

AUGUST 9, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 9, 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, Ross Portolese, Rosemary Klaer. In addition to members of the public, the following were also in attendance: David Bent, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

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

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #11-30 An appeal submitted by David A. Bridger requesting a Developmental Variance for **620 North Webster Street** to permit a solid fence with an exterior side yard setback of 0'.

David Bridger, 620 N. Webster Street, presented the appeal. He said he wants to replace the existing fence that is probably 50 years old and extend it to enclose his back yard.

Charles Krueger asked what material will be used for the fence. Mr. Bridger said white vinyl fencing.

Jim Trippel asked Mr. Bridger if they would comply with staff's recommendation to angle the fence. Mr. Bridger said yes. He also said Judge Means was a neighbor of his and has a fence very similar to his.

Greg Shearon read a letter of support from David and Elizabeth Miller, 617 Webster Street.

Mr. McCampbell closed the Public Hearing on Appeal #11-30.

Staff Recommendation

Staff recommends approval of Appeal 11-30 to allow the construction of a privacy fence with a 0-ft exterior side-yard setback along N Webster Street. 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 there is sufficient space (in excess of 55') between the proposed fence and the N Webster Street and W Grove Street intersection as not to create a visual hindrance; and the fence will be angled from the garage to create a clear visual coming from the existing garage.*

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 is replacing, at the same location, a fence that has been on the property for years. Furthermore, property to the south has an existing at the same location as the proposed.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 12 ½ -foot building setback would push the fence to the middle of the yard. To adhere to the required 12 ½ -ft setback for the fence would reduce the amount of usable yard area that would otherwise be protected from N Webster Street by the placement of the fence.*

MOTION: Charles Krueger moved to approve Appeal #11-31. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #11-31 An appeal submitted by Stephen and Diane Spencer requesting a Developmental Variance for **711 North Wenger Avenue** to permit a handicap accessible ramp with a front-yard building setback of 5' and side yard setback of 2'.

Stephen Spencer, 711 N. Wenger, presented the appeal. He said he built a ramp for his wife who has a brain tumor and confined to a wheelchair and it's the only way to get her in and out of the house.

Mr. Trippel asked if the ramp was permanent. Mr. Spencer said his wife's condition is terminal and the ramp will remain as long as she needs it.

In Favor

Gerald Mott, 628 N. Wenger, said he has been Mr. Spencer's neighbor for 15 years and the ramp is not an eyesore. He said it only takes up part of his driveway and is important for them to have.

Mr. Mott said he is disgusted that anyone would question why it's there. It doesn't take up any room and doesn't interfere with anyone else's property and he is in favor of it.

Judy Birkner (sp), 60110 Carol Street, said she is Mrs. Spencer's sister and takes care of her and it was built to help get her in and out of her house safely.

Ms. Birkner said it seems like it takes an awful lot to get a ramp put up. She said the ordinance needs to be looked at and changed. Ms. Birkner said according to ADA requirements, you can't refuse a person a ramp if they need it. You just don't need to jump through hoops to get a ramp when it's needed.

Mr. Krueger asked Ms. Birkner if the ordinance caused her a hardship in any way. She said it caused her brother-in-law to have to take time off of work. Ms. Birkner said they weren't thinking of a permit when the ramp was built; only that the need was immediate.

Mr. Shearon read letters of support from the following: Marvin Yocum, 725 N. Wenger; Dale and Amy Nelson, 713 N. Wenger; Douglas and Linda Armstrong, 718 N. Wenger; and Don and Janet DeCocker, 712 and 706 N. Wenger.

Mr. McCampbell closed the Public Hearing on Appeal #11-31.

Mr. Shearon said staff does not hold up the issuing a permit for a ramp, but want to make sure that the ramp is built according to code. He said the procedure is to issue the permit immediately and follow up with the variance process afterwards.

Staff Recommendation

Staff recommends **approval** of Appeal #11-31 to allow the wheelchair ramp constructed with a 5' front-yard setback and 2' side yard setback to remain. 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
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the current ordinance was written to regulate the subdivisions being developed within the City, which typically have larger lots. The ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.

MOTION: Ross Portolese moved to approve Appeal #11-31. Mr. Trippel seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:13 p.m.

Greg Shearon, Senior Planner

Kari Myers, Administrative Planner