

JULY 8, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 8, 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, Ross Portolese, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the June 10, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-09 An appeal submitted by Marc and Kathryn Snyder requesting a Developmental Variance for **2238 Miller Court** to allow an oversized garage. *Continued from the June 10, 2014, meeting.*

Marc Snyder, 2238 Miller Court, said he has lived in his home 21 years and is asking for approval to construct an oversized garage. He said they converted their attached one stall garage into a kitchen and that's the reason for the request.

Mr. Snyder said his vision remains the same, but realized that 25' was too tall. He said he received a call from Planning staff saying that residents were concerned about the height of the garage so he hired an architect to draw up new plans with reduced height. Mr. Snyder said they reduced the size to 960 sqft and 17' 3" in height and the 2nd story will be for storage only.

Mr. Portolese asked what the revised size would be. Mr. Snyder said 17' 3" and 960 sqft

Ms. Klaer asked Mr. Snyder if he had spoken to his neighbors. Mr. Snyder said he had talked to Mr. Kowalik and he said he appreciated him talking to him about it.

Mr. Trippel asked what the average height of the homes were in the neighborhood. Mr. Prince said the neighborhood is predominantly single story with one split level home.

Mr. Trippel asked if the property backed up to the tracks. Mr. Prince said yes.

Mr. Trippel asked where the measurements for the garage would be taken. Mr. Prince said adjacent to grade, so the garage may actually be 17' 6". He said the height of the structure is defined in the Zoning Ordinance.

Mr. Trippel asked if the measurement was from the low point or high point. Mr. Prince said low point.

Opposition

Jim Kowalik, 2236 Miller Court, said he has lived at his property for 25 hours. He said he is more concerned with the placement of the garage adjacent to his property. He said he will be 100% impacted by the garage.

Mr. Kowalik also said he's concerned about the driveway they are proposing since it will be coming right next to his house. He said the first plan was to put it on the other side of the property which would be low impact to the other neighbor. Mr. Kowalik said his main concern is that his mechanicals are located on that side of the house.

Mr. Kowalik said he isn't opposed to the garage if he would keep it to minimal height; about 15'. He said he's looking at resale value of his property down the road and no one can tell the future.

Mr. Trippel asked Mr. Prince if they are dealing with the height variance or the driveway placement. Mr. Prince said the height and area of the garage are the issues; nothing about the driveway. He said the reality is they could build a garage 720 sqft and 15' in height.

Mr. Trippel asked if any department had to approve the driveway. Mr. Prince said Engineering would review, but only as it relates to utilities.

Mr. Kowalik asked if it were approved, what recourse would he have as a resident. Mr. Prince said if drainage were impacted, Engineering could become involved. He also said the allowed percentage of the lot is not being exceeded and he doesn't believe there would be any recourse.

Mr. Prince said drainage, as a general rule, shouldn't be an issue. Even though the driveway may be up against the property line, the water will still go out the front and rear of the property.

Mr. Trippel asked if you have to keep your own water on your property. Mr. Prince said we paraphrase the code and all properties slope in different directions. The idea is you take your water and dump in his basement and the driveway would meet code if you don't alter the drainage patterns.

Rebuttal

Mr. Snyder said codes will be followed. He said he would be hiring Geans to do the work and they have done a lot of work around the city.

Mr. McCampbell closed the Public Hearing on Appeal #14-09.

Staff Recommendation

*Staff recommends **approval** of amended Appeal 14-09 to allow the construction of an accessory structure up to 1595 sf and 17'3.5" high at 2238 Miller Court. 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 new construction constitutes an investment to 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 limited size requirement of accessory structures would not supply sufficient space for storage and protection of valuables.*

MOTION: Charles Trippel moved to approve Appeal #14-09 with an amended overall height of 17' 3 ½" and 960 sqft. Mr. McCampbell seconded; motion carried with a vote of 3-2 (*Krueger, Klaer*).

APPEAL #14-10 A request submitted by Triad Senior Living III, L.P. requesting a Developmental Variance at **1025 Park Place** to permit a 5' picket fence with a 13' front setback.

Tonya O'Dell, Executive Director, The Waterford at Edison Lakes, 1025 Park Place, presented the request. She said they are requesting to install 5' fencing around two retention ponds on their property. Ms. O'Dell said they feel 5' is an appropriate height for the fence.

Ms. O'Dell said they are a senior living facility and some of their residents have mild dementia. She said they have taken precautions and installed inside security and this will add another safety net. Ms. O'Dell said that at 4' in height, someone could lean over or climb over the fence. She said about a year ago a resident drowned in the retention pond.

Mr. Krueger asked if the fence was for safety concerns. Ms. O'Dell said yes.

In Favor

Dan Kenney, Regional Director Trial Capital Senior Living said he wanted to add that the 5' fence would be black wrought iron, very decorative, and will add an attractiveness to the community along with added safety.

Mr. McCampbell closed the Public Hearing on Appeal #14-10.

Staff Recommendation

*Staff recommends **approval** of Appeal 14-10 to allow the installation of a 5' decorative aluminum picket fence with a minimum 13' 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 the fence will provide a physical barrier from the ponds located on the property;*
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, given the proposed location of the fence on the embankment, a 4-ft fence would not be tall enough to prevent someone from climbing the fence.*

MOTION: Rosemary Klaer moved to approve Appeal #14-10. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #14-11 A request submitted by Simon Properties requesting a Sign Variance for **6502 Grape Road** to allow a non-conforming wall sign.

Randy Whiteman, US Signcrafters, 216 Lincolnway East, Osceola, appeared on behalf of the Appellants. He said they are requesting to install an additional sign plan on the existing sign structure. Mr. Whiteman said the sign is existing and has Michaels and Ross panels on it and this will add a panel for a new tenant and is vital for their very existence.

Mr. Whiteman said the addition fits with the original design of the sign and the new sign will help advertise the new business and allow for wayfinding. He said it doesn't fit the definition of a wall sign, but it is attached to a wall.

In Favor

Ryan Ginty, University Center Manager, spoke in favor. He said the tenant name is "Five Below" and they are a new retailer to the area. The store will be approximately 8,000 sqft, specialize in seasonal items and everything will be \$5 or less and will be a welcome addition to the plaza.

Mr. McCampbell closed the Public Hearing on Appeal #14-11.

Staff Recommendation

The Staff recommends approval of the third tenant sign that will be added to the existing legal nonconforming wall sign on the as submitted. This recommendation is based upon the following Findings of Fact:

- 1. Approval will not be injurious to the public health, safety, morals or general welfare of the community because the all construction will be completed in accordance with all applicable state and local building codes, and will be professionally installed with quality materials;*
- 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 signage is an integral part of the architectural design, is aesthetically pleasing, and represents an investment in the community;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because without the addition of a third cabinet, Five Below would not be able to share a presence to advertise facing Grape Road traffic.*

MOTION: Charles Krueger moved to approve Appeal #14-11. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #14-12 An appeal submitted by Kevin Einspahr and Telinna Harman requesting a Developmental Variance for **831 Lovechio Drive** to permit a solid fence on a through lot with a 10' building setback.

Kevin Einspahr, 831 Lovechio Drive, said they are asking for a 10' rear setback so they can put up a privacy fence. He said they want to protect their son and dog while they play in

the back yard. Mr. Einspahr also said they want to separate the industrial park view from the back of their house.

Mr. McCampbell closed the Public Hearing on Appeal #14-12.

Staff Recommendation

The Staff recommends approval of Appeal 14-12 to allow installation of a privacy fence with a 10-ft setback along Merrifield Avenue on property located at 831 Lovechio Drive. 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 Merrifield Avenue 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 there is an existing fence encroaching into the through lot setback on adjacent property to the north.*
- 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 Merrifield Avenue traffic and would reduce the amount of usable yard space.*

MOTION: Charles Trippel moved to approve Appeal #14-12. Rosemary Klaer seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:32 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner