

JUNE 12, 2012

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

A regular meeting of the Mishawaka Board of Zoning Appeals was held Tuesday, June 12, 2012, at 6:00 p.m. in the Council Chambers, City Hall, 600 East Third Street, Mishawaka, Indiana. Board members attending: Charles Krueger, Don McCampbell, and Rosemary Klaer. Absent: Jim Trippel and Ross Portolese. In addition to members of the public, the following were also in attendance: Ken Prince, David Bent, Greg Shearon, Peg Strantz, and Kari Myers.

Don McCampbell explained the Rules of Procedure.

The Minutes of the May 9, 2012, meeting, were approved as distributed.

Conflict of Interest was not declared.

PUBLIC HEARING:

APPEAL #12-15 An appeal submitted by Angela M. Weaver requesting a Developmental Variance for **1432 East Third Street** to allow a handicap accessible ramp with a front building setback of one (1) foot.

Angela Weaver, 1432 E. Third Street, presented the appeal. She said the ramp is for her husband and will be within 1' of the front property line.

Charles Krueger asked if the ramp will be professionally built. Mrs. Weaver said it will be a combination of professionals and volunteers.

Mr. McCampbell closed the Public Hearing on Appeal #12-15.

Staff Recommendation

*Staff recommends **approval** of Appeal 12-15 to allow an access ramp to be constructed with a 1' 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 because the ramp is modest in size and will be at least 3' from the public sidewalk; 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: Rosemary Klaer moved to approve Appeal #12-15. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #12-16 An appeal submitted by Sexton LF Properties, L.P. requesting a Developmental Variance for **212 Remington Court** to permit two (2) existing accessory structures with a non-conforming front building setback.

Greg Touney, Ice Miller, Indianapolis, appeared on behalf of the Appellant. He said the variance is required due to the City taking 5' – 15' to widen Main Street and also said the garages are existing.

Mr. McCampbell closed the Public Hearing on Appeal #12-16.

Staff Recommendation

Staff recommends approval of Appeal 12-16 to allow (2) existing garages that will encroach into the 25-ft front yard building setback due to adjacent right-of-way expansion. This recommendation is based upon 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 garages are existing and will still be an appropriate and safe distance away from the proposed street expansion.*
- 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 garages are existing.*
- 3. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the existing garages would need to be demolished and rebuilt if they were required to adhere to the required 25-ft setback.*

MOTION: Charles Krueger moved to approve Appeal #12-16. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #12-17 An appeal submitted by McMahon LLC requesting a Use Variance for **1275 and 1301 Industrial Drive and 1220 South Merrifield Avenue** to allow bulk propane storage.

Ed Fisher, Fisher Land Surveying Services, 303 E. Third Street, Mishawaka, presented the appeal on behalf of the Appellants. He said this Use Variance will allow for bulk propane storage in order to more readily fill their fork lift propane tanks. Right now, a company comes and fills their tanks and this will increase their productivity. Mr. Fisher said the Fire Department indicated their approval.

Mr. McCampbell asked if the size 1,000 gallon size is extra large. Mr. Fisher said no, there are ones that are larger. This tank, although 1,000 gallon in size, will only hold 800 gallons to allow for expansion. They use approximately 400 gallons every two weeks.

Mr. McCampbell closed the Public Hearing on Appeal #12-17.

Mr. Prince read a letter of support 1st Source Bank.

Staff Recommendation

The Staff recommends in favor of Appeal 12-17 for a Use Variance to allow a 1,000 gallon above ground fuel storage tank at Maron Products 1220 S. Merrifield location, subject to the following conditions:

1. *This approval shall be limited to one 1,000 gallon fuel storage tank. Any expansion shall require the submission, review, and approval of an additional Use Variance.*

The recommendation is based on the following reasons:

1. *With the stipulated condition, the approval will not be injurious to the public health, safety, morals, and general welfare of the community because the installation of the tank will conform to all applicable safety requirements as determined/interpreted by the City of Mishawaka Fire Department;*
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 1,000 gallon tank will only contain 800 gallons of propane as a safety measure to permit liquid expansion, and the tank will be set at least 25 feet from property lines and buildings;*
3. *The need for the variance does arise from a condition peculiar to the property involved because an above ground storage tank is not a permitted use in the I-1 Light Industrial District;*
4. *The strict application of the terms of this chapter constitutes an unnecessary hardship if applied to this property in that without the availability of onsite propane fuel the company would not be able to fuel their forklifts; and*
5. *Granting of this variance will not compromise the integrity of the Mishawaka 2000 Comprehensive Plan which indicates Industrial.*

MOTION: Charles Krueger moved to forward Appeal #12-17 to the Common Council with a favorable recommendation. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #12-18 An appeal submitted by R & B Car Company on behalf of Sears Roebuck & Company requesting a Use Variance for **6501 Grape Road** to permit three (3) separate off-site Used Car Sales as follows: ten (10) days in July, ten (10) days in August, and ten (10) days in September with temporary signage including banners and cold air balloons, mobile office facility for business transactions and securing of valuables.

Brandon Cretacci, R & B Car Company, 3811 S. Michigan Street, South Bend, presented the appeal. He said R & B Car Company has multiple locations in the area and have been doing business with Sears for quite a while and they approached them to hold the sale in their parking lot.

Mr. Krueger asked if they had held a sale at the mall before. Mr. Cretacci said no and this will be their first off site sale. He said that Sears approached them and it will provide a good family-friendly atmosphere for all customers.

Mr. McCampbell asked if they understood there were to be no inflatable balloons. Mr. Cretacci said yes. Mr. Prince also said there were to be no inflated animals or other attention-getting devices. He said Gates had the same conditions. Mr. Cretacci said they could live without them.

Mr. Krueger asked if they were familiar with all conditions of approval. Mr. Cretacci said he didn't understand the Transient Merchant's License.

Mr. Prince said it's a separate license obtained through the Board of Public Works and Safety and is required because you don't have offices in Mishawaka. He said it would be appropriate to obtain that should Council approve your request.

In Favor

John Kulis, Sears Automotive, said they hope to piggyback off of R& B's marketing and pick up some sales.

Mr. McCampbell closed the Public Hearing on Appeal #12-18.

Staff Recommendation

*Staff recommends in **favor** of Appeal 12-18, Use Variance, to allow for the temporary use of a portion of the Sears Roebuck & Company parking lot for three (3) off-site car sales events. The event proposes utilizing two inflated cold air balloons, two (2) tents, mobile office facility, and temporary signage. The Use Variance is subject to the following conditions:*

TRANSIENT MERCHANTS LICENSE:

- *A Transient Merchant's License shall be obtained from the Board of Public Works and Safety prior to the first sales event in July.*

USES:

- *The event shall be limited to the display and sales of automobiles and light trucks for ten (10) days in July, August, and September of 2012 as presented.*

SITE PLAN:

- *A site plan/layout shall be submitted identifying the location of display areas, visitor parking, tents portable toilets, temporary lighting, and other related temporary improvements subject to staff review and approval. Written approval of the site plan/layout shall be required from University Park Mall, LLC.*

ACCESS/TRAFFIC CONTROL REQUIREMENTS:

- *Access to the event use shall be through existing mall entrances. Additional restrictions may be requested by the City of Mishawaka the Director of Engineering as deemed appropriate as part of the review of a site plan/layout. The City of Mishawaka Police Department may also request any modifications to layout, parking, access, or attention devices during the event if it is deemed problematic to through traffic, or any safety issue is identified.*

SETBACKS:

- *All tents, display/parking areas, portable toilets and large inflatable balloons shall be set back a minimum of 25 feet from any road right-of-way and 10 feet from any internal access drive.*

SIGNAGE/ATTENTION DEVICES:

- *A plan identifying the location and type of all signage/attention devices shall be submitted subject to staff review and approval. A maximum of one (1) temporary sign no larger than 4' X 8' shall be permitted on Grape Road. A maximum of two (2) temporary signs shall be permitted along State Road 23. **No inflatable air balloons shall be permitted.** All signs and attention getting devices shall not flash or be animated where they are overtly distracting to the motoring public. Internal directional signs shall also be permitted as necessary provided they are not visible from surrounding major roadways.*

This recommendation is based upon 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 development is temporary and will maintain certain minimum developmental standards as outlined herein;*
- 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 area is surrounded by commercial development;*
- 3. The need for the variance arises from some condition peculiar to the property involved in that the C-2 zoning does not permit vehicle sales, even on a very limited basis, thus requiring the Use Variance for the proposed use;*
- 4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the ordinance as drafted, would not permit the Appellant to hold their regional event at this site, specifically, the University Park Mall is one of the few regional facilities that has been inherently constructed to handle this type of event by having the appropriate access, lighting, and parking;*
- 5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and the surrounding area is one of the largest consolidated retail areas in the State of Indiana.*

MOTION: Rosemary Klaer moved to forward Appeal #12-18 to the Common Council with a favorable recommendation. Charles Krueger seconded; motion carried with a vote of 3-0.

APPEAL #12-19 An appeal submitted by Jonathan LeVan requesting a Developmental Variance for **1132 East Fourth Street** to allow a 1,064 sqft, 17' high garage with a one (1) foot and two (2) foot side building setback.

Jonathan LeVan, 1132 E. Fourth Street, said he loves where he lives, however, he's had extensive damage to his vehicles by vandals and he wants a larger garage to store vehicles and tools inside.

Mr. McCampbell said it looks like the garage would take up a lot of the back yard. Mr. LeVan said it's something they have discussed and it's a trade-off.

Mr. McCampbell closed the Public Hearing on Appeal #12-19.

Staff Recommendation

Staff recommends **approval** of Appeal 12-19 to allow the construction of a 716 sqft addition to their existing 288 sqft freestanding garage at 1132 East 4th 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;*
- 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 new construction constitutes an investment 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 limited size requirement of accessory structures would not supply sufficient space for storage and protection of valuables.*

MOTION: Charles Krueger moved to approve Appeal #12-19. Rosemary Klaer seconded; motion carried with a vote of 3-0.

APPEAL #12-20 An appeal submitted by Robert and Ruth Butz requesting a Developmental Variance for **111 West LaSalle Avenue** to allow a handicap accessible ramp with a 17' rear yard setback.

Kay Green, 1807 E. Jefferson Blvd., Mishawaka, spoke on behalf of her parents. She said her father now needs a ramp to safely enter and exit the home.

Mrs. Green said she feels there needs to be a separate ordinance for handicap ramps. They aren't to enhance a property, but something the residents need. She said she doesn't understand the need to send letters to people to people who can't even see the ramp. Mrs. Green says she understands the need to notify the close neighbors. She said it's something that needs to be looked in to.

Mr. Krueger suggested Mrs. Green express her concerns at the next Council meeting.

Mr. McCampbell closed the Public Hearing on Appeal #12-20.

Staff Recommendation

*Staff recommends **approval** of Appeal 12-20 to allow an access ramp to be constructed with a 17' 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 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 located at the rear of the home and at least 40' from the adjacent property owner to the east; 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: Rosemary Klaer moved to approve Appeal #12-20. Charles Krueger seconded; motion carried with a vote of 3-0.

ADJOURNMENT: 6:23 p.m.

Kenneth B. Prince, City Planner

Kari Myers, Administrative Planner