

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, December 9, 2021 - Commenced at 6:00 P.M. & adjourned at 7:45 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  
Dave Osborne

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Ryan Smith, Planner  
Nathan Hooley, Planner

**LEGAL DEPARTMENT**

None

**TECHNOLOGY STAFF**

Matt Riggs

**RECORDING SECRETARY**

Jennifer Drlich

**APPROVAL OF AMMENDMENT OF AGENDA**

Davis makes motion to amend and approve the agenda to table 20-BZA-42, 21-UV-26, and 20-X-14 for one month; Second by Osborne. Voice vote carries.

**APPROVAL OF MINUTES FOR AUGUST 12**

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

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the December 9, 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.

Mulvaney notes the quorum and explains the procedures for it.

## NEW BUSINESS

### 21-X-12 PETITIONER IS JANET COOK, PRESIDENT PRAYERS MINISTRIES, INC PROPERTY IS LOCATED AT 2626 PRAIRIE ST

A Special Exception per Section 4.3 Special Exception Uses in the R-1 One Family Dwelling District to allow for the establishment of a Clubhouse Community called Lexington House which would help people in recovery with education, employment, and support.

Mulvaney calls petitioner forward.

Ross Swihart appears in person for the petitioner. He states they would like a special use for a clubhouse for those that are working with mental health issues. He states that the goal is to work with individuals in the community to promote their health and wellness and that the property values will not be negatively affected. The organization operates like much like the church outside of the spiritual and religious component. The church has found itself in lower numbers and has helped incubate other non-profits and allowed them to operate in its location. He states they are basically the same as the Goshen Clubhouse. They operate during normal business hours and most of the time people won't even know they are there. He states they are a membership clubhouse with after-care, but are not a mental health triage or emergency services. They are working with individuals who want to move their life in a positive direction.

Francis Disori appears in person. He states he is the Executive Director for Lexington House of Elkhart. He states that the Clubhouse has been around since 1948 and came out of New York City. There are now about 330 around the world. In the United States there are 220. In Indiana there are 11. Elkhart County has two with one in Goshen. He states that they feel during a pandemic is a perfect time to offer support to people in the community with a history of mental illness. They currently serve 8-9 people per day and are projected within 3 years to be around 18-25, which puts them in the same area as St Joe County Clubhouse and Cordell Clubhouse. People have a supportive community. They have a supportive community. They come in and have the opportunity to work on employment, education, and community connection. They offer support for strength of resiliency and confidence which are often compromised for those who have experienced mental illness.

Mulvaney asks for questions from the Board.

Osborne states that the Plan Commission did send this petition with a "Do Pass" recommendation.

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 occupy a portion of the River of Life Community Church. The Lexington House would provide people with employment, educational, and social programs. The Clubhouse would operate Monday thru Friday 8:30 A.M. till 3:30 P.M. and would have a daily attendance of between 3 to 15 members. They feel that this location is appropriate to their needs as it has access to public transportation and is within walking distance of pharmacies, groceries, Oaklawn Psychiatric Center, and multiple public housing sites.

### 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 it would provide similar uses as other businesses in the area;
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.

Hooley states there were 56 letters mailed. One returned 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 Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

**21-UV-25 PETITIONER IS NORA WADE TRUST**  
**PROPERTY IS LOCATED AT 1702 E HIVELY AVE**

Use Variance of Section 18.2 Permitted Uses to permit an existing single family home in a M-I Limited Manufacturing District.

Mulvaney calls petitioner forward.

David Myers appears in person as representative for petitioner. The Nora Wade family has owned the home since 1966, and used it as a single family residence. Nora Wade has passed and the children have asked for the home to be sold, but banks do not want to finance in a manufacturing zone. He states there is a shortage of residential homes in the area and they would like to make it easier for a family to be able to finance and buy it.

Mulvaney asks for questions from the Board. He states that this situation arises as an unfortunate circumstance of rezoning. Hearing no other questions, 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 single family residential home within a manufacturing district. The property consists of a lot at the corner of Eddy Street and Hively Avenue with an existing home and a vacant piece of land to the west. The home is nonconforming in nature and for financing reason the Use Variance is needed.

**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 a less intensive use than what would be permitted in the M-1 zoning district;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the use will continue as it has been and is adjacent to other residential homes;
3. The need for a variance does arise from some condition peculiar to the property involved as the house predates the zoning district;
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 continued use of a building constructed residentially;
5. The approval does not interfere substantially with the Comprehensive Plan as it encourages mixed uses.

Hooley states there were 22 letters mailed. None returned. There was one phone call in favor.

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 Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

**21-UV-27 PETITIONER IS TERRI NORWOOD/CURTIS**  
**PROPERTY IS LOCATED AT 900 EDWARDSBURG AVE**

To vary from Section 13.1, Permitted Uses in the B-3 Service Business District, to allow for an existing building to be used as a single family home.

Mulvaney calls petitioner forward.

Terri Norwood appears via Webex. She states that she and her children have been living in the building for four years. She would like to occupy the whole building as a residence without having to run a business out of it. She states that a shortage of residential housing would create a hardship for her to replace the current housing as well as getting financing to improve the property. She states there is limited space for parking. She looked at an overall plan for the community to enhance it and believes that keeping

the green space on the south side of the building would be more beneficial to the neighborhood than a parking lot and an increase in traffic as Edwardsburg Avenue is already busy. She states that all buildings on this side of the street are currently residential, except for this one. She believes it would benefit the sense of community and houses to keep this building residential 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 acquired a commercial property in 2018 and desires to convert the building into a single family home. This structure was constructed in 1920 and has been used for commercial uses in the past. In 2000 permits show the conversion of the upstairs into a live/work unit. According to the petitioner the entire interior of the building is designed as residential.

There was parking on the north of the building which was removed sometime between 2013 and 15 leaving just a small parking area to the south. With only the small parking area on the front of the building it limits what commercial uses could utilize this property. With the train tracks directly to the north backing up traffic and that generated from the business to the west there would be concern adding additional commercial traffic.

#### **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 and general welfare of the community because the use of the property will be less intensive than uses permitted under the B-3 district;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the use of the property would be similar to the residential homes to the east;
3. The need for the variance does arise from some condition peculiar to the property because the layout of the property it limits the uses that would be permitted in the B-3 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 being sought as it would limit the use of the building.;
5. The approval will be in compliance with the Comprehensive Plan which calls for this area to develop low intensity residential

Hooley states there were 39 letters mailed. Three returned in favor with no comment.

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

Osborne asks if the owner sells the property and they wish to take it back to commercial, could it be done.

Hooley states that they could if they meet ordinance standards.

Davis asks if there would be limited parking for commercial.

Hooley believes they could add parking to the north again.

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

Mulvaney notes the next two items are for the same petitioner and lot and will be heard together but voted upon separately.

#### **21-BZA-45 PETITIONER IS HABITAT FOR HUMANITY OF ELKHART COUNTY, INC PROPERTY IS LOCATED AT VACANT LOT NADEL AVENUE, 06-07-226-018-012**

Developmental Variance of Section 5.4 Lot Size to allow for a residential lot to be less than 7,200 sq. ft. to allow for the construction of a house on a 6,735 sq. ft. lot a reduction of 465 sq. ft. also a variance from Section 26.7.C.3.a Location of Parking Facilities to allow a paved parking area to located in the corner side yard.

Mulvaney calls petitioner forward.

Greg Conrad, Executive Director, appears in person with Ryan McDowell, Director of Construction. He states that the lot did have a single family home that was razed several years ago. They build a smaller home and would like to be able to split the lot in order to build two homes. They would be owner-occupied by two families.

Mulvaney asks for questions from the Board.

Osborne asks where the parking is for this home.

McDowell states that for the house on Cottage and Hester there is enough room to put the parking on the side of the house, but on Nadel and Hester they do not. (Inaudible, out of microphone.)

Conrad states there are really two corner lots, so they are trying to fit two homes and parking access.

Kevin Foy on Facebook asks for clarification of the lot locations. Mulvaney clarifies that one house is on one corner at Cottage and Hester and the other is on the opposite corner at Nadel and Hester.

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 parcels of land at the intersections of Cottage Court, Nadel Avenue, and Hester Ave. These are original lots of the Field House 3<sup>rd</sup> addition and if divided to their original dimensions would not meet current standards. This parcel is currently vacant and they desire to construct two new single family homes. The applicant intends to apply to the Plan Commission for a subdivision if the variances are approved.

The site plan for lot 95 proposes a single family home with an access drive off Cottage Court. The Developmental Variance is needed because the proposed lot is 6,735 square feet and would not meet current lot size requirements in an R-2 District. Also as the drive off Cottage does not go to a garage or to a parking area behind the front of the home a variance is also needed.

### **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 property will be used similar to the surrounding area and the drive will 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 property will be occupied by two new homes;
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 particular to the land involved and which are not applicable to other lands or structures in the same district as the parcel of land currently meets the lot size requirement but will not meet requirements when split;
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 the development of two new homes;
6. The special conditions and circumstances do result from a future action as they will be proposing to subdivide the parcels;
7. This property does lie within Zone X which is not restricted by the zoning ordinance.

Hooley states there were 36 letters mailed. One returned in favor with comment: Having two brand new homes in the neighborhood is a wonderful gift to our community.

Mulvaney asks if there are questions from the Board for staff. Hearing none he calls for the next variance to be read.

### **21-BZA-46 PETITIONER IS HABITAT FOR HUMANITY OF ELKHART COUNTY, INC PROPERTY IS LOCATED AT VACANT LOT NADEL AVENUE, 06-07-226-018-012**

Developmental Variance of Section 5.4 Lot Size to allow for a residential lot to be less than 7,200 sq. ft. to allow for the construction of a house on a 6,544 sq. ft. lot a reduction of 656 sq. ft.

**STAFF ANALYSIS**

The petitioner owns two parcels of land at the intersections of Cottage Court, Nadel Avenue, and Hester Ave. These are original lots of the Field House 3<sup>rd</sup> addition and if divided to their original dimensions would not meet current standards. This parcel is currently vacant and they desire to construct two new single family homes. The applicant intends to apply to the Plan Commission for a subdivision if the variances are approved.

The site plan for lot 93 proposes a single family home with access of Nadel Avenue to a parking pad beside the house. The Developmental Variance is needed because the proposed lot is 6,544 square feet and would not meet current lot size requirements in an R-2 District.

**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 property will be used similar to the surrounding area and the drive will 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 property will be occupied by two new homes;
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 particular to the land involved and which are not applicable to other lands or structures in the same district as the parcel of land currently meets the lot size requirement but will not meet requirements when split;
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 the development of two new homes;
6. The special conditions and circumstances do result from a future action as they will be proposing to subdivide the parcels;
7. This property does lie within Zone X which is not restricted by the zoning ordinance.

Hooley states there were 36 letters mailed. One returned in favor with comment: I am excited for the new neighbors to achieve home ownership and support the choice to build in our neighborhood. One returned not in favor with comment: This would cause crowding. Putting two homes on a lot too small for two homes. And will crowd the roads with more on-street parking that shouldn't be there. One house could allow for some off-street parking.

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

Mulvaney calls for a motion on 21-BZA-45.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes  
Davis – Yes  
Mulvaney – Yes

Motion carries.

Mulvaney calls for a motion on 21-BZA-46.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes  
Davis – Yes  
Mulvaney – Yes

Motion carries.

**21-UV-28 PETITIONER IS DANNY REYNOLDS  
PROPERTY IS LOCATED AT 1813 BORNEMAN AVENUE**

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District, to allow for a Single Family Dwelling. Single Family Dwellings are not permitted by right in the M-1 District.

Mulvaney calls petitioner forward.

Danny Reynolds appears in person. He states that he bought the house as a residence, but had a fire on October 8th. He states that to his knowledge the house has always been residential. It is on a 1/2 of an acre lot and there is not much industrial to be done there. He would like for it to continue as his residence. They do not intend to sell. They do not intend to harm the community or cause a disturbance. It will not interfere with the comprehensive plan. They enjoy where they are and would like to stay in their home. If they are not approved, it will cause hardship on him and his wife because they cannot afford to let it sit. They need to have it redone so that they have a home.

Mulvaney asks for questions from the Board.

Osborne asks if they are doing the remodeling work themselves.

Reynolds states that they are getting a contractor and the insurance is taking care of that.

Osborne asks if the casualties are greater than 50% of the value of the house.

Reynolds states that the latest estimate for repair is \$80,000 but they paid \$65,000. However, at the time housing and lumber prices were cheaper. He states they are currently living in a rental house with their dogs.

Mulvaney states this is also an issue that is due to rezoning. Remodeling, mortgages, and refinance require the variance.

Davis asks if Reynolds will live in the house once it is repaired.

Reynolds confirms. He states the house is only two minutes to his office at Lusher and 19.

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 .3-acre lot on the 1800 block of Borneman Avenue. The house there is 928 square feet and was built in 1900. Until recently, the use of the property as a single family residence was legal nonconforming since it is located in an industrial district. However, the house recently suffered a fire that resulted in a casualty greater than 50% of the cost of the house, meaning that the house cannot be repaired without the benefit of a use variance or a rezone.

#### STAFF RECOMMENDATION

The Staff makes no recommendation on the use variance.

Smith states there were 18 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.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

#### 21-X-13 PETITIONER IS MAXIM IVANOV / THE LENOX LLC PROPERTY IS LOCATED AT 101 NORTH MAIN STREET

A Special Exception per Section 15.3 Special Exception Uses in the CBD, Central Business District to allow for the establishment of a meeting hall/banquet facility.

Mulvaney calls petitioner forward.

Gary Frank appears in person and states he is the architect for the petitioner. He believes this is the best use he has ever seen for a property. To retrofit the property into anything else would be a shame. The building would be used for weddings, Christmas

parties, anniversaries, large business meetings and special occasions. He believes this is needed within the city. The exterior will not be changed. The whole intent was to keep the exterior. The exception will not reduce property values in maintaining the original building. The use will bring additional night activities to Elkhart, keeping safety greater in the downtown district. It is an approved special exception use. The building does have historical character they would like to maintain.

Mulvaney asks for questions from the Board.

Davis asks what will be the capacity.

Frank states it will be less than 300.

Davis states that he is on the Planning Board and knows there was an issue with the parking.

Frank states there are 40 parking stalls on the site, in addition to a city parking within walking distance that has the capacity to handle cars. He adds that the walking would also encourage downtown activity and life.

Osborne asks about reconfiguring the parking.

Frank states that they have not looked at reconfiguration and he has not measured the parking stalls, but he believes they are tight.

Leanne Ivanov appears in person and states she is one of the owners. She states they did look into the parking when they purchased the building. She states there is the lot they have, the city parking, and a lot next to the building which they are estimating about 100 additional spots. They are aware that the spots they have now are not enough, but they have looked into it.

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 architecturally significant building in the Central Business District that has most recently been used as a bank. The property comprises approximately one acre and the interior space of the building is approximately 6,000 square feet. They propose to occupy the building as an Events Center.

The property has approximately 40 parking spaces on-site, and there are additional public spaces nearby, both on-street and off-street. The facility is adequate to support its use, and the use is desirable for the Central Business District. In general, uses that activate the neighborhood not just during the day but also in the evening and on weekends, as events centers do, are encouraged in this location. The petitioners have stated their intent to both preserve the architecture of the building and ensure that it meets building and fire codes.

#### **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;
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 and the activity level will be desirable for the Central Business District;
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 24 letters mailed. One returned in favor with no comment.

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

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes



Motion carries.

**21-BZA-47 PETITIONER IS MAXIM IVANOV / THE LENOX LLC  
PROPERTY IS LOCATED AT 101 NORTH MAIN STREET**

To vary from Section 15.5.G, Developmental Conditions in the Central Business District, which prohibits permanent, free-standing signs in the front yard on Main Street, to allow for a permanent, freestanding sign in the front yard at 101 North Main Street.

To also vary Section 26.10.D.4.d which requires freestanding signs to be centered on the property line to allow for a freestanding sign at the southeast corner of the property.

To also vary from Section 26.10.D.4 Free-standing Signs to allow for a sign ten (10) feet in height that is setback six (6) feet from the property line, where a freestanding sign is permitted to be a maximum of 6.5 feet in height, a variance of 3.5 feet.

Mulvaney calls petitioner forward.

Frank appears in person for the petitioners. He states this is the original sign location for the building. They believe it will be important to help maintain the original character of the building. They did not want to attach anything to the building and damage the structure.

Mulvaney asks if they considered putting up a sign similar to the ones downtown that hang up like the new apartment complex or The Artisan.

Frank says they have. There will be a blue canopy on the north, but the character of the front of the building would not lend itself to that type of sign.

Mulvaney states that he is concerned about the size as that is a very busy intersection. He would prefer a sign like the ones downtown that hang on the sides of the building. They were approved with variances for size.

Mulvaney asks for questions from the Board.

Frank states that part of the height of the sign is a traffic box. There are visual blocks to the sign at that corner.

Osborne asks what type of sign it will be.

Frank states that the sign designer is present.

Osborne states that they do not need a flashing sign on that corner.

Frank defers to the indicated sign designer, stating that he believes it will be internally lit and he does not know the conditions for that sign.

Todd Lehman appears in person. He is from Sign Tech. He states that the discussion was that PNC Bank and the Post Office had signage high up on the building which had caused some damage. They wanted to do something that would cover some of the damage, but all it would say would be Lennox. However, they did not feel that would say what the building is or what services they offer. With the history and age of the building they did not want to do something to take away from character or aesthetics. Looking at the history, there were signs on the corner previously. They decided to do that to increase visibility from all directions. It would be illuminated internally and the height was dictated by the traffic control box. The control box impedes vision before the sign even comes into play.

Osborne asks if it will be a 45-degree angle from the corner.

Lehman confirms, adding that the previous signs were all at the same angle.

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**

This property is a .9-acre site in the Central Business District that features an architecturally significant building. The owner intends to use the facility as an events center, and has proposed a freestanding sign at the southeast corner of the property. The

proposed sign is located on one of two corridors, Main Street downtown, where freestanding signs are prohibited. In addition, at ten (10) feet tall it exceeds the maximum height by approximately 54%, and is at the corner of the lot where signs are prohibited.

The prohibition on freestanding signs along the Main and Jackson corridors in the Central Business District was established in 2017, as a part of revisions to the zoning code stemming from the River District plan, and was intended to update the Central Business District to encourage appropriate district. In general, dense development with minimal setbacks so that the buildings are close to the street, with parking in the rear, is encouraged. Freestanding signs in the front yard are typical of suburban, auto-oriented development; the vision for the downtown is for it to be a bicycle and pedestrian-friendly downtown district. Generally speaking, the desired development in the CBD should rely on wall signage, and would not have room for freestanding signs with their minimal setbacks.

The City has spent a substantial amount of time, effort, and funds towards creating a vision for the River District, and it's estimated that a further \$250 million will be invested in the River District in the next 5-10 years. Signage is a key component of that vision, and it's important that, moving forward, development proposals be reviewed in light of keeping with that vision to fit with the future of the district and to help attract further development.

### **STAFF RECOMMENDATION**

Staff recommends denial of the request 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 it would not contribute to the vision for the district;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because it intends for the future of Jackson and Main corridors to be absent of freestanding signs;
4. Special conditions and circumstances do not 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 not result in practical difficulties in the use of the property because wall signs will adequately address wayfinding needs;
6. The special conditions and circumstances do 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 variance, staff recommends that the following condition be placed upon the approval:

1. If the property or business is transferred to anyone other than the current petitioner, the variance will be rendered null and void.

Smith states there were 24 letters mailed. One returned in favor with no comment.

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

Osborne asks for clarification on the requirement for a free-standing sign to be centered on the property line.

Smith states that the sign should be centered on the street frontage, not at a corner, with one free-standing sign per frontage.

Osborne asks if PNC Bank previously had a sign there.

Smith states that they did. They took the sign down and the legal, non-conforming status was lost. Had the sign been refaced, they would be able to keep it, but with an entirely new sign, it has to meet current code.

Osborne asks about the sign's exact location on the corner (inaudible, out of microphone).

Smith states it is a front yard or a corner side-yard.

Osborne asks if the variances were approved, would they have to go through any kind of technical review or (inaudible, out of microphone).

Smith states there is no typical review of freestanding signs. There are limits such as no flashing lights, limits on cast light, and glare. If there was a complaint on those, there could be some enforcement enacted.

Osborne states they are not looking at issues about signage on the building.

Smith agrees, but states that it is an architecturally significant building and if they have a freestanding sign the Board should codify what exactly they are allowed to do so that Zoning could specify a certain amount of wall signage or projecting signs on the façade of the building.

Davis asks if there was a similar issue with Hopman's across the street.

Smith states it was a similar issue with them and the bank right across the street.

Davis asks if Hopman's was passed.

Smith states that it was.

Davis asks if Hopman's sign was ten feet.

Smith states that he believes it was 6-7 feet.

Mulvaney calls for a motion.

Davis makes motion to approve with conditions, including the added condition of limited wall signage as allowed; Second by Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

**21-BZA-48 PETITIONER IS JOSEPH D AVERY**  
**PROPERTY IS LOCATED AT 1025 & 1027 W CLEVELAND AVE**

Developmental Variance of 26.7.C.3.a Location of Parking Facilities to allow a paved parking area to be located in the front yard.

Mulvaney calls petitioner forward.

Sarah Avery appears in person. She states that she is the wife of the petitioner. They are seeking to keep the parking pad they had installed on two of their properties; 1025 West Cleveland Avenue where their house is located and a corner lot at 1027 West Cleveland Avenue. She states that they also own a lot on the opposite side of the house for a total of three. They propose to combine the two variance lots into one. They would also change the size of the parking pad to meet any city requirements, add shrubbery to add curb appeal, and be willing to work with the board to come to an agreeable solution. They believe off-street parking will improve community safety by reducing street congestion. She states that one of them must park on the street now. Because of this, there have been two crashes into the driver's side of her husband's parked vehicle. One occurred February 27th, 2020 and the other on February 7th, 2021, which totaled his car. The parking pad will not reduce visibility to neighbors or passers-by at the corner. There are already bushes and a tree. She believes off-street parking has a huge appeal and may increase property values for those seeking to buy a house, especially with most people having two vehicles. She states that several houses in the area also have parking pads and presents pictures of 1626 Eleventh Street and 1102 W Cleveland Avenue. She states the ordinance does not consider their parking pad as a corner lot, but a front lot, based on the technicality that the lots are not yet combined. This is the most ideal location for their pad.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor.

Elizabeth Avery appears in person. She states that she is the sister of the petitioner and is in favor because of her brother's safety and the car having been hit twice because of someone else's error.

Aften Avery appears in person. She states that she is also the sister of the petitioner and is in favor. She is concerned for the safety of her family members and that they should be able to park without harm to their property.

Electa Zollinger appears in person. She states that she is the mother of the petitioner and is in favor. She notes the two accidents for two years in a row with his car. She does not believe the pad will lower property values. She does not consider it in their front yard

because it is beyond where the driveway is. She thinks it will improve property values since they have all three lots and they are already trying to clean up and improve the three lots. The two accidents have also increased the car insurance which has added an extra burden on them.

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

**STAFF ANALYSIS**

The petitioners own three parcels of land at the intersection of 11<sup>th</sup> Street and W Cleveland Avenue. The petitioner has installed an approximately 504 sq. ft. asphalt parking area beside and in front of the existing home utilizing a preexisting drive-cut. On-street parking was the only parking available to the petitioner.

The petitioner states the principal need for the parking area is to have their vehicles off the street since they have been hit twice. The parking pad is approximately 40 feet from the west property line and approximately 60 feet from the edge of pavement. Screening the parking area is a large amount of existing vegetation along 11<sup>th</sup> Street.

**STAFF RECOMMENDATION**

The Staff does not have a recommendation for this petition.

Hooley states there were 42 letters mailed. None returned.

