

SEPTEMBER 14, 2010

BOARD OF ZONING APPEALS
CITY OF MISHAWAKA, INDIANA

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, September 14, 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, Don McCampbell, Ross Portolese, and Rosemary Klaer. In addition to members of the public, the following were also in attendance: John Gourley, Ken Prince, Greg Shearon, Peg Strantz, and Kari Myers.

The Minutes of the August 10, 2010, meeting, were approved as distributed.

Don McCampbell explained the Rules of Procedure.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #10-25 An appeal submitted by Susan M. Velez requesting a Developmental Variance for **1205 South West Street**, to allow a privacy fence with a 3' exterior side yard setback and a deck with a 3' rear yard setback.

Susan Velez, 1205 S. West Street, presented the appeal. She said she wants to add the fence so she can enjoy more privacy for her family and dogs in the back yard.

Don McCampbell asked who installed the deck because it was installed without permits. Ms. Velez said it was a friend of a friend who installs deck. The man who installed the deck said she wouldn't need any permits because it wasn't attached to the house.

Jim Trippel asked why she had to have the fence so close to the street. He said he was concerned it would be an eyesore so close to the sidewalk. Ms. Velez said putting the fence at the required 12' 6" from her property line would leave her with very little yard inside the fence to enjoy.

Mr. Trippel said he was not in favor of having it so close to the sidewalk. Ms. Velez said there are several similar fences within a few blocks of her house and hers would be similar.

Mr. Trippel said he had not seen them and thinks the fence would be too close to the sidewalk.

Rosemary Klaer asked Ken Prince to clarify Mr. Trippel's comment regarding the nearby fences. Mr. Prince said he was not aware of them and they had not been investigated.

Rose Portolese asked how high the fence would be. Ms. Velez said 6'.

Opposition

Mike Van Bruaene, 1221 S. West Street, said he lives behind Ms. Velez, across the alley. He said he had concerns about being able to safely back out of his driveway. Mr. Van Bruaene also said 13th Street is very busy and it may be hard to see.

Ms. Klaer asked Mr. Prince to clarify the development standard for fences. Mr. Prince said the zoning ordinance requires 12' 6" from the side property line.

Rebuttal

Ms. Velez said she plans on having a notched 6' setback off both corners at the alley and driveway to provide vision clearance.

Don McCampbell closed the Public Hearing on Appeal #10-25.

Mr. Trippel questioned why staff approved the variance since it would stick out so far. Mr. Prince said fences are always sticky issues. He said the fence would be approximately 7' from the sidewalk and 18' from the curb line on West Street. He also said the corner cuts will provide better vision for those walking down the sidewalk. Mr. Prince said staff tries to work with property owners.

Mr. Trippel said he felt the hardship was self-inflicted and the fence should be moved back.

Staff Recommendation

Staff recommends approval of Appeal 10-25, 1025 S. West, to allow installation of a privacy fence with a three (3) foot exterior side yard setback; and to permit an existing deck with a rear yard setback of three (3) feet at its closest to the south property line and 17 feet at its farthest. 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 because there will be sufficient distance between the location of the fence/deck and the West Street and alley intersection; and the fence will be installed with one entire fence panel angled at the alley to permit adequate vision clearance for pedestrians, bicycles and drivers;*
- 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 both home improvement projects 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 the required 12.5 foot setback for the fence is close to a third of the lot width. To move the fence to the required setback would severely limit the amount of land that can be used for recreation; to require a 25 foot setback for the unroofed deck would only permit an approximate 3 foot deep deck.*

MOTION: Charles Krueger moved to approve Appeal #10-25. The motion died due to lack of a second.

MOTION: Jim Trippel moved to deny Appeal #10-25. Rosemary Klaer seconded; motion carried with a vote of 3-2 (*Krueger, McCampbell*).

The Board asked what happens now. Mr. Prince said the Board has the ability to table the item and work with the appellant. If not, the Board has denied the request and should move to the next agenda item. Mr. Prince conferred with Mr. Gourley and said he thinks the Board should retract the denial so the item can be tabled in an effort to work out an agreeable setback with the applicant.

MOTION: Jim Trippel moved to rescind the previous vote in order for staff to work with the applicant. Rosemary Klaer seconded; motion carried with a vote of 5-0.

Mr. Portolese said the neighbors should be included in the discussions as well. Mr. Prince said he's willing to sit down with the neighbors, but the department cannot broker between two individuals.

APPEAL #10-26 An appeal submitted by Lester Sherk requesting a Developmental Variance for **213 East Thirteenth Street**, to allow a handicap accessible ramp with a 0' front yard setback.

Randy Tackett, RHT Building Services, 1821 N. 150 W., Wabash, IN, represented the Appellant. Mr. Tackett said Mr. Sherk needed the ramp in order to enter and exit his home safely.

Mr. Trippel asked if the ramp could be removed when it was no longer needed. Mr. Tackett said it could be removed. It would also depend on the next person who lived in the home.

Mr. McCampbell closed the Public Hearing on Appeal #10-26.

Staff Recommendation

*Staff recommends **approval** of Appeal 10-26 to allow an access ramp to be constructed with a 0' 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 were 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 ramp is modest in size; and*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.*

MOTION: Jim Trippel moved to approve Appeal #10-26. Charles Krueger seconded; motion carried with a vote of 5-0.

APPEAL #10-30 An appeal submitted by David Scheibelhut requesting a Developmental Variance for **2705 Normandy Drive**, to allow an access ramp with a 14' 7" front building setback.

Greg Scheibelhut, 2121 Devonshire Drive, South Bend, appeared on behalf of his brother, the Appellant. Mr. Scheibelhut said his brother was injured and is currently paralyzed and needs safe access to his home.

Mr. Trippel asked if the ramp could be removed when it was no longer needed. Mr. Scheibelhut said his brother intends to recycle the material into a deck when he doesn't need it anymore.

Ms. Klaer asked Mr. Prince if a permit would be required if he decided to build a deck in the future. Mr. Prince said yes.

Mr. McCampbell closed the Public Hearing on Appeal #10-30.

Staff Recommendation

Staff recommends **approval** of Appeal 10-30 to allow an access ramp to be constructed with a 14' 7" 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 were 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 ramp is modest in size; and
3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance has no provision to accommodate a situation such as the Appellant's where special access to an individual's home is needed.

MOTION: Ross Portolese moved to approve Appeal #10-30. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #10-31 An appeal submitted by the Fraternal Order of Eagles Aerie 2083 requesting a Developmental Variance for the **900 block of South Merrifield Avenue**, to allow for a reduction in the number of parking spaces from the required 137 to 70 for senior multi-family housing.

Jeffrey Ballard, Danch, Harner & Associates, 1643 Commerce Dr., South Bend, appeared on behalf of the Appellants. Mr. Ballard said the Eagles are currently in the process of selling the property and they are requesting a Developmental Variance to reduce the amount of required parking spaces from 137 to 70 for a senior housing facility.

Mr. Ballard said the prospective buyer is AHEPA 60 from Ohio. They have 86 projects in 22 states. The property is just over 4 acres and will be developed in two phases. Phase one will be a three story building with 50 one unit apartments. Phase two will also be a three story building with 40 one unit apartments. The facility will have walking paths, gazebo, and will have a nice residential feel to it.

Mr. Ballard said the request for reduced parking is based on the experience that only 25% of the residents will drive. The requested number of spaces, 70, will leave plenty of room for visitors.

Mr. Portolese asked if the request was for a reduction of parking only. Mr. Prince said yes. Later the Plan Commission will consider the rezoning request.

Mr. Portolese asked what the age limits were for this facility. Mr. Ballard said "senior" described a wide range of folks. Mr. Prince said it typically starts at age 55, but the average age of residents is late 70's to early 80's for this type of facility. Mr. Prince said when people gravitate to this type of living; there is no need for a 1 to 1 ratio of parking. These units are different from the standard apartments. We don't want them to build extra parking and have a sea of concrete. Also, they'll be able to provide more landscaping with less parking.

Mr. Trippel asked if statistics verify this. Mr. Prince said yes.

Mr. Ballard said there will be in-house transportation for the residents who want to go out and shop or they will have the option of walking to Kroger.

Mr. Trippel asked if this request is for both phases. Mr. Prince said yes. If they run into problems with parking, they have room on the site to add if necessary.

Mr. McCampbell closed the Public Hearing on Appeal #10-32.

Staff Recommendation

Staff recommends approval of Appeal 10-31 to allow a reduction in the required number of parking spaces from the required 135 parking spaces to 70 parking spaces. 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 similar previous developments have shown that the proposed reduction in parking will be sufficient to meet all of the site's parking needs.*
- 3. Strict application of the terms of this chapter will result in practical difficulties in the use of the property because the development will consist of (2) apartment buildings. With these buildings and the amount of open-space needed for stormwater, the amount of land available for parking is limited. Furthermore, the requirements of 1 ½ parking spaces for apartment units were designed for general public apartment use. The Ordinance does not provide for separate parking standards for age-specific apartments where the percentage of residents that drive vehicles is less.*

MOTION: Rose Portolese moved to approve Appeal #10-31. Mr. Trippel seconded; motion carried with a vote of 5-0.

APPEAL #10-32 An appeal submitted by Saint Joseph Regional Medical Center requesting a Sign Variance for **5215 Holy Cross Parkway**, to allow the relocating, removing and adding "Emergency" panels and directional signs for the purpose of assisting the public to the Emergency Department at St. Joseph Regional Medical Center.

Buck Miller, Burkhart Advertising, 1247 Mishawaka Ave., South Bend, appeared on behalf of the Appellant. Mr. Miller said since opening in December, the hospital has encountered some unusual traffic problems with people trying to locate the Emergency Room. The proposed seven (7) supplemental signs will provide directional enhancement.

Mr. Krueger asked if the signs would be illuminated. Mr. Miller said yes.

Mr. Trippel asked if they will be located near the road. Mr. Miller said yes, but need to work within the required setbacks. They will be located approximately 14' from the curb.

Mr. McCampbell asked if these signs will replace the temporary signs. Mr. Miller said yes.

Mr. McCampbell closed the Public Hearing on Appeal #10-32.

Mr. Prince said staff suggested they put up the temporary directional signs then follow up with the variance request.

Mr. Prince read a letter of support from Edward Rose of Indiana.

Staff Recommendation

Staff recommends approval of Appeal #10-32 to allow (1) red "EMERGENCY" panels to be added to the two main identification monument signs located at Douglas Road/ Holy Cross Parkway on the north, and Edison Lakes Parkway/Holy Cross Parkway on the south; (2) to add up to seven (7) internally illuminated directional signs with copy EMERGENCY along Holy Cross Parkway leaded to the Emergency entrance; and (3) to remove EMERGENCY panels from existing multi panel directional signs in four (4) locations at St. Joseph Regional Medical Center, 5215 Holy Cross Parkway. 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 the general welfare of the community will be improved with the additional "EMERGENCY" signage to lead the way to the emergency room, and all state and local building codes will be adhered to during installation of the signs;*
- 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 signs will be installed at least 14 feet from the back of the curb, will be staggered appropriately on the 89 acre parcel, and will have Douglas Road and Holy Cross Parkway buffering them from adjacent properties; and*
- 3. Strict application of the terms of the On-Premise Sign Standards Ordinance will result in a practical difficulty in the use of the property by allowing unsafe traffic patterns to continue to confuse drivers seeking to find the SJRMC emergency room.*

MOTION: Charles Krueger moved to approve Appeal #10-32. Rosemary Klaer seconded; motion carried with a vote of 5-0.

APPEAL #10-33 An appeal submitted by the City of Mishawaka Redevelopment Commission requesting a Developmental Variance for **501 West Sixth Street**, to allow construction of a new home with an 8' front building setback and a privacy fence with a 1' exterior side-yard setback.

Ken Prince, City Planner, appeared on behalf of the Redevelopment Commission. Mr. Prince indicated this lot had been purchased by the Redevelopment Commission and will be the site of a new Habitat for Humanity home (*Secretary's note: the lot will be used for the City's First Time Homebuyer Program*). Mr. Prince said he is proud of the City's partnership with Kil Architecture in designing a home that fits in with the neighborhood.

Mr. Prince said the front setback of the home would be 8' which closely matches that of the adjacent homes. The Zoning Ordinance requires a 25' front setback.

Mr. Krueger asked if the house will have a garage. Mr. Prince said yes, a single car detached garage.

Mr. Prince also said part of this request is for a privacy fence along West Street. He said the fence aligns with Squad's across the street and wouldn't go any closer to West Street and would not further obstruct vision.

Mr. Prince said that building a new house is the best thing for the neighborhood and the character of the new house would match the character of the neighborhood.

Staff Recommendation

Staff recommends approval of Appeal 10-33 to allow the construction of a home lot with an 8-foot front-yard building setback and a privacy fence with a 1-ft exterior side-yard setback with angled fencing at the southeast corner of the lot. 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 there is sufficient space between the proposed fence and the W 6th Street and S West Street intersection as not to create a visual hindrance; and the fence will be angled at the intersection of the alley and S West Street to create a clear visual coming from 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 because the proposed home will be consistent with the existing front-yard building setbacks of the adjacent homes and the interior side-yard building setback of 5-ft will be adhered to.*
- 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. To adhere to the required 12 ½ -ft setback for the fence would reduce the amount of usable yard area that would otherwise be protected from S West Street by the placement of the fence.*

MOTION: Rosemary Klaer moved to approve Appeal #10-33. Ross Portolese seconded; motion carried with a vote of 5-0.

PRIVILEGE OF THE FLOOR:

Mr. Trippel asked if there was any way to issue a temporary permit for handicap ramps. Mr. Prince said the county permits them by right. Mr. Prince said in the case of the ramp just approved this evening on 13th Street, it would have been built inappropriately. By not having the variance process, it opens up problems for other things.

ADJOURNMENT: 6:39 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner