

MAY 15, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Wednesday, May 15, 2013, 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 Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the April 9, 2013, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #13-12**

An appeal submitted by 2-BE's Properties LLC requesting a Use Variance for **4028 Lincolnway East** to allow a professional office and residential use with a 4' X 7' sign on an R-1 Single Family Residential zoned property. *Continued from the April 9, 2013, meeting.*

Brent VanderZwaag, 3938 Rosemont Place, Mishawaka, presented the Appeal. He apologized for not being at last month's meeting. He said he would like to use the building as light office and a residence. Mr. VanderZwaag also said he would like a sign on the property as well.

Mr. Portolese asked what type of office it would be. Mr. VanderZwaag said it would be a financial office.

Mr. Krueger asked about the photo of the "Generations" signs. Mr. VanderZwaag said this sign is similar in size to the one he is requesting and used it as an example.

Mr. Krueger asked if his office would be closed to the barber shop. Mr. VanderZwaag said it's across the street from the veterinarian.

Ms. Klaer asked if the sign would be illuminated. Mr. VanderZwaag said perhaps at some point in the future.

Mr. Trippel said staff has recommended the sign be placed on the far east side of the property. Mr. VanderZwaag said that is fine; that's where he requested it be. He said he will abide by all setbacks and will not block traffic exiting Barrows Court.

Ms. Klaer asked about the parking situation. Mr. VanderZwaag said the garage area has three parking spaces plus two inside of the garage. He said he doesn't feel there will be issues with parking.

Mr. Portolese asked if he would live there. He said he wouldn't be living there, but his college-age son might live there or a potential business partner from Grand Rapids may live there for a short period of time next year.

Mr. McCampbell closed the Public Hearing on Appeal #13-12.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 13-12 for a use variance to allow 4028 Lincolnway East to be utilized for a professional office and a residential use with a 4' x 7' commercial sign subject to the following conditions:*

- 1. The uses shall be limited to no more than one commercial office and/or one residence at a time.*
- 2. The proposed sign shall be limited to no greater than 28 square feet of display area, it shall be no higher than 6' in height, and shall be placed to the east of the house, outside of the public right-of-way of Lincolnway.*

*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 and/or improvements to the existing structure;*
- 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 adjacent properties to the south, east, and west are all zoned for general commercial uses;*
- 3. The need for the variance arises from some condition peculiar to the property involved because the existing single family property is located on a heavily traveled thoroughfare, Lincolnway East that makes it less desirable for residential uses.*
- 4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the proposed hybrid commercial and residential uses. The only means by which to allow the proposed office use and maintain the residential use for the property is through the use variance process;*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates general commercial uses for this area.*

**MOTION:** Jim Trippel moved to forward Appeal #13-12 to the Common Council with a favorable recommendation. Ross Portolese seconded; motion carried with a vote of 5-0.

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**APPEAL #13-15** An appeal submitted by Mario R. Martinez requesting a Developmental Variance for **506 Meridian** to permit a deck with a 19' front setback.

No one appeared to present the Appeal. The Board unanimously approved continuing the item to the June 11, 2013, hearing.

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**APPEAL #13-16** An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **514 Grand Boulevard** to allow a new home with an 11' front setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Habitat for Humanity. Also in attendance was Brad Chipman from Habitat.

Mr. Mosness said they are requesting the variance in order to align the home with neighboring homes. He said this request is similar to ones in the past.

Mr. Portolese asked if the home would be in line with other homes. Mr. Mosness said yes.

Mr. Mosness also said this will be a one-story home, not two-story as noted in the staff report. He also said it was decided to change the setback from 11' to 13'.

**Opposition**

William Casey, 505 Grand Boulevard, said he was a friend of the previous owner. He said the previous owner was a navy hero and his boss at Bendix and just doesn't want a house there.

Laura Casey, 505 Grand Boulevard, said she was also a friend of the previous owner and doesn't want a house built there.

**Rebuttal**

Mr. Mosness said Habitat for Humanity has enjoyed building homes in Mishawaka and likes this location and would like to move forward.

Mr. McCampbell closed the Public Hearing on Appeal #13-16.

Mr. Prince said the City has asked Habitat for Humanity to keep their houses in line with others in the neighborhood. He said if this request is denied, the house can still be built, but would have the required 25' front setback.

**Staff Recommendation**

*Staff recommends approval of Appeal 13-16 to allow the construction of a home lot with a 13-foot front-yard building setback at 515 Grand Blvd. 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:** Ross Portolese moved to approve Appeal #13-16. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #13-17** An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **126 East Thirteenth Street** to allow a new home with a 6' front setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Habitat for Humanity. He said this request is almost identical to the previous. This home will also be one-story.

Mr. Krueger asked if the floor plan was the same as the one just approved. Mr. Prince said yes, same plan, and same square footage.

Mr. McCampbell closed the Public Hearing on Appeal #13-17.

**Staff Recommendation**

*Staff recommends approval of Appeal 13-17 to allow the construction of a home lot with a 6-foot front-yard building setback at 126 East 13<sup>th</sup> 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 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:** Charles Krueger moved to approve Appeal #13-17. Rosemary Klaer seconded; motion carried with a vote of 5-0.

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**APPEAL #13-18** An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **231 East Ninth Street** to allow a new home with a 13' front setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Habitat for Humanity. He said this request is similar to the two previous requests in that they want to align the new home with others in the neighborhood. This home will be two stories.

**Staff Recommendation**

*Staff recommends approval of Appeal 13-18 to allow the construction of a home lot with a 13-foot front-yard building setback at 231 East 9<sup>th</sup> 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 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 #13-18. Ross Portolese seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:17 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner