

MAY 9, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Wednesday, May 9, 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, and Rosemary Klaer. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

The Minutes of the April 10, 2012, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #12-10 An appeal submitted by Steven Robinson and Ron Hickman requesting a Developmental Variance for **1931 Lincolnway West** to allow a reduction in the required landscaping.

Steven Robinson, 51092 Streamwood Drive, Granger, presented the request. He said they are requesting fewer trees and no shrubs be added on the property. He said he appreciates the recommendation to eliminate planting and reduced size of trees on the east and south property lines; there isn't much room there anyway. He said they put in sod along Lincolnway and Carlton and put in curb cuts and did almost everything they needed to do, except the landscaping.

Mr. Robinson said it's a car lot and has been a car lot and trees would block the view of the cars. He asked if Staff would allow him to plant one tree on the east curb cut on Lincolnway and one tree on the south side of Carlton and one on the corner of Carlton and Lincolnway for a total of 3 trees. Mr. Robinson said he appreciates that staff did allow them to reduce the size of trees they needed to plant. He said he is grateful for all staff has done, but really would appreciate being allowed to just add 3 trees.

Jim Trippel asked if the landscape plan that is being shown is the plan that was approved and if the black dots were where staff wanted trees planted. Mr. Prince said yes.

Mr. Trippel asked if staff approved the reduction in trees along Carlton and Lincolnway. Mr. Prince said staff is recommending that along the east and south property line those trees can remain, but must add the trees along Carlton and Lincolnway. He said they've reduced the caliper size of the trees and that's an appropriate compromise. Mr. Prince said trees are a running battle with car dealerships. He said Jordan, Gurley Leep, and Gates have all added trees and this is consistent with what other dealers have and the trees do not block the view of the cars.

Mr. Robinson said he understands what Mr. Prince is saying, but he isn't Jordan, Gurley Leep or Gates and he has installed sprinklers and asked again if he could reduce the number of trees.

He said he feels the angle of the trees would block the view of the cars and doesn't want to put in all the trees.

Mr. McCampbell said they will stick with what Planning staff has recommended.

Mr. Krueger asked if the question was the number of trees along Lincolnway. Mr. McCampbell said the spacing is according to the ordinance. Mr. Robinson explained he wanted 2 less trees along Carlton and Lincolnway than what staff recommends.

David Nellans, 2432 River Avenue, asked where the trees would be planted; in the parking lot or along the tree lawn and how would they survive.

Mr. McCampbell closed the Public Hearing on Appeal #12-10.

Mr. Krueger asked Mr. Prince what his feelings were about removing the trees. Mr. Prince said there should be a consistent standard for each car dealer and he thinks it's a reasonable standard. He said not adding shrubbery along both streets and minimum trees along both frontages is reasonable. He also said the landscape plan being shown is what was previously approved, but never installed.

Staff Recommendations

Staff recommends approval of Appeal 12-10 to allow a reduction in landscaping on property located at 1931 Lincolnway West as follows:

- 1. Eliminate required shrub plantings along Carlton Road and Lincolnway West.*
- 2. Reduce the required size of overstore deciduous trees from 2 ½-inches to 1 ¼ to 1 ½ inch caliper trees. (Trees to be true nursery grade" caliper size = 15-20 gallon)*
- 3. No new tree plantings along the south and east property lines.*

This recommendation is based on 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 because the addition of landscaping is considered to be an improvement to the property.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Ordinance does not allow for alternatives to landscaping for car lots where inventory is desirable to be visible from public roads.*

MOTION: Charles Krueger moved to approve Appeal #12-10. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #12-11 An appeal submitted by David and Peggy Nellans requesting a Developmental Variance for **2432 River Avenue** to allow an oversized (960 sqft) accessory structure.

David Nellans, 2432 River Avenue, said he wants to add another stall to his garage. He said the existing garage is 24' X 28' and the new stall would be added to the left. Mr. Nellans also said he has 3 lots, so there is plenty of room.

Mr. Trippel asked if the addition would be going towards the house. Mr. Nellans said yes.

Mr. McCampbell asked if it would have the same material as the existing garage. Mr. Nellans said yes.

Mr. Krueger asked if he would be replacing the roof. Mr. Nellans said yes.

Mr. McCampbell closed the Public Hearing on Appeal #12-11.

Mr. Prince read letters of support from Diane Siade, 205 N. Russell, and Richard Vaerwyck, 201 N. Russell.

Staff Recommendation

Staff recommends approval of Appeal 12-11 to allow the construction of a 12' by 24' (228 SF) addition to existing freestanding garage at 2432 River Avenue. 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 be built in an area between the house and the garage, and the property owners plan to match the exterior material of the historic home, and the garage addition represents a significant investment 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 size limitations were implemented with respect to the size of single residential lots. There are no provisions in the Ordinance for larger accessory structures that are located on a single address with three (3) lots. In addition, the limited size requirement of accessory structures would not supply sufficient space for storage.*

MOTION: Jim Trippel moved to approve Appeal #12-11. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #12-12 An appeal submitted by James and Garnett Sue Fuson requesting a Developmental Variance for **2803 Hampton Road** to allow a roof over an existing deck with a 2' side yard setback.

