

JULY 13, 2010

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, July 13, 2010, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Jim Trippel, Ross Portolese, and Rosemary Klaer. Absent: Don McCampbell. In addition to members of the public, the following were also in attendance: David Bent, Ken Prince, Greg Shearon, and Kari Myers

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The Minutes of the June 8, 2010, meeting, were approved as distributed.

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Jim Trippel explained the Rules of Procedure.

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Conflict of Interest was not declared.

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**PUBLIC HEARING:**

**APPEAL #10-19**

An appeal submitted by Ervin and Sandra Paprocki requesting a Developmental Variance for **2717 Northwood Drive**, to permit construction of a three-season sunroom with a 4-foot side-yard building setback.

Terry Shock, Champion Windows, appeared on behalf of the Appellants. Mr. Shock said the sun room will be 10' X 12' and located 4' from the side property line. He said that's the most convenient place to put the sunroom as the patio doors are located there. Mr. Shock said they looked at various sizes, and 10' X 12' is the smallest they could go.

Charles Krueger asked when they would start construction would. Mr. Shock said within a few weeks.

Jim Trippel asked what they are infringing upon. Mr. Shock said the houses are 25-30 feet apart and a patio currently exists where the sunroom will be built. There is also a privacy fence between the two properties. Mr. Shock said there are 5 or 6 other examples of similar sunrooms along the street.

Mr. Trippel closed the Public Hearing on Appeal #10-19.

**Staff Recommendation**

*Staff recommends approval of Appeal 10-19 to allow the construction of an 11'x14' (3) season sunroom with a 4-ft side-yard building 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, with the proposed addition, there will be approximately 15-ft to the adjacent residential structure to the north.*

3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because available land for living expansion is hindered due to the small width of the lot at 40-ft and the attached duplex structure to the south.*

**MOTION:** Charles Krueger moved to approve Appeal #10-19. Rosemary Klaer seconded; motion carried with a vote of 4-0.

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**APPEAL #10-20** An appeal submitted by Habitat for Humanity of St. Joseph County requesting a Developmental Variance for **530 West 6<sup>th</sup> Street**, to permit construction of a new single-family residential home with an 8-foot front building setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. He said the property is part of the City's NSP project. There were two houses on the lot and each had multiple apartments. Due to them being substandard, the City purchased them and demolished the buildings. A Habitat for Humanity home will be built there.

Mr. Prince said the variance will allow the home to sit more in line with the other homes in the neighborhood which have setbacks varying from 1' to 8'. The City partners with Habitat and provides a subsidy for them to build a home that architecturally fits in the neighborhood.

Mr. Prince also indicated due to a scheduling conflict, Habitat pulled a permit to build the foundation with the understanding they will have to remove and relocate it if not approved by the Board.

Mr. Krueger said he commended Habitat on their design of the home.

Mr. Trippel closed the Public Hearing on Appeal #10-20.

#### **Staff Recommendation**

*Staff recommends approval of Appeal 10-20 to allow the construction of a home lot with an 8-foot front-yard building 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 proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes.*
3. *Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the required 25-foot building setback would push the home further back into the lot, thus reducing that amount of usable yard area; furthermore, the required 25-ft front-yard building setback would not be consistent with adjacent residential front-yard building setbacks.*

**MOTION:** Rosemary Klaer moved to approve Appeal #10-20. Ross Portolese seconded; motion carried with a vote of 4-0.

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**APPEAL #10-21** An appeal submitted by Mick E. Dockery requesting a Developmental Variance for **901 Washington Avenue**, to permit construction of a deck with a 9 ½ -foot to 11 ½ - foot rear-yard building setback.

Mick Dockery, 901 Washington Avenue, presented the Appeal. He said he wants to add 4' on the west side of the existing deck back to the edge of the sunroom. The rear setback is the issue. He will also be adding a pergola.

Mr. Trippel closed the Public Hearing on Appeal #10-21.

Mr. Prince read a letter of support from Rev. and Mrs. Dale Sherry, 125 N. Merrifield Ave.

### **Staff Recommendation**

*The Staff recommends **approval** of Appeal #10-21 to permit the expansion of the deck to the exterior side and rear of the home located at 901 Washington Avenue, resulting in a rear yard setback ranging from 9.5 feet (SE corner of deck) at its closest to 11.5 feet (SW corner of deck). 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 is proposed for the west side of the property where there is a street and no immediate adjacent residence. The deck is a common home upgrade, will be aesthetically pleasing, 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's home has an existing rear-building setback of 19 feet preventing any rear addition or improvements.*

**MOTION:** Ross Portolese moved to approve Appeal #10-21. Charles Krueger seconded; motion carried with a vote of 4-0.

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**APPEAL #10-22** An appeal submitted by James W. and Marlene K. Hutson requesting a Developmental Variance for **1443 East Third Street**, to permit construction of a garage addition with a 30-inch side-yard building setback and a 14-foot rear-yard building setback.

James Hutson, 1443 E. Third Street, said he has lived in the home 43 years and has added on to it over time. He said they received a variance in 1985 for the garage to be built 30" from the side property line. Mr. Hutson says he is now requesting a variance so he can build a new 2 car garage for storage of his boat and cars. He had used his in-law's garage next door, but they sold the house. Mr. Hutson indicated the new garage will align with the existing and have a 14' rear setback.

Mr. Hutson said they desire to attach the garage to the existing garage so they can safely access the new garage from the home.

Mr. Krueger asked if he had chosen a contractor. Mr. Hutson said not yet. He recently roofed and re-sided his home and has talked to him about submitting a bid.

Ross Portolese asked what will happen to the existing garage. Mr. Hutson said it will remain. An existing shed in the back yard will be removed when the new garage is built.

Mr. Trippel closed the Public Hearing on Appeal #10-22.

Mr. Trippel asked Mr. Prince if there was a restriction on the number of garages permitted on a property. Mr. Prince said no, just restriction on percent of lot coverage.

### **Staff Recommendation**

*The Staff recommends **approval** of Appeal 10-22 to permit the construction of a 22' X 24' garage attached to the existing one car garage resulting in a 30" side yard setback and 14' rear building setback. The recommendation is based on 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 all construction will be completed in accordance with all applicable state and local building codes;*
- 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 construction represents an investment in the neighborhood; and*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the Appellant's home has an existing non-conforming side setback of 30" and rear building setback of 28' which unduly limits the size of any home or garage addition.*

**MOTION:** Charles Krueger moved to approve Appeal #10-22. Rosemary Klaer seconded; motion carried with a vote of 4-0.

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**APPEAL #10-23** An appeal submitted by Terry Lee Archer requesting a Developmental Variance for **604 South Logan Street**, to permit construction of a fence with a 6-inch exterior side-yard building setback.

Terry Archer, 604 S. Logan, presented the Appeal. Mr. Archer said he wants to extend the fence line toward 7<sup>th</sup> Street to allow him to utilize more of his yard area for a large garden.

Mr. Trippel asked if he owned two lots. Mr. Archer said yes, they are joined.

Mr. Prince asked if he was certain where his lot line was. Mr. Archer said he had the property surveyed last year and the lines are staked (submitted photos).

Mr. Archer said his original request was for 6" from the property line, but is requesting to change to 3' to allow ATT to access a box.

Rosemary Klaer asked if he was going to landscape outside of the fence. Mr. Archer said yes, on the west side. On the north side, no.

Mr. Prince said if the Board should make a motion to approve, then it should reflect the change to 3' setback.

Mr. Trippel closed the Public Hearing on Appeal #10-23.

### **Staff Recommendation**

The Planning Staff recommends **approval** of Appeal 10-23 to allow the construction of a 6'-7' wood privacy fence to a minimum of 3 feet of the north property line at 604 S. Logan 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 because all state and local building codes will be adhered to during construction, and the fence will be set suitably back so as not to block vision driver and pedestrian vision along the alley and at the intersection;
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 closest house is approximately 75 feet away across West Seventh Street. The construction would represent 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 setting the fence back 12.5 feet from the north property line will substantially decrease the space needed to plant the desired large garden.

**MOTION:** Ross Portolese moved to approve Appeal #10-23 with a 3' setback from the north property line. Rosemary Klaer seconded; motion carried with a vote of 4-0.

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**PRIVILEGE OF THE FLOOR:**

James Hutson, 1443 E. Third Street, said the City and Habitat for Humanity are doing a fantastic job. They all look so good.

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

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Kenneth B. Prince, City Planner

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Kari Myers, Administrative Planner