

OCTOBER 8, 2013

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 8, 2013, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Charles Trippel, Don McCampbell, and Rosemary Klaer. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: Robert Beutter, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the September 10, 2013, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #13-35 An appeal submitted by Dean Engle requesting a Developmental Variance for **810 West Grove Street** to allow a front porch/deck with a 15' front building setback.

Dean Engle, 810 W. Grove Street, presented his appeal. He said he constructed a 9' X 7' extension to his front porch and did so without a permit and when he came to the office to obtain a permit, he was told he would need a variance due to the setback.

Mr. Prince read a letter of support from Joe Rapalski, 802 W. Grove Street.

Mr. McCampbell closed the Public Hearing on Appeal #13-35.

Staff Recommendation

*Staff recommends **approval** of Appeal 13-35 to allow the 9' X 7' front porch addition with a 15' front building setback 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 15' setback is not substantial and is consistent with other homes 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 house currently encroaches into the front-yard setback. Any addition to the home could not be constructed without first seeking a variance.*

MOTION: Charles Krueger moved to approve Appeal #13-35. Charles Trippel seconded; motion carried with a vote of 4-0.

APPEAL #13-36 An appeal submitted by Blair Hills Community Association, Inc., requesting a Sign Variance for **641 Dragoon Trail** to allow for a non-monument style sign on S-2 Planned Unit Development zoned property and an additional sign in the common area.

David Morgan, 1021 Longhorn Drive, Mishawaka, presented the appeal. He said they are requesting two new signs; one will be in the common area near the corner of Merrifield and Dragoon and one in front of the office at 641 Dragoon Trail.

Mr. Krueger asked if the signs would be illuminated. Mr. Morgan said not at this time, but perhaps in the future.

Mr. McCampbell asked if the old signs would be removed. Mr. Morgan said yes.

In Favor

John Babcock, 2206 Ridge Place, said he is the President of the Blair Hills Homeowner's Association. He indicated the residents have seen the design and are in support of the signs.

Mr. McCampbell closed the Public Hearing on Appeal #13-36.

Staff Recommendation

The Staff recommends approval of Appeal #13-36 to install two (2) Blair Hills Community freestanding signs. One non-monument sign located at the southeast area of Blair Hills Avenue and Merrifield Drive as described above and one non-monument sign at 641 Dragoon Trail as described above. Approval is based on 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 vision clearance along Dragoon Trail, Blair Hills Drive and Merrifield Avenue will not be impaired;*
- 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 Blair Hills Community and the signs are in scale with the surroundings; and*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulties in the use of the property because without the way finding signs the Blair Hills Community and office building could not be easily identified.*

MOTION: Rosemary Klaer moved to approve Appeal #13-36. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #13-37 An appeal submitted by Joseph J. Solfronk requesting a Developmental Variance for **126 West Tenth Street** to allow a solid fence with a 0' exterior side yard setback.

Ann Solfronk, Joseph Solfronk's mother, appeared on his behalf as he was unable to attend due to his coaching a middle school football game. She said her son is requesting to build a privacy fence as he lives on a corner and would like to discourage students from entering his back yard.

Mr. Trippel asked if Mr. Solfronk got along with his students. Ms. Solfronk said yes, they love him, but would like the privacy that a fence affords.

Mr. McCampbell closed the Public Hearing on Appeal #13-37.

Staff Recommendation

Staff recommends approval of Appeal 13-37, 126 West Tenth Street, to allow a privacy fence with a zero exterior side yard setback fronting on Mill 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 there will be sufficient distance between the location of the fence and the alley and Mill Street 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 the home improvement project represents an investment in the neighborhood and will contain the household pet dog; 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 from the west property line would fall in back of the Appellant's house, thus*

MOTION: Charles Trippel moved to approve Appeal #13-37. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #13-38 An appeal submitted by Gary W. Peden requesting a Use and Developmental Variance for **426 West Sixth Street** to allow a residential unit within C-1 General Commercial zoned property and reduction in required number of parking spaces.

Gary Peden, 325 E. Walnut Street, Osceola, presented the Appeal. He said he wants to use the north end of the building as an apartment, which has been vacant for 3 years, and put a coffee shop in the front portion of the building. Mr. Peden said it would be a small, family run business primarily serving the neighborhood.

Mr. Krueger asked Mr. Peden if he was aware of staff's conditions of approval. He said yes he was aware and is in agreement with them.

Ms. Klaer asked if he would have tables for outside seating. Mr. Peden said possibly on the south side of the building, but he hasn't filed for a Notice of Recognition of Encroachment as of yet.

Mr. Trippel asked what would be the hours of operation. Mr. Peden said 8:00 a.m. to 8:00 p.m. during the week and 8:00 a.m. to 12:00 p.m. on the weekends.

Mr. Trippel asked if he would be serving food. Mr. Peden said perhaps sandwiches for lunch.

Mr. Trippel asked if there would be any on-site cooking. Mr. Peden said no.

Mr. McCampbell closed the Public Hearing on Appeal #13-38.

Staff Recommendation

The staff recommends in favor of Appeal 13-38, a Use Variance, to allow a single-family residential home in the back residential building with a coffee shop in the front, brick structure. The use variance is subject to the following conditions:

1. *Site improvements, landscape & pavement setbacks, to bring the site into compliance with current standards, shall not be required.*
2. *Off-Street parking spaces may be reduced to (5) spaces.*
3. *Appropriate One-Way and Do Not Enter directional signage shall be posted to direct vehicular traffic through the site.*
4. *Dumpster shall be enclosed with a fence.*
5. *The freestanding sign shall be removed from the property or brought up to code to correctly advertise a bona fide business.*

The recommendation for approval 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 the building is existing and 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 property is currently zoned commercial and the property has been utilized as a commercial business in the past; furthermore, the proposed residential use is consistent with the surrounding neighborhood.*
3. *The need for the variance arises from a condition peculiar to the property involved in that a business building is attached to a residential house and the property is zoned commercial and does not allow residential use.*
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. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates general commercial. Furthermore, the proposed residential use is consistent with the existing residential uses in the area.*

MOTION: Rosemary Klaer moved to forward Appeal #13-38 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #13-39 An appeal submitted by JSK Investments requesting various Developmental Variances for building height, pavement setback, and landscaping for property located in the **1200 block of Douglas Road**.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, presented the Appeal on behalf of JSK Investments. He said this property was annexed into the City about 5 years ago as a proposed hotel site, but due to the economic downtown the project was put on hold. The property owners now wish to move forward.

Mr. Lang said the original plans show the two hotels and convention center, but the convention center has now been downsized. He said the proposed lay out is a Holiday Inn to be located on the front portion of the property and Candlewood Suites (a long term suite property) located on the rear portion of the property with a restaurant in between. Mr. Lang said two parcels are being created and side yard requirements come into play requiring the variances.

Mr. Lang said there was concern with the number of staff, and he said the hotel and meeting rooms would be staffed by the same people and not doubling of the staff.

Mr. Lang also said the number of rooms at the Holiday Inn has decreased by 8 and Candlewood Suites rooms have been decreased by 2. He said the parking request of required 310 to 247 is probably misleading and would be more like 270.

Mr. Lang said the request for landscaping is between the 2 lots. He said the perimeter trees will remain and in areas where they are lacking, they will add landscaping.

Mr. Lang said they have been working with the Engineering Department relative to stormwater management and have addressed their comments. The changes will allow the service road to be placed farther back from Douglas, which has been a problem along Main Street and Grape Road.

Mr. Lang said the height of the hotels will be 4 stories and with the narrowness of the lot it's easier to go up than side to side.

Mr. McCampbell asked what the lot lengths were. Mr. Lang said the parcel is approximately 5 acres in size and are longer north/south as are most of the lots in the area with the exception of a few of the smaller homes.

Mr. Krueger asked if all of the buildings would be 4 stories. Mr. Lang said only the hotels and not the conference center.

Mr. Krueger asked if the hotels would have elevators. Mr. Lang said yes.

Mr. Trippel said if you look at the site it looks squeezed in. Mr. Lang said it does look that way, but if the site were developed on a smaller lot, it would look deeper.

Mr. Trippel asked Mr. Prince if something similar has been done in Mishawaka. Mr. Prince said other hotels in town have a similar density ratio, such as Springhill, but due to the length of the lot it does look more squeezed in.

Mr. Trippel asked Mr. Prince if staff had any concerns with the 4 story height. Mr. Prince said no.

Opposition:

Gale Paldino, 15409 Douglas Road, Mishawaka, said she lives right beside the property. She said she was kind of confused about the address. Also, she said the property is 136' wide and told by developers that it's nearly 1,000 long. Ms. Paldino said she was concerned about the width of the property and the narrowness of the buildings and parking. She said she also wanted to know about Douglas frontage access.

Rebuttal:

Mr. Lang said the address shows up on tax records as assigned to the parcel and also took from government documents.

Mr. Lang also said the size of the parcel is 205' wide and 1,166' feet deep and that's what the survey shows it to be.

Mr. McCampbell questioned Mr. Prince about the refined site plan. Mr. Prince said parking has been moved back and the front area will be a pond and green space in the front with the access drive moved back. He said ideally, the access road would be 200' back from Douglas Road.

Mr. McCampbell closed the Public Hearing on Appeal #13-39.

Staff Recommendation

Staff recommends approval of Appeal 13-39 to allow for the following variances:

- 1. Variance to allow a 0-ft pavement setback between proposed Lots 1 and 2.*
- 2. Variance to allow no tree plantings between proposed Lots 1 and 2.*
- 3. Variance to allow a reduction in parking to 247 total spaces.*
- 4. Variance to allow building height of 4 stories or 64-feet.*

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 required pavement setback and building setbacks will be adhered to along adjacent properties and parking is sufficient for the needs of the development. Furthermore, the property is located across the street from property that is zoned C-8 Suburban Commercial, which allows building heights of 10 stories or 120 feet.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the total width of both lots combined is only 205'. The narrow lot size does not allow sufficient space to comply with the required pavement setbacks and tree plantings, and parking requirements. Furthermore, in order to comply with the 3 story building height limit, further ground square footage would be needed to supply the total number of guest rooms. Given the narrow lot width, there is not sufficient space on the site to expand the building footprint without decreasing needed site improvements such as parking, landscaping, and retention basins.*

MOTION: Charles Trippel moved to approve Appeal #13-39. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #13-40 An appeal submitted by Tamara J. Pesek requesting Developmental Variances for **3703 North Main Street** to allow a 26' tall grain silo, reduction in required landscaping, 0' side setbacks, and a Sign Variance for a wall sign to project above the parapet wall.

Todd Miller, Ancon Construction, 2146 Elkhart Road, Goshen, appeared on behalf of the Appellants. Mr. Miller said the Pesek's are remodeling the old Mishawaka Brewing Co. located north of Putt Putt Golf. He said the existing parking lot spans the property north to south without the required 5' setbacks. He said talking to staff they would lose too many spaces by updating the parking with the required setbacks so they want to leave as it is, thus requiring the variance.

Mr. Miller said the grain silo is needed for the brewing operations. He said they will be brewing 15-20 different types of craft beer and the grain silo allows them to hold enough material so they don't have truck deliveries of grain every day. This will help keep their business flowing.

Mr. Miller also said the sign variance request has been withdrawn. The front of the building has been redesigned and the sign will not project above the parapet.

Mr. Trippel asked if construction had started. Mr. Miller said they have started interior demolition and the whole building is being gutted. They will keep the exterior walls and add on to the back.

Mr. Trippel asked how integral to the operation the grain silo is. Mr. Trippel said it's interesting when people start construction and then come and ask for appeals. Mr. Miller said they haven't started construction; only the interior demolition.

Opposition:

John Rice, owner of Putt Putt Golf asked how the grain silo will be filled as he's concerned with grain dust blowing over his property.

Rebuttal:

Mr. Miller said it's gravity-fed via auger from a truck.

Tamera Pesek said the auger fits into a rubber lid and there won't be any grain dust to blow around.

Mr. McCampbell closed the Public Hearing on Appeal #13-40.

Staff Recommendation

*Staff recommends **approval** of Appeal 13-40 to allow a 26' 11 5/16" grain silo, a 0' pavement setback along the north and south property lines, no landscaping along the north and south property lines, and within the existing interior parking area. 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 site is existing and the proposed additions will comply with all required building setbacks.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because property improvements are existing and does not allow the opportunity to bring the site into compliance with current developmental standards without reducing parking and disturbing traffic flow through the site.*

MOTION: Charles Krueger moved to approve Appeal #13-40. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #13-41 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **513 East Broadway Street** to allow for the construction of a new home with a 0' front-yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the request is for a new first time homebuyer home. He said the home will have a 12.6' front setback which is similar to other homes in the neighborhood and the garage will actually be side-fed from the alley.

Mr. Prince said at the time of publication in the newspapers, it wasn't known exactly what the setbacks would be as we didn't have the final plans, so 0' was used in order to get the item on the agenda.

Mr. McCampbell closed the Public Hearing on Appeal #13-41.

Staff Recommendation

Staff recommends approval of Appeal 13-41 to allow the construction of a First Time Homebuyer home with an 11.8-foot front yard building setback at 513 East Broadway. 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 #13-41. Charles Trippel seconded; motion carried with a vote of 4-0.

APPEAL 13-42 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **422 East Grove** to allow for the construction of a new home with a 0' front-yard setback and a 0' exterior side-yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the setback will be 11.1' and be in line with other homes in the neighborhood. All other setbacks will be adhered to.

Mr. Krueger asked if this will be a Habitat home. Mr. Prince said no, it will be a first time homebuyer home.

Mr. McCampbell closed the Public Hearing on Appeal #13-42.

Staff Recommendation

Staff recommends approval of Appeal 13-42 to allow the construction of a First Time Homebuyer home with an 11.1-foot front-yard building setback at 422 East Grove 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, thereby reducing the amount of usable yard area; furthermore, the required 25-foot front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

MOTION: Charles Trippel moved to approve Appeal #13-42. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL 13-43 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **410 West Ninth Street** to allow for the construction of a new home with a 0' front-yard setback and 1' side-yard setbacks.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said this home will have a 12.9' front setback which is comparable to other homes in the neighborhood.

Mr. Krueger asked if this was a first time homebuyer home. Mr. Prince said yes and it's nearly identical to the home across from City Hall.

Mr. Krueger asked if they had a buyer for the home. Mr. Prince said yes, construction isn't started on a home until someone has committed to and been approved to purchase the home.

Opposition:

John McClane, 332 W. 8th Street, said Mr. Prince didn't elaborate on the 1' side setback and was also curious about that and how it sets a precedent for other things to happen. He asked why the variance was requested for 0' when the code requires 25'. 0' would be right at the curb. Mr. McClane said it seemed vague.

Rebuttal:

Mr. Prince said the reason it was advertised that way was because we needed to get going before the snow flies. The actual home setback will be 12.9' and the side yard will meet code which is 5'.

Mr. McCampbell closed the Public Hearing on Appeal #13-43.

Staff Recommendation

Staff recommends approval of Appeal 13-43 to allow the construction of a First Time Homebuyer house with a 12.9 foot front building setback at 410 West Ninth 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 farther 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 #13-43. Charles Trippel seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:46 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner