

**AUGUST 9, 2016**

**BOARD OF ZONING APPEALS  
CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 9, 2016, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Trippel, Don McCampbell, Ross Portolese, and Marcia Wells. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

---

Mr. McCampbell explained the Rules of Procedure.

---

The Minutes of the July 12, 2016, meeting, were approved as distributed.

---

Conflict of Interest was not declared.

---

**PUBLIC HEARING:**

**APPEAL #16-26**

An appeal submitted by Ray Stewart requesting a Developmental Variance for **825 Fairmount Avenue** to permit the construction of a front porch and handicap accessible ramp with a 0' front setback and 6' exterior side yard setback.

Ray Stewart, 825 Fairmount Avenue, said he wants to add on to his front porch and also a handicap ramp on the west side of his porch. He said the addition won't go any farther than the west side of his porch. He said the addition would be even with the east side of his porch and come out to the west edge of his house.

Mr. Stewart said the ramp would come out from the house to the sidewalk. He said his uncle, who is 86 years old, lives with him and Mr. Stewart says he is also disabled. The ramp would make it easier to get his uncle in and out of the house.

Mr. Stewart said he was unsure where the numbers on the staff report came from; 6' side setback but he thinks it should be 10'. Mrs. Hill said she used our GIS information and used a 6' setback to be safe as it was unclear exactly where the property line is.

Mr. Prince read a letter of support from Kirby Kapitan who owns the property at 821 Fairmount Avenue.

Mr. McCampbell closed the public hearing on Appeal #16-26.

**Staff Recommendation**

*Staff recommends **approval** of Appeal 16-26 to allow an enclosed front porch and handicap access ramp to be constructed with a 0' front yard setback and 6' exterior side 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 still be 3' 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 Trippel moved to approve Appeal #16-26. Ross Portolese seconded; motion carried with a vote of 4-0.

---

**APPEAL #16-27** An appeal submitted by Michael Niedbalski requesting a Use Variance for **1732 East McKinley Avenue** to permit the following: used auto parts sales, auto wrecking and dismantling, possessing two or more inoperable cars, storing, disposing, salvaging or recycling vehicles.

Michael Niedbalski, 1732 E. McKinley, Mishawaka, said he is requesting a variance to become compliant with the state requirement in order to keep his auto salvage license intact. He said it would allow him to keep doing what he's been doing for 38 years.

Mr. McCampbell closed the public hearing on Appeal #16-27.

Mr. Trippel asked Mr. Prince if he felt this use variance would be detrimental. He said he understands they've been in business a long time, but wants the City's viewpoint. Mr. Prince said the use is really long standing. If a new business was being proposed, we would question it more. He said right now it's split zoned and the annexation is also up tonight.

Mr. Prince said they are getting City sewer and fire protection. It's a commercial business with heavy industrial zoning and it makes logical sense if the salvage business would go away, auto use is still in line with other McKinley uses.

**Staff Recommendation**

*Staff recommends in favor of Appeal #16-27 to allow: 1) selling used major component parts of vehicles; 2) wrecking or dismantling vehicles for resale of their major component parts; 3) rebuilding salvage, wrecked or dismantled vehicles; 4) disposing of recyclable materials to a scrap metal processor or other appropriate facility; 5) possessing two (2) or more inoperable vehicles subject to registration for more than thirty (30) days; and 6) engaging in the business of storing, disposing, salvaging or recycling of vehicles, vehicle hulks or the parts of vehicles, located at 1718 and 1732 E McKinley Highway. This 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 the business has been operating for many years at this location. The owner has been designated a certified Indiana Clean Yard through IDEM;*

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 business has been operating at this site for many years, and similar automobile oriented commercial development exist along the McKinley Highway corridor;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the business has been operating for several years, however now requires a zoning affidavit, thus requiring the Use Variance for the proposed uses;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to continue to run their business;*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area along McKinley Highway for general commercial.*

**MOTION:** Ross Portolese moved to forward Appeal #16-27 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #16-28** An appeal submitted by Ataia Perkins requesting a Developmental Variance for **316 East Grove Street** to permit a privacy fence with a 3' exterior side yard setback.

Ataia Perkins, 316 E. Grove Street, said she would like to replace the existing chain link fence with a privacy fence. It will be cut at an angle at the alley so as not to provide a visual distraction.

Mr. McCampbell asked if it would be similar to the fence across the street. Ms. Perkins said yes.

Mr. McCampbell closed the public hearing on Appeal #16-28.

**Staff Recommendation**

*Staff recommends approval of Appeal #16-28 to allow a privacy fence with a 3' 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 fence will be set back 6' near the alley to allow visibility for those entering and exiting the alley.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing the fence 12' 6" from the property line would result in the loss of usable back yard space.*

**MOTION:** Marcia Wells moved to approve Appeal #16-28. Ross Portolese seconded; motion carried with a vote of 4-0.

---

**APPEAL #16-29**

An appeal submitted by Habitat for Humanity of St. Joseph County, Inc., requesting a Use Variance for **5225 Grape Road** to permit a 140' communications tower on C-4 Automobile Oriented Commercial zoned property.

Andy Fitz, Mastec Network Solutions, 1351 E. Irving Park Road, Itasca, IL, presented the appeal. He said that AT&T is requesting a use variance to install a 140' monopole cell tower on the Habitat for Humanity property. He said the pole would have capacity for three more co-locators and would have a 26' X 84' compound to house the equipment shelter for AT&T and the other three co-locators.

Mr. Fitz said he has read the staff report and has no objections to the conditions of approval.

**Opposition**

Anthony Zmirski, 605 Andres Court, said he lives in the Summerfield subdivision. He said he questions if the tower would affect property values, cause health problems, and asked Mr. Fitz to elaborate more on why the tower needs to be located here.

**Rebuttal**

Mr. Fitz said regarding property values, there have been in depth studies, as there are similar concerns with wind turbines, regarding proximity to cell towers and has shown to have no negative implications for sale or resale of property.

Mr. Fitz said AT&T employs radio frequency engineers to design networks and Mastec helps build the networks. He said they identify an area where coverage is lacking or gap or insufficiency. Mr. Fitz said this particular site is a coverage site and the search ring is quite small. He said they looked at the water tank to the north and it is too close to an existing AT&T tower. The tower to the south is also too close to an AT&T site. He said they approached the hospital and they were not interested in a roof top location.

Mr. Fitz said this site is identified as an area of poor coverage and it's a small area they are trying to fill. He said they submit site candidates to AT&T and they choose the best.

Mr. McCampbell closed the public hearing on Appeal #16-29.

**Staff Recommendation**

*The staff recommends in favor Appeal 16-29 to allow a telecommunications facility consisting of a 140 foot monopole tower with attached antennas and a fenced compound to include an equipment building and generator subject to the following conditions:*

- 1) *The monopole tower shall not exceed more than 140 ft. in height (does not include height of attached antenna apparatus and lighting rod).*
- 2) *A fence of no higher than 7-foot will be allowed around the base of the tower and equipment building. Barbed wire is not permitted.*
- 3) *An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the schematic site plan submitted.*
- 4) *The proposed 12' access drive between the existing asphalt parking area and the access gate into the compound shall be paved.*
- 5) *A storm water drainage plan shall be submitted to include an adequate system and means to capture all runoff from the new impervious surface areas.*

- 6) *A row of evergreen trees shall be planted 10' on center along the northern 84' fence enclosure and along the western 25' fence enclosure to screen the compound area. The evergreen trees shall be 6' in height at the time of planting.*

*This 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 the property on which the tower is to be located is adjacent to commercial uses to the north, east, and south while adequate screening/buffering is present between the property and the residential subdivision to the west. The telecommunication facility and tower will be constructed and managed according to all regulatory codes.*
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 area is primarily surrounded by commercial development; and adequate screening/buffering is present between where the tower is sited on the applicant's property and the residential properties to the west.*
3. *The need for the variance arises because the Zoning Ordinance for the City of Mishawaka restricts the installation of all telecommunications towers from all zoning districts other than the I-2 Heavy Industrial District. With the increase usage of cell phones, the number of properly zoned properties in areas needed to provide adequate call coverage and becoming less available. However, each site needs to be evaluated on an individual basis.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because cell towers are only allowed in industrial zoned properties. The use of cellular phones and technology are continually increasing creating a higher demand for better cellular coverage for users. The location of properties zoned heavy industrial within the City requires that sites be evaluated on a case by case basis relative to the context of a specific location.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan. Although the Comprehensive Plan identifies this property for Service Commercial, the Comprehensive Plan will not be substantially interfered with because of the limited use of the property and the specific hardships/development characteristics of the site associated with the request.*

**MOTION:** Charles Trippel moved to forward Appeal #16-29 to the Common Council with a favorable recommendation subject to the conditions of approval. Marcia Wells seconded; motion carried with a vote of 3-1 (*Portolese*).

---

**APPEAL #16-30** An appeal submitted by Daniel Eric Weiss and Katherine Reyna Weiss requesting a Developmental Variance for **2202 Homewood Avenue** to permit a front porch addition with a 15' front setback.

Daniel Weiss, 2202 Homewood Avenue, said they would like to put a permanent roof structure over the front steps and it wouldn't come out any farther than that's there now.

Mr. Prince read a letter of support from James Brogdon, 2222 Homewood Avenue.

Mr. McCampbell closed the public hearing on Appeal #16-30.

**Staff Recommendation**

Staff recommends **approval** of Appeal 16-30 to allow a portico to be constructed with a 15' 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 portico will not extend beyond the existing brick pillars or steps and will complement the 1916 architecture; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the home already sits closer to the property line than allowed by code and the house previously had a small metal awning over the front door.

**MOTION:** Ross Portolese moved to approve Appeal #16-30. Charles Trippel seconded; motion carried with a vote of 4-0.

---

**APPEAL #16-31** An appeal submitted by Drive & Shine Real Estate, Inc., requesting a Developmental Variance for **5406 North Main Street** to permit a reduction in required number of parking spaces.

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellant. He said Drive & Shine is requesting to reduce the total number of parking spaces from the current number of 28 to 19 spaces.

Mr. Shearon said they are planning a 3,820 sqft building addition on the south side for a new car wash device. He said because of the routing of traffic, it will take up some parking spaces.

Mr. Shearon said in 2004 a building addition reduced the parking to the current 28 spaces and now the request is to further reduce it to 19. He said the way car washes operate these days; there is no need for customer parking as they wait in the car. Mr. Shearon said with the new system, customers go in the building and watch the car being washed.

Mr. McCampbell closed the public hearing on Appeal #16-31.

**Staff Recommendation**

The Planning Department recommends approval of Appeal 16-31 for an additional reduction in the required number of parking spaces from the prior approved twenty-eight (28) spaces to nineteen (19) spaces. 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 reduced number of parking spaces resulting from the building addition, and reconfigured parking area and drives, will still allow ample parking for employees while nearly eliminating the need for customer parking.

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 are currently an excess number of parking spaces and the proposed addition will reduce parking needs on site.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the location of the existing building, parking areas and access drives limits the ability to expand the business. Due to the unique nature of the business, the site requires minimal to no spaces for its customers.*

**MOTION:** Charles Trippel moved to approve Appeal #16-31. Ross Portolese seconded; motion carried with a vote of 4-0.

---

**ADJOURNMENT:** 6:30 p.m.

---

Kenneth B. Prince, City Planner

---

Kari Myers, Administrative Planner