

**NOVEMBER 15, 2016**  
**BOARD OF ZONING APPEALS**  
**CITY OF MISHAWAKA, INDIANA**

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, November 15, 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, and Marcia Wells. Absent: Ross Portolese. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

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Mr. McCampbell explained the Rules of Procedure.

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The Minutes of the October 11, 2016, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**  
**APPEAL #16-40**

An appeal submitted by Heidi E. Slessman requesting a Developmental Variance for **825 South Middleboro Avenue** to permit the construction of two (2) decks with a 19' front yard setback and 8' 6" exterior side yard setback.

Heidi Slessman, 423 Calhoun Street, said she owns the property and would like to put two decks on the house; one in the front and one on the back. She said she needs them to safely enter the house. Ms. Slessman said the rear deck is old and needs to be replaced and be safe for whomever might live there and would appreciate the approval to do so.

Mr. McCampbell asked Ms. Slessman if she lived there. Ms. Slessman said she bought the house from her parent's estate and might let her nephew live there. She said she wants to get a good quality of people there to improve the neighborhood as a whole. Ms. Slessman said she heard her parents had bad renters and wants to improve the neighborhood and the decks would add curb appeal.

Mr. McCampbell closed the Public Hearing on Appeal #16-40.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #16-40 to allow two decks to encroach into the front and exterior side yard setbacks. 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 decks would not encroach further into the setbacks than the home.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the house currently encroaches into the front and exterior side yard setbacks. Any new porch or deck addition for entry into the home would require a variance.*

**MOTION:** Charles Trippel moved to approve Appeal #16-40. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #16-41** An appeal submitted by William and Kimberly Van Elk requesting a Developmental Variance for **7520 Toscana Court, Granger**, to permit the construction of a new single family home with an 18'6" front yard setback and 20' rear yard setback.

Adam Devon, Devon Custom Builders, P.O. Box 619, Granger, said they are building a home for the Van Elks. He said their lot is on a cul-de-sac and not a standard lot; it's pie shaped.

Mr. Devon said they are asking for a front setback variance as the garage encroaches. He said most of the house fits within the building envelope, but the deck and stairs also encroach in the rear.

Mr. McCampbell closed the Public Hearing on Appeal #16-41.

**Staff Recommendation**

*Staff recommends approval of Appeal 16-41 requesting a developmental variance from the required 25' front yard building setback to an 18.5' front yard building setback and from the required 25' rear yard building setback to a 20' rear yard building setback to allow the construction of a new house at 7520 Toscana Court. 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 new house will be similar in style and character to other residential structures on Toscana Court.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property due to adjacent to a cul-de-sac resulting in a lot that has a lesser buildable depth than most of the other residential lots along Toscana Court.*

**MOTION:** Marcia Wells moved to approve Appeal #16-41. Charles Trippel seconded; motion carried with a vote of 4-0.

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**APPEAL #16-42** An appeal submitted by David J. and Tracy-Reed Case requesting a Developmental Variance for **1837 East Jefferson Boulevard** to permit a 1,008 sqft, 26' in height, accessory structure.

David Case, 1837 E. Jefferson Blvd., said they built their house in 2008 and they currently have a shed for lawn equipment and the new structure would be for a trailer and lawn equipment. The extra height requested would match the pitch of the house and the extra height would be used to store lawn furniture and such.

Mr. McCampbell asked how far back on the property would the structure be located. Mr. Case said approximately 300'.

Mr. Krueger asked if the lawn equipment would be commercial. Mr. Case said no. Just large equipment to pick up leaves and grass clippings for their large lot.

Mr. McCampbell closed the Public Hearing on Appeal #16-42.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #16-42 to construct a 1,008 square foot, 26' high shed. 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 size of the shed is proportionate to the size of the lot, and will not be seen from the road, or neighboring properties due to woods and elevation change; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant could build several 720 sq ft structures on the lot, but it is more practical to build one large structure to accommodate their items.*

**MOTION:** Charles Trippel moved to approve Appeal #16-42. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #16-43** An appeal submitted by Larry Scheibelhut requesting a Developmental Variance for **205 West LaSalle Avenue** to permit a house to be placed on Lot 53 with an 8' 6" exterior side yard setback.

Larry Scheibelhut, 51925 Elm Road, Granger, said he got a variance in July for a side yard setback, however, he has found he didn't ask for enough. He said he was going to have the property replatted to move the lot lines and found that the west lot line, lot 52, had a slight taper to it and the house that will sit on the lot has had siding added over the years and would cause a tight fit. Mr. Scheibelhut said they are requesting more of a setback, 8'6" now. He said they looked at the immediate area and the house behind them with a garage has an 8' setback.

Mr. McCampbell closed the Public Hearing on Appeal #16-43.

**Staff Recommendation**

*Staff recommends approval of Appeal 16-43 requesting a developmental variance from the required 12.5' exterior side yard setback for Lot 53 in Martin's 1<sup>st</sup> Addition to an 8.5' exterior side yard setback along Elizabeth Street. The variance requested will allow for the relocation of two existing houses currently located at 2201 and 2205 N. Main 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 and regulations will be adhered to for the relocation of the existing homes;*
- 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 relocated homes will be similar in character to other houses on the block, and the homes are of greater value than the existing structure to be demolished.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the narrowness of the existing lots, the homes could not be relocated without the approval of the requested variance.*

**MOTION:** Charles Krueger moved to approve Appeal #16-43. Charles Trippel seconded; motion carried with a vote of 4-0.

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**APPEAL #16-44** An appeal submitted by Roberto Escobedo requesting a Developmental Variance for **202 Manchester Drive** to permit a solid fence with a 0' exterior side yard setback.

Roberto Escobedo, 202 Manchester Drive, said they are asking for a privacy fence in their back yard as they have a pool and numerous kids in the neighborhood and want to make sure they don't get into the pool. He said they have a chain link fence and would like to replace it with a privacy fence.

Mr. Escobedo said staff recommended they butt the fence up against the shed and he thinks it would take away from the looks. He would like to put the fence in the same place as the chain link fence.

Mr. McCampbell asked if the fence behind them is theirs. Mr. Escobedo said a neighbor put up the fence and he likes the way it looks. He said the fence would add to the value of those surrounding him; and to protect the kids from the pool.

Mr. Krueger asked if he would be putting the fence where staff recommended. Mr. Escobedo said staff recommended to put against the shed, but if the shed goes away, it would leave an open space.

Mr. Krueger asked if the shed was going away. Mr. Escobedo said not in the near future, but it will wear out over time.

**In Favor**

Bill Schalliol, 215 Hackberry Drive, said he is in support of the request. He said he knows staff recommended stopping short, but as an adjoining neighbor, he supports allowing the fence all the way around.

Mr. Prince read a letter of support from John Schalliol, 222 Hackberry Drive.

Mr. McCampbell closed the Public Hearing on Appeal #16-44.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #16-44 to install a 6’ high privacy fence in the exterior side yard, not to extend past the existing shed. 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 there is already a shed in the exterior side yard. There is no alley and the sidewalk does not extend past this property, so there is no concern for the site line of cars to see a pedestrian; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant wishes to secure the pool.*

**MOTION:** Charles Krueger moved to approve Appeal #16-44. Marcia Wells seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:20 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner