

MARCH 12, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 12, 2013, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Jim Trippel, Don McCampbell, Ross Portolese, and Rosemary Klaer. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the February 12, 2013, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #13-01

An appeal submitted by Brixmor Property Group requesting a Sign Variance for an additional freestanding sign at **4620 Lincolnway East**. *Continued from the February 12, 2013 hearing. Appellant is requesting withdrawal.*

Mr. McCampbell read a letter from the Appellant requesting withdrawal. The Board unanimously approved the request.

APPEAL #13-05

An appeal submitted by Michael J. and Sara Dill requesting a Developmental Variance for 1704 South Main Street, Mishawaka, Indiana, to allow a garage addition with an 18" side yard setback.

Michael Dill, 1704 S. Main Street, presented the appeal. He said they want to build a 26' X 40' attached garage which will have an approximate 18" setback from the north property line. He said there is an existing retaining wall and he wants to incorporate it into the outside garage wall, but will see what the builder says.

Mr. Trippel asked if the double door will face the street. Mr. Dill said yes.

Ms. Klaer asked if the garage will be attached to the house. Mr. Dill said yes.

Mr. McCampbell said a letter of support from Gene and Lori Harding, 1646 S. Main St., was included in the packets.

Mr. McCampbell closed the Public Hearing on Appeal #13-05.

Mr. Trippel asked if there was a size limit for an attached garage. Mr. Prince said no.

Staff Recommendation

Staff recommends approval of Appeal 13-05 to allow the construction of a garage addition at 1704 S Main Street with an 18-inch 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 the proposed addition will be in excess of 20-ft from the existing house to the north and appropriate drainage measures such as downspouts draining away from the north property must be installed.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing accessory structures do not make it possible to construct a detached garage on the property. Furthermore, the placement of the existing home on the lot does not allow for a sufficient garage to be attached without encroaching into the required side-yard building setback.*

MOTION: Rosemary Klaer moved to approve Appeal #13-05. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #13-06 An appeal submitted by Great Lakes Capital, LLC, requesting a Sign Variance for Toscana Park Development (Gumwood Road), Granger, Indiana, to permit an oversized real estate development sign.

Douglas Merritt, Professional Permits, 115 S. Main St., Ste 203, Mishawaka, appeared on behalf of the Appellant. He said the property owner seeks to install a development sign on the property at Toscana Park to highlight the new residential phase under construction.

Mr. Trippel asked where the sign would be located. Mr. Merritt said north of the current Toscana Park main ID sign.

Mr. Trippel asked how far off Gumwood would the sign be installed. Mr. Merritt said the sign would meet the necessary and required setback, but not so close that it would obscure visibility or be a deterrent for those entering or exiting the property.

Mr. Merritt said the intent is to develop interest in the property as it has recently gone thru a change of ownership. There's good activity going on at the site. He said if there is any future activity and there be need for a sign, they would have to come back for approval of any additional signage. Also, they understand the sign can remain for two years.

Mr. McCampbell closed the Public Hearing on Appeal #13-06.

Staff Recommendation

Staff recommends **approval** of Appeal #13-06 to allow an 8' X 16', 12' OAH real estate development sign at Toscana Park Development. 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 the sign will be located on the Appellant's property, outside of all City right-of-way and utility easements, and will not create a visual obstruction to motorists entering and exiting the property;*
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 there will be sufficient distance (300' +) between the temporary real estate development sign and Toscana Park's permanent identification sign to the south; and*
3. *Strict application of the terms of the On-Premise Sign Standards will result in a practical difficulty in the use of the property because the ordinance would only permit a sign display area of 32 sqft for the approximate 37 acre parcel.*

MOTION: Jim Trippel moved to approve Appeal #13-06. Ross Portolese seconded; motion carried with a vote of 4-0.

APPEAL #13-07

An appeal submitted by Great Lakes Capital, LLC, requesting a Use and Sign Variance for 902 East University Drive (City Plaza North), Mishawaka, Indiana, to permit an oversized off-premise real estate development sign.

Douglas Merritt, Professional Permits, 115 S. Main St., Ste 203, Mishawaka, appeared on behalf of the Appellant. He said this property owner also owns Toscana Park and they are looking for a similar style sign and will encompass not only City Plaza but also Toscana Park Residences.

Mr. Merritt said a significant amount of traffic enters City Plaza and they are not only looking to promote City Plaza but also Toscana Park Residences which is very close by. He said they are seeking permission for the content of the sign to help both developments grow and be strong contributors to the City.

Mr. McCampbell asked where the sign would be located. Mr. Merritt said it will be located near Ruth's Chris Steakhouse and any existing temporary signs would be removed.

Mr. McCampbell said staff had two conditions of approval and does the property owner agree to them. Mr. Merritt said yes he understood the conditions and thanked staff for working with them on their request.

Mr. McCampbell closed the Public Hearing on Appeal #13-07.

Mr. Trippel asked how far back from the road will the sign be located. Mr. Prince said out of the right of way.

Staff Recommendation

Use Variance:

Staff recommends approval of Appeal #13-07 Use Variance to allow an off-premise real estate development sign subject to the following conditions of approval:

- 1. The existing real estate development signs at City Plaza North must be removed when new sign is installed.*
- 2. The sign must be removed after two (2) years.*

This recommendation is based upon the following Finds of Fact:

- 1. Approval will not be injurious to the public health, safety, morals, or general welfare of the community because the sign will be located on the Appellant's property, outside of all City right-of-way and utility easements, and will not create a visual obstruction to motorists entering and exiting the property;*
- 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 professional designed to provide optimum visibility for the motorist navigating the curvature of University Drive;*
- 3. The need for the variance arises from some condition peculiar to the property because the S-2 Zoning district does not permit signs advertising a business, product, service, or event not necessarily available on the premises where the sign is located;*
- 4. The strict application of the terms of this chapter would constitute an unnecessary hardship if applied to the property because the Appellant desires to not only highlight and promote the City Plaza Development but Toscana Park Retail and Residential developments which are both owned by the Appellant; and*
- 5. While the area is not included in the Mishawaka 2000 Comprehensive Plan, the surrounding area is predominantly commercial and both City Plaza North and City Plaza South (located directly across the street) are owned by the Appellant.*

Sign Variance:

Staff recommends approval of Appeal #13-07 Sign Variance to allow an 8' X 8' (64 sqft), 12' OAH real estate development sign to be placed at City Plaza North. 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 the sign will be located on the Appellant's property, outside of all City right-of-way and utility easements, and will not create a visual obstruction to motorists entering and exiting the property;
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 there will be one professionally designed real estate development sign for City Plaza North; and
3. Strict application of the terms of the On-Premise Sign Standards will result in a practical difficulty in the use of the property because the ordinance would only permit a sign display area of 32 sqft for the approximate 15 acre parcel.

MOTION: Ross Portolese moved to forward Appeal #13-07 Use Variance to the Common Council with a favorable recommendation. Jim Trippel seconded; motion carried with a vote of 4-0.

MOTION: Ross Portolese moved to approve Appeal #13-07 Sign Variance. Jim Trippel seconded; motion carried with a vote of 4-0.

ADJOURN: 6:15 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner