

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, January 13, 2022 - Commenced at 6:00 P.M. & adjourned at 6:56 P.M.  
City Council Chambers – Municipal Building**

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

**MEMBERS PRESENT**

Doug Mulvaney  
Ron Davis  
Johnny Thomas  
Andy Jones

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Eric Trotter, Assistant Director  
Ryan Smith, Planner

**LEGAL DEPARTMENT**

None present

**TECHNOLOGY STAFF**

Anthony Elkins

**RECORDING SECRETARY**

Jennifer Drlich

**ELECTION OF OFFICERS**

Mulvaney nominates Ron Davis as Vice-Chair; Second by Thomas. Voice vote carries.

Jones nominates Mulvaney for President; Second by Davis. Voice vote carries.

**APPROVAL OF AMMENDED AGENDA**

Jones makes motion to amend the agenda to remove the withdrawn petition 20-BZA-42; Second by Davis. Voice vote carries.

**APPROVAL OF MINUTES FOR DECEMBER 9, 2021**

Davis makes motion to approve; Second by Thomas. 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 13, 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

### 21-UV-26 PETITIONER IS MINA YOUSSEF AND DIANA MESEHE PROPERTY IS LOCATED AT 1433 W FRANKLIN STREET

To vary from Section 6.2, Permitted Uses in the R-3 District, to allow a Three-Unit Multiple Family Dwelling. Multiple Family Dwellings are not allowed by right in the R-3 District.

Mulvaney calls petitioner forward.

Youssef appears via WebEx. He states that he bought the property a couple of months ago as a tri-plex and there have been tenants occupying the apartments for at least one year. He would like the property approved as a three-unit.

Mulvaney asks for questions from the Board. Hearing none, he 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 petitioners own a house zoned R-3 built in 1910 on Franklin Street east of Bridge Street. The property has come before the board once before, in 2014. At the time, staff had just learned that the property had been converted illegally into a 4-unit. The owners at the time petitioned the Board to legalize the four-unit and were denied. However, the proper renovations to convert the house back to a two-unit which is allowed by ordinance, and the new owners now come before the Board claiming the house to be a three-unit and asking to legitimize its use as such through the variance process.

The house is currently being taxed as a two unit, however the house is being used as a three-unit, with one unit on the first floor of the house, another unit on the second floor, and a third unit in the garage.

The oldest official zoning map is from 1957. That map indicates the zoning district at that time was R-4, **Two Family Dwelling District**. Note the difference between the R-4 district in 1957 and the current R-4 district which is multi-family. This means that as far back as 1957 the structure would not have been allowed to be converted into a four unit.

Building permit records reveal a 1988 roof permit signed by R.E. Rohrer, owner. In the space labeled "Existing Construction" the hand written entry is "two family dwelling". Application materials and meeting minutes from the 2014 case indicate that the petitioner at that time believed that the garage was converted "sometime around 1969 or 1970" to a "one-bedroom apartment." No building permits were located to indicate that alterations to the structure were permitted.

It is the assertion of the planning staff that 1433 West Franklin is an illegal conversion and does not merit the granting of a use variance.

### STAFF RECOMMENDATION

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

1. The approval will be injurious to the public health, safety, morals and general welfare of the community because an illegal conversion does not deserve to be rewarded by the granting of a use variance; to do so could act to encourage such action by other property owners;
2. The use and value of the area adjacent to the property may be affected in a substantially adverse manner because the property was never intended to accommodate a four-unit dwelling;
3. The need for the variance does not arise from some condition peculiar to the property because there is none;
4. The strict application of the terms of this Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is being sought because the owner may alter the structure back to a legal two unit dwelling and any hardship is self-imposed;
5. The approval will not be in compliance with the Comprehensive Plan which calls for low density residential uses.

Trotter states there were 41 letters mailed. One returned in favor and one not in favor with no comments.

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

Thomas asks how this property was discovered as non-compliant.

Smith states that another planner had a conversation with some sort of inquiry. He believes it was prior to the petitioner purchasing the property, but he was not privy to the conversation. He believes there was discussion about what was legal and what was not.

Mulvaney calls for a motion.

Davis makes motion to **approve**; Second by Jones.

Davis – No

Jones – No

Thomas – No

Mulvaney – No

Motion fails.

Davis makes motion to **deny**; Second by Jones.

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Yes

Motion carries.

**21-X-14 PETITIONER IS RAFAEL PEREZ / TOMASA AGUIRE A  
PROPERTY IS LOCATED AT 322 E INDIANA AVE**

A Special Exception of Section 12.3 of the Community Business District to allow the operation of a tattoo parlor.

Mulvaney calls petitioner forward.

Gerardo Mendez appears in person. He states he is the business partner of Kevin Perez and they would like to operate the site as a tattoo shop. He believes there is enough parking.

Mulvaney asks for questions from the Board.

Davis asks if they have met all the state requirements for a tattoo parlor.

Mendez states that they currently have the checklist, and as soon as they are approved, they will submit.

Mulvaney asks if it will be appointment only, no walk-ins.

Mendez states that is correct. There would be 3 artists. Each would have one person at a time and only one or two tattoos a day.

Jones asks if there is more than one business in the building or could they use the whole thing.

Mendez states that they are only using part of the building. He believes the landlord uses the other part for storage.

Jones asks if it has been vacant for a long time.

Mendez states that there was a business there a long time ago, but he believes it has been vacant since that time.

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 proposes to convert a portion of an existing commercial building into a tattoo parlor. Their proposal is to have a private studio with two local artists with an additional chair for accomplished guest artists. The idea would be to promote other accomplished artist to utilize their business. The business is proposed to be appointment only and has parking along May Street.

**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 as this is an existing commercial building with limited traffic;
- 2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no physical changes to the property;
- 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 41 letters mailed. One returned in favor with no comment. He notes it does come 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.

Jones makes motion to approve; Second by Thomas.

- Davis – Yes
- Jones – Yes
- Thomas – Yes
- Mulvaney – Yes

Motion carries.

**NEW BUSINESS**

**22-UV-01 PETITIONER IS HEARTLAND RECREATIONAL VEHICLES LLC  
PROPERTY IS LOCATED AT VL WADE DR**

A Use Variance of Section 13.2 Permitted Uses in the B-3 Business Service District to allow for the creation of a recreational vehicle finished goods storage lot.

Mulvaney recuses himself from this case due to a potential conflict of interest.

Davis calls petitioner forward.

Matt Schuster with JPR on 300 Nibco Parkway. He notes that Dan Hahn from Heartland RV is also present for questions. He states that they are seeking a special use to allow for outside storage of recreational vehicles to be located within a B-3 zone. The project initially started as a rezoning project, however they were advised to request a special use as surrounding property owners were not in favor of the rezoning. The lot would be utilized for towable vehicles only. The vehicles would come from Heartland RV’s customer service lot with hours of service between 8 am and 5 pm. Parking would be on a paved surface and storm water storage would be required to be retained on site with proposed dry retention areas. The overall project would be required to meet City of Elkhart standards, including Tech Review for final approval and development. He presents a site plan showing where there would be fencing around the storage lot with a 15-foot utility easement in the back. North of that they have proposed 6-foot arborvitae and a fence in the residential properties on the south end.

Davis asks for questions from the Board. Hearing none, he 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 vacant parcel of property in the Elk-Air Industrial Park. The parcel of property is on the south side of Wade Drive and is in the process of converting the zoning district to M-1 Limited Manufacturing. The intended use of the property is outdoor storage of recreational vehicle finished goods.

Heartland Recreational Vehicles has several of their industrial facilities to the northeast of the property in the same industrial park. Per the submitted site plan the outdoor storage area would be screened to ordinance standards utilizing new and existing vegetation.

**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 storage lot will be reviewed through the Technical Review Process for drainage requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the storage area will be properly screened from the adjacent residential properties;
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 the Comprehensive Plan calls for this area to be developed industrially;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would prohibit a low intensity use to help buffer the residences from other industrial uses;
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 variance, staff recommends that the following condition be placed upon the approval:

1. A striping plan shall be submitted to the City prior to occupancy, subject to staff approval.

Smith states there were 12 letters mailed, 0 returned.

Public attendee speaks off microphone.

Smith asks if she would like to speak and suggests reopening the public hearing portion.

Trotter states for the record that for the rezoning request she had submitted a response, but none returned for this petition.

