

APRIL 13, 2010

**BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 13, 2010, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Jim Trippel, Don McCampbell, Ross Portolese, and Rosemary Klaer. Also in attendance: John Gourley, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

The minutes of the March 9, 2010, meeting, were approved as distributed.

Don McCampbell explained the Rules of Procedure.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #10-08 An appeal submitted by Jeffrey R. and Deana R. Tallman requesting a Developmental Variance for **1501 Lincolnway East**, to permit construction of a garage with a 30" side yard setback.

Jeffrey Tallman, 1501 Lincolnway East, presented the appeal. He said he is requesting a variance so he can build a new garage with a 30" setback instead of the required 36".

Jim Trippel asked if he was going to demolish the existing garage. Mr. Tallman said yes, and he will expand the existing foundation.

Charles Krueger asked if he was going to make any improvements to the driveway. Mr. Tallman said yes, new concrete.

Mr. Krueger asked if there was another building on the property. Ken Prince said it looked like it has been razed.

Don McCampbell closed the Public Hearing on Appeal #10-08.

Staff Recommendation

The Staff recommends approval of the developmental variance request to allow a 30 inch east side yard setback for the construction of a freestanding accessory structure at 1501 Lincolnway East based on the following Findings of Fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because all state and local building codes will be adhered to during construction;*
- 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 new garage will maintain the same setback as the current garage which has existed since the 1920's without a negative impact; and*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current ordinance was written to regulate the subdivisions being developed within the city, which typically have larger lots, it would preclude the possibility of constructing a much needed larger garage where no public injury or substantial impact to the surrounding properties can be demonstrated.*

MOTION: Jim Trippel moved to approve Appeal #10-08. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #10-09 An appeal submitted by Jimi Enterprises/Jimi Partnership, requesting a Use Variance for **3820 Grape Road**, to permit the use of two (2) temporary trailers for office use during construction of new Honda dealership building.

Brett Konarski, Wightman Petrie, 412 S. Lafayette Blvd., South Bend, represented the Appellant. Mr. Konarski said the trailers will be used for automotive sales offices while the new Honda dealership building is under construction.

Mr. Trippel asked if they would comply with the 5' minimum setback from the north property line. Mr. Konarski said the trailers would meet the setback.

Mr. McCampbell closed the Public Hearing on Appeal #10-09.

Staff Recommendation

The staff recommends in favor of Appeal 10-09 to allow for the installation of temporary modular units to be used as offices based upon the following findings of fact:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the temporary buildings will meet all applicable setback requirements of the C-4 Automobile Oriented Commercial Zoning District;*
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 car sales office use currently exists on site;*
3. *The need for the variance arises from some condition peculiar to the property involved because the existing office building will be demolished and office space is needed on site during the construction of a new facility;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because by definition this type of temporary structure may not be used for business offices; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the sales office is consistent with the Comprehensive Plan.*

MOTION: Ross Portolese moved to forward Appeal #10-09 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #10-10 An appeal submitted by JB Capital LLC requesting the following Variances for property located in the **1000 Block of East Ireland Road**: Use Variance to permit outside sales display/storage area; Sign Variance to permit a 120 sq foot monument sign; and Various Developmental Variances which include a reduction in parking spaces, and flexibility in required landscaping.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Dr., South Bend, appeared on behalf of the Appellant. Keith Carter, Bunnell Hill, and John Piraccini were also in attendance.

Mr. Ballard said Tractor Supply Company is the largest retail farm and ranch store in the United States with over 800 locations. He said they are proposing a new store just west of the existing Walgreen's on the corner of Ireland Road and Bremen Highway. The site is part of the Bremen Highway retail center PUD and was originally designed as a two tenant retail building.

Mr. Ballard said they are requesting four (4) variances and they include a Use Variance for outside storage, a Sign Variance for a larger monument sign, Developmental Variances for reduction of parking spaces and landscaping. He said they have addressed staff's comments

John Piraccini, 633 Windy Cove, Mishawaka, spoke on behalf of the developer, John Becker. He said growth on the south side of Mishawaka has been stagnant for so long; it's the south entrance into the City. He said he spoke to a number of the neighbors about the requested variances and has brought signed letters of support from them. He said they are excited about the new Subway going in and the Tractor Supply Company will draw for miles.

Mr. Ballard said regarding the outdoor display, the staff recommendation allowed one item per pad. He said one item per pad wouldn't be enough, especially if they wanted to display two trailers per pad or three mowers. He said the merchandise would be high quality. Mr. Prince said staff didn't want the area to appear "junky".

Keith Carter, Bunnell Hill Development Co., 3000 Henkle Drive, Lebanon, OH, spoke on behalf of the Sign Variance. Mr. Carter said they have reduced their request to 75 sqft, with 56 sqft of copy area from the original 120 sqft. He said this store is going to be a great draw for the community and will draw from neighboring communities as well. The new store will generate 8-12 new jobs in the area and they are making a large commitment to the community.

Mr. Prince said staff felt that 60 sqft was more than adequate and the overlay district standards are applied to this site. He said Walgreens kept their sign to 60 sqft as did Meijer.

Mr. Carter said that both Walgreens and Meijer are located directly on Bremen Highway and Meijer also has a larger building and can also utilize a larger wall sign due to its size.

Mr. Prince said if TSC wanted extra visibility, then perhaps they could build the building taller to allow for a larger wall sign.

Mr. Trippel asked if they had the option for two signs. Mr. Prince said yes, but the site was originally designed for a five-tenant center.

Mr. McCampbell closed the Public Hearing on Appeal #10-10.

Staff Recommendation

The staff recommends in favor Appeal 10-10, a Use variance, to allow for outside display and storage subject to the following conditions:

1. *The (3) display pads along Ireland Road shall be limited to single large items, such as tractors, trailers, and riding lawn mowers. Only (1) item per pad shall be allowed. Multiple single type items such as bags mulch, seed, etc... will not be allowed within these display pads. However, these multiple single type items may be allowed to be displayed within the sidewalk display area in front of the building and within the large display area adjacent and to the west of the building.*
2. *The display pads along Ireland Road shall maintain a setback of 20-ft from the Ireland Road right-of-way.*
3. *The 15000 sf display area adjacent and to the west of building shall be screened in the front portion facing Ireland Road with a 6-ft wood or vinyl opaque fence. Large shrubs, at a minimum of 6-ft in height at time of planting, creating an opaque screen, may be utilized in combination or in lieu of the opaque fencing.*
4. *The display areas in front of the building shall be clearly marked as to create a definite separation between the display area and the pedestrian walkway.*

The approval of the Use variance is based upon the following findings of fact:

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the display area will be clearly identified and will be setback a safe distance from Ireland Road as not to hinder visibility.*
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 of the retail sales have already been approved as part of the PUD; furthermore, appropriate screening and setback measures will be implemented;*
3. *The need for the variance arises from some condition peculiar to the property involved because the Ordinance does not allow for outside display and storage of items on commercial property;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because Tractor Supply Company sales several items that are large in size, such as tractors, bags of mulch, landscape material, ect... that are appropriate for and require the use of outside storage and display.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan and is reasonably consistent with the goals, objectives and policies of the Comprehensive Plan. The Plan, created in 1990, suggested commercial uses just south of Ireland Road and Residential to the north, but the addition of a filling station, Walgreens, and the previous approved commercial PUD at this location, combined with the volumes of traffic at this intersection, make the highest and best use of the property commercial.*

*The Staff recommends **denial** of Appeal 10-10 to allow for the installation of a monument sign with a display area of 120 sf. The recommendation is based upon the following Finding of Facts:*

1. *The approval will be injurious to the public health, safety, morals, and general welfare of the community because the larger sign will hinder visibility from vehicles entering and exiting the site.*

2. *The use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because the total square footage and copy area of the sign would be larger than the signage display area of the existing monument signage within this PUD development. The larger signage display area hinders the attempt to provide consistent design elements amongst the various developments within the PUD through the utilization of similar signage sizes.*
3. *The strict application of the terms of this chapter will not result in practical difficulties in the use of the property because appropriate identification of the business can still be realized within the confines of the allowable sign display area.*

The Staff recommends approval of Appeal 10-10 to allow the for the reduction of providing parking spaces from the minimum required 96 spaces (5/1,000 sf of gross floor area) to a minimum of 65 spaces and to allow a reduction in landscaping from the required 6-ft fencing and evergreen plantings along the west, north and east property lines, except for that portion identified along the west property line adjacent to the residential home. 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 all state and local building codes will be adhered to during construction and appropriate screening measures will be implicated on site where appropriate;*
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 existing landscape buffering and the expanse of open area (non-developed land) along the north lot line is sufficient to protect adjacent property. In addition, the 5 parking spaces per 1000 sf of building requirement was established for a proposed multi-tenant development. The requested 65 spaces (3.4 spaces per 1000 sf) is appropriate for the proposed single retail tenant use.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the additional hardscape needed to supply 31 more parking spaces would reduce the size of the building and outdoor storage space. Tractor Supply Company sell large items and several diverse items that require a substantial sized building and outdoor storage space. Because of the parcels dimensional width, additional parking can not be implemented while still maintaining the needed building and outdoor storage/display square footage that the business requires.*

MOTION: Jim Trippel moved to forward the Use Variance for Appeal #10-10 to the Common Council with a favorable recommendation, subject to the amended staff recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

MOTION: Rosemary Klaer moved to approve the Developmental Variances for Appeal #10-10. Ross Portolese seconded; motion carried with a vote of 5-0.

MOTION: Charles Krueger moved to deny the Sign Variance for Appeal #10-10. Rosemary Klaer seconded; motion carried with a vote of 3-2.

APPEAL #10-11 An appeal submitted by Frank and Joanne Gorney requesting a Developmental Variance for **320 South West Street**, to allow a home addition on the rear of the home while maintaining the existing 3' side yard setback; and lot coverage of more than 45%.

Mark Hoerstman, 322 and 328 S. West Street, Mishawaka, appeared on behalf of Mr. and Mrs. Gorney. He said the Gorney's are proposing the addition of a handicap accessible bedroom and bathroom for an elderly parent. Mr. Hoerstman said the small addition on the rear of the home will be torn down and the new addition will maintain the 4' setback along the south property line. The new addition will be more attractive than the existing room.

Mr. McCampbell asked Mr. Hoerstman if he occupies 322 S. West Street. He said no, but maintains it as a single family residence.

Mr. Krueger asked what the addition would be used for. Mr. Hoerstman said it is for a handicapped father-in-law.

Mr. McCampbell closed the Public Hearing on Appeal #10-11.

Staff Recommendation

Staff recommends approval of Appeal 10-11 to allow the construction of a rear 16' by 18' addition with a 1-foot interior side-yard building setback from the overhand and a 4-foot setback from the foundation; and to allow approximately 3,376 sf of the lot to be occupied at 320 South West 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 all state and local building codes will be adhered to during construction;*
- 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 proposed addition will maintain the side yard setback of the existing home; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current ordinance was written to regulate the new subdivisions being developed within the City, which typically have larger lots. The ordinance has no provision to accommodate a situation such as the Appellants' desire to build an addition while maintaining the same side yard setback of the existing home.*

MOTION: Rosemary Klaer moved to approve Appeal #10-11. Charles Krueger seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 7:44 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner