

MAY 12, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 12, 2020, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Chris Tordi, Marcia Wells, Larry Stillson, and Joel Dendiu. Absent: Charles Krueger. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Derek Spier, Christa Hill, and Kari Myers.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the March 10, 2020, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #20-07 An appeal submitted by Benjamin and Lora Galacia requesting a Developmental Variance for **222 East Eleventh Street** to allow a front porch landing with handicap mechanical lift with a 2' front building setback.

Benjamin Galacia, 222 E. Eleventh Street, said he would like to put a deck in front of the house and put a lift to the side so his wife, who has MS, can enter and exit the home. He said this will be done instead of a 20' long ramp. The lift will raise her up to the deck so she can enter safely.

Mrs. Wells closed the Public Hearing on Appeal #20-07.

Staff Recommendation

Staff recommends **approval** of Appeal #20-07 to allow a handicap mechanical lift with a 2' front 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 landing over front steps and lift are modest in size 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 #20-07. Chris Tordi seconded; motion carried with a vote of 4-0.

APPEAL #20-08 An appeal submitted by Rousseve Properties LLC requesting various Developmental Variances for **305 and 305 Bittersweet Road** for pavement setbacks and landscaping between lots.

Stephanie Floyd, Progressive Engineering, 38650 SR 15, Goshen, represented Rousseve Properties. She said her client was pursuing a minor subdivision in order to sell half of the property and it was determined that part of the property didn't comply with the setbacks. Ms. Floyd said as part of that process, they are asking for the variances so they can continue with the subdivision process.

Mrs. Wells closed the Public Hearing on Appeal #20-08.

Staff Recommendation

Planning Staff recommends approval of Appeal 20-08 to allow a reduction in the required parking (pavement) setbacks and landscaping for two new lots at 305 and 309 Bittersweet Road. 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. The need for the requested variances is solely a direct result of subdividing the property into two (2) new lots. No changes to the existing improvements are proposed.*
- 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. The commercial lots will function in the same manner, but will have separate ownership of the buildings and associated parking areas.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. The zoning ordinance requires that individual lots be separated by pavement setbacks and landscape buffers. The ordinance does not allow the flexibility for separate lots to function as an integral unit.*

MOTION: Chris Tordi moved to approve Appeal #20-08. Larry Stillson seconded; motion carried.

Appeal #20-09 An appeal submitted by RKG Holdings, LLC, requesting a Developmental Variance for **3837 Lincolnway East** for a reduction in landscaping.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of RKG Holdings.

Mr. Lang said in 2014 the property was zoned for a car dealership and in 2016 the operators got into the towing business and they have been upgrading the site as the operation has grown. He said at that time a site plan was submitted for continued development.

Mr. Lang said it was determined a variance was needed for landscaping. He said the owners have improved the property with a new fence around the perimeter. Mr. Lang said there were trees around the back portion of the property and is wooded. The petition is to allow them to use the existing landscaping as required landscaping.

Mrs. Wells closed the Public Hearing on Appeal #20-09.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-09 to reduce the landscaping requirement to existing trees and a 7' foot privacy fence. 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. The fence, a requirement of the 2016 rezoning, will serve as a buffer between the commercial use and neighboring residential uses.*
- 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. Adding the buffering of a fence would help bring the site into compliance.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the depth of the lot, adding landscaping would be a financial hardship and would leave the property in non-compliance.*

MOTION: Larry Stillson moved to approve Appeal #20-09. Joel Dendiu seconded; motion carried with a vote of 4-0.

APPEAL #20-10 An appeal submitted by Artisan Investment Group LLC requesting a Use Variance for **201 Smith Street** to allow three (3) units in R-1 Single Family Residential zoning.

Marlin Schwartz, Artisan Investment Group, 420 N. Main St., Middlebury, IN, said with the requirements for financing sale of the property, it's no in compliance. He said the use of the property will not change as it's been a multi-unit property for as far back as they could research. They need the variance for financing.

Mrs. Wells asked how many parking spaces did the house have. Mr. Schwartz said there were three behind the house and two in front on the street.

Mrs. Wells asked if there were spaces for five cars.

Mr. Prince read a Letter of Remonstrance from Erik Waelchli who owns 819 LWW. Mr. Prince also said that three parking spaces are available in the back and the two in front are on the street and that is a distinction.

Mr. Stillson asked if it was currently a three unit apartment. Mr. Schwartz said yes.

Mr. Stillson asked how many years it had been an apartment. Mr. Schwartz said the Polk Directory all the way back to 1979 and prior to that.

Mr. Stillson asked if the variance was for insurance purposes. Mr. Schwartz said for financing.

Mr. Waelchli speaking via phone said there is ample space in the back yard for additional parking and there is no need for on-street parking.

Mrs. Wells closed the Public Hearing on Appeal #20-10.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-10 to allow three units in R-1 Single Family Residential at 201 Smith Street. 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 nothing is physically changing at the site. This use has been in existence since at least 1979.*
- 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 use of the property is not changing, only being made legal for financial institution purposes.*
- 3. The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.*
- 4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single family home.*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates low density uses for this area.*

MOTION: Larry Stillson moved to forward Appeal #20-10 Use Variance to the Common Council with a favorable recommendation. Joel Dendiu seconded; motion carried with a vote of 4-0.

MOTION: Larry Stillson moved to approve Appeal #20-10 Developmental Variance. Joel Dendiu seconded; motion carried with a vote of 4-0.

APPEAL #20-11 An appeal submitted by Artisan Investment Group LLC requesting a Use Variance for **1210 West Sixth Street** to allow three (3) units in R-1 Single Family Residential zoning.

Marlin Schwartz, Artisan Investment Group, 420 N. Main St., Middlebury, IN, said this request is pretty much identical to the one previous and has the same situation. The zoning doesn't comply with the use and need the variance for financing. He said this house has also been a three-unit apartment for many years.

Mr. Schwartz said the parking behind the house is large enough for 3 cars and there is some on the street in front, but is restricted at certain times of the day. Overnight parking is ok.

Mrs. Wells said a paved parking pad is a condition of approval. Are you in agreement with that? Mr. Schwartz said yes.

Mr. Stillson asked if it would be large enough for five cars. Mr. Schwartz said no, probably four.

Mr. Stillson said there would be one on the street. Mr. Schwartz said he didn't know if it helped, but they own the building directly to the east and have no problem allowing the

tenants to park on that property. He said they just use the building for material overflow and they are welcome to park there.

Mr. Schwartz said in the past year they haven't had any issues with Code Enforcement and have been lucky to have good tenants.

Mrs. Wells closed the Public Hearing on Appeal #20-11.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-11 to allow three units in R-1 Single Family Residential at 201 Smith Street subject to the following condition: A hard surface parking pad shall be provide for 3 marked parking spaces. 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 nothing is physically changing at the site. This use has been in existence since at least 1979.*
- 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 use of the property is not changing, only being made legal for financial institution purposes.*
- 3. The need for the variance arises from some condition peculiar to the property because even though the property has been used this way for over 40 years, the zoning has not matched the use.*
- 4. Strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property because it is unclear if the property could be returned to a single family home.*
- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates low density uses for this area.*

MOTION: Larry Stillson moved to forward Appeal #20-11 to the Common Council with a favorable recommendation. Joel Dendiu seconded; motion carried with a vote of 4-0.

APPEAL #20-12 An appeal submitted by Graham Gates and Olivia Ganser requesting a Developmental Variance for **617 North Webster Street** to allow a privacy fence with a 0' exterior side yard setback.

Graham Gates, 617 N. Webster Street, said they are requesting a variance for a solid fence at their property line. He said that the zoning ordinance requires 12' 6" for a privacy fence, but that doesn't allow for much of a back yard.

Mr. Tordi asked if it was already up. Mr. Gates said no.

In Opposition

Tim Schultz who owns 902 W. Mishawaka Avenue, called in to say he had no problem with the fence, but had an issue with how the notice mailed to him was worded.

Mrs. Wells closed the Public Hearing on Appeal #20-12.

Staff Recommendation

The Staff recommends **approval** of Appeal #20-12 to install a 6' privacy fence with a 0' exterior side yard setback, to be set back 7' from the sidewalk. 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 represents an improvement to their property; 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 yard space.

MOTION: Chris Tordi moved to approve Appeal #20-12. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-13 An appeal submitted by Mark and Debra Kamm requesting a Developmental Variance for **1215 and 1225 East Jefferson Boulevard** to allow for the development of seven (7) starter homes with an 18' front yard setback.

Greg Shearon, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, appeared on behalf of the Appellants. He said they want to rezone the property to R-3 for seven starter homes for veterans and the contingent owner is the VFW.

Mr. Shearon said the homes would be 400-500 sqft each and in order to lay out the homes, as shown, they are asking for some setback variances; 18' in front matching Reggio's Restaurant; 10' rear setback. He said the lot is shallow and would limit the structures.

Mr. Shearon said the third variance is parking setback from 5' to 0' with parking on the east side of the property. He said the contingent owner is the VFW and it makes sense to have parking access from that point.

Mr. Shearon said there is an existing access drive that comes off of Jefferson and instead of making a separate access drive, we'll use that drive and have residents park on the east property line.

Mrs. Wells asked how many parking spaces would they have. Mr. Shearon said 11.

Mr. Stillson asked if there would a legal document that will guarantee the owners of these buildings will have access and the ability to use the VFW parking lot on a continual basis. Mr. Shearon said an easement will be provided.

Mr. Stillson said he would want guaranteed parking. Mr. Shearon said will probably do a subdivision plat and provide an access easement in the plat.

Mrs. Wells asked if a site plan and a plat will be done. Mr. Shearon said yes, after the rezoning is approved.

Mr. Tordi asked where specifically would the parking spaces be. Mr. Shearon showed on the overhead.

Mr. Tordi asked if anything will change on Jefferson. Mr. Shearon said no, we'll probably redo the sidewalk, though. There will be no additional access off of Jefferson.

Mr. Prince said he wanted to clarify what was being requested. He said the property is being rezoned to R-3 and will be held under single ownership and there will be no sale of individual units. He said there would be seven individual units and have requested they plat as one lot and the access to parking area will be included with that plat. Mr. Prince said the parking spots are connected to those units. He said if the VFW sells their property, the parking will go with the units.

Opposition

Mike Klotz, 1226 E. Stanley Street, Mishawaka, said he lives right behind this "trailer park" you want to put in. He said he has been there 40 years. He said Highland Village looks good and now you want to degrade his property value.

Mr. Klotz said the VFW owns property across the street on the corner of Maplehurst; why now build there. He said his brother owns the rest of the lots on Stanley Street. He said he has nothing against veterans, but is definitely against this.

Richard Klotz, 1212 E. Stanley Street, Mishawaka, asked where the parking would be. He also asked how big the lots would be. Mr. Prince said there is no parking proposed off of the alley.

Mr. Klotz asked how much room from the alley to the back of the houses. Mr. Prince said 10'.

Mr. Klotz asked how much room between the houses.

Mr. Shearon said to address the homes, they would not be trailers, but stick-built homes that are around 400-500 sqft, one bedroom with a small kitchen and are meant to be starter homes. He said they will be nicely landscaped, with walks and patio areas. The structures will be spaced 10-12' apart and there will be plenty of room between each. Mr. Shearon said the rear of the home will be garden area.

Mr. Stillson asked about ownership. Mr. Shearon said it would be the VFW.

Mr. Stillson asked if VFW would be in charge of upkeep. Mr. Shearon said yes.

Mr. Tordi asked if property values would be negatively affected as Mr. Klotz indicated he was concerned about. Mr. Prince said this is more of a rezoning issue vs. the variance of the property. The properties are zoned commercial and industrial and the uses that could go there would have a more negative impact than rezoning to residential. That is more for the Plan Commission to decide.

Mrs. Wells asked how many people would live in the house. Mr. Shearon said one.

Mrs. Wells closed the Public Hearing on Appeal #20-13.

Mr. Prince said the concept is of that of an efficiency apartment separate of each other. These are meant to be more like cottages and was presented in that way. He said this is more appealing than an apartment building and creates a better living environment.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-13 to reduce the front, rear, and parking lot setbacks for the new development at 1215 & 1225 E Jefferson. 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. The buildings will not be any closer to Jefferson or the alley than existing or neighboring. Providing access through the VFW lot directly to the east, will not require a new curb cut on Jefferson.*
- 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. This redevelopment is welcomed in of an area with vacant or underutilized buildings. The VFW Post 360 will maintain ownership and maintenance of the property.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Due to the depth of the lot, increasing the setbacks beyond existing buildings would not allow it to be redeveloped. The connection to the VFW Post 360 is a benefit to the development.*

MOTION: Joel Dendiu moved to approve Appeal #20-13. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-14 An appeal submitted by School City of Mishawaka requesting a Sign Variance for **3810 Lincolnway East (Twin Branch Elementary School)** to allow an 8’ tall monument sign with electronic message center.

Steven Tucker, US Signcrafters, 216 Lincolnway East, Osceola, represented School City. He said the high school is zoned residential and the way the ordinance is written, is not entitled to any signage.

Mr. Tucker said they propose to remove the old sign that was hit by a car and replace with a more modern and attractive sign that would have a message center and could provide public messages. He said the brick will match the architecture of the school.

Mrs. Wells closed the Public Hearing on Appeal #20-14.

Staff Recommendation

The Planning Staff recommends approval of Appeal #20-14 to allow the existing freestanding sign be replaced with an 8'2" tall sign with 60 square feet display area and 35 square feet copy area.

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 construction will be completed in accordance with all*

applicable state and local building codes and 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 provide better visibility for the school.*
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. The existing sign is considered non-conforming.*

MOTION: Larry Stillson moved to approve Appeal #20-14. Chris Tordi seconded; motion carried with a vote of 4-0.

APPEAL #20-15 An appeal submitted by Terry and Judy Allen requesting a Developmental Variance for **728 East Sixth Street** to allow a 5' chain link fence with a 0' front setback.

Judy Allen, 728 E. Sixth Street, said their existing fence is kind of dilapidated and felt a chain link fence would be right for them.

Mrs. Allen said the new fence will be on the same line as the old. She said on the east side there is about 18' of privacy fence and the new fence will go there forward, across the front yard and back to the back yard.

Mr. Prince said the existing picket fence is located within the right-of-way and this approval only allows them to come within 10' of the sidewalk. The Board only has the authority to grant approval to come within 10' of the sidewalk.

Mrs. Allen asked if that could be appealed.

Mrs. Wells closed the Public Hearing on Appeal #20-15.

Staff Recommendation

*The Staff recommends **approval** of Appeal #20-15 to install a 5' chain link fence in the front 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 represents an investment in the neighborhood and will require less maintenance than the existing picket and privacy fences; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellants have no back yard to safely secure their dog and property.*

MOTION: Chris Tordi moved to approve Appeal #20-15. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-16 An appeal submitted by Bethel College Inc. requesting Use and Developmental Variances for the **southeast corner of West Lowell Avenue and Clay Street** to allow a shipping container for storage purposes for the training center and for a reduction of parking spaces in connection with a new athletic training center facility.

Matt Lentsch, 121 Wabash Avenue, Mishawaka, VP President of Advancement at Bethel University, appeared on behalf of Bethel.

Mr. Lentsch said they are seeking to build a new training facility at the southeast corner of West Lowell Avenue and Clay Street. He said a final site plan was submitted in conjunction with the request and will be presented later this evening.

Mr. Lentsch said Bethel purchased this property which used to be a trailer park at a cost of approximately \$520,000.00. He said they had to remediate a good bit of the land and they have brought a great value to the neighbors and community. There's been much investment by Bethel.

Mr. Lentsch said they have been a great neighbor to the community and they seek to continue to develop the property.

Mr. Lentsch said the container is south of an existing storage building and east of the facility. The container will be moved to a portion that is less visible than its current location. He said the new building will screen the container to the south. He said staff has requested a row of evergreen trees be planted and the existing trees will be maintained.

Mr. Lentsch said based on the 2 parking spaces per 1,000 sqft of floor area, a total of 49 spaces are required, but because traffic will be foot traffic from campus and not car traffic, and they only need 16 spaces. They'll fix up the shed that's there with new roof and paint.

Mr. Lentsch said they have been in contact with the neighbors and Councilwoman Kate Volker to keep them informed as to what's going on. It's important the University be a good neighbor.

Mrs. Wells asked if the container will be visible. Mr. Lentsch said it will be more hidden where it will be moved to have additional buffering around it.

In Favor

Kate Volker, 834 Lincolnway East, complemented Mr. Lentsch as they have worked hard to meet the needs and requests of the neighbors.

Ms. Volker said they have concerns and in fairness to Bethel, their concerns go back 30 years and they have made substantial investment in the property.

Ms. Volker said, "Am I a fan of the shipping container?" No, but she appreciates the effort to camouflage the container and improve the shed.

Tony Natali, 3941 Rosemont Place, Mishawaka, Athletic Director, said the department is working with Mr. Lentsch and the Advancement Office and it's an opportunity to assure all they will accomplish all what has been shown tonight.

Joe Zappia, 1015 W. Lawrence Street, Mishawaka, Physical Plant Director, said he's in favor of the project and will sure this stays as they have said. It will be a beautiful facility and a good addition to the neighborhood.

Mrs. Wells closed the Public Hearing on Appeal #20-16.

Staff Recommendation

The Planning staff recommends approval of Appeal 20-16 for a Use Variance to allow a shipping container for storage accessory to a proposed athletic training facility and adjacent athletic fields subject to the following conditions:

- 1. A solid row of evergreen trees shall be planted along the east property line adjacent to Lots 30 through 36, and Lot 39 in the Lowell Wood Subdivision. Trees shall be spaced a maximum of 12' apart and a minimum 6-7' in height at the time of planting. Existing trees may also be maintained to meet the screening requirement compliant with the maximum spacing and minimum height requirements. Trees shall not be required adjacent to the existing storage building.*
- 2. Improvements to the existing storage building shall include roof replacement and painting.*

The Planning staff recommends approval of Appeal 20-016 for a Developmental Variance for a reduction in the required number of off-street parking spaces for property located at the southeast corner of W. Lowell Avenue and Clay Street.

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. The shipping container will be moved a portion of the site that is less visible from the adjacent public rights-of-way and neighboring properties than its current location. The existing and proposed building and required row of evergreen trees will screen the container from all directions. Additionally, the proposed number of parking spaces should provide adequate parking. A majority of the facility's users are within walking distance 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. Moving the shipping container east the proposed building and south of an existing accessory building and planting a row of evergreen trees to the east will more adequately screen it from neighboring properties. The parking reduction will not negatively affect the area as parking requirements for the facility are limited.*
- 3. The need for the use variance arises from some condition peculiar to the property in that the zoning ordinance does not permit shipping containers to be used for storage.*
- 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 and result in practical difficulties in the use of the property. The use variance will permit the university to*

continue to use the shipping container for needed storage to support the adjacent athletic fields and proposed new training facility. Requiring additional parking spaces to meet code would unnecessarily consume land and would be seldom occupied. The proposed number of spaces should provide adequate parking.

- 5. The recommendation is consistent, and or, not in conflict with Comprehensive Plan which indicates medium density residential use for this area. The proposed primary use of the property for an athletic training facility is permitted, but does not allow shipping containers to be used as an accessory structure for storage purposes.*

MOTION: Chris Tordi moved to forward Appeal #20-16 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 7:20 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner