

NOVEMBER 15, 2011

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 15, 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 October 11, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

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. *Continued from the October 11, 2011 meeting.*

William Hensley appeared on behalf of the Appellants and said they purchased the property in good faith to rehab it into a filling station and mini mart and not a service station. He said they entered into a contract with a contractor and he wasn't honest and didn't go through the proper channels.

Mr. Hensley said he is a retired engineer and is trying to help the Appellants get through this process. They have contracted with a petroleum company and have removed the old tanks and pumps and the contaminated materials were removed as required. He also said they are still in a contract with a petroleum company to replace the old tanks with a new updated system. The building will be rehabbed inside and out and aesthetically will match the beautification in downtown Mishawaka. Mr. Hensley said it is a very visible spot in the city and feels it would be a benefit.

Mr. Hensley said they are requesting to be allowed to proceed and continue with the upgrade of the facility. He said the Appellants have taken a loan out on their house to do this work and unfortunately ran into the dishonest contractor and that sent them out into left field. It's unfortunate, but they are honest people and are doing this in good faith. He also said they own a business in South Bend; it's a mini mart, but not a filling station.

Mr. Krueger asked if the tanks had been removed. Mr. Hensley said yes and he made sure that it was done correctly. The tanks were removed and drained of any leftover material.

Mr. Trippel asked if that's as far as it has gone. Mr. Hensley said yes. He said there are areas inside the building that the contractor was trying to hide, but he did more harm than good and now it's going to take quite a bit to bring it back.

Mr. Portolese asked what they were going to do with the building. Mr. Hensley said it would be renovated inside and out.

Mr. Krueger asked if they had a rendering of what the building would look like. Mr. Hensley said no, but they wanted it to look like the satellite store next door by getting rid of the imitation brick siding. He also said landscaping would be done and the interior would have the characteristics of a 7-11. Mr. Hensley said some coolers have been installed and the cooling system needed to be added.

Mr. Krueger asked if they purchased the building to the south. Mr. Hensley said no, it's a dish satellite installation and sales business. He said he has spoken to them and seem fine with what the Appellants are attempting to do.

Mr. Prince said the request is only the Use Variance since this is a C-3 zone; granting them permission to re-open the fueling center that has been vacant for a long time. He said the fueling portion is only the first step. Filing of a site plan is next.

Mr. Hensley said there is a plan for the fueling center. At the northeast corner there will be a planter and at the northeast corner of the building there will be another planter to hide the air conditioning unit. More planters will be placed at the southwest corner of the property to match the satellite store's landscaping. It will be more appealing.

Ms. Klaer asked Mr. Prince if he was ok with the tanks. Mr. Prince said the Engineering Department had expressed concerns about tankers loading and unloading on a very tight lot and Mr. Hensley said they agreed to utilize smaller tanker trucks.

Mr. Trippel closed the Public Hearing.

Staff Recommendation

The Staff recommends in favor of Appeal 11-39 to allow a gasoline filling station with an inside convenience store within a C-3 City Center Commercial zoning district with the following condition:

- *A site plan shall be submitted for review and approval consistent with the downtown Design Review Ordinance.*

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 all state and local codes will be adhered to;*
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 historic use of the property has been a filling station.*
3. *The need for the variance does arise from a condition peculiar to the property involved because the property is zoned C-3 City Center Commercial, which does not allow for a filling station use.*
4. *The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that the C-3 District does not permit filling station uses. The property can not continue its historical filling station use without the use variance.*
5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates General Commercial for this area.*

MOTION: Ross Portolese moved to forward Appeal #11-39 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #11-42 An appeal submitted by Hal W. and Deborah A. Schearer requesting a Developmental Variance for **1916 Lincolnway East** to allow an access ramp and deck with an 18' front building setback.

Deborah Schearer, 1916 Lincolnway East, said they installed the handicap ramp because her husband requires the use of a scooter.

Ms. Klaer asked if the ramp could be removed when it was no longer needed. Mr. Prince said it could, but that hasn't been requested.

Mr. Portolese asked if the ramp had been installed. Mrs. Schearer said yes.

Mr. Trippel closed the Public Hearing.

Staff Recommendation

Staff recommends approval of Appeal 11-42 to allow an already installed 7' x 9' deck/access ramp to remain with an 18 foot front setback at 1916 Lincolnway East. 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 deck/access ramp does not extend further out than the adjacent homes; 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 Appellant's where special access to an individual's home is required and the resident cannot gain entry or leave the house without a wheelchair.*

MOTION: Charles Krueger moved to approve Appeal #11-42. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #11-43 An appeal submitted by Robert L. Kollar and Jill Estes requesting a Developmental Variance for **1820 Lincolnway East** to allow an access ramp with a 4' front building setback.

Robert Kollar said he owns the home and is selling it to his daughter. He said the ramp is needed because his daughter has had several knee surgeries and will need more. He said it has been started and can be moved if need be.

Mr. Trippel closed the Public Hearing.

Staff Recommendation

*Staff recommends **approval** of Appeal 11-43 to allow an access ramp to be constructed with a 4' front 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 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 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 #11-43. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #11-44 An appeal submitted by William H. Loudin requesting a Developmental Variance for **705 South Beiger Street** to allow a privacy fence with a 0' front setback.

Frank Wruble, Office Manager for R & R Excavating, appeared on behalf of Mr. Loudin. He said they want to replace an existing chain link fence with barbed wire with a privacy fence. Mr. Wruble said it will help with the appearance of the property and the security of the equipment kept on the property.

Mr. Trippel asked what kind of fence it would be. Mr. Wruble said it would be a stockade style of fence.

Mr. Prince said the Engineering Department had concerns on site visibility. He said they want a vehicle to be able to park in front of the gate without sticking out into the right-of-way.

Mr. Trippel closed the Public Hearing.

Mr. Prince said a stockade fence should provide security for the equipment and the property is zoned heavy industrial so it's appropriate.

Staff Recommendation

Provided the south gate location can be adjusted to address Engineering Department concerns, Staff recommends approval of Appeal 11-44, 705 South Beiger Street, to allow for a Privacy Fence with a 0' front 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 there will be sufficient distance between the location of the fence and Beiger Street to allow for vision clearance;*
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 fence represents an investment in the area and is not inconsistent with other security fencing that already exists in the area; and*
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 setback unduly limits the amount of usable and secure property that can be used for storage related to this business.*

MOTION: Rosemary Klaer moved to approve Appeal #11-44. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #11-45 An appeal submitted by David and Andrea Ballard and James and Theresa Clardy requesting a Developmental Variance for **4416 Lincolnway East** to allow a new building with a 5' front yard setback and a parking variance to allow a reduction in parking spaces from 19 to 15.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. Mr. Danch said due to the change of the proposed use from a sandwich shop to a cellular phone store, the parking variance request has been withdrawn.

Mr. Danch said they are still requesting a 5' front building setback to move the building forward toward Lincolnway. He said the site is on a corner and is very narrow and they want exposure to the traffic heading east on Lincolnway. Mr. Danch said the building is oriented to the east and would be a 30' wide building. He said no survey has been done on the property, but would be once the sale is complete. Mr. Danch said the existing home would be demolished and this would be a new building. He also said the site will meet all landscaping and standards on the rest of the site.

Mr. Trippel asked if it would match the setback of the transmission shop. Mr. Danch said yes and they have guessed at the setback, but want it to match Fred's whatever that might be.

Ms. Klaer asked if a sidewalk would be installed. Mr. Danch said yes.

Mr. Trippel asked what kind of street is Wayne Street. Mr. Prince said it's a public street but not built to city standards. There may be required improvements to allow for proper ingress and egress.

Opposition

Mavis Rose, 119 Wayne Street, wanted to know what kind of business this will be. Mr. Prince said the intended use is a cellular phone store, like a Sprint store. But he did say that the property is zoned general commercial and there's a long list of uses that could go there. Mr. Prince said the building is going to be 1,900 sqft and the parking just isn't there.

Mr. Prince also said there will be landscaping and fencing between the business and homes.

Jan Sanchez, no address given, said Wayne Street is a dead end and people use it as a parking lot for the liquor store. She asked if the only entrance to the site would be from Wayne. Mr. Prince said and that the Engineering Department would probably request that Wayne Street be improved.

Mr. Trippel closed the Public Hearing.

Staff Recommendation

Staff recommends in favor of approval of Appeal 11-45 to allow a new building with a 5' front yard setback (to be no closer than the adjacent transmission shop building to the west, as verified by a field survey and presented on final site plan drawings), in accordance with 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 all construction will be completed in accordance with all applicable state and local building codes. The ordinance requires screening and buffering of adjacent residential uses to the north;*
- 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 construction represents an investment in the neighborhood; and appropriate stormwater management measures*

will be implemented to prevent water run-off onto adjacent property. The proposed building will match the existing front yard setback on the building located immediately to the west;

3. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the adjacent structure was built close enough to the right-of-way to limit the visibility and functional use of the property.*

MOTION: Charles Krueger moved to approve Appeal #11-45. Rosemary Klaer seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner