

JULY 14, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 14, 2020, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Chris Tordi, Marcia Wells, and Joel Dendiu. Absent: 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.

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Mrs. Wells explained the Rules of Procedure.

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The Minutes of the June 9, 2020, meeting, were approved as distributed.

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Conflict of Interest was not declared.

**PUBLIC HEARING:**

**APPEAL #20-25**

An appeal submitted by Kristy and David Dill requesting a Developmental Variance for **2710 North Main Street** to allow a front porch with a 16' front yard setback.

Kristy Dill, 2710 N. Main Street, said they are requesting a variance for setback for a front porch to cover the steps that were sinking.

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

Mrs. Wells closed the Public Hearing on Appeal #20-25.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #20-25 to allow a front porch addition to be constructed with a 17'5" 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 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 request is modest, generally consistent with the setback of other homes in the neighborhood 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 current front setback does not allow any additional space for safe access, therefore, any addition would not be possible without requesting a variance.*

**MOTION:** Joel Dendiu moved to approve Appeal #20-25. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #20-26**

An appeal submitted by Kevin G. Shepherd requesting a Developmental Variance for **906 Pollitt Court** to allow a solid fence with a 0' rear yard setback.

Kevin Shepherd, 906 Pollitt Court, said he wants to replace a fence that's been there at least 28 years and is in bad shape.

Mr. Dendiu asked if he would be doing the work himself. Mr. Shepherd said no, he will have a contractor install it as it's 122' of fence and a lot of work.

Mr. Krueger asked if the fence would be stained or painted. Mr. Shepherd said he had no plans at this time.

Mrs. Wells closed the Public Hearing on Appeal #20-26.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #20-26 to replace a 6' privacy fence with a 0' rear yard setback along Cedar 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 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 directly to the west across Cedar Street are commercial and industrial businesses, and the residences to the north and south have fencing up to the property line; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellants would only be allowed to erect a fence that is 4' high and 75% open which would not be a barrier to muffle the noise coming from Cedar Street traffic and the commercial businesses to the west of Cedar Street.*

**MOTION:** Chris Tordi moved to approve Appeal #20-26. Joel Dendiu seconded; motion carried with a vote of 4-0.

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**APPEAL #20-27**

An appeal submitted by Richard S. and Micki L. Kidder requesting a Developmental Variance for **2423 Ewing Avenue** to allow a 23' tall accessory structure.

Richard Kidder, 2423 Ewing Avenue, said he's asking for permission to build a 23' tall garage.

Mrs. Wells asked if there was a garage there now. Mr. Kidder said no, there is not.

Mr. Dendiu asked if the desire for additional height was to match the house. Mr. Kidder said yes, for proportional reasons. He also said there would be unfinished storage in the area above.

Mrs. Wells asked if you would be able to see the garage from Ewing Avenue. Mr. Kidder said no, his lot is wooded on all sides and is not visible from the street or any of the neighbors.

Mrs. Wells closed the Public Hearing on Appeal #20-27.

**Staff Recommendation**

*The Staff recommends **approval** of Appeal #20-27 to allow a 720 sq. ft. accessory structure with an overall height of 23' at 2423 Ewing Avenue. 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. The height of the proposed garage will be*

*proportionate to the existing structures while not being visible from the road or neighboring properties due to the woods and elevation change; and*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because it would not allow the Appellant the ability to construct a new garage that is proportionate to the existing house and accessory structure.*

**MOTION:** Charles Krueger moved to approve Appeal #20-27. Joel Dendiu seconded; motion carried with a vote of 4-0.

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**APPEAL #20-28** An appeal submitted by Gary Kulwicki requesting a Developmental Variance for **506 West Third Street** to allow a front porch with a 0' front yard setback.

Kim Egendoerfer, 902 Dashwood Court, Mishawaka, said he is currently purchasing the property on Land Contract from Gary Kulwicki. He said the front porch was run-down and they replaced it. Mr. Egendoerfer said he plans on selling it as soon as it is finished.

Mr. Egendoerfer said he removed 8' of fencing from the sidewalk back.

Mr. Egendoerfer said he owns the house next door and when this came up for sale it was pretty run down and thought there was no better way to fix up the neighborhood.

Mr. Prince said the property line is actually 14' from the sidewalk and there would still be a 6' projection into the right-of-way and asked Mr. Egendoerfer if he would be willing to remove another section. Mr. Egendoerfer showed a picture of the fence with the 8' that was removed earlier today.

Mr. Prince said the concern continues to be visibility for those pulling out of their driveway and it is our recommendation to pull the fence from the right-of-way.

Mr. Tordi asked if the sight distance had been taken care of. Mr. Prince said no. It came out to the sidewalk, but still projects farther than the property line.

Mr. Tordi said staff was recommending approval. Mr. Prince said staff recommends approval if the fence was removed from the right-of-way.

Mrs. Wells said the choice was to remove another 6' of fence or he can removed some slats. Mr. Prince said one issue is sight distance and can remove every-other slat, but the other issue is putting a fence into the City right-of-way and that's an approval from the Board of Public Works and Safety and this Board cannot guarantee approval.

Mr. Egendoerfer said he can go 6' more. He asked if he could plant shrubs. Mr. Prince said yes.

Mr. Tordi asked if he would be willing to agree that if we make this conditional, you would remove the extra fence. Mr. Egendoerfer said yes, he would remove the additional section.

Mr. Prince thanked Mr. Egendoerfer for taking it upon himself to improve the neighborhood.

### **In Opposition**

Dawn Ballard, 520 W. Third Street, said the fence is a visual obstruction backing out of the driveway now that cars can park on both sides of the street.

Mrs. Wells told Mrs. Ballard that Mr. Egendoerfer has agreed to remove the additional section of fence.

Mrs. Ballard said that's fine as long as he doesn't plant shrubs to block visibility.

Mrs. Wells closed the Public Hearing on Appeal #20-28.

Mr. Prince said technically, you can't put a condition on a Developmental Variance, but the applicant did agree to remove the fence.

**Staff Recommendation**

Staff recommends **approval** of Appeal #20-28 to allow a front porch and 50% open fence with a 0' 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 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 request is generally consistent with the setback of other homes in the neighborhood 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 of the large right-of-way the existing setback is already closer than the 25', any addition would require a variance.

**MOTION:** Joel Dendiu moved to approve Appeal #20-28 as amended by the Appellant. Chris Tordi seconded; motion carried with a vote of 4-0.

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**ADJOURNMENT:** 6:25 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner