

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, January 12, 2023 - Commenced at 6:00 P.M. & adjourned at 7:38 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Andy Jones
Janet Evanega (Proxy)

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Maggie Marnocha

TECHNOLOGY STAFF

Matt Griggs

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AMENDED AGENDA

Mulvaney notes the petitioner for 22-UV-21 has requested to table until February.

Davis makes motion to approve amended agenda; Second by Jones. Voice vote carries.

APPROVAL OF MINUTES FOR DECEMBER 8, 2022

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the **January 12, 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

**22-UV-21 PETITIONER IS CITY OF ELKHART DEPARTMENT OF PARKS AND RECREATION
PROPERTY IS LOCATED AT 3499 NEWTON DR**

To vary from Section 26.4.2, Permitted Use in the R-1, One-Family Dwelling District to allow for the installation of a new wireless communication facility with a one hundred thirty-five foot 135 foot tall cell tower.

Mulvaney notes the Park Board has requested a postponement until February 9, 2023.

Jones makes motion to table; Second by Davis.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**22-BZA-41 PETITIONER IS BEARDSLEY 530 LLC
PROPERTY IS LOCATED AT 530 W BEARDSLEY AVE**

To vary from Section 6.4, Yard Requirements in the R-3 District, which requires corner side yard setbacks to be the established setback. The established setbacks at this location is 28 feet; the requested setback for a proposed garage to be attached to an existing nonconforming structure is 26 feet, a variance of two (2) feet.

Mulvaney calls petitioner forward.

Jeff Long appears via Webex. He states there is no garage on the property which is the same as or less than the setback of the home. They would not encroach any closer than the house does on Prospect. There is one parking space in front of the house, Street parking is not the best; his truck was struck while parked on the street and the road is narrow.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner recently purchased a 2,012 square foot residential structure built in 1880, according to Elkhart County Assessor records, on a .15-acre lot. They wish to construct an attached garage, of approximately 1,034 square feet, on the north side that will be even with the house, fronting on Prospect Street.

The house is legal nonconforming in terms of its setback, but only by approximately two (2) feet. The petitioner is proposing it to be even with the house for primarily aesthetic reasons. It does represent an expansion of a nonconforming structure, albeit a minor nonconformity given that it's approximately two (2) feet.

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 house is already established at that setback;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will not significantly affect sight lines or traffic;
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 the house was constructed in 1880;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit the construction of a garage;

6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood hazard area.

Smith states 52 letters were mailed, none returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**22-BZA-43 PETITIONER IS THE CITY OF ELKHART ON BEHALF OF ZION MISSIONARY CHURCH
PROPERTY IS LOCATED AT 1135 E HIVELEY AVE**

To vary from Sections 26.10.D.1 General Location Standards which requires all on premise signs to be located no closer than five (5) feet from any right-of-way to allow for a zero setback a variance of five (5) feet.

Mulvaney calls petitioner forward.

Hooley appears as representative.

Mulvaney clarifies this is because of the potential overpass, but has nothing to do with the actual overpass.

Hooley states it is because of the widening. There is potential for the church to have a new sign that will meet ordinance in the future, but in the interim this protects the existing sign.

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

STAFF ANALYSIS

The property consists of several building used by the Zion Missionary Church. Records show that the properties primary identification sign was installed in 1999. The City is going through a redesign of the Hively Avenue and Main Street intersection resulting in the need to widen the right-of-way along Hively Avenue. The new right-of-way line along the church's property will affect the front yard setback of the existing sign.

STAFF RECOMMENDATION

The Staff recommends **approval** of the developmental standard 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.

Staff Comment: The review of Development Standard Variance request will not be injurious to the public health, safety, morals or general welfare of the community, based on the continue allowance of pre-existing monument sign to remain static in size and height and for the purposes of identification of Zion Missionary Church.

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner;

Staff Comment: The surrounding properties will not be impaired in use or value by the requested Development Standard Variance, based on the fact, the sign will not change in size or height, nor in purpose that has been utilized for identification purposes for Zion Missionary Church.

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;

Staff Comment: As mentioned above in the Variance Request section of the subject staff report, the expansion of Hively Avenue Overpass project will reduce the amount of existing right-of-way on Hively Avenue, therefore, creating a legal, non-conforming sign as a result of the project. The applicant has demonstrated a physical hardship based on the need for identification for the existing church signage on the northern portion of the lot on a major thoroughfare.

4. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the property's road frontage has been reduced over the years;

Staff Comment: The subject property is located on Hively Avenue, the existing sign and building structure are located at the northern portion of the property with parking located to the southern end of the property. The expansion of Hively Avenue Overpass Project will impair the subject property, particularly, based on degree of right-of-way being acquired on the subject property. Thereby, special conditions and circumstances exist in the Development Standard Variance request for this property.

5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property;

Staff Comment: The requirements of the Sign Section of the enacted Ordinance would place practical difficulties on the subject property, based on the requirements of the Sign section of the Ordinance would produce a reduction in proximity and ability to provide effective church identification from Hively Avenue.

6. The special conditions and circumstances **do not** result from an action or inaction by the petitioner.

Staff Comment: The expansion of Hively Avenue Overpass project is the reasoning for the subject Development Standard Variance request, the applicant is responding to the expansion of the right-of-way by seeking Development Standard Variance to change the existing monument sign from legal, non-conforming to a legal conforming sign.

7. This property does not lie within a designated flood hazard area.

Hooley states there were 36 letters mailed, one returned in favor with no comments.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

NEW BUSINESS

23-X-01 PETITIONER IS IGLESIA DEL DIOS VIVO COLUMNA Y APOYO DE LA VERDAD LA LUZ MUNDO EAST CHICAGO IN LLC & ETAL PROPERTY IS LOCATED AT 1209 HARRISON ST

A Special Exception per Section 12.3.A, Special Exceptions Uses in the B-2 Neighborhood Business District, to allow for the establishment of a church in an existing commercial building.

Mulvaney calls petitioner forward.

Gabriel Lopez appears via Webex for petitioner. He states they are based in East Chicago, Indiana but have 6 members in Elkhart who would like to use the property for a Bible study.

Mulvaney asks for questions from the Board.

Evanega asks if the members will be living in the establishment.

Lopez states they will not. There will be Bible studies between 7-8 at night and possibly Sundays; however, they all meet in East Chicago on Sundays. He states it will basically be used during the week.

Mulvaney opens for public comments to speak in favor.

Dwight Fish asks if the structure of the building is in good enough shape for use. He states there has been a lot of rubble around it and it looked like there needed to be clean up.

Lopez states it used to be a clinic and the former owner has cleaned everything out. They are going to remove the non-loadbearing walls with permits, but the structure is safe.

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

STAFF ANALYSIS

The petitioner has purchased an existing office building with the intent of renovating the building to use as a church. This building was previously used as a clinic and the applicant is proposing some interior remodeling to accommodate the needs of their forty members. The floor plans provided show several existing offices that will be removed to create a large congregation space. Some of these spaces will remain for other church purposes. At this time, no proposals were made for changes to the exterior of the building. The site also has fifteen parking spaces that will accommodate the church members.

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.

Hooley states there were 38 letters mailed. Two returned not in favor with no comment. One returned not in favor with comment: There are too many auto repair shops in the immediate area. Some not licensed.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Evanega makes motion to approve; Second by Davis.

Davis – Yes

Jones – Yes

Evanega – Yes

Mulvaney – Yes

Motion carries.

23-X-02 PETITIONER IS ELKHART COUNTY YOUTH FOR CHRIST, INC PROPERTY IS LOCATED AT 2721 PRAIRIE ST

A Special Exception per Section 8.3 Special Exception Uses in the R-5, Urban Residential District, to allow for a K thru 6 Charter School and for the expansion of a previous Board approved community center to include an additional property to the overall development.

Mulvaney calls petitioner forward.

Crystal Welsh with Abonmarche appears in person for petitioner. She states the Youth for Christ have partnered with a charter school and would like to extend the life and operation of the community center by combining with the school. There would be day, evening, and weekend activities for the community. She notes Kurt Weimer on the phone, Jeff Schaffer with Abonmarche, and a representative from DJ construction are available for questions

Mulvaney asks with which charter school the project is associated.

Kurt Weimer appears via Webex. He states it is Premiere Arts Academy.

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

STAFF ANALYSIS

The petitioner is a faith-based organization that has previously received approval for a Community Center at 2721 Prairie Street. The petitioner would like to expand this approval to include a property immediately to the north that currently has a house. They are also requesting to be permitted to operate a K-6 Charter school at this location.

These two uses would be able to utilize the same facility but operate at different times. The Community Center would use the building in the evenings and weekends and the school would operate during the workweek. If approved the school would be able to accommodate two hundred students with a staff of twenty.

There are no set plans for the existing house located north of where the Charter School is being constructed. There was an original submittal to have the structure removed and add additional parking or it may just become additional outdoor activity space. It is also possible the house could become administrative offices for the Charter School. In any of these scenarios, the applicant will need to work with staff and the Building Department to pull all permits and meet all regulations.

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 it is a minor expansion of an already approved use;
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.

Hooley states there were 23 letters mailed. One letter from Mayor Rod Roberson was submitted in favor and the item came from Plan Commission with a Do-Pass recommendation.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**23-BZA-01 PETITIONER IS PAMELA J LONGBRAKE AKA PAMELA J SWAIN
PROPERTY IS LOCATED AT 1728 E BEARDSLEY AVE**

To vary from Section 26.1.B.8.a, which limits the maximum size of a single accessory structure to seven hundred twenty (720) square feet to allow for the construction of a three hundred eight (308) square foot lean-to attached to an existing Board approved eight hundred thirty-two (832) square foot garage.

Mulvaney calls petitioner forward.

Pamela Swain appears in person. She requests the lean-to addition to the back of the existing structure so they can park the boat on the concrete that is already there.

Mulvaney asks for questions from the Board.

Evanega asks if the structure is at the back of the building and won't be seen from the street.

Swain states that it will not be seen.

Mulvaney asks if this is because they had the boat on the grass and wanted the protection for it.

Swain confirms, stating that it was a gift from her father-in-law and they had nowhere to store it. They did have a back patio already there.

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

STAFF ANALYSIS

The property currently has an existing garage that was built in 1996. A previous property owner requested a developmental variance to allow the garage to be built at eight hundred and thirty-two (832) square feet, exceeding the maximum square footage of seven hundred and twenty (720) square feet for a single structure. The petitioner desires to add a lean-to over an existing concrete pad on the back of the garage.

The property owner received notice of a boat being parked on the grass. To resolve the notice it was moved behind the garage onto the concrete pad. The lean-to was being added to the garage to help protect the boat from the weather. A letter was sent regarding construction of the addition without permits and because of the size of the existing garage, a developmental variance was needed.

The applicant is working through the Plan Review process with the Building Department to ensure that addition is built to all code requirements. This property is a portion of a large original subdivision lot and is a reasonable size for the amount of assessor structure space proposed. With the lean-to being located behind the garage, it will be screened from the public right-of-way.

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 as the lean-to will be built to City requirements;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property will continue to be used residentially;
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 as this is a larger residential lot;
4. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the garage had an existing concrete pad;
5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property because it could place constraints on the proper storage of a vehicle;
6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the size of the existing garage already received previous approvals to exceed the size allowance;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 38 letters mailed. One returned in favor with no comment. One returned not in favor with comments: the opinion was that the City should follow their own guidelines, the resident should have followed proper guidelines and permitting, there is no reason to approve the addition to an already oversized structure.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

23-BZA-02 PETITIONER IS DANIEL B TISER
PROPERTY IS LOCATED AT 1738 CASSOPOLIS ST

To vary from Section 26.4.A.1 – Fence Requirements, which only allows barbed wire on fences in manufacturing districts above seven (7) feet, to allow for a barbed wire fence above a six (6) foot chain link fence on a property zoned B-3, Service Business District and R-2, One-Family Dwelling District.

Mulvaney notes the item has been requested for a one month table and calls for a motion.

Jones makes motion to table; Second by Davis.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

23-BZA-03 PETITIONER IS BAYER FEDERAL CREDIT UNION DBA MICHIANA CREDIT UNION
PROPERTY IS LOCATED AT 358 S ELKHART AVE

The request is to vary from Section 26.10.D.3 Table 1 that limits an integrated message board to fifty (50)% of the sign area of the freestanding sign to allow a thirty-two point thirty-two (32.32) square foot message board as a primary sign.

Mulvaney calls petitioner forward.

Kerie Sekal appears in person for petitioner. She states they would like to update the existing monument sign for branding and improved communication capabilities. There will not be changes to the dimensions of the sign or its current positioning. It is currently an electronic sign. The change will support updates and improve efficiency of current antiquated technology as well as improve aesthetics.

Mulvaney asks for questions from the Board.

Jones asks if the sign will be the same size as Hopman's.

Sekal states that she is not sure.

Jones asks if there will be pictures.

Sekal confirms.

Evanega asks if they are just removing the "INOVA" portion so that the whole thing will be electronic.

Sekal confirms. She states the current bulbs are large and support a scrolling message. The new bulbs will be smaller with more capability to look like a complete image.

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

STAFF ANALYSIS

INOVA Federal Credit Union is operating their corporate headquarters from this property. An existing non-conforming freestanding sign serves the site. The petitioner is proposing to keep the main structure of the sign while replacing the face with an electric message board. A portion of the existing sign is a message board and the request would be a replace of the entire face. This is the only freestanding sign on the property serving the business.

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 as the signs will not create a visual barrier;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property will continue to be used as an office;
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. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the sign is preexisting;
5. The strict application of the terms of this Ordinance **will result** in practical difficulties in the use of the property because it places constraints on the visibility of the office;
6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the sign currently exist;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 8 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Jones makes motion to approve; Second by Davis.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**23-BZA-04 PETITIONER IS EGAP ELKHART I LLC
PROPERTY IS LOCATED AT 154 HIVELEY AVE**

To vary from Section 12.4, Yard Requirements in the B-2 District, which requires a thirty (30) foot front setback and ten (10) foot side setbacks for buildings to allow the following: on Lot 2, a ten (10) foot front (south) and zero (0) foot side (east) setback, a variance of twenty (20) and ten (10) feet; on Lot 3, a ten (10) foot front (south) setback and zero (0) foot side (east and west) setbacks, a variance of twenty (20) and ten (10) feet; and on Lot 4, a side (west) setback of zero (0) feet, a variance of ten (10) feet in a proposed subdivision of an existing development.

To also vary from Section 12.4, Yard Requirements in the B-2 District, which allows building heights to be a maximum of thirty-five (35) feet, to allow an existing building on Lot 4 in a proposed subdivision to be thirty-nine (39) feet in height, a variance of four (4) feet.

To also vary from Sections 4.4, Yard Requirements in the R-1 District, and 12.4, Yard Requirements in the B-2 District, which requires seventy-five (75) feet of frontage for new parcels, to allow in a proposed subdivision on an existing development the following: on Lot 2, frontage of zero (0) feet, a variance of seventy-five (75) feet; on Lot 3, zero (0) feet of frontage, a variance of seventy-five (75) feet; and on Lot 4, twenty-nine (29) feet of frontage on Hively Avenue, a variance of forty-six (46) feet.

To also vary from Section 12.5.F.1 Landscape Requirements in the B-2 District, which requires a parcel greater than three (3) acres to have a twenty (20)-foot wide landscaped area adjacent to a residentially zoned or used property, to allow an existing development to maintain a zero (0) foot setback adjacent to an R-1 zone, a variance of twenty (20) feet.

Mulvaney calls petitioner forward.

Jeff Barnes with Jones Petrie Rafinski appears in person for petitioner. He notes there are representatives for EGAP online as well. He states the site is the former Pierre Moran Mall which they want to improve and develop. They want to subdivide the property into 6 lots. Based on the geometry prepared for the subdivision plat, there are various setback and variance requirements that are (inaudible).

Mulvaney states that he understands that there is no active plan for development at this time, but simply making the property more likely to be redeveloped because of the separate lots.

Barnes states that is his understanding as well.

Jones states he is glad to see something new tried because of the stall in development.

Mulvaney opens for public comments to speak in favor.

Fish asks what type of business would be attracted to the new sizing.

Barnes states that he is not certain but the representatives online may be able to answer.

Ashley Meyer with Essential Growth Properties appears via Webex. She states they are a grocery anchored owner-operator in Cincinnati, Ohio. The parcel splits accommodate the overall site to drive additional traffic for the existing grocer and retailers. There is potential for multi-family.

Jones notes that it's seemingly right for mixed-use development with retail business on the first floor and residential above.

Meyer states that is certainly one scenario.

Mulvaney agrees that anything to move the area forward to use is positive. He opens for public comments to speak in favor. Hearing none, he opens for opposition.

Mark Troyer appears in person. He and his wife have lived to the north of the petitioner property for about 5 years. He wants the shopping center to succeed and believes it is an asset. He understands there are new owners and look forward to that. He is concerned because they and the neighbors had negative interactions with the previous owner. He asks the Board to look at the interests of the petitioner and the effects on the neighbors.

Jones asks if there is a through street from the residences to the site in question.

Troyer states they can go through Benham and Prairie.

Jones asks if they can go through the library and beyond to the north.

Troyer states they cannot.

Mulvaney notes there is a retention pond next to the library.

Troyer states Hawthorne dead-ends and there is a footpath.

Mulvaney closes the public portion of the meeting and calls staff forward.

Smith states the current zoning proposal for Lot 1 is R-1, which would be a single-family house. The rest is zoned B-2 which is a medium density business district. Any uses would have to fit those parameters or come back before this Board, Planning Commission, or Common Council for approval.

Jones asks if mixed-use would have to come back.

Smith states that it would need public notice and approval from a Board.

STAFF ANALYSIS

The Petitioners own two parcels comprising approximately 33.4 acres, including a 31.9 acre parcel zoned B-2 containing the Woodland Crossing shopping center and a vacant 1.6-acre property zoned R-1. The owner wishes to subdivide it into six lots in

order to facilitate sale and adaptive reuse and/or redevelopment, which is to be considered by the Plan Commission in January under 23-SUB-01.

The proposed subdivision conceives of the property as having six buildings; the main building comprising Kroger and the former Sears would be split into three separate buildings on separate parcels to be redeveloped or reused by separate entities. The property has already been developed with a complex system of parking areas and driveways. At this time no specific physical changes are proposed. However, in order to subdivide the property, a number of variances from the Zoning Ordinance are proposed. They include zero setbacks for the main building that is being subdivided, lot frontages less than 75 feet on Lots 2, 3, and 4, a building (Kroger) that is four feet taller than what is allowed (35 feet), and the existing lack of a buffer yard on the north section of the property adjacent to R-1 zoning.

The deviation from Zoning Standards, and multiple ownership with shared access is not common in shopping centers of this type. The proposed subdivision will facilitate the reuse and redevelopment of the property, which is a significant landmark within the City. The subdivision will also establish a common easement of access throughout the property, allowing any parcel the use of any "existing drive aisles and travel ways," enabling access to the lots with limited or no frontage.

No proposed physical changes have been proposed as of the writing of this staff report. While there are a number of aspects to the variance, they are to facilitate the subdivision of land, and should not be construed as changes to the property at this time. The petitioner has taken adequate measures through the establishment of a common easement to ameliorate the problems that may have been associated with the proposed configuration, allowing access for all of the parcels throughout the subdivision.

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 no physical changes or change in use that would not be allowed in the existing zoning district are being proposed at this time;
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 site will operate in generally the same way as it currently does;
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 it is an aged shopping mall in need of adaptive reuse;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would hinder reuse;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood hazard area.

Smith states there were 61 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Evanega makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

23-BZA-05 PETITIONER IS M M LYNN LLC
PROPERTY IS LOCATED AT 2016 BORNEMAN AVE

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots 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 an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

To vary from Section 26.7.E.3, Off Street Loading Requirements to allow for a proposed loading dock to be constructed as part of a proposed building addition that will require the public right of way for maneuvering to access the proposed dock.

To vary from Section 26.7.C.7.1.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

Smith notes they have had discussions with the applicant and are asking to table the variances from Section 26.7.C.7 (a, b, c) and 26.7.C.7.1.b.2 and only vote on Section 26.7.E.3.

Mulvaney calls petitioner forward.

Debra Hughes appears in person for petitioner. They would like the two requests tabled in order to create a plan. The remaining request is to use properties adjacent and across the street owned by the same owner, as well as the right-of-way to access the proposed truck dock on the north end. It will require the truck to back into the dock from the public right-of-way and using the property on the east side of Twentieth Street to access the new property on the west side of Twentieth Street. The area was developed as industrial 80 years ago when standards were very different, buildings and properties were smaller. It does not meet current standards. The variance is to allow for the backing into the truck dock which is similar to other uses in the area who are allowed to back into their truck docks. This is a targeted redevelopment area and the owner is investing about 5 million dollars in robotic welding technology and advanced manufacturing. They will bring in new manufacturing for the city.

Mulvaney asks what street will primarily be used to get to the dock.

Hughes states that the trucks would come in from Lusher Avenue, south on Twentieth Street which is lightly used, 4 blocks long, and dead ends at the south. They might also pull into the property on the east side of Twentieth Street and back straight across the property, into the dock. Staff has recommended them to install signage to advise truck drivers not to block the intersection. Staff also recommended an easement be recorded on the east side property for perpetual use.

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

STAFF ANALYSIS

Staff is currently working with the applicant to consider some revisions to the site plan, which would reduce the number of variance request. At this time, for the January meeting, staff requests the BZA to hear the request for the loading dock with turning movements in the right of way and to table the other two requests. Staff is recommending in favor of the turning movements with two conditions attached.

The petitioner owns approximately 1.2 acres of contiguous property in an established industrial district with lots that are generally smaller than the lots in more recently established industrial parks on the perimeter of the city. They also own other properties nearby which are part of their overall development plan.

This property currently has a building on the lot of approximately 14,000 square feet, and they wish to add a 10,088 square foot building onto the property that is part of a larger redevelopment and reinvestment program in the immediate area. The site plan submitted includes a loading dock, which would entail turning movements in the right of way, parking accessed directly from 20th Street, and a gravel lot, which would remain, that has a septic field underneath it.

As stated, staff is working with the applicant to possibly revise the gravel area and the parking accessed from the street, and is requesting a vote on the loading dock/turning movement at the January meeting. It is generally discouraged to have any turning movements in the right of way. However, the lack of available land limits the applicant's ability to accommodate truck movements on site. Staff recommends approval of the variance to allow right of way turning movements, as long as they are kept out of the intersection and guaranteed in perpetuity. To that end, the petitioner should work with Public works to install signs stating that no

turning movements are allowed in the intersection, and record an easement on the property across 20th Street that would accommodate proposed turning movements.

STAFF RECOMMENDATION

The Staff recommends **approval** of the developmental variance to vary from Section 26.7.E.3, Off Street Loading Requirements to allow for a proposed loading dock to be constructed as part of a proposed building addition that will require the public right of way for maneuvering to access the proposed dock 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 efforts will be made to prevent turning movements in the right-of-way;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the land area available for expansion is limited;
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;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the land area is limited and does not allow for substantial expansion;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood hazard area.

The Staff recommends **tabling until the February 9 meeting** the following developmental variances:

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots 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 an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

To vary from Section 26.7.C.7.1.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

CONDITIONS

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

1. Signs shall be posted for no turning movements in the intersection, subject to approval by Public Works.
2. An access easement shall be recorded at 1935 Markle allowing the demonstrated turning movements.

Smith states there were 16 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion on Sections 26.7.E.3 and 26.7.C.7.1.b.2 which the petitioner requested to be tabled.

Davis makes motion to table requests to vary from Sections 26.7.E.3 and 26.7.C.7.1.b.2 for one month; Second by Jones.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

Jones makes motion to approve variance from Section 26.7.E.3 with conditions; Second by Davis.

Davis – Yes

Jones – Yes

Evanega – Yes

Mulvaney – Yes

Motion carries.

23-X-03 PETITIONER IS WOLF PACK LLC
PROPERTY IS LOCATED AT 112 E LEXINGTON AVE

A Special Exception per Section 15.3, Special Exception Uses in the Central Business District (CBD), to allow an Event Center in an existing commercial building.

Mulvaney calls petitioner forward.

Ignacio Perez appears in person to request use of the property as an event center.

Mulvaney asks what type of events will be hosted.

Perez states weddings, quinceañeras, and all kind of different events.

Mulvaney asks if this would primarily be weekends or during the week.

Perez states it will be small events during the week, such as office parties.

Jones asks if it could still be used by Jazz Fest as the site is historically been a performance location.

Perez states he did not know that, but it would be nice if he had more information.

Jones asks if the awnings or outside will change.

Perez states he will just change the lettering.

Evanega asks if he is obtaining a liquor license.

Perez is working on that at the moment.

Evanega is concerned about people outside the building and drinking in the parking lot.

Perez states that will not be allowed.

Jones asks if that will be a Riverwalk license.

Perez confirms. It will be a 3-way license.

Davis asks if there will be cooking on the premises.

Perez states that will be in the future but for now they will bring their own food in.

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

STAFF ANALYSIS

The petitioner has purchased an existing commercial building in the downtown area just east of Main Street. This building was previously a Knights of Columbus meeting hall. The petitioner desires to use the building as an event center. The building has

existing bar and kitchen facilities but the proposal is for clientele to cater their own food for events. The petitioner is looking into applying for a liquor license as a service to their business.

The property has a few parking spaces in the rear of the building and has access to on street parking as well as an adjacent public parking lot. At this time, the petitioner is not proposing any exterior changes to the building other than new signage for the business.

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.

Hooley states there were 32 letters mailed. One returned not in favor with comment: There are other venues in close proximity to each other: The Lerner, Lenox, Hotel Elkhart, Winchester Mansion, and others in a small downtown area with restricted parking.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Evanega makes motion to approve; Second by Davis.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**23-UV-01 PETITIONER IS KENNETH WHITMAN
PROPERTY IS LOCATED AT 2734 HAWTHORNE ST**

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

Mulvaney calls petitioner forward.

Robert Kolean appears for the petitioner. He states the building has been residential since its construction in the 1950's and has residential homes across the street and in the area.

Mulvaney asks for questions from the Board.
Evanega asks if the home is being sold.

Kolean states it is, and needs the variance for financing purposes.

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

STAFF ANALYSIS

The home is located in an area with a mixture of residential, commercial, and light industrial development. The applicant has requested the variance, as the house would not be able to be rebuilt if it were damaged past fifty percent of the assessed value or was completely removed. According to the County Assessor's Office, the house was built in 1958 and appears to have only been used as a single family home.

The properties to the west across Hawthorne Street are zoned R-2 One-Family dwelling and are occupied by single-family residences. An undeveloped property zoned light manufacturing separates this property from South Nappanee Street. A variance would permit the home to remain, while allowing the possibility of the property to be included in future redeveloped along the South Nappanee Street corridor.

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 use of the property is less intense than uses that are permitted in this zoning district;
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 remain residential;
3. The need for the variance arises from some condition peculiar to the property involved as the home **was** built at the time of the zoning districts establishment;
4. The strict application of the terms of this Ordinance **will** constitute an unnecessary hardship if applied to the property because it could restrict the houses ability to be repaired and rebuilt;
5. The approval does not interfere substantially with the Comprehensive Plan as the plan **does not** directly address this property and the size of the parcel limits development.

Hooley states there were 17 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.

Jones makes motion to approve; Second by Davis.

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

Motion carries.

**23-UV-02 PETITIONER IS BELMONT MENNONITE CHURCH INC
PROPERTY IS LOCATED AT 925 OXFORD ST**

To vary from Section 5.2 Permitted Uses in the R-2 One Family Dwelling District to allow a day care center to operate in a portion of an existing church.

To also vary from section 26.4.A.6 Fence Requirements which states that no fence other than open decorative fencing, no taller than four (4) feet, shall be located in a front yard to allow the installation of a six (6) foot tall vinyl privacy fence in the front yard along Moyer Street.

Mulvaney calls petitioner forward.

Ray Hunsberger, Trustee for the church, appears in person. They would like to accommodate the New Creation Daycare Center at the church. They would like to stay within that community. The original church was down the street, they built in the Hudson-Sterling area because of their commitment to the area and believe the subsidized daycare is part of that commitment. The building will not change. It won't affect the way the church uses the building on Sunday, but the daycare will use it during the week.

Mulvaney asks if this is an existing daycare.

Hunsberger state that it is. It had been at the old church building, moved, and now needs to move again.

Mulvaney asks if there are any issues with the conditions.

Hunsberger is fine with the conditions.

Evanega asks if he is aware of the limitation on the number of students to 45.

Hunsberger confirms that he is.

Mulvaney opens for public comments to speak in favor.

Fish appears in person to support the daycare in the church and their ongoing work in the area.

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

STAFF ANALYSIS

The Belmont United Methodist Church is located at the intersection of Moyer Avenue and Ren Street. The church's parking lot is situated to the north along Oxford Street across an alley. The church was approached by a daycare that would like to operate out of several of their classrooms. The daycare would also use the church's large multi-purpose room and an outdoor fenced-in activity area that is being constructed.

The church has a drop-off area on the north side of the building through an alley that the daycare will use. The drop-off area is far enough from Moyer Avenue to allow several cars to be stacked waiting for pick-up. The daycare will also utilize the church's parking lot for parent and staff parking. The daycare and the church will be using the church's facilities at different times so there should be little issue with parking.

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 it will operate under State guidelines;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because there are no proposed exterior changes to the building;
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 property providing a service to the area;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

CONDITIONS

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

1. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises other than those approved for an institutional use.
5. A copy of the child care center license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.

7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum of fifty-five (55) children meeting the children/staff supervision ratio established by the State.
9. Pickup and dropoff should be off the alley along the north side of the church with one-way traffic and from the main parking area on Oxford Street
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by January 2025.

Hooley states there were 46 letters mailed. Three returned in favor with no comment.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion.


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

Davis – Yes
Jones – Yes
Evanega – Yes
Mulvaney – Yes

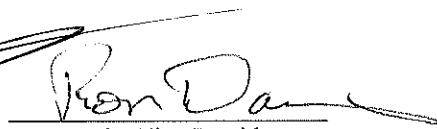
Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President