

OCTOBER 9, 2018

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 9, 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 September 11, 2018, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #18-29 An appeal submitted by Drive & Shine Real Estate, Inc., requesting a Sign Variance for **5406 North Main Street** for a second freestanding sign.

Richard Johnson, Burkhart Signs, South Bend, along with Haji Tehrani of Drive and Shine presented the request. Mr. Tehrani said the business expansion is the first of its kind in Indiana. He you stay inside your car and you will be given directions to go into a different part of the building and without the sign, customers would be lost. Mr. Tehrani said he feels it would cause challenges to customers if the signs didn't properly direct them.

Mr. Johnson showed the site plan. He said customers have to go around the place twice which will differ from the current situation.

Mr. McCampbell asked if the sign would be 250' off Main Street. Mr. Johnson said yes and you won't be able to be read from Main Street and it is only a single face sign.

Mr. McCampbell said staff has recommended the sign support color be changed. Mr. Johnson said colors have been cleaned up and staff now has an updated drawing. Mr. Tehrani said the green is across the window mullions and all signs follow that color scheme.

Mr. McCampbell closed the Public Hearing on Appeal #18-29.

Staff Recommendation

*The Staff recommends **approval** of the additional freestanding sign variance. This recommendation is based upon the following Findings of Fact:*

- 1. Approval will not be injurious to the public health, safety, morals or general welfare of the community because the all construction will be completed in accordance with all applicable state and local building codes, and will be professionally installed with quality materials;*

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 location of the new signage is only intended to be read by those already in the site, not the travelling public;*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the function of this sign is to provide internal directional, however, the size does not allow it to be classified as a directional sign.*

MOTION: Charles Trippel moved to approve Appeal #18-29. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #18-30 An appeal submitted by Melissa Lauer requesting a Developmental Variance for **1601 Lincolnway West** to allow a solid fence with a 3' exterior side yard setback.

Melissa Lauer, 1601 Lincolnway West, said the existing fence is a 4' tall chain link and would like to put up a 6' privacy fence.

Mr. McCampbell asked if it would go in the same place as the shed. Ms. Lauer said yes. The front part kind of cuts across the walk and up to the house.

Mr. McCampbell closed the Public Hearing on Appeal #18-30.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-30 to install a 6' privacy fence in the exterior side yard, with a 3' 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 alley;*
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 located wholly on the owners property with sufficient room and an elevation change between the traveling public on 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 12.5' exterior side yard setback would result in the loss of usable rear yard space, or loss of privacy with the existing fence.*

MOTION: Larry Stillson moved to approve Appeal #18-30. Marcia Wells seconded; motion carried with a vote of 5-0.

APPEAL #18-31 An appeal submitted by Entrust Group Inc., FBO Lisa Hagerman McKnight requesting a Developmental Variance for **216 South Race Street** to allow a 14' rear yard setback for landing and stairs.

Troy McKee, McKee Construction, appeared on behalf of the Appellant. He said the building is set up for 3 units and at some point removed the stairs from the back of the house and they want to turn back into a 3 unit. Mr. McKee said there are 3 meters at the house and the request is to put stairs running perpendicular to the house and wouldn't be going out any further to the sidewalk in the rear.

Mr. McCampbell closed the Public Hearing on Appeal #18-31.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-31 for a 14' rear yard setback in order to install a 3' x 4' landing with staircase. 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 had previously been a door/access in that location; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because there is no other way to access the door on the second story.*

MOTION: Charles Krueger moved to approve Appeal #18-31. Charles Trippel seconded; motion carried with a vote of 5-0.

APPEAL #18-32 An appeal submitted by Phillip J. Miltenberger requesting a Developmental Variance for **450 East Eighteenth Street** to permit a 1,500 sqft, 18' tall accessory structure.

Phillip Miltenberger, 450 E. Eighteenth Street, said he recently purchased the house and would like to put a large garage in the back; his lot is nearly an acre. He said he has a classic car and a friend who needs a place to put a car. Mr. Miltenberger said the garage would also hold his truck and lawn maintenance equipment. He said he has a big lot with plenty of room and wouldn't obstruct any views.

Opposition

Dale Freeman, 445 E. Seventeenth Street, said he doesn't necessarily have a problem with it, but building is more than twice the size is excessive. He said the home is listed as 900 sqft and an access structure twice the size is excessive.

Mr. Freeman said a building that large will be detrimental to property values to neighbors and a 30' X 50' is not in keeping with the zoning ordinance as written.

Rebuttal

Mr. Miltenberger said he neighbor has a detached garage next to his house and is close to what he is asking for. He also said the neighbor across the street has a large building as well and his house is no bigger than his house. Mr. Miltenberger said he isn't asking for more than what they have.

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

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-32 to construct a 30' X 50' (1,500 sqft), 18' tall 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 his storage.*

MOTION: Larry Stillson moved to approve Appeal #18-32. Charles Krueger seconded; motion carried with a vote of 4-1 (Trippel).

APPEAL #18-33 An appeal submitted by Cary and Risa Steinkraus requesting a Developmental Variance for **1430 South Ironwood Drive** to permit a 1,305 sqft, 28' tall accessory structure.

Cary Steinkraus, 1430 S. Ironwood Drive, said he is seeking a variance to put up a building in the back that will house three vehicles and lawn and garden equipment. He said the unique element is requesting useful attic space. He said it becomes inexpensive storage square footage to allow them to store seasonal items they don't get into very often. Mr. Steinkraus said the height would be a maximum of 28'. The actual architectural is closer to 22' 6" and didn't want to get caught and wanted to be safe. Mr. Steinkraus said it is their intent and desire and because of the aesthetic they are seeking to keep as minimal as possible.

Mr. Steinkraus said an additional element is that they are abutting building against the retaining wall and is going to be within 3' of the property line as per zoning requirements. He said at the present time, that property line is a little more than 3' on the backside of the retaining wall and will probably be at least 40" away.

Opposition

Paul Stearns, Associate Pastor of Deer Run Church of Christ, 2730 S. Ironwood Drive, South Bend, said the church owns the adjacent property at 1510 S. Ironwood Drive. He said they are not arguing against the size and want to help facilitate the structure.

Pastor Stearns said they want to make sure there won't be any windows facing their property. He also said there is a question on where the property line actually is and would like the Board to hold off granting approval until their survey is complete. Pastor Stearns said the same company that Mr. Steinkraus had survey his property is coming back to try and determine where the property line actually is. He said he believes the concrete is

actually on their property. Pastor Stearns said he doesn't care if they come up to 3', but don't want it on their property.

Pastor Stearns said they had a "gentleman's agreement" on a piece of property and the survey said it belonged to them. He said they were going to give it to them, but during the building of the retaining wall, which has collapsed once already, it seems it violates the 3' setback. Pastor Stearns also said there are elements underground and want to make sure it's inspected before anyone signs off on it. He also said he isn't sure what documentation is needed from a legal standpoint because elements are on their property. Are they liable?

Pastor Stearns said they aren't asking them to rip down the wall, but want to make sure they are protected (he showed photos of the wall during construction, collapsed wall, elements on their property). He again asked the Board to table the request until his survey is complete and take a look where the structure will be built.

Mr. Stillson asked Pastor Stearns what he was specifically asking for. Pastor Stearns said he is asking the Board to hold off on making a decision until his survey is complete next week.

Mr. Krueger asked if he was questioning the stability of the wall. Pastor Stearns said there is a concern as it has collapsed once already.

Rebuttal

Mr. Steinkraus said working on the "gentleman's agreement" he made plans and actually invited Bo Hundt, Building Inspector, to take a look at what was in progress and he said he didn't need a permit for the wall.

Mr. Steinkraus said yes, they experienced a collapse as the excavator put in loose fill and it fell over. He said he rebuilt the wall and followed a recommended architectural process this time and has proven to be stable during recent downpours. Mr. Steinkraus also said they put in what's known as a "dead man" in the wall and it projects about 6' underground and it put in an element of stability. As far as stability goes, without an engineering inspection, he's certain they have stood the test with the rain. The wall hasn't moved.

Mr. Steinkraus said the property does present some ambiguity as the two neighbors, 1430 and 1510, conspired to put in a swimming pool (prior to him purchasing the property) and that property was surveyed behind the poolhouse incorrectly before Ironwood was widened and there is a discrepancy and pins were set and he's been paying for the property. Mr. Steinkraus said the reality of the agreement is Deer Run benefits by allowing them to have additional portion of lands which was the location of the poolhouse and in exchange not to contest the rear pin. That agreement, and Bo saying he didn't have to have a permit for the slab he poured concrete in anticipation of the garage and that's kind of a sketch of the history of the property.

Mr. McCampbell closed the Public Hearing on Appeal #18-33.

Mr. Trippel asked if work had been done without permits. Mr. Prince said Bo inspected the wall and landscaping/retaining walls do not require permits and right now, permits are not required.

Mr. Trippel asked if it was a structural wall. Mr. Prince said it's a landscape wall. He said his point being when they get to a certain height, it gets structural and it sounds like the issues have been fixed.

Mr. Trippel asked if the wall has been built. Mr. Prince said it is not part of the structure and is not part of the appeal as they are not attaching the garage to the wall.

Mr. Prince also said the property line issue is irrelevant to this request. He said Mr. Steinkraus is required to keep 3' from the property line and if he puts it in the wrong place, he could have to move it. Mr. Prince said where that line is is up to where the surveyor finds it.

Mr. Stillson asked if this variance is approved, are we not validating the "gentleman's agreement." Mr. Prince said they may disagree even after the survey is done and it is not this Board's role to determine where that line may or may not be and any liability by not getting it right could be significant.

Staff Recommendation

*The Staff recommends **approval** of Appeal #18-33 to construct a 29' X 45' (1,305 sqft), 28' tall 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 his storage.*

MOTION: Charles Krueger moved to approve Appeal #18-33. Larry Stillson seconded; motion carried with a vote of 4-1 (Trippel).

ADJOURNMENT: 6:38 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner