

OCTOBER 8, 2019

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, October 8, 2019, at 6:05 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Chris Tordi, Charles Trippel, Marcia Wells, and Larry Stillson. 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 September 10, 2019, meeting, were approved as distributed.

---

Conflict of Interest was not declared.

---

**PUBLIC HEARING:**

**APPEAL #19-41** An appeal submitted by Raymond M. Jaziorski requesting a Developmental Variance for **107 Wayne Street** to allow an 8' rear yard setback for a building addition.

Raymond Jaziorski, 107 Wayne Street, said he wants to add 2 bedrooms on the back of the house to make it bigger. He said the house only has 1 bedroom.

Mr. Tordi asked if he had started construction. Mr. Jaziorski said no, he was waiting on the meeting.

Mr. Trippel closed the Public Hearing on Appeal #19-41.

**Staff Recommendation**

*Staff recommends approval of Appeal #19-41 to allow the construction of an addition to the rear of the home with an 8' rear 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 addition represents an investment 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 home has rear setback of approximately 20' and the Appellant will not be able to make the necessary improvements without the variance.*

**MOTION:** Chris Tordi moved to approve Appeal #19-41. Charles Krueger seconded; motion carried with a vote of 5-0.

---

**APPEAL #19-42** An appeal submitted by Craig Plotts requesting a Developmental Variance for **702 East Eighth Street** to allow a 6' privacy fence with a 0' exterior side yard setback.

Craig Plotts, 702 E. Eighth Street, said he's on a corner lot and wants to put the fence up to the sidewalk. He said there was a chain link fence on the line and it rotting and had weeds, so he put up a nice privacy

fence. Mr. Plotts said the issue is coming out of the alley coming out of his house and you can't see the sidewalk.

Mr. Plotts said the fence is up, 85' long. He is proposing to move it 5' back and if he moves the whole fence, he would have to reset the posts. He is willing to put in a corner cut and he feels it would alleviate the issue.

Mr. Stillson asked if he got a permit to put up the fence. Mr. Plotts said no, and it's his fault; he knows it was wrong and figured since he was using the existing posts it would be ok. He admitted he should have gotten permission.

Mr. Tordi said one of the things we look at is staff recommendations and they recommend denial due to public safety and concerns. He said the proposal is for a corner cut and staff is recommending 6' setback all the way back. Mr. Plotts said he can bring it back farther and if that's what the Board recommends, he will get it done, but he thinks the 8' corner cut is enough.

Mr. Tordi said he is worried about setting a precedent about rules for such things as this. Mr. Prince said it would set a precedent for a non-open fence along Laurel and we don't want to see a wall and it's established that way. He said we try to keep our recommendations as minimal as possible and our opinion of this is that a 6' setback would accomplish this. He said he understands that it means pulling up the fence, but it's a two-fold issue.

Mr. Stillson said another issue is that you are proposing changes as we are sitting here. Mr. Plotts said not necessarily. He proposed a 5' cut out. He'll pull the whole fence back if necessary.

Mr. Prince read a letter of support from Diana Hampton, 710 Laurel Street.

### **Opposition**

Ben Vanator, 720 E. Eighth Street, said he pulls out of the alley every morning and evening and his truck actually has to sit in the street to see. He said he also went down to the other end and truck also has to sit in Laurel Street to see past the fence and thinks if he moves it back 6' it should be ok. Mr. Vanator said he's had 2 incidences with kids and you should have visibility both ways and not look around a brick wall.

Mr. Vanator also said snow removal will be a problem as well as the fence sits right on the sidewalk. He said he doesn't make any difference to him if the city wants to fight with the owner, but there's going to be an accident.

### **Rebuttal**

Mr. Plotts said there was a corner cut on the chain link fence. He also said he has no problem bringing it back if the Board so decides.

Mr. Tordi asked Ken that this seems to him that this is a request to allow the fence and he asked if you can change the setback to 6'. Mr. Prince said typically what we do in this case, they've applied for 0' setback and the request can be modified to be less than that, but not more. We have allowed requests to be modified on the floor and that's what this process is for. He is not asked for anything more. For instance, if he had requested 6' and changed his mind to 4', that would require going through the process from the beginning.

Mr. Prince also said we cannot put a condition on the period of time and we will work with Mr. Plotts on the timing. He said the normal timeframe would 30-45 days, but we want the immediate safety concern addressed first.

Mr. Trippel closed the Public Hearing on Appeal 19-42.

## Staff Recommendation

Staff recommends **denial** of Appeal 19-42 to allow the construction of 6' privacy fence with a 0' setback along Laurel with a 5' corner cut. 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 it blocks vision when pulling out of the alley. The solid fence is a functional wall adjacent to the sidewalk that further limits the usability of the sidewalk when compared to a lower open fence which is permitted by right. The fence is out of character with other fences constructed along Laurel Street.
2. The use and value of the area adjacent to the property included in the 0' with 5' corner cut variance will be affected in a substantially adverse manner because the fence is currently blocking sight distance from the alley onto Laurel Street; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing the fence at the required 12.5' setback would result in the loss of usable yard space, but also of those exiting the alley and using the sidewalk on Laurel Street

Staff therefore recommends **approval** to allow a 6' privacy fence with a 6' exterior side yard setback.

1. Approval will be injurious to the public health, safety, morals and general welfare of the community because it blocks vision when pulling out of the alley.
2. The use and value of the area adjacent to the property included in the 0' with 5' corner cut variance will not be affected in a substantially adverse manner if the fence is moved back to 6', which will mimic the situation of other fences (and houses) along Laurel; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing the fence at the required 12.5' setback would result in the loss of usable yard space. Staff's recommendation hopes to balance the loss of the yard with safety of those using the alley and passing by on Laurel Street.

**MOTION:** Larry Stillson moved to deny Appeal 19-42 as submitted, but moved to approve a 6' exterior side yard setback. Marcia Wells seconded; motion carried.

---

**APPEAL #19-43** An appeal submitted by Donald Roy and Lindy Sue Odell requesting a Developmental Variance for **125 Timberwood Court** to allow a 5' rear yard setback for a building addition.

Scott, American Sunspace, 30012 County Road 10 W, Elkhart, IN, said the homeowners would like to add a sunroom with 5' rear setback. He also said most everything done in that area has required a variance.

Mr. Prince read a letter of support from Joyce Wroblewski, 2733 N. Main Street.

Mr. Trippel closed the Public Hearing on Appeal #19-43.

## Staff Recommendation

The Staff recommends **approval** of Appeal #19-43 to construct a sunroom at the rear of the home resulting in a 5' rear 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 sunroom, a common home upgrade, will be aesthetically pleasing 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 Appellants' home has an existing rear-building setback of 15' and would not permit any addition without a variance.*

**MOTION:** Larry Stillson moved to approve Appeal #19-43. Chris Tordi seconded; motion carried with a vote of 5-0.

---

**APPEAL #19-44** An appeal submitted by Diocese of Fort-Wayne South Bend requesting a Sign Variance for **1311 South Logan Street (Marian High School)** for the replacement of two monument signs, one new building sign, and multiple internal directory signs.

Doug Merritt, 2319 Lincolnway East, Mishawaka, appeared on behalf of Marian High School as well as Principal Mark Kirzeder. He said they are requesting approval of a comprehensive sign plan for the campus including the sports complex.

Mr. Tordi said these new signs are way overdue.

Mr. Prince said we aren't in opposition, but the sign at the athletic field is not part of the request. Mr. Trippel closed the Public Hearing on Appeal #19-44.

#### **Staff Recommendation**

*The Staff recommends **approval** of the variance for the sign package as presented. 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 improvements are meant to update the high school. For example, the sign will allow for a changing message, which is not an option with the current signage. Also, the directional signs will help guide visitors around the large, 35 acre campus;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because there is no signage allowed for schools in the R-1 District. Two existing signs are being upgraded, and the new signs are meant to identify the school, athletic fields, and other operations on campus.*

**MOTION:** Chris Tordi moved to approve Appeal #19-44. Marcia Wells seconded; motion carried with a vote of 5-0.

---

**APPEAL #19-45** An appeal submitted by Dennis R. and Lucille Smethers and Shawn and Ragen Carlton requesting a Development Variance for **621 and 613 Bay View Drive** to allow an 8' rear yard setback for a privacy fence on a through lot.

Shawn Carlton, 621 Bay View Drive, said he bought the house a month ago and wanted to put up a fence in the back yard and they have double frontage. He said the neighbor had applied for a variance for 10' setback and if he did that it would put it through some mature trees.

Mr. Trippel closed the Public Hearing on Appeal #19-45.

**Staff Recommendation**

Staff recommends **approval** of Appeal #19-45 to allow a fence with an 8' front yard setback on a through lot. 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 will actually be approximately 16' from the edge of pavement, even with other similar fences in the area; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the lot is a through lot with two front yard setbacks.

**MOTION:** Marcia Wells moved to approve Appeal #19-45. Larry Stillson seconded; motion carried with a vote of 5-0.

**APPEAL #19-46** An appeal submitted by Jennifer Anderson requesting a Developmental Variance for **2729 North Main Street** to allow a 15' rear yard setback for an attached garage.

Cindy with First Response, South Bend, said they are repairing Ms. Anderson's home due to a fire and she is asking for a variance as they are moving the garage.

Mr. Prince read letters of support from Joyce Wroblewski, 2733 N. Main Street, and Elizabeth Hemenway, 114 Timberwood Court.

Mr. Trippel closed the Public Hearing on Appeal #19-46.

**Staff Recommendation**

Staff recommends approval of Appeal #19-46 to allow the construction of an attached garage with a 15' rear 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 this is replacing a garage damaged by fire, and the addition represents an investment 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 garage could not be expanded to the south due to the County regulated drain easement.

**MOTION:** Charles Krueger moved to approve Appeal #19-46. Marcia Wells seconded; motion carried with a vote of 5-0.

**APPEAL #19-47** An appeal submitted by James and Julie Schmidt requesting a Use Variance for **623 East Fourth Street** to allow tailoring and alterations in the small detached building (formerly beauty salon).

Matt Vukovich, 4000 E. Bristol Street, Elkhart, said he is the land contract holder and the tailor proposing to use the property is also in attendance.

Mr. Vukovich said he purchased the property on land contract almost two years ago and at the time, the salon had 2 people working there. He is attempting to fill the property, but with no luck and not having

the property filled they are losing money. Fritz, a tailor, is looking to move in. He said Fritz will tailor and repair clothing and have some suits for sale that he designed. Mr. Vukovich said the shop will have normal business hours and Saturday 9-2.

Mr. Trippel asked if he owned all 3 parcels. Mr. Vukovich said he owns the property next door and the house. Utilities are on one bill.

Mr. Prince said they changed the staff report that identified a condition for one building sign no larger than 10 sqft because it is a residential property.

Mr. Vukovich said one sign in the window or on the property. Mr. Prince said as you would determine.

### **Opposition**

Rebecca, 621 E. Fourth Street, said the building has been vacant for quite a while. She said when the building was open the original owner had clients coming non-stop and they would take up all the parking. Rebecca said she realizes it's a public street, but there's a handicap space that isn't being used by anyone.

Rebecca said she was under the impression that if the building ever sold, it would have to be torn down and she is in opposition of this.

Mr. Krueger asked what kind of business the previous owner had. She said it was a hair salon.

Mr. Krueger asked if this would be different. She said back in the 50's it was a pet store.

George Klingerman, 626 E. Fourth Street, said he lives directly across the street. He said when there's a business there, it bothers everyone's parking; you can't park anywhere. He also said he owns a small business and understands what it's like to get business. Mr. Klingerman said he has a truck and trailer and has no place to park and many do not have driveways.

Mr. Klingerman said everyone knows each other and keeps an eye on one another. He said there are times when he has to park one street over. He said the handicap parking space was approximately 15' long and they repainted it and extended it another 10'. He said there was never anyone there as a customer that used that spot.

Mr. Stillson asked Mr. Klingerman if he had a truck and trailer he parked on the street. Mr. Klingerman said yes he does.

### **Rebuttal**

Mr. Vukovich said he understands where the folks are coming from. He said that's even more reason to switch use to a tailor as people are dropping off and picking up items.

Fritz, the tailor, said someone will bring in clothes and he will fix them and they'll come back later to pick them up. He said some stuff he'll be selling, but not like a Walmart, mostly clothing he designs and some stuff he'll buy. He said they will be different style, classy clothes and he doesn't think it will bring in a lot of traffic.

Mr. Stillson asked if he would be doing retail? Fritz said yes.

Mr. Stillson asked if it would be business with stores off-site. Fritz said no, not stuff like that and he would start with small things.

Mr. Krueger asked if he would be willing to remove the handicap parking spot in front of the business. Mr. Vukovich said he doesn't know how that works.

Mr. Prince said normally the property owner petitions the Engineering Department. He said we can have them evaluate it on your verbal request and we can probably eliminate it.

Rebecca, 621 E. Fourth Street, said she's concerned about people coming into the neighborhood. She said if he's retail, then he's more than a tailor. They don't want people lingering in the neighborhood.

Mr. Klingerman said this is a residential area and shouldn't have been there since the beginning. He said he doesn't think there should be a business across the street from his home. He said he's sorry, but this isn't a commercial neighborhood.

**Additional Rebuttal**

Mr. Vukovich said in closing, he's a tailor doing alterations. He said some high end suits that folks can look at, but won't be a retail store where people will be coming to.

Mr. Prince said the grandfathering, per the ordinance, when you vacate the building for a period of time, in this case, it's R-1 and we can't make them tear down the business. Because it is R-1 it would come back before the board to evaluate. He said it is a very low intensity use that's why staff is recommending approval.

Mr. Trippel closed the Public Hearing on Appeal #19-47.

**Staff Recommendation**

*The Planning Staff recommends approval of Appeal 19-47 to allow a use variance for a tailor/alternation shop in the R-1 Single Family Residential District at 623 E Fourth St, including one building sign no larger than 10 square feet. 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 as a similarly low intensity business 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 building can only be used as a two-chair beauty shop;*
- 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 has been used as a business since at least 1977 and does not meet the definition of a single-family dwelling;*
- 5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.*

**MOTION:** Larry Stillson moved for forward Appeal #19-47 to the Common Council with a favorable recommendation. Marcia Wells seconded; motion carried with a vote of 4-1.

**ADJOURNMENT:** 6:55 p.m.

---

Kenneth B. Prince, City Planner

---

Kari Myers, Administrative Planner