

**NOVEMBER 13, 2012**  
**BOARD OF ZONING APPEALS**  
**CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 13, 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.

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Don McCampbell explained the Rules of Procedure.

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The Minutes of the October 9, 2012, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #12-40** An appeal submitted by Kathy S. Avery requesting a Developmental Variance for **2107 Clover Road** to permit a privacy fence with 0' exterior side yard setback.

Kathy Avery, 2107 Clover Road, said she is asking for a variance for her privacy fence.

Mr. Portolese asked if the fence was up already. Ms. Avery said yes. She got a permit for the fence, but misunderstood the setback requirements.

Mr. McCampbell said he can see why she wants the fence. Ms. Avery said the commercial property to the north is unsightly and on a downward swing.

**In Favor**

Ernest Young, 1727 E. LaSalle Ave., said if he owned Ms. Avery's property, he would want a fence taller and wide. He said he isn't in opposition of the fence and it doesn't hinder visibility.

Mr. McCampbell said there are rules to follow and that's the reason Ms. Avery is here.

Mr. Young said their neighborhood is wedged between commercial and industrial properties.

Mr. McCampbell closed the Public Hearing on Appeal #12-40.

Ken Prince read a letter of Support from Gregory and Cynthia Keller, 2108 Clover Road.

Ms. Klaer asked if Code Enforcement had been to the commercial property. Mr. McCampbell said it is unknown and has nothing to do with the appeal.

**Staff Recommendation**

Staff recommends approval of Appeal 12-40, 2107 Clover Rd, to allow a privacy fence with a zero 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 there will be sufficient distance between the location of the fence and the LaSalle Ave and Clover Rd intersection to provide adequate vision clearance for pedestrians, bicycles and drivers;
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 both home improvement projects represent 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 12.5 foot setback does not provide ample screening of the commercial property to the north.

**MOTION:** Charles Krueger moved to approve Appeal #12-40. Jim Trippel seconded; motion carried with a vote of 5-0.

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**APPEAL #12-41** An appeal submitted by Ralph E. and Sherry L. Gunnett requesting a Developmental Variance for **523 Laurel Street** to permit an 864 sqft accessory structure.

Sherry Gunnett, 523 Laurel Street, said they are requesting approval to build an oversized garage.

Mr. McCampbell asked where the driveway will be. Mrs. Gunnett said it will come off of Laurel and be concrete.

Mr. Trippel asked if they had two lots. Mrs. Gunnett said yes and had both properties combined last Spring.

Mr. McCampbell closed the Public Hearing on Appeal #12-41.

#### **Staff Recommendation**

Staff recommends **approval** of Appeal 12-41 to allow the construction of an 864 sf garage at 523 Laurel Street. 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 new construction constitutes an investment to 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 limited size requirement of accessory structures would not supply sufficient space for storage and protection of valuables.

**MOTION:** Jim Trippel moved to approve Appeal #12-41. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #12-42** An appeal submitted by Whistle Stop Square Associates LLC and Dan Shoup requesting a Use Variance for the **southwest corner of Day Road and Glaser Court** to permit a 10,000 gallon above ground fuel storage tank for bus maintenance facility.

Pete Garber, DJ Construction, 3414 Elkhart Road, said this request is similar to one that was approved in August for a property on Home Street. The fuel tank will be 10,000 gallons and installed in a concrete containment vault.

Mr. Trippel asked if it will comply with all Fire Department regulations. Mr. Garber said yes, and the tank will be relocated from their current property on Home Street. He said they aren't adding an additional tank to the neighborhood; just relocating the tank to this property.

Mr. Krueger asked if the tank will be located behind the building. Mr. Garber said yes, on the south side of the building.

**Opposition**

Don Kristoff, 14449 Day Road, lives across the street. He said there is a lot of traffic on Day Road and at least once a year there's a crash in this area and at times it's risky getting in and out of his driveway. He also said one of the things about the tank is once there is one there will be more.

Mr. McCampbell said no, this approval is limited to one 10,000 gallon tank only. There will be no more.

Mr. Kristoff said he is concerned about additional traffic this tank will create. He said he's surrounded by quite a few homes and feels like he has a special place there. He wishes the traffic could stay around the corner on Home Street and that's the main reason for his concern.

**Rebuttal**

Mr. Garber said they are doing some traffic research on what this project will create. He said this business is owned by the same family that owned United Limo, but is a different operation. They have a small charter bus business with 5 buses currently. Most of their business is west on Day Road and a good share of their inbound/outbound traffic will be going west. It is a relatively small company now and should have very little impact on traffic.

Mr. Garber said they understand this request is for one tank only. If for some reason they would want more, they would have to come back for approval.

Mr. Garber said the fuel tank will be located inside a legally constructed vault and any spillage will be contained inside the vault. He said the ground conditions of the existing site on Home Street are well within the criteria.

Mr. McCampbell closed the Public Hearing on Appeal #12-42.

**Staff Recommendation**

The Staff recommends in favor of Appeal 12-42 for a Use Variance to allow a 10,000 gallon above ground diesel fuel storage tank at property located at the southwest corner of Day Road and Glaser Court, 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:** Mr. Portolese moved to forward Appeal #12-42 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #12-43** An appeal submitted by Cressy Land Investments, LLC, requesting a Developmental Variance for property located at the **southwest corner of Day Road and Park Place** for a reduction in parking spaces from 81 to 30.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Applicant. He said a party wishes to purchase the property and develop as senior housing focusing on dementia and Alzheimer’s patients. He said the facility will be 35,000+ sqft with 54 residential apartments. He said access will be from Day Road and Park Place with parking on the north and east side.

Mr. Ballard said a request will be considered at tonight’s Plan Commission meeting to rezone the property from C-2 Shopping Center Commercial to R-3 Multi-Family Residential.

Mr. Ballard said the required number of parking spaces for this facility would be 81, but they are requesting a variance to permit 30 spaces. He said the purchaser has substantial

experience in this kind of development and said those living at this facility don't drive. The parking will be used for staff and visitors.

Mr. Ballard said it is a 24 hour care facility and maximum staff per shift is 15 with 15 spaces left for family, friends, and physicians, and they feel 30 spaces is adequate.

Mr. Trippel asked what they will do if there aren't enough parking spaces. Mr. Ballard said they would re-evaluate and install more if needed. But based on the experience of those developing the property, they have never needed to add more parking.

Ms. Klaer asked when the facility would be up and running. Mr. Ballard said if all goes well, construction can begin in the spring with opening in August of 2013.

Dane Slabaugh, 16149 Waterside Drive, Granger, said the national average for this type of facility is 1/2 parking spaces and in the past they have not had any issues with that number.

### **In Favor**

Michael Hardy, Barnes & Thornburg, 100 N. Michigan Street, South Bend, appeared on behalf of The Forest Condo Association as well as a number of residents. He said most of the residents didn't know about this project until they received their notices. Mr. Hardy said officials met with Mr. Slabaugh and had discussions about the impact on their homes. He said based on those conversations, certain representations were made by Cressy. They included: single story building, no higher than 35', will use minimally invasive lighting directed away from the condos and only used where necessary and in consultation with the representatives of the Condo Association. Mr. Hardy said the structure will have a residential look and feel with dumpsters and trash receptacles in a fenced in area in the back that will be constructed to look like the exterior of the building and not visible. He also said they will work to ensure the tree line is minimally disturbed and at the request of the Association, the developer will install a berm with mutually agreeable plantings. He said if this happens, then the Condo Association is in favor of this request.

Drew Cash, 1322 Bridgewater Way, said he was a member of the Board of Directors for the Condo Association. He said the berm's necessity hasn't been determined. They are open to working with the developers.

Mr. Prince said this request is a Developmental Variance and no conditions can be placed on a Developmental Variance

### **Opposition**

Paul Klein, 1342 Bridgewater Way, asked why we were approving parking if the rezoning hasn't taken place.

Mr. Prince said the developer is doing so at their own risk and can ask for this variance prior to rezoning. It's routine to do it this way.

Mr. Klein asked if this isn't approved, then the existing C-2 zoning won't have less parking. Mr. Prince said no, if it isn't approved then this request is null and void.

Bill Cambron, 1433 Bridgewater Place, said his concern is a substantial increase in traffic along Park Place. He asked if speed limit signs would be posted.

Mr. Prince said the speed limit on Park Place is 30 mph. He said an additional sign isn't planned, but could be at the request from the association.

## Rebuttal

Mr. Ballard said the property is currently zoned C-2 Shopping Center Commercial and a strip mall or 7-11 could locate there creating much more traffic. He said the City has requested a right-in/right-out entrance on Day Road. If the rezoning is approved, then this traffic would be much less than commercial uses.

Mr. Krueger asked if the parking lots would be lighted. Mr. Ballard said all site requirements will be met per City standards.

Mr. Krueger asked if the lots would be lit all night. Mr. Ballard said yes and would be kept within the boundary of the property so light will not cast into the surrounding neighborhoods.

Mr. McCampbell closed the Public Hearing on Appeal #12-43.

Mr. Krueger said if this doesn't happen then the variance dies? Mr. Prince said if the variance and zoning is approved, then another memory care facility would have to take its place. Market rate apartments could not go there.

## Staff Recommendation

*The Planning Department recommends approval of Appeal 12-23 to allow a reduction in parking from a required 81 spaces to 30 spaces at property located at the southeast corner of Day Road and Park Place. 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 parking is sufficient to support the proposed use.*
- 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 provide for separate parking standards for such residential care apartments where the percentage of residents that drive vehicles is less or non-existent.*

**MOTION:** Mr. Portolese moved to approve Appeal #12-43. Ms. Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #12-44** An appeal submitted by Cressy Land Investments, LLC, requesting a Developmental Variance for property located near the **southeast corner of Trinity Place and Creek Point** for a reduction in parking spaces from 132 to 44.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Appellant. He said they are requesting a reduction in parking spaces for a memory care facility. He said the Ordinance would require 132 spaces for the 33,000 sqft facility and since residents are not permitted to have vehicles, then the parking would be for

guests and employees. Mr. Mosness said the developer has set a minimum of 30 spaces, but would go with 40 if the property allows it.

Mr. Mosness also said the Plat and Site Plan will be considered at tonight's Plan Commission meeting.

Mr. Trippel asked what happens if there aren't enough parking spaces. Mr. Mosness said the developer manages over 35 similar centers and finds 30 spaces is sufficient and 40 is a good design guideline. He said if it is an issue, they will address it.

Mr. McCampbell closed the Public Hearing on Appeal #12-44.

Mr. Trippel asked if this is more of a Use Variance than a Developmental Variance. Mr. Prince said this type of used is permitted in the C-8 zoning district. There are no separate parking requirements for assisted living.

**Staff Recommendation**

*The Planning Department recommends approval of Appeal 12-44 to allow a reduction in parking from a required 132 spaces to 44 spaces at property located Trinity Place and Creek Point. 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 parking is sufficient to support the proposed use; and*
- 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 provide for separate parking standards for such residential care apartments where the percentage of residents that drive vehicles is less or non-existent.*

**MOTION:** Mr. Portolese moved to approve Appeal #12-44. Ms. Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #12-45** An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **519 West Sixth Street** to permit a new single family home with a 5' front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the next three variances are all similar in that we want the new homes to fit in the neighborhood in the context of what exists.

Mr. Prince said the ordinance as written is more for new subdivisions. He said the requested setbacks matches those homes in the neighborhood and will not look out of place.

Mr. Krueger asked when they will be built. Mr. Prince said likely at the beginning of the year.

**Staff Recommendation**

*Staff recommends approval of Appeal 12-45 to allow the construction of a home lot with a 5-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 in the area.*
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:** Ms. Klaer moved to approve Appeal #12-45. Mr. Trippel seconded; motion carried with a vote of 5-0.

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**APPEAL #12-46**

An appeal submitted by the City of Mishawaka Redevelopment Commission and Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **126 West Tenth Street** to permit a new single family home with a 3' front building setback.

Ken Prince, City Planner, appeared on behalf of the Appellants. He said this is for a 3' front setback. He said there was an error in the staff report in that it refers to Sixth Street and not Tenth Street.

Mr. Krueger asked if the rendering in the packets is what the home will look like. Mr. Prince said yes.

Ms. Klaer commented it would be a great addition to the neighborhood.

**Opposition**

Jim Parmley, 211 W. 10<sup>th</sup> Street, said his house is farther back than 5'. Mr. Prince said the intent is to keep the home in line with others in the neighborhood. Mr. Parmley said the homes across the street are farther back than what is being requested.

Mr. McCampbell closed the Public hearing on Appeal #12-46.

**Staff Recommendation**

*Staff recommends approval of Appeal 12-46 to allow the construction of a home at 126 W 10th Street with a 3-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 in the area.*
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 in the area.*

**MOTION:** Mr. Trippel moved to approve Appeal #12-47. Mr. Portolese seconded; motion carried with a vote of 5-0.

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**APPEAL #12-47** An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **2604 Milburn Boulevard** to permit a new single family home with a 15' front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said like the previous two variances, this setback will more closely match those in the neighborhood.

Mr. Krueger asked if this home would be constructed next year as well. Mr. Prince said yes.

Mr. Prince also noted the error in the staff report referring to Sixth Street instead of Milburn.

Mr. McCampbell closed the Public Hearing on Appeal #12-47.

**Staff Recommendation**

*Staff recommends approval of Appeal 12-47 to allow the construction of a home lot at 2604 Milburn Blvd with a 15-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 in the area.*
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.*

**ADJOURNMENT:** 6:53 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner