

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, February 8, 2024 - Commenced at 6:06 P.M. & adjourned at 6:44 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Phalene Leichtman

MEMBERS ABSENT

Evanega Rieckhoff

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Amendment to the agenda to table 24-BZA-03
Davis makes motion to approve; Second by Leichtman. Voice vote carries.

APPROVAL OF MINUTES FOR DECEMBER 14, 2023

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the February 8, 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.

NEW BUSINESS

24-UV-02 PETITIONER IS EOZ BUSINESS LLC

PROPERTY IS LOCATED AT VACANT LOT, EAST JACKSON BLVD (300 BLOCK)

To vary from Section 15.2.Q, Permitted Uses in the CBD, which allows 'Multi-family residential dwellings, including condominiums, townhouses and residences located above commercial uses to allow for residential dwellings located on the first floor, where currently residential dwellings are not a permitted use on the first floor.

To also vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for the residential units in this development to be as small as five hundred seventy four (574) square feet, a maximum variance of one hundred seventy six (176) square feet.

Mulvaney calls the petitioner forward.

Bob Haden appears in person on behalf of the petitioner. Haden states that the petitioner would like to see the petition approved and that staff has a favorable recommendation for it.

Mulvaney asks for questions from the Board.

Mulvaney asks Haden if the petitioner is seeking the variance because they want to build smaller one-bedroom apartments.

Haden answers yes, and it is being done to meet demand and create an atmosphere for that area.

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, EOZ Business, LLC, is requesting to vary from development standards found in the Central Business District (CBD), for the latest phase of development in the River District. The sites that are part of this request are located along E. Jackson Boulevard and Clark Street, north of Jackson, in the heart of the River District.

The 2018 River District Implementation Plan's vision sought to develop a thriving urban, mixed use, walkable community that is a downtown destination emphasizing the rivers and recreational amenities. To reinforce the Neighborhood Structure, the Plan extends downtown's walkable street grid and establishes building frontages against sidewalk edges and makes walking useful, safe and comfortable. The proposed development represented in this petition supports the vision and spirit of the 2018 Plan.

In Figure 1 below, the buildings that are a part of this request are noted with a letter A, B and C. The proposed buildings are three (3) and four (4) stories in height, cited behind the public sidewalk with associated parking north, out of the street view from E. Jackson Boulevard.

As background, the ordinance currently permits residential (apartment and condominium) uses above commercial uses in the Central Business District. The proposal calls for three (3) mixed use buildings which will have commercial (including restaurant), office and/or residential uses incorporated into each of the buildings. See Figure 1 above. The Clark Street Building A, as shown above in Figure 1, will have retail on the first floor with residential on the upper floors of that building. The building at the intersection of E. Jackson and Clark Street, shown as Building B in Figure 1, will concentrate the commercial and office uses at the west end of the building and have walk up apartments east at the street level fronting E. Jackson Boulevard. Building C in Figure 1, is proposing residential on all three levels.

The second part of the request is to permit the reduction of dwelling unit minimum floor area to 574 square feet where the current minimum floor area is 750 square feet. This reduction in floor area is consistent with what is happening in other communities that are working to address the shortage of housing. The goal is to also help densify downtown and provide residential housing options for all stages of life in order to continue to make Elkhart a vibrant downtown.

It is anticipated that with pending updates for the zoning ordinance, the elements contained within this request will be conforming in the future. The timeline for the updates to the ordinance will be in draft form in the third quarter of this year.

Staff supports the variance request contained in the petition.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variances 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 new buildings will be built and conform to all applicable building codes. The uses found within the buildings and unit size will be a positive addition to the existing businesses in a mixed use district;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the programming of the building meet the goals of the 2018 River District Plan by incorporating a mix of uses that support the plan's vision;
3. The need for the variance arises from some condition peculiar to the property because of the requirement that residential be allowed only above commercial uses and the reduction of unit size would prevent these buildings from being constructed;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property because the varied typology proposed in these buildings are becoming more common in downtowns;
5. The approval does not interfere substantially with the Comprehensive Plan which calls for the area to be developed with mixed use.

Huber states there were 11 letters mailed and zero returned.

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

Mulvaney calls for a motion.

Davis makes a motion to approve 24-UV-02, 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 Leichtman.

Davis – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-04 PETITIONER IS LOTUS ENTERPRISES
PROPERTY IS LOCATED AT 2101 BYPASS ROAD**

To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

Mulvaney calls the petitioner forward.

Robert Miller appears in person on behalf of the petitioner. Miller states that he agrees with the staff report and will transition the current unit from a static unit to an LED.

Mulvaney asks for questions from the Board.

Mulvaney states that the board first came across LED signs... (Unintelligible, off mic). The city was in the process of adopting a new ordinance concerning signs, which is still in the works. Mulvaney says it was an issue beforehand, so some petitions were kicked down the road. However, the proposal that is being presented would be consistent with... (Unintelligible, off mic). Mulvaney says that was one of the issues with what's being proposed... (Unintelligible, off mic).

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

Lamar Advertising leases the subject property and owns a billboard structure that includes both north and south facing signs.

For this sign structure, it is there by action approved by this body in 2016 as the site was being redeveloped after the realignment of ByPass Road as it intersects Nappanee Street. At that time, the site was two separate businesses with two different zoning classification with both oriented toward Nappanee Street. The new building proposed, as it sits today, was oriented to the north toward ByPass Road. In order to have the site be compliant, the site was rezoned and the necessary variances approved in order to construct the billboard that currently exists at the southwest corner of ByPass Road and Nappanee Street. That also included the combination/consolidation of the parcels for the site, which was never completed. This came to light when the case before the board now was filed. As a part of our recommendation and conditions, staff is asking that the combination be completed as required by the previous owner in 2016. Because now, the building may be considered non-conforming.

Lamar is proposing to upgrade the billboard from the current, traditional static sign face to with a new electronic LED billboard. The BZA heard two other requests similar to this action in December 2023 for a site on South Main Street and East Beardsley Avenue. Staff is supportive of the request and understand the technology is changing and feel there are adequate safeguards in place with the proposed conditions to ensure the current proposal meets the future language for the UDO.

The City of Elkhart is in the process of updating its zoning ordinance, including the sign ordinance components. It is anticipated that the new UDO will include allowances for and guidance related to electronic billboards, including standards related to movement, video elements, message sequencing, limits on message duration, and brightness. Accordingly, the proposed guidance will be included in the staff's recommendation related to this request.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard 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 off-premises sign already exists at this location;
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 sign to LED is in keeping with the trends in changing technology for billboard signs;
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 sign already exists and without board action the conversion to LED would not be permitted;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would require the sign to continue to utilize the existing non-LED sign face that is manually changed;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the sign is pre-existing;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 10 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.

7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage

Ughetti states there were 11 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Davis makes motion to approve 24-BZA-04, and adopt the petitioner's documents and presentation together with the staffs finding of fact as the board's finding of facts in the present petition, and adopt all conditions listed in the staff report; Second by Leichtman.

Davis – Yes


Leichtman – Yes

Mulvaney – Yes

Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President