

JULY 13, 2021

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 13, 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 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 June 8, 2021, meeting, were approved as distributed.

Conflict of Interest was not declared.

**PUBLIC HEARING:
APPEAL #21-17**

An appeal submitted by Jolyn McQueen requesting a Developmental Variance for **1803 Delaware Street** to allow a roof over a front stoop with a 1' exterior side yard setback.

Jared McQueen, 602 E. Jefferson, Plymouth, said he's doing the work. He said all they are looking to do is replace an old metal awning. The concrete is there and bringing out the roof to the stoop.

Mrs. Wells asked if the work had been started. Mr. McQueen said yes, they didn't realize they needed a permit.

Mrs. Wells closed the Public Hearing on Appeal #21-17.

Staff Recommendation

*Staff recommends **approval** of Appeal #21-17 to allow the construction of overhang resulting in a 1' exterior side yard setback at 1803 Delaware St. 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 a similar awning was there for many years without affecting 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 currently has an exterior side yard setback of 6', therefore any addition to the home would require a variance.*

MOTION: Chris Tordi moved to approve Appeal #21-17. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #21-18

An appeal submitted by Jeff W. and Bambi L. Williams requesting a Developmental Variance for **5413 Zappia Drive** to allow a deck with an 11' rear yard setback.

Scott Konkey, 23901 Ardmore Trail, South Bend, said the Williams' want to replace an existing deck building prior to them moving in. He said the deck is the only entrance to the rear of the home and due to its age, it could become dangerous.

Mrs. Wells closed the Public Hearing on Appeal #21-18.

Staff Recommendation

Staff recommends **approval** of Appeal #21-18 to allow the construction of a 14' X 20' deck on the rear of the home with a 11' 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 a deck has existed for a number of years and has not created any issues and the replacement 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 home has a rear yard setback of 25' and any rear addition to the home would require a variance.

MOTION: Larry Stillson moved to approve Appeal #21-18. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-19

An appeal submitted by Matthew and Michele Sommer requesting a Developmental Variance for **2620 North Main Street** to allow a 5' open fence with a 0' exterior side yard setback.

Michelle Sommer, 2620 N. Main Street, said the reason they are asking for the variance is they don't want to lower the height of the fence as they have dogs that jump. If they were to move the fence back, they would lose a lot of yard space. Mrs. Sommer also said the fence would be open.

Mr. Tordi asked if they were ok with staff recommendation of a 10' corner cut or going straight across the yard. Mrs. Sommer said they would do the 10' corner cut.

Mrs. Wells closed the Public Hearing on Appeal #21-19.

Staff Recommendation

Staff recommends **approval** of Appeal #21-19 to allow a 5' tall 75% open fence with a 0' exterior side yard setback on the north property line (facing Bastogne Ave) at 2620 N Main Street subject to the condition that the fence be setback at least 10' at the intersection with the neighbor to the east's 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 even though the fence will be 75% open, a corner cut allows for unobstructed sight distance; 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 meet the setback or risk the security of their dogs.

MOTION: Charles Krueger moved to approve Appeal #21-19. Larry Stillson seconded; motion carried with a vote of 5-0.

APPEAL #21-20

An appeal submitted by Jadet LLC requesting a Use Variance for **1035 East McKinley Avenue** to allow for the continuation of automobile repair in I-1 Light Industrial District.

Jerry DeTurk, Jadet LLC, 294 E. 350 N. Warsaw, IN, said they were here last year for the Use Variance and would like to not have to do this every year. He said the proprietor of the business is perfectly happy installing wheels and tired.

Mrs. Wells asked if he was just doing tires. Mr. DeTurk said yes and there have been no complaints from the City.

Mrs. Wells closed the Public Hearing on Appeal #21-20.

Staff Recommendation

The Planning Staff recommends approval of Appeal 21-20 to allow continuation of Use Variance to allow the sale of tires and automotive mechanical work in the I-1 Light Industrial at 1035 E McKinley subject to the installation of a grit/oil/water separator if any work containing fluids such as brake jobs or oil changes will to occur at this site in the future. 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 there are other similar uses in the McKinley/Merrifield corridor;*
- 2. The use and value of the area adjacent to the property included in the variance will has not been affected in a substantially adverse manner in the past year because the property will be used similarly to other properties in the immediate area;*
- 3. The need for the variance arises from some condition peculiar to the property in that automobile uses are not allowed in the I-1 Industrial District;*
- 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 because the property has been operating at this use for the past year, denying this request would result in a vacant building and a displaced business;*
- 5. The recommendation is consistent with Comprehensive Plan which indicates both general commercial and industrial uses for this area.*

MOTION: Joel Dendiu moved to forward Appeal #21-20 to the Common Council with a favorable recommendation. Larry Stillson seconded; motion carried.

APPEAL #21-21

An appeal submitted by Andrew B. LaDow requesting a Developmental Variance for **933 East Grove Street** to allow a solid fence with a 2' exterior side yard setback to remain.

Andrew LaDow, 933 E. Grove Street, said he is asking for the fence to remain. He said if he put the fence at the 12' 6" setback, it would block off too much yard. Mr. LaDow said there is an existing 4' chain link fence and he intends to leave it.

Mr. Ladow said he back his car in and out several times to make sure he could see and that's why he chose this location for the fence.

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

Staff Recommendation

The Staff recommends **approval** of Appeal #21-21 to install a 6' privacy fence with a 2' exterior side yard setback, to be set back approximately 5' 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 a larger area for privacy; 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 #21-22. Joel Dendiu seconded; motion carried with a vote of 5-0.

APPEAL #21-22 An appeal submitted by Pizza Hut of America, Inc., requesting a Developmental Variance for **2777 Lincolnway East** to allow for a reduction in the number of parking spaces from 26 to 22.

Mike Huber, Abonmarche Consultants, 315 W. Jefferson Blvd, South Bend, appeared on behalf of the applicant. He said they were here last month for a request to reduce the number of parking spaces and today they have a more conceptual site plan.

Mr. Huber said they ran into a couple of road blocks with McDonald's next door and they have not granted them an easement.

Mr. Huber said they are proposing a new site plan and they have reached out to INDOT and they have responded positively. It may be an 18-24 month process. He said their intent is to acquire additional land to put in a few more spaces. They are asking for the 22 spaces they discussed last month. Mr. Huber said the 22 spaces does allow to meet the 50% seating capacity and employees at peak.

Mr. Krueger asked if they had a tenant for the building. Mr. Huber said yes, but they are not in the position to disclose who it is at this time. He said it is a national tenant and will have a brand-new building.

Mr. Dendiu asked how the lack of easement from McDonald's changed things. Mr. Huber said they had to provide more space for a drive on Mariellen and that took 2-3 spaces.

Mr. Huber said they are giving up access on Lincolnway.

Mrs. Wells asked Mr. Prince if he knew who the tenant was. Mr. Prince said yes. He said our role is not to look at the tenant and this is bare-bones staff's opinion on the parking.

Mr. Huber said the client was attending virtually. He said they have had smaller sites and based on efficiency, they are not concerned about anything related to the site.

Mr. Dendiu said if they were not concerned with the 22 spaces, why would they spend the extra money to buy property from INDOT. Mr. Huber said it gives them flexibility.

Mrs. Wells closed the Public Hearing on Appeal #21-22.

Staff Recommendation

Planning Staff recommends approval of Appeal 21-22 to allow a further reduction in the required number of parking spaces for a proposed 2,327 sq. ft. restaurant with drive-thru facilities to 22. 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. 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: Charles Krueger moved to approve Appeal #21-22. Chris Tordi seconded; motion carried with a vote of 5-0.

APPEAL #21-23 An appeal submitted by 3515 Main Street, LLC, requesting a Developmental Variance for **3515 North Main Street** to increase the maximum building size from 8,000 sqft to 10,105 sqft for a building addition.

Andrew Cunningham, Jones Petrie Rafinski, 325 S. Lafayette Blvd, South Bend, appeared on behalf of the Appellant. He said the owner is wishing to invest in improvements to the property to meet current and future tenants needs.

Mr. Cunningham said the proposed addition would be in line with the existing building and meet all required setbacks. He said they would be removing some parking, but keeps within standards. There will be additional landscaping to bring value to the property and be a good neighbor.

Mrs. Wells asked if they have the required 41 parking spaces. Mr. Cunningham said yes.

Mrs. Wells closed the Public Hearing on Appeal #21-23.

Staff Recommendation

Planning Staff recommends approval of Appeal 21-23 for an increase in the maximum permitted building size from 8,000 sq. ft. to 10,105 sq. ft. to allow a proposed 3,696 sq. ft. addition on a 6,409 sq. ft. building at 3515 N. Main 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 proposed building addition and continued use as a multi-tenant office building are consistent and compatible with density and uses of the adjacent parcels. Furthermore, the proposed site improvements, including but not limited to, landscaping, screening, and drainage improvements will comply with the applicable zoning and engineering regulations.*
- 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 adjacent properties to the south and east include multi-family residential apartment complexes with the property to the north being a commercial/recreational use. The approval of the variance will not affect these adjacent properties in any manner nor detract from their use or value. Additional site improvements, such as landscaping and drainage, will be made as a result of the building expansion.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Limiting the building size will not allow maximum utilization of the property, while*

adhering to the parking space, building setbacks, landscaping, screening, and other required development regulations.

MOTION: Joel Dendiu moved to approve Appeal #21-23. Larry Stillson seconded; motion carried with a vote of 5-0.

ADJOURNMENT: 6:21 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner