

JUNE 10, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 10, 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, Don McCampbell, and Rosemary Klaer. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the May 13, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-08 An appeal submitted by Jonathon Greenlaw requesting a Developmental Variance for **917 East Lawrence Street** to allow a privacy fence with a 0' exterior side yard setback.

Johnathon Greenlaw, 917 E. Lawrence, said he built the fence when they moved in. He said he was unaware of the setback and the need for a permit until they received the Notice of Violation. Mr. Greenlaw said he was sorry it took so long to file the variance, but they needed to save up the money.

Mr. Greenlaw said if they followed the guidelines, the fence would be halfway in the back yard, and they have a one year old child and large dog and needs the yard space. He also said the back yard would be difficult to access if they had to move the fence since the back door exits on the east side of the house.

Mr. Krueger asked how long the fence had been up. Mr. Greenlaw said since September.

Mr. Krueger asked Mr. Greenlaw if he was aware of staff recommendations to move several panels. Mr. Greenlaw said yes, he was aware.

Mr. Krueger asked if he was in agreement with it. Mr. Greenlaw said it would be a hardship, but it could be done.

Mr. McCampbell closed the Public Hearing on Appeal #14-08.

Mr. Krueger asked Mr. Prince to explain staff's recommendation. Mr. Prince said the idea of the corner cut is to allow anyone walking down the sidewalk to see a car backing up.

Mr. Prince also said this variance only grants the fence up to the right-of-way. It would need to go before the Board of Public Works and Safety for a Notice of Recognition of Encroachment. He said he feels comfortable with the corner cut.

Staff Recommendation

The Staff recommends Denial of Appeal 14-08, as submitted, to retain a six (6) foot high solid wood fence that has been constructed over the property line 6 feet east into the city right of way, but can recommend Approval of an amended request that would remove/relocate one or two fence panels at the southern end of the fence where it meets with the driveway. This recommendation is based upon the following Findings of Fact:

- 1. Approval may be injurious to the public health, safety, morals and general welfare of the community if the fence is not angled on the southern end to provide vision clearance.*
- 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 fence is similar to other non-conforming fences that exist in the area, and the fence represents an investment 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 if the fence sets back at 12.5 feet from the property line, the useable back yard area will be substantially decreased for the family.*

MOTION: Charles Krueger moved to approve Appeal #14-08 subject to Staff's recommendation to remove/relocate one or two fence panels at the southern end of the fence. Charles Trippel seconded; motion carried with a vote of 4-0.

APPEAL #14-09 An appeal submitted by Marc and Kathryn Snyder requesting a Developmental Variance for **2238 Miller Court** to allow an oversized garage. *Appellant requesting continuance to July 8, 2014, meeting.*

The Appellants are requesting the item be continued to the July 8, 2014. Charles Trippel moved to approve. Rosemary Klaer seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:11 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner