

MARCH 13, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 13, 2012, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Jim Trippel, Ross Portolese, and Rosemary Klaer. Absent: Charles Krueger and Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Kari Myers, and Joe Dits of the South Bend Tribune.

Jim Trippel explained the Rules of Procedure.

The Minutes of the February 14, 2012, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #12-05

An appeal submitted by Gates Automotive Group on behalf of University Park Mall LLC requesting a Use Variance for **6501 Grape Road**, to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in May, 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, General Sales Manager, Gates Automotive, 714 Dice Court, South Bend, presented the appeal. He said they are once again requesting a Use Variance in order to hold up to three used car sales events in the J C Penney parking lot at University Park Mall and the request is identical to the requests in 2010 and 2011.

Mr. Emberton outlined 5 findings of fact and, they are as follows:

1. He said the approval will not be injurious to public health. They go to great length to address public health concerns such as trash receptacles, sanitary facilities, tents to provide comfort for staff and customers. Cars will be moved before mall hours. There were no problems with sales in 2010 or 2011.
2. The use and value of area will not be adversely affected. Mr. Emberton said he is unaware of anyone within the 300' who filed a qualified complaint against last year's event. They use approved and safe entrances from Grape and SR 23 and chose the least traveled area of the mall. This has proved to be an asset to their business model. The mall and outlying businesses enjoy the benefit the high volume traffic brings.
3. For the past 3 years Chevrolet has maintained an active display inside of the mall, but cannot sell cars in the mall. Mishawaka had the foresight to approve the mall 30 years and it is a regional attraction.
4. The strict application of the ordinance causes a hardship. The variance is for Simon Property, not Gates Chevrolet. They are proud to partner with the mall. He said staff finds: University Park Mall is one of a few regional facilities who can handle this event. A study from last year's event showed nearly 30% of sale were from outside of Indiana

and outside our County and over 3,000 people were drawn to the event. Only sold to 30% of qualified customers, other 70% of traffic drove down the road and shopped at other dealerships or vendors in the area. Mr. Emberton said the mall is in the business of leasing and they want the same opportunity as other businesses to hold this event.

5. In 2011, Gates complied with all layout requirements for the sale, allowed for unimpeded traffic flow and had additional precautions as well.

Mr. Emberton said customers anticipate this event and Gates has been part of many creative, safe events. Other sites have welcomed this event and they believe it is good business stewardship to conduct business in the town where they live, work, and spend their money. It is not Gates, but the Board of Zoning Appeals who creates this opportunity.

Mr. Trippel asked Mr. Emberton if he agreed with the conditions of approval. Mr. Emberton said yes, there is nothing different than the past year's request.

Mr. Prince said one item did change and that is they cannot have cold air balloons. Those are not permitted at all and staff felt they couldn't treat them differently. Mr. Emberton said he was ok with it.

Mr. Prince said the Notice of Hearing was also sent to other new car dealers.

Mr. Trippel closed the Public Hearing on Appeal #12-05.

Staff Recommendation

*Staff recommends in **favor** of Appeal 12-05, 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 May, June, and August of 2012 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, 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. **No inflatable air balloons shall be permitted.** 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 regional event at this site, specifically, the University Park Mall is one of the few regional facilities that has been inherently constructed to handle this type of event by having the appropriate access, lighting, and parking;*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and the surrounding area is one of the largest consolidated retail areas in the State of Indiana.*

MOTION: Ross Portolese moved to forward Appeal #12-05 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried.

APPEAL #12-06 An appeal submitted by CCC Real Estate Holdings Co. LLC and Barbara Van Damme, contingent purchaser, requesting a Use Variance for **429 West Eighth Street** to permit a bakery and residential unit in a C-1 General Commercial District.

Elliott Farnham and Barbara VanDamme, 829 E. Third Street, presented the appeal. Mr. Farnham said he and his mother want to open a bakery at 429 W. Eighth Street. It will not be a neighborhood bakery, like West End Bakery, but will only be used for baking and packaging products and the office. He said all sales will be taken over the phone and off-site marketing. Mr. Farnham said little parking will be required as sales will mainly be made via the web.

Mr. Farnham said the building is zoned C-1 General Commercial and they do not need both floors for the bakery operation and they want to use the second floor as residential rental use. Parking is very limited and the tenants can use the existing garage for parking and not the sidewalk.

Mr. Trippel asked Mr. Farnham and Ms. VanDamme if they agreed with staff's conditions of approval. They said yes.

Mr. Portolese asked if someone else will live in the building. Mr. Farnham said they will not be living in it, but renting it out. They will need the rental income to help with business expenses.

Ms. VanDamme said they are required to have a paved parking space behind the garage and they propose the tenants park in the garage. They would put in the other parking space if they have to, but feel it's unnecessary to put in at this point.

Mr. Prince said the staff recommendation does not include that condition knowing that there is no walk-in or customer traffic. There's no need to provide that additional paved space.

Ms. Klaer asked when they plan to open. Ms. VanDamme said they want to be open by July, 2012. The plan is to renovate the apartment first then change the old print shop over to a bakery.

Mr. Portolese asked if they would bake bread. Ms. VanDamme said no, there would be no pastries like you see at West End Bakery; they don't want to compete with them. Cakes would be ordered via the website and shipped to customers. She said their cakes would be classic kinds, European-style such as torts.

Mr. Portolese asked if this would be a wholesale operation. Ms. VanDamme said strictly retail for now; it's too premature to think about any thing else.

Favor

John Artusi, 330 W. 9th Street, said he is in favor of this request. The building is still nice, but needs repair. He also said he has questions about deliveries. Would they be having FedEx and UPS people coming in? Also, where will the dumpster be located? He said he thinks this is a good location with little parking, but wishes them well.

George Baker, owner of 810 W. 10th, said he in favor of this use. He said they are willing to come in and take the responsibility and risk to open a new business and put new life into the building.

Mr. Baker also said he is here representing CCC Holdings, the building owner, and said they have had multiple parties interested in the building and each would have had to ask for this same variance. He said he thinks this is a trending use to bring back the old mom and pop buildings with apartments above and he encourages this type of use.

Mr. Trippel closed the Public Hearing on Appeal #12-06.

Staff Recommendation

The Staff recommends approval of Appeal #12-06 to allow the following variances for 429 West Eighth Street:

1. *A Use Variance to permit the main floor of the building to be used as a bakery for a cake catering/ cake web sales business; and,*
2. *to allow the second floor to be occupied as a two bedroom rental unit*

Conditional upon the following:

1. *Temporary signs and banners are prohibited from being displayed on the outside. Interior window signage shall be limited to one sign, taking up no more than 25% of the window pane, per street-side façade.*
2. *Occupants of the upstairs apartment shall park in the two stall garage.*
3. *Closing hour for the bakery shall be 5:00 p.m.*
4. *Any change of use in the future for this site would require approval of a use variance.*

This recommendation is predicated 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 all City and Health codes and inspections will be complied with;*
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 use may be beneficial to the value of the adjacent area because an unobtrusive and well-maintained business is better for the neighborhood than a vacant and deteriorating property;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the building was constructed over 80 years ago, prior to the establishment of the Zoning Ordinance, for commercial purposes without off street parking or room for expansion. Additionally, the apartment use was permitted prior to 1986. The lack of available parking and no room for expansion limits the potential uses of the structure;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because of the existing non-conforming situations that will continue to exist regardless of the use of the structure. If the property were to remain predominantly commercial on both floors, the demand for parking could be greater than a bakery on the main floor and one apartment on the second floor; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan identifying the area as General Commercial because the variance is for a predominate commercial use with a secondary residential use.*

MOTION: Ross Portolese moved to forward Appeal #12-06 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried.

APPEAL #12-07 An appeal submitted by City of Mishawaka Redevelopment Commission requesting various Developmental Variances for the **southeast corner of Jefferson Boulevard and Main Street**, including building setbacks, parking, and landscaping.

Jeff Ballard, Danch Harner & Associates, 1643 Commerce Dr., South Bend, appeared on behalf of the Redevelopment Commission. He said the property in question is a remnant piece which is long and narrow and leftover from the underpass project. They are requesting a number of developmental variances.

Mr. Ballard said there is currently not a construction program in place to build and this is just a concept to get the property ready for marketing. Later this evening at the Plan Commission, they will request a C-6 Linear Office Commercial zoning for this property which is currently zoned R-1 Single Family.

Mr. Ballard said the plans show a 2,700 sqft office building that is pushed towards the corner and the parking would be on the south side of the building. He also said an office would be low impact to the neighborhood and is a nice buffer from Main Street. Mr. Ballard said C-6 zoning would limit commercial development to only office use, but would also permit a single family residence on the property.

Mr. Ballard reviewed the requested variances (which are outlined in the staff report) which are for front building setback, side building setback, off street parking setback, and required parking lot landscaping. He said regarding landscaping, there is existing landscaping on the west side and that would be utilized and possibly transplanted along Stanley.

Mr. Trippel asked if these variances were to make the area marketable. Mr. Ballard said yes and he is not aware of anything in particular being proposed for this property.

Mr. Prince said the City must follow state statute for the disposal process of property and must be put out for public bid. He said this is leftover land and the consultants prepared a plan for the highest and best use for this property. Mr. Prince said in the public process they have to make a bid outright with no negotiations and for that process to be fair, he feels this property needs to be ready for development.

Ms. Klaer asked how many parking spaces would be required. Mr. Ballard said 11, but 16 have been provided. He also said as a courtesy to residents, parking is along Main Street.

Opposition

Brian Gordon, 116 Stanley, said he went through a lot with the underpass construction. It's a great improvement and wonderful for the residents and is remarkable green space next to his house. He said he's lived near trains since he's been married and traffic noise is not an issue. Mr. Gordon said this might provide a buffer to Jefferson or the northeast, but there is increased traffic flow along Stanley and there are young children in the neighborhood. He feels to put in a commercial building or open the door for commercial would blight the historic corner. He doesn't feel it should be approved because they have young children in the area and want the green space for them to grow up around.

Mr. Prince read a Letter of Remonstrance from Dan Sexton and Lonny Curtis Sexton, 125 Stanley.

Dan Sexton, 125 Stanley Street, said this is his wife's house and she bought it 19 years ago. He said they went through a lot of hardship while the underpass was under construction. Mr. Sexton said they were promised by the City they would take care of any problems caused by the construction. They went from DLZ to Reith-Riley and they said the construction didn't cause their problems. He said they have had to completely renovate the house and they now have nice landscape and they feel they deserve it. Other places can be used for businesses.

Mr. Sexton said his wife is disabled and cannot go anywhere. She was promised this view and she deserves it. He feels these variances would open the door for commercial construction.

Mr. Trippel asked what the building height would be. Mr. Prince said they would limit it to two stories, whatever is constructed. He also said this is the first of many leftover properties left from the street widening that the City will ultimately have to dispose of, including Main and McKinley.

Mr. Prince said the reason this piece of property is first to be rezoned is because an adjacent resident expressed interest in it. This isn't park land and this isn't where the City will put in a jungle gym. He said the City wants to see if anyone is going to be interested in the property;

there is a bidding process and that's the law. Anyone can bid on it. Mr. Prince said ultimately the City is not in the maintenance business.

Mr. Prince said the property will be advertised in the paper and anyone can bid on it. These variances are not only for an office as C-6 zoning also allows for a home. He said an office use is seen as a transitional use.

Mr. Gordon spoke up and said he was concerned about the integrity of the underpass wall should a parking lot be put in. Mr. Prince said DLZ identified a "safe zone" and will be identified as a permanent easement.

Mr. Sexton spoke up and said he doesn't care how pretty you make it; he doesn't want to see a parking lot. He said he doesn't want the City to open that door and feels it will lower their property values.

Mr. Prince said the issue before the Board is the developmental variances and the reduced setbacks could be for a home or an office.

Mr. Trippel closed the Public Hearing on Appeal #12-07.

Staff Recommendation

The Planning Department recommends approval of AP 12-07 to allow the following variances for property located at southeast corner of Jefferson Blvd and Main Street and west of Stanley Street:

- 1. A Variance from the required 25 feet front building setback along Jefferson Blvd. (north property line), to a minimum of 10 feet for a proposed building.*
- 2. A Variance from the required 5 feet side building setback along Stanley Street (east property line), to a minimum of 2 feet for a proposed building.*
- 3. A Variance from the required 10 feet off street parking setback along a public road right-of-way (east property line), to a minimum of 2 feet for a proposed parking lot.*
- 4. A Variance from the required 10 feet off-street parking setback along a public road right-of-way (west property line-Main Street ROW), to a minimum of 5 feet for a proposed parking lot.*
- 5. A Variance from the required parking lot landscape screen of a minimum height of 36 inches along an minimum of 75 percent of the linear distance of the parking area, to a parking lot landscape screen of a minimum height of 36 inches along a minimum of 26 percent of the linear distance of the parking area*

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 the property is physically disconnected from adjacent properties by public right-of-ways.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the property is narrow and abuts right-of-way to the north, east, and west; thus limiting where buildings can be placed on the site. Furthermore,*

the narrow lot does not allow ample space to comply with the required pavement setbacks and landscaping while providing sufficient parking.

MOTION: Ross Portolese moved to approve Appeal #12-07. Rosemary Klaer seconded; motion carried.

ADJOURNMENT: 6:57 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner