

SEPTEMBER 13, 2016

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 13, 2016, 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 Marcia Wells. 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 August 9, 2016, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #16-33 An appeal submitted by Pam Richardes requesting a Use Variance for **220 East Mishawaka Avenue** to allow a food truck trailer to be located within the front yard setback. *Appellant has requested withdrawal.*

Mr. McCampbell read a letter from the Appellant requesting withdrawal. The Board moved and unanimously approved the request.

APPEAL #16-32 An appeal submitted by Amir Pouya, DBA Pouya Gallery Inc., requesting a Developmental Variance for **1035 East University Drive, Granger** to permit a reduction in number of parking spaces.

James Yoder, FM Construction, 530 E. Lexington Avenue, Suite 175, Elkhart, IN, appeared on behalf of the Appellant. He said the 10,000 sqft warehouse addition would require 66 parking spaces, but the nature of Mr. Pouya's business doesn't require the additional parking spaces. Mr. Yoder said they would use the existing lot. Mr. Yoder said if the property were to be sold, any new owner would have space to add parking if needed. It's really a capital expense issue.

Mr. Krueger asked if this was a retail operation. Mr. Yoder said yes, retail sales in the front, however, most sales come via the internet or they deliver. They actually have more parking than what's needed to operate the business.

Mr. McCampbell closed the public hearing on Appeal #16-32.

Staff Recommendation

The Planning Staff recommends approval of Appeal 16-32 to allow a reduction in number of required parking spaces from 65 spaces to 19 spaces for the existing 6,250 sf building and proposed 10,000 sf addition.

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 adequate parking will be maintained on the property for the existing and proposed use for warehousing, cleaning, and retail sales of imported rugs. Furthermore, the appellant states that there is not a need for the number of parking spaces required per ordinance due the minimal number of employees and customers, and overall nature of the business;*
- 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 parking area and number of spaces being maintained is, according to the appellant, sufficient to support the existing and expanded use of the property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property as it would require a large capital expense for a parking lot that would be unused.*

MOTION: Charles Trippel moved to approve Appeal #16-32. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #16-34 An appeal submitted by Anthony King requesting a Developmental Variance for **635 North Wenger** to permit a solid fence with a 0' exterior side yard setback.

Anthony King, 635 N. Wenger Avenue, presented his request. He said he just purchased the home in August and wants to put a 6' privacy fence in the back yard. Mr. King said the required 12' 6" setback would put the fence halfway into his patio eliminating about half of his back yard. He would like to build it even with the back corner of the house, along the street to the alley and then along the alley to the garage.

Mr. McCampbell said staff has recommended angling the fence at the alley. Mr. King said he saw the recommendation and it feels it would be an eyesore. He said there's still 6'-8' from the road to the fence and he doesn't think it would be an issue not to angle it.

Mr. McCampbell said staff feels it should be done to allow visibility for vehicles exiting the alley to the street.

Mr. Prince said we have consistently asked for the angle for other privacy fences due to the proximity to the alley. He said one angled panel would be sufficient.

Mr. King said he would be fine with that.

Mr. Krueger asked if it would be 6', white vinyl. Mr. King said wood panel fence.

Mr. McCampbell closed the public hearing on Appeal #16-34.

Mr. Trippel asked if the request to angle the fence was uncommon. Mr. Prince said no, it's very common. It depends on the location and we look at each request individually.

Staff Recommendation

Staff recommends approval of Appeal #16-34 to allow a privacy fence with a 0' exterior side yard setback, to be no closer than the existing house, with the northwest corner angled to allow visibility. 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 angled 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: Ross Portolese moved to approve Appeal #16-34. Charles Trippel seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:09 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner