

AUGUST 12, 2014

**BOARD OF ZONING APPEALS
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 12, 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: David Bent, Greg Shearon, Peg Strantz, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the July 8, 2014, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #14-13 An appeal submitted by Richard Mrozinski requesting a Developmental Variance at **1702 Division Street** to allow an access ramp with a 0' exterior side yard setback.

Michael Mrozinski, 810 W. 12th Street, Mishawaka, appeared on behalf of his father. He said his father has a muscle disease and needs the ramp to safely get in and out of the house. Mr. Mrozinski also said there is no access thru the garage.

Mr. McCampbell closed the Public Hearing on Appeal #14-13.

Staff Recommendation

*Staff recommends **approval** of Appeal 14-13 to allow an access ramp to be constructed with a 0' exterior 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 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 ramp is modest in size and will be at least 15-feet from the public sidewalk; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.*

MOTION: Charles Krueger moved to approve Appeal #14-13. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #14-14 An appeal submitted by Dow Family Real Estate LLC requesting a Use Variance at **2030 North Merrifield Avenue** to allow two (2) apartments on C-1 General Commercial zoned property.

Cyndi Carper, 14008 Day Road, Mishawaka, appeared on behalf of her parents who own the property. She said her parents come to town several times a year and use a 2nd floor apartment. Ms. Carper said it's hard for her father to get up and down the stairs due to illness and they would like to turn the first floor into a two-bedroom apartment for easier access.

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

Staff Recommendation

The Staff recommends in favor of Appeal #14-14 allowing one apartment on the main floor and one apartment on the second floor at 2030 North Merrifield. The recommendation 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 all required permits will be secured and codes adhered to;*
- 2. The use and value of the area adjacent to the property included in the variance will not have an adverse impact on the surrounding neighborhood because the commercial zoned property is surrounded by commercial and industrial uses;*
- 3. The need for the variance arises from some condition peculiar to the property involved in that the property is zoned C-1, which does not allow a multi-family use;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in that the historical use of the property has been a commercial and residential use and the second living unit cannot be implemented until the property is rezoned appropriately or a use variance is granted; and*
- 5. Granting the use variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan because the parcel will continue to be zoned C-1 General Commercial District.*

MOTION: Ross Portolese moved to forward Appeal #14-14 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #14-15 An appeal submitted by Garrison Central Mishawaka, LLC, requesting various Developmental Variances at **5802 Grape Road** due to proposed replat of the property.

Mike Danch, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. Mr. Danch said the property consists of the Bed Bath & Beyond and H. H. Gregg stores. The owners want to split the properties and create two legal lots of record.

Mr. Danch said that larger retail tenants have a tendency to purchase the properties they are leasing and due to that request, the variances are necessary. He said the variances are mostly for setbacks for the existing buildings.

Mr. Danch said the way the parking lot was developed decades ago; they found that certain setbacks were not met. He said there are several striped areas that staff has asked them to look at to see if the owners would be willing to put in a landscaped island. Mr. Danch also said an ingress/egress easement would be included so H. H. Gregg will have access to Indian Ridge through Bed Bath & Beyond's property.

Mr. Danch said they have been working with staff and are working to bring the property into compliance. He also said that a subdivision request is on this evening's Plan Commission agenda.

Mr. McCampbell closed the Public Hearing on Appeal #14-15.

Staff Recommendation

With some improvements made to bring the property into compliance with current developmental standards. The Planning Department recommends approval of the aforementioned developmental variances for the proposed (2) lot Indian Ridge Minor Subdivision. This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community because the conditions on the properties are existing.*
- 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 properties are existing and are a part of the overall design of the shopping center.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the development is existing and to comply with the requirements would require the removal of certain sections of buildings, pavement, etc...*

MOTION: Rosemary Klaer moved to approve Appeal #14-15. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #14-16 An appeal submitted by Erik and Linda Waelchli requesting a Developmental Variance for **819 Lincolnway West** to allow steps, landing, and railing with a 3' 3" side yard setback.

Erik Waelchli, 52037 Woodridge Drive, South Bend, said the house sits very close to the east property line and in a crooked fashion. He said with a required 5' side setback, there's no way to put in proper steps. Mr. Waelchli said there is currently no roof over the side entrance to the apartment and he wants to make it safe and accessible.

Mr. McCampbell closed the Public Hearing on Appeal #14-16.

Staff Recommendation

Staff recommends approval of Appeal 14-16 to allow the construction of a 36" X 10' 8" landing and access stairs with handrail with a 3' 3" 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 steps will provide safe access to the upstairs apartment; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because Appellants would not be able to provide safe and suitable entry to the upstairs apartment due to the current setbacks of the home.*

MOTION: Charles Trippel moved to approve Appeal #14-16. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #14-17 An appeal submitted by McDonald's USA, LLC, requesting a Sign Variance for **1011 West McKinley Avenue** to allow signage to extend above the roof line.

Blair Carmosino, 112 Westchester Blvd., Noblesville, IN, appeared on behalf of McDonald's. He said McDonald's is remodeling this location and bringing up to their new design standards. Mr. Carmosino said the new sign will extend above the roof line, and is not a standard wall sign in that sense.

Mr. McCampbell closed the Public Hearing on Appeal #14-17.

Staff Recommendation

The Staff recommends approval of the proposed arch sign on the east façade at 1011 West McKinley 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 the new corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed signage.*

MOTION: Rosemary Klaer moved to approve Appeal #14-17. Ross Portolese seconded; motion carried with a vote of 5-0.

APPEAL #14-18 A request submitted by Twin City Baptist Church requesting a Developmental Variance for **420 East Jefferson Boulevard** to allow the construction of a new church with an overall height of 39' 10" with a steeple height of 87' 7".

J C Schrock, DJ Construction, 3414 Elkhart Road, Goshen, IN, appeared on behalf of Twin City Baptist Church. Also in attendance was Pastor Jerry Bell.

Mr. Schrock said this is a request to build a new facility to replace the building that was damaged by a windstorm and had to be torn down. He said it's different in appearance from

what was torn down, but with a smaller footprint. He also said the steeple is about the same height as before.

Mr. Trippel asked when construction would begin. Mr. Schrock said as soon as possible as they have been without the building since November of last year. He said the site plan is still being reviewed by Planning and Engineering and plans need to be submitted to the State. They want to start in August, but definitely in September.

Mr. Shearon read letters of support from Craig Kapson, President of Jordan Automotive Group, and Robert Baughman, 314 E. Edgar Avenue.

Mr. McCampbell closed the Public Hearing for Appeal #14-18.

Staff Recommendation

Staff recommends **approval** of amended Appeal 14-18 to allow the construction of a church with an overall roof height 39'10" with steeple height of 87'7". 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 the proposed height of the building will be consistent with what was previously on site with the old building.
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the architectural elements of churches with mezzanines and steeples require heights that exceed those of typical single family living spaces and the ordinances do not have a separate height allowance for churches and places of worship.

MOTION: Charles Trippel moved to approve Appeal #14-18. Ross Portolese seconded; motion carried with a vote of 5-0.

NEW BUSINESS:

Mr. Shearon advised the Board that after 34 years of service to the City, Peg Strantz will be retiring at the end of the month.

Mr. McCampbell said the fence at 914 E. Lawrence had been moved.

ADJOURNMENT: 6:20 p.m.

Greg Shearon, Senior Planner

Kari Myers, Administrative Planner