

AUGUST 12, 2014

**PLAN COMMISSION
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Plan Commission was held Tuesday, August 12, 2014, at 7:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Commission members attending: Gary West, Matt Lentsch, Dale "Woody" Emmons, Ross Portolese, Don McCampbell, Nick Troiola, and Rosemary Klaer. Absent: Murray Winn and Edward Salyer.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the July 8, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

PLAT #14-13

A request submitted by Garrison Central Mishawaka, LLC, seeking approval of the two (2) lot Indian Ridge Minor Subdivision.

Mike Danch, Danch, Harner and Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Petitioner. He said this is the H. H. Gregg and Bed, Bath & Beyond property and they want to create two legal lots of record. Mr. Danch said earlier in the evening the Board of Zoning Appeals approved several variances for the existing buildings.

Mr. Danch said larger tenants are now purchasing the property where they are located, and he said the variance and subdivision procedures are typical. He said the plat shows an ingress/egress access agreement so H. H. Gregg can have access to University Drive.

Mr. McCampbell closed the Public Hearing on Plat #14-13.

Staff Recommendation

The Planning Department recommends approval of the Preliminary and Final Plat for the (2) lot Indian Ridge Minor Subdivision because the plat meets the requirements identified within the City of Mishawaka Zoning Subdivision Control Ordinances.

MOTION: Rosemary Klaer moved to approve Plat #14-13. Ross Portolese seconded; motion carried with a vote of 7-0.

PETITION #14-14 A request submitted by John Becker and the City of Mishawaka to vacate an ingress/egress easement and public right of way(s) being a portion of the East-West Alley South of 101 East Mishawaka Avenue.

Greg Kil, Kil Architecture/Planning, 1126 Lincolnway East, South Bend, appeared on behalf of Mr. Becker. Mr. Kil said the property in question is along the south side of Mr. Becker's property and he would like to build a balcony projection on the south side of the building

over the alley. He said the building is available for rental and hopes to market it for restaurant use.

Mr. Kil said the balcony would encroach into the alley and consideration of this proposal would allow for this development.

Mr. Emmons asked what the reason was for the balcony if the building wasn't sold or rented. Mr. Kil said the south side of the building has a beautiful view of the river and downtown Mishawaka and the plan is to take advantage of the view.

Mr. Kil said this opportunity would allow Mr. Becker to market the building on a more effective level and he sees a higher and better use for it. He said the potential exists for a boutique restaurant, but no one has signed.

Mr. Emmons said the alley is being used for deliveries and asked what Mr. Becker is proposing. Mr. Kil said the alley will still maintain all utilities for the section to be vacated and there will be access via an easement created through the existing parking lot.

Mr. Emmons asked if a truck would be able to make the turn. Mr. Kil said yes, that's why the access is of a width to allow the turn to be made. They also will be removing some of the existing wall.

Mr. Emmons said he had been told that the pub down on the end gets deliveries through the alley. Mr. Kil said he believed it would not hinder any deliveries.

Mr. Emmons asked if emergency vehicles would easily access the alley through the parking lot. Mr. Kil said yes, but it might be a challenge for some rigs.

Mr. West asked if a permanent utility easement would be a problem. Mr. Kil said no.

Mr. Portolese asked if they were vacating the whole alley. Mr. Kil said no, only part of the alley and the width of the building for the balcony.

Opposition

Chris Frazier, 2nd Vice Commander, and Doug West 1st Vice Commander, American Legion, 133 E. Mishawaka Avenue, said they have had a chance to look at it and they aren't clear as to how much access they will have. Ms. Frazier said trash trucks come in off of Sarah Street and the City doesn't maintain that.

Ms. Frazier asked if the access is going to be a street. She also said the entrance is so close to Main Street and Mishawaka Avenue and that could create a traffic hazard. Ms. Frazier also asked where the overhead power lines would go.

Mr. Doug West said their concern wasn't only the trash trucks, but beer deliveries are made in the alley as they have doors at the rear of their building. He said George Shafer from the Fire Department said they weren't happy about closing off the alley.

Ms. Frazier suggested that other department heads review the request.

Mr. Lentsch said that access to the alley would be provided by an easement through the parking lot and asked why that wouldn't work for them. Mr. West said a semi wouldn't be able to make the corner.

Ms. Frazier asked about parking for any proposed end use. She said she's concerned about a restaurant going in and no parking. Mr. Lentsch said the Commission was not approving that this evening.

Ms. Frazier said JPD Controls allows them to use their parking lot and she doesn't know how this will impact his parking lot.

William Whiteman, one of the owners of JPD Controls, 125 E. Mishawaka Avenue, said they have leased a new building and he has given verbal approval for the American Legion to use the parking lot. He said he agrees that the radius of the turn will fit some of the trucks that come down the alley.

Rebuttal

Mr. Kil said he respects the concerns of the American Legion. He said relative to the new curb cut, it will be 140' from Main Street and it's an appropriate distance. He said the alley is much closer than that.

Mr. Kil said he understands that making the turn is an issue. He asked to clarify the point that semis service the American Legion.

Mr. Kil said Mr. Becker will remove enough of the wall to accommodate the neighbors as much as he can. That may require the abandonment of 1 or 2 parking spaces.

Mr. Kil said the utilities to Mr. Becker's building are on the other side of the alley and the overhead lines that do service the building will not be impacted by the balcony. It isn't a hazard or an issue.

Mr. Emmons suggested the matter be continued until some of the answers to questions could be hashed out. Mr. Kil said he thought all departments had reviewed the request. He said he would rather not table it if were addressed at the administrative level.

Mr. Shearon said the request was routed to all departments and Jim Schuster had signed off and approved the request. We have our copy of Mr. Schuster's approval.

Mr. Kil said on Mr. Becker's behalf, they would consider adjustment of the retaining wall to allow for a larger truck.

Mr. Lentsch asked Mr. Kil if they would look at it. Mr. Kil said they would do what was needed to make it happen.

Mr. McCampbell closed the Public Hearing on Petition #14-14.

Staff Recommendation

Staff recommends in favor of Petition 14-14 to vacate a 16.5'x141.67' portion of alley running east/west located south of 101 E Mishawaka Avenue. This recommendation is based upon the following findings of fact:

- 1) *The vacation will not hinder the growth or orderly development of the neighborhood. The vacation will allow for improved growth and orderly development of the neighborhood.*
- 2) *The vacation of the established right-of-way will not make access to any adjacent property difficult or inconvenient.*

- 3) *The alley 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) *With the establishment of proposed ingress/egress easement, the proposed vacation will not hinder the use of any public way, utility or place.*
- 5) *This petition is not in specific conflict with the goals, objectives, and policies of the Comprehensive Plan.*

MOTION: Nick Troiola moved to forward Petition #14-14 to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion carried with a vote of 5-2 (*Emmons, Portolese*).

PETITION #14-15 A request submitted by Michiana Tennis Association, LLC, requesting a PUD Amendment for 5805 Fir Road, 5815 Fir Road, and 5905 Fir Road to allow a reduction in the number of parking spaces and revised architectural materials.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Petitioners. Andy Place of Long Term Care Investments was also in attendance.

Mr. Mosness said last year they received approval for a long-term nursing facility and in the past few months, that party has backed out. He said they have found a new tenant and they are asking for more beds, but don't need the 100 parking spaces; but require a minimum of 80.

Mr. Mosness also said they want the building to fit in with neighboring residential uses and they are asking for a waiver of architectural materials for vinyl siding to blend with residential.

Mr. Lentsch asked if those were the most significant changes. Mr. Mosness said they would also be making some internal changes as well.

Mr. Lentsch asked if it would be skilled or assisted living. Andy Place, 1628 Rockwood Lane, Mishawaka, said the tenant felt that the market was stronger in Mishawaka and wanted more beds. They also felt strongly about the need for more Medicaid beds. He said they have changed from 40 to 75 Medicaid beds. These operators have different thoughts than the previous prospective tenant and he said all will be skilled care.

Mr. Emmons asked what the change would be from what was originally proposed. Mr. Mosness said they are trying to maintain a residential look. The cement board siding gives a more commercial air and also requires more maintenance. They are reducing the amount required; the requirement is for 2/3 and they are asking for 1/3 masonry materials.

Mr. McCampbell closed the Public Hearing on Petition #14-15.

Staff Recommendation

Staff recommends in favor of amending the Michiana Tennis Association PUD to allow the following in regards to the skilled care nursing facility:

1. To allow a minimum of 0.8 parking spaces per bed for the proposed nursing facility.
2. To allow for vinyl siding/trim and fiber cement board/trim to be acceptable materials for the exterior building façade.
3. To allow the building facades facing public right-of-way and the internal private collector drive to have a minimum of 1/3 masonry materials and the remaining materials to include vinyl siding/trim. Masonry materials may include a combination of stone, brick, rock, fiber cement board/trim, doors, windows, louvers, and glass.

This recommendation is based on the following findings of fact:

1. *Existing Conditions-* The area along this portion of Fir Road consists of low density residential uses on large acre lots. The proposal is in keeping with the existing area by maintaining a low to medium density residential use within the area.
2. *Character of Buildings in Area-* The character of many of the buildings located along Fir Road is residential. The proposed facility will be residential in nature.
3. *The most desirable/highest and best use-* Due to the presence of the commercial activity to the north, south and west of the area, the traffic along this Fir corridor has been increased significantly in recent years. With the new hospital and development along Douglas Road, which is located just south of this area, this corridor will become even more heavily utilized and most likely will be developed for commercial type uses. However, there is currently a large presence of low density residential uses in the area. The proposed care facility is an appropriated transitional use between the existing residential uses in the area and the likely future commercial development of the area.
4. *Conservation of property values-* The proposed zoning will not be injurious to property values in the surrounding area, because the proposed use is compatible with the surrounding area.
5. *Comprehensive Plan-* The proposed amendment is consistent with the Comprehensive Plan has identified this area for low density residential.

MOTION: Matt Lentsch moved to forward Petition #14-15 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 7-0.

PETITION #14-16 A request submitted by RKG Holdings L.L.C. requesting to rezone 3837 Lincolnway East from C-1 General Commercial District to C-4 Automobile Oriented Commercial District.

Rick and Karen Gerver, Gerver Auto Sales, and son Matt Gerver, GM of Gerver Auto Sales, presented the petition. Mr. Rick Gerver said they purchased the property a month ago and they thought the whole property was zoned C-4, but actually part is zoned C-1 and staff advised they would need to rezone the whole property to C-4 to sell cars. He said the property was previously owned by Mr. Morgan and they lived in the house on the C-1 part of the property and rented the C-4 portion.

Mr. Portolese asked if someone would be living in the house. Mr. Gerver said yes, they plan on renting the house. Mr. Shearon said in order to do so; a Use Variance would be required as the zoning ordinance does not permit residential in C-4 zoning. Mr. Shearon said Planning was not aware of their intent to rent the house.

Mr. Shearon also said Planning requested the entire property be zoned C-4 so they could sell cars on all of the property; for it to have two different zonings didn't make sense.

Mr. McCampbell said we're here tonight to consider the request to rezone the property to C-4 and said if they want to do something different with the property, they'll have to come back another time.

Mr. Emmons asked if the house would be zoned C-4 and did they want to muddy the waters and go to C-4 and come back and get another procedure. Mr. Shearon said the hearing was already advertised the rezoned the property to C-4 and this gets them to be able to operate their car business. Mr. Shearon said down the road they can come back and file for a Use Variance.

Mr. Rick Gerver said they are going to make the property look better and improving the property is very important to them.

Mr. McCampbell closed the Public Hearing on Petition #14-16.

Staff Recommendation

The Planning Department recommends approval of Petition 14-16 to rezone the north 125' of Lot #2 Ward's Subdivision Property south of LWE located at 3837 Lincolnway East from C-1 General Commercial to C-4 Automobile Oriented Commercial. This recommendation is based upon the following findings of fact:

- 1. Given the property's close proximity to commercially zoned property and adjacent to C-4 zoned property, the C-4 zoning would be compatible with the surrounding commercial properties uses in the area.*
- 2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is the C-4 Automobile Oriented Commercial*
- 3. Because the parcel is located adjacent to commercial properties and along heavily traveled corridors, the C-4 zoning classification would be compatible and is a desirable use for this property;*
- 4. C-4 zoning classification will have a favorable and stabilizing impact on the neighborhood, conserving property values in the immediate and surrounding commercial area by further expanding the automobile commercial use that currently exists on the property.*
- 5. The proposed C-4 Automobile Oriented Restaurant Commercial zoning is consistent with the City's Comprehensive Plan which indicated general commercial uses along the Lincolnway East corridor.*

MOTION: Ross Portolese moved to forward Petition #14-16 to the Common Council with a favorable recommendation. Matt Lentsch seconded; motion carried with a vote of 7-0.

DESIGN REVIEW:

DR #14-02

A request submitted by Barack River Rock, LLC, requesting a waiver from the Mishawaka City Design Review Ordinance Section 105-76 Architectural Materials for Mishawaka Grove Development.

Greg Kil, Kil Architecture, 1126 Lincolnway East, South Bend, appeared on behalf of Barack River Rock. Scott Sivan was also in attendance.

Mr. Kil said this was a follow up from last month's meeting requesting a material waiver. He said some of the requested materials do not meet the C-3 requirement and they are asking for approval of cement fiber panel that offers design opportunity and flexibility for the project.

Mr. Emmons said that staff requested river stone or field stone on the southeast corner of the building since that corner is most visible and the appellant said they would consider it. Mr. Sivan said he met with Mr. Prince and discussed river rock and they think it's a good idea, but haven't had time to render a solution and incorporate into the plans for this evening.

Mr. Emmons asked if they were doing more than considering it. Mr. Sivan said they will try and make it work. How much exactly? He couldn't say.

Ms. Klaer said she thinks it looks nice, but is disappointed that it doesn't look more residential and historic. Mr. Sivan said the rendering is very consistent with what the Redevelopment Commission approved. It is a more contemporary design with an attempt to scale down and fit, but they always had the intent to have a more modern and youth look to attract the demographic they are hoping to reach. Mr. Sivan said ultimately, he thinks it will fit with the north side designed to look more like townhouses.

Mr. McCampbell closed the Public Hearing on Design Review #14-02.

Staff Recommendation

Provided the revised elevations are submitted and acceptable, staff recommends in favor of Design Waiver #14-02 the use of cement fiber panels, cement fiber horizontal lap boards, and corrugated metal panels as permitted materials for the exterior of the proposed mixed use building as shown on the attached elevations, as well as the use of white cement fiber panels. The materials are used in a manner that complements the modern architectural design of the building. The materials that will be utilized are of high durability and design especially for commercial architectural applications.

MOTION: Matt Lentsch moved to approve Design Review #14-02. Ross Portolese seconded; motion carried with a vote of 7-0.

SITE PLAN:

SP #14-E

A request submitted by Capital Avenue Properties, LLC, requesting final site plan approval for a 2,000 sqft drive-thru restaurant at the northwest corner of Capital Avenue and Grand Vista Parkway, Granger.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Petitioner. He said a few months ago the Commission approved the vacation of Evergreen Road and amended the PUD. Now the request is for final site plan approval and review of building elevations.

Mr. Mosness said the project is a 2,000 sqft drive-thru restaurant. He said he has discussed staff comments regarding the width of the drive and have also addressed planning comments and comments from Engineering regarding access. Mr. Mosness said revised

drawings have been submitted and have also provided the ingress/egress easements in order to provide access to the adjoining properties.

Mr. McCampbell asked if a revised site plan has been submitted. Mr. Mosness said yes, submitted today. Mr. Shearon said a Developmental Agreement with the owner will have to be signed before any permits are issued for the project. He said they are in the process of reviewing now, but the petitioner wanted to get started right away.

Mr. Lentsch asked if the Developmental Agreement was with the City. Mr. Mosness said yes.

Staff Recommendation

Provided a revised site plan is submitted and reviewed by staff addressing the above, Staff recommends that the request for final site plan be approval for the Starbucks Site Plan be approved. This recommendation is based on the fact that the site plan meets all the requirements of Section 137-35 Final Site Plan Approval.

MOTION: Rosemary Klaer moved to approve Site Plan #14-E. Ross Portolese seconded; motion carried with a vote of 7-0.

NEW BUSINESS:

Mr. Shearon read a letter of support the rezoning of 3837 Lincolnway East from Lester Loeschen of 4325 Skipper Road, Sebring, FL.

Mr. Shearon advised the Commission that after 34 years of service to the City, Peg Strantz will be retiring at the end of the month.

Mr. Lentsch said the current Comprehensive Plan is out of date and from his perspective it's something he would like to see movement on.

ADJOURNMENT: 7:52 p.m.

Greg Shearon, Senior Planner

Kari Myers, Administrative Planner