

**SEPTEMBER 9, 2015**

**BOARD OF ZONING APPEALS  
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Wednesday, September 9, 2015, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Don McCampbell, and Marcia Wells. Absent: Charles Trippel and Ross Portolese. 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 August 11, 2015, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #15-31**

An appeal submitted by Amanda and Jeremy King requesting a Developmental Variance for **2601 Hampton Road** to allow a nearly-solid 4' fence with a 0' exterior side yard setback.

Amanda and Jeremy King, 2601 Hampton Road, said they would like to put up a fence around the perimeter of the house and instead of the required 75% visible opening, would like something with less open space. They want a nicer looking picket fence. Mr. King said they would like more privacy to protect their kids and dog. He said he spoke to the neighbors and they were in favor of it.

Mr. McCampbell said they have made their property look 100% better since moving in.

Mr. McCampbell closed the Public Hearing on Appeal #15-31.

**Staff Recommendation**

*The Staff recommends approval of Appeal 15-31 to allow installation of a 4-ft picket fence with less than 75% visibility along the exterior side yard facing Elm Road on property located at 2601 Hampton Road. 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 both Elm Road and Hampton Road 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 the privacy fence will not hinder views out of driveways from adjacent properties.*

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 give them privacy along such a busy road. According to MACOG traffic counts, Elm Road had an annual average daily traffic (AADT) amount of 14,826 in 2013.*

**MOTION:** Marcia Wells moved to approve Appeal #15-31. Charles Krueger seconded; motion carried with a vote of 3-0.

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**APPEAL #15-32** An appeal submitted by EIG Edison Park Center LLC requesting various Developmental Variances for **535-615 West Edison Road**.

Jeff Ballard, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said they are requesting various developmental variances for the existing retail center. He said the property contains six (6) buildings and has space for 46 tenants.

Mr. Ballard said it was determined in order to create two (2) lots the approval of several variances would be needed. He said the variances include reduction in frontage, setback, parking setback, parking reduction, and landscaping.

Mr. McCampbell closed the Public Hearing on Appeal #15-32.

Mr. Krueger asked Mr. Prince if the Board needed to know anything further. Mr. Prince said what is happening is they are taking a development designed as one center and breaking it into two. He said the thing to note is that a blanket easement needs to be provided over both properties for access.

**Staff Recommendation**

*The Planning Department recommends approval of the aforementioned developmental variances for the proposed (2) lot Edison Holdings Subdivision. The approval of variances is only for existing non-conforming situations. Future new development/improvements on the property will need to adhere to current developmental standards. 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:** Charles Krueger moved to approve Appeal #15-32. Marcia Wells seconded; motion carried with a vote of 3-0.

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**APPEAL #15-33** An appeal submitted by Bendan Properties requesting a Sign Variance for **2801 Lincolnway East** to allow a canopy roof sign.

Mike Longley, Bendan Properties, 4220 Edison Lakes Parkway, Mishawaka, appeared on behalf of Quality Dining. He said this is the second Mishawaka Burger King remodel and it's similar to the location on McKinley remodeled last year and signage is consistent with the previous package. Mr. Longley said the request is for the sign mounted over the front entrance canopy.

Mr. McCampbell closed the Public Hearing on Appeal #15-33.

**Staff Recommendation**

*The Staff recommends approval of Appeal 15-33 to allow the "HOME OF THE WHOPPER" sign to sit on top of the entrance canopy at 2801 Lincolnway East 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 corporate standard signage cannot be utilized on a building that was designed to incorporate the proposed canopy signage.*

**MOTION:** Marcia Wells moved to approve Appeal #15-33. Charles Krueger seconded; motion carried with a vote of 3-0.

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**APPEAL #15-34** An appeal submitted by Robert B. and Sherrie L. Klotz requesting a Developmental Variance for **803 West Ninth Street** to permit a front deck with an 8' front building setback.

Sherrie Klotz, 803 W. Ninth Street, said they would like to move their porch and tuck it into the middle of the house. She said it would work better for the layout of the house.

Mr. McCampbell asked if the porch was enclosed. Mrs. Klotz said yes, there are concrete steps and they will put in nicer looking deck with steps.

Mr. McCampbell closed the Public Hearing on Appeal #15-34.

Mr. Prince read a letter of support from Debra Davisson, 715 W. Ninth Street.

**Staff Recommendation**

*Staff recommends approval of Appeal 15-34 to allow the construction of a 4' X 8' landing with steps with an 8' 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 8' 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 landing will increase the safety and accessibility to the home's main entrance, and the home's setback is already non-conforming.*

**MOTION:** Charles Krueger moved to approve Appeal #15-34. Marcia Wells seconded; motion carried with a vote of 3-0.

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Mr. Prince said Greg Shearon has accepted a position with a local consulting firm and this will be his last meeting.

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**ADJOURNMENT:** 6:14 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner