

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, May 12, 2022 - Commenced at 6:00 P.M. & adjourned at 7:20 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Johnny Thomas
Andy Jones

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner

LEGAL DEPARTMENT

None

TECHNOLOGY STAFF

David Hopkins

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AMENDED AGENDA

Jones makes motion to add item 22-SI-01 and approve; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR AUGUST 12

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the May 12, 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-05 PETITIONER IS MARIA TORRES & FRANCISCO SESMAS PROPERTY IS LOCATED AT 210 W WOLF AVENUE

A Special Exception per Section 5.3, Special Exception Uses in the R-2, One-Family Dwelling District, to allow for a daycare center.

Mulvaney calls petitioner forward.

Gary Frank appears in person for the petitioners. He states the petition is for a daycare center licensed up to 16 children ages 2-12. Hours of operation begins with drop-off around 6:00 or 7:00 AM to pick-up between 3:30-4:00 PM. There should be 6-7 parents with 2-3 kids each. Healthy meals will be provided with the sponsoring of the childcare food program. The CDC and local health department guidelines will be followed. The Fire Department has reviewed and approved the property. The rear yard is fenced in for the kids to play. Parking and drop-off will be in the back of the property, using a rarely used alley. The area will be paved and the owners would like to do that within 6-8 weeks. He states that, as the architect, he also approved the building for 16 children and the property will meet daycare guidelines. The property will be well maintained and remain residential in appearance, but no one will be living there. Roosevelt Elementary School is across the street, which parents with younger children will appreciate in close proximity. There is potential for increase in land value of the neighborhood and the school district. The owners request, as one of the conditions from the Zoning Department, that they would be allowed a small sign to be placed after being passed through the department for approval. Residential neighbors to the east and north will act as a buffer between the residential, school, and church.

Mulvaney asks if the building has been certified for enough square footage of the property.

Frank states that he has certified it, as well as the daycare group.

Mulvaney states that one condition prohibits exterior display signs and other forms of advertising on the premises. He asks what type of sign is proposed.

Frank states a small, non-permanent sign which will be presented to staff for approval.

Jones asks if there are any other signs nearby, including the church.

Frank states the church is directly west.

Jones asks if it is contiguous with the property.

Frank says it is adjacent but not attached, and has a sign.

Jones asks if there are any other signs for businesses in the area that may have been given zoning.

Frank states that he is not aware of any signs.

Jones asks for more specifics on the type of signage; type, location, lighting.

Frank states they are not looking for a lighted sign, just a daycare center identifier. He believes that the sign is supposed to be in the middle of the property.

Smith states that if a sign is under 4 square feet or posted on a door it is not considered a regulated sign. He asks the petitioner if they are considering a temporary sign for when first established.

Frank states they would like something permanent but not with a footing or foundation.

Smith states that signs for daycares in residential areas are generally prohibited. There might be a small wall sign they could work with petitioner on, but staff's recommendation would be to not allow a permanent free-standing sign.

Jones asks if the petitioner is familiar with the other 13 conditions, including no sign, and if they are only asking for that change.

Maria Torres appears in person. She states that she is familiar with the conditions. She wants the sign to identify themselves, not for promotion. She wants people around them to know who they are and why they are there. She wants their logo of two small crayons and a small square on a sturdy sign to identify them to the community.

Jones asks if they have more than 16 children who are on a waiting list.

Torres states that they have a lot of children on a waiting list, so it is not about advertising.

Francisco Sesmas appears in person. He presents a graphic of the intended design of the sign. He feels that 4 square feet would be enough for a sign, but they would like it to be permanent.

Jones asks if he would like something similar to a political yard sign.

Sesmas states yes, but permanent.

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 recently closed on a property at 210 W. Wolf Ave. that they intend to use as a Class II Daycare; the Indiana State Family and Social Services Administration (FSSA) allows for up to 16 children under a Class II license. The house was built in 1950 and comprises 672 square feet on a .16-acre parcel with an ample backyard. The property is adjacent to Agape Church and across the street from Roosevelt Elementary School.

Initially, staff had some concerns regarding the size of the building, and how staff parking, pickup and drop-off would work. The state requires 560 square feet of usable area for a Class II home. Staff inspected the house on 2/17/22. The house has a very small kitchen, bathroom, and utility area. The petitioners claim they measured the house and will meet the requirement; this will need to be certified by a professional, which the state also requires. Staff believes they may meet the requirement, but that should be confirmed by an architect or engineer.

Past owners have had an informal agreement with the church allowing them to use the edge of its parking lot as a driveway/parking area. The petitioners state they have verbal approval from the church to do so for both employee parking and drop off/pick-up. Additionally, there is considerable congestion on Wolf Avenue for drop off and pickup at Roosevelt, and parents of children at the school often use the church parking lot. Staff is concerned about conflict between the two uses and the utilization of the lot for parking.

The drop-off/pick-up arrangement is acceptable if they receive written approval from the church to use it for that purpose; the Board may contemplate requiring a formal agreement as well. Staff believes employee parking should be handled on-site and kept outside of the church parking lot. The daycare standards for parking are 1 space per employee plus 1 space per 6 students. The lot is 45 feet wide; a parking pad for up to four vehicles could be provided given the width of the lot. Additionally, the petitioners should structure their hours so that drop off and pick up do not conflict with peak times for Roosevelt Elementary.

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 if the conditions are followed;
2. The Special Exception **will not** reduce the values of other properties in its immediate vicinity because it will be a small operation and no significant changes to the property are planned;
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.

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 sixteen (16) children, including those of the petitioner.
9. Written approval shall be obtained from the adjacent church to allow them to use the church's parking lot for drop-off and pick-up.
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by March 14, 2024.
11. Drop-off and pick-up times for the daycare shall be outside of peak times for Roosevelt Elementary traffic.
12. Petitioners shall provide four (4) paved parking spaces adjacent to the rear alley.
13. The usable child care space must meet the state minimum based on the class of license obtained, to be verified by a qualified professional.

Smith states there were 24 letters mailed. None returned.

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

Smith states that the church has given verbal approval but not written confirmation.

Jones states that, based on the fact there was no objection from the church, it's probably ok, but he is concerned about the sign. He understands that this case is to be reviewed in two years and asks if a temporary sign for 6 months could be regulated.

Smith states yes.

Jones confers with the Board regarding a time limit on a sign.

Mulvaney asks Smith if he would be comfortable conferring with the petitioner about the sign and duration or if he would prefer that the Board set up the requirements.

Smith states that staff's recommendation is to allow an up to 4 foot square building or window sign; If the Board wants to allow a six-month sign with a limited square footage, it is something that could be administered.

Davis clarifies that the sign is wanted permanently.

Smith states that is his understanding. He says the sign is not allowed in any other daycare in a residential home, in a residential neighborhood. They are more restrictive in residential neighborhoods than commercial ones. He states that is an allowance in commercial districts for extra signage when businesses first establish. He does not believe it has been applied in this particular circumstance.

Jones notes that the windows aren't very large for putting a sign in them.

Smith states that many daycare homes will have a letter-sized sheet posted on the door.

Mulvaney calls for a motion.

Jones makes motion to approve with conditions and added condition that a free-standing sign shall be allowed for only the first six (6) months of operation; Second by Davis.

Davis – Yes

Thomas – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

22-X-07 PETITIONER IS FELLOWSHIP OF HOPE MENNONITE CHURCH PROPERTY IS LOCATED AT VACANT LOT W GARFIELD AVENUE

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

Mulvaney calls petitioner forward.

Andrew Hudson appears in person for the petitioner. He states he is a member of the church. They want a memorial garden in the lot adjacent to the church with access to the public and outside of the area. The lot has no house, requiring the variance. The fence will be only along the eastern and western sides (inaudible) open on the northeast.

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

The petitioner, a religious institution, own a vacant lot on the 500 block of West Garfield Ave., which is adjacent to their church building, across an alley, at 1618 S. Sixth Street. The property has been vacant for years, and the church wishes to develop it as a Memorial Garden.

The proposed design includes plantings and landscaping elements, including a north-south walkway that bisects the site, a trellis, and sections for garden plots. No off-street parking will be on the site itself, but the church has a parking lot and there is also public parking on the street. The church would be responsible for maintaining the Memorial Garden.

Staff does not anticipate that the use would cause a significant increase in traffic or entail other impacts that might be a nuisance to neighboring dwellings. The proposed use will be low-intensity and is appropriate for its residential context.

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**;
2. The Special Exception **will not** reduce the values of other properties in its immediate vicinity because it will put the site into active use and be maintained by the church;
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 38 letters mailed. None returned. He notes that the petition comes from Plan Commission with a "Do-Pass" recommendation.

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-06 PETITIONER IS ERIKA N LOPEZ LOPEZ PROPERTY IS LOCATED AT 900 W BEARDSLEY AVENUE

To vary from Section 19.2 permitted uses in the M-2, General Manufacturing District to allow an existing structure to be used as an ice cream shop. Ice cream shops are not a permitted use in the M-2 District.

Mulvaney calls petitioner forward.

Jim McCaslin appears in person for petitioner. He states that the building was formerly a Key bank. Zoning is M-2, General Manufacturing. The location is 100 feet on the street by 175 in depth. It is not practical as a manufacturing site. They are

requesting to use it as a retail site. The petitioner plans to manufacture the ice cream on site. They believe there would be adequate parking. People would eat-in with 4 tables inside and potentially 4 outside.

Mulvaney asks how soon they will plan on opening.

McCaslin states they hope for this summer.

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 commercial property constructed in 1951 and comprising 3,500 square feet on a .41-acre parcel. The property was formerly used as a bank, and includes a drive-thru area and substantial parking lot. It has been vacant for a number of years; the petitioner wishes to reuse the property as an ice cream shop. It's located on a primary street on a mixed corridor that includes residential, industrial, and commercial uses.

The property has adequate parking for the proposed use. Even though it is zoned industrial, an ice cream shop would be a low-impact and appropriate use for the corridor that would make use of the commercial structure. The petitioner will have to obtain relevant approvals from the Elkhart County Health Department.

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 commercial auto-oriented business;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because it has previously been used as a commercial business open to the public;
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 a commercial venture;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the structure was built before their ownership.

Smith states there were 24 letters mailed. Two returned in favor with no comment; One not in favor with no comment.

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

Jones asks if the drive-thru window will be open.

McCaslin states it will not.

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Jones.

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

Motion carries.

22-BZA-13 PETITIONER IS GREAT LAKES CAPITAL DEVELOPMENT LLC PROPERTY IS LOCATED AT VACANT LOT PRAIRIE STREET

To vary from Section 12.5.B, which requires Drive-Thru facilities to have adequate driveway space on the premise for ten (10) waiting vehicles for a single lane, to allow for an Automated Teller Machine (ATM) with driveway space for eight (8) vehicles, a variance of space for two (2) vehicles.

Mulvaney calls petitioner forward.

Jeff Ballard appears in person for the petitioner. He states that they worked with engineering and planning to come up with the site plan. The site is maxed out with the number of staging cars in the lane. There are 9 cars shown, but they are asking for 8 to relieve a little bit of stress at the approaches. There is enough room for cars to enter the drive-thru lane to pass safely out, if needed. He states that rarely do ATMs have that many cars backed up as they generally move quickly.

Mulvaney asks for questions from 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 owns a narrow lot bordered on the east with Prairie Street and to the west with a railroad right-of-way, and wish to develop it as a drive-up ATM. The use is permitted in the Central Business District. The proposed configuration shows a U-shaped drive with room for eight cars in a queue, and wide enough for a vehicle to pass the queue on the right side. The Zoning Ordinance requires room for ten cars.

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 there will be adequate room for stacking and passing;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the proposed use is permitted within the Central Business District;
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 because the lot is relatively small and narrow;
5. The strict application of the terms of this Ordinance **will result** in practical difficulties in the use of the property because there are limited viable uses for a property of its location and configuration;
6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the property configuration has not changed since the petitioners purchased it;
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.

Jones makes motion to approve; Second by Davis.

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

Motion carries.

22-UV-07 PETITIONER IS SJR POWERSPORTS LLC PROPERTY IS LOCATED AT 721 GRAYWOOD AVENUE

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District, to allow for retail sales of powersports machines, which is not a permitted use in the M-1 District.

Mulvaney calls petitioner forward.

Jason Lewis appears in person for the petitioner. He states the site is used for repair and maintenance of power sports vehicles such as motorcycles and ATVs. Current zoning is limited manufacturing, and they would like to do a number of retail sales. Ninety percent of the process would happen online, sales would be by appointment only. There will be no outward change to the business as far as signage, showroom, or display, and a negligible difference in traffic to and from the property. He states that maintenance facilities often accrue items that are abandoned or that work cannot be paid for by the customer. They want to be able to offer a professional sale including titling and a temporary tag. He states that they have begun the process for state licensing and it has

required them to get the zoning affidavit. If not approved, they would have to find a different course with the product and may have to put product outside or find a place to store it as it accumulates. They have stated should be one to two sales a month, but it will most likely be far fewer. If the situation grows to require more than that, they would not want stay on the dead end road and would seek to move.

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

The petitioner owns an industrial property comprising two parcels, approximately .85 acres with about 6,000 sf of buildings. They have been using the facility for repair and maintenance of Powersports machines such as motorcycles, ATVs, and snowmobiles, which is a permitted use in the district. They would like to sell a small volume of units and have stated that they will not be acquiring any specifically for sale; rather they will be reselling products that are either abandoned or turned over for lack of payment. They anticipate the volume to be approximately one or two per month. Sales would typically begin online, with the buyer picking up the product at the Graywood facility.

Under the City of Elkhart's Zoning Ordinance, retail sales are only allowed in B Districts, and sales of vehicles are restricted to B-3 and B-4 Districts. Since this is in an industrial zone, neither of these uses are allowed by right. Vehicle sales in the City have been concentrated along major commercial corridors both to afford visibility and take advantage of signage permissible in commercial districts, as well to ensure they have access to roads with the capacity to handle the amount of traffic

As a result, two of the major concerns with locating a public sales business in a manufacturing district are traffic and signage. This company's business model is different from the type of dealership contemplated in the Zoning Ordinance. Selling a small volume of product left by customers differs from a typical dealership, which can attract a significant amount of traffic. Staff recommends approval with some conditions in order to restrict the property from functioning as a typical dealership, which would not be appropriate for the Graywood environment.

STAFF RECOMMENDATION

The Staff recommends **approval** of the use 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 sales will be limited and conducted inside the building;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because visual and other impacts will be similar to its permitted vehicle repair uses;
3. The need for the variance does arise from some condition peculiar to the property because the use would not be permitted without board action;
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 because it does not allow for the use without Board action;
5. The approval will be in compliance with the Comprehensive Plan which is anticipated to call for industrial land uses;

CONDITIONS

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

1. All sales shall be indoors. Outside sales or display will not be allowed.
2. There shall be no signage in excess of what's allowed in the district by ordinance.

Smith states there were 12 letters mailed. Three returned in favor with no comment. One returned not in favor with comments: Too much excessive loudness from revving of motors and test-driving up and down street.

Mulvaney asks if the wall sign shown in the picture is appropriate for the district at this point.

Smith states that it does.

Mulvaney calls for a motion.

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

Davis – Yes

Thomas – Yes
Jones – Yes
Mulvaney – Yes

Motion carries.

**22-UV-08 PETITIONER IS BRENDA G GONZALEZ GUTIERREZ
PROPERTY IS LOCATED AT 1800 W FRANKLIN STREET**

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 a permitted use in the M-1 District.

Mulvaney calls petitioner forward.

Brenda Gonzalez appears in person. She states her original intent was to run a small tax preparation business. She has been doing taxes from her home for about 6 years and when she purchased the property she thought it would work; after putting her savings into the repair and enhancement of the property, the cost of a mortgage and maintaining her primary home does not work. The property does not have a basement, is one level, under 900 square feet, and has two bedrooms, 1 bath, kitchen, and living area. There is no garage. She purchased in September and started remodeling. It had been vacant for years and the properties surrounding it are mainly single-family residential homes. Across the street is a retail resale shop and a vacant lot with a sign.

Mulvaney asks for questions from the Board.

Jones states that the renovations are beautiful.

Mulvaney notes the staff's parking, paving, and permitting requirements, and asks if there are any issues with those conditions.

Jones asks what the timetable is for paving.

Smith states that the priority is getting code violations in the house corrected and he can be flexible on the paving. Staff understands that budgeting can be an issue and would like flexibility to work with the petitioner.

Jones asks if the parking is gravel now and what the other residences have.

Smith states there is probably a mix as is common for older areas of the city, but as the properties improve and change over, they are brought up to current code.

Jones asks if one year is enough.

Gonzalez states that it is.

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 formerly-commercial building built in 1920 and comprising 840 square feet on a .13-acre site at the northwest corner of Franklin and Avalon Streets. The property was recently converted to a single family residence, mostly without the benefit of permits. Work had been done on the roof, electrical system, HVAC and plumbing. Staff inspected the property on April 19. A number of deficiencies were found; the owner was provided a list of issues and the steps needed to be taken to remediate them.

While the property is located in a primarily residential side of Franklin Street, it is zoned industrial and the overall character of the corridor is mixed, with residential along with commercial and industrial land uses. Staff does not have an issue with the use of the property as a residence. However, steps should be taken to bring the property up to code, including the aforementioned building deficiencies. Additionally, paved parking should be provided, a sidewalk should be constructed on Avalon Street, and the gravel parking should be phased out in order to bring the property up to current residential standards.

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 is in a neighborhood with single family residences as a primary land use;
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 when warranted;
4. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the building because it has already been converted to a residence;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

CONDITIONS

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

1. Unpaved parking shall be removed.
2. Paved parking according to city standards shall be provided. Petitioner shall work with staff on permitting and configuration.
3. The conversion to single family residential shall be permitted and approved by the City's Building Department.

Smith states there were 24 letters mailed. None returned in favor; two returned not in favor with one comment: We feel that if we start allowing people to live in the area of these businesses that it opens a Pandora's Box for complaints from home owners about business operations. We have a lot of trucks that pick-up and drop off material. How long until we get noise complaints or traffic complaints. I'm in favor of residential growth to help the town, but it isn't where established businesses are.

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

Jones asks if there is on-street parking.

Smith states there is not.

Jones asks if the garage was converted into living space and where the driveway would be.

Smith states the driveway would lead up to the former garage space.

Jones comments that that is not a huge space, but he knows there is also concrete work to do, in addition to the house work. With the current expense of concrete he would like to give her 24 months instead of 12. He confers with the Board.

Davis asks if Gonzalez is prepared to do all the concrete work now.

Gonzalez states that she is not prepared to do it in the next few months or the end of the year, but can before next fall. An extension would be great just in case, but she is hopeful that before fall of next year it will be done.

Smith requests to keep the condition to a year with the understanding that, if the petitioner runs in to difficulties, it can be discussed at that time to allow flexibility.

Jones inquires to the board about how to make a motion for that instance.

Mulvaney states they can modify the condition for up to 12 months and if there is an issue staff can bring it in as a staff item.

Jones makes motion to approve with conditions adding up to 12 months for paving with the option for an extension if requested from the Board; Second by Thomas.

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

Motion carries.

22-UV-09 PETITIONER IS JERRY A LANE
PROPERTY IS LOCATED AT 1317 JOHNSON STREET

To vary from Section 11.2, Permitted Uses in the B-1, Neighborhood Business District, to allow for a single-family dwelling. Single-family dwellings are not a permitted use in the B-1 District.

Mulvaney calls petitioner forward.

Jerry Lane appears in person. He states a car hit his house and cause considerable damage. He has lived in the house since 1963 and is now living in a hotel until it is repaired. He would like to move back in when it is finished.

Mulvaney asks for questions from the Board.

Thomas asks if he will have any financial problems repairing the home.

Lane states it is totally covered by insurance. They have all the permits and are ready to build. There was a structural engineer to ensure the foundation was set correctly and approved.

Mulvaney opens for public comments to speak in favor.

Cindy Darling appears via Webex. She states that she lives about a block away from the petitioner and is in favor.

Mulvaney notes that there are a number of thumbs up on the Facebook feed and William Steele has also commented in favor. He opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a single family residence built in 1910 and comprising 1,000 square feet on a .19-acre lot. The house was recently struck by a car and is in need of repairs, which are greater than 50% of the total construction cost of the building, exclusive of foundation. Due to the extent of damage, the legal nonconforming status is lost, and the owner needs a variance in order to repair the residence.

While the property is located in a commercial district, the land uses surrounding it are primarily residential.

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 petitioner's ownership;

Smith states there were 32 letters mailed. One returned in favor with no comment. One phone call was in favor. One phone call was not in favor with concerns regarding lowered home value.

Drlich clarifies that she does not believe the person not in favor understood that the land was already B-1 and was not being changed to B-1, which was why they were opposed.

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.

**22-BZA-14 PETITIONER IS R B REALTY LLC
PROPERTY IS LOCATED AT 3112 LEXINGTON PARK DRIVE**

To vary from Section 26.7.C.7.f Parking Lot Design, which requires a continuous curb at least six (6) inches in height in commercial properties, to allow a parking lot expansion without a curb, at an existing commercial facility.

Smith states for the record that the petitioner has withdrawn the petition.

STAFF ITEM

22-SI-01 - REVIEW OF 21-UV-14, 21-BZA-29

Staff requests guidance from the BZA on progress at the vacant lots at Folsom and Belmont.

STAFF ANALYSIS

In July of last year, 21-UV-14 and 21-BZA-29 were approved by the BZA to allow a tree cutting service at Vacant Lots near Folsom and Belmont. The following conditions were placed upon the approvals:

- Instead of gravel, the lot must be paved enough for the current vehicles to be properly parked.
- The petitioner will have the four parcels surveyed with the corners marked within 3 months of approval, and provide a copy of the survey to city staff
- No more vehicles than what are currently stored on the property may be stored on the property.

Little progress has been made since last July. Last fall the petitioners informed us that a survey had been done – however, it was not a full survey, they had simply asked a surveyor to mark the corners on their property, and by the time staff made it out to the property one of them had been removed. It did appear that they had been encroaching on the city lots to the northwest.

Staff, including the Planning and Engineering Departments and the Environmental Center met with the petitioners on the site in Fall of 2021. We went over exactly what was expected of them, including mapping the edge of the wetland, having a complete grading plan to ensure no runoff is being directed off-site, and a paving plan to be approved through the city's Technical Review process. The idea was that the petitioners would work with a consultant over the winter to prepare a plan, which could then be implemented in the spring.

Staff contacted the petitioners this spring to check on the progress of their plan; they had contacted an architect regarding a potential building on the site but had not discussed with anyone their plans for the site. Staff reiterated exactly what was expected of them and asked them to contact their surveyor. Recently they stated they had received a quote and wouldn't be able to afford the survey work immediately, and asked for more time. Staff asked what a realistic time frame was and did not receive a response. The Environmental Center was asked for to list their concerns for the site, since the adjacent wetland is on their property. Director Jeff Zavatsky responded with the following:

“Here are our concerns:

1. This property borders a wetland. One of the most threatened and sensitive ecosystems in Indiana.
2. When we visited last fall, they were instructed to remove the illegal dumping in the back area (wetland). This has not happened.
3. When we inspected the 2 city lots in between Mr. Martin. There was a lot of trash and “junk” and landscape refuse present. Although some of the trash could have been blown in, the larger trash and especially the cut tree logs and leaf piles were not. (Those piles can still be seen in elevate.)
4. We are concerned with the continued illegal dumping of landscape material (leaves, branches logs) from a commercial landscaper. Especially, bringing in any dead or diseased trees from outside this area. They have the possibly to introduce any new diseases or insects from infected trees. Their 3 lots have been fenced in on 3 sides and not the back that adjoins the wetland, suggesting continued illegal dumping of landscape material.
5. The machinery that is used requires oil to run and lubricate. What guarantee do we have that this will not find it way to the ground and wetlands without a solid surface. A 5-gallon bucket of oil or ?? was observed next to a boom truck in the fenced in lot.
6. They were instructed to have water runoff sloped away from wetland. Not convinced this has happened.

7. Cars are still being parked on grass on lot next to Folsom St.”

This property has been a concern for approximately two and a half years. Part of the delays in progress have to do with COVID. However, staff has been very patient and generous in trying to give a small local business the opportunity to establish themselves, but the lack of progress and environmental concerns are troubling.

Staff requests some guidance from the BZA on how to approach the situation. Some possible approaches may include giving the petitioners additional time (a specific time frame would be appropriate), enacting enforcement measures such as fines, or seeking to revoke the variances and compel them to move the operation.

STAFF RECOMMENDATION

Staff requests guidance on how to approach the conditions listed in the variance for the vacant lots on Folsom and Belmont.

Smith notes that the photos received tonight were taken on Tuesday. Zavatsky went out from their property, looking up to the Guerra’s property for the first time and estimated there are 1 ½ to 2 dump trucks worth of material and will probably require an excavator to clear everything out. Zavatsky has said most of it predates when they were spoken to in the fall, but some is fresh, indicating there is still some dumping. The property is open on the backside, suggesting they are intending to still use that for dumping.

Davis asks if the Board did specify that they were to blacktop or concrete.

Smith states yes, the understanding was they could have gravel leading to the parking spaces, but they were to pave underneath. Staff has required them to hire a surveyor or engineer to work the full site so that there is a full understanding of how the drainage is working and how it relates to the wetlands, which seems to be the sticking point now.

Mulvaney recalls that there was quite a bit of opposition to the neighborhood. He is concerned that if they cannot afford to do the full survey, they cannot afford to pave or remove the junk off the property. He believe hard, fast deadlines with 2 – 3 month requirements need to be met or the Board will revoke the variance.

Jones agrees. He would revoke it right away, but that would offer a chance to make changes. He agrees this is really bad and understands why the neighbors aren’t happy.

Mulvaney says step one is to get the survey, but if they can’t then the rest is pointless. He suggests 2 months to get the full survey, remove the illegal dumping, and remove the cars. If that is done, then there are 3 months to pave the lot.

Jones asks if the area floods.

Smith states he does not believe the floodwaters have gotten that high. The back of the property has a significant slope and down below that is the flood zone.

Jones asks if the tires and debris would not be something that floated down and collected.

Smith states it is doubtful, but not provable.

Mulvaney states from the picture that it looks to be tires, but it may be hollowed out logs.

Smith states he believes there are also some household appliances.

Mulvaney notes manmade items in the pictures.

Davis agrees that it looks like a mini landfill.

Smith clarifies for the staff that 2 months from today they must have the design work with a survey and clear out the dumping that’s occurred on the property. If they fail to meet that deadline, the Board will move forward with a revocation. He asks if that’s at each stage.

Mulvaney states that is the minimum; get the survey, remove the illegal dumping, and the cars.

Smith states that in July there will be an update or a request for revocation. He is meeting with the Legal Department on Monday to have something to the petitioner as soon as possible.

Mulvaney states that they wanted to give a new business a break but he does not know if they can financially make it.

Smith suggests they should do as everyone else who rents a space until enough money can be saved or financed to build something of their own.

Mulvaney states tree businesses are very busy, so they should be doing well. He calls for a motion.

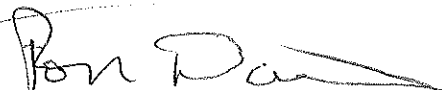
Jones makes a motion to approve the time limits and requirements set forth in the discussion; Second by Davis. All are in favor. Voice vote carries.

ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting. Davis makes motion to adjourn; second by Jones. Voice vote carries.



Doug Mulvaney, President



Ron Davis, Vice-President