

**BOARD OF ZONING APPEALS  
-MINUTES-**

**Thursday, February 10, 2022 - 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  
Ron Davis  
Johnny Thomas  
Andy Jones

**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 AMENDED AGENDA**

Davis makes motion to table 22-X-04 until the March 10, 2022 meeting and approve agenda; Second by Jones. Voice vote carries.

**APPROVAL OF MINUTES FOR AUGUST 12**

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

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the February 10, 2022 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

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

**OLD BUSINESS**

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

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

Mulvaney calls petitioner forward.

Todd Lehman appears in person for Sign-Tech Sign Services for the petitioner. He states that from the aerial view of the property it seems that the building and drive meet the setback requirements, which doesn't allow a lot of room for a sign on Middlebury Street. Moving the sign down to the corner of Patricia and Middlebury allows people to see the sign from Middlebury which is the primary source of truck traffic and commuters. All other criteria for signage are met.

Mulvaney asks for questions from the Board. Hearing none, 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 currently under construction for a new industrial building for Elevations Park Model. They are proposing a new freestanding monument style sign to be located at the intersection of Patricia Court and Middlebury Street. The proposed sign will be internally lit and 45 feet back from the property lines. The variance is needed as the ordinance requires all freestanding signs to be centered on the property line.

**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 signs location will not affect visibility at the intersection;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property is to be used for industrial uses similar to existing uses in this area;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted as the business will have only one freestanding sign where two are permitted;
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 as this site is on the corner and will utilize one freestanding sign as identification on two street frontages;
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 identifying the business;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the property is located at an intersection of two public right of ways;
7. This property does not lie within a designated flood area.

Smith states there were 7 letters mailed, none returned.

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

Davis makes motion to approve; Second by Thomas.

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

Motion carries.

## NEW BUSINESS

### 22-BZA-01 PETITIONER IS KIRSTIN COY & RAFAEL CARDENAS RAMOS PROPERTY IS LOCATED AT 1328 & 1334 COUNTY ROAD 6 W

To vary from Section 6.4 Yard Requirements in the R-3 Two Family Dwelling District to allow a property line to be placed through the middle of an existing duplex to create a zero-foot side yard setback.

Mulvaney calls petitioner forward.

Rafael Cardenas Ramos appears in person. He states that when they purchased the house it wasn't split legally. He states they found out about this after the purchase of their half of the duplex was completed. They would like to have the split be legal.

Kirstin Coy appears online. She states that she owns the 1334 half of the duplex.

Mulvaney asks if there is an issue with producing a plat as is the condition.

Ramos and Coy have no issue with 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 petitioners each own part of a property containing a duplex; the units of the duplex are addressed to 1328 and 1334 County Road 6 West. Last year, the former owner of the property had a surveyor supply a survey showing a property split that divided the property into two parcels, splitting the duplex in two, and created an access easement on the driveway. The survey was recorded and both parcels sold to new owners.

The process was done without undergoing the required city processes, and staff holds that it was an illegal division; any property in the city that is subdivided must undergo review by our Plat Committee and Major Subdivisions must also be reviewed by the Plan Commission.

Staff learned of the split prior to the sale of the properties and contacted the owner to notify her that she needed to submit applications. Several months passed without any application being submitted, and during that period the properties were sold. Staff has spent considerable time working with the current and former owners to have the appropriate applications submitted. The application we received was less than we would typically process; however, staff believed it was best to proceed with the process and review their application.

The proposed lots met the minimum requirements for parcels in the R-1 District, and the proposed access easement maintains access for both lots. However, the properties do not meet the minimum setbacks or the minimum frontage for the district, and the survey provided does not qualify as an official plat. Staff does not have an objection to the request, since the physical and functional characteristics of the site will not change, it will simply be under two owners instead of one.

### 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 physical and functional nature of the site will not change;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property is not being modified;
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 as this site was developed as a duplex;
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;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the property was developed prior to ownership;
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 conditions be placed upon the approval:

1. The applicants must submit an official plat.

Smith states there were 9 letters mailed. One returned in favor with no comment.

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

Jones asks where the plat comes from for the petitioner.

Smith states that there was a survey done for which there is already a drawing which would just need slightly modified with some extra verbiage and signature blocks.

Jones asks if the petitioner could do that or would they need a survey.

Smith states that they would have to have a surveyor do that, to stamp it.

Mulvaney asks if Smith would assist in what is required.

Smith states that he has already spoken to the firm which has provided a quote and a timeframe.

Mulvaney calls for a motion.

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

Davis – Yes

Thomas – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**22-BZA-04 PETITIONER IS MICHAEL D & SUZANNE M BRUMMEL  
PROPERTY IS LOCATED AT 1845 N BAY DR**

To vary from Section 26.4.A.6 to allow a 6-foot-tall privacy fence to encroach into a corner side yard and point A.8 to allow the use of welded wire as a fencing material.

Mulvaney calls petitioner forward.

Michael Brummel appears in person. He states they replaced a 4ft welded wire fence and the height violated the height ordinance. Their yard is lower than the road so the top of the fence is only 42” higher than the road itself which is less than the 4’ required. The privacy fence does not appear as a large object on the side of the road, but it does help keep his wife and their garden safe.

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 property is at the corner of N Bay Street and Miller Street and has a heavily wooded area to the north. The applicant installed the fence without knowing the ordinance requirements and that a permit was needed. The fence was installed to surround their garden to protect it from deer. They used wire mesh on the house side of the garden also to keep animals out of the garden.

This property is significantly lower than the adjacent roadway where the fenced in area is located. The lower elevation allows the fence to not inhibit visibility at the intersection. The applicant also states that because of traffic along Miller Street the fence will provide some privacy for the garden area.

**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 fence does not create a visual barrier at the intersection;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property will continue to be used residentially;
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 grade change of the property brings the fence lower along the right of way;
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 use of a private garden;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the grade change of the property was naturally created;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 15 letters mailed. Two returned in favor with comment: The fence is attractive, well-built, and sits at a lower grade than the house. It does not block visibility when driving.

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

Davis makes motion to approve; Second by Jones.

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

Motion carries.

**22-X-03 PETITIONER IS NELSON B HOLDINGS LLC  
 PROPERTY IS LOCATED AT 529 S SECOND ST**

A Special Exception per Section 15.3, Special Exception Uses in the Central Business District (CBD), to allow a Bed and Breakfast home and Meeting Hall/Banquet Facility at 529 South Second Street.

No petitioner appears.

Planning requests motion to table until end of meeting in order to contact petitioner.

Davis makes motion to table; Second by Thomas. Voice vote carries.

**22-BZA-05 PETITIONER IS JAMES E & MARGARET B CORMICAN  
 PROPERTY IS LOCATED AT 156 ALFRED ST**

To vary from Section 26.4.a.6 to allow a 6-foot privacy fence to encroach into a corner side yard.

Mulvaney calls petitioner forward.

Margaret Cormican appears in person. She states that they had a 4' chain link fence since 1976. They decided to change to a 6' privacy fence after a complaint to the police of their dogs barking. They were hoping the fence would help.

Mulvaney asks for questions from the Board.

Jones asks if anyone needs to access the alley to access their garage.

Cormican states that there is no encroachment to the alley and that the new fence is actually back further than the old one. There is easily room for an emergency vehicle.

Mulvaney opens for public comments to speak in favor.

Steve Warrick states he lives on Wood Street across from this residence. He states the fence has remedied the barking from the dogs. The fence is well-constructed and appealing. They are good neighbors and citizens and he is in favor of the variance.

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

**STAFF ANALYSIS**

The home is located at the intersection of Alfred and Wood Street. The applicant installed a privacy fence without knowing the ordinance requirements and that a permit was needed. The location of the fence is within the corner side yard between their detached garage and rear property line.

The new fence replaced a preexisting chain-link fence that enclosed the back yard. The new privacy fence runs along the public right of way and along the rear lot line. To the rear of the property is an ally but with the distance from the roadway it places the fence outside the vision clearance. The applicant states the privacy fence was needed to help with the noise from their dogs.

**STAFF RECOMMENDATION**

The Staff makes no recommendation of the developmental variance.

Hooley states there were 44 letters mailed. Seven returned in favor with five comments: Just so it will not impede the sight line of any traffic nearby; They are improving their property. Already had an older fence in exact place. Why would there be any opposition to replacing with a new, attractive, safe functioning fencing?; The fence is very nice. We have no objection at all to the new fence!; The fence doesn't impact anyone around here in a negative way. It's a great idea!; I am the neighbor directly behind the Cormican's property. I think they should be allowed to leave the fence they have put up and not be fined for it. They put this up to comply with someone's complaint about their dogs barking. They are trying to do the right thing. It is a nice privacy fence to contain their dogs. The corners are hard to live on because of the walking route on Wood Street, there is never privacy in our back yards and people rile up our dogs on purpose. Please consider their request and allow their fence with no fine.

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

Jones says that he is surprised that a professional fence company who regularly does installs in the City did not obtain permitting or was unaware of the need for a variance.

Hooley states that often companies work with many different jurisdictions with different rules and it is possible they were unaware.

Mulvaney calls for a motion.

Jones makes motion to approve; Second by Davis.

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

Motion carries.

**22-UV-03 PETITIONER IS JOHN & MARGARETTE FRECHETTE  
PROPERTY IS LOCATED AT 315 W LEXINGTON AVE**

To vary from Section 15.2 permitted uses in the Central Business District to allow an existing structure to be converted into a single family dwelling.

Mulvaney calls petitioner forward.

Amanda Bender appears in person to represent the petitioners and Joseph Greenlee. She states it will be her family living on the property as a single family residence.

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 property consists of an existing house built in 1924 that has been most recently used as a law office. The applicant would like to convert the structure back into a single family home. The home is considered notable on the Indiana Historic Buildings map and the applicant intends to maintain the exterior appearance.

**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 a single family residence will be similar to other nearby properties;
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 compatible with the neighborhood
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the building as it was constructed to be a residential home and the Comprehensive Plan calls for this area to develop with mixed uses;
5. The special conditions and circumstances do not result from an action or inaction by the applicant as the structure was built before the creation of the Central Business District;

Smith states there were 42 letters mailed. None returned.

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

Davis makes motion to approve; Second by Thomas.

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

Motion carries.

**22-BZA-06 PETITIONER IS JESS PROPERTIES LLC  
PROPERTY IS LOCATED AT 145 S NAPPANEE ST**

To vary from Section 26.10.D.4.d which requires freestanding signs to be centered on the property line to allow for the construction of a freestanding sign at the corner of Roseland Avenue and S Nappanee Street.

Mulvaney calls petitioner forward.

Todd Lehman appears in person for the petitioner. He sates they are working with the dental center as well as DJ construction and they actually had to move the sidewalk to make room to put a sign on the property. He states that the proposal is as tight as they can get the sign in the corner of this property, but there is no room anywhere else on Nappanee Street. 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 property has an existing dental office that is currently undergoing a major expansion. The desire is to locate a freestanding sign at the intersection of Roseland Avenue and Nappanee Street. The existing buildings on this site have over the years become closer to the public right of way with the widening of Nappanee Street. With the location of the buildings there is a limited amount of space along Nappanee Street to locate a sign. The corner would allow the applicant to have a more visible sign that would still be located outside of the vision clearance.

**STAFF RECOMMENDATION**

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

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community as the design will not affect visibility along Nappanee Street;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property will continue to be used as a medical office;
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 property’s road frontage has been reduced over the years;
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 location of the business’s primary sign;

6. The special conditions and circumstances do not result from an action or inaction by the applicant as the widening of Nappanee Street has reduced the front yard;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 10 letters mailed. One returned in favor with comment: The Elkhart Clinic is most definitely in favor of this. We feel the sign will not present any safety issues and welcome the upgrade to the neighborhood.

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

Davis makes motion to approve; Second by Jones.

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

Motion carries.

**22-BZA-07 PETITIONER IS SAM & ERIC INVESTMENTS LLC, DALJINDER SINGH**  
**PROPERTY IS LOCATED AT 245 W HIVELY AVE**

To vary from Section 26.5.C which requires a primary structure be 55 feet from the centerline of a primary street to allow a fuel canopy to be 44 feet from the center line of Benham Avenue and 46 feet from the centerline of Hively Avenue.

To vary from Section 26.7.D to reduce the required number of parking spaces for a convenience retail use from 24 parking spaces to 17 spaces.

To vary from Section 26.C.7.l which requires a 4-foot landscape strip along a building where it abuts parking to have no landscape area.

Mulvaney calls petitioner forward.

Debra Hughes with Surveying and Mapping appears in person for the petitioner. She states she is the project civil engineer and is accompanied by the owner and general contractor. The ordinance requires 6 spaces for every 1,000 sq. ft. of building. They are proposing 17 spaces for a 4,000 sq. ft. building which is 7 short. The plan includes 12 fuel pumps and a convenience store with gas stations. Many people could park at the pump and go inside to pay for merchandise. So the additional 12 spaces are functionally available. She states that the second item is regarding a landscape strip between the front sidewalk and building. They would like the variance because that area becomes an eyesore with discarded cigarettes, straw wrappers, and napkins, and it is more difficult to keep clean with landscaping. The landscaping plan will provide 10 maple trees, 5 hawthorn trees, 5 honey locust trees, 10 viburnum shrubs and 20 juniper shrubs.

Mulvaney asks for questions from the Board.

Jones asks if the landscape strip is on the Hively side.

Hughes states that the building is on a diagonal. (Speaks off microphone, indicating on a map for the Board.)

Jones asks if there is residential to the south.

Hughes says there are two vacant lots to the south also owned by this owner. They also have a petition for rezoning from multi-family residential to commercial for next month with Plan Commission. South of those two lots, the fifth lot is one residence.

Jones asks about the proposed use for the other two lots.

Hughes states it is also small commercial business.

Mulvaney asks if the denial of the landscape strip would substantially change the plan or make it impossible.

Hughes states that the building would have to be moved because they have the minimum dimensions for the canopy for function and then the minimum for the drive aisle between the canopy (speaks off microphone, indicating on the plan to Board).

Mulvaney asks about the increase in traffic on the corner and how many patrons per day would go to this station and store.



Hughes states that the owner currently operates the Marathon station at the northeast corner of this intersection. He has a lease with the Woodland Crossing owner. The lease involved the Kroger store, so when they installed a gas pump 14 years ago they set a sunset on the Marathon station of 14 years, which is now expired. So that building will now be demolished and he is switching to the southeast corner to maintain his relationship with his customers and to serve the area. Traffic would increase if there were two, he is simply changing from the north side to the south side of the street.

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

#### STAFF ANALYSIS

The property is currently occupied by a muffler shop. The property directly to the south is currently vacant with larger trees providing some screening along the adjacent residential home. The petitioner desires to demolish the existing structure to build a new gas station and convenience store. The gas pumps and canopy would come out towards the intersection of Benham and Hively Avenue. The convenience store will be designed to be placed in the southeast corner of the property facing the intersection.

Because of the size of the lot and the placement of the two buildings certain ordinance requirements will not be met. The request is to reduce the amount of onsite parking spaces from 24 to 17 spaces. The petitioner states that a large portion of the building will not be open to the public. The zoning ordinance does not currently account for the parking under the canopy. This standard is being considered in the future ordinance revision and after further review determined that this request was not needed.

The applicant also requests to not have landscaping between the building and the proposed parking. This request will reduce the overall landscaping on the property. The requests are because of the site design and restraints in the size of the lot.

#### STAFF RECOMMENDATION

The Staff recommends **approval** of the request for a reduction of onsite parking based on the following findings of fact:

1. The approval **will not** be injurious to the public health, safety, morals or general welfare of the community as the design of the canopy will no cause congestion on the street;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property to the south is vacant;
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** which are particular to the land involved and which are not applicable to other lands or structures in the same district since the parking requirement for gas stations will be addressed in the revised ordinance;
5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property as there is limited space for additional parking;
6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the applicant will clear the entire site of existing infrastructure;
7. This property does not lie within a designated flood hazard area.

The Staff recommends **denial** of the request for the reduction of the landscape strip on the following findings of fact:

1. The approval **will** be injurious to the public health, safety, morals or general welfare of the community as it reduces the spacing between the parking and the sidewalk of the building;
2. The use and value of the area adjacent to the property **will** be affected in a substantially adverse manner as it will reduce the amount of green spaces on the property;
3. Granting the variance **would not** be consistent with the intent and purpose of this Ordinance because it would reduce the amount of landscaping;
4. Special conditions and circumstances **do not exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the plans could be redesigned to accommodate the landscaping;
5. The strict application of the terms of this Ordinance **will not** result in practical difficulties in the use of the property as the commercial development could meet all requirements;
6. The special conditions and circumstances **do** result from an action or inaction by the applicant as the applicant will clear the entire site of existing infrastructure;
7. This property does not lie within a designated flood hazard area.

Smith states there were 10 letters mailed. One returned not in favor with comment: We are writing to express our opposition to the granting of zoning variances for the property at 245 W Hively Ave. Our home of over forty years is at 2740 Benham Ave, the first property south of the proposed development. We note that the property is also adjacent to residential apartments to the east. We are concerned about the increased noise, light and traffic which will likely be produced by the activity of a convenience store. We are opposed to reducing the number of parking spaces by nearly 30%. It seems that fewer spaces increases the possibility of spillover

to adjacent properties. It is our wish to be good neighbors to those who live and work near us. In this case, it seems that a larger property would suit this project better if three variances are required to fit the available space.

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

Davis asks if they own the convenience store across the street.

Smith says they are leasing it.

Davis asks if it will be torn down.

Smith states that is his understanding.

Jones asks if they will be required to remove the underground tanks when the building is demolished.

Daljinder Singh appears in person. He states that it is his responsibility to take the pumps and all the equipment inside. He says the fuel company will take all the tanks and canopy from the site. He will have to be done before the 31<sup>st</sup> of June. In the meantime, they will take the price signs.

Jones asks if he knows if there are plans to develop it.

Singh states that whatever Kroger has is it.

Mulvaney calls for a motion on the parking variance.

Jones makes motion to approve; Second by Thomas.

Davis – Yes

Thomas – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

Mulvaney calls for a motion on the landscape variance.

Jones makes motion to approve; Second by Davis.

Davis – Yes

Thomas – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

Mulvaney notes for the record that his Facebook feed had a late comment. Kevin Foy had concerns about the gas station because he owns the property next to it and objects to the parking.

**22-BZA-08 PETITIONER IS MCMICHAEL PROPERTIES, LLC (MAX & BECKY YEAKEY)  
PROPERTY IS LOCATED AT 3600 S NAPPANEE ST**

To vary from Section 26.10.D.4.d which requires freestanding signs to be centered on the property line to allow for a freestanding sign that will be south of the primary drive. Also to allow the sign to be located at 7.5 feet from the property line along South Nappanee Street a reduction of 17.5 feet.

Mulvaney calls petitioner forward.

Todd Lehman appears in person for the petitioner. He states that all of the signage in the area are under the old county ordinances where they are very large and tall structures. They would like to reuse the existing foundations which is concrete and anchor bullets and electricity, which places the sign where it is. The old sign was 18 feet tall and 80 sq. ft. which they could have refaced, but

Max had an idea. They have tried to keep it as narrow as they could but wanted to get the exposure because traffic, especially if not in the right turn lane coming toward Elkhart, needs to see it in advance to be able to turn into the property.

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

This property was formally OmniSource but is now in operation as Premium Concrete. OmniSource had a freestanding sign near the entrance to their property but it has since been removed. The applicant desires to install a freestanding sign near the primary entrance to the business close to the south end of the property. The ordinance requires freestanding signs to be centered along the road frontage.

The proposed sign is 16 feet in height which would require a 25-foot setback from the property line. The request is to reduce the setback from 25 feet to 7.5 feet from the property line. At this distance a 7-foot-tall sign would be permitted and the request is for a 9-foot increase.

The property currently has a tall privacy fence for security and screening along Nappanee Street. This screening leaves approximately 36 feet of land between the public right of way. The property has adequate space to allow the sign to meet setback requirements and the proposed location would set a poor precedence for new signage along our primary roads.

#### STAFF RECOMMENDATION

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

1. The approval will be injurious to the public health, safety, morals or general welfare of the community as the location will be placed closure to the public right of way;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property has sufficient area to place a sign outside the required front yard;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because it would allow a 16-foot-tall freestanding sign closer to a primary thoroughfare.;
4. Special conditions and circumstances do not exist which are particular to the land involved and which are not applicable to other lands or structures in the same district as there are other business signs located outside the required front yard along Nappanee Street;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property as there is space along the frontage of their property to meet the front yard requirement;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the previous operator had a freestanding sign;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 20 letters mailed. None returned.

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

Davis makes motion to approve; Second by Jones.

Davis – No  
Thomas – No  
Jones – No  
Mulvaney – No

Motion fails.

Thomas makes motion to deny; Second by Jones.

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

Motion carries to deny petition.

**22-X-03 PETITIONER IS NELSON B HOLDINGS LLC**  
**PROPERTY IS LOCATED AT 529 S SECOND ST**

A Special Exception per Section 15.3, Special Exception Uses in the Central Business District (CBD), to allow a Bed and Breakfast home and Meeting Hall/Banquet Facility at 529 South Second Street.

Mulvaney calls petitioner forward.

Phalene Leichtman appears online. She states that they would like to open a bed and breakfast at the Winchester Mansion downtown. They would use the second story for sleeping facilities and then downstairs for an event venue space to host smaller parties such as wedding receptions, baby showers, wine tastings and things like that in the future.

Mulvaney asks for questions from the Board.

Jones asks if it will be residential as well.

Leichtman states that they will be living there. There can only be 5 guest suites and there are 6 to 7 bedrooms upstairs. They would occupy the extra rooms.

Jones states that the building has been used similarly before and should see a lot of use. He would like to see some revitalization in that area.

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

**STAFF ANALYSIS**

The petitioners own the Winchester Mansion, located at the northwest corner of Second and Harrison Streets. The building is an 8,500 square foot facility that has recently been used commercially. The property is currently being used as living quarters; the new owners would like to combine uses at this property, for the second floor to be used as a residence and bed and breakfast, and the first floor to be used as an events center. Both of those uses require a Special Exception in the Central Business District.

The property is suited to the use. There are six bedrooms and three bathrooms on the second floor, and the first floor has been used commercially and can be converted to an events center. The building's context is primarily commercial. Unlike bed and breakfasts in residential districts, the commercial nature of the neighborhood means that concerns about traffic and noise should not become a hardship for neighboring properties. Additionally, the events center will add livelihood to the downtown evenings and weekends, which will be beneficial to the Central Business District. The property has a parking lot in the rear; there is also a large and underutilized parking lot across Harrison Street that can be used by guests.

**STAFF RECOMMENDATION**

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected as this use will be compatible with its commercial surroundings;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be little to no physical changes to the property;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Smith states there were 20 letters mailed. None returned.

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


Jones makes motion to approve; Second by Davis.

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


Motion carries.

ADJOURNMENT

Davis makes motion to adjourn and is seconded by Thomas. Meeting is adjourned and all are in favor.



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Doug Mulvaney, President



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Ron Davis, Vice-President