. Prince also noted the garage addition exceeds the setback requirement of 25'.

### **Staff Recommendation**

*The Planning Staff recommends approval of Appeal 10-45 to allow the construction of a 14' by 22' garage addition to the front of the home at 5126 Breeze Wood Drive with a front yard setback of 40.5 feet. 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 a 40.5 foot front yard setback will be maintained, the entire house façade will be updated, and more garage space will be available to store recreational items inside; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home is currently 50.5 feet from the front property line which does not allow the potential to modify the home without encroaching into the required 50 foot setback. Without the front setback variance the Appellants would not be permitted to expand garage space to store recreational items that are now stored on the driveway.*

**MOTION:** Rosemary Klaer moved to approve Appeal #10-45. Ross Portolese seconded; motion carried with a vote of 4-0.

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**NEW BUSINESS:**

Ken Prince said the 2011 Filing Schedule and new Fee Schedule were included in packets and are presented for the Board's consideration. Mr. Prince said the fees were last adjusted four years ago.

**MOTION:** Jim Trippel moved to accept the 2011 Filing Schedule and new Fee Schedule as presented. Rosemary Klaer seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:22 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner