

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, September 12, 2024 - Commenced at 6:08 P.M. & adjourned at 7:05 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff
Phalene Leichtman

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AGENDA

Mulvaney moves to approve the agenda.

Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF MINUTES FOR JULY 11, 2024

Evanega Rieckhoff makes motion to approve; Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

OPENING STATEMENT

Welcome to the July 11, 2024 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the Board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

24-UV-04 PETITIONER IS HERG INC PROPERTY IS LOCATED AT 106 & 108 BOWERS COURT TABLED FOR ONE MONTH

NEW BUSINESS

24-BZA-20 PETITIONER IS THOMAS NICKEL INVESTMENTS LLC PROPERTY IS LOCATED AT 900 E BEARDSLEY AVE

To vary from Section 26.4.B.2, Fences Permitted in Residential and Business Districts, which requires in part that 'in a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence, wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street; or 2. In any portion of the rear yard lying closer to said street than the point of the principal building nearest said street.' To allow a six (6) foot opaque fence installed in the corner side yard (Howard Street frontage) without benefit of permit to remain.

Mulvaney calls the petitioner forward.

Glenn Duncan, an attorney representing Thomas Nickel Investments LLC, located at 228 W High St, appears in person on behalf of the petitioner. Duncan wants to clarify that the petitioner knows things were done incorrectly. The fence was installed before ever receiving a permit, and had they applied, the petitioner would have been made aware of the need for a variance. Duncan states that full disclosure and ignorance of the law are no excuses, but sometimes, they are somewhat of an explanation. Duncan says Thomas is a good citizen of Elkhart, where Thomas has done a great deal of development in and around the City. Duncan says he would like to point out that Thomas developed Star Tire and designed it to have brick, which was the City's recommendation at the time. Duncan says this is proof that Thomas is a good citizen. He then explains that Thomas hired a reputable fence contractor and that the contractor would handle whatever legal requirements there were to install the fence. He states that when Thomas received the notice of violation from the City, Thomas contacted the contractor to address issues with the legality of the fence, where the contractor stated that that burden falls on the property owner, not on the contractor. Having received a citation from the City, the petitioner has recognized that he is in violation. So, applying for the permit started, leading the petitioner to seek the variance. Duncan says that the Board has received the petitioner's application, which addressed the seven standards required for the petition. He adds that the Staff report indicates that the petitioner is satisfying nearly all the requirements except for one, which Duncan believes has been satisfied. Duncan says it's number six, as it replies to number four regarding the property characteristics his client does not have, which is that it is a corner lot. He says Staff has indicated that the petitioner causes number six. This means the fence was installed in the corner lot without receiving the appropriate variance. Duncan says that that is not the characteristic that is the problem, but the problem is that it's a corner lot in a high-traffic area. That issue has been addressed by pointing out that the neighbors across the street developed their property without a buffer between commercial and residential properties. So, Duncan says, the use of his property is for residential purposes, the yard runs the entire length of the Lake City Bank property, and there is a lot of traffic. He says the petitioner would like to shelter the residence from traffic exposure. In addition, since the property on Beardsley Street sees a lot of traffic, the petitioner would like to shelter the backyard. Duncan says he does not believe the fence has negatively impacted any surrounding properties. Duncan then states that a benefit of violating the requirement is that neighbors will know what the fence will look like. Duncan states that the neighbors have expressed their pleasure with the fence to Staff and the standards for being in the flood zone are satisfied. Duncan says he does take issue with the condition that Staff has recommended for three simple reasons. First, the condition itself may satisfy the standards. However, the Staff would like them to move the fence back one foot. Duncan says that the petitioner can do that; however, that would come at a significant expense. Second, Staff asks that the condition be imposed because it will be consistent with a new ordinance that the city council will consider, but that Ordinance has yet to exist. Duncan says he does not know if the final form will be one or two feet. The real problem with the condition is that the sidewalk at the location is in good condition, and there are no trees in the tree lawn along Howards Street, so there is no chance of any tree uprooting or causing the sidewalk to be redone or removed. Duncan then says the sidewalk is in good condition and should be for the next 50 years, so there is no real good reason. Moving the fence back to allow space between the sidewalk and the fence is unnecessary. He says the wrong thing is if you look at where it exists, there will be a problem if there is a one-foot area and he wonders who will maintain that area. Currently, where the fence is, it runs along the edge of the sidewalk, and the mowing of the yard inside that fence will prevent that from becoming an issue. He says a property directly to the north has a chain-link fence about a foot off the sidewalk; weeds and trees are growing in that space. Duncan says his client will have no issue taking care of that area. However, the petitioner may only own the property for a while, and it's not a good idea to create that one-foot space between the sidewalk and the fence because it will be difficult for somebody to maintain.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that if the Board were to approve the request, the petitioner would be grandfathered at one foot if the new zoning ordinance were to change that. She also says that the petitioner will be responsible for the one foot since that area still belongs to the property owner.

Leichtman asks Trotter for a timeframe of when the Ordinance will be changing.

Trotter answers that a draft may be ready by this year's fourth quarter.

Leichtman asks Trotter if the City anticipates the Zoning Ordinance to grow.

Trotter replies yes.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

Thomas M Nickel Investments, LLC is the owner of the subject rental property and resides immediately south across Beardsley Ave. In an attempt to provide screening from the auto-oriented commercial uses with drive-throughs across Howard St., the owner installed a 6 foot privacy fence, when 4 feet is the maximum height, at its current location on the property line, which is not at the required setback, without a permit. Petitioners are seeking this variance to allow for a permit of the now existing fence in its current location.

Staff has no recommendation on the proposed variance but is requesting the condition that the fence be moved to a 1 foot setback from the Howard St. property line. The City of Elkhart is in the process of updating its zoning ordinance, including the fence regulations. It is anticipated that the new UDO will include allowances for fences in a corner side yard to be located at 1 foot setback in the subject location.

STAFF RECOMMENDATION

The Staff has no recommendation of the developmental variance to vary from Section 26.4.B.2, Fences Permitted in Residential and Business Districts, which requires in part that 'in a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence, wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street; or 2. In any portion of the rear yard lying closer to said street than the point of the principal building nearest said street.' To allow a six (6) foot opaque fence installed in the corner side yard (Howard Street frontage) without benefit of permit to remain based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the approval of the variance will soon be permitted by right if located at a 1 foot setback consistent with the future City of Elkhart Unified Development Ordinance;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because a fence, even if located at the property line, is a typical use of residential districts. The fences location should not affect the use and value of a adjacent property, especially if located per the requested condition;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted because the fence would allow for screening from the intense, auto-oriented commercial uses to the west;
4. Special conditions and circumstances do exist as the subject property is a corner lot;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because if the fence were installed in the correct location it would effectively divide the yard in half;
6. The special conditions and circumstances do result from the applicant because the fence was installed without a permit and in the incorrect location;
7. This property does not lie within a designated flood area.

CONDITIONS

If the Board chooses to approve the requested developmental variances, Staff recommends that the following conditions be placed upon the approval:

1. To relocate the fence to a 1-foot setback along Howard St., consistent to what's proposed in the future City of Elkhart Unified Development Ordinance.

Ughetti states that 31 letters were mailed, three of which were returned in favor with two comments. The first says that it is an improvement over the previous wire fence. The second letter says that the fence looks good and increases security, to pay the fine and get a permit next time.

Mulvaney asks if there are questions from the Board for Staff.

Davis asks Ughetti if the petitioner understands the condition being placed by Staff.

Duncan answers yes.

Mulvaney asks Trotter about the theory behind the one-foot setback along a sidewalk and a street in this situation. Mulaveny says he understands there might be a reason between residences.

Trotter replies that the theory allows for proper sidewalk maintenance while allowing the homeowner to have a larger backyard versus what is currently required, which is a six-foot fence equal to the house's setback. So, if the home is setback 12 or 14 feet, it loses the area behind the six-foot fence.

Mulvaney asks if that would narrow the number of setbacks based on the side the fence sits on.

Trotter replies yes.

Trotter states that Staff is attempting to allow more usable space within the six-foot boundary limit.

Mulvaney states that if he assumes the sidewalk needs to be replaced, the fence must be torn down to allow equipment to pass through.

Trotter answers that that would depend on the scale of operation at the time.

Mulvaney asks Trotter if the City would have every right to remove them.

Trotter answers that they would assume.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-20, and adopt the petitioner's documents and presentation as the findings of fact in the present petition, and adopt all conditions listed on; seconded by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

**24-UV-10 PETITIONER IS DIANA CASTILLO AND JUAN CASTILLO
PROPERTY IS LOCATED AT 722 GRAYWOOD AVE**

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the property to be used as a commercial kitchen.

Mulvaney calls the petitioner forward.

David Porter, a contractor representing Diana Castillo and Juan Castillo, located at 722 Graywood Ave, appears in person on behalf of the petitioner. Porter says the request is for a commercial prep kitchen since it needs to be zoned for that use. He then states that he is still determining the appropriate zoning for the food prep but believes it's currently zoned as M-1.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Porter how many people will work there and how many trucks will enter and exit the facility.

Porter answers that one business and one food truck will cater off-site. If things go well, this could allow community businesses to have a place to come locally and do their food preparations. However, the plan is to have just one company with no patrons.

Evanega Rieckhoff asks Porter if it's a restaurant.

Porter replies no.

Mulvaney states that the food will be prepared on-site solely by loading trucks. He adds that major renovations will be made to the building, which appears to have once been a growing facility.

Leichtman states that commercial kitchens are needed in the City.

Porter states that the property would allow for an expansion to open it up more to the community. He says that everything would be done within the appropriate standards.

Mulvaney asks Porter if there are any issues with the conditions listed by Staff.

Porter answers no.

Mulvaney states that the petitioner's biggest challenge will be the Health Department.

Porter states that once permits are pulled, everything will be sized appropriately with the facility.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow for a commercial kitchen and food truck fulfillment center at the site. The surrounding area is highly industrial, and the request use is consistent with its character. The proposed use will see food trucks coming to the location to restock before going to other locations to serve customers.

Based on the submittal, Staff has additional questions regarding the number of employees, number of food trucks expected to restock at the site, and the hours of operation. Those questions and the lack of a proper site plan lead to the requested condition of the required pre-development meeting. Nonetheless, Staff feels the use is appropriate for the district and is recommending approval as the only requested action this moment is the use variance, not site plan approval which will need to be achieved at a later date.

The project will still need to go through zoning, health, and building review processes. Submittal to Technical Review will also be required.

STAFF RECOMMENDATION

The Staff recommends approval of the use variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the proposed use is consistent and less intense than other uses allowed in the M-1 Limited Industrial District;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed use is less intense than other uses allowed in the M-1 district;
3. The need for the variance arises from some condition peculiar to the property involved because without board action the use would not be permitted;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because more intense uses are allowed in the M-1 district and denial would leave the property vacant;
5. The approval complies with the Comprehensive Plan which calls for the area to be developed with industrial uses.

CONDITIONS

If the Board chooses to approve the requested use variance, Staff recommends that the following conditions be placed upon the approval:

1. The petitioners schedule a pre-development meeting with Staff to discuss getting a site plan for the site that meets the current zoning, health, and building regulations.

Ughetti states there were 12 letters mailed, with one returned in favor with no comment.

Mulvaney asks if there are questions from the Board for Staff.

Mulvaney calls for a motion.

Davis makes a motion to approve 24-UV-10 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Leichtman.

- Davis – Yes
- Evanega Rieckhoff – Yes
- Leichtman – Yes
- Mulvaney – Yes

Motion carries.

**24-X-07 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT 1300 BL INDIANA AVE THOMAS ST**

To vary from Section 6.4, Yard Requirements in the R-3, Two Family Dwelling District, which requires the front yard setback for new structures to be built at the established or twenty (20) feet from the front property line to allow for the lift station structure to be located within the twenty (20) foot setback. To also vary from the Yard Requirements which limits the height of structures to thirty (30) feet to allow for the lift station structure at a height of thirty-seven (37) feet, a variance of seven (7) feet. To also vary from the Yard Requirements which limits lot coverage to forty (40) percent for all structures to allow for a lot coverage of forty-two (42) percent, a variance of two (2) percent. To also vary from Section 26.4.A.6, Fence Requirements which states in part that 'No fences, other than split rail, wrought iron or open picket fences not to exceed four (4) feet in height, shall be permitted in any front yard or corner side yard, to allow for a six (6) foot vinyl coated fence in the front yard.

Mulvaney calls the petitioner forward.

Tory Erwin, director of the City of Elkhart Public Works, located at 1201 S. Nappanee St, appears in person. Erwin says that the project is one of the City's long-term control plans, a twenty-year project in which the City is under a consent decree with the DOJ and the EPA to eliminate and reduce the combined sewer overflows into the waterways in Elkhart. The project is a key part of that project, allowing for a lift station to accept 1/3 of the City's wastewater and combine sewer. It will also have a 1.7 million-gallon

storage tank. The site was selected in 2008 when the long-term control plan was being developed, and it has taken until now to get the project on the list.

Mulvaney asks for questions from the Board.

Mulvaney asks Erwin if all the construction around downtown is in relation to the station.

Erwin answers that the construction around Indiana Avenue is related to the lift station. The construction near downtown is a different long-term control plan project that is not connected to the project but is still part of the plan.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

The petitioner is requesting a special exception to allow for the construction of a new lift station, equipment building, monorail system, security fence and Combined Sewer Overflow (CSO) storage tank.

The request is part of the City of Elkhart's Long Term Control Plan (LTCP) which is mandated by the Environmental Protection Agency (EPA).

The site is adjacent to existing sewer infrastructure along both Lafayette Street and Indiana Avenue where sewer flows will be directed to the new lift station and CSO storage tank. The design was completed to meet the parameters found in the LTCP as well as the necessary operational access to both the lift station and the CSO storage tank.

The storage tank has been designed to resemble a building which will help the structure blend more easily into the street scape along Indiana Avenue. The exterior elevations are included in the packet.

The above grade CSO storage tank will incorporate an access stair tower. Security fencing will be built around the lift station to protect the monorail system that will serve the lift station.

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected because all structures will be built per all applicable local building and federal (where applicable) codes;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the new equipment will be screened and will not impact the adjacent uses;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because the equipment will not generate adverse effects on adjacent properties with noise, emissions or vibrations.

Trotter states there were 58 letters mailed with one returned in favor with no comment.

Mulvaney asks if there are questions from the Board for Staff.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-X-07, and adopt the petitioner's documents and presentation as the findings of fact in the present petition, and adopt all conditions listed on; seconded by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-23 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT 1300 BL INDIANA AVE THOMAS ST**

To vary from Section 6.4, Yard Requirements in the R-3, Two Family Dwelling District, which requires the front yard setback for new structures to be built at the established or twenty (20) feet from the front property line to allow for the lift station structure to be located within the twenty (20) foot setback. To also vary from the Yard Requirements which limits the height of structures to thirty (30) feet to allow for the lift station structure at a height of thirty-seven (37) feet, a variance of seven (7) feet. To also vary from the Yard Requirements which limits lot coverage to forty (40) percent for all structures to allow for a lot coverage of forty-two (42) percent, a variance of two (2) percent. To also vary from Section 26.4.A.6, Fence Requirements which states in part that 'No fences, other than split rail, wrought iron or open picket fences not to exceed four (4) feet in height, shall be permitted in any front yard or corner side yard, to allow for a six (6) foot vinyl coated fence in the front yard.

The presentation for 24-BZA-23 from Tory Erwin has been combined with that of 24-X-07, thus rendering an additional presentation unnecessary.

STAFF ANALYSIS

The petitioner is requesting several developmental variances associated with the special exception request for the installation of a new lift station, equipment building, monorail system, fence and storage tank building.

The City's Long Term Control Plan (LTCP) is required by a consent decree from the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) to reduce sanitary sewer overflows into local waterways. The need for the variances comes from the new equipment that is part of the LTCP to separate combined sewers, install devices that direct wastewater to the treatment plant rather than combined sewer areas, install regional storage tanks to capture and store sewer overflows during wet weather and improvements to the wastewater treatment plant. Since 2010, the City has completed approximately half of the 38 Long Term Control Plan projects. The consent decree has a mandated completion date of December 2029 for all of the LTCP projects.

This project is located on the north side of the 1300 block of Indiana Avenue bounded by Thomas (west) and Fremont Streets (east). The north boundary is Lafayette Street. Currently there is a community garden and two (2) single family dwellings that will be removed as a part of this project.

The proposed storage tank building is designed to look like a built structure along Indiana Avenue. It is placed between the commercial uses on either side of the property – a place of worship and a food outreach ministry. The primary façade along Indiana includes a contemporary wave feature that incorporates landscaping that buffers and softens that elevation toward the street. The height of the storage tank building is requiring a height variance because the enclosed stair tower is seven (7) feet above the maximum height allowed in the R-3 district of thirty (30) feet. The lot coverage variance where the storage tank building is to be placed is two (2) percent over the lot coverage maximum for the R-3 district of 40%. The north south alley that is to the west of the tank will not be used for maintenance vehicles. A newly constructed access drive has been incorporated into the plan to provide an additional buffer area to keep maintenance traffic away from the church.

North of the church, a small portion of the proposed underground pump station, at the intersection of Lafayette and Thomas Streets, will extend into the front yard setback along Thomas Street. The only visible parts of the pump station will be the concrete top and access hatches. The entire area will be surrounded by vegetation to screen the built structures associated with the lift station.

Finally along Thomas Street, a six (6) foot, vinyl coated fence, is requested to be placed in the front yard. This proposed fence will provide security and prevent people from accessing the site, out of harm's way and away from the equipment.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, or general welfare of the community, because the petitioner will be required to complete the modifications in a workmanlike manner and have inspection by the building department;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the equipment associated with the variance requested will be screened from adjacent properties and is permitted as a special exception use within the district;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows a measure of relief when uniquely warranted;

4. Special conditions and circumstances do exist that are peculiar to the land involved because without board action, the mandated project would not move forward and cause the City to be out of compliance with our consent decree;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because board action is required for this proposed use;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because no work has begun;
7. This property does not lie within a designated flood area.

Trotter states there were 58 letters mailed, with one returned in favor with no comment.

Mulvaney asks if there are questions from the Board for Staff.

Evanega Rieckhoff asks Erwin if money has been budgeted for the properties and if a new community garden will be around the area.

Erwin answers that Utilities has acquired all the properties necessary for the project. To address the second question, Erwin says that green space will remain open north of the tank, east of the lift station, where the City will look to allow some programming for the area. Whether that is used for a community garden or playground equipment will depend on whatever the community finds the best value for the area.

Mulvaney calls for a motion.

Davis makes a motion to approve 24-BZA-23 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Leichtman.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-21 PETITIONER IS PATRICK MOHAN AND JILL MOHAN
PROPERTY IS LOCATED AT VL MELROSE MANOR (06-03-230-002)**

To vary from Section 26.1B.1, Accessory Structures, which states in part 'An accessory structure shall not be erected prior to the establishment or construction of the principal building to which it is accessory or to which it is intended to be accessory,' to allow for the accessory structure to remain without the establishment of a principal building.

Mulvaney calls the petitioner forward.

Petitioner Patrick Mohan, 13 Melrose Manor, appears in person. Mohan says that he had purchased a storage garage and placed it on a lot adjacent to his property without releasing that he was in violation. Mohan says that he talked to the company from which he bought the shed and was told that a foundation was unnecessary. Mohan states that he was written up for needing a foundation and for building on a vacant lot.

Mulvaney asks for questions from the Board.

Mohan brings in two large exhibits that display the property with the already-built accessory structure. Mohan points out that the white house is on lot 4, and lots 5 and 6 are behind the shed.

Mulvaney asks Mohan if the lots were purchased separately from Mohan's residential property.

Mohan replies yes. He has lived on lot 13 since 2000 and bought the vacant lot, also known as lot 14, in 2016. He says that he thought he would build a pool or pool house.

Mulvaney asks Mohan if there is no room on his principal property.

Mohan answers that additional storage is warranted and that nothing can be done on his lot.

Mohan states that at one point, lots 10 through 15 face the river, and lots 1 through 6 face Jackson Boulevard. Mohan says there are two interior lots. He says he looked at what could be done with the lot, but it would be difficult because the front of the house would face the street. Mohan says there is one house north of lot one, but that was the original farmhouse built before any other homes were built in the subdivision. Mohan says the other point he wanted to make was that, at one point, there was a public easement.

Evanega Rieckhoff asks Mohan if he has the red line with the public easement.

Mohan says that would have made the property more attractive for building a home then; however, now there is no river access for the lot.

Mulvaney opens for public comments to speak in favor.

Doug Graham, located at 53523 County Road 15, appears in person in favor of the petition. Graham says that the petitioner needs more storage since the house is landlocked. Graham says the shed is stuck far back on the property, and as one can see, driving down the neighborhood, people would only know it's there if they look for it. Graham says Mohan takes excellent care of the property, where they mow it and keep it current. Graham says it's not a permanent structure, and if the petitioner had to, it could be torn out. Graham says it complements the house and the neighborhood.

Mulvaney opens for public comments to speak in opposition. Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

Patrick and Jill Mohan are the owners of 13 Melrose Place (A) and have obtained the subject property (B) and placed a small 12 foot by 16 foot shed in the southeast corner of the property (C).

The variance is needed because the property is separated from its owner by a public street and it is an accessory structure without a primary structure. The petitioners received a notice of violation from City Code Enforcement for this reason. It should be noted that the petitioners did not obtain a permit, but the structure meets all other regulations regarding accessory structures.

The accessory structure is located in a discrete location screened by the fences of the surrounding property. The primary homes waterfront lot makes it difficult to locate the structure in the little available yard.

Staff recommends approval of the variance, subject to the condition that they obtain a permit.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.1B.1, Accessory Structures, which states in part 'An accessory structure shall not be erected prior to the establishment or construction of the principal building to which it is accessory or to which it is intended to be accessory,' to allow for the accessory structure to remain without the establishment of a principal building, subject to the requested condition, based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because a small shed as an accessory structure is a typical use in residential districts and the structure is located far from the public right of way and screened by fences of the surrounding properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure because it would allow for the use of a vacant property by an adjacent owner;
4. Special conditions and circumstances do exist as the subject property is owned by an adjacent owner separated by a public street as opposed to directly abutting it;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would be vacant otherwise and the waterfront location of their existing home makes it difficult to locate an accessory structure in their small yard;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

CONDITIONS

If the Board chooses to approve the requested developmental variances, Staff recommends that the following conditions be placed upon the approval:

1. To obtain a permit for the accessory structure.

Ughetti states there were 31 letters mailed, with two returned in favor with no comment.

Mulvaney asks if there are questions from the Board for Staff.

Mulvaney calls for a motion.

Leichtman makes a motion to approve 24-BZA-21, and adopt the petitioner's documents and presentation as the findings of fact in the present petition, and adopt all conditions listed on the staff report; seconded by Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

24-UV-12 PETITIONER IS VASHU MOTELS INC PROPERTY IS LOCATED AT 2807 CASSOPOLIS ST

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the construction of a drive thru coffee shop.

Mulvaney calls the petitioner forward.

John Schebaum, a civil engineer representing Net Lease Properties LLC, located at 1000 Forest Park Blvd Suite 401, appears via WebEx on behalf of the petitioner. Schebaum says the petitioner wants to build a drive-thru coffee shop, and to do that, the property has multiple zoning. Schebaum says that when he was working with Eric, research had to be done to figure out the zoning for the property. He says they are seeking a use variance for the drive-thru over the M-1 zoning portion of the property.

Mulvaney asks for questions from the Board.

Mulvaney asks if the coffee shop will be a drive-thru only.

Schebaum replied yes and said that there would be no menu boards. There will not be a service window, but more like a service door, where employees will go around with a hand-held iPad and take orders. Schebaum says that if there are 10 vehicles, there will be an employee who will go to the last car on the drive and take their order where they will go to the door. Schebaum says the typical turnaround is pretty quick due to the model being used.

Evanega Rieckhoff asks Schebaum if 18 cars can be lined up.

Schebaum answers that that's showing maximum stacking for a seven-thru model where they might try to get it to 20, but the typical outcome will see it get that busy on opening day.

Leichtman asks Schebaum if the petitioner knows that it will usually be cold and rainy.

Schebaum answers that there will be a canopy structure to protect the employees.

Evanega Rieckhoff asks Schebaum if customers will use the parking spots on the left-hand side of the property while they wait for their coffee.

Schebaum answers that the parking there will be used only by employees.

Evanega Rieckhoff asks Schebaum how customers will be getting out.

Schebaum answers that customers will pay while sitting at the stop bar. He then says that when a customer gets their order taken and they are the only one, the customer will pay and receive the coffee at the stop bar. However, if there are 10 customers, someone will walk along the sidewalk or drive-thru, where orders will be taken. When customers get to the stop bar, employees will have their drinks ready, and then customers will exit the property.

Evanega Rieckhoff states that she did not see the other exit onto Cassopolis Street and she apologizes.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls Staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow for a drive thru coffee shop in an M-1 Limited Manufacturing District at the location of the former Budget Inn located on Cassopolis St. near the Toll Road intersection. The location places the site at a key gateway to our City and influences visitors first perceptions of Elkhart. Gateways are essential establishing the sense of community and Elkhart's image.

The reason for the request is the mix of zoning found on the site. The use is permitted in the portion that directly abuts Cassopolis St. that's zoned B-3, but because part of the site is zoned M-1 it requires a use variance. Staff recommends approval of the use variance as more intense uses are allowed in the M-1 district. Approving the use would allow for the reuse of the property to a desired use and provide for new investment along this critical corridor. Redevelopment of the site will improve the sense of welcome and Elkhart community image as discussed in the Comprehensive Plan. City staff welcomes this new development. Submittal to Technical Review will be required as well as approval from the Indiana Department of Transportation (INDOT).

STAFF RECOMMENDATION

The Staff recommends approval of the use variance based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the proposed use is consistent with the commercial character of the corridor;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed use is less intense than other uses allowed in the M-1 district;
3. The need for the variance arises from some condition peculiar to the property involved because without board action the use would not be permitted;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property because a denial of the use variance will limit the development to a small portion of the site;
5. The approval complies with the Comprehensive Plan which calls for the area to be developed with commercial uses and for improving the streetscape and community image of this key gateway.

CONDITIONS

1. Project shall be submitted for review and approval at Technical Review.
2. Petitioner shall be required to obtain all necessary approvals from Indiana Department of Transportation (INDOT) in coordination with the Technical Review submittal listed in condition No. 1 above.

Trotter states there were 17 letters mailed with zero returned.

Mulvaney asks if there are questions from the Board for Staff.

Evanega Rieckhoff asks Trotter if the petitioner understands the conditions put forth by Staff.

Trotter answers that the petitioner has been in contact with Jeff Schaffer out of Public Works because they will have to go through Tech Review, and INDOT will have to be involved. Because of the location, the entrances will be modified, and since Cassopolis is a state road, they will need INDOT approval. This is not a site plan approval; it is just the use, and they will still go through Tech Review and INDOT for site plan approval.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-UV-12, and adopt the petitioner's documents and presentation as the findings of fact in the present petition, and adopt all conditions listed on the staff report; seconded by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

ADJOURNMENT

Davis makes motion to adjourn; Second by Evanega Rieckhoff. All are in favor and meeting is adjourned.



Doug Mulvaney, President



Ron Davis, Vice-President