

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, April 8, 2021 - Commenced at 6:00 P.M. & adjourned at 7:02 P.M.
City Council Chambers – Municipal Building**

Elkhart City Plan Commission was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Jeff Schaffer
Andrew Strycker

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

James Hines

RECORDING SECRETARY

Jennifer Drlich

OPENING STATEMENT

Welcome to the April 8, 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.

AMMENDMENT AND APPROVAL OF AGENDA

Mulvaney notes that 20-BZA-42 and 21-BZA-02 have requested postponement for one month and should be removed from the agenda. He asks if there is a motion to table.

Strycker motions to table; Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR MARCH 11, 2021

Strycker motions to approve; Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Davis motions to approve; Second by Strycker. Voice vote carries.

NEW 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.

Fernando Sanchez Quintos of 1731 S Main St appears in person. He states they are requesting a fence variance.

Mulvaney asks if it is a 6-foot-high fence.

Quintos states that they are asking for a 4-foot fence.

Mulvaney states that the request asks for a wood privacy fence.

Quintos states they want a 4-foot fence. They bought a lot next to their home and want to fence it altogether.

Mulvaney asks if they want a solid, wood, privacy fence that cannot be seen through.

Cynthia Acosta Ortega states that they want a fence around the vacant lot they acquired and the lot the house is on. It won't go up to the front of Main Street. It will go right beside the house so it will give the visual area for a person on Hovey.

Mulvaney asks for questions from the Board.

Mulvaney states that one of the issues is that the fence along Hovey Avenue is too close to the right of way. Planning wants to move the fence further back than what is proposed. He asks if they would have a problem with that.

Ortega asks how far away from the sidewalk they want to go.

Hooley states that it should be 12 feet from the public right of way, meaning that the fence would have to be moved back another 10 feet from where it is proposed.

Mulvaney asks if moving only the fence on Hovey back 10 feet would be a problem.

Ortega asks if making the fence see-through would change that.

Mulvaney states that the fence is too close to the right of way and the city is requesting a denial based on that. They do not have an issue with anything to do with the rest of the fence as long as that one section is moved back the 10 feet.

Ortega asks for clarification on right of way.

Hooley states that in this case the public right of way is also their property line and appears to be on the inside of the sidewalk. So, the sidewalk is technically in the public right of way of Hovey. They are proposing the fence to be two feet from the property line and the right of way of Hovey.

Mulvaney asks if the sidewalk is within the right of way.

Hooley confirms. He states that from the pavement the sidewalk starts in about 6 feet, so there are about 10 feet between the pavement of Hovey and their property line.

Mulvaney asks how far from the sidewalk edge would the 12 feet be.

Hooley states it would be 22 feet from the edge of the street pavement.

Strycker asks what the setback is on Main street.

Hooley states that the setback would have to be in line with the home, which is what they are proposing. He states he is coming up with 16 feet.

Strycker asks if they were to meet the setback requirements, and said they wanted to do a 4-foot fence, would they even need an appeal.

Hooley states that if they are still proposing to do a privacy fence, they would. If they want to do an open picket, wrought iron, or split rail, they could go to the property line on Hovey.

Ortega says what she understood was, if it was see-through they could go to the property line, the problem is that they want a privacy fence. So if it's not a privacy fence they can go to the property line.

Mulvaney states a solid privacy fence needs to be set back 12 feet. An open picket fence would not need to be. It could be put up to the edge of the property line. He asks for confirmation from Hooley.

Hooley states that if they so choose to change the plan, Planning and Zoning will have to look at corner visibility from the alleyway. For the most part, open picket fence could go to the property line.

Schaffer makes the suggestion that they table the item so that the petitioner can speak to the staff in light of the applicant reconsidering their request.

Mulvaney agrees.

Schaffer makes motion to table until next month's meeting so that the applicant and staff may reach a conclusion that does not require action from the Board.

Strycker seconds.

Mulvaney states that before a vote he wants to make sure the petitioner understands that they are postponing any decision until next month in order to give them time to talk to City staff to work out an agreement. They are not denying it, but giving them extra time to find a solution.

Ortega agrees.

Mulvaney calls for a voice vote. Voice vote carries unanimous.

21-BZA-11 PETITIONER IS B&D PROPERTIES LLC
PROPERTY IS LOCATED AT 1847 GARDEN STREET

To vary from Section 26.10.D.4 Free-standing Signs, which allows for an office sign in a residential district at a 36-foot setback to be up to 15 square feet, to allow for a freestanding sign 70 square feet in area, a variance of 55 square feet.

Mulvaney calls petitioner forward.

Charles Raiff of 1847 Garden Street appears in person for B&D Properties, LLC. He states that they manage the Wise Estates mobile home community in Elkhart on the corner of Country Club Drive and Garden. They are asking to install a new sign for the business and community roughly 45 feet south of Country Club Drive.

Mulvaney asks if the sign is to be put on the opposite side of an existing structure that already serves as part of the post office box structure.

Raiff states it is a wall that has been put up there to protect the mailboxes and mailman from winds and storms that come off the road. They are trying to enhance that area visually by putting up a sign. It's a great location for them and they believe it will make everything look a little better there.

Mulvaney asks for questions from the Board.

Schaffer asks what the purpose for the use of the sign.

Raiff states it is to primarily advertise the park and the business entity that runs out of the park, B&D Properties. They have discussed putting up a digital, scrolling message board on the bottom, but primarily it is to let people know they exist.

Anthony Bryan approaches. He states they do have issues with customers not finding the office and going to residents' homes. They have installed signs saying that the home is not the office and feel they need to do something more to promote the location and have the general public know where they are. Right now it is very unclear to the general public.

Mulvaney states the staff did not make a recommendation on this either for or against, but recommended three conditions on the application. He asks if there are any issues with those.

Raiff states they do not. In fact, they already intended to turn off the lights in the evening time.

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 mobile home park east of Cassopolis Street bounded by Garden Street, Canton Street, Country Club Drive, and Woodlawn Avenue. On the northeast corner of the lot is the park's business and maintenance building. Near the building is a mail facility with a large backing board with a blank face, facing Country Club Drive, and approximately 36 feet south of the street right-of-way.

The petitioner wishes to place a sign approximately 70 square feet in area with an integrated message board on the existing structure. Since this is a mobile home park, it is primarily residential in nature; the sign code in residential areas are generally stricter than those in commercial areas. The maximum square footage for an office sign in a residential district starts at ten square feet at the minimum five-foot setback; the increased setback results in a greater sign allowance of fifteen feet.

The proposed setback is greater than typically found for a freestanding sign, and the sign would face a commercial district.

STAFF RECOMMENDATION

The Staff makes **no recommendation**.

CONDITIONS

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

1. Any applicable sign and electrical permits must be issued prior to installation, and an electrical inspection shall be sought post-installation if one is deemed necessary by the electrical inspector.
2. The integrated message board shall be 50% or less the size of the primary sign; if it is electronic, it may not change light intensity or give the visual impression of movement or rotation.
3. Any sign illumination shall be turned off between the hours of 11 p.m. and 7 a.m.

Smith states there were 14 letters mailed; 1 returned in favor with no comment.

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

Strycker asks what the maximum size of the sign would be if this were a business district.

Smith states that there is a minimum 5-foot setback and the further back it is pushed, there is a bonus to a certain extent. At the minimum setback in a B district 50 square feet would be allowed. Where they are with a 36-foot setback they would be allowed up to 75 square feet.

Strycker asks if this were a business if this sign would be acceptable.

Smith states yes, if it were a business.

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

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

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

Motion carries.

21-UV-05 PETITIONER IS MARIO'S DELI & CATERING INC
PROPERTY IS LOCATED AT 1801 WOOD STREET

To vary from Section 11.2, Permitted Uses in the B-1 District, to allow for a furniture repair and restoration business. Furniture repair and restoration uses are not permitted by right in the B-1 District.

Mulvaney calls petitioner forward.

Bryan Snyder of 2213 Cambridge Dr, Goshen. He states the current owner would like to sell the business and has accepted his offer for the building. He would like to establish a furniture repair and restoration business there.

Mulvaney asks for questions from the Board.

Schaffer asks if trucks or other heavy vehicles should be expected as part of the business. He wants to know how the materials are brought in.

Snyder states there aren't that many materials and he has them delivered to his house. He states the impact would be less in terms of traffic. He does not have customers come to the location except to pick up or drop off furniture and he doesn't have many employees.

Schaffer asks if there is a fourth condition discussing no parking of oversized vehicles, semis or similar size vehicles if the petitioner would have a problem with that.

Snyder states not at all.

Mulvaney states that he understands that the staff conditions talk about no use of volatile organic compound based substances such as solvents and adhesives. He asks if Snyder does not propose to use any of that.

Snyder states that he has spoken to staff about that and the term needs to be amended slightly. It needs to say Low VOC. The technical definition is anything that evaporates, but everything he uses is water-based and low VOC.

Mulvaney asks if there are any problems with the other two conditions.

Snyder says there are not.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition.

Kevin Quarandillo of 198 Gage Avenue appears. He states that this property is on the opposite side of Wood Street from his property. He states that he has spoken to a number of neighbors who have said they are not in favor. He also has some concerns for his home. He states that he sent Smith some information regarding vapor intrusion to distribute to the Board. He submits papers from Acuity Environmental System Solutions and a fact sheet from the Indiana Department of Environmental Management. He states that his information is not directly regarding the zoning but it is something that should be considered. He reads a letter from Acuity regarding an environmental study at 500 Industrial Parkway, Elkhart. The letter states that TCE has been released and encountered groundwater. Under certain conditions this can be volatile and cause a potential vapor intrusion. He refers to an attachment explaining vapor intrusion and vapor coming into the home. He reads further information about how Acuity can take samples of the ground and air to test for vapor. He states he is having this done to see if there are chemicals in his home from the ground water. He reads about chemicals, degreasers or gasoline causing concern when leaked from things like paint strippers or thinners. He states these can collect over time and go into a home. He states his address is residential, but across Simpson there are a number of industrial facilities. There are odors on a regular basis. He states that they aren't in question today, and the things he brought to attention today aren't in question to this concern, but there are concerns about more chemicals in the area. He states that he heard the petitioner speak about not using volatile organic compounds, but the concern is potential contribution to groundwater pollution which is already under investigation. He does not feel there should be a business right next to them in a residential area toxifying the neighborhood further. He states this is not about combustion, it is about the air pollution of their homes.

Mulvaney asks if the petitioner would like to address any of these concerns.

Snyder states that he does not use any of the chemicals that were referenced. There is no thinner or stripper. He puts nothing down the drain. There is no smell. It's Citristrip. It hardens into a paste and is solid waste. It does not go into the ground or groundwater.

Mulvaney asks for further comments; seeing none, he closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns an existing commercial building comprising a 5,500 square foot commercial building that was built in 1920. The building's location is unusual since it's a single commercial building in the middle of a low-density residential neighborhood. Recent past uses of the building have been for a deli and catering business and a gift shop. The current owners wish to sell the property to another party who intends to use 21-UV-05 the property for a furniture repair and restoration shop.

Generally speaking, a workshop such as this would be deemed permissible in the more intensive B-3 or M zoning districts. However, the operation proposed will be relatively small and the buyer has stated that non-volatile materials will be used. Parking is available on the street and if the business owner were to scale up the business such that more parking is needed he would likely need a new facility.

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 operation will be contained indoors and non-volatile materials will be used;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the repair activity will be housed indoors and no exterior changes are anticipated;
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. The operation shall not cause a disturbance to neighboring properties including but not limited to noise, smoke, and odor, as determined by the zoning administrator.
2. The Building and Fire Departments shall be informed of the new business prior to its commencement, and any applicable building and fire codes shall be adhered to.
3. Volatile organic compound-based substances such as paints, solvents, and adhesives shall not be used.

Smith states there were 51 letters mailed; 2 returned in favor with no comment, 6 not in favor, 3 with comments. Comments were:

"We have issues with people parking across driveways and in my driveway now I hate the store no furniture store!"

"The addition of more noise and traffic is my main concern, but with wood working saw's compresor's and more bis truck's will be to loud."

"I'm sorry to oppose the change in zoning. I believe that once the zoning classification is changed it goes from a neighborhood deli to furniture repair to woodshop. I own a woodshop in a M-2 manufacturing site. I become wary of it becoming mixed with residential zoning with no buffer. My concerns are the same here when we try to preserve our residential neighborhood from sliding into mixed use. The Wood & Gage has been a great neighbor. I will miss them."

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

Davis asks if the petitioner agreed to the special conditions.

Smith states that he asked for the one modification, but yes, he did.

Schaffer asks if the Pretreatment Questionnaire has been approved by Public Works.

Smith states that it has.

Mulvaney calls for a motion.

Schaffer makes motion to approve with conditions, including the amended condition number 3, and adds condition 4. That no parking or loading of any semi-trucks or other similar sized vehicles shall be allowed as part of the business; Second by Davis.

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

Motion carries.

**21-X-06 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT 1201 S NAPPANEE**

A Special Exception in a, R-1, One-Family Dwelling District, to allow for the expansion of a Municipal Utility.

Mulvaney calls petitioner forward.

Jeremy Roschyk with Donahue and Associates appears online for the petitioner. He states they are the engineering firm working with Elkhart on developing the expansion. They are requesting the appeal of the R-1 designation for the waste water treatment plant in accordance with the requirements of the 2011 consent decree with the EPA and Department of Justice. The project will include 2 additional structures and the existing treatment plant at the site, including adding onto the garage behind the existing administration building. There is no expansion of the site.

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 Elkhart Waste Water Treatment Plant is proposing several site improvements. They are looking to construct a new two-story Central Operations Building, a new Tunnel Exit Building, 2 additions to an existing Collection and Distribution Garage, and several ancillary structures.

The City of Elkhart is implementing this application to comply with the November 2011 Consent Decree that was entered into with the United States Environmental Protection Agency and the United States Department of Justice. These improvements will allow an increase in hydraulic capacity at the site to 60 million gallons per day.

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 as the facility will be built to exceed local fire and building code requirements;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the improvements will not change the overall appearance or use of the property;
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.

Hooley states there were 43 letters mailed; 1 returned in favor with no comment. He notes that this did go before the Plan Commission on Monday and comes with a favorable Do-Pass recommendation.

Mulvaney asks if there are questions from the Board for staff. Hearing non, he calls for a motion.

Schaffer makes motion to approve; Second by Davis.

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

Motion carries.

21-X-07 PETITIONER IS CURRENT OWNER LAURIE STEWART, PHILIP D. AND GAYLE R. WHITMER AND POTENTIAL BUYER IGLESIA DE JESUCRISTO PALABRA MIEL PROPERTY IS LOCATED AT 3030 OLD US 20

A Special Exception in a, B-1, Neighborhood Business District, to allow for Religious Facility.

Mulvaney calls petitioner forward.

Samuel Oviedo Espinoza appears online to represent the church. He states they simply want to have a church there. They will not be doing any construction outside and the building is just for a small congregation. They don't want anything big or that will affect their neighbors. They have some neighbors that tell them they are in favor and are happy to have a church there.

Mulvaney asks how many people would attend church on any given day?

Espinoza states that now there are 35-40.

Mulvaney asks for questions from the Board.

Davis asks if the whole building will be used for the church.

Espinoza states it will. He states that they are only using around 8,000 square foot of it because they are a small church right now, but they do not plan to rent out to businesses or anything. It is the church's building.

Mulvaney reminds the Board that previously they did approve a variance to put in a small manufacturing plant, but that fell through. He states they will have to act on removing the other variance at some point.

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 requesting to use an existing commercial building as a church. The property currently has existing parking and the petitioner is not proposing any changes to the property other than refacing existing signage.

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 the improvements will not change the overall appearance of the property;
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.

Hooley states there were 38 letters mailed; 1 returned in favor with no comment, 2 not in favor with 1 comment. One telephone call returned in favor. Comments not in favor were: As my backyard abuts up to this property, it takes away my privacy. I would be willing to accept this if there were a privacy fence put between the properties. He states this project comes from the Plan Commission with a favorable recommendation.

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

Davis makes motion to approve; Second by Strycker.

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

Motion carries.

STAFF ITEMS

19-X-07U

PROPERTY IS LOCATED AT 1016 LAUREL ST

Daycare Home update.

STAFF ANALYSIS

On April 11, 2019, a special exception was granted to Miss Nicia's Family Child Care daycare home at 1016 Laurel Street. 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 April 9, 2021.

Staff visited the site on March 26; the site was compliant except that there were signs out front and a copy of the license had not been submitted to the Planning Office. Ms. McBride provided a copy of the license and stated she would remove the signs. According to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has had two critical health and safety violations since 2018, for having hazardous materials (cleaning supplies) accessible, and for maintenance issues with the backyard fence. Both have been resolved.

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 April 13, 2023.

Mulvaney asks for questions from Board. Hearing none, he calls for public comments in favor. Hearing none, he calls for public comments in opposition. Hearing none he closes the public meeting and calls for a motion.


Schaffer makes motion to approve; Second by Davis.

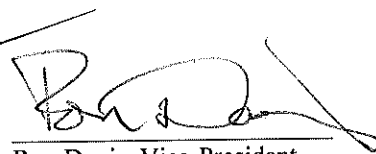
Davis – Yes
Schaffer – Yes
Strycker – Yes
Mulvaney – Yes

Motion carries.

ADJOURNMENT

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


Doug Mulvaney, President


Ron Davis, Vice-President