

SEPTEMBER 11, 2012

BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 11, 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, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

The Minutes of the August 14, 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 August 14, 2012 meeting.*

Mr. Prince indicated this item has been continued twice. He suggested action by the Board to note the applicant was not here and terminate the application. Any further consideration of this request would require the applicant to refile.

Mr. Trippel moved to terminate Appeal #12-23. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-31 A request submitted by Parkview Terrace Apartments Limited Partnership requesting various Sign Variances for **602 East Thirteenth Street**.

Dan Salomone, ASI, 2650-C West Bradley, Place, Chicago, appeared on behalf of Parkview Terrace. Mr. Salomone said the owners have upgraded a number of elements on the property and the new signage will coincide with the upgrades.

Mr. Salomone said the sign package includes new identification signs, directional signs, and on-site wayfinding signs. He said the new main identification sign is in the same location as the existing sign. There will be horizontal sign panels mounted on the perimeter fence that identify entrances and provide wayfinding identification for residents and visitors. These will also be strategically located on the property.

Mr. McCampbell closed the Public Hearing on Appeal #12-31.

Mr. Trippel asked if the signs will meet the sign ordinance. Mr. Prince said no, that's the reason for the variance.

Mr. Portolese asked how many signs will there be. Mr. Prince said perhaps 12, but the main ID sign is what we're discussing.

Staff Recommendation

The Staff recommends approval of Appeal #12-31 to allow identification signs for Parkview Terrace Apartments on East Twelfth Street as described above. Recommendation for approval is based upon the following Findings of Fact:

1. *Approval will not be injurious to the public health, safety, morals or general welfare of the community because all state and local building codes will be adhered to during construction, including proper setbacks from the right of way for the primary monument sign;*
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 Parkview Terrace primarily encompasses the entire block; and the proposed signage is modest in size and quantity;*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the Appellant's property is five (5) acres in area, comprised of three (3) and two story apartment buildings which would overshadow the maximum freestanding sign allowed by the ordinance.*

MOTION: Charles Krueger moved to approve Appeal #12-32. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-32 A request submitted by Gerald W. and Carolyn J. Kozuch requesting a Use Variance for **512 West Edison Road** to allow five (5) tenants on C-1 General Commercial zoned property.

Gerald Kozuch, 512 W. Edison Road, presented the appeal. He said at this time they are not requesting any changes to the building. He also said he was not aware that more than 2 tenants were not permitted. Mr. Kozuch said times are difficult and he would like to open up the building for up to 5 smaller tenants.

Mr. McCampbell asked if the existing doors would remain; the ones that face the parking lot and facing Edison. Mr. Kozuch said yes and would like the ability to put in smaller spaces and have more opportunity to rent to smaller stores. He said it would not hurt the area because there won't be any changes to the building.

Mr. McCampbell asked Mr. Kozuch if he had seen Staff's conditions of approval. Mr. Kozuch said no, he had not. (Peg Strantz provided him a copy of the staff report).

Mr. Kozuch said he didn't understand item #3; he isn't making any changes. He also indicated the dumpsters will be hidden from view, and the signs that are there are already up.

Mr. McCampbell said regarding #5, is that other tenants may want signs and that's why that condition is there.

Mr. Prince explained each condition to Mr. Kozuch:

Item #1 – restaurants are excluded because you don't have enough parking for eating and drinking establishments. Mr. Kozuch said he has some other strip centers and they have pizza

and sub shops and he wants to keep that option open. Mr. Prince said it's standard protocol to review the uses as they come in and it's based on what you are proposing. He said he doesn't want to blindly leave open to restaurants and not have enough parking.

Mr. Kozuch said one proposed tenant was to be a sub shop. Mr. Prince said based on the number of parking spaces, it hasn't been evaluated. He said any kind of retail would be permitted, but eating and drinking establishments would not be allowed because they require more parking than retail. Mr. Prince said there is no way for us to evaluate a sub shop at this time and it would need to come back for another variance.

Mr. Kozuch said again that he's had Domino's and sub shops at his other centers. Mr. Prince said an option would be to continue the item until next month and for everyone to sit down and discuss these conditions. It's inappropriate to review the items before the Board. Mr. Kozuch said he would prefer to go ahead and get this done tonight.

Mr. Prince continued with the items. Item #3 would only apply if remodeling.

Item #4 does require the dumpster to be enclosed. Mr. Kozuch said it's located behind the building and he has no issue with that and could enclose it.

Item #5, Mr. Prince said sign permits are required for tenant panels on the existing sign. Mr. Prince said if you want to modify the sign and add tenants, the sign would have to conform to the sign ordinance. Mr. Kozuch said what is there would be adequate.

Item #6 requires parking spaces to be striped. Mr. Kozuch said he has no issue with that as he restripes them regularly.

Item #7 applies if modifications would be done to the building.

Mr. McCampbell asked Mr. Kozuch if the conditions were acceptable as they stand. Mr. Kozuch said yes.

Mr. McCampbell closed the Public Hearing on Appeal #12-32.

Staff Recommendation

*Staff recommends **approval** of Appeal #12-32 for a use variance to allow five (5) tenant spaces in the single building at 512 West Edison. The approval is subject to the following conditions:*

- 1. Outside sales display and outside storage shall be prohibited.*
- 2. Carry-out restaurants and eating and drinking establishments are excluded uses.*
- 3. Architectural appropriate materials shall be used on all sides of the building visible from public right-of-way including the alley.*
- 4. All dumpsters shall be screened from view. Dumpster(s) shall be screened by an enclosure. Dumpster locations shall be located at the north end of the site.*
- 5. If the use variance is granted, sign permits must be secured for the multi-tenant panels that were installed; if the variance is denied the panels shall be removed.*
- 6. Parking spaces shall be striped.*

7. *An administrative site plan shall be filed detailing the parking areas, curb cuts, dumpster(s) location, stormwater retention, interior building modifications, and landscaping subject to staff review and approval prior to tenant changes.*

This recommendation is based upon 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 applicable codes will be adhered to during building modifications;*
2. *The use and value of the area adjacent to the property included in this variance will not be affected in a substantially adverse manner because the site is located in a high traffic commercial area;*
3. *The need for the variance arises from a condition peculiar to the property involved because the building was erected in 1978 prior to current commercial developmental standards and both the building and lot are narrow in width and deep in length;*
4. *The strict application of the terms of this chapter does constitute an unnecessary hardship if applied to this property in that the proposed multiple uses being requested would otherwise require a C-2 Shopping Center zoning classification; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the area has been identified for general commercial uses.*

MOTION: Ross Portolese moved to forward Appeal #12-32 to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #12-33 A request submitted by JKKS Property LLC requesting a Use Variance and Developmental Variance for **202 East Seventh Street** to allow multi-family use on R-1 Single Family Residential zoning, parking and setback variances.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant.

Mr. Danch said there are two houses on the property and have been for several decades. The front building is a duplex and a single family home in the rear. He said the property owners purchased the properties and started making improvements. They had worked with a real estate agent and assumed everything was ok. Mr. Danch said when it came time to obtain permits to put in furnaces, that's when they found out there were problems.

Mr. Danch said they discussed their options with planning staff and it was decided to go with the use variance as rezoning to R-3 Multi-Family Residential wouldn't be in the best interests of the neighborhood. A Use Variance would allow the two homes to remain on site.

Mr. Danch also said they are asking for several developmental variances. He said they need five on-site parking spaces and since this property is larger than some on the block, they were able to create a driveway off the alley to provide three spaces for tenant parking.

Mr. Danch said the building setbacks are also not in compliance as the structures were built decades ago. He said if these variances are granted, then the property owners can continue with improvements to the property, and asked for the Board's favorable recommendation.

Mr. McCampbell asked Mr. Danch if the Appellant had seen the condition of approval. Mr. Danch said yes and they had no problem with it.

Mr. Krueger said he wasn't sure where the parking would be. Mr. Danch said there isn't a driveway now, but would put one in that came off the alley that would create two spaces for the front house and one for the rear.

Mr. Krueger said there are three units and the tenants could be husband and wife, each with a car. Mr. Danch said it was possible, but probably would only be single tenants. Staff had asked not to put in a driveway off of Seventh Street and the street could be used for two spaces.

Mr. McCampbell closed the Public Hearing.

Staff Recommendation

The Staff recommends in favor of Appeal 12-33 to allow up to (3) multi-family units (1 duplex, 1 single-family home) at property located at 202, 202 ½, & 204 East 7th Street subject to the following condition:

- 1. An administrative site plan shall be submitted showing off-street parking with appropriate storm-water management measures.*

This recommendation is based upon 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 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 along with the single-family uses had existed from 1987. 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 property is zoned R-1, which does not allow the historic multi-family use.*
- 4. The strict application of the terms of this chapter will result in practical difficulties in that the historical use of the property has been multi-family and improvements to the property cannot be implemented until the property is rezoned appropriately or a use variance is granted.*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the area has been identified low density residential.*

MOTION: Jim Trippel moved to forward Appeal #12-33 Use Variance to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

MOTION: Jim Trippel moved to approve Appeal #12-33 Developmental Variance. Ross Portolese seconded; motion carried with a vote of 5-0.

NEW BUSINESS:

Mr. Prince said as part of ongoing redevelopment efforts, the City acquired multiple lots on 7th and Taylor Streets. Habitat for Humanity wants to build a new home and they are in a time crunch in order to make use of available funds. Mr. Prince said the bad part about it is they need a variance to put the house in line with other existing homes. Also, the lot is only 38' wide and would need a side setback variance as well. The proposed setbacks would be 5' from 7th Street and 3' from Taylor Street.

Mr. Prince said they would like to get a foundation permit in order to get started and they know they are potentially at risk in doing so if a variance isn't approved.

Mr. Prince said it isn't fair for the Board to make a decision this evening, but if they have an opportunity to drive by the site this evening and call tomorrow to let him know what they think.

Ms. Klaer asked if it would be a 2 or 3 bedroom home. Mr. Prince said 3.

Mr. Trippel said he didn't have any complaints, but thought we agreed earlier this year not to go smaller than 40' wide lots. Mr. Prince said that was correct, but then what you have here is a non-buildable lot. It would match the standards that are existing in the neighborhood.

The members of the Board they did not have a problem with issuing a foundation permit.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner