

**AUGUST 10, 2010**

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 10, 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, and Ross Portolese. Absent: Rosemary Klaer. In addition to members of the public, the following were also in attendance: John Gourley, Greg Shearon, Peg Strantz, and Kari Myers

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The Minutes of the July 13, 2010, meeting, were approved as distributed.

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Don McCampbell explained the Rules of Procedure.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #10-24** An appeal submitted by Matthew C. Moore requesting a Developmental Variance for **4035 Norton Court**, to permit an accessory structure with a 13' setback on a thru-lot.

Matthew Moore, 4035 Norton Court, presented the appeal. He said he wants to replace an old storage building that had to be torn down due to its dilapidated condition.

Jim Trippel asked if the new building has the same footprint as the old. Mr. Moore said yes.

Mr. Trippel asked if he had had any complaints about the setback in the past. Mr. Moore said no, not the location, only the condition of the building.

Don McCampbell asked if they can put in a driveway from Third Street. Greg Shearon said that would need approval from the Engineering Department. Mr. Moore said he had no plans to do so.

Greg Shearon read letters of support from Mr. and Mrs. Leon Baker, 4025 Norton Court; and Robert and Helen Veal, 201 S. Elder Street.

Mr. McCampbell closed the Public Hearing on Appeal #10-24.

**Staff Recommendation**

*The Planning Department recommends **approval** of Appeal 10-24 to allow a 13-ft building setback for an accessory structure on a thru lot on property located at 4035 Norton Court. 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 there are many accessory structures within the required 25-foot setback along Third Street; and the proposed location of the accessory structure will be at the same location as the previous structure.*
  
3. *The strict application of the terms of this chapter would result in practical difficulties in the use of the property because the required 25-foot building setback for accessory structures along Third Street would reduce the amount of useable yard area that is consistent with adjacent residential properties.*

**MOTION:** Ross Portolese moved to approve Appeal #10-24. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #10-27** An appeal submitted by Kellee Hersha requesting a Developmental Variance for **428 West Imus Drive**, to allow a home addition with a 4 ½-ft exterior side yard setback.

Kellee Hersha, 428 W. Imus Drive, presented the appeal. She said she wants to build a dining room off of her kitchen.

Mr. Trippel asked if any of her neighbor's houses extended that far out. Ms. Hersha said no, her house faces Charlotte Street where most other neighbor's face Imus.

Mr. Krueger asked what the addition would look like. Ms. Hersha said her house would be "L" shaped and the whole house will be re-roofed and re-sided.

Mr. Shearon read a letter of support from Dean and Donna Watson, 504 Imus Drive.

Mr. McCampbell closed the Public Hearing on Appeal #10-27.

#### **Staff Recommendation**

*Staff recommends approval of Appeal 10-27 to allow the construction of a 16' by 17' west side addition with an 8 foot exterior side yard setback at 428 Imus Drive. 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, with the proposed addition, there will be approximately 96 feet to the adjacent residential structure to the west across Charlotte Street; and*
  
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because without the variance the Appellant would have to continue to endure the undersized kitchen/dining area.*

**MOTION:** Jim Trippel moved to approve Appeal #10-27. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #10-28** An appeal submitted by Aaron and Julia LaCava requesting a Developmental Variance for **2420 East Third Street**, to permit the construction of a porch with a 15 ½-ft front yard setback.

Aaron LaCava, 2420 E. Third Street, appeared. He said he wants to add a front porch. It will have two steps instead of the one. He also said his neighbor has a similar setback.

Mr. Trippel asked if the setback matches others in the neighborhood. Mr. LaCava said yes.

Mr. Krueger asked if the porch will extend to the corner of the house. Mr. LaCava said no.

Mr. Trippel asked if there were any plans to enclose the porch. Mr. LaCava said no.

Mr. Shearon read a letter of support from David Fairchild and Shanna Bolser, 2405 E. Third Street.

Mr. McCampbell closed the Public Hearing on Appeal #10-28.

### **Staff Recommendation**

*Staff recommends approval of Appeal 10-28 to allow the construction of a porch with a 15.5-ft front-yard building setback. 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 residence to the west has an existing front porch with a front-yard setback similar to the proposed.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house currently encroaches into the front-yard setback. An appropriate and sufficient entry/porch to the house can not be constructed without seeking a variance.*

**MOTION:** Charles Krueger moved to approve Appeal #10-28. Jim Trippel seconded; motion carried with a vote of 4-0.

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**APPEAL #10-29** An appeal submitted by Billy I. Watkins and Douglas B. and Shari L. Binkley requesting a Developmental Variance for **4064 Cottage Avenue**, to permit the construction of an attached garage with a 2' side building setback.

Doug Binkley, 1928 Somersworth, South Bend, appeared. Mr. Binkley said he and his wife just purchased the home. He said the home has an existing car port that he wants to demolish and build a new 24' X 28' attached garage.

Mr. Trippel asked if the garage will be any closer to the side property line than the existing car port. Mr. Binkley said no.

Mr. Shearon read letters of support from Edwina Bert, 4034 Cottage Avenue; and Carole Carey, 4066 Cottage Avenue.

Mr. McCampbell closed the Public Hearing on Appeal #10-29.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal 10-29 to permit the construction of a new 24' X 28' attached garage resulting in a 2' interior side setback. The recommendation is based on 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 all construction will be completed in accordance with all applicable state and local building codes;*
- 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 construction represents an investment in the neighborhood; and*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant's home has an existing non-conforming side setback of 2' which limits the property owner's ability to improve/expand the garage.*

**MOTION:** Ross Portolese moved to approve Appeal #10-29. Jim Trippel seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:17 p.m.

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Greg Shearon, Senior Planner

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Kari Myers Administrative Planner