

SEPTEMBER 13, 2011

BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 13, 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, and 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 August 9, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #11-32 An appeal submitted by the City of Mishawaka Planning Department, acting on behalf of the appellant, Habitat for Humanity of St. Joseph County, requesting a Developmental Variance for **548 West Sixth Street** to permit a garage with a 19' rear building setback.

Ken Prince, City Planner, presented the appeal. He said when the previous variance for the front setback of the home was approved, the Planning Department overlooked the setback of the garage. Mr. Prince said 5th Street was misidentified as an alley and not a thru street and a 25' rear setback is required. The garage has already been built.

Mr. McCampbell closed the Public Hearing on Appeal #11-32.

Staff Recommendation

Staff recommends approval of Appeal 11-32 to allow the construction of a detached garage with a 19-ft rear-yard setback on a through lot. 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 there are adjacent structures within the required 25-ft setback along 5th Street.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-ft front-yard building setback would reduce the amount of useable yard area that is consistent adjacent residential properties.*

MOTION: Ross Portolese moved to approve Appeal #11-32. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #11-34 An appeal submitted by Conrad A. Roberts requesting a Developmental Variance for **928 Corby Boulevard** to permit a 1,440 sqft garage.

Conrad Roberts, 928 Corby Boulevard, presented the appeal. Mr. Roberts said he wants to be a new garage but needs a variance to build one the size he needs.

Charles Krueger asked if the garage will be detached. Mr. Roberts said yes.

Mr. McCampbell closed the Public Hearing on Appeal #11-34.

Staff Recommendation

*The Staff recommends **approval** of Appeal #11-34 to construct a 1,440 sqft detached garage. 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 nearby properties have similar sized structures and the property is large enough to accommodate a large garage without crowding the property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because while the Appellant could build several 720 sqft structures on his large lot it is more practical to build one large structure to accommodate his personal items.*

MOTION: Charles Krueger moved to approve Appeal #11-34. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #11-35 An appeal submitted by Theodore and Linda Szalewski, owners, and Erik and Linda Waelchli, contingent purchasers, requesting a Use Variance for **819 Lincolnway West** to permit a professional office and apartment on R-3 Multi-Family Residential property; and a Sign Variance to permit an 8 sqft sign, 4' in height.

Erik Waelchli, contingent purchaser, presented his request. He said he wants to use the downstairs portion of the home for his international business consulting office and have an apartment upstairs. But Mr. Waelchli said the apartment would be too small for their use so it will be rented out.

Mr. Krueger asked Mr. Waelchli if he agreed with the conditions of approval. Mr. Waelchli said yes and he had spoken with the Planning Department about the number of employees and parking for employees and tenants and they can park five cars with the existing space they have behind the house.

Mr. McCampbell closed the Public Hearing on Appeal #11-35.

Staff Recommendation

The Staff recommends in favor of Appeal 11-35 allowing, 1) a Professional Office on the main floor of 819 Lincolnway West, an R-3 Multi-Family residentially zoned property, and 2) one, 2' wide by 4' tall freestanding sign with the following conditions:

- 1. The office is limited to two (2) employees in addition to the owners. Amended 9/12/11*
- 2. One freestanding, non-illuminated, monument style, identification sign may be permitted for the office. The sign shall not exceed 2 feet in width, 4 feet in height and shall have no open or void areas from the display area to the ground.*

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 the conversion of the structure to an office use is appropriate given the volumes of traffic on Lincolnway and the previous conversions that have already occurred in 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 the architectural character of the building will remain or be enhanced. Paved off-street parking for four vehicles will be provided;*
- 3. The need for the variance does arise from a condition peculiar to the property involved because the location along a high volume roadway is less desirable for residential uses;*
- 4. The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that the R-3 Multiple Family Zoning District does not permit low density office uses. The property is located on a high volume roadway south of 100 Centre and the Mishawaka Wastewater Treatment Plant; and*
- 5. Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates Low Density Residential because the architectural integrity (a residential structure) will remain intact as part of the office conversion.*

MOTION: Ross Portolese moved to forward Appeal #11-35 Use Variance to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

MOTION: Jim Trippel moved to approve Appeal #11-35 Sign Variance. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #11-36 An appeal submitted by Daniel Eric Weiss requesting a Developmental Variance for **2202 Homewood Avenue** to permit a privacy fence with a 0' exterior side yard setback.

Daniel Weiss, 2202 Homewood Avenue, presented the appeal. He said he put up a new privacy fence last summer in the same location as an old chain link fence and didn't know special permission was required.

Mr. Trippel asked if the privacy fence was located in the same place as the chain link fence. Mr. Weiss said yes.

Mr. McCampbell closed the Public Hearing on Appeal #11-36.

Staff Recommendation

Staff recommends approval of Appeal 11-36, 2202 Homewood Avenue, to allow a 6 foot privacy fence with a zero exterior west side yard setback or up to the property line. 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 there will be sufficient distance between the location of the fence and Roosevelt Avenue to allow 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 places the fence inside the leading edge of the house severely limiting the amount of usable and secure property that can be used for private family functions and to secure their pet dog.*

MOTION: Charles Krueger moved to approve Appeal #11-36. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #11-37 An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **550 West Sixth Street** to allow a new home with a 10' front building setback and a garage with a 19' rear building setback.

Matt Glass, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellant. He said they plan to build a similar home to the one to the east and they want a uniform look and want to meet the setback of the homes along the street. Mr. Glass also said the garage will have the same setback as the one in the appeal earlier in the meeting.

Rosemary Klaer commented the homes are very nice looking.

Mr. McCampbell closed the Public Hearing on Appeal #11-37.

Staff Recommendation

Staff recommends approval of Appeal 11-37 to allow the construction of a home lot with a 10-foot front-yard building setback and a detached garage with 19-ft setback on a through lot. 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 and garage will be consistent with the existing front-yard building setbacks and garage setbacks of the homes on the block,*
- 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 existing residential building setbacks.

MOTION: Rosemary Klaer moved to approve Appeal #11-37. Ross Portolese seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:15 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner