

AUGUST 13, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 13, 2013, at 6:00 p.m., in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: 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, Greg Shearon, Peg Strantz, and Kari Myers.

Mr. McCampbell asked for a moment of silence in remembrance of long time Board member Jim Trippel who passed away unexpectedly on July 31, 2013.

Mr. McCampbell explained the Rules of Procedure.

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

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #13-21

An appeal submitted by Todd Sikorski, Diana S. Ritchie, Jack W. Ritchie, JoAnn T. Rorie, and Jessie O. Rorie requesting a Use Variance for **1022 Willow Street** to permit a duplex in an R-1 Single Family Residential District.
Continued from the July 9, 2013 meeting.

Todd Sikorski, 2110 Pleasant Street, South Bend, presented the appeal. Mr. Sikorski said he also owns Sikorski Heating and Plumbing located at 1120 Willow Street.

Mr. Sikorski said he purchased the home in January of 2013 as an investment to stabilize the area adjacent to his business. He said it was constructed in 1950 and received the 2nd level addition sometime after that date. He said the legal address assignments are 1022 and 1022 ½ Willow Street in 1983 according to NIPSCO and Mishawaka Utilities.

Mr. Sikorski said he has owned the property for seven months and his goal is to be a good neighbor. He said he has invested much time and resources with no return on his investment to date. Mr. Sikorski said he has spoken to Planning and the neighbors and he's not financially able to convert it to a single family home and installing stairs is just not feasible nor conducive. He said each level has its own separate gas, water, heat, and air conditioning. The estimated costs to convert to a single family dwelling would be at least \$30,000 to \$35,000. He's hoping to find an amicable resolution.

Mr. Sikorski said he had a neighborhood meeting last night; hand delivering notices to those who signed the petition against his request. Councilman Mike Compton attended the meeting, walked through the house, in an attempt to come to a resolution but that didn't happen. He said his business is located within 750' of the front door of the home; he'll be able to keep tabs on the property and will not be an absentee landlord. Mr. Sikorski said he'll not have a management company to take care of the property and it's not his intent to upset the neighbors. He said he hasn't occupied the building because he didn't want harassment back and forth between the neighbors.

Mr. McCampbell asked if anyone was living there. Mr. Sikorski said no, it's been vacant for about 15 years.

Mr. McCampbell asked if he would rent both upper and lower units. Mr. Sikorski said he would like to have a single individual in each unit. The building isn't conducive for a large family. There is no access from the upper to the lower unit. He said the only way to access each level is from the outside doors and no way to join the two levels.

Mr. McCampbell asked if he agreed to staff conditions for off street parking, stormwater management, and a walk way. Mr. Sikorski said yes.

Mr. Portolese asked how long it has been 2 units. Mr. Sikorski said it was his understanding that it was built that way. He said several neighbors have homes that were originally built as a basement home with the 2nd level added later. He also said that when those homes were built, stairwells were put in and this home wasn't done that way.

Mr. McCampbell said it looked like the home had separate utilities and addresses in 1983. Mr. Sikorski said in order to convert the structure to a single family dwelling, all electric and plumbing would have to be disassembled and come together and it would be an enormous expense. With that much of an expense, you might as well tear down and build new.

Opposition

Jerry DeDapper, 1011 Willow Street, spoke in opposition. He said Mr. Sikorski is a great neighbor and he likes him and is looking forward to him being there; he's opposed to it being a duplex.

Mr. DeDapper said he has lived in his home since 1974 and has probably been in 1022 Willow more than Mr. Sikorski. He feels the property would be great as a rental, not a duplex. The single family home is an appropriate use for the property and will hold to the standard of the neighborhood and this issue involves the use of the basement as a rental unit. Mr. DeDapper said it was built in the 1950's as a basement and the whole lower level is exposed and remained so until the 1960's until used as a single family home.

Mr. DeDapper said it's listed as 600 sqft, but thinks it's less than 500 sqft living space with 7' tall ceilings in the lower level. It only has one entrance and would be a safety issue. He said when he toured the home he saw a food prep area and bathroom from the original construction, but saw no laundry facilities or refrigerator and is certainly not a place he would want to live as it has a musty smell.

Mr. DeDapper said all parking is in the back yard; it's not fit for 2 family occupancy and would adversely affect the integrity of the neighborhood. He said there is only one rental property on Willow Street and it's his. There's virtually no crime; the neighbors look out for each other and it's like a little family.

Mr. DeDapper said as a landlord, he's aware of the pitfalls of tenants. He said he's removed tenants for drug use, non-payment, and it doubles the difficulty and he asks the Board to vote no.

Mr. McCampbell asked Mr. DeDapper when was the last time he was in the home. Mr. DeDapper said before Monday it was several months ago.

William Hall, 1005 E. Marion Street, said he owns the house next door. He said he didn't want to repeat what Mr. DeDapper said, but when it was a duplex they had nothing but problems with drugs, trash, and parking in the back yard.

Mr. Hall asked Mr. Sikorski how many signatures he had in favor of his request. Mr. Hall said he had over 30 names on a petition in opposition to the request. He said if Mr. Sikorski made a bad investment, he needs to live with his loss and he shouldn't be expected to sustain a loss too. Mr. Hall said he's proud to live in this neighborhood and wondered if the other houses that have double meters would be able to have folks live in their basements as well.

Robert Hall, 1625 Lynn Street, appeared on behalf of his mother who lives at 926 E. Battell. He said she opposes the duplex use but has no problem with a single family rental unit.

Theresa Weber, 1015 E. Marion Street, said she also owns the property directly across the street. She said her parents built their home across the street as a basement home before adding the second level and the whole family lived in it.

Mrs. Weber said she likes Mr. Sikorski; he's a good air conditioning man and would do his best to keep it up, but sometimes it's out of his control. She said she's concerned about this and wants her neighborhood to stay good.

Rebuttal

Mr. Sikorski said he had never heard of a basement house before and Mrs. Weber just stated her family grew up in their basement house while the 2nd floor was added. He said Mr. DeDapper said it was a basement; well it started as a house. He understands there were troubles previously and his fear is teenagers living downstairs vs. just a single person on each floor. Mr. Sikorski said he wants to keep it simple.

Mr. Sikorski said his dad has had one rental for 30 years and he understands. Mr. Sikorski said he (Sikorski) is 44 years old, has been a business owner for 21 years and knows how to collect debts and deal with people. His business is across the street and he's certainly not trying to create chaos for himself or anyone else. He said an investment company was going to buy the property and he stepped in in the hopes to maintain the integrity of the neighborhood. There was no malicious intent, no money-making conspiracy. Mr. Sikorski said the property had been used as a duplex and there's no way to connect the two floors.

Mr. Sikorski said it's been empty for 15 years and had made some improvements, but stopped when this issue came up; it is what it is... a duplex. If there were a way to connect it, it may be more valuable as a single family home.

Mr. Portolese asked Mr. Sikorski if he had any signatures of those in favor of his request. Mr. Sikorski said no. He also said he's not a landlord and he's never done anything like this. He also said of the 30 people who signed the petition, there are perhaps 7 who live within 300 feet of the property and two of those signatures are from Theresa Weber and she owns 2 properties.

Mr. Sikorski said he lives in River Park and gets the rental situation. He said he's 44 years old and has no intention of selling his business and going to work for someone else. He has a great business and has done work in several of these folk's homes. Mr. Sikorski said they say he's a good guy; why would it change now?

Mr. McCampbell closed the Public Hearing on Appeal #13-21.

Mr. Portolese asked why the city would install the 2 meters. Mr. Shearon said Polk Directory listed it as a duplex since at least 1983; and knows things were done differently then.

Ms. Klaer asked wouldn't the home have to be inspected before it was sold to confirm it had the two required doors. Mr. Bent said he doesn't think it's a requirement.

Staff Recommendation

The Staff recommends approval of Appeal 13-21 to allow a two-family home on R-1 Single Family Residential property, subject to the following conditions of approval:

- 1. This approval shall be for a period of not more than five (5) years at which point the home must be converted back into a single-family residence.*
- 2. An administrative site plan shall be submitted showing three (3) off-street parking spaces with appropriate storm-water management measures, a concrete walkway from the parking area to the house, and an enclosure for trash and recycling.*

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 has existed since 1983. The property is now being updated and repaired 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 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: Ross Portolese moved to forward Appeal #13-21 to the Common Council with *no recommendation*. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #13-30 An appeal submitted by Nancy D. Lee requesting a Developmental Variance for **520 Downey Avenue** to allow a deck with a 0' rear yard and 0' side yard setback.

Lisa Koebel, 58313 Summer Chase Drive, Elkhart, present the appeal on behalf of her mother, Nancy Lee. She said her mother purchased the home in 2005 and the pool and deck already existed. In 2007 she obtained a permit to add a front section of decking, but never did. Ms. Koebel said a section of decking was added to the back, but no permit was obtained for the work.

Ms. Koebel said the situation was discovered when the neighbor's electricity went out and was told by the electrical inspector that a section needed to be removed. Upon inspection of the planning and building files, it was determined permits were never issued for the pool or deck. She said according to St. Joseph County Assessor, the pool may have been installed in 2000. They are now requesting the variance to allow the pool and decks to remain.

Mr. McCampbell closed the Public Hearing on Appeal #13-30.

Staff Recommendation

Staff recommends approval of Appeal 13-30 to allow the non-conforming pool and deck with 0' side yard and 5' rear 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 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 pool and the majority of the deck were already installed when the Appellant purchased the home in 2005 and have been in existence since at least 2000 without any complaints; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the pool and deck were existing when the home was purchased and the owner was unaware of its nonconformity, and removing the structures would be a financial hardship to the Appellant.*

MOTION: Ross Portolese moved to approve Appeal #13-30. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #13-31

An appeal submitted by Lawrence D. and Maria E. Withrow requesting a Developmental Variance for **127 West Twelfth Street** to allow a home addition with a 0' exterior side yard setback.

Lawrence Withrow, 127 W. Twelfth Street, said he and his wife purchased the home about three years ago and prior to their purchasing the home it had become the eyesore of the neighborhood. He said it's their desire to renovate the home to its original Craftman's Cottage style.

Mr. Withrow said they are proposing to replace the rear porch which had become infested with vermin and he just tore it off and didn't know there was an issue with the setback until he came in to get a permit. He said the replacement structure will follow the roofline and have the same footprint as the old porch. Mr. Withrow said it will not encroach any farther into the setback and will improve the appearance of the house and neighborhood. He said as he has been working on the house, neighbors have been stopping by to encourage him.

Mr. Withrow pointed out the edge of the property and location where the new addition will be on a photo shown on the projector.

Mr. McCampbell asked Mr. Withrow if he lived in the house. Mr. Withrow said yes; it's their retirement home and will continue to live there.

Ms. Klaer asked Mr. Withrow if he planned to re-side the house. Mr. Withrow said yes, eventually. He and his wife are retired and on fixed incomes and when all modifications are complete, he will re-side the house. Mr. Withrow said he will paint the existing siding to cover the fading.

Mr. McCampbell closed the Public Hearing on Appeal #13-31.

Staff Recommendation

Staff recommends approval of Appeal 13-31 to allow the construction of a 6' 8" X 18' enclosed rear porch with a 0' 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 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 addition will maintain the same setback and improve the condition of the home; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house currently encroaches into the exterior side yard setback and the Appellants would not be able to access the home if the addition were built with the setbacks set for in the Zoning Ordinance.*

MOTION: Ross Portolese moved to approve Appeal #13-32. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #13-32

An appeal submitted by Paul G. Hurst requesting a Developmental Variance for **627 North Byrkit Street** to allow a car port with a 1' side yard setback.

Charles Lahey, 502 W. Washington Avenue, South Bend, appeared as did Paul Hurst, 627 North Byrkit Street. Mr. Lahey said Mr. Hurst has some disability problems; surgery on knees and hips, has back problems and is under a doctor's care. He said Mr. Hurst has lived in this neighborhood for quite a few years and wants to live there the rest of his life, but it's difficult for him to get out in the snow and ice.

Mr. Lahey said Mr. Hurst started the carport innocently enough and didn't know he needed permits. He said it's an open carport, comes up to the property line and is open so police and fire can have access. It's very accessible and not blocking access to the alley or the street. Mr. Lahey said the reason for the carport is to protect the truck from the weather as the garage is too small for his truck. This way, he won't be walking through snow drifts in winter and this is Mr. Hurst's solution. Mr. Lahey said Mr. Hurst has talked to staff and the requested modifications to the structure are agreeable to him.

Mr. McCampbell asked if the carport had been cut back 1' as requested in the staff report. Mr. Hurst said not yet, but will do so.

Mr. McCampbell asked who built the garage. Mr. Hurst said he did with the help of some friends.

Mr. McCampbell asked Mr. Hurst if he knew he needed permits to build the garage. Mr. Hurst said no, he didn't know.

Mr. McCampbell said it looks like the garage is a decent size. Mr. Hurst said he also has another car and a sports car that are kept in the garage.

Mr. McCampbell said when he visited the site he noticed there was no house number. Mr. Hurst said it's hidden behind a wreath on his front door.

Mr. McCampbell closed the Public Hearing on Appeal #13-32.

Staff Recommendation

Staff recommends approval of Appeal 13-32 to allow a carport addition to remain and as amended at 627 North Byrkit Avenue. 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 carport will be well built, attractive and with the attached gutter, one (1) foot from the property line;*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the accessory building size and setback limitations were implemented with respect to the 40 foot wide size of single residential lots at a time when larger garages nor more than one vehicle were not the norm.*

MOTION: Ross Portolese moved to approve Appeal #13-32 as amended. Rosemary Klaer seconded; motion carried with a vote of 3-0.

ADJOURNMENT: 6:49 p.m.

Greg Shearon, Senior Planner

Kari Myers, Administrative Planner