ELKHART CITY BOARD OF ZONING APPEALS
-MINUTES-
Thursday, May 14, 2020 – Commenced at 6:00 PM & Adjourned at 6:55 PM
City Council Chambers – Municipal Building

THIS WAS A WEBEX MEETING.

Elkhart City Board of Zoning Appeals was called to order by Doug Mulvaney at 6:00 P.M.

MEMBERS PRESENT
Jeff Schaffer – in person
Andrew Strycker – WebEx
McNeal Stewart – in person
Ron Davis – in person
Doug Mulvaney – in person

MEMBERS ABSENT
none

REPRESENTING THE PLANNING DEPARTMENT
Eric Trotter, Assistant Director for Planning
Ryan Smith, Planner

LEGAL DEPARTMENT
None

RECORDING SECRETARY
Kathy Kalman

AMEND AGENDA
Amend agenda to remove the approval of the February 13 minutes. Davis made motion to remove the minutes, second by Schaffer. Motion carried.

APPROVAL OF AGENDA
Stewart made motion to approve the amended agenda, second by Davis. Motion carried.

APPROVAL OF MINUTES OF JANUARY 9, 2020
Schaffer made motion to approve the minutes of January 9, 2020, second by Davis. Motion carried.

APPROVAL OF PROOFS OF PUBLICATION
Davis made motion to approve Proofs of Publication, second by Schaffer. Motion carried.

OLD BUSINESS:
None

NEW BUSINESS:

20-UV-07 PETITIONER IS HOLY TEMPLE INC
PROPERTY IS LOCATED AT 1333 WEST LUSHER AVENUE
To vary from Section 5.2, Permitted Uses in the R-2 District, and Section 8.2, Permitted Uses in the R-5 District, to allow for an existing commercial building to be used as transitional housing (halfway house). Transitional housing (halfway houses) are not allowed by right in either the R-2 or R-5 District.

Mulvaney calls the petition forward.

Derrick Matthews, via WebEx, says the building was purchased in approximately 1999 and it used to be a bank/credit union. After purchasing the building, they secured a second 501c3. In 1996 they ran an after school program called Project Scope which mentored kids. The 501c3 is still active and the board came together and wanted to start a halfway house/transitional house. The uses of that building after it was purchased were Goodwill Job Services for a couple of years then it was empty for a few years and then rented in 2018 for a daycare. It has since been empty for a few years. They want to run a transitional house with roughly six to eight participants coming out of county jail or work release. They are working with a few agencies such as Osklawn, Recovery Works, CCJ and the Elkhart County Chaplain. They would have a monitoring camera system. Matthews recruited the IT person from the Crossing and they
will use the same camera system and run an application process. They will run AA, NA and have Personal Finance classes. Participants will work first shift and this will be a nine to 18-month program. He believes that the program will be safe and they will have adequate monitoring and staffing.

Mulvaney calls for any questions from the board. 

Davis asks if Matthews contacted anyone in the residential area with their plans for the building and if they have gotten any response.

Matthews says they have not. They can go to the local community in that zoning area and put out feelers and ask if they would want to have a halfway/transitional house in that area.

Schaffer thanks Matthews and his family and says how important they are to the City of Elkhart. If a group could run this successfully, it would be a group like his. When there have been other applications in the past, they have a more robust operations plan with input from the police and sheriff and he wonders if it might be more appropriate if the board could see more of a robust plan or if that is something they could develop.

Matthews says that is something they can develop. He has been working closely with the director of SOS, Servants of the Streets, and they have had meetings together to see how they run their program and their application process and their monitoring process and they are taking advice of the people who are running a similar program. He thinks they will run it with more security as they have the assets for camera and hourly staff. There are a lot of outside people coming in to teach classes and a banker will come in once a week. It will be an application process and not just anyone will be there. Their goal is to release men to re-enter society and they will teach them the skills and tools of finance and teach them how to re-enter society, be productive and not re-offend.

Mulvaney says for the record, Strycker has joined via WebEx.

Mulvaney asks about offenders being screened and who will do the screening.

Matthews says it will be an online application process and then the staff will screen to see if the applicant would be a candidate or not and they will go through a few people before they get to staff. For example, someone from CCJ will refer someone to their program and they will see if they are the right fit and then they will go through the application process and they would go from there. Also, Oaklawn has a program called Recovery Works and their staff will recommend certain folks from Oaklawn and they would pay a portion of their housing. Housing will be $300 a month and all participants will have to work first shift and Recovery Works pays for a portion of their housing. There are a lot of key players that will be involved in this. Both Elkhart County Jail Chaplains will have potential candidates that they will email to Matthews and staff will screen the applicant before they would be a part of the program.

Mulvaney says other agencies and organizations will do the referring to Matthews group.

Matthews says that is correct.

Mulvaney asks if they have some criteria for violent vs. non-violent offenders.

Matthews asked SOS how they ran their application process. They have some offenders in their program that were released and might have had some violence in their past. After meeting them and through the screening process, they have taken some into their program and they have been successful. They will be screening like that, if not at a higher screening rate.

Mulvaney calls for any further questions, seeing none, he calls for anyone wishing to speak in favor of the petition. No one in attendance or online has any comments in favor. Seeing none, he calls for anyone wishing to speak against this petition.

Arvis Dawson, city council at large, received a text from a constituent, Kristy Barnett who lives on Lusher and she is unable to get into this meeting and she wants him to convey her comments that she is opposed to this. Dawson wants to applaud the efforts of the church in putting out transitional housing and he thinks it's a great idea but in talking with the residents of the neighborhood, they are adamantly opposed to it. This has primarily been a residential neighborhood for the last 40 years. They didn't mind so much the daycare that was there but they are concerned about the halfway house. They are definitely concerned about it and there are homeowners who have been there for over 40 years and some are seniors and they are concerned about traffic and they are opposed to this and they asked Mr. Dawson and Ms. Hines to convey that to the board. They met with some residents for their opinions and they ask that this not be supported by the BZA.

Tonda Hines, 6th district city council, this property is in her district. She wants to echo what Dawson said. She is thankful for the church over the years. However, the residents they've talked to don't feel like they have been a part of the conversation and if this moves forward they want to be a part of the conversation. However, they strongly oppose the type of programming that the church would like to put in there now. She asks on behalf of the residents that the board consider the residents and the residential neighborhood of property owners.
Mulvaney calls for any online comments through WebEx or Facebook. Seeing none, he closes public meeting and calls staff forward.

**STAFF ANALYSIS**
The petitioner is a church, Holy Temple Church in Christ at 2205 Oakland Ave. The church owns an existing commercial building nearby at 1333 W. Lusher. The building is approximately 2,500 square feet and the parcel is approximately .7 acres with a 21-space parking lot. The building has previously been used as a bank and as a daycare center.

Holy Temple would like to use the building as an 8-bunk halfway house for men recently released from prison. Tenants would be screened and are anticipated to live in the facility for 9-18 months. Two staff members would be present for 8 hours a day, with the building under 24-hour camera surveillance. Tenants would be required to have first-shift jobs and would be responsible for maintaining the living space and conducting typical daily chores such as cooking and laundry. Staff has experience working in this capacity, and life skills classes such as personal finance and job search will be available. Some tenants may participate in programs at Oaklawn.

While the property is located in a residential neighborhood, it is a relatively low density neighborhood and the building and parking lot are located a distance from nearby residences. Care should be taken to buffer the property from those adjacent.

The petitioner is currently working with the Building and Fire Departments to ensure the formerly commercial building meets code as a residential facility. Both departments should approve of the building for its proposed use prior to occupancy.

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

1. Approval will not be injurious to the public health, safety, morals, and general welfare of the community because there is a distance between this property and adjacent properties;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner because all activities will remain on-site and the property will be buffered from adjacent properties;
3. The need for the variance does arise from some condition peculiar to the property;
4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought because it limits the use of the property without board action;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be developed with low density residential uses.

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

1. The petitioner must obtain clearance from the Building and Fire Departments to use the building as a residential halfway house.
2. A six-foot privacy fence shall be installed along the southern and eastern property edges as permitted by ordinance to buffer the property from adjacent residences.

Smith said there were 32 letters mailed, four returned not in favor, two with comments and two phone calls not in favor with comments. Smith read the comments into the record.

Comments:

“Our area has been a family structure neighborhood (one family dwelling) for years, and I am opposed to the idea of a transitional type of housing being considered for this district. If transitional housing are not allowed by right in the R-2 or R-5 district why even consider discussing or allowing it to happen.”

As we are elderly people we would not agree in the transitional housing as we would not feel at ease in the proposition of the matter.”

Phone calls:

“Not in favor. This is a residential neighborhood with small children.”

“Not in favor. Extremely opposed. This is a residential neighborhood with elderly residents and small children.”

Mulvaney calls for questions for staff.

Schaffer says staff recommended in favor and he states that Smith has a tough job regarding land use decisions and he asks Smith if a more robust operating plan would be useful for this application or is that something that probably doesn’t make a difference either way.
Smith says it would be useful. In speaking with Mr. Matthews he knows they have gone through a lot of details. When you talk with Mr. Matthews, he can relay those details to you but it is not put together as far as he knows in a plan and he thinks that would help with review and maybe put some residents at ease.

Mulvaney asks if meeting with the community or community input would be helpful as well.

Smith says they are always in favor especially with controversial land use decisions; having dialog between the neighbors and whoever is proposing the proposed use.

Mulvaney asks if the use variance would be granted for the property, is there any type of review process or issues with supervision or anything like that.

Smith says not inherently, however there are cases where the board might pass a proposal and place a condition on it with a review on a periodic basis. Unlike daycares, he doesn’t think they are subjected to state inspections so they might have to figure out how to actually evaluate their operations. But if a periodic review were in order, he feels that would be an appropriate condition that is placed upon it.

Mulvaney calls for any further questions for staff. Seeing none, he calls for a motion.

Schaffer says their process doesn’t allow a motion to table.

Schaffer made motion to approve 20-UV-07 and include all staff conditions. If this motion does move forward, add a couple of conditions:

1) Prior to occupancy of the building the applicant holds a neighborhood meeting that is scheduled by the applicant in consultation with the staff and the council member for the district.
2) The applicant provides the staff with an operating report or operating plan that can be reviewed by the staff and the council member for the district and by the city’s appropriate public safety people as the staff may determine.
3) Both of these conditions would take place prior to occupancy of this use.

Second by Davis.

Vote one:

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

Vote two in favor, three against. This action did not pass.

Schaffer says in light of the motion to pass failing, he makes a motion to deny 20-UV-07 because the following conditions have not been met. He believes that the conditions that have not been met is that, this variance has the potential to be injurious to the public health, safety, morals and welfare. He states again as part of his motion that he believes this petition could be successful but that there are a couple more steps left to be taken. Second by Davis.

Schaffer asks a question before voting. Since there is no counsel in attendance, if this motion does not pass, then the item is tabled and will stay on the agenda until next month. If the board neither approves nor denies it, it is his understanding from previous counsel that it remains on the agenda for another month.

Smith says the board can postpone the hearing. If you deny it, it is denied. There is a period of time for them to reapply unless they make a change and then they can reapply sooner.

Schaffer asks if staff would consider adding some of the things they talked about with enough of a change that they could come back rather quickly.

Smith says no. Those are kind of supporting documentation and activities but he doesn’t think the proposed use is changing. Counsel might disagree with him, but offhand having a public meeting and putting together a plan isn’t enough of a change.

Mulvaney asks Smith what type of delay would there be if they have to resile the petition and come back.
Smith says he cannot locate the code citation but he believes it is six months.

Mulvaney says for the record, he is uncomfortable with not having counsel from the city to answer the questions and he feels there is an intermediate step between completely denying it and forcing them to wait six months to come back.

Smith says they can postpone the vote until the next meeting and ask the petitioner to take those additional steps and reheat it at the next meeting.

Mulvaney says simply postpone rather than doing anything further.

Smith says yes.

Schaffer withdraws his motion to deny. He would like make a motion to postpone this petition until the June meeting. He thinks the applicant has gotten a lot of good input and will take some steps between now and June and this can be heard in June. He also asks the chairman to reopen the public hearing in June. Second by Davis.

Mulvaney says he would be happy to reopen.

Mulvaney says to Mr. Matthews, this will be postponed until next month and this will give additional time to put together a more detailed plan and talk to community members and when they come back after speaking within the community, they can look at it at that time. The board wants more information and they are deciding not to make a decision tonight.

Vote to postpone:

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

Motion carried.

Mulvaney says this will be postponed until next month and if Mr. Matthews has any questions to contact staff.

20-REV-01 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT 2101 STERLING AVENUE
A request by the City of Elkhart to revoke 95-UV-09 which was approved April 13, 1995 to grant a use variance to allow a second floor residence and a first floor commercial business in the same building, in a M-1 zone.

STAFF ANALYSIS
In 1995, use variance 95-UV-09 was granted to this property for use as a commercial business on the first floor and a residential use on the second floor. The property has changed hands several times since then, and the current owners, who purchased the property in late 2019, informed staff that it has been used as a two-unit residential structure, with residential on both the first and second floors, for some time.

At the time 95-UV-09 was granted, several conditions were placed upon it. One of those conditions was that a four foot or greater screen of “a solid fence, densely planted evergreen hedge, or combination thereof” be installed along the south lot line. Such a screen appears to have never been installed.

Another condition was that the “use variance shall be in the name of Robert & Myra Hargrove. Termination or transfer of this business to another individual or entity or to another location shall cause this use variance to be null and void.” According to the current owners, the property has not been used as a business for some time, meaning that 95-UV-09 should be void.

Because the use has changed and the current owners wish to have a residential unit on both floors, the BZA granted use variance [20-UV-06] on March 12, 2020. Since [20-UV-06] makes 95-UV-09 obsolete, since the property has been materially changed to a two-unit residential structure, and since two of the conditions placed upon 95-UV-09 are not met, staff recommends revocation.

STANDARDS
The BZA may revoke a variance whenever one or more of the following exists:

I. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

**STAFF RECOMMENDATION**
The Staff recommends revocation of the use variance based on the following findings of fact:

1. N/A
2. There has not been compliance with two requirements of the variance - a four-foot screen along the southern property line and that a business in the name of Robert & Myra Hargrove has been terminated at this location.
3. A circumstance has materially changed in that the building has been converted to a two-unit residential property.

Smith says there were 13 letters sent, none returned.

Mulvaney calls for questions from the board.

Stewart clarifies if revocation is based upon the old variance so they can move forward with the new case.

Smith states that not revoking this will not prevent the owners from going forward, the old variance is obsolete and some of the conditions were not met and keeping the old variance on the books is not necessary at this point.

Mulvaney calls for anyone wishing to speak in favor of this petition.

Mulvaney states he doesn’t see anyone online except the host and Strycker.

Mulvaney calls for anyone wishing to speak against this petition.

Mulvaney states that Jerri Barnett is online.

Jerri Barnett says she doesn’t have a comment about this case but about 20-UV-07.

Mulvaney states 20-UV-07 has been acted on and no action was taken and it will be re-heard at the next meeting and that new public comment will be heard and the petitioner will submit a more developed plan and to talk within the community to discuss what they are planning to do and they are to come back at next month’s meeting.

Barnett says she hopes to meet with the petitioner.

Mulvaney closes public hearing.

Mulvaney calls for any further questions for staff; seeing none he calls for a motion.

Schaffer made motion to approve 20-REV-01; second by Davis.

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

Motion carried.

**20-REV-02 PETITIONER IS CITY OF ELKHART**
**PROPERTY IS LOCATED AT 1035 JOHNSON STREET**
A request by the City of Elkhart to revoke 13-UV-07 which was approved June 13, 2013 to vary from the Permitted Uses in the R-3, Two Family Dwelling District, Section 6.2 to allow for the property to be used as an art gallery with retail sales, with no residential use of the site.

**STAFF ANALYSIS**
A variance was issued in 2013 (13-UV-07) to operate an art gallery at this property. At the time, the property had two buildings which were joined as a part of this process, and none of the building was intended for residential use. The art gallery has ceased operation, and on March 12, the Board granted variance number [20-UV-04] to allow for the building to be used for a facial care salon in the south wing of the building and a residence in the north wing.
Subsequent to approval, renovations have begun inside of the building to support the new uses. A firewall is being installed to separate the two units, interior walls are being placed to create rooms for the salon, and some renovation is being done on the plumbing and bathrooms. Since the building is materially changing from how it was configured to support the art gallery use, and that variance is no longer necessary, staff recommends revoking 13-UV-07.

**STANDARDS**
The BZA may revoke a variance whenever one or more of the following exists:

1. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

**STAFF RECOMMENDATION**
The Staff recommends revocation of the use variance based on the following findings of fact:

1. N/A
2. N/A
3. A circumstance has materially changed in that the building is now being renovated to support the proposed mixed use as a salon and residence.

Smith says 38 letters were sent, none returned.

Mulvaney calls for questions from the board. Seeing none, he calls for anyone to speak in favor or against this petition. Seeing none, he closes public hearing and calls for a motion.

Schafter made motion to approve 20-REV-02; second by Davis.

Strycker – Yes
Stewart – Yes
Davis – Yes
Schafter – Yes
Mulvaney – Yes

Motion carried.

**20-REV-03 PETITIONER IS CITY OF ELKHART**
**PROPERTY IS LOCATED AT 212 SOUTH SECOND STREET**

A request by the City of Elkhart to revoke 18-UV-06 which was approved May 10, 2018 to vary from Section 15.2, Permitted Uses in the CBD District, and Section 2.2 Definitions – Live/Work Unit, which requires residences in Live/Work Units to be incidental to the business use and located either on an upper floor or at the back of the unit, to allow for a Live/Work Unit where the workspace is incidental to the living space and where there is living space in the front of the unit.

**STAFF ANALYSIS**
In 2018, Bruce Hopkins purchased this property, intending to use it as a live-work unit. Although it is in the Central Business District (CBD) his plans for the building included living space that was in the front of the building and not incidental to the business. Use variance 18-UV-06 was granted on May 10, 2018 to allow for the proposed use. However, the planned renovations to the building did not occur, and Mr. Hopkins sold the property to another entity in February of this year.

The new owner has begun work on the building to be used for commercial purposes. Since the building is materially changing, the residential portion is no longer to be built, and the property has changed hands, staff believes the property’s status warrants the revocation of 18-UV-06.

**STANDARDS**
The BZA may revoke a variance whenever one or more of the following exists:

1. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.
STAFF RECOMMENDATION
The Staff recommends revocation of the use variance based on the following findings of fact:

1. N/A
2. N/A
3. A circumstance has materially changed in that the owner, Mr. Hopkins, no longer occupies the site and the new owner is renovating it for a commercial use.

Smith states there were 38 letters sent, one returned in favor with no comments.

Mulvaney calls for anyone to speak in favor or against this petition. Seeing none, he closes public hearing and calls for a motion.

Schaffer made motion to approve 20-REV-03; seconded by Davis.

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

Motion carried.

STAFF ITEM
None

ADJOURNMENT
Davis made motion to adjourn, second by Schaffer. Motion carried.

Doug Mulvaney, Chair

Ron Davis, Vice Chair