Public attendee continues to speak off microphone.

Smith states that he did receive an email from the attendee before this application was received. He states that he would be willing to read it if she likes and offers an opportunity for her to speak again.

Public attendee declines.

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

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

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Abstain

Motion carries.

Mulvaney resumes control of meeting. He states that the following two cases will be heard concurrently but voted separately.

Smith states that the reason for two petitions is because there are two parcels with different zoning.

**22-UV-02 PETITIONER IS BETANIA MINISTRIES INC  
PROPERTY IS LOCATED AT 525 HARRISON ST**

A Use Variance of Section 18.2 Permitted Uses in the M-1 Limited Manufacturing District to allow the use of the property as a playground and green space for the adjacent church.

Mulvaney calls petitioner forward.

Jose Botello appears in person and states that he is the pastor of the church. He states that they would like to continue to use the location as a church as it has been since 2007, and to use the parcel behind the building as a playground as it has been for more than 50 years. They were not aware they needed the City's approval for these uses.

Davis asks if this is the church across from Michael's.

Botello states that it is.

Davis asks if there would be an issue with parking.

Botello states that there is plenty of parking. He believes on Sixth Street there are 70 spaces and all around the building there is pavement for parking. He states it is a small congregation of 15 or 20 people so there is plenty of parking.

Jones asks about a boat stored in the back on the playground and to whom it belongs.

Botello states that the boat belongs to a petitioner and it will be parked only temporarily.

Jones notes that it is on a paved surface as well.

Mulvaney asks for questions from the Board. Hearing none, he 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 two parcels of land at the intersection of Harrison and 6th Street that is currently being operated as a church. The north property is occupied by the church and the southern parcel is being used as an outdoor playground. As the property is located in a Manufacturing district a Use Variance is needed to allow an accessory use to the church. The applicant states that the church has had a positive influence on the surrounding 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 as this use will provide services to the general public;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because there will be little to no physical changes to the property;
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 property because it would prohibit the property from being used by a less intense use than those permitted in the M-1 District;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

Smith states there were 18 letters mailed. One returned not 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; Second by Jones.

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Yes

Motion carries.

**22-X-01 PETITIONER IS BETANIA MINISTRIES INC**  
**PROPERTY IS LOCATED AT 525 HARRISON ST**

To vary from Section 13.3 Special Exception Uses in the B-3 Service Business District to allow the property to be used as a Church.

**STAFF ANALYSIS**

The petitioner owns two parcels of land on Harrison Street that is currently being operated as a church. The north property is occupied by their facility and the southern parcel is being used as an outdoor playground. The applicant states that the church has had a positive influence on the surrounding neighborhood. As the property is located in a commercial district a Special Exception is needed to operate a church.

**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 as this use will provide services to the general public;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be little to no physical changes to the property;
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 18 letters mailed. One returned not 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; Second by Thomas.

Davis – Yes

Jones – Yes

Thomas – Yes

Mulvaney – Yes

Motion carries.

**22-BZA-02 PETITIONER IS 756 PATRICIA CT – ELKHART LLC**  
**PROPERTY IS LOCATED AT 756 PATRICIA CT**

To vary from Section 26.10.D.4.d which requires freestanding signs to be centered on the property line to allow for the installation of a new freestanding sign at the corner of Patricia Court and Middlebury Street.

Trotter asks if petitioner is present in person or online. No petitioner appears.

Davis makes motion to table for one month; Second by Jones. Voice vote carries.

**22-BZA-03 PETITIONER IS PAUL GREGORY**  
**PROPERTY IS LOCATED AT 1440 S NAPPANEE ST**

To vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires that parking lots with between one (1) and 75 spaces have a ten (10) foot landscape strip when adjacent to a right-of-way, to allow a parking lot with a six (6) foot landscape strip adjacent to Nappanee Street, a variance of four (4) feet.

Mulvaney calls petitioner forward.

Alec Seaman with Technical Group appears via WebEx for petitioner. He states this is an existing Burger King and they are redeveloping the entire site. The existing curb cuts do not meet setbacks as required, so they are redeveloping to match them as much as possible; however, along the street there is a drive aisle for access to the drive-thru that cannot be shifted any further or it would be too small to fit any car, making it impossible for the drive-thru to function from Nappanee Street without the variance.

Mulvaney asks for questions from the Board.

Davis asks if it will be a new and improved Burger King.

Seaman states it will be a full interior, exterior, and site remodel.

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 property has an existing Burger King restaurant built in 1985 that was damaged in a fire and is currently being demolished. The applicant intends to rebuild the restaurant and redesign the drive thru facilities. The current design of the building and parking areas do not meet the current code requirements.

The redesign will allow the site to meet most of the setback requirements. Because of the size of the property a drive lane will encroach into the front setback along Nappanee Street by 4 feet. The redesign of the site will allow for screening requirements to be met along Nappanee 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 as the design of the drive lane will not affect traffic flow or visibility along Nappanee Street;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property has been used as a restaurant in the past;
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 the redesign of the site will bring it more into compliance with the current ordinance requirements;
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 has been a restaurant but is too small to accommodate the drive lanes needed for onsite traffic flow;
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 rebuilding the restaurant with an appropriate design;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the property was originally designed as a restaurant;
7. This property does not lie within a designated flood area.

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.

Davis makes motion to approve; Second by Jones.

Davis – Yes  
Jones – Yes  
Thomas – Yes  
Mulvaney – Yes

Motion carries.

#### 22-X-02 PETITIONER IS MAC REAL ESTATE, CLAIR MCKINLEY PROPERTY IS LOCATED AT 2501 S NAPPANEE ST

To vary from Section 12.3 Special Exception Uses in the B-2 Community Business District to all a Meeting Hall/Banquet Facility

Mulvaney calls petitioner forward.



Octavia Ray appears in person. She states that she is both owner and renter of the property. She would like to operate The Jubilant Den event hall. The event hall has been used for a lot of community events. They have taken in water for Benton Harbor's water crisis. They host entrepreneur trainings, prayer breakfasts, women's conferences, and plan to offer bridal showers, and birthday parties to select citizens to keep the neighborhood safe and be respectful of other local businesses in the corridor.

Mulvaney asks for questions from the Board.

Davis asks if there will be cooking.

Ray states they will be working with local chefs to offer catering, but no preparation in the hall.

Jones asks if there will be a pre-approved list of caterers or if it is up to whoever is renting the venue for the day.

Ray states that the renter would be able to bring in their food or book with an outside caterer. She does have a list of recommendations that come highly recommended from the South Bend and Mishawaka area.

Jones asks if she owns the entire building.

Ray states that she does not. The property manager, Clair McKinley. She is renting out the last unit on that building.

Jones asks if the part she is leasing has two exterior doors and it two units or just one because the rest of the building looked vacant.

Ray states there are 8 units in the corridor, 4 are vacant, and she is in one of those. She is on the end and they do have two exits, one at the back and one at the front. It is one unit at 2,700 square feet.

Jones asks how many people the one unit will accommodate.

Ray states that because of COVID she does not expect any more than 100 people at a maximum.

Jones states that it will be plenty of parking.

Davis asks if parking will be an issue with the liquor store at the other end.

She states it will not be an issue at all.

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 leasing tenant space within an existing multitenant commercial building. The intended use of the tenant space is an event center. The petitioner states that the space could be used for conferences and educational training. The petition states that the space would be able to accommodate 200 people. Primary operation of the facility will be on Sundays but the facility will be available throughout the week from 10 AM till 11 PM.

#### **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 as this use will provide services to the general public;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be little to no physical changes to the property;
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 17 letters mailed, 0 returned.

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

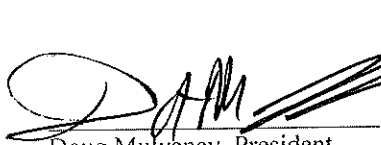
Thomas – Yes

Mulvaney – Yes

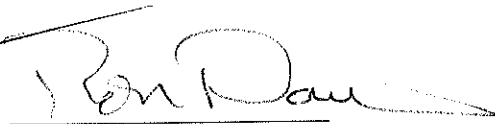
Motion carries.

**ADJOURNMENT**

Mulvaney asks for a motion to adjourn meeting. Jones makes motion to adjourn and is seconded by Davis. Meeting is adjourned and all are in favor.



Doug Mulvaney, President



Ron Davis, Vice-President