

NOVEMBER 9, 2010

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 9, 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: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers

The Minutes of the October 12, 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 October 12, 2010 meeting.*

Susan Velez, 1205 S. West St., presented the appeal. Ms. Velez said this request was continued from the September meeting.

Ms. Velez said she would like a privacy fence with an approximate 3' setback from the sidewalk. She said it would be angled 6' off the corners so motorists and pedestrians will have better visibility entering and exiting the alley.

Jim Trippel asked how tall the fence would be. Ms. Velez said 6'.

Mr. Trippel asked Ken Prince how far from the property line would the fence be located. Mr. Prince said the fence would be within 2' of the property line.

In Favor

Richard Negri, 508 W. 13th Street, spoke in favor of the request. He said both he and Ms. Velez are on the route to Rose Park and 9 times out of 10 they get trash in their yards. Mr. Negri said Ms. Velez has considered her neighbor and he would have access. He also said he doesn't see what the complaint is. She has had respect for her neighbors. Mr. Negri said he knows of no neighbors who are against this complaint, but many were unable to attend this meeting and he doesn't see where this fence would be a bother.

Don McCampbell said the fence must be angled in order to provide vision clearance for those exiting the alley.

Ross Portolese asked Mr. Negri who throws trash in his yard. Mr. Negri said it's often people on their way to and from Rose Park. He gets beer bottles and pop cans.

Opposition

Mike Van Bruaene, 1221 S. West Street, said if Ms. Velez has a 6' fence, he will have trouble seeing to back out of his driveway.

Bob Allison, 519 W. 13th Street, said he uses the alley. He agrees Ms. Velez needs more privacy. He said he is concerned about cars being able to see children as they pull out of the alley, but he likes the idea of the corner being angled. That should solve the problem.

Mr. McCampbell closed the Public Hearing on Appeal #10-25.

Staff Recommendation

Staff recommends approval of Appeal 10-25, 1025 S. West, to allow installation of a privacy fence with a three (3) foot exterior side yard setback; and to permit an existing deck with a rear yard setback of three (3) feet at its closest to the south property line and 17 feet at its farthest. 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 because there will be sufficient distance between the location of the fence/deck and the West Street and alley intersection; and the fence will be installed with one entire fence panel angled at the alley to permit adequate vision clearance for pedestrians, bicycles and drivers;*
- 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 both home improvement projects represent an investment in the neighborhood; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 12.5 foot setback for the fence is close to a third of the lot width. To move the fence to the required setback would severely limit the amount of land that can be used for recreation; to require a 25 foot setback for the unroofed deck would only permit an approximate 3 foot deep deck.*

MOTION: Charles Krueger moved to approve Appeal #10-25. Jim Trippel seconded; motion carried with a vote of 3-1 (*Portolese*).

APPEAL #10-37

An appeal submitted by Gurson Enterprises Inc. requesting a Use Variance and Developmental Variance for **701 West Fourth Street**, to allow a wood privacy fence with a 0' exterior side yard setback, and a C-5 Neighborhood Commercial use within an R-1 Single Family Residential District.

Paul Gurson, owner of 701 W. 4th Street, presented the appeal. Mr. Gurson said his property line runs right along the side of his building. He put up a fence because he wants to increase his business by adding outdoor seating for food. He said he back yard area would be useless if he has to set the fence back 8.5' out of the City right of way.

Mr. Gurson said he was told to keep the trash dumpster off the new sidewalk. His plan is to keep up against the building.

Mr. McCampbell said one of the staff's conditions of approval was to put the dumpster behind the building and enclose it. Mr. Gurson said he would if he had to, but other businesses in the area have theirs on the outside.

Mr. Prince said the Use Variance is an expansion and the requirement is to bring the property up to code relative to the zoning ordinance and the condition is appropriate. He said getting the dumpster enclosed is important and would require a Notice of Recognition of Encroachment from the Board of Public Works and Safety.

Mr. Portolese asked if a trash truck would damage the new sidewalk. Mr. Gurson said yes it would and he would roll the dumpster to the curb on trash days so the truck would not have to drive on it.

Mr. Trippel asked if he would be leaving the fence where it is. Mr. Gurson said yes, it wouldn't cause any problems with people seeing to enter and exit the alley and he just wants to be able to increase his business.

Mr. McCampbell closed the Public Hearing on Appeal #10-37.

Staff Recommendation

*The Planning Staff recommends **approval** of Appeal 10-37 to permit a 7' privacy fence to remain up to the east property line. A hearing with the Mishawaka Board of Public Works and Safety is necessary to permit the extra 8.5 feet of encroachment into the public right of way. 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 the fence will be set suitably back so as not to block vision driver and pedestrian vision along the alley;*
- 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 fence is a buffer from the activities that occur at the tavern for the properties south of the alley; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because setting the fence back 12.5 feet from the east property line will decrease the yard space by 50%.*

USE VARIANCE:

*The Planning Staff recommends **approval** of Appeal 10-37 to allow expansion of the C-5 commercial use of the eating and drinking establishment (Yakety Yak Café) onto the R-1 zoned southern 57 feet of the property with the following conditions of approval:*

- 1. Outdoor activities on the lot be limited only to those dates that are approved by the Mishawaka Board of Public Works and Safety;*
- 2. The dumpster be removed from the public right of way (street and sidewalk) and be surrounded by an enclosure;*
- 3. At the time any construction is proposed, a site plan and landscape plan shall be submitted to comply with Section 137-35 Final Site Plan Approval, Section 137-815 Landscaping and Screening Regulations, and the C-1 General Commercial District Developmental Regulations; and*
- 4. The ground area between the fence and sidewalk shall be landscaped.*

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 area in question is located immediately behind the longstanding commercial property and by all appearances is the rear yard of the business. The property is located in an older part of the City where historic businesses were intermingled with single family residences for in some cases, more than 50 years.*
- 3. The need for the variance arises from some condition peculiar to the property involved because the zoning for the business was limited only to the commercial building. The expansion of the zoning is not sensitive to the context of the property in a residential neighborhood. The use variance process affords more regulatory control over future activities and expansion of the commercial business;*
- 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 zoning for the property permits only single family development. The proposed commercial expansion area/lot is too small for residential development and is by default the backyard of the existing commercial business; and*

5. *The recommendation of the Comprehensive Plan for this area is low density residential. The variance allows for the modest expansion of a long-standing commercial property while maintaining the integrity of the existing residential neighborhood.*

MOTION: Ross Portolese moved to forward the Use Variance of Appeal #10-37 to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 4-0.

MOTION: Ross Portolese moved to approve the Developmental Variance of Appeal #10-37. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #10-38 An appeal submitted by Samuel W. and Rachel H. Rose requesting a Developmental Variance for **629 South Middleboro Avenue**, to allow a garage addition with a 3' rear yard setback.

Samuel and Rachel Rose, 629 S. Middleboro Avenue, presented the appeal. Mr. Rose said any garage they would choose to build would require a variance. Mrs. Rose said most garages in their neighborhood have similar rear setbacks and theirs would be no different. The garage would create no line of site problems for cars or pedestrians.

Charles Krueger asked if there was a garage there now. Mr. Rose said no.

Staff Recommendation

*The Staff recommends **approval** of Appeal 10-38 to permit the construction of a 28' X 30' attached garage resulting in a 3' rear building 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 rear building setback of 33' which unduly limits the size of any home or garage addition.*

MOTION: Jim Trippel moved to approve Appeal #10-38. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #10-39 An appeal submitted by Starboard Properties, LLC, requesting a Developmental Variance for **506 Division Street**, to allow barbed wire fencing in C-5 Neighborhood Commercial District.

Stephen Peterson, owner of Starboard Properties, said he purchased 512 Division and there was an existing old fence with barbed wire and he wants to replace it.

Mr. Peterson said there are two underwriters in the country for boats and they require a secure lot for insurance purposes. He said all marinas have either razor or barbed wire. He said at any one time he may have up to \$1 million in inventory and you cannot lock up a boat like you can a vehicle. He said he has had some incidents and without the security, he is liable. He admitted the barbed wire will not keep everyone out, but will deter many. He said some boat motors are worth up to \$20,000.

Mr. Krueger asked if he had video cameras on his property. Mr. Peterson said cameras no, alarms yes. He said he wants to grow his business and hopes the City still welcomes his business.

Mr. Peterson said he took a drive and within 8 blocks of his facility and there are many properties with barbed wire; including municipal properties. He said the City property on Cedar Street has razor and barbed wire. Division Street has no access and it really isn't a street.

Mr. Trippel asked if he was requesting to allow the existing fence to remain was the request for new fencing. He also questioned wouldn't a cyclone fence without the barbed wire be just as effective. Mr. Peterson said cyclone fencing would deter people. He said the 7' fence with barbed wire will keep most people out.

Mr. Prince said staff had concerns about the visibility of the fence from Mishawaka Avenue. He said if barbed wire is indeed required, then he suggested the request be continued to the next meeting to provide documentation to that fact. Mr. Prince said he is not objecting to the height, but objects to the appearance of barbed wire.

Mr. Peterson said the fence will be 80' long and the only place where it will not be barbed wire is along the east line. He said he needs something to deter would be vandals. He can wait the 30 days and if he doesn't get the barbed wire approved, he will have to look for another location. Mr. Peterson indicated he also houses the Mishawaka Fire Department boats. He said he just wants to secure the property and improve the area.

In Favor

Andrew Peterson said he used to work at Wyland Marine and they used motion detectors. County Police used to come every night because animals would set off the motion sensors and after while they didn't come because of so many false alarms.

Opposition

Deborah Van Bruaene, 411 E. Mishawaka Avenue, said her property is the only one affected by this and he didn't come and speak to her about it.

Mr. Peterson said there would be no barbed wire along her property line. He said he would put up a metal privacy fence for a section instead of chain line.

Rebuttal

Mr. Peterson said he's there to help the neighborhood. He's now talking about using less barbed wire.

Mr. Krueger asked how many employees he had. Mr. Peterson said two in the winter and six in the summer months. He said he hopes to expand, but needs a secure place.

Mr. Trippel asked why this request can't wait one month. Mr. Peterson said the house at 512 Division Street is due to be demolished soon and then the property will be wide open. His is not a car lot, it's not a repo lot. He has very expensive pieces of equipment to protect.

Mr. McCampbell closed the Public Hearing on Appeal #10-39.

Staff Recommendation

Although the Staff recommends approval of the chain link fence with a 7' height, Staff is recommending denial of the barbed wire at 506 and 512 Division. The recommendation is based upon the following Findings of Fact:

- 1. Approval of the 7' chain link fence, without barb wire, will not be injurious to the public health, safety, morals and general welfare of the community because all local and state codes will be adhered to.*
- 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 fence, without barb wire, represents a substantial investment and of the property.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Zoning Ordinance requires that fences in the front yard area, along Division*

Street not exceed 4' in height and must be 75% open. Strict application of the ordinance would not provide appropriate security measures for the marina and the inventory outside the buildings.

MOTION: Charles Krueger moved to approve Appeal #10-39 with the barb wire. Jim Trippel seconded; motion carried with a vote of 3-1 (*McCampbell*).

APPEAL #10-40 An appeal submitted by Karen S. Wilson and Kelley S. Desimone requesting a Sign Variance for **4202 Lincolnway East**, to allow a 3' X 4' sign in an R-1 Single Family Residential District.

Jim Eichorst represented Karen Wilson. He said he was here to help her out. He said Karen Wilson wants a small sign to advertise her hair salon which is inside of her home. He said she didn't think a sign would be detrimental since the properties on both side of her home are commercial. He said she wants a sign in her front yard because no one knows she's there. She didn't know she couldn't have the sign until she received the letter from the Planning department.

Mr. Prince explained that the property was zoned R-1 Single Family Residential and residential businesses are not designed for drive in business.

Mr. Trippel asked if it would be easier to change the zoning. Mr. Prince said the distinction is that she lives there. He also indicated if the property were to be rezoned, they would have to bring the property up to C-1 standards.

Mr. Eichorst said Ms. Wilson wants to keep the residential look of the property.

Mr. McCampbell said the staff recommendation is for denial of the larger sign, but approval of a smaller sign.

Mr. Trippel said he thinks what staff recommends is appropriate. He said some requests are not justified.

Mr. Portolese said the problem is that the property is residential. Mr. Prince said the 4 sqft sign is appropriate.

In Favor

Richard Nunemaker, 4305 Lincolnway East, said is was most in favor of commercial businesses along Lincolnway.

Mr. Prince read a letter of remonstrance from Ron Neff owner of Ron's Hair Salon, 4221 Lincolnway East.

Rebuttal

Mr. Eichorst said Ms. Wilson used to work for Mr. Neff but left to take care of her ill mother.

Mr. McCampbell closed the Public Hearing on Appeal #10-40.

Staff Recommendation

*The Planning Staff recommends **denial** of Appeal #10-40 to install a freestanding sign with a height of 4 feet and a display area of 3' by 4'/12 SF, but could recommend a sign with a display area of 4.5 square foot and a total height of four (4) feet for the residential zoned property. This 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 may be affected in a substantially adverse manner because the size of the proposed sign is excessive for the residential zoned property that is situated south and adjacent to a residential neighborhood; and*

3. *The strict application of the terms of Chapter 129, the On-Premise Sign Standards, will not result in practical difficulties in the use of the property. The code does permit a one (1) square foot sign that is flush mounted to the house for advertising. Staff feels the hardship is self imposed.*

MOTION: Jim Trippel moved to deny Appeal #10-40 as submitted. Ross Portolese seconded; motion passed with a vote of 3-1 (*Krueger*).

MOTION: Jim Trippel moved to approve a 4.5 square foot, 4' tall sign. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #10-41 An appeal submitted by Duke Realty requesting a Sign Variance for **611 East Douglas Road**, to allow additional directional signage for the Medical Office Building.

Douglas Merritt, Professional Permits, 113 S. Main Street, Mishawaka, represented Duke Realty. He said they are seeking approval for an on-premise directional sign program for the Medical Office Building, associated parking lots, and internal drive aisle.

Mr. Merritt said the proposed signs will provide wayfinding guidance for people seeking services and facilities at the medical campus. He said the scale of the signs are proportionate to the size of the facility and are similar to those of the hospital.

Mr. Trippel asked if all of the signs would be on their property. Mr. Merritt said yes.

Mr. Prince read a letter of support from Edward Rose of Indiana.

Mr. McCampbell closed the Public Hearing on Appeal #10-41.

Staff Recommendation

The staff recommends approval of Appeal 10-41 to allow (10) directional signs - (3) 68 ½" x 48" signs, (4) 84" x 60" signs, (2) 73" x 60", and (1) 22" x 12" sign at 75" overall height at the Medical Office Building located at 611 E Douglas Rd. This 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 state and local building codes will be adhered to during installation of the signs; and the signage will allow for positive, safe internal traffic management through the site.*
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 signs will be in scale with the overall development and consistent with existing directional signage that is implemented for the hospital site.*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in a practical difficulty in the use of the property. The lack of directional signage will not allow patrons to easily and safely find their way throughout the development.*

MOTION: Jim Trippel moved to approve Appeal #10-41. Charles Krueger seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 7:16 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner