

SEPTEMBER 9, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Wednesday, September 9, 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, Larry Stillson, and Joel Dendiu. In addition to members of the public, the following were also in attendance: 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 August 11, 2020, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #20-40** An appeal submitted by Samantha Stacy requesting a Developmental Variance for **226 South Logan Street** to allow a 6' privacy fence with a 0' exterior side yard setback.

Jimmy Stacy, 226 S. Logan Street, said the original permit for the fencing was where a gas line was located so they moved it 8' out. He said there was a fence there previously and put in the same spot.

Mrs. Wells asked if this caused a line-of-sight problem and if staff was requesting a corner cut. Mr. Spier said it is far enough off of the sidewalk that it doesn't create vision issues.

Mrs. Wells closed the Public Hearing on Appeal #20-40.

**Staff Recommendation**

Staff recommends **approval** of Appeal #20-40 to allow a 6' solid fence with a 0' exterior side yard setback at 226 S Logan. 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 gas line prohibits the fence from being installed even with the house; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant would have to give up additional space if the fence was moved to the north, away from the gas line.

**MOTION:** Larry Stillson moved to approve Appeal #20-40. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #20-41** An appeal submitted by Arlene Myers requesting a Developmental Variance for **624 East Battell Street** to allow a solid fence with a 0' exterior side yard setback.

Dennis Dukes, 61667 Locust Road, South Bend, spoke on behalf of the Appellant who was also in attendance. He said he put up a new fence not knowing he needed a permit. He said there was an existing fence and also bushes which were removed last year. He said the bushes were about 8' tall and overgrown.

Mr. Dukes said there is no line of sight issue and the fence creates a nice fence line.

Mr. Tordi said staff is recommending approval, but with a 5' corner cut at the back edge. Mr. Dukes said he didn't understand why it was needed.

Mr. Tordi said staff said it is a safety issue as the fence is up to the sidewalk and someone pulling out of the driveway may not be seen.

Mr. Dukes said Mrs. Myers would be fine with the 5' corner cut.

Mrs. Wells closed the Public Hearing on Appeal #20-41.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #20-41 to allow a 4' solid fence with a 0' exterior side yard setback at 624 E Battell with a 5' corner cut at the northeast corner of the fence where the sidewalk meets the driveway. 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 replacing bushes that had been there for many years; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant would have to give up additional space if the fence was moved even with the house.*

**MOTION:** Chris Tordi moved to approve Appeal #20-40 with staff recommendation of 5' corner cut. Larry Stillson seconded; motion carried with a vote of 5-0.

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**APPEAL #20-42** An appeal submitted by Michael R. Portolese, Executor of the Estate of Antonio D. Portolese, requesting a Developmental Variance for **619 Lincolnway East** to allow a reduction in the required number of parking spaces from 8 to 5.

Michael Portolese, 434 Calhoun Street, Mishawaka, presented the appeal. He said he is the executor of the estate of Antonio Portolese and they are preparing to liquidate the two properties and need to make sure parking is ok with the zoning.

Mrs. Wells closed the Public Hearing on Appeal #20-42.

Mr. Tordi asked Mr. Portolese to clarify what he meant by two properties. Mr. Portolese said two properties were rezoned last month, but only this one needed a parking variance.

Mr. Dendiu asked if they had any interested buyers. Mr. Portolese said it hasn't been listed yet and as they wanted to get zoning taken care of.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #20-42 to allow the reduction of parking spaces from the required 8 to 5 which currently exist. 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 the property has been used in this manner for a significant amount of time and has caused no issues;*
- 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 an apartment building for many years and not adversely affected the neighboring properties; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant would not be able to fully rent all 5 units due to lack of parking spaces.*

**MOTION:** Joel Dendiu moved to approve Appeal #20-42. Larry Stillson seconded; motion carried with a vote of 5-0.

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**APPEAL #20-43** An appeal submitted by JV and Sue Peacock C/O Outpost Sports requesting a Use Variance for **3602 Grape Road #11** to allow microblading services in an existing salon.

Vittoria Gianetto, 51633 Trailwood Court, Granger, presented the appeal. She said she is requesting approval to perform microblading services at Rootz Salon. She said microblading is a form of semi-permanent make up for eyebrows.

Mrs. Wells closed the Public Hearing on Appeal #20-43.

**Staff Recommendation**

*Staff recommends in **favor** of Appeal #20-43 to allow microblading services in Suite #11 Rootz Salon at Outpost Center, 3602 Grape Road. 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 existing business provides similar personal services/salon 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 because it is included in a commercial development;*
3. *The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;*
4. *The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the development; and*
5. *The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and is in close proximity to one of the largest consolidated retail areas in the State of Indiana.*

**MOTION:** Chris Tordi moved to forward Appeal #20-43 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 5-0.

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**APPEAL #20-44** An appeal submitted by John and Christine Tirotta requesting a Developmental Variance for **315 Edgewater Drive** to allow an oversized accessory structure.

John and Christine Tirotta, 315 Edgewater Drive, Mishawaka, appeared on behalf of their request. They said they would like to build a 24' X 36' garage.

Mrs. Wells asked if they were aware that Engineering had several comments. Mr. Tirotta said he had Lincoln Sewer come out and they scoped the line and it was clear.

Mrs. Wells said Engineering has asked for a clean-out after the garage is built. Mr. Tirotta said they are ok with that.

Mr. Tordi also said that Engineering is requesting that the garage be located 20' from the alley. Mr. Tirotta said that's only a recommendation and if it's set back that far it's next to the house. They plan on building a deck on to the house and it would make it too close. Mr. Tirotta said Engineering doesn't want cars parked in the alley.

Mr. Stillson said currently the garage is 18' back. Mr. Tirotta said yes, it's a larger garage.

Mrs. Wells closed the Public Hearing on Appeal #20-44.

#### **Staff Recommendation**

Staff recommends **approval** of Appeal #20-44 as presented to allow an oversized garage with a total square footage of 864 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 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 not out of character with other houses on the block and shows 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 existing garage is not large enough to hold two cars plus storage.*

**MOTION:** Charles Krueger moved to approve Appeal #20-44. Joel Dendiu seconded; motion carried with a vote of 5-0.

**APPEAL #20-45** An appeal submitted by Vanessa Frias requesting a Sign Variance for **1026 Dodge Avenue** to allow a 35 sqft freestanding sign.

Vanessa Frias, 1026 Dodge Avenue, Mishawaka, said she wants to put up a sign larger than previously requested.

Mr. Tordi said there is a condition from staff that it be placed 40' from the centerline of Twelfth Street and do you intend to follow that? Ms. Frias said yes.

Mrs. Wells closed the Public Hearing on Appeal #20-45.

**Staff Recommendation**

*The Staff recommends approval of Appeal #20-45 with the condition it be placed at least 40' from the centerline of Twelfth Street. 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 sign will be will be installed by a licensed sign contractor;*
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 sign will be non-illuminated and appropriately proportioned in size for where it will be installed; and*
3. *Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty in the use of the property because there is no provision to allow a sign for a commercial business in the R-2 zoning district.*

**MOTION:** Larry Stillson moved to approve Appeal #20-45. Charles Krueger seconded; motion carried with a vote of 5-0.

**APPEAL #20-46** An appeal submitted by Nguyen Hoa V and Hynh Hoa T requesting a Developmental Variance for **1014 South Russell Avenue** to allow an enclosed porch with a 12' front yard setback.

Nguyen Hoa, 1014 S. Russell Avenue, Mishawaka, presented the appeal. He said he would like to make a roof over a porch as his wife would like more sitting room outside.

Mr. Krueger asked if he would be doing the work. Mr. Hoa said no.

Mrs. Wells closed the Public Hearing on Appeal #20-46.

**Staff Recommendation**

Staff recommends **approval** of Appeal #20-46 to allow enclosing the existing front porch at 1014 S Russell with a 12' 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 not out of character with other houses on the block and shows 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 house is already closer than the required 25' and the porch is existing.*

**MOTION:** Joel Dendiu moved to approve Appeal #20-46. Chris Tordi seconded; motion carried with a vote of 5-0.

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**ADJOURNMENT:** 6:27 p.m.

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Derek Spier, Senior Planner

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Kari Myers, Administrative Planner