

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, October 14, 2021 - Commenced at 6:00 P.M. & adjourned at 7:35 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
Andrew Strycker
Dave Osborne

MEMBERS ABSENT

Ron Davis

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

John Espar, Corporate Counsel

TECHNOLOGY STAFF

Matthew Riggs

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AMENDED AGENDA

Mulvaney notes that there is a request to amend the minutes to table item 20-BZA-42.

Strycker makes motion to approve; Second by Osborne. Voice vote carries.

APPROVAL OF MINUTES FOR AUGUST 12

Strycker makes motion to approve; Second by Osborne. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Strycker makes motion to approve; Second by Osborne. Voice vote carries.

OPENING STATEMENT

Welcome to the October 14, 2021 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-17 PETITIONER IS MARIA PEREIDA
PROPERTY IS LOCATED AT 702 W HIVELY AVE**

To vary from Section 5.2, Permitted Uses in the R-2 District, to allow retail plant sales. Retail sales are not permitted in the R-2 District.

Smith notes that the petition was tabled last month, but the petitioner is here to speak with her daughter to translate.

Pereida appears in person. She states her mother is requesting permission to sell her plants every year through just certain months. She has letters from neighbors stating that they have no problem with it, but she does not have them in hand this evening.

Mulvaney asks to clarify that they now want to apply for a variance to sell the plants every year on a continuous basis.

Pereida states that is correct, but only for seasons like March through September.

Mulvaney asks for questions from the Board. Hearing none, he calls for a motion.

Strycker makes motion to approve with conditions Motion fails for lack of second.

Strycker makes motion to table for one month; Second by Osborne.

Osborne – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

NEW BUSINESS

**21-UV-19 PETITIONER IS STANLEY GOLDEN
PROPERTY IS LOCATED AT 1651 W FRANKLIN ST**

To vary from Section 18.2, Permitted Uses in the M-1 Limited Manufacturing District, to allow Auto Sales, which is not a permitted use in the M-1 District.

Mulvaney calls petitioner forward.

Stephanie Floyd appears in person to represent the petitioner. Petitioner wishes to change the current site which has a multi-use building containing a hobby shop and repair shop. Petitioner is looking to remove the hobby shop and bring in auto sales. This is a secondary location for them. Their first location is in Osceola. This location is a very small car lot that may hold 10 cars because of proximity restrictions and property lines. She states that some letters were submitted with concerns regarding traffic. They believe the change will actually reduce traffic because of reduced hours. The shop does not operate on Sunday. There is limited staff on Saturday from 11 am to 3 pm. They are closed on Wednesdays, and are not open past 5 pm. The current hobby shop has hours until midnight on Mondays for events. She states the petitioner's site in Osceola is also very clean. They have invested at cleaning up the inside and outside for the community. She states that one letter commented about the alley traffic. Her client does not control the alley traffic; that is a city item. People drive there randomly, but their business would not be from the alley. She believes people driving up and down or racing and revving engines may be generated by the hobby shop, but that will be closing.

Mulvaney asks for questions from the Board.

Strycker asks if there is already a variance in place for the hobby shop to be there.

Smith states he believes they are legal nonconforming, which is they have been a retail there for a very long time.

Osborne asks if the hobby shop building is being removed.

Floyd states that the building will just be repurposed. It was purchased 3 years ago and have been in the process of updating and remodeling it with the intent of making it a car lot.

Osborne asks what the buildings will be used for.

Floyd states that they will just be used for current staff, it will not be housing anything else.

Osborne asks if there will be mechanic work performed there.

Floyd states that there is an existing mechanic there, but the client will not be doing any of that work.

Osborne asks how many cars they will park.

Floyd states that they have it laid out as 8-10, but no more.

Osborne asks if that includes employee cars.

Floyd states that it does.

Osborne asks Smith if a car lot is considered retail.

Smith states they are a B-3 or B-4, but not an M-1.

Osborne asks if there must be so many parking spaces per square foot of building.

