

SEPTEMBER 11, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 11, 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 August 14, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-25 An appeal submitted by Troy Singleton and Robert P. Shultz requesting a Developmental Variance for **901 South Main Street** permit a solid fence with a 6' 6" exterior side yard setback.

Robert Schultz, 901 S. Main Street, said he wanted to put up a fence and the location they need is 6' 6".

Mr. Krueger asked why he needed the fence. Mr. Schultz said the yard is presently not fenced in and the corner of the house is quite a ways from the sidewalk. It's 21' from the street and it will look ok. Mr. Schultz said if you put the fence at the required setback, it would be by the back porch.

Mr. McCampbell closed the Public Hearing on Appeal #18-25.

Staff Recommendation:

Staff recommends approval of Appeal #18-25 requesting a Developmental Variance from the required 12' 6" exterior side yard setback for a 6' high privacy fence to a 6' 6" 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 as a result of permitting a privacy fence with a 6' 6" exterior side yard setback as the fence will be at least 14' from the sidewalk; 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' 6" exterior side yard setback would result in the loss of usable rear yard space.*

MOTION: Charles Trippel moved to approve Appeal #18-25. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #18-26 An appeal submitted by PD Realty LLC requesting a Use Variance for **916 East McKinley Avenue** to permit a temporary office trailer for up to 24 months on I-1 Light Industrial zoned property.

Bill Pemberton, 1333 Patriot Court, Mishawaka, said he is the managing member of the LLC that owns the property and the business is growing quicker than they can move forward with new building construction. He said they need a temporary office trailer until they can get construction rolling.

Mr. McCampbell closed the Public Hearing on Appeal #18-26.

Staff Recommendation

Staff recommends approval of Appeal #18-26 to permit a 8' X 36' temporary office trailer to be located on the property through September of 2020. 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 structure will be professionally installed, maintained, and removed upon the construction and occupancy of the new building at 902 E. McKinley.*
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 site is sufficiently large enough to safely accommodate the temporary office trailer.*
3. *The need for the variance arises from some condition peculiar to the property in that the Zoning Ordinance allows a construction trailer; however, no construction has started on the site. The temporary nature of the office trailer, in anticipation of the building, functions with a similar purpose.*
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 Zoning Ordinance does not allow for an office trailer, however the previously approved plans indicate that this will be a temporary situation.*
5. *The recommendation is consistent, and/or, not in conflict with Comprehensive Plan which indicates commercial/office uses for this area.*

MOTION: Charles Trippel moved to forward Appeal #18-26 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #18-27 An appeal submitted by Paul and Cheryl Morrison requesting a Developmental Variance for **7421 Toscana Court, Granger**, to permit a solid fence up to 9' in height.

Dale DeVon, 7508 Toscana Court, Granger, appeared on behalf of the Appellants, who were also in attendance. Mr. DeVon said they are home builders in the community and have built 16 homes in Toscana Park.

Mr. DeVon said Mr. and Mrs. Morrison asked to have a pool built and his company doesn't build pools. He said the owner found a company to put in the pool and they also asked for a pool house.

Mr. DeVon said out of the 17 homes in the neighborhood, 6 or 7 have courtyard walls and when he pulled the permit for the pool house, he didn't get a permit for the courtyard wall. He said he wasn't aware of the height restriction for it. (showed photos of the wall from inside the courtyard).

Mr. DeVon said the home owner to the south isn't happy about the wall and he has met with him several times. He asked if they would put in a row of arborvitae to block the wall and the Morrison's have agreed to do that. Mr. DeVon also said the owner took photos from the hotel to show what their back yard looks like and said the owners have spent a lot of money in decorating the pool and trying to protect and increase their property value.

Mr. DeVon said the owners have about \$100,000 in the wall and he would lose the privacy he hoped to enjoy on the inside of the pool.

In Favor

Paul Morrison, 7421 Toscana Court, said they built their dream home hoping they would never go anywhere else. He said they put thought into the back yard for the grandkids to come out and enjoy the pool and when he built the home he didn't know a big hotel would be going in and were just going to put in the arborvitae, but ended up coming up with the wall. Mr. Morrison said it's actually less than 7' in height and doesn't mind putting in more dirt to come up to 7'.

Mr. Trippel asked at what point did you realize you were in violation. Mr. Morrison said when they got the letter after the wall was built.

Mr. Trippel asked when the structures were built, did you, the home owner, assure the permits were secured. Mr. Morrison said yes, he knew they had permits for the pool, house and such. He didn't do any of the permitting, but hired Mr. DeVon to pull permits.

Mr. DeVon said he pulled permits for the pool house and the pool company pulled the permit for the pool.

Mr. Trippel asked who pulled the permit for the fence/wall. Mr. DeVon said no one.

Mr. McCampbell closed the Public Hearing on Appeal #18-27.

Mr. Trippel asked what is the normal process, pull the permit? Mr. Prince said yes, fences are regulated the same way as other construction and you pull the permit prior to construction. He said we were made aware from the complaint by the neighbor. Mr. Prince said we are recommending denial and we are sympathetic and perhaps the neighbor is

better about the wall now that landscaping will be put in. He said due to the fact that it is now constructed, staff doesn't object to the little peaks.

Mr. Prince said we maintain a common standard for everyone and is amazed no one looked at the regulations prior to constructing a \$100,000 wall.

Mr. Trippel said he understands the City's concern that they don't feel the need to pull permits because they'll approve it anyway. Mr. Prince said Mr. DeVon would probably be more than happy to pull the \$10 permit.

Mr. Stillson said if this is denied, is there a remedy presented. Mr. Prince said we need to have more of a dialog.

Mr. McCampbell reopened the Public Hearing.

Mr. Morrison said the measurement was taken at the base of the wall. Mr. DeVon said we can create a 3' planter area to make the wall height 7' everywhere.

Mr. Prince said if you are willing to bring up the grade, staff would recommend approval only for the additional 8" that will require them to fill to make the height work. Mr. DeVon said he will work with the neighbor to the north to make sure there is room for the planter. Mr. DeVon also said the wall alone was not \$100,000, but the cost of the wall and the pool house.

Mr. Krueger said in his opinion, this is a very unusual situation as their property butts up against public parking and it is aesthetically pleasing. He said because of its location, that in itself, warrants approval and is acceptable in his eyes. Mr. Krueger said it's obviously in an upscale area and was done tastefully. He said he can understand the situation and would be inclined to vote in favor.

Mr. McCampbell asked if the Board were to approve, how would the approval be worded. Mr. Prince said recommend approval at 7' 8" and leave it at that.

Mr. McCampbell closed the Public Hearing on Appeal #18-27.

Staff Recommendation

*The Staff recommends **denial** of Appeal #18-27 to install a 9' privacy fence/wall in the side and rear yards. This recommendation is based upon the following findings of fact:*

- 1. Approval will be injurious to the public health, safety, morals and general welfare of the community because construction was started without obtaining a building permit;*
- 2. The use and value of the area adjacent to the property included in the variance may be affected in a substantially adverse manner because the Planning Department has already received neighbor complaints; and*
- 3. Strict application of the terms of this chapter will not result in practical difficulties in the use of the property because a 7' privacy could be installed. Granting the variance will allow the continued use of an amenity that was illegally installed.*

MOTION: Charles Trippel moved to approve Appeal #18-27 for a fence height of 7' 8".
Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #18-28 An appeal submitted by Pyfer Pyfer and Pyfer requesting Use and Developmental Variances for **1324 Benton Street** to permit warehouse/storage in C-1 General Commercial District and various developmental variances for reduction in parking setbacks, landscaping/screening, and off-site parking.

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. Mr. Shearon said this is a two-part request; a Use Variance for stand-alone storage in C-1. He said the owner wants to use the existing building for storage for South Bend Clutch across the street, but C-1 zoning doesn't permit the use and the neighborhood isn't appropriate for industrial zoning.

Mr. Shearon said the second request is for various developmental variances for setback as the building currently encroaches; 0' pavement setbacks, no tree planting along the north, south, and east property lines due to concrete and not enough room. Other variance requests include reduction in screening and no off-street parking.

Mr. Krueger asked if the Appellants were aware of the conditions. Mr. Shearon said yes, they were aware and agree to them.

Mr. McCampbell closed the Public Hearing on Appeal #18-28.

Staff Recommendation

The Planning staff recommends approval of Appeal 18-28 to allow a use variance for a stand-alone storage (warehouse) building at 1829 Benton Street subject to the following conditions:

- 1. The storage/warehousing use of the building shall be limited to South Bend Clutch and shall not be used by any other business or tenant.*
- 2. The architectural material for the proposed additions shall be a metal panel to match the existing structure.*

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 building is existing and all building codes will be adhered to during construction of the addition;*
- 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 proposed storage use is similar to the prior retail/office use.*
- 3. The need for the variance arises from some condition peculiar to the property in that the property is zoned C-1 General Commercial which does not permit to proposed stand-alone storage (warehouse) 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 zoning does not allow for the proposed stand-alone storage (warehouse) use. Furthermore, the current building is designed for storage with the small size of the property not*

allowing for the required improvements for other commercial use of the property. The preferred means by which to allow the use is through the use variance process;

5. *The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates commercial uses for this area.*

The Planning staff recommends approval of Appeal 18-28 to allow the following developmental variances for the existing building and proposed additions at 1829 Benton Street:

1. *A variance to allow an encroachment of 1.5' in the required 5' side yard building setback resulting in a 3.5' building setback along the south property line.*
2. *A variance to allow a 0' pavement setback along the north and east property lines.*
3. *A variance to allow no trees along the north, south, and east property lines being the side and rear yards.*
4. *A variance to allow no trees and screening within the front yard along Benton Street.*
5. *A variance to allow no screening fence along the south property line.*
6. *A variance to allow no required off-street parking.*

This recommendation is based on the following finding of fact:

1. *Approval will not be injurious to the public health, safety, morals and general welfare of the community because the building is existing and all building codes will be adhered to during construction of the addition.*
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 conditions, such as the building and pavement setbacks, landscaping, and screening, currently exist and will be maintained on the property. Furthermore, several of the requested variances were previously approved with the prior building expansion.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Existing conditions such as pavement, small lot size, building placement, and existing landscaping makes adherence to the required developmental standards unfeasible.*

MOTION: Charles Krueger moved to forward Appeal #18-28 Use Variance to the Common Council with a favorable recommendation. Charles Trippel seconded; motion carried with a vote of 5-0.

MOTION: Charles Trippel moved to approve Appeal #18-28 Developmental Variances. Marcia Wells seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:35 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner

