

OCTOBER 11, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 11, 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.

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Don McCampbell explained the Rules of Procedure.

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The Minutes of the September 13, 2011, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #11-33**

An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **802 West Seventh Street** to allow the construction of a new single family residence with a 2' front building setback, a 4' side yard setback, and a 4' exterior side yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this request is very similar to others.

Mr. Prince said as part of the Neighborhood Stabilization Program, the City purchased the two structures and demolished them. Last month, the Plan Commission approved the replat of the three lots into 2 lots which extends the north/south property line. Habitat for Humanity will build a house on the remaining lot and building architecture is included in the packets.

Mr. Prince said if approved, this variance would allow the new home to match the streetscape in the neighborhood and a house built with a 25' front setback would not be appropriate for the area. He said this home would closely match what was there previously.

Rosemary Klaer said it would be a nice addition to the neighborhood.

Mr. McCampbell closed the Public Hearing on Appeal #11-33.

**Staff Recommendation**

*Staff recommends approval of Appeal 11-33 to allow the construction of a home lot with a 2-foot front-yard building setback, a 2-ft front setback, 4-ft side setback, and a 4-ft exterior side-yard 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; and, the proposed exterior side-yard setback is consistent with adjacent exterior side-yard setbacks and setbacks within 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 proposed home will be consistent with the existing 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 lot is only 36-ft wide. With the required 12 ½ -ft exterior side-yard and the 5-ft side-yard setbacks, an appropriate home, consistent with homes in the neighborhood, could not be constructed without encroaching into the required building setbacks.*

**MOTION:** Ross Portolese moved to approve Appeal #11-33. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #11-38** An appeal submitted by Evergreen Real Estate Services, L.L.C. requesting a Developmental Variance for **602 East Thirteenth Street** to allow an existing building with a 15' setback from the new right-of-way line.

Timothy Ochs, Ice Miller, LLC, Indianapolis, appeared on behalf of Evergreen Real Estate Services, who owns Parkview Terrace Apartments. Mr. Ochs said the sole reason for the variance relates to setback issues. He said when the apartments were originally built they were built with the correct setback according to the zoning ordinance in effect at the time.

Mr. Ochs said due to the widening of 12<sup>th</sup> Street in the future, an additional 10' of right-of-way was required resulting in a non-conforming front setback. Mr. Ochs said a lot of people think the existing building is grandfathered, but that is not the case. He said there is a 1968 case where the courts say that's not the way it works. Mr. Ochs said Evergreen Real Estate Services is in the process of redeveloping the site and said lenders and investors want to make sure they will not get into trouble for this before putting a lot of their money into the project.

Mr. McCampbell closed the Public Hearing on Appeal #11-38.

Mr. Trippel asked when this all came about. Mr. Prince said this is a plan that has been in the works for more than a year. Evergreen Real Estate Services purchased the property and have applied for tax credits to rehab the apartments. He said as part of the application process, they have entered into a Development Agreement with the Redevelopment Commission and as part of the agreement, the City identified the need to widen 12<sup>th</sup> Street and this proposal is part of a larger neighborhood stabilization plan that is fully supported by the City. The improvement of 12<sup>th</sup> Street will include 3 lanes and 12<sup>th</sup> Street has parking on both sides of the street.

Mr. Prince said as part of the project four lots will be created from a parking lot on the west side of the parking lot which will be used for single family homes to be built by Habitat for Humanity. Ms. Klaer asked how this will affect the new homes that will be built. Mr. Prince said the new homes will meet the setback

### **Staff Recommendation**

*The Planning Staff recommends of Appeal 11-38 reducing the front yard setback from 25' to 15' along 12<sup>th</sup> 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. In addition, the variance is a result of the additional right-of-way acquired by the City and is not proposed to change or increase the amount of the existing legal non-conforming location of the building;*

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 building has existed in this location for decades, and its existing location would not change as a result of the variance. The need for the variance is based on a potential need to rebuild in the future. If the building were destroyed beyond repair, no changes are anticipated to occur to increase the current legally non-conforming situation;*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the sole need for the variance is a result of the City's acquisition of additional road right-of-way and doesn't alter the project as it currently exists.*

**MOTION:** Jim Trippel moved to approve Appeal #11-38. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #11-39** An appeal submitted by Parwinder Kaur and Harjinder Singh requesting a Use Variance for **302 South Main Street** to allow a gasoline filling station with an inside convenience store in the C-3 City Center Commercial District.

Mr. Prince said he received an email from the Appellants asking that this item be continued to the November meeting. The request was unanimously approved.

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**APPEAL #11-40** An appeal submitted by Carole Carey requesting a Developmental Variance for **4066 Cottage Avenue** to allow an enclosed deck with an 8' rear yard setback.

Carole Carey, 4066 Cottage Avenue, said she would like to enclose her deck with screens. She said she has had multiple surgeries for skin cancer and can longer sit in the sun.

Mr. Trippel asked if the deck was existing. Ms. Carey said yes it was. She said the roof would be "snow load" and not cheap and would match the existing roof line.

Mr. McCampbell asked if it would be screened for summer use. Ms. Carey said yes.

Mr. Trippel asked if it would have windows. Ms. Carey said no, just a roof and screens.

Mr. McCampbell closed the Public Hearing on Appeal #11-40.

Mr. Trippel asked if the deck was in the flood plain. Mr. Prince said when the maps were created they didn't always follow the contours of the ground and we, as a City, have to follow the maps, but doesn't feel it will be a problem once the flood plain maps are amended as shown. If the map doesn't change as anticipated then the owner would need to remove the addition or verify the structure is above the 100 year flood plain.

#### **Staff Recommendation**

*Staff recommends **approval of** Appeal #11-40 to allow the appellant to enclose an existing deck with screen. 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;*
3. *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 deck faces the river and is a common property upgrade; and*
2. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home has a 26' rear yard setback and any addition or improvement would not be allowed without a variance.*

**MOTION:** Charles Krueger moved to approve Appeal #11-40. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #11-41** An appeal submitted by Jeffrey Musgrave requesting a Developmental Variance for **427 North Byrkit Avenue** to allow a 4' side setback for a home addition.

Jeff Musgrave, 427 N. Byrkit Avenue, presented the appeal. He said first of all he apologizes the addition is nearly half complete. He thought the required setback was 3' and not 5' and came in to get permits after he started the project. He said when he found out it required a variance, he stopped work on it.

Mr. McCampbell asked how old the house was. Mr. Musgrave said it was built in 1941. He said the addition will not extend any farther than the rest of the house and wanted to match the existing overhang to cosmetically match the rest of the house.

Mr. Trippel asked if the foundation was 6' from the property line. Mr. Musgrave said yes.

Mr. McCampbell closed the Public Hearing on Appeal #11-41.

### **Staff Recommendation**

Staff recommends **approval** of Appeal #11-41 to allow the construction of an 8' X 9' home addition with a 4' side-yard 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 addition will not encroach any closer to the north property line; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home has an existing nonconforming setback and would not permit the homeowner to upgrade his home without a variance to do so.*

**MOTION:** Jim Trippel moved to approve Appeal #11-41. Charles Krueger seconded; motion carried with a vote of 5-0.

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Ken Prince said the November meeting will be held November 15, 2011, due to City Hall being closed for the General Election.

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**ADJOURNMENT:** 6:22 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner