

JUNE 9, 2020

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

The regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 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, and Larry Stillson. Absent: 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 May 12, 2020, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #20-17 An appeal submitted by Kenneth L. and Marcy J. Bergner requesting a Developmental Variance for **3706 York Street** for an oversized accessory structure and a 5' exterior side yard setback.

Kenneth Bergner, 3706 York Street, said he wants to extend part of his garage for extra storage. He said the addition will be over a concrete foundation that's been there for 40 years.

Mrs. Wells closed the Public Hearing on Appeal #20-17.

Staff Recommendation

*The Staff recommends **approval** of Appeal #20-17 to build a 384sf addition onto an existing 720sf garage with a 6' 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 existing garage encroaches into the setback; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because this allows the new garage to be used as one space.*

MOTION: Larry Stillson moved to approve Appeal #20-17. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #20-18 An appeal submitted by Denise Townsend requesting a Developmental Variance for **502 West Sixth Street** to allow a privacy fence with a 0' exterior side yard setback.

Denise Townsend, 502 W. Sixth Street, said she wants to put up a privacy fence around the side yard.

Mr. Prince said it will be 10' back from the sidewalk and provide sufficient green space for visibility.

In Favor

Julie Gozzola, 501 W. Sixth Street, lives across the street and is in favor of it.

Mrs. Wells closed the Public Hearing on Appeal #20-18.

Staff Recommendation

*The Staff recommends **approval** of Appeal #20-18 to install a 6' privacy fence with a 0' exterior side yard setback, to be set back 10' 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 represents an improvement to their property; 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 usable yard space.*

MOTION: Chris Tordi moved to approve Appeal #20-18. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-19 An appeal submitted by Jonathon Hurtt and Kaceigh Hurtt (Ahlenius) requesting a Developmental Variance for **1806 North Merrifield Avenue**, to allow a front porch with a 20' front yard setback.

Jonathon Hurtt, 1806 N. Merrifield Avenue, said in late winter they had work done to the foundation and had to remove the front porch. He said they are requesting to rebuild the porch.

Mrs. Wells closed the Public Hearing on Appeal #20-19.

Staff Recommendation

*Staff recommends **approval** of Appeal #20-19 to allow a front porch addition to be constructed with a 20' 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 generally consistent with the setback of other homes 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 already encroaches into the front setback and any addition would not be possible without requesting a variance.*

MOTION: Larry Stillson moved to approve Appeal #20-19. Chris Tordi seconded; motion carried with a vote of 4-0.

APPEAL #20-20 An appeal submitted by Bryan Tanner requesting a Developmental Variance for **525 Calhoun Street** to allow a front porch with a 23' front yard setback.

Bryan Tanner, 525 Calhoun Street, said the home had a full front porch when built in 1912 and was removed in the 1950's and replaced with a stoop. He said instead of repairing the stoop, they want to rebuild the front porch and it would have a 23' front setback.

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

Staff Recommendation

*Staff recommends **approval** of Appeal #20-20 to allow a front porch addition to be constructed with a 23' 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 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 reduction of 2' to comply with the required setback would constrict the design in such a way to be disproportionate with the rest of the structure and prevent functionality of enclosed entryway.*

MOTION: Charles Krueger moved to approve Appeal #20-20. Larry Stillson seconded; motion carried with a vote of 4-0.

APPEAL #20-21 An appeal submitted by Michiana Rental Properties, LLC, requesting a Use Variance for **623 East Fourth Street** to allow for a dog grooming salon.

Matt Vukovich, 4000 E. Bristol Street, Elkhart, IN, presented the request. He said he was before this board a few months ago for a tailor, but his business didn't work out for him.

Mr. Vukovich said he was under the impression a dog grooming salon was the same as a hair salon and didn't realize he had to come back. He said the dog groomer has been there a few months.

Mr. Tordi said he remembers the tailor and parking wasn't going to be an issues. He asked if it would be a drop off and pick up. Mr. Vukovich said he thinks it's rare that more than one car would be there. He said they did get the handicap spot painted over and that freed up several on street parking spaces. He also added there is no overnight care of dogs.

Joanna Dwyer, South Bend, said she just moved in and hasn't had any issues. She said dogs are dropped off and left. She said a lot of customers are neighbors who walk over.

Ms. Dwyer said she introduced herself to the neighbors and told them to let her know if they had any issues. She said one neighbor stopped in today to wish her luck.

Mrs. Wells said as a condition staff recommends that one sign per building face, no larger than 10 sqft. Ms. Dwyer said she's ok with that. She said she wasn't going to have any that lights up, just a little window thing.

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

Staff Recommendation

The Planning Staff recommends approval of Appeal 20-21 to allow a use variance for a dog grooming shop in the R-1 Single Family Residential District at 623 E Fourth St, including one sign per building face at no larger than 10 square feet each. 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 no physical changes are being made to the exterior of the property;*
- 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 used as a similarly low intensity business for many years, without any problems that we know of;*
- 3. The need for the variance arises from some condition peculiar to the property in that the building can only be used as a two-chair beauty shop or tailor/alteration shop;*
- 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 building has been used as a business since at least 1977 and does not meet the definition of a single-family dwelling;*
- 5. The recommendation is consistent with Comprehensive Plan which indicates low density residential uses for this area.*

MOTION: Chris Tordi moved to forward Appeal #20-21 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #20-22 An appeal submitted by Kate Morgan requesting a Developmental Variance for **301 George Street** to allow a privacy fence with a 3' 6" exterior side yard setback.

Kate Morgan, 301 George Street, said she would like to install a 6' privacy fence and it would be located approximately 12' 6" from Homewood Avenue. She said that staff is recommending a 5' X 5' corner cut out at the alley and she is ok with doing that.

In Favor

Dave Straughn, 305 George Street, said he lives next door to Ms. Morgan and uses the alley to access his garage. He said he examined the sketch provided by staff and measured the area. He said if it is erected as shown, he has no issues with the fence and recommends your favorable recommendation.

Mr. Tordi asked as this moves forward, can we make the 5' X 5' cutout a condition. Mr. Prince said it is not conditional, but is reflected in the Appellant's agreement of the cut out.

Mrs. Wells closed the Public Hearing on Appeal #20-22.

Staff Recommendation

*The Staff recommends **approval** of Appeal #20-22 to install a 6' privacy fence with a 3' 6" exterior side yard setback, to be set back 12' 6" from George Street and a 5' X 5' corner cut at the alley exiting onto Homewood. 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 represents an improvement to the property; 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 usable yard space.*

MOTION: Larry Stillson moved to approve Appeal #20-22. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #20-23 An appeal submitted by Gen4 Properties LLC and Gates and Gates Realty LLC requesting a Developmental Variance for **the southeast corner of West McKinley Avenue and Benton Street** for a reduction in parking setbacks, landscaping, and fence height for an existing auto sales lot.

Matt Schuster, Jones, Petrie, Rafinski, 300 Nibco Parkway, Suite 250, Elkhart, IN, appeared on behalf of the Appellants. Matt Helmkamp with Gates was also in attendance via phone.

Mr. Schuster said Gates is looking to use the existing sales lot and they purchased two lots to the east which was a former restaurant and want to expand the lot. He said they would continue similar setbacks to the east and west.

Mr. Schuster said along Benton Street they would be expanding the setback to 5' and on the eastern side would be increased to 9'. He said they concur with staff recommendations and ask for your favorable recommendation.

Mrs. Wells asked Mr. Schuster to address landscaping. Mr. Schuster said the landscaping variances are due to the use being a vehicle sales lot and they want to maximize vehicle inventory and allow for visibility along McKinley to see the vehicles. He said they are adding trees along Benton street and shrubs. Mr. Schuster said along the east side, they can't really fit in the landscaping and on the south side there are overhead utilities.

Mrs. Wells asked Mr. Schuster to address the reduction in fence height. Mr. Schuster said there is an existing 6' fence along the western section and the will continue. He said the 6' height is easier to get for maintenance and such if needed to be repaired or replaced.

Mrs. Wells asked if the fence would be opaque. Mr. Schuster said yes, a 6' vinyl fence.

Mrs. Wells closed the Public Hearing on Appeal #20-23.

Staff Recommendation

The Planning Staff recommends approval of Appeal 20-23 to allow for reduced parking setbacks, landscaping, and height of the required screening fence for an existing and expanded automobile sales lot at 611 & 625 W. McKinley Avenue.

This recommendation is based on the following finding of fact:

- 1. Approval will not be injurious to the public health, safety, morals and general welfare of the community. An existing automobile sales lot has been located on part of the property since the late 1990s. The requested variances are primarily to allow the existing conditions to remain while improving the property with additional landscaping, greenspace, fencing, lighting, and storm water management infrastructure.*
- 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 has been zoned and continually used for commercial purposes for several decades. With the proposed expansion in the property's use, the existing conditions of the property will be improved.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property. Existing conditions such as pavement and adjacent building placement makes adherence to the required developmental standards unfeasible.*

MOTION: Chris Tordi moved to approve Appeal #20-23. Charles Krueger seconded; motion carried with a vote of 4-0.

APPEAL #20-24 An appeal submitted by Christopher Jones requesting a Developmental Variance for **706 Geyer Avenue** to allow a privacy fence with a 3' exterior side yard setback.

Christopher Jones, 706 Geyer Avenue, presented the request. He said they had a chain link fence and replaced it with a privacy fence and he didn't know a permit was needed. He said

they want to keep it as it is as there is a tree in the corner. Mr. Jones said other neighbors have similar fences.

Mr. Tordi said the problem they have is that the recommendation is to deny because it can cause public injury and the recommendation by staff is to put in a corner cut.

Mr. Jones said they asked them to do a 10' corner cut and said an earlier case was asked for a 5' corner cut. He measured it and 5' should do it. Mr. Jones said on Milburn there is another fence that comes to the alley and you can't see at all. He said he could take down the full panel that you can't see through and put up a shadow box panels that you can see through.

Mr. Tordi said he's glad you are open to making changes and it makes it hard to approve something that can cause injury to the public. He said staff is recommending the 10' corner cut and are you willing to do that. Mr. Jones said he could do the 10' if that is what is needed in order to keep the privacy fence. He said neighbor kids are coming by and harassing their dogs.

Mr. Tordi asked if he would agree to the 10' corner cut. Mr. Jones said yes.

Mr. Prince read a Letter of Remonstrance from Jeff Dome, 722 Geyer Avenue.

Mr. Prince said staff looks at each case individually and appreciates the Appellant willingness to work with them.

Jennifer Jones, 706 Geyer, said she had a question. She said it would be really inconvenient to take down the tree and if it's 7' or 8', they'll have to remove the tree. Is there some kind of leeway to keep the tree?

Mr. Tordi asked if the fence could go behind the tree; could you take more than 10'. Ms. Jones said the yard is small already.

Mr. Prince said when he looked at it the tree is close to it and if you follow the corner cut it will miss the tree and he recommends straddling the tree and you may need to adjust the posts. You can modify that portion of the fence, you can do an open fence in that area, which is another option, but it can't be a shadow box as that's not open.

Mrs. Jones said they wanted to avoid a chain link fence.

Mr. Stillson asked what timeframe are they under to make the change. Mr. Prince said we'll work with them and haven't discussed it, but it's usually 30 days. Mr. Jones said they can get it done.

Staff Recommendation

*Staff recommends **denial** of Appeal 20-24 to allow the construction of 6' privacy fence with a 3' setback along Geyer. This recommendation is based upon the following findings of fact:*

- 1. Approval will be injurious to the public health, safety, morals and general welfare of the community because it blocks vision when pulling out of the alley. The solid fence is a functional wall adjacent to the sidewalk that further limits the usability of the sidewalk and alley when compared to a lower open fence which is permitted by right. The fence is out of character with other fences constructed in the Milburn corridor.*

2. *The use and value of the area adjacent to the property included in 3' variance will be affected in a substantially adverse manner because the fence is currently blocking sight distance from the alley onto Geyer Avenue; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing the fence at the required 12.5' setback would result in the loss of usable yard space, but also of those exiting the alley and using the sidewalk on Geyer Avenue.*

Staff therefore recommends **approval** to allow a 6' privacy fence with a 10' corner cut.

1. *Approval will not be injurious to the public health, safety, morals and general welfare of the community because property sight distance is provided when pulling out of the alley.*
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 if the fence is cut to allow visual sight distance; and*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because installing the fence at the required 12.5' setback would result in the loss of usable yard space. Staff's recommendation hopes to balance the loss of the yard with safety of those using the alley and passing by on Geyer Street.*

MOTION: Larry Stillson moved to approve Appeal #20-24 with the 10' corner cut as agreed to by the Appellant. Chris Tordi seconded; motion carried with a vote of 4-0.

ADJOURNMENT: 6:42 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner