

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, January 11, 2024 - Commenced at 6:00 P.M. & adjourned at 6:48 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Andy Jones
Evanega Rieckhoff (Proxy)

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES FOR NOVEMBER 9, 2023

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

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

ELECTION OF OFFICERS

Trotter announced that the first item on the agenda was the 2024 election of officers. Trotter suggested that since the Board only has three regular members with one proxy and is short two appointments, the Board should elect officers this evening, as required by statute. Trotter proposes that the election of officers would only be for the meeting in January, and the item would stay on the agenda for February with the idea that council appointments will have been set and established for the February meeting.

Mulvaney calls for a motion to nominate officers.

Jones makes a motion to nominate Doug Mulvaney as Board President; Second by Davis. Voice vote carries

Mulvaney calls for a motion to nominate Ron Davis as the Vice President for the meeting.

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

Mulvaney calls for a motion to nominate Andy Jones as the Secretary for the meeting.

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

NEW BUSINESS

24-UV-01 PETITIONER IS FOUNDATIONS CHILD CARE CENTER, INC PROPERTY IS LOCATED AT 320 W HIGH ST

To vary from Section 1.5.2, Permitted Uses in the Central Business District, to allow for the establishment of a day care center at 320 W. High Street. Day care centers are not permitted in the Central Business District.

Mulvaney calls the petitioner forward.

Jennifer Fisher appears in person on behalf of the petitioner. Fisher introduced Tricia Pendleton as the director of operations and Bobby Ferrari as the general contractor with Fine Line Finishing. Fisher says they bought 320 W High St several years ago for office space and storage programs. They have five locations in Elkhart and St. Joseph County, serving several hundred children and offering significant employment within the community. Fishers says that Foundations Child Care has been in Elkhart for over 14 years and is a proud member of the Chamber of Commerce. They have no outstanding issues with the City of Elkhart, and recently, they filed for a Special Exception for a property they acquired last year. Fishers explained that their original goal with the High Street location was to sell it about a year ago because they had opened a 20,000-square-foot program in South Bend that provided office space and storage. However, the State of Indiana's Department of Family and Social Services came to them to inquire about vacant land they needed to utilize because Elkhart has a deficit in infant and toddler childcare programs. Fisher says Foundations Child Care is nationally accredited and ranked in the country's top eight percent in childcare. They are also a member of an accreditation association called NAEYC, the National Association for the Education of Young Children. Fisher then says that they offer the highest quality program rating that the state of Indiana provides, in which they are four levels past the quality providers. The State of Indiana offered them a grant to support the remediation of the inside of the building on 320 W High St to accommodate additional childcare seats. It was enough money to cover the complete build-out and more than six months of staffing their equipment should the City of Elkhart grant the variance. Fisher then gave insight on how, typically, child daycare programs create noise and traffic, but they are looking at creating 22 spots for children between the ages of six weeks and 23 months old. The facility would not be a school-age playground. They would use an eight-seater stroller to walk children around the block. Fisher says they are looking for 35 square feet of outside space for ten children. Additionally, they found out they own two parcels on High St, and the recent combination of those two parcels grants them the parking and space that allows them to egress out for cribs and playgrounds needed for children. Fisher says they would not increase noise standards or bring down the community in any way. They have recently remodeled the building by re-roofing it, repaving the parking lot, and aesthetically improving the property. Their physical presence five days a week detracts from some of the nuisances that the community and the apartment complex nearby might find. Fishers added that Elkhart is one of only a few cities that do not have a childcare program in their central business district. When you look at other developing cities in the country, almost all of them provide it because there's a strong need to support those working within the community. When you talk about ecological footprints, being on the third block on High St, people at the office work two blocks away. Government, businesses, banks, ministries, and other facilities within the area could quickly drop off their children without creating more of a carbon footprint. Fishers says they believe that Foundations Child Care would only help improve the community with their service and opportunities. They have demonstrated that in over a decade and are committed to staying and being present positively.

Mulvaney asks for questions from the Board.

Jones asks Fisher if they can meet the seven conditions that staff has proposed.

Fisher answers yes, other than needing a larger playground where they must file for a parking variance. However, her director of operations analyzed the one-to-six parking ratio for the different standards, and they concluded that they could meet it with the combined parcels.

Jones asks Fisher if they would be set with the 12 parking spaces.

Fisher says they would be good on that and the other conditions; the only issue was that it was not a preapproved use.

Jones states that the conditions are what staff has recommended to the board to approve the variance.

Evanega Rieckhoff states that the conditions are a typical list for all childcare facilities, and doubts there will be problems.

Fisher answers that there are no problems adhering to the conditions set forth by the board.

Mulvaney asks Fisher, based on the ages of the children from zero to 23 months, if it is safe to say that most of their activities with the children will be indoors, with the kids being taken out on occasion in a stroller or something along those lines.

Fisher responded yes, and that the maximum group size is ten for toddlers, so if anybody were outside at any time, it would be a maximum of ten toddlers between the ages of 12 and 23 months old. Fishers then says that if anybody has had or been around children, outside time is the most enjoyable time for them, and they would love it. Normally, they are not as loud and boisterous as you would find with preschool and school-age children.

Evanega Rieckhoff says she drove by the property address the other day because she was concerned when she saw that the daycare would be located in the Central Business District. However, she says it's a great building; she believes it would be a perfect setting for the petitioner and a wonderful location.

Mulvaney states that he has seen several agencies in and out of the property, so he is glad to see somebody taking it over and using it again.

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

Rosie Mesa appears via WebEx in opposition to the petition. Mesa states that she objects to the zoning change for the petitioner because it is a business district. It currently has attorneys, accountants, and insurance companies and needs to remain professional. Mesa says establishing a childcare center would fundamentally change the nature and character of the business district. She then says that lawyers need quietness to work, which would be harmed if parents dropped off and picked up their children from the daycare center. Mesa added that no increased noise is guaranteed because of the increased traffic and inability to muscle children. She explained that children make noise, and there's nothing wrong with children, but children do make noise. They then say that there is a reason why daycare centers are not permitted in business districts, and that is why. The daycare center would interfere with the quiet enjoyment of Mesa's business property and other lawyers who need quiet work time. Mesa says there could be a potential devaluation of her business property because there were no childcare centers when she bought it.

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

STAFF ANALYSIS

The petitioner is a 501(c)3 nonprofit corporation that operates 5 early childhood education programs, 4 of which are within the City of Elkhart, and has served Elkhart for 14 years. They currently own the property at 320 W. High, and have been primarily using the facility for storage and as a collection site for community donations. The building includes approximately 3,200 sf of finished space on a .235 acre parcel. Petitioner was awarded a grant from the State of Indiana to convert the building from its previous medical office set-up into infant and toddler classrooms that will increase available child care opportunities for Elkhart residents. The building is located within a cluster of primarily professional office uses.

The petitioner anticipates serving 22 children and employing 6-8 staff at the facility. While there are no income limits or restrictions on the families served ab the petitioner's programming, approximately 75% of the families they serve are low-income.

The location of this facility is convenient to a large density of both residents and downtown businesses who would benefit from access to high-quality childcare.

The petitioner is proposing to create an enclosed and fenced outdoor play area to allow for outdoor recreation for the toddlers. Based on the proposed number of employees and children served, the facility will require a total of 12 parking spaces and the proposed plan will meet the parking requirements.

STAFF RECOMMENDATION

The Staff recommends Approval of the use variance based on the following finding of fact;

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the day care must successfully pass all required inspections. Additionally, the use is not out of character for the in terms of intensity as compared to other uses permitted with the CBD district and within the immediate surrounding uses;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the because the site was formerly used for commercial (medical office) purposes and it has sufficient play and parking areas;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because the ordinance provides the variance process as relief;
4. Special conditions and circumstances do exist which are peculiar to the land involved because day care centers are not permitted by right in the CBD zoning district;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the existing building appears to be appropriate to accommodate the proposed use and will add a valuable amenity to the surrounding neighborhood and neighborhood businesses;
6. The special conditions and circumstances do result from any action or inaction by the applicant as the proposed use is a change from the existing storage uses;
7. This property does not lie within a designated flood area.

CONDITIONS

1. The petitioner shall provide a fenced-in play area for children. This area shall be separated from the parking lot.
2. Children will only be outside the building when being dropped off, picked up, or on walks or outings supervised by adult staff.
3. The facility and grounds shall be kept clean at all times.
4. The facility shall be subject to inspection, upon reasonable notice, by the Zoning Administrator during hours of operation.
5. A copy of the day care license shall be submitted by the petitioner to Department of Planning.
6. All building code requirements for the new use shall be met prior to occupancy. Petitioner shall request Certificate of Occupancy prior to opening for business.
7. The affected property must comply with all fire and building code requirements for fire rated construction and opening protection. Petitioner to confer with building officials to determine any required alterations.

Huber states there were 43 letters mailed. One returned in favor with no comment, and one returned not in favor with a comment from Rose Mesa, which echoed her previous statements.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve variance 24-UV-01, and adopt the petitioner's documents and presentation together with the staff's finding of facts as the board's finding of facts in the present petition, and adopt all conditions in the staff report; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

24-BZA-01 PETITIONER IS STAR 004 LLC
PROPERTY IS LOCATED AT 1207 W LUSHER AVE

To vary from Section 12.4, Yard requirements in the B-2, Community Business District, to allow for a new convenience store to be constructed ten (10) feet from the rear property line where twenty feet is required with a ten (10) foot landscape area and to also vary from Section 12.4, Yard requirements to allow for the same convenience store to have a corner side setback of 28.44 feet, where 30 feet is required, a variance of one and fifty six (1.56) hundredths feet.

To vary from Section 26.7.D, Schedule of Off-Street Parking, to allow for seven (7) parking spaces where 18 are required, a variance of 11 parking spaces.

Mulvaney calls the petitioner forward.

Deborah Hughes appears in person on behalf of the petitioner. Hughes states there are two setback variances since it is a small site. Hughes says that the south setback variance is 10 feet, where 20 feet is required inside, and 28, where 30 is required. She says they have modified the building and the canopy size to meet the front setback of 15, and the west side setback of 10 feet is only half the requirement. Hughes adds that the existing site has no fence along the south side, with an alley and residential use on the other side. She says the existing site has no fence along the south side, with an alley and residential use on the other side. So the cars and traffic that use the existing facility will be more of a problem for the neighbors. Hughes states that the property will have a six-foot privacy fence on the South property line that will protect the property to the south from headlights and other things related to the vehicles going back and forth. Hughes then states that the parking variance of the city standards requires six parking spaces per 1000 square feet, which is quite a bit of parking. She says the building will be a 3000-square-foot structure requiring 18 parking spaces. She says the petitioner had provided seven, and then there would be an additional six at the fuel dispensers for a total of 13, so the variance would be seven. Hughes states that the property will be a destination for pedestrians from the neighborhood. Hughes added that the traffic to the store would be walking, with little driving traffic. The three variances should be approved, and she will address any questions or concerns.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks if there are currently any pumps at the property and if they will install the three.

Hughes answers that there will be three islands with six dispensers, with two on each side.

Hughes states that the property was a gas station in the past. However, the pumps and tanks were removed, so all that is left is an old-fashioned gas station with the services. The petitioner will be installing a new store and a new pump island.

Evanega Rieckhoff asks Hughes if they are counting parking at the pump parking space.

Hughes answers yes.

Evanega Rieckhoff asks Hughes if they cannot put any other parking spaces on the other side of the building.

Hughes responds that there would be a dumpster enclosure on the east side, so the access to the dumpster would need to stay open. Hughes adds that it is possible that some of the employees could park there when the dumpster is emptying. She says that the city standards do not allow them to be considered legit parking spaces, but they could be used functionally.

Jones states that trash is everywhere every time he visits a convenience store. He says that people seem to walk out of the store, unwrap something, and throw it to the ground. Jones then says that the property is next to a residential area, and he hopes the petitioner will keep it clean. Jones then explains that it feels like the employees believe it is not their responsibility to clean. He then states that the dollar stores are incredibly awful and extremely dirty.

Hughes says those are legitimate concerns and that the owner, Jason Patel, is online. Additionally, the other owner is present, so they are aware of Jones's concerns, and she will share Jones's concerns about keeping the store clean with them as well.

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

STAFF ANALYSIS

The petitioner is redeveloping the site at 1207 W Lusher Avenue for a new convenience store. The site has a long history of being used as an automotive repair shop and based on the site plan submitted as the plan for redevelopment, there are several variances required for this project. There are two (2) developmental variances for the new building – a rear yard variance of ten (10) feet and a corner side yard variance of one and fifty six hundredths (1.56) feet. The last is for a parking variance, providing relief of 11 spaces.

The characteristic of use for these types of commercial uses are typically of quick transactions and use of parking space is short term. Functionally the six (6) pump spaces serve to accommodate the service station parking requirements of the ordinance. As a result, the site would only lack five (5) spaces for parking to meet the 12 required for the convenience retail use.

The site plan is a fairly standard layout with the building to the rear of the property and the pump islands and fuel canopy in front of the building. The location is at the intersection of heavily trafficked streets in Elkhart that feed commercial and industrial areas in the city. The commercial zoning has been in place since 1957 surrounded by residential neighborhoods.

At the writing of this report, this redevelopment project had not yet been reviewed by the Technical Review Committee. Staff is not anticipating any insurmountable issues with the plan as submitted.

STAFF RECOMMENDATION

The Staff recommends Approval of the developmental variance based on the following finding of fact;

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the structure and property will be updated and improved, which would be mandated to meet the current state and local building code requirements. Additionally the tech review process will ensure the development does not create any negative traffic issues; and the appropriate screening of the adjacent residential uses;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the current state of the parcels dilapidated condition will be substantially improved, resulting in an attractive use of the parcel. Additionally the tech review process will ensure the development is appropriately screened from the adjacent residential uses;
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 peculiar to the land involved because of the lots small size. Without relief from the current development standards, this commercial project would not be possible;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property as it restricts the development of the desired commercial project on this parcel;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Trotter states there were 33 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Jones makes a motion to approve 24-BZA-01, and adopt the petitioner's documents and presentation together with the staff's finding of facts as the board's finding of facts in the present petition; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-02 PETITIONER IS KENT MIKEL AND JANINE MIKEL
PROPERTY IS LOCATED AT 119 BANK ST**

To vary from Section 1.10.B.2.a, Regulations for Nonconformities, to allow for an existing single family dwelling's conversion of the attached garage to a master suite in the R-2, One Family Dwelling District. The current structure is one and one tenth (1.1) foot from the side property line, where seven (7) is required, a variance of five and nine tenths (5.9) feet to allow for a three (3) foot addition to the east (front) of the current garage and six (6) foot to the west (rear) of the current garage.

Mulvaney calls the petitioner forward.

Kent Mikel appears in person as the petitioner. Mikel states that he is in a situation because his home is over 100 years old, and the garage attached to the home is insufficient for use. The garage cannot hold any vehicles, so he uses it for storage but wants to utilize it by turning it into a master bedroom with a bath and storage area. Mikel explained that he would need to put a garage on the back of the property so as not to lose any garage space. Mikel then says the problem is that the home was built in the 1920s, so the house is right up on the property line. This would mean that for him to extend the size of the garage to accommodate the changes, he would need it to be running parallel to the property line. Mikel states that his request is not to move the property closer to the property line but to run it parallel to it to allow for the garage extension. This would allow for a little more space on the inside. However, a variance is required to make that adjustment. Mikel says that if he did not have the variance, the property would have to be brought up to code, which means that it would need to be torn down, so he is requesting it. Mikel says that he and his wife have been living at the property for 28 years, he has no intention of going anywhere else, and he wants to make it usable and keep it functional.

Mulvaney asks for questions from the Board.

Jones states that looking at the existing garage door, he is not sure how a vehicle would fit in there.

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 single family residence built in 1901, according to the Elkhart County Assessing information, and is comprised of one thousand four hundred and twenty four (1,424) Sqft on a .25 acre parcel located on the west side of Bank Street, south of East Jackson Boulevard. This property is surrounded by R-2 One Family Dwelling District to the east, west, and south. The properties to the north are zoned R-1 One Family Dwelling District.

The petitioner desires to convert and add on to the existing attached garage into a master suite. Currently the garage is one and one tenth (1.1) foot from the side property line, where seven (7) feet is required by the current zoning ordinance in Section 5.4, yard requirements for R-2 one family dwelling district, a variance of five and nine tenths (5.9) 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 conversion of the garage would be mandated to the current building code therefor will meet all state and local building requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the conversion of the garage to livable space would remain as a residential use in a residential zoned neighborhood;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance as a measure of relief is allowed when warranted as this is an older home that was built close to property lines prior to the current zoning development standards;
4. Special conditions and circumstances do exist which are peculiar to the land involved because the unique characteristics of this and surrounding parcels because the development of the site prior to the current zoning standards has resulted in structures that have been built within the current setback requirements for residential zones;

5. The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property because of the structure was built before the standards of the current zoning ordinance that requires greater setbacks;
6. The special conditions and circumstances do not result from any action or inaction by the applicant as the non-conformities have been long established;
7. This property does not lie within a designated flood area.

Ughetti states there were 50 letters mailed with one returned in favor with comment of not having any issues with the petitioner's request.

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

Mulvaney calls for a motion.


Davis makes motion to approve 24-BZA-02, and adopt the petitioner's documents and presentation together with the staff's finding of facts as the boards finding of facts in the present petition; Second by Evanega Rieckhoff.

Davis – Yes
Evanega Rieckhoff – Yes
Jones – 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