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

Davis asks if the area is already paved.

Hooley states that it is, but was done without knowledge that they needed a permit.

Davis makes motion to approve; Second by Osborne.

Osborne – Yes

Davis – Yes

Mulvaney – Yes

Motion carries.

Mulvaney notes that Ariel Fuller on Facebook is in favor as well.

**21-BZA-49 PETITIONER IS LAURA JEAN SMITH  
PROPERTY IS LOCATED AT 3200 E JACKSON BLVD**

To vary from Section 26.7.C.3.a, Location of Parking Facilities, which does not allow parking areas and driveways to be in a front yard, or to occupy more than 50% of any yard, to allow an off-street parking area in front of the primary residence and to allow the parking area/driveway to occupy more than 50% of the yard.

Mulvaney calls petitioner forward.

Laura Smith appears in person. She refurbished her driveway during home renovations and was under the impression that the contractor had obtained all the appropriate permits. She states that they filled in the area in the middle of the driveway because it was constantly flooding. She does not believe that it has detracted from the value or safety. She states that it has actually made it much easier to maneuver the car so that she can go out frontwards since cars on Jackson speed. She states there was a French drain added to capture the water so that it no longer floods. She states even the mail carrier could not deliver for a few days after rain. She says that her neighbors are in favor of the renovations as well.

Mulvaney asks if the grassy center made it difficult to turn.

Smith states that it is a small area to even pull the car into. She says that trying to exit the street with cars behind you and trying to go around you while you have to stop to get in a specific spot felt very unsafe. She states that she tried to talk to her contractor about it, but he is unreachable.

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 .12-acre lot with a 3,228 square-foot house originally built in 1936, which she purchased in June of 2020. When purchased the property had a U-shaped driveway; after purchasing, the house suffered a fire casualty, which required repair and renovations to the house. During this process, the petitioner's contractor filled in the center of the U-drive. No permits were issued for the driveway, and no inquiries were made to city offices regarding the driveway prior to installation.

The Zoning Ordinance precludes parking in front of residences, as well as covering more than 50% of any yard with paving. This new configuration is estimated to cover approximately 68% of the yard, based on measurements in GIS.

As a typical U-shaped driveway, the prior configuration did not work well. An outside radius of approximately 25' would accommodate passenger cars; the outside radius here is approximately 15'. It was best considered as having two driveways with a pad that would accommodate a three-point turn. Filling in the center essentially added another lane to the driveway, making a 3-lane driveway, rather than enhancing turning movements. The current configuration exceeds our driveway standards, and it's generally not a good policy to vary away a zoning violation.

**STAFF RECOMMENDATION**

The Staff makes no recommendation on the developmental variance.

Smith states there were 25 letters mailed. Three letters and one phone call returned in favor with one comment: We have no problem with Ms. Smith's parking area in front of her house. In actuality the parking area, ever since we moved into our home 23 years ago, was only slightly smaller. There was about an 8-10' by 5-7' patch of grass in the middle of the U-shaped drive. Ms. Smith had the grass area cemented to make the drive easier to get in and out of. There is no space for off-street parking in front of her house, even if there was a small patch of grass. Our homes are very close to each other. She has done a tasteful remodel and was very careful to ask us and the neighbor on the west side of her if any changes to the house on the outside were amiable.

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

Mulvaney calls for a motion.

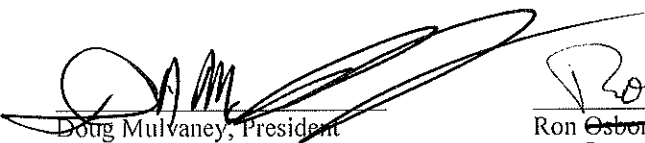
Davis makes motion to approve; Second by Osborne.

- Osborne – Yes
- Davis – Yes
- Mulvaney – Yes

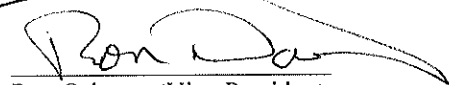
Motion carries.

**ADJOURNMENT**

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



Doug Mulvaney, President



Ron Osborne, Vice-President  
Davis