#### NOTICE

A meeting of the City of Evansville Board of Zoning Appeals will be held on the date and at the time stated below in City Hall, 31 South Madison Street, Evansville, Wisconsin 53536. Notice is further given that members of the City Council might be in attendance. Requests for persons with disabilities who need assistance to participate in this meeting should be made by calling City Hall: (608)-882-2266 with as much advance notice as possible. Please silence cell phones and electronic devices during the meeting.

City of Evansville **Board of Zoning Appeals**Regular Meeting **Thursday, September 28th, 6:00 pm**3rd Floor, 31 South Madison Street, Evansville, WI 53536

#### **AGENDA**

- 1. Call to Order
- 2. Roll Call.
- 3. Motion to approve the agenda.
- 4. Motion to waive the reading of the March 16, 2023 minutes and approve them as printed.
- 5. Civility Reminder
- 6. Citizen Appearances
- 7. Action Items.
  - A. Public Hearing and review of variance application VAR-2023-0283 for parcel number 6-27-249 at 202 S Madison Street to allow building setbacks less than allowed by Section 130-768(3) of the Evansville Municipal Code.
    - i. Initial Staff and Applicant Comments
    - ii. Public Hearing
    - iii. Board of Zoning Appeals Questions and Comments
    - iv. Motion
- 8. Motion to Adjourn

These minutes are not official until approved by the City of Evansville Board of Zoning Appeals.

# City of Evansville **Board of Zoning Appeals**Monday, March 16, 2023, 6:00 p.m. 3rd Floor City Hall, 31 S Madison St, Evansville, WI 53536

#### **MINUTES**

- **1. Call to Order** at 6:00 pm.
- 2. Roll Call:

Members	Present/Absent	Others Present
Janice Turner	P	Colette Spranger, Community Development Director
Ken Updike	P	Mary Leeder, Applicant
Sarah Krause	P	Patricia Hager, Resident
Jeff Vrstal	A	
Ry Thompson	A	
Vacant	A	
Vacant	A	

- 3. Motion to approve the agenda by Updike, seconded by Turner. Approved unanimously.
- 4. <u>Motion to waive the reading of the minutes from the July 7, 2020 regular meeting and approve them as printed by Updike, seconded by Turner. Approved unanimously.</u>
- **5.** Civility Reminder. Stacy noted the City's commitment to civil discourse.
- 6. Citizen appearances other than agenda items listed. None.
- 7. Action Items.
  - A. Public Hearing and review of variance application VAR-2022-0217 for parcel number 6-27-595.1 at 511 E Main Street to allow building setbacks less than is allowed by Section 130-1004(11) of the Evansville Municipal Code.
    - i. Initial Staff and Applicant Comments. Spranger shared her staff report.
    - **ii. Public Hearing.** Spranger opened the public hearing at 6:23pm closing it with no comments from the public.**Board of Zoning Appeals Questions and Comments.** Turner asked if there was a sidewalk in front of this property, which there is. Krause asked for clarification as to how to determine what is extraordinary, exceptional, or unusual circumstances.
    - iii. Motion. The Board of Appeals approves issuance of the variance on parcel 6-27-595.1 to reduce the front setback to 20 for a residential building on the property. The variance is approved noting the following findings of fact and conditions:
      - The variance will not cause a detriment to neighboring properties and is necessary due to an applicant presented hardship as a result of the buildings presence prior to the existence of the present zoning code.

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- The granting of the variance does not suggest that setback standards should be changed in any zoning district.
- The granting of the variance is not contrary to the purposes set forth in the zoning code.
- The granting of the variance is not contrary to the purposes set forth in the zoning code
- The granting onf the variance is not contrary to the public interest.

  Motion by Turner, seconded by Updike. Approved Unanimously.
- B. Public Hearing and review of variance application VAR-201-0032 for parcel number 6-27-589 at 469/471 E Main Street to a drive-thru stacking length less than allowed by Section 130-407(3) of the Evansville Municipal Code.
  - i. **Initial Staff and Applicant Comments.** Leeder described the use of the window for pickups only and everyone would have to call ahead. Spranger shared her staff report.
  - **ii. Public Hearing.** Spranger opened the public hearing at 7:01pm. Hager expressed it was a terrible idea and felt it would effect traffic flow on the street.
  - iii. Board of Zoning Appeals Questions and Comments.
  - iv. Motion. <u>The Board of Appeals approves issuance of a variance to reduce the stacking length for a pick-up window as described in Section 130-407 to 40 feet on this property.</u>
    The variance is approved noting the following findings of fact and conditions:
    - The variance will not cause a detriment to neighboring properties and is necessary due to an applicant presented hardship as a result of the building's orientation and proximity to the street and the needed location of the pick-up window.
    - The granting of the variance does not suggest that the required stacking length for drive-thrus should be changed.
    - The granting of the variance is not contrary to the purposes set forth in the zoning code.
    - The granting of the variance is not contrary to the public interest.

      Motion by Krause, seconded by Updike. Approved Unanimously.
- 8. Next Meeting Scheduled for Monday, May 25, 2023 at 6pm
- 9. Motion to Adjourn by Updike, seconded by Turner, passed unanimously.



# EVANSVILLE BOARD OF APPEALS - STAFF REPORT - September 29, 2023

**APPLICATION NUMBER:** VAR-2023-0283

**Applicant**: Evansville Ecumenical Care Closet

Parcel: 6-27-249 (206 S Madison)

**Prepared by:** Colette Spranger, Community Development Director **Prepared for:** City of Evansville Board of Zoning Appeals

**Description of request:** The applicant is requesting approval of a variance from the Evansville Municipal and Zoning Code for building and pavement setbacks less than what is allowed in the B-1 Local Business District. For a street side lot line in the B-1 zoning district, a building setback (distance) of 25 feet is required. The proposed variance asks for a 1 foot setback.

**Background of Request**: The applicant is requesting this variance to allow for canopy to cover a one-way half-circle (or u-shaped) driveway located on the Liberty Street side of the applicant's building. The overhang and support posts of the canopy will be 12 inches from the public sidewalk. From a zoning perspective, a canopy is considered an extension of the building and is treated no differently than a solid wall. In this case, the canopy would be open on three sides. This aids in visibility for both pedestrians and those operating vehicles in the driveway area.

The overhang includes plans for a gutter, which will empty on the east side of the canopy onto the applicant's property. There is an option to utilize an interior gutter option that would extend the setback to 18 inches, but this would add extra expense to the applicant with little change to the effect of the lack of setback.

In addition to building setbacks, 10 feet is required between a paved surface area and the street in the B-1 zoning district. City staff has typically interpreted "paved surface area" as a parking area. The turnaround area required for the driveway and the presence of a canopy would make it difficult to maintain the grass strip between the sidewalk and pavement on the applicant's property. The lack of barrier between pedestrians and the entire paved driveway area remains a public safety issue. (This is not a violation of the zoning code -- unlike the City's residential zoning districts, the B-1 zoning district does not have a maximum driveway width.)

The purpose of the canopy is that it allows clients of the weekly food pantry to pull up to the building and be sheltered from the elements. The pantry is operated on Tuesday each week and clients must make an appointment to receive their order. This configuration provides a discreet approach for users and places a client's pick up nearer where items are distributed. No stacking of cars should occur in the driveway or extend onto Liberty Street.

Plan Commission will review plans for the u-shaped driveway and provide comments on the lack of barrier between driveway and sidewalk. If the Board of Zoning Appeals approves this variance to adjust the canopy's setback, Plan Commission will also review the canopy in tandem with the driveway.

The Board of Zoning Appeals need only determine whether the <u>setback</u> for the canopy, rather than the size, appearance, and use of the canopy itself, is worthy of variance.

**Required Findings:** The Board of Zoning Appeals must consider the standards in Section 130-131 prior to making its findings. The standards are as follows:

# (1) Site design and physical characteristics

- a. Existing topography, drainage patterns and vegetative cover and the suitability of the proposed use in this regard.
- b. Availability of water, sewer, rail and other services and the utility requirements of the proposed site.
- c. Where public sewers are not available, the percolation characteristics of the soil.
- d. Adequacy of the proposed internal circulation system, including safety considerations.
- e. Access to sites from the internal circulation system.
- f. The costs of providing various public services.
- g. Appearance (how the area will look).

**Staff comments:** The proposed use has public services readily available and the current utility requirements would not be impacted. The canopy itself benefits the proposed u-shaped driveway. The u-shaped driveway would provide – arguably – better vision clearance for all users as opposed to the current driveway leading up to the distribution door, which requires users to back in and out of. The new driveway configuration would also close off access from Liberty Street to the Care Closet's main parking lot. The currently driveway location is awkwardly placed and creates congestion for vehicles and pedestrians along Liberty Street. The driveway layout improves traffic circulation and foot access with or without the canopy but increases potential conflict between pedestrians and vehicles in the driveway. Still, the driveway is only slated to be in regular use on Tuesdays during the food pantry, so the overall impact is still improved from what is currently on the ground.

# (2) Site location relative to public road network

- a. Convenient access to a public road network (safety of access points).
- b. Visibility from the proposed road and the need for visibility.
- c. Access; the location is to provide access primarily by right-hand turning movements.

**Staff comments:** As stated in the previous item, traffic circulation is improved by closing off one access point and eliminating a back-out driveway along Liberty Street. No changes to access are anticipated for the Care Closet's driveway on Madison Street (State Highway 213).

#### (3) Land use

- a. Compatibility with existing or proposed uses in the area.
- b. Relation to any existing land use plan.
- c. Relation to existing or proposed development at nearby interchanges.
- d. In reviewing an application for a zoning district change to a business district, the plan commission and city council shall consider whether the proposed zoning district change likely will result in increased vehicular traffic on nearby local streets in areas of existing residential development and whether such increased traffic will have an adverse impact on the existing residential development.

**Staff comments:** The building the Care Closet currently occupies was once a grocery store. The property has long been adjacent to a residential area. In staff's opinion the location is compatible with its adjacent uses.

## (4) <u>Traffic generation</u>

- a. Amount of daily and peak hour traffic to be generated, related to site size. Traffic shall be sub-classified as to arterial, collector and local streets.
- b. Amount of traffic generated relative to existing and anticipated ultimate generated traffic in the area.
- c. Expected composition of site-generated traffic by vehicle types.
- d. Effect of site-generated traffic on the operation of the area.
- e. Safety and convenience of future users.

**Staff comments:** The property is at the corner of South Madison and Liberty Streets. South Madison is the City-controlled portion of State Highway 213, which is classified as an arterial street, meaning the design of the road is meant to move vehicles throughout the community. The location affected by the proposed variance is on Liberty Street, a local road, which is designed for individual access to properties and not as a through street. The addition of the canopy and adjustment of the driveway is on will not result in increased traffic, but will collect traffic that already uses the site.

# (5) Community effects

- a. Immediate and long-range tax base.
- b. Access to market or service area.
- c. Relation to scenic or recreation values.
- d. Relation to the public interest, the purpose and intent of this chapter and substantial justice to all parties concerned.
- e. Compliance with the master plan's goals and objectives.

Staff comments: The operators of the Care Closet are of the opinion that the requested changes would enhance the client experience at the food pantry. City master plan goals for transportation include enhancing walkability throughout the community. Sidewalks were recently installed at this property in 2022. The chief concern of City staff in having a canopy so close to the sidewalk is the potential for rain, ice, or snow to create adverse conditions for pedestrians. This worry is offset to an extent by the gutter emptying off to the side of the canopy on the applicant's property. However – this area is also impervious and is on an incline. Should the Board of Zoning Appeals grant the canopy with a variance for its setback, staff intends to address this issue further at Plan Commission to ensure that any water emptied from the gutter in this location does not flow back to the sidewalk.

## **(6)** Other relevant factors

- a. Compliance with the Performance Standards in Article III of the zoning code.
- b. Additional impacts.

#### Staff comments:

- In Chapter 106-82 of the Municipal Code, which governs Streets, Sidewalks, and Public Places, states that "No person shall, except when crossing at a constructed driveway: Obstruct a sidewalk so as to prevent or impede its use for pedestrian purposes." The Board of Zoning Appeals should discuss whether a setback variance for the canopy would result in an impediment to sidewalk use.
- The street side setback of 25 feet for the B-1 zoning district is the largest of any of the City's five business zoning districts and is the typical setback required in industrially zoned districts throughout the City.

- City staff also observed, as part of the research for this application, that there are only about 20 properties city-wide that have B-1 zoning. Nearly all of these properties that have improvements (i.e. buildings) were developed prior to the initial adoption of the zoning code in 1986, and as a result most have some degree of nonconformity to the zoning district. Said plainly the zoning district and its requirements were placed on these property after they were built. For any of these properties, there is usually at least one physical characteristic of the property that does not meet the zoning district's standard. The offending characteristic is allowed to remain but is generally not allowed to become more non-conforming.
- However, this property is close to the downtown area, where buildings have no setback
  from their property line and meet the public sidewalk by design. This shows there is
  precedent elsewhere in the City and the effect is generally considered positive and not
  a detriment to public safety.
- This is the second time within a year a variance has been requested in the B-1 zoning district. The B-1 Local Business district is intended to permit small scale commercial development in neighborhoods where appropriate. This suggests to staff that this district may not functioning as intended and is due for an update. The language regarding uses and requirements for this district was last updated in 2007.

**Board Consideration:** The Board must determine whether exceptional circumstances are present and that there is an absence of detriment, as specified above, in order to grant the variance. Specific conclusions must be noted by the Board in the motion. Per Section 130-153:

"No variance to the provisions of this chapter shall be granted by the board of appeals unless it has considered the standards in section 130-131 and it finds that all the following facts and conditions exist and so indicates in the minutes of its proceedings:

- (1) Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance would not be of such a general or recurrent nature as to suggest that this chapter should be changed.
- (2) Absence of detriment. The variance shall not create substantial detriment to adjacent property and shall not materially impair or be contrary to the purpose and spirit of this chapter or the public interest.
- (3) Conclusions of law. The findings of the board shall be accompanied by findings of fact and conclusions of law."

**Staff conclusion:** When considering the request against other properties and uses on other properties in the B-1 zoning district, staff is of the opinion that a variance is the appropriate tool to address this issue. It should be considered the variance runs with the land in perpetuity, and for that reason the motion will be worded to ensure that setback variance is granted for the open-air canopy only and not a solid wall.

**Staff recommended motion:** The board can choose to approve, deny, or approve with conditions the variance request(s). If the board chooses to approve, the following motion can be used:

The Board of Appeals approves issuance of a variance to reduce the street side yard setback less than allowed by Section 130-768(3) of the Evansville Municipal Code. Setback allowed to 1 foot of property line to accommodate an open-air canopy covering a half-circle driveway on this property, parcel 6-27-249, addressed at 209 South Madison Street. The variance is approved noting the following findings of fact and conditions:

- The variance will not cause a detriment to neighboring properties and is necessary due to an applicant presented hardship as a result of the building's long-standing non-conforming status in the B-1 zoning district.
- The granting of the variance does not suggest that a required street side yard setback be changed for all properties in the B-1 zoning district.
- The variance to the street side yard setback shall only apply to this canopy area along Liberty Street and not to any future expansion of the existing building.
- The granting of the variance is not contrary to the purposes set forth in the zoning code.
- The granting of the variance is not contrary to the public interest.

# **Photo Exhibits of the Property**

Main Entrance along Liberty Street. Sidewalk and grass strips between the sidewalk and parking lot are new as of 2022.

Vehicle exiting from the main parking area on to Liberty Street. This driveway will be eliminated if the half-circle/u-shaped driveway is approved and there will be no vehicular access to the main parking lot from Liberty Street.

View of proposed canopy/driveway area on Liberty Street. Note the location of the white car to demonstrate the turning radius needed for the u-shaped driveway. The driveway apron seen here would remain in its current location.







View of proposed canopy/driveway area from another angle. Red marks added to driveway that will be removed.



View of sidewalk facing east on Liberty Street.











