

OCTOBER 12, 2010

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 12, 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. In addition to members of the public, the following were also in attendance: John Gourley, Ken Prince, Greg Shearon, and Peg Strantz.

The Minutes of the September 14, 2010, meeting, were approved as distributed.

Don McCampbell explained the Rules of Procedure.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #10-25 An appeal submitted by Susan M. Velez requesting a Developmental Variance for **1205 South West Street**, to allow a privacy fence with a 3' exterior side yard setback and a deck with a 3' rear yard setback. *Continued from the September 14, 2010 meeting. Appellant requests continuance to November 9, 2010 meeting.*

Mr. McCampbell read a letter from the Appellant requesting the item be continued to the November 9, 2010 hearing.

MOTION: Ross Portolese moved to continue Appeal #10-25 to the November 9, 2010 meeting. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #10-36 An appeal submitted by Lloyd Family Lmtd Partnership requesting a Conditional Use Permit for **917 West McKinley Avenue** (College Square Shopping Center) to allow for a tattoo and body piercing studio. *Appellant requests withdrawal.*

Mr. McCampbell read a letter from the Appellant requesting the item be withdrawn from consideration.

MOTION: Ross Portolese moved to withdraw Appeal #10-36 at the Appellant's request. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #10-34 An appeal submitted by Judy Pruski requesting a Use Variance for **1802 West Sixth Street**, to allow an auto body repair and maintenance shop in I-1 Light Industrial zoned property.

Jerry DeTurk, 294 E. 350 N., Warsaw, appeared on behalf of his sister, Judy Pruski. Mr. DeTurk first commended Peg Strantz on her communication and helpfulness.

Mr. DeTurk said the request is to have an auto body repair shop at this address. He said the gentleman who will be operating the business was to have been here this evening, but he is not.

Jim Trippel said he was originally concerned about parking availability, but after reviewing the photos it appears there is plenty of parking.

Mr. McCampbell said he had a question about Lot 68 that was the tax lien sale. He said the certificate may not be redeemed until after October 29. Mr. DeTurk said after October 29 he can petition for the deed. The previous owner has basically abandoned the building. Mr. DeTurk said he has cleared weeds, trimmed trees, cleared out cars and junk. He said that lot will be used for the offices. The idea was to get started right away on the rest of the property and not have to wait the extra month for that Lot 68.

Charles Krueger said it looked like the north end of the building looks pretty bad. He asked Mr. DeTurk if any improvements were planned. Mr. DeTurk said there are improvements planned. There is a paint shop planned for the west end.

Ken Prince noted as stated in the staff report, Code Enforcement has requested they comply by scraping and painting the building.

Mr. McCampbell closed the Public Hearing on Appeal #10-34.

Staff Recommendation

The Staff recommends in favor of Appeal 10-34, a use variance for automotive body repair and automotive maintenance on Lots 66, 67, 69 and 70, Milburn Place Addition, subject to the following conditions:

- 1. Use variance shall be limited to automotive body repair and automotive maintenance shall be limited to indoors. No outside storage of vehicles, materials and/or vehicle parts will be permitted;*
- 2. A site plan shall be submitted to the Department of City Planning that adheres to the developmental standards of the C-4 Automobile Oriented Commercial District; including, but not limited to, legal description, off-street parking, interior layout of the buildings, exterior lighting, storm drainage system;*
- 3. A landscape plan that adheres to the requirements of commercial districts shall be submitted to the Department of City Planning;*
- 4. Freestanding Signage on the site is limited to one unilluminated monument style sign with a display area of no greater than four (4) feet high by eight (8) feet wide/ 32 square feet, and with a total sign height not to exceed five (5) feet and with permits secured from Building and Planning Departments;*
- 5. Façade/wall signage is limited to three (3), with letter height not to exceed 12 inches and ten (10) square feet of display area; and*
- 6. Temporary signage is prohibited.*

This recommendation is based on the following reasons:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have no impact on the surrounding commercial and residential uses that currently operate there. The proposed use is consistent with the existing industrial properties within the area.*

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 mixed commercial/industrial/residential nature of the area along the railroad tracks. The recommended conditions will also ensure that the proposed business will not affect the residential neighborhood to the south and north.*
3. *The need for a variance arises from the nature of the area, where property owners are very protective of the intensive zonings of their properties to the west and east. A use variance would allow the proposed automobile commercial use, while still protecting the industrial zoning for future use and also protecting the residential users to the north and south.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current I-1 light Industrial zoning would not allow for the proposed automobile oriented commercial uses.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies other surrounding areas as Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Charles Krueger moved to forward Appeal #10-34 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #10-35 An appeal submitted by Habitat for Humanity of St. Joseph's County requesting a Developmental Variance for **327 Milburn Court**, to allow a new home with an 11' front setback and a 2' 6" side yard setback.

Daryl Knip, Abonmarche Consultants, 750 Lincolnway East, South Bend, represented the Appellant. Mr. Knip said that Todd Junkins, Director of Construction Services for Habitat for Humanity was also present.

Mr. Knip said the variance request is so the home will sit in line with the other homes on the street. The side yard setback is for a side door porch. The rest of the house will comply with the required setbacks.

Mr. Trippel asked if the 5' stoop measurement was from the foundation. Mr. Knip said yes.

Ms. Klaer said it would be a nice improvement.

Mr. McCampbell closed the Public Hearing on Appeal #10-35.

Mr. Trippel asked Mr. Prince if there had been no roof over the stoop, would a variance be required for the side yard setback. Mr. Prince said if it is considered a structure by the definition in the Ordinance, it would require a variance. If it was wood, it would require a variance.

Mr. Trippel said he thought it was concrete. Mr. Prince said he would need clarification from Habitat because the front porch is concrete.

Staff Recommendation

Staff recommends approval of Appeal #10-35 to allow the construction of a home lot with an 11' front building setback and 2' 6" side yard 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 proposed home will be consistent with the existing setbacks of the adjacent homes and the variance for the side yard setback is for an exterior side door porch only and not the entire home; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25' building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25' front building setback would not be consistent with adjacent residential setbacks.*

MOTION: Jim Trippel moved to approve Appeal #10-35. Rosemary Klaer seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:15 p.m.

Peg Strantz, Associate Planner

Kenneth B. Prince, City Planner