

AUGUST 14, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, August 14, 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: Ken Prince, David Bent, Derek Spier, Christa Hill, and Kari Myers.

Mr. McCampbell explained the Rules of Procedure.

The Minutes of the July 10, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-20 An appeal submitted by Elizabeth A. Bigler and Dale Michelle McIntosh requesting a Developmental Variance for **205 Bosse Avenue** to allow a privacy fence with 0' front yard setback.

Dale Michelle McIntosh, 205 Bosse Avenue, said she wants to put a fence back up where it was. She said they want it for security reasons and to keep their dogs in.

In Favor

Elizabeth Bigler, 205 Bosse Avenue, said the existing fence was about 1' off the sidewalk and they want to put the new fence in the same spot. She said the neighbor said it didn't hinder their vision.

Mr. McCampbell closed the Public Hearing on Appeal #18-20.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-20 to install a 6' privacy fence in the front 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;*
- 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 has not caused any adverse conditions since it was installed over 20 years ago; 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 even with the front of the house would result in the loss of usable yard space, and security to the front of the house.*

MOTION: Larry Stillson moved to approve Appeal #18-20. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #18-21 An appeal submitted by Nick and Jessica Hause requesting a Use Variance for **2606 and 2608 Ewing Avenue** to allow a two-family home to remain in the R-1 Single Family Residential District.

Nick Hause and his wife Jessica, owners of 2606 and 2608 Ewing, appeared. He said they are seeking approval of a Use Variance as they are currently selling the property and it came to their attention the zoning is R-1. He said it was built in 1951 as a duplex and is taxed as such and would like approval so they can finish the escrow process.

In Favor

Sharon McDonald said she is representing the Hauses' with the transaction. She said the house was built in 1951 and as far back as they can tell, it has been used continuously as a duplex. She said the variance is needed so the structure could be rebuilt as a duplex in the event it's destroyed. Ms. McDonald said the buyer is planning on living in one unit and renting out the other.

Mr. Trippel asked if it was currently owner-occupied. Ms. McDonald said not it is not, the owners live in CA and both units are rented. She said everything is separated except sewer.

Opposition

Janice Brugh, 2616 Ewing, said she lives across the alley and has issues with parking. She said she has come home to find cars parked in her yard. People stop and park in the alley and that is an issue for her.

Mr. Krueger asked if she had reported it. Ms. Brugh said yes.

Mr. Krueger asked if the police have done anything. Ms. Brugh said no, but they had one car towed that was in their yard.

Mr. Krueger asked if it was the one incident. Ms. Brugh said yes, they have quite a bit of parking behind the home and they pull up along side the house and get out. She also said in the winter they have had quite a few slide-offs. Ms. Brugh said their issue is parking and if both sides are rented they don't know what their plan is for parking.

Ms. Wells asked who the garage behind the house belongs to. Ms. Brugh said to 2606 and it's a two stall garage. She also said she has had to replace the fence.

Mr. Trippel asked how long has she lived there. Ms. Brugh said since 2001.

Mr. Krueger asked if she had discussed this with the neighbor. Ms. Brugh said the only time she spoke to them was about a dumpster that damaged her side yard, but that issue was resolved.

Rebuttal

Ms. McDonald said she would like to point out that there is more than ample parking. She said there is a large area, can park two in the garage and three across the back. She said there are long-term tenants in 2608 and they don't even drive. They attend Logan Center and a caretaker comes part time during the day. Ms. McDonald said obviously, you wouldn't want to park in the alley, but there is sufficient parking.

Mr. Hause said the person buying the home is single, with no family or kids, and shouldn't add any more traffic or cars into the area.

Staff Recommendation

The Planning Staff recommends approval of Appeal 18-21 to allow a use variance for a duplex in the R-1 Single Family Residential District at 2606-2608 Ewing Avenue. 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 no physical changes are being made to the property;*

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 property has been used in this way for many years, without any problems that we know of;*
3. *The need for the variance arises from some condition peculiar to the property in that the property was built as a duplex, or was at least converted by 1954, but the zoning was never changed to match the use;*
4. *Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought because the building was built as a duplex;*
5. *The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.*

MOTION: Charles Trippel moved to forward Appeal #18-21 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #18-22 An appeal submitted by Daniel Stoehr and Amy Brockman requesting a Developmental Variance for **902 Calhoun** to allow a front porch with an 8' exterior side yard setback.

Daniel Stoehr, 902 Calhoun, said they are seeking to build a deck off the front portion of their house, the entire length of the house. He said there's a safety hazard and want to make it look nicer and increase safety.

Mr. McCampbell closed the Public Hearing on Appeal #18-22.

Mr. Prince read a letter of support from Bradley and Brenda Green, 914 W. Battell St.

Staff Recommendation

Staff recommends approval of Appeal #18-22 to allow the construction of a deck to the front of their home (which faces Calhoun) with an 8' 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 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 deck does not encroach further into the setback than homes on the other three adjacent corners.*
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 exterior side yard setback and the Appellants will not be able to make the necessary improvements without the variance.*

MOTION: Charles Krueger moved to approve Appeal #18-22. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #18-23 An appeal submitted by 1500 McKinley, LLC, requesting various Developmental Variances for reduced parking and landscaping for an expanded auto sales lot at **1408 East McKinley Avenue**.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellant. He said this is a used car sales area along McKinley and the old Swifty gas station has been

acquired by the operation to the east and they want to expand. Mr. Lang said the property is part in the City and part in the county.

Mr. Lang said they have seen comments regarding driveways and they will comply and will proceed with overstory trees.

Mr. Prince asked Mr. Lang about the timeframe. Mr. Lang said they are going to be doing final portion of the site plan with revisions being asked for by Engineering.

Mr. Prince said the trees, not the site plan. Mr. Lang said probably this fall.

In Favor

Mike Thompson, owner of 1445 E. McKinley Avenue, said his property is immediately across the street and wants to say he is in favor of the request and is excited about what they have done with the property. He said they are great neighbors.

Mr. McCampbell closed the Public Hearing on Appeal #18-23.

Staff Recommendation

Planning Staff recommends approval of Appeal 18-23 to allow a reduction in the required landscaping at the existing and proposed automobile sales business located at 1408 and 1500 E McKinley Avenue, subject to a deciduous tree being planted every 40 feet along the frontage, for a total of 16 trees. 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. Currently, no such buffer or landscape area is provided. The addition of the perimeter trees along McKinley will provide some greenery and help break up the 600+' of frontage.*
- 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 redevelopment of 1408 E McKinley Ave includes removal of an unused pump canopy.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property as landscaping screening and or berm would prevent the vehicles for sale being visible from the road.*

MOTION: Marcia Wells moved to approve Appeal #18-23. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #18-24 An appeal submitted by Drew Johnson and Hartwell Services LLC requesting a Developmental Variance for **1711 East McKinley Avenue** to permit an oversized accessory structure.

Drew Johnson, Hartwell Services LLC, 1711 E. McKinley Avenue, said he is looking to increase the size of a garage to 24' X 40'. He said it will be a garage that would be used for a variety of business related storage. Mr. Johnson said he is in the computer business and he has zero storage and his portable shed isn't big enough.

Mr. McCampbell closed the Public Hearing on Appeal #18-24.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-24 to construct a 24' X 40' (960 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 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 their business storage.*

MOTION: Charles Trippel moved to approve Appeal #18-24. Charles Krueger seconded; motion carried with a vote of 5-0.

NEW BUSINESS:

Mr. McCampbell asked Mr. Prince about the outcome of the meeting with residents and INDOT regarding restriping of Lincolnway. Mr. Prince said over 300 letters were sent to property owners along Lincolnway and six people attended. He said most people were concerned about the distance between the curb and yard when mowing their yards. He said INDOT has been very cooperative and we think the project will move forward. The timeline is for patching this year and paving next year.

ADJOURNMENT: 6:25 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner