

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, November 12, 2020 - 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 - In Person
Jeff Schaffer - Webex
Andrew Strycker - Webex
McNeal Stewart - Webex

MEMBERS ABSENT

Ron Davis

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

James Hines

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AGENDA

Motion to approve by Schaffer; Second by Strycker. Voice vote carries.

APPROVAL OF MINUTES FOR OCTOBER 8, 2020

Motion to approve by Schaffer; Second by Stewart. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Motion to approve by Schaffer; Second by Stewart. Voice vote carries.

OPENING STATEMENT

Welcome to the November 12, 2020 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

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

OLD BUSINESS

None

NEW BUSINESS

Smith asks Mulvaney if he would prefer to hear the first two cases consecutively or concurrently since they pertain to the same property.

Mulvaney states that concurrently would be preferred.

**20-UV-16 PETITIONERS ARE COREY BARNETT
PROPERTY IS LOCATED AT 1929 LEININGER AVENUE**

To vary from Section 19.2, Permitted Uses in the M-2 District, to allow for a one-family detached dwelling, which is not a permitted use in the M-2 District.

STAFF ANALYSIS

The petitioner owns two parcels at the intersection of 20th St. and Leininger Avenue. While it's zoned M-2, General Manufacturing District, until recently the property was occupied with a 528-square-foot house built in 1950. The house was recently demolished without the benefit of permits, leaving only the foundation intact. The owner wishes to redevelop the property as a single-family residence with an expanded footprint that includes a garage.

STAFF RECOMMENDATION

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

1. Approval **will not** be injurious to the public health, safety, morals, and general welfare of the community because the property has a long-standing use as a single-family residence;
2. Use and value of the area adjacent **will not** be affected in a substantially adverse manner because the use of this property as a residence would not create conflict with or substantial impact on adjacent properties which are zoned for industrial uses.
3. The need for the variance **does** arise from some condition peculiar to the property because the residential structure was constructed and previously occupied as a single-family dwelling prior to the establishment of the M-2 zoning district;
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 sought because the property has already been developed and used as a single family residence;
5. The approval of this variance **will** be consistent with the comprehensive plan which calls for this area to be zoned and developed for commercial uses; the residential use will not negatively impact potential commercial or industrial uses

CONDITIONS

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

1. Two paved parking spaces will be provided according to city standards.

**20-BZA-35 PETITIONERS ARE COREY BARNETT
PROPERTY IS LOCATED AT 1929 LEININGER AVENUE**

To vary from Section 19.6, Yard Requirements in the M-2 District, which requires a 15-foot side yard setback, to allow for a nine (9) foot side yard setback, a variance of six (6) feet.

STAFF ANALYSIS

The petitioner owns two parcels at the intersection of 20th St. and Leininger Avenue. While it's zoned M-2, General Manufacturing District, until recently the property was occupied with a 528-square-foot house built in 1950. The house was recently demolished without the benefit of permits, leaving only the foundation intact. The owner wishes to redevelop the property as a single-family residence with an expanded footprint that includes a garage.

The expanded footprint includes an extension of the remaining foundation's nine (9)-foot setback. Since this is an industrial district, the required setback is fifteen (15) feet. A typical residential setback, typified by the R-2 District, would be in the range of seven (7) feet. The property is next to a vacant lot; if it were developed there would be the required fifteen (15) foot setback. Therefore, the proposed nine (9) foot setback is reasonable for a residential use and should the adjacent property be developed it would provide an adequate setback.

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 proposed setbacks are sufficient for a residential use;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the adjacent vacant property would be required to develop with adequate setbacks;
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 property was developed in 1950 with the proposed setback;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because a foundation already exists at the proposed setback
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the property was developed prior to the current ownership;
7. The developable area of this property does not lie within a designated flood area

Mulvaney calls for petitioner.

Corey Barnett, 1929 Leininger Avenue. He states he purchased the property looking to do an addition. However, he states that he did not research the property. He would like to have the property rezoned so he could continue with his addition.

Mulvaney asks if he is essentially building a new home.

Barnett states that he will use the existing foundation and create a crawlspace under the remainder of the home and add a three-stall garage.

Mulvaney asks if this is the house they will live in.

Barnett confirms that he will.

Mulvaney asks if the board has questions for the petitioner.

Stewart asks if Barnett is building the home himself or hiring contractors

Barnett states that he will be building the structures himself.

Strycker asks how long ago Barnett purchased the property.

Barnett states that it was in June or July this year.

Mulvaney asks for any further questions from the Board. Seeing none, he opens for public comment in favor of the petition. Seeing none, he opens for comments in opposition. Again seeing none, he closes the public meeting and asks for the staff report.

Smith reads the report for 20-UV-16, noting that if they follow the current site plan, condition one will be satisfied. He states there were 19 letters mailed, 0 returned. He reads the staff report for 20-BZA-35. He states there were 19 letters mailed, 2 returned in favor with no comment from the same person.

Mulvaney asks if the Board has questions for staff.

Stewart asks if the previous residence was demolished

Smith states that it was recently demolished and now only the foundation exists.

Stewart asks if there is someone who checks to ensure that connections for city gas and water are up to code and in compliance.

Smith states they will have to receive permission from Public Works, but to his knowledge there are existing utility hook-ups for that residence.

Stewart asks if the hook-ups are still in whatever foundation is left.

Smith states that he believes so, but cannot say authoritatively. There are utility lines so he assumes so.

Stewart asks if Barnett will have to find the lines and hook-ups.

Barnett approaches to speak. He states that all utilities and electric have been removed. He has contacted NISPCO who has pulled the gas back to the street. They will do the final hook-up after the new structure is built, but all utilities are off of the foundation.

Mulvaney asks for further questions. Hearing none, he states they will vote on the petitions separately, beginning with **20-UV-16**. He calls for a motion.

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

Schaffer - Yes
Stewart - Yes
Strycker - Yes
Mulvaney - Yes

Mulvaney calls for a motion on **20-BZA-35**.

Strycker makes motion to approve; Second by Schaffer.

Schaffer - Yes
Stewart - Yes
Strycker - Yes
Mulvaney - Yes

Motion carries.

**20-UV-17 PETITIONERS ARE JEFF SIMONS
PROPERTY IS LOCATED AT 328 W MARION STREET**

To vary from Section 15.2 Permitted Uses in the CBD District, which allows for "multi-family residential dwellings... located above commercial uses," to allow for residential on the first floor and not above commercial uses.

Mulvaney calls petitioner forward.

Jeff Simons appears via Webex. He states the property is zoned Central Business District and he would like the Use Variance for residential. He has owned the building for 12 years and now wants to sell. However, because of the zoning there is a problem for the buyer to have financing.

Mulvaney asks for questions from the Board. Seeing 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 an existing multi-family residential building on the western edge of the Central Business District (CBD). Its neighborhood generally is a transition area between the more intense CBD and the lower-density residential district to the west. According to Elkhart County Assessor records, the structure was built in 1900, was last modified in 1940, and comprises over 14,000 square feet on a 1.125 acre site. As such, the house predates its current CBD zoning district, which places limits on the types of multifamily housing allowed; in the case of apartment buildings, the current regulations only allow such a land use when located above a commercial use.

This property has no known history of a commercial use located on the first floor. The owner is in the process of selling the property, and the buyer's financier requires a legal conforming status to proceed.

STAFF RECOMMENDATION

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

1. Approval will not be injurious to the public health, safety, morals, and general welfare of the community because the property already contains an existing residential structure with a long-standing use as a multi-family residence;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner because the use of this property as a residence would not create conflict with or substantial impact on adjacent properties.
3. The need for the variance does arise from some condition peculiar to the property because the residential structure was constructed and previously occupied as a multi-family dwelling prior to the establishment of the CBD zoning district;
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 sought because the property has already been developed and used as a multi-family residence;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be zoned and developed for medium density residential uses.

Smith states there were 23 letters mailed and 0 returned.

Mulvaney asks if there is not a condition indicated on the staff report.

Smith states that there is a condition for the second property, but not for this one.

Mulvaney asks if there are any further questions for staff. Seeing none, Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Schaffer - Yes
Stewart - Yes
Strycker - Yes
Mulvaney - Yes

Motion carries.

**20-UV-18 PETITIONERS ARE JEFF SIMONS
PROPERTY IS LOCATED AT 420 S FOURTH STREET**

To vary from Section 15.2 Permitted Uses in the CBD District, to allow for a one-family detached dwelling, which is not a permitted use in the CBD District.

Mulvaney calls petitioner forward.

Simons appears via Webex states that the same buyer is interested in this property and has the same issues with it needing to be zoned as residential.

Mulvaney asks for questions from the Board. Hearing none, he asks if the petitioner has any objection to the condition that there should be a paved spot for two cars.

Simons states that he would not, but he does not know what the new owners would say. He owns three parcels there and the lot behind

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

STAFF ANALYSIS

The petitioner owns an existing single family residence on the western edge of the Central Business District (CBD). According to Elkhart County Assessor records, the house was built in 1900, was last modified in 1933, and comprises 1,500 square feet on a 1.9-acre site. As such, the house predates its current CBD zoning district, which does not allow single family residences by right. The owner is in the process of selling the property, and the buyer's financier requires a legal conforming status to proceed.

STAFF RECOMMENDATION

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

1. Approval will not be injurious to the public health, safety, morals, and general welfare of the community because the property already contains an existing residential structure with a long-standing use as a single-family residence;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner because the use of this property as a residence would not create conflict with or substantial impact on adjacent properties.
3. The need for the variance does arise from some condition peculiar to the property because the residential structure was constructed and previously occupied as a single-family dwelling prior to the establishment of the B-1 zoning district;
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 sought because the property has already been developed and used as a single family residence;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be zoned and developed for medium density residential uses.

CONDITIONS

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

1. The two parcels shall be combined, either through a minor subdivision or parcel tax combination.
2. The unpaved parking shall be removed and two paved parking spaces shall be provided according to city standards.

Smith states there were 22 letters mailed, 1 returned in favor with comments: I'm in favor of granting Jeff Simon's variance as requested on his property.

Mulvaney asks the Board if there are questions for staff.

Schaffer states that he understands the conditions and supports them but wants to know if the conditions will be enforceable upon a new property owner.

Smith states it is. That it is done through the normal compliance process. Obviously, heading into winter, they would have to readdress this in the spring, but just like any other property owner and they would be required to comply.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Stewart.

Schaffer - Yes

Stewart – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**20-BZA-36 PETITIONERS ARE GREG VANDUSEN
PROPERTY IS LOCATED AT 676 W LEXINGTON AVENUE**

To vary from Section 5.4, Yard Requirements in the R-2 District, which sets a maximum 40% coverage of structures per lot, to allow for a proposed 26-foot by 26-foot garage that would establish a total lot coverage of 58%, a variance of 18%.

Mulvaney calls petitioner forward.

Dave Dickman, contractor for Mr. Van Dusen. He states that he was hired to build a garage on the back of his property. When he applied for the permit, he discovered they are 500 and some square feet over the land usage. The project meets all setbacks, but Mr. Van Dusen is asking to vary the land usage requirement for the structure. He wants to get his items protected due to some vandalism.

Mulvaney asks for questions from the Board.

Stewart asks if this building will be attached.

Dickman states it will be detached.

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

STAFF ANALYSIS

The petitioner owns an existing residential house with a garage in the rear on West Lexington Avenue. The house comprises 1,884 square feet on a .1-acre lot. The R-2 District limits lot coverage to 40%; the existing house and attached garage are legal nonconforming since the lot is already over the 40% limit.

The petitioner wishes to build a 26' x 26' garage to store belongings which will no longer be stored at his store which is in the process of being vacated. The existing house had an attached garage in the rear; however, this space has been renovated to become living space and is no longer a functioning garage. Garages are common in this older section of the city. The house with the converted garage space is relatively large for the area, and was constructed in 1882 according to Elkhart County Assessor records, accounting for the coverage overage. While the proposed garage will increase the nonconformity, the structure otherwise meets zoning requirements.

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 proposed garage will not impact other properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because garages are common in this older section of the city with relatively small lots;
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;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property since the existing garage has been converted to living space and the petitioner is in need of storage space for personal items;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the house was constructed prior to his ownership;
7. The developable area of this property does lie within a designated flood area and will be required to meet flood district regulations.

Smith states there were 50 letters mailed, 1 returned in favor with no comment.

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

Stewart makes motion to approve; Second by Schaffer.

Schaffer - Yes
Stewart - Yes
Strycker - No
Mulvaney - Yes

Motion carries.

**20-BZA-37 PETITIONERS ARE ELKHART GENERAL HOSPITAL, INC
PROPERTY IS LOCATED AT 1753 FULTON STREET**

To vary from Section 10.5, Yard Requirements in the O District, which requires front setbacks to be the established setback. The established front yard setback at this location is 34 feet; the requested setback is 15 feet, a variance of 19 feet.

Mulvaney calls petitioner forward.

Greg Shearon with Danch, Harner & Associates, 1643 Commerce Drive, South Bend, Indiana appears via Webex. He states he is representing Elkhart General Hospital to request a variance for a front setback. Currently, their office is located at 1753 Fulton Street. They would like to buy the residential house to the east at 1717 Fulton, rezone that property, demolish the house, create additional parking, and build an addition to the east of the existing office. To match architecturally and structurally they will need to encroach further to the north of the existing building. There is a setback requirement of 34 feet. They are requesting a variance of 15 feet. With the property across the street being right up to the sidewalk, they feel that the encroachment would be appropriate to the neighborhood.

Mulvaney asks if this is primarily clinical space.

Shearon states that it's part of their office.

Mulvaney asks how many more patients that might add.

Sharon states he does not know the specifics or what the actual use is. It's mainly their office space.

Mulvaney asks for questions from the Board. Seeing 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, Elkhart General Hospital, owns and operates a medical office located at 1753 Fulton Street. The business is in the process of expanding, and this variance request represents one aspect of the expansion. The entire

proposal includes an expanded building and an additional parking lot to the east which would necessitate a rezoning and demolition of the existing house on that property.

The proposed expansion to the 11,000-square foot facility would bring the front of the office to approximately 15 feet from the front property line. The required front yard setbacks in the O district is the average on the block; the average here is 34' and the petitioner is asking for a variance of 19'.

The property's current layout presents a challenge for expansion. The side yards are primarily taken up with surface parking needed to serve the clinic. The existing building is at or near the required setbacks for the front and rear yards. Therefore, a variance is necessary to accommodate the expansion as alternatives are limited.

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 proposed setback will not affect other properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed setback is a small portion of an already developed property;
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 property is limited in space for expansion;
5. 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 ability to provide a needed expansion;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the property was developed prior to current ownership
7. This property does not lie within a designated flood area.

Smith states there were 26 letters mailed, 0 returned.

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

Schaffer makes motion to approve; Second by Strycker.

Schaffer - Yes
Stewart - Yes
Strycker - Yes
Mulvaney - Yes

Motion carries.

STAFF ITEMS

18-X-10U

PROPERTY IS LOCATED AT 400 W MISHAWAKA RD

Staff and BZA review of Special Exception 18-X-10, which allowed for the establishment of a Day Care Center at 400 W. Mishawaka Road.

STAFF ANALYSIS

On November 8, 2018, a special exception was granted to Rock Foundation Preschool and Daycare at 400 W. Mishawaka Rd. The approval came with eleven conditions:

1. All children shall be restricted to the church and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.

3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A day care center license shall be obtained prior to operation, and a copy of the license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. The Special Exception shall be for children ages 2-5; enrollment of infants, toddlers, or school age children shall require further Board action.
8. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
9. There shall be a maximum of thirty (30) children under the supervision of the petitioner, with adequate staff according to state guidelines. Expansion beyond thirty (30) children shall require further Board action.
10. Adults dropping off and picking up children shall use the east curb cut for ingress and the west curb cut for egress.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by November 12, 2020.

Staff visited the site on October 21 and found the owner to be compliant with the conditions placed upon the special exception with two exceptions – numbers seven (7) and nine (9); while the board placed restrictions on the ages (2-5) and number (30 maximum) of children allowed at the school, the program has expanded to include up to 45 school-age children. Additionally, according to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has had three critical health and safety violations: two regarding missing paperwork and one regarding a storage closet with cleaning supplies unlocked.

STAFF RECOMMENDATION

Staff recommends that the board takes no action at this time and the petitioner apply for revisions to the special exception conditions at the next BZA meeting.

Mulvaney asks if the Board take no action if the petitioner will be notified that they need to reapply.

Smith states they are already in that process and there has already been a conversation regarding that.

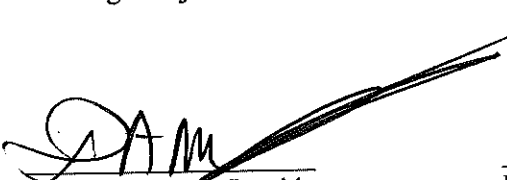
Mulvaney asks for questions and comments from Board.


Mulvaney calls for a motion.

Stewart makes motion to table until December; Second by Schaffer. Voice vote carries unanimous.

ADJOURNMENT

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


Doug Mulvaney, President


Ron Davis, Vice-President