

**MAY 14, 2019**

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 14, 2019, at 6:00 p.m., in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Charles Trippel, Marcia Wells, and Larry Stillson. Absent: Chris Tordi. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Derek Spier, and Kari Myers.

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Mr. Trippel explained the Rules of Procedure.

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The Minutes of the April 9, 2019, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #19-12**

An appeal submitted by Jason Garcia requesting a Developmental Variance for **606 Berlin Street** to permit a deck with a front building setback of 5'. *Continued from the April 9, 2019, meeting.*

Jason Garcia, 606 Berlin Street, said the ramp along the alley has been removed and needed a certain clearance for the front porch. He said the ramp has been put on the back of the house.

Mr. Trippel asked who is they. Mr. Garcia said the workers.

Mr. Trippel asked if he owned the property. Mr. Garcia said he's purchasing the home on land contract and the owner lives elsewhere. He's buying it through a friend.

Mr. Trippel closed the Public Hearing on Appeal #19-12.

Mr. Prince said the ramp was encroaching into the alley and the variance is for the setback for the front porch. He said it fits well within the neighborhood.

**Staff Recommendation**

*Staff recommends approval of Appeal #19-12 to allow the 5' 6" X 32' front porch with a 5' (approximate) front building setback to remain. 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 were 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 requested setback is*

*not substantial and is fairly consistent with 516 Berlin (north) and 607 Berlin (across the street) in the neighborhood;*

- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the covered porch will increase the safety and accessibility to the home's main entrance.*

**MOTION:** Larry Stillson moved to approve Appeal #19-12. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #19-13** An appeal submitted by the Humane Society of St. Joseph County requesting a Use Variance for **2506 Grape Road** to permit a 175' monopole communication broadcasting tower (cell tower). *Continued from the April 9, 2019, meeting.*

Andy Fitz, Mastec Network Solutions, 1351 E. Irving Park Road, Itasca, IL, appeared on behalf of the Humane Society and ATT. He said he is representing AT&T to allow a telecommunications facility on Humane Society-owned property. Mr. Fitz said they have been working with staff over the past few months to identify a suitable location as AT&T has determined a need for a new tower due to a hole in the coverage in the vicinity.

Mr. Fitz said Mastec Network Solutions finds suitable locations within the AT&T search ring. He said there were other candidates, but were unsuitable or not viable.

Mr. Fitz said a previous request before the Board was north of the main building. He said the tower was approved, but never constructed. Mr. Fitz said he's been working with staff and they relocated the tower to the south side and putting it farther away from residences. He said they will also put in a double row of evergreens to shield from the road.

Mr. Fitz said AT&T feels it would benefit the community and Humane Society with the revenue and it's important to note that over 50% of households do not use landlines. Wireless has become a vital piece of infrastructure such as power and electric lines, water, and sewer. It's now considered an essential service.

Mr. Krueger asked if he was aware of the conditions of approval. Mr. Fitz said yes and agree to them.

Mr. Trippel closed the Public Hearing on Appeal #19-13.

Mr. Prince read Letters of Remonstrance from Matt Heidet, 233 Imus Drive, and Donald and Marcia Fuller, 227 Imus Drive.

Mr. Prince also noted the previously approved cell tower was located on the east side of the property and north the north side.

### **Staff Recommendation**

*The staff recommends in favor Appeal 19-13 to allow for the installation of a communications tower and radio building subject to the following conditions:*

- 1) The monopole tower shall not exceed more than 180-feet in height (does not include height of attached lighting rod).*
- 2) An opaque fence of no higher that 8-foot will be allowed around the base of the tower and equipment building.*

- 3) *An Administrative Site Plan shall be submitted for the property. The site plan shall be consistent with the schematic site plan submitted.*
- 4) *A double row of evergreens shall be planted between Grape Road and the fenced compound and shown on the Administrative site plan.*
- 5) *The entire access drive shall be paved. This includes the approximately 10' between the existing paved drive and the leased compound area. The access shall utilize an existing curb cut of the Humane society. A storm water management system shall be provided for all new impervious surface area.*
- 6) *The monopole tower shall not be located any closer to Grape Road than the existing Humane Society main building to the north. This will require the tower be offset on the east side of the proposed compound area.*

*This recommendation is based upon the following findings of fact:*

1. *The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the property on which the tower is to be located is almost 5 acres, and the tower is located the furthest from the single family homes in the area, using the building as buffer. The proposed tower is also located adjacent to existing commercial and industrial areas to the south, east, and west and will be constructed and managed according to all regulatory codes.*
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 area is primarily surrounded by commercial development; and there is a sufficient distance between where the tower is sited on the petitioner's property and the residential properties to the north.*
3. *The need for the variance arises from some condition peculiar to the property involved in that the geographic position and the open nature of the property all make it ideally suited for a communications tower.*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because cell towers are only allowed in industrial zoned properties. The use of cellular phones and technology have rapidly increased in the past few years and created a higher demand for better cellular coverage for users. The location of properties zoned heavy industrial within the City requires that sites be evaluated on a case by case basis relative to the context of a specific location.*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan. Although the Comprehensive Plan identifies this property for General Commercial, the Comprehensive Plan will not be substantially interfered with because of the limited use of the property and the specific hardships/development characteristics of the site associated with the request.*

**MOTION:** Charles Krueger moved to forward Appeal #19-13 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 4-0.

**APPEAL #19-14** An appeal submitted by Gary D. Bryer requesting a Developmental Variance for **901 Burdette Street** to permit a handicap accessible ramp with a 0' exterior side yard setback.

Adam Miller, 59474 Cottonwood Ct., Mishawaka, appeared on behalf of Mr. Bryer. He said the ramp is located within the fenced in back yard. Mr. Miller said the house is located within the required setback and any access would require a variance.

Mr. Prince read a Letter of Support from John Kudelka agent for 922 Burdette Street property owner.

Mr. Trippel closed the Public Hearing on Appeal #19-14.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #19-14 to allow a handicap access ramp with a 0' 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;*
- 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 ramp is modest in size and located within the Appellant's fenced back yard; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.*

**MOTION:** Larry Stillson moved to approve Appeal #19-14. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #19-15** An appeal submitted by Roth Property Solutions, LLC, requesting a Developmental Variance for vacant land at the northwest corner of South Elder Street and Norton Court to permit a landscape barrier of trees instead of a fence.

No one appeared to present the appeal. The Board unanimously approved the item being continued to the June 11, 2019, meeting.

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**APPEAL #19-16** An appeal submitted by Jimmy Gosa requesting a Developmental Variance for **112 East Eleventh Street** to permit a handicap accessible ramp with a 0' front yard setback.

No one appeared to present the appeal. The Board unanimously approved the item being continued to the June 11, 2019, meeting.

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**APPEAL #19-17** An appeal submitted by Shannon P. and Kelli M. Eversole requesting a Developmental Variance for **1643 South West Street** to permit a 936 sqft, 20' tall accessory structure.

Kelli Eversole, 1643 S. West Street, said they have built a new home and want to build a detached garage that will look like the new home.

**In Favor**

Vic Kasznia, 4012 Harrison Court, Mishawaka, said he used to live a few doors down from the Eversole's and have watched them make improvements to their property. He said it has been a positive effect on the neighborhood.

Melissa Jackson, 1626 S. West Street, said they have been great neighbors. She said she wanted to have clarification as to the height and to make sure not intended for commercial purposes or living quarters.

Mr. Prince read a Letter of Support from Sam Watson, 506 Autumn Court.

**Rebuttal**

Mrs. Eversole said it will not be higher than the house and will only be used for storage for 3 vehicles.

Mr. Trippel closed the Public Hearing on Appeal #19-17.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #19-17 to build at 936 square foot (36' x 26'), 20' high 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 lot is large enough for multiple accessory buildings and the design will match the existing house; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because building more than one garage would be more expensive and look cluttered.*

**MOTION:** Larry Stillson moved to approve Appeal #19-17. Marcia Wells seconded; motion carried with a vote of 4-0.

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**APPEAL #19-18** An appeal submitted by Don A. and Carol C. Vellucci requesting a Developmental Variance for **1402 Milburn Boulevard** to permit a 6' solid fence with a 1' exterior side yard setback.

Don Vellucci, 1402 Milburn Boulevard, said they are placing the 4' chain link fence with a vinyl fence and add 22' of vinyl fence along the east side of the house. He said he has the recommendation about cutting off the corner and he understands that. Mr. Vellucci asked if he were to get a vinyl fence that you could see through would he take it to the corner.

Mr. Prince said staff's concern was visibility, and if it were open, it would be acceptable. He said it would need to be 75% open and chain link would be ok. Mr. Prince said we are just asking for the 8' corner cut.

Mr. Trippel closed the Public Hearing on Appeal #19-18.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #19-18 to install a 6' privacy in the exterior side yard with a 1' 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; 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:** Marcia Wells moved to approve Appeal #19-18. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #19-19**

An appeal submitted by Steve Stacy requesting a Developmental Variance for **302 East Russ Avenue** to permit a canopy to cover outdoor seating with a 0' front yard setback.

Jacqueline Beal with Custom Awning, 320 Oregon Avenue, Osceola, said they have proposed a metal canopy to replace the two temporary units that are there now. She said it's just an overhead canopy, 10' X 29'. It will be within a few feet of the sidewalk.

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

**Staff Recommendation**

*The Staff recommends **approval** of the setback 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 awning will be aesthetically pleasing as an extension of the dining area;*
- 3. Strict application of the terms of the Zoning Ordinance will result in practical difficulty because the building already encroaches into the front yard setback, so any addition would require a variance.*

**MOTION:** Charles Krueger moved to approve Appeal #19-18. Larry Stillson seconded; motion carried with a vote of 4-0.

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**APPEAL #19-20** An appeal submitted by Greg V. Wellman requesting a Developmental Variance for **127 Prairie Avenue** to permit an accessory structure 21' 7" in height.

Greg Wellman, 127 Prairie Avenue, said he is going to build a two-story garage for storage. He said anything he does on the property would be an improvement. He said it would serve as storage for household items and for vehicles.

Mr. Trippel closed the Public Hearing on Appeal #19-20.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #19-20 to construct a 21' 7" 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 garage will meet all required setbacks and represents an investment in the neighborhood; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the limited height requirement of accessory structures would not supply sufficient space for storage and protection of vehicles and valuables.*

**MOTION:** Larry Stillson moved to approve Appeal #19-20. Marcia Wells seconded; motion carried with a vote of 4-0.

**APPEAL #19-21** An appeal submitted by Renee E. Langdon requesting a Developmental Variance for **805 West Twelfth Street** to permit 5' picket fence with a 0' exterior side yard setback.

Phyllis DeVorkin, realtor with Berkshire Hathaway, appeared on behalf of Renee Langdon. Ms. DeVorkin said Ms. Langdon has built a new home at Taylor and 12<sup>th</sup> Streets and would like a fence. She said Ms. Langdon was originally going to put up a different fence, but will now be a vinyl coated back chain link fence. Ms. DeVorkin said Ms. Langdon has several dogs and would like the 5' height vs. the allowed 4'.

Ms. DeVorkin said due to some utilities, she will be moving the fence closer to the house.

Mr. Trippel closed the Public Hearing on Appeal #19-21.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #19-21 to install a 5' aluminum picket fence in the exterior side yard 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 meets the 75% visibility requirement and is 1' 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. Reducing the height of the fence creates a safety concern for the Appellant and her dog.*

**MOTION:** Larry Stillson moved to approve Appeal #19-21. Marcia Wells seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:32 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner