

**AGENDA
ELKHART CITY BOARD OF ZONING APPEALS
THURSDAY, FEBRUARY 8, 2024 AT 6:00 P.M.
COUNCIL CHAMBERS – MUNICIPAL BUILDING**

THIS MEETING WILL ALSO BE HELD ELECTRONICALLY VIA WEBEX.

This meeting can also be accessed via WebEx. To join, go to <http://coei.webex.com>, enter 2317 077 1574 as the meeting number and “BZA2023” as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to hugo.roblesmadrigal@coei.org prior to the meeting.

1. **ROLL CALL**
2. **2024 ELECTION OF OFFICERS**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES DECEMBER 14, 2023**
5. **APPROVAL OF PROOFS OF PUBLICATION**
6. **NEW BUSINESS**

24-UV-02 PETITIONER IS EOZ BUSINESS LLC

PROPERTY IS LOCATED AT VACANT LOT, EAST JACKSON BLVD (300 BLOCK)

To vary from Section 15.2.Q, Permitted Uses in the CBD, which allows ‘Multi-family residential dwellings, including condominiums, townhouses and residences located above commercial uses to allow for residential dwellings located on the first floor, where currently residential dwellings are not a permitted use on the first floor.

To also vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for the residential units in this development to be as small as five hundred seventy four (574) square feet, a maximum variance of one hundred seventy six (176) square feet.

24-BZA-03 PETITIONER IS NANCY V SHAUM

PROPERTY IS LOCATED AT VACANT LAND TOLEDO ROAD - 06-11-251-013-011

To vary from Section 12.4 Yard Requirements in the B-2, Community Business District, to allow for a ten (10) foot rear yard setback where twenty (20) feet is required, a variance of ten (10) feet.

24-BZA-04 PETITIONER IS LOTUS ENTERPRISES

PROPERTY IS LOCATED AT 2101 BYPASS ROAD

To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

7. **ADJOURNMENT**

**PLEASE REMEMBER TO USE THE MICROPHONE WHEN SPEAKING.
ERRORS IN THE MINUTES MAY RESULT FROM INAUDIBLE VOICES.**

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, December 14, 2023 - Commenced at 6:00 P.M. & adjourned at 7:57 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Andy Jones
Evanega Rieckhoff (Proxy)

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Eric Trotter, Assistant Director for Planning
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Amendment to the agenda to table 23-BZA-28.

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

APPROVAL OF MINUTES FOR JUNE 8, 2023 AND JULY 13, 2023

Evanega Rieckhoff makes motion to approve June 8, 2023 minutes; Second by Davis. Voice vote carries.

Davis makes motion to approve July 13, 2023 minutes; Second by Jones. Voice vote carries

APPROVAL OF PROOFS OF PUBLICATION

Notices that were published for 23-BZA-37 and 23-BZA-38 are actually for the same property, not two separate properties.

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

APPROVAL OF 2024 CALENDAR

Jones makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

OPENING STATEMENT

Welcome to the December 14, 2023 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.

OLD BUSINESS

23-BZA-33 PETITIONER IS WILLIE J. LEE AND ADRIAN L. RILEY

PROPERTY IS LOCATED AT VACANT LAND (1022) W. GARFIELD STREET - 06-08-302-014

To vary from Section 5.2.B which states in part that 'The primary façade of the structure shall face a public street' to allow for a manufactured home to be cited so that the primary façade does not face the public street.

Mulvaney calls the petitioner forward.

Harrison Haines appears in person on behalf of the petitioner. Haines states that his client wishes to buy this property and locate a modular on it. He then said he had worked with four builders on the South side, where they built 18 new properties on the South Side of Elkhart. Haines mentioned the areas of Hubbard, Garfield, Fieldhouse, and Marco Streets as zones where he has worked and sold houses for anywhere between \$195,000 and \$210,000. He then said the modular for the request would be a high-end modular that will be sold anywhere between \$200,000 and \$210,000, so he is asking for the board's approval.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Haines if nothing has changed since the last meeting since he is still seeking to place the modular on the side facing the street.

Haines answered yes, and they will put the carport on the other side towards the back alley so the public will see the side of the modular. Haines said two new properties are on the corner, and the property would not be a detriment but an asset to the community.

Evanega Rieckhoff states that the modular is a nice-looking home, but she struggles with placing it sideways.

Evanega Rieckhoff asks Haines if the modular would have an alley facing the front of the home.

Haines responded that the front of the home would face an alley.

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

STAFF ANALYSIS

The petitioner is proposing to relocate an existing manufactured home to a vacant lot at 1022 West Garfield Avenue. This site is in a neighborhood characterized predominantly by single-family homes on lots that were platted in the early 1900s. Typical homes in this neighborhood were constructed prior to the 1950s, and the homes were built to a style with short front yard setbacks and front doors and porches addressing the street, while alleys are used primarily for access to parking and garages.

The property location of this request is included in a part of the neighborhood that was recently included in the Benham Neighborhood Planning process facilitated by the City of Elkhart, the Greater Elkhart Chamber of Commerce and the University of Notre Dame. The focus of the Plan was to identify strategies to create new investment in both business and in-fill housing within the Benham Neighborhood. The final plan document is in process, but the presentation materials highlighted the importance of maintaining the traditional design and development standards of the neighborhood as a key component of implementing a successful in-fill development strategy. The development proposed by the petitioner does not represent consistency with either the existing neighborhood or the vision defined in the forthcoming Benham Neighborhood Plan

STAFF RECOMMENDATION

The Staff recommends denial of the developmental variance based on the following findings of fact:

1. The approval would not be injurious to the public health, safety, morals or general welfare of the community as the proposed single-family use is consistent with the zoning district;
2. The use and value of the area adjacent to the property would be affected in a substantially adverse manner as the proposed orientation and design of the building would not be consistent with existing neighborhood character nor the proposed vision identified in the Benham Neighborhood Plan. ;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because the Ordinance emphasizes the compatibility with surrounding land uses and the coordination of drives, parking areas and pedestrian walks as critical components of the development review process;
4. Special conditions and circumstances do not exist which are peculiar to the land involved because the lot meets the criteria for a typical R-2 building lot in this neighborhood;
5. The strict application of the terms of this Ordinance does not result in practical difficulties in the use of the property as the lot is currently vacant and can accommodate a house design appropriately;
6. The special conditions and circumstances do result from an action by the applicant as the applicant is trying to ask for relief for an existing structure to be relocated on the lot, there are other lots in the City that can accommodate the structure appropriately;
7. This property does not lie within a designated flood area.

Huber states there were 30 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Jones.

Davis – Yes

Evanega Rieckhoff – No

Jones – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

23-BZA-36 PETITIONER IS BROCK WEAVER

PROPERTY IS LOCATED AT 2310 E JACKSON BLVD

To vary from Section 26.1.C.3 – swimming pool fence requirements, which states that ‘A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking’, to allow for no fence to be constructed along the river side of the property. The property is located on the St. Joseph River.

Mulvaney calls the petitioner forward.

Brock Weaver and Angela Weaver appear in person as the petitioners. Brock states they are seeking relief from the ordinance requesting a fence along the riverside. He said the plan is to have a fence run along the East and West sides of the property because they feel that the safety requirements of the pool are being met. Brock then stated that he has a four-foot wall encasing the pool, which would be a natural barrier. He added that they also have an automatic pool cover that would always cover the pool.

Mulvaney asks for questions from the Board.

Jones states that their proposal is consistent with new construction along the upper St. Joseph River for those with pools because you would typically want it fenced in to keep children out. However, in this situation, the kids would have to take a boat to get into the water, so he is in favor.

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

STAFF ANALYSIS

The petitioner owns a newly constructed home on East Jackson Boulevard that abuts the St. Joseph River. The house was completed in the fall of this year and obtained a certificate of occupancy in October of this year. An in-ground pool was part of the new home development. The in-ground pool has been installed via a permit issued in April of this year with an automatic pool cover.

The petitioner wishes to vary from Section 26.1.C.3 which states that "A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking" to allow for no fence to be constructed along the river side and to consider the embankment of the river wall as a barrier to the pool.

The petitioner will enclose the pool with a six (6) foot fence to the east and west property lines and to the south of the property. To the north, the seawall for the river would act as a natural barrier to the property and pool. The landscaping on the west side of the property has yet to be completed; however, the petitioner has stated they intend on finishing the landscaping subsequent to the construction of the required pool fence.

Staff believes the petitioner has met the intent of the ordinance and has made a reasonable effort to comply with the requirement. They will have a six (6) foot fence installed adjacent to the side property lines, in combination with an automatic pool cover, which diminishes the risk of an attractive nuisance.

If the Board chooses to approve the developmental variance, it is recommended that:

1. The landscape is graded, seeded, and finished upon completion of construction of the fence.
2. That parcels 02-34-377-012-012 and 02-34-377-002-012 be combined with parcel 02-34-377-003-012.

STAFF RECOMMENDATION

The Staff recommends Approval of the developmental 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 as the river wall would create a sufficient barrier equal to a fence. In addition, the pool has an automatic pool cover installed for added security;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the property would still remain a residential property in a residential neighborhood, and pools are commonly found in residential neighborhoods;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved, as the rear of the property abuts a river, creating a natural barrier;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property by depriving the petitioner of the rights commonly enjoyed by other properties in the same area;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the property abuts the St. Joseph River and the embankment would serve as preventative access to the pool comparable to the otherwise required fence;
7. This property does not lie within a designated flood area; however.

CONDITIONS

1. The landscape is graded, seeded, and finished upon completion of construction of the fence.
2. That parcels 02-34-377-012-012 and 02-34-377-002-012 be combined with parcel 02-34-377-003-012.

Mulvaney calls for a motion.

Jones makes motion to approve with conditions; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

23-UV-13 PETITIONER IS ALEJANDRO PONCE PROPERTY IS LOCATED AT 1716 ELIZABETH STREET

To vary from Section 5.2 Permitted Uses in an R-2 One-Family Dwelling District to allow for a proposed accessory structure to be used as a commercial home hair salon. The use as a home hair salon is not permitted in the R-2 district.

Mulvaney calls the petitioner forward.

Alejandro Ponce appears in person as the petitioner. Ponce states he would like to build a home salon structure on his property at 1716 Elizabeth Street. Ponce said he would be the only person working there and only accept one customer at a time, so there would be no disruption to neighborhood traffic. He said he would build everything up to code if the board granted the variance.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Ponce if he plans on building the beauty shop where a shed currently stands or if he plans on building an accessory structure in a different location.

Ponce answered that the shed will be removed since there is no room left for the proposed building to be properly built.

Evanega Rieckhoff states that she could not figure out where the new building would go but now understands that it looks good.

Jones asks Ponce what the size of the structure would be.

Ponce responded that it would be about 14 by 24 feet.

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

Dwight Fish appears in person in opposition to the petitioner's request. Fish states that he has lived in the neighborhood for almost 32 years, and it has seen a large spike in the wrong kind of business activity. He said there is a Sterling East home plan that calls for a lot more housing but, tragically, is interspersed with a lot of industry and commercial work throughout the neighborhood. Fish said the problem with Elizabeth Street is that it's very narrow and used by commercial vehicles that service Moryde and LE Johnson. He then said that the street is being overused, and there has been an increase in children on the narrow street. Fish explained that the house at 1716 Elizabeth Street was originally built as a habitat home, and not one of the seven homes in the immediate area has been expanded upon. After that, Fish told the board that the neighborhood has a chronic problem of not having enough parking spaces for people. Fish said he took photographs showing how congested the street can become when people park on the street, whether visiting family or staying the night. He then alleged he had seen people parking on the tree lawn and a busted water main due to parking on the tree lawn. Fish asserted that he is not opposed to small businesses, but too much business property is not being utilized or rented. In a residential area, it is supposed to be quiet and safe; and as a neighborhood coordinator, Fish said that is at the top of his agenda. He also believes that allowing a building of that size would exceed the ordinance's square foot limit.

Ponce responded by explaining that the property is small; however, there is an existing parking area for two cars in the back of his property, and as he said previously, he will only accept one client at a time. Ponce said his customers will be using the alley behind the property to reach customer parking, so there will be minimal impact on the traffic conditions on Elizabeth Street. He then adds that he will only operate Tuesdays through Saturdays from 10 AM to 5 PM, which will not affect weekends. Ponce closed by stating that Moryde is nearby and his business is tiny compared to the company.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a 1,040 square foot house on a .12-acre lot in the 1700 block of Elizabeth Street, between Ren and Bar Streets in the Sterling East Neighborhood. The 2018 Sterling East Neighborhood Plan highlights the overall mix of residential and industrial land uses within the neighborhood and identifies the lack of residential density and presence of vacant land parcels within the overall neighborhood. Neighborhood development goals identified in the plan relate to coordinated in-fill strategies that provide for both residential development and industrial expansion.

