

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, June 10, 2021 - Commenced at 6:00 P.M. & adjourned at 7:55 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
Jeff Schaffer
Andrew Strycker

MEMBERS ABSENT

Ron Davis

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

Justin Knopsnyder

RECORDING SECRETARY

Jennifer Drlich

AMMENDMENT AND APPROVAL OF AGENDA

Strycker makes motion to table items 20-BZA-42 and 21-BZA-16 for one month per petitioner requests; Second by Schaffer. Voice vote carries.

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

APPROVAL OF MINUTES FOR May 13, 2021

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the June 10, 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-10 PETITIONER IS FERNANDO SANCHEZ QUINTOS AND CYNTHIA M ACOSTA 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 for second time; staff recommends denial based on this fact.

Mulvaney calls for a motion.

Strycker makes motion to deny; Second by Schaffer.

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.

Brad Hunsberger appears via Webex. He requests an approval of this petition for a single-family home. The area is surrounded on both sides by single-family housing. It is a bit of a transition area into some businesses along Benham Avenue, but it is otherwise a residential area.

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 petitioner owns a vacant lot on a block of Indiana Avenue that is primarily residential in use but zoned B-1. They wish to develop the property as a single family residence, similar to those flanking the property. While the zoning is meant to guide the area towards commercial development in the long-term, a single family residence in the near-term will be compatible with the other single family residences that are to the east, west, and south.

The current site plan shows access from the rear, however, the alleyway that once existed there has been vacated. The petitioner will need to secure legal ingress/egress access to the lot in order to develop it.

STAFF RECOMMENDATION

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

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because a single family residence will be similar to other nearby properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property will be compatible with the neighborhood
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it is a narrow lot that doesn't lend itself to commercial development;
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 special exception, staff recommends that the following conditions be placed upon the approval:

1. Any access to the property, once developed, will be from a legally established right-of-way.

Smith states there were 33 letters mailed, 0 returned.

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

Schaffer asks if the sketch provided would roughly comply with residential use.

Smith states that it would be appropriate in an R-2 district.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

- Schaffer – Yes
- Strycker – Yes
- Mulvaney – Yes

Motion carries.

NEW BUSINESS

**21-BZA-17 PETITIONER IS 3 CREEK LLC
PROPERTY IS LOCATED AT 500 BENCHMARK DR**

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag storage lot for recreational vehicles in the corner side yard.

Mulvaney calls petitioner forward.

Coley Brady appears online for 3 Creek and Alliance RV.

Matt Schuster appears online for JPR and 3 Creek LLC. He states they want to construct a gravel storage lot within the floodway are of Pine Creek between their existing storm water retention basin and the creek. As a part of this plan, the existing vegetation would remain along County Road 17. The proposed gravel storage area would be used for towable, recreational vehicles as building would not be permitted in the proposed area. There would not be any motors, chassis storage, or raw materials would be here. The overall site has grown quickly with a fourth building under construction. The need for additional storage comes from material shortages in the industry which is causing vehicles to be stored on site longer. The proposed request would be subject to IDNR, Tech Review, and Drainage Board were any construction to be proposed. The intent would be to remove the existing top soil, creating a new storm water detention basin along the south side of the proposed gravel storage lot. The overall plan would reduce the cross sectional area of the floodway and not add fill within the flood zone. The estimated timeline for IDNR approval is between 4-9 months from time of submittal. They are seeking to request the variance first, prior to assembling the submittal for IDNR.

Mulvaney asks for questions from the Board.

Schaffer asks about the use of gravel along one of the most highly used thoroughfares of the City of Elkhart. He is not sure it makes sense and wants to know if there is a more becoming surface.

Schuster asks if he is referring to a recycled asphalt surface compared to a gravel.

Schaffer states that he is concerned with gravel or a temporary material in an area that even has special architectural standards if that is what we want to present to travelers on County Road 17.

Schuster states there is quite a bit of vegetation there so it's hard to see through other than a small gap in the vegetation, so it is fairly well screened. He states there could be some additional landscaping, but that would be subject to approvals by DNR or the County Drainage Board if it's in their area.

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

STAFF ANALYSIS

The petitioner is seeking permission to construct a parking/storage lot for the purpose of storing towable finished product with a gravel surface material. The ordinance allows for gravel/slag as a surface for lots in the rear yard. The need for the variance arises due to the fact that there is no building proposed for the site west of Benchmark Drive. The other lot is north of Blueprint Drive will be covered in the next BZA agenda item.

This property is also located entirely within the Special Flood Hazard Area (SFHA) as an identified Floodway. Which means the property is in an extremely hazardous area due to the velocity of floodwaters which can carry debris, potential projectiles and has erosion potential. Based on the location within the SFHA it is highly unlikely that any permits would be granted at the local or state level for a built vertical structure.

It is important to note – that the proposed use is not storage of material – it is storage of movable units that could be moved in the event of unseasonably wet weather. It is the staff's suggestion that if the variance is approved it is conditioned with only the movable units allowed to be parked in the lot with no storage of material that is not a chassis or a full finished product. Furthermore, screening be added on the west side to block the lot from County Road 17.

The project will be required go through technical review and be submitted to the Indiana Department of Natural Resources for permitting review and approval. The City of Elkhart is prohibited from granting any permits until the IDNR has reviewed the application for development.

STAFF RECOMMENDATION

Staff makes **no recommendation** to the request to vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag storage lot for recreational vehicles.

CONDITIONS

1. Should the BZA approve the request – petition shall file for any and all required permits with the Indiana Department of Natural Resources.
2. No excavation, clearing or work of any kind commence prior to written approval from the Indiana Department of Natural Resources.
3. Should the BZA approval the request – only chassis or full finished products be allowed to be stored on the lot in question. No storage of any bulk material be permitted.
4. Should the BZA approve the request – screening be incorporated on the west to buffer from the County Road 17 corridor.

Smith states there were 7 letters mailed with no responses.

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

Strycker asks if the City is liable for any damages that might occur in the floodplain because they approved it.

Arndt states that the City is not liable for approving.

Smith states they would be responsible for ongoing monitoring for bulk storage.

Coley states that Alliance RV has no intention of putting in chassis or any raw materials, but they are fine with the City monitoring that.

Mulvaney calls for a motion.

Strycker makes motion to approve with conditions; Second by Schaffer.

Schaffer – No
Strycker – Yes
Mulvaney – No

Motion fails.

Schaffer makes motion to deny based on the fact that the property does not have special conditions or circumstances that exist that are peculiar to it; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-18 PETITIONER IS 3 CREEK LLC
PROPERTY IS LOCATED AT 400 BENCHMARK DR

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for a gravel and slag parking lot/storage area in the front and corner side yard.

To also vary from Section 26.7.C.7.l.ii.b.2, Parking Lot Landscaping which requires parking lots abutting a right-of-way in an M-2 District to be 30 feet wide where there are more than 150 spaces, to allow for a landscape strip of zero (0) feet, a variance of 30 feet.

Mulvaney calls petitioner forward.

Schuster appears online for petitioner. He requests the variance for both employee parking and outside storage for recreational vehicles to remain there. There is currently a gravel variance on the north side of the property which was subject to be reviewed in 24 months and which will be paved next week. This is on the south end, just north of Blueprint Drive along with the zero-foot landscaping. The request was previously discussed, tabled and withdrawn in July or August. The gravel was constructed as part of the previous building project and had been utilized during the construction of the building. Alliance's goal is to vacate the right-of-way of Blueprint Drive in the future to open up additional property between their facilities. A traffic study is currently underway, reviewing the overall traffic in the area. Alliance is seeking to keep that area as gravel and be reviewed by the BZA in 24 months to allow for additional time for the traffic study to be prepared and allot them time to continue further discussions with the adjoiner about the vacation of Blueprint Drive.

Mulvaney asks for questions from the Board.

Mulvaney asks if the gravel was there without a previous permit because it came from construction and they decided to leave it.

Schuster states that it was part of the previous plan in that area and then used during the construction of the second building.

Mulvaney asks for the reason for gravel as opposed to paving.

Schuster states to allow for more time for the traffic study, and for the end goal to vacate Blueprint Drive and use more of the property in that area. They would then use that area for storage as a side yard and not a front yard.

Brady states they are paving the north side and there will be 100% asphalt there. As they continue to develop out on the property, it would allow them flexibility to figure out how the whole area is going to look. He welcomes any Board member to come visit and walk around the grounds and facility to talk through everything and how Benchmark would potentially connect out to County Road 17 or straight forward and through to Middlebury or County Road 14.

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 is in the process of developing a 31-acre site; in 2019 the first building was constructed comprising 105,336 square feet at the northwest corner of the property. Under 19-BZA-26, the Board permitted a gravel parking/storage lot on the north side of the building with the following conditions attached:

1. The unpaved area would not extend further west than the front of the proposed building.
2. The unpaved area would not relieve the applicant of any ADA compliance standards they would have to follow.
3. This variance would be reviewed again by this board in 24 months

A second building, to the immediate south and comprising 121,068 square feet, has been built. The petitioner is requesting a second gravel lot, to the south of the new building, for both parking and storage of finished product. When the project went through tech review, staff noted that the proposed gravel lot would require a variance. The petitioner subsequently applied for and then withdrew a variance prior to the public hearing. Permits were issued for the project as a whole with the exception of the gravel lot. The gravel lot has since been installed without the benefit of permits, but a Certificate of Occupancy has yet to be issued due to the nonconforming lot.

Staff's recommendation for the proposed lot remains the same. The Zoning Ordinance only makes allowances for gravel and similar lots when they are for storage lots in industrial districts and in the rear yard. Since the late 1970s, new parking lots have been required to be paved, regardless of yard location. Additionally, staff has concerns about the proposed zero-foot setback from Blueprint Drive. While it is currently an unimproved right-of-way, if the road should be built, the parking lot would have to have a greater setback.

The petitioner has not provided adequate evidence of hardship or uniqueness of the property to qualify the granting of the variance. Doing so would be a departure from the intent of the zoning ordinance as well as the norms for the city both in industrial areas and elsewhere.

STAFF RECOMMENDATION

Staff makes no recommendation of the request for a developmental variance.

CONDITIONS

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

1. The unpaved area would not extend further west than the front of the proposed building.
2. The unpaved area would not relieve the applicant of any ADA compliance standards they would have to follow.
3. This variance would be reviewed again by this board in July 2020, at the same time of review for 19-BZA-26.
4. If Blueprint Drive is ever improved, the required setback for the parking lot shall be 30'.

Smith states there were 10 letters mailed, 0 returned.

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

Mulvaney asks if the staff's feelings would change about this with the knowledge that one of the reasons for the request is flexibility for changes with respect to Blueprint Drive and storage.

Smith states they would still offer no recommendation.

Schaffer asks if Blueprint Drive was vacated and was a side yard would it still have to be paved.

Smith states that it would.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – No
Strycker – No
Mulvaney – No

Motion fails.

Schaffer makes motion to deny based on the fact that the petitioner has not provided adequate evidence of hardship or uniqueness of the property; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-BZA-19 PETITIONER IS IGNACIO ZEPEDA
PROPERTY IS LOCATED AT 2305 S MAIN ST**

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 sign at the northeast corner of the property.

To also vary from Section 26.10.D.4 Free-standing Signs to allow for a sign twelve (12) feet 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 six (6) feet.

To also vary from Section 26.5.B.1 Intersection Visibility Area, which does not allow a sign to be erected “in such a manner as to impede vision between a height of three (3) feet and eight (8) feet above the established curb level of the intersecting streets in the area bounded by the street lines (curbs) of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection” to allow a twelve (12) foot tall sign in the Intersection Visibility Area.

Mulvaney calls petitioner forward.

Zepeda appears in person. He states that his translator has not appeared but he is going to do his best. He states that this is his first time installing a commercial sign in the city. He put it there without permission because the last owner had told him the sign was there for a long time. He states he renewed the sign the way it was for a long time, thinking it would get grandfather status to be in the same place. He says there is not a lot of space on the property to move the sign.

Mulvaney asks for questions from the Board.

Schaffer states that the staff report says the sign is in the visibility triangle and that is a big concern because someone turning left off of Herrold Avenue might not be able to see a vehicle. He asks if there were relief on the height, would they be able to move the sign. He states the current location is probably the worst spot for public safety.

Zepeda states they will see because there are other properties with signs exactly the same.

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 mixed use building on a .3-acre lot. A twelve-foot-high sign has been installed at the corner of the lot without the benefit of permits. The sign location is the same as where a sign was installed in the past, however, that sign was removed years ago, meaning its legal nonconforming status has expired. Generally, in commercial districts, one freestanding sign is permitted per frontage, subject to standards such as size and location.

First, freestanding signs are required to be centered on the lot frontage and setback at least five feet from the right-of-way. If a centered sign is not possible, a setback of at least 20 feet from the side lot lines is required. The sign meets the minimum five-foot setback, but is not centered on the frontage, nor 20 feet from a side lot line. This lot’s paved parking area, however, was configured in such a way that the requirements are impossible to be met without removing the front driveway. The lot does have an ingress-egress configuration that would function without the front access, making a landscaped area at the center of the lot a possibility.

Second, on corner lots, there is an Intersection Visibility Area, bounded by the street lines (curbs) of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection, where a height of between three and eight feet above the curb level must be kept clear of visual impediments. The sign is clearly within this area. Staff, when driving from Herrold onto Main St., did not find a significant impediment to vision, however, cannot attest with certitude that it will not cause a conflict in any situation.

Third, a sign at a five-foot setback can be a maximum of six feet tall. The sign is twice that height, and the petitioner has not provided any rationale for a hardship that would necessitate the height. In fact, its location makes it clear from view on South Main Street. If the Board chooses to approve the sign location, it's recommended that they at least require the sign height be reduced to be brought closer to the permitted height of six feet.

STAFF RECOMMENDATION

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

1. The approval may be injurious to the public health, safety, morals or general welfare of the community because the sign lies within the Intersection Visibility Area;
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 the hardship from the lot configuration does not outweigh a safety risk;
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 it was developed with a sign at the corner, leaving little room for a freestanding sign elsewhere;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because wall signs are allowed;
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 50 letters mailed, 1 returned in favor with no comment.

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

Mulvaney asks if there is less obstruction because the sign is open in the middle at the bottom and, if it were dropped to 6 feet, would it create a solid piece and even more obstruction to vision. He does not believe just dropping the height will help.

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Schaffer.

Schaffer – No
Strycker – Yes
Mulvaney – No

Motion fails.

Shaffer makes motion to deny as it could be injurious to the public health, safety, morals or general welfare; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-BZA-20 PETITIONER IS JOSEPH AND KRISTIN NEWBERRY
PROPERTY IS LOCATED AT 3620 FOX COURT**

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.

Newberry appears online. He requests the fence within 6-feet of the sidewalk in order to use most of their yard. There are no adjacent residential properties that would be affected by these variances because the land is undeveloped and the street dead-ends.

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 petitioner is requesting the installation of a six-foot-tall wood privacy fence to extend from the side of the house to be within 6 feet of the property line along Deer Run Drive. The proposal is to have the fence come off the side of the home by the garage and fence around the rear of the property.

The property is at the corner of a cul-de-sac and stub street. The land to the north is intended to develop into additional housing with Deer Run Court extending to the north. If Deer Run Drive were extended to the north this would increase traffic through the neighborhood and place the proposed fence visually within the front yard of future residential properties. A fence on this property in line with the house would be more in line with the front of future residential homes along Deer Run Drive.

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 a street than normally allowed;
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 the Zoning Ordinance with regard to the proximity of the fence to the adjacent street;
4. 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;
5. 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;
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.

Hooley states there were 28 letters mailed, 3 returned in favor, one with comments that there are other residents coming through the neighborhood to get to shopping centers and there is a need for a privacy fence.

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

Schaffer asks how long the adjoining properties have remained vacant. He believes it to be around 30 years since it was platted.

Staff is unsure.

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

- Schaffer – Yes
- Strycker – Yes
- Mulvaney – Yes

Motion carries.

**21-BZA-21 PETITIONER IS D&J REALTY LLC
PROPERTY IS LOCATED AT 2675 AEROPLEX DR**

To vary from Section 26.4.A.6 Fence Requirements, General Provisions –All Districts, which states that “no fences, other than split rail, wrought iron or open picket fences... not to exceed four (4) feet in height, shall be permitted in any front yard or corner side yard,” to allow for a seven (7) foot galvanized chain link fence with vinyl coating in the front and corner side yard.

Mulvaney calls petitioner forward.

Aaron Reynolds with Ambrose Property Group appears online for petitioner. He states that they are a contract purchaser for the property and have filed a consent document to present this evening. He introduces the Civil Engineer, Andy Taylor who is presenting site plans online for the Board. He states they have 3 different fence heights located within the front yard. The green sections are 6-foot high fencing around the retention areas along the south border of John Weaver Parkway. There is a 5-foot section along the south face of the building which is a pedestrian barrier from the parking area to the southeast portion of the site. There is another for the queuing area to keep pedestrian traffic out of the lot where delivery vehicles queue and for the safety of foot-traffic. Those two sections are what they are seeking the variance for. The red section is actually security fencing in a side yard that is not part of the request. They are asking for chain-link fencing which is not allowed. They have two conflicting city

requirements; one states that there shall not be fencing, but they feel it is a health and safety concern, and the development ordinance does require it.

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 petitioner owns a 41-acre lot that is planned for development as a warehousing and distribution center. The planned development includes several retention areas adjacent to roadways surrounded by fencing, as well as fencing in selected areas for safety to prevent pedestrians from crossing into drive lanes. The fence is proposed to be seven-foot chain link with vinyl coating.

The property's configuration is unusual in that it fronts roadways on three edges, limiting where a chain link fence of that height is allowed. The fences around the retention areas range in setback from the right of way from zero to approximately ten feet. In all cases, the fencing is primarily for safety, and the fence adjacent to rights-of-way will be mitigated by shade trees, spaced at approximately 30-foot intervals.

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 fencing will increase safety;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed fence will be mitigated with landscaping beyond what is required by ordinance;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 property has three frontages;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit safety;
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.

CONDITIONS

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

1. The fences around the retention areas shall be setback farther from the right-of-way, on the slope of the retention.
2. A continuous tree line shall be maintained along Aeroplex Drive.

Smith states there were 7 letters were mailed, 0 returned.

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

Schafer asks about the first condition. He speculates that the fences are 3-4 feet from the right-of-way and asks if there is a preferred distance because the condition is vague.

Smith states that the reason it is a little bit gray is because it has been discussed and not yet settled because there are maintenance issues versus aesthetic issues. He asks that, if the board is comfortable, the condition be left up to staff to work out with the petitioners.

Schaffer asks if amending the condition to say something along the lines, "to the extent technically feasible," would be acceptable.

Smith agrees.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions, amending condition one at the end to say "to the extent technically feasible."; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-22 PETITIONER IS RANDALL & KAREN STRUKEL
PROPERTY IS LOCATED AT 1005 FIELDHOUSE AVE

To vary from 3 standards of Section 26.1 of the Development Standards:

1. Section 26.1.B.8 to vary from the permitted square footage of a single accessory structure of 720 square feet and the total allowable accessory structure square footage from 840 square feet to allow a 1,200 square foot storage building. Also to vary from the standard of 2 accessory buildings per lot to allow a 5th building.
2. Section 26.1.B.5 which limits the height of an accessory structure to 15 feet in height to allow a 20-foot-tall building.
3. Section 26.1.B.2 which requires the accessory structure to not be any closer to the street than the principal structure to allow the accessory structure to be closer to Fieldhouse Ave.

Mulvaney calls petitioner forward.

Randy Strukel of 1005 Fieldhouse Avenue appears in person. He states that they want to construct a 30x40 pole barn structure as a hobby shop and storage, as well as a personal vehicle garage for a multi-vehicle family. They have a camper they want to store in the winter. They recently moved from a larger home and a bigger garage. This home has two empty lots beside the house for a total of four lots.

Mulvaney asks for questions from the Board.

Schaffer states that one of the staff concerns is that the building location is closer to the street than the house is.

Strukel states it will be in line with the neighborhood.

Schaffer asks how far back it would have to be moved in order to bring it in line with the house.

Strukel says he didn't measure, but they want to use the back area as a park-like setting and the empty area in the front won't do anyone any good. He's going to mow it anyway but they can't use it for anything.

Strycker states they already have several other buildings on the property and asks what they are besides the home.

Strukel states there is a detached garage, a utility shed, a 10x12 garden shed, and a covered patio next to the pool.

Strycker states the standard is 2 or 3 structures and this would bring them up to 5 on the property. They recommend combine or remove some of those to come in line with the number of structures.

Strukel states if he could put up a bigger building to take their place, because taking the buildings down and moving the stuff out of it defeats half the purpose. It takes away the space they want and need. It's not a total solution unless they build bigger.

Schaffer asks if the sheds are on a concrete foundation.

Strukel states they are on skid runners.

Schaffer states that the only buildings on foundations are the house and attached garage.

Strukel confirms.

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 two vacant parcels of property directly to the west of his primary residence. The request is for a 1,200 square foot storage building at 20 feet in height. The structure is to be used for storage of his personal RV, a hobby shop with woodworking tools as well as those to work on vehicles, and for additional personal storage.

The vacant parcel is currently being gardened by the petitioner which he wants to keep. The petitioner is proposing the storage building closer to Fieldhouse Avenue to allow the garden area to remain. This will place the storage building closer to the road than the principal structure but would be in line with the neighboring house and the church to the east across 10th Street.

There is currently a 96 square foot garden shed on the vacant parcels and with the principal structure there is a 440 square foot detached garage, a 240 square foot storage building, and a canopy area with a small changing area for the pool.

The additional height is requested to allow a loft area in the proposed building for storage of crafting tools and material. There will be three overhead doors to the structure to provide access for the RV, lawn equipment, and other vehicles.

STAFF RECOMMENDATION

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

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the size and use of the structure may result in additional noise and traffic.
2. The use and value of the area adjacent to the property will be affected in an adverse manner because the structure will create a situation where an accessory building is the predominant use of the property;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because it would allow an accessory structure to far exceed the typical size allowance and be larger than the principal structure;
4. 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;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because the land can continue to be used as a residential yard and garden;
6. The special conditions and circumstances do result from an action by the applicant as additional storage space is requested.

CONDITIONS

The staff recommends the following conditions:

1. If approved the three properties will need be combined into one parcel to have the new structure on the same parcel of land as the principal structure.

Hooley states there were 25 letters mailed, 3 returned; 1 in favor, 2 not in favor.

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

Strycker asks if the combination of structures means combining the garage and shed into one.

Hooley states that way all the accessory structures would be with a primary structure.

Strycker asks if that involves physically moving and combining them.

Hooley clarifies that the city is wanting the parcels legally combined, not the structures.

Mulvaney calls for a motion.

Schaffer makes motion to approve with condition and an additional condition that the front of any accessory structures can be no closer to Fieldhouse Avenue than the front of the home; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

21-BZA-23 PETITIONER IS ZACHARY & ALISON SMITH PROPERTY IS LOCATED AT 1617 YORK ST

To vary from Section 26.7.3.a, Parking and Loading Facilities, to allow an off-street parking area in front of the primary residence.

Mulvaney calls petitioner forward.

Alison Smith appears in person with Zachary Smith. She states that they have been granted custody of her spouse's 3 children and they need separation from their children together. They have looked at the fact that the home is on a flood plain and other options and feel the best option would be to convert the garage to a master bedroom and extra bathroom. She states, however, the codes say that there cannot be a driveway without a garage.

Mulvaney asks for questions from the Board.

Schaffer asks if there is a house across the street or if they were removed and the area is swampy.

Mrs. Smith states that it is the Sterling Park neighborhood in an area that will not be developed further.

Schaffer states that area is really low and floods. He notes if they had to park on the street, because it's a low density area, the Smith's would not be parking in front of other driveways.

Mrs. Smith adds that the garage was not even built big enough to park one of their cars inside.

Mulvaney notes a letter from Michelle Gregory who supports the petition so that each child can have their own room.

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's home currently has a two car garage that they would like to convert into living space. The petitioner state the current garage which is approximately 24 feet by 20 feet is too small for both of their vehicles.

The garage is not currently being used for their personal vehicles and the driveway is serving as the primary parking for the residence. The petitioner is requesting the additional living space to accommodate the increase in the number of people living in the home. The home currently has three bedrooms with a household of two adults and four children.

The petitioner has concerns about drainage if the home were to be expanded. The conversion of the garage to living space would allow the footprint of the existing house to remain the same. It was also mentioned that any additions to the house could cause drainage issues with the neighboring property. The property is located in the mapped floodplain but did receive an elevation certificate in 2002 showing the home above the floodplain.

STAFF RECOMMENDATION

The Staff does not have a recommendation for the developmental variance.

Hooley states there were 25 letters mailed, 0 returned, but there is the letter from McArthur Counseling Center in support.

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

Mulvaney calls for a motion.

Schaffer makes motion to approve; Second by Strycker.

- Schaffer – Yes
- Strycker – Yes
- Mulvaney – Yes

Motion carries.

**21-UV-08 PETITIONER IS LUIS VELASQUEZ
PROPERTY IS LOCATED AT 1320 HARRISON ST**

To vary from Section 11.2, Permitted Uses in a B-1 Neighborhood Business District, to allow an existing commercial building to be used as a Boxing Training Facility.

Mulvaney calls petitioner forward.

Jessica Fortoso appears in person. They are asking that the commercial building on 1320 Harrison Street be allowed to be used as a boxing and fitness gym for children and adults.

Juan Fortoso appears in person. He states they are requesting approval for using the commercial building to train kids and adults for boxing. There is no other boxing in the area. The one that was here has closed down. He states there are a number of kids calling him because he is training his son and they were training at the other gym. People are calling him, asking him to train them. He was allowing 2-3 kids at his house to help them, but he would like to see if they can be approved to do something for the community.

Mrs. Fortoso states that her husband is registered with USA Boxing. This started with their 13-year-old son. He has been boxing since he was 7 years old. What was St. James has closed and, as a little boy with a dream, he was boxing at home and other boys from St. James were reaching out to them constantly. She states that she works in the schools as a translator and parent support at other schools, so they were also reaching out to her about the gym. They were given the opportunity to rent this location and are hoping to give the opportunity for a lot of boys, girls and adults to work out. She states they enjoy being there and don't want to leave.

Mulvaney states that Elkhart has a long history of boxing and it would be good to see another boxing gym.

Mulvaney asks for questions from the Board.

Strycker asks about parking as there are only two spots there.

Mr. Fortoso states that it is a long driveway and they can put 6 cars there. They are telling people now that it is for drop off and pickup only. At some point, with expansion they will probably move to a different facility, but right now they will use something to start and have the kids start doing something instead of being on the streets.

Strycker states his only concern was when the business starts really going that they are going to run out of room for parking.

Mrs. Fortoso states they are aware of that and have talked to parents. She states there are background checks for people who work there, so parents are fine with leaving their children with them, so the pickup and drop-off is what it is. They are not allowed to stay. A lot of boys and girls walk or ride bikes to the gym, or there is a lot of car-pooling.

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 an existing commercial building comprising of 4,420 square foot that was built in 1937. The building is located at the intersection of Harrison and Franklin Street and is at the western edge of a commercially zoned residential area. The building has been used in the past for retail sales.

The petitioner would like to operate a facility to train kids and adults in boxing techniques and discipline. The desire is to have those trained compete in tournaments. This type of use would typically be found in a B-2 Community Business District. All training will be conducted inside and the petitioner assures there will no outdoor activity. There are a two parking spaces on the property and there is street parking along Harrison and Franklin.

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 all activities will be conducted indoors;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because no exterior changes are proposed and the building has been used commercially in the past;
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 underutilized building becoming a low intensity use;
5. The special conditions and circumstances do not result from an action or inaction by the applicant.

CONDITIONS

The staff recommends the following conditions:

1. If approved the applicant will work with staff on proposing a drop-off and pickup-up plan that would detail how they will provide save access to the property as there is limited onsite parking.

Hooley states there were 56 letters mailed. One returned in favor with no comment. One was not in favor with comments: There is already a parking issue and Harrison is already a very busy street that would be unsafe for children.

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

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-UV-09 PETITIONER IS ROBERT J VIVANTE
PROPERTY IS LOCATED AT VACANT LOT SOUTH SHORE DR (06-08-102-006-012)**

To vary from Section 5.5.2 Permitted Uses in a R2 One Family Dwelling District to allow the construction of a parking area.

Mulvaney calls petitioner forward.

Robert Vivante appears online. He states that the property on 313 South Shore is a single family residence. There is a back alley that has been abandoned or is no longer in service. He has had problems with the lot across the street with people leaving refuse or parking illegally. He states that the city planner suggested that he apply for a zoning variance. He would like to build a parking area for two parking spaces and asphalt, signage indicating private property and strictly for his tenant parking.

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 petitioner owns a vacant parcel of land on South Shore Drive across the street from a house at 313 South Shore Dr. The petitioner desires to develop the vacant parcel into a parking area. The house at 313 South Shore Dr. currently does not have any onsite parking. South Shore Drive bends in front of the home so parking in front of the house is prohibited. The property is also too narrow and does not have an alley access to allow onsite parking.

The petitioner is proposing to pave a driveway and a parking area on the vacant parcel exclusively for the use of the residents at 313 S. Shore Dr. The property is currently being used as parking by the neighbors as they currently would have to park around the corner on Hudson Street. The petitioner feels that this improvement would clean up the parcel as well as provide closer parking.

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 it would provide parking that would be closer and safer for the residents;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property will solely be used for parking by people that live across the street;
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 property developing for residential use;
5. The special conditions and circumstances do not result from an action or inaction by the applicant;

CONDITIONS

The staff recommends the following conditions:

1. If approved the applicant will need to incorporate the property with the parking area into the deed of the primary residence so that they will be tied together for any future sales.

Hooley states there were 32 letters mailed, 2 returned in favor with no comment.

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

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-UV-10 PETITIONER IS T&M REAL ESTATE INC
PROPERTY IS LOCATED AT 1736 CASSOPOLIS ST**

To vary from Section 5.2, Permitted Uses in the R-2 District to allow for the property to be used as a parking lot. The primary business fronting on Cassopolis Street will be an auto parts sales, rental, and leasing, and minor repair business.

Mulvaney calls petitioner forward.

Lori Snyder appears in person. She states they are asking for a variance for the back end of the property. It sits between Wendy's and the Shelley Party Shop. It has been on the market for 15 years but they do have a buyer, providing this passes.

Mulvaney asks for questions from the Board.

Schaffer state that the site plan kind of dies off on the east side and opposite Cassopolis Street. He asks if, should it be approved, could they work with the buyer to provide a more finalized site plan.

Snyder states it is just for parking.

Schaffer asks if the area is already paved.

Snyder confirms.

Schaffer confirms that the staff condition is just to work on a striping plan because of what is already out there.

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 petitioner owns four parcels on the Cassopolis Street corridor comprising approximately 1.39 acres. Three parcels are adjacent to Cassopolis Street and zoned B-3; the one parcel to the east, adjacent to Canton Street, is .77 acres and zoned R-2. The property has been used in the past as a car sales establishment, a truck accessory store, and antique shop. The parking lot is legal nonconforming, however, it has been vacant for over a year, thus necessitating its reestablishment as a legal use in the R-2 District.

The proposed use is an auto parts sales, rental, and leasing, and minor repair business, focusing on wheels and tires and alignment. The plan is to demolish the building and build new to house the business, and use the existing parking lot for customer and employee parking. The variance would allow for the reestablishment of the use of the parking lot. However, the plan submitted does not show definition for how the lot will be used. The petitioner should at a minimum submit a striping plan to demonstrate how the lot will be used, subject to staff approval.

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 parking lot is already developed;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the existing parking lot will be used in a similar manner to what it has been used in the past;
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 would limit the utility of the adjacent, commercially zoned parcels on Cassopolis Street;
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 conditions be placed upon the approval:

- 1. A striping plan shall be submitted to the City prior to occupancy, subject to staff approval.

Hooley states there were 20 letters mailed, 1 returned in favor, 1 not in favor with no comment.

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

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions; Second by Strycker.

- Schaffer – Yes
- Strycker – Yes
- Mulvaney – Yes

Motion carries.

STAFF ITEMS

Smith presents a resolution to be adopted and signed, that sets forth from here forward the rules for virtual participation by the Board members. He states that the big thing that needs attention are the limitations. Fifty percent of the members are needed in person. Members are expected to attend in person at least fifty percent of the time, et cetera. Unwritten is that what is asked is that members try to be here if they can because there are limitations on virtual participation, and just communicate with staff to ensure that we are meeting all of our obligations. Smith asks if this needs to be formally adopted.

Arndt states that it does.

Smith asks for any questions.

Schaffer states that he believes it provides a lot of flexibility for vacation, illness, or situations where members can still participate. He motions to adopt the resolution as presented and authorize the chairman to sign it as presented.

- Schaffer – Yes
- Strycker – Yes
- Mulvaney – Yes

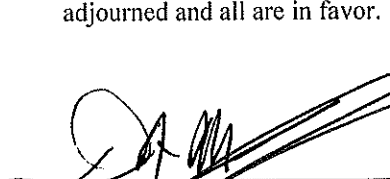
Motion carries.

Mulvaney states that this is Schaffer’s last meeting with the Board of Zoning Appeals. He thanks him for his expertise and service over the years.

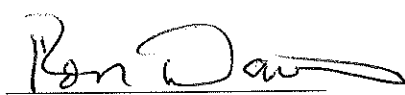
Schaffer thanks both Mulvaney for his leadership and Strycker for his commitment and time dedicated to the board. He would thank Ronnie Davis for his volunteer hours for multiple boards as well. He states that he has taken a professional position that he feels is unfair to continue in this Board for other consultants who have to come before it. He will however be serving on the Historic Commission.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President