

**APRIL 14, 2015**

**BOARD OF ZONING APPEALS  
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, April 14, 2015, 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: Marcia Wells. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, Christa Hill, and Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the March 10, 2015, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:  
APPEAL #15-13**

An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **401 East Third Street** to permit a new single family home with a 15' front setback, 10' exterior side setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Habitat for Humanity. He said they are requesting to align the new home with neighboring ones while allowing space in the back for the family to enjoy.

**Opposition**

Heidi Peebles, 409 E. Third Street, wanted to know what steps she could take to keep this from happening. She said she's lived there for 25 years and has endured what was there previously and is concerned that the same type of tenants will move in. Ms. Peebles said no one wants another home to go there; wants it kept as an empty lot for part of her property.

Mr. Trippel said it's a Developmental Variance. What Ms. Peebles is here for isn't what we are going to determine.

Mr. Prince said he had a conversation with Ms. Peebles and the previous home was a multi-use apartment where they made meth. He said the City acquired it and demolished it and the property was sold to Habitat. Mr. Prince told Ms. Peebles if she wanted to purchase the property, she would need to contact Habitat. The only consideration tonight is relative to the variance and we're only determining the setback.

Mr. Trippel told Ms. Peebles that the Board is determining the setback only.

Ms. Peebles asked where the garage would be located. Mr. Mosness pointed out the garage on the overhead.

## **Rebuttal**

Mr. Mosness said to clarify; the garage is located 5' from both side property lines. He also said Habitat builds nice homes and prospective owners go through an interview process and Habitat selects them; they are also vested in the process.

Mr. McCampbell closed the Public Hearing on Appeal #15-13.

## **Staff Recommendation**

*Staff recommends approval of Appeal 15-13 to allow the construction of a home lot with a 15-foot front-yard building setback and a 10-ft exterior side-yard building setback located at the southeast corner of 3<sup>rd</sup> Street and Union Street. 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 home will be consistent with the existing building setbacks of the adjacent homes.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the lot is only 0.11 acres in size and the width and depth of the lot does not allow ample space to comply with required building setbacks.*

**MOTION:** Ross Portolese moved to approve Appeal #15-13. Charles Krueger seconded; motion carried with a vote of 4-0.

## **APPEAL #15-14**

An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **803 East Fourth Street** to permit a new single family home with a 10' front setback and 4' side setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Habitat for Humanity. He said this request is very similar to the one previous; requesting to align the house with others in the neighborhood.

## **In Support**

Pat Nemeth, 718 E. Fourth Street, said when she bought into the neighborhood it wasn't good and hasn't gotten any better. She said she has worked with Habitat and knows owners are training in home ownership and they also build good homes.

## **Opposition**

Terry Brown, 807 E. Fourth Street, said he they have used the vacant lot for a neighborhood watch gathering once a month. He said he doesn't have a problem with building a house on the lot; but they always turn into a rental. There were always people coming in and out. He said he's been there over 20 years and doesn't want to see it happen again. Mr. Brown said he wanted to buy the property but was told a new sewer line was going to go in and he wants that to happen before a house is built. He was told the property would be used for staging area. He also said he wants to know how he can keep this from happening.

Mr. Trippel said the request is for a setback variance. Mr. Brown said he didn't receive a notice.

Mr. Trippel also told Mr. Brown that this Board isn't the "you guys" he has been referring to.

Mr. Prince said Mr. Brown raised some good point. He said he's had discussions with him previously. Mr. Prince said the property at Fourth and Merrifield is going to be used for staging. The sewer project is actually a tunnel and basically a mining operation because it's 60' deep and will be going down Third and Fourth Streets and it isn't something the City typically does. He said it's a project that will cost tens of millions of dollars and is part of the government's mandate for sewer and we want to make sure it's done as correctly as possible. It should be done within the next 10 years.

Doreen Howard, 827 E. Fourth Street, said her concern is there are enough rentals as it is. She said she understands they buy the home but are only held there for 5 years; they could lose it or sell it. She said if Mr. Eller buys it it would turn into a trash hole.

Ms. Howard said the house doesn't meet the zoning standards and doesn't understand why this person doesn't have to meet the standards. She said why not take the lot and give the neighbors more yard and have them be less cluttered. You are trying to shoe horn a house onto a lot where it won't fit. Ms. Howard said the lot isn't big enough for a house.

Mr. Prince read a letter of support from Norma McIntyre, 820 E. Fifth Street.

### **Rebuttal**

Mr. Mosness said the home will align with the other homes in the neighborhood. He also said the garage is located 3' 6" from the property line and it conforms to the zoning ordinance for setback.

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

### **Staff Recommendation**

*Staff recommends approval of Appeal 15-14 to allow the construction of a home lot with a 10-foot front-yard building setback and a 4-foot side-yard building setback at 803 East 4<sup>th</sup> Street. 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 home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-foot front-yard building setback would not be consistent with adjacent residential front-yard building setbacks. Reducing the side-yard setback by one foot allows for a one foot standard overhang on the proposed house and a 10' wide driveway to access the garage.*

**MOTION:** Charles Trippel moved to approve Appeal #15-14. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #15-15** An appeal submitted by Grape-Edison Limited Partnership, requesting various Developmental Variances for **3717 Grape Road** including a reduction in parking spaces, landscaping, and pavement setback.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. He said the property is a former Walgreen's and has been vacant for several years. He said the Appellant would like to use the building and parking lot to facilitate their project.

Mr. Ballard said the variances are for parking setback, reduction in parking from 5.5 spaces per 1,000 sqft. He said they are providing 62 spaces vs. the 74 required and are maxing out parking.

Mr. Ballard said they are also requesting the existing pavement to encroach into the pavement setback on the south and west and minimum pavement setback along Edison and Grape.

Mr. Ballard also said they are requesting several landscaping variances as well such as reduction in required landscaping and number of trees.

Mr. Ballard said the contingent purchaser is Drive Time Automotive group out of Phoenix and they have 128 dealerships in the US. He said the dealership typically sells 79 cars a month and they'll have 10-15 employees. Mr. Ballard said they usually remodel the sites they go into and they'll spend almost \$650,000.00 to do so.

Mr. Ballard said the cars they sell are reconditioned off-site and brought to the location for sale. He said their hours of operation will be 9-9 Monday thru Saturday.

Mr. Prince asked if the drive on the north side of the building will be used to display cars. Mr. Ballard said no, the Fire Department won't allow it.

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

### **Staff Recommendation**

*The Planning Department recommends approval of the aforementioned developmental variances for the property located at 3717 Grape Rd. 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 property 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 property is existing.*
- 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.; and existing pavement setbacks do not allow sufficient space for the required tree planting.*

**MOTION:** Charles Krueger moved to approve Appeal #15-15. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #15-16** An appeal submitted by Relaxation Investments LLC requesting a Use Variance at **5201 North Main Street** to allow a multi-tenant building with a drive-thru use.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said the Appellants are proposing to develop the site with a Pot Belly and Qdoba restaurants. He said access will be thru Main Street and also thru the Meijer access drive.

Mr. Ballard said normally this type of use would require a C-2 Shopping Center Commercial zoning, but the site isn't large enough. Also, the drive-thru restaurant would require a C-7 Automobile Oriented Restaurant Commercial zoning. He said Planning staff suggested keeping the C-1 zoning and request a Use Variance. He said several developmental variances were requested as well.

Mr. Ballard said they have worked with the Planning staff and the developmental variance for parking can be avoided. He said this will be done by re-designing the parking lot. He also said staff indicated it would be more appropriate to base the number of spaces on a multi-tenant center. They are providing 61 spaces and that may fluctuate, but will agree to the staff recommendation.

Mr. McCampbell closed the Public Hearing on Appeal #15-16.

Mr. McCampbell asked for guidance on the developmental variance. Mr. Prince said the Board could approve the Use Variance based on the conditions of approval.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 15-16 to allow a use variance for a (4) unit multi-tenant building with one drive-thru restaurant on property south of 5209 North Main Street use subject to the following condition:*

1. *Parking shall be provided at a minimum of (5) spaces per 1000 sf of building area.*
2. *Uses shall be limited to those identified in the C-1 General Commercial Zoning District.*
3. *Signage shall be limited to one monument for the entire complex as identified in the Main Street Signage Overlay.*
4. *Current stormwater management standards and grease-traps shall be implemented per City of Mishawaka Engineering Department. Improvements to right-of-way and access drives, such as turn lanes, etc... shall be implemented as determined by the City of Mishawaka Engineering Department.*

*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 and/or improvements to the existing structure;*

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 adjacent properties are zoned commercial and the proposed use is consistent with those in the surrounding area.*
3. *The need for the variance arises from some condition peculiar to the property in that the property is zoned C-1 General Commercial and the City of Mishawaka Zoning Ordinance does not have a zoning classification that would allow for the proposed multi-tenant use with the drive-thru restaurant use.*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the zoning does not allow for the combined multi-tenant use and the drive-thru restaurant use. The only means by which to allow the two uses is through the use variance process;*
5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

**MOTION:** Charles Krueger moved to forward Appeal #15-16 to the Common Council with a favorable recommendation. Charles Trippel seconded; motion carried with a vote of 4-0.

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**APPEAL #15-17** An appeal submitted by Mark May requesting a Developmental Variance for **716 Eighteenth Street** to allow an oversize accessory structure.

Mark May, 716 Eighteenth Street, said he would like to build a large garage. He said he purchased the property in 1987 and has an acre.

Mr. May said there is a garage that sits in front of where the new garage will be located and that will be moved out of the way. The driveway will extend to the garage and he'll build a new fence.

Mr. May also said there will be doors at both ends so he can store his fishing boat and will be able to pull his truck through and turn around in the back yard. He said he also has several other vehicles he'll store in the garage.

Mr. May said it will have white siding and a green roof just like his house.

Mr. Krueger asked if it will be used to store cars. Mr. May said yes, it will be 1,600 sqft feet and he has several older cars he'll store inside. It will have gas and electric and will have lights on the front and back.

Mr. Trippel asked if the garage will be just for storage or did he plan on starting a business to work on cars. Mr. May said if he works on cars, they will only be his.

**Opposition**

Richard Cukrowicz, 707 Lovechio, said he opposes the request. He said something of that size would block his view as he lives directly behind Mr. May. Mr. Cukrowicz said it could diminish the value of his property.

Mr. McCampbell asked what view it would diminish. Mr. Cukrowicz said he doesn't want to sit outside and look at that big thing.

### **Rebuttal**

Mr. May said it will actually fix up his back yard. He said he has a number of yard implements lying in different places that will now be stored inside. Mr. May also said they use their shed for swimming pool stuff.

Mr. McCampbell asked how far from the garage to the back of the lot. Mr. May said perhaps several hundred feet. He said it was a cornfield when he bought the property. It's 298' deep. He said what the neighbor is now looking at is a truck, fence, and his existing garage.

Mr. McCampbell asked if the new garage will be about even with the back of the pool. Mr. May said yes and there are pine trees growing along the back of the lot and most are taller than he is.

Mr. McCampbell closed the Public Hearing on Appeal #15-17.

Mr. Trippel said the staff report indicated he could build several structures. Mr. Prince said a typical city lot is much smaller and this lot is an acre. He said they could probably build a dozen garages and still meet code and Mr. May is asking for one structure larger than code allows.

### **Staff Recommendation**

*The Staff recommends **approval** of Appeal #15-17 to construct a 40' X 40' (1,600 sqft), 17' detached garage. 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 property is large enough to accommodate a large garage without crowding the property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because while the Appellant could build several 720 sqft structures on his large lot it is more practical to build one large structure to accommodate his vehicles and personal items.*

**MOTION:** Charles Trippel moved to approve Appeal #15-17. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #15-18** An appeal submitted by Edward Burke requesting a Developmental Variance for **123 South Delorenzi** to permit a handicap accessible ramp with a 13' front setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the handicap ramp program is one that the Department of Community Development offers. Mr. Prince said in this case, the need is demonstrated and a variance is needed to place a ramp in front of the house.

Mr. Prince also said the appeal listed the setback as 18', but the scale was off and it's actually 13' and that has been corrected in the staff report.

Mr. McCampbell closed the Public Hearing on Appeal #15-18.

**Staff Recommendation**

*Staff recommends **approval** of Appeal 15-18 to allow an access ramp to be constructed with an 18' front 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 18' 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 #15-18. Ross Portolese seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:41 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner