REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

August 17, 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 17, 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.

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.

Minutes for the Regular meeting of August 3, 2020 were approved as received from the Clerk's Office.

Clerk Block read the following letters to the council from the Board of Zoning Appeals and the City Plan Commission regarding their recommendations from their August 11, 2020 meeting.

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.

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*.

Clerk Block read the following proposed ordinances by title and assigned committee.

PROPOSED ORDINANCE NO. 2020-24

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.
PUD Amendment to allow for mixed Use Development to allow Residential, Commercial, and Industrial Uses – Vacant Land S. of Vistula Rd. & W. of Cedar Rd.
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2020-25

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.
Rezone from R-1 Single Family Residential to C-3 City Center Commercial – 619 Lincolnway East
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2020-26

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.
Rezone from R-1 Single Family Residential to R-2 Two Family Residential – 613 W. Third St.
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO, 2020-27

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.
PUD Amendment to allow Assisted Living Facility – North West corner of Deer Run Dr. and Fir Rd.
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2020-28

AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF MISHAWAKA, INDIANA PROVIDING ZONING CLASSIFICATION THEREFORE
Annex adjacent property to be included in subdivision – South & East of 1141 & 1241 E. Twelfth St.
(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2020-29

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.
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.
(Assigned to Land Use Planning Committee)

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

RESOLUTION NO. 2020-15

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
Adding Parcels to the City's Acquisition List

Mr. Prince, City Planner, spoke in favor of **RESOLUTION NO. 2020-15**. Mr. Prince began stating in 2014, when they added areas to the TIF district, they said at that time they would bring back the individual properties rather than to bring many properties and hit 20 properties at one time. He explained in the proposal, they also budgeted money to acquire property that was a strategic acquisition to be able to acquire to redevelop as the statute intends for the Redevelopment Commission. Mr. Prince stated the properties they were discussing tonight, were properties on Mishawaka Avenue firmly associated with Burns Rental, which was the main rental building on Mishawaka Avenue and also two properties located immediately to the North on the north side of the alley fronting Grove Street. Mr. Prince stated they were approached by Burns Rental a year ago for their interest in acquisition and at the time they were hoping the private market could take care of it. Mr. Prince stated they recently contacted the Planning Department had an offer on the property with the buyer being interested in the property as is. Mr. Prince stated their need was for parking in the Battell Park, which is the oldest city park and the conclusion has been to not add parking. Mr. Prince also stated the purchase agreement they have drafted has the property at $535,000 which is $30,000 less than the appraised value proposed, and they have ordered another appraisal. Mr. Prince noted he has provided a diagram showing how the property and rear could be configured into parking. Mr. Prince stated the end result would add 36 parking spaces on the rear of the property and the intent of the Mishawaka Avenue property would be to redevelop. Mr. Prince concluded stating there was not a definitive plan set, but they were reviewing it with Mayor Wood, and they were adamant the property would keep rising in value, making it a prudent acquisition.

Mrs. Voelker asked what the plan would be for the properties on Liberty and Grove, since they were still occupied. Mr. Prince stated they require the properties to be empty, so the current owner would have to deal with terminating the leases on the properties. Mr. Prince noted in the purchase agreement, it allows them to close immediately on the commercial property while extending the time of closing for the residential properties.

Mr. Mammolenti asked what kind of property taxes Burns Rental payed. Mr. Prince stated normally the assessed evaluation is less than the appraised value, but they were paying close to $10,000 a year in property taxes but has not looked that information up. Mr. Mammolenti also asked if we knew what type of business would be replacing Burns Rental. Mr. Prince stated their communications have only been with the owners of the business and have indicated the potential purchaser were primarily interested in the residential properties. Mr. Prince stated they will also take the commercial property along with the residential properties which is why the city feels this is a good opportunity with the all the improvements made in Battell Park and Veterans Plaza. Mr. Mammolenti asked if they would convert the Northside into a parking lot and then market the Southside. Mr. Prince stated that would be the plan, but once they would acquire it the plan would definitively be to demolish everything on the Northside of the alley and the Southside of the alley could pose a commercial opportunity and they would attempt to sell it if possible. Mr. Prince stated if that did not play out, then they would move to redevelop the section of the property. Mr. Mammolenti asked if the north and south of the alley were demolished, what would be the all-in price for the city. Mr. Prince stated they currently did not have a plan for a parking lot on the Southside of the alley and the costs would roughly be in the 3 quarters of a million-dollar range.

Mrs. DeMaegd asked if there would be a no-fee parking for the citizens. Mr. Prince stated most spaces are free for 2 hours or the citizens are able to buy a permit and these spots will offer free parking.

Mr. Compton questioned the financial proposal given to Burns Rental. Mr. Prince stated this was a matching price and they have an offer on the table but thought it would be inappropriate to ask what the offer was.

Mr. Hixenbaugh asked Mr. Prince to expand on the funding source for the purchase price and it was his understanding the TIF funds would be the source as opposed to the general fund. Mr. Prince stated the TIF district collects the difference between the current assessed valuation and the assessed valuation after development. Mr. Prince also stated it was connected to property taxes, but instead of a general fund it was put into an infrastructure fund and could only be used for that purpose. He continued to say with that fund, they have done a plethora of different projects including the recent improvements to Beutter Park. Mr. Prince stated in terms of financial impact, they were looking at half a million dollars to push another project down the line and there were a number of projects downtown in motion as well. Mr. Hixenbaugh asked if this causes them to walk away from any of the planned expenditures. Mr. Prince stated they would be postponed. Mr. Hixenbaugh asked how long it will realistically take to redevelop the properties in regard to the neighbors adjacent. Mr. Prince stated it would take about a year to make a demolition decision. Mr. Hixenbaugh asked what type of commercial uses might be appropriate for that spot. Mr. Prince stated something along the lines of a Café that could feed the public and serve the park would be ideal.

Mrs. Voelker asked if the corner lot would be redeveloped would the assessed value increase and would the money go back into the TIF district. Mr. Prince stated it is adjacent to the TIF district, so it gives them legal ability to acquire the property and any tax revenue would go directly to the general fund.

Mr. Hixenbaugh thanked Ken Prince and the administration for their work on this project. Mr. Hixenbaugh stated he would be supporting this resolution for multiple reasons. Mr. Hixenbaugh stated he was concerned with pedestrians trying to get to Battell Park and the traffic hazards this could represent. He believed it was in the best interest of the homeowners for the city to maintain control of this property until appropriate uses are identified and the addition of the parking was a benefit for the neighborhood in his opinion.

Question was called for a 7:35 PM for **RESOLUTION NO. 2020-15** **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.

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
Use Variance to allow Automobile Repair in I-1 Light Industrial – 1035 E. McKinley

Jerry DeTurk, 294 E 350 North Warsaw, Indiana was the owner of the property along with Darlene Dieter 294 E 350 North Warsaw, Indiana spoke in favor of **RESOLUTION NO. 2020-16**.

Mr. Banicki questioned incoming and outgoing traffic, what kind of parking there will be and what was the general plan . Mr. DeTurk stated there was space for 9 parking spots outside of the fence and parking spots inside of the fence if needed. He continued to say they have allowed for expansion of McKinley on the Northside so no one will be backing onto McKinley. Mr. Banicki expressed concern for the safety of citizens around the area, due to the constant amount of traffic. Mr. Banicki also asked if this will be a change of ownership or rental situation. Ms. Dieter answered it will be rental. Mr. Banicki stated there have been problems with people in the past as far as business goes. Mr. Banicki asked how big the inside of the building was to store tires. Mr. DeTurk stated there are two 30x50 storage sheds there that will be moved and there will be nothing stored outside of the building. Mr. Banicki asked how many cars will be put in the building to service at one time. Mr. DeTurk stated two cars.

Jesus Navarro, 1622 S Jackson Street South Bend, Indiana and the renter of the property, stated tires will be the business model without mechanical. Mr. Banicki stated it could happen where mechanical uses are asked of the business. Mr. Navarro stated it is not worth the money to do mechanical work, he gave the council his word his main focus was in tires.

Mr. Banicki went on to ask how many employees they will have. Mr. Navarro stated there will be two more tire workers and they will stay away from outside work. Mr. Banicki asked would they sell new or used tires. Mr. Navarro stated they will be selling both and he will store the new ones inside and possibly using the sheds in the back to store new and old tires. Mr. Banicki also asked where store scraped tires. Mr. Navarro stated they will be held in the back as well. Mr. Banicki questioned the back-parking lot, whether it was locked or fenced in. Mr. Navarro showed an image of fencing around the back to Mr. Banicki. Mr. Banicki asked if there will be issues with traffic flow. Mr. Navarro stated he did not feel it would be a problem.

Mr. Mammolenti expressed concern in the piling up of used tires on the property which would become an eye sore for the business. Mr. Navarro stated they would like to get the tires recycled every couple week to hopefully solve the problem.

Mr. Emmons stated during the Plan Commission meeting, Mr. Navarro made a statement that there will be no oil changing and if they did, they would put in an oil separator. Mr. Navarro stated he does not plan to do oil changes but would add it if it were necessary in the future.

Mr. Compton asked Mr. Hixenbaugh if the oil separator would be part of the resolution currently. Mr. Hixenbaugh stated the second condition built into the resolution reads '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.' Mr. Compton stated he would like to make the oil separator a requirement before business is conducted that way, he is able to do the work properly and would have a hard time supporting this without the requirement. Mr. Navarro stated he cannot put in an oil separator as of right now because he would not be able to afford it and understands Mr. Compton's concerns. Mr. Navarro also explained he was not a mechanic and would have to hire one to conduct that business which would cost him even more money that he does not have. Mr. Compton followed up stating he understood the position and respects his word, but they have had instances in the past where businesses have not kept past promises. Mr. Compton concluded stating his concern.

Mr. Emmons asked was there a lift in the building. Mr. Navarro stated there was not. Mr. Emmons asked Mr. Banicki if it was awkward to have oil changes without a lift. Mr. Banicki stated it would be tougher to conduct oil changes without a lift but would be absolutely doable.

Mr. Mammolenti asked how much an installation of equipment would cost. Mr. Navarro stated an above ground machine would start at $4,500 but an in-ground machine would cost more. Mr. Navarro mentioned he spoke on the phone with someone and would have to receive a quote and has not been given on yet. Mr. Mammolenti asked if there were no interest in changing oil, why he would reach out to get a quotation from someone. Mr. Navarro stated a woman in Planning needed some type of decision whether he wanted to continue to get mechanical equipment or to just work with tires before he came before the council.

Mrs. Voelker asked what the $4,500 would be for. Mr. Navarro stated that money would be for the oil separator machine. Mrs. Voelker also asked if there is an investment he has to make to do the tires. Mr. Navarro stated he will have to purchase separate equipment for the tire work. Mrs. Voelker asked if he had the equipment in his prior business in South Bend. Mr. Navarro stated the equipment came with the building he was renting. Mrs. Voelker asked what caused Mr. Navarro to move to Mishawaka. Mr. Navarro stated he had issues with the landlord. Mrs. Voelker asked what the investment would be to purchase the equipment for tires. Mr. Navarro stated it would cost around $6,000-$7,000. Mrs. Voelker asked if he will have a customer base that will follow him to the new business. Mr. Navarro stated his old clients still call him currently. Mrs. Voelker asked how long he had been out of business. Mr. Navarro stated it had been 4 months. Mrs. Voelker asked how long he had been working in tires specifically. Mr. Navarro stated he had been in the business for 3 to 4 years. Mrs. Voelker asked how someone gets into the tire business and if someone needs training/certification or if he simply developed a reputation and got a business. Mr. Navarro stated there is no training or certification needed and she was correct.

Mr. Hixenbaugh asked if he had worked for any other owners of a similar business prior to having his own shop. Mr. Navarro stated he has not. Mr. Hixenbaugh asked if at any point in time he did brake work or oil change work. Mr. Navarro stated he had done that work in the past. Mr. Hixenbaugh stated he is hesitant to remove the oil separator wording out of the resolution and would not vote for the resolution if the language were not in there. Mr. Hixenbaugh stated a possible probationary period could be appropriate to review the business and see what the activity in it is like. Mr. Hixenbaugh stated there is significant concern on the council not because of Mr. Navarro, but because of past experiences with businesses going back on their word in certain discussions. Mr. Hixenbaugh asked if there is anything else Mr. Navarro would like to share that would make the council feel better prior to voting on the resolution. Mr. Navarro stated he had no further information.

Mr. Mammolenti asked how long the lease would be if he were to sign. Mr. Navarro stated he had not determined that yet and was waiting for the council's approval to receive that information. Mr. Mammolenti asked if he would be willing to put a yearlong probationary period on the business. Mr. Navarro stated he would be okay with that. Mr. Mammolenti also asked if the landlord would be willing to do that as well. Ms. Dieter also stated they would be okay with that as well.

Mr. Hixenbaugh asked for Mr. Trippel's opinion on his suggestion if it is within the council's authority to enact a temporary component onto the resolution. Mr. Trippel, Council Attorney, stated if the petitioner consents to it, then it is allowed and agreed with Mr. Hixenbaugh.

Mrs. Voelker asked how long the business will take to develop clientele and conduct services. Mr. Navarro stated the time could vary and hoped to have a successful business. Mrs. Voelker asked if in 6 months the business will be up and running. Mr. Navarro stated he believes it will be. Mrs. Voelker also asked at the 1-year mark if he will know if he would want to take a leap to purchase the oil separator. Mr. Navarro stated that would be a good time frame.

Mr. Banicki asked the council if the resolution only applies to the renter or to the property itself. Mr. Trippel stated variances would follow with the petitioner and the property.

Ms. Dieter asked if the property use is only for one year. Mr. Hixenbaugh stated it is a talking point but has not been finalized.

Mr. Hazen asked if Mr. Compton would feel better if there would be a limitation of one year. Mr. Compton stated he would and has concern what will happen with the business, given the area is a few miles from his home and he was glad to see someone making good use of the building. Mr. Compton expressed appreciation for Mr. Navarro's patience with the council and stated he would support the resolution with the one-year period included.

Mr. Compton moved to make an amendment to add a sunset of one year (12 months) to the resolution which would expire on 9/1/2021, with a second from Mrs. Voelker the motion carried.

Mr. Bellovich asked what exactly would happen on the sunset day. Mr. Hixenbaugh stated this would give an opportunity for the city departments to pay a visit to Mr. Navarro's business to see what kind of business he has engaged in and another hearing would be held soon after to consider an extension if it were necessary for the council to do so. Mr. Hixenbaugh again stated there will have to be a physical visit to the property that would confirm or deny the activity on the site.

Mr. Compton stated Mr. Navarro would come back in a year and at that point, they would make the decision to extend the period or not while discovering if the business conducted was an issue at that point.

Mrs. Voelker asked if they will need Mr. Navarro to appear in front of the council in August of 2021. Mr. Compton stated that was correct.

Mr. Hixenbaugh Called for roll call vote.

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. The amendment passed

Mr. Banicki stated Mr. Navarro admitted he conducted mechanical work in the past and moved to make an oil separator mandatory with a passage of the resolution, without a second, the motion dies.

Mr. Mammolenti thanked Mr. Hixenbaugh, the council, Mr. Navarro, and the landlords for their work and patience through this process. Mr. Mammolenti stated they have been burned in the past and the council is hoping they do not put them in a bad spot. Mr. Mammolenti concluded by welcoming them to Mishawaka.

Mr. Hazen agreed with Mr. Mammolenti and stated this is a new precedent.

Mr. Hixenbaugh thanked everyone and asked Mr. Navarro to contact the Planning Department at some time before August of 2021 to check on the status of the operation and hoped all goes well. Mr. Hixenbaugh concluded stating he should be aware the city has remedies to take a look at the business if it were necessary to do so before the deadline.

Question was called for 8:19 PM for **RESOLUTION NO. 2020-16** **Vote: Motion passed (summary: Yes = 8, No = 1, Abstain = 0).**
Yes: Mrs. DeMaegd, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.
No: Mr. Banicki.

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: 3205 GRAPE ROAD, MISHAWAKA INDIANA
Use Variance for 6-Unit Senior Care Facility – 3025 Grape Rd.

Mike Huber, Abonmarche Consultants, spoke in favor of **RESOLUTION NO. 2020-17**. Mr. Huber stated the intent of the project is to have a 6-bedroom residential facility on the lot immediately west of the existing Homestead Senior Care on Grape Road. He said the staff will be from the Homestead Senior Care facility and there will not be a need for additional parking. Mr. Huber concluded stating they are asking for the permission to have the use variance granted.

Mr. Banicki asked where the cars will be placed with the addition of this facility. Mr. Huber stated they will have 2 parking spots in the garage and 3 additional spots off of the driveway and will be able to accommodate the 5 required parking spaces the ordinance requires. Mr. Huber stated the staff will already be parking in the Homestead Senior care existing parking spots. Mr. Banicki expressed concern about parking on Eisenhower Drive, he drives down the road frequently and believed it could be an issue. Mr. Banicki asked what they will do regarding storm water retention. Mr. Huber stated they are preparing a storm water retention plan and also expanded on the parking issue by stating they would be open to installing no parking signs along the street to enforce no parking on Eisenhower. Mr. Huber stated they are utilizing a series of storm water retention ponds and they have just finished a plan that day which will be sent to

Planning. Mr. Banicki stated the retention pond overflows as it is now. Mr. Huber stated they are building 2 more retention ponds on the property. Mr. Banicki asked if they met with the neighbors. Mr. Huber stated he had not personally met with them, but assumed his client had some conversation with them. Mr. Huber also pointed out this was not a commercial use, and this is why they have to receive a use variance to allow for the residential use in the district. Mr. Banicki asked what kind of clients they are looking to bring in. Mr. Huber stated it could be folks that need full time care, but it was not necessarily Hospice Care.

Mr. Compton asked would this be rehabilitation facility and also will be secure enough for the busy area. Mr. Huber stated it was to his understanding the facility was for patients who need more than in-home care. Mr. Huber also stated the facility was secured and staffed at the regulatory need required through state guidelines.

Mrs. Voelker asked was this business coming because there are not enough facilities. Mr. Huber replied correct, their client indicated they were in the home care business and there was demand for this kind of facility. Mr. Huber also stated they operate one facility in Goshen and plan to have another one in the area in addition to the Mishawaka facility. Mrs. Voelker questioned the time frame for the project. Mr. Huber stated the existing garage would be demolished, along with a drainage plan and final site plan submitted to the city. He continued to say at that point, the building process would begin, within in a year they expect to be fully up and running. Mrs. Voelker asked was this a skilled nursing or assisted nursing facility. Mr. Huber stated he believed it will be a skilled nursing facility and apologized for not having all of the details.

Mr. Emmons asked Mr. Prince if the use variance covers all kinds of care. Mr. Prince stated they left it generic and this was not a registered nurse giving the care, but nursing assistants who provide care. Mr. Prince also stated there was a different level of nursing required when giving medications and this was more of an assistant type of care, giving general function type of care such as cooking being provided, changing of clothes, bathing, etc. Mr. Emmons also asked if they wanted a higher level of care, would the variance need to be changed. Mr. Prince said it would not need to be changed as worded.

Mrs. Voelker hoped the business owner had been on the call to get their questions clarified.

Mr. Banicki asked if the parking on the street was a no parking zone. Mr. Prince stated the Board of Zoning Appeals denied the variance they were requesting on parking. Mr. Prince stated the Traffic Commission will study what restrictions needed when the point was reached to do so. He recommended the council to request review of the parking situation, despite the petitioner stating they would go along with no parking. Mr. Banicki stated the street was too narrow for sidewalks in the past and he did not believe it was as wide as it was supposed to be. Mr. Prince stated his concern was well noted.

Mr. Huber stated if needed, he would have the petitioner at the next meeting to answer questions. Mr. Hixenbaugh stated he appreciates that offer and will move to a vote.

Question was called for at 8:39PM for **RESOLUTION NO. 2020-17** **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.

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
Use Variance for a 4-Unit Apartment in R-1 Single Family Residential – 539 W. Sixth St.

Suzanne Plugis, Pear Tree Management, spoke in favor of **RESOLUTION NO. 2020-18**. Ms. Plugis stated they are having difficult time making the transaction work. Ms. Plugis stated she had been with the company 9 years and this property has always been a rental property. She stated they have not had any issues with parking, and they were trying to sell and move on with the process.

Mr. Compton asked if the building was currently operating as a 4-unit apartment. Ms. Plugis replied correct.

Mr. Mammolenti asked what the plan was to keep it as a 4-unit apartment. Ms. Plugis stated it was current plan.

Mr. Emmons expressed concern if she knew neighbors were upset with the parking and the way the neighborhood was changing to single family homes. Mr. Emmons added the parking in the area was not the greatest and neighbors had concerns about the parking as well. Mr. Emmons concluded stating he would like to see the single homes continue and not have multi-unit properties.

Mrs. Voelker stated after looking at the photos of the area, parking looks difficult and asked if parking in the alley poses a problem of individuals getting parked in. Ms. Plugis stated they have never had a problem and all the residents get along. Mrs. Voelker questioned the big structure in the back. Ms. Plugis stated there was a two-stall garage being used for storage, but the new owner could use it for tenant parking.

Mr. Hixenbaugh asked was professional property management purchasing the unit or selling it to a private individual. Ms. Plugis stated she would not know until closing but they have sold many properties recently. Mr. Hixenbaugh stated there were some issues regarding HVAC problems not being quite up to code, he asked Ms. Plugis to expand on those issues. Ms. Plugis stated those issues have never been brought to her attention. She said when they bought the property it was set up the same way and they carried on with it. Ms. Plugis stated there was 1 meter for water and split the price up amongst the tenants. Mr. Hixenbaugh asked was she aware of any mechanical problems. Ms. Plugis stated she was not. Mr. Hixenbaugh asked if she was the individual to take calls if neighbors had a concern. Ms. Plugis stated she takes all calls and she reaches out to one of the owners if she could not help. Mr. Hixenbaugh asked has she received calls in the last year from residents in the neighborhood. Ms. Plugis stated she has not received one call on the property.

Mr. Compton asked was the property currently filled. Ms. Plugis stated it was 100% occupied. Mr. Compton asked what would happen if the sale does not go through. Ms. Plugis said she was not sure. Ms. Plugis stated the apartments were all 1 bedroom with two people in each one.

Mr. Emmons asked was she were aware a number of neighbors called the council requesting the property to stay R-1. Ms. Plugis stated it was not brought to her attention. Mr. Emmons stated it was brought to the Plan Commission.

Mr. Mammolenti asked how long the owner has owned the home. Ms. Plugis stated they purchased it in 2011. Mr. Mammolenti asked at that time was the property zoned R-1. Ms. Plugis stated they bought it from someone who purchased it in 2004.

Mr. Emmons stated he will be voting to keep it R-1 and will vote against the petition.

Mr. Mammolenti stated he had not received any calls directly but have heard in passing that residents shared Mr. Emmons concerns. Mr. Mammolenti also stated he will be voting no.

Mrs. DeMaegd stated she sends out the agenda on social media when she receives it and got feedback stating they would prefer this property remain R-1. Mrs. DeMaegd also stated she will be voting against this.

Mr. Hazen stated some owners want zoning changed to be able to sell them. Mr. Hazen wished the owners would not wait until the last minute to come before the council. Mr. Hazen also stated he agreed with Mr. Emmons and now was the time to correct these issues.

Mr. Banicki stated property taxes are a factor as well and the investment property would be higher if rezoned. Mr. Banicki stated he does not know if he cannot support the petition.

Mr. Prince stated there are 4 units in a non-conforming situation and they cannot write a letter that would grandfather the units. Mr. Prince also stated the 4 units will continue to be there even if the council decides against the petition. Mr. Prince concluded stating there is no enforcement action and they have no documentation it was illegally created.

Mrs. Voelker asked if financing was not necessary, the zoning would not need to be changed. Mr. Prince stated that would be correct.

Mr. Hixenbaugh stated if the resolution is not passed, the zoning remains R-1 and the use will not change into single family with four residents continuing to reside there.

Mrs. Voelker stated the residential market is very strong and the potential for someone to purchase the property and convert it was much higher as of now. She expressed she will vote to retain it as an R-1.

Mr. Mammolenti asked if the petition fails, the tenants will be able to stay. Mr. Prince stated that is correct and it would not have to come back to the council, as long as the bank does not require it.

Question was called for at 9:01PM for **RESOLUTION NO. 2020-18** **Vote: Motion failed (summary: Yes = 0, No = 9, Abstain = 0).**
No: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh.

NEW BUSINESS

Mayor Wood attended the meeting via Webex, he was experiencing technical difficulties, he was unable to provide the COVID-19 update. Mr. Prince stated he was unaware of new updates to be shared and has had very little discussion with the Mayor. Mr. Hixenbaugh asked for a written update at the Mayors convenience.

ADJOURNMENT 9:04PM

Deborah S. Block /s/	Gregg A. Hixenbaugh /s/
Deborah S. Block, IAMC, MMC, City Clerk	Gregg A. Hixenbaugh, President