

JUNE 14, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 14, 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, Ross Portolese, and Rosemary Klaer. Absent: Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Jim Trippel explained the Rules of Procedure.

The Minutes of the May 10, 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. *Continued from the May 10, 2011 meeting.*

Paul and Teresa Peiffer, 537 E. Fourth Street, appeared. Mr. Peiffer said he has an adult son with leukemia and he needs safe access to the home. He said he is able to walk with a cane, but cannot navigate stairs.

Ross Portolese asked if the ramp has been constructed. Mr. Peiffer said yes, they obtained a permit for it when they submitted their variance application.

Mr. Trippel closed the Public Hearing on Appeal #11-17.

Ken Prince said it's customary when people come in for a handicap accessible ramp that we issue a permit if they file for a Developmental Variance. He said that's why it's been constructed. We've never denied a request, but have requested modifications in construction prior to it being built.

Staff Recommendation

Staff recommends **approval** of Appeal 11-17 to allow an access ramp to be constructed with a 5 foot front-yard setback to the south. 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 were 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 ramp is modest in size and 6 feet from the public sidewalk; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellants' where special access to an individual's home is needed.*

MOTION: Ross Portolese moved to approve Appeal #11-17. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #11-21 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **407 West Sixth Street** to permit a new home with an 8' front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the next four appeals are for homes for the City's First Time Home Buyer program. Mr. Prince said it's important to have the homes fit the context of the street; it's a policy to have the setback match those nearby. This home will have a 9' setback with 1' overhang.

Rosemary Klaer asked if the home was already sold. Mr. Prince said yes, homes are not built unless a buyer has been approved.

Mr. Trippel closed the Public Hearing on Appeal #11-21.

Staff Recommendation

Staff recommends approval of Appeal 11-21 to allow the construction of a home lot with an 8-foot 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore; the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Charles Krueger moved to approve Appeal #11-21. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-22 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **519 West Sixth Street** to permit a new home with a 5' front building setback.

Ken Prince, City Planner, represented the Redevelopment Commission. He said this appeal is nearly identical to the previous one, except this home will have a 5' setback.

Mr. Trippel closed the Public Hearing on Appeal #11-22.

Staff Recommendation

Staff recommends approval of Appeal 11-22 to allow the construction of a home lot with a 5-foot 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Rosemary Klaer moved to approve Appeal #11-22. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #11-23 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **510 West Tenth Street** to permit a new home with a 7' front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this is the same situation as the previous two. This setback will be 7'.

Mr. Trippel closed the Public Hearing on Appeal #11-23.

Staff Recommendation

Staff recommends approval of Appeal 11-23 to allow the construction of a home lot with a 7-foot 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore,*

the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.

MOTION: Ross Portolese moved to approve Appeal #11-23. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #11-24 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **311 Cleveland Street** Mishawaka, Indiana, to permit a new home with a 10' front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this situation is similar as the previous three. However, in this instance, the permit was inadvertently issued before the variance was approved.

Mr. Trippel closed the Public Hearing on Appeal #11-24.

Staff Recommendation

Staff recommends approval of Appeal 11-24 to allow the construction of a home lot with a 10-foot 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks*

MOTION: Rosemary Klaer moved to approve Appeal #11-24. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #11-25 An appeal submitted by James and Bonnie Bonham requesting a Developmental Variance for **1031 East Battell Street** to allow a deck with a 21' rear yard setback.

James and Bonnie Bonham, 1031 E. Battell St., appeared to present the appeal. They said they are in the process of remodeling the lower level of their town home and they would like to build a deck on the lower level mainly to provide safe exit from the home if necessary. No exit currently exists.

Mr. Portolese asked if they planned to build steps to the river. Mr. Bonham said yes, eventually.

Mr. Trippel closed the Public Hearing on Appeal #11-25.

Mr. Trippel asked Mr. Prince if their property went to the river's edge. Mr. Prince said that would be a good question for Ed Fisher. Mr. Fisher said he wasn't sure.

Staff Recommendation

*Staff recommends **approval** of Appeal 11-25 to allow the construction of a deck with a 21' rear 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 adjacent townhomes have decks on the rear of their structures; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing setback inhibits the homeowners from completing any expansion without obtaining a variance.*

MOTION: Rosemary Klaer moved to approve Appeal #11-24. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-26 An appeal submitted by Parkview Terrace Apartments Limited Partnership requesting a Developmental Variance for **602 East Thirteenth Street** to allow for a reduction of parking spaces for the apartment complex from the required 162 to 127 spaces.

Ed Fisher, Fisher Land Surveying Services, 303 E. Third Street, Mishawaka, appeared on behalf of the Appellants. He said the apartments; the City and Habitat for Humanity are partnering to form four (4) individual lots on an unused parking lot on the western portion of the property. This will reduce the number of parking spaces from 200 that are existing to 127. The Zoning Ordinance requires 162 for the 108 apartments in the complex. Mr. Fisher referred to the photographs in the staff report that shows how few cars actually use the lot. He said those spaces are not needed by the residents.

Mr. Trippel asked how Habitat will acquire the lots. Mr. Prince said meetings were held with residents on what improvements to make to Hillis Hans Park and at those meetings there were problems that were identified. He said it was determined visitors to the apartments, not the residents, were the problem who would park in the neighborhood and walk to the apartments. Mr. Prince said the question was how could this be addressed?

Mr. Prince said a management company is looking to buy the apartment complex and apply for tax credits to reinvest in the facility. He said the City's suggestion was to eliminate the far west parking lot, because it wasn't used, and it would provide a better blend in the neighborhood to build single family homes on the property. The proposed four lots were included in their application and it also included funding for Habitat.

Mr. Prince said the funding for improvements will include fencing between the new lots and the complex along with landscaping. He said an ornamental picket fence will be provided along the street as well. All pedestrian traffic will be through one point. Mr. Prince said because of the fence, it will discourage people visiting the apartments from parking on the side streets. He also said it's important to note that the apartments will be providing additional security

cameras and a tot lot on their property. The current mid-block crossing from the apartments to the park will be removed and moved to the corner. He said all of the improvements will be a great enhancement to the neighborhood and should start in September.

Mr. Trippel asked Mr. Prince if he felt 127 spaces were adequate. Mr. Prince said many residents are low-income families who rely on public transportation.

Mr. Krueger asked if the residents of the Habitat houses will have access to garages from the street. Mr. Prince said there will be no alley and access will be from the front.

Mr. Trippel closed the Public Hearing on Appeal #11-26.

Staff Recommendation

The Planning Staff recommends of Appeal 11-26 to allow a reduction in parking from 162 spaces to 127 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 parking is sufficient to support the proposed uses as is evident in the current parking on the site.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because with the current under utilized parking that exists on the site, improvements and expansion of the site cannot be implemented. Furthermore, the proposed (4) residential building lots would not be able to be developed.*

MOTION: Jim Trippel moved to approve Appeal #11-26. Rosemary Klaer seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:27 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner