

**NOVEMBER 12, 2013**  
**BOARD OF ZONING APPEALS**  
**CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 12, 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 Ross Portolese. Absent: Rosemary Klaer. In addition to members of the public, the following were also in attendance: 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 October 8, 2013, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #13-44** An appeal submitted by Leigh A. Rapalski requesting a Developmental Variance for **802 West Grove Street** to permit a home addition with a 3' side yard setback and 21' rear yard setback.

Leigh Rapalski, 802 W. Grove Street, said she wanted to build a home addition with an attached garage. She said she would keep the addition even with the existing house and the garage would be 21' from the alley.

Mr. McCampbell closed the Public Hearing on Appeal #13-44.

**Staff Recommendation**

*Staff recommends approval of Appeal #13-44 to allow the construction of an addition and attached garage with a 21' rear yard setback, and 3' west 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 proposed addition setback to the adjacent home to the west will be maintained; and*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant's home is located on a narrow lot in an older neighborhood with an alley that was constructed before attached garages were commonplace.*

**MOTION:** Ross Portolese moved to Approve Appeal #13-44. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #13-45** An appeal submitted by Murray G. and Janice C. Winn requesting a Developmental Variance for **1913 Margaret Avenue** to permit a solid fence on a through lot with 0' rear yard setback.

Murray Winn, 1913 Margaret Avenue, presented the Appeal. He said he needed to replace some fence panels and decided to replace the entire fence, that's when he discovered the fence was in violation of the zoning ordinance. Mr. Winn said he has a thru lot and the ordinance requires a 25' rear yard setback. He said the existing fence is just inside the property line and the fence would go through his shed if it were moved to the required setback and also not line up with other fences in the neighborhood.

Mr. McCampbell closed the Public Hearing on Appeal #13-45.

Mr. Krueger said he was surprised you had to get a variance for an existing fence. Mr. Prince said once you remove something non-conforming, it then has to conform to the zoning ordinance.

**Staff Recommendation**

*The Staff recommends approval of Appeal 13-45 to allow installation of a 6 foot privacy fence up to the Cedar Street property line at 1913 Margaret 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 clear vision will be maintained for Cedar Street traffic and all local building codes will be adhered to for the construction of the fence.*
- 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 directly to the west across Cedar Street are commercial businesses, and the residences to the north and south have fencing up to 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 Appellants would only be allowed to erect a fence that is four feet high and 75% open which would not be a barrier to muffle the noise coming from Cedar Street traffic and the commercial businesses to the immediate west of Cedar Street.*

**MOTION:** Charles Trippel moved to approve Appeal #13-45. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #13-46** An appeal submitted by Robert and Faye Sullivan requesting a Developmental Variance for **124 South Race Street** to permit a garage addition with 30" rear yard setback.

Adam Skrzyszewski, Professional Permits, 115 S. Main Street, Mishawaka, appeared on behalf of the Appellants. He said the property owners want to add an attached garage to the home and due to site constraints, the addition will result in a 30" rear building setback (a rendering was shown).

Mr. Krueger asked if the shown rendering is accurate as to what the addition would look like. Mr. Skrzyszewski said yes, and the building materials will match the existing structure in color and quality.

Mr. Krueger asked if the addition will have plumbing. Mr. Skrzyszewski said no, it will strictly be for storage of vehicles.

Mr. Krueger asked if it will have a 2<sup>nd</sup> story. Mr. Skrzyszewski said yes, but would be for storage of household items only.

Mr. McCampbell closed the Public Hearing on Appeal #13-46.

Mr. Krueger said he assumed the dormers are to help match the architectural features of the home. Mr. Prince said he doesn't know why they were proposed. He also said the Appellants have spent a great deal of money on the design of the addition.

**Staff Recommendation**

*Staff recommends **approval** of Appeal 13-46 to allow the construction of a 27' X 28' garage addition on the rear of the home with a 30" rear 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 has been designed to complement the existing historic structure; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house does not currently have a garage to safely store their vehicles and maintenance items and any addition would require a variance due to the existing setback of the home.*

**MOTION:** Charles Krueger moved to approve Appeal #13-46. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #13-47** An appeal submitted by Yolanda Demske requesting a Use Variance for **1216 West Eighth Street** to permit the outside storage of portable restrooms on I-1 Light Industrial Zoned property.

No one appeared to present the appeal. The Board moved and approved this item be continued to the December 10, 2013, meeting.

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**APPEAL #13-48** An appeal submitted by Michael E. and Dory Mitros Durham requesting a Developmental Variance for **361 Edgewater Drive** to permit a 5' fence with a 5' front yard setback.

Michael and Dory Mitros Durham, 361 Edgewater Drive, presented the Appeal. They said they are requesting the reduced setback for the 5' fence. Mrs. Durham said they want to fence in the side yard to provide security for their children as they play. She said they live

across from a home with a pool and the proximity to the river also concerns them, and she also wants to include several old-growth trees within the fence. Otherwise, the fence would have to be installed even farther back in their yard decreasing the amount of usable area.

Mr. McCampbell closed the Public Hearing on Appeal #13-48.

**Staff Recommendation**

Staff recommends **approval** of Appeal 13-48 to allow the installation of a 5' decorative aluminum fence with a 5' front 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 an older deteriorated fence with overgrowth was removed thereby improving the visibility for neighbors entering/exiting their driveways;
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 decorative fence will improve the appearance of their property and the overall neighborhood; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because it would deprive the family of the use of approximately 1,475 sqft of yard area and old-growth trees would require extra setback for the fence.

**MOTION:** Ross Portolese moved to approve Appeal #13-48. Charles Krueger seconded; motion carried with a vote of 4-0.

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Ken Prince said there will be a ribbon cutting ceremony for the new sculpture and newest section of the Riverwalk thru Central Park on Saturday, November 23, at 9:00 a.m. Invitations will be mailed soon.

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**ADJOURNMENT:** 6:16 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner