

AGENDA

Monday, March 4, 2019

**Meetings of Standing Committees
Council Conference Room
6:45 P.M.**

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Approval of the Minutes of the Previous Regular Meeting**

February 18, 2019

5. Petitions, Communications, Remonstrance and Memorials

Appeal No. 2019-04 Use Variance for Temporary Sales Trailer - SE Corner of Front & Spring Streets

Appeal No. 2019-05 Use Variance for Trailer Sales in I-2 Heavy Industrial - 520 S. Byrkit

Appeal No. 2019-06 Use Variance for Accessory Structure without a Primary Structure - 517 Ell

Appeal No. 2019-08 Use Variance to allow Used Car Sales for Two 10-day Annual events for a Three Year Period - University Park Mall 6501 N. Grape Rd. Parking Lot North of JC Penney

Appeal No. 2019-09 Conditional Use to Permit a Cell Tower Not to Exceed 185' in Height - Part of 500 S. Union St. 0.30 Acres of 22.4 acres Parent Parcel

Petition No. 2019-02 Rezoning from I-2 Heavy Industrial to R-1 Single Family Residential Vacant Property - 13880 Scout Lane

Petition No. 2019-03 PUD Amendment to allow Microblading/Semi Permanent Makeup University Gardens - 6910 N. Main St. - Unit 13D

- 6. Report of Special Committee**
- 7. Ordinances on First Reading**
- 8. Resolutions**
- 9. Ordinances on Second Reading**

P.O. NO. 2019-05 Amending the Sewer Insurance Fund and Charges (Assigned to Budget and Finance Committee)

P.O. NO. 2019-06 Annex and Zone to R-1 & R-3 for 6 single Family Residential lots & 7 Townhomes - 16525 Arthur St and 52781 Grape Rd and Vacant 2 Acre Lot **NO VOTE - PUBLIC HEARING ONLY**

- 10. Privilege of the Floor - Non-Agenda Items**
- 11. Unfinished Business**

R2019-06 Use Variance for Outpatient Day Treatment Center for Autism - 1316 W. Dragoon

12. New Business

13. Adjournment

At this time I know of no other business to come before the Council.

Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements, contact Geoffrey Spiess, ADA Coordinator, at (574) 258-1615.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
February 18, 2019

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday February 18, 2019, at 7:00 p.m. The meeting was called to order by President Emmons all were asked to stand for the Pledge of Allegiance lead by Boy Scott Troop 110 Coalbush United Methodist Church member Isaak Prince and the Webelo II Pack 555 sponsored by St. Pius in Granger.

 Roll Call.

Present: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.

Minutes for the Regular Meeting of February 04, 2019 were approved as received from the Clerk's Office.

Clerk Block read the following letters from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their February 12, 2019 meeting.

APPEAL NO.2019-03 An appeal submitted by the Diocese of Fort Wayne – South Bend, Inc., requesting a Use Variance for **1316 West Dragoon Trail** to allow for an outpatient day treatment center for autism.

The Board, with a vote of 4-0, recommended approval.

PETITION NO. 2019-01 A petition submitted by DJSJ, LLC, Don Shaum, Jr, and Jennifer Shaum requesting to annex and zone 16525 Arthur Street and vacant two (2) acre lot, Granger, Indiana, to R-1 Single Family Residential and R-3 Multi-Family residential for six (6) single family residential lots and seven (7) townhomes.

The Commission, with a vote of 8-0, recommended approval.

Clerk Block read the following proposed ordinances by title were assigned to a committee and set for public hearing at next the meeting.

PROPOSED ORDINANCE NO. 2019-05

**AN ORDINANCE AMENDING PART I, CHAPTER 62, OF THE MUNICIPAL CODE
OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED**
(Amending Sewer Insurance Fund & Charges)
(Assigned to the Budget and Finance Committee)

PROPOSED ORDINANCE NO. 2019-06

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION
THEREFORE**

(Annex & Zone R-1 & R-3 6 Singles Family Res & 7 Townhomes 1625 Arthur St. & 52781 Grape Rd.)
(Assigned to the Land Use Planning Committee)

Clerk Block read the following resolutions by title and were opened for public hearing.

RESOLUTION NO. 2019-04

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, INTRODUCING AN ORDINANCE FOR ANNEXATION, ADOPTING A
WRITTEN FISCAL PLAN, AND A DEFINITE POLICY FOR ANNEXATION FOR THE
PROPERTY LOCATED AT:**

**53013 Fir Road, Granger, IN 46530 and the adjacent Cleveland Road and Fir Road right-
of-way to include approximately 3.2 acres**

Ken Prince, City Planner presented the fiscal plan. He said there was an existing office building, a Pain Clinic located in the area, this property was immediately adjacent, and Cleveland Road was the only access. Mr. Prince mentioned there would be an extension to the office development. He went on to say the legal requirement for annexation required at least 12.5% of contiguity with the city, the proposed property was 30% contiguous. He stated various departments were notified, and it was identified the services for this property could be done through the existing budget. Mr. Prince said any extension of utilities would be done by the developer's expense. He also mentioned for the record, because this was the year prior to the census the effective date could not occur until January 1, 2020.

Mrs. Voelker asked did this mean they could not begin construction until January 2020. Mr. Prince explained if they began construction, they would have to construct in a simultaneous process in the county and the city in order to accomplish. He said the city was not legally allowed to amend the boundary until January 2020. Mr. Prince continued to say most petitioners file their site plans and receive approvals to get everything in place to be able to start at the beginning of the year.

Mr. Compton asked would the city begin any preliminary preparations to bring utilities to the site prior to 2020. Mr. Prince said the city had the ability to do so because it was a public right-of-way, even if it was a private property. He continued to say he was not aware of any agreements to allow the city to begin.

Question was called for at 7:09 P.M. for **RESOLUTION NO. 2019-04**  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 9). **Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.

RESOLUTION NO2019-05

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, MAKING A FINAL DETERMINATION AND CONFIRMING THE
DESIGNATION OF AREAS WITHIN
THE CITY OF MISHAWAKA, INDIANA, KNOWN AS**

1420 INDUSTRIAL DRIVE, MISHAWAKA, IN 46544

Dave Diroll, President and owner of Jamil Packaging said he was requesting for the tax abatement for a specialty gluer machine.

Mrs. Voelker questioned the price of the machine. Mr. Diroll said the pay back loan amount was for 1.5 million dollars. He said for a 7 to 8-year loan term they would pay \$20,000 a month. Mrs. Voelker also asked when it would be profitable. Mr. Diroll said probably around the fourth year. He said he had a lot of market factors, it could go really strong or go the other way.

Mr. Mammolenti recalled at the last meeting Mr. Diroll mentioned the gluer was for the demand of a specific customer. Mr. Diroll replied yes, their largest customer. Mr. Mammolenti asked if Mr. Diroll was to lose that customer did he have something in place. Mr. Diroll said the particular customer had the same supply chain since 1980, they were very solid customers. He continued to say he wanted to meet all contracts.

Mr. Bellovich asked how long the company has been in Mishawaka. Mr. Diroll replied since 2002. Mr. Bellovich thanked Mr. Prince for the information on abatements and history. He continued to say all targets Jamil hit during the course of recession. Mr. Prince said during the recession Jamil was down a couple of jobs compared to other companies with tax abatements. Mr. Bellovich asked how many did Mr. Diroll employee at his Tennessee location. Mr. Diroll said 12, it was a smaller company.

Mr. Tanner questioned the average wage. Mr. Diroll said average pay was \$16 for the operators and less for the people working on the back end of the machine. He said all together average was \$17. Mr. Diroll continued to say he offered benefit package such as health insurance, profit sharing and a matching program for their 401K, worth \$7 if the employee chose to participate. Mr. Tanner also questioned how Mr. Diroll was doing in job market recruiting. Mr. Diroll said the RV industry was loosening up a little bit, he believed it would help hire. He said they could hire up to 12 right now. Mr. Diroll said he heard Elkhart dropped their drug testing. He continued to say he would never do it. Mr. Tanner also asked would the machine not require as much labor. Mr. Diroll said it was a state-of-the-art machine, it had 6 glue heads and 6 folding sections.

Mr. Diroll offered the council to tour the facility. Mr. Emmons said he was sure some of the council would take up Mr. Diroll's offer.

Mayor Wood expressed Jamil has been a great corporate citizen in Mishawaka. He continued to say Jamil did everything they said they were going to do and more. Mayor Wood said he had the

opportunity to tour the plant on multiple occasions, it was always clean, full of energy and very well maintained. He expressed Jamil was making an investment in a part of the city which he believed needed the investment. Mayor Wood went on to say Mr. Diroll has been a good citizen to the city, the company sponsored different community events. He expressed he valued Mr. Diroll's citizenship, the jobs they provided, and product they produced.

Mr. Hixenbaugh thanked Mr. Prince for the written material and meeting with him to answer some questions. He went on to thank Mr. Diroll for his time answering some of his questions. Mr. Hixenbaugh said this was a good example of a good corporate citizen.

Question was called for at 7:21 P.M. for **RESOLUTION NO. 2019-05**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 9). Yes: Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.**

RESOLUTION NO. 2019-06

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZOING APPEALS FOR THE PROPERTY LOCATED AT: 1316 West Dagoon Trail Mishawaka, Indiana

Joshua Smith, CEO and Leanne Suarez COO of Journey's Behavior Learning Center requested a use variance. Mr. Smith said the property was known as the Friary on the Marian High School Campus. He said through some relationships with the Diocese, they were able to secure a lease on the building to be able to provide out patient ABA for children with Autism in the Mishawaka area. Mr. Smith went on to say the facility would have between 40 to 50 employees and serve between 35 to 40 children. He said their services were clinic and educational based services, but not medical model service. Mr. Smith said they had children during school hours Monday through Friday from 8:30AM to 4PM. He mentioned some children were there for half a day whether it was in the morning or afternoon.

Mrs. Voelker asked the following questions

1. What ages they served and did the children attend the program every day.
2. Questioned their educational program.
3. How did Children become a client, how long would they attend the program and when did they transition to schools.
4. Were employees certified.
5. Where they were currently located.
6. Did they not know they needed a variance before the moved into the new facility and how long had they been open.

Ms. Suarez said they served the ages 2 to 18 years old. She said typically they served the children every day; it depended on the recommendation from their doctors. She explained it was not necessarily education; they gave support to give the children to transition them into schools.

Ms. Suarez said their goal was to help transition the children to an educational component. She went on to say every patient were at different stages for their needs and levels of learning. Mr. Smith said the treatment was overseen by Board Certified Behavior analysis; they also had a board-certified analysis doctor whose background was in special education. He said direct care was carried out by certified behavioral technicians. Mr. Smith continued to say employees were certified by the BACV board. He said operating at 1316 W. Dragoon Trail. Mr. Smith explained they did not know they needed the variance until after they moved in. He said they opened on February 11. Mr. Smith mentioned prior to moving they did meet with the Fire Marshall and Planning Department.

Mr. Compton asked did they operate out of a facility prior. Ms. Suarez said majority of the children were at a facility downtown South Bend, it abruptly closed. Mr. Compton asked did Mr. Smith and Ms. Suarez work at the downtown location and where was it located. They replied yes, it was located at the old Madison Center.

Mr. Mammolenti asked were they running the prior clinic. Mr. Smith replied yes, since February of last year. Ms. Suarez said they both had previous experience within the industry. She said she has been in the industry for 14 years. Mr. Mammolenti questioned the lease term. Mr. Smith said the lease was for 2 year with the option to extend it up to 5 years. Mr. Mammolenti asked how the facility was funded. Mrs. Smith said they excepted private or Medicaid insurance.

Mr. Tanner asked did they accept self-insurance. Ms. Suarez said there was a mandate in the State of Indiana, however if the self-funded plan were out of the state, they did not have to cover it. She continued to say in all her years there has been fewer an fewer plans that were not covering autism. Ms. Suarez said typically they also encourage the individual for future planning for the family to apply for assistance or disability waiver which would usually bring in Medicaid assistance.

Ms. Petko Reisdorf questioned the direct care staff to student ratio. Mr. Smith said the direct care staff was one to one therapy. He continued to say the registered Behavioral Technician had one child all day long. Mr. Smith said the licensed Clinicians who oversee the children generally had between 8 and 10 kids they provided the case management over. Ms. Petko Reisdorf also questioned how long the transitioning process took from school to clinic or clinic to school. Ms. Suarez explained it varied from child to child, some children transition fairly quickly who may have had some minimal skills to work on. She continued to say some children take longer. Ms. Suarez said they were in constant contact with schools to help consult in the transitioning process. Ms. Petko Reisdorf asked how many young children were turned away due to full capacity. Ms. Suarez said 6 to 10 kids were on a waiting list now, they usually had running list at all times.

Mr. Bellovich said Mr. Smith indicated they would have 40 to 50 employees working on site. He asked how many children they could service at any given time and were they open during the summer. Mr. Smith said 35 children. He said they were opened year-round.

Mr. Hixenbaugh asked the following questions:

1. When did the Fire Marshall and Building Department visit the facility and did they give them permission to open before appearing before the council and before making the changes.
2. What safety devices and system did they have in place and was the Fire Marshalls approval of occupancy and use in writing.
3. Was the facility required to have accreditation?
4. Did Medicaid and the private insurance have regulations on student safety.
5. If a child were to exit the premises would they have to report it to Medicaid or any other standard as an incident report?
6. How many currently participated in the program.
7. In their experience how frequently did they have a student elude staff to get out.

Mr. Smith said the visit from the Fire Marshall and Building Inspector occurred on February 7th or 8th. He continued to say the facility opened on February 11th. Mr. Smith said the Fire Marshall and Building inspector said there were a few items they need to correct in their plan and as long as they put in a life safety system in place. He continued to say they were training their staff on how to get out the building with the kids. Mr. Smith said they currently had an active fire system; they were working to have the system to be monitored remotely. He said they also had fire extinguishers, emergency lighting, horns and emergency exit lights. Mr. Smith said through conversation the Marshall gave approval for occupancy. He said they did not have a locked door system. Mr. Smith continued to say some facilities put delayed egress on doors which could be impediment. He said safety came down to the supervision, the one on one supervision. Mr. Smith said the children should never be out of arm reach of staff assigned to them. He went on to say they also identify areas in the facility that were potential hazard areas such as a door. Mr. Smith said they were not subject to an accreditation but it was subject to contract rules set forth by Medicaid and the private insurance companies. He continued to say the way they carry out their treatment in care, patient abuse and neglect, reporting a patient of abuse and neglect, and the up keep and safety of the building. Mr. Smith said they would report to Medicaid if there was an injury based around the child exiting the building. Ms. Suarez said in one of her previous facilities one adult eloped outside of the building. She explained it was not an ABA center care, they were in a 1 to 3 or 4 staff ratios. Ms. Suarez said they currently had 26 students.

Mr. Emmons asked how did the treatment effect children currently in school educational progress. He also questioned how they would educate the children in the layout of the building and what were the size of the rooms. Ms. Suarez said most children enrolled in school typically come to the center because they were not successful in school. She said they come to their environment to help the children in a school setting. She went on to say some parents pull their children out as a home school environment, they work with the schools to come to the facility to give some educational support and service. Ms. Suarez said some kids went to school for half of the day. She continued to say they constantly work around an educational environment to get the children back into school. Ms. Suarez said their clinical Director had his master's in special education, he had a consistent focus on supporting the education component of the individuals. She mentioned there were some large rooms in the building they utilized as a transitioning room for the children when they were socially ready. Mr. Smith said the smaller rooms were 13 x 13.

Mr. Mammolenti asked was this a non-profit or for profit and what was the name of the company or organization who operated the Madison center and why did the facility shut down. Mr. Smith

said they were for profit. He said the River Bend Behavioral Health was owned by a company called Meridian Behavioral Health. Mr. Smith said it was shut down because of financial issues from the corporate level.

Mr. Hixenbaugh asked would there be any additional remodeling or work in the building in order to further facilitate the provision of their services and when did they anticipate the fire suppression system to be completed. He also questioned any other items the Fire Marshall and Building Inspector listed to be completed. Mr. Smith replied no remodeling; they would do some painting and update the building. He said he was given the system would be implemented in 10 days. Mr. Smith said they installed GFI's around sinks, electrical boxes needed to be capped, had to put in blanks for electric panels and replace batteries in the emergency lights as required from the Fire Marshall.

Mr. Hixenbaugh questioned Ken Prince, City Planner regarding inspections referenced earlier. He asked did Mr. Prince have any knowledge of the results of the inspections by the Fire Marshall or Building Commissioner. Mr. Prince replied no, he did not have any personal discussions. He continued to say his staff put together the staff report. Mr. Prince said he understood they had to put in GFI's etc., and were all issues needed to be addressed prior to the occupancy. Mr. Prince went on to say he was not aware of any cons from the Fire Marshall. He indicated even by applying for the variance, everyone was aware the final authority of approval rested with the council. Mr. Prince continued to say he believed any consent given by the inspector met by their needs but not in terms they could occupy the facility. He said normally in a circumstance like this from the administration perspective, if they were specifically and if it was an emergency circumstance, obviously with the place closing and the need to provide service for the children, they could identify this as an emergency. Mr. Prince said they would have needed to address all the life safety items first then go back for reinspection before they could occupy the facility on the condition they normally needed the variance. He said if they did not receive it they would then have to exit the facility. Mr. Hixenbaugh asked would the Fire Marshall or the Building Commissioner follow up on the inspection to make sure the life safety devices were implemented up to their requirements. Mr. Prince said following the discussion he heard this evening, he had a note to touch base with Building Commissioner to verify. He went on to say normally the task were completed then they would receive a certificate of occupancy from the Building Commissioner. Mr. Prince said he did not believe it would have been issued for the proposed building. He said he would verify to make sure a certificate of occupancy was issued, if not, he would make sure it will happen shortly.

Mr. Hixenbaugh appreciated all the information provided. He expressed there was no doubt the life safety devices would eventually be implemented. Mr. Hixenbaugh went on to say he was not comfortable approving the variance when there was more work to be done. He continued to say none of the council were interested in disrupting the lives of 26 student and their families. Mr. Hixenbaugh said it would be more appropriate to postpone this matter until the petitioner completed all work to comply.

Mr. Hixenbaugh made a motion to postpone **RESOLUTION NO. 2019-06** until the March 04, 2019 meeting same upon a second by Mrs. Voelker motion carried.

Mr. Compton asked Mr. Hixenbaugh to clarify the facility would remain open, continue to treat their patients, and they were delaying until all the life safety equipment was in place and

operating. Mr. Hixenbaugh replied yes, he did not believe as an entity had the ability to take enforcement action to issue a cease and desist.

Mr. Emmons requested for roll call to postpone **RESOLUTION NO. 2019-06** until March 04, 2019.

Clerk Blocks roll call showed  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 9). **Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.

Clerk Block read the following proposed ordinances by title and opened for public hearing.

PROPOSED ORDINANCE NO, 2019-02

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE
CITY OF MISHAWAKA, INDIANA, AND PROVIDING ZONING
CLASSIFICATION THEREFORE**

(Annex & Zone C-6 Office 53013 Fir Rd.)
(Assigned to the Land Use Planning Committee)
VOTE ONLY

Mrs. Voelker reported the Land Use Planning Committee recommended this proposed ordinance should be presented to the council as a whole. This is signed by the entire committee upon a second by Mr. Banicki motion carried.

Question was called for at 8:01 P.M. for **PROPOSED ORDINANCE NO. 2019-02**  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 9). **Yes:** Mrs. Voelker, Mr. Compton, Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.

PROPOSED ORDINANCE NO, 2019-03

**AN ORDINANCE AMENDING CHAPTER 137, OF THE MUNICIPAL CODE OF
THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED,
COMMONLY KNOWN AS “THE ZONING ORDINANCE OF 1966” OF
THE CITY OF MISHAWAKA, INDIANA**

(PUD Amend – add Senior Daycare 6005 N. Fir Rd.)
(Assigned to the Land Use Planning Committee)

Clerk Block said the petitioner asked to withdraw **PROPOSED ORDINANCE NO. 2019-03** Mr. Tanner made motion to withdraw **PROPOSED ORDINANCE NO. 2019-03** same upon a second by Mr. Banicki motion carried.

NEW BUSINESS

Mr. Mammolenti and Ms. Stacy Petko Reisdorf announced the 3rd District neighborhood meeting would be February 20, 2019 at 7 p.m. at Twin Branch School, guess speaker would be Alex Barkley from Secure Tech Solutions discussing helpful ways to secure homes.

Mr. Emmons announced the next 1st District meeting would be March 21, 2019, guess speaker would be Probate Judge Cichowitz.

ADJOURNMENT 8:04 P.M.

Deborah S. Block /s/
Deborah S. Block, IAMC, MMC, City Clerk

Dale “Woody” Emmons /s/
Dale “Woody” Emmons, President



FLAHERTY & COLLINS
PROPERTIES

DEVELOPMENT CONSTRUCTION MANAGEMENT
One Indiana Square, Suite 3000 Indianapolis, IN 46204
317.816.9300 317.816.9301 www.fcp.com

January 22, 2019

Board of Zoning Appeals
City of Mishawaka, IN

To Whom It May Concern,



The undersigned appellant respectfully requests approval to use land owned by the Mishawaka Redevelopment Commission for purposes of placing a temporary leasing trailer for The Mill at Ironworks Plaza project.

Attached are documents required with this request which include the following:

1. Use Variance Description
2. Plot plan showing location of leasing trailer
3. Image of proposed trailer
4. Proposed marketing signage at the trailer.

Hold Harmless- Obligation of the Developer. To the extent permitted by law, the Developer shall indemnify, hold harmless, and defend the Commission, the City, and all City Entities and agents from and against any and all claims, judgments, liabilities, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and court costs) directly arising from or connected with the intentional or negligent actions of the Developer or its employees, agents, or contractors; the performance of the Developer's Work; and/or the default by the Developer of any term or condition on its part to be performed or observed under this Agreement.

Further, the property around the trailer will be maintained and grass will be restored when trailer is removed.

We appreciate your consideration and please let us know if you need additional information.

Sincerely,

Brian R. Prince II, J.D.
Principal
Vice President, Development
Flaherty & Collins Properties

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 16 2019

CITY CLERK
MISHAWAKA, IN

DATE: January 22, 2019

TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. I, **F&C Mishawaka Development, LLC**, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

A parcel of land located in the Northeast Quarter of Section 16, Township 37 North, Range 3 East, in the City of Mishawaka, Penn Township, St. Joseph County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Lot 11 in Edward M. Sharp's Addition to the City of Mishawaka, as recorded in Plat Book 2, Page 18 in the Office of the Recorder of St. Joseph County, Indiana; thence South 00°15'02" East (this and all subsequent bearings based on the Indiana Coordinate System of 1983, East zone), 148.50 feet along the east line of said Lot 11 to the north line of Front Street (82.5 foot right of way); thence South 89°49'48" West, 264.02 feet along said north line to a 5/8" rebar with cap stamped "FIRM #0058" and the Point of Beginning;

thence continuing South 89°49'48" West, 179.56 feet along said north line to a rebar with said cap; thence North 00°10'12" West, 20.00 feet to a rebar with said cap; thence South 89°49'48" West, 130.00 feet to a rebar with said cap; thence South 00°10'12" East, 20.00 feet to a rebar with said cap on said north line of Front Street; thence South 89°49'48" West, 221.61 feet along said north line to a rebar with said cap; thence North 00°10'12" West, 280.13 feet to a rebar with said cap; thence North 90°00'00" East, 508.33 feet to a rebar with said cap; thence South 00°08'54" West, 176.74 feet to a rebar with said cap; thence South 35°33'53" East, 51.73 feet to a rebar with said cap; thence South 54°26'16" East, 44.79 feet to a rebar with said cap; thence South 15°57'07" East, 23.93 feet to a rebar with said cap; thence South 77°41'44" West, 50.13 feet to the Point of Beginning, containing 3.288 acres, more or less.

Request temporary use of City of Mishawaka % City Hall owned property located at:
ALL OF LOT 4 & VAC ALLEY SO& ADJ PT OF LOT 6 E 33X66 & 4.150'X 66 ORIG PLATT
ST JOE IRON WKS

Parcel 71-09-16-206-004.000-023
216 N Spring Street

1016-1009-041009

2. The above-described real estate presently has a zoning classification of C-3, City Center Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant proposes to occupy the above-described property in the following manner: We would like to put a temporary leasing office trailer on this site (216 N. Spring Street).
4. Appellant desires to place a temporary leasing office trailer on land that is designated as a city center, which typically would serve the entire community with a diversity of complementary and compatible land uses.
5. The Zoning Ordinance of the City of Mishawaka does not list temporary sales trailers as an intended use for the property. Section 137-359.

6. Strict adherence to this ordinance would create a hardship as not allowing a temporary leasing office trailer would significantly impact the marketing and pre-leasing efforts and thus compromise the overall success of the property, Mill at Ironworks Plaza.

7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?
No. Placing the temporary leasing trailer away from the construction area will be safer for the community.
- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?
No, the placement of a temporary leasing trailer will not affect adjacent land in an adverse manner.
- (3) Does the need for the variance arise from some condition peculiar to the property involved?
Yes, we would require our temporary leasing trailer to be located in close proximity to the multi-family property that we are building, Mill at Ironworks Plaza.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
No, the property that we request use of is vacant.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
No, this is a temporary situation and will only aid in the successful development of Mill at Ironworks Plaza, a public-private partnership.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Brian R. Prince II, J.D.

CONTACT PERSON:

Name:	Brian Prince
Address:	One Indiana Square, Suite 3000, Indianapolis, IN 46204
Day Phone Number:	317-816-9300
Fax Number:	317-816-9301
Email:	bprince@flco.com

① Trailer Location



Legend

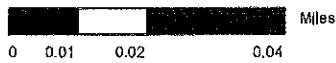
- SJC Parcel Dimensions
- SJC Parcels
- ELK Parcels
- SJC Street
- ELK Street
- Building Footprint
- Railroad
- Abandoned Railroad
- Road Centerline
- Railroad Bridge

Michiana Regional GIS Website

txtSubTitle

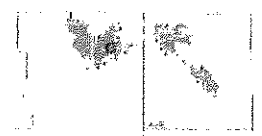
Map Generated By: Public
Date Printed: 1/14/2019

1 inch = 187.44 feet



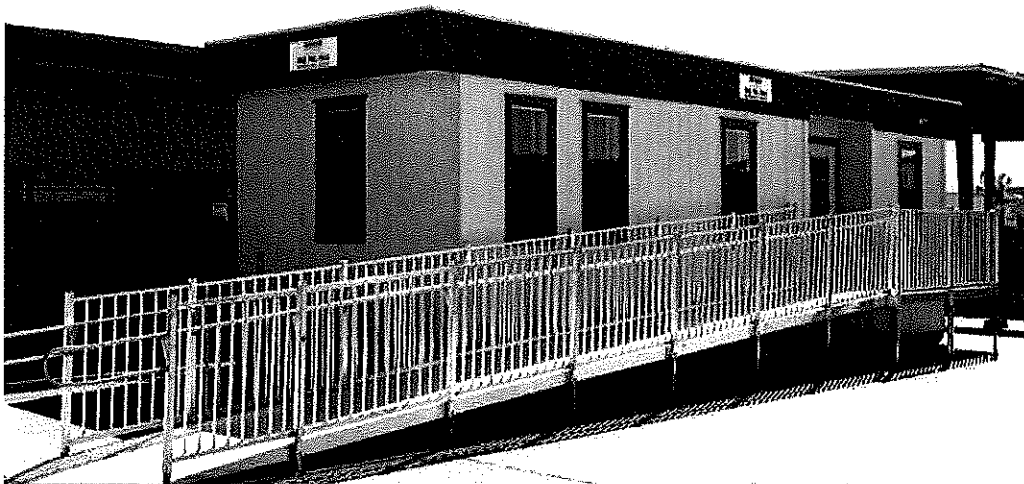
Coordinate grid is based on Indiana East State Plane Coordinate System 1983 North American Datum.

Information shown on this map is not warranted for accuracy or merchantability.
Reproduction or distribution of this material is not authorized without the express written permission of MACOG.

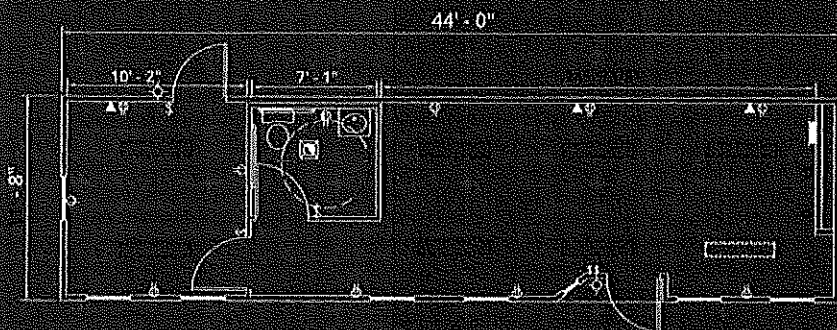


WILLSCOT

48' x 12' SALES OFFICE



In addition to your office solution, we can provide additional products and services that complete your space- creating a more productive, comfortable, and safe work environment.



CUSTOMIZATION

Supply of complete
flooring, lighting, and
handicap accessible
restroom
and coffee bar
equipment

Dimensions

48' Long (including hitch)
44' Box size
12' Wide
8' Ceiling height

Exterior Finish

Aluminum or wood siding
I-Beam Frame
Standard drip rail gutters

Interior Finish

Vinyl covered gypsum walls
Commercial carpeting
throughout
Gypsum or T-grid suspended
ceiling

Electric

Fluorescent ceiling lights
Single phase electric and
breaker panel

Heating/Cooling

Central HVAC and duct
heating

Windows/Doors

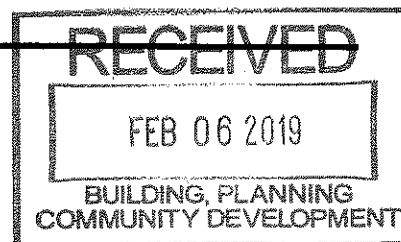
Large glass windows
French door

Other

Large display/reception area
Private office(s)
Handicapped accessible
restroom
Coffee bar



DATE: February 6, 2019
TO: Board of Zoning Appeals
City of Mishawaka, Indiana



AP 19-05

The undersigned appellant respectfully shows the Board:

1. I, ABI Attachments, Inc., am the tenant of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Part of the Northwest Quarter of the Southwest Quarter of Section 14, Township 37 North, Range 3 East, St. Joseph County, Mishawaka, Indiana, described as follows: Commencing at the Northwest corner of the Northwest Quarter of the Southwest Quarter of Section 14, Township 37 North, Range 3 East; thence South 00°00'00" West on the West line of Section 14, a distance of 528.415 feet; thence North 89°51'00" East, a distance of 40.00 feet to the East right of way line of Byrkit Avenue and the point of beginning; thence continuing North 89°51'00" East, a distance of 775.44 feet; thence South 00°19'50" East, a distance of 331.51 feet; thence South 89°39'24" West, a distance of 777.375 feet to the East right of way line of Byrkit Avenue; thence North 00°00'00" East on the East right of way line of Byrkit Avenue and parallel to and 40.00 feet East of the West line of Section 14, a distance of 336.135 feet to the point of beginning.

2. The owner of the property described above, the Dieter W. & Monica M. Lodder Living Trust, have authorized this request, as evidenced by written documentation included with this appeal.
3. The above-described real estate presently has a zoning classification of I-2 Heavy Industrial District under the Zoning Ordinance of the City of Mishawaka.
4. Appellant presently occupies the above-described property in the following manner: assembly of outdoor equipment used in the preparation and management of soil and the ground.
5. Appellant desires to obtain a use variance in order to sell trailers for use on public roadways that require titling and licensing in satisfaction of the requirements to obtain a dealer license from the State of Indiana. These trailers are resold and shipped directly to our customers from an out-of-state manufacturer, with these trailers never actually being on-site at the property described above. On-site activities are limited to phone-based sales and completion of titling paperwork for these trailers.
6. The Zoning Ordinance of the City of Mishawaka requires I-2 Heavy Industrial as described in Sec. 137-101 and Sec. 137-608 of the Municipal Code.
7. Strict adherence to the Ordinance requirements would create an unusual hardship because if we are unable to obtain the use variance described above, we will not be able to complete the zoning affidavit, which is required by the State of Indiana to obtain a dealer license. Without the dealer license, we would not be able to sell the trailers, resulting in a negative impact to our economic viability.
8. Answer the following necessary questions for a Use Variance:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

No, approval will not have any of the injurious effects mentioned above. We currently sell our products using phone-based techniques, which would be unchanged with approval. No additional equipment or traffic would occur since these titled trailers are resold and shipped directly to our customers from an out-of-state manufacturer.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner?

No, approval will not have any adverse impact on the use and value of adjacent properties. We currently sell our products using phone-based techniques, which would be unchanged with approval. No additional equipment or traffic would occur since these titled trailers are resold and shipped directly to our customers from an out-of-state manufacturer.

- (3) Does the need for the variance arise from some condition peculiar to the property involved?

No, the need for the variance only arises because of a requirement by the State of Indiana in order for us to obtain a dealer license, even though we only need the license to resell trailers that are shipped directly to our customers from an out-of-state manufacturer.

- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?

Yes, strict adherence to the Ordinance requirements would create an unusual hardship because if we are unable to obtain the use variance described above, we will not be able to complete the zoning affidavit, which is required by the State of Indiana to obtain a dealer license. Without the dealer license, we would not be able to sell the trailers, resulting in a negative impact to our economic viability.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No, approval will not interfere with the Plan. We currently sell our products using phone-based techniques, which would be unchanged with approval. No additional equipment or traffic would occur since these titled trailers are resold and shipped directly to our customers from an out-of-state manufacturer.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Scott Holmes, President

CONTACT PERSON:

Name: John Dilling, VP of Finance
Address: 520 S Byrkit Ave, Mishawaka, IN 46544
Day Phone Number: 574-679-7853
Fax Number: 574-674-5433
Email: jdilling@abiattachments.com

Board of Zoning Appeals, City of Mishawaka
Department of City Planning
600 East Third Street, Room 201
Mishawaka, Indiana 46544

To Who it may concern:

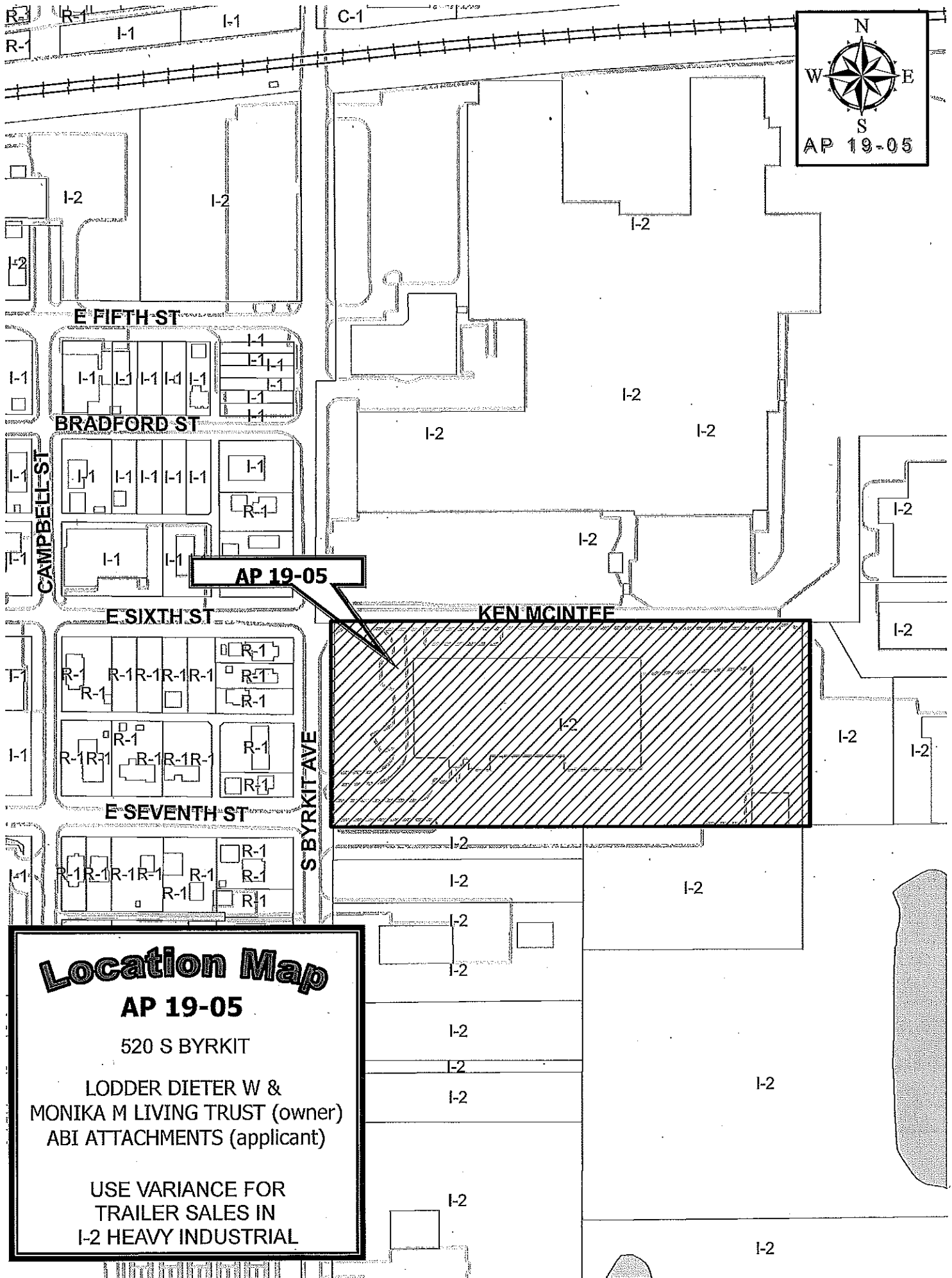
This letter serves as authorization for ABI Attachments, Inc. to submit a request for a use variance to the Board of Zoning Appeals with the City of Mishawaka related to the property they lease located at 520 S Byrkit Ave, Mishawaka, which is owned by the Lodder Dieter W & Monika M Living Trust. We understand that the use variance request is being sought in order to sell trailers through their business and is a requirement to obtain a dealer license with the State of Indiana, even though these trailers are resold and shipped directly to their customers from an out-of-state manufacturer, with these titled trailers never actually being on-site at this property.

Sincerely,

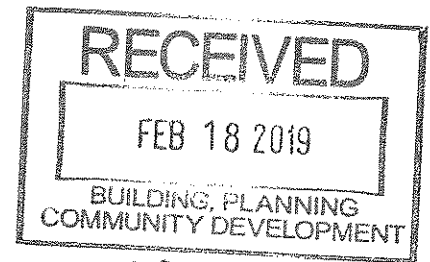
Dieter W. & Monica M. Lodder
Living Trust, dated July 29, 1981,
As Amended May 31, 1985



By John W. Nelson
Attorney-in Fact



Ahmed Jojo
517 N. Pine St.
Mishawaka, IN 46545
(574) 276-5501



DATE: February 12, 2019

TO: Board of Zoning Appeals

City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

1. I, Ahmed Jojo, am the owner of the following described real estate, 517 Ell located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:
Lot 10 V Brunners Sub
2. The above-described real estate presently has a zoning classification of R-1 Single Family Residential District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (*or proposes to occupy*) the above-described property in the following manner: *Extra yard space for 517 N. Pine Street.*
4. Appellant desires to add a storage shed sized 12' x 32' on a lot with an existing 12' x 20' storage shed.
5. The Zoning Ordinance of the City of Mishawaka requires a primary structure before an accessory structure, like a storage shed, can be erected on the site. *This is an extension of the residence it just so happens to be across the street.*
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship: *The new storage shed is used more like a garage than a shed. It houses a kayak, a canoe, bikes, yard supplies, mower and riding tractor plow. There is currently no room on the house lot for the items I need and use.*
7. Answer the following necessary questions for a **USE VARIANCE** :
 - (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? *No, it will not it was professionally built and is sturdy and safe.*
 - (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *No, it will not be a negative item in the community since it is being used just like a garage.*
 - (3) Does the need for the variance arise from some condition peculiar to the property involved? *No it is a shed and is used for storage items.*

(4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *Yes, The properties at 517 N. Pine St. & 517 Ell St. are currently under the same ownership and used as one. At the time of sale, every attempt will be made to keep these properties together. If the properties are not sold at the same time or to the same owner, the 2nd storage shed on 517 Ell St. will be removed.*

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *No, it will not. I plan to live here for the rest of my life. I purchased this home in 1994 and have been a lifelong resident and community member. When I purchased the property behind me I had the house torn down so my 3 girls could have a play area and yard. The shed is not an eyesore by any means, it is not readily visible to most and I am using it just like a garage since I am limited at my residence for space.*

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.



Signature of Property Owner/Title Holder Second Property Owner/Title Holder

Ahmed Jojo

Print Name Here

CONTACT PERSON:

Name: Ahmed Jojo

Address: 517 N. Pine St. Mishawaka, IN 46545

Day Phone Number: (574) 254-1034

Fax Number: (574) 254-1034

Email: ajhvacr@gmail.com

Central Park.

O'connor St.

gate

32'

12x20
Existing shed

4' 6"

10' 7"

13' 7"

12x32
New shed

Door

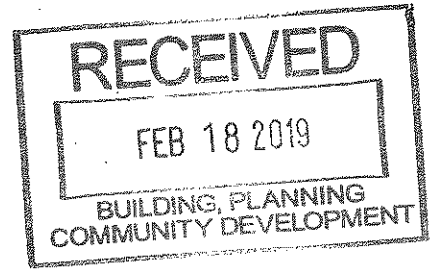
Door

15'

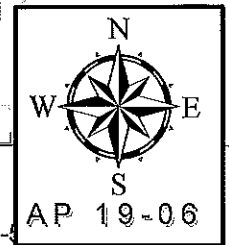
gate

gate

St 11 E



E MISHAWAKA AVE



DIVISION ST

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AP 19-06

R-1

S-1

R-1

ELL ST

N PINE ST

ALICE ST

S-1

COMFORT PL

C-3

C-3

C-3

Location Map

AP 19-06

517 ELL

AHMED JOJO

(also owns 517 N Pine St)

USE VARIANCE FOR
ACCESSORY STRUCTURE
WITHOUT A
PRIMARY STRUCTURE

Date: 2/19/2019

To: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant, Gates Automotive Group, Clint Emberton GSM, respectfully shows the board:

1. I, Clint Emberton, (appellant) on behalf of University Park Mall, (owner) am petitioner of the following described real estate located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to wit:

University Park Mall
6501 Grape Road
Legal Description

Commencing at an Indiana Toll Road right-of-way monument at the intersection of the North right-of-way line of said Toll Road with the proposed West right-of-way line of Grape Road, said point also being the Principal Point and Place of Beginning and lying in and on the South line and 80.00 feet West of the East line of said Northwest Quarter of Section 28;

thence South 89°37'13" West on and along the North right-of-way of the Indiana State Toll Road (said line also being the South line of the Northwest Quarter of Section 28), a distance of 723.71 feet to a point;

thence North 35° 00' 00" West a distance of 382.67 feet to a point;

thence North 55° 00' 00" East a distance of 41.50 feet to a point;

thence North 35° 00' 00" West a distance of 459.50 feet to a point;

thence North 60° 00' 00" West a distance of 430.30 feet to a point on the Easterly right-of-way line of Indiana State Route 23;

thence on and along the said Easterly right-of-way line a distance of 64.24 feet along an arc to the right having a radius of 2821.79 feet and a chord of 64.24 feet bearing North 35° 22' 43.5" East to a point;

thence South 50° 00' 00" East a distance of 385.71 feet to a point;

thence North 30° 00' 00" East a distance of 31.50 feet to a point;

thence South 60° 00' 00" East a distance of 83.08 feet to a point;

thence North 55° 00' 00" East a distance of 169.78 feet to a point;
 thence North 30° 00' 00" East a distance of 101.13 feet to a point;
 thence South 60° 00' 00" East a distance of 50.00 feet to a point;
 thence North 30° 00' 00" East a distance of 55.00 feet to a point;
 thence South 60° 00' 00" East a distance of 79.17 feet to a point;
 thence North 30° 00' 00" East a distance of 198.00 feet to a point;
 thence North 60° 00' 00" East a distance of 114.17 feet to a point;
 thence North 30° 00' 00" East a distance of 75.07 feet to a point;
 thence North 05° 00' 00" East a distance of 225.09 feet to a point;
 thence North 60° 00' 00" West a distance of 358.49 feet to a point on the said
 Easterly right-of-way line of Indiana State Route 23;
 thence North 37° 08' 02" East on and along the said Easterly right-of-way line a
 distance of 70.52 feet to a point;
 thence 452.832 feet along an arc to the left having a radius of 1807.446 feet and a
 chord of 451.649 feet bearing North 29° 57' 23" East to a point;
 thence North 89° 49' 12" East a distance of 312.93 feet to a point;
 thence South 86° 33' 43.1" East a distance of 320.02 feet to a point on the proposed
 West right-of-way line of Grape Road;
 thence South 01° 01' 41" East on and along the said West right-of-way- line of
 Grape Road a distance of 370.02 feet to a point;
 thence South 00° 24' 32" East a Distance of 1484.91 feet to a point;
 thence South 10° 04' 57" West a distance of 186.59 feet to a point;
 thence South 00° 24' 32" East a distance of 320.00 feet to the Principal Point and
 Place of Beginning.

2. The above described real estate presently has a zoning classification of C-2, Shopping Center Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant, on behalf of University Park Mall, presently occupies or proposes to occupy the North parking lot portion, Directly North of JC Penny retail store, and East to the SR 23 boundary of University Park Mall and West to the University Park Mall boundary at Grape Road of the above described property in the following manner:
4. The Gates Automotive Group desires to occupy the property on three separate occasions, 1.) A specific 10 day period in June to be named, 2.) a specific 10 day period on August to be named for offsite Used Car Sale activities. These activities will be consistent with the previous activities that have been approved by the Board of Zoning Approval, City of Mishawaka, for the past six consecutive years. These events have been executed to the guidelines set forth without cause for internal review or discipline. The hours of operation shall be from 10 am until dusk. The property shall be used "As-Is" with no permanent changes to be made. Additionally, Gates Automotive Group, within the current Zoning Constraints of the City of Mishawaka, would request permission for (8) temporary signs consistent with previous approvals. Three portable tents will be erected to provide shade and shelter for customers and staff not to exceed 30' x 60'. Two 12 x 60 powered mobile office facility for business transactions, consumer privacy compliance, and securing of valuables. Adequate temporary restroom facilities will be provided including but not limited to handicap accessible facilities and washing stations for sanitary concerns. Trash receptacles will be stationed in (8) eight locations through out the site emptied twice daily. As always, appropriate traffic control measures are the highest of priority. Safety cones, barricades, and safety banners will be used to provide clear and safe traffic patterns and parking for University Park Mall guest, offsite sale customers, employees of both the Mall and Gates Automotive Group.
- 4-1. The Gates Automotive Group request special consideration from the board. Our request for approval the past six years has gone virtually unopposed. The Board has been generous to grant our request. Additionally, the Council has been gracious to accept the Boards recommendation and grant our request. Gates values the time that the Members of the Board dedicate to our Community. We last petitioned your advice and made request of your services three years ago and were granted a three year approval with conditions. We (Gates and University Park Mall) would like to request a comprehensive approval for the next three years. This approval would have to adhere to the guidelines as have been approved for the previous years. This approval could be withdrawn by either party, at any time with 90 days notice. The approval would expire on 10/1/2021. In the consideration of time, effort, and repetition of request, we pray that you carefully review this addition to the submitted request.

5. The Zoning Ordinance of the City of Mishawaka requires, (1) per section 157.14, Prohibit Signage in all Zoning Districts state; it shall be unlawful to erect or maintain temporary signs, except as permitted under 157.16 Temporary Freestanding Sign Permits. (2) The parking area of the University Park Mall in question is Zoned C-2, Shopping Center Commercial.
6. Strict adherence to the Ordinance requirements enforced would prohibit Gates from selling used vehicles from that location, and (2) Using banners, tents and other miscellaneous materials to promote our Used Car Sales Event.
7. Approval of this request will not be injurious to the public health, safety, morals, or general welfare of the community at large. Gates Automotive Group, having been a local family owned business for 90 years, is involved in and committed to the well being of the City of Mishawaka and the fine citizens who reside here. The use and the value of the area and the adjacent properties included in the variance will not be adversely affected. Quite to the contrary, this event has and will continue to stimulate revenues for the local community. Numerous local media outlets, employees of surrounding business enterprises, subcontractors and vendors involved in staging this event and certainly tax revenues for State and local Government will be positively impacted.
- 7-1. The need for the variance arises due to the fact that the property is located in the City of Mishawaka and is currently not being used for the same purpose as the request is being made. The property is also located in a very high visibility area with easy access, adequate customer and employee parking.
- 7-2. Strict application to the terms of this chapter constitutes an unnecessary hardship if applied to this property due to the fact that Gates Used Car Sales are successful in part because of the safe and festive atmosphere created by our marketing and executed by our well trained employees. The previous approvals graciously granted by the by The Board of Zoning Appeals beginning in 2010, and commencing last year, 2018, were beneficial for Gates, the University Park mall, and the Community of Mishawaka as a whole. The events were organized in an effective, safe, and non-offensive manner to the community. Over the last three years, the State of Indiana has enjoyed tax revenues totaling over \$1.5M dollars. Additionally, the payrolls, invoices, numerous hired vendors, and outsourced services have generated hundreds of thousands in revenue that stay in the local Community. We have driven nearly ten thousand curious and interested buyers to this market since inception which has been beneficial to the University Park Mall and other local businesses. We believe that the approval of the above request will in no manner fall short of our previous year's success and benefit to the Community at large. We strongly encourage the approval of our request and believe we can do our share to encourage economic momentum. Restricting the use of this property will also limit the ability for Gates' to stimulate a vibrant market and promote an event that surrounding communities have come to expect and enjoy.

8. Approval will in no manner interfere with the Mishawaka 2000 Comprehensive Plan as the property is already defined as Commercial.

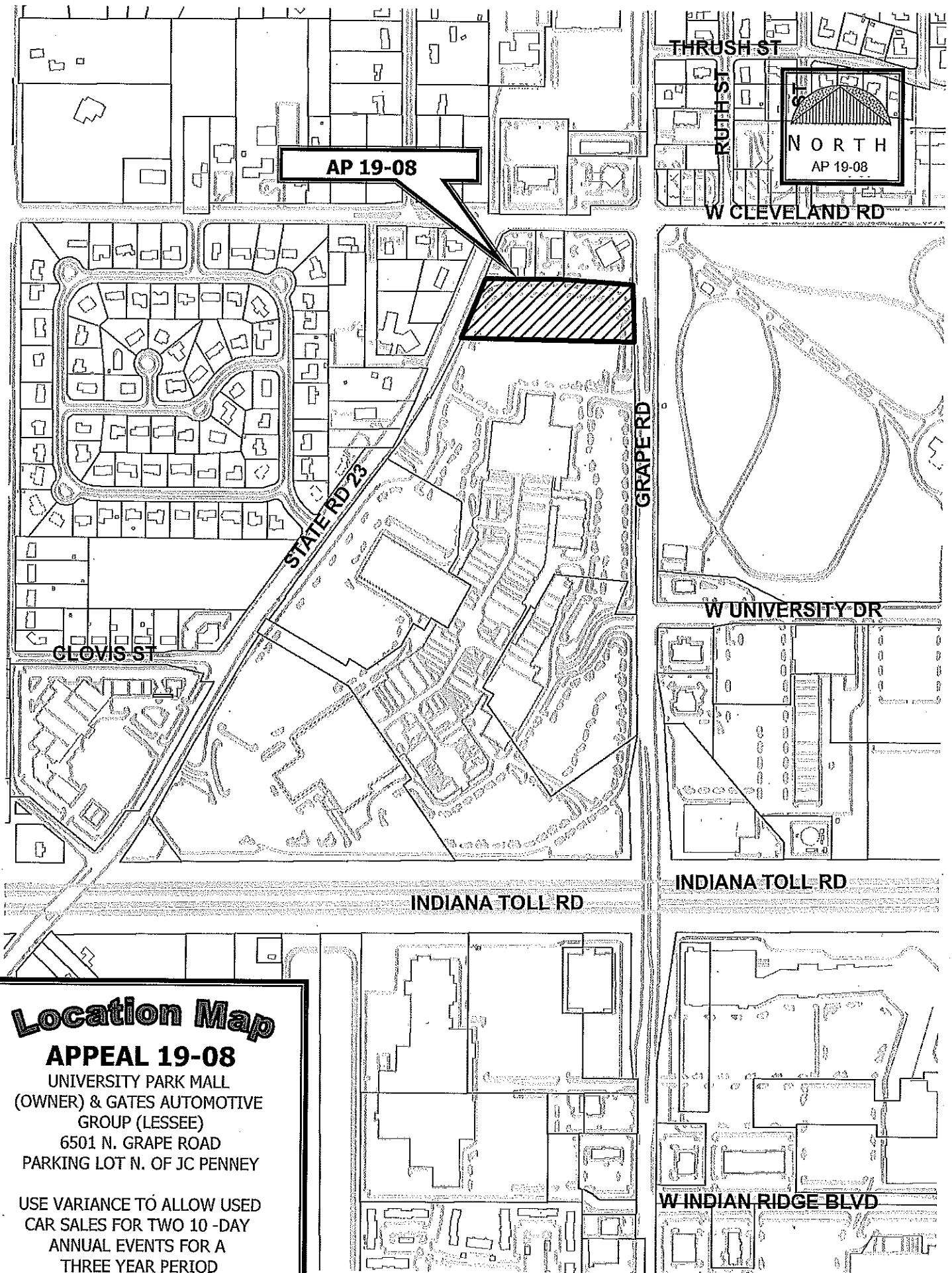
Wherefore the Gates Automotive Group prays and respectfully requests a hearing on this appeal and that after such a hearing, the Board grants the requested variance.

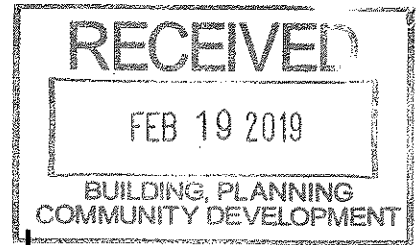
Property Owner Signature: See Attached Authorization

Property Owner Name: University Park Mall

Contact Person(s):

Clint A, Emberton
GSM, Gates Automotive Group
636 W. McKinley Avenue
Mishawaka, IN 46545
Phone: 574-340-0395
Fax: 574-291-6088
Email: cemberton@gatestoyota.com





February 19, 2019

City of Mishawaka
600 East Third Street
Mishawaka, IN 46545

To Whom It May Concern:

This letter will serve as University Park Mall's authorization for Gates to utilize a designated portion of our parking lot to promote its line of vehicles during requested dates in 2019 (lease reference: 9710-1217-SBV-07355). The attached plot map details the planned placement of vehicles and tents in our north parking lot near JC Penney.

We have a good working relationship with Gates Automotive and the shows over the past four years were all well organized and professional. University Park Mall and its merchants benefit from these types of promotions by means of traffic and sales.

Please do not hesitate to contact me for clarification or if further information is needed.

Sincerely,

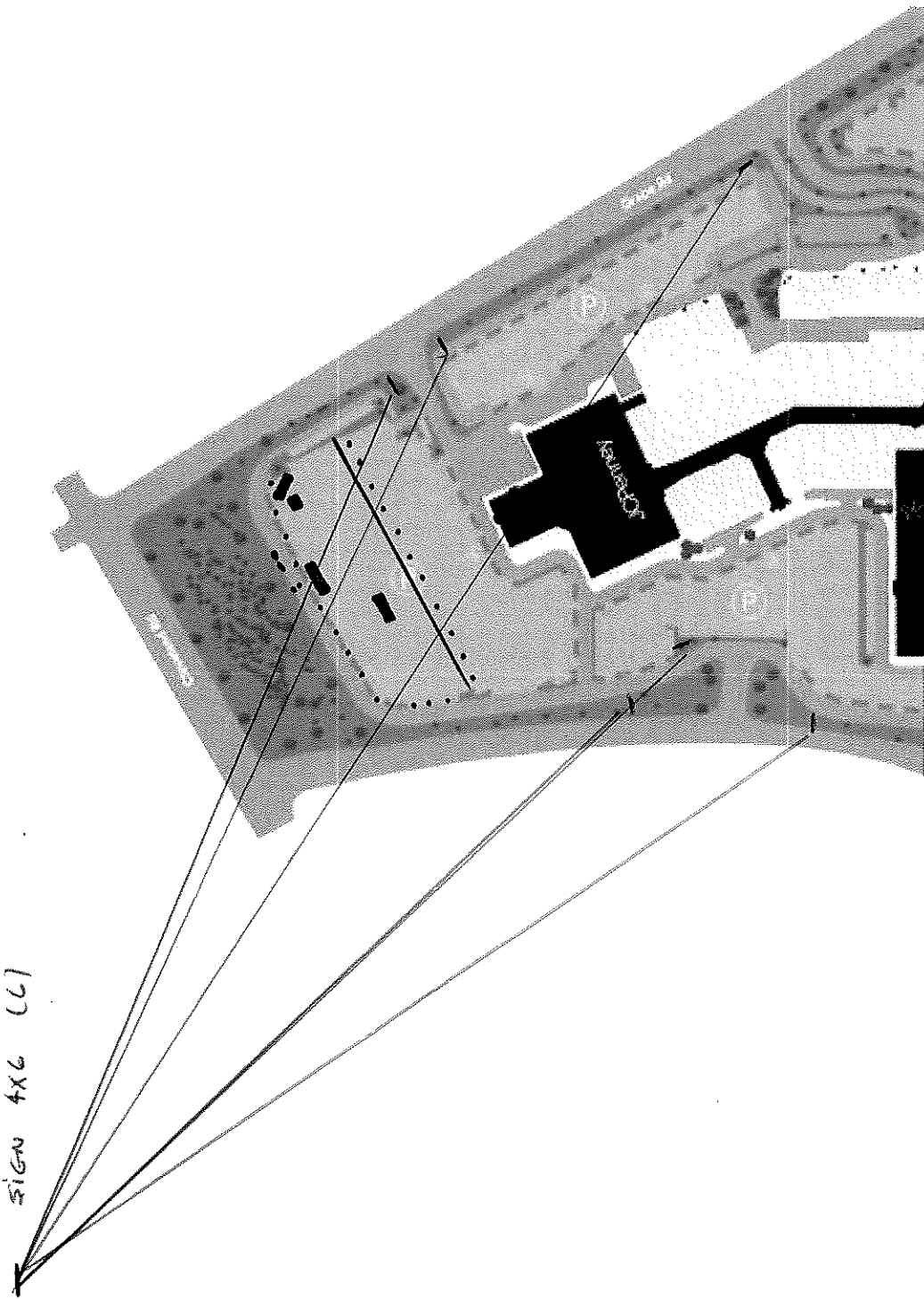
Lily Tikijan
Director of Marketing & Business Development
University Park Mall

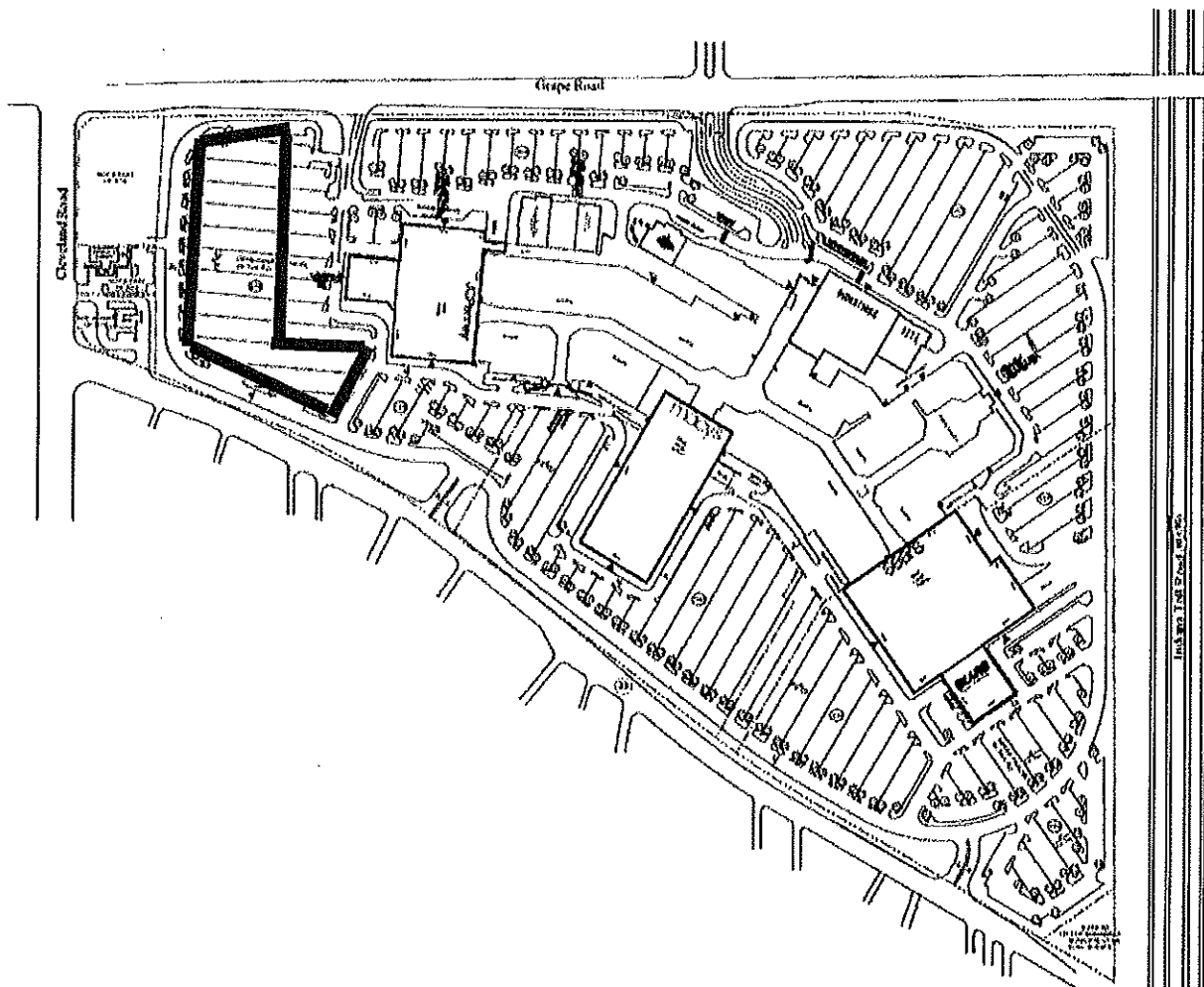
cc: Wes Mehr

smw/enclosure

- PORTABLE FACILITIES (2)
- 12X12 TENT (1)
- 30X60 TENT (2)
- MOBILE OFFICET (2)
- SAFETY CONES

SIGN 4X6 (1)





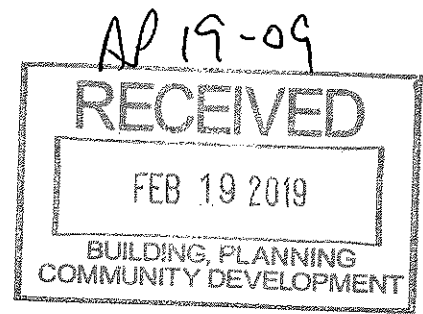
University Park Mall
6501 N. Grape Road
Mishawaka, IN 46543
OCAP # 9712





www.telecompark.com

HAYES TOWERS



February 20, 2019

Board of Zoning Appeals
600 E Third Street
City of Mishawaka, Indiana 46544

Re: Application for a Conditional Use Permit

The undersigned Appellant respectfully shows the Board:

1. Petitioner proposes to purchase the following described real estate located in the City of Mishawaka, St. Joseph County, State of Indiana, to-wit:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, and ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF THE ORIGINAL UNION STREET AND THE SOUTH RIGHT-OF-WAY LINE OF THE CONRAIL RAILROAD, SAID POINT ALSO BEING THE NORTHWEST CORNER OF A PARCEL OF GROUND IDENTIFIED AS TAX KEY NUMBER 016-1126-4943 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA AUDITOR'S OFFICE; THENCE IN A NORTHEASTERLY DIRECTION (ALL BEARINGS ASSUMED) ALONG SAID SOUTH RIGHT-OF-WAY LINE OF THE CONRAIL RAILROAD FOR A DISTANCE OF 161 FEET MORE OR LESS; THENCE SOUTH A DISTANCE OF 90 FEET MORE OR LESS; THENCE WEST A DISTANCE OF 160 FEET MORE OR LESS TO THE EAST RIGHT-OF-WAY LINE OF SAID ORIGINAL UNION STREET; THENCE NORTH ALONG SAID EAST LINE A DISTANCE OF 71 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 0.30 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

2. The above described real estate presently has a zoning classification of I2 District under the Zoning Ordinance of the City of Mishawaka.
3. Petitioner presently occupies (*or proposes to occupy*) the above described property in the following manner:
Hayes Towers, or a related entity, proposes to occupy above-described property with a 180' high (185' overall) monopole type telecommunications tower.
4. Petitioner desires to obtain a conditional use permit in order to build a telecommunication tower.
5. The Zoning Ordinance of the City of Mishawaka states, in Section 137-609B, that a Communication broadcast tower may be a conditionally approved use for property already zoned industrial I-2 district.



814 MARIETTA STREET, SOUTH BEND, INDIANA 46601 (574) 233-1296

(1) Will approval be injurious to the public health, safety, morals or general welfare of the community?

No. The proposed use will not be injurious to the public health, safety, morals or general welfare because the compound will be securely fenced and no dangerous materials will be used at the site.

(2) Will the use and value of the area adjacent to the property included in the conditional use permit be affected in a substantially adverse manner?

No, adjacent property will not be affected in a substantially adverse manner. In preparing this petition, Hayes Towers consulted with the Mishawaka City Planner's Office and will continue to work with the Planner's Office to ensure that the project will be designed, constructed, and maintained in an appropriate manner.

(3) Will adequate conditions be stipulated to mitigate any potentially adverse impact of the conditional use permit upon adjacent property?

Yes, Hayes Towers will continue to work with the BZA, Common Council and Mishawaka City Planner's Office to design and build the tower compound according to zoning ordinances and recommendations.

(4) Will adequate measures be taken to provide proper utilities, drainage, paved access roads, landscape buffering, fencing, leakproof dikes, safety precautions, and to minimize traffic congestion?

Yes, Hayes Towers will take all measures necessary to provide the proper utilities, drainage, paved access roads and a 6' fence for safety precautions. The site will be an unmanned facility and will not cause traffic congestion.

(5) Why is the granting of the conditional use permit in the best interest of the community?

The granting of the conditional use permit is in the best interest of the community because public safety entities, businesses, municipalities and residents need reliable cellular coverage on a daily basis. This tower is necessary to fill coverage gaps in areas surrounding the tower. The tower will not place demands on public services and facilities in excess of current capacity. No sewer or water or other public services are required at the site, no additional traffic will be generated, and adequate electric service is available.



Wherefore, Petitioner prays and respectfully requests a hearing on this application and that after such hearing the Board grant the requested Conditional Use Permit.

Anne Hayes

Purchaser of Property

CONTACT PERSON:

Name: Anne Hayes

Address: 814 Marietta Street, South Bend, IN 46601

Phone: 574-233-1296

A-HAYES@TELECOMPARK.COM



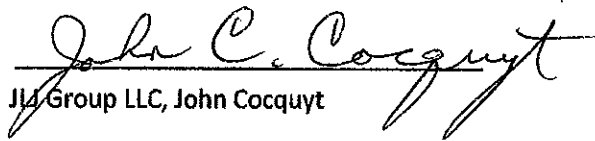
814 MARIETTA STREET, SOUTH BEND, INDIANA 46601 (574) 233-1296

Board of Zoning Appeals
City of Mishawaka, Indiana
600 E Third Street
Mishawaka, IN 46544

Re: Petition For the construction of a monopole type communications tower.

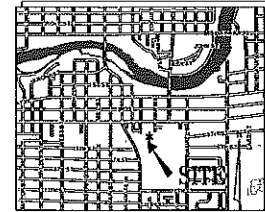
To: The Honorable Board,

Please be advised that Charles S. Hayes Inc. dba Hayes Towers, has been directed to represent my interest at the public hearing of the Board of Zoning Appeals of Mishawaka, Indiana at which this petition is to be considered.

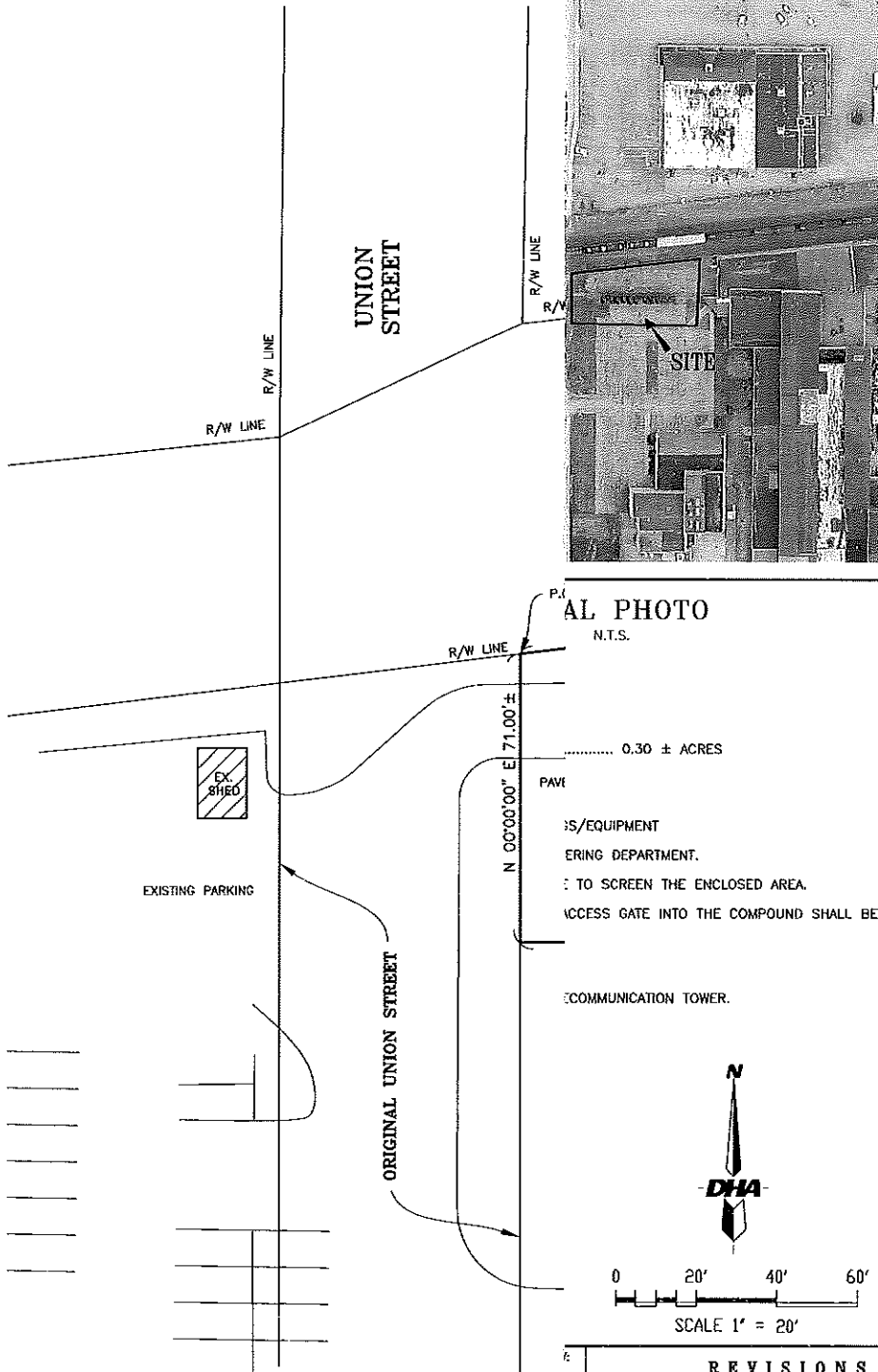
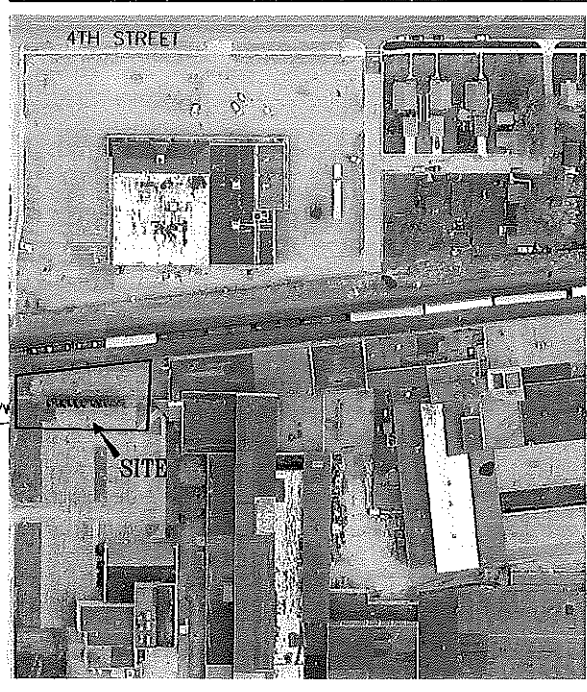

JL Group LLC, John Cocquyt

LEGAL DESCRIPTION:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT OF INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF THE ORIGINAL UNION STREET AND THE SOUTH RIGHT-OF-WAY LINE OF THE CONRAIL RAILROAD, SAID POINT ALSO BEING THE NORTHWEST CORNER OF A PARCEL OF GROUND IDENTIFIED AS TAX KEY NUMBER 016-1126-4943 IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA AUDITOR'S OFFICE; THENCE IN A NORTHEASTERLY DIRECTION (ALL BEARINGS ASSUMED) ALONG SAID SOUTH RIGHT-OF-WAY LINE OF THE CONRAIL RAILROAD FOR A DISTANCE OF 161 FEET MORE OR LESS; THENCE SOUTH A DISTANCE OF 90 FEET MORE OR LESS; THENCE WEST A DISTANCE OF 160 FEET MORE OR LESS TO THE EAST RIGHT-OF-WAY LINE OF SAID ORIGINAL UNION STREET; THENCE NORTH ALONG SAID EAST LINE A DISTANCE OF 71 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 0.30 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

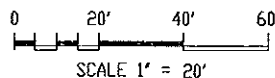


SITE LOCATION MAP



AIRIAL PHOTO
N.T.S.

0.30 ± ACRES
PAV.
SIS/EQUIPMENT
ERING DEPARTMENT.
TO SCREEN THE ENCLOSED AREA.
ACCESS GATE INTO THE COMPOUND SHALL BE
COMMUNICATION TOWER.



SCALE 1" = 20'

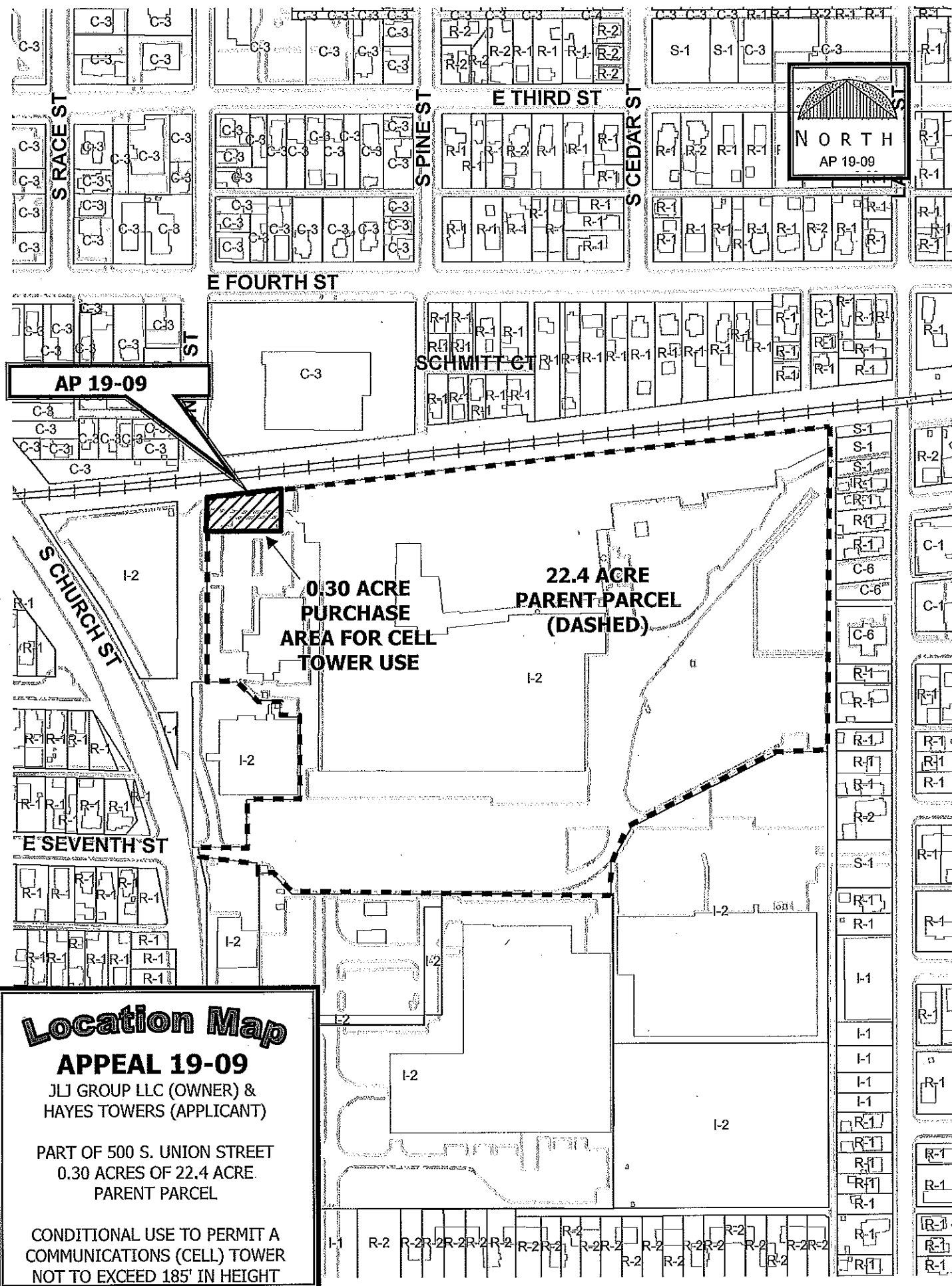
REVISIONS

NO.	DATE	BY	DESCRIPTION
1			
2			
3			

DHA
Dunck, Hammer & Associates, Inc.
Land Surveyors • Professional Engineers
Landscape Architects • Land Planners
Office: (219) 331-4000 / (800) 551-4000
Fax: (219) 331-4119
164 Commerce Street • South Elkhart, IN 46033



SHEET
1 OF
1



Date: 2-16-19

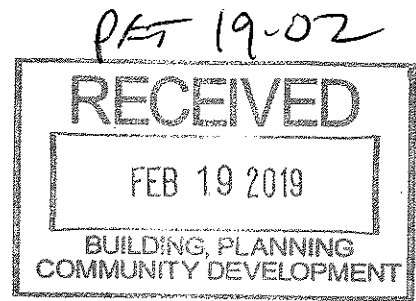
Honorable Members of the

Common Council

City of Mishawaka, Indiana

And Mishawaka City Plan Commission

City of Mishawaka, Indiana



PETITION TO REZONE

James Douglas Cole owner and titleholder of record for 13880 Scout Lane, Mishawaka, County of St. Joseph, Indiana 46544

Key # 71-09-13-155-004.000-023

Legal Description; 364.31 Ft On Nyc Rr By 200 Ft Deep Mid Pt Se Nw Ex N 0.728Ac sold to State 13 37 3e cont 0.932 Fishburn Survey 15/16 Split#37001-22-2215

Petitioner owns 100% of the above property which carries a zoning classification of I-2 and currently vacant with no buildings on it.

Petitioner desires said real estate to be re-zoned to R-1. Current property is vacant land and petitioner would like to either build residential home on it or sell as R-1

Wherefore, the petitioner pray and respectfully request that the common council of the city of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above describe parcel of land located in the City of Mishawaka.

James Douglas Cole

CONTACT PERSON

Mike Finkler -Realtor -At Home Realty Group

3505 Lincolnway E, Mishawaka Indiana 46544

574-876-4137

mfinkler@AOL.com

2. The estate or interest in the land described or referred to in this Preliminary Title Report is Fee Simple.
3. Title to said estate or interest in said land is at the effective date hereof vested in: James Douglas Cole
4. The land referred to in this Preliminary Title Report is located in the County of Saint Joseph, State of Indiana described as follows:

SEE ATTACHED EXHIBIT "A"

**Valid only if Schedule B is attached.
Schedule A consists of 2 page(s)**

SCHEDULE A

EXHIBIT A

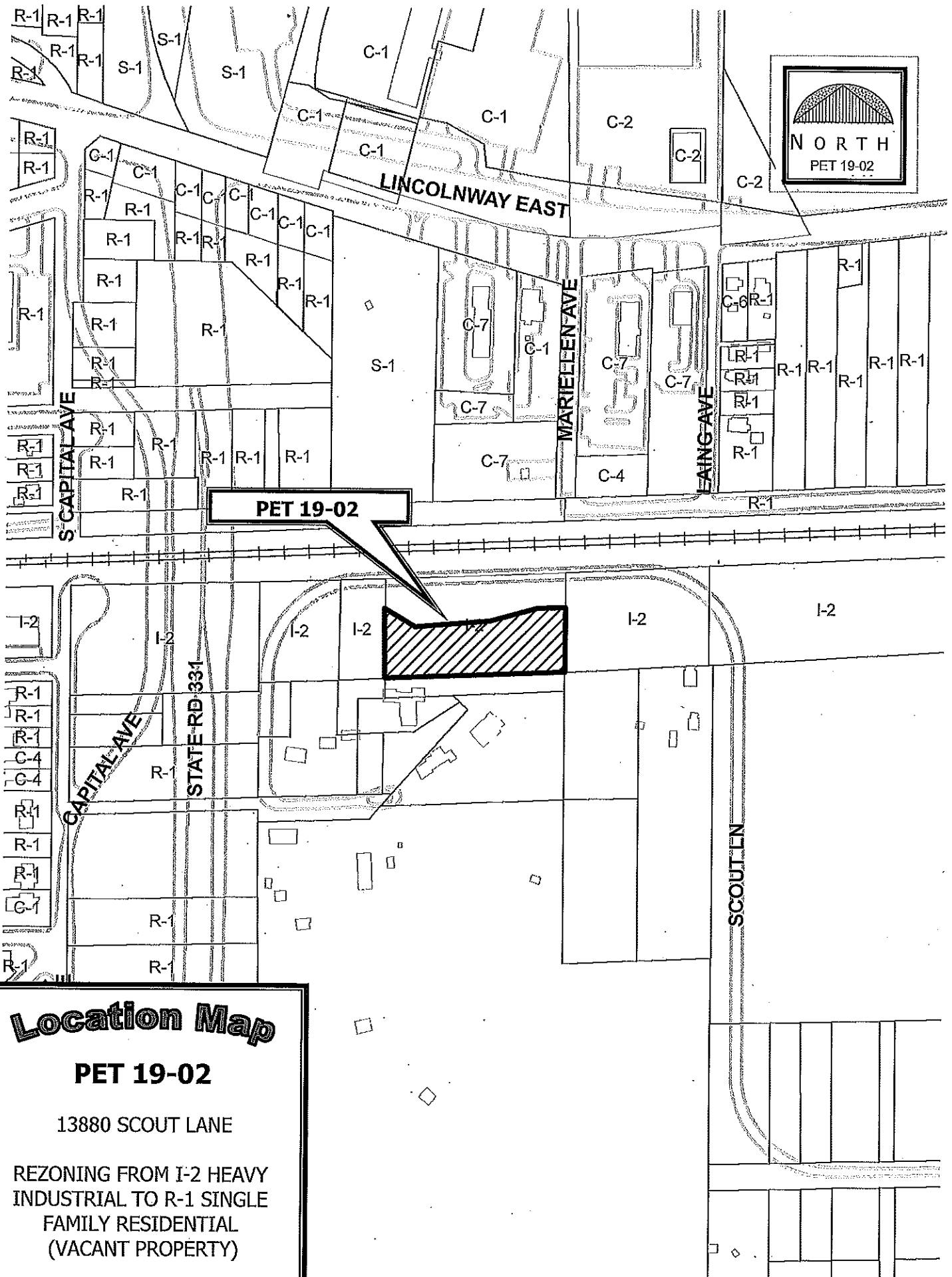
Beginning at a point on the South line of the New York Central Railroad right-of-way 666.69 feet Easterly, (measured along the South right-of-way line of the New York Central Railroad) of the intersection of the South line of New York Central right-of-way and the West line of Section 13, Township 37 North, Range 3 East; thence Easterly 364.31 feet to the centerline of Mariellen Avenue; thence Southerly 90 degrees 00 minutes; 239.13 feet along said centerline of Mariellen Avenue; thence Westerly parallel to the South line of the New York Central rightof-way 373.77 feet; thence North parallel to the West line of Section 13, Township 37 North, Range 3 East, Two Hundred Thirty-nine and Thirty-one hundredths 239.31 feet to the place of beginning. All land described herein is located in the Southwest Quarter (1/4) of the Northwest Quarter (1/4) of Section Thirteen (13), Township Thirtyseven (37) North, Range Three (3) East, Penn Township, St. Joseph County, Indiana, and contains Two (2) acres, more or less.

Excepting therefrom:

A part of the Southwest Quarter of the Northwest Quarter of Section 13, Township 37 North, Range 3 East, St. Joseph County, Indiana, and being described as follows: Beginning the Northwest corner of the grantor's land being on the South line of the New York Central Railroad right-of-way North 87 degrees 40 minutes 42 seconds East

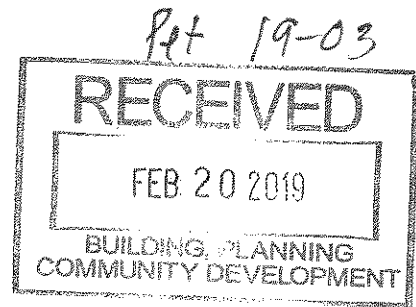
666.69 feet (distance quoted from Instrument #0403430) from the intersection of the West line of said Section 13; thence North 87 degrees 40 minutes 42 seconds East 361.51 feet (364.31 feet by Instrument #0403430) along said South line to the centerline of Mariellen Avenue and the Northeast corner of the grantor's land; thence South 2 degrees 57 minutes 20 seconds East 69.94 feet; thence South 85 degrees 46 minutes 09 seconds West 61.85 feet; thence South 75 degrees 16 minutes 15 seconds West 102.39 feet; thence South 84 degrees 37 minutes 32 seconds West 150.21 feet, thence North 57 degrees 19 minutes 47 seconds West 61.03 feet; thence South 87 degrees 40 minutes 42 seconds West 3.16 feet to the West line of the grantor's land; thence North 0 degrees 01 minute 11 seconds West 67.05 feet along said West line to the point of beginning and containing 0.728 acres, more or less.

**Valid only if Schedule B is attached.
Schedule A consists of 2 page(s)**



February 18th 2019

Honorable Members of the Common Council
City of Mishawaka, Indiana
And Mishawaka City Plan Commission
City of Mishawaka, Indiana



RE: PETITION OF PUD AMENDMENT

The undersigned, Thomas J. Herrman, respectfully show they are the owners of the following described real estate located in the City of Mishawaka, county of St. Joseph, State of Indiana, to-wit:

University Gardens, LLC
6910 North Main Street Suite 13D
Granger, IN 46530

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification S-2 Planned Unit Development specifically for leased commercial space/office use.

Legal Description of land: Unit 13 University Garden Office Park. Parcel or Identification number 71-04-27-102-015.000-036 / 030-1001-000418. Property Address: 6910 N Gumwood RD, Granger, IN 46530.

Petitioner(s) desire said real estate to be amended to allow for Aesthetic Beauty Studio, LLC (Danielle Rzepka, Owner and leaser of unit 13D) use the space for Microblading/Semi-Permanent Makeup).

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.



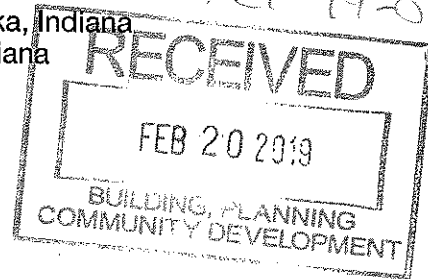
Thomas J. Herrman, owner

Contact Person
Jennifer Herrman
574-274-2524
jherrmann@hgservices.com

Danielle Rzepka
574-250-2195
dani.rzepka@gmail.com

February 18th 2019

Honorable Members of the Common Council City of Mishawaka, Indiana
And Mishawaka City Plan Commission City of Mishawaka, Indiana

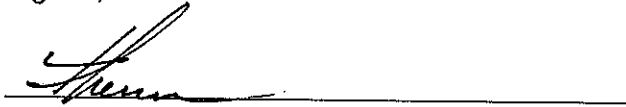


RE: PETITION FOR PUD AMENDMENT of:

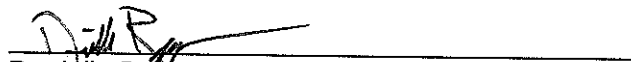
University Gardens suite 13D
6910 North Main Street
Granger, IN 46530

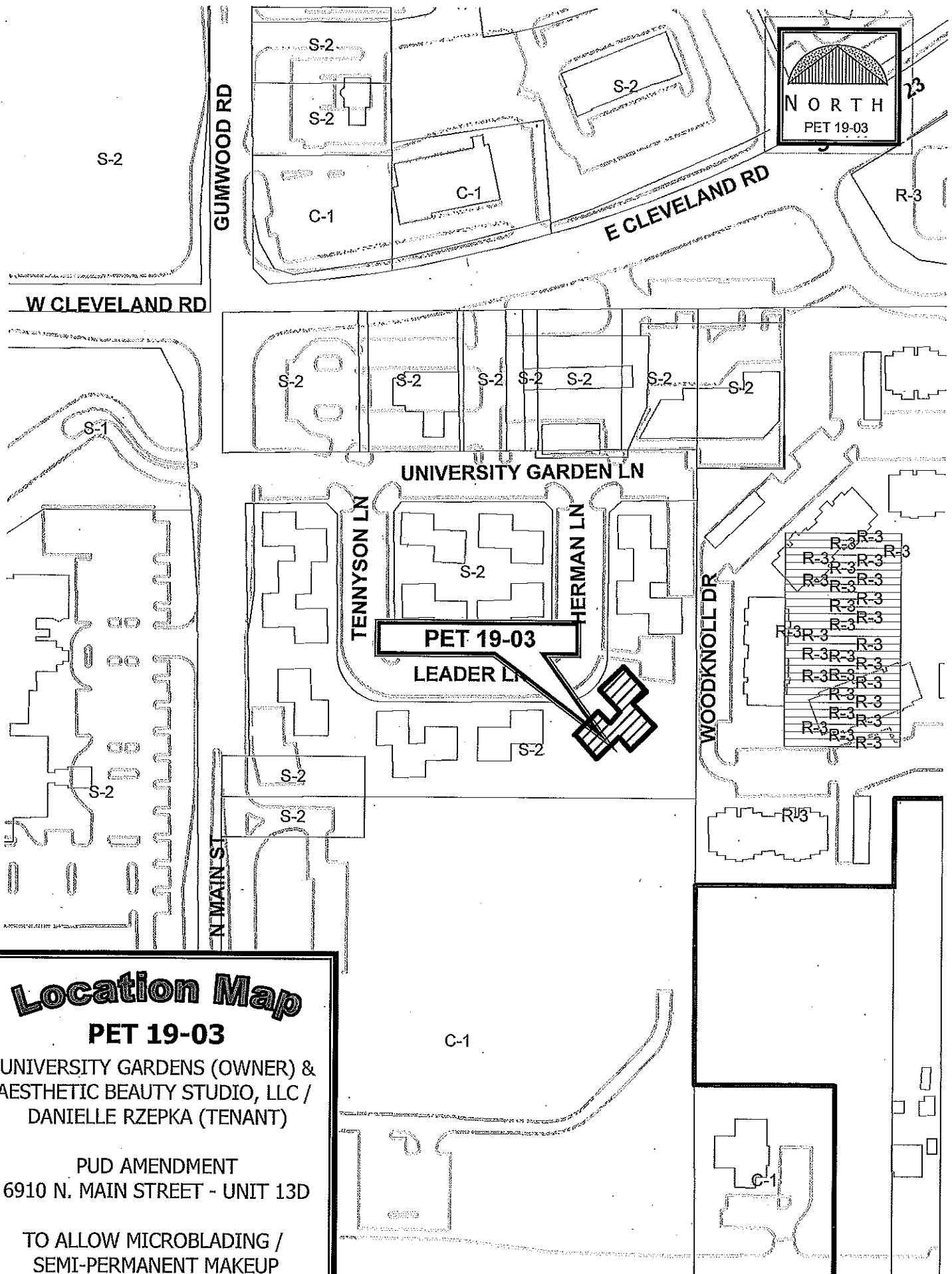
I, Thomas J. Herrman hereby authorize permission to Danielle Rzepka, owner of Aesthetic Beauty Studio, LLC, to act on behalf of myself in any and all court hearings and paperwork filings in order to grant an amendment to PUD for Suite 13D located at 6910 North Main Street Granger, in St. Joseph county, in the State of Indiana.

Signed,



Thomas J. Herrman


Danielle Rzepka, Aesthetic Beauty Studio, LLC



1st Reading 2-18-19
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2019-05

ORDINANCE NO. ____

RECEIVED
DEBORAH S. BLOCK, MMC

FEB 14 2019

CITY CLERK
MISHAWAKA, IN

**AN ORDINANCE AMENDING PART I, CHAPTER 62, OF
THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA,
AS FROM TIME TO TIME AMENDED.**

WHEREAS, the City of Mishawaka, Indiana, ("City") has heretofore established a Sewer Insurance Program ("Program") to help control the cost of repairing and replacing sewer connections for Sewage Works Single Family Residential Customers; and

WHEREAS, the City of Mishawaka believes it is in the best interests of the Sewage Works Customers that the Program continue; and

WHEREAS, the Mishawaka Board of Public Works has determined that for the Program to continue an increase in Insurance Premiums must be implemented, and asks the Common Council to take the steps necessary to increase the a Sewer Insurance Premium to \$2.20; and

WHEREAS, Indiana Code 36-9-23-1 et seq., requires that the rates and charges to be collected for the use of and the service rendered by such sewage works be fixed by Ordinance, finally adopted after due notice and public hearing; and

WHEREAS, the Common Council held a public hearing after due notice at which users of the sewage works, owners of property served or to be served by the works, and other interested persons were heard concerning the proposed fee set forth below;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. Section 62-243, SEWER INNSURANCE FUND AND CHARGES – PURPOSE, ASSESSMENT, UTILIZATION shall be amended as follow:

Sec. 62-243. – PURPOSE, ASSESSMENT, UTILIZATION.

- (a) The sum of \$2.20 per month shall be added as sewer insurance charges for all single-family residential use sewer customers within the corporate city limits of the city. (This program does not include commercial, industrial, or bulk water customers.) All of the sums of money so collected shall be deposited in a separate fund of the city's wastewater utility, entitled "Sewer Insurance Fund".
- (b) All funds collected under section 62-246 shall also be deposited into this fund.
- (c) All of the sums of money so collected shall be used solely to repair or replace failing private sewer connections, and for administrative and inspection costs associated with the program, including material, labor and equipment for sewer lateral repairs or inspection.

Section 2. This ordinance shall be in full force and effect from and after its passage, signing by the Mayor, and legal publication as provided by law.

PASSED and adopted by the Common Council of the City of Mishawaka on the ____ day of _____, 2019, at _____ o'clock __.m.

Presiding Officer

ATTEST:

Deborah S. Block, City Clerk

PRESENTED by me to the Mayor of the City of Mishawaka on the ____ day of _____, 2019, at _____ o'clock __.m.

Deborah S. Block, City Clerk

APPROVED by me this ____ day of _____, 2019, at _____ o'clock __.m.

David A. Wood, Mayor

RECEIVED
DEBORAH S. BLOCK, MMC

1st Reading 2-18-19
2nd Reading
Passed
Failed
Continued To

PETITION #19-01

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2019-06

ORDINANCE NO. _____

FEB 14 2019

CITY CLERK
MISHAWAKA, IN

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA, AND PROVIDING ZONING CLASSIFICATION THEREFORE

WHEREAS, a Petition has been presented to the Common Council of the City of Mishawaka, Indiana, praying that certain territory lying contiguous to the corporate limits of the City of Mishawaka, Indiana, be annexed to and declared to be a part of the City of Mishawaka, and that it be provided with a Zoning Classification, and

WHEREAS, the Mishawaka City Plan Commission, to which Commission the petition was duly referred, has recommended the annexation and the zoning as hereinafter set forth, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, that:

Section 1. The following described real estate be and the same is hereby annexed to and declared to be a part of the City of Mishawaka, Indiana:

R-1 Single Family District: A part of the Southwest Quarter of Section 21, Township 38 North, Range 3 East, Clay Township, St. Joseph County, Indiana and being more particularly described as follows: Commencing at the southeast corner of Lot 1 as shown on the Recorded plat of Crone's Arthur Street Minor Subdivision in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9320384; thence North 00°00'00" West along the east line of said Lot 1, a distance of 183.43 feet to the beginning; thence continuing North 00°00'00" West along said east line, a distance of 145.00 feet to the northeast corner of said Lot 1; thence North 89°55'02" West along the north line of said Lot 1, a distance of 6.96 feet; thence North 00°00'00" West a distance of 167.90 feet; thence South 89°55'02" East, a distance of 302.00 feet to a point of the east right-of-way line of Grape Road; thence South 00°00'00" East along said east line, a distance of 312.90 feet; thence North 89°55'02" West, a distance of 295.04 feet to the point of beginning containing 2.15 acres more or less.

R-3 Multi-Family District: A part of the Southwest Quarter of Section 21, Township 38 North, Range 3 East, Clay Township, St. Joseph County, Indiana and being more particularly described as follows: Beginning at the southeast corner of Lot 1 as shown on the Recorded plat of Crone's Arthur Street Minor Subdivision in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9320384; thence North 00°00'00" West along the east line of said Lot 1, a distance of 183.43 feet; thence South 89°55'02" East, a distance of 295.04 feet to the east right-of-way line of Grape Road; thence South 00°00'00" East along said east line, a distance of 183.43 feet; thence North 89°55'02" West, a distance of 295.04 feet to the point of beginning containing 1.24 acres more or less.

COMMON ADDRESS: 16525 Arthur Street and 52781 Grape Road

The above described real estate shall hereafter be annexed into and within the City of Mishawaka, Indiana, and a part of that district designated in the Zoning Ordinance of the City

Proposed Ordinance No. 2019-06

Ordinance No. _____

of Mishawaka, Indiana, and shall carry a classification for zoning of R-1 Single Family Residential District and R-3 Multi-Family Residential District.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions - The subject parcels are located along a moderately travelled section of Grape Road adjacent to property zoned for commercial, retail, office, restaurant, and single family residential uses. The annexation area consists of an existing single-family house and vacant land. Adjacent land uses include an office, commercial, and restaurant to the south, and single family residential to north, west, and east.
2. Character of Buildings in Area - The character of the buildings located adjacent to and in the surrounding area are commercial and residential. Single family residential homes are located to the north, west, and east of the property, with an office building and vacant retail building and restaurant to the south.
3. The most desirable/highest and best use - With the property's location adjacent to both commercial and single family residential uses, the most desirable uses for the property are transitional multi-family and single family residential as proposed.
4. Conservation of property values - The proposed zoning will not be injurious to property values in the surrounding area because the proposed uses will provide a transition from the commercial uses to the south and the single family residential uses to the north.
5. Comprehensive Plan - This property is not included within the extents of the Mishawaka 2000 Comprehensive Plan. However, the proposed multi-family and single family uses are reasonably consistent with adjacent land uses along this portion of the Grape Road corridor.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2019, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

Proposed Ordinance No. 2019-06

Ordinance No. _____

PRESENTED by me to the Mayor this _____ day of _____, 2019, at
o'clock _____.M.

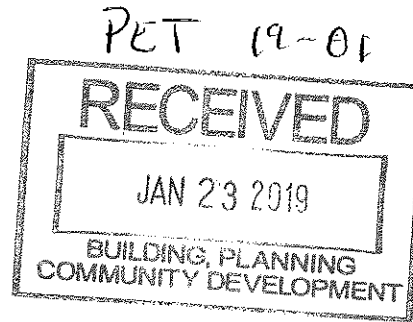
Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2019, at _____ o'clock
_____.M.

David A. Wood, Mayor

JAN 31 2019

CITY CLERK
MISHAWAKA, IN



January 22, 2019

TO THE:

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

RE: Petition for Annexation and Zoning Classification

The undersigned DJSJ, LLC, Don Shaum, JR AND Jennifer Shaum respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

R-1 Multi Family District Area

A part of the Southwest Quarter of Section 21, Township 38 North, Range 3 East, Clay Township, St. Joseph County, Indiana and being more particularly described as follows: Commencing at the southeast corner of Lot 1 as shown on the Recorded plat of Crone's Arthur Street Minor Subdivision in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9320384; thence North 00°00'00" West along the east line of said Lot 1, a distance of 183.43 feet to the point of beginning; thence continuing North 00°00'00" West along said east line, a distance of 145.00 feet to the northeast corner of said Lot 1; thence North 89°55'02" West along the north line of said Lot 1, a distance of 6.96 feet; thence North 00°00'00" West a distance of 167.900 feet; thence South 89°55'02" East, a distance of 302.00 feet to a point of the east right-of-way line of Grape Road; thence South 00°00'00" East along said east line, a distance of 312.90 feet; thence North 89°55'02" West, a distance of 295.04 feet to the point of beginning containing 2.15 acres more or less.

R-3 Multi Family District Area

A part of the Southwest Quarter of Section 21, Township 38 North, Range 3 East, Clay Township, St. Joseph County, Indiana and being more particularly described as follows: Beginning at the southeast corner of Lot 1 as shown on the Recorded plat of Crone's Arthur Street Minor Subdivision in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9320384; thence North 00-00'00" West along the east line of said Lot 1, a distance of 183.43 feet; thence South 89-55'02" East, a distance of 295.04 feet to the east right-of-way line of Grape Road; thence South 00-00'00" East along said east line, a distance of 183.43 feet; thence North 89-55'02" West, a distance of 295.04 feet to the point of beginning containing 1.24 acres more or less.

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located 16525 Arthur Street and 52781 Grape Road, both in Granger, Indiana and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a R-1 Residential District and R-3 Residential District. Petitioners further state they intend to utilize said land for single family and multi-family units.

Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate, showing the size of the proposed building and also the location of the proposed building structure(s).

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a R-1 Residential District and R-3 Residential District.

x Donald L. Shaum

DJSJ, LLC

By Don Shaum Jr (print name)

22040 County Road 20

Goshen, Indiana 46525

x Donald L. Shaum

Don Shaum, Jr.

22040 County Road 20

Goshen, Indiana 46525

x Jennifer Shaum

Jennifer Shaum

22040 County Road 20

Goshen, Indiana 46525

Contact Person:

Lang, Feeney & Associates, Inc.

Terance D. Lang

715 South Michigan Street

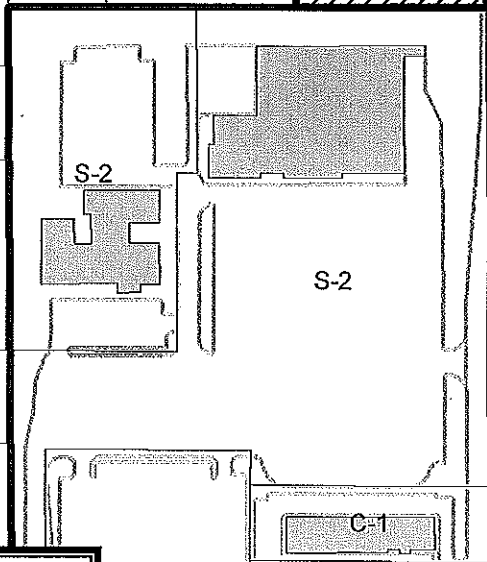
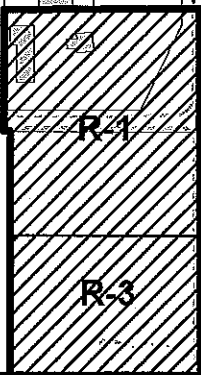
South Bend, Indiana 46601

574-233-1841

Terry@LangFeeney.com



PET 19-01



THRUSH ST

RUTH ST

LEO ST

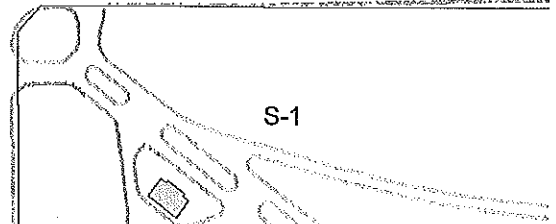
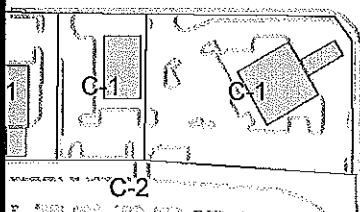
GRAPE RD

W CLEVELAND RD

Location Map PET 19-01

DJSJ, LLC & DON JR. AND
JENNIFER SHAUM
16525 ARTHUR ST. &
VACANT 2 ACRE LOT

ANNEXATION & REZONING
TO R-1 & R-3 FOR 6 SINGLE
FAMILY RESIDENTIAL
LOTS & 7 TOWNHOMES



FEB 14 2019

APPEAL #19-03

CITY CLERK
MISHAWAKA, IN

RESOLUTION NO. 2019- 06

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA,
APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE
PROPERTY LOCATED AT:

1316 West Dagoon Trail, Mishawaka, Indiana

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **1316 West Dagoon Trail, Mishawaka, Indiana**, more particularly known and described as follows:

A tract of land in the Northeast Quarter of Section 20 beginning at the northeast corner of Section 20, Township 37 North, Range 3 East; thence south along the east line of said Section 20, said Township and Range, one thousand two hundred fifty-four and sixty-nine hundredths (1,254.69') feet to the center line of the pavement that forms the north point of a "Y" at the intersection of Logan Street (Hickory Road) and Dagoon Trail all in the northeast ¼ of Section 20, Township 37 North, Range 3 East north of Dagoon Train; thence southwesterly following the center line of the pavement forming the "Y" at the intersection of Logan Street (Hickory Road) and Dagoon Trail Two hundred sixty and nine tenths (260.9') feet to the centerline of Dagoon Trail; thence meandering along the centerline of said Dagoon Trail in a westerly direction one thousand one hundred seventy-three and sixty-five hundredths (1,173.65') feet to a point where the west line of the east ½ of the east ½ of the northeast ¼ of said Section 20 intersects the centerline of said Dagoon Trail; thence north along the west line of the east ½ of the east ½ of the northeast ¼ of said Section 20, nine hundred ninety-seven and fifteen hundredths (997.15') feet to the north line of said Section 20, said Township and Range; thence east along the north line of said Section 20, one thousand three hundred twenty-seven and four tenths (1,327.4') feet to the place of beginning, containing 35.83 acres, more or less.

COMMON ADDRESS: 1316 West Dagoon Trail

The Use Variance, if approved, will allow an outpatient day treatment center for children and adolescents diagnosed with autism.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

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 little to no additional impact than the existing school. This is one building on a large (35+ acre) property.
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 most of the property surrounding this building is part of the Marian High School campus.
3. The need for a variance arises from identifying the highest and best use for a building that was constructed appropriately for such counseling services, but not zoned for such. There is adequate parking and life safety devices.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the building is available for use, but rezoning the entire property would not be the highest and best use for the school.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this area as open space, with one of the uses being schools, and this use is compatible with the school. The approval is consistent with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this _____ day of _____, 2019, at _____ o'clock _____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2019,
at _____ o'clock ____m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2019, at
_____ o'clock ____m.

David A. Wood, Mayor

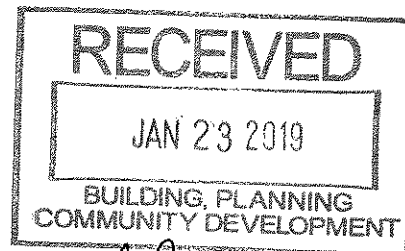
RECEIVED
DEBORAH S. BLOCK, MMC

JAN 31 2019

CITY CLERK
MISHAWAKA, IN

January 22, 2019

Board of Zoning Appeals
City of Mishawaka, Indiana



The undersigned appellant respectfully shows the Board:

1. Diocese of Fort Wayne – South Bend, Inc is the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Legal Description:

Irr Tract In Ne Ne N Of Dragoon Trail Sec 20-37-3e 35.64 Ac M Or L

Registered legal address for the entire property:

1328 W. Dragoon Trl, Mishawaka, IN 46544

Address for the building requesting a use variance:

1316 W. Dragoon Trl, Mishawaka, IN 46544 ("building") Annotated in Attachment A.

2. The above-described real estate presently has a zoning classification of Residential R-1 District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently has an agreement to occupy the above-described property in the following manner:

The above described property will be used as an outpatient day treatment center providing Applied Behavior Analysis ("ABA") programs for children and adolescents diagnosed with Autism. The hours of operation are 8:00am-4:30am Monday thru Friday.

4. Appellant desires to *(Explain what is proposed that violates the Ordinance.)*
According to the ordinance the building for the proposed service is required to be zoned as a commercial medical office building. The variance is requested to use the building for this purpose. The services provided are counseling, life skills, and education preparation. They are not medical in nature. The building is appropriately constructed, has ample parking, has the appropriate life safety devices to support the proposed services.
5. The Zoning Ordinance of the City of Mishawaka requires *(Explain ordinance requirements and note Section Number of the Ordinance.)*
According to the ordinance the building for the proposed service is required to be zoned as a commercial medical office building. The variance is requested to use the building for this purpose. The services provided are counseling, life skills, and education preparation. They are not medical in nature. The building is appropriately constructed, has ample parking, has the appropriate life safety devices to support the proposed services.
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship.
The building is properly constructed for the services proposed for the building the current building zoning will not allow for the proposed services. The failure to obtain the requested variance will negatively impact the potential for needed programs in the community.
7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? **YES OR NO and explain your reason why.**

No. Approval of the use variance will allow the building to house an ABA clinical and educational program for children and adolescents with Autism. The program housed within the building provides treatment for autism creating a positive impact on the patients, their families, the local community, and society. Children and Adolescents attending programs at this facility are no

different than the student population attending school at Marian High School, which is located on the grounds where the building is located. The program is based Applied Behavior Analysis which is the foremost proven and approved treatment modality for autism and is conducted under the supervision of trained and licensed professionals.

- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? *YES OR NO and explain your reason why.*

No. Approving the requested use variance will not significantly alter the population of children and adolescents currently attending school at Marian High School. Also, there are no residential structures or commercial business directly adjacent to the building as it is located on southwest corner of the Marian High School campus. The addition of these services will not negatively impact properties adjacent to the Marian High School campus. The building will be used as with no exterior changes or improvements and the current parking lots provide ample parking space.

- (3) Does the need for the variance arise from some condition peculiar to the property involved? *YES OR NO and explain your reason why.*

No. The current building is zoned Residential R1 and was recently vacated by the historical inhabitants. However, the building is constructed to support an entity that provides outpatient day treatment ABA programs for children. Therefore, the variance is being requested to continue to provide the ABA programs in the building.

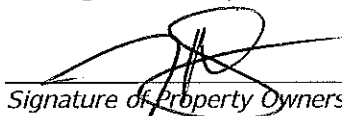
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? *YES OR NO and explain your reason why.*

Yes. Although the building is properly constructed for the services proposed for the building the current zoning will not allow for the proposed services.

- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? *YES OR NO and explain your reason why.*

No. The Mishawaka 2000 Comprehensive Plan does not specifically address plan for the annotated building. It only notates the campus the building is located upon as Education space. The proposed program for children and adolescent day treatment ABA services aligns with an education designation as the program employs education functions throughout the operation of the programs. The function of the proposed services will not impact current traffic patterns or create

WHEREFORE, Appellant respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.


Signature of Property Owners Representative

Joshua Smith

Print Name Here


Signature of Property Owners Representative

Leanne Suarez

Print Name Here

CONTACT PERSON:

Name: Joshua Smith
Address: 3226 Brunswick Square Drive, Mishawaka IN 46544
Day Phone Number: 843-609-5885
Fax Number: 574-635-3201
Email: Joshua.caerus@outlook.com

January 23, 2019

TO: Board of Zoning Appeals, City of Mishawaka, Indiana

FROM: Diocese of Fort Wayne - South Bend, INC

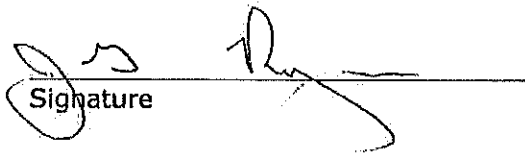
SUBJECT: Authorization Letter - Building Zoning Variance Request

I hereby give authorization for Joshua Smith and Leanne Suarez, the owners of Journey's Behavior Learning Center, LLC, to submit a Use Variance Request for the below listed building which is owned by the Diocese of Fort Wayne - South Bend, INC.

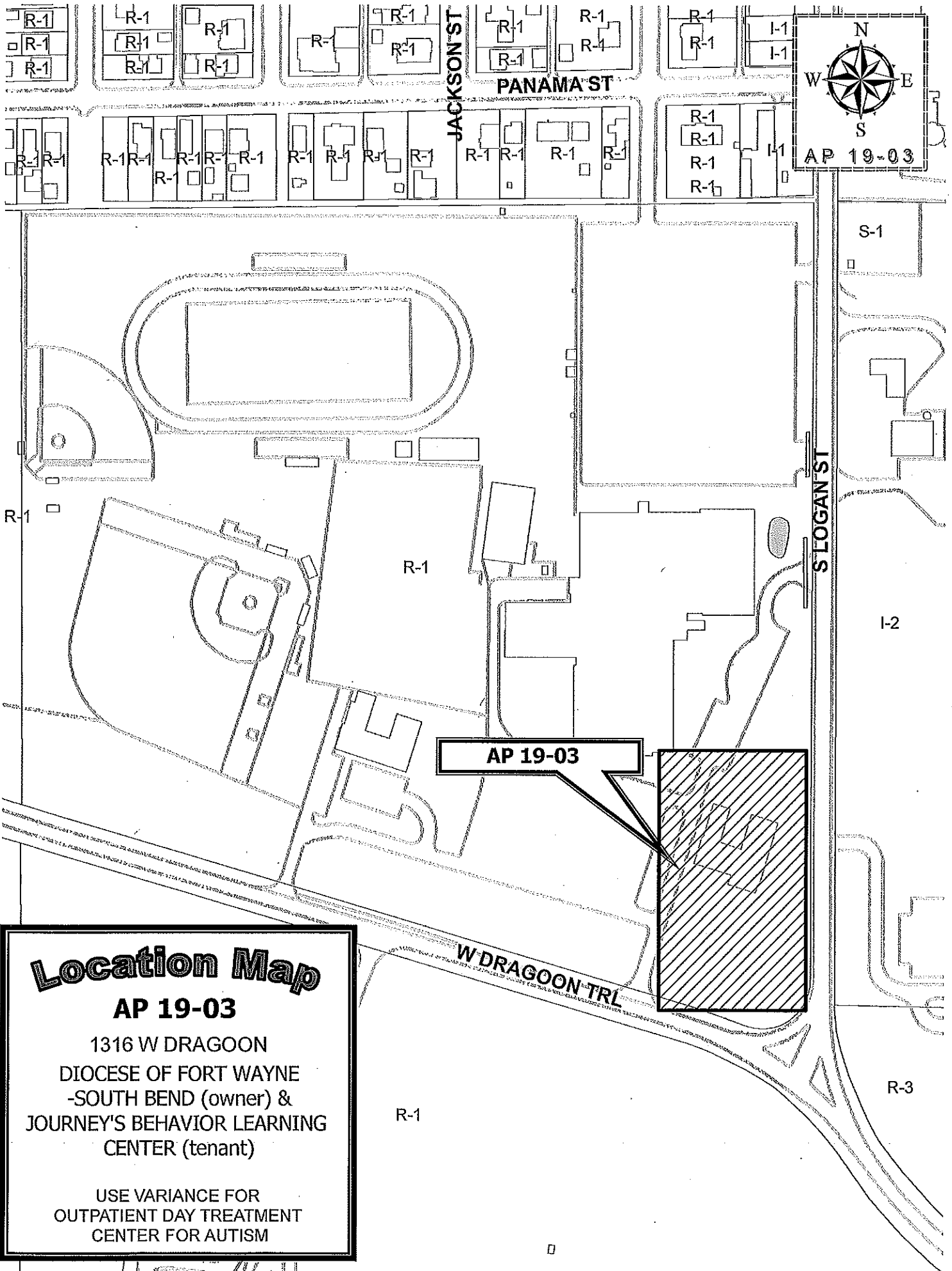
1316 W. Dragoon Trail
Mishawaka, IN 46544

This authorization is limited to submitting and completing the required processes outlined by the City of Mishawaka, Indiana for a Use Variance for the listed address.

Sincerely,


Signature

J. G. Ryan CFD
Print Name/Title



Location Map

AP 19-03

1316 W DRAGON
DIOCESE OF FORT WAYNE
-SOUTH BEND (owner) &
JOURNEY'S BEHAVIOR LEARNING
CENTER (tenant)

USE VARIANCE FOR
OUTPATIENT DAY TREATMENT
CENTER FOR AUTISM