

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, March 11, 2021 - Commenced at 6:00 P.M. & adjourned at 6:54 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 - in person
Ron Davis - in person
Jeff Schaffer - online
Andrew Strycker - in person

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner 2

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

James Hines

RECORDING SECRETARY

Jennifer Drlich

APPROVAL OF AGENDA

Request is made to amend agenda to remove 20-BZA-42 and 21-BZA-02 as the petitioner has asked for a postponement. 21-BZA-09 must be reset for next month due to a printing error on the legal ads.
Motion made by Strycker to approve. Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR FEBRUARY 11, 2021

Motion made by Strycker to approve. Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Motion made by Davis to approve. Second by Strycker. Voice vote carries.

OPENING STATEMENT

Welcome to the March 11, 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

None

NEW BUSINESS

21-UV-03 PETITIONER IS MARTIN GUERRA

PROPERTY IS LOCATED AT VACANT LOT FOLSOM STREET

To vary from Section 5.2 Permitted Uses to allow the operation of a tree cutting business where residential uses are allowed.

Mulvaney calls petitioner forward. He states to the petitioner that 21-UV-03 will be heard, but that the petitioner's second request of case number 21-BZA-09 will not be heard until next month due to a publishing error.

Martin and Eliseo Guerra appear in person. Eliseo Guerra states that they are using the three lots as a parking lot. They have dirt and mulch so everything is muddy there. They want to use the three lots as main headquarters to do business. They plan on parking the trucks in the back in a line.

Mulvaney asks how many trucks they currently own.

Eliseo Guerra states that they own four.

Mulvaney asks how long they have been using the property at this point.

Eliseo Guerra states for about two years.

Mulvaney asks for questions from the Board.

Strycker asks if they are just storing their trucks. He wants to know if they will be bringing back trees and sawing them there.

Eliseo Guerra states they will not be bringing trees back, just parking trucks.

Mulvaney states that, should the petition be approved, one of the conditions is to have the property surveyed. He asks if they have any issues with that in order to establish where the city line is.

Eliseo Guerra states they have looked into a survey.

Mulvaney asks for further questions from the board. Hearing none, he opens for public comments to speak in favor. Seeing none, he opens for opposition.

Dwight Fish of 1627 Elizabeth Street. He states that he is also the Fourth District Councilman. He has seen the business activity increase over the last couple of years. He opposes the petition. He moved there in 1992 and immediately started a neighborhood association that fought against L E Johnson and MORryde to corral a business that was expanding, buying up properties, and using city streets. There are still traffic issues. There are many children there. There is also the habitat and environment. He has volunteered for 29 years at the Elkhart Environmental Center and helped the City to acquire the wetlands that abut this property. They are hoping to keep a buffer between the wetlands and the business, but the property in question is on a hill above a wetland. An unpaved parking lot causes some of the problems they had and recognized in 1991, which is groundwater pollution on fragile wetlands. Directly across from the center is a state protected wetland, a watershed, and low water tables. Trucks leak fluids, oil, solvents, et cetera from the engine or bed and that causes a lot of environmental issues. The number of trucks in this business has expanded and must keep expanding, as businesses do to survive. He is concerned about the number of trucks that will end up on this property in a residential area. They are trying to preserve the environment, develop parks, and encourage homes in a residential area.

Mulvaney asks for further persons to speak in opposition. Seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns four parcels of unimproved property in the Hudson Sterling Subdivision south of Folsom Street. Access to the lots is via an unimproved alley with access onto Folsom Street; the lots also front on the platted right of way for Belmont Avenue, although this right of way is uncleared and unimproved, making it impossible to use for vehicular access. It's unlikely that this platted roadway will be improved in the foreseeable future.

The properties are on the edge between low-density residential development and a large nature preserve area owned by the City of Elkhart Environmental Center, which is likely to remain undeveloped land in perpetuity. The Elkhart River and a flood district are located to the immediate northeast. The neighborhood is also home to industrial development, such as Mor/Ryde to the northwest, and it's not uncommon for residential uses in this area to abut next to industrial uses. Residential uses are to its immediate northwest and southwest, and preserve areas to its northeast and southeast.

The owners have been using the properties as equipment storage for a tree service for over a year. The properties have been mostly cleared, and a fence with gates put up on the three contiguous parcels. The properties are unpaved; a variance requesting relief from paving requirements has also been submitted as 21-BZA-09. Trucks and heavy equipment are being stored on-site.

While no surveys of the site are known to exist, staff measured the linear frontage of the lots along the alley in February of 2020. According to property records, the two lots owned by the Environmental Center should have a linear frontage of 80', whereas staff only measured approximately 57 linear feet of undisturbed forest. Staff believes it's likely that the applicants have encroached onto city-owned property; a survey to determine exact locations of property boundaries is recommended.

The applicants are a small business startup with limited resources. While staff supports small business initiatives in general, the location is not ideal, located adjacent to a residential neighborhood and with only an unimproved alley for access.

STAFF RECOMMENDATION

The Staff makes **no recommendation** of the use variance.

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 have the four parcels surveyed with the corners marked within 3 months of approval, and provide a copy of the survey to city staff.

There were 17 letters mailed; 1 returned in favor with no comment. There was one phone call not in favor with comments: Keep residential. Once businesses come in, it's hard on home values.

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 - No
Schaffer - No
Strycker - No
Mulvaney - No

Motion fails.

Strycker makes motion to deny; Second by Davis.

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

Motion carries.

Davis suggests that the petitioner may rent a storage unit for a reasonable price as an option for their trucks.

**21-X-05 PETITIONER IS ELKHART COMMUNITY SCHOOL CORPORATION
PROPERTY IS LOCATED AT 2720 CALIFORNIA ROAD**

A Special Exception, R-1, One-Family Dwelling District, to allow for the expansion of an educational facility on an existing campus. Also a Special Exception to allow the installation of two (2) above ground fuel tanks in a M-2 General Manufacturing District.

Mulvaney calls petitioner forward.

Andrew Cunningham appears in person for Jones Petrie Rafinski of 325 S Lafayette Boulevard, South Bend. The Elkhart Community Schools would like to make improvements to the land they currently own. As a result of the merger of the schools the improvements would improve the safety, functionality and operational ability of the school. The major improvements would expand the westernmost parking lot in order to provide more parking for students and staff, as well as to relocate the bus parking, drop-off and pickup location to the northern portion of the site to allow for more bus activity, to move it away from California Road, and to operate more safely and efficiently. In the eastern portion of the site, the school wishes to expand the existing transportation facility and add a fueling station with two above ground fuel tanks located in an industrial area so as not to cause disruption.

Mulvaney asks if the buses will come in on the west side, drive between building and parking lot, and then into the bus parking lot.

Cunningham confirms.

Mulvaney asks if the baseball field is being shifted.

Cunningham states that is correct. As the merger happens some of the uses will be shared between the two schools.

Mulvaney asks how many extra parking spots will be there as a result of expansion.

Cunningham states there will be approximately 250 more spaces.

Mulvaney asks for questions from the Board.

Strycker asks if the improvement is part of the referendum or if it is part of the budget.

Tony Gianesi, Chief Operating Officer for Elkhart Community School Corporation appears in person. He states that the referendum is completely separate. Under state bonding laws they are able to bond for the project. They have held the public hearing for the project which was approved by the board, so it will move forward regardless of the results of the referendum. He adds that they realized bussing would increase from 33 to between 60 and 70 so they tried to find a centralized location. The reason the bussing area doesn't start directly behind the new ETI building is to allow for

more growth. They are utilizing the sports fields from Central because they are in slightly better shape, which gave them the ability to remove the existing softball field.

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

Dwight Fish of 1627 Elizabeth Street appears in person. He states that he supports the community schools and hopes for an affirmative vote. He is concerned about the above ground fuel tanks and the environmental issues that entails.

Cunningham states that as part of the review process they are required to show approval from the state's inspection to the Tech Review board.

Mulvaney asks for further comments 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 school is requesting these improvements to their existing campus in response to a merger in the high school districts. The school is in need of increased student parking as well as the ability to handle an increase in bus traffic. The reconfiguring of the existing parking area and the drop-off area will assist in handling the increase in students. The circulation improvements throughout the campus are necessary to help with increased foot traffic and to increase pedestrian safety. The new fueling center will help the school maintain the increased number of buses coming to the property.

The proposed pick-up/drop-off area will be constructed on a portion of the school property currently being used as a baseball field. This new area is adjacent to a vacant piece of property that abuts a light industrial use.

The bus fueling center will construct two (2) above ground fuel tanks. The first is a 6,000-gallon gasoline tank and the second is a 15,000-gallon diesel fuel tank on existing improved surfaces surrounded by existing industrial uses. This is a Special Exception of uses in the M-2 General Manufacturing District Section 19.3 A. stating all Special Exceptions in the M-1, Limited Manufacturing District, Specifically Section 18.3 K. with regards to bulk storage tanks. Tanks storing liquids or gases that require filing a Tier 1 or 2 SARA (Superfund Amendment and Reauthorization Act) report or those that exceed an NFPA classification of 2 such filing require additional approval. Also referencing Section 18.3 L. which requires a Special Exception for the storage of any liquid or gas in excess of 10,000 gallons.

STAFF RECOMMENDATION

Staff recommends **approval** of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because it will be similar to the remainder of the campus;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

There were 34 letters mailed. Two returned in favor with comments: Traffic control for school busses will be important. One returned not in favor with comment: Taxes are high enough here. I am divorced and cannot pay another tax hike.

Hooley states that the petition comes from the Plan Commission with the recommendation that the City receives a State Design Release for the fuel tanks. They did make a favorable recommendation to the Board. The projects are currently undergoing the Tech Review process.

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
Schaffer - Yes
Strycker - Yes
Mulvaney - Yes

Motion carries.

**21-UV-04 PETITIONER IS MAHMOUD ALSHURFA
PROPERTY IS LOCATED AT 800 GOSHEN AVENUE**

To vary from Section 12.2, Permitted Uses in a B-2 Community Business District to allow the operation of a mechanic shop and outdoor automobile sales.

Mulvaney calls petitioner forward.

Mahmoud Alshurfa, owner of 800 Goshen Avenue appears in person. He states that the property has been auto repair for forty years, but he would like to add car sales. He would like to have five cars for sale and the rest of the parking be for customers and cars to be repaired. Customers come by appointment so as not to have extra cars in the parking lot. He wants to keep it very clean.

Alanoud Alshurfa appears in person, identifying herself as he petitioner's sister. She states that their entrances will be one-way in order to better direct traffic flow concerns. They will have two handicap parking spaces to accommodate customers. They will not have loud voices in order not to bother the neighbors. They have also spoken to the neighbors regarding noise and environmental concerns, stating that they will keep the shop as it has been, with no issues.

Mulvaney states that there are two conditions recommended by staff. One regards vehicles for sale not extending over the sidewalk. The other is that the handicap parking be designated with striping.

Alanoud Alshurfa states that also, all the cars they have will be clean and ready for sale. They have another property in South Bend where they can fix up those cars if necessary before bringing them to this property.

Mulvaney asks for questions from the Board.

Strycker asks if they already have the auto shop there and are simply adding the sales.

Alanoud Alshurfa confirms.

Mahmoud Alshurfa states that they wish to keep the shop very clean. He does not believe a messy shop will invite business. He wants to conduct business the right way. He does not want to keep too many cars on the lot.

Mulvaney asks if there are any further questions. 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 owner owns a .36-acre lot at the intersection of Goshen Avenue and Middlebury Street currently being used as an automobile repair business. The existing building is currently being operated as an automobile repair service utilizing two services bays in the building.

The applicant is requesting to use the building as it is being used today as a mechanic repair business. The applicant proposes to use the paved area at the intersection of Goshen Ave and Middlebury St. for the sale of vehicles. The applicant would also have a small office in a portion of the building.

The applicant is not proposing any additional site changes at this time and would use the property in a similar fashion as the existing business. The applicant is not proposing any new lighting or additional signage other than the signage on the building. The site will have adequate parking to accommodate the mechanic repair shop and the office space.

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 applicant will be working with the local health officials on disposal of all waste materials;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because this property is currently being used for the same type of business;
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 type of use continuing on the property;
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. Vehicles for sale on this property shall be located on the property and not extend over the sidewalk in the public right of way.
2. Proposed parking areas shall be designated with striping along with designating one ADA accessible parking space.

There were 29 letters mailed. One returned in favor with no comment. Two returned not in favor with no comments.

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

Strycker asks in what zoning car sales are allowed.

Smith states that is B-3, but also in B-4 but it must be in an automall.

Mulvaney asks for further questions. Hearing none, he calls for a motion.

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

Davis - Yes

Schaffer - Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

STAFF ITEMS

19-X-04U

PROPERTY IS LOCATED AT 149 KENWOOD AVENUE

Staff and BZA review of Special Exception 19-X-04, which allowed for the continuation of a Day Care Center at 149 Kenwood Avenue.

STAFF ANALYSIS

On March 4, 2019, a special exception was granted to Jodi’s Little Stars daycare home at 149 Kenwood Avenue. 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.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum twelve (12) children, including those of the petitioner.
9. The operator of the day care home shall live on the premises.
10. The alley cannot be used for the drop off and pick up of children, clients must park in the driveway or on the street.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by March 11, 2021.

Staff visited the site on February 24, and found the owner to be fully in compliance with the conditions placed upon the special exception. Additionally, according to the state’s Family and Social Services Administration (FSSA) child care finder site, the day care has an exemplary inspection record, with zero violations recorded since June of 2018.

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 March 9, 2023.

Mulvaney asks for comments from the petitioner.

Jodi Bishop appears online. She clarifies that it is a Day Care Home and not a center as the requirements are different. She states that she had her inspections today and everything was good.

Mulvaney asks for questions from 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 for a motion.

Strycker makes motion to approve; Second by Davis.


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

Motion carries.


ADJOURNMENT

Mulvaney asks for a motion to adjourn meeting.

Strycker motions to adjourn and is seconded by Davis. Meeting is adjourned and all are in favor.



Doug Mulvaney, President



Ron Davis, Vice-President