James Fuson, 2803 Hampton Rd., said they would like to add a roof over the existing deck so they can get some use and enjoyment from it in the summer as it gets very warm on the deck.

Mr. Fuson said he ran into a problem when calling about a permit because the existing deck is too close to the property line. He said it's about 36" from the fence and the ordinance requires 5'. Mr. Fuson said they are asking for a variance to add a roof over the deck resulting in a 2' side setback. He said it will be a pitched roof that runs north/south shedding water east/west. It would have eaves and downspouts and not impact the neighbors. Mr. Fuson said they have talked to the family to the south and they have indicated their approval.

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

Mr. Trippel asked if the Fire Department had seen the request. Mr. Prince said yes, it is routed to all pertinent departments including Fire.

Mr. Trippel asked if it was a violation of the fire code. Mr. Prince said both the Fire and Building Departments reviewed the request and had no issues. Mr. Prince said it's usually the type of construction and this is an open structure and apparently this meets the building code.

Staff Recommendation

Staff recommends approval of Appeal 12-12 to allow the construction of a deck roof with a 2-ft side 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 an existing deck encroaches in the side-yard setback and downspouts will be directed away from adjacent property.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the deck currently encroaches into the side-yard setback. An appropriate and sufficient deck roof can not be constructed without seeking a variance.*

MOTION: Charles Krueger moved to approve Appeal #12-12. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #12-13 An appeal submitted by Jay Primmer and Michael Williams requesting a Developmental Variance for **406 E. Fourth Street (aka 226 S. Union)** to allow a new structure with a 10' front and exterior side yard setback, and a 16' rear yard setback.

Jay Primmer, 830 E. 18th Street, Mishawaka, presented the appeal. He said they are proposing to build a new home/salon and due to the size of the lot would need several setback variances to accomplish it. If the zoning ordinance were adhered to, the building could not be built as they plan. The setbacks along Fourth and Union Streets are in line with other homes in the area.

Mr. McCampbell asked if it will be a new home. Mr. Primmer said yes.

Ms. Klaer asked if there would be a problem with parking. Mr. Prince said the C-3 City Center Commercial zoning district does not have off-street parking requirements. He said this property will be a hybrid between residential and commercial and thought it appropriate to obtain a variance because the single family home use must meet R-1 developmental standards. Mr. Prince also said that a waiver for architectural materials is also being requested later this evening.

Mr. Trippel asked if the setbacks would be approximately the same as the neighbors. Mr. Primmer said yes.

Mr. McCampbell closed the Public Hearing on Appeal #12-13.

Staff Recommendation

Staff recommends **approval** of Appeal #12-13 to allow the construction of a single family home/hair salon with a 10' front building setback, 16' rear yard setback, and 10' 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;
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 will have similar setbacks of the adjacent homes, and the construction of the home represents 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 building setbacks would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required setbacks would not be consistent with adjacent residential setbacks.

MOTION: Jim Trippel moved to approve Appeal #12-13. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #12-14 An appeal submitted by Zolman Tire, Inc., requesting a Use Variance for **2356 North Home Street** to allow commercial tire and fleet service on an I-1 Light Industrial Zoned property.

Nate Zolman, Zolman Tire, Inc., 2014 E. McKinley Ave. presented the appeal. He said the property in question is directly to the north of their existing facility and was a retreat manufacturing business.

Mr. Zolman said he plans to expand their current commercial truck tire and fleet repair business. He said they are now working inside of their headquarters with limited parking. The building has 26,000 sqft and is empty. Mr. Zolman also said you allowed them to expand 7 years ago and they have continued to expand

Mr. Zolman read letters of support from Edwin Sampson, owner of Sampson Fiberglass, 2424 N. Home Street, and Robert Langel, property owner to the east.

Mr. Krueger asked if additional parking spaces would be needed. Mr. Zolman said there will not be customer cars coming to that facility; only tractor trailers and semis. Mr. Prince said all parking requirements will be met.

Mr. McCampbell closed the Public Hearing on Appeal #12-14.

Staff Recommendation

The Staff recommends in favor of Appeal 12-14 allowing for commercial tire and fleet service on an I-1 Light Industrial Zoned property subject to the following conditions:

1. An administrative site plan shall be submitted for review and approval consistent with the schematic drawings provided. Proposed Phase 1 improvements shall be completed by the end of 2012.
2. Proposed phase 2 improvements shall be completed concurrent with the next significant planned capital improvement project for the building/property.

3. *Improvements to the site/within the building shall include an oil separator and any other improvements/modifications as may be directed by the Department of Engineering.*

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 industrial. Since the building was recently vacant and is being purchased with the intent of renovating it for the proposed use, the proposed investment will likely have a positive impact on surrounding properties.*
3. *The need for the variance does arise from a condition peculiar to the property involved because the property is zoned I-1 light industrial, which does not allow the intended use, which will be entirely within an enclosed building, noting that Home Street already carries significant amounts of truck traffic.*
4. *The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that the surrounding uses are predominantly commercial with a significant amount of truck usage, unlike other light industrial areas that are tucked into residential neighborhoods.*
5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates Industrial usage for this area.*

MOTION: Rosemary Klaer moved to forward Appeal #12-14 to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:38 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner