

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, September 9, 2021 - Commenced at 6:00 P.M. & adjourned at 7:26 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  
Brad Billings - proxy

**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

**APPROVAL OF AGENDA**

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

**APPROVAL OF MINUTES FOR AUGUST 12**

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 September 9th, 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**

**20-BZA-42 PETITIONER IS INDIANA MICHIGAN POWER, AN AEP COMPANY  
PROPERTY IS LOCATED AT VACANT LOT, SOUTH MAIN STREET**

To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

Smith states the petitioner has asked for a postponement.

Mulvaney calls for a motion.

Davis makes motion to postpone for one month; Second by Billings.

Davis – Yes  
Strycker – No  
Billings – Yes  
Mulvaney – Yes

Motion carries.

**NEW BUSINESS**

**21-BZA-32 PETITIONER IS KEYBANK NATIONAL ASSOCIATION  
PROPERTY IS LOCATED AT 2801 CASSOPOLIS ST**

To vary from Section 26.5.D.1 which requires primary structures to be 120 feet from the centerline of a major thoroughfare. To allow an ATM canopy to encroach three (3) feet eight (8) inches closer to the public right of way reducing the overall structure's setback to forty-one (41) feet ten (10) inches.

Mulvaney calls petitioner forward.

Chris Rood of Vocon Design in Cleveland, Ohio appears via Webex to represent KeyBank. He states there are existing teller lines with an existing canopy and they want to add another teller line and provide an accessory shelter with the canopy to be built underneath the existing canopy. One of the previous considerations was to make sure that changing a pass through lane to an ATM lane would not impede either ingress or egress for parking spaces on both sides of the branch. That would not occur, however, creating an accessory shelter canopy, if considered part of the structure, would impinge upon the setback from the right-of-way. The proposed canopy would extend 3'8" from the edge of the curb.

Mulvaney asks for questions from the Board.

Mulvaney asks if the traffic flow will remain the same.

Rood states that is correct. There will be no impediment to the traffic flow for either parking lot from the drive lines.

Mulvaney asks if this is the only location to put the ATM without disturbing that flow.

Rood states that is also correct.

Strycker asks if there is already a canopy in existence.

Rood states that there is, but that canopy ends right at the edge of the lane. The proposed accessory canopy would provide shelter for the new ATM lane.

Strycker asks if the canopy would be next to the existing canopy.

Rood states that it is a freestanding canopy that extends out from underneath the existing canopy. It's a smaller canopy to provide shelter.

Strycker asks if it is merely an extension.

Rood states that it is.

Strycker asks if they will be paving out further.

Rood states that they will be paving over existing area.

Mulvaney states that the picture looks like the ATM is on the building, under the canopy, but teller access is outside of the canopy at this time.

Rood states that the structure in front of the canopy is essentially a clearance bar.

Mulvaney asks about the structure to the side of the canopy.

Rood states that is the teller tube.

Mulvaney asks if that is where the ATM is going.

Rood 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 is the owner of an existing KeyBank built in 1968 located at the northwest corner of the intersection of Cassopolis Street and County Road 6. The existing bank has a canopy coming out towards County Road 6 that serves their bank teller drive thru. The petitioner desires to extend the canopy closer to County Road 6 to accommodate an ATM. The layout of their site restricts the location of a drive up ATM. The proposed canopy location would still allow good traffic flow through 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 as the canopy will not impede visibility;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the use of the property will not change;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. 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 as site conditions restrict the location of an ATM;
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 13 letters mailed. None returned.

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 – Yes  
Strycker – Yes  
Mulvaney – Yes  
Billings – Yes

Motion carries.

**21-BZA-33 PETITIONER IS BYRON & MELISSA NAFF  
PROPERTY IS LOCATED AT 1723 GREENLEAF BLVD**

To vary from Section 4.4 of the R1 side yard requirements which requires that the total of the two side yard setbacks to be a minimum of twenty (20) feet in width. The request is to reduce the combined setback to eleven point four (11.4) feet to allow an existing detached garage to be attached to the house and an addition to be within eight point five (8.5) feet of the side property line.

Mulvaney calls petitioner forward.

Byron Naff appears in person. He states that he and his wife want to put an addition on the front of the home. He and his wife plan to spend 30 years or more in the home and there are currently no bedrooms on the main level. In speaking with neighbors there has been no disapproval of this action as it will not be blocking or impeding any views or creating any harm. They are reducing the setback 2.9 feet overall.

Mulvaney asks if they are also adding a family room in addition to the bedroom.

Naff states that is correct.

Mulvaney for questions from the Board.

Strycker asks if they are building straight back from the main body of the house.

Naff states that is correct.

Strycker asks if when they built the house the setbacks weren't in place.

Naff states the house was built in 1927 so it was well before the ordinance.

Strycker states that, by those regulations, it looks like anything they would do would be within the setbacks.

Mulvaney comments that the design was well thought out.

Naff submits a public notice in favor. He reads the contents: Jeffrey Church of 1717 Greenleaf Boulevard is in favor.

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 home was built in 1927 and was recently purchased by the petitioner to be improved and made into their primary residence. The existing west side yard setback is nonconforming as it does not meet the current zoning ordinance requirement of a 7-foot minimum setback. The detached garage on the east side of the property currently meets this minimum.

The petitioner desires to attach the existing garage with the house. When the house and garage become attached the structure would not be able to meet the required combined side yard setback. The request is to be allowed to maintain the existing west setback and reduce the east setback to 8.5 feet. The eastern side of the structure would maintain a setback over the required 7-feet.

The petitioner is proposing this expansion to allow for the addition of a family room and to allow the upstairs bedrooms to be reconfigured. To the east of the proposed addition is the neighbor's garage and the extension of the house towards the river should not diminish visibility for the neighboring properties.

**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 proposal will improve the overall use of the existing home;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the house will still maintain the minimum side yard setback;
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 structures in the same district because the home was built closer to the property line than currently allowed;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints upon updating and expanding the existing home;
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 23 letters mailed. One returned tonight in favor with no comment.

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 – Yes

Strycker – Yes

Mulvaney – Yes

Billings – Yes

Motion carries.

**21-BZA-34 PETITIONER IS MARINE REALTY LLC  
PROPERTY IS LOCATED AT 2805 DECIO DR**

To vary from Section 26.7.C.7.1.ii.b.2, Parking Lot Landscaping which requires parking lots abutting a right-of-way in an M-2 District to be 10 feet wide where there are 1 - 75 spaces, to allow for a landscape strip of .88 feet, a variance of 9.12 feet.

Mulvaney calls petitioner forward.

Debra Hughes from Marbach Brady and Weaver, 3220 Southview Dr appears in person for the petitioner. She is the civil engineer for the project with Dave Van Deventer, project manager. The company would like to expand their parking lot adjacent to their front office, adding 27spaces to allow for front office staff. The zoning ordinance requires a 10-foot setback for parking lots from rights-of-way. At this particular location, the right-of-way widens going north, toward the toll road. Rather than a straight parallel right-of-way next to the road, there is a widening right-of-way because Decio Drive goes over the toll road on an embankment. They understand there is a need for earthwork and retaining walls. Because of this there are two sections where the pavement would be closer than the 10 feet.

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 a large marine manufacturing campus generally north of CR 6 and between Marina Drive and Decio Drive. The campus is largely built out, with four buildings, employee parking, and outside storage. According to their consultant's calculations, the site is approximately 12% short of their required parking.

The petitioner is requesting to add an additional 27 parking space on the east side of the property fronting on Decio Drive, where there is enough greenspace to accommodate it. However, to do so would encroach upon the required ten (10) foot setback which is required for parking lots of its size next to a right of way. The site limitations necessitate some relief from standards, and would still leave some greenspace between the parking lot and the road. Some street tree planting would be appropriate to ameliorate the reduction in the landscape strip.

**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 maintain a landscape strip between the road and the parking lot;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because street tree planting will ameliorate the lessening of the setback;
3. Granting the variance would not 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 there is a shortage of parking according to the city's requirements;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because there is a need for more parking and little space to expand;
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 special exception, staff recommends that the following conditions be placed upon the approval:

1. Shade trees should be planted along the additional parking fronting on Decio Driving, at a minimum interval of one (1) for every thirty (30) linear feet.

Smith states there were 9 letters mailed. One returned in favor with no comment.

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

Strycker asks about the standard for trees and if it is typical.

Smith states the typical standard is one per forty feet but they are moving towards one per 30 feet.

Strycker states he is questioning the amelioration of the space they have, and where that came from.

Smith states it is a compensation, not a standard formula in this case. The city is asking for a little bit of vegetation to make up for the loss of green space.

Strycker asks if the petitioner has issue with that.

Hughes states they do not.

Mulvaney calls for a motion.

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

Davis – Yes

Strycker – Yes

Mulvaney – Yes

Billings – Yes

Motion carries.

**21-BZA-35 PETITIONER IS GORDON HUGHES & JENNIFER ABRELL  
PROPERTY IS LOCATED AT 2700 GREENLEAF BLVD**

To vary from Section 4.4 of the R-1 yard requirements that requires a residence to meet a corner established setback from the side street. To vary from the required thirty-five (35) foot established setback from the side street to allow a garage to be built at eighteen (18) feet from the property line along Bay Street.

Mulvaney calls petitioner forward.

Larry Friesner of Designing & Drafting Services appears in person as petitioner representative. He states the main reason for the variance is because the garage is too small for modern vehicles. The home is about 70 years old, in beautiful condition, and the

petitioner is having difficulty fitting new cars into it. There will be no adverse condition to any other city ordinance or drainage. The property is substantially large enough to stay under the 40% required. The existing garage is 44 feet from the property line. This particular Bay Street has a 60-foot right-of-way, but the poles are on a 40-foot right-of-way. They are going to protrude 26 feet. The average setback of the neighbors to the north is 35 feet. The petitioner will be 9 feet in front of the property to the north. There is no visual between the two properties because of the evergreens between the two properties. They would still be 38 feet back from the asphalt, 18 feet from the property line, and 28 feet off the pole line with the variance. The new building will be attached to the existing structure.

Strycker asks from what street they will be entering the property.

Friesner states that the entry will remain the same as before. The drive and curb cuts will not change.

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**

This home is located at the intersection of Greenleaf Boulevard and Bay Street. The petitioner desires to build an attached garage to the house. The proposed addition will match the architectural features of the house and will have access through an enclosed breezeway. The location of the proposed garage will line up with their existing driveway.

The property has an existing 15-foot tall row of evergreens along the north property line. The location of the garage addition will not be visible from the neighboring property. The addition will extend 9-feet closer to Bay Street than the neighbor's home to the north. The proposed location of the garage is over 130-feet from the intersection of Greenleaf Blvd and Bay Street.

#### **STAFF RECOMMENDATION**

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

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community as it does not create a visual barrier;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed garage will improve the overall use of the existing home;
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 of the orientation and location of the home;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints upon improving the existing home;
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 31 letters mailed. One returned in favor with no comment.

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 – Yes

Strycker – Yes

Mulvaney – Yes

Billings – Yes

Motion carries.

#### **21-BZA-36 PETITIONER IS UBALDO CRUZ PEREZ PROPERTY IS LOCATED AT 2751 BURR OAK AVE**

To vary from Section 26.7.C.3.a, Parking and Loading Facilities, to allow an off-street parking area in front of the primary residence.

Mulvaney calls petitioner forward.

Ubaldo Cruz Perez of 2751 Burr Oak Avenue appears via Webex with a translator.

Mulvaney asks if there was a garage there at one time.

Perez states that there was.

Mulvaney asks if the board has questions for the petitioner.

Mulvaney asks when the garage was converted into a room.

Perez states that he did it a month ago. He made it into a dining room.

Mulvaney asks if the room has been finished.

Perez states it is not finished yet.

Mulvaney asks if anything has been done inside since all the board sees is a wall with a window.

Perez states that the only thing there is the floor.

Mulvaney asks if the petition is denied would he be able to turn it back into a garage.

Perez says he would, but he wonders if he can ask for another petition.

Mulvaney states he can appeal. He can also reapply after 90 days.

Mulvaney opens for public comments to speak in favor. Makayla Rose on Facebook comments, "He is trying to make a dining room for his family. I think you should approve." Seeing no other comments, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

#### **STAFF ANALYSIS**

The petitioners own an 816 square foot single family dwelling on a .227-acre lot in the Howard Park Subdivision. They began to convert their garage to additional space without the benefit of permits. The lot is relatively narrow, meaning that there is little room for expansion to the side for either building or parking. Staff is concerned about reducing the amount of parking space on the property. There is no on-street parking at this location meaning the driveway is the only parking for residents and any visitors. A better alternative may be to build an addition onto the back of the house to increase the amount of interior living space.

#### **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 it could lead to issues with parking;
2. The use and value of the area adjacent to the property may be affected in a substantially adverse manner because it may lead to parking issues;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance;
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 an alternative, adding on to the rear of the house, is possible;
6. The special conditions and circumstances do result from an action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Smith states there were 20 letters mailed. There one letter returned not in favor with comment: "We do not want them parking all over their yard on a parking pad. This is a residential neighborhood and we don't want loading and unloading to take place." He states that he thinks the writer believes they are expanding the parking pad in front of the house, which is not quite accurate. There was also one phone call not in favor with comment: "It will create a safety issue if petitioner parks on the street."

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



Strycker asks for clarification on what the parking is for.

Smith states that garage conversion to living space is now allowed because parking pads in front of the living space is not allowed. He states there was a case a couple of months ago on York with a similar situation. At that house there were flood issues and things happening that aren't happening here. But, this case is not proposing to expand the parking. They are converting garage to living space, which changes the relationship of the parking to the house.

Strycker states that he understood it as they were asking to park in the street and wanted the City to do something for them in the street.

Smith states the concern is that removing parking will lead to people parking in the street.

Mulvaney asks how long the driveway is.

Smith says he does not know.

Strycker notes the comment stating that there were 6 cars parked there.

Smith and Hooley confer that there is only room for 4 cars.

Strycker states that is still a lot of cars in a parking space.

Smith states the minimum is two. He also does parking enforcement and people all over the city have a limited amount of parking and are trying to park more. This petitioner may not have that many but, if he moves out and someone else moves in, they could.

Mulvaney asks if the conversion of the garage into a room is another issue with the Building Department.

Smith states the Building Department would not move forward without approval from Zoning. However, they would have to get permits for it.

Strycker asks if everything he's done has been without permits.

Smith states that is true, but he has been honest with Code Enforcement.

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Billings.

Davis – No  
Strycker – No  
Mulvaney – No  
Billings – No

Motion fails.

Strycker makes motion to deny; Second by Billings.

Davis – Yes  
Strycker – Yes  
Mulvaney – Yes  
Billings – Yes

Motion carries.

Mulvaney explains to the petitioner that he has been denied, that he can appeal or reapply in 90 days. He suggests working with the City to see if there is an acceptable option.

Perez states that he will appeal.

Mulvaney states that he must speak to a lawyer to appeal.

**21-UV-17 PETITIONER IS MARIA PEREIDA**  
**PROPERTY IS LOCATED AT 702 W HIVELY AVE**

To vary from Section 5.2, Permitted Uses in the R-2 District, to allow retail plant sales. Retail sales are not permitted in the R-2 District.

Mulvaney calls petitioner forward.

Maria Pereida appears via Webex with her daughter Juliana Pereida. She requests permission to be able to sell the plants that she has. They were not aware that it was a district she could not sell. She wants to sell the plants that she has or at least until November. She has a letter from the neighbors stating they are OK with the sales. They are small houseplants.

Mulvaney asks for questions from the Board.

Strycker asks if they are OK with having just enough time to sell their current plants.

Pereida says that is correct. They requested until the end of November because she does not know how long it will take to sell the ones she has here.

Strycker asks if a condition limiting her time until November 1<sup>st</sup> would be acceptable.

Smith states that the Board can put a time limit on the variance as the easiest option.

Billings asks if once these plants are sold she would not sell plants ever again.

Smith states that without that condition she would be allowed to sell plants in perpetuity and, if someone else moves in, they would be able to as well. With a time limit the variance would expire and someone would have to reapply.

Billings asks if she could sell the plants as a yard sale or garage sale.

Smith states she could work within those limits.

Pereida asks if she would be allowed to sell plants again next year if she applies for the variance again, or would she be able to sell on the weekends.

Mulvaney states she would have to reapply before she sells anything.

Strycker states that he would only allow the variance for her to sell the plants she has now, but not continually.

Smith states that his suggestion, because variances are meant to be permanent, is that staff can handle an extension on compliance efforts.

Mulvaney explains to Pereida that they would like to allow the sales to continue until current plants are gone without taking any formal action on the variance at this point. City staff would work with Pereida to get the rest of her stock sold and, should she like to continue selling, they would tell her where it would be allowed. The concern is with a residential district without parking there would be too much traffic.

Pereida asks what the time frame is to finish.

Mulvaney states that she should call staff tomorrow and work with them. He asks Smith what the next appropriate steps would be.

Strycker asks whether a denial would affect anything he would do.

Smith states he has the authority to work with the petitioner on compliance dates. He states that his understanding was that they wanted the situation to be permanent which was why they have applied for the variance. If they wanted to end by the end of the year, he could work out something with them.

Mulvaney asks if there is a motion to table. Seeing none, he opens for public comments to speak in favor. He notes that there is one in favor on Facebook: "It would be nice to approve. It makes the view look beautiful with all the plants." Seeing none further, he opens for opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

#### **STAFF ANALYSIS**

The petitioner owns a 1,656 square foot house on a .27-acre lot on the 700 block of West Hively Avenue. Staff recently received a complaint about ongoing plant sales at the property, and noted many plants in the yard along with a "For Sale" sign. Informal sales such as these are often covered under the provisions in the Zoning Ordinance for rummage sales.

However, there are limits placed upon rummage sales in the City, some of which are a limit on the number of days (maximum of three consecutive and fifteen total in any calendar year) and a requirement to remove all articles not sold from front and side yards by 8:00 p.m. The petitioner has clearly indicated that she would like to sell the plants for months at a time and has physical limitations which preclude removing plants from the yard daily.

Staff has witnessed the driveway with little room for potential customers, and there is no on-street parking on that section of Hively, making parking and safety a concern. Retail sales have generally been discouraged in residential areas for traffic and noise reasons, except for limited rummage sales, and the applicant has not demonstrated any uniqueness to the property or hardship that would necessitate a variance from the Zoning Ordinance.

#### **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 of limited available parking;
2. The use and value of the area adjacent to the property may be affected in a substantially adverse manner because the house is in a residential neighborhood and retail sales can cause a disturbance in the form of noise and traffic;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance;
4. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because it may be used for the purpose it was built, as a single family residence;
5. The special conditions and circumstances do result from an action or inaction by the applicant because she started the business

#### **CONDITIONS**

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

1. Signage will be limited to a single inverted V or inverted T sign no larger than eight (8) square feet, or up to two yard signs, up to three (3) feet in height and four (4) square feet in area, in accordance with all other provisions of the City of Elkhart's sign ordinance.

Smith states that the petitioner did supply 3 letters of support with her petition and there were 38 letters mailed. One returned not in favor with comments: The street is very busy and there is nowhere for people to park. Traffic is crazy and people don't always stop for school buses, let alone people parking in the street to buy flowers and plants.

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

Davis asks if staff would be in favor of the Board putting a limit on the variance until December so that the petitioner could sell her current inventory.

Smith states that his preference would be, if the Board wanted to put that limit on it, that staff would just handle that administratively rather than passing a variance with a time limit on it.

Mulvaney calls for a motion.

Strycker makes motion to approve; Motion fails with no second. Item is postponed for one month.

#### **21-UV-18 PETITIONER IS NORTON & BARBARA BARNETT PROPERTY IS LOCATED AT 207 E PARKVIEW AV**

To vary from Section 18.2, Permitted Uses in the M-1 District to allow for internet sales and dispatch for delivery of motor vehicles. Motor vehicle sales is not a permitted use in the M-1, Limited Manufacturing District.

Mulvaney calls petitioner forward.

Kerry Beasley appears in person for the petitioner. He states that he and his wife own Four By Motor Company in Granger. They bring in 70's, 80's, 90's trucks and SUV's from out west and store them in an industrial space. Vehicles are lightly reconditioned and stored indoors. Everything is advertised online. They are not open to the public and are appointment only. If someone does want to see one of the vehicles, they come and see it within the building. They are able to test drive if desired, but everything is stored indoors. He states they are looking to expand because they are outgrowing their space. Because they are strictly online, they also need more space to photograph the vehicles. Many of the things they do are actually allowed in M-1, such as automobile and truck repair, indoor/outdoor storage, truck garage, warehousing, but not vehicle sales. The previous tenant was a van conversion company who would bring in vans and convert them for various purposes and sell them. Most of the other businesses in the complex are retail. He does not know of any that are actually manufacturing facilities immediately around them. He states that he has a personal relationship with the owners who have actually held the space for them for a month, hoping that they would be approved for the variance.

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 an industrially zoned property with an existing thirty-seven hundred square foot multi-tenant building. The petitioner desires to have an internet sales motor vehicle dealership out of the eastern end of the building. Some of the tenants of this building are commercial in nature. The previous tenant of the proposed space was a van conversion shop. The previous tenant utilized the side property for outdoor storage of vehicles where the petitioner will not.

The proposed business would primarily be vintage cars that would be sold over the internet. Most of these vehicle would arrive at this location, have light work done on them, and shipped to their buyer. Their business does not intend to have customers at the property unless it is to pick up an online purchase. There may be light mechanical work and detailing done to the vehicles which is a permitted use in the Limited Manufacturing District.

### STAFF RECOMMENDATION

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

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community because there is not intended to be public on-site sales;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because there will be a limit commercial presence in a manufacturing district;
3. The need for the variance does arise from some condition peculiar to the property as there are several preexisting commercial uses in a manufacturing district;
4. The strict application of the terms of this Ordinance may constitute an unnecessary hardship if applied to the property for which the variance is being sought because it would restrict the use of the building to allow a less intense use;
5. The approval will be in compliance with the Comprehensive Plan which is anticipated to call for industrial land uses;

Hooley states there were 18 letters mailed. One returned not in favor with comments: Because of dust, the gravel area should be asphalted.

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

Strycker asks if the variance is granted, would it be limited to internet sales or could they start selling like a car lot.

Smith states that the request specifies internet sales, but the Board would be welcome to reinforce it with a condition.

Strycker asks if the variance carries over to the next owner of the property if it is sold. His concern is for the next owner.

Hooley states the condition would carry with the variance.

Mulvaney calls for a motion.

Beasley asks to clarify that the only way they advertise is online sales. There are times when a customer will want to travel in to see a vehicle, but they do not advertise in front of the building. No one can just come into the space without an appointment.

Strycker states he is more concerned about the traffic from auto sales from actually having a car lot.

Beasley states that they are not even in the building full time.

Strycker makes motion to approve with two added conditions: 1. There will not be public sales of vehicles on the property. And, 2. Vehicles will not be stored outside to be advertised to be sold; Second by Davis.

Motion carries.

**STAFF ITEM**

Smith requests if it would be possible to revisit 21-UV-17 in order to table the item instead of having it die and be readvertised.

Mulvaney requests advice from Arndt if it would be possible.

Arndt states that a motion to reconsider would be acceptable.

Mulvaney asks for a motion to reconsider.

Strycker makes motion to reconsider; Second by Billings.

Davis – Yes  
Billings – Yes  
Strycker – Yes  
Mulvaney – Yes

Mulvaney asks for motion to table.


Strycker makes motion to table; Second by Davis.

Davis – Yes  
Billings – Yes  
Strycker – Yes  
Mulvaney – Yes

Motion carries.

**ADJOURNMENT**

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



Doug Mulvaney, President                      Ron Davis, Vice-President