

AUGUST 14, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 14, 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, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: David Bent, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

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

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #12-23

An appeal submitted by Action Investment Group, LLC and Premier Real Estate Solutions requesting a Developmental Variance for **2028 Milburn Boulevard** to permit wood decking with a 1' 6" front setback. *Continued from the July 10, 2012 meeting. Request continuance to September 11, 2012 meeting.*

The Board moved and unanimously approved the continuance of this item.

APPEAL #12-24

An appeal submitted by Alice Young requesting a Developmental Variance for **330 West Marion Street** to allow the construction of a new front porch roof with a 6' 9" front setback.

Alice Young, 330 W. Marion Street, presented her appeal. She said Code Enforcement told her she needed to replace the roof over her front porch. Ms. Young said she needs this variance so she can get the necessary permits to do so.

Mr. Trippel asked if it will be the same size. Ms. Young said yes, just changing the shape, but it won't come out any farther.

Mr. McCampbell closed the Public Hearing on Appeal #12-24.

Staff Recommendation

Staff recommends approval of Appeal #12-24 to allow the reconstruction of the front porch roof with a 6' 9" 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 porch will improve the curb appeal of the home thereby improving 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 existing roofed porch encroaches into the front-yard setback and any replacement of the same would not be possible without a variance.*

MOTION: Charles Krueger moved to approve Appeal #12-24. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #12-25 An appeal submitted by Jeffrey and Lynn Annis requesting a Developmental Variance for **447 Edgewater Drive** to construct an attached garage with a 10' rear setback and 2' side setback.

Jeffrey Annis, 447 Edgewater Drive, presented the appeal. He said they have a small attached porch they want to demolish and add a 16' X 20' addition and a two stall attached garage. Mr. Annis said they currently do not have a garage.

Mr. Portolese asked if the setback for the kitchen will be ok. Mr. Annis said yes the main kitchen will stay as is and the addition will be a laundry room and they will re-do a bedroom.

Mr. Trippel asked if the setback on the north side will be greater than that of the house. Mr. Annis said yes, the garage itself will be approximately 6-7' from the property line. He said he didn't realize they needed the 25' setback from the alley and it will actually be about 18'.

Mr. McCampbell asked if he understood what the City's wants him to do with the curb cut. Mr. Annis said yes and he passed that information along to the builder and has no problem with it.

Mr. McCampbell closed the Public Hearing on Appeal #12-25.

Staff Recommendation

Staff recommends approval of Appeal 12-25 to allow the construction of an addition and attached garage with a 10' rear yard setback, and 2' 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 proposed addition setback to the adjacent home to the north will be maintained or increased; and*
3. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant's home is located on a narrow lot in an older neighborhood with an alley that was constructed before attached garages were commonplace.*

MOTION: Ross Portolese moved to approve Appeal #12-25. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-26 An appeal submitted by Thomas M. and Joan M. Bachorski requesting a Developmental Variance for **201 West Eleventh Street** to allow a front porch and steps with a 4" front setback.

Tom Bachorski, owner of 201 W. Eleventh Street, said he has done extreme renovations to the property. He said the front portion of the porch was concrete and it was settling and the side porch area was wood so he decided to put in the deck. Mr. Bachorski said it was after the fact when he was verifying the inspections that he found out he needed a variance and the work was already done.

Mr. Bachorski said the new porch is deeper than the concrete because he put in some nice stairs and that extended it out farther.

Mr. Krueger asked if this was an apartment. He said the right hand side of the house used to be an ice cream parlor or beauty salon, that's why there are two entrances to the house.

Mr. McCampbell closed the Public Hearing on Appeal #12-26.

Staff Recommendation

Staff recommends **approval** of Appeal #12-26 to allow the construction of wood front porch and steps with a 4" 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 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 porch has improved the curb appeal of the home thereby improving 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 existing porch encroaches into the front-yard setback and any replacement of the porch or steps would not be possible without a variance.

MOTION: Jim Trippel moved to approve Appeal #12-26. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #12-27 An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **511 West Sixth Street** to permit a new home with a 10' front setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellant. He said the request will align the front of the new home with those of neighboring properties.

Mr. Trippel asked if the neighboring houses had setbacks of 10'. Mr. Mosness said they vary from 6-10' so they went with 10'.

Mr. McCampbell closed the Public Hearing on Appeal #12-27.

Staff Recommendation

Staff recommends approval of Appeal 12-27 to allow the construction of a home lot with an 10-foot 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 proposed home will be consistent with the existing front-yard 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 required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.

MOTION: Rosemary Klaer moved to approve Appeal #12-27. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #12-28 An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **513 South Taylor Street** to permit a new home with a 10' front setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellants. He said they are requesting 10' setback as in the previous appeal. This will help the house fit in with the neighborhood.

Ms. Klaer asked if this was going to be a three bedroom house. Mr. Mosness said yes.

Mr. Krueger asked if this was a double lot. Mr. Mosness said it was part of two lots.

Mr. McCampbell closed the Public Hearing on Appeal #12-28.

Staff Recommendation

Staff recommends approval of Appeal 12-28 to allow the construction of a home lot with an 10-foot 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 proposed home will be consistent with the existing front-yard building setbacks of the existing homes along Taylor Street.
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 required 25-ft front-yard building setback would not be consistent with the residential front-yard building setbacks along Taylor Street.

MOTION: Charles Krueger moved to approve Appeal #12-29. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-29 An appeal submitted by Michael and Vickie Maguire requesting a Developmental Variance for **558 Dittman Street** to allow a home addition with an 8' rear setback.

Michael Maguire, 558 Dittman, said he is asking for a variance to allow him to attach his garage to his house. He said the front of his house faces Dittman, not Cassell which is the shorter frontage of his lot. He said they would like the added protection from the elements and added security of having the garage attached to the house. Mr. Maguire said he also thinks it would fit in better vs. detached.

Mr. Trippel asked if the garage would extend south. Mr. Maguire said yes, he's never had much of a back yard and now he'll have less grass to mow.

Mr. McCampbell commented there was no side door to the house. Mr. Maguire said there will be.

Mr. McCampbell asked if he understood about the curb cut. Mr. Maguire said basically there are no curbs in the area, just a ramp up to the sidewalk and there are no treelawns. He said he will remove the old driveway as they plan on converting the existing garage into living space.

Mr. McCampbell closed the Public Hearing on Appeal #12-29.

Staff Recommendation

Staff recommends approval of Appeal 12-29 to allow the construction of an attached garage with an 8' rear 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 home to the south will be at least 23' from the addition; and*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant's home has an existing rear building setback of 33' which unduly limits the size of any home or garage addition.*

MOTION: Ross Portolese moved to approve Appeal #12-29. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-30 An appeal submitted by Fedor Properties, Inc. and Dan Shoup requesting a Use Variance for vacant property Street **north of 3324 North Home** to allow for a fuel storage tank.

Peter Garver, DJ Construction, Goshen, appeared on behalf of Don Shoup, the prospective property owner. He said Mr. Shoup is moving his bus maintenance facility from the United Limo facility property which is also located on Home Street. Mr. Garver said Mr. Shoup plans to build a smaller facility to service Cardinal Bus Line and they require the Use Variance in order to install an above-ground fuel storage tank. He plans to relocate an existing tank from the United Limo facility. Mr. Garver said they would install a concrete containment system that would meet all EPA requirements.

Mr. Trippel asked if this containment has been approved by National Fire Protection. Mr. Garver said yes and it will be leak-proof.

Mr. Portolese asked if there will be a fence around the tank. Mr. Garver said yes.

Mr. McCampbell said staff has indicated this is limited to one 10,000 gallon tank. Mr. Garver said they had no problem with that.

Opposition

Dr. Ernest Boyer, speaking on behalf of the owner of Culture Systems, Mr. Kim, asked if the Board received a copy of the letter Mr. Kim sent this afternoon. Mr. Shearon said no, it had not been circulated among the Board members. Mr. Shearon read the letter of opposition from David Kim, President of Culture Systems.

Mr. Shearon explained to Dr. Boyer that the Board makes a recommendation to the Common Council and they have the final say. He said in order to move this process along he recommends Appellant address their concerns before the Council meeting. This isn't the final vote, just a recommendation to the Council and their final vote.

Rebuttal

Mr. Garver said he wasn't aware of these concerns. He said he's confident Mr. Shoup will be a good neighbor of Culture Systems. Cardinal is relocating a current business and a Phase II environmental study was done at their current location in order for a lease to be signed with a new tenant and the tests all came out ok.

Mr. Garver said this is not going to be a Transpo facility; no customers will be coming or going. It's just going to be a bus maintenance facility; washing, fueling, overnight parking for maybe 10-12 buses. They also plan to put a fence around the entire property.

Mr. McCampbell told Mr. Garver and Dr. Boyer that both will have the opportunity to speak at the Council meeting on Monday.

Mr. Portolese asked if they will have security overnight. Mr. Garver said possibly, but there haven't been any incidents at their existing facility just down the street. He said he appreciates the concerns of Culture Systems and they don't intend to do anything to change that.

Mr. McCampbell closed the Public Hearing on Appeal #12-30.

Mr. Portolese wanted to make sure the Appellant will build an adequate containment vessel that must ensure safety of those nearby.

Ms. Klaer said we have approved several similar to this.

Mr. Shearon said he has been advised by Mr. Bent, Counsel to the Board, that the applicant has addressed the three concerns outlined in Mr. Kim's letter.

Item #1 being they have shown successful handling of such material in the past. Mr. Shearon requested the applicant forward a copy of the environmental testing results to the Council.

Item #2 assuring that safe distance requirements are met. Mr. Garver said he would do further research and turn in his response to the Council.

Item #3 assuring that additional equipment listed for I-2 Heavy Industrial zoning would not affect the safety of workers in I-1 Light Industrial. Mr. Shearon said that the additional equipment is allowed under I-1 Light Industrial zoning and the only thing addressed tonight is the fuel tank.

Mr. Bent, Counsel to the Board, addressed the Appellant. He said in regard to item #2 about hazardous material site distances are met... is Mr. Garver aware of any existing problem. Mr. Garver said no he is not aware of any situations and believes they are well within.

Mr. Bent said in his opinion Item #3 is irrelevant regarding additional equipment listed in I-2 as this issue is dealing with the fuel tank.

Mr. Shearon said the Fire Department reviewed the request and approved.

Mr. McCampbell closed the Public Hearing on Appeal #12-30.

Staff Recommendation

The Staff recommends in favor of Appeal 12-30 for a Use Variance to allow a 10,000 gallon above ground diesel fuel storage tank at property located north of 3224 N Home Street, subject to the following conditions:

- 1) *This approval shall be limited to one 10,000 gallon diesel fuel storage tank. Any expansion shall require the submission, review, and approval of an additional Use Variance.*

The recommendation is based on the following reasons:

1. *With the stipulated condition, the approval will not be injurious to the public health, safety, morals, and general welfare of the community because the installation of the tank will conform to all applicable safety requirements as determined/interpreted by the City of Mishawaka Fire Department;*
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 10,000 gallon tank will be set at least 25 feet from property lines and will be placed in an appropriate concrete containment vault.*
3. *The need for the variance does arise from a condition peculiar to the property involved because an above ground storage tank is not a permitted use in the I-1 Light Industrial District;*
4. *The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that without the availability of onsite fuel, the company would not be able to fuel their bus fleet; and*
5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates Industrial.*

MOTION: Ross Portolese moved to forward Appeal #12-30 to the Common Council subject to staff's condition of approval. Jim Trippel seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:40 p.m.

Greg Shearon, Senior Planner

Kari Myers, Administrative Planner