

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, February 11, 2021 - Commenced at 6:00 P.M. & adjourned at 7:19 P.M.  
City Council Chambers – Municipal Building**

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

**MEMBERS PRESENT**

Doug Mulvaney - In Person  
Ron Davis - WebEx  
Jeff Schaffer - WebEx  
Andrew Strycker - WebEx

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Eric Trotter, Assistant Director for Planning  
Ryan Smith, Planner  
Nathan Hooley, Planner

**LEGAL DEPARTMENT**

Randy Arndt, Deputy City Attorney

**TECHNOLOGY STAFF**

Justin Knopsnyder

**RECORDING SECRETARY**

Jennifer Drlich

**AMENDMENT OF AGENDA**

Mulvaney makes note that 20-BZA-42 and 21-BZA-02 have requested a postponement, and 21-UV-02 has withdrawn.

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

**APPROVAL OF MINUTES FOR JANUARY 14, 2021**

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

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the February 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.

## **NEW BUSINESS**

### **21-X-02 PETITIONER IS CITY OF ELKHART PROPERTY IS LOCATED AT 1347 EDGEWATER BOULEVARD**

A Special Exception as per Section 5.3, Special Exception Uses in the R-2 District, to allow for the rehabilitation of an existing sanitary sewer lift station, including replacement of the above grade structure.

Mulvaney calls petitioner forward.

Jamie Poczekay with DLZ appears online. She states there is a sanitary, sewer lift station with an above grade brick building that houses the electrical equipment for the station. The city is proposing to rehabilitate the station which was originally constructed in the 1950s and is in need of major repairs. The petition is to rehabilitate and remove the existing structure and replace it with a new structure. They would like to reconfigure the site to allow for maintenance activities and improve safety. They have developed the building in a way that is compatible with the neighborhood. The building will be equipped with new security features and operate in accordance with the local and state guidelines. They are proposing to add a fence on the north side for screening.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

### **STAFF ANALYSIS**

The City of Elkhart owns an existing sanitary sewer lift station on a quarter-acre lot at the corner of Edgewater and Navajo, across from the river. The station currently includes an above-ground structure and a single driveway. The City proposes to rehabilitate the lift station which will include demolishing the existing structure, installing pumps and other equipment in the below-ground structure, pouring a concrete top slab over the underground equipment, and building a new above-ground structure to house electrical and mechanical equipment. The above-ground structure will mimic the appearance of a residential building, and a fence will be installed to the northwest to screen the property from an adjacent residence.

### **STAFF RECOMMENDATION**

The Staff recommends approval of the special exception 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 structure will mimic the look of a residential structure;
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 18 letters mailed. One returned in favor with no comment. The case comes from the Plan Commission with a "Do-Pass" recommendation.

Mulvaney asks the Board for questions for staff. Hearing none, 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-03 PETITIONER IS ELKHART PUBLIC LIBRARY PROPERTY IS LOCATED AT 2400 BENHAM AVENUE**

A Special Exception as per Section 4.3, Special Exceptions in the R-1 District, to allow for a 1,035 square foot addition to an existing Public Library.

Mulvaney discloses that he is the President of the Board of Directors for the Friends of the Elkhart County Library which is not a policy-making body with respect to the library, nor having anything to do with budgetary matters. It is a support organization independent from the library. It is not part of the Board of Trustees and he does not believe he has any conflict in acting on this. He calls the petitioner forward.

Ethan Yoder with Engineering Resources appears online. He states that he is the civil engineer for the project. The library is proposing an addition and interior renovations to the existing building. It will include a children's book area and some site improvements, a patio, relocating handicap parking closer to the front door. They are requesting a special exception for library use in an R-1 district which the library currently operates in but it would be extending that use. The building addition is located on the south side of the building away from the residential area. The architecture will mimic the current architecture so as to fit in with the community and surrounding area. It should not reduce the property values of the surrounding area and should be seen as an asset to the surrounding community.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

**STAFF ANALYSIS**

The petitioner owns and operates the Pierre Moran Branch of the Elkhart Public Library at 2400 Benham Avenue. The building currently comprises 4,800 square feet on a .76-acre lot. The property is bordered on the north by a low-density residential neighborhood, on the east and west with vacant lots, and on the south by the Woodland Crossing development to the south. They propose to build a 1,000 square foot addition on the south side of the building. The project is currently going through the city's Technical Review process. The proposed addition is unlikely to cause a nuisance to adjacent properties and is being built away from the residential area to the north.

**STAFF RECOMMENDATION**

The Staff recommends approval of the special exception 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 addition will be located an ample distance from adjacent properties;
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 18 letters mailed. One returned in favor with comment: We are in favor. Strongly! The case comes from the Plan Commission with a "Do-Pass" recommendation.

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

Strycker makes motion to approve; Second by Schaffer.

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

Motion carries.

**21-X-04 PETITIONER IS ELKHART PUBLIC LIBRARY  
PROPERTY IS LOCATED AT 3429 E BRISTOL STREET**

A Special Exception as per Section 4.3, Special Exceptions in the R-1 District, to allow for a 2,130 square foot addition to an existing Public Library.

Mulvaney calls petitioner forward.

Ethan Yoder with Engineering Resources appears online. He states that the edition includes the children's reading area, immersion lounge, office space, outdoor patio, and interior renovations. The property is currently R-1 and has a special exception use for library use and they are requesting to extend that use. It will keep with the same architectural style as the existing building. The building addition will be to the south, facing a park recreation area. It is not anticipated to reduce the values of the surrounding properties as it should be seen as an asset to the community.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

**STAFF ANALYSIS**

The petitioner owns and operates the Osolo Branch of the Elkhart Public Library at 3429 E. Bristol St. The building currently comprises 4,000 square feet on a 1.5-acre lot. The property is surrounded by low-density recreational and institutional uses, with a park to the west, a school to the north, and a church to the east. They propose to build a 2,100 square foot addition on the south side of the building. The project is currently going through the city’s Technical Review process. The proposed addition is unlikely to cause a nuisance to adjacent properties.

**STAFF RECOMMENDATION**

The Staff recommends approval of the special exception 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 addition will be located an ample distance from adjacent properties;
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 10 letters mailed. Two returned in favor with no comment. It comes from Plan Commission with a “Do-Pass” recommendation.

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

Schaffer makes motion to approve; Second by Davis.

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

Motion carries.

**21-BZA-04 PETITIONER IS STEVEN E HOLBERT  
PROPERTY IS LOCATED AT 1840 FIELDHOUSE AVENUE**

To vary from Section 18.6, Yard Requirements in the M-1 District, which requires a twenty-five (25) foot front yard setback, to allow for a two (2) foot front yard setback, a variance of twenty-three (23) feet.

Mulvaney calls petitioner forward.

Tom Sotebeer with Almac-Sotebeer Inc appears online to represent the petitioner. He states they would like to add additional storage space on the property by adding a small building along the current fence line.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

**STAFF ANALYSIS**

The petitioner owns a .36-acre lot in an established industrial zone immediately south of Lusher Avenue at the corner of 19<sup>th</sup> and Fieldhouse. They wish to expand their warehousing facility with a 75’ x 48’ addition, which would be built to approximately 2’ from the property line. The site is somewhat limited due to retention being behind the building, and the setback is not unprecedented in this long-established industrial area. Any right of way improvements for Fieldhouse Ave. such as road widening or sidewalks are unlikely in the foreseeable future.

**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 future right of way expansions are unlikely;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will not interfere with the use and other buildings in its vicinity have similar setbacks;
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 there is limited room for expansion;
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 development;
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. The addition must be outside of the Intersection Visibility Area as per Section 26.5.B.1.

There were 13 letters mailed. One returned in favor with no comment.

Mulvaney asks the Board for questions for staff.

Schaffer asks how comfortable Mr. Smith is that the building will be outside the visibility area.

Smith states that, according to the site plan that was submitted, which he did scale off, it is outside of visibility. However, at the time of application a surveyed site plan was not available. They are in the process of surveying the property and there has already been a discussion with what they thought there would be some revisions made. The condition is precautionary.

Mulvaney calls for a motion.

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

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**21-BZA-05 PETITIONER IS PULSE 1 LLC / CELLAR INVESTMENT LLC**

**PROPERTY IS LOCATED AT 501 / 521 COUNTY ROAD 6 E**

To vary from Section 26.10.D.4.a which allows only one free-standing sign is permitted per zoning lot frontage, to allow a second freestanding sign on the County Road 6 frontage.

To also vary from Section 26.10.D.4 Free-standing Signs to allow for a sign eight (8) feet in height that is setback seven (7) feet from the property line, where a freestanding sign is permitted to be a maximum of seven (7) feet in height, a variance of one (1) foot.

To also vary from Section 26.10.D.4 Free-standing Signs, which requires that an integrated message board in the B-2 to be limited in size to 50% of the sign area of the principal sign, to allow for an Electronic Message Center that is 100% of the size of the principal sign, a variance of 50%.

Mulvaney calls petitioner forward.

Gary Potts, owner of Professional Permits at 58171 Dragonfly Court in Osceola, Indiana appears online to represent the petitioners. He states that the three parcels and the LLCs are owned by a husband and wife. They have a narrow easement for The Branded Barrel between the two parcels that are the main parcels. This is where they are requesting to put the sign.

Mulvaney asks for questions from the Board.

Strycker asks what is the need for the sign to be 100% electronic.

Potts states that it will be a monolith sign. The top panel will be the electronic message center and the bottom is going to be a static Branded Barrel sign. At 50% it would have a very large area of blank cladding that would not be very aesthetically pleasing.

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

**STAFF ANALYSIS**

The petitioners are a husband and wife who own three parcels at the southeast corner of County Road 6 and Cassopolis Street that include an established gas station and liquor store. Developed in tandem, since the properties are under the same ownership and control, they constitute a single zoning lot even though they're two distinct businesses. Since they're technically a single zoning lot and a freestanding sign at the northwest corner of the property is planned for the gas station, a variance was necessitated for an additional freestanding sign on the County Road 6 frontage.

Since the property was developed without conceiving of a freestanding sign for either property, available space is limited. The petitioners propose a seven (7) foot setback for the Branded Barrel liquor store. At that setback, typically a 7' tall sign up to 54 square feet in area would be allowed. Ordinance generally allows an EMC/integrated message board to be up to 50% of the area of the primary sign. The proposed sign here differs in that the primary sign is significantly smaller, at 27.5 square feet, than what is allowed by ordinance. The overall size of the sign with both components included is 55 square feet.

Under the ordinance, by right, a primary sign would be allowed to be 54 square feet, and an EMC would be allowed to be 27 square feet. Although the configuration is different what the ordinance contemplates, the net effect of the proposed sign is no more impactful than what would be allowed by right.

**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 size of the sign is close to what would be allowed by right and is unlikely to cause a significant increase to driver distraction;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the overall size is only slightly larger than what would be allowed by right;
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 it is a single zoning lot with two distinct businesses;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would reduce wayfinding;
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.

There were 19 letters mailed. One returned not in favor with comment: There is enough light pollution in my area already- we don't need any more signs advertising anything. Enough is enough. This is getting to be a bit much. The CR 6 area doesn't need to resemble Grape Road.

Mulvaney asks the Board for questions for staff.

Strycker asks who mailed as not in favor.

Smith states it was Renie Campoli.

Strycker asks which business she owns.

Smith states he believes it is a residence.

Mulvaney calls for a motion.

Strycker makes motion to approve; Second by Davis.

Davis – Yes

Schaffer – Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

**21-BZA-06 PETITIONER IS BCW PROPERTIES LLC, DONALD & FANNY ARCENATH BERGERSON, MAYWELL DEVELOPMENT LLC, JESSE L & RENEE D STRIEBY, SMARTT PROPERTY LLC**  
**PROPERTY IS LOCATED AT 2426 CASSOPOLIS STREET (PARCELS 02-29-276-006, 007, 008, 037, 038, 039, 040), 515 ARLINGTON ROAD (PARCEL 02-29-276-016), VACANT LAND CR 9 (PARCELS 02-29-276-041, 042, 043), 2508 AND VACANT LAND CASSOPOLIS STREET (PARCELS 02-29-276-005, 050, 032, 033, 034, 035), 53301 CR 9 (PARCEL 02-29-276-036)**

To vary from Section 14.5.F.1, which requires commercial properties in B-4 zones to provide a forty (40) foot landscaped area when located adjacent to a residentially zoned or used property, to allow for a twenty (20) foot landscaped area along the northern edge of the property and a fourteen (14) foot landscaped area along the southern edge of the property, a variance of twenty (20) and twenty-six (26) feet respectively.

Mulvaney calls petitioner forward.

Ashley Mack, Real Estate Manager for Meijer, and Jon Sheidler from Woolpert Inc appear online. Mack states that Meijer has placed 28 acres of property under contract with plans to construct a 162,000 square foot Supercenter and a 3,800 square foot convenience store and gas station. They are requesting variances to reduce landscaped area and increase signage due to site constraints. She states that Meijer is a family-owned regional retailer based in Grand Rapids, Michigan. They have over 253 stores across six states and employ over 70,000 team members. In every community where they locate a store, they become an important community partner. They strive to support a wide variety of nonprofit organizations by donating more than 6% of net profits to charity each year and sponsoring hundreds of community events. A new store in the city of Elkhart would represent a minimum investment of 20 million dollars and provide approximately 250 employment opportunities, 70% of which would be full time. In addition, they are excited to announce that the site would have Meijer's newest prototype which is designed to reinvigorate the shopping experience for customers. She refers to Sheidler's screen share of proposed elevations for the main store. It is more contemporary with a light, open feel. She states that shopping patterns have changed due to COVID and Meijer is adapting to customer preferences with more options. The prototype store integrates a digital order pickup space on the south side to accommodate increased demand. The new store will also include the latest technology for shop and scan which limits interaction at the checkout, and grocery delivery. The new offerings increase the overall width of the building, and, given site constraints, Meijer is requesting the variance from the landscape buffer to accommodate. She states they have worked hard with staff in an effort to mitigate the visual impact to neighboring property owners. On the north side of the site they would install a 6-foot opaque fence and a 3-foot mound to provide additional height for the new landscaping. They have modified the layout of the store by placing the loading dock for the main store, gas station, and convenience store as far south as possible away from the residential property. They will utilize the latest LED technology to provide a safe environment for customers, but also ensure no light is emitted beyond the property line.

Mulvaney asks for questions from the Board.

Schaffer asks if the prototype has been similarly proposed in other cities.

Mack states that the outside look, the elevation, will be in Ft. Wayne, Indiana, but this will be the first one with the full outside experience as well as the inside. They will see if they will do it anywhere else, but as of now, this is the only location for a 2023 opening that they are going to do this.

Schaffer asks what the experience is in Ft. Wayne and what kind of feedback have they received. He asks if they are as far along in the process there.

Mack states that they are commencing construction this year, but feedback from the community has been a lot of excitement. The new prototype is definitely different from the older stores. It's a lot airier, has a lot more glass, is a little more modern, which communities tend to like.

Schaffer asks, regarding the north side of the building where the concrete area appears to be the garden center, if there will be forklifts and what are the hours of operation there.

Mack states there will be and that those are usually only in summer months and run April through late fall. They open around 7 AM but generally close around 8 PM.

Davis asks if there will be an entrance on Cassopolis Street as well as County Road 9.

Mack states they have Cassopolis, a small entry proposed on Arlington, and are working with the city to realign Emerson for entries. There are effectively two entrances off Cassopolis. Based off of a traffic study, the majority of the traffic will be utilizing the two entries off of Cassopolis.

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

### **STAFF ANALYSIS**

The petitioner(s) own land that is being developed for a new regional retail user – Meijer. A variance request has been filed to seek relief from the landscape buffer width for the B-4 District.

The need arises from the fact the store’s design has changed over the last months largely due to the impact of the pandemic and the necessary pivot the business has had to make. Online shopping and the area dedicated to that new service has added dimensional area to the footprint. The need for grocery pick up with minimal interaction with other people/customers has become a larger part of the store’s business model. The ability at the same time to continue to provide the same level of service their customers expect while meeting the ever changing needs to protect every customer’s health.

During the course of the plan development process and other public hearings to approve the rezoning for the project, Meijer committed to screening the building to mitigate the visual impact of the new development from the adjacent residential uses. This site plan achieves that in several ways. The landscape buffer proposed along the north side of the property provides the required plant material density as prescribed by the rezoning request, it also provides a solid fence that will run the length of the north property line and finally it will have a three (3) foot mound that will provide instant height for new plant material – giving visual maturity for the plant material and adding to the height. The distance from the existing residential structures to the north and the proposed building is approximately 400 feet. The distance to structures to the south is about 400 feet as well.

The layout has been modified and will now have the loading docks at the south end of the building to limit the noise associated with that activity. The more densely populated area to the north should not be impacted by the docks required for the use. The structures to the south are several hundred feet from the docks as well.

The project has been submitted for the City’s Technical Review process. As is common for a project of this scale and magnitude, the consultant is continuing to work with staff to complete comments found during a review of the project.

### **STAFF RECOMMENDATION**

The Staff recommends approval of the developmental variances 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 screening proposed will screen the building largely from the residential uses to the north and south;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed screening will meet the intent of the ordinance by providing a visual and physical buffer and the proposed building will be approximately 400 from structures to the north and south;
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 the size of the development is large and the distance to adjacent structures is hundreds of feet from the proposed building;
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 development;
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.

There were 31 letters mailed. One returned in favor with no comments, and one not in favor with no comments.

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

Schaffer makes motion to approve; Second by Strycker.

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



Motion carries.

**21-BZA-07 PETITIONER IS BCW PROPERTIES LLC, DONALD & FANNY ARCENATH BERGERSON, MAYWELL DEVELOPMENT LLC, JESSE L & RENEE D STRIEBY, SMARTT PROPERTY LLC PROPERTY IS LOCATED AT 2426 CASSOPOLIS STREET (PARCELS 02-29-276-006, 007, 008, 037, 038, 039, 040), 515 ARLINGTON ROAD (PARCEL 02-29-276-016), VACANT LAND CR 9 (PARCELS 02-29-276-041, 042, 043), 2508 AND VACANT LAND CASSOPOLIS STREET (PARCELS 02-29-276-005, 050, 032, 033, 034, 035), 53301 CR 9 (PARCEL 02-29-276-036)**

To vary from Section 26.10.D.4 Free-standing Signs to allow for a sign twenty (20) feet in height and 100 square feet in area that is setback ten (10) feet from the right-of-way, where a freestanding sign is permitted to be a maximum of 8.5 feet in height and 60 square feet in area, a variance of 11.5 feet in height and 40 square feet in area.

To also vary from Section 26.10.D.4 Wall Signs, to allow for an 812 square-foot wall sign on a signable area of 1,410 square feet, where a wall sign is limited to 564 square feet, a variance of 248 square feet.

To vary from Section 26.10.D.4 Projecting Signs, which limits projecting signs to nine (9) square feet in area, to allow two projecting signs 12.5 square feet in area, a variance of 3.5 square feet.

Mulvaney calls petitioner forward.

Ashley Mack, Real Estate Manager for Meijer, and Jon Sheidler from Woolpert Inc appear online. Mack states that they are seeking a variance due to the constraints of the site. They are proposing a single, 20-foot high pipe sign with 100 square feet of signage area. It will be the only Meijer sign along Cassopolis to serve both the main store and gas station. Since the street is a state highway, Meijer will be required to dedicate an additional 15 feet of right-of-way for a deceleration lane at the southern drive. This places the sign 25 feet away from the original right-of-way line, which impacts the visibility. They are also requesting for the Meijer wall sign since the building is 780 feet back from the street, the larger sign helps with visibility and architectural design balance as the building is relatively large. They also wish to add projecting signs at the corners of the building to direct customers to the pharmacy pick-up window as well as the new buy online pick-up area. These are wayfinding signs that help direct traffic within the development.

Mulvaney asks for questions from the Board. Hearing none, he opens for public comments to speak in favor. Hearing none, he opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

#### **STAFF ANALYSIS**

The petitioner(s) own land that is being developed for a new regional retail user – Meijer. A variance request has been filed to seek relief for a portion of the signage associated with the new development proposal.

The petitioner(s) are requesting a free-standing sign that is 20 feet in height and 100 square feet in area ten feet from the right of way line. At that location the maximum height allowed is nine and one half feet a variance of 11.5 feet. The area allowed at that location would be 60 square feet, a variance of 40 square feet. The height of the proposed sign at 20 feet is the maximum allowed by ordinance. There are several points that make this portion of the case unique. The site is large – over 28 acres with significant road frontage along both Cassopolis Street and Johnson Street. Next, because Cassopolis Street is a state highway, an additional 15 feet of right of way is required to be dedicated for a deceleration lane for the southern drive. The impact of the state's request is significant. The visual impact of the freestanding sign proposed is set back 25 feet from the original right of way line. If it were not for the required additional dedication of right of way, a variance would still have been required, but would be smaller for both the height and area.

The wall signage request seeks to vary the amount of wall signage permitted based on the signable area of 1,410 square feet that would limit the area of wall signage to 564 square feet. The petitioner is requesting wall signage of 812 square feet. Staff has no issue with the request based on the fact the proposed building is set back from Cassopolis Street approximately 780 feet. At this distance from the right of way, the additional area requested in the petition will not be perceptibly noticeable by the layperson or be incompatible when compared to other large retail users or be visually intrusive for the site.

The final part of the variance is for projecting signs at the corners of the building directing customers to specific locations in the building – essentially wayfinding signage. These signs alert customers to the pharmacy pick up window and direct customers to the on-line order pick up order area. These signs will be located at the north and the south ends of the building. Again, considering the scale of the building the request is in line with the unique situation created by the type of sign used to direct

customers. These signs are typically found in urban areas on traditional storefronts and our ordinance only has standards that reflect the more traditional installation/use thus the variance request before this body.

**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 size of the campus and the setback of the building from the right of way necessitates the need for the variances;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the freestanding sign is located adjacent to the right of way and the other signs requested are attached to the building and should pose no impact to any adjacent properties;
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 it is necessary to provide branding and wayfinding signage for the proposed project;
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 development;
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.

There were 31 letters mailed. Two returned in favor with no comment, and one not in favor with comment: Enough has already been done to run down the area. Plus, we don't trust them to follow through with anything.

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

Strycker makes motion to approve; Second by Davis.

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

Motion carries.

**21-BZA-08 PETITIONER IS EW MARINE INC  
PROPERTY IS LOCATED AT 1101 PARKWAY AVENUE**

To vary from Section 26.10.D.4 Directional Signs to allow for a sign five (5) feet in height and twenty-four (24) square feet in area, where a directional sign is permitted to be a maximum of three (3) feet in height and four (4) square feet in area, a variance of two (2) feet in height and twenty (20) square feet in area.

To also vary from Section 26.10.D.4 Free-standing Signs to allow for a freestanding sign 127 square feet in area that is setback thirty (30) feet from the property line, where a freestanding sign is permitted to be a maximum of 75 square feet in area, a variance of 45 square feet.

Mulvaney calls petitioner forward.

Kyle Lehman appears in person from Sign Tech Sign Services at 1508 Bashor Road, Goshen, Indiana to represent the petitioner. He states they are dealing with the first multi-tenant building in the new Pine Creek side of the property. What they have done in the past has all been in the Parkway at 17 side of the property. The consistency of all the requested signage would be reflective on what has already been completed. The main tenant increase on 17, primarily due to the distance off of the road and making the tenant signs readable, but also very similar to the existing multi-tenant sign that sits out in front of the Parkway at 17. The internal directory is for wayfinding, but also to increase in size big enough so that the tenant's information can be read.

Mulvaney asks for questions from the Board. Hearing none he asks for comments in favor of the petition.

Kevin Bullard of 1133 County Road 17 appears online. He agrees with Sign Tech that, because of the extra wide right-of-way, it is appropriate to have a little bit bigger sign. He states that up and down 17 there are other businesses that have asked for similar variances and some, even after they have put up their sign, realize it's too small and increase the size of their signs.

Mulvaney opens for opposition. Hearing none, he closes the public portion of the meeting and calls staff forward.

**STAFF ANALYSIS**

The petitioner owns a commercial lot in the Parkway at 17 Planned Unit Development; signs in this development, which was initiated prior to annexation from Elkhart County, are subject to both private protective covenants and city code. Several other properties were developed prior to annexation and reflect both the covenants and the county’s sign code.

This property is being developed with two spec office buildings in a configuration that differs in layout from others in this development. There will be two buildings – a north and a south building – with a central driveway/parking area. Additionally, the western edge of the parking lot will be approximately 37 feet from the right of way, which is a greater distance than most properties in the city.

The petitioner is requesting permission for two signs that meet the private covenants but not city code. One is a directional sign that will face vehicles coming into the parking lot, and the other is a multitenant freestanding sign located 30 feet from the County Road 17 right-of-way that is similar in size and configuration to the sign for the strip mall on the property immediately to the north. The proposed directional sign is 2’ higher and 24 square feet larger than what is typically allowed for directional signs. There is a wayfinding need for such a sign, since it will outline which business is in which of the two buildings, which may not be achieved by adhering to the 3’ height and 4 square feet in area city standard.

The freestanding sign is requested to be 127 square feet in area where 75 square feet in area is allowed. The sign is setback from the road significantly farther than what occurs typically with freestanding sign, passersby are traveling at a high rate of speed, and it’s similar to other signs for the same development.

**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 signs as proposed will provide for adequate wayfinding without increasing visual clutter;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the signs will be consistent with others in the same development;
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 it is being developed with two buildings flanking a central driveway/parking lot;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because wayfinding needs may not be met;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does lie within a designated flood area and is being developed to standards for a Special Flood Hazard Area.

There were 5 letters mailed. Two returned in favor with no comment.

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

Strycker makes motion to approve; Second by Schaffer.

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

Motion carries.

**ADJOURNMENT**

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