

JUNE 8, 2021

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 8, 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: 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 May 11, 2021, meeting, were approved as distributed.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #21-13** An appeal submitted by Sells Enterprises LLC requesting a Developmental Variance for **945 East Sixth Street** to allow a gravel surface for fire access drives.

Terry Pennington, Cor-a-Vent, 945 E. Sixth Street, Mishawaka, said when they did the addition, they thought they met everything they needed. He said Fire Inspector George Schafer drove over the drive and said it was ok. Mr. Pennington said the building permit was issued in 2018 and doesn't know why they were deemed ok to use the building and now we're looking at paving part of the apron. He said they showed other gravel on the site plan and Fire drove on it and said it was ok. It will only be used in emergency situations and not for employee parking or use. Mr. Pennington said he just wants to do what is in compliance with the City.

Mr. Krueger said the Fire Marshall indicated they needed a driveway to handle heavy fire equipment; has that been resolved. Mrs. Wells said no, that's why we are here.

Mr. Pennington said they put in a 2" foundation for the drive for fire trucks. Mr. Schafer drove on it and being the Fire Marshall, said it was sufficient and if anyone knows it would be him.

Christa Hill said George Schafer has since retired and a different Fire Marshall reviewed this plan and that may be where the discrepancy is.

Mrs. Wells asked if we needed to go by what the current Fire Marshall says.

Mr. Tordi said the south drive and north drive needs to be paved. Mr. Pennington said that is correct and he just wants to know how much and what type; concrete or asphalt.

Derek Spier said none of the south drive needs to be paved. The north drive off of Sixth Street needs to be paved in its entirety; all the way into the property.

Mr. Pennington asked if it could be asphalt. Mr. Spier said in the right-of-way it would have to meet City Engineering standards.

Mr. Pennington asked if someone from Engineering would tell him what he needs to do. Mr. Spier said yes.

Mr. Pennington said he would like to keep all gravel, but understands the concerns. He thought he was done with this.

Mr. Stillson asked for clarification on what the Board would be voting on; no input relative to the pavement. The City will decide the amount of gravel, thickness, etc.

Mr. Tordi said per staff recommendations, the north drive must be paved.

Mrs. Wells closed the Public Hearing on Appeal #21-13.

**Staff Recommendation**

*Planning Staff recommends approval of Appeal 21-13 to allow only the south drive to be gravel. The north drive must be paved. 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 as use of the drives are meant to be for emergency purposes only. There will not be day to day traffic on the drives. Additionally, the portion of the north access drive to be paved will prevent or greatly minimize the risk of aggregate rock migrating into the public right-of-way*
- 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 business has existed at this site for many years. The drives are only meant to be for Fire Department access.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because it will not allow for a portion of the fire access drive to be gravel. Requiring hard surface for the entire length of the drive is both cost prohibitive and unnecessary due to the minimal use of the drive.*

**MOTION:** Larry Stillson moved to approve Appeal #21-13. Chris Tordi seconded; motion carried with a vote of 5-0.

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**APPEAL #21-14** An appeal submitted by Jacqueline M. Nadolny requesting a Developmental Variance for **2602 Lexington Boulevard** to allow a solid fence with an exterior side yard setback of 3'.

Jacqueline Nadolny, 2602 Lexington Blvd., said she is requesting to replace an existing privacy fence with a new fence. She said the new fence will only be along Elm Road and the portion to the south.

Ms. Nadolny said the new fence will be in the same location with is 3' from the property line. She said she has lived there since 1989 and has no issues with visibility due to the fence.

Mrs. Wells closed the Public Hearing on Appeal #21-14.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #21-14 to allow a 6' solid fence with a 3' exterior side yard setback at 2602 Lexington Boulevard. 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 deteriorating fence will be removed and replaced with new in the same location 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 Appellant would have to remove mature landscaping and give up additional space if the fence was located at the 12' 6" setback.*

**MOTION:** Joel Dendiu moved to approve Appeal #21-14. Larry Stillson seconded; motion carried with a vote of 5-0.

**APPEAL #21-15** An appeal submitted by Donald C. Olson and Nancy J. Scott-Olson requesting a Developmental Variance for **4310 Cottage Avenue** to allow a deck with a 9' rear yard setback.

Donald and Nancy Olson, 4310 Cottage Avenue, said they built a new home and they now want to put a deck on the north side of the house which faces the river. Mr. Olson said they share that north property line with AEP and AEP owns 31' from the property edge and the deck will be 9' from the property line.

Mr. Krueger asked if it would interfere with AEP operations. Mr. Olson said no and he got a letter from AEP saying they are not opposed to the request. It was included with the Board members' packets.

Mrs. Wells closed the Public Hearing on Appeal #21-15.

**Staff Recommendation**

*Staff recommends **approval** of Appeal #21-15 to allow the construction of a 21' X 21' deck on the rear of the home with a 9' 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 deck will complement the home and represents an improvement to 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 home has a rear yard setback of 29' and almost any rear addition to the home would require a variance.*

**MOTION:** Charles Krueger moved to approve Appeal #21-15. Joel Dendiu seconded; motion carried with a vote of 5-0.

**APPEAL #21-16** An appeal submitted by BTB Properties LLC requesting a Developmental Variance for **3407 Lincolnway East and 106**

**Maplewood Avenue** to allow a front yard setback of 16' for step and walkway ramp to patio.

Tom Wilson, 10245 Vistula Road, Mishawaka, said he would like approval for the steps and ramp to the patio. He said there is a door toward Lincolnway and they thought this was a better option within the fenced area.

Mr. Tordi asked if the steps and ramp already exist. Mr. Wilson said yes, he is the owner and the renters did it.

Mr. Tordi asked if they checked with him beforehand. Mr. Wilson said no.

Mrs. Wells asked about the door along Lincolnway; will it be removed. Mr. Wilson said no, it is an emergency exit and will remain.

Mrs. Wells closed the Public Hearing on Appeal #21-16.

**Staff Recommendation**

Staff recommends **approval** of Appeal #21-16 to allow a step and ramp to patio area with a 16' 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 and will provide safe exit and entry to and from the restaurant to the patio; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because without the step and ramp customers will not be able to access the outside seating area that was created when the home located on the property was demolished for the purpose of the patio.

**MOTION:** Chris Tordi moved to approve Appeal #21-16. Charles Krueger seconded; motion carried with a vote of 5-0.

**ADJOURNMENT:** 6:19 p.m.

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner