

MAY 11, 2021

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, May 11, 2021, 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 in attendance: Ken Prince, Derek Spier, Christa Hill, and Kari Myers.

Mrs. Wells explained the Rules of Procedure.

The Minutes of the April 13, 2021, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #21-05

An appeal submitted by Morgan E. Mick requesting a Developmental Variance for **1803 Lincolnway West** to allow a new home with a 20' front yard setback and 10' exterior side yard setback. *Continued from the April 13, 2021, meeting.*

Andrew Mick and Morgan Mick, 515 Edgewater Drive, said they are asking for a 20' front setback vs. a 25' setback for a new home.

Mrs. Wells asked if there were two variances for setbacks. Mr. Prince said yes, front and side.

Mr. Mick said it will line up better with the other homes along the street.

Mrs. Wells closed the Public Hearing on Appeal #21-05.

Staff Recommendation

*The Staff recommends **approval** of Appeal #21-05 to permit a new home with a 20' front yard setback and 10' 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 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 new home 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 lot is very narrow and it would limit the size of home*

that could be built and requesting the variances would result in a home that fits in with the neighborhood.

MOTION: Chris Tordi moved to approve Appeal #21-05. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #21-06 An appeal submitted by RUDRA Twenty Six, LLC, requesting a Developmental Variance for **1333 and 1335 Lincolnway East** to allow a reduction in the required number of parking spaces from ten to eight for a proposed two tenant building. *Continued from the April 13, 2021, meeting. Appellant is requesting withdrawal.*

The Board unanimously approved the request to withdrawal.

APPEAL #21-08 An appeal submitted by Isabella Hess requesting a Developmental Variance for **402 Studebaker Street** to allow a 6' privacy fence with a 0' exterior side yard setback.

Isabella Hess, 402 Studebaker Street, said she wants to build a privacy fence. She said the existing fence is a 4' 6" picket fence and she has large dogs.

Ms. Hess said there was an incident last year where a neighbor put their hand over the fence and was injured by a dog. She said it's for the safety of her family and the neighborhood.

Ms. Hess said she will put in notches at the alley and driveway. She said if the fence were to be installed at the required setback, she would lose approximately 12' of yard.

Mr. Prince said the fence needs to be 4' from the sidewalk as the existing fence seems to be in the City right-of-way. Ms. Hess said she's ok with that.

Mrs. Wells closed the Public Hearing on Appeal #21-08.

Staff Recommendation

*The Staff recommends **approval** of Appeal #21-08 to install a 6' privacy fence with a 0' exterior side yard setback, to be set back 2' 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 will provide security for her large dogs and neighbors; 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 approximately 10' of usable yard space.*

MOTION: Larry Stillson moved to approve Appeal #21-08. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-09 An appeal submitted by 5758 Grape Road, LLC, requesting a Sign Variance for **5758 Grape Road** to allow a sign installed on a canopy (roof sign).

Charley Schalliol, Site Enhancement Services, 6001 Nimitz Parkway, South Bend, appeared on behalf of McCalisters. He said they are requesting to install a set of 18" letters on a pick-up canopy to reflect a new aspect of their business. You call and order food and pick up from your car. Mr. Schalliol said it is not a drive-thru lane to place an order, just a pick up window.

Mr. Schalliol said the letters are 18" in height and 11.76 sqft in size and the letters are similar to other businesses in the area; i.e. Taco Bell, "Home of the Whopper" at Burger King. He said due to the way the code is written, it is considered a roof sign.

Mrs. Wells closed the Public Hearing on Appeal #21-0.

Staff Recommendation

*The Staff recommends **approval** of the roof sign 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 sign is not attached to the roof, but an awning and extends less than two feet above the canopy;*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in practical difficulty because the new feature, a pick-up window, needs to be identified and the proposed canopy signage is the most practical way to achieve the identification.*

MOTION: Chris Tordi moved to approve Appeal #21-0. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #21-10 An appeal submitted by Richard Derek Pestow, Wesley Cole Pestow, Colin Wade Pestow, and George A. Pestow requesting a Developmental Variance for **1619 Elder Road** for a 30' X 48', 18' tall accessory structure with gravel drive behind the house.

Wesley Pestow, 1619 Elder Road, said he would like to erect this structure he has been given. He said he received it for nothing more than pulling it down and bringing it to his house.

Mr. Pestow said he has a lot of vehicles, tools, and other things that need storage and this would take care of those issues.

Mrs. Wells asked what would be stored there. Mr. Pestow said three vehicles, tools, etc.

Mr. Tordi said Engineering had comments about paved hard surface and are you in agreement with that. Mr. Pestow said he didn't have a problem with the garage paved. Hopes to do it after concrete pad is poured.

Mr. Prince said the idea would be to have it done before occupying the space. Engineering said it should be paved between the house and street and gravel up to the garage since it's so far back.

Mrs. Wells closed the Public Hearing on Appeal #21-11.

Staff Recommendation

*The Staff recommends **approval** of Appeal #21-10 to construct a 1,440 sqft (30' X 48'), 18' tall accessory structure. 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 size of the structure is proportionate to the size of the lot, and will store items normally stored outside getting them out of view of adjacent 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 could build several 720 sqft structures on the lot, but it is more practical to build one large structure to accommodate their items.*

MOTION: Charles Krueger moved to approve Appeal #21-10. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #21-11 An appeal submitted by Hack Properties, LLC, requesting a Developmental Variance for **606 Brown Avenue** to allow a 5' 6" exterior side yard setback for a new home.

Terry Lang, Lang, Feeney & Associates, 715 S. Michigan Street, South Bend, appeared on behalf of the Appellant. He said this variance will allow for a new home on the corner lot. There is a developer interested in these properties and thinks it would be a nice asset to the community.

Mr. Lang said along Forest Avenue there is 60' right-of-way and there is an extra 16' of space between the property line and the curb; much space. That's the purpose of the appeal. He said these lots were platted 50-60 years ago.

In Favor

Paul Johnson, 626 W. Brown Avenue, said he's been there for 26 years and never had a neighbor. He said it's a beautiful neighborhood and what they are doing is an awesome job.

Mrs. Wells closed the Public Hearing on Appeal #21-11.

Staff Recommendation

Staff recommends approval of Appeal 21-11 requesting a developmental variance from the required 12.5' exterior side yard building setback to a 5.5' exterior side yard building setback to allow the construction of a new house at 606 Brown 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 the existing structures along Forest Avenue have equal or lesser building setbacks. In addition, the proposed house will be setback 21.5' from the back of curb of Forest Avenue due to a larger than normal distance between the property line and road. 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 a majority of the adjacent properties are also occupied with single family residences. The exterior side yard setback of the proposed house will be consistent with the existing setbacks of the adjacent structures. Furthermore, the value of the proposed improvements will be similar to or greater than the adjacent homes.
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Per the zoning ordinance, the lot is a legal building site, but has a limited width and area. Compliance with the required 12.5' exterior side yard building setback would result in only 25.5' of buildable width. The building width is narrower since a corner lot requires a greater side yard setback.

MOTION: Joel Dendiu moved to approve Appeal #21-11. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #21-12 An appeal submitted by Pizza Hut of America, Inc., requesting a Developmental Variance for **2777 Lincolnway East** to allow a reduction in parking spaces and pavement setback along Mariellen Avenue.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Boulevard, South Bend, said the property is the former Pizza Hut restaurant between McDonald's and Mariellen Avenue. Mr. Huber said they are requesting to rezone this property to C-7 later this evening at Plan Commission.

Mr. Huber said the site would require 35 parking spaces. Additionally, the presence of Mariellen Avenue on the east side requires a 10' pavement setback and they are asking for the variance given the narrowness of the site.

Mr. Huber said as they were laying out the site they had challenges due to the narrow lot. The floor plan is the smallest of the franchise and is geared more towards the drive-thru business vs. inside dining; approximately 30 dining sites will be provided.

Mr. Huber said looking at the parking spaces, they have done their best to accommodate the maximum number on the site. He said they received Engineering comments and they would prefer this site work with 2-way traffic; or angled parking vs. perpendicular in the back; had angled in the back.

Mr. Huber said this gets to what they most likely need. They may lose four additional spaces and would have to modify the request from 35 to 26 or down to 22. They know at peak staffing hours this restaurant would have 7 employees and provide 19 additional public spaces. If they have to go to 22, that would give 15 public spaces and that would be the minimum they would want to see. Their preference is for 26.

Mr. Huber said Engineering also asked to contact INDOT and they anticipate they can do that, but there are no guarantees that INDOT would allow.

Mr. Prince asked Mr. Huber if the Engineering request was adamant the driveway location be moved from Lincolnway to Mariellen. Mr. Huber said it may not be a problem moving forward and will work with staff.

Mr. Prince said because of the advertising requirements would you support the 26 spaces if they have to modify as 22 would need to come back and re-advertise. Mr. Prince said it was our preference it be 2 way, but can make it work with parallel spaces more move forward as requested.

Mr. Tordi asked Mr. Prince what his preference was. Mr. Prince said based on the very limited seating, we think parking is adequate. Of course, would like to see more, but it's sufficient for the site.

Mr. Stillson asked about the parallel parking on the site. You are going to have cars parking on either side of the drive with drive-thru traffic coming through those spaces as well. Mr. Prince said that is virtually the same as any other drive-thru restaurant.

Mr. Stillson asked why there isn't an entrance or exit on the side street. Mr. Prince said that's what he clarified with Mr. Huber earlier. Engineering is requesting that the Lincolnway entrance be moved to the side street.

Mr. Huber said they do have an extended drive-thru lane understanding they had issues with the width.

Mr. Prince asked about the vehicles in queue. Mr. Huber said 6-8 and that's up to the order board and there's room for another 4-6.

Mr. Tordi asked if there was an average queue time for the restaurant. Mr. Huber said 190 seconds or just under 3 minutes.

Mr. Dendiu asked if there will be room to circle around the restaurant. Mr. Huber said there is an existing entrance along Mariellen and asked about using it as a bail-out opportunity.

Opposition

Bill Reiser, 2771 Lincolnway East, franchiser of McDonalds. He said he does not know the concept, but will raise a concern. He said as the owner of the property to the west, he is concerned if there is congestion, they may choose to park in his parking lot and doesn't have the extra spaces to donate. He said it happened with Pizza Hut.

Mr. Reiser said the City seems to be looking at the number of tables, but at 80% drive-thru there may be people going in to pick up orders. He said it would be interesting to know the break down of many go in to get it to go. Also, with dining in, may get busy during peak hours and he doesn't want them parking in his lot.

Mr. Tordi asked if people parked there when it was Pizza Hut? Mr. Reiser said yes, on occasion.

Rebuttal

Mr. Huber said Pizza Hut was a different model and didn't have the drive-thru opportunity and was a dine-in restaurant. He said currently, the concept is 80% drive-thru and they are not anticipating that many staying. The balance is a combination of going in and picking up and sitting down. Even if they go in, it's very quick turn around.

Mr. Tordi asked if they were going to have designated pick-up spaces. Mr. Huber said potentially 1-2, but not exclusively for pick up.

Mr. Dendiu asked if he knew the average dining-in time. Mr. Huber said approximately 5 minutes for coming in and picking up. He doesn't know how long for staying to eat.

Mrs. Wells closed the Public Hearing on Appeal #21-12.

Mr. Tordi asked Mr. Prince to clarify the difference between 26 and 22 spaces. Mr. Prince said they are showing 26. Fundamentally, they can get the 26 spaces with the parallel parking. He said if they were to get rid of the parallel spaces, it would be down to 22.

Mr. Prince said they applied for 26 and the Board can only act on 26 spaces. He said if they choose to, they can come back with 22 and we are trying to encourage them to maximum the use of the property.

Mr. Dendiu said he would be uncomfortable with 22 spaces.

Mr. Stillson said he would be inclined to support 22 spaces vs. 26 due to the congestion that parallel parking creates.

Mr. Stillson asked if there was an exit at the rear leading to Mariellen Avenue. Mr. Prince said yes.

Mr. Prince said the only thing they can act on is the 26 spaces.

Staff Recommendation

Planning Staff recommends approval of Appeal 21-12 to allow a reduction in the required parking/pavement setback and number of parking spaces for a proposed 2,327 sq. ft. restaurant with drive-thru facilities. The new building will be located at 2777 Lincoln Way East. 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 reduction in the required pavement setback will result in the minimum allowable width for the landscaping/planting area along Mariellen Avenue. The required landscaping shall mitigate any effects of headlights on potential on-coming traffic. According to the contingent franchise, adequate parking will be provided based upon customer demand and usage of the drive-thru facility.*
- 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 property is located adjacent to three existing drive-thru restaurants. The approval of the variance will not affect these businesses in any manner nor detract from their use or value.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Adhering to the required pavement/parking setback and number of parking spaces would make the proposed development unfeasible. The proposed restaurant building is the smallest footprint offered by the specific franchise. The narrow dimensions of the property limit the number of parking spaces that can be provided.*

MOTION: Chris Tordi moved to approve Appeal #21-12. Charles Krueger seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:51 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner