

MAY 10, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 10, 2011, 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.

Don McCampbell explained the Rules of Procedure.

The Minutes of the April 12, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #11-17 An appeal submitted by Paul and Teresa Peiffer requesting a Developmental Variance for **537 East Fourth Street**, to allow for the construction of an access ramp with a 5' front yard setback.

No one appeared to present the appeal. The Board unanimously approved continuing the item to the June meeting.

APPEAL #11-18 An appeal submitted by Frank R. Folk requesting a Developmental Variance for **710 Somerset Avenue**, to allow for a roof to be constructed over an existing porch with a 21' front yard setback.

Frank Folk, 710 Somerset Avenue, presented his appeal. He said he has a front porch patio that is approximately 21' from the sidewalk and he wanted to construct a new roof over it. He indicated the new roof would match the pitch of the roof on the house.

Don McCampbell asked if the new roof would be the same shape as the existing. Mr. Folk said it would be approximately 8" lower.

Jim Trippel asked if the porch would remain open. Mr. Folks said yes.

Ken Prince read a letter of support from Mark Kruger, 716 Somerset Avenue.

Mr. McCampbell closed the Public Hearing on Appeal #11-18.

Staff Recommendation

Staff recommends approval of Appeal 11-18 to allow the construction of a roof over an existing porch with a 21-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 south has 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. Replacement of the roof over the existing porch could not be constructed without seeking a variance.*

MOTION: Charles Krueger moved to approve Appeal #11-18. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-19 An appeal submitted by Robert E. Wegner, Jr. requesting a Developmental Variance for **931 North Main Street**, to allow for a solid fence with a 0' exterior side-yard setback and a 4' solid fence to be constructed with a 7' front yard setback.

Robert Wegner, Jr., 931 N. Main Street, presented his appeal. He said he would like a 6' privacy fence along Broadway Street at the rear of his property. He said it would provide him with privacy from traffic. Mr. Wegner said it shouldn't interfere with people pulling out of the alley.

Mr. Wegner said along the side property line toward the front also along Broadway, he would like a 2' brick-type wall with wrought iron railing on top to help bring down the noise and keep people from throwing trash in his yard and trespassing. He said the fence would then make a 45 degree angle around the front, behind the tree. He said it wouldn't interfere with visibility.

Mr. Trippel asked if the fence would be about 15' from the front property line. Mr. Wegner said yes (graphic shown on overhead).

Mr. Trippel asked what the fence would be constructed of. Mr. Wegner said it would be vinyl or wood.

Mr. Portolese asked if the fence would be 6' or 7'. Mr. Wegner said he would like 7', but can make do with 6'.

Mr. McCampbell asked if he had read the comments from staff. Mr. Wegner said yes he did. He also said if it was possible, he would like a trashcan to put near the corner for people waiting on the bus so they wouldn't litter in his yard. He said he would empty it.

Mr. McCampbell closed the Public Hearing on Appeal #11-19.

Staff Recommendation

Staff recommends **approval** of Appeal 11-19 to allow the construction of a privacy fence with a 0' exterior back yard setback along Broadway, but recommends **denial** of a 4' solid fence with a 7' front yard setback. However, Staff can recommend **approval** of a 42" combination wall/fence with a 0' exterior side and 15' front setback (see attached conceptual drawing). This recommendation is based upon the following Findings of Fact:

1. *Approval for the 6' privacy fence along the back exterior side yard along Broadway and 42" combination wall/fence in the exterior front yard 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 installed to create proper vision clearance at the intersection;*
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 fence will be set well inside the Appellant's yard and not create visibility issues; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 12'6" setback along Broadway would reduce the amount of usable yard area.*

MOTION: Jim Trippel moved to approve Appeal #11-19 subject to Staff recommendations. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #11-20 An appeal submitted by Panera Bread, LLC of Sunset Hills, MO and Cressy Land Planning Associates, LLP, requesting a Use Variance for **4310 North Main Street**, to allow a drive-thru and a Developmental Variance for a reduction in the required number of parking spaces.

Tony Disanza, Panera Bread, St. Louis, presented the appeal. Mr. Disanza said Panera Bread is requesting to add a drive-thru to their existing restaurant, and a request to reduce on-site parking from the current 75 spaces to 59.

Mr. McCampbell said he was there at noon and couldn't find 5 parking spaces; he found 4 in back and one on the side and there were 3-4 cars driving around the parking lot looking for a spot. Mr. Disanza said other locations that have the drive-thru have reduced their required parking by 15% and said those now circling the parking lot to find a place to park can get their orders at the drive-thru.

Mr. McCampbell asked if that will eliminate the 2 spaces directly in front near the curb. Mr. Disanza said they are keeping the handicap spaces on the side.

Mr. McCampbell asked if the 6 spaces on the east side of the building will be eliminated. Mr. Disanza said yes. He also said that time for food pick up is approximately 3 ½ - 4 minutes, so the traffic flow through the drive-thru would be consistent.

Mr. Trippel asked what the proportion of carry out business is now. Mr. Disanza said approximately 30% vs. dine in sales. He said they have found after the retrofit the carry out business drops to about 18% due to the availability of the drive-thru. He said there are 1,400 Panera bakery cafes in the US, only 70 have drive-thrus and 30 of those are retrofits. It's a new program.

Mr. Trippel said he was concerned about reducing the parking by 16 spaces. He asked Mr. Disanza if he felt the remaining spaces would be enough to serve their customers. Mr. Disanza said yes, parking studies have shown parking need reduces with the drive-thru.

Mr. Prince said customer parking overflow parks in Houlihan's parking lot in the morning and Houlihan's overflow parks at Panera in the evening.

Mr. McCampbell asked where the exit would be. Mr. Prince said right now it would be the entry drive for the medical center. Ideally, that exit lane would be separate and can be addressed during the site plan phase.

Mr. Krueger asked Mr. Disanza if he had reviewed staff recommendations and does he agree with them. Mr. Disanza said yes.

Mr. McCampbell closed the Public Hearing on Appeal #11-20.

Mr. Trippel asked Mr. Prince if he was comfortable with the parking. Mr. Prince said it isn't ideal, but the only people Panera would hurt would be themselves or an adjacent restaurant. The impact is, if you want to go to Panera that badly, you will park at an adjacent business and walk. He said when you have multiple restaurants in the area, it's a given that one would park in other lots if the desired lot was full and the only issue he was aware of was parking for Houlihan's St. Patrick's Day party and they have made modifications to that event.

Staff Recommendation

Staff recommends approval of Appeal 11-20 to allow a drive-thru located at 4310 Main Street with the following conditions:

- 1) *The drive-thru use shall be limited to a specialty gourmet sandwich/bakery restaurant.*
- 2) *An administrative site shall be submitted for review and approval of the reconfiguration of the parking area and drive-thru addition.*

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 current restaurant use will not change and the proposed drive-thru use for specialty gourmet sandwich/bakery restaurant is less intense and traffic demand is less than a typical fast-food restaurant drive-thru.*
3. *The need for the variance arises from some condition peculiar to the property involved because the zoning current zoning allows for a restaurant, but prohibits a drive-thru use. Rezoning to the appropriate zoning classification with the allowable uses would not be appropriate for this location;*
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 a restaurant but does not allow a drive-thru to be incorporated into the business; and*
5. *The approval is consistent with the recommendations of the Comprehensive Plan for Service and General Commercial development for this and the surrounding area.*

Staff recommends approval of Appeal 11-20 to allow the reduction in parking to 59 spaces. 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 drive-thru use and restaurant is not an intensive use as a fast-food drive-thru use and thus does not require the expanded amount of parking. Furthermore, the number of parking spaces supplied exceeds the required ratio for restaurant use.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the proposed drive-thru is being implemented on an existing developed site. The current building and size of lot does not allow for the drive-thru and ability to comply with the required parking for drive-thru without obtaining a variance.*

MOTION: Ross Portolese moved to forward Appeal #11-20 Use Variance to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 4-0.

MOTION: Charles Krueger moved to approve Appeal #11-20 Developmental Variance. Jim Trippel seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:30 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner