

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, August 10, 2023 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.  
City Council Chambers – Municipal Building**

**MEMBERS PRESENT**

Doug Mulvaney  
Ron Davis  
Andy Jones  
Janet Evanega Rieckhoff

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Nathan Hooley, Planner

**LEGAL DEPARTMENT**

Maggie Marnocha

**RECORDING SECRETARY**

Jennifer Drlich

**APPROVAL OF AGENDA**

Davis makes motion to approve; Second by Jones. 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 August 10, 2023 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

### 23-BZA-22 PETITIONER IS MARINE REALTY LLC PROPERTY IS LOCATED AT 2805 DECIO DR

To vary from Section 26.10.D.4.d which requires free-standing signs to be centered on the property to allow a sign along Decio Drive to be approximately four-hundred twenty (420) feet south of the center of the frontage.

Mulvaney calls petitioner forward.

Gary Potts with Professional Permits appears in person for the petitioner. Potts states they have decided to move the sign to the other side of the drive to reduce the amount of variance requests. Option two of the packet given out demonstrates that they have moved it to the other side of the road. It is the same design; however, the only difference is that it has been moved from about 50 feet off the property line to approximately 120 feet. An image from Google Maps is presented from the sign packet handed out AS EXHIBIT A. Potts explains the point of the sign being located 470 feet away from the property line is that the drive entrance is right on the property line. If the sign is put in the center, northbound traffic will not be able to read the sign before you get past the drive entrance where you would have to go onto Till Road. All this would signify that truck traffic has to come back southbound or head back over State Road 15. Pott's concern is that it would not be the best situation for the residents of the area. Pott makes it known that the size of the sign is not changing, just the location. What is being requested instead of 420 feet is 350 feet south of the centerline. Potts states that the approval will improve the wayfinding of motorists because identification signs would be located near the drive entrance of a parcel. A code compliance sign would be injurious to the public health of the community because it would add to the unnecessary travel of large cars and trucks through residential areas just to get back to the driving entrance. He said the property is a large industrial campus area with the drive entrance located near the proposed freestanding sign. The variance would be consistent with the intent and purpose of the zoning ordinance. The various request is the minimum relief necessary to allow for sufficient visibility of the freestanding sign. Pott's said the property has 940 feet of frontage, and to center the sign, it would have to be around 470 feet from the property line. To revisit exhibits A and B, visibility does not exist. The drive is located at the southeast corner of the parcel and if it were relocated to the center of the frontage then it would not be legible in time to navigate to the drive entrance. Northbound, motorists are shown on exhibit C that the property coming back over the toll road and over the bridge. Trees have grown along there so the center in that location will not be visible. The sign in the proposal location is going to greatly reduce and possibly eliminate the drive around and the weaving through residential areas. He states the strict application of the terms of this ordinance would derive the applicant of rights commonly enjoyed by other properties in the same district under the provision of this ordinance; the strict application of the terms of this ordinance would result in a sign. That does not allow for sufficient identification of the parcel, the property, or the business because several trees will block the sign and it would not be legible at the drive entrance.

Mulvaney asks for questions from the Board.

Jones asks Potts if by moving the sign it will be viewable on time for someone to make a turn when they are coming over the toll road.

Potts answers with a yes because the sign is going to be moved an additional 70 feet north so when coming down the hill you will still be able to catch it with enough time.

Evanega Rieckhoff asks Potts if there is electricity where Potts wants to move the sign.

Potts answers that currently, they will have to add electric service to eliminate the sign, which would be true for both locations.

Jones asks Potts if the original location had electricity.

Potts answers that HE DOES NOT believe so but he trusts that it was never allowed and apologizes for not wanting to do things without receiving the proper permits.

Jones asks Potts if that was the way the sign was before it was annexed.

Potts answers that HE DOES NOT know when the sign was installed.

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 has an existing manufacturing facility at 2805 Decio Drive. There is a sign located at the corner of their property that appears to have been installed between 2019 and 2023 without a permit. Staff believes the sign is not legal nonconforming sign since it appears to have been installed without staff approval.

The petitioners wish to install a sign in the same location, which does not meet code requirements. There is ample room to the north of the driveway to install a sign. The petitioner has provided no genuine hardship that would necessitate the granting of the variance; a sign that is adequate for wayfinding could be placed at the center of the property.

**STAFF RECOMMENDATION**

The Staff recommends denial 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 as;
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 not be consistent with the intent and purpose of this Ordinance because a viable option exists that would satisfy the property owner's wayfinding needs; there is no hardship to installing a sign to code;
4. Special conditions and circumstances do not exist which are peculiar to the land involved since a sign that meets code could be installed;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property, as a centered sign would serve wayfinding needs;
6. The special conditions and circumstances do result from an action by the applicant as the petitioner is removing an existing sign;
7. This property does not lie within a designated flood area.

Hooley states that nine letters were mailed and zero were returned.

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

Mulvaney asks Hooley if the recommendation for denial would also hold true to the proposed option two sign location.

Hooley answers with correct.

Mulvaney calls for a motion.

Jones makes motion to approve; Second by Evanega Rieckhoff.

Davis – Yes

Jones – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**NEW BUSINESS**

**23-UV-07 PETITIONER IS WRIGHT PROPERTY HOLDINGS LLC  
PROPERTY IS LOCATED AT 2121 W INDIANA AVE**

To vary from Section 5.2, Permitted Uses in the R-2 District, to allow for a Contractor Storage Facility on a temporary basis at 2121 West Indiana Avenue. Contractor Storage Facilities are not a permitted use in the R-2 District.

To also vary from Section 26.4.A.6, Fence Requirements, which states 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 temporary chain link fence at the property line.

To vary from Section 26.7.C.7 (a, b, c), Parking Lot Design, which states in part that storage and parking lots/driveways must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for the use of an unpaved surface for a temporary storage facility.

To also vary from Section 26.7.C.7.1.ii.(b,c), Parking Lot Landscaping, which requires a landscape strip for a parking/storage area of six (6) feet when adjacent to vacant land and ten (10) feet when adjacent to a right-of-way, to allow for no landscape strip within the property lines, a variance of six (6) and ten (10) feet respectively.

To also vary from Section 26.7.C.1, Regulations and Requirements, and 26.7.C. 26.7.C.7.1.ii.(g) – Parking Lot Landscaping, which require a solid screen four (4) feet in height when adjacent to residential and a minimum of one (1) tree planted per forty (40) feet of parking lot perimeter, to allow for a temporary Contractor Storage Facility without additional screening or trees planted.

Mulvaney calls petitioner forward.

Ethan Zartman with C&E Excavating appears in person for the petitioner. Zartman states that C&E Excavating was awarded the Oakland Avenue project by the city of Elkhart earlier this year. He said most of the work will start in the spring of 2024 and will have a project duration up until the fall of 2025. Zartman requested to use the vacant lot at 2121 W Indiana Avenue as a temporary storage yard for the duration of the project. With the amount of materials being used, a large area is needed to store the construction material. The layout presented to the board illustrates how much true material is needed and roughly shows its intended use. The proposed storage lot will have a 6-foot chain link fence around the perimeter and a locked gate when the lot is not in use. The access point to the lot will be from Waurika St.; that way material can be delivered east and can enter the storage lot using a low-volume road at a time when Indiana Ave will not always be closed. Zartman states the use and value of the adjacent property value will not be affected in any substantial adverse manner. Once the project is completed, the chain link fence will be removed and the lot will be restored to its existing condition. In the fall, the material will be coming in and out of the area and so it is going to be a common site for construction equipment. With the projected use of the lot, it will allow proper coordination to minimize the impact in the area. The need for the variance rises from some condition peculiar to the property involved. Zartman said that the vacant lot is the only lot within the vicinity that can be used as a storage area that can accommodate the amount of material that will be taken in.

Mulvaney asks for questions from the Board.

Jones asks Zartman if they plan to have any meetings with neighbors to let them know what is going on.

Zartman answers that there were public hearings for the project that all residents were invited to come to. If the board would like them to reach out to some of the neighbors within the direct vicinity of the lot then they are more than willing.

Evanega Rieckhoff asks Zartman if he sees any issues with the expiration of the project being on January 1, 2026.

Zartman answers with no but that with any construction project there can always be delays but the current completion date is set for September 1<sup>st</sup> of 2025 so they would have four months of additional time to work and get that in before it expires. In that time, most of the material will already be installed so any unused material can be moved.

Evanega Rieckhoff asks Hooley if they can be given an extension if they were to run into trouble with their date.

Hooley answers with the way I have the condition as or when the construction project is completed so whichever comes first.

Mulvaney asks Zartman if he were living in a neighboring house and once the project was in operation what exactly would he see.

Zartman answers that he would see a 6-foot chain link fence and inside you would be able to concrete, reinforced concrete, pipe varying in sizes, and going to see a new 30-inch ductal iron force main pipe. There will be storm sewer structures that will vary in size from 3 feet in diameter to about 9 feet in diameter. There will be an array of different kinds of material stacked on top of each other.

Davis asks Zartman if the whole area will be fenced in.

Zartman answers YES that everything that they have material on will be fenced in and will have a gate that is locked when they are not using the area.

Davis asks Zartman how high will the fence be.

Zartman answers that the fence will be 6 feet tall.

Jones asks Zartman if there will be temporary power service to the site and if it will be lit at night.

Zartman answers that they are currently not planning to unless they encounter issues; nonetheless, most of the material is large so it would be obvious if someone were trying to get into things.

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 owns a 1.2 acre vacant lot fronting on Indiana Avenue, Waurika Street, and Illinois Street. The property was most recently used as a single family residence, which was demolished in 2020 and has been vacant since.

The city has a planned utility project which includes a combined sewer overflow (CSO) separation and force main installation. The project, "Oakland Avenue – Project A CSO Force main" will run along Waurika Street, Indiana Avenue, and Thomas Street. The project will run from approximately later this year to potentially late 2025.

The contractor on the project, C & E Excavating, has a need to store material temporarily during construction. The proposed lot is the only available lot in the area. Traditionally, accommodations have been made for projects undergoing or in support of construction on a temporary basis. Since this is, a multi-year project, staff believed the petitioner should seek a variance.

Normally for a permanent project, there are a number of developmental standards that must be met, including setbacks, surface material, and landscaping. In this case, staff thinks the best long-term strategy for the project is to use it temporarily, engaging in best practices for site management to minimize impacts on other properties, and to return the site to its former state once construction is complete.

#### **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 use is temporary for a project that will benefit public health and safety;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the petitioner will manage the site in a responsible manner;
3. The need for the variance arises from some condition peculiar to the property because it is the only available vacant lot in the area that has the capacity for the project;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property because it would hamper a public project that will benefit public health and welfare;
5. The approval does not interfere substantially with the Comprehensive Plan which calls for the area to be developed with residential and commercial uses.

**CONDITIONS**

If the Board chooses to approve the requested Use Variance, staff recommends that the following condition be placed upon the approval:

1. The variance shall expire as of January 1, 2026, or when the construction project is completed, whichever comes first.
2. The site shall be restored to its prior state once the project is completed.

Hooley states there were 26 letters mailed. There was one returned not in favor with no comment.

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

Mulvaney calls for a motion.

Davis makes motion to approve with conditions; Second by Jones.

Davis – Yes

Jones – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**23-UV-08 PETITIONER IS CESAR LOPEZ**  
**PROPERTY IS LOCATED AT 1417 JOHNSON ST**

To vary from Section 11.2 Permitted Uses in the B-1 Neighborhood Business District to allow an existing structure to be used as a single-family dwelling, which is not a permitted use by right in the B-1 zoning district.

Mulvaney calls petitioner forward.

Cesar Lopez appears in person as the petitioner. Lopez states that the property is in B-1 zoning and wants to convert it into residential. The property was given to him in August of 2022. He said his sister purchased it in 2021 and he started renovating in June of this year. He did not realize the property was not conforming to the correct zoning until Hooley told him it was designated as B-1 zoning. Lopez stated the reason being the orientation, the zoning, and the space. Lopez said he is here before the board to change that and have it permitted. He said there are two bedrooms, a kitchen, and a laundry room in said property. He said that the structure looks like a home so it is difficult to sell as a commercial property that has two parking spaces.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Lopez where the garage is and if it is not attached.

Lopez answers that the garage is not towards Johnson Street but towards the alley.

Evanega Rieckhoff asks Lopez what he wants to do with the garage.

Lopez answers he wants to leave it as an accessory unit.

Evanega Rieckhoff asks if he wants to store things in it and so forth.

Lopez answers that in 2018, the garage had a garage door but it does not now but if granted permission he would put a garage door on it.

Mulvaney asks Lopez if he is okay with putting a garage door there.

Lopez answers with yes.

Jones states that was his only question because it looks like they would want him to restore the garage to its original use.

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**

According to the County Assessor's office, the home and detached garage were built in 1930. The applicant proposes to convert the primary structure back into a single-family residence. Per discussion with the current property owner the property has not been used residentially for over a decade. As the structure has lost its nonconforming status it requires a Use Variance to be allowed to be used as a home in the B-1 Neighborhood Business District.

Work on the existing garage was halted by the Building and Planning Department while the use of the property was determined. The resident proposes to use the garage for personal storage space. A fence is also proposed to provide some security to the yard as this property fronts a major thoroughfare.

**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 as this home will conform with the neighborhood to the west;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the buildings are being renovated and improved;
3. The need for the variance arises from some condition peculiar to the property involved as the property was originally developed residential prior to the commercial zoning district

**CONDITIONS**

If the Board chooses to approve the requested Use Variances, staff recommends that the following condition be placed upon the approval:

1. The garage shall be returned to original use with an overhead garage door facing the alley and only be used for residential purposes.

Hooley states there were 28 letters mailed. One returned not in favor with comment;

"We do not need the possibility of more rental housing in this Business District. This area should be targeted for more improvement, not changes in use."

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve; Second by Davis.

Davis – Yes

Jones – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**23-UV-09 PETITIONER IS THE RUTHMERE FOUNDATION INC  
PROPERTY IS LOCATED AT 819 N MAIN ST**

To vary from Section 5.2 Permitted Uses in an R-2 One-Family Dwelling District to allow an existing carriage house to be converted into a visitor center for the Ruthmere properties. This use is not permitted in the R-2 district

Mulvaney calls petitioner forward.

Eric Stalheim with Ruthmere Foundation Inc. appears in person for the petitioner. Stalheim states that in short, they are looking to convert the original carriage house for the Beardsley address into a visitor's center that would support broader programming for all of their properties within the neighborhood. The building was originally a carriage house up until it was converted into a residence in the 1920s. In 2019, a fire broke out and it has been vacant until recently when the Ruthmere Foundation bought the property and is now looking to revitalize it. Stalheim stated they would argue this project would cause no issues with the surrounding area and would bring more people into the neighborhood in a positive way.

Mulvaney asks for questions from the Board.

Jones asks Stalheim if they knew the structure was originally a carriage house.

William Firstenberger with Ruthmere Foundation Inc. appears in person for the petitioner and answers with yes... (Unintelligible, off mic).

Jones asks Firstenberger if that was the only building left of the original Beardsley homestead.

Firstenberger answers with yes to their knowledge; however, there are some suspicious outbuildings.

Mulvaney states he knows they went through a couple of debates on what to do with the building.

Firstenberger states they did extensive canvassing of the community and asked the public for their input starting in January 2022 through June 2022. He said it was all part of an overarching strategic plan that the Ruthmere Foundation was engaged in over 18 months. The property was acquired shortly after the fire; they decided to put the brakes on the project until they got public input first. So a combination of the board's and staff's assessment needs coupled with the public input led to the conceptual idea of a multipurpose use visitors center for the Beardsley house and Ruthmere mansion itself.

Mulvaney states the house was appearing run down and ragged around the edges.

Jones stated it looked solid and asked if it was all brick.

Firstenberger answers with yes and that it is a 1900s agricultural building and that in the 1920s, it was hollowed out and converted into a shoehorn residence. He said that the shoehorn was the part that burned. He stated that there were bits of the 19<sup>th</sup> Century burned components that had to be rectified in the phase one stabilization of the property. Firstenberger also said they ensured that it was not taking water by rebuilding the roof and removing the overburden of trees that were growing in close. Afterward, they stopped to get public input to develop ideas and a future for the project.

Mulvaney states that he also has a house that was an old carriage house in the 1930s where it was converted into a private residence. He said the house was a stable for racehorses back in the day.

Mulvaney opens for public comments to speak in favor.

Michelle Lucchese who lives at 832 N. Main St. Lucchese states she is thrilled Ruthmere bought the property. She said after the fire the property has just been an eyesore and has become fearful that it might be taken over by who knows. States she is in total support for this project.

Michael J. Church appears via WebEx who lives at 116 E Beardsley. Church states he lives across the street from the property and is part of the Ruthmere board. He states he is in support of the project because it will restore the property to its original footprint and it will give it proper use.

Mulvaney opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.



**STAFF ANALYSIS**

According to the County Assessor's information, the carriage house was built in 1848 and was originally part of the Havilah Beardsley property. This structure was damaged by fire in 2019 and was structurally stabilized to be preserved for future use. The proposal is to renovate the carriage house to complement the Havilah Beardsley House and serve as a visitor center to serve the Ruthmere estate. The Havilah Beardsley House located just south received a Use Variance in 2006 to be used as a museum with office space.

The building will be converted to provide office and support space for the museum along with restrooms and a gift shop. The site has limited parking that will be reserved for ADA accessible parking. A tour bus stop is proposed along Main Street to provide transportation from offsite parking.

The Division of Historic and Preservation Archaeology rates this structure as contributing to the historic character of the neighborhood. This project will help preserve this classification and that of the Havilah Beardsley House, which has an outstanding rating. The use of the property as a visitor center will mainly be from April through December, but there may be opportunities for additional functions throughout the entire year.

**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;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the use of the property will be improved and retain its residential appearance;
3. The need for the variance arises from some condition peculiar to the property involved as the property is accessory to a historical significant house that serves as a cultural museum and located in a residential district;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property because could restrict the preservation of a historic structure;
5. The approval does not interfere substantially with the Comprehensive Plan as the proposal will fit with the character of the neighborhood.

Hooley states there were 30 letters mailed. Three returned in favor with no comment.

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

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes

Jones – Yes


Evanega Rieckhoff – Abstain


Mulvaney – Yes

Motion carries.

**ADJOURNMENT**

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

  
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Doug Mulvaney, President

  
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Ron Davis, Vice-President