



Town of Edinburgh

Administrative Offices: 107 South. Holland Street, Edinburgh, IN 46124

Wade D. Watson, Planning Director

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BZA STAFF REPORT

To: BOARD OF ZONING APPEALS MEMBERS
From: Wade D. Watson, Planning Director
Date: April 6, 2022
Re: Case ZB 2022-03 UV (USE VARIANCE)

GENERAL INFORMATION:

Applicant: Crystal Beach Properties, LLC
1744 S Eagles View Drive, Martinsville, In 46151

Property Address: **211 Perry Street, Edinburgh, IN 46124**

Agent: JCJ Restoration
209 E Park Dr., Edinburgh, IN 46124

Property Owner: Crystal Beach Properties, LLC
1744 S Eagles View Drive, Martinsville, In 46151

Property Number: 41-12-34-032-053.000-002
Lot Size: 0.341 Acres – Approximately 100' x 150' (15,002 Square Feet)
Zoning: Medium Density Residential (R-4)
Land Use: Four-Unit Apartment & Vacant Commercial Space
FEMA Flood Plain: Subject Property does not exist in a designated flood area

SURROUNDING ZONING:

North: R-4:
South: R-4:
East: R-4:
West: R-4:

SURROUNDING LAND USE:

Single-Family Residential
Single-Family Residential
Multi-Family Residential
Single-Family Residential

REQUEST:

CASE ZB2020-03 UV Petitioner is requesting a variance from Developmental Standards of Title XV, Division 2, Chapter 156.036, Table 2 of the Town of Edinburgh Zoning Ordinance to permit renovation for a change of use of a multi-use structure located on property known as 211 Perry Street, Edinburgh IN 46124 to convert space previously used as commercial occupancy into sleeping rooms to rent by the day or by the week.

DOCUMENTATION AND PUBLIC NOTIFICATIONS:

Petitioner has satisfied all documentation requirements, legal and public notifications specified in the Town of Edinburgh Zoning Board of Appeals Application Packet for Variance/Special Exception. Staff has received no oral or written remonstrance in response to this petition prior to completion of this report.

PURPOSE OF STANDARDS:

The intent of the Edinburgh zoning standards is to promote the public health, safety, and general welfare of the community.

Districts designated for residential use, "R-1", "R-2", "R-3", "R-4", "R-5", and "R-6" are limited to dwellings and public and semi-public uses which are normally associated with residential neighborhoods. The only uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these six districts is to create an attractive, stable, and orderly residential environment. However, the density standards, dwelling types and the lot and yard requirements are different in the each of the six districts to provide for the various housing needs and desires for citizens.

CASE HISTORY:

- Until sometime during the 1990's, this property was used as a House of Worship and a parsonage. In November 2000 D.M.B. Properties Inc. obtained an Improvement Building Permit from the Building Commissioner for the conversion of the structures on this property into an 8-unit multi-family dwelling. The Edinburgh Town Council revoked this permit on the grounds of inadequate parking and inadequate on-site space for a dumpster to support an 8-unit multi-family dwelling.
- In March 2001 D.M.B. Properties Inc. petitioned the Board of Zoning Appeals for a variance from developmental standards to allow the conversion of the church and parsonage into a four (4) unit multi-family dwelling with four (4) attached garage/storage units.
- In the public meeting of March 15, 2001, the Board of Zoning Appeals heard the variance request, reviewed and discussed the project plans and made the plans available to the attendees of the meeting. Following the presentation of the petitioner's case, public comments and further discussion, Chairman Whitlock asked for a motion either to deny or approve the variance requested by D.M.B. Properties, Inc. A motion was made and seconded to deny the variance request and the motion passed.
- At some time between March 15, 2001 and March 25, 2021, in violation of the decision of the Board of Zoning Appeals, the property was converted and was being used as a four-unit apartment and a commercial print shop. A search was conducted of the records of permits issued by the Planning Department during this period, and no records were found of an Improvement Permit for these renovations or for a change of use to convert this property from a church and parsonage into its current use as a four-unit apartment and commercial space.
- Based on the Planning Department's investigation, there are two apartments on the first story and a central mechanical room. The apartment on the west side of the first story has its exit directly to the

outside. The east side unit on the first story exits the apartment into a lobby before its exit to the exterior. The apartment on the west side of the second story has its exit to an exterior stair on the south side of the building. The east side unit on the second story has an internal stair leading to the apartment front door on the first story in the lobby shared by the downstairs neighbor.

- It appears that the property is being served by two electric meters, one for the commercial space (formerly the house of worship) and the other serving four dwellings (formerly the parsonage).
- According to the Johnson County public records, on March 25, 2021 the property was sold to its current owner. It appears that Crystal Beach Properties LLC has continued to rent/lease the four-unit apartment. As such, the existing conditions of this property should either be considered:
 - a) an existing non-compliant use and/or
 - b) a violation of the Board of Zoning Appeals' decision on March 15, 2001 to deny the request for a variance for a change of use.

CASE CONSIDERATIONS:

1. The petitioner is requesting a use variance to convert vacant space (former house of worship which was converted into a commercial print shop) of this structure into what may be essentially considered a "HOTEL". (They intend to continue to use non-conforming four-unit apartments as they currently exist.)

The following common definitions from Division 11, §156.271 may be helpful in evaluating the merits of this case:

- **Dwelling**: A permanent building, or portion thereof, but not a mobile home, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, and multiple-family dwellings, but not including hotels, motels, or lodging houses.
- **Dwelling Unit**: One or more rooms which are arranged, designed, or used as living quarters for one family.
- **Dwelling, Multi-Family**: A dwelling or portion thereof, containing three or more dwelling units, including condominiums.
- **Boarding House**: A building where meals are regularly served for compensation for three or more persons, but not exceeding 12 persons, not open to transients, in contradistinction to hotels and restaurants open to transients.
- ***Lodging House**: A building where lodging only is provided for compensation to three or more, but not exceeding 12 persons, not open to transients, in contradistinction to a hotel which is open to transients.
- **Hotel**: A building in which lodging is provided and offered to the public for compensation and which is open to transient guests, in contradistinction to a boarding or lodging house.
- **Motel**: A building or a detached building used as dwelling units containing bedroom, bathroom, and closet space, and each unit having convenient access to a parking space for the use of the unit's occupants. The units, with the exception of the apartment of the manager or caretaker, are devoted to the use of automobile transients

***Note**: While §156.271 defines the term "Lodging House", it is not included as a permitted use in §156.036 Table 1. (Attached as Exhibit "A")

2. The Indiana Building Code (IBC) recognizes the critical difference in the transient nature of the guests. The IBC classifies residential uses that are transient in nature (including boarding houses, hotels, and motels) as Residential Group R-1. The IBC classifies residential uses that are primarily permanent in nature (including apartments, and non-transient boarding houses, hotels, and dormitories) as Residential Group R-2.
3. Edinburgh Zoning Code, Division 2, §156.036 establishes Permitted Uses for each district as shown on Table 1. Uses not specifically listed or defined to be included in the categories under this article shall not be permitted. As indicated by Table 1, Multi-family Dwellings, Hotels and Motels are not permitted in a District zoned R-4. (See §156.036 Table 1 attached as Exhibit “A”)
4. Division 2, §156.036 of the Edinburgh Zoning Ordinances anticipates the consideration of a “Rooming & Boarding Houses” as a permitted use in districts zoned R-4 when authorized by Special Exception issued by the Board of Zoning Appeals. (See §156.036 Table 1 attached as Exhibit “A”)
5. Division 5, §156.175 (3) establishes the “Off-Street Parking” requirements for all buildings or structures where there is a change of use. Whenever a building or structure constructed before the effective date of this Article is changed or enlarged, in floor area, number of employees, number of housing units, seating capacity, or otherwise to create a need for an increase in the number of parking spaces, additional parking shall be provided on the basis of the enlargement of change.
6. Division 5, §156.175 (5) c. establishes: “Parking spaces for apartments, dormitories, or similar residential uses shall be located not more than three hundred (300) feet from the principal user.”
7. Division 5, §156.175 (11) When two or more uses are located within the same building or structure, off-street parking spaces equal in number to the sum of the separate requirements for each use shall be provided.
8. Division 5, §156.175 (13) establishes that every parcel used for private off-street parking area capable of accommodating five (5) or more vehicles shall be paved with bituminous, concrete, or other all-weather, dust-proof surfacing and shall be provided with bumper guards or barrier curbs where needed.
9. Division 5, §156.175 (14) establishes parking space requirements shall provide two (2) parking spaces for each multi-family dwelling unit and one parking space for each 300 square feet of floor area for all other types of businesses.

COMPREHENSIVE PLAN REVIEW

1. Town of Edinburgh Comprehensive Plan was adopted by Council May 9, 2011. One of the top community priorities recognized by the Comprehensive Plan for the Residential Areas was to enhance the Town’s desirability as a place to live by improving the quality, character, safety and appeal of existing neighborhoods and by providing high quality, diverse housing stock through the approval of new residential development, and maintaining the existing structures.
2. Residential Area Objectives were to protect residential areas from encroachment by incompatible land use and the adverse impacts of adjacent activities and to enhance and enforce all building, safety, zoning and fire codes to prevent overcrowding, unsafe conditions, and misuse of residential dwellings. It further

encourages improving the physical appearances of residential neighborhoods, including architectural styles, setbacks, and landscaping requirements.

3. Comprehensive Plan states (page 31) the Town should encourage residential areas to develop with a variety of housing and dwelling unit types and densities.

CRITERIA FOR DECISIONS:

(The petitioner will need to address the Criteria for Decisions in their presentation**)** In taking action on all variance requests, the Board of Zoning Appeals shall use the following decision criteria, consistent with the requirements of the Indiana Code. The Board may grant a Use Variance from development standards and limitations of this Ordinance if, after a public hearing, it makes findings of facts in writing (consistent with IC 36-7-4-918.5) that:

1. **General Welfare: The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**

STAFF FINDINGS: The approval of this variance will be injurious to the public safety or general welfare of the community as these rooms will open to transient guests within a residential neighborhood and the shortage of available onsite parking spaces.

2. **Adjacent Property: The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.**

STAFF FINDINGS: Adjacent properties to the subject property will not be affected in a substantially adverse manner.

3. **Practical Difficulty: The strict application of the terms of the ordinance will result in a practical difficulty in the use of the property. (This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.)**

STAFF FINDINGS: The strict application of the ordinance will not result in a practical difficulty in the use of this property.

4. **Unnecessary Hardship: The strict application of the terms of the Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.**

STAFF FINDINGS: The strict application of the terms of the ordinance will not result in an unnecessary hardship if applied to this property.

5. **Comprehensive Plan: The approval does not interfere substantially with the Edinburgh Comprehensive Plan.**

STAFF FINDINGS: The approval of this variance will interfere with and is inconsistent with the goals and objectives of the Comprehensive Plan for Residential Areas by the encroachment of an incompatible land use which adversely impacts the residential neighborhood with overcrowding and detracts from the residential character of the neighborhood.

STAFF RECOMMENDATION

The investigation findings suggest that granting a Use Variance to allow renovation for a change of use and conversion of this property to be used as requested by the petitioner is inconsistent with the goals and objectives of the Edinburgh's Zoning Ordinances and Comprehensive Plan. Further, there appears to be insufficient Off-Street Parking space to meet the minimum requirements established in the Edinburgh Zoning Code to accommodate proposed change of use.

Therefore, staff recommends denial of the petition.

Should the Board choose to grant this Use Variance, staff makes the recommendation that the applicant be required to meet the following standards or obtain a developmental variance on the same:

1. That this decision is only granted to the Petitioner, and the Use Variance is not transferable to any other property owner(s) not directly associated with the Petitioner, and
2. That this decision is null, and void should the Petitioner fail to develop the subject parcel within one (1) year of the date of the BZA Findings of Fact, and
3. That all parking areas servicing this building shall be paved with asphalt within one year of the granting of this Use Variance, and
4. That all aspects of this project development be compliant with all applicable Building Codes adopted by the State of Indiana, and the developmental requirements of the Edinburgh Zoning Ordinances,
5. That appropriate renovation permits are issued for the project, including a Construction Design Release from the Indiana Department of Homeland Security, that all work shall be inspected for code compliance as specified by the Edinburgh Building and Zoning Official, and that prior to any occupancy of any newly renovated space a Certificate of Occupancy be issued by the Town of Edinburgh Planning Department.

Respectively Submitted,



Wade D. Watson
Planning Director, Town of Edinburgh