

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 19, 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 August 19, 2019, at 7:00 p.m. The meeting was called to order by President Dale “Woody” Emmons all were asked to stand for the Pledge of Allegiance.



Roll Call.

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

Absent: Mrs. Voelker, Mr. Compton.

Others Present: Clerk Block, Deputy Clerk Raven Boston, Council Attorney Michael Trippel.

Minutes of the Regular Meeting of August 05, 2019 was approved as received from the Clerk’s Office.

Clerk Block read a letter from the Board of Zoning Appeals regarding their recommendations from their August 13, 2019 meeting.

APPEAL #19-28 An appeal submitted by Jay Frederickson requesting a Use Variance for **228 West Edison Road**, Suite 600, to permit microblading and/or permanent make up.

The Board, with a vote of 3-0, recommended approval.

APPEAL #19-33 An appeal submitted by L & B Penn LLC & PJT Penn LLC requesting a Use Variance at **2320 Douglas Road** to allow wholesale landscape material sales.

The Board, with a vote of 3-0, recommended approval subject to the following conditions:

1. The sale of wholesale landscape materials shall be limited to only top soil for a period not to exceed three (3) years.
2. The access drive improvements along Veteran’s Parkway shall be reviewed and implemented as determined by the City of Mishawaka Engineering Department.

APPEAL #19-35 An appeal submitted by Patricia A. Skelton requesting a Use Variance for **903 East Fifth Street** to allow an existing house and 1,500 sqft accessory structure to be used as a home-based business in I-1 Light Industrial zoning district.

The Board, with a vote of 3-0, recommended approval subject to the following conditions:

1. All business operations shall occur completely within the accessory structure.
2. No outside storage of raw materials or finished product is permitted.

3. No person shall be employed on the premises other than a member of the immediate family residing on the premises.
4. No signage shall be permitted other than a nameplate of no more than one square foot in area flush mounted to an outside wall.
5. No commodity shall be sold on the premises.
6. No mechanical equipment is used except for basic hand tools and an air compressor.
7. The exterior of the accessory structure shall not be painted or constructed to indicate from the exterior that the structure is being utilized for any purpose other than that of a detached residential accessory building.

Clerk Block read a letter from the Police Department for the approval of the Justice Assistance Grant (JAG) for 2019.

A motion was made by Mr. Banicki to accept the JAG letter same upon a second by Mr. Tanner motion carried.

Clerk Block read the following proposed ordinances by title and was set for public hearing at the next meeting.

PROPOSED ORDINANCE NO. 2019-21

**AN ORDINANCE FIXING THE SALARIES
OF CERTAIN ELECTED OFFICIALS OF THE CITY OF MISHAWAKA
FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2020
(Elected Officials Salary Ord)
(Assigned to the Budget and Finance Committee)**

PROPOSED ORDINANCE NO. 2019-22

**AN ORDINANCE THE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY
OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND
THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA,
FOR THE YEAR BEGINNING JANUARY 1, 2020.
(City Employee Salary Ord)
(Assigned to the Budget and Finance Committee)**

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

RESOLUTION NO. 2019-21

**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:
228 West Edison Road, Suite 600, Mishawaka, Indiana**

(Use Variance to Permit Micro-blading/permanent makeup)

Petitioner was not present.

Mr. Mammolenti made a motion to postpone **Resolution No. 2019-21** to the September 03, 2019 meeting upon a second by Mr. Tanner motion carried.

RESOLUTION NO. 2019-22

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:

2320 Douglas Road, Mishawaka, Indiana

(Use Variance to allow Wholesale Landscape Material Sales)

Bernard Feeney, Land Surveyor Plymouth Land Surveying and Design, Inc. spoke on the behalf of the petitioners. He said the Penn family was the owner of the farm that was being converted into the Juday Creek Park. Mr. Feeney explained two buildings remaining on the proposed property on the northwest corner of the intersection of Veterans Parkway and Douglas Road was a part of their homestead. He said there was a substantial amount of top soil left over from the construction from the widening of Douglas Road, which was deposited at the west end of the remaining buildings. Mr. Feeney said they were requesting to allow the sale of the top soil by Larry and Paul Penn. He informed the council the petitioners were aware of the requirements from the Engineering Department and they fully expect to comply to all conditions. Mr. Feeney continued to say they were also aware there was a 3-year term limit.

Mr. Tanner said he understood this was not a landscape business going in to the location. He asked to clarify this was to address the access top soil left behind from the project. Mr. Feeney replied correct, they were selling the top soil wholesale to landscaping businesses throughout the county. He mentioned the primary beneficiary benefitting from the sale was the McKinley Landscape Center. Mr. Tanner also asked was this an agreement made with the Penn Family and the contractor for this project. Mr. Feeney replied yes.

Question was called for at 7:31 P.M. for **RESOLUTION NO. 2019-22**  **Vote: Motion carried by unanimous roll call vote (summary: Yes = 7). Yes: Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.**

RESOLUTION NO. 2019-23

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:

903 East Fifth Street, Mishawaka, Indiana

(Use Variance to allow existing house and Accessory Structure used for home business)

Norman Vandermee 903 E. 5th Street said his property was currently zoned industrial and for the last 30 years he has been working out of his one and a half car garage. He continued to say he would like to increase the size of his garage to 1500 square feet which would fit up to 4 cars. Mr. Vandermee mentioned he had no employees and it was a home-based business. He said his line of business was designing prototype molds for automotive racing cars. Mr. Vandermee said in his 30 years of working out of his home he did not hear of any complaints from the surrounding neighbors. He mentioned there were neighbors with concerns regarding property values, but it seemed he alleviated their concerns.

Mr. Tanner ask would the business require heavy metal machinery and the type of construction the garage would be. Mr. Vandermee replied no, it was all basic hand tools. He said the garage would be an insulated metal building; he would try to make it look as residential as possible.

Mr. Mammolenti questioned the hours of operation. Mr. Vandermee explained he did not have set hours of operation, he worked on his own time. He said he kept the noise down at night.

Mr. Emmons commented Mr. Vandermee answered all the questions of the concerned citizens at the Board of Zoning meeting.

Question was called for at 7:19 P.M. for **RESOLUTION NO. 2019-23**  **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 7). **Yes:** Mr. Tanner, Mr. Mammolenti, Mr. Banicki, Mrs. Petko Reisdorf, Mr. Bellovich, Mr. Hixenbaugh, Mr. Emmons.

PRIVILEGE OF THE FLOOR

Mr. Emmons explained the guidelines to take place under privilege of the floor for the Menards remonstrators. He asked the audience to be courteous, limit comments and please do not be redundant. He said the council was there to listen to comments, there would not be any discussion from the council.

Ken Prince, City Planner explained whatever decision made by the council had to be defensible. He stated if the council approved or turned down the proposed ordinance for Menards at the next meeting, state law mandates what kind of process would take place. Mr. Prince continue to explain there was a public hearing scheduled for September 03, 2019 for the proposed Menards. He mentioned there was a number of remonstrators who made contact regarding their concerns the council would take action at the last meeting before the deadline was up. Mr. Prince went on to say in this case there was not a representative from Menards present to defend and to take testimony on the item tonight and it would jeopardize the process. He said it would not prevent the public to ask questions, but it was very important to refer to the legal counsel regarding the ability to take testimony tonight.

Mike Trippel, Council Attorney said as Mr. Prince pointed out under Indiana law, on zoning matters the council would act as the arbiter of the evidence and make a decision based on evidence presented. He said there was a public hearing scheduled for September 3rd on the Menards item. Mr. Trippel said at that time the council would hear from the public in favor and against to then ask their questions and weigh the evidence to make a decision. He continued to

explain the decision made by the council was subject to a potential appeal by either party if they were not pleased with the decision, but there were court remedies if the parties decided to appeal the decision. Mr. Trippel concurred with Mr. Prince, the acceptance of evidence on a night when there was no public hearing scheduled would be violative to Indiana law which would potentially expose the council to liability later. He then went on to quote section 6 of the council rules, “as the presiding officers (council), on none agenda items for such period of time the council may allow people to speak only as allowed by the presiding officers.” He said the council had the ultimate digression to limit or to cease comment.

Mr. Emmons said each person’s remarks would be limited to 3 minutes. He asked the public to remain professional and respect the rules Mr. Trippel stated. Mr. Emmons opened the floor to privilege of the floor.

Granger residence expressed they were against the relocation of the Menards store. Jeff and Marie Sepeta 50701 Trails North, Kimberly VanElk 7520 Toscana Ct., Chris and Christine Baglow 52888 Farmingdale Dr., Charleen Wozniak 52367 Liberty Mills Ct., Corrine Weaver 16280 Brick Rd., Michael Schlemma 52800 Farmingdale Dr., Margret Filchak 51137 Heathertin Ct., Marylin Kostry 16113 Gumwood Crossings, Richard Paul 52180 Wyndham Crest Ct., Claudia Mager 52440 Wynbrooke Ct., Amanda Jones 15587 Signal Hill Ct., Lisa Gamman 51904 Quail Valley, Doris Collins 15736 Fieldcrest Ct., Gloria Prawat 52366 Silverleaf Ct., Anne Slater 16394 Darden Rd.

ADJOURNMENT 8:21 P.M.

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

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