

DECEMBER 13, 2011

BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, December 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, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

The Minutes of the November 15, 2011, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING

APPEAL #11-46

An appeal submitted by David Warkentien requesting a Developmental Variance for a vacant residential lot located **east of 514 West Russ Street** to allow an 18' front building setback and an 18' rear building setback for a new single family home.

David Warkentien, 5738 W. 150 N., LaPorte, presented the appeal. He said he has made an offer to purchase the vacant lot, contingent upon approval of the variance for front and rear setback.

Mr. Warkentien said the setback of the adjacent houses is 18' and this house would be aesthetically pleasing.

Mr. Krueger asked if he would be residing in this home. Mr. Warkentien said yes, his wife teaches at Bethel College and wanted to be within walking distance.

Mr. Trippel said the plan shows the home being within 5' of the property line. Should it be 4' 6"? Mr. Warkentien said no, the overhang would be minimal and will be the side setback.

Mr. McCampbell closed the Public Hearing on Appeal #11-46.

Staff Recommendation

Staff recommends approval of Appeal 11-46 to permit the construction of a new house with an 18 ft front yard setback and an 18 ft rear yard setback on Lot 41, Liberty Park Addition. 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 a new single family house will*

be constructed on a formerly vacant lot, while increasing property values in the neighborhood.

- 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 front building and rear setbacks would reduce the amount of usable yard area, and would create an inconsistency with the front-yard building setbacks of the east and west adjacent, residential properties.*

MOTION: Charles Krueger moved to approve Appeal #11-46. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #11-47 An appeal submitted by W. Scott and Julia Robbins requesting a Use Variance to permit a dog day care and boarding facility with an outdoor play area at **2406 Schumacher Drive**.

Julia Robbins, 2126 Willow Lake Drive, Mishawaka, presented the appeal. She said they are requesting a Use Variance for a 50' X 100' outdoor play area.

Mr. Trippel asked what the existing building would be used for. Ms. Robbins said it would be a reception area when people bring in their animals. They are proposing to build a 30' X 100' metal fabricated building to house the animals.

Mr. Trippel asked if the building was in use now. Ms. Robbins said they were in the process of preparing it.

Mr. Portolese asked if she had held a meeting with the neighbors. Ms. Robbins said yes and 22 attended and said their major concern is the existing problem they have with the Humane Society. She said their situation is different than that of the Humane Society which does not have a large buffer area like they do. Their building will be far away from residences and they aren't removing any of the trees.

Ms. Robbins said the play area will be blocked by the 30' X 100' building and the warehouses that are in the area; this is completely different than the Humane Society. She said the outdoor play area will not be in use the majority of the day; tentative hours are 10:00 a.m. to 12:00 p.m. and 2:00 p.m. to 4:00 p.m. They will also have a large indoor play area and if a dog barks, it will be brought indoors. Ms. Robbins said she wants to be sensitive to barking problem.

Ms. Robbins also said that in the 5-6 years that Kamp K-9 has been operation, the City had received only one complaint of dogs barking and they are also located near residences.

Mr. McCampbell asked if the dogs would be outside during the night. Ms. Robbins said no.

Mr. Portolese asked if the building will be air conditioned. Ms. Robbins said yes.

Ms. Klaer asked if dogs would be staying overnight. Ms. Robbins said yes, it would also be a boarding facility or just to provide day care if the owners wanted, but definitely overnight.

Opposition

Dixie Mason, 329 Imus Court, said she met with Julia and liked her and sounds like the facility will be nice. She said they have had huge issues with the Humane Society that still have not been resolved and they have been working with George Obren and Mayor Wood.

Ms. Mason said that Ms. Robbins has indicated she would bring the dogs inside if they misbehave, but her concern is once something is in place, you can't turn it around and the noise is her biggest concern.

Mr. Krueger asked where she lived. Ms. Mason said in the cul-de-sac behind the Humane Society.

Robin Fowkes, 142 W. Leyte Ave., lives within 300' of the facility and said she isn't convinced that 30 dogs being allowed outside can be kept quiet without a muzzle. She asked the Board not to approve this as it would infringe upon her right of peace and quiet.

Robert Lutes, 143 W. Leyte Ave., said his main concern is the noise factor and it will be adjacent to his back yard. He said he can go out on any given day and hear the dogs at the Humane Society and you can't tell him that 30 dogs won't cause noise. Mr. Lutes asked what it would do to his property value. Who would want to buy his home with 30 dogs in a back yard near by?

Mr. Lutes also said if this is passed, who's to say that down the road they wouldn't want 60 or 90 dogs. That's his concern. He said he has put in a lot of time and money into his home and doesn't want to sit outside and hear dogs bark.

Mr. McCampbell said it doesn't look like the building would hold 90 dogs and anything additional outside would have to come back to this Board for approval. Mr. Prince said by right they can have the dog kennel, but the outside use (play area) requires approval.

Scherry Roberts, 145 W. Leyte Ave., said she is also concerned about the noise and can hear the barking from the Humane Society and doesn't believe a buffer would work. She also said she is concerned about her property values.

Dorothy Neal, 150 W. Leyte Ave., said the Humane Society has been rough for everyone and adding 30 more dogs would just be more noise. She said Ms. Robbins doesn't know exactly how many dogs will be outside since this is just a proposal. She also said her mother is 85 and doesn't want it either.

Rebuttal

Julia Robbins addressed the comments about 30 dogs outside at one time. She said obviously they will not have 30 dogs out at one time. Common sense would be more like 12 out at one time. Ms. Robbins said she doesn't think it will be at capacity all the time and logically it wouldn't happen.

Ms. Robbins also said their dogs aren't in the same situation as the dogs housed at the Humane Society where they are left unattended. Her dogs will never be left unattended.

She also addressed the comments about not letting the dogs outside overnight. She said they would never let all the dogs out at the same time during the evening to use the bathroom.

Mr. Portolese said his concern is if the Humane Society is so close and their dogs are barking how will you keep your dogs from barking. Ms. Robbins said during the meeting with the neighbors she stressed that if a dog is overly loud and causing a disturbance they can easily be taken inside. This will be a controlled environment. She said she didn't want problems with the neighbors and wants a good relationship with the neighborhood. Ms. Robbins said she wants a sharp business on the street and doesn't want to hurt anyone's property values.

Mr. McCampbell closed the Public Hearing on Appeal #11-47.

Mr. McCampbell said Staff has recommended the item be continued to January meeting for a vote and he thinks it's a good idea.

Mr. Prince said staff had received one letter of support and four letters of remonstrance and they will be included in the January packet.

Staff Recommendation

The staff has received several letters and phone calls from surrounding residents with concerns regarding this proposal. Given the amount of response, the City has requested that the appellant conduct a neighborhood meeting to address questions and concerns. Therefore, the staff recommends that the appeal be continued until such time that a neighborhood has been conducted.

MOTION: Charles Krueger moved to continue Appeal #11-47 to the January 10, 2012, hearing. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #11-48 An appeal submitted by C & O Real Estate, LLC, requesting a Use Variance to permit lawnmower sales and service on an I-1 Light Industrial zoned property at **3935 Glaser Court**.

Len Zappia, 112 W. Jefferson, Ste. 501, South Bend, represented the Appellant. He said the Appellant currently operates a landscaping business on the premises. They also repair their own equipment and store parts for their equipment on the property as well. Mr. Zappia said they would like to service lawnmower equipment for others and they also want to store and sell parts. He also said that at some point, they may want to also sell lawnmowers.

Mr. Zappia said they are in the same complex as Frito Lay and a food distribution business.

Mr. Trippel asked what kind of equipment they want to repair. Mr. Zappia said riding lawnmowers, mowers, and maybe tractors. He said they are a commercial landscaping business and repair and maintain their own equipment and said the equipment is similar to what our Park Department would use.

Mr. Trippel asked if the equipment would be stored inside. Mr. Zappia said yes.

Staff Recommendation

The Staff recommends in favor of Appeal 11-48 to allow repair and sales of lawn mower/landscaping equipment and parts within an I-1 Light Industrial zoning district. 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 the proposed use is less invasive than an industrial use;*
- 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 property is located within an industrial area and landscaping contractor business currently exists on the property. Furthermore, the proposed use is complimentary to the existing landscaping business use and will not result in a heavy amount of traffic that many other commercial uses would produce.*

3. *The need for the variance arises from some condition peculiar to the property involved because the current zoning allows for the current landscaping contracting business, but prohibits the repair and sales of lawn mower equipment and parts to the public.*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning for the property permits a landscaping contracting business but does not allow the proposed repair and sales use to be incorporated into the business; and*
5. *The Comprehensive Plan indicates Industrial for this area. Although there will be a commercial use on the property, the majority of the property will be industrial in nature with the landscaping business. Furthermore the proposed use complements the existing use of property and will not thwart the industrial nature of the property or the surrounding industrial area.*

MOTION: Ross Portolese moved to forward Appeal #11-48 to the Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:27 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner