

BOARD OF ZONING APPEALS

-MINUTES-

Thursday, August 12, 2021 - Commenced at 6:07 P.M. & adjourned at 6:45 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
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 Drllich

APPROVAL OF AMENDMENT OF AGENDA

Mulvaney notes that 21-BZA-16 has been withdrawn by petitioner and that 20-BZA-42 should be tabled for one month. He asks for a motion to amend.

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

APPROVAL OF MINUTES FOR JULY 8, 2021

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the August 12th, 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.

Mulvaney notes that since there is a quorum a petition needs all three votes to approve to pass.

NEW BUSINESS

21-UV-15 PETITIONER IS SHRIKRISHNA LLC PROPERTY IS LOCATED AT VL CR 20

To vary from Section 12.2, Permitted Uses in the B-2 Community Business District, to allow a residential home.

Mulvaney calls petitioner forward.

Bhavesh Patel appears via Webex. She asks that she may use the commercial property as a residential to build a modular home.

Mulvaney asks for questions from the Board.

Strycker asks if the property was specifically purchased to build a home or if the property was already owned and it was convenient to build.

Patel states they purchased the land 8 years ago.

Strycker asks if the petitioner owns any businesses nearby.

Patel states that she owns the gas station on Mishawaka Road with 4 different lots.

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 four parcels at the northeast corner of Mishawaka Road and Pleasant Plain Avenue. Their request is to construct a modular home on the parcel just west of an existing gas station. The four parcels at the intersection of Mishawaka Road and Pleasant Plain Avenue are a part of the Martin and Bailey Subdivision. This development was created in 2004 with a B-2 zoning designation to allow the construction of a Huck's Convenience Store with the additional three parcels for future development.

The parcel mentioned in this petition is currently vacant. There is an access drive along the front of this parcel which serves as a second egress to Mishawaka Road for the gas station and to allow access for future development. As the corner lot is the only parcel to develop the petitioner feels that the adjacent property would best be served as a residential property. Per the petitioners request the home would be intended for the property owner.

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 applicant is proposing residential in a district which allows uses with a larger amount of traffic and activity;
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner because this property would serve a residential use on the interior of a commercially zoned development;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because it would be inconsistent with the design and approval of the Martin and Bailey Subdivision;
4. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the land as the remaining properties are of sufficient size and with appropriate zoning to develop commercially;

Hooley states there were 9 letters mailed, none returned.

Davis asks if there is a residential house to the east of the property.

Hooley states that further west from the developments there are some residential homes and across the street is a mobile home park.

Mulvaney asks what the daily traffic count is on Mishawaka Road for that location because it is a busy intersection.

Hooley states that he does not.

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

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Davis.

Davis – No
Strycker – No
Mulvaney – No

Motion fails.

Mulvaney calls for another motion.

Strycker makes motion to deny; Second by Davis.

Davis – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

**21-BZA-31 PETITIONER IS MELINDA MCCAREY
PROPERTY IS LOCATED AT 947 E INDIANA**

To vary from Section 26.7.B.1.c, Off-Street Parking and Loading, to allow for the storage of a commercial mini bus where the parking of commercial vehicles is prohibited.

Mulvaney calls petitioner forward.

Melinda McCarey appears in person. She states that she is the owner/operator of New Heights Daycare. She has purchased a minibus which is parked on her property. She was notified that she was not allowed to park a commercial vehicle on her property without a variance which she is asking for today.

Strycker comments that it is a very small bus. He asks if the bus is for the daycare and whether she plans to get a bigger bus.

McCarey states that it is for her daycare and she has no plans for a bigger bus.

Strycker asks if her neighbors have an issue with the bus.

McCarey states that they do not and have even offered to come out to the meeting to offer support.

Mulvaney asks if there is an issue with the requirement to pave the area where the bus will be parked.

McCarey states that the area is already paved.

Mulvaney asks for questions from the Board.

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 daycare home at 947 E. Indiana Avenue with a licensed capacity of up to twelve children. She has purchased a mini bus to use for transporting children to and from school. The bus has a 1990 GMC Cutaway Van chassis. It's 23 feet long and seven-foot, four inches long. According to GMC records, the Gross Vehicle Weight Rating for the chassis is between 7,400 and 10,500 lbs. Two of the criteria for classifying a vehicle as commercial under the Zoning Ordinance are vehicles having an overall length of more than twelve feet, and having a rated capacity of one and one-half tons or more, making the bus clearly classified as a commercial vehicle, which is prohibited in residential districts.

The property is a double lot with a single width paved driveway. In June the property was cited for the commercial vehicle and parking on an unpaved surface.

STAFF RECOMMENDATION

The Staff makes **no recommendation** on the request for a developmental variance.

CONDITIONS

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

1. Parking and driving of all vehicles on the premises shall be done on a paved surface.

Smith states there were 38 letters mailed. One returned without indicating either in favor or against.

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

Strycker asks if the petition passed would it be only for this specific vehicle or would it open the way for any other vehicle.

Smith states the request is for a commercial minibus so it would not be limited to this specific vehicle. However, an additional condition could limit the variance; however, the petitioner would be limited by the state to the number of children in the home and he is not overly concerned about the petitioner trying to get a larger bus.

Mulvaney asks if there is any kind of inspection for the bus being on a paved surface.

Smith states that the condition could be relinquished to staff and petitioner to work out, and should there be a complaint in the future it would give the staff something to fall back on.

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Davis.

Davis – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**21-UV-16 PETITIONER IS DAVID EVANS
PROPERTY IS LOCATED AT 2450 JOHNSON ST**

To vary from Section 19.2, Permitted Uses in the M-2 General Manufacturing District, to allow a residential home.

Mulvaney calls petitioner forward.

David Evans appears via Webex. He asks that he could have the variance in order to use the home as a residence.

Mulvaney asks for questions from the Board.

Strycker asks if the house is already existing.

Evans states it was built around 1900.

Strycker asks if it was zoned M-2 when it was built or how it is that there is additional property added on to make it M-2.

Evans states that it was the Toth farm and one of the sons wanted to make an automobile service area for MGs. That was done in the 80's and some of the land was sold off and the land became commercial at that time. The person living consistently in the home since that time died about two years ago. The code says that if a it has been vacant for more than a year it must not be used as a residence.

Mulvaney asks how long Evans has owned the property.

Evans states that he has owned the property south of there since 1979. The Toth's and he have known each other for a while and when the owner of the property retired, he asked Evans if he was interested. The purchase is a recent one.

Mulvaney asks for further questions from the board.

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 home on the east side of Johnson Street that was the original homestead of the Toth family. The petitioner has a metal fabrication business he developed in 1975 on the property directly south of this home. The property includes several sheds, a garage, and a barn. The property has set empty for several years with the passing of the previous owner.

The petitioner intends to improve the property and refurbish the existing home for use as a single family rental property. Because the home has set empty for several years there have been several break-ins which has caused further degrading of the home. The petitioner feels that having the home operating as a residence again would improve 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 property will be occupied which will deter any further break-ins and other unlawful activities;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the house is existing on the property and will be improved to again function as a residence;
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, in this case allowing the previous use to continue as it has for many years;
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 the existing house to be renovated and occupied;
5. The special conditions and circumstances do not result from an action or inaction by the applicant as the residence predates the zoning district;

CONDITIONS

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

1. The petitioner will file for a Minor Subdivision to include Parcel 1 of the petition with the parcel to the south which includes their existing business. Staff will work with the petitioner on the layout of the development for any future expansions, timing, and on the petition process.

Hooley states there were 11 letters mailed. One returned in favor with no comment.

Davis asks if the petitioner agrees with all the conditions.

Hooley states that he has not addressed them with Evans. He understands that he has been speaking with staff about the parcel.

Evans states that they agree to the conditions.

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

Mulvaney calls for a motion.

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

Davis – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

STAFF ITEMS

19-X-12U

PROPERTY IS LOCATED AT 418 W FRANKLIN

Staff and BZA review of Special Exception 19-X-12, which allowed for a Day Care Center at 418 West Franklin Street.

STAFF ANALYSIS

On August 8, 2019, a special exception was granted to New Generation Child Care Ministry daycare center at 418 W. Franklin St.

The approval came with eleven conditions:

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. The alley shall be blocked off and children shall be guided by staff when moving between the church and the playground.
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 beyond what is allowed for a religious institution in its district.
5. A copy of the child care registration 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 registration 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 of eighty-seven (87) children.
9. Staff shall direct parents to drive one-way through the alley, entering from the west and exiting either through the parking lot drive to the north or to one of the alleys to the east.
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by August 12, 2021.
11. A plan for preventing and ameliorating health and safety violations shall be submitted to staff prior to the daycare opening, and shall explicitly address first aid and CPR certifications, and vaccine documentation.

Staff visited the site on July 29. The daycare center has a licensed capacity of 75 children, with 37 children currently enrolled. The operation has separate rooms for infants, toddlers, pre-k (age 3-5) and school age children, with a fenced in play area across the alley and parking lot from the church. The site was compliant with the possible exception that the requirement in condition 1 that the alley be blocked off – daycare staff said a teacher would block off the alley by standing near the entrance.

One of the concerns with granting the special exception initially in 2019 was that the number of health and safety violations listed on the state’s Family and Social Services Administration (FSSA) child care finder site was high: 60 violations between 2016 and 2019 with five critical violations. Upon approval, the leadership at the church worked with city staff to come up with a plan to reduce the number of violations.

The state’s website lists 13 violations since 2019, with no critical violations. Examples include housekeeping (tears in carpet, unstocked toilet paper, food storage), operations (not meeting staff to children ratio, sleep practices) and paperwork. This represents a reduction in the number of violations for this child care operation. Given scale factors – the operation is larger than most day care operations in the city – in staff’s experience the number of violations is no longer atypical.

STAFF RECOMMENDATION

Staff recommends that the special exception for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by August 10, 2023.

Smith states that the pastor of the church is present for any questions.

Mulvaney asks for questions from Board.

Mulvaney calls for a motion.

Strycker makes motion to approve to extend the petition for two years; Second by Davis.

Davis – Yes


Strycker – Yes

Mulvaney – Yes

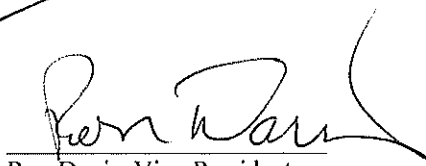
Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President