Smith states he has a formula (inaudible, out of microphone).

Osborne asks if they are going to meet the criteria.

Floyd states that they presented to the owners that they had to meet the criteria.

Strycker asks if that includes everything in the staff report, including delivery truck and radius for turning.

Floyd states that it does.

Mulvaney asks if there is a reason no detailed layout has been provided yet.

Floyd states that it was not requested at time of application. They originally thought they would need a site plan and to ask for a rezoning, but staff suggested this way. She states that the area can only have so many cars dead center and a couple off to the side to allow for people to come in, look at cars, and park. They are not changing any of the site. There will be no demo on the current asphalt to make this work better or add more cars.

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 .6-acre site along the Franklin Street corridor which has most recently been used as a retail sales and auto service establishment, and is zoned M-1. He wishes to use it as a car sales establishment, which is not allowed by right in industrial districts.

Staff has concerns about the potential layout of a car lot at this location. While a preliminary conceptual layout and a site survey has been submitted as part of the application process, no scaled drawing has been provided demonstrating that adequate parking will be provided. Additionally, no information or evidence has been provided regarding how deliveries will be handled. If delivered by truck, the petitioner should demonstrate in advance that the site can handle the turning radii of a truck while allowing room for vehicles to be maneuvered to their destination while the truck is on-site. The site is located at a curve on a busy corridor, leaving staff concerned about any turning movements occurring in the right-of-way.

Additionally, in 2015, the Common Council approved an update to the Comprehensive Land Use Plan, which outlines a long term vision for development and redevelopment within the city. The future land use map calls for commercial land uses in this area. It has also been targeted as one of eight (8) Proposed Major Gateways, which are key entrances into the community to which special consideration is given to the regulation of land use, special signage, and aesthetic treatment. In staff's view, the use of this property as a used car lot does not enhance the character of the Franklin Street corridor and does not meet the future vision for the area.

STAFF RECOMMENDATION

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

1. The approval may be injurious to the public health, safety, morals or general welfare of the community because of the potential for turning movements of delivery trucks in the right-of-way;
2. The use and value of the area adjacent to the property may be affected in a substantially adverse manner because of the aforementioned delivery concerns; additionally, it is not fitting with its designation as a Gateway Corridor in the Comprehensive Plan;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance;
4. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because it may be used for an array of M-1 uses;
5. The special conditions and circumstances do result from an action or inaction by the applicant.

CONDITIONS

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

1. Prior to opening, petitioner must submit to and receive approval from staff a parking, delivery, and signage plan. The parking lot shall also be striped as per approved plan prior to opening.

Smith states there were 29 letters mailed. 3 returned not in favor with comments: "We need an egress onto Franklin because there is no left-hand turn onto Indiana. Also, there is too much traffic as is and too much trash being tossed from cars. Also safety for children will be compromised." "I don't want the excess traffic coming up and down the alley. It's a alley not a drag strip." "Traffic – noise – music from cars – hidden driveways – trucks – excessive speed. Enough is enough – no – no – no."

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

Strycker asks if the district will be rezoned eventually to commercial or if will it stay manufacturing.

Smith states that there has been some discussion about it. The lots are not big enough for current industrial needs. It would probably be a B-2 where auto sales are not allowed.

Osborne asks for the petitioner to approach. He asks what is in the other buildings besides the mechanic shop and will the hobby shop be rented out for another business.

Floyd states that there is only the hobby which will be closed and not rented out. They also drive the cars in themselves, so there is no delivery truck or big carrier truck coming in.

Osborne states that he is concerned about the traffic for the other business on the site creating a congestion problem on the small lot.

Golden appears in person. (Inaudible, out of microphone.)

Osborne asks if he runs the mechanic shop.

Golden states the shop would be used for his personal storage.

Floyd states that she forgot that the mechanic is gone and no longer on the site, which she learned before the meeting. The only business that would reside in the entire facility would be the car lot.

Mulvaney calls for a motion.

Strycker makes motion to approve with conditions; Second by Osborne.

- Osborne – Yes
- Strycker – Yes
- Mulvaney – Yes

Motion carries.

21-UY-20 PETITIONER IS SOUTHSORE DEVELOPMENT COMPANY LLC

PROPERTY IS LOCATED AT 2421 S NAPPANEE ST

To vary from Section 19.2, Permitted Uses in the M-2 General Manufacturing District to allow for general retail sales.

Mulvaney calls petitioner forward.

Mike Jacobson appears in person to represent the petitioner. He states the building is approximately 220,000 sq. ft. currently used for manufacturing. There is a space of 12,500 sq. ft. on the on the frontage of State Road 19 that they feel was previously office space and is unfit for manufacturing. He states that most processes require higher ceilings and there is a basement beneath which inhibits forklift traffic due to the floor's rating. They would like the variance to allow for a retail store in that area. He has met with the Building Department and had any of the improvements required approved. He has also met with the Fire Department there and received a list of items to do as well. He states they feel there is adequate parking. There are neighboring retail stores in the area as well so they do not believe this would be negative to the community in any way. They feel it would be a positive thing for the area.

Strycker asks if the area will be rented out to another business as retail sales or if it will be their own.

Jacobson states that it will be rented out to another business.

Osborne asks if they will be using the entire space.

Jacobson states that they will.

Strycker asks if they already know who it is.

Jacobson states that they do. There is not a fully executed lease. The store is a bin store where they purchase large bins of items that are returned to Target, Wal-Mart, Amazon and then sell the items individually. He states that they would like the use variance regardless of tenant because of the place within the building, parking, and truck docks.

Strycker asks if they have talked to staff about this particular business.

Smith states that it would fit within the variance.

Mulvaney asks for questions from the Board.

Osborne asks how many parking spaces they have.

Jacobson says well over 30, but he does not have an exact count. He says there is parking around the entire building. Currently, other companies use them, but those spaces could also be opened and used to open the whole front of the public with one retail entrance.

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 large multitenant industrial building. The portion of the building the petition is for was previously used as office space. This portion of the building was designed with a lower ceiling and has a basement under a portion of the space. Because of the structural design of the space it does not lend itself to industrial uses.

The space has been in disrepair over the years and is in the process of being renovated. The petitioner is proposing to lease this space for general retail sales. This property has off street parking available along the front of the building and there are currently no proposals for exterior changes to the building.

STAFF RECOMMENDATION

The Staff recommends approval of the use 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 this will be a less intense use than what the zoning district would permit;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because submitted plans do not show any change to the exterior of the building;

3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted and as the Comprehensive Plan encourages commercial development along Nappanee Street;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit the use of the space which is not adequately designed for manufacturing;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

Hooley states there were 17 letters mailed. None returned.

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

Strycker asks if the petition is passed, would that business still have to adhere to certain rules.

Hooley states that is correct. He addresses the parking situation, stating that there is a substantial amount of parking around the South side of the building.

Osborn asks if it is angled or parallel parking.

Hooley states that it is angled.

Osborn asks how many spaces are required for 12,000 sq. ft. according to ordinance.

Hooley states it is 1 per 300, or 40 spaces.

Osborne asks how many spaces there are.

Hooley states there is not an exact count.

Jacobson speaks inaudibly from the rear of the room.

Osborn asks about the front of the building on Nappanee Street.

Jacobson speaks inaudibly from the rear of the room.

Drlich asks for petitioner to approach and speak into microphone for the record.

Jacobson states that the south half of the building had 29 spots. His best guess is 44-50 on the front and on the south approximately 18.

Osborne asks how many ingress and egress there are for parking.

Jacobson states that there are 3.

Strycker asks if zoning will enforce parking issues.

Hooley states that they will.

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Osborne.

Osborne – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-X-08 PETITIONER IS LEONARD D COOK & JANET K COOK
PROPERTY IS LOCATED AT 2626 PRAIRIE ST**

A Special Exception as per Section 4.3, Special Exception Uses in the R-1 District, to allow for the establishment of a private secondary educational institution at an existing religious institution.

Mulvaney calls petitioner forward.

Cindy Cavanaugh appears via Webex for the petitioner. She states that she is the Vice President for Goodwill Industries Excel Centers. She recognizes that Dr. Cook is also online. She states that they are seeking to utilize part of the River of Life Church as a high school for adults to help anyone seeking a high school diploma achieve that. They currently use 6 classrooms, two childcare spaces, a couple offices and a small sanctuary. She states there is also a 3-year lease in place.

Mulvaney asks for questions from the Board. Hearing none, he asks if they are using the old Montessori space for the new school.

Cavanaugh confirms that they are.

Mulvaney asks if there is an estimated number of students.

Cavanaugh states that the maximum is 250 students. She clarifies that they will not all be there at the same time. Students take classes as they are offered. There are five terms of eight weeks. The students are adults who have families and flex time in when they can. Their biggest attendance is in the morning. They have about 88 students currently and are in their second term of operation.

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

Goodwill Industries has contracted with the Prayers Ministries, which operates the River of Life Community Church at 2626 Prairie Street, to open an Excel Center at the existing facility. The Excel Center will provide high school education along with some college courses and professional certifications, along with free child care for their participants. Based on a conversation with Goodwill staff, the child care activity does not rise to the level of being classified as a daycare center under the Zoning Ordinance, nor are they required to acquire a child care license from the Indiana Family and Social Services Administration.

According to the Elkhart County Assessor's records, the church comprises approximately 53,000 square feet on a 5-acre lot, and was built in 1956. The school will operate using the existing church; no physical modifications are planned other than signage.

The church previously hosted another educational program, the Cornerstone Christian Montessori Academy, and the interior of the church is set up for a classroom format. It's common for churches, even in residential areas, to house similar institutional activities such as specialized schools or daycares, since the facilities are adequate and often left unused for the majority of the week. The church is located in a residential district with single family dwellings to the east. However, it's also bordered by a busy commercial area on the west, and traffic will primarily be coming to and from the church from Prairie Street and the entrance at the end of Carlton Avenue. Given its location, facilities, and established history as a church and school, its renewed use as a school is appropriate.

STAFF RECOMMENDATION

The Staff recommends approval of the special exception based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no physical changes to the property and the activity level will be similar to past uses;
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 56 letters mailed. Three returned in favor with no comment. One returned not in favor with comments: "There is already a high volume of traffic in our area in which the speed limit and stop signs are ignored. My young grandchildren are with us at times and play outside. I already watch them carefully. More traffic and students would put more stress on us. It would also cause more noise than necessary."

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

Osborne makes motion to approve, noting that this comes from the Plan Commission with a "Do Pass" recommendation; Second by Strycker.

Osborne – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-X-09 PETITIONER IS LEXINGTON BUSINESS CENTRE INC
PROPERTY IS LOCATED AT VACANT LOT JR ACHIEVEMENT DR**

A Special Exception as per Section 15.3, Special Exception Uses in the CBD District, to allow for the establishment of a private park and recreation facility.

Mulvaney calls petitioner forward.

Petitioner fails to appear.

Smith states he did notice no petitioner and leave a voicemail. He suggests tabling the petition to the end of the meeting.

Osborne states that he does not believe representation is needed.

Mulvaney states he has no issue acting on the petition.

Smith states that is up to Mulvaney's discretion.

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 the .37-acre landscaped vacant lot at the southwest corner of East Lexington Avenue and Junior Achievement Drive, as well as the multi-use building across Lexington Avenue to the north. Two of the tenants at the multi-use building have requested the use of the vacant lot for entertainment and social gathering purposes. The petitioner proposes to build a small band shell and use the property for "weddings, music events, movie nights and other social activities." The site would be an amenity to both local businesses and local residents as several high-density residential complexes exist within walking distance. Visitors from farther away would be able to access nearby private and public parking, and the owner/operator would need to adhere to all applicable noise, food, and beverage laws. The use is appropriate for its urban context and is likely to enhance rather than detract from its surroundings.

STAFF RECOMMENDATION

The Staff recommends approval of the special exception based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because it is a small urban amenity;
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.

There were 8 letters mailed. None returned.

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

Strycker makes motion to approve; Second by Osborne.

Osborne -- Yes
Strycker – Yes
Mulvaney – Yes

Motion carries

**21-BZA-37 PETITIONER IS SHEILA MCLEMORE C/O BOB NOECKER & AMY MCLEMORE (TURNER)
PROPERTY IS LOCATED AT 3309 E JACKSON BLVD**

To vary from section 4.4 of the R-1 yard requirements to allow the construction of a garage to encroach 21.5 feet into the established front yard setback.

Mulvaney calls petitioner forward.

Sheila McLemore appears in person. She states that she wants to build a single-car garage on the front of her house and convert the current garage into kitchen space. She states that her current kitchen is very small and there is not room for a table.

Mulvaney clarifies that it allows her to enlarge the footprint of her home.

McLemore states this is correct and the home is currently only 1,000 sq. ft.

Mulvaney asks for questions from the Board.

Osborne asks if petitioner has considered putting the addition on the back side of the house

McLemore states that would not work simply. This variance would be the best way to do it because the kitchen is at the front of the house, next to the garage. She states they would have to move the kitchen into the back and start from scratch. She would be able to keep the kitchen sink and appliances in place and simply enlarge the area to allow for a table in the current garage space.

Osborne states that it sounds like it would be cost prohibitive to put the kitchen in the back.

(Petitioner's unidentified supporter speaks out of microphone inaudible).

Strycker states that, according to the site plan, the house is already 79 feet back from the road. He asks how far they need to be and what the setback is.

Smith speaks out of microphone (inaudible).

Strycker states that it would move the home from being 79 feet to 54 feet off the road.

(Petitioner's unidentified supporter speaks out of microphone, inaudible). ...Twenty-five-foot deep garage. He states that according to the average setback of neighboring properties they could have already gone 5 feet forward, so they are asking for an additional 15 feet.

Mulvaney opens for public comments to speak in favor.

Brandon McLemore appears. He states he is petitioner's son and son-in-law to Bob Noecker. His mother has purchased the home from Noecker to keep it in the family. He wishes to attest to how tight the space is. He states that his family of four lived in the home for two years prior and, in order to have any dining room space, there was a small, round kitchen table with collapsing sides that they would push against a side wall which still limited the space. He states that the plan to have space to have family sit down without sitting on the couch in the living room is necessary.

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

STAFF ANALYSIS

The petitioner has the house on a purchase agreement and they desire to add a new attached one car garage on to the front of the house. The existing garage would be converted into more kitchen space and a utility area. Per the zoning ordinance a driveway shall access a garage so the renovations of the existing garage would not be possible without the proposed garage.

The garage is proposed to extend 20 feet into the front yard established setback. Along the west side of the front yard there is a large row of bushes providing screening neighboring property as well as Jackson Blvd. On the east side of the property there is a large shrub next to the neighbor's window providing some screening. The proposed garage will match the nonconforming side yard setback. The existing home is set 4 feet from the east property line where a 7-foot setback is required.

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 it does not create a visual barrier;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed garage will improve the overall use of the existing home;
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 and which are not applicable to other lands or structures in the same district because of the large front yard setback and internal use of the home;
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 upon improving the existing home;
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 area.

CONDITIONS

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

1. A public sidewalk shall be installed in the public right-of-way along the front of the property. This will allow for future pedestrian connectivity. The Comprehensive Plan encourages the installation of sidewalks in all residential neighborhoods.

Hooley states there were 38 letters mailed. Two returned in favor with no comment. One returned not in favor with no comment.

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

Strycker asks why there is the requirement of a sidewalk, especially with the home being so far back.

Hooley states it is to encourage future connectivity one home at a time.

Strycker asks if that is the city's responsibility to build sidewalks.

Smith states that in almost all cases when properties are developed, if sidewalks are required, it is the owner and builder who actually install them. They do have to be to city standards and they are inspected for ADA standards, but it is typically the private owner who installs a sidewalk.

Strycker asks if it is every new home and building that would have to have a sidewalk.

Smith states that is correct.

Strycker asks if established ones do not. He asks, if a home is sold, is the buyer required to put in the sidewalk.

Smith states that change of ownership does not trigger that requirement, but adding on or improving the property does.

Mulvaney asks petitioner if she could meet the sidewalk condition.

McLemore states that she is willing, but is concerned about the neighbors viewing it negatively as creating an expectation for them.

Petitioner's unidentified supporter asks if it would be possible for the city to share cost.

Mulvaney states that would be something for the petitioner to discuss with the Street Department.

Hooley states that he understands the Street Department has some kind of program.

Mulvaney believes if petitioner provides material, they provide labor.

Strycker makes motion to approve without conditions; Second by Osborne.

Osborne – Yes

Strycker – Yes
Mulvaney – Yes

Motion carries.

Mulvaney clarifies to the petitioner that the sidewalk is not required.

**21-X-10 PETITIONER IS HANCOCK REGIONAL HOSPITAL DBA VALLEY VIEW HEALTHCARE CENTER
PROPERTY IS LOCATED AT 333 MISHAWAKA RD**

A Special Exception as per Section 4.3, Special Exception Uses in the R-1 District, to allow for the establishment of a dialysis unit in an existing nursing home.

Mulvaney calls petitioner forward.

Adam Panfil appears via Webex for petitioner. They would like to renovate a 1,088 sq. ft. part of the existing nursing home to include a small dialysis unit solely for residents. The license they will be obtaining would not allow them to treat non-residents of the nursing home. He states this would reduce traffic because current residents would no longer need to be picked up and transported to an outpatient clinic. There would also be higher infection control by keeping the residents in the facility as opposed to sending them out where they could possibly be exposed to a number of infectious diseases.

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 and operates a nursing home on a 10-acre zoning lot located at 333 W. Mishawaka Rd. The facility comprises approximately 51,000 square feet and was built in 1984. The owner wishes to renovate approximately 1,000 square feet to install an in-house dialysis facility. The dialysis facility will serve existing residents in need of dialysis, it will not be open to the general public or to external patients. The proposal follows a trend in nursing homes to provide such a service to their residents, giving them a convenient and secure option for a needed treatment which is common for a percentage of the senior population. No exterior changes are proposed, and no increase in traffic or noise is anticipated as a result of the renovation. Staff anticipates effects on adjacent properties to be minimal.

STAFF RECOMMENDATION

The Staff recommends approval of the special exception 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 the renovation will be interior and the service will be provided for existing residents
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 11 letters mailed. One returned in favor with no comment. He states the Plan Commission recommends approval.

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

Strycker makes motion to approve; Second by Osborne.

Osborne – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-BZA-38 PETITIONER IS KAREN STAUFFER
PROPERTY IS LOCATED AT VACANT LOTS ALBANY ST**

To vary from Section 26.4.A.6, Fence Requirements, which states that “No fences, other than split rail, wrought iron or open picket fences... not to exceed four (4) feet in height, shall be permitted in any front yard,” to allow a six (6) foot privacy fence in a front yard.

Mulvaney calls petitioner forward.

Rick Stauffer appears in person. He states that he owns the property on Elliston and his back yard abuts the two properties on Albany Street. He states that, once this proceeding is done, all that property will be transferred over to him and will become his back yard. He states that years ago there was a house, but now it is a vacant lot with trees and brush and a dead end road, so there is little traffic from the south. (Inaudible, out of microphone.) ...Nice wood privacy fence with the nice side facing out.

Mulvaney asks if the fence surrounds the wood, but not a building.

Stauffer states that is correct.

Mulvaney asks if he is trying to keep people from wandering through.

Stauffer states that is correct. He wants to keep his kids safe because they play in the woods.

Strycker asks if the fence is already in place.

Stauffer confirms.

Strycker asks when it was installed.

Stauffer says it was earlier this year. He had the property surveyed and did not know he needed a permit or variance.

Strycker states that the fence is angled for traffic coming to see around. It looks that the fence was installed the right way.

Stauffer says that is correct. He states they have cleaned up the area and he keeps up the mowing on that side of the fence.

Osborne asks if petitioner intends to combine the parcels into one big parcel or keep it separate for taxing.

Stauffer states that he is not sure, but he will probably keep them separate.

Osborne states that his concern is if the property is sold someone could conceivably build a house on that lot with a 6 ft. fence in their front yard, which is against ordinance.

Stauffer states that he has no intentions of ever selling it. All the property in that area is family-owned. (Inaudible, out of microphone.) He states that it is a wooden fence and removable.

Mulvaney asks if he is aware that he would also require a permit if the variance is approved.

Stauffer agrees to the 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 two undeveloped parcels fronting on Albany Street, which are part of a larger block of properties owned by members of the same family. Some of the properties are residential, some are commercial/industrial. The petitioner installed a six (6) foot privacy fence from 1519 Elliston, to the east, and enclosing these two parcels, without the benefit of a permit. On Albany Street, the fence is located close to the property line.

The properties generally function as a through lot, where the properties have front and rear frontage on roadways. Typically, in this case, owners are expected to meet the minimum front building setback, which in would be 15' here. However, these lots are filled with dense woods and vegetation, making a 15' setback impractical if not impossible. The property is on a low-trafficked, dead-end street, and is unlikely to cause any negative effects on adjoining properties.

STAFF RECOMMENDATION

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

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because it is located on a low-trafficked, dead-end street;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will screen the view of dense vegetation;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows a measure of relief when uniquely 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 dense vegetation makes a 15' setback impractical;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because use of the street and alley will not be affected;
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 area.

CONDITIONS

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

1. The petitioner shall obtain a permit for the fence.

Smith states there were 23 letters mailed. None returned.

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

Strycker asks if there is a way to add a condition to state that if the property is sold or there are improvements made then this variance would be made void.

Smith states that what he would suggest, since the property is currently owned by Karen Stauffer and will be transferred to Rick, is to then add the condition that if anyone other than them owns the land the variance becomes null.

Strycker asks if they can just say improvements because the concern is for someone in the future to build a house.

Smith states they would need to define improvements because a shed is an improvement.

Strycker asks if he can simply say residence instead.

Smith states that would be okay.

Osborne states that he was thinking similarly, but looked a little closer and realized that this is all B-1 and M-1 which is business and manufacturing so it's not even a residential area.

Smith states they could say primary building, rather than an accessory building, which would allow a shed but not development for any other land use which would make the variance null and void.

Osborne would like to leave the recommendation as is.

Mulvaney calls for a motion.

Strycker makes motion to approve with conditions and the added condition that adding a primary structure to the property will make the variance null and void; Second by Osborne.

Osborne – Yes
 Strycker – Yes
 Mulvaney – Yes

Motion carries.

**21-UV-21 PETITIONER IS ETHOS SCIENCE CENTER
 PROPERTY IS LOCATED AT 1025 N MICHIGAN ST**

To vary from Section 19.2, Permitted Uses in the M-2 General Manufacturing District to allow for an educational space which would include interactive storefronts for students.

Petitioner fails to appear.

Mulvaney states that for some time his Kiwanis Club has been supporting this project for some time because the nearest point is Fort Wayne to take the Jr. Achievement kids. He states that this is a mock town where students operate various businesses and go from place to place to learn how various businesses work. There is a mock-up in the packet of the store fronts and a mini town to help the Jr. Achievement program. He states they have done substantial fund-raising to do this project and it will be entirely contained within the space at Ethos.

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 Ethos Center was approved in 2016 through a Use Variance to all an educational facility for students at this location. The portion of the building the petitioner is proposing to change is currently warehouse space. The petitioner is requesting this space be converted into another educational facility use to be operated by Junior Achievement.

Junior Achievement proposes a project called JA BizTown which would convert this open space into 15 small mock storefronts. This would be an interactive educational experience for students to learn how to operate a mock town. Students will learn the roles of citizens, workers, and consumers in the town. All activities and construction are proposed to be within the existing structure.

STAFF RECOMMENDATION

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

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community because the building will provide enhanced learning opportunities for area students;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the requested activity is less intense than many allowable manufacturing uses;
3. The need for the variance does arise from some condition peculiar to the property because the portion of the building lends itself to the requested use as the majority of the building is occupied by Ethos;
4. The strict application of the terms of this Ordinance may constitute an unnecessary hardship if applied to the property for which the variance is being sought because only permitted manufacturing uses could take place at the site;
5. The Comprehensive Plan calls for this area to develop with mixed uses.

Hooley states there were 30 letters mailed. Two returned in favor with no comment.

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

Mulvaney calls for a motion.

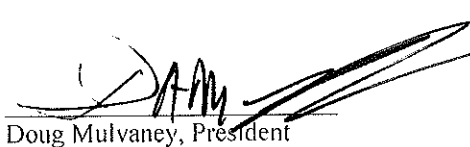
Strycker makes motion to approve; Second by Osborne.

Osborne – Yes
Strycker – Yes
Mulvaney – Yes

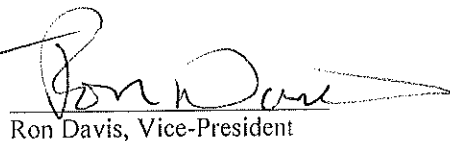
Motion carries.

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Osborne approves motion to adjourn and is seconded by Strycker. Meeting is adjourned and all are in favor.



Doug Mulvaney, President



Ron Davis, Vice-President

2022 ELKHART CITY BOARD OF ZONING APPEALS CALENDAR

File by Date

Meeting Date

Friday, December 10, 2021

Thursday, January 13, 2022

Friday, January 14, 2022

Thursday, February 10, 2022

Friday, February 11, 2022

Thursday, March 10, 2022

Friday, March 11, 2022

Thursday, April 14, 2022

Thursday, April 14, 2022

Thursday, May 12, 2022

Friday, May 13, 2022

Thursday, June 9, 2022

Friday, June 10, 2022

Thursday, July 14, 2022

Friday, July 15, 2022

Thursday, August 11, 2022

Friday, August 12, 2022

Thursday, September 8, 2022

Friday, September 9, 2022

Thursday, October 13, 2022

Friday, October 14, 2022

Thursday, November 10, 2022

Thursday, November 10, 2022

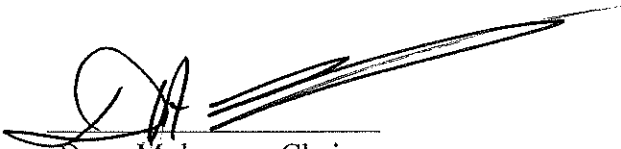
Thursday, December 8, 2022

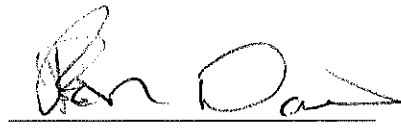
Friday, December 9, 2022

Thursday, January 12, 2023

Note: All meetings are held in the Council Chambers, 2nd floor, City Municipal Building at 6:00p.m., the 2nd Thursday of each month unless indicated.

Reviewed and adopted by the City of Elkhart Board of Zoning Appeals at its regular meeting November 10, 2021.


Doug Mulvaney, Chair


Ron Davis, Vice-Chair