

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, May 13, 2021 - Commenced at 6:00 P.M. & adjourned at 7:02 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  
Jeff Schaffer  
Andrew Strycker

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Ryan Smith, Planner  
Nathan Hooley, Planner

**LEGAL DEPARTMENT**

Randy Arndt, Deputy City Attorney

**TECHNOLOGY STAFF**

James Hines

**RECORDING SECRETARY**

Jennifer Drlich

**AMENDMENT AND APPROVAL OF AGENDA**

Mulvaney states a one-month postponement of item 20-BZA-42 has been requested.

Strycker makes motion to remove 20-BZA-42 and approve agenda; Second by Davis. Voice vote carries.

**APPROVAL OF MINUTES FOR APRIL 8, 2021**

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

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the May 13, 2021 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

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

## OLD BUSINESS

### 21-BZA-02 PETITIONER IS H&O INVESTMENTS PROPERTY, LLC PROPERTY IS LOCATED AT VACANT LOT, COUNTY ROAD 6 EAST (WEST OF STRYKER)

To vary from Section 26.5.D.1 Major Thoroughfare Setback, which states "no principal building or structure shall be placed within one hundred twenty (120) feet of the center line of the right-of-way of any street designated as a major thoroughfare," to allow a principal building located seventy-four (74) feet from the centerline of County Road 6, a variance of forty-six (46) feet.

Mulvaney calls petitioner forward.

Tom Cowen and Whitney Pizzala appear online for the petitioner. Cowen states they have been working with city staff and Tech Review to receive approval from Plan Commission in order to move on to the Board and City Council.

Mulvaney asks for questions from the Board. 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 approximately 1.35 acres of land at the southwest corner of Stryker and CR 6. While currently zoned M-1, they have petitioned for it to be rezoned to B-2 for the development of a retail store; that request has received a do pass recommendation from the Plan Commission.

They wish to vary the front yard setback from 120' to 74', a variance of 46'. The proposed site layout has gone through several iterations, with the current layout having mostly passed Technical Review. While the proposal does encroach into the major thoroughfare setback, it leaves adequate room for future improvements to County Road 6.

### 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;
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 warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property;
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 area.

Smith states there were 26 letters mailed. Two returned not in favor, one with comments: "No, because I know they are trying to slide in the Dollar General again with the entrance and exit on Stryker Street, a residential area street."

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

Strycker asks what was the change between the first time the petitioner applied and this time where it's recommended for approval.

Smith states that there have been several meetings with the petitioner. At first, staff believed there were other options for the site. With stipulations for the site layout by Dollar General, they now believe this is the only option.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Davis.

Davis – Yes  
Schaffer – Yes  
Strycker – No  
Mulvaney – Yes

Motion carries.

**21-BZA-10 PETITIONER IS FERNANDO SANCHEZ QUINTOS AND CYNTHIA MACOSTA ORTEGA  
PROPERTY IS LOCATED AT 1731 S MAIN STREET**

To vary from Section 26.4.A.6 Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Petitioner fails to appear either in person or on Webex.

Smith states that he spoke to petitioner about their options but they did not make a clear decision. He suggests that they table the petition for one month, during which time he will reach out to the petitioner again.

Mulvaney calls for a motion.

Strycker makes motion to table; Second by Davis.

Motion carries unanimous.

**NEW BUSINESS**

**21-UV-06 PETITIONER IS BRADLEY NORMAN  
PROPERTY IS LOCATED AT 915 S MAIN ST**

To vary from Section 15.2. (Q) multi-family residential dwelling located above commercial uses to allow residential uses in the basement of an existing multitenant building.

Mulvaney calls petitioner forward.

Sam Voss appears in person for Go-Go Real Estate and Bradley Norman. He states they are remodeling the entire building, and there is adequate space in the basement area to add two more apartments.

Mulvaney asks for questions from the Board. He also asks if it will be affordable housing.

Voss states it is. He says there are currently seven apartments and they want to open it to nine.

Strycker asks if there is proper egress or escape out of the basement in case of fire.

Voss states there is one opening right now, but they plan on putting egress windows in the bedroom areas for each apartment.

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 existing building built around 1875 is currently being used as a multi-family home. The petitioner desires to convert unused open space in the basement of the building into two large two bedroom apartments.

The petitioner states with walkable amenities along downtown Main Street, ample street parking, and that the residents may not have vehicles there should be enough parking for all the residents of the building. There is an existing detached 3-4 car garage behind the building and paving that can accommodate parking for some of the current and proposed residents.

**STAFF RECOMMENDATION**

Staff recommends approval of the request 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 will continue to operate as a multi-family dwelling;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the building is being updated and will remain residential in appearance;
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 property because it places constraints on this buildings ability to utilize unoccupied below grade space;

5. The special conditions and circumstances do not result from an action or inaction by the applicant;

Hooley states there were 44 letters mailed. One returned in favor and one not in favor with no comments.

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

Strycker makes motion to approve; Second by Davis.

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**21-BZA-12 PETITIONER IS CONCORD COMMUNITY SCHOOLS  
PROPERTY IS LOCATED AT 4000 S MAIN ST**

To vary from Section 26.4.A.7 which limits the height of a fence to six (6) feet in height to allow a fence at eight (8) feet in height.

Mulvaney calls petitioner forward.

Randall Hesser appears for the petitioner. He presents renderings for the Board to consider. He states the property is where the transportation center is being built. The property has already been annexed in order to receive city services. They would like an 8-foot fence around the property for security, a variance of two feet. He directs the Board to the drawings showing the front of the transportation center, where the fencing would be located, and the type of fencing proposed. He states they would also like the fence for aesthetics. He states the property backs up to a railroad track which creates issues; There are no neighbors in the rear to report suspicious activity. The fence will not block the view of any neighbors and it is very far from the road so the size will not adversely affect anyone.

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

**STAFF ANALYSIS**

The property is currently under construction for a transportation center for the use of Concord Intermediary School which is across the street. Construction of the facility is estimated to be completed this summer. The property has recently been annexed into the City Limits.

The request is to allow an 8-foot-tall perimeter fence for security and screening purposes. The property borders an elevated railroad which provides a buffer to the east. The petitioner feels the additional height to the fence will provide additional security.

**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 fence will not be constructed with any materials that can be considered harmful;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the business is behind existing businesses and the property is buffered by the elevated railroad;
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 use of the property is behind existing businesses and bordered by an elevated railroad;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would reduce security measures needed to operate;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;

Hooley states there were 24 letters mailed. One returned not in favor with no comment.

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

Schaffer makes motion to approve; Second by Strycker.

Davis – Yes  
Schaffer – Yes  
Strycker – Yes  
Mulvaney – Yes

Motion carries.

**21-BZA-13 PETITIONER IS HOLLY BYERS**  
**PROPERTY IS LOCATED AT 1401 W LEXINGTON AVE**

To vary from Section 26.4.B Fence Requirements to allow for a wood privacy fence six (6) feet in height in the corner side yard where a split rail, wrought iron, or open picket fence not to exceed four (4) feet in height is permitted.

Mulvaney calls petitioner forward.

Holly Byers appears in person. She states that there was one error on her petition drawing. She states the fence was drawn just outside of the property line, but they want it on the property line. They want to add protection for younger family members and their own future children from any sort of voyeurism and onlookers, as well as to line up with the side door to allow access to the house from the back yard. If lined up with the side of the house they would have to use the east entrance which could impede on the neighbor's driveway and cause conflict with that neighbor.

Mulvaney asks for questions from the Board.

Strycker asks if the fence is in the front yard or just along the side.

Byers states that it is only the side yard to about the middle of the house.

Strycker states that it should not cause visual issues trying to turn that corner.

Byers states that they wanted to make sure that the fence is set forward from the garage in the back to make sure there are no visual issues with the alley either.

Mulvaney asks if Byers has spoken to the city about the encroachment issue. He reads the condition and asks staff for clarification.

Hooley states that if the petitioner is going to design the fence to be against the property line as she said, then the encroachment would not be required, only if they cross the property line.

Schaffer states that it seems if they didn't violate the corner side yard, because the fence would have to run from the east side of the house due south, it would cut about half of the proposed area out. He does see the unique situation because the house is narrow on a wide lot.

Mulvaney opens for public comments to speak in favor.

Rollie White, who also resides at the address, steps forward in favor, citing the previous reasons given by Byers. He states there have already been instances of people coming into the yard or up to it, even urinating on a tree outside.

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

**STAFF ANALYSIS**

The proposal is for a 6 ft. fence to encroach into the corner side yard setback. The site plan provided by the applicant appears to have the fence encroaching into the public right-of-way. Approval of the submitted site plan would require an encroachment from the Board of Public Works and an approval from the Board of Zoning Appeals for an allowance of a 0 ft. setback to the property line.

The petitioner feels that a 6 ft. tall fence will provide sufficient security for her pets and family members. The proposed fence is also to enclose an existing deck area that was added to the east side of the home. This decking area was added to the home between 2019 and 2021 and does not appear to have any permits.

A previously approved permit from 2003 showed the property with a proposed 4 ft. tall open picket fence along Linden Ave. Though this fence was not installed it showed that the property could function with a decorative open fence. The previous owners were aware of the ordinance requirements and willing to comply with the type of fencing permitted in the corner lot.

In the file there are examples of other homes with fencing in a similar location as the petitioner's proposal. Most of these fences have been in existence for a decade or more but staff was unable to find permits for their construction.

### **STAFF RECOMMENDATION**

The Staff recommends that the Petitioner's request be denied based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the location of the fence will bring a visual barrier closer to the street than what would be allowed by ordinance;
2. Granting the variance would not be consistent with the intent and purpose of the Zoning Ordinance with regard to the proximity of the fence to the adjacent street;
3. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
4. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property to continue as it is used;

### **CONDITIONS**

1. If approved, an approved encroachment from the Board of Public Works would be needed along with a Zoning Clearance permit.

Hooley states there were 35 letters mailed. One returned in favor and one not in favor with no comments.

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

Strycker clarifies that the condition will not be needed if the fence is at the property line and not over.

Hooley states that is correct.

Byers states that they will put the fence on the property line and will submit a revised plan showing that.

Mulvaney calls for a motion.

Schaffer makes motion to approve with condition that a revised site plan will be submitted to the staff, showing that the fence is entirely on the property line, and that the staff would have the opportunity to review that as part of the permit process for the fence; Second by Strycker.

Davis – Yes  
Schaffer – Yes  
Strycker – Yes  
Mulvaney – Yes

Motion carries.

### **21-BZA-14 PETITIONER IS BCW PROPERTIES LLC, DONALD & FANNY ARCENATH BERGESON, MAYWELL DEVELOPMENT LLC, JESSE & RENEE STRIEBY, SMARTT PROPERTY LLC PROPERTY IS LOCATED AT 2426 CASSOPOLIS ST**

To vary from Section 26.6.B.5, Exterior Lighting Standards, which requires "all lighting structures within a property or planned development shall... be of uniform height," to allow for 21 lighting structures at thirty (30) feet in height and 22 lighting structures at twenty (20) feet in height in a planned development. The twenty (20) foot lighting structures are proposed to be installed when within 75' of a residential use property.

Mulvaney calls petitioner forward.

Jon Sheidler with Woolpert appears online for the petitioner. He states that he is the engineering consultant for Meijer Stores. He states they have discussed the lighting ordinances with staff regarding lighting within 75 feet of residences being limited to 20 feet in height. He states that is effectively all of the lighting on the Meijer property and it is relatively low height for a shopping center parking lot. They have proposed providing the 20-foot max lighting along the property lines where it is within 75 feet of the

residential properties, but then be able to provide 30-foot tall lighting in the rest of the development. He states the 20-foot limit would require more than twice the number of poles and would still not provide even lighting throughout the parking lot.

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 enumerated in this report is currently under development as a new Meijer store with approximately 150,000 square feet of retail. The property occupies over 28 acres, with a large associated parking lot. The northern edge of the property borders on residential land uses. The city's height regulations for new developments include provisions for a 30' maximum height in general, 20' maximum height when within 75' of residential properties, and that the height be uniform throughout a given development.

The developers' request for a variance in the uniformity to allow for different heights when within 75' of residential and when not. It would allow for 20' high poles when within the 75' of residential and 30' high when not.

The project is significantly larger than most other commercial and industrial properties developed with the city. The north-south width of the majority of the site is over 600'. While it is reasonable for smaller sites to have uniform pole height, the scale of this development warrants an exception to allow for a scheme with fewer overall light poles (increasing efficiency) and two overall heights. The light poles will be uniform in design. Given that the land involved could easily be large enough for two separate developments, in which case two different styles of lighting would be allowed, it's unlikely that the proposed variation will be a detriment to the overall aesthetic of the property.

#### **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 varied height would allow for a lower height (20') when adjacent to residential;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the lights will be limited in cast light at the property lines;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the scale of the development allows for some variation in light height;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would decrease efficiency;
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 area.

Smith states there were 30 letters mailed. Two returned in favor with no comments.

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

Schaffer asks for confirmation that even with the variance they are meeting the photometric requirements.

Smith states they are.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

Davis – Yes  
Schaffer – Yes  
Strycker – Yes  
Mulvaney – Yes

Motion carries.

**21-BZA-15 PETITIONER IS R E T A INC**  
**PROPERTY IS LOCATED AT 116 W JACKSON BLVD**

To vary from Section 26.7.C.7.1.ii.a.i, Parking Lot Landscaping, which requires a four (4) feet wide landscape strip when a parking lot of one to forty (1-40) spaces abuts a building, to allow for a landscape strip one and a half (1.5) feet abutting a building, a variance of two and a half (2.5) feet.

Mulvaney calls petitioner forward.

Arvin Delacruz appears in person for the petitioner. He states he is the architect for Abonmarche. He is appearing with Rod Tackett, an executive leadership member and investment director for RETA, as well as Dustin Miller with DJ Construction. He asks that the Board accept closer than the 4-foot requirement for the parking lot adjacent to the building on the northwest corner. He states with the existing parcel, and historic significance of the existing post office building, as well as wanting to maximize parking within the central business district and encourage density, they were able to meet all the other modifications requested by Tech Review. He states they have designed a curb along the north wall with a similar condition to the existing site. The proposed area between that curb and the building is a stone mulch, with the current condition as it stands.

Mulvaney asks if they will also renovate the historic post office portion of the building.

Delacruz states that is correct, part will be renovated on the interior, as well as bringing some of the windows back to the original intent. While the building is not on the national registry, there is a local historical significance to that parcel. They were sensitive to how the project would fit into the rest of the urban fabric.

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

Laura Macias appears. She states that she is the owner of the business next to this project. She states that she has brought her son with her for translation as her English is not very good. She is concerned that her business will be blocked by signs and bus parking and her customers won't be able to see her shop.

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

**STAFF ANALYSIS**

The property includes a historic post office and a former pet shop; the petitioner is in the process of redeveloping the property, retaining the post office and adding onto that building with a new structure, for the use of a non-profit pregnancy clinic and family resource center. The project has gone through technical review and is mostly approved except for a parking setback in relation to a property line and building on the northwest quarter of the block, and an architectural detail.

It's worth noting that, according to a survey provided during the technical review process, the building adjacent to the proposed parking lot setback has crossed the property line. The proposed parking is two feet from the property line and 1.5' from the building, where four feet is required. The setback is not needed for drainage, since retention will occur primarily through a series of drywells on site. The property is also within the Central Business District, in which denser development than the rest of the city is the norm.

**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 property is in the relatively dense Central Business District;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will not affect the adjacent building;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the land on which the development proposed is limited;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it may not allow for sufficient parking;
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 area.

Smith states there were 34 letters mailed. Two returned in favor with no comments.



Schaffer asks if the adjoining business owner was concerned about plants or vegetation blocking her building. He asks if the plan is that there wouldn't be any plants, just turf.

Smith states they are required to maintain it just as any other property.

Schaffer asks if it would be sensible to continue with landscape stone rather than a vegetation strip.

Smith states that there is no room for a shrub or anything that would grow very tall.

Schaffer states that the petitioner is nodding, so he may add that as a condition because it seems that would not be a big deal and that would make the business owner know that she would be okay as well.

Macias approaches with her son to interpret. He states that they were not really talking about plants and vegetation. She was concerned about a big trailer the petitioner was going to put in to cover up the view of her building so customers could not see it.

Delacruz states that the owner plans to park the RV in question inside the adjacent parking structure on the property. It will not be left out on the yard.

Macias asks if she will receive a letter to inform her about this meeting. Someone told her that she would get a letter regarding the case before, but she never got anything.

Smith states he will address her concerns after the meeting.

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

Strycker makes motion to approve; Second by Davis.

Davis – Yes  
Schaffer – Yes  
Strycker – Yes  
Mulvaney – Yes

Motion carries.

**21-UV-07 PETITIONER IS LACASA OF GOSHEN INC  
PROPERTY IS LOCATED AT 208 W INDIANA AVE**

To vary from Section 11.2, Permitted Uses in the B-1 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.

Petitioner fails to appear.

Smith states that he was expecting the petitioner to appear and suggests that the item be tabled for one month so that he can reach out to them.

Mulvaney calls for a motion.

Strycker makes motion to table for one month; Second by Schaffer.

Davis – Yes  
Schaffer – Yes  
Strycker – Yes  
Mulvaney – Yes

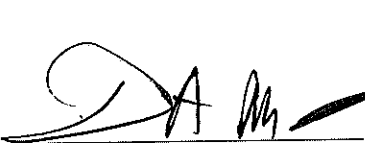
Motion carries.

**STAFF ITEMS**

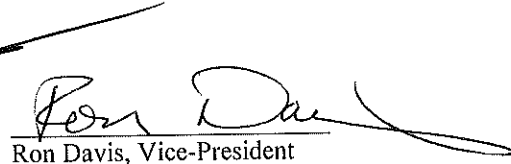
None

**ADJOURNMENT**

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



Doug Mulvaney, President



Ron Davis, Vice-President