

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, March 10, 2022 - Commenced at 6:00 P.M. & adjourned at 7:10 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

David Hopkins

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AMENDED AGENDA

Davis makes motion to table 22-X-05 until April 14, 2022 Meeting and amend the agenda; second by Thomas. Voice vote carries.

APPROVAL OF MINUTES FOR AUGUST 12

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the March 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-X-04 PETITIONER IS KNIGHTS OF COLUMBUS / ELKHART COLUMBUS CLUB PROPERTY IS LOCATED AT 112 E LEXINGTON AVE

A Special Exception per Section 15.3, Special Exception Uses in the CBD Central Business District, to allow for a charitable organization to operate a soup kitchen.

Mulvaney notes that he is a member of First Congregational Church in Elkhart since 1983 and that the petitioner operated there for many years. He does not believe he has a conflict of interest, but offers to recuse himself if anyone would like him to do so. No comments are presented and he calls petitioner forward.

Dale McDowell appears in person. He states that they have been in operation for 40 years. They operate 5 days a week from 11-12. They serve about 25,000 meals a year on less than \$50,000. The church they operated in was sold and they had 30 days to leave. A week before their time ended, the Columbus Club called and offered this space. They thought that since there had been fish fries and was a kitchen in the basement, it would work. There were issues with the City. They moved in at the beginning of January and thought they had worked through the issues the Health Department, FOG, Planning, and Fire Departments. This site was only going to be used by them for roughly 6 months. They are working with another local church to use their building as a permanent home. They would like to be back in the area that they have been serving and just need some time for remodeling. There is only one employee, who is the cook.

Mulvaney asks for questions from the Board.

Jones asks if the new location will require a use variance.

McDowell does not believe so. He states they will have to get a new FOG plumbing system and a little remodeling so they are asking for an extension until July instead of June. They want the variance so they can immediately open at the Columbus Club since they have all of their stuff, food, and Health Department approval.

Mulvaney asks if they anticipate 3-4 months in this location.

McDowell states the original plan was for 6 months, which would be June, but remodeling could take another month. They would like to move and be able to serve people whom they have been unable to serve through the coldest part of the winter.

Mulvaney asks if the petitioner would have an issue with an approval and a review hearing in a few months.

McDowell says they would not. That would allow them to know more on the remodeling timetable.

Jones asks staff if another exemption would be needed for the kitchen to operate in another location.

Smith states that it is likely they would, but he would need to know the location and to check the ordinance.

Mulvaney opens for public comments to speak in favor.

Aaron Mishler appears in person. He states that he works primarily as a Registered Nurse and conducts annual senior wellness visits. One of the questions during these visits is if the patient has concerns about food insecurity. He states that the amount of people who do have concerns is disappointing. He understands there is some concern for the location, but he is confident in the administration's ability to work with local business owners, the Homeless Coalition, and partners downtown to make sure that the temporary arrangement manages to feed all those who have concerns about food insecurity.

Judie Hyatte-Howie appears in person. She says she has been affiliated with Susanna's Kitchen for 11 years as the cook and Kitchen Manager. She states that they do serve everyone, but the majority of people are low income. They have homes, but must decide between a meal and a bill. She says a small percentage do cause trouble and they are downtown whether the kitchen is there or not. She states they are the people who have mental illness and are not helped by society. The rest of the people work, or are veterans, but do not have enough money to take care of themselves. The kitchen fills the gap for them.

Denny Speas appears in person. He states that he has been affiliated with the kitchen for approximately 21 years and is Vice Chairperson of the Board. He states that this is a Christian outreach serving a need to help people. He notes the City slogan is that we are a City with a heart. He quotes a Bible verse from Isaiah regarding tending to the hungry. He realizes there is not total agreement on this and he is saddened that there have already been a couple of months that these people have not been served.

Jann Hess appears in person. She states she is a member of Central Christian Church and has been on the Board for 15 years. She states that they operate one hour a day, 5 days a week to help feed people. She states some people's rent is so high that they don't have a lot of money and the kitchen helps by feeding them.

Mulvaney notes that there is a comment from David Smith on Facebook that speaks in favor of Dale McDowell, then opens for opposition.

David Osborne states that he has 6 retail locations downtown for which he is landlord. He states that all of his tenants have concerns. He believes some of it stems from issues with the homeless downtown for the past year sleeping in doorways and on sidewalks. They are afraid there will be a homeless faction in front of their businesses. They are trying to make sure that there is a nice place for people to feel safe to come to for the arts and entertainment district. He states that at the City Plan Commission meeting on Monday, a spokesperson for the kitchen said that the church was still a couple of weeks out from making a decision on whether they would be allowed to move in. He suggests the Board table this case for another month until the church makes a decision. The big concern is that the end of the 3 or 6 months the kitchen will still not have a permanent home and this case will have to be heard again. He hopes the time frame parameters for the temporary aspect of it will be upheld.

Kevin Leers appears in person. He is concerned for neighbors with young children. He says there was a young woman struck last summer by one of the clients of the kitchen. He notes that the same man also harassed her to the point of her moving. He states the kitchen did nothing to defend her. He believes the City spent a lot of money to move the kitchen off of Main Street a few years ago and does not want them to be moved back into the River District.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

Susanna's Kitchen is a nonprofit soup kitchen that provides free meals to approximately 100 people five days a week. Hours of operation are 11:30 – 1:30. Clientele includes individuals and families who struggle to meet their food needs, including some (but not all) homeless persons.

Until recently, the operation was located at 431 South Third Street, where it had operated for years. The church that hosted the organization did not allow for the renewal of Susanna's Kitchen's lease, which forced them to seek a new location. The Knights of Columbus on East Lexington offered to house the operation on an interim basis. As of now, the planned arrangement is for Susanna's Kitchen to temporarily operate out of Knights of Columbus, to whom they are paying rent. According to the petitioner, the current plan is to operate there until June 30, 2022 while they seek a permanent home elsewhere.

The organization has been working with the Health Department and has addressed all critical issues found during inspection.

The time frame is not certain, however. For example, they may find another location that needs some upgrades in order for them to operate there, may result in delays for construction.

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 and be compatible with the adjacent commercial properties;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the change to the use of the property is temporary. It is anticipated the operation will move to another location by June 30;
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 28 letters mailed; 8 returned not in favor, 2 with comments: The operation of a soup kitchen in the heart of Downtown Elkhart's Retail and Restaurant/ Business district is counterproductive to the efforts our merchants have invested their time, talents and personal finances in. A combined effort to draw the public to our Main Street/River District area businesses would be greatly impeded by the loitering that would inevitably accompany such a venue. For that reason, it is highly imperative that the soup kitchen be located elsewhere. I am strongly against this provision. Please seek another location that is not within the Gateway Mile business area; This is a great organization, but locating them within feet of at least 3 restaurants and downtown's most retail focused block does not project an open, safe, pedestrian-friendly shopping district, as we've all worked to create. Would be supportive of their organization relocating to an area further removed from The Gateway Mile.

Corinne Reed, Director of Communications for Mayor Rod Roberson, appears in person on behalf of the administration to speak in favor of the staff recommendation. She states that the team has been working closely with Suzanna's Kitchen since the variances became necessary. She states that they knew from the beginning that this would be a temporary solution. The administration also knew that the kitchen had expressed their interest for the organization to be located closer to the neighborhood where they were. The kitchen knows the people they serve well. The administration believes in the efforts to aid them in finding that permanent location, as well as the efforts of the rest of the administration and police department to keep the downtown area safe and walkable. She states that, based on the numbers McDowell cited, in the 3 months the kitchen has not been able to operate, over 8,000 meals have gone unserved. The Mayor's administration is committed to a city and a downtown that is for everyone, including the hungry.

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

Jones asks if, after the sunset date of June 30th, would the kitchen need to come back and reapply if a new location was not found.

Smith states that the Board would need to add that as a condition.

Davis states there should be regular updates to staff regarding progress.

Smith states that staff would be in touch.

Jones states that he hopes that the tenants and stakeholders downtown will provide information on any issues that arise. He states that he worked to bring many businesses downtown and cannot ignore that so many stakeholders are not in favor. He is leaning toward the short-term solution but agrees that the Central Business District is not the best location. The service needs to be provided, but there could be a better location.

Mulvaney calls for a motion.

Jones makes motion to approve with added condition that the matter be reviewed on July 14, 2022; Second by Davis.

Davis – Yes

Thomas – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

22-BZA-09 PETITIONER IS ELKHART CLINIC BUILDING LLC PROPERTY IS LOCATED AT 303 S NAPPANEE ST

To vary from Section 26.10.D.4 Freestanding Signs, which permits a six (6)-foot tall freestanding sign at a five (5) foot setback to allow a nine (9)- foot two (2)- inch tall freestanding sign, a variance of three (3) feet two (2) inches.

To also vary from Section 26.10.D.4 Freestanding Signs, which permits a freestanding sign to be 50 square feet at the minimum five (5) foot setback, to allow for one sign with an area of 52 square feet and a second sign with an area of 91 square feet, a variance of two (2) square feet and 41 square feet respectively.

Mulvaney calls petitioner forward.

Garry Potts appears in person for the petitioner. He notes that with him is Burnhardt signs and Sherry White, an employee of Elkhart Clinic. He states that the petitioner wants to replace two free-standing signs. The first is located at the drive entrance along the street. It is approximately 9' 2" tall in overall height and set back 5' from the property line. It is 52 square feet of sign area and includes an 18 square-foot integrated message center. Sign two will be 11' 10" in overall height, set back at the same as the existing sign. It will be 91 square feet in sign area and will include a 24 square-foot integrated message center. He states they believe that strict adherence to the zoning ordinance would result in reduced, safe motorist wayfinding in addition to the developmental standard response provided in the Board's packets. He notes that they do have staff support on this.

Mulvaney asks if the main sign currently displays only words, but the new one will have a video display.

Potts states that the new one will have the capability of full-color video on it. He states that he does not know if that would be allowed by the code, but they would be able to show color images.

Mulvaney states his concern is because it faces directly down Lexington Avenue and it's a bad intersection. It does not need a bright distraction. He asks how many patients will come to the facility a day.

Sherry White appears in person and states she is the Facilities Administrator for the Elkhart Clinic. She says that the main campus building has between 800 to 1000 patients. The use of the signs is not to display video, but to provide some educational material (off microphone, inaudible comments). They are working on expanding their urgent care hours and would be able to have the community know they are available to serve.

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 at the corner of W Lexington Avenue and S Nappanee Street. The property is currently operating as a medical facility. There are three access points to the property, two on Lexington Avenue and one on Nappanee Street. The facility currently has three freestanding signs. The petitioner proposes to reinstall a freestanding sign at the Nappanee Street entrance and another freestanding sign at the intersection.

The request for the sign at the Nappanee Street entrance is to allow an increase in height and size to allow a 9 foot 2 inches tall 52 square foot sign with an 18 square foot integrated electronic message board. This is an increase of 3 feet 2 inches in height and an increase in size of 2 square feet. The request is to also allow a second integrated electronic message board for this property. For the sign at the intersection the request is to allow a 91 square foot sign an increase of 41 square feet.

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 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 as the property will continue to be used as an 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 signs are preexisting;
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 visibility of the clinic;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the signs current exist;
7. This property does not lie within a designated flood hazard area.

Hooley states there were 25 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-UV-04 PETITIONER IS BILL & ANN ZIMMERMAN PROPERTY IS LOCATED AT 329 W FRANKLIN ST

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

Mulvaney calls petitioner forward.

Bill Zimmerman appears in person. He states that they have owned and operated the building for six or seven years. The building has been used as a business office, but it is no longer needed for that purpose. He would like to sell it as a private residence. He has noticed the trend of turning commercial buildings downtown back into private residences. He notes that it does carry a single site, historical designation to the property and the buyers will be made aware of the rules and regulations pertaining to that.

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

Mike Varner appears via Webex. He states his property is to the east of this building and their parking lot is within 10-12 feet of the petitioner's building. He is not necessarily opposed, but concerned if this is the right fit for that building with being between an accounting firm and the funeral home. He states they have had several meetings with the Mayor's office regarding the future development in the area and wonders if a single family dwelling makes sense there.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The property consists of an existing house that has been used commercially recently as a funeral arrangement office. The applicant would like to convert the structure back into a single family home. This property is on the outer edge of the Central Business District and there is a mixture of commercial and residential structures in the area. At this time there is no desire to have the building continue as an office use.

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;

Hooley states there were 20 letters mailed; 1 returned in favor with no comment.

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

Jones asks if there is on-site parking for this house.

Hooley states there is on-site parking but it is split from the house onto a different parcel.

Zimmerman states that there is parking to the south of the building and it is part of the property as it consists of 5 different parcels of land. It would easily accommodate 7 cars and has room for a garage if desired. There is also city parking on 4th Street to the west and Franklin Street to the north.

Jones asks if the buyer is also buying the parking lot.

Zimmerman states it is all being sold as one parcel.

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-05 PETITIONER IS FRANK CASSELLA
PROPERTY IS LOCATED AT 221 S THIRD ST**

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

Mulvaney calls petitioner forward.

Frank Cassella appears in person. He states that he recently bought a building on Main Street and relocated their bicycle shop there. He is now selling the property to the two young people who manage his shop. He states that he lives part time in downtown Denver, Colorado and walking to various downtown activities makes for a healthy and vibrant community. He states that the two people he is selling to are very community-minded and vested in the area. The property has been appraised contingent upon the use variance. The loan is approved contingent upon the variance 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 property consists of an existing structure built around 1925 that was originally built as a residential home. The Indiana Historic Sites and Structures Inventory considers this structure contributing to the historic character of the area. It was previously converted to commercial and used as a law firm.

The applicant would like to convert the structure back into a single family home. This property is in the Central Business District which calls for a mixture of uses. The applicant would like to convert the building to be used by two of his employees as a primary residence. At this time there is no desire to have the building continue as an office use.

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 structure was built as a single family home;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the exterior appearance of the structure will not change;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief in allowing the original use of the building;
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 there is a City need for housing;
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 30 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-10 PETITIONER IS JIMTOWN CORNER LLC
PROPERTY IS LOCATED AT 3704 S NAPPANEE ST

To vary from Section 26.7.D which requires a convenience store to have 6 parking spaces per 1,000 square feet. To allow the development to have 18 parking spaces a reduction of 7 spaces.

Mulvaney calls petitioner forward.

Rob Sweet appears in person for the petitioner. They would like to construct a new convenience store and fuel source facility with a reduced number of parking spaces. He states that current code requires 26 spaces while they are proposing 10 space bike rack and 18 spaces which is a reduction of 7. He notes that the fueling canopy provides 10 spaces. He states that most people park wherever they want; if they are fueling the vehicle, they park there and go inside, if they are going to in, they park at the fueling stations anyway. In essence, these spaces do act like parking spaces and are preferred. He produces a site plan noting the pedestrian connections and access to help the parking situation. He states that the building is about 4,300 square feet and 15-20% is for the back with kitchens and coolers, and without that area it reduces the number of spaces needed to a difference of 1 or 2.

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 is proposed to develop as a Casey's gas station with a 4,300 convenience store and a 3,100 gas canopy. The proposed site plan shows the gas canopy running parallel with S Nappanee Street. Per the plan the applicant is proposing to have 18 parking spaces.

Per the zoning ordinance 6 parking spaces are required per 1,000 square feet of convenience retail. The ordinance would require 26 parking spaces and the request is for a reduction of 8 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. The gas canopy allows for an additional 10 fueling spaces.

STAFF RECOMMENDATION

The Staff recommends approval of the request for the reduction of the landscape strip 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 site design 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 businesses along S Nappanee Street are developing commercially;
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 gas canopies provide additional parking areas;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property as it would restrict the design of the site and require an excess of parking;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the zoning ordinance does not address canopy parking standards;
7. This property does not lie within a designated flood hazard area.

Smith states there were 9 letters mailed, none returned.

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

Davis makes motion to approve; Second by Jones.

Davis – Yes

Thomas – Yes


Jones – Yes

Mulvaney – Yes

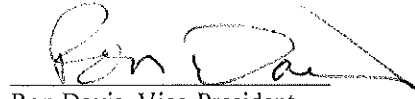
Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President