

FEBRUARY 12, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, February 12, 2019, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Chris Tordi, Charles Trippel, Marcia Wells, and Larry Stillson. Absent: Charles Krueger. 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. Trippel explained the Rules of Procedure.

The Minutes of the January 8, 2019, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #19-01 Variance for **1208 South Taylor Street** to allow a 4' 6" fence with a 0' front and exterior side yard setback.

Helen Corey, 1208 S. Taylor Street, said she would like a 4' 6" fence. She said she isn't knowledgeable about ordinances and regulations.

Justin Kizer, 1208 S. Taylor Street, said they were asking for the fence because they have a large dog. He's very friendly. He said Helen has a heart condition and going out with the dog on a leash is tiresome for her and a fence would help greatly. Mr. Kizer said their yard isn't big. He said Councilman Emmons talked to him about some of his concerns.

Mr. Kizer said they would have the fence set back 2' from the property line and not the 0' as requested. He said on Thirteenth Street, it would be 16' from the street which will not create any visibility obstructions. Mr. Kizer said along Taylor Street, the fence would be 8' from the street and the only driveway that might be obstructed would be theirs, but he did check and it doesn't create any visibility issues. He said there will also be a 10' notch at the corner.

Mr. Kizer said the fence would be black and there's the ability to get it in white, but he would have to look into it.

Opposition

Carol Battersby, 808 W. Thirteenth Street, asked what the fence material would be and what was the purpose of the setbacks. Mr. Prince said when the ordinance was established in the 1960's it stated fences in the front yard needed to be not more than 4' in height and open with a maximum of 7' solid fence allowed behind the house. He said they are exceeding the maximum fence height by 6".

Ms. Battersby said she isn't sure that answered the question. Mr. Prince said the 12' 6" exterior side setback is the requirement for the higher fence.

Mr. Trippel wanted to make sure we change the setback from 0' to 2'.

Mr. Trippel closed the Public Hearing on Appeal #19-01.

Staff Recommendation

*The Staff recommends **approval** of Appeal #19-01 to install a 4' 6" aluminum picket fence in the front and exterior side yards with a 0' 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 fence is only 6" higher than what code allows; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the increased height is minimal and installing the fence with a 12' 6" setback would result in substantial loss in use of the yard.*

MOTION: Chris Tordi moved to approve Appeal #19-01. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #19-02 An appeal submitted by Vision Properties, LLP, requesting a Developmental Variance for **312 South Main Street** to a reduction in rear and side yard pavement setbacks.

The Appellant requested the item be continued to the March 12, 2019, meeting. The Board unanimously approved the request.

APPEAL #19-03 An appeal submitted by the Diocese of Fort Wayne – South Bend, Inc., requesting a Use Variance for **1316 West Dragon Trail** to allow for an outpatient day treatment center for autism.

Josh Smith, 3226 Brunswick Square, Mishawaka, along with Leanne Suarez, with Journey's Behavior Learning Center and they serve children with autism.

Mr. Smith said they are requesting a Use Variance for the building on Marian's campus as it is zoned single family residential. He said the building was built to provide commercial medical offices and has the appropriate life safety devices. No medical procedures will be provided; only day-based services.

Ms. Suarez said their hours of operation would be the same as Marion's.

Mr. Trippel asked how many children will be in attendance. Mr. Smith said a maximum of 40 students and 40 employees. He said there are enough parking spaces in the Marian senior lot and they can park there.

Mr. Tordi said the lot seems to be very busy and have you asked Marian about liability about drop off and pick up. Mr. Smith said yes, and they have coordinated with the principal with Marian and if there are problems they can change their schedule if necessary. He said their pick up is after regular school hours.

Mr. Tordi asked about the "life safety devices." He said going from R-1 to ABA therapy clinic doors. Will there be locks on doors and have they been inspected? Mr. Smith said they have had a first inspection from the Fire Marshall and they have several items to work through and will get them worked out. He said a monitoring system will be added as well.

Mr. Tordi asked what age they service. Ms. Suarez said 2-18 with most children around the 2-8 year old range.

Mr. Tordi asked what keeps them in the building. Mr. Smith said it's one-on-one therapy all the time by certified and trained staff.

Mr. Tordi asked how the 40 kids are being served today. Mr. Smith said they were being served by a clinic in South Bend that closed.

In Favor

Connie Johnson, 1719 Panama, said she has a nephew with autism. She thinks it's a great program to help children that don't have any place else to go.

Mr. Tordi closed the Public Hearing on Appeal #19-03.

Mr. Prince said the change of occupancy is what requires the building and fire departments to make sure the building is up to code. He said it's a school complex and the proposed use is in like kind with the school.

Staff Recommendation

The Staff recommends in favor of Appeal 19-03, a Use Variance to allow Journey's Behavior Learning Center, an outpatient day treatment center providing Applied Behavior Analysis ("ABA") programs for children and adolescents diagnosed with Autism, at 1316 W Dragoon (within the Marian High School campus).

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 than the existing school. This is one building on a large (35+ acre) 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 most of the property surrounding this building is part of the Marian High School campus.*
- 3. The need for a variance arises from identifying the highest and best use for a building that was constructed appropriately for such counseling services, but not zoned for such. There is adequate parking and life safety devices.*

4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the building is available for use, but rezoning the entire property would not be the highest and best use for the school.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this area as open space, with one of the uses being schools, and this use is compatible with the school. The approval is consistent with the goals and objectives of the Comprehensive Plan.*

MOTION: Marcia Wells moved to forward Appeal #19-03 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 4-0.

NEW BUSINESS:

Mr. Prince invited everyone to join us after the Plan Commission meeting to honor Don McCampbell.

ADJOURNMENT: 6:20 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner