

FEBRUARY 11, 2014

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, February 11, 2014, at 6:00 p.m. in the Council Chambers, City Hall 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Charles Trippel, Ross Portolese, and Rosemary Klaer. Absent: Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

The meeting was turned over to Ken Prince for the election of officers.

ELECTION OF OFFICERS:

MOTION: Rosemary Klaer moved to nominate Don McCampbell as Chairman. Ross Portolese seconded; motion carried with a vote of 4-0.

MOTION: Ross Portolese moved to nominate Charles Trippel as Vice-Chairman. Charles Krueger seconded; motion carried with a vote of 3-0. (*Trippel abstained*).

Mr. Trippel explained the Rules of Procedure.

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

Conflict of Interest was not declared.

**PUBLIC HEARING:
APPEAL #14-01**

An appeal submitted by Anthony K. and Tara K. Paiano requesting a Developmental Variance for **1823 Margaret Avenue** to permit a solid fence with a 0' setback on a through lot. *Appellants requesting continuance to March 11, 2014, meeting.*

The Board unanimously approved the request to continue the Appeal to March 11, 2014.

APPEAL #14-02

An appeal submitted by Judy Swartzell-Pugh requesting a Developmental Variance for **1513 Maplehurst Avenue** to allow a roofed porch with a 22' 6" front setback.

Judy Swartzell-Pugh, 1601 Maplehurst, presented the appeal. She said the house was destroyed by fire in June, 2013, and they are rebuilding the home using the existing foundation. However, within the past few years sidewalks were added which reduced the amount of front yard, and the setback is less. Ms. Swartzell-Pugh said the porch will have a roof mostly for appearance, and will be the main entrance into the house and will keep rain and snow off the porch.

Mr. Trippel closed the Public Hearing on Appeal #14-02.

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Staff Recommendation

Staff recommends approval of Appeal 14-02 to allow the construction of a covered front porch with a 22.5' front 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 requested 22.5' 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 porch will increase the safety and accessibility to the home's main entrance.*

MOTION: Charles Krueger moved to approve Appeal #14-02. Rosemary Klaer seconded; motion carried with a vote of 4-0.

APPEAL #14-03 An appeal submitted by Bendan Properties requesting Developmental and Sign Variances for **530 West McKinley Avenue (Burger King)** to allow for a reduction in number of parking spaces and an oversized freestanding sign.

Mike Longley, Quality Dining, 4220 Edison Lakes Parkway, Mishawaka, and Scott Franko, US Signcrafters, 216 Lincolnway East, Osceola, appeared. Mr. Longley said he was requesting approval of a developmental variance as they are updating the Burger King restaurant and adding a second drive-thru lane. He said 80% of their business is done thru the drive-thru and its addition is key to making this restaurant successful. Mr. Longley said construction would start in the spring and will overhaul the exterior and add value to the corridor.

Scott Franko said he has worked with Quality Dining for a number of years and the sign variance request is to replace the existing manual readerboard with an electronic message sign which is a standard improvement for their main identification sign.

Mr. Franko said he understands the existing sign is nonconforming, but there are a number of other freestanding signs along that corridor that are more nonconforming. He said Burger King isn't extremely out of conformance and it isn't unreasonable to ask for a 4' X 8' electronic message sign. He said the existing manual readerboard is 4' X 8' and the new electronic message sign is 4' X 8' with new technology and it will help update the corridor.

Mr. Prince said when the sign ordinance was drafted in the 1990's many of those signs were nonconforming then, and this is one of them. The signs can exist in perpetuity, but any time you modify the sign it must be brought into conformity.

Mr. Portolese asked Mr. Longley if he agreed with staff recommendations. Mr. Longley said they were interested in getting an electronic sign similar to Dairy Queen's. He said they were also thinking of safety along the corridor in asking for the larger sign.

Mr. Prince said staff doesn't have a problem with the size of the readerboard; it's the overall nonconformity of the sign. They can reduce the size of the top cabinet and divide the square footage up as they want to.

Mr. Trippel asked if there should be two votes. Mr. Prince said yes; you can theoretically approve one portion of the variance and deny the other. That's why it was drafted separately.

Mr. Trippel closed the Public Hearing on Appeal #14-03.

Staff Recommendation

Sign Variance

*The Staff recommends **Denial** of the sign alteration by removing the existing message board and replacing with an 8'-3" by 4'-5" EMC cabinet containing 32 SF of copy area at 530 West McKinley Avenue based upon the following Findings of Fact:*

1. *Use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner because a competitive advantage would be created to the applicant not shared by other buildings and businesses; and*
2. *Strict application of the terms of the On-Premise Sign Standards Ordinance will not result in practical difficulties in the use of the property because the property does not have any unique features or other issues that would make a conforming sign inadequate.*

Developmental Variance

*The Planning Staff recommends **approval** of Appeal 14-03 to allow a variance for a reduction of parking from (54) spaces to 37 spaces. 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 requested number of parking spaces is sufficient to meet the parking requirements of the business and the proposed double drive-thru will limited the on-site vehicular congestion that could encroach onto adjacent property.*
3. *Strict application of the terms of this chapter will result in practical difficulties because the current developed site is not sufficient in size to accommodate the required (54) parking spaces and make improvements to the property, such as double drive-thru and new entry that will increase the restaurant's efficiency and effectiveness.*

MOTION: Ross Portolese moved to approve Appeal #14-03 Developmental Variance and approve the Sign Variance with the reduction in overall square footage to 80 square foot in sign area to be used as the Appellant sees fit. Rosemary Klaer seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:30 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner