

MARCH 13, 2018

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, March 13, 2018, 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, Marcia Wells, and Larry Stillson. 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 February 13, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-08 An appeal submitted by Justin Waller requesting a Developmental Variance for **2807 Lenson Court** to permit a solid fence with a 0' exterior side yard setback.

Justin Waller, 2807 Lenson Court, said he put up the mesh over the 4' chain link fence for the safety of his neighbors and his dogs. He said they are puppies and sometimes run toward the fence and he wanted to try and eliminate that behavior.

Mr. Waller said there was an instance last fall that made him do this. He said a neighbor's grandson had put his arm over the fence, the dogs were barking, but didn't bite him. Mr. Waller said he wanted to make sure everyone around them was safe. He said his dogs aren't mean, but he wanted to be respectful to his neighbors.

Mr. McCampbell asked Mr. Waller where he got the mesh. Mr. Waller said a place online that sells thru Walmart.

Mr. McCampbell asked if it was a material that the dogs couldn't scratch through. Mr. Waller said yes and is attached to the fence with metal grommets.

Mr. Prince read a letter of support from Delores Ward, 2811 Schumacher Drive.

Opposition

Jennifer Ohda, 2757 Lenson Court, said Mr. Waller put up a fence last year and doesn't believe he got a permit for it as it should be 12' 6" back from the sidewalk. She said as you can see, it almost butts up against the sidewalk.

Ms. Ohda said Mr. Waller said his dogs are very friendly, but since he put up the mesh, they have become very aggressive and now are trying to jump over the fence. She said her daughter was walking by the yard last week and they did exactly that and it scared her.

Ms. Ohda said she thinks Mr. Waller got the house reasonable because it doesn't have a back yard and people in her neighborhood don't put fences up in their front yard. She said he wants to be respectful and at that time they had one dog. Then the other dog came and things got crazier in the yard and then they put the mesh on the fence. Ms. Ohda said cosmetically, it looks horrible like something you would see in a tow yard and is not appealing to the neighborhood.

Ms. Ohda said more importantly, she would like to see if they could move the fence back in accordance with the ordinance and she wouldn't be opposed to that. She feels the more you isolate the dogs... you can see thru the fence. There will probably see more wear and tear on it as the seasons go by.

Mr. Prince read a letter from Mr. and Mrs. Patrick Metcalfe, 2763 Lenson Court, which was also signed by 7 neighbors.

Rebuttal

Mr. Waller said he did get a permit in 2016 and followed the guidelines as far as the chain link fence goes.

Mr. McCampbell closed the Public Hearing on Appeal #18-08.

Mr. Stillson said it's the addition to the fence and not the fence itself. Correct? Mr. Prince said to clarify, the 4' open fence is ok up to the property line. The fence didn't violate the ordinance until the screening was put up and made it a solid fence. Mr. Prince said he can keep the screening as long as it's 12'6" from the property line.

Mr. Krueger asked if the fence was in the front yard. Mr. McCampbell said it's along the side of the house which is toward the front of the house. The house faces Lenson Drive and not Lenson Court.

Mr. Prince said it's adjacent to multiple streets which requires the 12'6" setback for a solid fence. The open fence can be up to the property line.

Mr. Stillson asked for the definition of an open fence. Mr. Prince said 75% open, which we interpret as picket and chain link meets that definition.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-08 to install a 4' high privacy fence in the exterior side yard, with a 0' setback from the property line. 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 and adequate visibility will be maintained for vehicles entering and exiting the cul-de-sac;*
- 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 wholly on the owners property; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing a privacy fence with a 12.5' exterior side yard setback would result in the loss of usable rear yard space.*

MOTION: Charles Trippel moved to deny Appeal #18-08. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #18-09 An appeal submitted by Grape Road BMC Partners, L.P. requesting a Use Variance for **7121 Grape Road, Granger**, to allow outside storage containers.

Matthew Smith, Anchor Construction, 7121 Grape Road, said they are a tenant on the property and have two containers in the back parking lot that are used to store materials related to their business.

Mr. Smith said they have been made known that they are not allowed and they are appealing that. He said they are set back from Cleveland and Grape Roads and are screened by buildings and a berm and they feel that's justification for the appeal.

Mr. Trippel asked how long they have been there. Mr. Smith said since 2014.

Mr. Trippel asked if they've always had outside storage. Mr. Smith said he wasn't sure, perhaps 3 years.

Mr. Trippel asked if the location is conducive to the nature of their business; is that spot really the best for you. Mr. Smith said they are a design build general contractor and that location is for design professionals. The containers house different tools and machines and yes, that location suits them quite well.

Mr. Trippel said except that construction businesses usually have outside storage and that zoning district isn't conducive for that location. Mr. Smith said they don't really store building materials, more like tools and other such materials.

Mr. McCampbell asked what the shed was used for. Mr. Smith said it's related to a lab that they run so it has various items, not sure what, for the lab department.

Mr. Stillson asked if the two containers were enough for what they needed and did he think they would need a third or fourth? Mr. Smith said two were enough and have no plans to add more.

Mr. McCampbell said they are pretty large. Mr. Smith said they are ½ size containers that you would see on the back of a semi truck.

Mr. McCampbell closed the Public Hearing on Appeal #18-09.

Staff Recommendation

The Staff recommends in favor of Appeal 18-09, a Use Variance to allow two outside storage containers for property located at 7121 Grape Road, for the length of the tenant's lease.

This recommendation is based on the following reasons:

- 1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.*

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 fence, landscaping and buildings help screen the view of the containers.*
3. *The need for a variance arises from the type of equipment needed for the business, and the lack of a proper storage area indoors.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Larry Stillson moved to forward Appeal #18-09 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-1 (*Trippel*).

ADJOURNMENT: 6:18 p.m.

Kenneth B. Prince /s/
Kenneth B. Prince, City Planner

Kari Myers /s/
Kari Myers, Administrative Planner