

AGENDA

August 17, 2020

AS ORDERED BY GOVERNOR HOLCOMB'S

EXECUTIVE ORDER 20-37 FACEMASK ARE REQUIRED !

Meetings of Standing Committees
Council Conference Room
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00PM

WebEx Telephone Number: 1-408-418-9388
WebEx Access Code: 129 719 0282
Meeting password: XKcHPWwp326

Livestream #1: <https://www.facebook.com/cityofmishawaka/>
Livestream #2: @MichianaAccessTV on Facebook
Livestream #3: Michiana Access TV
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: [1297190282.mishawaka@lync.webex.com](tel:1297190282)

Members of the public will be asked to place their microphone on mute during the Meeting, with the exception of any public hearing. At the appropriate point in the public hearing, the Council President will invite the public to unmute their microphone for purposes of submitting such comments, one person at a time. All persons wishing to make public comments will be asked to first state their name and address for the record. After completing his/her public comments, members of the public will once again be asked to place their microphone on mute. Thank you for your cooperation.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Minutes of the Regular Meeting of August 03, 2020

5. Petitions, Communications, Remonstrance and Memorials

A letter from the Board of Zoning Appeals regarding their recommendations from their August 11, 2020 meeting

A letter from the City Plan Commission regarding their recommendations from their August 11, 2020 meeting.

6. Report of Special Committee

7. Ordinances on First Reading

- | | |
|------------------|--|
| P.O. NO. 2020-24 | PUD Amendment to allow for mixed Use Development to allow Residential, Commercial, and Industrial Uses - Vacant land S. of Vistula Rd. & W. of Cedar Rd. |
| P.O. NO. 2020-25 | Rezone from R-1 Single Family Residential to C-3 City Center Commercial - 619 Lincoln Way East |
| P.O. NO. 2020-26 | Rezone from R-1 Single Family Residential to R-2 Two Family Residential - 613 W. Third St. |
| P.O. NO. 2020-27 | PUD Amendment to allow Assisted Living Facility - North west corner of Deer Run Dr. and Fir Rd. |
| P.O. NO. 2020-28 | Annex adjacent property to be included in subdivision - South & East of 1141 & 1241 E. Twelfth St. |
| P.O. NO. 2020-29 | Grandview PUD Amendment to allow dumpster enclosures in the 25' front setback only if gate is not visible from Gumwood or S.R. 23/Cleveland Rd. |

8. Resolutions

- | | |
|----------|---|
| R2020-15 | Adding Parcels to the City's Acquisition List |
| R2020-16 | Use Variance to allow Automobile Repair in I-1 Light Industrial - 1035 E. McKinley |
| R2020-17 | Use Variance for 6-Unit Senior Care Facility - 3025 Grape Rd. |
| R2020-18 | Use Variance for a 4-Unit Apartment in R-1 Single Family Residential - 539 W. Sixth St. |

9. Ordinances on Second Reading

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

Mayor Wood COVID-19 Update

13. Adjournment - This meeting will be aired Wednesday at 9:00AM on the Public Access Channel

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 Susan Kile, ADA Coordinator, at (574) 258-1615.

Note: The Mishawaka Common Council has instituted changes in the way in which its meetings will be conducted during the current public health emergency. These changes are consistent with the terms of multiple Executive Orders issued by Governor Holcomb, as well as related legal guidance. It is anticipated that the Council's normal meeting procedures will be reinstituted at the conclusion of the public health emergency. In the meantime, physical attendance at Council meetings will continue to be restricted in accordance with relevant guidance related to limitations on public gatherings and social distancing. During the public health emergency, Council members, as well as members of the public and media, will continue to be afforded the opportunity to remotely access Council meetings. Recordings of Council meetings (if applicable) and the minutes of the meetings will also be made available to the public and the media as soon as is possible.

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 3, 2020

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Monday, August 3, 2020 at 7:00PM. The meeting was called to order by President Gregg Hixenbaugh all were asked to stand for the Pledge of Allegiance, followed by a moment of silence to remember the lives lost due to COVID-19 and former South Bend Mayor and Indiana Governor Joe Kernan.



Roll Call.

Present: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

Others present; Mike Trippel, Council Attorney and Clerk Block.

Clerk Block read the following appeals and petitions to the council, who referred them to the Board of Zoning Appeals and the City Plan Commission for their recommendation.

- | | |
|-----------------------------|---|
| APPEAL NO. 2020-35 | Use Variance to allow Automobile Repair in I-1 Light Industrial – 1035 E. McKinley |
| APPEAL NO. 2020-38 | Use Variance for 6-Unit Senior Care Facility – 3025 Grape Rd. |
| APPEAL NO. 2020-39 | Use Variance for a 4-Unit Apartment in R-1 Single Family Residential – 539 W. Sixth St. |
| PETITION NO. 2020-13 | Rezone from R-1 Single Family Residential to C-3 City Center Commercial – 619 Lincolnway East |
| PETITION NO. 2020-14 | Rezone from R-1 Single Family Residential to R-2 Two Family Residential 613 W. Third Street |
| PETITION NO. 2020-15 | PUD Amendment to allow Assisted Living Facility – Northwest corner of Deer Run Dr. and Fir Rd. |
| PETITION NO. 2020-16 | Annex adjacent property to be included in subdivision – South & East of 1141 & 1241 E. Twelfth St. |
| PETITION NO. 2020-17 | Grandview PUD Amendment to allow dumpster enclosures in the 25' front setback only if gate is not visible from Gumwood or S.R. 23/Cleveland Rd. |

PRIVILEGE OF THE FLOOR

Licia Gerber, 1450 Penn Avenue, respectfully asked the council to hold a meeting to discuss an ordinance to allow backyard hens in Mishawaka.

Mrs. Voelker thanked Mrs. Gerber and expressed appreciation for her dedication to meeting all of the council members and her efforts.

Mr. Hixenbaugh appreciated her passion for the issue and the work she has done on it. Mr. Hixenbaugh also stated we still remain in the throes of a public health emergency and Governor Holcomb extended the public health emergency, along with the executive orders asking local governmental entities to focus on essential governmental functions at this time. Mr. Hixenbaugh also stated, in his opinion, it is not possible for the council to move forward with scheduling that meeting at this time. Mr. Hixenbaugh concluded stating he and Mr. Compton, as the chairman of the Public Health and Safety Committee, have committed to them and will move forward as soon as it is appropriate to do so. Mr. Hixenbaugh also stated they should continue to work with them as the council tries to work through the public health emergency.

Mr. Compton stated the request has not fallen on deaf ears. Mr. Compton has spoken to the council members and stated the issues that are time sensitive, such as rezoning, are part of the defining line of what was essential and what isn't.

UNFINISHED BUSINESS

Reconsideration of Proposed Ordinance No. 2020-17, Ordinance No. 5697 for republication.

P.O. NO. 2020-17

Transfer of Funds and Additional Appropriation
Motor Vehicle Highway Restricted Fund \$427,150.00
TO:
Local Bridge and Road Matching Grant Fund

Additional Appropriation of Funds to:
Local Bridge and Road Matching Grant Fund \$854,300.00

Clerk Block requested for reconsideration for Ordinance No. 5697. She explained there was an error in publication which required republication.

Mr. Hixenbaugh explained the committee report was previously given and he continued to open the public hearing.

Question was called for at 7:13PM for **Proposed Ordinance No. 2020-17, Ordinance No. 5697**



Vote: Motion carried by unanimous roll call vote (summary: Yes = 9).

Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

NEW BUSINESS

Chief Brian Thomas, EMT Asst. Chief, gave an update on the COVID-19 pandemic. Chief Thomas stated it appears the area has entered a steady state with an average of 40 positive cases a day over the last week. Chief Thomas stated Mishawaka has leveled off but have not necessarily seen a decline. He said the hospitals have seen their census increase significantly and the fire station has seen their runs also increase significantly. Chief Thomas stated they have received their supplies ordered back in February and were seeing a normal supply chain return. Chief Thomas encouraged the citizens to continue to take this seriously. He said unfortunately his family is currently under quarantine after finding positive cases within his family from a graduation party. Chief Thomas urged everyone to continue to wear a mask when you cannot socially distance and to try to avoid large social gatherings.

Mr. Mammolenti asked Chief Thomas has there been a spike of positive cases since the initial one a few weeks ago. Chief Thomas stated they have not seen a spike, but they do have at least one confirmed positive case out right now. Mr. Mammolenti asked to extend their thoughts and prayers to that firefighter and thanked Chief Thomas for his dedication and leadership through this troubled time.

Mr. Emmons thanked Chief Thomas for his work in updating the council on COVID-19 . He went to ask if the paramedics were aware of COVID-19 related issue prior to their runs. Chief Thomas stated they are advised through dispatch when there is suspicion it could be a positive case and fortunately the signs and symptoms vary so greatly with a large number of people being asymptomatic. He also stated there have been a couple trauma cases where the patient ended up testing positive and did not know of a case where they had not been advised prior. Mr. Emmons also asked how long it takes to sanitize each vehicle as soon as they return from runs. Chief Thomas stated about 40-45 minutes, sometimes shorter or longer. Chief Thomas explained they treat each situation as they have positive cases in the decontamination process. He continued to say in the very beginning, an order for commercial device for cleaning was put out which ended up being canceled, the firefighters developed their own device that eliminates the virus, but leaves sticky residue behind causing more cleaning to be done. In conclusion, Chief Thomas stated they were trying to find a commercial device that would help cleaning and at the same time not leave sticky residue. Mr. Emmons asked if there has been an instance where an outside ambulance has been called. Chief Thomas stated he is confident that has happened, but has not been actively tracking that. Chief Thomas also stated he speculated it has happened that ambulances have been down whether they have been on a call or have been down due to sanitation.

Mr. Mammolenti asked if the material being dispensed or the way it is being dispensed is the reason for the sticky residue. Chief Thomas stated it could be a combination of both and it is not quite a product designed to do this.

Mr. Hixenbaugh thanked Chief Thomas for the information and sees the common theme is the inability at times to purchase a machine that would be important to have. Mr. Hixenbaugh appreciated the ingenuity of him and the firefighters for working through those issues. Mr. Hixenbaugh also asked if he could talk about the provisions put place in City Hall to keep the

employees safe and going beyond the minimum of wearing masks in government buildings. Chief Thomas stated it was not much different than what was being asked of everyone before, they are asking employees to wash their hands, social distance when possible, and wearing a mask. Chief Thomas stated the science is slowly coming behind to show wearing a mask not only prevents one from exposing other people but protects you as well. He said in City Hall, they elected for any interaction with the public to have employees wear a mask along with the public to take away any chance of spreading the virus. Mr. Hixenbaugh expressed appreciation for the task force taking all issues related to public health and safety seriously.

Mr. Compton asked Mr. Prince if any other city employees have tested positive other than the firemen. Mr. Prince stated there was an unidentified positive case found in the Wastewater department and that person has recovered. Mr. Compton stated he was pleased to see the decision of the taskforce and Mayor Wood to require masks throughout City Hall and in city buildings.

Mrs. Voelker asked for staff reports for all the variances and resolutions Clerk Block read. Mr. Prince stated they should receive them after they go before the Board of Zoning Appeals. Clerk Block explained they file the petitions and appeals and come to the council first, which she reads and are then sent back to the to the Board of Zoning Appeals and the City Plan Commission for their recommendation. Mr. Prince stated he knows in term of process that the agenda was all in first reading, so they would not receive the staff reports until the next meeting. Clerk Block concluded stating the resolution will come with staff report and the recommendation.

Mr. Compton stated he received an email from the White House regarding an invitation to listen in on a COVID-19 update from their administration on August 5th. Mr. Compton also stated he shared the email with Clerk Block. Clerk Block stated she would share it with the rest of the council.

Mr. Hixenbaugh concluded the meeting by reading the following statement:

Note: The Mishawaka Common Council has instituted changes in the way in which its meetings will be conducted during the current public health emergency. These changes are consistent with the terms of multiple Executive Orders issued by Governor Holcomb, as well as related legal guidance. It is anticipated that the Council's normal meeting procedures will be reinstituted at the conclusion of the public health emergency. In the meantime, physical attendance at Council meetings will continue to be restricted in accordance with relevant guidance related to limitations on public gatherings and social distancing. During the public health emergency, Council members, as well as members of the public and media, will continue to be afforded the opportunity to remotely access Council meetings. Recordings of Council meetings (if applicable) and the minutes of the meetings will also be made available to the public and the media as soon as is possible.

ADJOURNMENT 7:35PM

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

Gregg A. Hixenbaugh /s/
Gregg A. Hixenbaugh, President



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

August 12, 2020

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

Honorable Members of the Common Council
City of Mishawaka, Indiana

CITY CLERK
MISHAWAKA, IN

RE: Board of Zoning Appeals Recommendation
August 11, 2020, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variances were considered:

APPEAL #20-35 An appeal submitted by JADET LLC requesting a Use Variance for **1035 East McKinley Avenue** to allow sale of tires and automotive mechanical work.

The Board, with a vote of 3-1, recommended approval subject to the following conditions:

1. Submittal of an Administrative Site Plan
2. Installation of a grit/oil/water separator if any work containing fluids such as brake jobs or oil changes are going to occur at this site.

APPEAL #20-38 An appeal submitted by A & E Management LLC, requesting a Use Variance for **3025 Grape Road** to allow a six (6) unit senior care facility.

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

APPEAL #20-39 An appeal submitted by South Bend Real Estate 3 LLC requesting a Use Variance for **539 West Sixth Street** to allow the continuing use of a four-unit apartment in R-1 Single Family Residential zoning district.

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

Respectfully,

Kari Myers, Administrative Planner
Secretary, Board of Zoning Appeals

cc: Jerry DeTurk
Mike Huber
Suzanne Plugis

STAFF REPORT

Location: 1035 E McKinley

Date: August 11, 2020

Appeal: 20 35

Prepared By: CH

GENERAL INFORMATION

Applicant: JADET LLC

Status: Property Owner

Request: Use variance to allow automobile repair in I-1 Light Industrial District

Zoning Classification: I-1 Light Industrial District

Lot Size: 0.49 acres

Applicable Regulations: Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance;
Section 137-586 / I-1 Light Industrial District - Uses

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Automobile Oriented Commercial (vacant car lot)
South: C-4 Automobile Oriented Commercial (pawn shop)
East: C-4 Automobile Oriented Commercial (auto detailing)
West: I-1 Light Industrial (lumberyard)

Thoroughfare: McKinley Avenue

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and existing to the site.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies General commercial along McKinley and Industrial along the railroad tracks.

ANALYSIS

The Appellant is requesting a use variance to allow automobile repair, such as tires and oil changes in the I-1 Light Industrial District. A Use Variance was requested as opposed to a rezoning in order to allow the current request for automobile repair while maintaining the underlying I-1 Light Industrial zoning for future uses.

The building was built in 1980, according to tax records. Previous businesses at this location include Old Bob's Country Store and the Sign Shop. This area, at the intersection of McKinley Avenue, Merrifield Avenue, and the railroad tracks has a mix of commercial and industrial uses. The closest residential property is approximately 500 feet away.

All pertinent departments reviewed the request and provided the following comments:

- Building requires a "change of occupancy" permit.
- Engineering requires a grit/oil/water separator be installed if any work containing fluids, like brake jobs or oil changes are going to occur at this site. If it is determined that a grit/oil/water separator is required, a permit to do this work shall be obtained from the Engineering Department.
- Fire Department noticed a "lack of fire hydrants in area". The City will be installing a fire hydrant in the area, but it will not be on this property, therefore it will not affect this project.

Prior to occupying the building Planning Staff requests a site plan be submitted addressing the above items. Planning Staff suggests meeting with the property owner and tenant prior to submitting the site plan.

RECOMMENDATION

The Planning Staff recommends approval of Appeal 20-35 to allow a use variance for automobile repair and sale and installation of tires and wheels in I-1 Light Industrial District at 1035 E McKinley. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because there are other similar uses in the McKinley/Merrifield corridor;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property will be used similarly to other properties in the immediate area;
3. The need for the variance arises from some condition peculiar to the property in that automobile uses are not allowed in the I-1 Industrial District;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the property is currently vacant, but the proposed tenant's use is not permitted;
5. The recommendation is consistent with Comprehensive Plan which indicates both general commercial and industrial uses for this area.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map





A view from McKinley



View from Merrifield



Rear storage area

STAFF REPORT

Location: Proposed Lot 2 of Assisi Village Minor Subdivision (Plat 20-04)
west of 3205 Grape Road

Date: August 11, 2020

Appeal: 20 -38

Prepared By: DJS

GENERAL INFORMATION

Applicant: A&E Management LLC / Abonmarche Consultants

Status: Property Owner / Surveyor & Engineering Consultant

Request: Use variance to allow a six (6) unit senior care facility, and a developmental variance for a reduction in the required number of off-street parking spaces

Zoning Classification: C-6 Linear Office Commercial

Lot Size: 0.44 acres being proposed Lot 2 of Assisi Village Minor Subdivision

Applicable Regulations: Section 137-42 / (4) Board of Zoning Appeals – Use Variance; Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; and Sec. 137-426 thru 137-428 / C-6 Linear Office Commercial

SPECIAL INFORMATION

Area Development Pattern: North: C-6 Linear Office Commercial (Vacant)
South: C-6 Linear Office Commercial (Multi-Tenant Commercial / Planned Parenthood, Sylvan Learning Center & Prometric Testing Center)
East: R-3 Multi-Family Residential (Apartment Complex / Runaway Bay)
West: R-1 Single Family Residential (Residential)

Thoroughfare: Grape Road and Eisenhower Drive

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the owner's expense

Comprehensive Plan: Service Commercial

ANALYSIS

The appellant, A&E Management LLC, is requesting a use variance to allow a six (6) unit senior care facility on proposed Lot 2 of the Assisi Village Minor Subdivision, and a developmental variance to allow for a reduction in the required number of off-street parking spaces.

A minor subdivision plat (Plat 20-04) to divide the appellant owned property into two (2) lots was submitted concurrently with the variance petition. The plat will be considered by the Plan Commission following the Board of Zoning Appeals meeting.

Proposed Lot 2 is located south of Eisenhower Drive approximately 160' west of Grape Road. Surrounding properties are zoned C-6 Linear Office Commercial to the north and south, R-1 Single Family Residential to the west, and C-6 Linear Office Commercial to the east proposed as Lot 1 of the Assisi Village Minor Subdivision. An existing office building on proposed Lot 1 is occupied by the appellant d/b/a Home Instead Senior Care.

A new six (6) unit senior care facility is proposed to be constructed on said Lot 2. The C-6 Linear Office Commercial District does not permit an adult care facility as a permitted use thus requiring a use variance. The facility will be owned and operated by the adjacent Home Instead Senior Care business.

Based on four (4) parking spaces per 1,000 sq. ft. of gross area, which is the applicable ratio for all other uses in the C-6 district, a total of 16 parking spaces are required for the approximate 4,000 sq. ft. facility. The square footage is estimated as it is not provided in either the variance petition or on the conceptual site plan. Although the petition requests a reduction to two (2) spaces, the site plan shows eight (8) off-street parking spaces can be provided if the site is developed as conceptually shown. These spaces include six (6) within the driveway and two (2) within an attached garage.

Regardless, the petition states that adequate room is not available to provide the required spaces nor needed to meet the demands of the proposed use. The residents of the senior care facility will not have vehicles. Adequate parking will be provided for the employees and visitors within the driveway and garage on proposed Lot 2 and within the existing parking lot in proposed Lot 1. Staff concurs with this assessment and is supporting the parking space reduction.

All pertinent City departments have reviewed and approved the use and developmental variance requests.

RECOMMENDATION

The Planning staff recommends approval of Appeal 20-38 for a use variance to allow a six (6) unit senior care facility on proposed Lot 2 of the Assisi Village Minor Subdivision, and a developmental variance to allow for a reduction in the required number of off-street parking spaces.

This recommendation is based upon the following findings of fact:

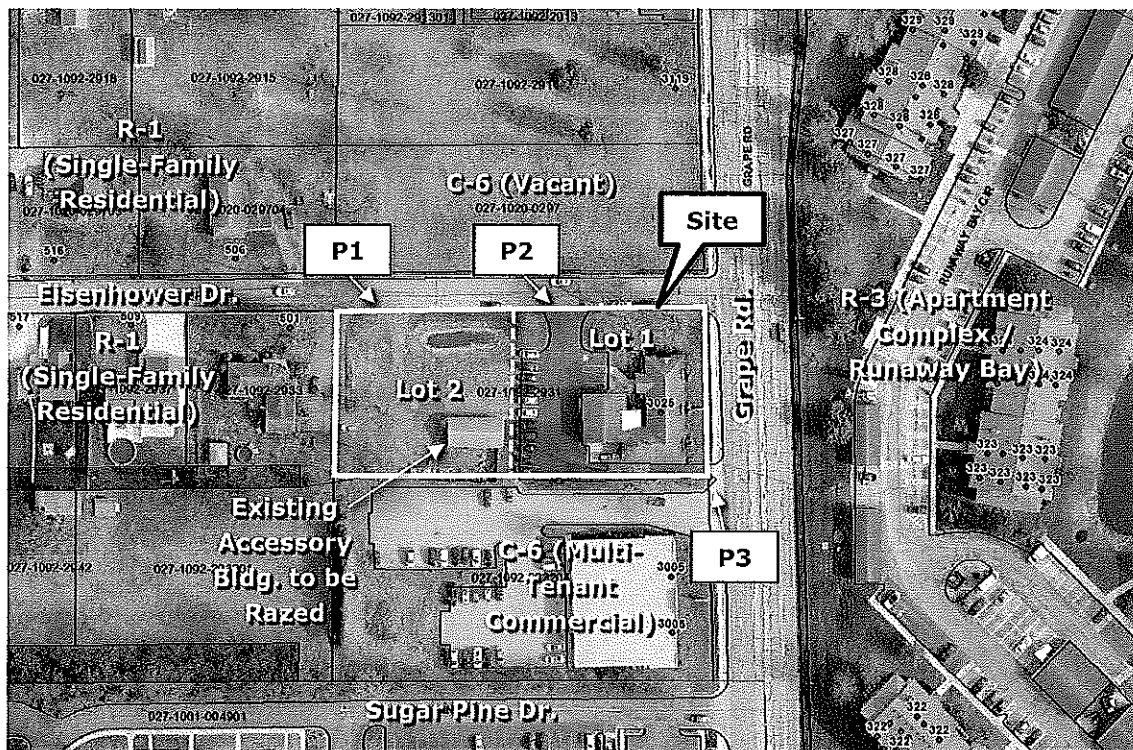
1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed use as a six (6) unit senior care facility will be located on a commercially-zoned property that currently includes an office use along a major corridor in the City. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west. Additionally, the proposed number of parking spaces within property owned by the appellant should provide adequate parking for both the residents and visitors of the facility.
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. Permitted uses within the C-6 Linear Office Commercial District are more intensive than the proposed use. The parking reduction will not negatively affect the area as parking requirements for the facility are anticipated to be limited.
3. The need for the use variance arises from some condition peculiar to the property in that the zoning ordinance does not permit a senior care facility within the C-6 Linear Office Commercial District.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The use variance will permit the appellant the ability to construct a senior care facility on property they already own and adjacent to their existing offices. Requiring additional parking

spaces to meet code would unnecessarily consume land and would be seldom occupied. The proposed number of spaces should provide adequate parking.

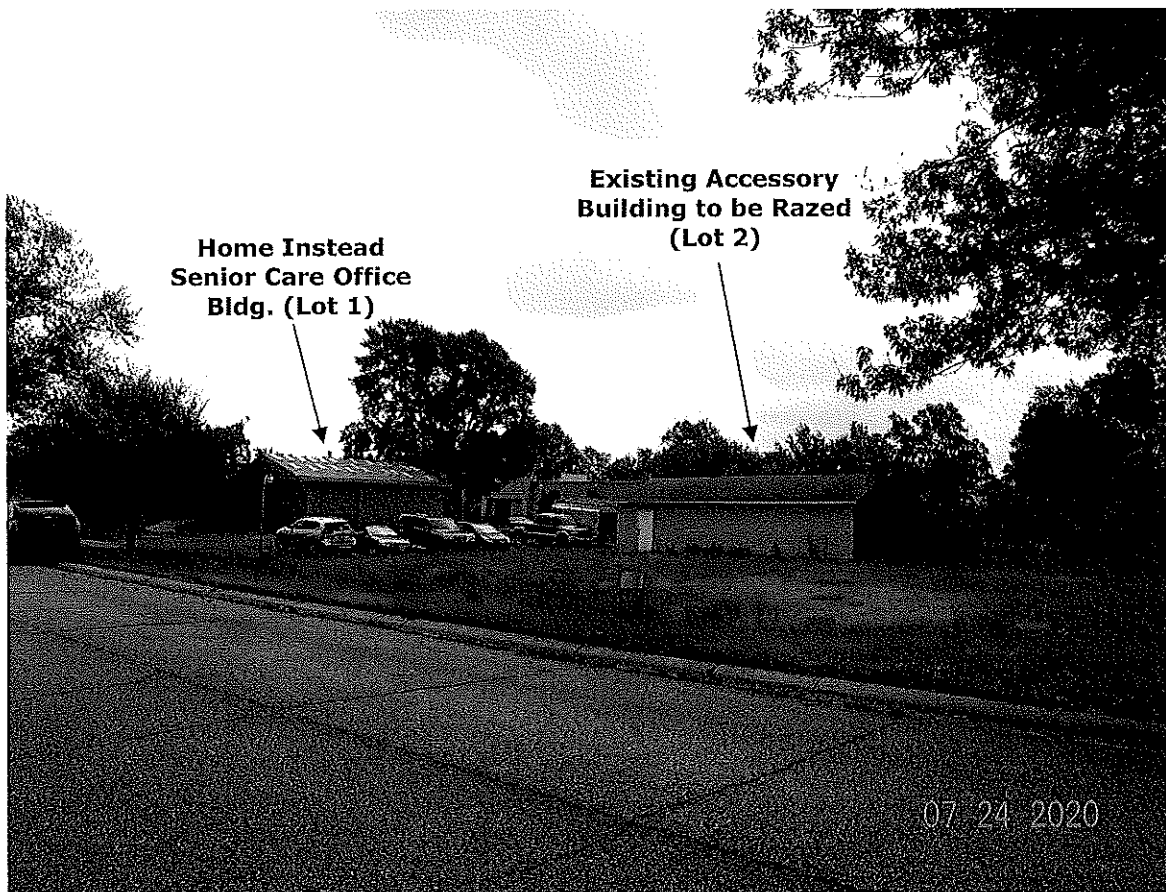
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates service commercial use for this area. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west.

ATTACHMENTS

Aerial, Photographs, Appeal, Site Plan, Minor Subdivision Plat (Plat 20-04), Location Map



Aerial Photograph – 3025 Grape Road being the proposed Assisi Village Minor Subdivision



P1. Looking southeasterly from Eisenhower Drive toward proposed Lot 2 and the future location of a 6-unit senior care facility.



P2. Looking southeasterly from Eisenhower Drive toward the existing office building (Home Instead Senior Care) on proposed Lot 1.



P3. Looking northerly from Grape Road toward the existing office building on proposed Lot 1.

STAFF REPORT

Location: 539 W. Sixth Street

Date: Aug. 11, 2020

Appeal: 20 39

Prepared By: KM

GENERAL INFORMATION

Applicant: Pear Tree Management LLC/South Bend Real Estate 3 LLC
Status: Property Owner
Request: Use Variance for 4 units in R-1 Single Family Residential

Zoning Classification: R-1 Single Family Residential
Lot Size: 52.4' X 115.5'
Applicable Regulations: Section 137-165 R-1 Single Family Uses
Section 137-42 Board of Zoning Appeals Use Variance

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: R-1 Single Family Residential
East: R-2 Two-Family Residential
West: R-1 Single Family Residential

Thoroughfare: West Sixth Street between Wells and West
School District: School City of Mishawaka
Township: Penn
Public Utilities: All utilities are available to the site
Comprehensive Plan: Low Density Residential

ANALYSIS

The Appellant is requesting a Use Variance to allow the continuation of four one-bedroom units in the R-1 Single Family Residential District.

The building was built in 1890 and attached garage added in 1982. According to the Penn Township Assessor's office, they were unable to determine if the house was originally built as a multi-unit apartment, but the 1979 the records showed it being a tri-plex. The current owner purchased the property in 2011 and are in the process of selling. To be considered legal non-conforming (i.e. grandfathered), proof would be needed back to 1966, prior to the introduction of the zoning ordinance. Since the current owner has only owned it for a few years, they were unable to provide documentation as it being a four-unit apartment since at least 1966.

The site provides space for six off-street parking spaces.

All pertinent City departments have reviewed and approved this request.

RECOMMENDATION

The Planning Staff recommends approval of Appeal #20-39 to allow four units in R-1 Single Family Residential at 539 W. Sixth Street. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because nothing is physically changing at the site. This use has been in existence since at least 1979.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the use of the property is not changing, only being made legal for financial institution purposes.
3. The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single-family home.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates low density uses for this area.

ATTACHMENTS

Photographs, Appeal, Aerial, Location Map



539 West Sixth Street



City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

August 12, 2020

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
August 11, 2020, Public Hearing
Certification of Proposed Ordinances

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

PETITION #20-12 A petition submitted by Mervin D. Lung Revocable Trust requesting to amend the Bercado Planned Unit Development, to allow for a mixed-use development to allow residential, commercial, and industrial uses, at vacant land **south of Vistula Road and west of Cedar Road.**

The Commission, with a vote of 4-3, forwarded no recommendation. If approved, the staff has prepared the ordinance and findings for approval which includes the conditions recommended by staff.

PETITION #20-13 A petition submitted by Michael R. Portolese, Executor of the Estate of Antonio D. Portolese, requesting to rezone **619 Lincolnway East** from R-1 Single Family Residential District to C-3 City Center Commercial District.

The Commission, with a vote of 7-0, recommended approval.

PETITION #20-14 A petition submitted by Michael R. Portolese, Executor of the Estate of Antonio D. Portolese, requesting to rezone **613 West Third Street** from R-1 Single Family Residential District to R-2 Two Family Residential District.

The Commission, with a vote of 6-1, recommended approval.

PETITION #20-15 A petition submitted by Richard LaFree requesting to amend the Deer Run Planned Unit Development to allow an assisted living facility on lots 7 and 8.

The Commission, with a vote of 7-0, recommended approval subject to the attached conditions of approval.

PETITION #20-16 A petition submitted by AWT, Inc. seeking to annex and zone one (1) one acre parcel and one two (2) acre parcel adjacent to **1141 and 1241 East Twelfth Street** to I-1 Light Industrial District.

The Commission, with a vote of 7-0, recommended approval.

PETITION #20-17 A request submitted by Great Lakes Capital Management, LLC, requesting to amend the Grandview Phase II Planned Unit Development to allow a dumpster enclosure between a principal building and street only if the gate is not visible from Gumwood Road or SR 23/Cleveland Road; and reduce the minimum setback of the dumpster enclosure from 50' to 25' from Gumwood Road and SR 23/Cleveland Road.

The Commission, with a vote of 7-0, recommended approval subject to the following conditions:

1. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.
2. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinances regarding the above matters.

Respectfully,



Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Mike Danch
Michael Portolese
Terry Lang
Mike Huber

PETITION #20-12
Bercado Planned Unit Development
Conditions of Approval

The Bercado Planned Unit Development hereafter be amended to allow a mixed-use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage as follows:

Uses:

Parcel A

1. Multi-Family Residential (Apartment Complex) with a maximum of 162 units

Parcel B

1. Single-Family, condominiums, rental or owner-occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches

Parcel C

1. Single-Family, condominiums, rental or owner-occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches
4. I-1 Light Industrial Uses
5. C-1 General Commercial Uses

Separation Requirements:

1. Any self-storage facility (mini-storage) located within Parcel "C" shall have a minimum separation of 30' between any storage buildings and adjacent school, park, church, hospital, and/or residentially-zoned property.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. Landscaping/screening for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall be provided as required by the standards of the C-1 General Commercial Zoning District.
2. Any self-service storage facility located within Parcel "C" shall be screened from the adjacent residential property with a combination of a 7' high screen fence and evergreen screening as approved by the Planning Staff.

Signage:

1. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for Parcel "A".
2. Signage for Parcels "B" and "C" shall conform to the sign standards of the most restrictive zoning district in which the land use would otherwise be permitted.

Road Improvements/Right-of-Way Dedication:

1. Road improvements along Vistula Road and Cedar Road shall be installed as determined by the Department of Engineering.
2. Additional right-of-way shall be required along Vistula Road, Cedar Road, and the connector road to Lincolnway East as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of each subdivision plat or separate deed of dedication document, if deemed appropriate.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.

Architectural Requirements:

1. Building materials and colors for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall comply with the C-1 General Commercial Zoning District.

Pedestrian Access/Circulation

1. A sidewalk shall be installed along the south side of Vistula Road within the dedicated right-of-way and along the entire property frontage with each phase of the development.

Other:

1. All other developmental standards not identified shall comply with height, area, and developmental regulations of the most restrictive zoning district in which the land use would be otherwise permitted.

PETITION #20-15
Deer Run Planned Unit Development
Conditions of Approval

The Deer Run Planned Unit Development hereafter be amended to allow for the development of a one-story assisted living facility subject to the following conditions:

1. Permitted uses shall be amended to include a one-story assisted living facility and other accessory uses including but not limited to common dining, activity rooms, family rooms, and recreation spaces.
2. Parking spaces shall be provided at a ratio of 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors.
3. Overstory or understory trees shall be provided along Fir Road at a rate compliant with the C-1 General Commercial District.
4. An existing tree row located along the north property line shall be maintained if within the property.
5. Parking lot screening per the C-1 General Commercial District shall be provided along the east side of the parking area adjacent to Fir Road.
6. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for the site.
7. The extension of all utilities to the site shall be at the developer's cost and expense.
8. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.
9. Building setbacks shall be a minimum of 25' from the east property line along Fir Road, the south property line along Deer Run Drive, and the south property line, and 5' from the west property line.
10. Pavement setbacks shall be a minimum of 10' from the east and south property lines, and 5' from the north and west property lines.
11. Building materials and colors shall comply with the C-1 General Commercial District with the exception of allowing fiber cement board siding and trim materials on all buildings.

STAFF REPORT

Location: Vacant Land South of Vistula Road, West of Cedar Road &
North of Lincolnway East

AUG 11, 2020
Date: June 9, 2020

Petition: 20- 12

Prepared By: DJS

GENERAL INFORMATION

Applicant: Mervin D. Lung Revocable Trust / In Good Company / Danch Harner & Associates

Status: Property Owner / Contingent Developer of Parcel "A" / Site Design Consultant

Request: Amend a part of the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage

Zoning Classification: S-2 Planned Unit Development

Lot Size: 57.16 acres

Applicable Regulations: Section 137-671 thru 137-679 / S-2 Planned Unit Development District; Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Medical Offices/Beacon Medical Group, Multi-Family Residential/River Pointe Apartments, and Single-Family Residential)

South: S-2 Planned Unit Development (Light Industrial/Patrick Metals & Elixir Industries, and Medical/Osceola Clinic)

East: S-2 Planned Unit Development (Church/Cedar Road Missionary & Single Family Residential) & Unincorporated St. Joseph County (Residential)

West: S-2 Planned Unit Development (Multi-Family Residential/Reflections Apartments & Multi-Tenant Commercial/Bittersweet Plaza)

Thoroughfare: Vistula Road, Cedar Road & Lincolnway East

School District: Penn-Harris-Madison School Corporation

Township: Penn

Public Utilities: All public utilities are available and/or will be extended to/throughout the site at the developer's expense

Comprehensive Plan: Medium Density Residential (Apartment Complexes & Nursing Facilities) & Industrial (Manufacturing, Warehousing and Distribution)

ANALYSIS

The Petitioner is requesting to amend part of the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage. The property is generally bound by Vistula Road to the north, Cedar Street to the east, Lincolnway East to the south, and multi-family residential and commercial development to the west. The property is currently vacant agricultural land.

Parcel "A" – First Phase of the Development - In Good Company, Contingent Developer

As indicated on the Preliminary Planned Unit Development site plan, the property will include three separate parcels with specific land uses identified for each parcel.

Parcel "A", which is an approximate 20.75 acre area within the west part of the site, is proposed for multi-family residential development (apartment complex) with a maximum of 162 units. *This parcel will be the first phase of the development and is the primarily reason the PUD amendment is being requested.* A prior PUD amendment (Petition 18-09) was considered for this parcel in 2018 when proposed for development by the same contingent purchaser as a 205 unit multi-family residential complex. The amendment request was withdrawn by the petitioner prior to consideration by the Common Council.

Parcels "B" & "C" – Future Phases of the Development – No Immediate Development Plans

Although there are no immediate plans for developing Parcels "B" and "C", Planning Staff requested that all property currently owned by the applicant be included in the amendment request. The reason for including these parcels is to establish a range of permitted uses on the remaining land that are compatible with the adjacent land uses.

Parcel "B" is an approximate 13.95 acre area located south of Vistula Road within the northeast part of the property. Specific land uses proposed for this parcel include single-family residential, condominiums, rental or owner occupied senior cottages (not to exceed a density of 5 units per acre), nursing homes, assisted living, independent senior living apartments (no density requirements limited to 2 stories or 35' in height), and churches.

Parcel "C", which is an approximate 22.46 acre area, is located within the southeast part of the property with frontage on both Cedar Road and Lincolnway East. Specific land uses proposed for this parcel include single-family residential, condominiums, rental or owner occupied senior cottages, nursing homes, assisted living, independent senior living apartments, churches, I-1 Light Industrial District permitted uses, and C-1 General Commercial District permitted uses. The petitioner also seeks relief from the separation requirement for any self-service storage facility (mini-storage) located within this parcel. The I-1 District requires that such facilities shall be a minimum of 250' from any school, park, church, hospital, and/or residentially-zoned property. The minimum setback being requested is 30' between any storage facility building and such adjacent use.

A detailed landscape plan conforming to the C-1 General Commercial District requirements shall be submitted with all Final Planned Unit Development site plans for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses, and will subject to review and approval by the Planning Staff. Any self-service storage facility (mini-storage) located within Parcel "C" shall be adequately screened from all adjacent residential properties to the east of Cedar Road. The landscaping/screening shall include a combination of a 7' high solid screening fence and evergreen screening as approved by the Planning Staff.

The applicants are proposing one access off of Vistula Road to serve Parcel "A". As indicated in the Staff report for the prior PUD amendment, emergency access shall be provided along both Vistula Road and from the apartment complex to the west. All drives and parking lots interior to Parcel "A" will be privately owned and maintained. One access is proposed for Parcel "B" off of Vistula Road. Two points of access are proposed for Parcel "C" with one along Cedar Road and one connecting to an existing ingress/egress easement within the commercial property at the northwest corner of Cedar Road and Lincolnway East.

The streets and access drives within Parcels "B" and "C" will likely be a combination of public right-of-way and private drives dependent upon the specific land use.

Excluding the reduction in the separation requirement for a self-service storage facility, as referenced above, any land use specifically permitted shall adhere to the applicable height, area, and development regulations of the most restrictive zoning district in which the use would be otherwise permitted. If deviations from these standards are proposed as a part of the Final Planned Unit Development site plan, the proper variances will need to be submitted to and approved by the Board of Zoning Appeals.

Prior to filing the petition, Planning Staff met with the applicant's representatives and requested that a neighborhood meeting be held to discuss development plans with the nearby property owners. Due to COVID 19, this meeting did not occur. However, the attached letter was mailed or hand delivered to all property owners within 300' of the subject property and within the River Point Estates subdivision and River Isle Condominium development.

At this time, the applicants are only proposing to amend a previously approved PUD to allow for a range of permitted uses. *The Bercado Farms PUD, as attached, shows that the part of the PUD to be amended was originally approved for medium density residential development (apartments, condominiums, and related services and recreational areas), a recreational center (indoor & outdoor tennis courts, paddle tennis courts, and handball), and an area shopping center (clothing, shoes, furniture, restaurants, etc).*

If approved, a detailed Final Planned Unit Development site plan must be submitted for each phase of the development to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements. Multiple subdivision plats will also be required to establish legal lots of record and separate ownership for each phase of the development.

All pertinent City Departments have reviewed and approved the Preliminary Planned Unit Development site plan.

The Engineering Department provided several comments that shall be addressed with all Final Planned Unit Development site plans and subdivision plats.

RECOMMENDATION

Staff recommends **approval** of Petition 20-12 to amend a part the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage subject to the following conditions:

Uses:

Parcel A

1. Multi-Family Residential (Apartment Complex) with a maximum of 162 units

Parcel B

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches

Parcel C

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)

2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches
4. I-1 Light Industrial Uses
5. C-1 General Commercial Uses

Separation Requirements:

1. Any self-storage facility (mini-storage) located within Parcel "C" shall have a minimum separation of 30' between any storage buildings and adjacent school, park, church, hospital, and/or residentially-zoned property.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. Landscaping/screening for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall be provided as required by the standards of the C-1 General Commercial Zoning District.
2. Any self-service storage facility located within Parcel "C" shall be screened from the adjacent residential property with a combination of a 7' high screen fence and evergreen screening as approved by the Planning Staff.

Signage:

1. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for Parcel "A".
2. Signage for Parcels "B" and "C" shall conform to the sign standards of the most restrictive zoning district in which the land use would otherwise be permitted.

Road Improvements/Right-of-Way Dedication:

1. Road improvements along Vistula Road and Cedar Road shall be installed as determined by the Department of Engineering.
2. Additional right-of-way shall be required along Vistula Road, Cedar Road, and the connector road to Lincolnway East as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of each subdivision plat or separate deed of dedication document, if deemed appropriate.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.

Architectural Requirements:

1. Building materials and colors for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall comply with the C-1 General Commercial Zoning District.

Pedestrian Access/Circulation

1. A sidewalk shall be installed along the south side of Vistula Road within the dedicated right-of-way and along the entire property frontage with each phase of the development.

Other:

1. All other developmental standards not identified shall comply with height, area, and developmental regulations of the most restrictive zoning district in which the land use would be otherwise permitted.

This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject parcel is vacant agricultural land located within an area of varying land uses including multi-family and single-family residential, commercial, industrial, and agricultural.
2. Character of Buildings – The character of the buildings within the surrounding area is mixed with multi-family and single-family residential buildings to the north, west, and east; a multi-tenant commercial strip center to the southwest; and industrial and medical offices to the south.
3. The most desirable/highest and best use – Because of the parcel's proximity to existing multi-family and single-family residential uses to the north, west, and east; commercial uses to the southwest; and industrial and medical uses to the south; the most desirable use for the property is for mixed uses as proposed. Furthermore, the Bercado Farms PUD shows that the part of the PUD to be amended was originally approved for medium density residential development (apartments, condominiums, and related services and recreational areas), a recreational center (indoor and outdoor facilities), and area shopping center (clothing, shoes, furniture, restaurants, etc).
4. Conservation of property values - The proposed PUD amendment should not be injurious to property values in the surrounding area. The proposed mix of land uses are compatible with and a logical extension of the adjacent existing uses. A majority of the property and proposed land uses are subject to landscaping/screening requirements.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan identified medium density residential (apartment complexes & nursing Facilities) and industrial (manufacturing, warehousing, and distribution) as the preferred land use.

ATTACHMENTS

Aerial, Photograph(s), Petition, Preliminary Planned Unit Development Site Plan, Original Approved Bercado Farms PUD (9/12/72), Letter to Adjacent Property Owners from Applicant (Dated 6/3/2020), Location Map



Aerial Photograph
Proposed Mixed Use Development
South of Vistula Road, East of Cedar Road, and North of Lincolnway East



P1. Looking northeasterly along Vistula Road from the northwest corner of Parcel "A".



P3. Looking easterly toward Parcel "A" from the Reflections Apartment complex to the east.



P3. Looking southwesterly along Vistula Road toward the northern part of Parcel "A".



P4. Looking northeasterly along Vistula Road toward the northern part of Parcel "B".



P5. Looking southwesterly from Cedar Street and the northeast corner of Parcel "C".



P6. Looking westerly along Lincolnway East toward the southern part of Parcel "C".



P7. Looking northerly from Lincolnway East along an east property line of Parcel "C" and an access drive for the adjacent medical offices.

STAFF REPORT

Location: 619 Lincolnway East

Date: August 11, 2020

Petition: 20 13

Prepared By: CH

GENERAL INFORMATION

Applicant: Antonio D Portolese Estate

Status: Property Owner

Request: Rezone from R-1 Single Family Residential to C-3 City Center Commercial

Zoning Classification: R-1 Single Family Residential

Lot Size: 60' X 132'

Applicable Regulations: Sec. 137-358 Commercial C-3 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: C-3 City Center Commercial
East: R-1 Single Family Residential
West: C-3 City Center Commercial

Thoroughfare: Lincolnway East

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: Low Density Residential

ANALYSIS

The Petitioner's Estate is requesting to rezone 619 Lincolnway East from R-1 Single Family Residential to C-3 City Center Commercial. The property is located on Lincolnway East between Cedar Street and Laurel Street.

The building is currently being used as a 5-unit apartment. The home was built between 1940 (tax records) and 1946 (historical sites survey). In the 1976 Polk Directory, there are 5 apartments, but we have no documentation as to when this conversion occurred. C-3 City Center Commercial allows a range of uses including single and multi-family residential, offices, retail, and restaurants.

This block of Lincolnway contains an axillary parking lot for City Hall and a multi-tenant building zoned C-3, three single family homes zoned R-1 Single Family Residential, and a duplex zoned R-2 Two Family Residential.

The Petitioner's Estate is in the process of selling the property and learned the use did not match the zoning. According to tax records, Antonio Portolese has owned the property since 1978.

The Petitioner's Estate has indicated willingness to apply for a parking variance from 1.5 spaces per unit to 1 space per unit.

Pertinent City Departments have reviewed and approved the request.

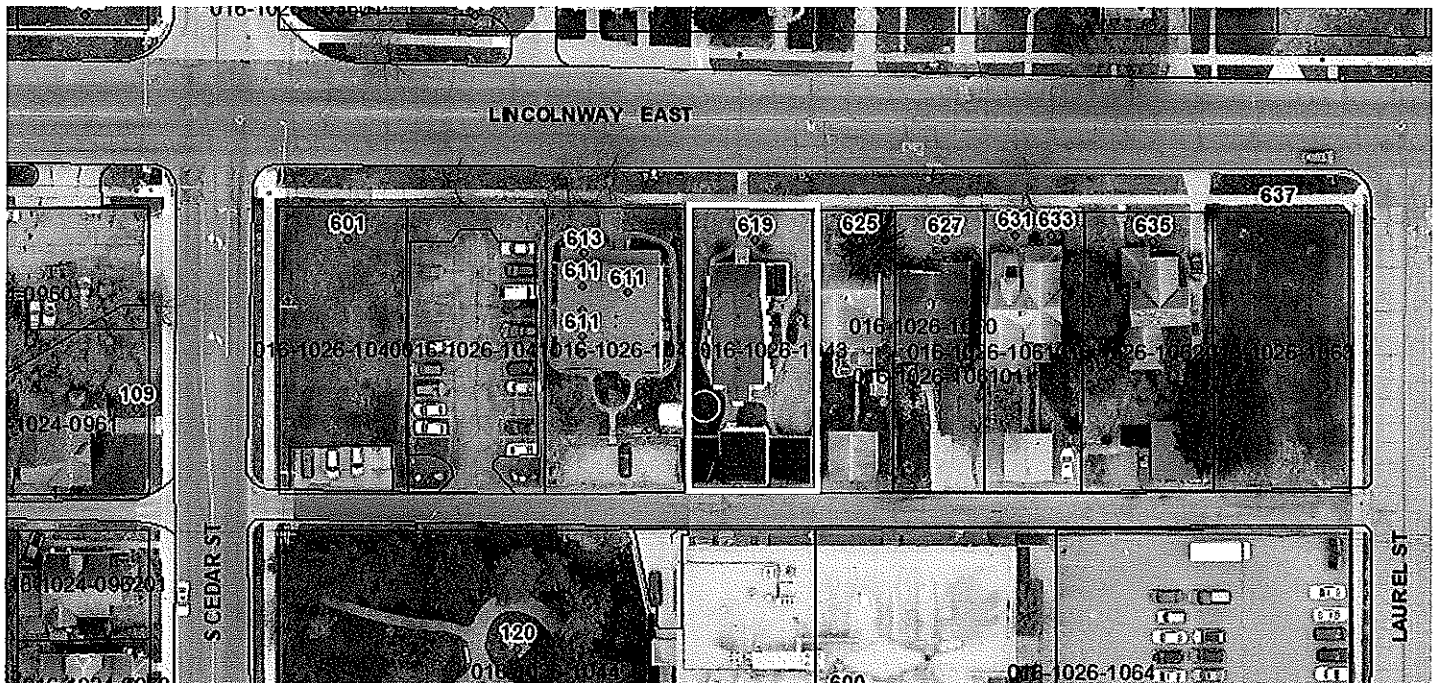
RECOMMENDATION

The Planning Department recommends **approval** of Petition 20-13 to rezone 619 Lincolnway East from R-1 Single Family Residential District to C-3 City Center Commercial District. This recommendation is based upon the following findings of fact:

1. The City Center Commercial zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a transitional area, the rezoning to C-3 City Center Commercial is a desirable use for this property;
4. Extending the zoning one more parcel east, providing a compatible zoning to the historic multi-family use will not have an unfavorable and destabilizing impact on the neighborhood; and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

ATTACHMENTS

PETITION, AERIAL, LOCATION MAP





619 Lincolnway East

STAFF REPORT

Location: 613 W Third

Date: August 11, 2020

Petition: 20 14

Prepared By: CH

GENERAL INFORMATION

Applicant: Antonio D Portolese Estate

Status: Property Owner

Request: Rezone from R-1 Single Family Residential to R-2 Two Family Residential

Zoning Classification: R-1 Single Family Residential

Lot Size: 50' X 142'

Applicable Regulations: Sec. 137-186 Residential R-2 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: R-1 Single Family Residential
East: R-2 Two Family Residential
West: R-1 Single Family Residential

Thoroughfare: Third Street

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: Low Density Residential

ANALYSIS

The Petitioner's Estate is requesting to rezone 613 W Third from R-1 Single Family Residential to R-2 Two Family Residential. The property is located on Third Street between Center St. and Wells St.

The building is currently being used as a duplex. The home was built between 1897 (tax records) and 1900 (historical sites survey). The current address layer lists 607 and 613 as the addresses associated with this parcel. The 1953 Polk Directory, found online, lists 607 and 613. In the 1976 Polk Directory, the addresses listed are 607, 613 and 613½. We have no documentation as to when this conversion occurred.

This block between Center and Wells contains three single family homes, and two duplexes. The surrounding blocks contain single and two family dwellings. Parking should not become an issue because there is a one car garage and a long (80'+) driveway.

The Petitioner's Estate is in the process of selling the property and learned the use did not match the zoning.

Pertinent City Departments have reviewed and approved the request. We have received one letter of remonstrance.

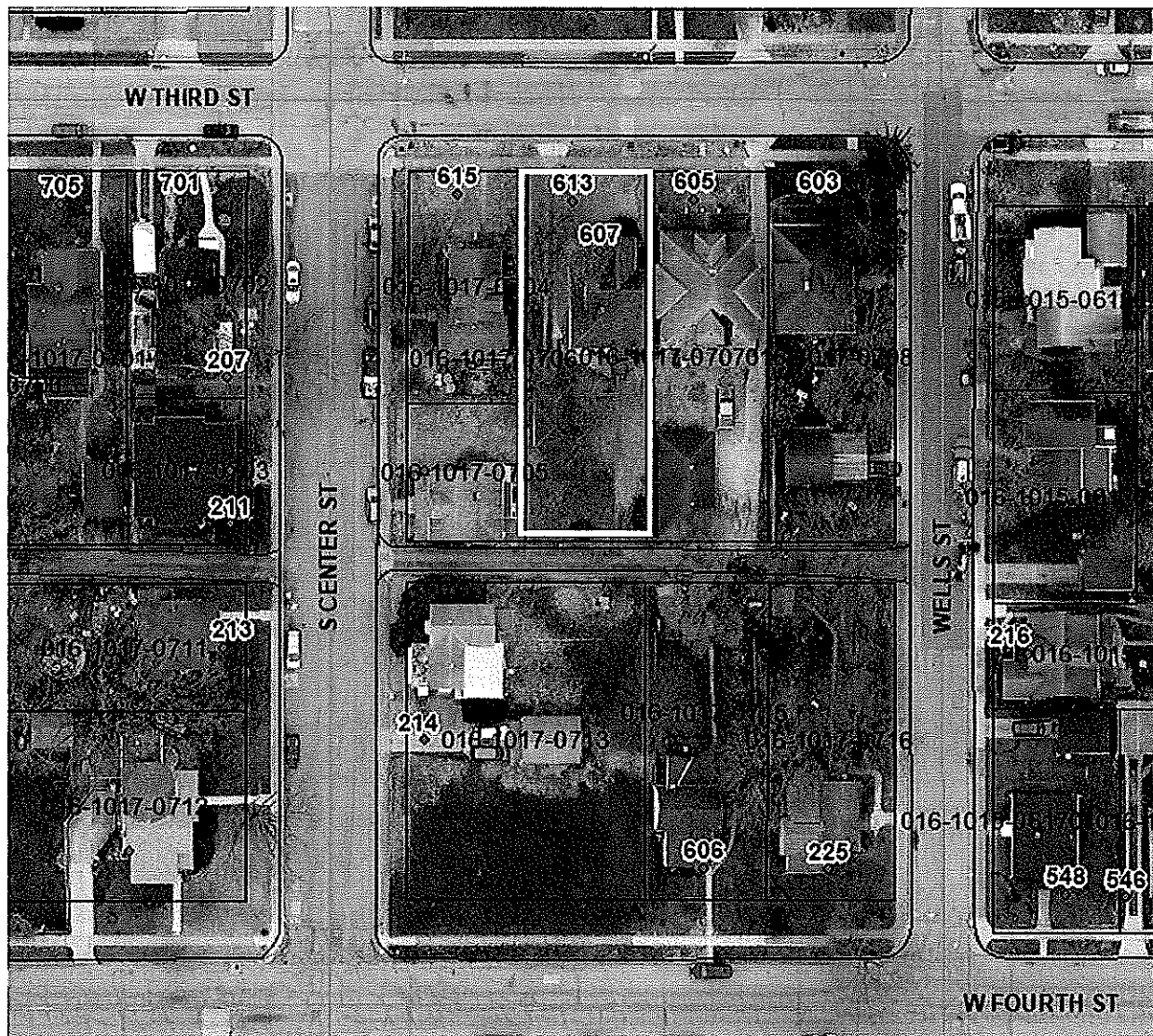
RECOMMENDATION

The Planning Department recommends **approval** of Petition 20-14 to rezone 613 W Third from R-1 Single Family Residential District to R-2 Two Family District. This recommendation is based upon the following findings of fact:

1. The R-2 Two Family zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a varied area, the rezoning to R-2 Two Family District is a desirable use for this property;
4. Rezoning to R-2 Two Family District will have a favorable and stabilizing impact on the neighborhood as the use is not changing and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

ATTACHMENTS

AERIAL, PHOTOGRAPHS, PETITION, LOCATION MAP





613 W Third

STAFF REPORT

Location: Northwest corner of Fir Road & Deer Run Drive
Part of the Deer Run PUD including Lots 7 & 8 of the
Deer Run Subdivision, Section Three

Date: August 11, 2020

Petition: 20- 15

Prepared By: DJS

GENERAL INFORMATION

Applicant: Richard LaFree / Lang, Feeney & Associates, Inc.

Status: Property Owner / Surveyor & Site Design Consultant

Request: Amend the Deer Run Planned Unit Development (PUD) to allow for a one-story assisted living facility with 24 units

Zoning Classification: S-2 Planned Unit Development (Permitted Uses on the portion of the PUD to be amended include commercial uses subject to the C-8 Commercial development regulations)

Lot Size: 4.15 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R Single Family District - Unincorporated St. Joseph County (Equestrian & Western tack store / Al-Bar Ranch)
South: S-2 Planned Unit Development (Vacant Land within the Deer Run PUD approved for Commercial Use & Vacant Athletic Facility)
East: R Single Family District - Unincorporated St. Joseph County (Residential)
West: S-2 Planned Unit Development (Vacant Land within the Deer Run PUD approved for Industrial Uses subject to the I-1 District development regulations)

Thoroughfare: Fir Road & Deer Run Drive

School District: Penn-Harris-Madison School Corporation

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the developer's expense

Comprehensive Plan: Low Density Residential

ANALYSIS

The petitioner, Richard LaFree, is requesting to amend a part of the Deer Run Planned Unit Development, originally approved in 2003 (Petition 03-42/Ord. 4818AA & 4819AA), to allow for the development of an

assisted living facility. At the direction of the Planning Staff, the request also states that the R-3 Multi-Family Residential development regulations shall be applicable except for the parking requirements. After review of similar PUD amendment requests, Staff is requesting that other development conditions be placed on the property. These conditions have been included in the staff recommendation.

The Planned Unit Development is located on west side of Fir Road between McKinley Avenue and Day Road. The part of the PUD being amended is bound by an equestrian and tack store to the north in unincorporated St. Joseph County, vacant land to the west, vacant land and a vacant building formerly occupied by the ICE Athletic Center to the south, and single-family residential property to the east in unincorporated St. Joseph County.

The amendment is to allow an approximate 14,200 sq. ft. one-story assisted living facility with 24 units within Lots 7 & 8 in the Deer Run Subdivision, Section Three (Plat 10-17). The two lots, which are located at the northwest corner of Fir Road and northern part Deer Run Drive, includes 4.15 acres of undeveloped land filled with scrub vegetation. The preliminary PUD site plan identifies JPMC Properties, Inc. as the contingent purchaser and developer.

The original preliminary PUD site plan and ordinance permitted commercial uses subject to the C-8 High-Density Suburban Commercial District development standards within said Lots 7 & 8. The PUD amendment will allow an assisted living facility in addition to the previously approved uses.

Also at the direction of Staff, it was recommended that parking space requirements be amended based on other recently developed assisted living facilities in the City or the developer's anticipated need. Parking requirements identified in the petition are 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors. When applying these ratios to the proposed development, a total of 32 parking spaces will be required. The preliminary site plan shows 37 spaces will be provided. One access to the parking lot and site is proposed from Deer Run Drive.

The landscaping, as conceptually shown on the preliminary site plan, shows trees along Fir Road and within the parking area. The C-1 District standards for over-story or under-story trees shall be applicable to the property frontage along Fir Road. Parking screening shall also be required between the parking area and Fir Road. Perimeter trees will not be required along the north, west, or south property lines. However, the existing tree row located along the north property line shall be maintained if within the property. A more detailed landscape plan conforming to the PUD conditions shall be submitted with the final planned unit development site plan, and is subject to review and approval by the Planning Staff.

The architectural materials and colors of the building shall comply with the C-1 General Commercial design regulations with the exception of allowing fiber cement board siding and trim on all buildings.

Similar to when the original Planned Unit Development was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed Final Planned Unit Development site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

All pertinent City Departments have reviewed and approved the PUD amendment request.

The Engineering Department provided several comments related to stormwater runoff, sanitary sewer, and erosion control. These comment shall be addressed with the final site plan.

RECOMMENDATION

Staff recommends **approval** of Petition 20-15 to amend a part of the Deer Run PUD, being more specifically Lots 7 & 8 in the Deer Run Subdivision, Section Three, to allow for the development of a one-story assisted living facility subject to the following conditions:

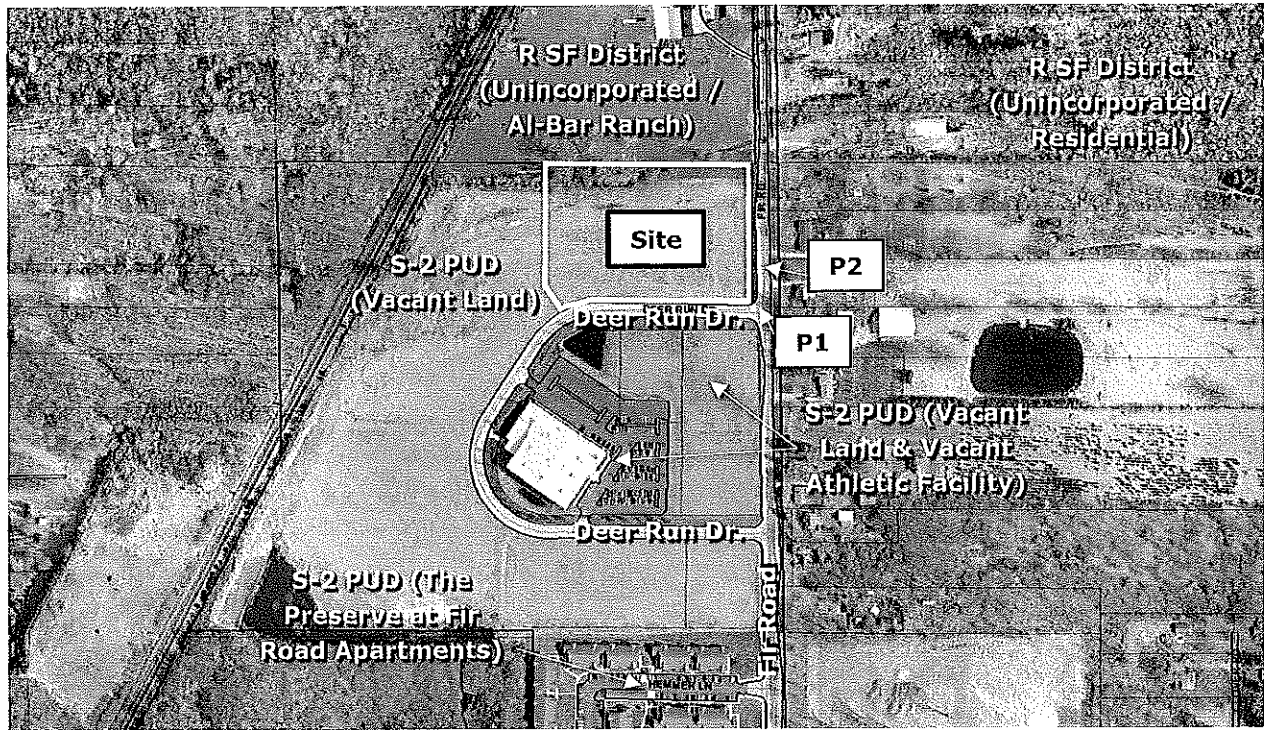
1. Permitted uses shall be amended to include a one-story assisted living facility and other accessory uses including but not limited to common dining, activity rooms, family rooms, and recreation spaces.
2. Parking spaces shall be provided at a ratio of 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors.
3. Overstory or understory trees shall be provided along Fir Road at a rate compliant with the C-1 General Commercial District.
4. An existing tree row located along the north property line shall be maintained if within the property.
5. Parking lot screening per the C-1 General Commercial District shall be provided along the east side of the parking area adjacent to Fir Road.
6. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for the site.
7. The extension of all utilities to the site shall be at the developer's cost and expense.
8. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.
9. Building setbacks shall be a minimum of 25' from the east property line along Fir Road, the south property line along Deer Run Drive, and the south property line, and 5' from the west property line.
10. Pavement setbacks shall be a minimum of 10' from the east and south property lines, and 5' from the north and west property lines.
11. Building materials and colors shall comply with the C-1 General Commercial District with the exception of allowing fiber cement board siding and trim materials on all buildings.

The recommendation is based on the following findings of fact:

1. Existing Conditions- The amendment will not alter or negatively impact the existing conditions of the surrounding area. Commercial and industrial uses more intensive than the proposed assisted living facility are currently permitted both within the portion of the PUD being amended and within vacant property in the PUD to the west and south.
2. Character of Buildings in Area- Very few buildings are located within the immediate area. A vacant athletic facility and the Preserve at Fir Road Road apartment complex are within the boundaries of the Deer Road PUD to the south. Low density single-family residential homes and undeveloped property are located predominantly along the east side of Fir Road.
3. The Most Desirable/Highest and Best Use- The proposed S-2 Planned Unit Development amendment for an assisted living facility is consistent with surrounding zoning classifications. The proposed use will be compatible with the existing and permitted land uses within the PUD.
4. Conservation of Property Values- The proposed zoning will not be injurious to property values in the surrounding area. A majority of the adjacent property is undeveloped with only a vacant athletic facility to the south and low density residential homes to the east. Higher intensive uses for the undeveloped portions of the Deer Run PUD are currently permitted.
5. Comprehensive Plan- The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential development. However, the presence of the existing apartments and the vacant athletic facility has profoundly changed the character of the area where low density residential development is no longer appropriate.

ATTACHMENTS

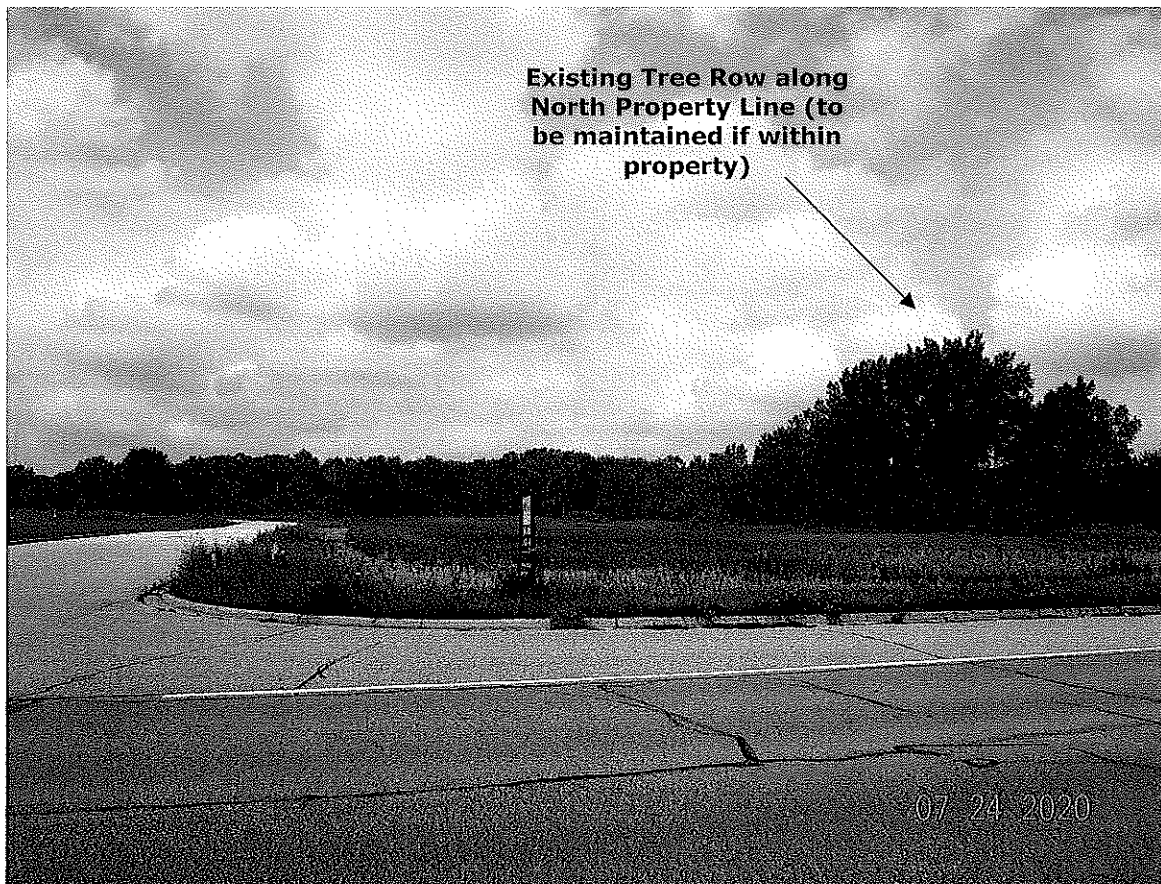
Photographs, Petition, Original Preliminary PUD Plan (Petition 03-42), Amended Preliminary PUD Plan, Location Map



Aerial Photograph
Deer Run Planned Unit Development
West of Fir Road between McKinley Avenue and Day Road



P1. Looking northwesterly toward the property from the Fir Rd. & Deer Run Dr. intersection.



P2. Looking westerly toward the property from Fir Road.

STAFF REPORT

Location: Property south of 1141 and 1241 E Twelfth St.

Date: August 11, 2020

Petition: 20- 16

Prepared By: DJS

GENERAL INFORMATION

Applicant: AWT, Inc.

Status: Property Owner

Request: To annex and establish zoning to the I-1 Light Industrial District for the expansion of an adjacent business

Existing Zoning: Unincorporated St. Joseph County (I Industrial District)

Proposed Zoning: I-1 Light Industrial District

Lot Size: 3.46 acres

Applicable Regulations: Section 137-585 to 137-587 / I-1 Light Industrial &
Section 137-41 / Amendments to Zoning Map &
Indiana Code 36-4-3-2.1 and 36-4-3-3.1

SPECIAL INFORMATION

Area Development Pattern: North: I-1 Light Industrial (AWT owned property)
South: Unincorporated St. Joseph County – I Industrial District
East: I-1 Light Industrial
West: I-1 Light Industrial

Thoroughfare: Twelfth Street

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the developer's/owner's expense.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies a preferred or planned use for this property as Industrial (Manufacturing, Warehousing, and Distribution).

ANALYSIS

Proposal:

The applicants are proposing to annex and establish zoning for part of a vacant parcel of land (Tax Parcel 014-1027-043614), located south of property located at 1141 and 1241 E Twelfth Street.

The 3.46 acre area, which is two separate pieces, is immediately adjacent to and south of Adorn, a manufacturing business at 1141 and 1241 E Twelfth Street. AWT, Inc, is the current property owner of all the property.

The purpose of the proposed annexation and required zoning to the I-1 Light Industrial District is allow for the future expansion of the Adorn business. A subdivision was also submitted to combine all property owned by AWT, Inc. into one lot. Normally when an annexation and zoning petition is filed, a preliminary site plan is required to conceptually show how the property will be developed. In this case, a preliminary site plan was not provided since there are no immediate development plans.

If the proposed annexation and rezoning request is approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm water drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

Annexation:

1141 E Twelfth was annexed in 1971. 1241 E Twelfth was annexed in 1973. The southern part of 1241 E Twelfth was annexed in 1996 prior to a building addition.

Per the State of Indiana's annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing City boundary in order to be annexed. Based on the existing city boundary, Parcel 1 has 527.76 feet, or %, of the total 859.06 feet of the perimeter of the property will be contiguous with the exiting city limits. Parcel 2 has 669.57 feet, or 61%, of the total 1339.15 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

Location/Context:

The site is located on the south side of Twelfth Street, between Merrifield Ave and Byrkit Ave. It is bordered to the north by Toot & Tell'em in Unincorporated St. Joseph County and the existing Adorn business within the City; to the west by a vacant industrial building within the City and the existing Adorn business within the City; to the south by vacant land in Unincorporated St. Joseph County; and to the east an industrial business and the existing Adorn business both within the City. The area between Merrifield Avenue and Bykit Avenue is primarily industrial.

Zoning Change:

Staff believes that the proposed zoning of this property to the I-1 Industrial District is appropriate given that the property will be added to the adjacent business for possible future expansion. The subsequent subdivision will clean up the parcel layer by combining all property owned by AWT, Inc, currently three parcels, into one parcel.

Transportation/Roads:

According to the latest available traffic counts, there were 8,300 annual average daily trips (AADT) (June 2015) along Twelfth Street just east of Byrkit Ave. According to the latest available traffic counts, there were 7,897 annual average daily trips (AADT) (June 2015) along Twelfth Street just west of Industrial Dr. The counts at these locations have been relatively constant over the past 20, actually decreasing from a high of almost 12,000 AADT in 2000. Due to the widening of Twelfth Street, as outlined in the 2045 Transportation Plan below, traffic volumes are expected to increase after the project is completed.

The 2045 Transportation Plan, prepared by the Michiana Area Council of Governments with input from City staff and the County Engineering Department, shows planned added travel lanes along Twelfth Street, from Dodge to Campbell. The projected completion year for this project is 2030. It should be noted that the plan may be amended in future years dependent on infrastructure priorities, projected travel demand, and available funding.

All pertinent City Departments have reviewed and approved the request for annexation and zoning.

RECOMMENDATION

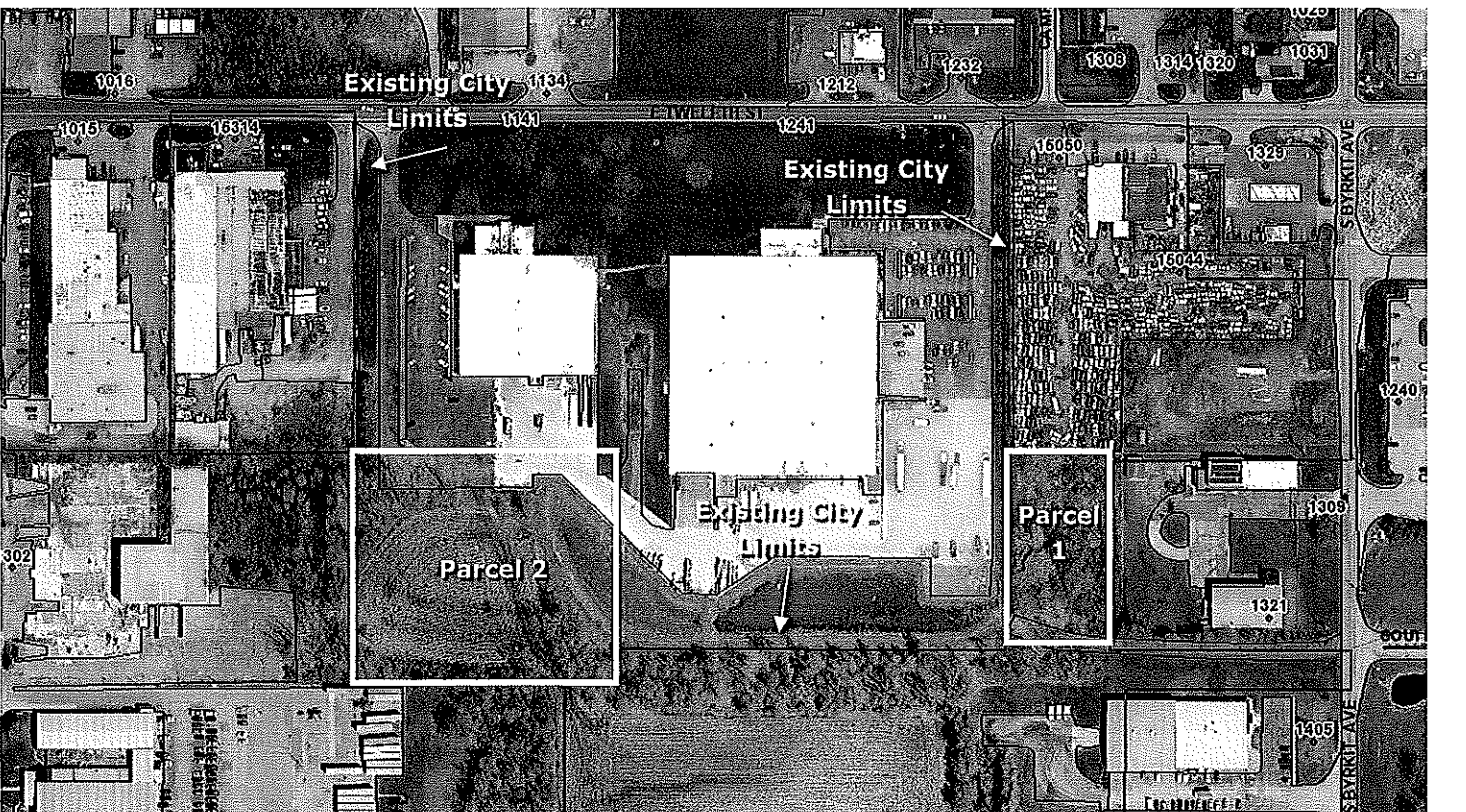
Staff recommends approval of Petition 20-16 to annex and establish zoning to the I-1 Light Industrial District for property south of and adjacent to 1141 and 1241 E Twelfth Street. The property will be combined with adjacent property owned by the same property owner to create one legal lot of record.

This recommendation is based on the following Findings of Fact:

1. Existing Conditions – The subject property is vacant industrial land in Unincorporated St. Joseph County, purchased by AWT, Inc. in 2016.
2. Character of Buildings in the Area – The character of buildings and land uses located along Twelfth Street, between Merrifield Ave and Byrkit Ave are primarily industrial, with a few other commercial land uses.
3. The most desirable/highest and best use – Because of the property's location adjacent existing industrial development, the most desirable use for the property is industrial.
4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area. The combining of all property owned with a possibility for expansion of the existing adjacent industrial use is compatible with industrial and commercial uses.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan, created in 1990, identified this area as industrial, which is how it has developed.

ATTACHMENTS

Aerial Map, Photographs of the Annexation Area, Rezoning & Annexation Petition, and Location Maps



Aerial Photograph



The building at 1241 E Twelfth (annexation Parcel 1 east of parking lot).



The Building at 1141 E Twelfth (annexation Parcel 2 south of parking lot).

STAFF REPORT

Location: Northwest corner of Gumwood Road &
W. Cleveland Road (S.R. 23)

Date: August 11, 2020

Petition: 20- 17

Prepared By: DJS

GENERAL INFORMATION

Applicant: Great Lakes Capital Management, LLC (a/k/a Grandview Flats II, LLC & Gumwood Acquisitions, LLC) / Abonmarche Consultants

Status: Property Owner / Engineer & Site Design Consultant

Request: Amend the Grandview Phase II Planned Unit Development to allow one dumpster enclosure between a principal building and public right-of-way only when the gate is not visible from Gumwood Road, to permit wood as a secondary building material, and to be setback a minimum of 25' from the right-of-way

Zoning Classification: S-2 Planned Unit Development (Permitted commercial and multi-family residential uses per Ord. 5434 & 5611)

Lot Size: 33.8 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Grandview Mixed-Use Development including future commercial and existing multi-family residential uses & City of Mishawaka/Municipal Wellfield)

South: S-1 Extensive Open Space/Public (Cemetery/St. Joseph Valley Memorial Park)

East: S-2 Planned Unit Development (Heritage Square and Toscana Park Mixed-Use developments including commercial and residential uses)

West: C-2 Shopping Center Commercial (Multi-Tenant Commercial/Centennial Place) & Unincorporated St. Joseph County (Single-Family Residential)

Thoroughfare: Gumwood Road & W. Cleveland Road (S.R. 23)

School District: South Bend Community School Corporation

Public Utilities: All utilities are available and have been extended to/throughout the site at the developer's/owner's expense.

Comprehensive Plan: Not specifically identified in the Mishawaka 2000 Comprehensive Plan. However, the permitted uses per the PUD are generally consistent with the established policy and trend of encouraging retail and multiple family uses within the area.

ANALYSIS

The Petitioner is requesting to amend the Grandview Phase II Planned Unit Development pertaining only to the previously approved conditions and development regulations as outlined below:

Proposed Uses:

4. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.

Building/Parking Sebacks:

1. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

When the Final PUD Site Plan for Grandview Phase II was submitted for review in 2018 (SP 18-B), the plan did not include any dumpsters locations within the site. The applicant's engineering and site design consultant stated that dumpsters were not required as all trash receptacles would be kept internal to the buildings. Though prior to approval and recording the plans, dumpsters were added to the site plan west of the buildings for the multi-family residential use. The location of the dumpsters behind the building complied with the development regulations.

In March, the applicant contacted Planning Staff to inquire on the possibility of placing an additional dumpster within the easternmost row of parking spaces along Gumwood Road. The dumpster is proposed to be located just north of the entrance drive and will serve Bar Louie, a new restaurant tenant. Planning Staff initially requested that the dumpster be placed in any location other than the first row of parking along Gumwood Road to minimize visibility. The applicant stated that the proposed location is the most ideal for access and reducing potential internal conflicts between the residents and patron's vehicles, and trash haulers.

Staff supports the amendment request to allow a dumpster enclosure where proposed. The dumpster enclosure will be constructed with a combination of brick and cedar to match the materials and design of the main building. A landscaping mound east of the enclosure will be raised and additional landscaping planted to screen the enclosure from Gumwood Road.

All other previously approved development standards and conditions of approval per Ordinance 5434 and 5611 are applicable.

All pertinent City Departments have reviewed and approved the request providing no comments.

RECOMMENDATION

Staff recommends approval of Petition 20-17 to amend the Grandview Phase II Planned Unit Development as follows:

Proposed Uses:

4. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.

Building/Parking Sebacks:

2. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

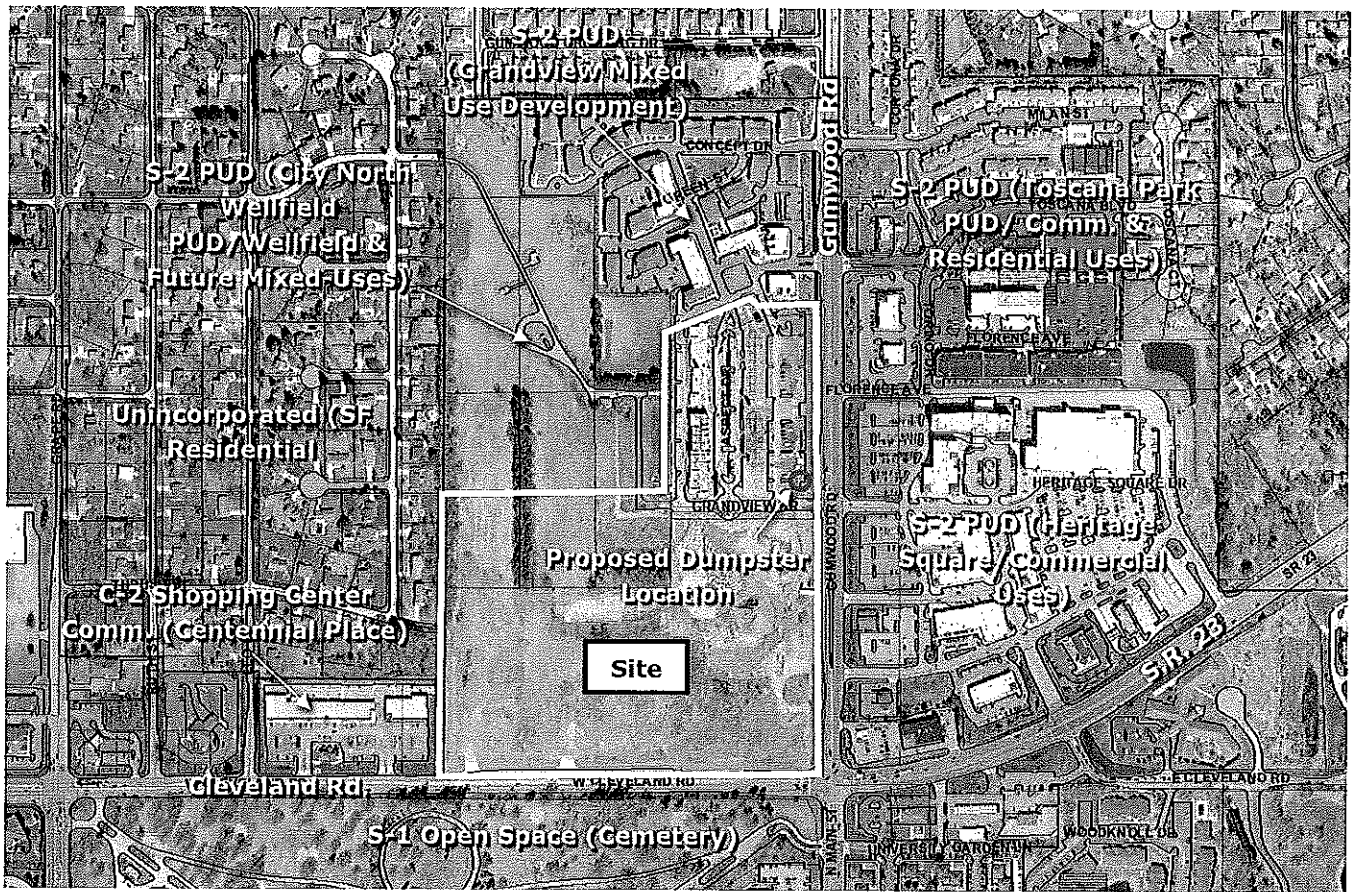
All other previously approved development standards and conditions of approval per Ordinance 5434 and 5611 shall be adhered to.

This recommendation is based upon the following findings of fact:

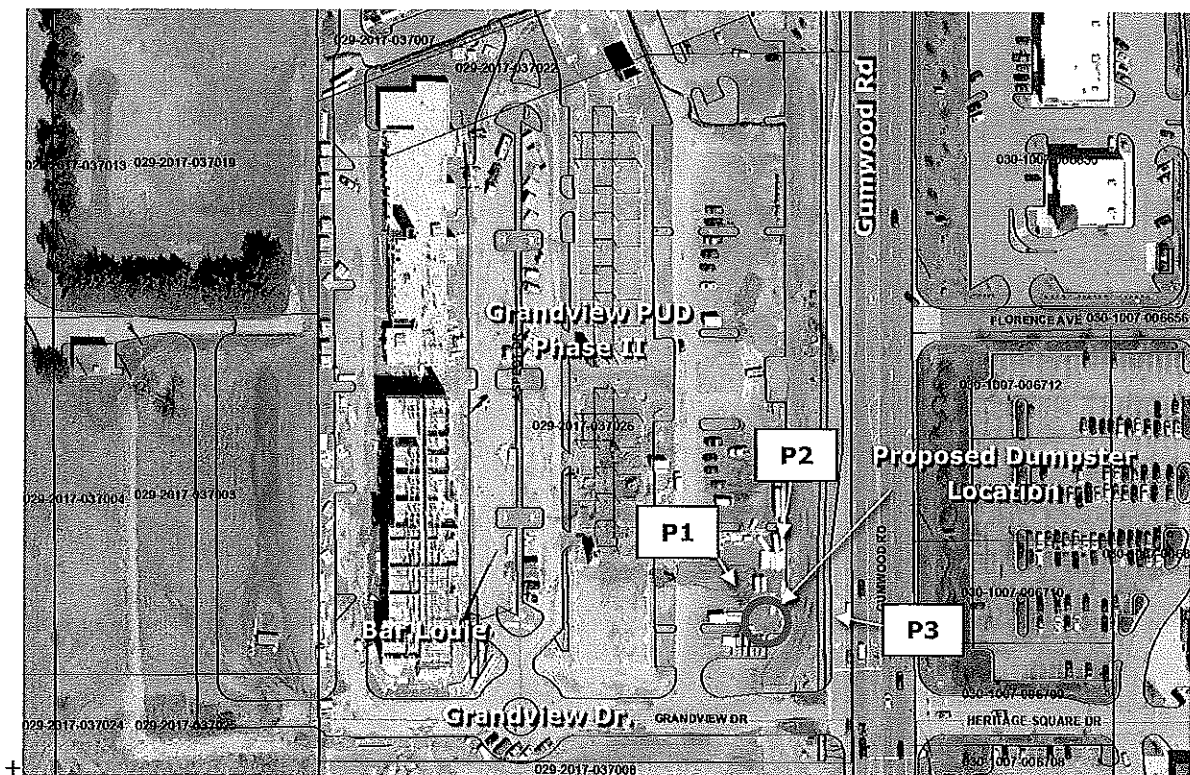
1. Existing Conditions – The subject property, located along Gumwood Road and Cleveland Road (S.R. 20), is partially developed with multi-family residential and commercial uses and with vacant land approved for the same uses. Existing similar multi-family residential and commercial developments are located to the north and across Gumwood Road to the east.
2. Character of Buildings in Area – The character of a majority of the buildings along Gumwood Road and W. Cleveland Road (S.R. 23) are commercial. The buildings north and west of the property are predominantly multi-family and single-family residential.
3. The most desirable/highest and best use – Due to the parcels' location and the significant commercial development along the Main Street/Gumwood Road corridor combined with the adjacent multi-family and single-family residential uses, the most desirable use for the property is a transitional mix of commercial and residential uses. The additional proposed dumpster enclosure and location is appropriate to support the existing and future commercial development within the property.
4. Conservation of property values – The proposed amendment will not be injurious to property values in the surrounding area. The dumpster enclosure will be constructed with high quality aesthetically appealing materials to match the main building. The adjacent berm will be raised and additional landscaping provided to screen the dumpster from the public right-of-way.
5. Comprehensive Plan – Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) corridor. The proposed dumpster enclosure does not affect the permitted uses previously approved for the property.

ATTACHMENTS

Aerials, Photographs, Petition, PUD Amendment Exhibit (Site Plan), Dumpster Enclosure Illustration, Location Map



Aerial Photograph
Grandview Planned Unit Development
Northwest Corner of Gumwood Road & Cleveland Road (S.R. 23)



Proposed Dumpster Location



P1. Looking southeast from within the existing parking lot toward the location of the proposed dumpster enclosure.



P2. Looking southerly along Gumwood Road toward the proposed dumpster location.

**Proposed Location for a
Dumpster Enclosure
behind Landscape Mound**



P3. Looking westerly from Gumwood Road toward the proposed dumpster enclosure to be located behind an improved landscape mound.

1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-12

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-24

ORDINANCE NO. _____

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.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has made no recommendation of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

A PART OF THE SOUTHEAST QUARTER OF SECTION 7 AND THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 4 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT #1 OF THE PLAT OF "NATIONAL CITY BANK SUBDIVISION" DOCUMENT NO. 0425385 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE WEST ALONG NORTH LINE OF SAID LOT #1, 17.00 FEET MORE OR LESS TO THE EAST LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-090502; THENCE NORTH ALONG SAID EAST LOT LINE, 722.10 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF VISTULA ROAD; THENCE NORTHEASTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE, 1701.16 FEET MORE OR LESS TO THE WEST LOT LINE OF A PARCEL IDENTIFIED AS PARCEL COUNTY ID NUMBER 027-1001-0906; THENCE SOUTH ALONG SAID WEST LOT LINE, 949.46 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, 303.58 FEET MORE OR LESS TO THE WEST RIGHT-OF-WAY LINE OF CEDAR ROAD; THENCE SOUTH ALONG SAID WEST RIGHT-OF-WAY LINE, 1007.89 FEET MORE OR LESS TO THE NORTH LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-091604; THENCE WEST ALONG SAID NORTH LOT LINE, 308.00 FEET MORE OR LESS TO THE WEST LINE OF SAID PARCEL; THENCE SOUTH ALONG SAID WEST LOT LINE OF SAID PARCEL, 420.00 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF LINCOLNWAY EAST; THENCE WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 306.93 FEET MORE OR LESS TO THE EAST LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-091602; THENCE NORTH ALONG SAID EAST LINE, 900.00 FEET MORE OR LESS TO THE NORTH LOT LINE OF SAID PARCEL; THENCE WEST ALONG SAID NORTH LOT LINE, 1280.00 FEET MORE OR LESS TO THE EAST LOT LINE OF SAID LOT

Proposed Ordinance No: 20-24

Ordinance No: _____

#1 OF THE PLAT OF "NATIONAL CITY BANK SUBDIVISION"; THENCE NORTH ALONG SAID EAST LOT LINE, 174.00 FEET MORE OR LESS TO THE POINT OF BEGINNING. CONTAINING 57.16 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, EASEMENTS, AND RESTRICTIONS OF RECORD.

COMMON ADDRESS: Vacant Land South of Vistula Road, West of Cedar Road, and North of Lincolnway East

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow a mixed-use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage as follows:

Uses:

Parcel A

1. Multi-Family Residential (Apartment Complex) with a maximum of 162 units

Parcel B

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches

Parcel C

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches
4. I-1 Light Industrial Uses
5. C-1 General Commercial Uses

Separation Requirements:

1. Any self-storage facility (mini-storage) located within Parcel "C" shall have a minimum separation of 30' between any storage buildings and adjacent school, park, church, hospital, and/or residentially-zoned property.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

Proposed Ordinance No: 20-24

Ordinance No: _____

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. Landscaping/screening for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall be provided as required by the standards of the C-1 General Commercial Zoning District.
2. Any self-service storage facility located within Parcel "C" shall be screened from the adjacent residential property with a combination of a 7' high screen fence and evergreen screening as approved by the Planning Staff.

Signage:

1. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for Parcel "A".
2. Signage for Parcels "B" and "C" shall conform to the sign standards of the most restrictive zoning district in which the land use would otherwise be permitted.

Road Improvements/Right-of-Way Dedication:

1. Road improvements along Vistula Road and Cedar Road shall be installed as determined by the Department of Engineering.
2. Additional right-of-way shall be required along Vistula Road, Cedar Road, and the connector road to Lincolnway East as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of each subdivision plat or separate deed of dedication document, if deemed appropriate.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.

Architectural Requirements:

1. Building materials and colors for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall comply with the C-1 General Commercial Zoning District.

Pedestrian Access/Circulation

1. A sidewalk shall be installed along the south side of Vistula Road within the dedicated right-of-way and along the entire property frontage with each phase of the development.

Proposed Ordinance No: 20-24

Ordinance No: _____

Other:

1. All other developmental standards not identified shall comply with height, area, and developmental regulations of the most restrictive zoning district in which the land use would be otherwise permitted.

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

1. Existing Conditions – The subject parcel is vacant agricultural land located within an area of varying land uses including multi-family and single-family residential, commercial, industrial, and agricultural.
2. Character of Buildings – The character of the buildings within the surrounding area is mixed with multi-family and single-family residential buildings to the north, west, and east; a multi-tenant commercial strip center to the southwest; and industrial and medical offices to the south.
3. The most desirable/highest and best use – Because of the parcel's proximity to existing multi-family and single-family residential uses to the north, west, and east; commercial uses to the southwest; and industrial and medical uses to the south; the most desirable use for the property is for mixed uses as proposed. Furthermore, the Bercado Farms PUD shows that the part of the PUD to be amended was originally approved for medium density residential development (apartments, condominiums, and related services and recreational areas), a recreational center (indoor and outdoor facilities), and area shopping center (clothing, shoes, furniture, restaurants, etc).
4. Conservation of property values - The proposed PUD amendment should not be injurious to property values in the surrounding area. The proposed mix of land uses are compatible with and a logical extension of the adjacent existing uses. A majority of the property and proposed land uses are subject to landscaping/screening requirements.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan identified medium density residential (apartment complexes & nursing Facilities) and industrial (manufacturing, warehousing, and distribution) as the preferred land use.

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 _____, 2020, at _____ o'clock ____ M.

Presiding Officer

Proposed Ordinance No: 20-24

Ordinance No: _____

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____,
2020, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Vacant Land South of Vistula Road, West of Cedar Road &
North of Lincolnway East

AUG 11, 2020
Date: June 9, 2020

Petition: 20- 12

Prepared By: DJS

GENERAL INFORMATION

Applicant:	Mervin D. Lung Revocable Trust / In Good Company / Danch Harner & Associates
Status:	Property Owner / Contingent Developer of Parcel "A" / Site Design Consultant
Request:	Amend a part of the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage
Zoning Classification:	S-2 Planned Unit Development
Lot Size:	57.16 acres
Applicable Regulations:	Section 137-671 thru 137-679 / S-2 Planned Unit Development District; Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern:	North:	S-2 Planned Unit Development (Medical Offices/Beacon Medical Group, Multi-Family Residential/River Pointe Apartments, and Single-Family Residential)
	South:	S-2 Planned Unit Development (Light Industrial/Patrick Metals & Elixir Industries, and Medical/Osceola Clinic)
	East:	S-2 Planned Unit Development (Church/Cedar Road Missionary & Single Family Residential) & Unincorporated St. Joseph County (Residential)
	West:	S-2 Planned Unit Development (Multi-Family Residential/Reflections Apartments & Multi-Tenant Commercial/Bittersweet Plaza)
Thoroughfare:	Vistula Road, Cedar Road & Lincolnway East	
School District:	Penn-Harris-Madison School Corporation	
Township:	Penn	
Public Utilities:	All public utilities are available and/or will be extended to/throughout the site at the developer's expense	
Comprehensive Plan:	Medium Density Residential (Apartment Complexes & Nursing Facilities) & Industrial (Manufacturing, Warehousing and Distribution)	

ANALYSIS

The Petitioner is requesting to amend part of the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage. The property is generally bound by Vistula Road to the north, Cedar Street to the east, Lincolnway East to the south, and multi-family residential and commercial development to the west. The property is currently vacant agricultural land.

Parcel "A" – First Phase of the Development – In Good Company, Contingent Developer

As indicated on the Preliminary Planned Unit Development site plan, the property will include three separate parcels with specific land uses identified for each parcel.

Parcel "A", which is an approximate 20.75 acre area within the west part of the site, is proposed for multi-family residential development (apartment complex) with a maximum of 162 units. *This parcel will be the first phase of the development and is the primarily reason the PUD amendment is being requested.* A prior PUD amendment (Petition 18-09) was considered for this parcel in 2018 when proposed for development by the same contingent purchaser as a 205 unit multi-family residential complex. The amendment request was withdrawn by the petitioner prior to consideration by the Common Council.

Parcels "B" & "C" – Future Phases of the Development – No Immediate Development Plans

Although there are no immediate plans for developing Parcels "B" and "C", Planning Staff requested that all property currently owned by the applicant be included in the amendment request. The reason for including these parcels is to establish a range of permitted uses on the remaining land that are compatible with the adjacent land uses.

Parcel "B" is an approximate 13.95 acre area located south of Vistula Road within the northeast part of the property. Specific land uses proposed for this parcel include single-family residential, condominiums, rental or owner occupied senior cottages (not to exceed a density of 5 units per acre), nursing homes, assisted living, independent senior living apartments (no density requirements limited to 2 stories or 35' in height), and churches.

Parcel "C", which is an approximate 22.46 acre area, is located within the southeast part of the property with frontage on both Cedar Road and Lincolnway East. Specific land uses proposed for this parcel include single-family residential, condominiums, rental or owner occupied senior cottages, nursing homes, assisted living, independent senior living apartments, churches, I-1 Light Industrial District permitted uses, and C-1 General Commercial District permitted uses. The petitioner also seeks relief from the separation requirement for any self-service storage facility (mini-storage) located within this parcel. The I-1 District requires that such facilities shall be a minimum of 250' from any school, park, church, hospital, and/or residentially-zoned property. The minimum setback being requested is 30' between any storage facility building and such adjacent use.

A detailed landscape plan conforming to the C-1 General Commercial District requirements shall be submitted with all Final Planned Unit Development site plans for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses, and will subject to review and approval by the Planning Staff. Any self-service storage facility (mini-storage) located within Parcel "C" shall be adequately screened from all adjacent residential properties to the east of Cedar Road. The landscaping/screening shall include a combination of a 7' high solid screening fence and evergreen screening as approved by the Planning Staff.

The applicants are proposing one access off of Vistula Road to serve Parcel "A". As indicated in the Staff report for the prior PUD amendment, emergency access shall be provided along both Vistula Road and from the apartment complex to the west. All drives and parking lots interior to Parcel "A" will be privately owned and maintained. One access is proposed for Parcel "B" off of Vistula Road. Two points of access are proposed for Parcel "C" with one along Cedar Road and one connecting to an existing ingress/egress easement within the commercial property at the northwest corner of Cedar Road and Lincolnway East.

The streets and access drives within Parcels "B" and "C" will likely be a combination of public right-of-way and private drives dependent upon the specific land use.

Excluding the reduction in the separation requirement for a self-service storage facility, as referenced above, any land use specifically permitted shall adhere to the applicable height, area, and development regulations of the most restrictive zoning district in which the use would be otherwise permitted. If deviations from these standards are proposed as a part of the Final Planned Unit Development site plan, the proper variances will need to be submitted to and approved by the Board of Zoning Appeals.

Prior to filing the petition, Planning Staff met with the applicant's representatives and requested that a neighborhood meeting be held to discuss development plans with the nearby property owners. Due to COVID 19, this meeting did not occur. However, the attached letter was mailed or hand delivered to all property owners within 300' of the subject property and within the River Point Estates subdivision and River Isle Condominium development.

At this time, the applicants are only proposing to amend a previously approved PUD to allow for a range of permitted uses. *The Bercado Farms PUD, as attached, shows that the part of the PUD to be amended was originally approved for medium density residential development (apartments, condominiums, and related services and recreational areas), a recreational center (indoor & outdoor tennis courts, paddle tennis courts, and handball), and an area shopping center (clothing, shoes, furniture, restaurants, etc).*

If approved, a detailed Final Planned Unit Development site plan must be submitted for each phase of the development to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements. Multiple subdivision plats will also be required to establish legal lots of record and separate ownership for each phase of the development.

All pertinent City Departments have reviewed and approved the Preliminary Planned Unit Development site plan.

The Engineering Department provided several comments that shall be addressed with all Final Planned Unit Development site plans and subdivision plats.

RECOMMENDATION

Staff recommends **approval** of Petition 20-12 to amend a part the Bercado PUD to allow a mixed use development consisting of multi-family residential, single-family residential, condominiums, senior cottages, nursing homes, assisted living, independent senior living apartments, churches, light industrial, commercial, and mini self-storage subject to the following conditions:

Uses:

Parcel A

1. Multi-Family Residential (Apartment Complex) with a maximum of 162 units

Parcel B

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)
2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches

Parcel C

1. Single-Family, condominiums, rental or owner occupied senior cottages (Not to exceed a density of 5 units per acre)

2. Nursing homes, assisted living, independent senior living apartments (No density requirements and limited to 2 stories or 35' in height.)
3. Churches
4. I-1 Light Industrial Uses
5. C-1 General Commercial Uses

Separation Requirements:

1. Any self-storage facility (mini-storage) located within Parcel "C" shall have a minimum separation of 30' between any storage buildings and adjacent school, park, church, hospital, and/or residentially-zoned property.

Utilities:

1. The developer shall connect to the City of Mishawaka sanitary sewer, water, and electric as directed by applicable codes, the City Director of Engineering, the Manager of the Water Division, and the Manager of the Electric Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

Stormwater Management Infrastructure:

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

Landscaping/Screening:

1. Landscaping/screening for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall be provided as required by the standards of the C-1 General Commercial Zoning District.
2. Any self-service storage facility located within Parcel "C" shall be screened from the adjacent residential property with a combination of a 7' high screen fence and evergreen screening as approved by the Planning Staff.

Signage:

1. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for Parcel "A".
2. Signage for Parcels "B" and "C" shall conform to the sign standards of the most restrictive zoning district in which the land use would otherwise be permitted.

Road Improvements/Right-of-Way Dedication:

1. Road improvements along Vistula Road and Cedar Road shall be installed as determined by the Department of Engineering.
2. Additional right-of-way shall be required along Vistula Road, Cedar Road, and the connector road to Lincolnway East as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of each subdivision plat or separate deed of dedication document, if deemed appropriate.

Lighting:

1. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.

Architectural Requirements:

1. Building materials and colors for any multi-family residential, nursing homes, assisted living, independent senior living apartments, and C-1 District permitted uses shall comply with the C-1 General Commercial Zoning District.

Pedestrian Access/Circulation

1. A sidewalk shall be installed along the south side of Vistula Road within the dedicated right-of-way and along the entire property frontage with each phase of the development.

Other:

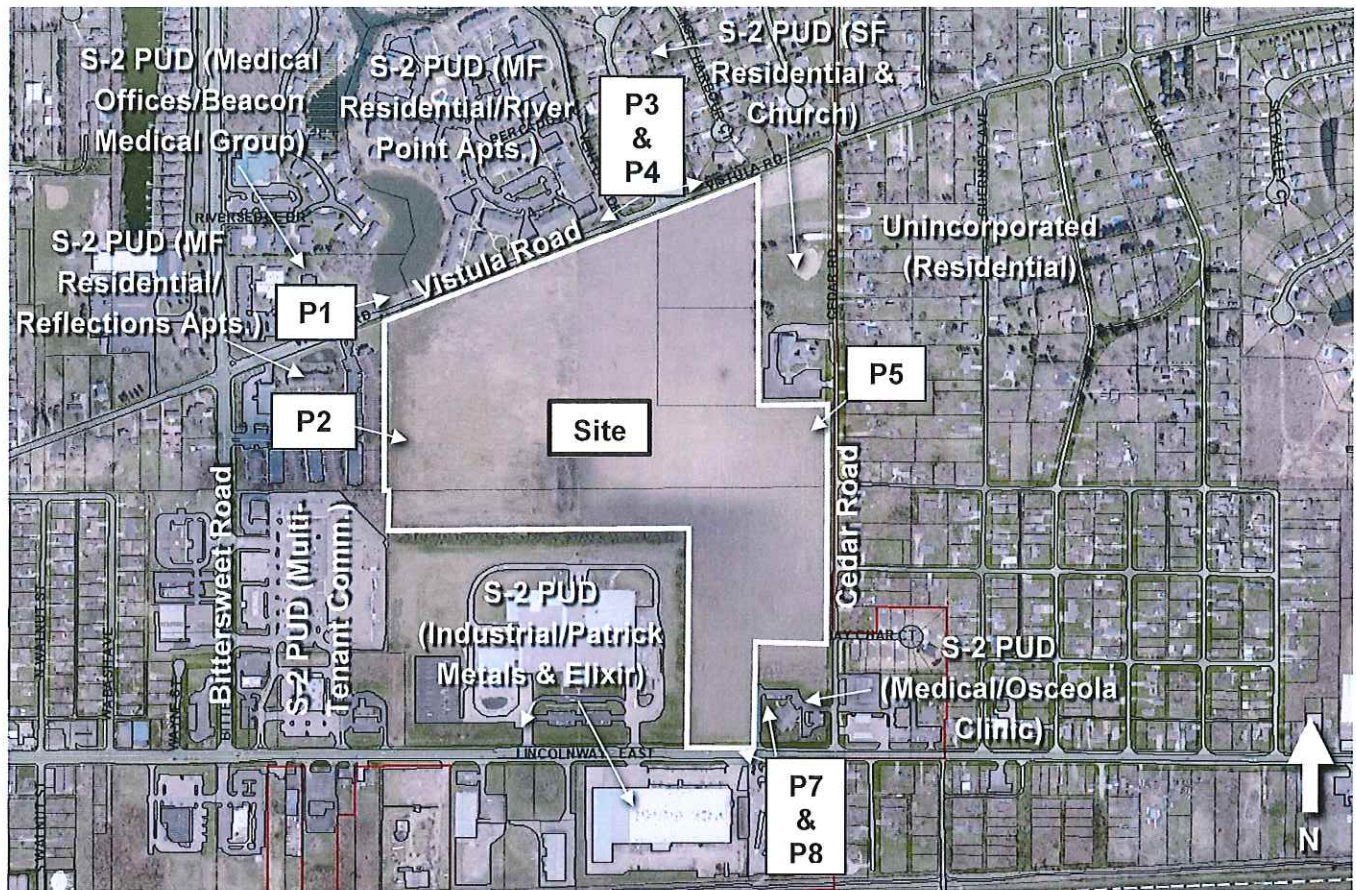
1. All other developmental standards not identified shall comply with height, area, and developmental regulations of the most restrictive zoning district in which the land use would be otherwise permitted.

This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject parcel is vacant agricultural land located within an area of varying land uses including multi-family and single-family residential, commercial, industrial, and agricultural.
2. Character of Buildings – The character of the buildings within the surrounding area is mixed with multi-family and single-family residential buildings to the north, west, and east; a multi-tenant commercial strip center to the southwest; and industrial and medical offices to the south.
3. The most desirable/highest and best use – Because of the parcel’s proximity to existing multi-family and single-family residential uses to the north, west, and east; commercial uses to the southwest; and industrial and medical uses to the south; the most desirable use for the property is for mixed uses as proposed. Furthermore, the Bercado Farms PUD shows that the part of the PUD to be amended was originally approved for medium density residential development (apartments, condominiums, and related services and recreational areas), a recreational center (indoor and outdoor facilities), and area shopping center (clothing, shoes, furniture, restaurants, etc).
4. Conservation of property values - The proposed PUD amendment should not be injurious to property values in the surrounding area. The proposed mix of land uses are compatible with and a logical extension of the adjacent existing uses. A majority of the property and proposed land uses are subject to landscaping/screening requirements.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan identified medium density residential (apartment complexes & nursing Facilities) and industrial (manufacturing, warehousing, and distribution) as the preferred land use.

ATTACHMENTS

Aerial, Photograph(s), Petition, Preliminary Planned Unit Development Site Plan, Original Approved Bercado Farms PUD (9/12/72), Letter to Adjacent Property Owners from Applicant (Dated 6/3/2020), Location Map



Aerial Photograph
Proposed Mixed Use Development
South of Vistula Road, East of Cedar Road, and North of Lincolnway East



P1. Looking northeasterly along Vistula Road from the northwest corner of Parcel "A".



P3. Looking easterly toward Parcel "A" from the Reflections Apartment complex to the east.



P3. Looking southwesterly along Vistula Road toward the northern part of Parcel "A".



P4. Looking northeasterly along Vistula Road toward the northern part of Parcel "B".



P5. Looking southwesterly from Cedar Street and the northeast corner of Parcel "C".



P6. Looking westerly along Lincolnway East toward the southern part of Parcel "C".



P7. Looking northerly from Lincolnway East along an east property line of Parcel "C" and an access drive for the adjacent medical offices.

RECEIVED
DEBORAH S. BLOCK, MMC

MAY 26 2020

CITY CLERK
MISHAWAKA, IN

DATE: MARCH 20, 2020

TO THE:

HONORABLE MEMBERS OF THE COMMON COUNCIL
CITY OF MISHAWAKA, INDIANA

RE: PETITION FOR AN AMENDED PUD (BERCADO FARMS PUD):

THE UNDERSIGNED MERVIN D. LUNG REVOCABLE TRUST, RESPECTFULLY SHOW THAT HE IS THE OWNER OF THE FOLLOWING DESCRIBED REAL ESTATE LOCATED IN THE CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA:

A PART OF THE SOUTHEAST QUARTER OF SECTION 7 AND THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 37 NORTH, RANGE 4 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT #1 OF THE PLAT OF "NATIONAL CITY BANK SUBDIVISION" DOCUMENT NO. 0425385 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE WEST ALONG NORTH LINE OF SAID LOT #1, 17.00 FEET MORE OR LESS TO THE EAST LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-090502; THENCE NORTH ALONG SAID EAST LOT LINE, 722.10 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF VISTULA ROAD; THENCE NORTHEASTERLY ALONG SAID SOUTH RIGHT-OF-WAY LINE, 1701.16 FEET MORE OR LESS TO THE WEST LOT LINE OF A PARCEL IDENTIFIED AS PARCEL COUNTY ID NUMBER 027-1001-0906; THENCE SOUTH ALONG SAID WEST LOT LINE, 949.46 FEET MORE OR LESS TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, 303.58 FEET MORE OR LESS TO THE WEST RIGHT-OF-WAY LINE OF CEDAR ROAD; THENCE SOUTH ALONG SAID WEST RIGHT-OF-WAY LINE, 1007.89 FEET MORE OR LESS TO THE NORTH LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-091604; THENCE WEST ALONG SAID NORTH LOT LINE, 308.00 FEET MORE OR LESS TO THE WEST LINE OF SAID PARCEL; THENCE SOUTH ALONG SAID WEST LOT LINE OF SAID PARCEL, 420.00 FEET MORE OR LESS TO THE NORTH RIGHT-OF-WAY LINE OF LINCOLNWAY EAST; THENCE WEST ALONG SAID NORTH RIGHT-OF-WAY LINE, 306.93 FEET MORE OR LESS TO THE EAST LOT LINE OF A PARCEL IDENTIFIED AS COUNTY PARCEL ID NUMBER 027-1001-091602; THENCE NORTH ALONG SAID EAST LINE, 900.00 FEET MORE OR LESS TO THE NORTH LOT LINE OF SAID PARCEL; THENCE WEST ALONG SAID NORTH LOT LINE, 1280.00 FEET MORE OR LESS TO THE EAST LOT LINE OF SAID LOT #1 OF THE PLAT OF "NATIONAL CITY BANK SUBDIVISION"; THENCE



NORTH ALONG SAID EAST LOT LINE, 174.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 57.16 ACRES MORE OR LESS.

SUBJECT TO ALL LEGAL RIGHT-OF-WAYS, EASEMENTS, AND RESTRICTIONS OF RECORD.

THE ABOVE DESCRIBED PARCEL OF LAND IS PRESENTLY ZONED "S-2" PLANNED UNIT DEVELOPMENT DISTRICT AND CONSISTS OF VACANT LAND WITH AGRICULTURAL USE.

THE PETITIONER DESIRES TO AMEND THE EXISTING PLANNED UNIT DEVELOPMENT FOR SAID REAL ESTATE TO BE ALLOWED THE FOLLOWING USES:

A. PARCEL 'A'

- 1) MULTI-FAMILY RESIDENTIAL (162 UNITS)

B. PARCEL 'B'

- 1) SINGLE-FAMILY, CONDOMINIUMS, RENTAL OR OWNER OCCUPIED SENIOR COTTAGES (NOT TO EXCEED A DENSITY OF 5 UNITS PER ACRE)
- 2) NURSING HOMES, ASSISTED LIVING, INDEPENDENT SENIOR LIVING APARTMENTS (NO DENSITY REQUIREMENTS. LIMITED TO 2-STORIES AND 35-FT IN HEIGHT)
- 3) CHURCHES

C. PARCEL 'C'

- 1) SINGLE-FAMILY, CONDOMINIUMS, RENTAL OR OWNER OCCUPIED SENIOR COTTAGES
- 2) NURSING HOMES, ASSISTED LIVING, INDEPENDENT SENIOR LIVING APARTMENTS
- 3) CHURCHES
- 4) I-1 LIGHT INDUSTRIAL USES
- 5) C-1 GENERAL COMMERCIAL USES
- 6) SPECIFIC ALLOWED SETBACK REQUIREMENT FLEXIBILITY: SELF-SERVICE STORAGE FACILITY, MINI STORAGE SHALL BE ALLOWED TO HAVE A MINIMUM SEPARATION OF STORAGE BUILDINGS FROM A SCHOOL, PARK, CHURCH, HOSPITAL, AND/OR RESIDENTIALLY-ZONED PROPERTY OF AT LEAST 30 FEET, WITH SCREENING IN THE 30 FEET CONTAINING A MIX OF A MINIMUM 7 FT. HIGH SOLID SCREENING FENCE AND EVERGREEN SCREENING AS APPROVED BY THE CITY PLANNING STAFF.

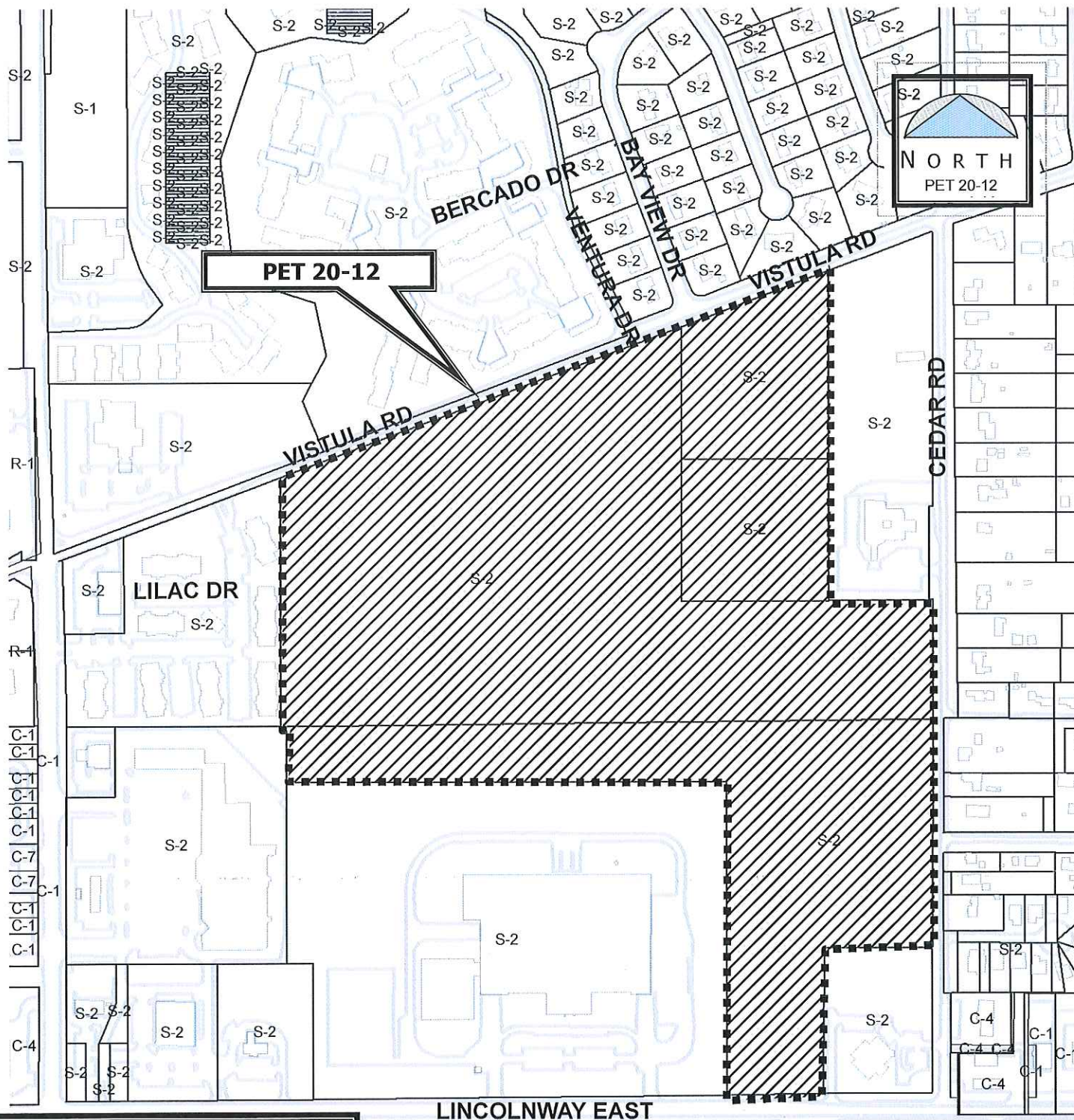
WHEREFORE, THE PETITIONER PRAYS AND RESPECTFULLY REQUEST THAT THE COMMON COUNCIL OF THE CITY OF MISHAWAKA REFER THIS MATTER TO THE MISHAWAKA CITY PLAN COMMISSION AND THAT AFTER HEARING, AN APPROPRIATE ORDINANCE BE ENACTED THE REZONING THE ABOVE DESCRIBED

CONTACT PERSON:

DANCH, HARNER & ASSOCIATES, INC.
1643 COMMERCE DRIVE
SOUTH BEND, INDIANA 46628
(574) 234-4003

LAKE CITY BANK
BY: *Quinn King* VICE PRESIDENT/TRUST OFFICER

MERVIN D. LUNG REVOCABLE TRUST
707 RIVER POINTE PLACE
MISHAWAKA, INDIANA 46544



Location Map

PET 20-12

MERVIN D. LUNG REVOCABLE TRUST

VACANT LAND S. OF VISTULA
ROAD & W. OF CEDAR ROAD

PUD AMENDMENT TO ALLOW
FOR A MIXED USE DEVELOPMENT TO
ALLOW RESIDENTIAL, COMMERCIAL,
AND INDUSTRIAL USES

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

PETITION 20-13

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-25

ORDINANCE NO. _____

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.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 26, Barbees Sub, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

COMMON ADDRESS: 619 Lincolnway East

which real estate is now classified as R-1 Single Family Residential District shall hereafter be within and a part of that District known as C-3 City Center Commercial District designated in "The Zoning Ordinance of 1966" as amended.

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

1. The City Center Commercial zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a transitional area, the rezoning to C-3 City Center Commercial is a desirable use for this property;

Proposed Ordinance No: 20-25

Ordinance No: _____

4. Extending the zoning one more parcel east, providing a compatible zoning to the historic multi-family use will not have an unfavorable and destabilizing impact on the neighborhood; and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

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 _____, 2020, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2020, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at _____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: 619 Lincolnway East

Date: August 11, 2020

Petition: 20 13

Prepared By: CH

GENERAL INFORMATION

Applicant: Antonio D Portolese Estate

Status: Property Owner

Request: Rezone from R-1 Single Family Residential to C-3 City Center Commercial

Zoning Classification: R-1 Single Family Residential

Lot Size: 60' X 132'

Applicable Regulations: Sec. 137-358 Commercial C-3 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: C-3 City Center Commercial
East: R-1 Single Family Residential
West: C-3 City Center Commercial

Thoroughfare: Lincolnway East

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: Low Density Residential

ANALYSIS

The Petitioner's Estate is requesting to rezone 619 Lincolnway East from R-1 Single Family Residential to C-3 City Center Commercial. The property is located on Lincolnway East between Cedar Street and Laurel Street.

The building is currently being used as a 5-unit apartment. The home was built between 1940 (tax records) and 1946 (historical sites survey). In the 1976 Polk Directory, there are 5 apartments, but we have no documentation as to when this conversion occurred. C-3 City Center Commercial allows a range of uses including single and multi-family residential, offices, retail, and restaurants.

This block of Lincolnway contains an axillary parking lot for City Hall and a multi-tenant building zoned C-3, three single family homes zoned R-1 Single Family Residential, and a duplex zoned R-2 Two Family Residential.

The Petitioner's Estate is in the process of selling the property and learned the use did not match the zoning. According to tax records, Antonio Portolese has owned the property since 1978.

The Petitioner's Estate has indicated willingness to apply for a parking variance from 1.5 spaces per unit to 1 space per unit.

Pertinent City Departments have reviewed and approved the request.

RECOMMENDATION

The Planning Department recommends **approval** of Petition 20-13 to rezone 619 Lincolnway East from R-1 Single Family Residential District to C-3 City Center Commercial District. This recommendation is based upon the following findings of fact:

1. The City Center Commercial zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a transitional area, the rezoning to C-3 City Center Commercial is a desirable use for this property;
4. Extending the zoning one more parcel east, providing a compatible zoning to the historic multi-family use will not have an unfavorable and destabilizing impact on the neighborhood; and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

ATTACHMENTS

PETITION, AERIAL, LOCATION MAP





07 24 2020

619 Lincolnway East

Michael R. Portolese
Executor for the Estate of Antonio D Portolese
434 Calhoun St.
Mishawaka IN 46545

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN



June 26, 2020

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

Re: Petition to Rezone 619 Lincolnway East, Mishawaka IN

In my capacity as Personal Representative/Executor of the estate of Antonio D Portolese (deceased) hereby certify that the estate is the legal and rightful owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana to-wit:

Parcel ID: 71-09-15-154-004.000-023

Tax ID: 016-1026-1043

Legal Description: Lot 26 BARBEES Sub

Common Address: 619 Lincolnway East, Mishawaka IN 46544

Petitioner owns one hundred (100%) percent of the above described parcel of land which carries a zoning classification of R-1 Single Family Residential District. Said property is a five-unit rental property.

Petitioner desires said real estate to be rezoned to C-3 Commercial District. Petitioner further states that they intend to utilize said land for multi-family residential use.

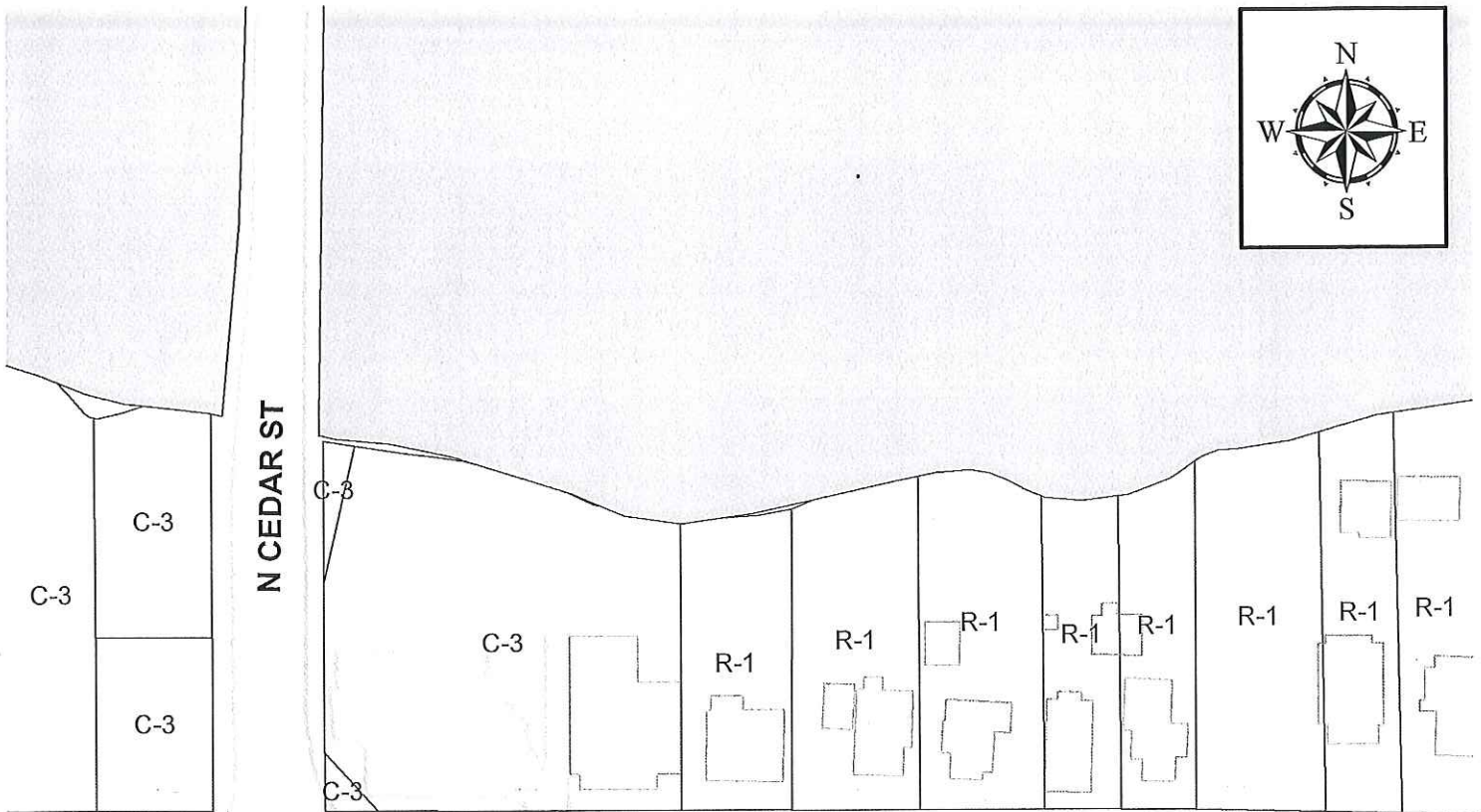
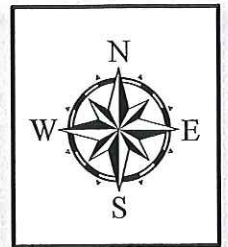
Wherefore, the petitioner prays and respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above described parcel of land located in the City of Mishawaka.

Michael R. Portolese

Michael R Portolese, Personal Representative
For the estate of Antonio D Portolese (deceased)

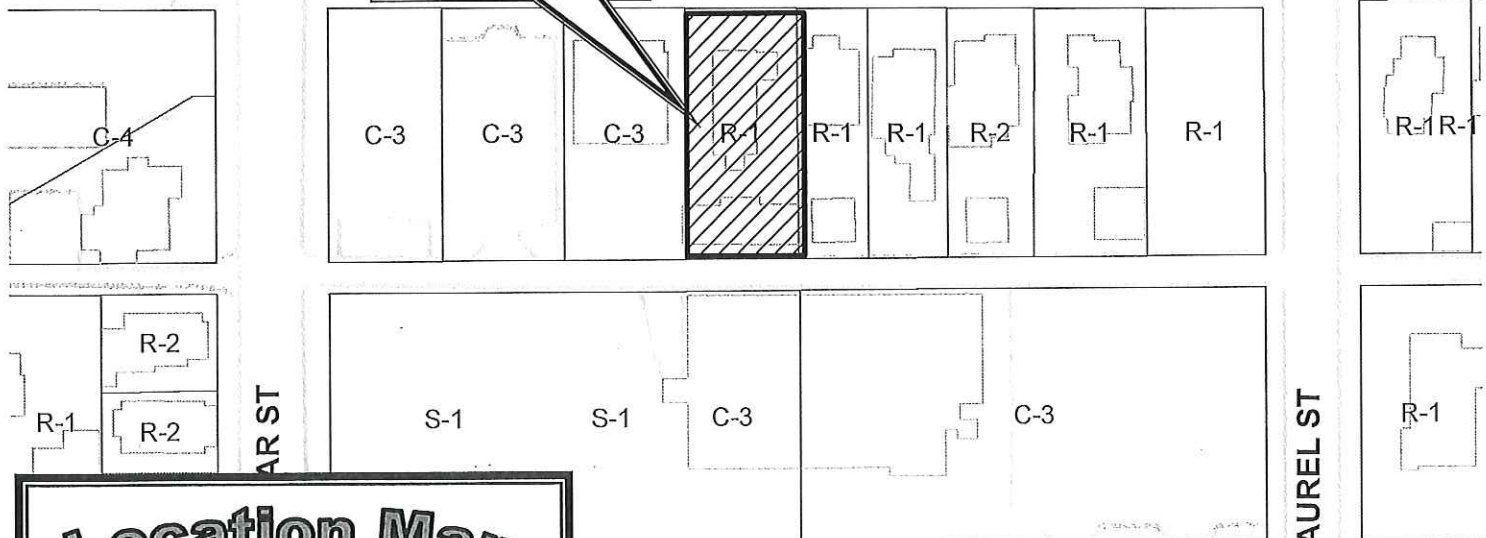
Cell Phone: (574) 532-5965

Email: mike@rci-products.com



LINCOLNWAY EAST

PET 20-13



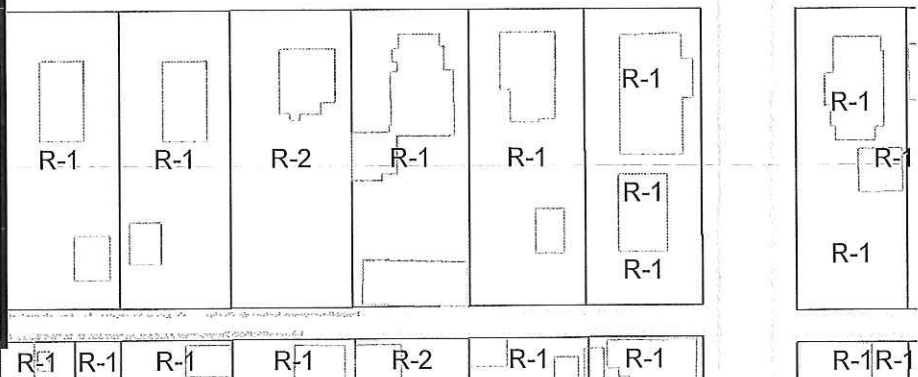
Location Map

PET 20-13

OWNER: ESTATE OF
ANTOINO D PORTOLESE
619 LINCOLNWAY EAST

REZONE FROM R-1
SINGLE FAMILY RESIDENTIAL
TO C-3 CITY CENTER
COMMERCIAL

E THIRD ST



1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-14

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-26

ORDINANCE NO. _____

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.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 15, Taylors Add to St. Jos Iron Works, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

COMMON ADDRESS: 613 West Third Street

which real estate is now classified as R-1 Single Family Residential District shall hereafter be within and a part of that District known as R-2 Two-Family Residential District designated in "The Zoning Ordinance of 1966" as amended.

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

1. The R-2 Two Family zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a varied area, the rezoning to R-2 Two Family District is a desirable use for this property;

Proposed Ordinance No: 20-26

Ordinance No: _____

4. Rezoning to R-2 Two Family District will have a favorable and stabilizing impact on the neighborhood as the use is not changing and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

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 _____, 2020, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2020, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORT

Location: 613 W Third

Date: August 11, 2020

Petition: 20 14

Prepared By: CH

GENERAL INFORMATION

Applicant: Antonio D Portolese Estate

Status: Property Owner

Request: Rezone from R-1 Single Family Residential to R-2 Two Family Residential

Zoning Classification: R-1 Single Family Residential

Lot Size: 50' X 142'

Applicable Regulations: Sec. 137-186 Residential R-2 District; Sec. 137-40 Plan Commission; & Sec. 137-41 Amendment to Zoning Ordinance and Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: R-1 Single Family Residential
East: R-2 Two Family Residential
West: R-1 Single Family Residential

Thoroughfare: Third Street

School District: School City of Mishawaka

Public Utilities: Available

Comprehensive Plan: Low Density Residential

ANALYSIS

The Petitioner's Estate is requesting to rezone 613 W Third from R-1 Single Family Residential to R-2 Two Family Residential. The property is located on Third Street between Center St. and Wells St.

The building is currently being used as a duplex. The home was built between 1897 (tax records) and 1900 (historical sites survey). The current address layer lists 607 and 613 as the addresses associated with this parcel. The 1953 Polk Directory, found online, lists 607 and 613. In the 1976 Polk Directory, the addresses listed are 607, 613 and 613½. We have no documentation as to when this conversion occurred.

This block between Center and Wells contains three single family homes, and two duplexes. The surrounding blocks contain single and two family dwellings. Parking should not become an issue because there is a one car garage and a long (80'+) driveway.

The Petitioner's Estate is in the process of selling the property and learned the use did not match the zoning.

Pertinent City Departments have reviewed and approved the request. We have received one letter of remonstrance.

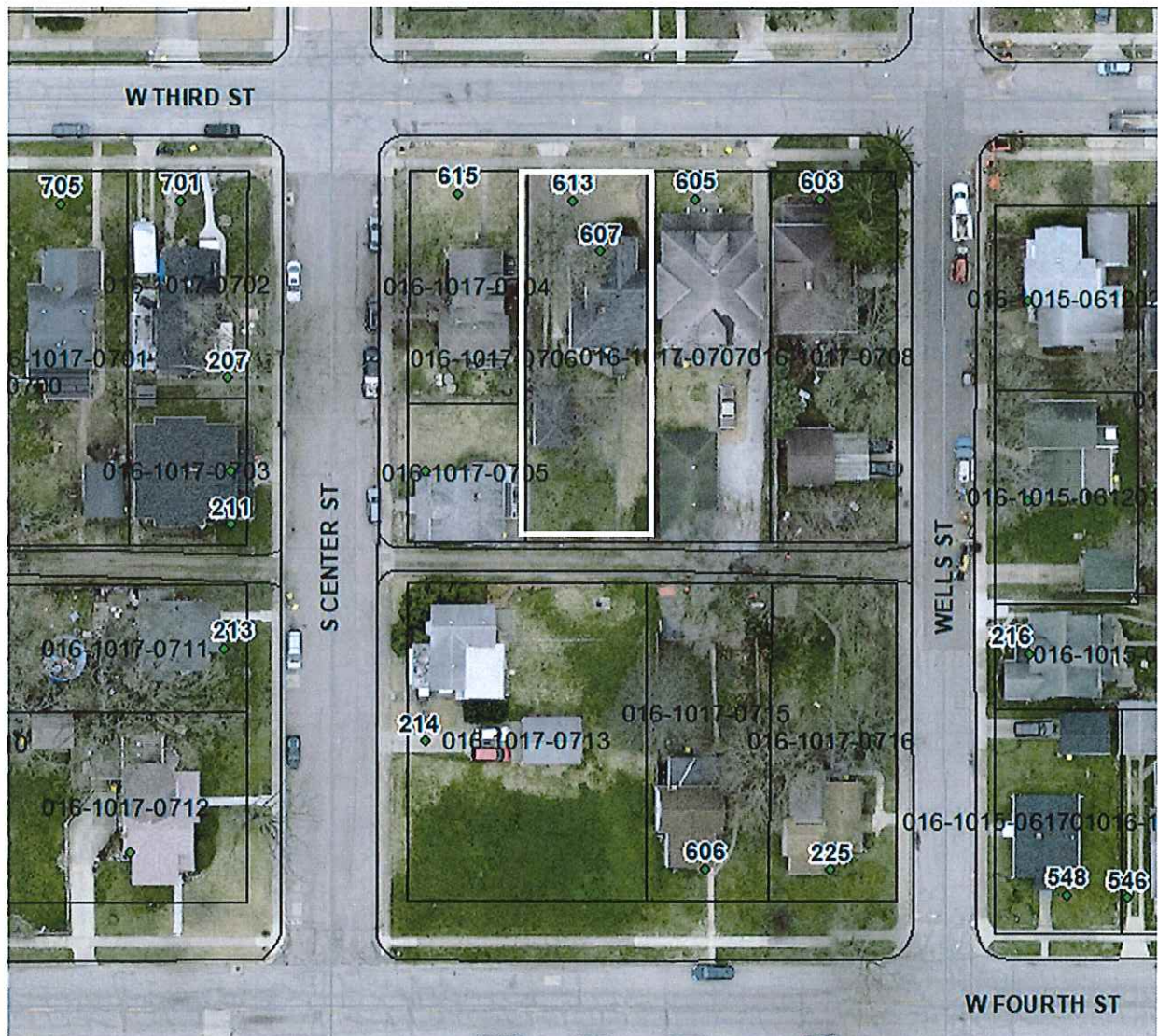
RECOMMENDATION

The Planning Department recommends **approval** of Petition 20-14 to rezone 613 W Third from R-1 Single Family Residential District to R-2 Two Family District. This recommendation is based upon the following findings of fact:

1. The R-2 Two Family zoning matches other properties in the immediate vicinity and the use would be compatible to the area;
2. Use and value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner because given the context of its location, its relationship to surrounding properties, staff feels that the most desirable use for this property is its historical multi-family use;
3. Because the parcel is located in a varied area, the rezoning to R-2 Two Family District is a desirable use for this property;
4. Rezoning to R-2 Two Family District will have a favorable and stabilizing impact on the neighborhood as the use is not changing and,
5. The City's Comprehensive Plan calls for low intensity residential use, and its historic use as a multi-family home is compatible and consistent with the higher density residential uses in the area.

ATTACHMENTS

AERIAL, PHOTOGRAPHS, PETITION, LOCATION MAP





613 W Third

Michael R. Portolese
Executor for the Estate of Antonio D Portolese
434 Calhoun St.
Mishawaka IN 46545



July 20, 2020

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

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN

Re: Petition to Rezone 613 W. 3rd St, Mishawaka IN

In my capacity as Personal Representative/Executor of the estate of Antonio D Portolese (deceased), I hereby certify that the estate is the legal and rightful owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana to-wit:

Parcel ID: 71-09-16-185-002.000-023
Tax ID: 016-1017-0706
Legal Description: Lot 15 TAYLORS ADD TO ST JOS IRON WORKS
Common Address: 613 W. 3rd St., Mishawaka IN

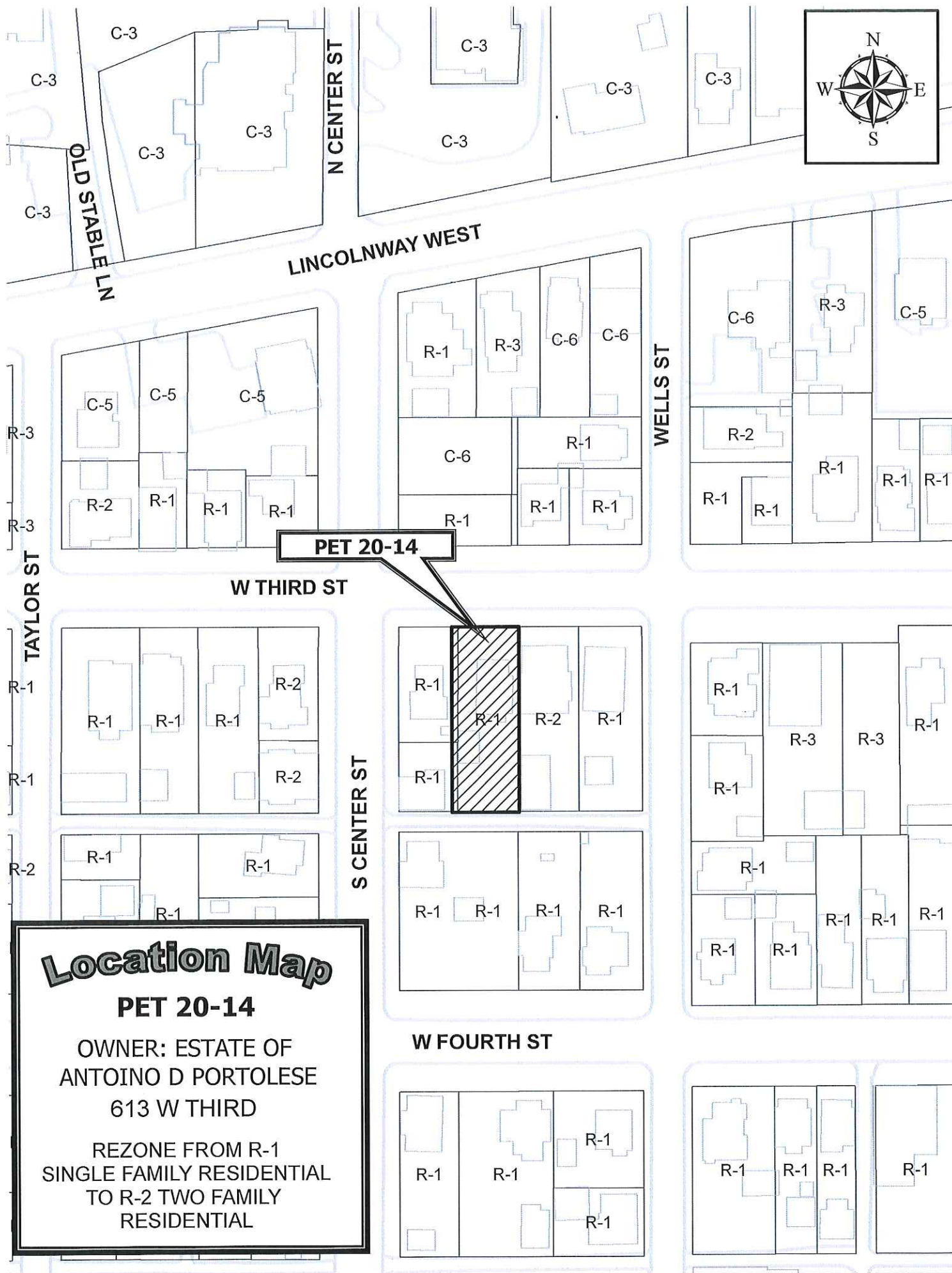
Petitioner owns one hundred (100%) percent of the above described parcel of land which carries a zoning classification of R-1 Single Family Residential District. Said property is a duplex rental property.

Petitioner desires said real estate to be rezoned to R-2 Two Family Residential. Petitioner further states that they intend to continue to utilize said land for two-family residential use.

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 rezoning the above described parcel of land located in the City of Mishawaka.

Michael R Portolese, Personal Representative
for the estate of Antonio D Portolese (deceased)

Cell Phone: (574) 532-5965
Email: mike@rci-products.com



1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-15

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-27

ORDINANCE NO. _____

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.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Lot 7 and Lot 8 as shown on the recorded plat of Deer Run Subdivision, Section Three in the Office of the Recorder of St. Joseph County, Indiana, as Instrument No. 1105126

COMMON ADDRESS: Northwest Corner of Fir Road and Deer Run Drive

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow for the development of a one-story assisted living facility subject to the following conditions:

1. Permitted uses shall be amended to include a one-story assisted living facility and other accessory uses including but not limited to common dining, activity rooms, family rooms, and recreation spaces.
2. Parking spaces shall be provided at a ratio of 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors.
3. Overstory or understory trees shall be provided along Fir Road at a rate compliant with the C-1 General Commercial District.
4. An existing tree row located along the north property line shall be maintained if within the property.
5. Parking lot screening per the C-1 General Commercial District shall be provided along the east side of the parking area adjacent to Fir Road.
6. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for the site.

Proposed Ordinance No: 20-27

Ordinance No: _____

7. The extension of all utilities to the site shall be at the developer's cost and expense.
8. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.
9. Building setbacks shall be a minimum of 25' from the east property line along Fir Road, the south property line along Deer Run Drive, and the south property line, and 5' from the west property line.
10. Pavement setbacks shall be a minimum of 10' from the east and south property lines, and 5' from the north and west property lines.
11. Building materials and colors shall comply with the C-1 General Commercial District with the exception of allowing fiber cement board siding and trim materials on all buildings.

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

1. Existing Conditions - The amendment will not alter or negatively impact the existing conditions of the surrounding area. Commercial and industrial uses more intensive than the proposed assisted living facility are currently permitted both within the portion of the PUD being amended and within vacant property in the PUD to the west and south.
2. Character of Buildings in Area - Very few buildings are located within the immediate area. A vacant athletic facility and the Preserve at Fir Road Road apartment complex are within the boundaries of the Deer Road PUD to the south. Low density single-family residential homes and undeveloped property are located predominantly along the east side of Fir Road.
3. The Most Desirable/Highest and Best Use - The proposed S-2 Planned Unit Development amendment for an assisted living facility is consistent with surrounding zoning classifications. The proposed use will be compatible with the existing and permitted land uses within the PUD.
4. Conservation of Property Values - The proposed zoning will not be injurious to property values in the surrounding area. A majority of the adjacent property is undeveloped with only a vacant athletic facility to the south and low-density residential homes to the east. Higher intensive uses for the undeveloped portions of the Deer Run PUD are currently permitted.
5. Comprehensive Plan - The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential development. However, the presence of the existing apartments and the vacant athletic facility has profoundly changed the character of the area where low density residential development is no longer appropriate.

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

Proposed Ordinance No: 20-27

Ordinance No: _____

PASSED by the Common Council of the City of Mishawaka, Indiana, this
_____ day of _____, 2020, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____,
2020, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Northwest corner of Fir Road & Deer Run Drive
Part of the Deer Run PUD including Lots 7 & 8 of the
Deer Run Subdivision, Section Three

Date: August 11, 2020

Petition: 20- 15

Prepared By: DJS

GENERAL INFORMATION

Applicant: Richard LaFree / Lang, Feeney & Associates, Inc.

Status: Property Owner / Surveyor & Site Design Consultant

Request: Amend the Deer Run Planned Unit Development (PUD) to allow for a one-story assisted living facility with 24 units

Zoning Classification: S-2 Planned Unit Development (Permitted Uses on the portion of the PUD to be amended include commercial uses subject to the C-8 Commercial development regulations)

Lot Size: 4.15 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: R Single Family District - Unincorporated St. Joseph County (Equestrian & Western tack store / Al-Bar Ranch)

South: S-2 Planned Unit Development (Vacant Land within the Deer Run PUD approved for Commercial Use & Vacant Athletic Facility)

East: R Single Family District - Unincorporated St. Joseph County (Residential)

West: S-2 Planned Unit Development (Vacant Land within the Deer Run PUD approved for Industrial Uses subject to the I-1 District development regulations)

Thoroughfare: Fir Road & Deer Run Drive

School District: Penn-Harris-Madison School Corporation

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the developer's expense

Comprehensive Plan: Low Density Residential

ANALYSIS

The petitioner, Richard LaFree, is requesting to amend a part of the Deer Run Planned Unit Development, originally approved in 2003 (Petition 03-42/Ord. 4818AA & 4819AA), to allow for the development of an

assisted living facility. At the direction of the Planning Staff, the request also states that the R-3 Multi-Family Residential development regulations shall be applicable except for the parking requirements. After review of similar PUD amendment requests, Staff is requesting that other development conditions be placed on the property. These conditions have been included in the staff recommendation.

The Planned Unit Development is located on west side of Fir Road between McKinley Avenue and Day Road. The part of the PUD being amended is bound by an equestrian and tack store to the north in unincorporated St. Joseph County, vacant land to the west, vacant land and a vacant building formerly occupied by the ICE Athletic Center to the south, and single-family residential property to the east in unincorporated St. Joseph County.

The amendment is to allow an approximate 14,200 sq. ft. one-story assisted living facility with 24 units within Lots 7 & 8 in the Deer Run Subdivision, Section Three (Plat 10-17). The two lots, which are located at the northwest corner of Fir Road and northern part Deer Run Drive, includes 4.15 acres of undeveloped land filled with scrub vegetation. The preliminary PUD site plan identifies JRM Properties, Inc. as the contingent purchaser and developer.

The original preliminary PUD site plan and ordinance permitted commercial uses subject to the C-8 High-Density Suburban Commercial District development standards within said Lots 7 & 8. The PUD amendment will allow an assisted living facility in addition to the previously approved uses.

Also at the direction of Staff, it was recommended that parking space requirements be amended based on other recently developed assisted living facilities in the City or the developer's anticipated need. Parking requirements identified in the petition are 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors. When applying these ratios to the proposed development, a total of 32 parking spaces will be required. The preliminary site plan shows 37 spaces will be provided. One access to the parking lot and site is proposed from Deer Run Drive.

The landscaping, as conceptually shown on the preliminary site plan, shows trees along Fir Road and within the parking area. The C-1 District standards for over-story or under-story trees shall be applicable to the property frontage along Fir Road. Parking screening shall also be required between the parking area and Fir Road. Perimeter trees will not be required along the north, west, or south property lines. However, the existing tree row located along the north property line shall be maintained if within the property. A more detailed landscape plan conforming to the PUD conditions shall be submitted with the final planned unit development site plan, and is subject to review and approval by the Planning Staff.

The architectural materials and colors of the building shall comply with the C-1 General Commercial design regulations with the exception of allowing fiber cement board siding and trim on all buildings.

Similar to when the original Planned Unit Development was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed Final Planned Unit Development site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

All pertinent City Departments have reviewed and approved the PUD amendment request.

The Engineering Department provided several comments related to stormwater runoff, sanitary sewer, and erosion control. These comment shall be addressed with the final site plan.

RECOMMENDATION

Staff recommends **approval** of Petition 20-15 to amend a part of the Deer Run PUD, being more specifically Lots 7 & 8 in the Deer Run Subdivision, Section Three, to allow for the development of a one-story assisted living facility subject to the following conditions:

1. Permitted uses shall be amended to include a one-story assisted living facility and other accessory uses including but not limited to common dining, activity rooms, family rooms, and recreation spaces.
2. Parking spaces shall be provided at a ratio of 1 space per 6 residential units, plus 1 space per employee at peak employment level, and 20 spaces for visitors.
3. Overstory or understory trees shall be provided along Fir Road at a rate compliant with the C-1 General Commercial District.
4. An existing tree row located along the north property line shall be maintained if within the property.
5. Parking lot screening per the C-1 General Commercial District shall be provided along the east side of the parking area adjacent to Fir Road.
6. One monument sign not exceeding 8' in height and 60 square feet in area shall be permitted for the site.
7. The extension of all utilities to the site shall be at the developer's cost and expense.
8. All site lighting shall be limited to 25 feet in height. 90-degree cut-off fixtures shall be required for both pole and wall mounted fixtures. The current City Ornamental street light standard may also be substituted by the developer in lieu of the cut-off fixture requirement noted above.
9. Building setbacks shall be a minimum of 25' from the east property line along Fir Road, the south property line along Deer Run Drive, and the south property line, and 5' from the west property line.
10. Pavement setbacks shall be a minimum of 10' from the east and south property lines, and 5' from the north and west property lines.
11. Building materials and colors shall comply with the C-1 General Commercial District with the exception of allowing fiber cement board siding and trim materials on all buildings.

The recommendation is based on the following findings of fact:

1. Existing Conditions- The amendment will not alter or negatively impact the existing conditions of the surrounding area. Commercial and industrial uses more intensive than the proposed assisted living facility are currently permitted both within the portion of the PUD being amended and within vacant property in the PUD to the west and south.
2. Character of Buildings in Area- Very few buildings are located within the immediate area. A vacant athletic facility and the Preserve at Fir Road Road apartment complex are within the boundaries of the Deer Road PUD to the south. Low density single-family residential homes and undeveloped property are located predominantly along the east side of Fir Road.
3. The Most Desirable/Highest and Best Use- The proposed S-2 Planned Unit Development amendment for an assisted living facility is consistent with surrounding zoning classifications. The proposed use will be compatible with the existing and permitted land uses within the PUD.
4. Conservation of Property Values- The proposed zoning will not be injurious to property values in the surrounding area. A majority of the adjacent property is undeveloped with only a vacant athletic facility to the south and low density residential homes to the east. Higher intensive uses for the undeveloped portions of the Deer Run PUD are currently permitted.
5. Comprehensive Plan- The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential development. However, the presence of the existing apartments and the vacant athletic facility has profoundly changed the character of the area where low density residential development is no longer appropriate.

ATTACHMENTS

Photographs, Petition, Original Preliminary PUD Plan (Petition 03-42), Amended Preliminary PUD Plan, Location Map



Aerial Photograph
Deer Run Planned Unit Development
West of Fir Road between McKinley Avenue and Day Road



P1. Looking northwesterly toward the property from the Fir Rd. & Deer Run Dr. intersection.



P2. Looking westerly toward the property from Fir Road.

PET 20-15

July 22, 2020

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

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN

Re: PETITION FOR PUD AMENDMENT

The Undersigned, Richard LaFree 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:

A parcel of land being a part of the Northeast Quarter Section 3, Township 37 North, Range 3 East, Penn Township, City of Mishawaka, St. Joseph County, Indiana and being more particularly described as Lot 7 and Lot 8 as shown on the recorded plat of Deer Run Subdivision, Section Three in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 1105126.

Vacant land located in the 1400 block of Deer Run Drive, Mishawaka, Indiana 46545 area.

Petitioner owns one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for one story office and commercial use.

Petitioner desire said real estate to be amended to allow for an assisted living facility. This facility shall have 24 rooms. The developmental regulations for R-3 Multi Family Residential District shall be used except for the parking requirement. The parking requirements shall be based on 1 space per 6 residential unit (rooms), plus 1 space per employee at peak employment level, and 15-20 spaces for visitors.

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 amending the PUD of the above described parcel of land located in the City of Mishawaka.

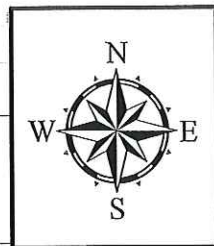
DocuSigned by:

Bonnie LaFree Suttor

Richard LaFree

By: Bonnie LaFree Suttor POA for Richard C. LaFree

Contact Person
Lang, Feeney & Associates, Inc.
Terance D. Lang
715 S. Michigan Street
South Bend, Indiana 46601
Phone: 574-233-1841
Terry@LangFeeney.com



PET 20-15

DEER RUN DR

FIR RD

Location Map

PET 20-15

OWNER: RICHARD LAFREE

NORTH WEST CORNER OF
DEER RUN DRIVE
AND FIR ROAD

PUD AMENDMENT TO
ALLOW ASSISTED
LIVING FACILITY

HEMMER LN

SPICER LN

SPICER LN

1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

PETITION #20-16

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-28

ORDINANCE NO. _____

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:

Parcels of land being a part of the Northeast Quarter of Section 22, Township 37 North, Range 3 East, Penn Township St. Joseph County, Indian and being more particularly described as follows:

Parcel 1: Commencing at the northeast corner of said Northeast Quarter, thence South 00°00'00" West along the east line of said quarter, a distance of 759.00 feet; thence South 89°58'40" West, a distance of 330.00 feet to the point of beginning; thence continuing South 89°58'40" West, a distance of 165.65 feet; thence North 00°00'00" West, a distance of 263.87 feet; thence North 89°58'40" East, a distance of 165.65 feet; thence South 00°00'00" East, a distance of 263.87 feet to the point of beginning. Containing 1.00 acre.

Parcel 2: Commencing at the northeast corner of said Northeast Quarter, thence South 00°00'00" West along the east line of said quarter, a distance of 759.00 feet; thence South 89°58'40" West, a distance of 1047.66 feet to the point of beginning; thence continuing South 89°58'16" West, a distance of 405.58 feet; thence North 00°00'19" West, a distance of 264.00 feet; thence North 89°58'40" East, a distance of 405.62 feet; thence South 00°00'12" West, a distance of 263.95 feet to the point of beginning. Containing 2.46 acres more or less.

COMMON ADDRESSES: Property South of 1141 and 1241 East Twelfth Street

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 of Mishawaka, Indiana, and shall carry a classification for zoning of I-1 Light Industrial District.

Proposed Ordinance No. 20-28

Ordinance No. _____

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

1. Existing Conditions – The subject property is vacant industrial land in Unincorporated St. Joseph County, purchased by AWT, Inc. in 2016.
2. Character of Buildings in the Area – The character of buildings and land uses located along Twelfth Street, between Merrifield Ave and Byrkit Ave are primarily industrial, with a few other commercial land uses.
3. The most desirable/highest and best use – Because of the property's location adjacent existing industrial development, the most desirable use for the property is industrial.
4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area. The combining of all property owned with a possibility for expansion of the existing adjacent industrial use is compatible with industrial and commercial uses.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan, created in 1990, identified this area as industrial, which is how it has developed.

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 _____, 2020, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2020, at o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

Proposed Ordinance No. 20-28

Ordinance No. _____

APPROVED by me this _____ day of _____, 2020, at _____ o'clock
_____, M.

David A. Wood, Mayor

STAFF REPORT

Location: Property south of 1141 and 1241 E Twelfth St.

Date: August 11, 2020

Petition: 20- 16

Prepared By: DJS

GENERAL INFORMATION

Applicant: AWT, Inc.

Status: Property Owner

Request: To annex and establish zoning to the I-1 Light Industrial District for the expansion of an adjacent business

Existing Zoning: Unincorporated St. Joseph County (I Industrial District)

Proposed Zoning: I-1 Light Industrial District

Lot Size: 3.46 acres

Applicable Regulations: Section 137-585 to 137-587 / I-1 Light Industrial &
Section 137-41 / Amendments to Zoning Map &
Indiana Code 36-4-3-2.1 and 36-4-3-3.1

SPECIAL INFORMATION

Area Development Pattern: North: I-1 Light Industrial (AWT owned property)
South: Unincorporated St. Joseph County – I Industrial District
East: I-1 Light Industrial
West: I-1 Light Industrial

Thoroughfare: Twelfth Street

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and/or will be extended to/throughout the site at the developer's/owner's expense.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies a preferred or planned use for this property as Industrial (Manufacturing, Warehousing, and Distribution).

ANALYSIS

Proposal:

The applicants are proposing to annex and establish zoning for part of a vacant parcel of land (Tax Parcel 014-1027-043614), located south of property located at 1141 and 1241 E Twelfth Street.

The 3.46 acre area, which is two separate pieces, is immediately adjacent to and south of Adorn, a manufacturing business at 1141 and 1241 E Twelfth Street. AWT, Inc, is the current property owner of all the property.

The purpose of the proposed annexation and required zoning to the I-1 Light Industrial District is allow for the future expansion of the Adorn business. A subdivision was also submitted to combine all property owned by AWT, Inc. into one lot. Normally when an annexation and zoning petition is filed, a preliminary site plan is required to conceptually show how the property will be developed. In this case, a preliminary site plan was not provided since there are no immediate development plans.

If the proposed annexation and rezoning request is approved, a detailed final site plan must be submitted to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm water drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements.

Annexation:

1141 E Twelfth was annexed in 1971. 1241 E Twelfth was annexed in 1973. The southern part of 1241 E Twelfth was annexed in 1996 prior to a building addition.

Per the State of Indiana's annexation laws, a parcel is required to share one-eighth, or 12.5%, of its boundary with the existing City boundary in order to be annexed. Based on the existing city boundary, Parcel 1 has 527.76 feet, or %, of the total 859.06 feet of the perimeter of the property will be contiguous with the exiting city limits. Parcel 2 has 669.57 feet, or 61%, of the total 1339.15 feet of the perimeter of the property will be contiguous with the existing city limits. This exceeds the required 12.5% contiguity.

Location/Context:

The site is located on the south side of Twelfth Street, between Merrifield Ave and Byrkit Ave. It is bordered to the north by Toot & Tell'em in Unincorporated St. Joseph County and the existing Adorn business within the City; to the west by a vacant industrial building within the City and the existing Adorn business within the City; to the south by vacant land in Unincorporated St. Joseph County; and to the east an industrial business and the existing Adorn business both within the City. The area between Merrifield Avenue and Bykit Avenue is primarily industrial.

Zoning Change:

Staff believes that the proposed zoning of this property to the I-1 Industrial District is appropriate given that the property will be added to the adjacent business for possible future expansion. The subsequent subdivision will clean up the parcel layer by combining all property owned by AWT, Inc, currently three parcels, into one parcel.

Transportation/Roads:

According to the latest available traffic counts, there were 8,300 annual average daily trips (AADT) (June 2015) along Twelfth Street just east of Byrkit Ave. According to the latest available traffic counts, there were 7,897 annual average daily trips (AADT) (June 2015) along Twelfth Street just west of Industrial Dr. The counts at these locations have been relatively constant over the past 20, actually decreasing from a high of almost 12,000 AADT in 2000. Due to the widening of Twelfth Street, as outlined in the 2045 Transportation Plan below, traffic volumes are expected to increase after the project is completed.

The 2045 Transportation Plan, prepared by the Michiana Area Council of Governments with input from City staff and the County Engineering Department, shows planned added travel lanes along Twelfth Street, from Dodge to Campbell. The projected completion year for this project is 2030. It should be noted that the plan may be amended in future years dependent on infrastructure priorities, projected travel demand, and available funding.

All pertinent City Departments have reviewed and approved the request for annexation and zoning.

RECOMMENDATION

Staff recommends approval of Petition 20-16 to annex and establish zoning to the I-1 Light Industrial District for property south of and adjacent to 1141 and 1241 E Twelfth Street. The property will be combined with adjacent property owned by the same property owner to create one legal lot of record.

This recommendation is based on the following Findings of Fact:

1. Existing Conditions – The subject property is vacant industrial land in Unincorporated St. Joseph County, purchased by AWT, Inc. in 2016.
2. Character of Buildings in the Area – The character of buildings and land uses located along Twelfth Street, between Merrifield Ave and Byrkit Ave are primarily industrial, with a few other commercial land uses.
3. The most desirable/highest and best use – Because of the property's location adjacent existing industrial development, the most desirable use for the property is industrial.
4. Conservation of property values – The proposed zoning will not be injurious to the property values in the surrounding area. The combining of all property owned with a possibility for expansion of the existing adjacent industrial use is compatible with industrial and commercial uses.
5. Comprehensive Plan – The Mishawaka 2000 Comprehensive Plan, created in 1990, identified this area as industrial, which is how it has developed.

ATTACHMENTS

Aerial Map, Photographs of the Annexation Area, Rezoning & Annexation Petition, and Location Maps



Aerial Photograph



The building at 1241 E Twelfth (annexation Parcel 1 east of parking lot).



The Building at 1141 E Twelfth (annexation Parcel 2 south of parking lot).

July 22, 2020

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN



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 AWT, Inc. respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

Parcels of land being a part of the Northeast Quarter of Section 22, Township 37 North, Range 3 East, Penn Township St. Joseph County, Indian and being more particularly described as follows:

Parcel 1: Commencing at the northeast corner of said Northeast Quarter, thence South 00°00'00" West along the east line of said quarter, a distance of 759.00 feet; thence South 89°58'40" West, a distance of 330.00 feet to the point of beginning; thence continuing South 89°58'40" West, a distance of 165.65 feet; thence North 00°00'00" West, a distance of 263.87 feet; thence North 89°58'40" East, a distance of 165.65 feet; thence South 00°00'00" East, a distance of 263.87 feet to the point of beginning. Containing 1.00 acre.

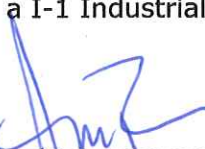
Parcel 2: Commencing at the northeast corner of said Northeast Quarter, thence South 00°00'00" West along the east line of said quarter, a distance of 759.00 feet; thence South 89°58'40" West, a distance of 1047.66 feet to the point of beginning; thence continuing South 89°58'16" West, a distance of 405.58 feet; thence North 00°00'19" West, a distance of 264.00 feet; thence North 89°58'40" East, a distance of 405.62 feet; thence South 00°00'12" West, a distance of 263.95 feet to the point of beginning. Containing 2.46 acres more or less.

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located adjacent to the rear of the property at 1141 and 1241 East 12th Street and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a I-1 Industrial District. Petitioners further state they intend to utilize said land for continued use of the adjacent, existing manufacturing site and it's expansion.

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 I-1 Industrial District.

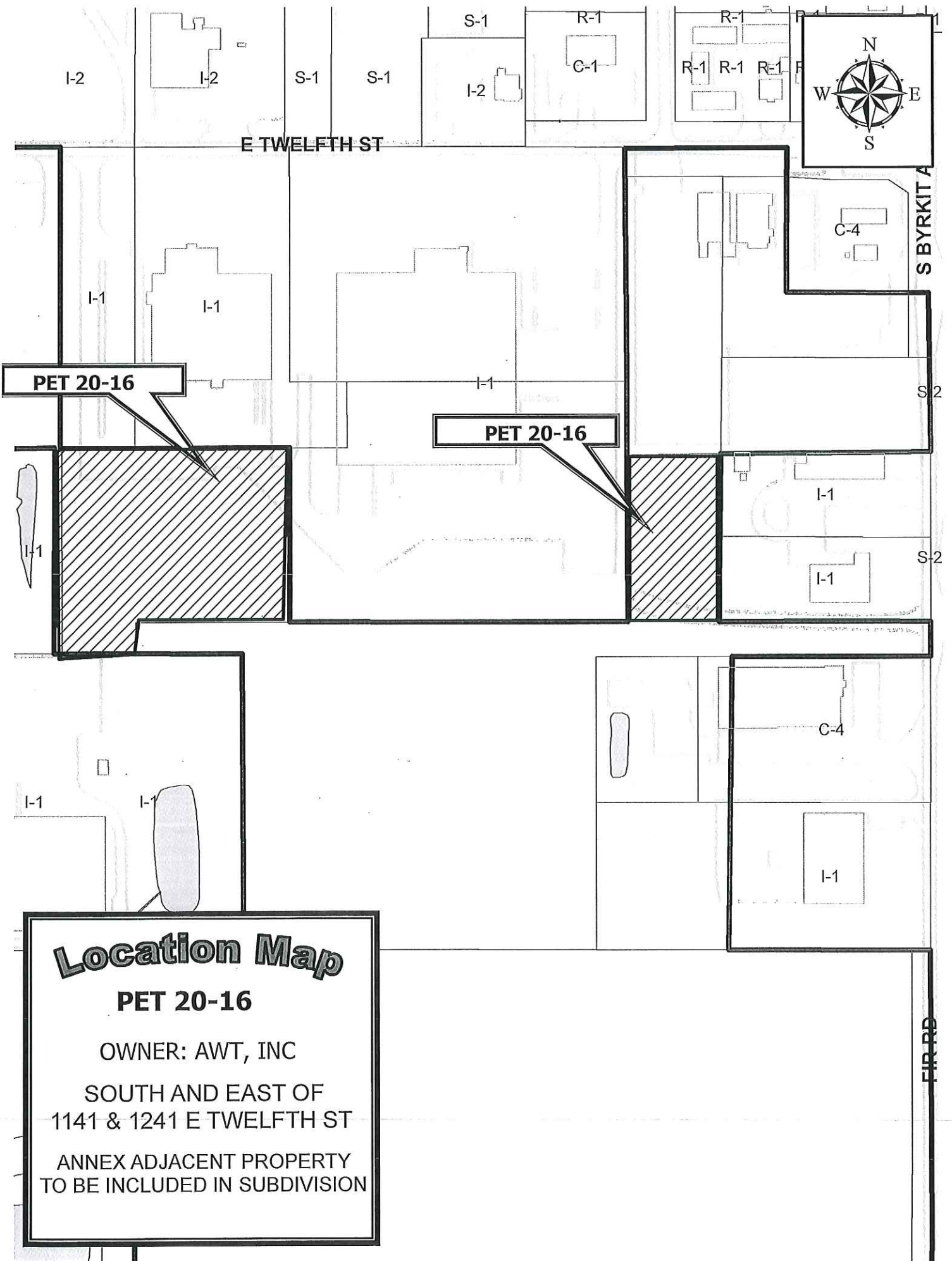

AWT, Inc.

By: ABBY THOMAS

Contact Person:

Lang, Feeney & Associates, Inc.
Terance D. Lang
715 S. Michigan Street
South Bend, Indiana 46601
574-233-1841

Terry@LangFeeney.com



1st Reading 8-17-20
2nd Reading
Passed
Failed
Continued To

RECEIVED
DEBORAH S. BLOCK, MMC

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

PETITION 20-17

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2020-29

ORDINANCE NO. _____

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.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

LOT 2 AND A PART OF LOT 1 IN GUMWOOD ROAD DEVELOPMENT P.U.D. SUBDIVISION, RECORDED AS INSTRUMENT NUMBER 1518561 IN THE RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA AND ALSO BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2, THENCE NORTH 00°30'31" WEST ALONG THE WEST LINE OF SAID LOT 2 EXTENDED, 912.90 FEET; THENCE NORTH 89°27'41" EAST, 782.68 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 2; THENCE NORTH 00°28'12" WEST ALONG THE WEST LINE OF SAID LOT 2, 562.65 FEET; THENCE NORTH 68°36'22" EAST, 327.80 FEET; THENCE SOUTH 21°40'35" EAST, 37.48 FEET; THENCE NORTH 89°46'50" EAST, 171.07 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1; THENCE SOUTH 00°31'05" EAST ALONG THE EAST LINE OF SAID LOTS 1 AND 2, 1531.34 FEET; THENCE SOUTH 44°28'18" WEST, 35.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 2; THENCE SOUTH 89°27'41" WEST ALONG THE SOUTH LINE OF SAID LOT 2, 1249.18 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 33.80 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHT OF WAY OF RECORD.

COMMON ADDRESS: Northwest Corner of Gumwood Road and West Cleveland Road

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow one dumpster enclosure between a principal building and public right-of-way only when the gate is not visible from Gumwood Road, to

Proposed Ordinance No: 20-29

Ordinance No: _____

permit wood as a secondary building material, and be setback a minimum of 25' from the right-of-way, subject to the following conditions:

1. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.
2. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

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

1. Existing Conditions – The subject property, located along Gumwood Road and Cleveland Road (S.R. 20), is partially developed with multi-family residential and commercial uses and with vacant land approved for the same uses. Existing similar multi-family residential and commercial developments are located to the north and across Gumwood Road to the east.
2. Character of Buildings in Area – The character of a majority of the buildings along Gumwood Road and W. Cleveland Road (S.R. 23) are commercial. The buildings north and west of the property are predominantly multi-family and single-family residential.
3. The most desirable/highest and best use – Due to the parcels' location and the significant commercial development along the Main Street/Gumwood Road corridor combined with the adjacent multi-family and single-family residential uses, the most desirable use for the property is a transitional mix of commercial and residential uses. The additional proposed dumpster enclosure and location is appropriate to support the existing and future commercial development within the property.
4. Conservation of property values – The proposed amendment will not be injurious to property values in the surrounding area. The dumpster enclosure will be constructed with high quality aesthetically appealing materials to match the main building. The adjacent berm will be raised and additional landscaping provided to screen the dumpster from the public right-of-way.
5. Comprehensive Plan – Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) corridor. The proposed dumpster enclosure does not affect the permitted uses previously approved for the property.

Proposed Ordinance No: 20-29

Ordinance No: _____

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 _____, 2020, at _____ o'clock _____.M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2020, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at _____ o'clock _____.M.

David A. Wood, Mayor

STAFF REPORT

Location: Northwest corner of Gumwood Road &
W. Cleveland Road (S.R. 23)

Date: August 11, 2020

Petition: 20- 17

Prepared By: DJS

GENERAL INFORMATION

Applicant: Great Lakes Capital Management, LLC (a/k/a Grandview Flats II, LLC & Gumwood Acquisitions, LLC) / Abonmarche Consultants

Status: Property Owner / Engineer & Site Design Consultant

Request: Amend the Grandview Phase II Planned Unit Development to allow one dumpster enclosure between a principal building and public right-of-way only when the gate is not visible from Gumwood Road, to permit wood as a secondary building material, and to be setback a minimum of 25' from the right-of-way

Zoning Classification: S-2 Planned Unit Development (Permitted commercial and multi-family residential uses per Ord. 5434 & 5611)

Lot Size: 33.8 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: S-2 Planned Unit Development (Grandview Mixed-Use Development including future commercial and existing multi-family residential uses & City of Mishawaka/Municipal Wellfield)

South: S-1 Extensive Open Space/Public (Cemetery/St. Joseph Valley Memorial Park)

East: S-2 Planned Unit Development (Heritage Square and Toscana Park Mixed-Use developments including commercial and residential uses)

West: C-2 Shopping Center Commercial (Multi-Tenant Commercial/Centennial Place) & Unincorporated St. Joseph County (Single-Family Residential)

Thoroughfare: Gumwood Road & W. Cleveland Road (S.R. 23)

School District: South Bend Community School Corporation

Public Utilities: All utilities are available and have been extended to/throughout the site at the developer's/owner's expense.

Comprehensive Plan: Not specifically identified in the Mishawaka 2000 Comprehensive Plan. However, the permitted uses per the PUD are generally consistent with the established policy and trend of encouraging retail and multiple family uses within the area.

ANALYSIS

The Petitioner is requesting to amend the Grandview Phase II Planned Unit Development pertaining only to the previously approved conditions and development regulations as outlined below:

Proposed Uses:

4. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.

Building/Parking Setbacks:

1. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

When the Final PUD Site Plan for Grandview Phase II was submitted for review in 2018 (SP 18-B), the plan did not include any dumpsters locations within the site. The applicant's engineering and site design consultant stated that dumpsters were not required as all trash receptacles would be kept internal to the buildings. Though prior to approval and recording the plans, dumpsters were added to the site plan west of the buildings for the multi-family residential use. The location of the dumpsters behind the building complied with the development regulations.

In March, the applicant contacted Planning Staff to inquire on the possibility of placing an additional dumpster within the easternmost row of parking spaces along Gumwood Road. The dumpster is proposed to be located just north of the entrance drive and will serve Bar Louie, a new restaurant tenant. Planning Staff initially requested that the dumpster be placed in any location other than the first row of parking along Gumwood Road to minimize visibility. The applicant stated that the proposed location is the most ideal for access and reducing potential internal conflicts between the residents and patron's vehicles, and trash haulers.

Staff supports the amendment request to allow a dumpster enclosure where proposed. The dumpster enclosure will be constructed with a combination of brick and cedar to match the materials and design of the main building. A landscaping mound east of the enclosure will be raised and additional landscaping planted to screen the enclosure from Gumwood Road.

All other previously approved development standards and conditions of approval per Ordinance 5434 and 5611 are applicable.

All pertinent City Departments have reviewed and approved the request providing no comments.

RECOMMENDATION

Staff recommends approval of Petition 20-17 to amend the Grandview Phase II Planned Unit Development as follows:

Proposed Uses:

4. All loading docks, dumpsters, and ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall primarily constructed with materials matching the building materials of the principal building. Wood, including cedar, is permitted as a secondary material used in construction of the dumpster. One dumpster enclosure may be located between a principal building and street only if the gate is not visible from Gumwood Road.

Building/Parking Sebacks:

2. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23/Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road.

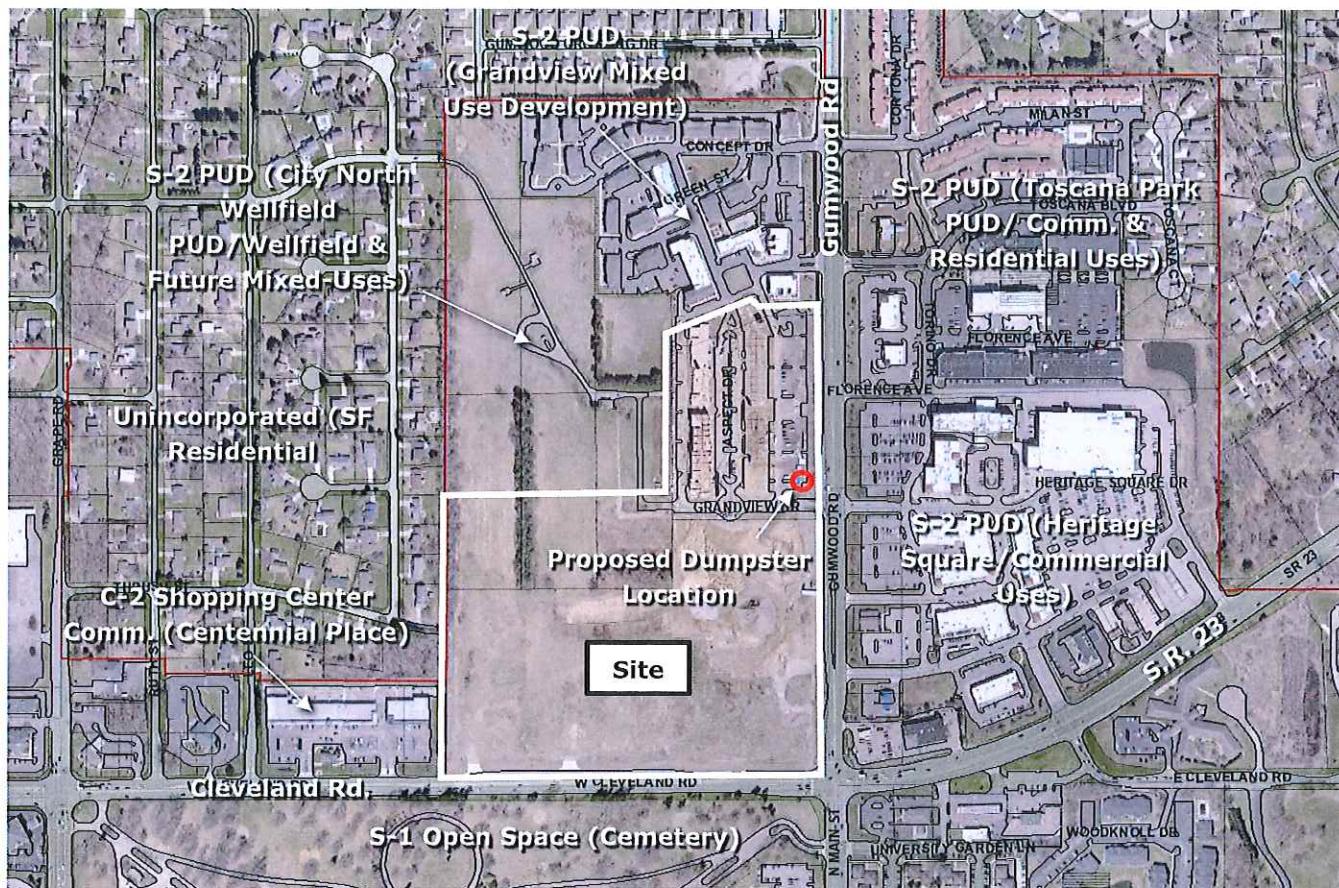
All other previously approved development standards and conditions of approval per Ordinance 5434 and 5611 shall be adhered to.

This recommendation is based upon the following findings of fact:

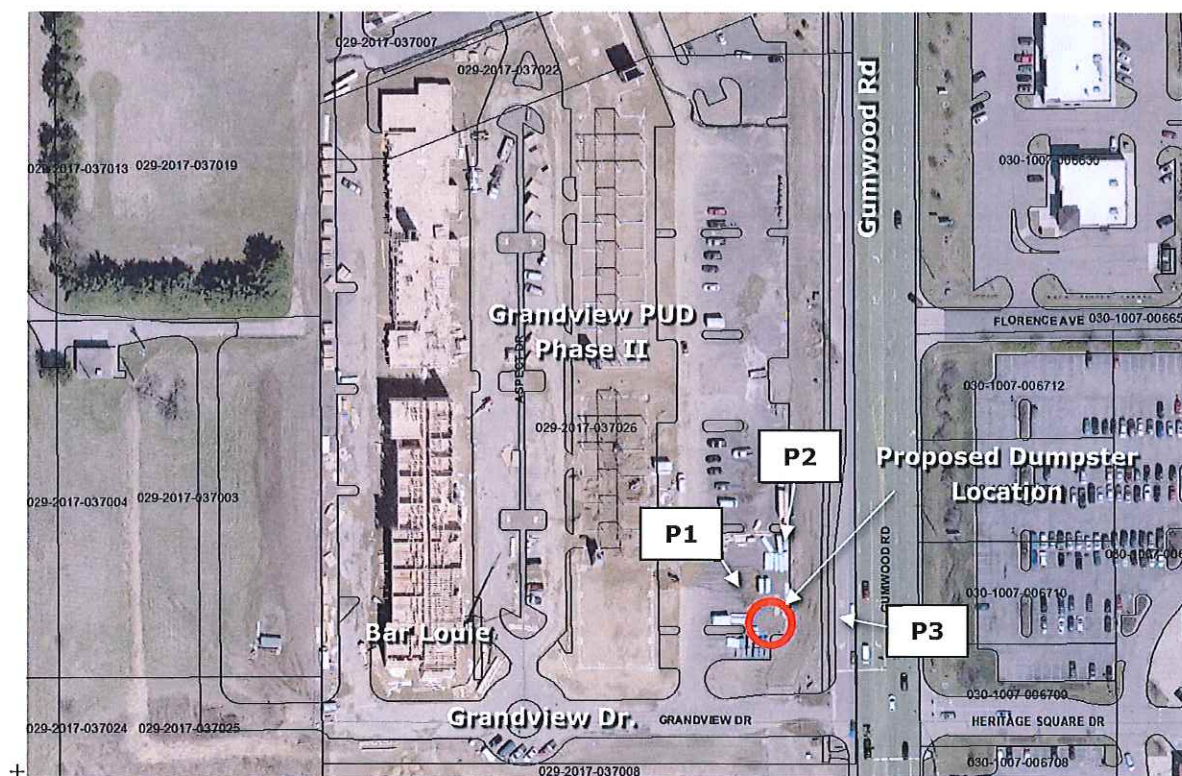
1. Existing Conditions – The subject property, located along Gumwood Road and Cleveland Road (S.R. 20), is partially developed with multi-family residential and commercial uses and with vacant land approved for the same uses. Existing similar multi-family residential and commercial developments are located to the north and across Gumwood Road to the east.
2. Character of Buildings in Area – The character of a majority of the buildings along Gumwood Road and W. Cleveland Road (S.R. 23) are commercial. The buildings north and west of the property are predominantly multi-family and single-family residential.
3. The most desirable/highest and best use – Due to the parcels' location and the significant commercial development along the Main Street/Gumwood Road corridor combined with the adjacent multi-family and single-family residential uses, the most desirable use for the property is a transitional mix of commercial and residential uses. The additional proposed dumpster enclosure and location is appropriate to support the existing and future commercial development within the property.
4. Conservation of property values – The proposed amendment will not be injurious to property values in the surrounding area. The dumpster enclosure will be constructed with high quality aesthetically appealing materials to match the main building. The adjacent berm will be raised and additional landscaping provided to screen the dumpster from the public right-of-way.
5. Comprehensive Plan – Although this specific property was not guided in the Mishawaka 2000 plan, the petition is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, guided general commercial uses along the Main Street (Gumwood Road extended) corridor. The proposed dumpster enclosure does not affect the permitted uses previously approved for the property.

ATTACHMENTS

Aerials, Photographs, Petition, PUD Amendment Exhibit (Site Plan), Dumpster Enclosure Illustration, Location Map



Aerial Photograph
Grandview Planned Unit Development
Northwest Corner of Gumwood Road & Cleveland Road (S.R. 23)



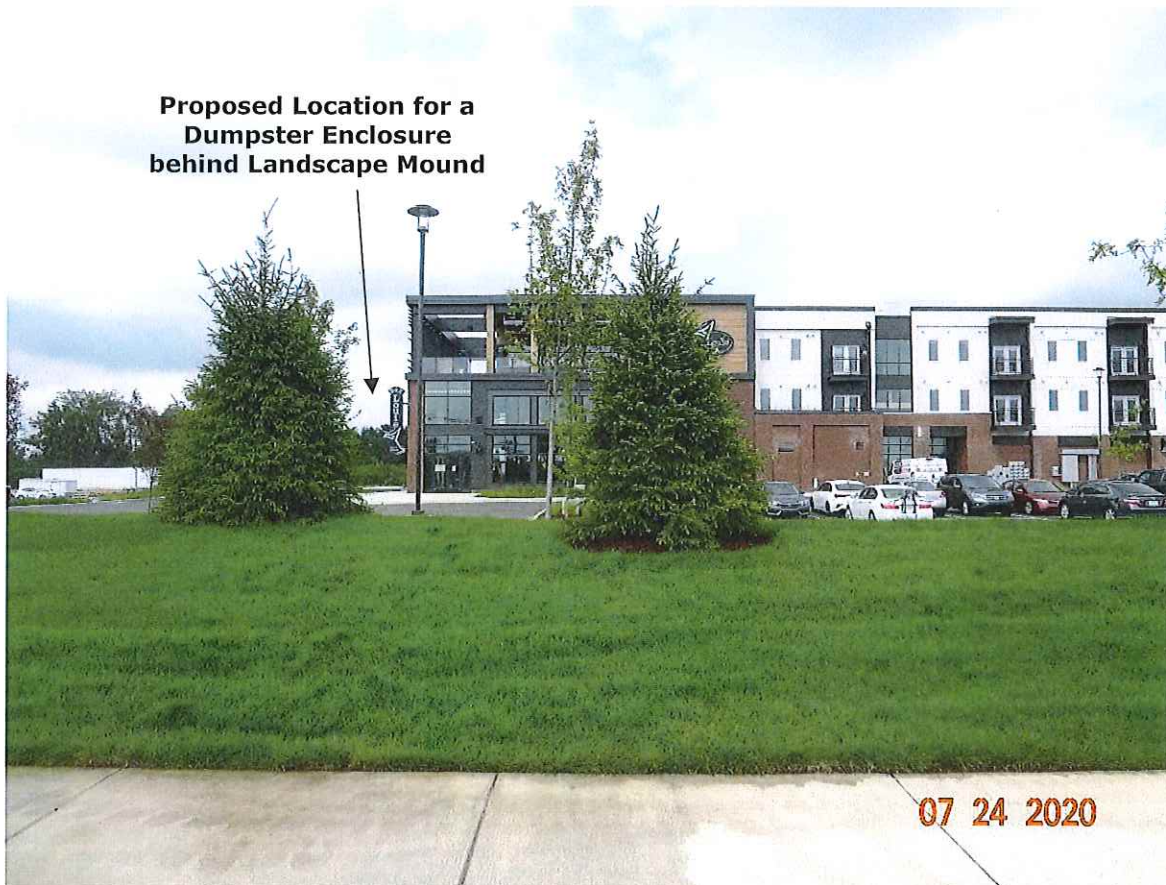
Proposed Dumpster Location



P1. Looking southeast from within the existing parking lot toward the location of the proposed dumpster enclosure.



P2. Looking southerly along Gumwood Road toward the proposed dumpster location.



P3. Looking westerly from Gumwood Road toward the proposed dumpster enclosure to be located behind an improved landscape mound.

Pet 20-17



Engineering • Architecture • Land Surveying

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

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN

RE: Grandview Phase II PUD Amendment

The undersigned, Ryan C. Rans, Member of Great Lakes Capital Management, LLC, 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:

LOT 2 AND PART OF LOT 1 IN GUMWOOD ROAD DEVELOPMENT P.U.D. SUBDIVISION, RECORDED AS INSTRUMENT NUMBER 1518561 IN THE RECORDER'S OFFICE OF ST. JOSEPH COUNTY, INDIANA AND ALSO BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, CITY OF MISHAWAKA, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2, THENCE NORTH 00°30'31" WEST ALONG THE WEST LINE OF SAID LOT 2 EXTENDED, 912.90 FEET; THENCE NORTH 89°27'41" EAST, 782.68 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 2; THENCE NORTH 00°28'12" WEST ALONG THE WEST LINE OF SAID LOT 2, 562.65 FEET; THENCE NORTH 68°36'22" EAST, 327.80 FEET; THENCE SOUTH 21°40'35" EAST, 37.48 FEET; THENCE NORTH 89°46'50" EAST, 171.07 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1; THENCE SOUTH 00° 31'05" EAST ALONG THE EAST LINE OF SAID LOTS 1 AND 2, 1531.34 FEET; THENCE SOUTH 44°28'18" WEST, 35.36 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 2; THENCE SOUTH 89°27'41" WEST ALONG THE SOUTH LINE OF SAID LOT 2, 1249.18 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 33.80 ACRES, MORE OR LESS, AND SUBJECT TO EASEMENTS, COVENANTS, AND RIGHTS OF WAY OF RECORD.

COMMON ADDRESS: Northwest Corner of Gumwood Road and Cleveland Road

Petitioner owns one-hundred percent (100%) of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for multifamily uses and commercial uses within the C-1 General Commercial and C-2 Shopping Center Commercial zoning districts. Dumpsters shall be located away from roads behind principal buildings.

Petitioner desires said real estate to be amended as follows:

1. Proposed Uses:

1. All loading docks, dumpsters, ATM machines, and mechanical equipment shall be screened from view. Dumpsters shall be screened by a wall matching the building materials of the principal building. Dumpster locations shall be located away from any roads behind principle buildings and located away from internal collector drives. Dumpster enclosures may be located between a principal building and street only if the gate is not visible from Gumwood or S.R. 23 / Cleveland Road.

2. Building / Parking Setbacks:

1. A minimum 50' building setback shall be provided along Gumwood Road and S.R. 23 / Cleveland Road. A dumpster enclosure may be located a minimum 25' setback from Gumwood Road and S.R. 23 / Cleveland Road.

WHEREFORE, the petitioner respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, and appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka

DocuSigned by:

Ryan Rans

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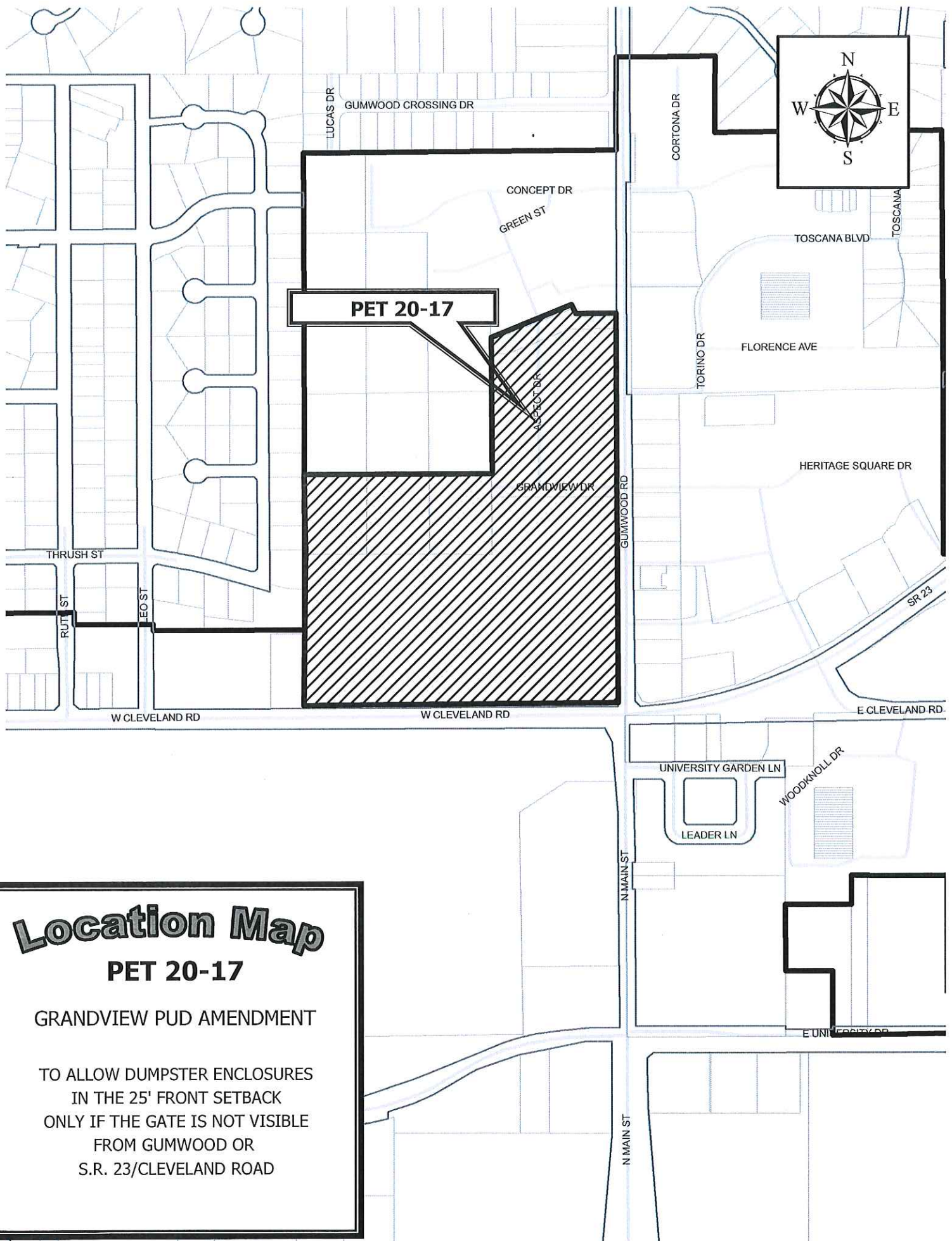
Ryan C. Rans, Member

Great Lakes Capital Management, LLC
(a/k/a Grandview Flats II, LLC)

CONTACT PERSON

Mike Huber
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 347-4610
mhuber@abonmarche.com





AUG 13 2020

RESOLUTION NO. 2020-15
Miscellaneous Property AcquisitionsCITY CLERK
MISHAWAKA, IN

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF
MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S
PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY
APPROVED COMMON COUNCIL RESOLUTION 2014-07 WHICH
APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN
COMMISSION APPROVING A CERTAIN DECLARATORY
RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE
NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION
OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE
NORTHWEST IMPROVEMENT PROJECT INTO ONE
CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN
AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE
CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY
THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION**

WHEREAS, on February 24, 2014, the City of Mishawaka Redevelopment Commission (the "Commission") approved and adopted its Resolution No. 2014-03 entitled "Resolution of the City of Mishawaka Redevelopment Commission Designating and Declaring Certain Areas as Economic Development Areas, Amending the Boundaries of the Northwest Area Improvement Project, Consolidating the Southside Economic Development Area and the Northwest Area Improvement Project Into One Area, And Amending the Economic Development Plan for the Consolidated Area Improvement Project" (the "Declaratory Resolution"); and

WHEREAS, the Declaratory Resolution (i) designated and declared certain areas within the City of Mishawaka, Indiana (the "City") to be economic development areas (the "Expansion Areas") for purposes of tax increment financing pursuant to Section 39 of Indiana Code 36-7-14 (the "Act") to expand the existing Northwest Area Improvement Project (the "Northwest Area"); (ii) removed certain parcels from the Northwest Area; (iii) consolidated the Southside Economic Development Area (the "Southside Area") and the Northwest Area into one area (to be known as the Consolidated Area Improvement Project) (the "Consolidated Area"); and (iv) approved an amendment (the "Plan Amendment") to the Economic Development Plan for the Northwest Area (the "Economic Development Plan") to provide for such Economic Development as amended to serve as the economic development plan for the Consolidated Area Improvement Project (as amended by the Plan Amendment shall hereinafter be referred to as the "Economic Development Plan"); and

WHEREAS, on March 11, 2014, the City of Mishawaka Plan Commission (the "Plan Commission") adopted and approved its resolution 2014-01, determining that the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, conform to the plan of development for the City and approving, ratifying and

confirming the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, and designated such resolution as the written order of the Plan Commission approving the Declaratory Resolution and the Economic Development Plan, as amended by the Plan Amendment, as required by Section 16 of the Act (the "Plan Commission Order"); and

WHEREAS, Section 16 of the Act prohibits the Commission from proceeding until the Plan Commission Order is approved by the legislative body of the City; and

WHEREAS, the Common Council of the City (the "Common Council") previously approved the Plan Commission Order by Common Council Resolution 2014-07; and

WHEREAS, as part of the previous approval various public improvement projects were listed as part of the Economic Development Plan; and

WHEREAS, a number of those projects including the continued redevelopment of the former Uniroyal properties and the acquisition of a blighted commercial properties in the downtown/in the area improvement project were included in the economic development plan; and

WHEREAS, the Administration is asking the legislative body for its review and approval of adding certain properties to the City's acquisition list to implement a portion of these projects; and

WHEREAS, the description of the properties proposed to be added are as follows:

610, 612, and 614 Liberty Drive, 325 West Grove Street, and 332 West Mishawaka Avenue

Lots 1, 2, 3, and 4 Lawrence & Battells Bl 25

Tax key numbers: 016-2006-0190, 016-2006-0191, and 016-2006-0192

And

Lots 22, 23, and 24 Lawrence & Battells Blk 25

Tax key number : 016-2006-0198

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of Mishawaka, Indiana, as follows:

1. The referenced parcels are hereby added to the City's acquisition list as part of the consolidated area improvement projects
2. This Resolution shall be in full force and effect from and after its passage by the Common Council.

Passed and adopted at a meeting of the Common Council of the City of Mishawaka, Indiana, held on August 17, 2020.

COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA

Gregg Hixenbaugh, President

ATTEST:

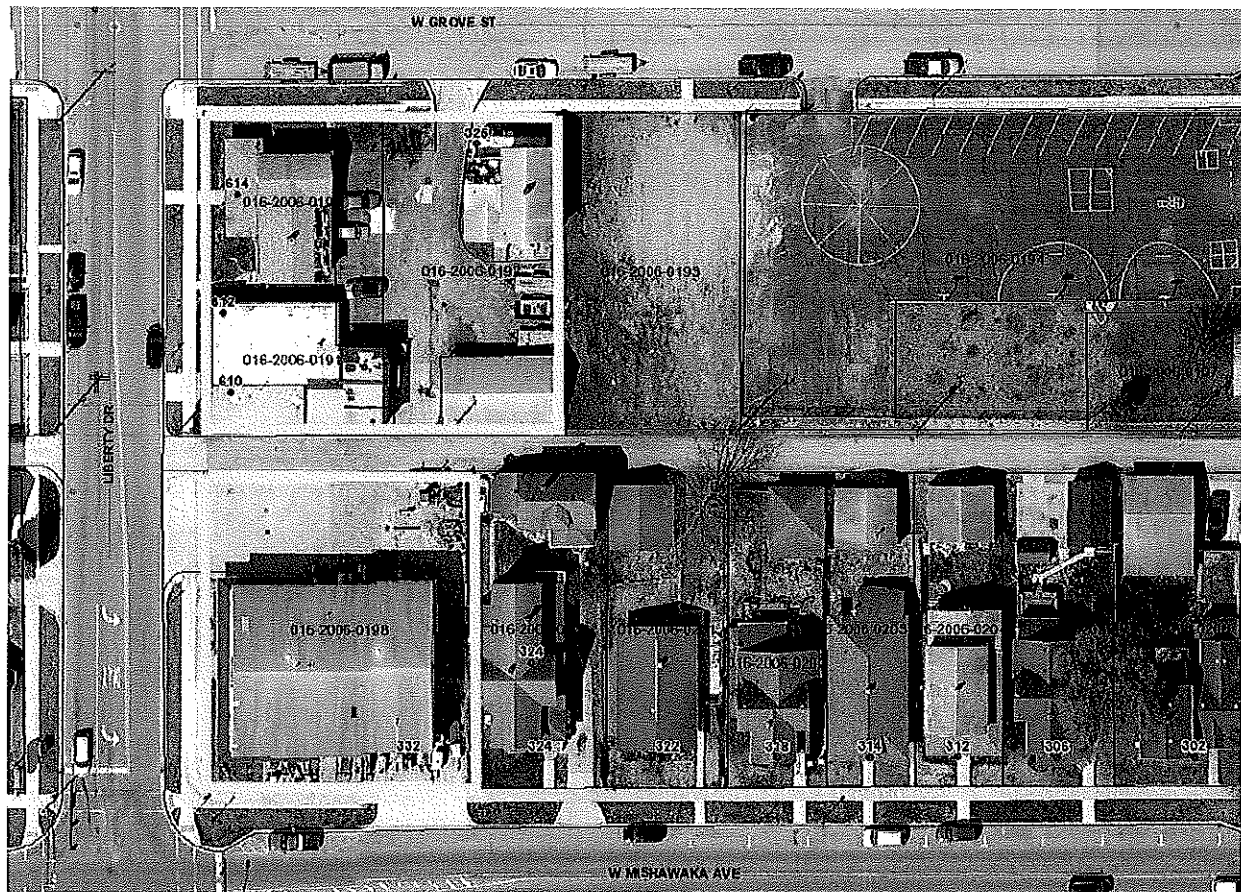
Deborah S. Block
Clerk of the City of Mishawaka, Indiana

Presented by me to the Mayor of the City of Mishawaka, Indiana, on the _____
day of August, 2020, at the hour of _____ .m.

Deborah S. Block
Clerk of the City of Mishawaka, Indiana

This Resolution approved and signed by me on the ____ day of August, 2020, at
the hour of _____ .m.

David A. Wood
Mayor of the City of Mishawaka, Indiana



BUY AND SELL AGREEMENT

THIS AGREEMENT, made and entered into as of the 24th day of August, 2020 by and between BAJAB III LLC, hereinafter referred to as “Seller”, and **CITY OF MISHAWAKA**, acting by and through its Redevelopment Commission, hereinafter referred to as “Buyer”, All of St. Joseph County, State of Indiana,

WITNESSETH THAT:

The Seller promises and agrees to sell and convey to the Buyer, and the Buyer promises and agrees to purchase of and from the Seller, for the sum of Two Hundred and Fifty Three Thousand Dollars and zero cents. (\$253,000), the properties located at 610, 612, and 614 Liberty Drive, and 325 West Grove Street, as well as, the property located at 332 West Mishawaka Avenue for the sum of Two Hundred and Eighty-Two Thousand Dollars and zero cents (\$282,000). The total of both acquisitions is Five Hundred and Thirty Five Thousand Dollars and zero cents (\$535,000). City of Mishawaka, St. Joseph County, Indiana, more particularly described as follows:

Lots 1, 2, 3, and 4 Lawrence & Battells Bl 25

Tax key numbers: 016-2006-0190, 016-2006-0191, and 016-2006-0192

And

Lots 22, 23, and 24 Lawrence & Battells Blk 25

Tax key number : 016-2006-0198

This purchase is contingent on the following:

1. Upon the Seller’s approval of this agreement, the Buyer will order one additional appraisal of the properties. The average of the appraisal performed by the seller and the one being obtained by the buyer must meet or exceed the offer price for each parcel, or this agreement shall be considered null and void, unless a reduction in price is jointly agreed upon by both the Buyer and Seller.

2. As a public entity, the Buyer is subject to specific purchasing laws identified by the Indiana Code. This includes adding this property to an official acquisition list that requires the approval of the Common Council of the City of Mishawaka.
3. The Seller shall remove and properly dispose of any chemicals or loose non-building materials that require special disposal and cannot be disposed of as part of standard City of Mishawaka residential trash service. All disposal shall be done in accordance with applicable laws and restrictions.

Subject to and upon the terms and conditions hereinafter set forth:

1. Buyer shall obtain, at Buyer's expense, a commitment for a \$253,000 Owner's Policy of Title Insurance in which the title insurance company shall agree to insure merchantable title in the name of the Buyer after delivery of a Deed to Buyer from Seller for the properties located at 610, 612, and 614 Liberty Drive, and 325 West Grove Street. Buyer shall also obtain, at Buyer's expense, a commitment for a \$282,000 Owner's Policy of Title Insurance in which the title insurance company shall agree to insure merchantable title in the name of the Buyer after delivery of a Deed to Buyer from Seller for the property located at 332 West Mishawaka Avenue. Any defects in title which tend to render the same un-merchantable shall be submitted by the Buyer to the Seller in writing and the Seller shall be given reasonable time to correct the same. If the Seller shall fail or refuse to cause such defects to be corrected, Buyer shall have the option of accepting title subject to defects, or of terminating this Agreement.
2. After the title to the described real estate has been approved by the Buyer, and upon payment of the balance of the purchase price by the Buyer to the Seller, the Seller shall execute and deliver a Warranty Deed conveying the real estate above described to the Buyer, free and clear of all liens and encumbrances, except as provided herein, and subject to all covenants, restrictions, easements, and zoning ordinances of record.

3. It is understood and agreed by the parties hereto that Buyer is purchasing the real estate and personal property covered by this agreement in an "as is" condition and that Seller has made no guarantees or warranties, expressed or implied, concerning said personal property, real estate, or any improvements thereon.
4. Pending the timely delivery of the aforementioned appraisal, this transaction shall be closed on or about the 18th day of September, 2020. This time frame may be extended by the Seller as may be requested not to extend beyond January 1, 2021 without the consent of the Buyer. It is understood that the Buyer wants to extend to the Seller an extended period of time to address the potential relocation of tenants. As such the commercial property located at 332 West Mishawaka Avenue may be closed on separately and independently of the other properties. The Buyer at its discretion may request and require additional assurances, including but not limited to the escrow of funds, if the closings occur separately, understanding that the Buyers intent of purchase is to land mass all of the properties and that separately, the properties are worth significantly less to the Buyer if they cannot be acquired together.
5. Seller shall deliver possession of the real estate above described to the Buyer at the time of closing. The Seller has identified that no tenants will be residing on the property at the time of closing. Furthermore, the Seller agrees to deliver possession to the buyer with no tenants occupying the premises nor with any tenants holding any lease hold interest in the property. The Buyer shall be permitted to inspect the premises on the day of closing to insure the building is not occupied.
6. Seller, at their option, shall have the right to limited salvage rights in the real estate located at 610, 612, and 614 Liberty Drive, and 325 West Grove Street. All such salvage rights are to be approved by the Buyer prior to Seller exercising their salvage rights. Salvage shall specifically not include anything that would structurally modify or impact the structure. As part of any salvage, the Seller shall be responsible for maintaining a secure structure not creating any openings that would freely allow birds, animals, or people to enter the building. The Seller shall have the time up to the closing

of the transaction to complete any desired salvage work. No salvage rights shall be provided for 332 West Mishawaka Avenue.

7. Risk of loss or damage to any improvements located upon the real estate above described shall remain with the Seller until the time of delivery of the Warranty Deed conveying title from Seller to Buyer and possession of the premises by Buyer.
8. Seller acknowledges that because Federal Funds may be used by the Buyer in the purchase of the subject property that the sale on behalf of the Seller is voluntary. Seller further acknowledges that the Buyer will not use the power of eminent domain to acquire the property. Seller acknowledges that the estimate of the fair market value of all the properties to be \$535,000. Seller further acknowledges that since the purchase is a voluntary, arm's length transaction, Seller would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.
9. Seller shall pay any unpaid taxes and assessments for prior years. Taxes for the current year shall be prorated to the date of closing based upon the last official tax rate.
10. The covenants, agreements, and conditions herein contained shall be binding upon the parties hereto and shall also extend to and be binding upon their respective heirs, legal representatives, and assigns.
11. The Seller shall assist with and provide any historical documentation relative to known environmental conditions on the property including but not limited to underground tanks and other existing conditions on the property of an environmental nature. This shall include any existing environmental reports such as a Phase 1 or Phase 2 environmental studies as may exist.
12. Vendor's Affidavit. Seller shall provide Buyer with an executed Vendor's Affidavit at the Closing in form acceptable to the Title Company.

13. In addition to any other obligations assumed by Seller hereunder, Seller shall pay for deed preparation, and one-half (1/2) of Meridian Title Company closing fees. Buyer shall pay the other one-half (1/2) of closing fees, plus the costs associated with recording the deed.
14. Seller shall be responsible for maintaining all properties until closing and for paying for all necessary maintenance, utilities, and repairs to keep the properties code compliant. Seller shall also maintain a proper insurance on the property until closing, fully insuring it against loss.
15. In the event that the Seller or Buyer breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or to enforce its rights hereunder and prevails, then the party in default agrees to pay all reasonable costs, attorney fees, and expenses incurred by the party not in default in enforcing the covenants and agreements contained herein.
16. No modification to this Agreement shall be valid unless in writing and signed by all parties.
17. If any provision of this Agreement is deemed void or unenforceable, the same shall in no way impair the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.
18. It is expressly agreed and understood that this Agreement contains all of the agreements of the parties and that no verbal agreements of any kind shall be binding upon the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

BUYER

SELLER

CITY OF MISHAWAKA, acting by and
Through its Redevelopment Commission
By:

BAJAB III LLC

Gary O'Dell, President

Kris Ermeti, Secretary

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

APPEAL #20-35

RESOLUTION NO. 2020- 16

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:

1035 East McKinley Avenue, 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 **1035 East McKinley Avenue, Mishawaka, Indiana**, more particularly known and described as follows:

Lots 9 & 10 Tohulka & Reynolds Add, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will allow the sale of tires and automotive mechanical work in the I-1 Light Industrial District subject to the following conditions:

1. Submittal of an Administrative Site Plan
2. Installation of a grit/oil/water separator if any work containing fluids such as brake jobs or oil changes are going to occur at this site

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. Approval will not be injurious to the public health, safety, morals and general welfare of the community because there are other similar uses in the McKinley/Merrifield corridor;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property will be used similarly to other properties in the immediate area;
3. The need for the variance arises from some condition peculiar to the property in that automobile uses are not allowed in the I-1 Industrial District;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the property is currently vacant, but the proposed tenant's use is not permitted;
5. The recommendation is consistent with Comprehensive Plan which indicates both general commercial and industrial uses for this area.

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 _____, 2020, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2020,
at _____ o'clock ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock _____ .m.

David A. Wood, Mayor

STAFF REPORT

Location: 1035 E McKinley

Date: August 11, 2020

Appeal: 20 35

Prepared By: CH

GENERAL INFORMATION

Applicant: JADET LLC

Status: Property Owner

Request: Use variance to allow automobile repair in I-1 Light Industrial District

Zoning Classification: I-1 Light Industrial District

Lot Size: 0.49 acres

Applicable Regulations: Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance;
Section 137-586 / I-1 Light Industrial District - Uses

SPECIAL INFORMATION

Area Development Pattern: North: C-4 Automobile Oriented Commercial (vacant car lot)
South: C-4 Automobile Oriented Commercial (pawn shop)
East: C-4 Automobile Oriented Commercial (auto detailing)
West: I-1 Light Industrial (lumberyard)

Thoroughfare: McKinley Avenue

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and existing to the site.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies General commercial along McKinley and Industrial along the railroad tracks.

ANALYSIS

The Appellant is requesting a use variance to allow automobile repair, such as tires and oil changes in the I-1 Light Industrial District. A Use Variance was requested as opposed to a rezoning in order to allow the current request for automobile repair while maintaining the underlying I-1 Light Industrial zoning for future uses.

The building was built in 1980, according to tax records. Previous businesses at this location include Old Bob's Country Store and the Sign Shop. This area, at the intersection of McKinley Avenue, Merrifield Avenue, and the railroad tracks has a mix of commercial and industrial uses. The closest residential property is approximately 500 feet away.

All pertinent departments reviewed the request and provided the following comments:

- Building requires a "change of occupancy" permit.
- Engineering requires a grit/oil/water separator be installed if any work containing fluids, like brake jobs or oil changes are going to occur at this site. If it is determined that a grit/oil/water separator is required, a permit to do this work shall be obtained from the Engineering Department.
- Fire Department noticed a "lack of fire hydrants in area". The City will be installing a fire hydrant in the area, but it will not be on this property, therefore it will not affect this project.

Prior to occupying the building Planning Staff requests a site plan be submitted addressing the above items. Planning Staff suggests meeting with the property owner and tenant prior to submitting the site plan.

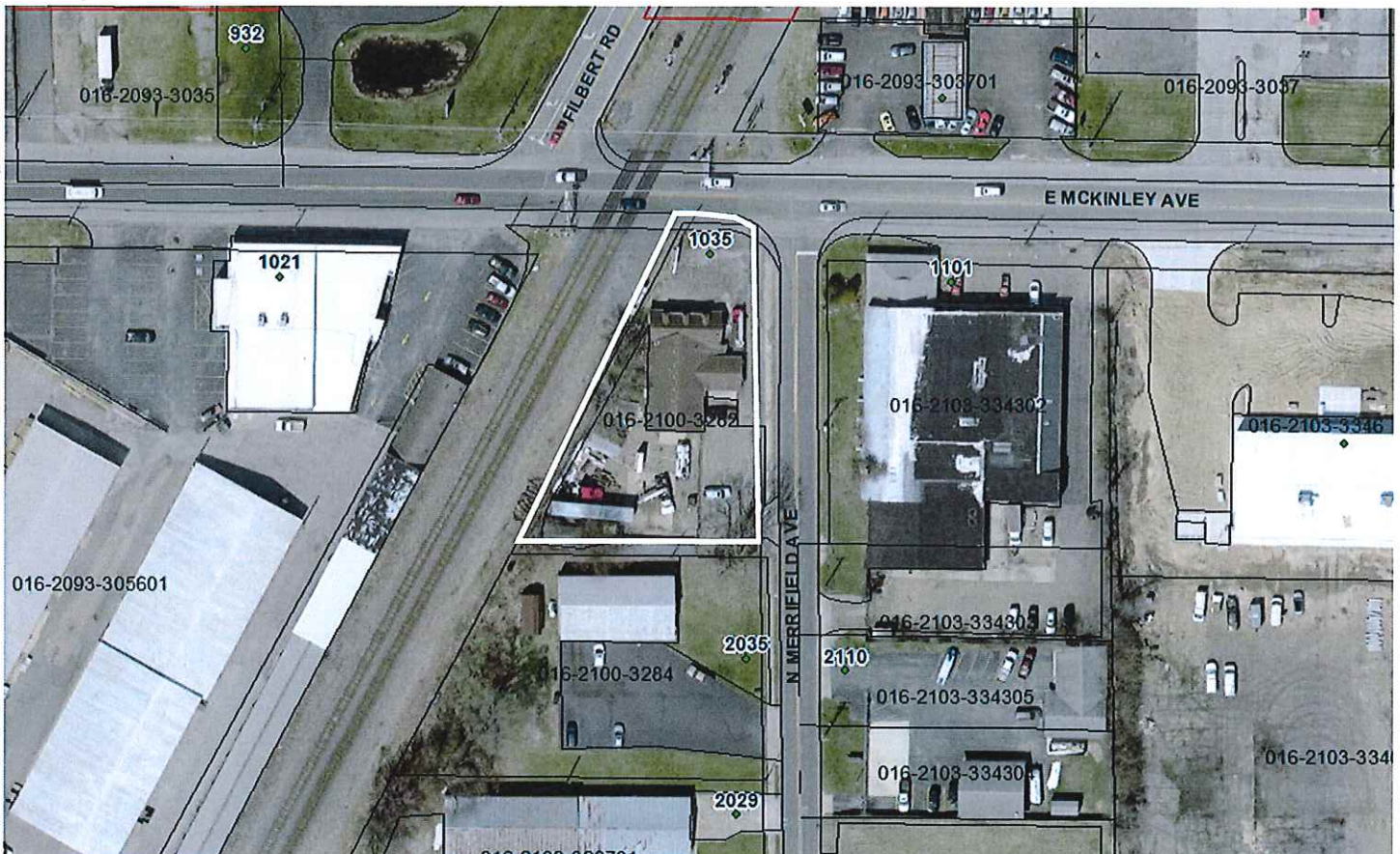
RECOMMENDATION

The Planning Staff recommends approval of Appeal 20-35 to allow a use variance for automobile repair and sale and installation of tires and wheels in I-1 Light Industrial District at 1035 E McKinley. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because there are other similar uses in the McKinley/Merrifield corridor;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the property will be used similarly to other properties in the immediate area;
3. The need for the variance arises from some condition peculiar to the property in that automobile uses are not allowed in the I-1 Industrial District;
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the property is currently vacant, but the proposed tenant's use is not permitted;
5. The recommendation is consistent with Comprehensive Plan which indicates both general commercial and industrial uses for this area.

ATTACHMENTS

Aerial, Photographs, Appeal, Location Map





A view from McKinley



View from Merrifield



Rear storage area

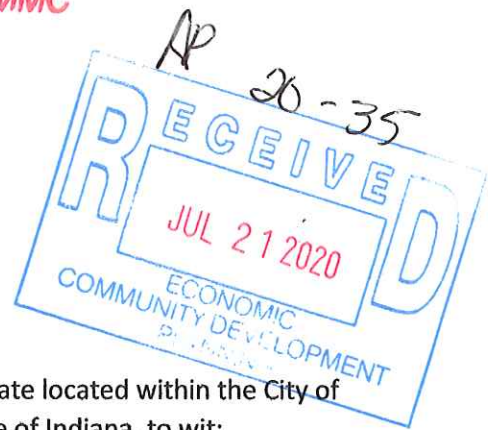
RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN

July 20, 2020

Board of Zoning Appeals
City of Mishawaka, Indiana



The undersigned appellant respectfully shows the Board:

1. JADET LLC is the owner of the following described real estate located within the City of Mishawaka, Mish Penn Township, St. Joseph County, State of Indiana, to wit:

Lots 9 & 10 Tohulka & Reynolds Add
1035 E. McKinley Hwy, Mishawaka, IN 46545
71-09-10-129-001.000-023
2. The above described real estate presently has a zoning classification of I-1 Light Industrial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant proposes to occupy the above described property in the following manner: sales of wheels and tires and automotive mechanical work.
4. Appellant desires to perform automotive mechanical work and sale and installation of wheels and tires.
5. The Zoning Ordinance for Classification I-1 of the City of Mishawaka does not allow any uses for any automotive mechanical work and sales and installation of wheels and tires. (Sec 137-586).
6. The automotive mechanical service work and sales/installation of wheels and tires is necessary to operate this successful business enterprise. The present Zoning Classification does not allow such and impedes an opportunity for a merchant to create a profitable and successful business.
7. There have been at least two instances of unauthorized discarding of sofas on this property in the past year. By placing an active business on this property would also eliminate this situation.
8. Use variance questions:
 - (1) Will approval be injurious to the public health, safety, morals or general welfare of the community?
No, The property will remain in compliance with any rules and regulations set forth by the City of Mishawaka.
 - (2) Will the use and value of the area adjacent to the property included in the variance be
 - (3) affected in a substantially adverse manner?
No, The only adjacent property is a warehouse to the South that is separated by a fence. A RR is to the West, McKinley Hwy to the North, and Merrifield Ave. to the East.

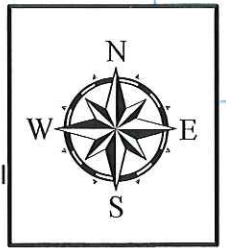
- (3) Does the need for the variance arise from some condition peculiar to the property involved?
No, The property and buildings will not be changed.
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought?
Yes, The wheel and tire business cannot be successful without a variance.
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?
No, the approval will enhance the Plan by allowing and creating a new business for the community.

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

JADET LLC
by Jerry DeTurk
Authorized member

JADET LLC by Jerry DeTurk, authorized member

Contact Person: Jerry DeTurk
294 E 350 N, Warsaw, IN 46582-7707
(574) 267-7642
Mrzipp6@gmail.com



FILBERT RD

I-1

I-1

C-1

C-4

I-1

E MCKINLEY AVE

AP 20-35

I-1

C-4

C-4

I-1

C-4

C-4

I-1

C-1

R-2

I-1

N MERRIFIELD AVE

I-1

I-1

C-1

N CEDAR ST

R-1

R-1

Location Map

AP 20-35

OWNER: JADET LLC

1035 E MCKINLEY

USE VARIANCE TO ALLOW
AUTOMOBILE REPAIR IN
I-1 LIGHT INDUSTRIAL

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

APPEAL #20-38

RESOLUTION NO. 2020-17

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:

3025 Grape Road, 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 **3025 Grape Road, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 103, Liberty Gardens & ½ Vacated Charlotte Street, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will allow a six (6) unit senior care facility in the C-6 Linear Office Commercial District.

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. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed use as a six (6) unit senior care facility will be located on a commercially-zoned property that currently includes an office use along

a major corridor in the City. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west.

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. Permitted uses within the C-6 Linear Office Commercial District are more intensive than the proposed use.
3. The need for the use variance arises from some condition peculiar to the property in that the zoning ordinance does not permit a senior care facility within the C-6 Linear Office Commercial District.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The use variance will permit the appellant the ability to construct a senior care facility on property they already own and adjacent to their existing offices.
5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates service commercial use for this area. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west

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 _____, 2020, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2020,
at _____ o'clock ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

RESOLUTION #2020-17
3025 Grape Road
Page 3 of 3

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock _____ .m.

David A. Wood, Mayor

STAFF REPORT

Location: Proposed Lot 2 of Assisi Village Minor Subdivision (Plat 20-04)
west of 3205 Grape Road

Date: August 11, 2020

Appeal: 20 -38

Prepared By: DJS

GENERAL INFORMATION

Applicant: A&E Management LLC / Abonmarche Consultants

Status: Property Owner / Surveyor & Engineering Consultant

Request: Use variance to allow a six (6) unit senior care facility, and a developmental variance for a reduction in the required number of off-street parking spaces

Zoning Classification: C-6 Linear Office Commercial

Lot Size: 0.44 acres being proposed Lot 2 of Assisi Village Minor Subdivision

Applicable Regulations: Section 137-42 / (4) Board of Zoning Appeals – Use Variance; Section 137-42 / (5) Board of Zoning Appeals – Developmental Variance; and Sec. 137-426 thru 137-428 / C-6 Linear Office Commercial

SPECIAL INFORMATION

Area Development Pattern: North: C-6 Linear Office Commercial (Vacant)
South: C-6 Linear Office Commercial (Multi-Tenant Commercial / Planned Parenthood, Sylvan Learning Center & Prometric Testing Center)
East: R-3 Multi-Family Residential (Apartment Complex / Runaway Bay)
West: R-1 Single Family Residential (Residential)

Thoroughfare: Grape Road and Eisenhower Drive

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the owner's expense

Comprehensive Plan: Service Commercial

ANALYSIS

The appellant, A&E Management LLC, is requesting a use variance to allow a six (6) unit senior care facility on proposed Lot 2 of the Assisi Village Minor Subdivision, and a developmental variance to allow for a reduction in the required number of off-street parking spaces.

A minor subdivision plat (Plat 20-04) to divide the appellant owned property into two (2) lots was submitted concurrently with the variance petition. The plat will be considered by the Plan Commission following the Board of Zoning Appeals meeting.

Proposed Lot 2 is located south of Eisenhower Drive approximately 160' west of Grape Road. Surrounding properties are zoned C-6 Linear Office Commercial to the north and south, R-1 Single Family Residential to the west, and C-6 Linear Office Commercial to the east proposed as Lot 1 of the Assisi Village Minor Subdivision. An existing office building on proposed Lot 1 is occupied by the appellant d/b/a Home Instead Senior Care.

A new six (6) unit senior care facility is proposed to be constructed on said Lot 2. The C-6 Linear Office Commercial District does not permit an adult care facility as a permitted use thus requiring a use variance. The facility will be owned and operated by the adjacent Home Instead Senior Care business.

Based on four (4) parking spaces per 1,000 sq. ft. of gross area, which is the applicable ratio for all other uses in the C-6 district, a total of 16 parking spaces are required for the approximate 4,000 sq. ft. facility. The square footage is estimated as it is not provided in either the variance petition or on the conceptual site plan. Although the petition requests a reduction to two (2) spaces, the site plan shows eight (8) off-street parking spaces can be provided if the site is developed as conceptually shown. These spaces include six (6) within the driveway and two (2) within an attached garage.

Regardless, the petition states that adequate room is not available to provide the required spaces nor needed to meet the demands of the proposed use. The residents of the senior care facility will not have vehicles. Adequate parking will be provided for the employees and visitors within the driveway and garage on proposed Lot 2 and within the existing parking lot in proposed Lot 1. Staff concurs with this assessment and is supporting the parking space reduction.

All pertinent City departments have reviewed and approved the use and developmental variance requests.

RECOMMENDATION

The Planning staff recommends approval of Appeal 20-38 for a use variance to allow a six (6) unit senior care facility on proposed Lot 2 of the Assisi Village Minor Subdivision, and a developmental variance to allow for a reduction in the required number of off-street parking spaces.

This recommendation is based upon the following findings of fact:

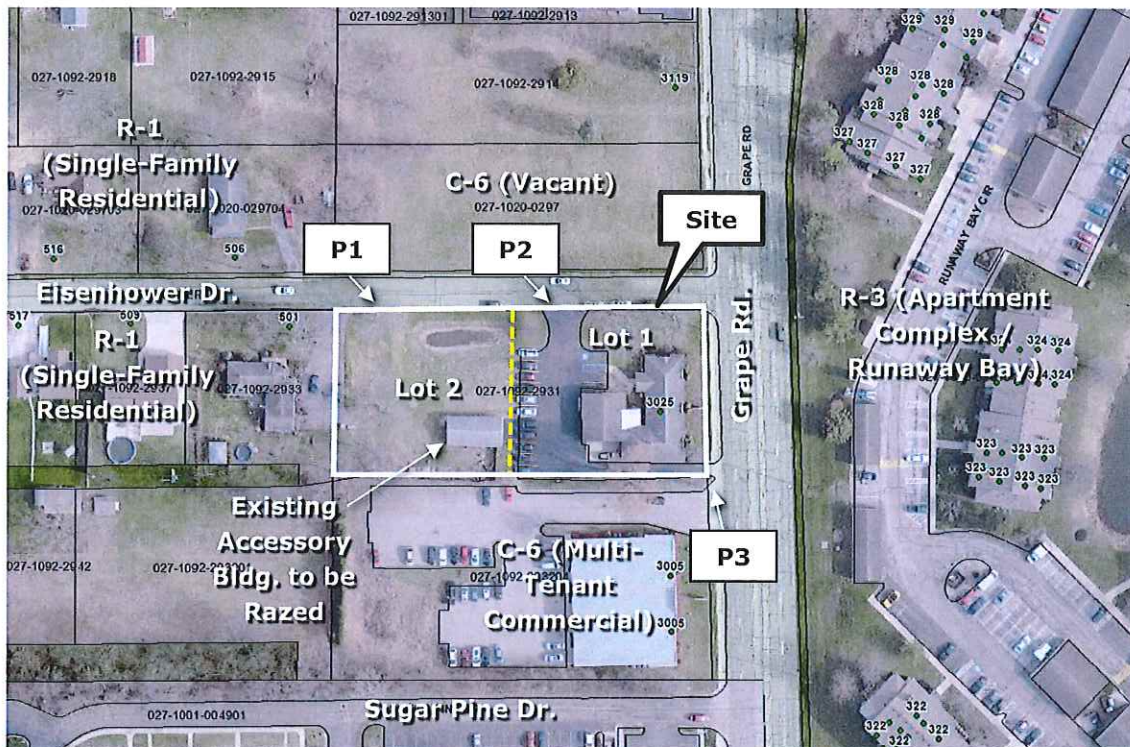
1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. The proposed use as a six (6) unit senior care facility will be located on a commercially-zoned property that currently includes an office use along a major corridor in the City. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west. Additionally, the proposed number of parking spaces within property owned by the appellant should provide adequate parking for both the residents and visitors of the facility.
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. Permitted uses within the C-6 Linear Office Commercial District are more intensive than the proposed use. The parking reduction will not negatively affect the area as parking requirements for the facility are anticipated to be limited.
3. The need for the use variance arises from some condition peculiar to the property in that the zoning ordinance does not permit a senior care facility within the C-6 Linear Office Commercial District.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought and result in practical difficulties in the use of the property. The use variance will permit the appellant the ability to construct a senior care facility on property they already own and adjacent to their existing offices. Requiring additional parking

spaces to meet code would unnecessarily consume land and would be seldom occupied. The proposed number of spaces should provide adequate parking.

5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates service commercial use for this area. The proposed use provides a buffer and acts as a transitional use between the higher intensity uses along Grape Road and the residential uses to the west.

ATTACHMENTS

Aerial, Photographs, Appeal, Site Plan, Minor Subdivision Plat (Plat 20-04), Location Map



Aerial Photograph – 3025 Grape Road being the proposed Assisi Village Minor Subdivision



P1. Looking southeasterly from Eisenhower Drive toward proposed Lot 2 and the future location of a 6-unit senior care facility.



P2. Looking southeasterly from Eisenhower Drive toward the existing office building (Home Instead Senior Care) on proposed Lot 1.



P3. Looking northerly from Grape Road toward the existing office building on proposed Lot 1.

FROM: Mike Huber
Abonmarche Consultants
315 W. Jefferson Blvd.
South Bend, IN 46601
(574) 347-4610
mhuber@abonmarche.com

TO: Board of Zoning Appeals
City of Mishawaka

RE: Variances for 3025 Grape Road

RECEIVED
DEBORAH S. BLOCK, MMC

JUL 24 2020

CITY CLERK
MISHAWAKA, IN

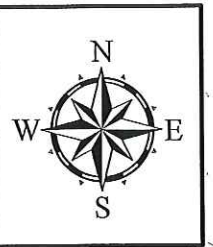
The undersigned appellant respectfully shows the Board:

1. I, Eric Thomas member of A&E Management 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:
Lot 103 Liberty Gardens & 1/2 Vacated Charlotte Street more commonly known as 3025 Grape Road.
2. The above-described real estate presently has a zoning classification of C-6 Linear Office Commercial District under the Zoning Ordinance of Mishawaka.
3. Appellant presently occupies the above-described property as an office.
4. Appellant proposes to continue the office use and locate a 6-unit senior care facility to the west of the current use requiring a use variance. The appellant desires to reduce the required parking of 16 spaces to 2 spaces.
5. The Zoning Ordinance does not allow the proposed use in the C-6 District. The Zoning Ordinance requires 16 spaces.
6. The strict application of this Ordinance would not allow the use to be located on the proposed site. The site is too small to provide the required parking spaces. Being a senior care facility and the residents not having vehicles, the required parking is unnecessary to meet the demands of this use.
7. **USE VARIANCE**
 - (a) The proposed use will not be injurious to the public health, safety, morals or general welfare of the community. The use will be located on a lot that already features a commercial use along a major corridor of Mishawaka.
 - (b) Meeting the requirements of the Zoning Ordinance will ensure that the use and value of adjacent property will not be adversely affected. Reducing the parking will not have an impact on neighboring properties because the residents will not have vehicles and employees working in the facility can park in the proposed garage or in the existing parking lot.
 - (c) The use variance is being requested so the senior care facility can be located adjacent to the existing offices.

BERRY AVE

BERRY AVE

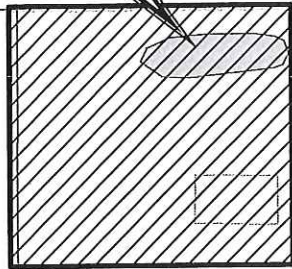
RUNAWAY



GRAPE RD

AP 20-38

EISENHOWER DR



SUGAR PINE DR

Location Map

AP 20-38

OWNER:

A & E MANAGEMENT LLC

3025 GRAPE ROAD

USE VARIANCE FOR
6 UNIT SENIOR CARE FACILITY

AUG 13 2020

CITY CLERK
MISHAWAKA, IN

APPEAL #20-39

RESOLUTION NO. 2020- 18

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:

539 West Sixth Street, 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 **539 West Sixth Street, Mishawaka, Indiana**, more particularly known and described as follows:

Lot 7, Krillenbergers Add, City of Mishawaka, Penn Township, St. Joseph County, State of Indiana

The Use Variance will allow the continuing use of a four-unit apartment in R-1 Single Family Residential District.

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. Approval will not be injurious to the public health, safety, morals and general welfare of the community because nothing is physically changing at the site. This use has been in existence since at least 1979.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the use of the property is not changing, only being made legal for financial institution purposes.
3. The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single-family home.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates low density uses for this area.

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 _____, 2020, at _____ o'clock ____ .m.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____ 2020,
at _____ o'clock ____ m.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2020, at
_____ o'clock ____ .m.

David A. Wood, Mayor

STAFF REPORT

Location: 539 W. Sixth Street

Date: Aug. 11, 2020

Appeal: 20 39

Prepared By: KM

GENERAL INFORMATION

Applicant: Pear Tree Management LLC/South Bend Real Estate 3 LLC
Status: Property Owner
Request: Use Variance for 4 units in R-1 Single Family Residential

Zoning Classification: R-1 Single Family Residential
Lot Size: 52.4' X 115.5'
Applicable Regulations: Section 137-165 R-1 Single Family Uses
Section 137-42 Board of Zoning Appeals Use Variance

SPECIAL INFORMATION

Area Development Pattern: North: R-1 Single Family Residential
South: R-1 Single Family Residential
East: R-2 Two-Family Residential
West: R-1 Single Family Residential

Thoroughfare: West Sixth Street between Wells and West
School District: School City of Mishawaka
Township: Penn
Public Utilities: All utilities are available to the site
Comprehensive Plan: Low Density Residential

ANALYSIS

The Appellant is requesting a Use Variance to allow the continuation of four one-bedroom units in the R-1 Single Family Residential District.

The building was built in 1890 and attached garage added in 1982. According to the Penn Township Assessor's office, they were unable to determine if the house was originally built as a multi-unit apartment, but the 1979 the records showed it being a tri-plex. The current owner purchased the property in 2011 and are in the process of selling. To be considered legal non-conforming (i.e. grandfathered), proof would be needed back to 1966, prior to the introduction of the zoning ordinance. Since the current owner has only owned it for a few years, they were unable to provide documentation as it being a four-unit apartment since at least 1966.

The site provides space for six off-street parking spaces.

All pertinent City departments have reviewed and approved this request.

RECOMMENDATION

The Planning Staff recommends approval of Appeal #20-39 to allow four units in R-1 Single Family Residential at 539 W. Sixth Street. This recommendation is based upon the following findings of fact:

1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because nothing is physically changing at the site. This use has been in existence since at least 1979.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because the use of the property is not changing, only being made legal for financial institution purposes.
3. The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.
4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single-family home.
5. The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates low density uses for this area.

ATTACHMENTS

Photographs, Appeal, Aerial, Location Map



539 West Sixth Street

Date: July 22, 2020

To: Board of Zoning Appeals
City of Mishawaka, Indiana



AP 20-39

The undersigned appellant respectfully shows the Board:

1. I, Kenneth Estes, am the Manager of the Manager of the Owner of the following described real estate located within the City of Mishawaka, IN Township, St. Joseph County, State of Indiana, to-wit:

Lot 7 Krillenbergers Add

539 W. 6th

2. The above-described real estate presently has a zoning classification of R1 Single Family Residential District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies the above-described property in the following manner: 4 unit rental (four one bedroom apartments)
4. Appellant desires to grandfather the property in to a legal non-conforming use or a fully legal use zoning a 4 unit.
5. The Zoning Ordinance of the City of Mishawaka requires
 - Sec. 137-68. - Continuation of nonconforming structures, uses, and lots.
 - Any lawful building or other structure, or any lawful use of a building or other structure or land, existing on the effective date of the ordinance from which this chapter is derived, which does not conform with the provisions of this chapter, shall be considered a lawful nonconforming building, structure, or use, and may be continued, except as otherwise herein provided.

(Code 1985, § 159.260; Ord. No. 2988, 12-15-1986)
 - Sec. 137-69. - Change of nonconforming use.
 - A nonconforming use shall not be changed to any other use or expanded in size, area, volume or scope, unless the proposed use conforms to the zoning requirements of the applicable zoning district.

(Code 1985, § 159.261; Ord. No. 2988, 12-15-1986; Ord. No. 3698, 6-21-1993)
6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. We are currently in the process of selling the property and in order to

complete the sale, the property must be classified as legal non-conforming use or a fully legal use zoning a 4 unit.

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 I do not feel as if the approval of this multi-unit will affect the overall health and safety of the public nor affect the general welfare of the community. Since it has been used as a multi-unit since our purchase in 2011, we have not received any complaints from the various residents or other neighbors in the area.**
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 because there are many rental properties with multi-units on 6th street and in the surrounding area.**
3. Does the need for the variance arise from some condition peculiar to the property involved? **No the only reason we are requesting this variance is because we are in the process of selling the multi-unit to a new owner who will continue using the rental home located at 539 W. 6th street as a multi-unit property with rentals.**
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 application of the terms of this chapter would constitute an unnecessary hardship if applied to the property since we are unable to complete its sale without a change in its classification.**
5. Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? **I do not believe that the approval will interfere with the Mishawaka 2000 Comprehensive Plan since there hasn't been any issues since we purchased the property. We have and will continue to enforce high standards for our rental home.**

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



Kenneth Estes
Manager of Pear Tree Management LLC,
The Manager of South Bend Real Estate 3 LLC

CONTACT PERSON:

Name: Suzanne Plugis

Address: 2917 Mishawaka Avenue South Bend, IN 46615

Day Phone Number: 574-232-2313

Fax Number: 1-866-748-5005

Email: suzy@peartreeproperty.com or kenny@peartreeproperty.com

Pear Tree Management, LLC

2917 Mishawaka Ave. South Bend, IN 46615 Phone 574-232-2313

July 22, 2020

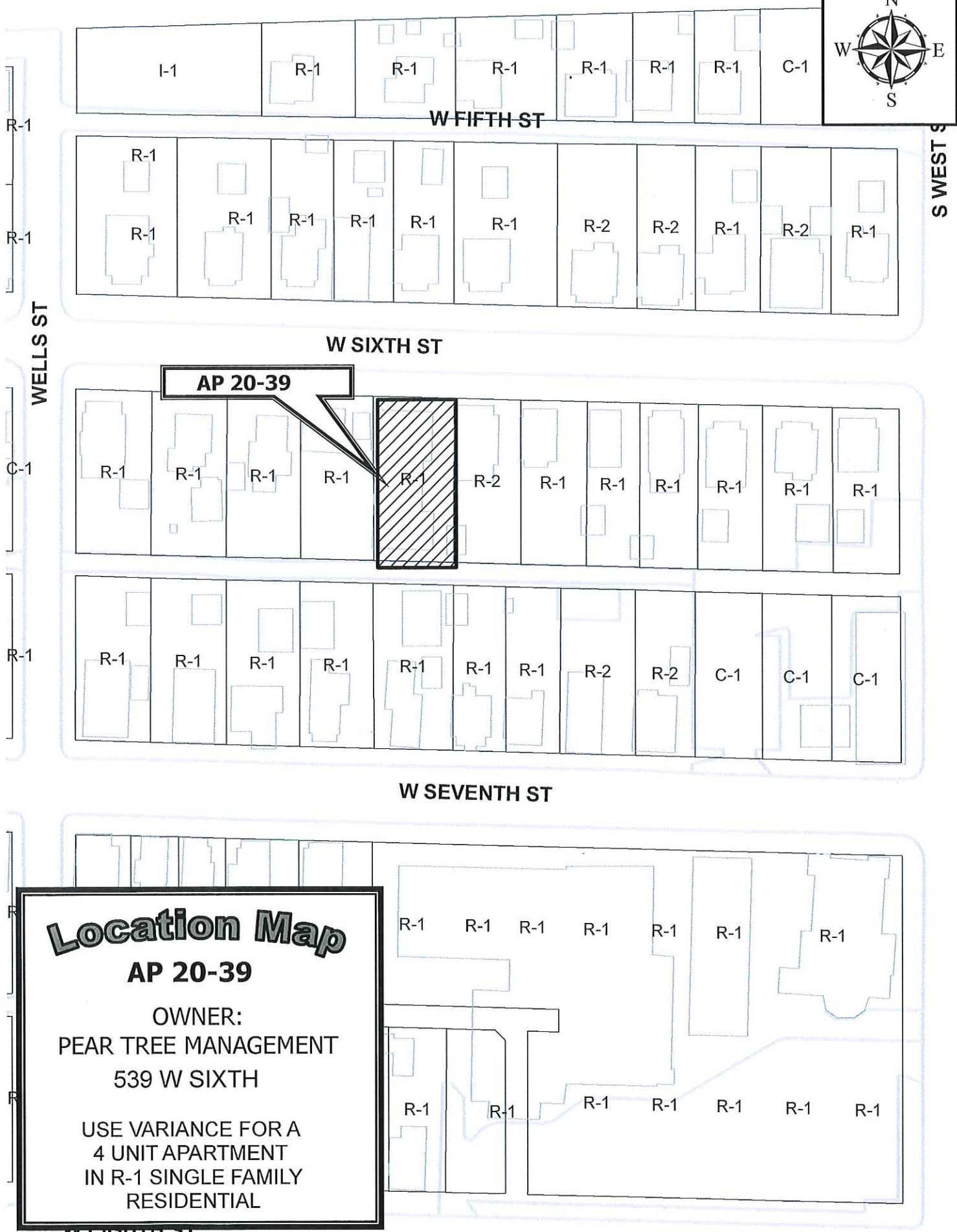
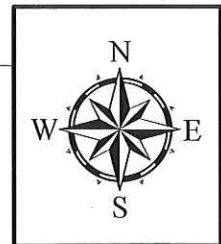
To Whom It May Concern;

I, Kenneth Estes, Manager of the Manager of South Bend Real Estate 3 LLC, and LLC confirm Suzanne Plugis' position as President and an authorized signer in place of myself. Furthermore, I give her full authority to sign any legal documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Estes', with a stylized flourish at the end.

Kenneth Estes
Manager of Pear Tree Management LLC,
the Manager of South Bend Real Estate 3 LLC



Location Map

AP 20-39

OWNER:
PEAR TREE MANAGEMENT
539 W SIXTH

USE VARIANCE FOR A
4 UNIT APARTMENT
IN R-1 SINGLE FAMILY
RESIDENTIAL