

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, April 14, 2022 - Commenced at 6:00 P.M. & adjourned at 6:35 P.M.  
City Council Chambers – Municipal Building**

Elkhart City Board of Zoning Appeals 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 approve amended agenda, tabling 22-X-05 for one month; Second by Thomas. 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**

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

**OPENING STATEMENT**

Welcome to the April 14, 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.

## NEW BUSINESS

### 22-BZA-11 PETITIONER IS FIRST NATIONAL BANK PROPERTY IS LOCATED AT 2801 CASSOPOLIS ST

To vary from Section 26.10.D.4 Free-standing Signs to allow for a sign seventeen (17) feet, three and one-half (3.5) inches in height that is setback five (5) feet from the property line, where a freestanding sign is permitted to be a maximum of six (6) feet in height, a variance of eleven (11) feet, three and one-half (3.5) inches.

To also vary from Section 26.10.D.4.b Free-standing Signs, which requires free-standing signs in a front yard to be set within a landscaped island or area a minimum of one hundred (100) square feet in area, to allow a free-standing sign in a front yard without a landscaped island or area, a variance of one hundred (100) square feet.

To also vary from Section 26.10.D.4.d Free-standing Signs, which requires a monument sign for a single tenant location to be centered on the property; petitioner is requesting a pole sign at the southeast corner of the property.

Smith states that the request has been revised by the petitioner. They have reduced the overall height to 14 feet and are going to add a landscape area of 81 square feet.

Mulvaney calls petitioner forward.

Garry Potts from Professional Permits appears in person for petitioner. He presents Exhibit A to the Board. He states the first page is the site plan of the property. He states the previous free-standing sign was blown down by the wind and the bank wanted to replace it with a similarly sized sign. They received the staff report recommending denial and made adjustments. The area marked 4'6" and 18' is where the sign used to stand and is cordoned off in the parking lot. They are going to make that the 81 square-foot raised landscape island with a curb so that people cannot run into it. The height is 14' from grade because a monument sign of 6' located in the parking lot would not be visible above the cars parked there. The bottom of the sign is 8' from grade. He states the space is very tight and to maintain visibility they cannot put the sign anywhere else. He states that there is also a traffic control box of approximately 6' that would also block visibility.

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

### STAFF ANALYSIS

This petitioner owns a bank located at the northwest corner of the intersection of Cassopolis Street and County Road 6, built in 1968. Until recently the property had a legal nonconforming pole sign located at the southeast corner of the property. It was nonconforming in terms of its height, location, and not being in a landscaped area. A major windstorm knocked the sign over, meaning the sign had to be entirely replaced, which means that the legal nonconforming status was lost.

Staff recognizes that the site was laid out prior to current regulations, and some accommodation may be necessary. However, at seventeen feet, the sign is substantially larger than other signs that have been permitted along this corridor. The sign also gets an extra boost in height because the parking lot is several feet above the surrounding grade, and wall signs also advertise the business along both County Road Six and Cassopolis Street frontages. Staff would also suggest that a curbed landscape bed for the sign would be appropriate to lessen the likelihood of a collision with a car.

There are several areas of the parking lot that are not utilized for parking, a landscaped area could easily be converted to a curbed sign bed. Some accommodation may be required to reinstall a sign given the configuration of the site. However, there is nothing unique about the site that would justify an increase in height; in fact, given that the parking lot is at a higher elevation than the street, the site offers an existing height advantage over other sites in the same district that would lessen the need for a height exception.

### STAFF RECOMMENDATION

The Staff recommends approval of the request for a developmental variance, to "vary from Section 26.10.D.4.d Free-standing Signs, which requires a monument sign for a single tenant location to be centered on the property; petitioner is requesting a pole sign at the southeast corner of the property," 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 property was constructed with the sign at that location;
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 be** consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when uniquely 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 since the property was developed prior to the current developmental standards;
5. The strict application of the terms of this Ordinance **will result** in practical difficulties in the use of the property because the property has limited space for a sign;
6. The special conditions and circumstances **do not result** from an action or inaction by the applicant;
7. This property does not lie within a designated flood hazard area.

The Staff recommends **denial** of all other aspects of the request for a 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;
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 special conditions and circumstances do not exist that would warrant relief;
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 gas canopies provide additional parking areas;
5. The strict application of the terms of this Ordinance **will not result** in practical difficulties in the use of the property because a sign could be constructed to city standards;
6. The special conditions and circumstances **do not result** from an action or inaction by the applicant;
7. This property does **not** lie within a designated flood hazard area.

Smith amends the approval to include both the corner location and the 81 square feet of landscape bed, and offer a no recommendation for the height variance. He states there were 14 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. He asks the height of a previously approved sign in the area.

Smith states that he does not recall.

Mulvaney calls for a motion regarding the two different staff recommendations.

Jones makes motion to approve the location with the agreed upon changes to a 14-foot sign and 81 square feet of landscaping; Second by Davis.

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

Motion carries.

**22-BZA-12 PETITIONER IS MCMICHAEL PROPERTIES, LLC  
 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 to be located one hundred twelve (112) feet from the south property line.

Also to vary from 26.10.D.4.c.ii which would allow a (7.25) foot tall sign at a (7.5) foot setback from the public right of way to allow a (7.5) foot tall sign an increase of a quarter (0.25) foot in height.

Mulvaney calls petitioner forward.

Stephanie Lehman from Sign Tech Services appears in person for the petitioner. She states that they would like the freestanding sign to be offset 112.52' from the south property line to the leading edge of the sign, and 7'6" feet back from the right-of-way. It would be 50' from the center of State Road 19 to the other leading edge. She presents pictures from the point where the sign will be installed. She notes there are ornamental trees to both the north and south, which would make it challenging to have the sign centered without removing them.

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

#### STAFF ANALYSIS

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 sign is proposed to be 7.5 feet from the public right-of-way at 7.5 feet in height. At this setback a 7.25-foot-tall sign would be permitted so the request is for a 2.5-inch increase in height. The proposed sign location would be similar to nearby signs that are located near the entrances to their business.

#### 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 is heavily screened;
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 sign will be placed in the same location as a previous sign;
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 business;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as there was an existing sign at this location;
7. This property does not lie within a designated flood hazard area.

Smith states there were 20 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 Jones.

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

Motion carries.

#### 22-X-06 PETITIONER IS LYNN CAROL BLACKMORE ALSO KNOWN AS LYNN CAROL ABERNATHY PROPERTY IS LOCATED AT 1403 LAUREL ST

A Special Exception as per Section 5.3, Special Exception Uses in the R-2 District, to allow for a Day Care Home.

Mulvaney calls petitioner forward.

Lynn Abernathy appears in person to request a home daycare.

Mulvaney notes they had previously approved the request for this address and asks how long the daycare was in operation.

Abernathy states it was approximately six and one-half years.

Mulvaney notes the requirement that the petitioner obtain licensure.

Abernathy states that she is in the process of that and needs this variance to complete it.

Mulvaney asks for questions for the petitioner.

Jones asks if the home is east of West Boulevard.

Abernathy confirms.

Mulvaney notes that this item will be up for review every two years by the Board. 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, Ms. Abernathy (formerly known as Ms. Blackmore) previously ran a daycare home at this location under 13-X-05, which was approved by this board on July 11, 2013. The daycare ceased operation for a period greater than one year; Ms. Abernathy wishes to start the operation again, which necessitated a new application for a Special Exception.

The house, built in 1950, comprises approximately 1,200 square feet on a .2-acre site. The house and grounds appear to be in good condition. The house has a spacious backyard and is located on a corner with a small driveway; parents may use part of the driveway or the two streets to drop off and pick up children. The daycare will necessitate a license from the Indiana Family and Social Service Administration (FSSA)

### 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 because the site has a fenced yard and parents can park on either of the two intersecting streets;
2. The special exception will not reduce the values of other properties in its immediate vicinity because the site must retain its residential character;
3. The special exception shall conform to the regulations of the Zoning District in which it is to be located because there can be no noise, smoke or odors that would compromise the neighboring properties.

### CONDITIONS

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

1. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum twelve (12) children, including those of the petitioner.
9. The operator of the day care center shall live on the premises.
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by April 11, 2024.

Smith states there were 43 letters mailed. Four returned in favor with one comment: Need all the help we can get. Two returned in favor with one comment: Zoning has R2 – one family only. He states it comes from the Plan Commission with a “Do Pass” recommendation.

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

Jones asks what constitutes reasonable notice for an inspection.

Smith states that they have not done an inspection since he has worked here. He says calling in and seeing if they could come in, or if there would be something convenient, rather than just showing up and knocking on the door.

Jones asks if 24 hours would be it.

Smith states, if they are able to accommodate to accommodate sooner, then yes.

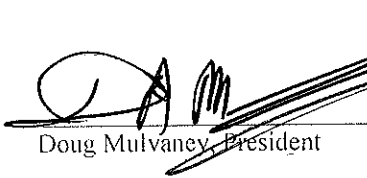
Jones makes motion to approve with conditions; Second by Davis.

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

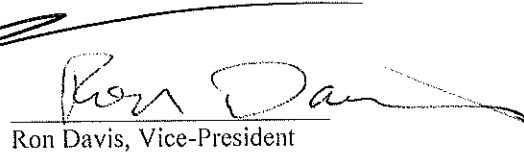
Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President