

OCTOBER 9, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 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, 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 Peg Strantz.

Don McCampbell explained the Rules of Procedure.

The Minutes of the September 11, 2012, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #12-34 An appeal submitted by Afdent Dental requesting a Sign Variance for **533 West Douglas Road** to permit a 36 sqft sign with 25.5 sqft of copy area.

Chad Bailey, Vanadco Signs, 10625 State Rd. 10, Argos, IN, appeared on behalf of the Appellant. He said they are requesting a LED message center for Afdent's main ID sign for the building they are remodeling. He said they tried to get the size of the sign as close to ordinance requirements as possible.

Wayne Pecina, General Manager of Afdent, said his brother Dr. Roger Pecina is founder and owner thanked everyone for listening to the request. He said they are making major improvements to their facility and have signed an agreement with Batteries Plus to take their stormwater into their system to alleviate flooding problems at the front of their building.

Mr. Pecina said the sign would advertise their new denture and surgery center.

Mr. McCampbell closed the Public Hearing on Appeal #12-34.

Staff Recommendation

The Staff recommends approval of Appeal #12-34 to allow a freestanding LED message center sign with a copy area of 25.5 square feet. 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 the message center will be used to convey messages along with time and temperature, and all construction will be completed in accordance with all applicable state and local building codes, and clear vision area requirements of the Zoning Ordinance ;*
- 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 sign will be located adjacent*

to Douglas Road amid other commercial properties, and represents an investment in the community;

- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because without the larger copy area, services and products the dental center provides cannot be advertised.*

MOTION: Charles Krueger moved to approve Appeal #12-34. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #12-35 A request submitted by Michael Darch, Jay Primmer, and Michael L. Williams requesting Developmental Variance to permit an oversized accessory structure at **1615 South Merrifield**.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan St., South Bend, appeared on behalf of the Appellants. He said there are two neighbors, living side-by-side, one wishing to transfer ownership of the garage that is located between them. Originally the garage was connected to the home at 830 E. 18th Street, adjacent, and the breezeway between the home and garage has been removed.

Mr. Lang said the neighbor to the north on Merrifield is an antique car collector and desires to add this to his property to store his cars as opposed to storing them in South Bend as he does now.

Mr. Lang said the variance is necessary due to the size and height of the garage. The exterior of the garage is very tasteful and not a detriment to the neighborhood at all.

Mr. Trippel asked when this was complete the lot to the south will be 114 X 75. Mr. Lang said the lot size will comply with the requirements for zoning for that lot.

Opposition

Lane Gaby, 837 Lovechio Drive, said he and his wife are against this because he thinks they should stay within the zoning requirements for size of the structure. He said he knows later on as they age that garage will break down and be over the size limit and bring down their property values.

Rebuttal

Mr. Lang said regarding concern about the maintenance of the garage; the gentleman who will own the new garage lives immediately adjacent and with a valuable antique car collection in that garage it will be well maintained. He said you can see it is in very, very good shape as is the home of the gentleman wishing to buy it. There will not be an absentee owner.

Mr. McCampbell closed the Public Hearing on Appeal #12-35.

Staff Recommendation

Staff recommends approval of Appeal 12-35 to allow an existing 2040 sf, 20-ft high garage. 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 a building permit was pulled when the garage was originally constructed;*

- 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 garage is existing and will adhere to the required setbacks for accessory structures.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the garage is existing and would have to be removed in order to comply with the requirements of the Ordinance.*

MOTION: Ross Portolese moved to approve Appeal #12-35. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #12-36 A request submitted by Terry and Judy Allen requesting a Developmental Variance to allow an accessory structure with a 29" side setback at **728 East Sixth Street**.

Terry and Judy Allen presented their appeal. Mrs. Allen said they built the shed to match the landscaping of the house. She also said they have lived in their home for 15 years and have continued to improve their property and the shed sits back approximately 68' from the front of the yard; they don't have a back yard so the shed was put in the front yard. She said they would like to keep the shed where it is. Moving the shed would require them to remove the fence and the raised flowerbeds located around the shed.

Mr. Trippel asked if they purchased the home or built it. Mrs. Allen said they purchased it.

Mr. Trippel asked if the home's setback was like this when they bought it. Mrs. Allen said yes, their back yard is basically 10' X 12' and it's used as a garden. Mr. Allen said the home used to be a 24' X 24' milk barn and was converted into a home in 1923; Mrs. Allen purchased the home in 1997.

Mr. McCampbell closed the Public Hearing on Appeal #12-36.

Mr. Trippel asked why this became an issue after 7 years. Mr. Prince said when the department receives complaints about structures we need to investigate. When we find non-conformities we have to address them. He said the only alternative other than moving the shed, was applying for the variance. Mr. Prince said it's a small shed and sits so far back.

Staff Recommendation

Staff recommends approval of Appeal 12-36 to allow an existing shed with a 29" and 34" side yard setbacks to remain. 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 shed meets the required front setback and does not limit visibility of neighboring properties; and*
 - 1. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because relocating the shed would damage landscaping and require removal of the fence to allow a truck to move the structure.*

MOTION: Rosemary Klaer moved to approve Appeal #12-37. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #12-37 A request submitted by John A. Cochran requesting a Developmental Variance to permit a privacy fence with 0' rear setback on a thru-lot at **4057 Stonegate Drive**.

John Cochran, 4057 Stonegate Drive, presented the appeal. He said he would like to install a privacy fence due to a pool they are installing.

Mr. Trippel asked if the pool was being installed now. Mr. Cochran said yes.

Mr. Trippel said by law it has to be surrounded by a fence. Mr. Cochran said yes.

Mr. Krueger asked if the fence would be vinyl. Mr. Cochran said yes.

Mr. Trippel asked if they were aware of the restrictions prior to installing the fence. Mr. Cochran said he wasn't aware of the restrictions until they pulled the permit for the pool.

Mr. McCampbell asked if he was aware he would be signing a utility waiver. Mr. Cochran said yes.

Mr. McCampbell closed the Public Hearing on Appeal #12-37.

Staff Recommendation

The staff recommends in favor Appeal 12-37 allowing for the installation of a 6-foot high privacy up to the east / rearing property line. The recommendation is based on the following reasons:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because all construction will be completed in accordance with all applicable state and local building codes;*
- 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 fence will provide security around the pool, thus providing protection for the residents and surrounding neighborhood, and the fence also represents an investment in the neighborhood; and,*
- 3. The strict application of the terms of this chapter will result in practical difficulties and creates a hardship in the use of the property because the current ordinance penalizes owners whose properties are through-lots with double frontage.*

MOTION: Jim Trippel moved to approve Appeal #12-37. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #12-38 A request submitted by Granger Community Church, Inc., requesting a Sign Variance at **630 East University Drive** to permit multiple signs on the property.

Scott Franko, US Signcrafters, 215 Lincolnway East, Osceola, appeared on behalf of the Appellant. Mr. Franko said the church first appeared before the Board in 2007 to start the process of obtaining multiple signs. A variance was approved at that time.

Mr. Franko said their property is approximately 50 acres and had only one main identification sign, but three access points onto their campus. At that time they sought a variance to allow two additional signs which were positioned on the north of the property. Two signs were approved, 8' tall and 8' wide (the two additional signs). The signs that are going in the place of those signs are actually 4' X 7', not as large as originally planned to be.

Mr. Franko said the main ID sign on University Drive is a little larger than what existed previously. He said the original variance in 2007 allowed up to 192 sqft for all three signs; these new signs combined will total 184 sqft.

Mr. Franko said also in attendance and could speak if needed is Tim Stevens, representing the church.

Mr. Franko said they are also requesting building letters for their new Early Learning Center that actually project up above the roof line, but is not main roof of the church.

Mr. McCampbell said the request is for two (2) roof signs. He said when he visited the site he only saw one set for Early Learning Center. Mr. Franko said it's the same sign only on two access points to the center.

Mr. Krueger asked if the signs would be illuminated. Mr. Franko said they may choose to spot illuminate, but are not built to be illuminated. They are not projecting light from within the signs.

Mr. Krueger asked if lights will be shining on them. Mr. Franko said if they so choose. The light will be shining to the signs not from the signs.

In Favor

Tim Stevens, Pastor from Granger Community Church, said he didn't have anything to add except to thank the Board for considering their request. He said they have learned a lot about signage and city codes and appreciates the Board's patience.

Mr. McCampbell closed the Public Hearing on Appeal #12-38.

Ms. Klaer said it seems that many people, companies, churches, etc, have been just going ahead and doing things and then they expect us to approve. It's happening often, but she said she doesn't know what we can do about it.

Mr. Prince noted that the underlying principle here is the variance appropriate or not. He said they acknowledged they made a mistake. The builder thought that signage was included in the permitting the process and that's where the confusion was in this case. Mr. Prince said when you look at the size of the property; look at the signage in the corridor, these signs are diminutive relative to other signs in the district. The signs proposed are appropriate to the overall aesthetics that the City wants for the corridor.

Staff Recommendation

The Staff recommends in favor of Appeal 12-38 to allow three (3) freestanding on-premise signs and two (2) roof signs for Granger Community Church at 630 E. University Drive. The 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 all construction will be completed in accordance with all applicable state and local building codes, including setbacks and clear vision area requirements of the Zoning Ordinance;*
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 signs represent an investment in the area, and are way finders for the community; and,*
3. *The strict application of the terms of the On-Premise Sign Standards will result in practical difficulties in the use of the property because the On-Premise Sign Ordinance does not take into account untypical situations of a property that exceeds 50 acres. Staff would speculate that the provision regarding signage for places of religious worship was put in place for the neighborhood churches so common throughout the City.*

MOTION: Charles Krueger moved to approve Appeal #12-38. Jim Trippel seconded; motion carried with a vote of 5-0.

APPEAL #12-39 An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **802 West Seventh Street** to permit a new single family home with a 14' front setback, 3.7' exterior side setback, and 4' side setback.

Ken Prince, City Planner, appeared on behalf of the Appellant. He said representatives from Habitat had a conflict and given our partnership and involvement with them and subsidies the City provides, he felt comfortable presenting on their behalf.

Mr. Prince said this was discussed at the last meeting regarding the need for setback variances. He said you can see Habitat's intent to match the front yard setback of the adjacent structures. Given the closeness and narrowness of the lot, less than 40' in width, and located on a corner, that prompted the need for the variance.

Mr. Prince said the home on the opposite side of the street has virtually the identical setbacks that are being requested. Even though the variances are significant and the lot is small, it matches the neighborhood and the intent of blending with the neighborhood.

Mr. Trippel said the plan shows 50' on the outside but the inside lines show 36'. Mr. Prince said he believes it was the previous lot and when it was replatted the lot line moved.

Mr. Trippel said the lot is 50' wide. Mr. Prince said the City acquired multiple lots and there may have been as many as three lots at one time. This lot has been replatted and there was a structure located on the rear and demolished. The adjacent owner acquired the rear half of one lot and we made this lot longer to match. It has been replatted to the 38' in width.

Mr. McCampbell closed the Public Hearing on Appeal #12-39.

Staff Recommendation

Staff recommends approval of Appeal 12-28 to allow the construction of a home lot with a 14-ft front-yard, 3.7-ft exterior side-yard setback, and a 4' 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 home will be consistent with the existing front-yard building setbacks of the existing homes along 7th Street; and the exterior side-yard setback along Taylor Street is consistent with the existing side-yard setback of the existing house across the street 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 property is located on a corner lot. With the required 12.5-ft setback, an appropriate sizable house that is consistent with other homes in the area could not be constructed.*

MOTION: Rosemary Klaer moved to approve Appeal #12-39. Ross Portolese seconded; motion carried with a vote of 5-0.

Mr. Prince noted a Letter of Support was received from Ryan Rans and Great Lakes Capital in support of Appeal #12-38 Granger Community Church Sign Variance.

ADJOURNMENT: 6:30 p.m.

Kenneth B. Prince, City Planner

Peg Strantz, Associate Planner