

**OCTOBER 13, 2015**

**BOARD OF ZONING APPEALS  
MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 13, 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 Marcia Wells. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Christa Hill, and Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the September 9, 2015, meeting, were approved as distributed.

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Conflict of Interest was not declared.

**PUBLIC HEARING:**

**APPEAL #15-35** An appeal submitted by SLM Management LLC requesting a Sign Variance for **1725 East McKinley Avenue** to permit a roof sign.

The Appellant has requested the item be continued to the November 10, 2015, meeting. The Board unanimously approved the request.

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**APPEAL #15-36** An appeal submitted by Daniel Uselton requesting a Developmental Variance for **913 West Catalpa Drive** to permit an oversized accessory structure.

Daniel Uselton, 913 W. Catalpa, said he is requesting a variance for an oversized pole barn. He said after further consideration he thinks a different location in the back yard would be more acceptable. Mr. Uselton said he would locate it on the west side of his property. It would have the same 10' setback from the side property line and 25' from Brown Avenue.

Mr. McCampbell asked Mr. Prince if the change in location changed the appeal. Mr. Prince said the request is for the size of the structure and not the location that's in question.

Mr. McCampbell closed the Public Hearing on Appeal #15-36.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #15-36 to construct a 17' tall, 1,600 sqft 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 nearby properties have similar sized structures and 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 personal items.*

**MOTION:** Charles Trippel moved to approve Appeal #15-36. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #15-37** An appeal submitted by Kellee Torres-Hersha requesting a Developmental Variance for **428 Imus Drive** to permit a solid fence with 0' exterior side yard setback.

Kellee Hersha, 428 Imus Drive, said she was asking for a 0' setback for her fence along Charlotte which is actually 11' into the City's right-of-way. She said to the north is Townhouses East and the street is a dead end with no traffic. Mrs. Hersha said Townhouses East put in a new privacy fence and they also thought a privacy fence would be nice. She said they also have a dog and recently put in a pool.

Mr. Prince said the variance gets the fence up to the property line and the Board of Public Works and Safety will consider the issue of it being in the right-of-way.

Mr. McCampbell closed the Public Hearing on Appeal #15-37.

**Staff Recommendation**

*Staff recommends approval of Appeal #15-37, to allow a privacy fence with a zero exterior side yard setback fronting on Charlotte Street to remain. 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 Charlotte Street is a dead end at their property so visibility of traffic and other homes will not be visually impacted;*
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 represents an improvement to their property and will contain the household pet; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 12' 6" setback from the west property line would greatly diminish their usable back yard area.*

**MOTION:** Charles Krueger moved to approve Appeal #15-37. Charles Trippel seconded; motion carried with a vote of 4-0.

**APPEAL #15-38** An appeal submitted by City of Mishawaka Redevelopment Commission requesting a Developmental Variance for the **southeast corner of**

**Main Street and Edgar Avenue** to permit a single family home with a 19' front building setback.

Brad Mosness, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of the Redevelopment Commission and Logan Center who has committed to build a new home. He said the request is for setbacks to better align the house with adjacent homes. Mr. Mosness said Andy Place with Place Builders, who will build the home, is also in attendance.

Clint Bolser, President and CEO of Logan, 2505 E. Jefferson Blvd., South Bend, said this is a wonderful opportunity to serve people with disabilities and they give folks and opportunity to live independently.

Andy Place, Place, Builders, 1620 N. Ironwood Drive, South Bend, said they have worked with the Mayor and staff in the design of the building to fit the neighborhood and redevelopment along Main Street and should be a great addition to the community.

Mr. Prince said Mr. Place has been great to work with and adds quality to the project.

Mr. McCampbell closed the Public Hearing on Appeal #15-38.

**Staff Recommendation**

*Staff recommends **approval** of Appeal 15-38 to allow a single family home to be constructed with a 19' 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 existing homes in the neighborhood have similar setbacks; 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 where new homes are being constructed in an existing non-conforming area.*

**MOTION:** Marcia Wells moved to approve Appeal #15-38. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #15-39** An appeal submitted by Tri-State Imports requesting a Sign Variance for **4325 Grape Road (Lexus of Mishawaka)** to permit a 25' tall freestanding sign.

Perry Watson, IV, said they are required by Lexus to install new signage. Mr. Watson said they originally requested a 30' tall sign and not 25'. Mr. Prince said he had spoken with Mr. Watson III about the 30' tall sign, but suggested they stay with 25' as it's more appropriate with the area.

Mr. McCampbell closed the Public Hearing on Appeal #15-39.

**Staff Recommendation**

The Staff recommends **approval** of Appeal #15-39 to permit a 25’ OAH freestanding sign to replace the existing 22’ sign. 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 additional height would be minimal, is aesthetically pleasing, and represents an investment in the community; and
3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because Lexus is requiring the upgrade in signage and a lower sign could possibly be blocked by mature trees on the site and place them at a disadvantage to other dealerships in the same area.

**MOTION:** Charles Trippel moved to approve Appeal #15-39. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #15-40** An appeal submitted by Merrill Realty, LLC, requesting various Developmental Variances for the unimproved parking **lot behind 606 North Main Street** for a reduction in setback and landscaping.

Terry Lang, Lang Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellant. He said Mr. Merrill has acquired the building to the east of the pharmacy along with the gravel lot and wants to improve it to make more usable. He is also renovating the interior of the building. Mr. Lang said the plan will accommodate angle parking with an entrance off of Mishawaka Avenue and exiting into the alley.

Mr. Lang said they are asking for a reduction in setback and landscaping. They are taking an ugly gravel lot and will turn it into an asset.

Mr. Trippel said calling it gravel is being nice. Any improvement would be fantastic.

Mr. McCampbell closed the Public Hearing on Appeal #15-40.

**Staff Recommendation**

The Staff recommend approval of Appeal 15-40 for a reduction of setbacks and elimination of landscaping to allow a small parking lot at the rear of 606 N. Main Street (vacant lot between 106 and 112 E. Mishawaka Ave). The 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 proposed parking will comply with all applicable codes;
2. The use and value of the area adjacent to the property included in the variance will be not affected in a substantially adverse manner because the proposed parking lot

*will be an improvement to the neighborhood; and will provide additional parking for businesses that currently utilize the unimproved area; and*

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the requirement of providing a 5-ft pavement from the side and rear lots lines and landscaping will not allow sufficient width to provide adequate parking widths and a single one-way in and one-way out drive aisle.*

**MOTION:** Charles Krueger moved to approve Appeal #15-40. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #15-41** An appeal submitted by Ronald Mullins requesting a Developmental Variance for **302 East Mishawaka Avenue** to permit a deck addition with a 15' front building setback and 1' exterior side building setback.

No one appeared to present the Appeal. The item will be continued to the November 10, 2015, meeting.

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**APPEAL #15-42** An appeal submitted by Ambrose Property Group VA, LLC, requesting a Developmental Variance for new VA Outpatient Clinic located on **Trinity Place west of Fir Road** to permit an 8' fence to be located around the perimeter of the facility.

Brian McMorrow, Abonmarche Consultants, 750 Lincolnway East, South Bend, appeared on behalf of Ambrose Property Group. He said they are seeking a variance for an 8' fence to be constructed around the perimeter of the property.

Mr. McMorrow said the arrangement with Ambrose obligates the developer to follow all ordinances and standards and a whole host of federal guidelines. He said the government defines the outpatient clinic as a mission critical facility and one of the things they need to provide is 8' fencing around the perimeter which will be similar to the fencing that surrounds St. Joseph Memorial Park near Cleveland Road. The Ordinance limits fencing to 4' in height in the front and 7' in the rear of the property.

Mr. McCampbell closed the Public Hearing on Appeal #15-42.

**Staff Recommendation**

*The Staff recommends approval of Appeal 15-42 to allow installation of an 8' decorative fence around the entire lot perimeter of the proposed VA Clinic on Trinity Place. 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 proposed fence has at least 75% open to maintain clear vision 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 along Trinity Place.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the height of fence the Appellants would be allowed to erect does not meet the VA guidelines.*

**MOTION:** Marcia Wells moved to approve Appeal #15-42. Charles Trippel seconded; motion carried with a vote of 4-0.

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**APPEAL #15-43** An appeal submitted by ARCP RL Portfolio IV LLC c/o American Realty Capital Properties Inc. requesting various Developmental Variances for **3930 North Main Street and 4010 North Main Street.**

Tim Ochs, Ice Miller, One American Square, Indianapolis, appeared on behalf of the owner. He said the site is already constructed and contains Red Lobster and Red Robin restaurants and if approved, no physical changes will be made.

Mr. Ochs said when the restaurants were built, they were owned by the owner and they are now splitting and need the ability to have separate lots for different owners. He said they will plat the lot into 2 lots and by doing that it creates setback issues hence the need for the variance requests.

Mr. McCampbell closed the Public Hearing on Appeal #15-43.

**Staff Recommendation**

*The Planning Department recommends approval of the aforementioned developmental variances for the proposed Replat Lot 1 Main and Day Subdivision. The approval of variances is only for an existing situation created by the new lot line. 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 pavement and parking spaces, etc.*

**MOTION:** Charles Trippel moved to approve Appeal #15-43. Marcia Wells seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:27 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner

