

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, July 14, 2022 - Commenced at 6:00 P.M. & adjourned at 7:23 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Andy Jones

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner

LEGAL DEPARTMENT

Kevin Davis

TECHNOLOGY STAFF

David Hopkins

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AMENDED AGENDA

Smith notes 22-X-09 petitioner has requested postponement for 60 days.

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the July 14, 2022 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

None

NEW BUSINESS

**22-BZA-19 PETITIONER IS BCW PROPERTIES
PROPERTY IS LOCATED AT 2426 CASSOPOLIS STREET**

To vary from Section 26.10.D.4 Free-standing Signs to allow for a sign one hundred thirty four (134) square feet in area that is setback thirty-four (34) feet from the property line, where a freestanding sign is permitted to be a maximum of seventy-five (75) square feet in area, a variance of fifty nine (59) square feet.

To vary from Section 26.10.D.4.d Free-standing Signs, which requires a freestanding sign for a single tenant location to be centered on the property frontage; petitioner is requesting a freestanding sign at the northwest corner of the property.

Mulvaney calls petitioner forward.

Douglas Merritt appears in person for the petitioner. He states that the North End Cycle property has been acquired by Meijer and the facility is moving south to the contiguous property on Cassopolis Street. There is a situation with multiple dealerships on one property and franchise sign requirements. They have tried to reduce the signage from what is at the existing location to the new property. They are only seeking to move one sign that is the minimum necessary to meet franchise requirements with the manufacturers.

Davis asks if they are moving the existing sign.

Merritt states there are actually two signs and they are only moving one.

Jones asks if they are dropping any of the franchises.

Merritt states they are not, but are taking the ground signs and making them into wall signs.

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 3.9-acre property on Cassopolis Street that they are in the process of building a new motorsports dealership, moving the business from their current location to the immediate south. They have an existing freestanding sign that they would like to move to the new location. At 20 feet in height and setback 34 feet from the right of way, it will be within the height limits set forth in the Zoning Ordinance.

The area and location do not meet code however – at 134 square feet it will be 59 square feet over the maximum, and it will be on the side of the property. Unlike many other businesses on Cassopolis Street, the manufacturers have sign stipulations that require a certain size. And with the way the site is configured, there is a small central area where a sign could go, however, it would have to be significantly smaller to meet code.

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;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner;
3. Granting the variance **would be** consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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;
5. The strict application of the terms of this Ordinance **will result** in practical difficulties in the use of the property because it may jeopardize their dealership for some manufacturers;

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 9 letters mailed. None returned.

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

Jones makes motion to approve; Second by Davis.

Davis – Yes
Jones – Yes
Mulvaney – Yes

Motion carries.

**22-BZA-20 PETITIONER IS 5200 HOFFMAN STREET – ELKHART LLC
PROPERTY IS LOCATED AT 5200 HOFFMAN STREET**

To vary from Section 26.10.D.4.d Free-standing Signs, which requires a freestanding sign for a single tenant location to be centered on the property frontage; petitioner is requesting a freestanding sign at the southeast corner of the property.

Mulvaney calls petitioner forward.

Todd Lehman with Signtech Sign Services appears for the petitioner. He states they are working with DJ Construction, Champion Chair and Grand Design for an identification sign for both businesses who use the same entrance to the west of the building. They want to locate the sign at the intersection so that people will know that both businesses access the west drive.

Mulvaney asks if the petitioner has any problems with the staff's condition.

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 an 18-acre property with a new industrial building located at the intersection of County Road 17 and Hoffman Street. The building has a shared drive with the property to the north, at 5100 Hoffman Street. They wish to put both of the business's names on a sign by the shared access drive. The sign meets the height and area requirements of the Zoning Ordinance, but not the location.

Typically signs are required to be centered on the street frontage. The petitioner is proposing that it be placed near the southwest corner, by the access drive. Given that there are two businesses using the same access drive, an allowance can be made for a sign near the drive. However, no other freestanding signs should be permitted along Hoffman Street.

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;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner;
3. Granting the variance **would be** consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 because it is a shared drive;
5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property because the sign will assist in wayfinding to a shared drive;
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.

CONDITIONS

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

1. The property shall not have any additional freestanding signs on Hoffman Street.

Smith states there were 9 letters mailed. None returned.

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

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

Davis – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**22-X-08 PETITIONER IS SPA INC
PROPERTY IS LOCATED AT 3404 TOLEDO ROAD**

A Special Exception per Section 7.3, Special Exception Uses in the R-4, Multiple Family Dwelling District, to allow for a women’s ministry home.

Mulvaney calls petitioner forward.

Carrie Zickefoose, Executive Director, appears in person for the petitioner. She states they have been in operation on the property for almost 24 years, but it was in the county. They were annexed back in 2018-19 and upon doing some housekeeping realized the special use permit needed to now come through the City instead.

Mulvaney notes that, should the program expand, the case may need to be revisited.

Mulvaney opens for public comments to speak in favor.

Dwight Fish, 4th District Councilman, appears in person. He states that he has toured the facility and spoken with staff and clients and it is a wonderful organization. He was on the council when they were annexed in and they were a good partner. He asks for a favorable vote.

Davis asks if they are in his district.

Fish states they are not currently, but will be if the new redistricting plan is finalized.

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

STAFF ANALYSIS

The petitioner owns and operates a women’s ministry home that has been operating since 1998. The organization offers shelter, case management, education, meals, and other types of support to women in need due to a variety of issues, including addictions, incarceration, and homelessness.

SPA, Inc. own two properties, one in the city and one in the county. The city property comprises approximately four acres, has 20 beds, and offers the first 4-6 months of a 1 year program, as well as housing the administrative offices of the organization. The property to the east, in the county, makes up 1.5 acres, has ten beds, and is intended for women who have completed the first phase of the program and are working.

The city property was annexed in 2018. At the time the organization was expanding their facilities, and decided to apply for annexation and connect to city utilities rather than keeping their well system. The property had a special use permit in the county which recently expired, necessitating its review by this Board.

The location is appropriate and the facilities adequate for the current operation. Staff has no objections to the organization continuing to operate in its capacity at this location, and it provides a much-needed service to the community. Should the program ever expand, it will necessitate additional review by the Board through the same process.

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 has been operating at this location for over two decades;
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.

Smith states there were 21 letters mailed. One returned in favor with no comment.

Mulvaney asks for staff's definition of expanding.

Smith states that expansion includes physically adding onto a primary building, not a shed or storage building, or adding a new use, such as a retail shop.

Davis asks if that would be an exception.

Smith states that it would still be a charitable organization, but an additional use.

Jones asks if that should be part of the motion.

Smith states it does not; it would just be handled at the time it may come up.

Jones makes motion to approve; Second by Davis.

Davis – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**22-UV-13 PETITIONER IS NANCY PLETCHER AND EDWARD J SMOKER REV LIV TRUST (LF EST)
PROPERTY IS LOCATED AT 916 AND 924 EAST JACKSON**

To vary from Section 7.2, Permitted Uses in the R-4, Multiple Family Dwelling District, to allow for a portion of two residential parcels to be used for a commercial parking lot. Commercial parking lots are not a permitted use in the R-4 District.

Mulvaney calls petitioner forward.

Tom Shoff appears in person for the petitioner. He states that the River Queen is an icon in the community, built in 1948 and stored at the dock at 110 Bowers Court. The builder, Red Macumber, ran it for 25 years. His nephew, Ed Smoker, ran it for 22 years. Former mayor Dick Moore and John Cleveland ran it for 18 years. Marly Rydson then asked Shoff to manage the boat and they have been running it for 7 years. They have put \$300,000 of public donations into the boat. He states that for 15 years passengers parked in the closed down Alex Drugstore lot, but that was purchased by the condominiums and they lost that parking. They tried to park in the American Park across the river but learned that the bridge that connects from behind Central High School is not designed to handle the load of traffic, and it's dangerous to get across the street. The traffic speeds and even with parking vests on, they have nearly been run down by it. He states that Smoker approached him with the True Grid product that goes on a grass lawn to create a parking surface that continues to look like a grass lawn. He presents slides for different stages of construction, performance, and reference.

Mulvaney asks how many parking spaces this will create.

Shoff states that it will create about 70. The boat is rated for 163 passengers, but they keep the limit at 90. They figure there should be about 45 cars at a time with attendants directing the parking. People all come and leave at the same time.

Jones notes that he has had several people concerned about what would happen when the parking disappeared because of the popularity of the attraction. He agrees that the road is dangerous.

Mulvaney opens for public comments to speak in favor.

Jeff Zavatsky appears in person. He states he is a former Captain of the River Queen and Director of the Elkhart Environmental Center. He notes there is a nostalgia and history surrounding the River Queen and that Elkhart was formed on the river, by the river. Very few cities have such an attraction and it is highly prized. He is also familiar with the product proposed and agrees that it is the best case scenario as far as water permeability and filtration; instead of going into sewers, it is filtering into the ground and plants.

Dwight Fish appears in person and states that this is part of an overall plan for development in the River District. The problem is that they are always cramped for space for the River Queen, but it is a thriving part of our identity.

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

STAFF ANALYSIS

The petitioners own two residential lots on the 900 block of East Jackson Boulevard. They have an agreement with the Elkhart River Queen to allow parking on their properties. The River Queen is an amenity on the St. Joseph River that provides tours and is available to rent for events. The River Queen has traditionally faced a challenge for parking as there are no parking lots in the adjacent area adequate for the usage of its clientele.

The plan is to use parts of the southern sections of the two properties for a parking lot constructed with permeable pavers. The pavers will provide the structural support of traditional pavement while allowing grass to grow up through it. The visual impact will therefore be minimal since it will appear to be a lawn. However, unlike parking on a lawn, the integrity of the property's land surface will be maintained. At this point the design is conceptual; a detailed design has not been completed as of the writing of this report.

Patrons of the River Queen will be directed to park on the permeable paver lot, walk down to Jackson then over to Bower Ct and north to the River Queen. While generally commercial lots are discouraged in residential zones, it is located on a primary corridor with a considerable amount of traffic, it will be used occasionally and not have the same amount of traffic many commercial uses have, and the permeable pavers will allow for the lot to blend into the neighborhood.

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 lot 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 pavers will allow the lot to blend in with the neighborhood;
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 the River Queen does not have access to a parking lot;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

Smith states there were 20 letters mailed. One returned not in favor with no comment.
Davis asks if Smith is familiar with this type of surface.

Smith states he is, but not this particular one. He has some contacts with landscape architects who have experience with it and have certified that it generally works as intended.

Davis asks if it will be within code, based on what they know.

Smith states it will and that they have already had discussions with the engineering department.

Davis makes motion to approve; Second by Jones.

Davis – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

Mulvaney notes that the next two cases will be heard together and voted upon separately.

**22-REV-01 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT VACANT LOT FOLSOM STREET**

A request by the City of Elkhart to revoke 21-BZA-29 which was approved July 8, 2021 to grant a developmental variance to allow construction of a gravel lot where a paved parking area would be required.

STAFF ANALYSIS

In July of last year, 21-BZA-29 was granted to allow for a gravel lot to be used on vacant lots on Folsom Street. At the time, one condition was placed upon the approval:

1. Instead of gravel, the lot must be paved enough for the current vehicles to be properly parked.

As of the writing of this report, there has been no paving on site.

In May of 2022, the BZA reviewed this and 21-UV-14, which allowed for tree cutting business in a residential zone at the same location. Based on failure to comply with the conditions as well as the lack of cleanup of materials dumped onto a wetland on city property, the BZA set forth two deadlines in order to maintain the variances in effect:

1. The petitioners must clean up all refuse dumped on city property and provide a plan to grade and pave the site to city standards within 60 days, and
2. The petitioners will have the site paved and graded according to city standards within a subsequent 90 days.

As of the writing of this report, there have been efforts to clean up the refuse dumped on the city wetland. However, no design plan has been provided. Staff believes the petitioners have not complied with the initial condition as well as the requirements set forth by the BZA in May of 2022.

STANDARDS

The BZA may revoke a variance whenever one or more of the following exists:

1. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

STAFF RECOMMENDATION

The Staff recommends revocation of the developmental variance based on the following findings of fact:

1. N/A
2. There has not been compliance with the requirement initially set forth with the variance (providing paving for the vehicles) and they have not provided a plan for grading and paving the site, as requested by the BZA in May of 2022.
3. The lack of grading and paving are endangering the wetland in regards to runoff.

Smith states there were 18 letters mailed. Earlier today the original petitioner brought in 40 not in favor with no comments, and 2 blanks. Additionally, 2 more not in favor by the original petitioners.

**22-REV-02 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT VACANT LOT FOLSOM STREET**

A request by the City of Elkhart to revoke 21-UV-14 which was approved July 8, 2021 to grant a use variance to allow the operation of a tree cutting business where residential uses are allowed.

STAFF ANALYSIS

In July of last year, 21-UV-14 was granted to allow for a tree cutting business to operate in a residential zone at vacant lots on Folsom Street. At the time, two conditions were placed upon the approval:

1. The petitioner will have the four parcels surveyed with the corners marked within 3 months of approval, and provide a copy of the survey to city staff
2. No more vehicles than what are currently stored on the property may be stored on the property.

As of the writing of this report, no survey has been provided to staff, and staff believes that more vehicles are present on the property than were last year.

In May of 2022, the BZA reviewed this and 21-BZA-29, which allowed for an unpaved parking lot (with conditions) at the same location. Based on failure to comply with the conditions as well as the lack of cleanup of materials dumped onto a wetland on city property, the BZA set forth two deadlines in order to maintain the variances in effect:

1. The petitioners must clean up all refuse dumped on city property and provide a plan to grade and pave the site to city standards within 60 days, and
2. The petitioners will have the site paved and graded according to city standards within a subsequent 90 days.

As of the writing of this report, there have been efforts to clean up the refuse dumped on the city wetland. However, no design plan has been provided. Staff believes the petitioners have not complied with the initial conditions as well as the requirements set forth by the BZA in May of 2022.

STANDARDS

The BZA may revoke a variance whenever one or more of the following exists:

1. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

STAFF RECOMMENDATION

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

1. N/A
2. There has not been compliance with the two requirements initially set forth with the variance (providing a survey to staff and limiting the number of vehicles on site) and they have not provided a plan for grading and paving the site, as requested by the BZA in May of 2022.
3. The lack of grading and paving are endangering the wetland in regards to runoff.

Smith states there were 18 letters mailed, 37 returned not in favor with no comment, 2 were blank, and 3 had no indicators.

Mulvaney asks if, in addition to the other issues, there has been no survey.

Smith states that they have not received a paper survey, but they have engaged a consultant who is on Webex.

Mulvaney opens for public comments to speak in favor of 22-REV-01.

Fish appears in person and states that the property and business have a long track record of not meeting requirements and timelines and asks for revocation based on the facts provided. He also notes that this residential area has a lot of pressure and problems with 2 established corporations already and it is not the right mix.

Zavatsky appears in person and notes that he is the adjoining property's Environmental Center manager. He appreciates the removal of the illegal dumping and the fill in the wetlands. The wetlands are the most environmentally sensitive land in the state of Indiana. They have also seen the endangered Blanding's turtle in the area. The concerns are still the same about contamination brought in to the site; invasive plants, trees, seeds, machinery use. There needs to be some guarantee that any oil will not make it into the wetlands and that the ground is sloped.

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

Debra Hughes with Surveying and Mapping appears via Webex. She states that her company was retained in May, 2022 by Eliseo Guerra who operates the business at this location to prepare the design plan for work requested by the city. Last fall in September 2021 they were also retained to mark the property corners and prepare a survey drawing. She cannot speak to whether that was supplied to the City, but the corners were marked and the drawing given to the owners. They received the existing topographic survey and provided it to Smith today, along with the dimension between the National Wetland inventory line and property line. There are approximately 62 feet between the property and wetlands. Her intent in preparing a design plan would be to provide the proper paving, and buffer between the developed site and the wetlands to ensure that there is proper protection from any oil or gas dropped on site. She requests an extension to do this and submit it through Technical Review.

Mulvaney asks if she was notified about the May hearing.

Hughes states she was not. Ryan called her last fall to let her know about this because he knew they had been retained to do the corner marking. The owner had not contacted them until May to actually hire them to do the requested plan.

Mulvaney asks if they were not retained until May of 2022 to do the marking.

Hughes states it was May 26th.

Eliseo Guerra appears in person. He states that his father is the actual property owner, but he has been the one making the process happen since his English isn't good. They plan for Guerra to take over, but they are separate businesses. They work together but he himself does about 60% tree service and 40% landscaping, mowing, and house maintenance. He states two months ago they received the deadline to have everything complete and the wetlands cleaned out. He states he sent Smith pictures right away when they began working on that and it is 100% clean. When they received the notice, they hired Hughes. They did not think they needed a civil engineer. They thought they could put a concrete slab down themselves. He would like an extension. They have grade levels and are waiting on Surveying and Mapping. They contacted every civil engineer in the area to find someone who could work with them sooner, but this was the only one available. "The design is to make it so nothing makes it to the wetlands and we can operate how it should. No oil will be spilled. There will be a drainage point and a low point so that all the water stays within our area." He notes that in the Hudson-Sterling area are a lot of dangerous trees and they feel that the area needs them and they can help everybody.

Davis asks if they knew the City was requiring them to have blacktop or concrete to store their trucks.

Guerra says they did. They were under the idea they could design it themselves since they have a cement background. There was a delay because they didn't know they needed a civil engineer to design it.

Davis asks how much time to they need.

Guerra states that Hughes has suggested a one year extension.

Davis states that is not going to happen.

Mulvaney states that this was ordered a year ago. The paving was to be done immediately. Other than the survey there is still substantial non-compliance with excess vehicles. The refuse has been cleaned up but paving is critical as well as not increasing the number of vehicles.

Guerra states they did not increase the number of vehicles. He says there is one that has been sitting and they have not been able to sell it. They will just sell it for whatever they can get for it. He says the alley has also delayed them because it is about 4-5 feet higher than their actual property. He says they need more time because that is going to take a lot of gravel or dirt to get it to the right grade.

Davis states he would be in favor of giving 90 days, having staff check it out, and if progress is made, granting an extension.

Jones states that is more generous than he was thinking, but he would agree since Hughes has now been hired.

Mulvaney suggests 90 days but there needs to be a written plan and a timeline showing how they intend to comply.

Guerra states they have been waiting on Surveying and Mapping to give some time for the design.

Mulvaney calls for a motion on **22-REV-01**.

Davis makes motion to table the case for 90 days; Second by Jones.

Mulvaney states that Guerra needs to appear with a plan in hand that is very specific as far as a timeline for compliance for each item. It must be realistic. There must be progress in the meantime.

Motion carries by unanimous voice vote.

Mulvaney calls for a motion on **22-REV-02**.

Davis makes motion to table the case for 90 days; Second by Jones.

Motion carries by unanimous voice vote.

Smith asks the Board to be specific about what progress they want.

Davis states they want physical progress.

Mulvaney wants a written survey, physical progress of removing excess vehicles, and starting the parking lot. He states that he understands the refuse has been taken care of, but one of the big concerns is the survey and whether the property is encroaching upon the wetlands and city property as that been undetermined. He notes that Hughes has stated there is a gap, but they want to see the actual survey.

Smith states he does have an email with a survey and there is a gap, but the key part will be grading and drainage retention.

Mulvaney asks for a copies.

Smith states he will get that to them. It shows the current contours and approximate edge of the floodway and wetlands.

STAFF ITEMS

18-X-08U PETITIONER IS B.A.M.B.I.'S DAYCARE PROPERTY IS LOCATED AT 2324 PIERRE MORAN DRIVE

Staff and BZA review of Special Exception 18-X-08, which allowed for a daycare home.

STAFF ANALYSIS

On August 6, 2018, a special exception was granted to B.A.M.B.I.'s Daycare at 2324 Pierre Moran Dr. The approval came with ten conditions:

1. All children shall be restricted to the house 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.
5. A copy of the child care home 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 twelve (12) children during the school year and a maximum of fifteen (15) children during the summer under the supervision of the petitioner.
9. The operator of the day care home shall live on the premises.
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by July 9, 2020.

Staff visited the site on June 21 and found the owner to be fully in compliance with the conditions placed upon the special exception. Additionally, according to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has a good inspection record, with no critical violations in the last three years.

STAFF RECOMMENDATION

Staff recommends that the variance for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by July 11, 2024.

Davis makes motion to approve; Second by Jones.

Davis – Yes
 Jones – Yes
 Mulvaney – Yes

Motion carries.

**20-X-02U PETITIONER IS LA CASA DE LOS NINOS VI
 PROPERTY IS LOCATED AT 2034 BENHAM AVENUE**

Staff and BZA review of Special Exception 20-X-02, which allowed for a Daycare Center.

STAFF ANALYSIS

On July 9, 2020, a special exception was granted to La Casa De Los Ninos VI daycare at 2034 Benham Avenue. The approval came with eleven conditions:

1. The petitioner or lessee shall submit plans for the building renovations to the building department within 14 days of approval, and obtain permits for any work done there within 45 days of approval.
2. The petitioner or lessee shall pave a pickup/drop off area to city standards prior to the daycare's operation; a plan shall be submitted and approved by city staff before any work is done;
3. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
4. The facility and grounds shall be kept clean at all times.

5. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
6. There shall be no exterior display, signs, or other forms of advertising on the premises.
7. A copy of the child care license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
8. 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.
9. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
10. There shall be a maximum of sixteen (16) children.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by July 14, 2022.

Staff visited the site on June 24 and found the owner to be fully in compliance with the conditions placed upon the special exception. Inspection data was not available from the state's Family and Social Services Administration (FSSA) child care finder site.

STAFF RECOMMENDATION

Staff recommends that the variance for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by July 11, 2024.

Davis makes motion to approve; Second by Jones.

Davis – Yes
 Jones – Yes
 Mulvaney – Yes

Motion carries.

**20-X-03U PETITIONER IS LA CASA DE LOS NINOS IV
 PROPERTY IS LOCATED AT 2012 BENHAM AVENUE**

Staff and BZA review of Special Exception 20-X-03, which allowed for a Day Care Center.

STAFF ANALYSIS

On July 9, 2020, a special exception was granted to La Casa De Los Ninos IV Daycare at 2012 Benham Avenue. The approval came with ten conditions:

1. The petitioner or lessee shall submit plans for the building renovations to the building department within 14 days of approval, and obtain permits for any work done there within 45 days of approval.
2. The petitioner or lessee shall pave a pickup/drop off area to city standards prior to the daycare's operation; a plan shall be submitted and approved by city staff before any work is done;
3. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
4. The facility and grounds shall be kept clean at all times.
5. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
6. There shall be no exterior display, signs, or other forms of advertising on the premises beyond what is allowed for in its district unless allowed by variance.

7. A copy of the child care license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
8. 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.
9. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
10. There shall be a maximum of sixteen (16) children.
11. Prior to establishing any further daycares on this block of Benham, the petitioner will consult with city planning and engineering staff.
12. A gate or doorway will be installed to seal off the room with the water heater.
13. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by July 14, 2022.

Staff visited the site on June 24 and found the owner to be fully in compliance with the conditions placed upon the special exception. Additionally, according to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has a good inspection record, with one critical violations in the last three years, for a trampoline being accessible to the children in 2020. The violation was resolved within one day. Experience has shown that it is common for daycares to have a few violations.

STAFF RECOMMENDATION

Staff recommends that the variance for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by July 11, 2024.

Jones makes motion to approve; Second by Davis.

Davis – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**22-X-04U PETITIONER IS KNIGHTS OF COLUMBUS
PROPERTY IS LOCATED AT 112 EAST LEXINGTON AVENUE**

Staff and BZA review of Special Exception 22-X-04, which allowed for a charitable organization to operate a soup kitchen. Mulvaney calls petitioner forward.

STAFF ANALYSIS

On February 10, 2022, the BZA granted the Knights of Columbus, located at 112 E. Lexington Avenue, a special exception to allow Susanna's Kitchen, a soup kitchen offering free lunches on weekdays, to operate at that location. One of the conditions was that the special exception was to be reviewed in July.

The relocation to the Lexington Avenue location was meant to be temporary, to allow the soup kitchen to operate while a new location was sought. In June, the BZA granted a use variance to Grace Lutheran Church, located at 831 W. Marion Street, a use variance to allow Susanna's Kitchen to operate out of their facility. The church has agreed to host the soup kitchen.

However, while there is enough space to operate the soup kitchen there, upgrades are needed to the kitchen in order for them to fully operate there. The church is currently seeking contractors and engaging in fundraising activities to facilitate Susanna's Kitchen's move to their location. While early fundraising efforts have been successful, at the time of the writing of this report, the upgrades are not yet fully funded, and many contractors are booked up, meaning that the date Susanna's Kitchen will be able to fully operate there uncertain.

While efforts are being made for Susanna's Kitchen to relocate, the Knights of Columbus may not be able to host their organization past another 60 days. The petitioners therefore have requested an extension of the Special Exception at 112 E. Lexington Avenue for another two months. So far, the City has not received any complaints about the kitchen operating at the Knights of Columbus, and the case could be reevaluated in two months' time by the BZA.

STAFF RECOMMENDATION

Staff recommends that the BZA grant Susanna's Kitchen an extension of two months to continue operating at 112 E. Lexington Avenue, to be reviewed again as a staff item on September 8, 2022.

Eric Trotter appears in person to represent Grace Lutheran Church and Suzanna's Kitchen. He notes that Grace was granted the variance to allow the kitchen. They are fundraising and working with a contractor and the Health Department on a required list of upgrades. They are also looking for a contractor for other upgrades, but the quotes have been very high and they need an additional 60 days to continue to fundraise and find ways of getting work done to maintain the building and safety. He reiterates that the mission of Suzanna's Kitchen and Grace blends well. The church has been in outreach for over 100 years and the kitchen's mission to feed the food insecure in the community is admirable and the church looks forward to working with them.

Jones comments that he works closely with downtown merchants and he was so impressed with the merchants hosting the fashion show fundraiser and its success. He has read that the targeted amount is very high and wants to know what they will do after sixty days and if there will be an interruption in service.

Trotter states that they will either ask for another extension or there will be a slight interruption in the kitchen's service. They are attempting to deal with the critical upgrades first, have had some successful fundraising, and grants awarded. They hope that the contractors can put them on the schedule. He knows the community has embraced the kitchen and are helping to move forward. He also believes the contractors that they have reached out to will do their best to get the work done as quickly as possible so they can begin operation.

Jones states there were some letters not in support originally, but none of the fears merchants had about allowing operation have not materialized.

Trotter states that has a lot to with the management and oversight of the McDowells.

Mulvaney confirms he has also had 0 complaints from downtown.

Jones states he had no idea that so many people needed the service and that they clients would be young kids and families or single parents.

Trotter notes that the times we live in have placed a strain on a lot of families.


Davis makes motion to approve; Second by Jones.

Davis – Yes
Jones – Yes
Mulvaney – Yes


Motion carries.

ADJOURNMENT

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



Doug Mulvahey, President



Ron Davis, Vice-President