

APRIL 10, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 10, 2012, 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. Absent: Rosemary Klaer. In addition to members of the public, the following were also in attendance: David Bent, 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 March 13, 2012, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #12-08** An appeal submitted by Sarah Fisher requesting a Developmental Variance for **119 South Delorenzi Street** to allow a covered porch with a 17' front setback.

Vic Butcher, 817 Leland Ave., South Bend, appeared on behalf of the Appellant. Mr. Butcher said he apologizes for jumping the gun and starting the porch without the necessary permits and are now trying to comply with the rules and regulations.

Mr. Butcher said when he found out they were in violation by adding the porch without a variance, they continued to put the shingles on to prevent damage from inclement weather and they are seeking permission to continue and complete the work started.

Mr. Butcher said the home owner needs the overhang because snow, ice and such builds up in front of the door in the winter and she desires to keep that area clear.

Jim Trippel asked if the photos show the overhang. Mr. Butcher said yes.

Mr. Trippel also asked if that was all that was being built. Mr. Butcher said yes. The posts will be turned into decorative columns. It really isn't a porch and is only a roof overhang and will not be enclosed.

Mr. McCampbell closed the Public Hearing on Appeal #12-08.

**Staff Recommendations**

*Staff recommends approval of Appeal 12-08 to allow the construction of a porch roof with a 17-ft front-yard building 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 residence to the north encroaches further into the front setback than the proposed porch roof.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house currently encroaches into the front-yard setback. An appropriate and sufficient porch roof to the house can not be constructed without seeking a variance.*

**MOTION:** Ross Portolese moved to approve Appeal #12-08. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #12-09** An appeal submitted by South Bend Real Estate 4 LLC requesting a Use Variance for **201 and 203 Indiana Avenue** to allow a duplex on R-1 Single Family Residential zoned property.

Dan Estes, representative member South Bend Real Estate 4 LLC, 2917 Mishawaka Avenue, South Bend, presented the appeal. He said this house was originally built as a duplex and was on Code Enforcement watch list. Mr. Estes said he had conversations with Code Enforcement and obtained building permits to remodel the property and were not aware of the non-conforming issues.

Mr. Estes said he feels the building adds character to the neighborhood and they are doing a lot of work to the property and even continued the work when told they needed the variance. He said it would be a financial hardship to them if this request were not approved.

Mr. Krueger asked if this would be a single family dwelling. Mr. Estes said no, it was originally built as a duplex; each side a mirror image of the other. It has never been a single family residence.

Mr. Portolese asked if they were remodeling the inside and outside. Mr. Estes said yes.

Mr. McCampbell said it looks nice on the outside and commends them on their work.

Mr. Trippel asked if they obtained the necessary building permits. Mr. Estes said yes.

Mr. McCampbell closed the Public Hearing on Appeal #12-09.

Greg Shearon read a letter of support from Richard and Dona Hall, 219 N. Wenger Ave.

### **Staff Recommendation**

*The Staff recommends in favor Appeal 12-09 to allow the continuance of a duplex and non-conforming off-street parking at 201-203 Indiana Avenue 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 existing structure was legally non-conforming until the time it became vacant for more than six months. All required permits will be secured and codes adhered to;*
- 2. The use and value of the area adjacent to the property included in the variance will not have an adverse impact on the surrounding neighborhood because the duplex use had*

*existed from 1909 to 2007. The property is now being restored to its original design, will increase property values in the neighborhood, and will no longer continue to deteriorate;*

3. *The need for the variance arises from some condition peculiar to the property involved in that the structure was constructed in 1909, prior to the establishment of the Zoning Ordinance and without off street parking;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because of the existing non-conforming parking situation will continue to exist regardless of the use of the structure; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the area has been identified low density residential.*

**MOTION:** Charles Krueger moved to forward Appeal #12-09 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:09 p.m.

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Greg Shearon, Senior Planner

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Kari Myers, Administrative Planner