

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, June 13, 2024 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff

MEMBERS ABSENT

Phalene Leichtman

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Mulvaney moves to approve an amended agenda and tabling 24-UV-04 and 24-BZA-06 until the next meeting. Davis makes motion to amend the agenda; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF MINUTES FOR MARCH 14, 2024 & MAY 9, 2024

Evanega Rieckhoff makes a motion to approve March 14, 2024 minutes; Second by Davis. Voice vote carries. Davis makes a motion to approve May 9, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the June 13, 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-07 PETITIONER IS GURPREET SINGH PROPERTY IS LOCATED AT 1900 & 1904 W FRANKLIN ST

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the construction of a four family dwelling. Four family dwellings are not a permitted use in the M-1 District.

Mulvaney calls the petitioner forward.

Levi Ridhour appears in person on behalf of the petitioner. Ridhour says the plan is to build a quadplex on the vacant property. He says it will add value to the property since there is nothing there, and the plan is for it to be affordable housing. He adds that a concrete parking lot will be installed in the back on the north side to match the surrounding neighborhood so people are not parking on Franklin Street.

Mulvaney asks for questions from the Board.

Mulvaney asks Ridhour if each unit will be two bedrooms.

Ridhour answers yes and believes each unit will be 920 square feet.

Mulvaney states that the quadplex is needed and that there is a need for smaller apartments.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

Ronald and Jackie Clay appear in person in opposition to the petition.

Ronald asks the Board why the petitioner can build a quadplex in a light manufacturing area.

Mulvaney answers that the petitioner is before the Board seeking relief, which is why they are present today. The rationale is that the neighborhood's character is starting to change.

Jackie states that she deals with many renters, and they have had issues with them in the past. She then says that if law enforcement is dispatched, they might or might not come, and people are left having to deal with the issue. Jackie states she has a quiet neighborhood and wants to keep it that way.

Ivy Iverson appears in person in opposition to the petition. Iverson says she owns the Franklin Street Tavern and has operated it for nearly 25 years. She says she agrees with the neighbors because the area can be messy. She states that people cut through and speed through her parking lot. The wear and tear of her property suffers because of it, and it costs her money. Iverson states that people leave their trash in the dumpster, and if it is closed, they leave it in the area. Iverson then says children play in the alley and parking lot, which can be dangerous. She then says that she has a chain link fence, which is being destroyed by visiting guests of the renters. Iverson adds that she receives large deliveries four to five times a week, which concerns her since children play around there. She says it's a huge liability and cannot install a fence around her property. Iverson says she wants the wear and tear to stop and people to stop trashing her property.

Evanega Rieckhoff states that the apartment complex will have its trash pickup.

Iverson states she is still determining if that will happen. She then says she has a petition with approximately 18 signatures against it. She says people do not want it in the area and believes it will not enhance the neighborhood.

Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is proposing to construct a four family dwelling at the intersection of W Franklin and Navajo Streets. This section of Franklin has historically had manufacturing zoning mixed with various types of residential and commercial uses for almost 70 years. Since the 1950's, this area has been a mix of industrial, commercial and residential uses. Because of its adjacency to the railroad, the uses tended to be more intense along the south side of Franklin and became less intense the farther away one moved to the north from Franklin. Over time, the manufacturing and commercial uses have diminished with smaller industrial development moving to newer industrial areas, often adjacent to major thoroughfares and clustering with similar uses, in other parts of the city.

It is thought that in time much of this portion of the neighborhood will be considered for rezoning to some sort of residential or mixed use. Looking at the graphic above, there are a number of parcels on El Reno, Navajo and Avalon that sought and were granted rezoning to residential in 2005. This is noted to highlight the varying nature of uses in the neighborhood with a strong favor toward residential.

The need for a use variance is required in order to construct this project. The idea of a more intense residential use should not impact the surrounding uses or character of the neighborhood as this use is less intense than most commercial users or the permitted industrial uses.

Staff is supportive of this infill project. Proposals like this one are becoming more common in areas that have seen disinvestment over time and where the need for new and diverse housing options are needed. This proposal reflects a development pattern seen in other parts of the city that integrates varying levels of density within a neighborhood. This type of housing is considered the 'Missing Middle' – which the city is lacking. Because of the compact construction and it being developed where the necessary infrastructure is existing - it is more cost effective to construct. Therefore those costs do not have to be passed along to the tenant in the form of higher rent. This request adds to the inventory of alternative housing types needed in Elkhart.

It is anticipated that more of these requests will be coming in the future as staff looks for creative ways to reintroduce residential units on vacant infill property.

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 building will be constructed to city standards;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the intensity of use will blend with the neighborhood that has a variety of residential, commercial and industrial uses along Franklin currently;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the site because any residential redevelopment will require board action and the land does not support most industrial uses on the small site;
5. The special conditions and circumstances do not result from an action or inaction by the applicant.

Trotter states there were 29 letters mailed with zero returned. Trotter says one telephone call was not in favor with concerns about too many rentals in the area.

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

Davis asks Trotter how parking will be accommodated.

Trotter answers that tenants will have access to the alley and parking can accommodate two per unit.

Davis asks if that will be within Staffs rules.

Trotter answers yes.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-UV-07 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 Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

24-BZA-08 PETITIONER IS STEVE MCGRATH & DAWN MCGRATH PROPERTY IS LOCATED AT 933 E BEARDSLEY ST

To vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

Mulvaney calls the petitioner forward.

Dawn McGrath appears in person as the petitioner. McGrath says she and her husband bought their residence in 2015 and have lived there as their primary residence. McGrath states she also purchased the home in front of hers, located at 929 E Beardsley. She says she wants to stay consistent with the adjacent properties and convert them into two apartments. McGrath adds that she also transformed her basement into an apartment because the property forms a long strip along Cressy and Everett on Greenleaf. She states there is a sufficient amount of pavement between the new homes for the parking of about 12 cars. McGrath says she got the idea of turning the office into a small rental room with dimensions of 16 feet by 14 feet. It would have a private entrance, with a private bathroom, containing a second access to the garage. McGrath states it would be considered an extended stay.

Evanega Rieckhoff asks if there is a stove or hot plate.

McGrath answers that there will be a hot plate, mini fridge, coffee maker, water filter, and an air fryer. She says there will be a TV, and the property is furnished.

Mulvaney asks for questions from the Board.

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 wishes to vary from the requirements found in Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

The property is zoned R-5, Urban Residential District. Multiple dwelling units in the structure are allowed by right.

This site abuts the St. Joseph River on East Beardsley Avenue just west of Greenleaf Boulevard. The structure was built in 1973 according to Elkhart County tax records and sits toward the rear of the property. The kitchen area and bath were existing when the petitioner purchased the property. The property currently has six off street parking spaces therefore having adequate parking for an additional unit.

There are single family and multifamily homes that surround the property. There is also a commercial building, currently used for Cressy & Everett Real Estate, northeast of the site.

Staff supports the variance request contained in the petition. There will be no outward change to the building. This request reinforces the demand for walkable and affordable housing and begins to address the market gap in housing diversity.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental 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 residential unit within the structure is built per all applicable current building codes;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because many of the adjacent properties are also multifamily dwellings. The use is permitted by right with, the size of the unit in question being of typical size for an efficiency unit;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because there will be no change to the outward appearance of the structure. Additionally, the unit is contained within the footprint of the structure;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because without board action the additional unit would not be a legal dwelling unit because of its size;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the elements of unit (kitchen and bath) existed in the structure when the petitioner purchased the property;
7. This property does not lie within a designated flood area.

Trotter states that 55 letters were mailed, with three returned and one telephone call in favor with no comment. One letter was returned not in favor with the comment that the residential unit needed to be bigger and would change the neighborhood's characteristics from low to high-density residential.

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

Evanega Rieckhoff states that the apartment does seem relatively small and asks Trotter if there is any history of apartments being that small within the city.

Trotter answers that there is an increase in the type of request, as earlier in the year, there was a complex approved by the city that contained one, two, and three dwelling units and mixed-use. Trotter says there is a growing demand for younger professionals who may not need a larger apartment. He states this is the same for the other side of the spectrum, for older individuals who may want to downsize and enjoy as much responsibility for keeping a property. Trotter then says that one or two buildings in South Bend are effeminacy and one-bedroom units. He says there is a trend to attract single people who may not need or want all of the area to take care of.

Evanega Rieckhoff asks McGrath if there is a window.

McGrath answers that there are two windows.

Evanega Rieckhoff asks if the garage will belong to the tenant.

McGrath answers that it could be.

Mulvaney calls for a motion.

Davis makes motion to approve 24-BZA-08 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 Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-09 PETITIONER IS MARK SHARP & COLETTE SHARP
PROPERTY IS LOCATED AT 1626 W EAST LAKE DR**

To vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

Mulvaney calls the petitioner forward.

Mark Sharp appears in person as the petitioner. Mark states that he recently built a house on East Lake Drive close to the park and pavilion in the neighborhood. He says there are two houses with no sidewalks on their street, and he claims there are no sidewalks on either side of the road. Mark then says his neighbors do not have sidewalks, nor does the park have one. He says that his house would be the only one in the area with a sidewalk, and it would look out of place.

Colette Sharp appears in person as the petitioner. Colette says she and her husband, Mark, live in an established neighborhood. She says the lot was a double lot, but it was combined when the house was being built. Colette states they are asking not to install a sidewalk since they would be the only ones in the area with a sidewalk, which would look unsightly. She says her neighbors are not concerned about sidewalks, and it's not a part of the neighborhood.

Mark states that it would look odd since a sidewalk on one side of their driveway extends 10 feet. Conversely, it would go around 70 feet and stop short of a street sign. He says he has talked to others in the neighborhood, and no one he knows wants the sidewalk. He says it has been a thing since the 1960s when the neighborhood was built, and there are no safety concerns.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff stated that she had been driving around before the meeting started and had realized there were no sidewalks around the area. She states it would be unique and understands what the petitioner is requesting.

Mark Sharp asks Evanega Rieckhoff if she has seen his house.

Evanega Rieckhoff answers yes, saying she drove by it and that it's a beautiful home.

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 wishes to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.

The petitioner built a home, which was completed earlier this year, on one of the last remaining vacant tracts of land within the East Lake Subdivision north of Bristol Street; there are two or three vacant lots remaining throughout the subdivision. This subdivision was established in the mid 1950's with the majority of the homes being built into the 1990's. The site that is part of the request is in the third phase of the subdivision where no adjacent sidewalks currently exist. Typically, the later phases (three or four) of the eleven, in the subdivision have public sidewalks, mainly in the central and northern part of the neighborhood.

Staff recognizes the concerns posed by the petitioner in their submittal material around maintenance and aesthetics. However, this circumstance is not unlike many other circumstances in the city where development has occurred over time – even this subdivision is evidenced where sidewalks exist in some areas and not others. Sidewalks provide a designated place for pedestrians and allow

for the separation of pedestrians from automobile traffic. Part of living in a more urban area include the urban elements which include sidewalks.

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because it is necessary to establish standards regulating off street parking, pedestrian movement and in part for the enhancement of the community;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the new home is in an area of the subdivision with no existing sidewalk system;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the public sidewalk in question could have been installed at the time of construction;
5. The strict application of the terms of this Ordinance not will result in practical difficulties in the use of the property because the public sidewalk in question could have been installed at the time of construction;
6. The special conditions and circumstances do result from any action or inaction by the applicant because the petitioner chose not to install the sidewalk and file for relief from the requirement;
7. This property does not lie within a designated flood area.

Trotter states that 21 letters were mailed, with three returned in favor. Two comments said that there are no sidewalks in the area and that installing one would be a waste of resources and an eyesore, and another said the HOA supports not installing a sidewalk.

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

Evanega Rieckhoff asks Trotter who would be responsible for maintaining the sidewalk.

Trotter answers that the city would assume the responsibility for the sidewalk over the long haul if it fell into disrepair.

Evanega Rieckhoff asks Trotter if the homeowner would assume responsibility for the tree lawn.

Trotter answers that the petitioner would be responsible for mowing the tree lawn, but the city would be responsible for the sidewalk.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner's documents and presentations, together with the Staff's finding of fact, as the Board's findings of fact in the present petition.

Maggie Marnocha, Board of Zoning Appeals attorney, states that the Board must withdraw the motion since it moved to approve the Staff's report and the petitioner's findings as the Board's findings of fact. It has to do one or the other.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to withdraw the original motion; Second by Davis.

Mulvaney asks Trotter if the petitioners could avail themselves of the city's sidewalk program.

Trotter answers that that would be a Board of Works policy decision that would have to be considered by the Board of Works.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner's documents and presentations as the Board's findings of fact in the present petition.

Davis – No
Evanega Rieckhoff – Yes
Mulvaney – Yes

Motion fails as there is a minimum quorum and the petition will be heard next month.

**24-X-04 PETITIONER IS MALIK ENTERPRISES LLC
PROPERTY IS LOCATED AT 1710 LEER DR**

A Special Exception per Section 13.3, Special Exception Uses in the B-3, Service Business District, to allow for a Trade School.

Mulvaney calls the petitioner forward.

Crystal Welsh and Brianne Feeks appear in person on behalf of the petitioner. Welsh states that a medical health facility currently occupies an existing building. She says the current user of the property will continue to operate while they look for another facility. Welsh states that as part of negotiations as part of sales, they can stay in the current facility until they find an alternative building. Welsh states that the school is accredited and has been operating for the last ten years at 2701 South Parkway. She says it's not a new program, just a relocation to offer more class space. Welsh then says the classes will be operating during the evenings so that the actual class participants can work during the day and take classes at night. Welsh says there should be no issues since it is not a residential area. She states that the current medical facility will operate during the day, and the classes will go on at night. There are two separate parking lots, so parking should not be a concern. Welsh says it will be helpful since it's large enough for hands-on classes.

Mulvaney asks for questions from the Board.

Mulvaney asks Welsh if the petitioner will own the building and lease out certain spots to the previous owner until the previous owner can transition to a new location.

Welsh answers yes.

Evanega Rieckhoff asks Feeks how many students will be attending.

Feeks answers that there will be about 160 students, but the students only attend class one night a week, so there will be a total of 40 students who attend each class a week.

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 petitioners are submitting an application to establish a trade school at 1710 Leer Drive in the Park Six Industrial Park. Trade schools are a special exception use.

The building was most recently used as a home medical equipment facility. The request as a trade school works well for the area along County Road 6, in an area largely populated with industrial users that would benefit from skilled workers completing the program. Based on information provided with the petition, the school is affiliated with Vincennes University and is accredited by NCCER, the National Center for Construction Education and Research.

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;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. Any/all necessary permits be obtained from the Building Department for interior renovations prior to occupancy.

Ughetti states there were eight letters mailed, with one returned in favor with a comment from Tom Kershner saying he values education and welcomes a trade school at the location. However, his concern is the traffic situation in the industrial park. They stated that the commercial area has only one entrance/exit, a "T" into CR 6. He said they have often requested an additional entrance/exit or a traffic light or turn lane to be added at the entrance for safety purposes. He told students that entering and exiting the industrial park will force them to navigate a crowded entrance/exit, and a left turn from this area is sometimes very challenging. Kershner said he did not oppose the zoning for a trade school but asked for vehicle safety to be addressed at the location.

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

Mulvaney calls for a motion.

Davis makes motion to approve 24-X-04 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 Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-10 PETITIONER IS THOMAS SHOFF
PROPERTY IS LOCATED AT 2402 E JACKSON BLVD**

To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

Mulvaney calls the petitioner forward.

Thomas Shoff appears in person as the petitioner. Shoff states that he understands that Staff will review the pool ordinance to match the state ordinance, which requires a four-foot fence for pools. He says the pool will have an automatic pool cover and does not believe any toddlers will be swimming in from the river.

Mulvaney asks for questions from the Board.

Mulvaney states that the Board has approved similar petitions, primarily since the river acts as a natural barrier.

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 requests to vary from the requirements found Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

The home site is located along the St. Joseph River. Based on county tax data, the home was built in 1921 and is surrounded by single family dwellings. The petitioner is in the process of constructing an in-ground pool with an automatic pool cover. Prior to commencing construction, staff met with the petitioner to understand the scope of the pool project. At that time staff relayed the development requirements for in-ground pool construction. The proposal is to have a four (4) foot fence surround the rear yard where the pool is being constructed. The intent is to also have the river bank act as the fourth side of the fence as any person wanting to enter from the north side of the property would have to enter by boat or swim up to the bank – this request is similar to other developmental variance requests heard by this body.

After hearing the petitioner’s proposal, staff indicated a variance would be required. Staff at the same meeting shared the Planning Department is in the process of updating the current zoning ordinance. One of the regulations that would change is the pool development requirements. Although still in the draft form – the requirement would be for an in-ground pool with an automatic pool cover, a four (4) foot fence would be required. This proposed language will more closely mirror state code. It is anticipated that the new ordinance will have public hearings in the late fall.

Staff supports this request as it is similar to other water front developmental variances that this Board has approved in the past.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. 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 as the river wall would create a sufficient barrier equal to a fence. In addition, the pool has an automatic pool cover installed for added security;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property would still remain a residential property in a residential neighborhood, and pools are commonly found in residential neighborhoods;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved, as the rear of the property abuts a river, creating a natural barrier;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property by depriving the petitioner of the rights commonly enjoyed by other properties in the same area;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the property abuts the St. Joseph River and the embankment would serve as preventative access to the pool comparable to the otherwise required fence;
7. This property does not lie within a designated flood area.

Ughetti states there were 19 letters mailed with one returned in favor with no comment and one returned not in favor with a comment that they have three small children.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-10 and adopt the petitioner's documents and presentations as the Board's findings of fact in the present petition.

Davis – Yes

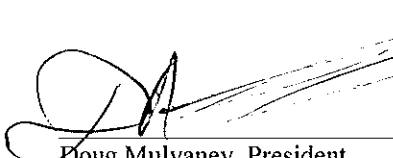
Evanega Rieckhoff – Yes

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