The subject property is located in the Zone 4 residential section of the Sterling East Neighborhood and is zoned R-2 One-family Dwelling District. Specifically, the property is located within a cluster of approximately 9 adjacent homes on Elizabeth Street, and is one of 4 immediately adjacent homes that utilize the alley for parking access behind the home. It is anticipated that business traffic would utilize the alley for access to the business and for parking. Three (3) total parking spaces would be required, and there is enough lot width to accommodate 3 spaces at 10' wide by 20' long. Depending on the overlap of customers at the businesses, traffic could accumulate in the alley.

The petitioner is proposing to demolish an existing accessory structure and construct a new 336 sf building for the purpose of operating a one (1) chair hair salon behind the primary home. The business would operate by appointment only Tuesday-Saturday from 10am-6pm. The construction of the accessory structure will include the utility connections required to meet state business codes, which could allow future use of the structure as an accessory dwelling unit, which is currently not permitted in the City's zoning ordinance.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 5.2 Permitted Uses in an R-2 One-Family Dwelling District to allow for a proposed accessory structure to be used as a commercial home hair salon 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 accessory structure would be permitted as a replacement for the existing structure and the business will meet all state public health requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the required parking will be accommodated and clients will seen by appointment only and not be drive-by or drop in customers, which will serve to mitigate traffic concerns;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance as the Conditional Use procedure allows for practical latitude for a petitioner while allowing the City to maintain the protection of health, safety and general welfare of neighboring residents;
4. Special conditions and circumstances do exist which are peculiar to the land involved because the residential zoning of the property does not permitted the proposed business use;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the proposed use will not be permitted without the conditional approval of the use;
6. The special conditions and circumstances does result from any action or inaction by the applicant because the petitioner's intent to operate the hair salon is driving the petition for the conditional use;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. There shall be no exterior display, no exterior sign except as allowed by the sign regulations for R-2 One-Family Dwelling district in which the home occupation is located.
2. Use of the accessory structure as an Accessory Dwelling Unit shall not be permitted.
3. All utility connections will be reviewed and approved by the City of Elkhart Department of Public Works.

Huber states there were 33 letters mailed, with one returned not in favor with no comment.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve with conditions; Second by Jones.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

23-BZA-37 PETITIONER IS CONTRADA MODI INC

PROPERTY IS LOCATED AT 2720 CASSOPOLIS STREET AND 500 MERRILL STREET

To vary from Section 26.7C.7.1.ii.(b).2, parking lot landscaping when abutting a right of way (Merrill Street) which requires a twenty (20) foot landscape strip to allow for a portion of the Merrill Street frontage to have a zero (0) foot setback landscape strip. And to also vary from Section 26.1B.4 Accessory structures – General provisions which states ‘On a corner lot, an accessory structure shall not be located closer to the side lot line nearest the intersecting street than the established building line along that street on the same side’ to allow for a new drive-thru canopy and dumpster enclosure to be located within the established building line and the street (Merrill).

Mulvaney calls the petitioner forward.

Justin Lurk with Chick-fil-A appears on behalf of the petitioner. Lurk stated he is the principal development lead for the Midwest region and is accompanied by Mike Timco, the project engineer. Lurk said that Chick-fil-A is a franchise company but is quite different since franchisees only get one location, and it's their only source of income. Chick-fil-A is open Monday through Saturday and closed on Sundays to allow everyone time to rest. He then spoke on how their founder opened a diner back in the 1940s, and it was open six days a week 24/7, so they still honor that legacy today. He said their founder was a great partner in community-sponsored local nonprofits and positively impacted all who contacted them. They asked the board to turn to page 6 on EXHIBIT A to review the property's site plan and look at the proposed highlighted variances. The first proposed variance is for the parking spaces on the South side of the property that would have a zero-foot setback to the property line on Merrill Street. Since Merrill Street is wide open and free for all with no established urban gutter, they propose adding a landscaping strip to meet the intent of the code there and to define the boundaries of Merrill Street. He continued by saying that the other two variances are for the open-air canopy on the South side of the building to protect team members and guests when they come in and pick up their food. It would be an open-air structure, so it will not limit visibility. It will have columns on the outside, and it will not be connected to the building but adjacent to it. Lurk added that it would be an accessory structure between the building line and the property line, which would be the same for the dumpster enclosure. He said the dumpster would be on the far southeast corner of the property since they wanted to get it as far away from Cassopolis Street as possible. Lurk announced that the dumpster would be a full masonry brick structure with metal gates and waterlines so that it would be cleaned at least once a week. Regarding the sign, they seek to keep the existing sign currently in place, but they will be refacing it. Lurk said they are trying to maximize the site as best as possible from a drive-thru standpoint. He then said that the back of the building will face Cassopolis Street, and they are also proposing to close off the current access point on the street so that there are just two access points on Merrill Street. This would be done to ensure a controlled environment from a traffic standpoint.

Mulvaney asks for questions from the Board.

Mulvaney asks Lurk how many cars is the drive-thru designed to hold off the street.

Lurk replied that currently, their drive-thru is designed to accommodate up to 30 through 35 cars, but their latest design calls for a two-lane drive-thru that goes all the way around the building. He said they started doing that at the time of Covid. The local owner-operator will use the second lane one of three ways. Both lanes will be used during nonpeak hours, but you will be filtered down to one lane. During peak hours, they will have two lanes to stay open throughout the process. The third way is that the second lane may be used as a mobile thru lane, so if there is a high mobile ordering demand, the second lane will be designated solely for mobile orders. To answer Mulvaney's question, Luke said the drive-thru is designed to accommodate 46 through 48 cars, which is above and beyond what they typically do; however, they will keep traffic on the northern side of the property to prevent spillage off the site.

Jones asks Lurk how many diners they can accommodate inside.

Lurk explained that the building would have 70 interior seats, including a patio with four tables and four chairs, and another sixteen seats during the warmer months. Lurk added that there are 80 parking spaces on-site within their lot lines, so it would be the right amount for the building between their employees and third-party delivery companies such as Grub Hub and Uber. Luke also said that that is why they are asking for a variance on the parking spaces on the South Side because if they took away 12 spaces, they would be two shy of their standards on parking.

Mulvaney opens for public comments to speak in favor. Seeing none, he opens for opposition. Seeing none, he advises that there is a question via Webex.

David Drlich acknowledged that the drive-thru accepts 35 cars and asked what is typical for a lunch or dinner rush because the line at the Mishawaka Chick-fil-A location often snakes into the Home Depot parking lot.

Lurk answers that he does not have the exact numbers on the Mishawaka site; however, the new dual drive-thru approach is 45% more efficient than their old design. He said they have done a lot of research on this, so they are trying to design their drive service at 30 to 35 cars, and what they are proposing is above that.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The site is located at the northeast corner of Cassopolis and Merrill Streets. The petitioner is under contract to sell the existing restaurant. The contract purchaser is planning on redeveloping the site and razing the existing building and constructing a new quick service restaurant. Because the lot is narrow and the site is also located on a corner, the following developmental variances are being requested. The site has not yet been submitted for Technical Review.

The petitioner is requesting on behalf of the purchaser two variances. The first is a developmental variance along the Merrill Street frontage for relief from the landscape buffer of twenty (20) feet to allow for a zero (0) foot setback where twenty (20) feet is required.

The user has larger numbers of customers at points during the hours of operation that necessitate the parking lot in the current requested configuration. This need is based on historical data collected from other similar sized restaurants.

The second variance is to allow two accessory structures to be constructed and located in the front yard (corner side yard) between the future building and Merrill Street. Accessory structures are not permitted to be located in the front yard (corner side yard).

The redevelopment of the site will have the current curb cut on Cassopolis Street closed and all of the traffic to the site come by way of access points along Merrill. This will allow for the flow of traffic around the new building to have patrons places orders on the north side of the building, come west around to the south to pay and pick up their order; at both windows under free standing canopy structures that allow staff to be out of the weather and patrons the ability to have windows down and be free of rain and snow.

Staff has no issue with the requested variances. The existing lot is narrow which limits to a degree the opportunities around the property to locate these secondary accessory structures.

STAFF RECOMMENDATION

The Staff recommends in favor of the developmental variance which seeks to vary from Section 26.7.C.7.1.ii.(b).2, parking lot landscaping when abutting a right of way (Merrill Street) which requires a twenty (20) foot landscape strip to allow for a portion of the Merrill Street frontage to have a zero (0) foot setback landscape strip. And to also vary from Section 26.1.B.4 Accessory structures – General provisions which states ‘On a corner lot, an accessory structure shall not be located closer to the side lot line nearest the intersecting street than the established building line along that street on the same side’ to allow for a new drive thru canopy and dumpster enclosure to be located within the established building line and the street (Merrill) 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 accessory structures will be built to meet all building and zoning requirements and the buffer material will meet the intent of the ordinance;
2. The use and value of the area adjacent to the property not be affected in a substantially adverse manner because the site is located on a major commercial corridor that has had a restaurant/commercial user for decades. Redevelopment is not out of the ordinary and is to be anticipated;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance as the site is narrow and in order to redevelop for a new user some amount of relief is expected;
4. Special conditions and circumstances do exist which are peculiar to the land involved because the site is narrow and to redevelop for a new user some relief is warranted;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because without some measure of relief from the standards, the fact that the site is located on a corner limits, by ordinance, the options for locations to place these accessory structures. By placing them in a permitted location – the usability of the site would be overwhelmingly negatively impacted;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Trotter states there were 13 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve; Second by Jones.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

23-BZA-38 PETITIONER IS CONTRADA MODI INC

PROPERTY IS LOCATED AT 2720 CASSOPOLIS STREET AND 500 MERRILL STREET

To vary from Section 26.10.D.4 – Freestanding sign standards which requires that ‘Free standing signs shall be centered on the property, or if not possible, at least twenty (20) feet from any adjacent side property line’, to allow for an existing free standing sign to remain, not centered, at a distance nine and twenty five hundredths (9.25) feet from the north side property line a variance of ten and seventy five (10.75) hundredths feet. To also vary from Section 26.10.D.4.c, for the same existing freestanding sign to remain at a height of eighteen (18) feet where seven (7) feet in height is allowed for a variance of eleven (11) feet.

STAFF ANALYSIS

The case is for the same site referenced in 23-BZA-37. The site is located at the northeast corner of Cassopolis and Merrill Streets. The petitioner is under contract to sell the existing restaurant. The contract purchaser is planning on redeveloping the site and razing the existing building and constructing a new quick service restaurant. The site has not yet been submitted for Technical Review.

The petitioner, on behalf of the contract purchaser, is requesting to reuse the existing free standing sign, reface the structure and incorporate manual changeable reader board. The current sign predates our current ordinance.

Section 26.10.D.4 requires the sign for a new use to be centered on the site and meet the height and area standards for the proposed location. Allowances are made for circumstances that do not permit the sign to be centered on the lot but require it to not be closer than twenty (20) feet to an adjacent property line.

Section 26.10.D.4.c speaks to the area and height of permitted freestanding signage. The city’s signage code language places emphasis on monument signage as a way to lessen visual clutter and establish over time a more unified appearance along the commercial corridors.

The ordinance requires that at a distance of five (5) feet from the right of way/property line the sign be a maximum of six (6) feet in height with allowances for additional height and area as the sign is moved farther from the right of way/property line. The sign referenced in the variance exceeds the allowable height at that location and to be reused, requires relief from the height standard by the board.

Because the site is on a corner, the petitioner would be entitled to two (2) free standing sign – one for the Cassopolis frontage and one for the Merrill Street frontage.

The variance requested seeks relief from the location requirements because the existing sign is not centered on the site and is at a distance of nine and twenty five hundredths (9.25) feet from the property line, a variance of ten and seventy five hundredths (10.75) feet. As well as for the maximum height requirements as the existing sign has a height of eighteen (18) feet, a variance of eleven (11) feet.

STAFF RECOMMENDATION

The Staff recommends in favor of the developmental variance to vary from Section 26.10.D.4 – Freestanding sign standards which requires that ‘Free standing signs shall be centered on the property, or if not possible, at least twenty (20) feet from any adjacent side property line’, to allow for an existing free standing sign to remain, not centered, at a distance nine and twenty five hundredths (9.25) feet from the north side property line a variance of ten and seventy five (10.75) hundredths feet. To also vary from Section 26.10.D.4.c, for the same existing freestanding sign to remain at a height of eighteen (18) feet where seven (7) feet in height is allowed for a variance of eleven (11) feet based on the following findings of fact:

1. The approval will not injurious to the public health, safety, morals or general welfare of the community because the sign will be maintained and modified so as to be in compliance with all structural requirements for freestanding signs;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the existing freestanding sign has been in place for some time;
3. Granting the variance may be consistent with the intent and purpose of this Ordinance;
4. Special conditions and circumstances may exist which are peculiar to the land involved;
5. The strict application of the terms of this Ordinance may result in practical difficulties in the use of the property;

6. The special conditions and circumstances do not result from any action or inaction by the applicant as the redevelopment of the site has not yet started;
7. This property does not lie within a designated flood area.

Trotter states there were 13 letters mailed and zero returned.

Mulvaney calls for a motion.

Jones makes motion to approve; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

23-BZA-39 PETITIONER IS INDIANA MICHIGAN POWER (AEP)
PROPERTY IS LOCATED AT S MAIN STREET -06-22-426-004-011

To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

Mulvaney calls the petitioner forward.

Robert Muller appears in person on behalf of the petitioner. Muller states that the location is on US 33, just off Sunnyside. Muller said they want to turn the current front-lit structure into a backlit LED billboard. He said he had worked with Mike and Eric on the project for a few months. Muller explained that nothing on the structure changes other than the face going down and the face going up.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Muller if the sign will be twice as big.

Muller responded no.

Mulvaney asks Muller if all they are doing is replacing the current billboard with an LED background.

Muller answers yes, nothing is changing, and that the structure was built in 2008.

Mulvaney asks Muller if he has any issues with the nine conditions that the city has proposed if the board approves their petition.

Muller answered that he only had an issue with the minimum time duration for ads on the billboard because the city originally wanted a 20-second ad duration; however, the industry standard for federal and INDOT is 8 seconds. Muller said that he agreed with the city for a 10-second dwell time.

Mulvaney asks how the maximum brightness is measured to ensure that they are in compliance and if they measure that regularly.

Muller responded that they do. He said their industry has a .3 nits level and that a static billboard has constant light while a digital billboard reads the ambient light, changing and dimming based on the time of the day. Muller said there is less overall light with a digital billboard than a static one.

Mulvaney asks Muller how often the message on the billboard would change.

Muller answered that it would change every 10 seconds and flip so there would be no motion from static to static.

Mulvaney states it sounds like it will allow them to put different messages up, which is a better deal for them.

Muller states that that is correct, and it would also allow them to display safety messages to help Marshalls or Amber alerts. Muller said they are out of Baton Rouge, and their home office, the National Operations Center, manages that so they can fire up different messages that are safety concerns.

Jones asks if that would mean Amber Alerts.

Muller answered that that was correct.

Jones asks Huber if the proposed development at Concord will be mixed-use.

Huber responds correctly and that it's slotted for business park use.

Jones asks Huber if it will be residential, too.

Huber answers that some residential are being proposed but not towards the front of the property, they are closer towards the back. Huber then said that the designated locations for the residential and the site plan for Concord Mall are towards the back of the property.

Mulvaney asks Muller if LED is the future wave for billboard signs now.

Muller answers yes; however, they will not look at every structure and upgrade it to LED.

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

STAFF ANALYSIS

Lamar Advertising currently leases the subject property and has owned and maintained two (2) existing billboard structures, each containing two (2) billboard faces, within approximately 1,500' of each other in the US 33 corridor for over 15 years. As a part of the Sunnyside Rd. overpass project, INDOT is acquiring and demolishing the billboard in the more southern location. Typically the state statute allows the petitioner to relocate and reconstruct a new billboard when the State acquires and demolishes, however, this corridor is included as a Scenic Byway corridor, and new billboards are prohibited. The state does allow for conversion to electronic billboards, and the petitioner has asked to convert the remaining billboards to electronic operation as an alternative to the replacement of the demolished billboard.

The billboard is located on the east side of US 33 adjacent to the railroad right-of-way and an electric transmission wire tower. Across US 33 to the West is the Concord Mall. The nearest adjacent businesses to the north include a car wash, used car lot and auto sales/detaining business approximately 300 feet to the north.

The City of Elkhart is in the process of updating its zoning ordinance, including the sign ordinance components. It is anticipated that the new UDO will include allowances for and guidance related to electronic billboards, including standards related to movement, video elements, message sequencing, limits on message duration, and brightness. Accordingly, the proposed guidance will be included in the staff's recommendation related to this request.

The request of the petitioner will result in a reduction of the total number of billboard structures in the corridor from 2 to 1, and will allow the billboards to be upgraded to modern sign technology. The reduction in number of signs will offset the allowance of the new sign to continue the same size of the previous signs.

STAFF RECOMMENDATION

The Staff recommends "approval" of the developmental variance to vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet 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 off-premises sign already exists at this location and with these dimensions;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because modern electronic sign technology is an approved option for billboard replacement by the State in the Scenic Byway Corridor ;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance as the petition represents a reduction in the total number of billboard structures in the corridor and the City's forthcoming ordinance changes will allow for electronic billboards;
4. Special conditions and circumstances do exist which are peculiar to the land involved because the corridor is designate by INDOT as a scenic byway;
5. The strict application of the terms of this Ordinance does result in practical difficulties in the use of the property as the INDOT has restrictions in the corridor for the reconstruction of new sign structures;
6. The special conditions and circumstances does not result from any action or inaction by the applicant as the request is being brought by the petitioner as a result of the actions of INDOT related to the Sunnyside Dr. overpass project ;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 10 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage

Huber states there were 13 letters mailed and zero returned in favor.

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

Mulvaney calls for a motion.

Davis makes motion to approve with conditions; Second by Evanega Rieckhoff.

Davis – Yes
Evanega Rieckhoff – Yes
Jones – Yes
Mulvaney – Yes

Motion carries.

23-BZA-40 PETITIONER IS BARCLAY CORPORATION
PROPERTY IS LOCATED AT E BEARDSLEY AVE -06-05-229-020-012

To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To also vary from Section 26.10.F.4.j, which states in part "Off-premises signs shall not be located within thirteen hundred (1,300) feet of the St. Joseph River," to allow an existing off-premises sign three-hundred-fifty (350) feet from the St. Joseph River, a variance of nine-hundred-fifty (950) feet.

Mulvaney calls the petitioner forward.

Robert Muller appears in person on behalf of the petitioner. Muller states that the location is between Beardsley and Johnson Street. He said the north face would change, which is the side facing Kroger. Muller then said that they would not change anything other than the face. It will stay the same size and everything.

Mulvaney asks for questions from the Board.

Mulvaney asks Muller if it's just the one side.

Muller answers yes, just one side, the die you face when driving south.

Jones asks Muller why not both sides.

Muller responded that he discussed that issue with staff, and at the time, they believed it was best to just do the Northside of the sign.

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

Jennifer Drlich from 2020 Greenleaf Blvd appears in person in opposition to the request. Drlich handed out a packet to the board and stated that her main concerns with the signage are the aesthetics, the surrounding residential area, and public safety. When addressing the aesthetics of the sign, Drlich said the sign is already oversized and unattractive and inappropriately placed close to the river and multiple residences. She added that variances have already been granted regarding four section items on January 14, 2021, in case 20-BZA-41, les Section 26.10.F.4h regarding illumination. She said her approval letter was Exhibit A, p1, with her name at the bottom since she was the recording secretary for the Board of Zoning Appeals. Next, Drlich raised concerns about the surrounding residential areas, where she provided pictures in the packet from beneath the sign with red indication boxes for neighborhoods. She said that in exhibit A, p2 is to the north, clearly visible, and directly facing the proposed LED sign at approximately 500 feet. Drlich stated she has neighbors 470 feet away whose single-house light, which does not shine directly at their residence, is bright enough for them to see in their bedroom all night. Drlich next references exhibit A, p3, where there are ENE neighborhoods that will be affected. The furthest box to the left, more so than the Greenleaf properties and condos, would be at present. Lastly, she references exhibit A, p4, where there are neighborhoods to the South. She then said that with the four aforementioned variances being approved in 2021, she could only imagine that, should the illumination variance also pass for the

north face, it will soon be requested for the south face. Neighborhoods are edging Johnson Street that would be able to see the sign as well as the residents of the Elkhart Housing Authority, particularly in Indiana when the leaves are off the trees, and it's dark 12 hours a day for about 6 months a year. Drlich then said that her main concern with the petition is public safety. She asked the board to look at Exhibit A, p5 Aerial; the sign indicated with a star. The board will see that the billboard is near railroad tracks, curves, lane expansions (including 5 and 7 lanes), lane constrictions, and a river over a hill. There are 14 entrance and exit points to the roadways within the eyeshot of the sign. She added that the area has few walkable groceries and urgent care medical facilities. Because of these facilities, families, the elderly, and the disabled from the surrounding neighborhoods and apartments are walking, biking, and wheelchairs across these roads. Drlich said she crosses the intersection 4 times a day every weekday, and there is almost always pedestrian traffic. She continued by saying that the area is an incredibly busy main thoroughfare that runs nearly the entire breadth of the city, connecting students to schools and employees to jobs. She said there are a lot of teen drivers, and with the addition of the much-needed housing to go in on the corner of Beardsley and Greenleaf, this traffic will only increase. There are regular or near accidents from distracted drivers, those who completely disregard signals and use the surrounding parking lots to avoid the intersection. Drlich cited exhibit B, which is an article from the USDOT in April 2015, on p2 notes that a 2-second distraction causes 23% of incidents, a 3-second distraction causes 65-80%, digital billboards correlated with an increase in crash rates, especially sideswipe and rear-end, and teens were more likely to be distracted by billboards, especially digital. On exhibit C, Drlich shared an academic article regarding digital billboard advertisements; on p1 notes that driving performance is negatively affected by transitioning as opposed to static (or unchanging) billboards. On page 2, 78% of crashes are due to distractions, and the presence of billboards exacerbated the situation, citing on page 4 that 33 other academic studies were used to support their research. Drlich then went over January 14, 2021, Board of Zoning Appeals meeting minutes regarding illuminated billboards and the previous case for the same request is 20-BZA.41. Drlich explained that on page 4, Jeff Schaffer asked if the City Council has ever considered this matter where Trotter who's on staff, had said they had felt the need to recommend against until there is an opportunity to review and update the sign ordinance and have some updates. She then told the board that Schaffer has wondered if introducing something into the city that the Council should have an opportunity to weigh in on rather than BZA. Drlich referenced board member Mulvaney's previous comments, saying the BZA was not equipped to deal with some of the illuminated billboard policy issues until then. She said that Davis had stated that he understood none of these items would be passed until they went before the Council. According to the minutes, Mulvaney had stated that the Council would develop some standards. Drlich then read the staff analysis written by Ryan Smith, the former Planner I for the City of Elkhart. He had said some communities have enacted complete bans on digital billboards specifically or electronic message signs more broadly. Others have elected to permit such signs in certain locations or districts and with certain development standards. There is conflicting literature regarding digital billboards and driver distraction compared to traditional billboards. It is often hard to control the many variables that account for driver distraction, and sometimes, the studies are funded or sponsored by organizations interested in outdoor advertising. Some studies have suggested digital billboards, especially at night, create a greater distraction in the number of glances or duration of distraction. Other studies suggest the impacts are similar to traditional billboards if additional safety standards are put in place... such as controlling brightness, lengthening the dwell time of each message, limiting video or messages that include motion, and ensuring the sign doesn't conflict with or display images that may be confused with traffic control signage. Court cases regarding the regulation of billboards have upheld bans on digital signs by accepting local government arguments that the bans serve traffic safety and aesthetic interests. Because the billboard is currently legal, non-conforming concerning several development standards of the zoning ordinance, the variances to permit the larger size, taller height, reduced setback from the property line, and reduced setback from the river would allow the billboard to be reconstructed if damaged or abandoned. However, replacing one of the traditional, static sign faces with a digital (LED) sign face so close to the intersection and St. Joseph River, as well as potentially being visible from the River District, would lead to undesirable traffic safety and aesthetic conditions. The proximity to the roadway and intersection would likely lead to increased driver distraction and exacerbate dangerous conditions at an already busy intersection with offset geometry, with numerous curb cuts/driveways nearby. At night, the illuminated sign could interfere with the visibility of the traffic control signals, especially for westbound traffic on E Beardsley Ave. Conversion to a digital billboard so close to the river represents a significant negative impact to the aesthetic character along the riverfront. Drlich also read Ryan Smith's staff recommendation which said staff recommended the denial of the developmental variance from Section 26.10.F.4.h, to allow for the conversion of an existing billboard to an LED billboard: 1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the proposed digital sign could increase distractions near the intersection of E Beardsley Ave and Johnson St. This is a busy thoroughfare with a signalized intersection and numerous driveways/curb cuts in the vicinity of the sign. Additionally, the illuminated sign may interfere with visibility of the traffic signals, especially when approaching from the east along E Beardsley Ave; 3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because of potential negative impacts to public health and safety as well as community aesthetics, especially along the St. Joseph River; 5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because it includes an existing, traditional billboard with current advertising signage; 6. The special conditions and circumstances do result from an action by the applicant because the property is currently being used for off-premise commercial signage; the owner simply wishes to change the sign display type;

Drlich then said there was a public comment against the variance, and the motion to deny illumination passed. She closes by stating that it seems that none of the circumstances have changed, the appropriate variances have already been granted, and it remains a poor precedent to approve the LED at this particular location.

David Drlich from 2020 Greenleaf Blvd appears in person in opposition to the request. Mr. Drlich asks if any part of the request is in the public's interest. Mr. Drlich also asked if there is a significant financial interest to the city by allowing the sign to be digital. He then said the conversion of the sign is not going to attract a significant number of workers to the area, nor can he imagine there be any sort of significant tax difference to the city. Mr. Dlich then asked if the sign would provide a service that citizens want. He also asked if citizens want to see more ads, specifically while driving or crossing the street. Lastly, Mr. Drlich asked if the request was going to improve the aesthetics of the city. He then said we can all agree that it will not do anything. No one comes to the city to see a giant changing illuminated sign. Mr. Drlich then stated that the people who live on Erwin Street or in the Riverside high-rise would not benefit from a sign shining into their windows. He then said that that intersection is already busy and traffic will only grow as the con property on Beardsley Street becomes housing. They explained that studies show that billboards distract drivers and digital billboards further distract drivers; therefore, the variance would make citizens less safe. Mr. Drlich said that in the overall pros and cons of the petition, he does not see any pros for the citizens of Elkhart. They then said there is a reason why the city has ordinances, and they are to ensure that projects like this don't walk all over the interest of the city or its citizens. He then said that the point of the board itself is to provide some measure of relief to petitioners, but what exactly does that mean. He continued by saying that at the end of the day, a proposal ultimately requires five separate variances to be executed. Mr. Drlich said he believes the petitioners had exceeded the term's intent by some measure, especially regarding an issue like this, where citizens don't receive any clear benefit in exchange.

Mulvaney closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

Lamar Advertising leases the subject property and owns a billboard structure that includes both north and south facing signs operating as legal, non-conforming structures. In the case of this variance request, the south facing sign is approximately 5 feet from the property line, 20 feet from the edge of the roadway, and only 77 feet from the center of the E Beardsley Ave and Johnson St intersection. The sign is approximately 350 feet from the bank of the St. Joseph River. Because the billboard is currently legal, non-conforming with respect to several development standards of the zoning ordinance, the variances to permit the larger size, taller height, reduced setback from the property line, and reduced setback from the river, would allow the billboard to be reconstructed if damaged or abandoned. The small size and odd shape of the parcel make it unlikely to support development in accordance with the provisions of the B-2 district.

Lamar is proposing to upgrade the north-facing billboard from the current, traditional static sign face to with a new electronic LED billboard, while maintaining the existing traditional south facing billboard. Properties north of the subject billboard include predominantly commercial uses, including Kroger's, Physician's Urgent Care, Andy's Place Chicken, and Eclipse Window Tinting.

The City of Elkhart is in the process of updating its zoning ordinance, including the sign ordinance components. It is anticipated that the new UDO will include allowances for and guidance related to electronic billboards, including standards related to movement, video elements, message sequencing, limits on message duration, and brightness. Accordingly, the proposed guidance will be included in the staff's recommendation related to this request.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To also vary from Section 26.10.F.4.j, which states in part "Off-premises signs shall not be located within thirteen hundred (1,300) feet of the St. Joseph River," to allow an existing off-premises sign three-hundred-fifty (350) feet from the St. Joseph River, a variance of nine-hundred-fifty (950) feet. 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 off-premises sign already exists at this location and with these dimensions;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the off-premise sign already exists at this location and with these dimensions;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 sign already exists and the subject property is of a size and shape that would make it difficult to support any development in accordance with the provisions of the B-2 District ;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would require removal of the sign with little to no potential for new development ;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the sign is pre-existing;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 20 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage

Huber states there were 6 letters mailed, with one returned not in favor with comments. The comments were: I want to know who the real party behind the request is. I know it is a used car lot organization, which will cause real harm to the atmosphere of my executive office building. Tom Arnold, manager.

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

Evanega Rieckhoff asks Huber why the staff is asking the board to approve the request in December if the city passes a new zoning ordinance in January.

Huber answers that that won't happen in January; however, the city is in the process of passing a new zoning ordinance in 2024.

Mulvaney states that when the petition came to the board back in January 2021, nothing was proposed as far as city ordinances. He said the board has no guidelines, and the proposal was to illuminate both sides, North and South. This time around, it is just the North side. Mulvaney said that, at the time, the board was reluctant to proceed forward, not knowing what the city ultimately might end up with for an ordinance. He then said that the board might've passed something that the city would determine by ordinance as nonconforming or illegal. So, the board was very reluctant to proceed forward until the city had caught up with technology to come up with the ordinance to match it.

Huber states that that is correct and that the standards have already been incorporated, and the city is working through a couple of the other districts in the process.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve with conditions; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – No

Mulvaney – Yes

Motion carries.

ADJOURNMENT

Jones makes motion to adjourn; Second by Evanega Rieckhoff. All are in favor and meeting is adjourned.

Doug Mulvaney, President

Ron Davis, Vice-President

0900 LEGALS

ing defendant(s) whose whereabouts are unknown: US Credit c/o CT Lien Solutions In addition, to the above-named defendants being served by this summons, there may be other defendants who have an interest in this lawsuit. An answer or other appropriate response in writing to the Complaint must be filed either by you or your attorney with the Clerk of the Court for Elkhart County at: Elkhart County Clerk 101 North Main St, Room 204, Goshen, IN 46526 on or before the 25th day of February, 2024, (the same being thirty (30) days after the Third Notice of Suit), and if you fail to do so, a judgment may be entered against you for

LEGAL NOTICE #24-UV-02

Hearing on proposed Use Variance #24-UV-02

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, FEBRUARY 8, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-02.

Petitioner: Eoz Business, LLC business

Request: To vary from Section 15.2.Q, Permitted Uses in the CBD, which allows 'Multi-family residential dwellings, including condominiums, townhouses and residences located above commercial uses to allow for residential dwellings located on the first floor, where currently residential dwellings are not a permitted use on the first floor.

To also vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for the residential units in this development to be as small as five hundred seventy four (574) square feet, a maximum variance of one hundred seventy six (176) square feet.

Location: Vacant Lot, East Jackson Boulevard (300 block)

Zoning: CBD, Central Business District

This meeting can also be accessed via WebEx. To join, go to <http://coei.webex.com>, enter 2317 077 1574 as the meeting number and "BZA2023" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to hugoroblesmadrighal@coei.org prior to the meeting.

LEGAL DESCRIPTION:

A part of the Northeast Quarter of Section 5, Township 37 North, Range 5 East, Concord Township, Elkhart County, Indiana and being a Replat of Lots 3A, 3B, 3C, and 4B of River District Northwest Addition, First Replat.

Arguments for and against the granting of the above designated petition will be heard at this meeting.

PLEASE NOTE: A copy of this petition is on file in the Planning Office for public examination prior to the hearing. Written objections to this petition which are filed with the Secretary of the Board, located in the Planning Office, prior to the hearing will be considered. The hearing may be continued from time to time as may be found necessary.

Dated at Elkhart, Indiana this 23rd day of January 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: January 26, 2024
hspaxlp

LEGAL NOTICE #24-MSUB-04

Hearing on proposed Minor Subdivision #24-MSUB-04

NOTICE is hereby given that the City of Elkhart Plan Commission will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **MONDAY, FEBRUARY 5, 2024 at 1:45 P.M.** concerning the following request:

A public hearing will be conducted on Minor Subdivision #24-MSUB-04

Petitioner: Bhavesh Patel

Request: Per Section 5 of the City of Elkhart Subdivision Ordinance, primary approval of a two (2) lot subdivision replat and also establish an access easement as a part of this approval. The access easement is required as the proposed Lot 2 will have no street frontage. The parcels were established in Elkhart County prior to the current subdivision ordinance.

Location: 2701 W. Lexington Ave.

Zoning: B-2, Community Business District

This meeting can also be accessed via WebEx. Virtual attendance is strongly encouraged but not mandatory; however, City Hall is open for in-person participation. To join, go to <http://coei.webex.com>, enter 2310 506 8344 as the meeting number and "PLAN" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting or may be submitted to Carla.Lipsev@coei.org prior to the meeting.

LEGAL DESCRIPTION:

PART OF THE EAST HALF, OF THE SOUTHWEST QUARTER, IN SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, CLEVELAND TOWNSHIP, CITY OF ELKHART, INDIANA.

A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, SITUATED IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS,

COMMENCING AT A POINT WHERE THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SEC110N 1 IS INTERSECTED BY THE CENTERLINE OF WEST LEXINGTON AVENUE (U.S. HIGHWAY 20); THENCE NORTH 62 DEGREES 17 MINUTES WEST ALONG THE CENTERLINE OF SAID WEST LEXINGTON AVENUE, A DISTANCE OF 117.52 FEET; THENCE NORTH 82 DEGREES 9 MINUTES WEST, 90.13 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING NORTH 82 DEGREES 9 MINUTES WEST, A DISTANCE OF 201.9 FEET TO AN IRON STAKE; THENCE SOUTH 00 DEGREES 00 MINUTES WEST, PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 457 FEET MORE OR LESS TO THE NORTH LINE OF LAND DESCRIBED IN A DEED TO NORTIND REALTY, INC. (DEED RECORD 180, PAGE 353); THENCE NORTHEASTWARDLY ALONG THE NORTH LINE OF SAID NORTIND REALTY, INC. LAND, A DISTANCE OF 201 FEET MORE OR LESS TO A POINT THAT IS DUE SOUTH OF THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 00 MINUTES EAST, A DISTANCE OF 420 FEET MORE OR LESS TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

0900 LEGALS

what the plaintiff has demanded. Phillip A. Norman, P.C. /s/ Benjamin J Pliskie #30407-45 Attorney for Plaintiff Phillip A. Norman, P.C. 2110 Calumet Avenue Valparaiso, IN 46383 Telephone: 219-462-5104 23-00751 Attest: /s/ Christopher Anderson Clerk, Elkhart Superior Court hspaxlp

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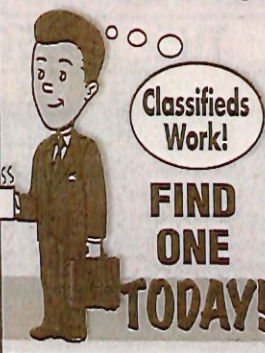
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PROPOSED ORDINANCE 24-O-03-R

AN ORDINANCE APPROPRIATING NINE MILLION FOUR HUNDRED THOUSAND (\$9,400,000.00) FROM THE AMERICAN RESCUE PLAN (ARP) CORONAVIRUS LOCAL FISCAL RECOVERY FUND FOR THE LASALLE, MCKINLEY AND BENHAM AREA WATER AND SEWER PROJECT

NOTICE OF PUBLIC HEARING

Notice is hereby given to the taxpayers of the City of Elkhart, County of Elkhart, State of Indiana, that the proper legal officers of said Municipal Corporation, at their regular meeting place, 229 S. Second Street, Elkhart, Indiana, on the 5th day of February 2024 at 7:00 p.m., will consider and determine Proposed Ordinance 24-O-03-R, an ordinance appropriating Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) and assigning it to the following account lines

2474-5-000-4430000 Infrastructure \$9,400,000.00

The Mayor and the Controller of the City of Elkhart have recommended that said appropriation be made.

Taxpayers appearing at such hearing shall have the right to be heard thereon. The appropriation of funds as finally made will be referred to the Department of Local Government Finance for approval, and public notice shall be given of the submission to the taxpayers of the taxing district by publication in accordance with I.C. 5-3-1.

CITY OF ELKHART, INDIANA

BY: Debra D. Barrett, City Clerk
hspaxlp

City of Elkhart, IN
Public Notice
Public Planning Meetings and Hearings
Mandatory Sub-Recipient Application Training
Community Development Block Grant (CDBG) Application

Purpose:

The City of Elkhart is seeking public input on the community, economic and affordable housing development needs of the community as it prepares its 2024 Annual Action Plan for the U.S. Department of Housing and Urban Development (HUD). The Annual Action Plan outlines community needs, and the associated strategies to effectively address those needs over the one-year grant period. In 2024, Elkhart anticipates receiving approximately \$710,000.00 in entitlement funds and \$40,000 in Program Income. The City anticipates submitting its application to HUD on or about May 20, 2024.

Your input will shape how these funds are invested in your community

Annual Action Plan Public Meeting #1 – February 6, 2024 at 9:00 am

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Mandatory Subrecipient Training – February 6, 2024 at 10:30 am

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Non-profit organizations intending to apply for funds must attend this mandatory training

Annual Action Plan Public Meeting #2 – February 6, 2024 at 5:30 pm

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Tentative Future Meeting Schedule:

2024 Annual Action Plan Public Comment Meeting – April 2, 2024 5:30pm

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

2024 Annual Action Public Hearing - April 9, 2024 at 4:00 pm

Location: Council Chambers 2nd Floor 229 S. Second Street; Elkhart, IN 46516

2024 Annual Action Plan Resolution to Common Council - May 6, 2024 at 7:00 pm

Location: Council Chambers, 2nd Floor 229 S. Second Street; Elkhart, IN 46516

If you need other accommodations for the meetings, please contact the Community Department at least seven calendar days prior to the scheduled public hearing at:

(574) 294-5471 ex 1062 or email mary.kaczka@coei.org

For additional information please visit the CDBG website at: <https://elkhartindiana.org/government/community-development>
hspaxlp

LEGAL NOTICE #24-BZA-03

Hearing on proposed Developmental Variance #24-BZA-03

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, FEBRUARY 8, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Developmental Variance Petition #24-BZA-03.

Petitioner: Nancy V. Shaum

Request: To vary from Section 12.4 Yard Requirements in the B-2, Community Business District, to allow for a ten (10) foot rear yard setback where twenty (20) feet is required, a variance of ten (10) feet.

Location: Vacant Land Toledo Road - 06-11-251-013-011

LEGAL NOTICE #24-BZA-04

Hearing on proposed Developmental Variance #24-BZA-04

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, FEBRUARY 8, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Developmental Variance Petition #24-BZA-04.

Petitioner: Lotus Enterprises

Request: To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

Location: 2101 Bypass Road (Formerly 415 North Nappanee Street)

Zoning: B-2, Community Business District

This meeting can also be accessed via WebEx. To join, go to <http://coei.webex.com>, enter 2317 077 1574 as the meeting number and "BZA2023" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to hugoroblesmadrighal@coei.org prior to the meeting.

LEGAL DESCRIPTION:

For APN/Parcel ID(s): 20-05-01-427-002.000-006 and 20-05-01-427-003.000-006

PARCEL I:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, IN CLEVELAND TOWNSHIP, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION, THENCE SOUTH ALONG THE EAST LINE OF SAID QUARTER SECTION TWO HUNDRED NINE AND EIGHTY-EIGHT HUNDREDTHS (209.88); THENCE WEST AT RIGHT ANGLES TO THE EAST LINE OF SAID QUARTER SECTION THREE HUNDRED FIFTY-EIGHT (358) FEET TO THE CENTER-LINE OF THE U.S. HIGHWAY NO. 112 BYPASS; THENCE NORTHEASTWARDLY ALONG THE SATO CENTERLINE APPROXIMATELY TWO HUNDRED FIFTY-FOUR (254) FEET MORE OR LESS TO THE NORTH LINE OF SAID QUARTER SECTION; THENCE EASTWARDLY ALONG THE NORTH LINE OF SAID QUARTER SECTION TWO HUNDRED SIXTEEN AND EIGHTY HUNDREDTHS (216.80) FEET TO THE PLACE OF BEGINNING.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, ELKHART COUNTY, INDIANA AND THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT OF WAY LINES DEPICTED ON THE ATTACHED RIGHT OF WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID QUARTER SECTION, SOUTH 89 DEGREES 41 MINUTES 52 SECONDS WEST 38.19 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION, SAID NORTHEAST CORNER DESIGNATED AS POINT "22" ON SAID PLAT, WHICH POINT OF BEGINNING IS ON THE WEST BOUNDARY OF S.R. 19 PER DEED RECORD 217, PAGE 104 (OFFICE OF THE RECORDER OF ELKHART COUNTY); THENCE SOUTH 0 DEGREES 06 MINUTES 48 SECONDS WEST 209.83 FEET ALONG THE WEST BOUNDARY OF S.R. 19 TO THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 2008-02480 (OFFICE OF SAID RECORDER); THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS WEST 14.90 FEET ALONG SAID NORTH LINE; THENCE NORTH 0 DEGREES 06 MINUTES 48 SECONDS EAST 77.55 FEET TO THE POINT DESIGNATED AS "345" ON SAID PLAT; THENCE NORTH 61 DEGREES 08 MINUTES 37 SECONDS WEST 24.63 FEET TO THE POINT OF DESIGNATED AS "384" ON SAID PLAT; THENCE SOUTHWESTERLY 228.15 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 420.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 69 DEGREES 43 MINUTES 58 SECONDS WEST AND A LENGTH OF 225.35 FEET TO THE SOUTHEASTERLY BOUNDARY OF S.R. 112 PER PROJECT F.A. 574, SEC. A, (1936), DESIGNATED AS POINT "36916" ON SAID PLAT; THENCE ALONG THE BOUNDARY OF SAID S.R. 112, SOUTHWESTERLY 70.59 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,687.15 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 37 DEGREES 54 MINUTES 58 SECONDS WEST AND A LENGTH OF 70.59 FEET TO A CORNER OF THE TRACT OF LAND DESCRIBED IN SAID INSTRUMENT; THENCE NORTH 50 DEGREES 53 MINUTES 07 SECONDS WEST 50.00 FEET TO THE CENTERLINE OF SAID S.R. 112; THENCE ALONG THE CENTERLINE OF SAID S.R. 112, NORTHEASTERLY 269.01 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 1,637.15 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 34 DEGREES 24 MINUTES 27 SECONDS EAST AND A LENGTH OF 268.71 FEET TO THE NORTH LINE OF THE GRANTOR'S LAND; THENCE NORTH 89 DEGREES 41 MINUTES 52 SECONDS EAST 178.46 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING AND CONTAINING 0.879 ACRES, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT OF WAY WHICH CONTAINS 0.082 ACRES, MORE OR LESS, FOR A NET ADDITIONAL TAKING OF 0.797 ACRES, MORE OR LESS.

PARCEL II:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST IN CLEVELAND TOWNSHIP, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A STONE AT THE WEST QUARTER POST OF SECTION SIX (6), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST; THENCE DUE SOUTH (S 0 DEGREES E) ALONG THE EAST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ONE HUNDRED TWENTY AND SIXTY-FOUR HUNDREDTHS FEET (120.64'); THENCE SOUTH EIGHTY-NINE DEGREES THIRTY-EIGHT MINUTES WEST (S 89 DEGREES 38 MINUTES W) THREE HUNDRED THIRTY FEET (330') TO AN IRON STAKE; THENCE DUE NORTH (N 0 DEGREES E) NINETY-ONE AND SIXTY-EIGHT HUNDREDTHS FEET (91.68') TO AN IRON STAKE ON THE SOUTHEAST LINE OF HIGHWAY U.S. 112, THENCE NORTHEASTWARDLY ALONG THE SOUTHEAST LINE OF SAID HIGHWAY FIFTY-SEVEN AND TWENTY-TWO HUNDREDTHS FEET (57.22') TO AN IRON STAKE; THENCE NORTH EIGHTY-NINE DEGREES, THIRTY-SIX MINUTES EAST (N 89 DEGREES 36 MINUTES E) TWO HUNDRED NINETY-FOUR AND SEVENTY-TWO HUNDREDTHS FEET (294.72') THENCE SOUTH ZERO DEGREES TWENTY-FOUR MINUTES EAST (S 0 DEGREES 24 MINUTES E) SIXTEEN AND FOUR HUNDREDTHS FEET (16.04') TO THE PLACE OF BEGINNING, CONTAINING ABOUT ONE (1) ACRE OF LAND.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, ELKHART COUNTY, INDIANA AND THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT OF WAY LINES DEPICTED ON THE ATTACHED RIGHT OF WAY PARCEL PLAT MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 5 EAST DESIGNATED AS POINT "20" ON SAID PLAT; THENCE SOUTH 0 DEGREES 17 MINUTES 18 SECONDS WEST

Petitioner: EOZ Business, LLC business

Request:To vary from Section 15.2.Q, Permitted Uses in the CBD, which allows 'Multi-family residential dwellings, including condominiums, townhouses and residences located above commercial uses to allow for residential dwellings located on the first floor, where currently residential dwellings are not a permitted use on the first floor.

To also vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for the residential units in this development to be as small as five hundred seventy four (574) square feet, a maximum variance of one hundred seventy six (176) square feet.

Location:Vacant Lot, East Jackson Boulevard (300 block)

Zoning:CBD, Central Business District

This meeting can also be accessed via WebEx. To join, go to <http://coei.webex.com>, enter 2317 077 1574 as the meeting number and "BZA2023" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to hugoroblesmadrigal@coei.org prior to the meeting.

LEGAL DESCRIPTION:

A part of the Northeast Quarter of Section 5, Township 37 North, Range 5 East, Concord Township, Elkhart County, Indiana and being a Replat of Lots 3A, 3B, 3C, and 4B of River District Northwest Addition, First Replat.

Arguments for and against the granting of the above designated petition will be heard at this meeting.

PLEASE NOTE: A copy of this petition is on file in the Planning Office for public examination prior to the hearing. Written objections to this petition which are filed with the Secretary of the Board, located in the Planning Office, prior to the hearing will be considered. The hearing may be continued from time to time as may be found necessary.

Dated at Elkhart, Indiana this 23rd day of January 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: January 26, 2024
hspaxlp

LEGAL NOTICE #24-MSUB-04

Hearing on proposed Minor Subdivision #24-MSUB-04

NOTICE is hereby given that the City of Elkhart Plan Commission will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **MONDAY, FEBRUARY 5, 2024 at 1:45 P.M.** concerning the following request:

A public hearing will be conducted on Minor Subdivision #24-MSUB-04

Petitioner: Bhavesh Patel

Request: Per Section 5 of the City of Elkhart Subdivision Ordinance, *primary approval of a two (2) lot subdivision replat and also establish an access easement as a part of this approval.* The access easement is required as the proposed Lot 2 will have no street frontage. The parcels were established in Elkhart County prior to the current subdivision ordinance.

Location: 2701 W. Lexington Ave.

Zoning: B-2, Community Business District

This meeting can also be accessed via WebEx. Virtual attendance is strongly encouraged but not mandatory; however, City Hall is open for in-person participation. To join, go to <http://coei.webex.com>, enter 2310 506 8344 as the meeting number and "PLAN" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting or may be submitted to Carla.Lipsey@coei.org prior to the meeting.

LEGAL DESCRIPTION:

PART OF THE EAST HALF, OF THE SOUTHWEST QUARTER, IN SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, CLEVELAND TOWNSHIP, CITY OF ELKHART, INDIANA.

A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, SITUATED IN CLEVELAND TOWNSHIP, ELKHART COUNTY, STATE OF INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS,

COMMENCING AT A POINT WHERE THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1 IS INTERSECTED BY THE CENTERLINE OF WEST LEXINGTON AVENUE (U.S. HIGHWAY 20); THENCE NORTH 62 DEGREES 17 MINUTES WEST ALONG THE CENTERLINE OF SAID WEST LEXINGTON AVENUE, A DISTANCE OF 117.52 FEET; THENCE NORTH 82 DEGREES 9 MINUTES WEST, 90.13 FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION, THENCE CONTINUING NORTH 82 DEGREES 9 MINUTES WEST, A DISTANCE OF 201.9 FEET TO AN IRON STAKE; THENCE SOUTH 00 DEGREES 00 MINUTES WEST, PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 457 FEET MORE OR LESS TO THE NORTH LINE OF LAND DESCRIBED IN A DEED TO NORTHRIDGE REALTY, INC. (DEED RECORD 180, PAGE 353); THENCE NORTHEASTWARDLY ALONG THE NORTH LINE OF SAID NORTHRIDGE REALTY, INC. LAND, A DISTANCE OF 201 FEET MORE OR LESS TO A POINT THAT IS DUE SOUTH OF THE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 00 MINUTES EAST, A DISTANCE OF 420 FEET MORE OR LESS TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.

EXCEPTING A 12-FOOT RIGHT OF WAY OFF THE WEST SIDE FOR A ROADWAY.

ALL THE MORE PARTICULARLY DESCRIBED AS (DOC#90-007473);

THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, CLEVELAND TOWNSHIP, ELKHART COUNTY, INDIANA, WHICH IS DESCRIBED AS: FROM A POINT WHERE THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION IS INTERSECTED BY THE CENTERLINE WEST LEXINGTON AVE. (US #20) MEASURE N.

62°13'03" W. (N. 62°17' W. RECORD) ALONG THE CENTERLINE SAD WEST LEXINGTON AVE., 117.52 FEET; AND N. 82°05'03" W., 90.13 FEET TO THE POINT OF BEGINNING; THENCE S. 00°01'44" W., 412.33 FEET (SOUTH 420 FEET RECORD); THENCE S. 86°39'44" W., 200.34 FEET; THENCE N. 00°01'44" E., 427.92 FEET (NORTH 457 FEET RECORD); THENCE N. 89°34'11" E., 163.12 FEET (S. 8209' E., 201.9 FEET RECORD); THENCE

S. 82°05'03" E., 37.23 FEET TO THE POINT OF BEGINNING. CONTAINING 1.94 ACRES.

Arguments for and against the granting of the above designated petition will be heard at this meeting.

PLEASE NOTE: A copy of this petition is on file in the Planning Office for public examination prior to the hearing. Written objections to this petition which are filed with the Secretary of the Commission, located in the Planning Office, prior to the hearing will be considered. The hearing may be continued from time to time as may be found necessary.

Dated at Elkhart, Indiana this 19th day of January, 2024, by the City of Elkhart, Plan Commission.

Publication Date: 1/26/2024
hspaxlp

NOTICE OF PUBLIC HEARING

Notice is hereby given to the taxpayers of the City of Elkhart, County of Elkhart, State of Indiana, that the proper legal officers of said Municipal Corporation, at their regular meeting place, 229 S. Second Street, Elkhart, Indiana, on the 5th day of February 2024 at 7:00 p.m., will consider and determine Proposed Ordinance 24-O-03-R, an ordinance appropriating Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) and assigning it to the following account lines

2474-5-000-4430000 Infrastructure \$9,400,000.00

The Mayor and the Controller of the City of Elkhart have recommended that said appropriation be made.

Taxpayers appearing at such hearing shall have the right to be heard thereon. The appropriation of funds as finally made will be referred to the Department of Local Government Finance for approval, and public notice shall be given of the submission to the taxpayers of the taxing district by publication in accordance with I.C. 5-3-1.

CITY OF ELKHART, INDIANA

BY: Debra D. Barrett, City Clerk
hspaxlp

City of Elkhart, IN
Public Notice
Public Planning Meetings and Hearings
Mandatory Sub-Recipient Application Training
Community Development Block Grant (CDBG) Application

Purpose:

The City of Elkhart is seeking public input on the community, economic and affordable housing development needs of the community as it prepares its 2024 Annual Action Plan for the U.S. Department of Housing and Urban Development (HUD). The Annual Action Plan outlines community needs, and the associated strategies to effectively address those needs over the one-year grant period. In 2024, Elkhart anticipates receiving approximately \$710,000.00 in entitlement funds and \$40,000 in Program Income. The City anticipates submitting its application to HUD on or about May 20, 2024.

Your input will shape how these funds are invested in your community

Annual Action Plan Public Meeting #1 – February 6, 2024 at 9:00 am

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Mandatory Subrecipient Training – February 6, 2024 at 10:30 am

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Non-profit organizations intending to apply for funds must attend this mandatory training

Annual Action Plan Public Meeting #2 – February 6, 2024 at 5:30 pm

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

Tentative Future Meeting Schedule:

2024 Annual Action Plan Public Comment Meeting – April 2, 2024 5:30pm

Location: Elkhart Public Library-Downtown - 300 S. Second Street-Elkhart, Indiana 46516

2024 Annual Action Public Hearing - April 9, 2024 at 4:00 pm

Location: Council Chambers 2nd Floor 229 S. Second Street; Elkhart, IN 46516

2024 Annual Action Plan Resolution to Common Council - May 6, 2024 at 7:00 pm

Location: Council Chambers, 2nd Floor 229 S. Second Street; Elkhart, IN 46516

If you need other accommodations for the meetings, please contact the Community Department at least seven calendar days prior to the scheduled public hearing at:

(574) 294-5471 ex 1062 or email mary.kaczka@coei.org

For additional information please visit the CDBG website at: <https://elkhartindiana.org/government/community-development>
hspaxlp

LEGAL NOTICE #24-BZA-03

Hearing on proposed Developmental Variance #24-BZA-03

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, FEBRUARY 8, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Developmental Variance Petition #24-BZA-03.

Petitioner: Nancy V. Shaum

Request: To vary from Section 12.4 Yard Requirements in the B-2, Community Business District, to allow for a ten (10) foot rear yard setback where twenty (20) feet is required, a variance of ten (10) feet.

Location: Vacant Land Toledo Road - 06-11-251-013-011

Zoning:B-2, Community Business District

This meeting can also be accessed via WebEx. To join, go to <http://coei.webex.com>, enter 2317 077 1574 as the meeting number and "BZA2023" as the password. Attendees may preregister or enter during the meeting. Comments and questions may be submitted via the WebEx app during the meeting, or may be submitted to hugoroblesmadrigal@coei.org prior to the meeting.

LEGAL DESCRIPTION:

A part of the West Half of the Northeast Quarter of Section 11, Township 37 North, Range 5 East, in Concord Township, City of Elkhart, Indiana.

Beginning at the southwesterly corner of the recorded plat of Middlebury Street Industrial park (Elkhart Plat Book 20, Page 12), said point also lying on the south line of said Quarter Section; thence South 89 degrees 14 minutes West along the South line of said Quarter Section a distance of 264 feet; thence North 00 degrees 04 minutes East a distance of 220.20 feet to an iron stake on the southerly line of said recorded plat; thence north 89 degrees 15 minutes 25 seconds east (north 89 degrees 15 minutes East recorded) along the southerly line of said plat a distance of 264 feet to an iron stake; thence South 00 degrees 04 minutes West along the southwesterly line of said recorded plat a distance of 220.17 feet to the beginning point of this description.

Arguments for and against the granting of the above designated petition will be heard at this meeting.

PLEASE NOTE: A copy of this petition is on file in the Planning Office for public examination prior to the hearing. Written objections to this petition which are filed with the Secretary of the Board, located in the Planning Office, prior to the hearing will be considered. The hearing may be continued from time to time as may be found necessary.

Dated at Elkhart, Indiana this 23rd day of January 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: January 26, 2024
hspaxlp

PARCEL I:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, IN CLEVELAND TOWNSHIP, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION, THENCE SOUTH ALONG THE EAST LINE OF SAID QUARTER SECTION TWO HUNDRED NINE AND EIGHTY-EIGHT HUNDREDTHS (209.88); THENCE WEST AT RIGHT ANGLES TO THE EAST LINE OF SAID QUARTER SECTION THREE HUNDRED FIFTY-EIGHT (358) FEET TO THE CENTER-LINE OF THE U.S. HIGHWAY NO. 112 BYPASS; THENCE NORTHEASTWARDLY ALONG THE SATO CENTERLINE APPROXIMATELY TWO HUNDRED FIFTY-FOUR (254) FEET MORE OR LESS TO THE NORTH LINE OF SAID QUARTER SECTION; THENCE EASTWARDLY ALONG THE NORTH LINE OF SAID QUARTER SECTION TWO HUNDRED SIXTEEN AND EIGHTY HUNDREDTHS (216.80) FEET TO THE PLACE OF BEGINNING.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, ELKHART COUNTY, INDIANA AND THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT OF WAY LINES DEPICTED ON THE ATTACHED RIGHT OF WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID QUARTER SECTION, SOUTH 89 DEGREES 41 MINUTES 52 SECONDS WEST 38.19 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION, SAID NORTHEAST CORNER DESIGNATED AS POINT "22" ON SAID PLAT, WHICH POINT OF BEGINNING IS ON THE WEST BOUNDARY OF S.R. 19 PER DEED RECORD 217, PAGE 104 (OFFICE OF THE RECORDER OF ELKHART COUNTY); THENCE SOUTH 0 DEGREES 06 MINUTES 48 SECONDS WEST 209.83 FEET ALONG THE WEST BOUNDARY OF S.R. 19 TO THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 2008-02480 (OFFICE OF SAID RECORDER); THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS WEST 14.90 FEET ALONG SAID NORTH LINE; THENCE NORTH 0 DEGREES 06 MINUTES 48 SECONDS EAST 77.55 FEET TO THE POINT DESIGNATED AS "345" ON SAID PLAT; THENCE NORTH 61 DEGREES 08 MINUTES 37 SECONDS WEST 24.63 FEET TO THE POINT OF DESIGNATED AS "384" ON SAID PLAT; THENCE SOUTHWESTERLY 228.15 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 420.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 69 DEGREES 43 MINUTES 58 SECONDS WEST AND A LENGTH OF 225.35 FEET TO THE SOUTHEASTERLY BOUNDARY OF S.R. 112 PER PROJECT F.A. 574, SEC. A, (1936), DESIGNATED AS POINT "36916" ON SAID PLAT; THENCE ALONG THE BOUNDARY OF SAID S.R. 112, SOUTHWESTERLY 70.59 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,687.15 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 37 DEGREES 54 MINUTES 58 SECONDS WEST AND A LENGTH OF 70.59 FEET TO A CORNER OF THE TRACT OF LAND DESCRIBED IN SAID INSTRUMENT; THENCE NORTH 50 DEGREES 53 MINUTES 07 SECONDS WEST 50.00 FEET TO THE CENTERLINE OF SAID S.R. 112; THENCE ALONG THE CENTERLINE OF SAID S.R. 112, NORTHEASTERLY 269.01 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 1,637.15 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 34 DEGREES 24 MINUTES 27 SECONDS EAST AND A LENGTH OF 268.71 FEET TO THE NORTH LINE OF THE GRANTOR'S LAND; THENCE NORTH 89 DEGREES 41 MINUTES 52 SECONDS EAST 178.46 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING AND CONTAINING 0.879 ACRES, MORE OR LESS, INCLUSIVE OF THE PRESENTLY EXISTING RIGHT OF WAY WHICH CONTAINS 0.082 ACRES, MORE OR LESS, FOR A NET ADDITIONAL TAKING OF 0.797 ACRES, MORE OR LESS.

PARCEL II:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST IN CLEVELAND TOWNSHIP, ELKHART COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A STONE AT THE WEST QUARTER POST OF SECTION SIX (6), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST; THENCE DUE SOUTH (S 0 DEGREES E) ALONG THE EAST LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, ONE HUNDRED TWENTY AND SIXTY-FOUR HUNDREDTHS FEET (120.64'); THENCE SOUTH EIGHTY-NINE DEGREES THIRTY-EIGHT MINUTES WEST (S 89 DEGREES 38 MINUTES W) THREE HUNDRED THIRTY FEET (330') TO AN IRON STAKE; THENCE DUE NORTH (N 0 DEGREES E) NINETY-ONE AND SIXTY-EIGHT HUNDREDTHS FEET (91.68') TO AN IRON STAKE ON THE SOUTHEAST LINE OF HIGHWAY U.S. 112, THENCE NORTHEASTWARDLY ALONG THE SOUTHEAST LINE OF SAID HIGHWAY FIFTY-SEVEN AND TWENTY-TWO HUNDREDTHS FEET (57.22') TO AN IRON STAKE; THENCE NORTH EIGHTY-NINE DEGREES, THIRTY-SIX MINUTES EAST (N 89 DEGREES 36 MINUTES E) TWO HUNDRED NINETY-FOUR AND SEVENTY-TWO HUNDREDTHS FEET (294.72') THENCE SOUTH ZERO DEGREES TWENTY-FOUR MINUTES EAST (S 0 DEGREES 24 MINUTES E) SIXTEEN AND FOUR HUNDREDTHS FEET (16.04') TO THE PLACE OF BEGINNING, CONTAINING ABOUT ONE (1) ACRE OF LAND.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, ELKHART COUNTY, INDIANA AND THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT OF WAY LINES DEPICTED ON THE ATTACHED RIGHT OF WAY PARCEL PLAT MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 37 NORTH, RANGE 5 EAST DESIGNATED AS POINT "20" ON SAID PLAT; THENCE SOUTH 0 DEGREES 17 MINUTES 18 SECONDS WEST 120.64 FEET ALONG THE EAST LINE OF SAID SECTION TO THE SOUTHEAST CORNER OF THE GRANTOR'S LAND; THENCE SOUTH 89 DEGREES 55 MINUTES 18 SECONDS WEST 38.71 FEET ALONG THE SOUTH LINE OF THE GRANTOR'S LAND TO THE WEST BOUNDARY OF S.R. 19 PER DEED RECORD 221, PAGE 6, (OFFICE OF THE RECORDER OF ELKHART COUNTY) AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 89 DEGREES 55 MINUTES 18 SECONDS WEST 14.90 FEET ALONG SAID SOUTH LINE; THENCE NORTH 0 DEGREES 06 MINUTES 48 SECONDS EAST 136.65 FEET TO THE SOUTH LINE OF THE TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 95-017328 (OFFICE OF SAID RECORDER); THENCE NORTH 89 DEGREES 53 MINUTES 18 SECONDS EAST 14.90 FEET ALONG SAID NORTH LINE TO THE WEST BOUNDARY OF SAID S.R. 19; THENCE SOUTH 0 DEGREES 06 MINUTES 48 SECONDS WEST 136.66 FEET ALONG THE BOUNDARY OF SAID S.R. 19 TO THE POINT OF BEGINNING AND CONTAINING 0.047 ACRES, MORE OR LESS.

Arguments for and against the granting of the above designated petition will be heard at this meeting.

PLEASE NOTE: A copy of this petition is on file in the Planning Office for public examination prior to the hearing. Written objections to this petition which are filed with the Secretary of the Board, located in the Planning Office, prior to the hearing will be considered. The hearing may be continued from time to time as may be found necessary.

Dated at Elkhart, Indiana this 23rd day of January 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: January 26, 2024
hspaxlp

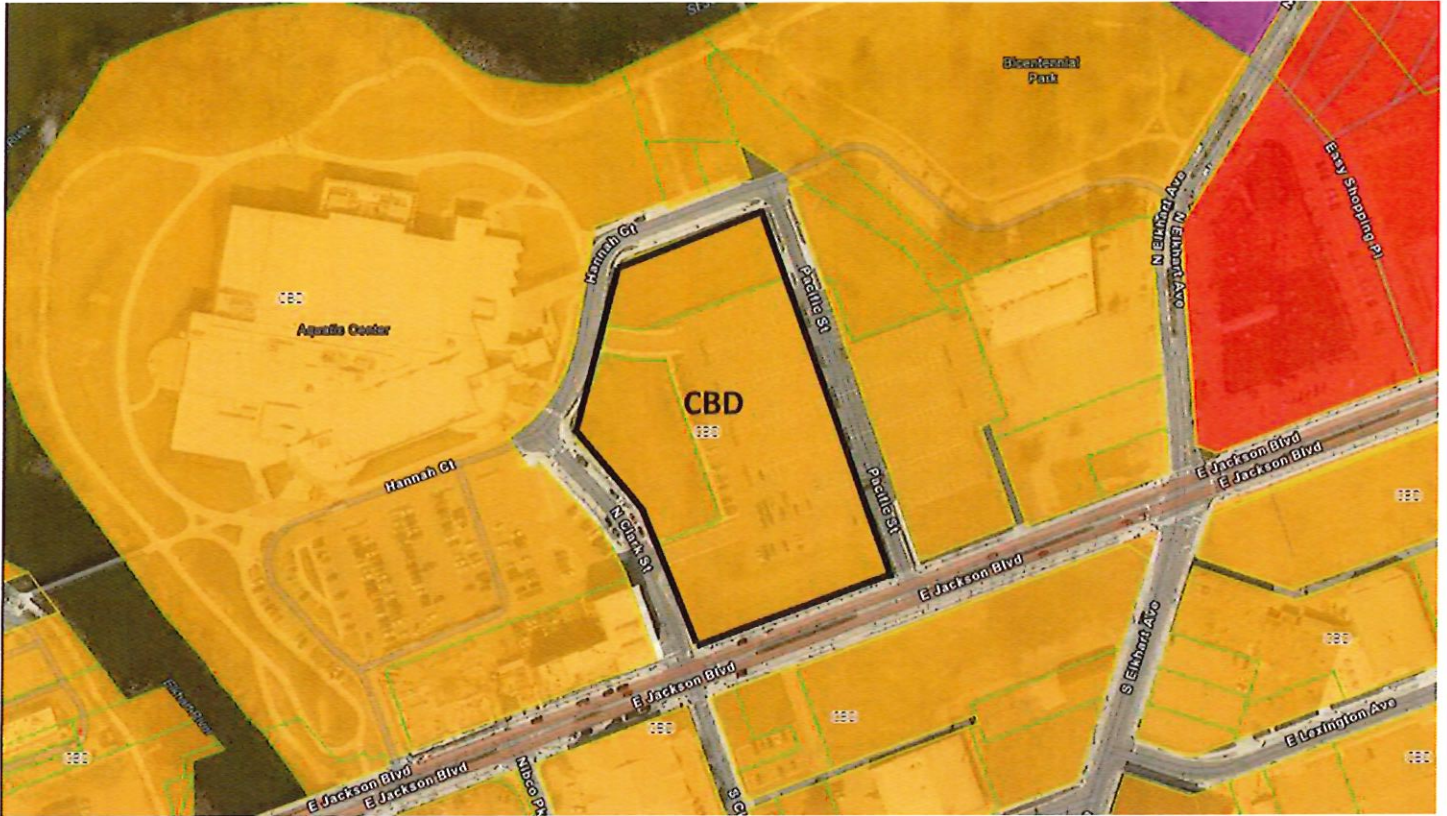
RESERVE THIS SPACE TODAY!



Staff Report

Planning & Zoning

<u>Petition:</u>	24-UV-02
<u>Petition Type:</u>	Use Variance
<u>Date:</u>	February 8, 2024
<u>Petitioner:</u>	EOZ Business, LLC
<u>Request:</u>	<p>To vary from Section 15.2.Q, Permitted Uses in the CBD, which allows 'Multi-family residential dwellings, including condominiums, townhouses and residences located above commercial uses to allow for residential dwellings located on the first floor, where currently residential dwellings are not a permitted use on the first floor.</p> <p>To also vary from Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for the residential units in this development to be as small as five hundred seventy four (574) square feet, a maximum variance of one hundred seventy six (176) square feet.</p>
<u>Site Location:</u>	Vacant Lot, East Jackson Boulevard (300 block)
<u>Existing Zoning:</u>	CBD, Central Business District
<u>Size:</u>	+/- 3.20 Acres
<u>Thoroughfares:</u>	E. Jackson Boulevard
<u>School District:</u>	Elkhart Community Schools
<u>Utilities:</u>	Available and provided to the site.



Surrounding Land Use & Zoning:

The property is located in downtown. It is surrounded by commercial and recreational properties zoned CBD, Central Business District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be developed with mixed uses.

Staff Analysis

The petitioner, EOZ Business, LLC, is requesting to vary from development standards found in the Central Business District (CBD), for the latest phase of development in the River District. The sites that are part of this request are located along E. Jackson Boulevard and Clark Street, north of Jackson, in the heart of the River District.

The 2018 River District Implementation Plan's vision sought to develop a thriving urban, mixed use, walkable community that is a downtown destination emphasizing the rivers and recreational amenities. To reinforce the Neighborhood Structure, the Plan extends downtown's walkable street grid and establishes building frontages against sidewalk edges and makes walking useful, safe and comfortable. The proposed development represented in this petition supports the vision and spirit of the 2018 Plan.

In Figure 1 below, the buildings that are a part of this request are noted with a letter A, B and C. The proposed buildings are three (3) and four (4) stories in height, cited behind the public sidewalk with associated parking north, out of the street view from E. Jackson Boulevard.

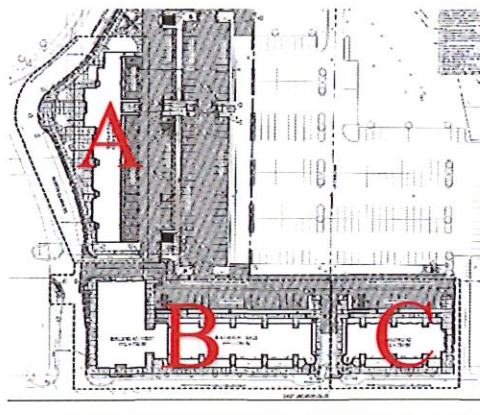


Figure 1

As background, the ordinance currently permits residential (apartment and condominium) uses above commercial uses in the Central Business District. The proposal calls for three (3) mixed use buildings which will have commercial (including restaurant), office and/or residential uses incorporated into each of the buildings. See Figure 1 above. The Clark Street Building A, as shown above in Figure 1, will have retail on the first floor with residential on the upper floors of that building. The building at the intersection of E. Jackson and Clark Street, shown as Building B in Figure 1, will concentrate the commercial and office uses at the west end of the building and have walk up apartments east at the street level fronting E. Jackson Boulevard. Building C in Figure 1, is proposing residential on all three levels.

The second part of the request is to permit the reduction of dwelling unit minimum floor area to 574 square feet where the current minimum floor area is 750 square feet. This reduction in floor area is consistent with what is happening in other communities that are working to address the shortage of housing. The goal is to also help densify downtown and provide residential housing options for all stages of life in order to continue to make Elkhart a vibrant downtown.

It is anticipated that with pending updates for the zoning ordinance, the elements contained within this request will be conforming in the future. The timeline for the updates to the ordinance will be in draft form in the third quarter of this year.

Staff supports the variance request contained in the petition.

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 new buildings will be built and conform to all applicable building codes. The uses found within the buildings and unit size will be a positive addition to the existing businesses in a mixed use district;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the programming of the building meet the goals of the 2018 River District Plan by incorporating a mix of uses that support the plan's vision;
3. The need for the variance arises from some condition peculiar to the property because of the requirement that residential be allowed only above commercial uses and the reduction of unit size would prevent these buildings from being constructed;
4. The strict application of the terms of this Ordinance **will** constitute an unnecessary hardship if applied to the property because the varied typology proposed in these buildings are becoming more common in downtowns;
5. The approval does not interfere substantially with the Comprehensive Plan which calls for the area to be developed with mixed use.

Conditions

Photos





PETITION #: 24-VV-02

FILING FEE: \$ 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

☐ Developmental Variance ☐ Appeal from Staff Decision
☒ Use Variance ☐ Special Exception ☐ Conditional Use

Property Owner(s): David Weaver of EOZ Business, LLC

Mailing Address: 240 E Jackson Blvd, Suite 401 Elkhart, IN 46516

Phone #: 574-320-2339 Email: dave@weimpactgroup.com

Contact Person: Robert Heiden of Jones Petrie Rafinski (JPR)

Mailing Address: 325 S Lafayette Blvd, South Bend, IN 46601

Phone #: 574-232-4388 Email: rheiden@jpr1source.com

Subject Property Address: Lot 4B of River District Northwest Addition First Replat, E Jackson St
Lots 1 & 2 of River District Northwest Addition Second Replat, E Jackson St

Zoning: CBD - Central Business District

Present Use: Vacant along Jackson, parking North half Proposed Use: Mixed-use, Commercial/Residential

NOTE: The petitioner is the legal property owner of record, or a certified representative, and agrees the above information is accurate. Failure to provide a legal signature or accurate information will make this application null and void.

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): David Weaver

SIGNATURE(S):  DATE: 2023-12-13

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Board of Appeals docket:

- ☒ One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.
- ☒ A completed Petition form signed by the legal owner of record (or approved representative).
- ☐ If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.
- ☒ A full and accurate legal description of the property.
- ☒ One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 12 copies must be submitted.
- ☐ Optional: any supplementary information the applicant may wish to include.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY:  DATE: 12/14/2023



Land Surveying · Civil Engineering · Planning · Architecture · Project Funding · GIS · Environmental · Renewable Energy · Landscape Architecture

December 13, 2023

Board of Zoning Appeals
City of Elkhart, Indiana

**RE: USE VARIANCE FOR THE PROPOSED BUILDINGS ON THE PARCELS EAST OF CLARK STREET
KNOWN AS ZONE 1 OF THE RIVER DISTRICT**

The undersigned Appellant respectfully shows the Board:

1. We Impact Group, David Weaver, is the owner/developer for the existing Office Building 1 at 240 E Jackson and proposed Office Building 2 at 210 E Jackson which is submitting for a Use Variance located on three (3) parcels east of Clark St and North of Jackson Blvd. The current parcel numbers are 20-06-05-279-034.000-012 (or Lot 4B of River District Northwest Addition), and 20-06-05-279-035.000-012, 20-06-05-279-034.000-012, and 20-06-05-279-033.000-012 (or Lots 3A, 3B, and 3C of River District Northwest Addition, that are currently in the process of a replat to become Lot 1, Lot 2, and Lot 3 of River District Northwest Addition, Second Replat, all located within Concord Township, Elkhart County, Indiana, to wit:

Legal Description

See First (signed) and Second (unsigned, not yet recorded) Replat Plan Sheets attached to this submittal

2. The described real estate presently has zoning classifications of CBD – Central Business District under the Zoning Ordinance of the City of Elkhart.
3. Petitioner presently occupies Office Building 1 across Clark St from the described property and will control the commercial and residential mixed-use development across Clark St upon its completion.
4. Petitioner desires to construct three mixed-use buildings, one on each of the parcels to include office and commercial space, with residential units above and walkup townhome style apartments, and parking. The proposed site layout requires a use variance for the first level, walkup apartments (not over commercial) and a developmental variance for the size of the residential units.
5. A. The Zoning Ordinance of the City of Elkhart, Section 15.2 requires:
 - Multi-family residential dwellings, including condominium, townhouses and residences located above commercial uses. For portions of each of the three (3) proposed buildings, there will be walkup or ground level residential dwelling units.B. The Zoning Ordinance of the City of Elkhart, Section 15.2 and 6.1 requires:
 - Two-Family (Multi) dwellings, with a minimum of seven hundred fifty (750) square feet of dwelling unit space per dwelling unit. There are 91 proposed residential units ranging in size from 574 sft to 1,174 sft, of which fifty-six (56) are below the minimum 750 square foot size requirement.
6. Strict adherence to the zoning ordinance for this development would make this it just like the other existing mixed-use and residential buildings already throughout the River District, and not provide a varying level of housing opportunity. The walkup residential units are utilized to create a more

residential main street, town center atmosphere, and smaller units target a different clientele from other River District apartment buildings.

7. Approval will not be injurious to the public health, safety, morals, and general welfare of the community, because the approval of this variance still adheres to the goals of mixed-use development within the River District.
8. Use and value of the area adjacent to the property will not be affected in a substantially adverse manner, because the Downtown River District, as zoned a Central Business District, has similar common uses throughout.
9. Granting the variance would be consistent with the intent and purpose of the Zoning Ordinance and the original development of the overall River District.
10. Special conditions and circumstances exist which are special to each of these parcels of which each building fronts the main streets and are not applicable to most other areas within the overall district.
11. The strict application of the terms of these deviation from ordinance would deprive the applicant of the providing a differing and unique targeted housing opportunity.
12. The special conditions and circumstances do not result from any action or inaction by the applicant, however meet the general layout of the River District Plan.
13. The variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, or conflict with existing laws or ordinances.

WHEREFORE, Petitioner prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Current Property Owner (Petitioner)

Signature of Property Owner: 

Printed Name: Forza Business, LLC

Owner's Representative:

Contact Person: Robert Heiden w/ Jones Petrie Rafinski Corp. (JPR)

Address: 325 S. Lafayette Blvd.

South Bend, IN 46601

Ph: (574) 232-4388

Robert Heiden

From: David Weaver <dave@weimpactgroup.com>
Sent: Friday, February 3, 2023 11:36 AM
To: Robert Heiden; Adam Miller; 'Pat Gross'
Subject: Authorization to file for variance

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please use this email as authorization to file on behalf of weIMPACT Group and EOZ Business a variance for our second mixed-use office and retail building located directly west of the Riverbend at 240 East Jackson BLVD.

Thank you and best regards,

Dave Weaver
weIMPACT Group and EOZ Business
574.320.2339
dave@weimpactgroup.com

:

AFFIDAVIT IN SUPPORT OF VARIANCE PETITION

I, David Weaver, being first duly sworn upon his/her oath deposes and says that he/she is familiar with and has personal knowledge of the facts herein and, if called as a witness in this matter, would testify as follows:

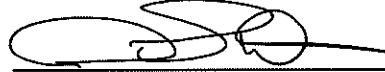
1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
2. I make this affidavit in support of my variance petition filed contemporaneously herewith.
3. I am now and at all times relevant herein have been, the owner of record of the property located at Zone 1 Development (300 E Jackson) Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 13th day of December, 2023.



Printed: David Weaver

I certify under the penalties for perjury under the laws of the United States of America and the State of Indiana that the foregoing factual statements and representations are true and correct.



Printed: David Weaver

STATE OF INDIANA)

) SS:

COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared _____, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this _____ day of _____, 20____.

Printed: _____

My Commission Expires:

Notary Public in and for the State of Indiana
Resident of _____ County, Indiana

4B First Replat

Curve	Radius	Arc Length	Chord Length	Chord Bearing	Delta Angle
C1	330.00'	131.69'	130.82'	N31°34'55"W	22°51'53"
C2	29.00'	36.84'	34.41'	N06°37'24"W	72°46'55"
C3	240.50'	84.25'	83.82'	N19°43'56"E	20°04'15"
C4	31.00'	32.86'	31.34'	N40°03'46"E	60°43'57"
C5	330.00'	10.74'	10.74'	N21°04'55"W	1°51'52"
C6	330.00'	120.95'	120.28'	N32°30'52"W	21°00'01"





Staff Report

Planning & Zoning

<u>Petition:</u>	24-BZA-04
<u>Petition Type:</u>	Developmental Variance
<u>Date:</u>	February 8, 2024
<u>Petitioner:</u>	Lotus Enterprises, LLC
<u>Site Location:</u>	2101 ByPass Road (FKA - 415 N. Nappanee Street)
<u>Request:</u>	To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.
<u>Existing Zoning:</u>	B-2, Community Business
<u>Size:</u>	+/- .09 acres
<u>Thoroughfares:</u>	ByPass Road and Nappanee Street (SR 19)
<u>School District:</u>	Elkhart Community Schools
<u>Utilities:</u>	Available and provided to site.

Surrounding Land Use & Zoning:

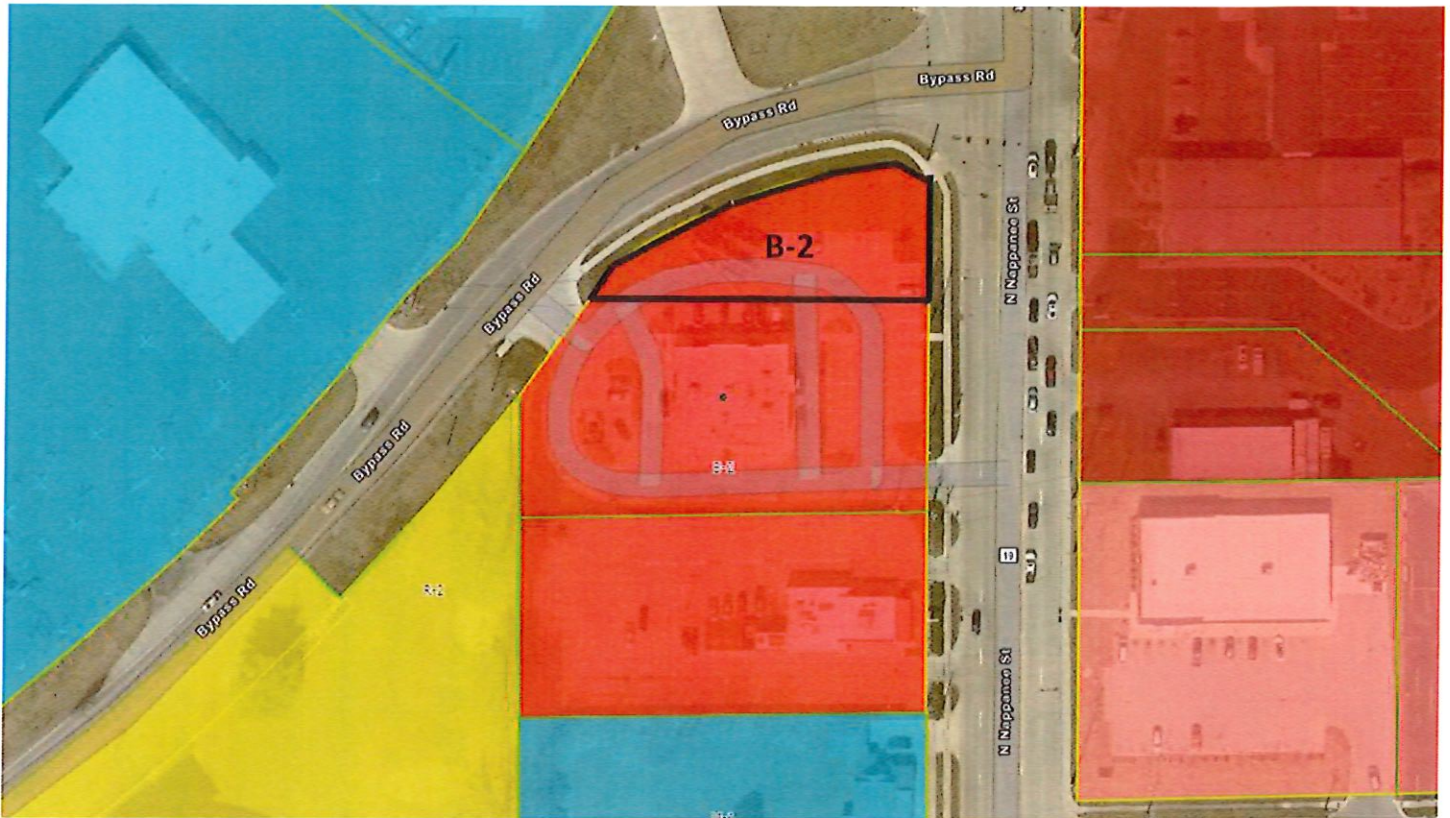
The surrounding property to the north and west is a former automobile dealership zoned M-1, Limited Manufacturing District, land to the south is a restaurant zoned B-2, Community Business District and land to the east is primarily commercial zoned B-2, Community Business District and B-3, Service Business District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan does not specifically address off-premise signs. The subject property is included in an area identified for commercial use on the future land use map.



Staff Analysis

Lamar Advertising leases the subject property and owns a billboard structure that includes both north and south facing signs.

For this sign structure, it is there by action approved by this body in 2016 as the site was being redeveloped after the realignment of ByPass Road as it intersects Nappanee Street. At that time, the site was two separate businesses with two different zoning classification with both oriented toward Nappanee Street. The new building proposed, as it sits today, was oriented to the north toward ByPass Road. In order to have the site be compliant, the site was rezoned and the necessary variances approved in order to construct the billboard that currently exists at the southwest corner of ByPass Road and Nappanee Street. That also included the combination/consolidation of the parcels for the site, which was never completed. This came to light when the case before the board now was filed. As a part of our recommendation and conditions, staff is asking that the combination be completed as required by the previous owner in 2016. Because now, the building may be considered non-conforming.

Lamar is proposing to upgrade the billboard from the current, traditional static sign face to with a new electronic LED billboard. The BZA heard two other requests similar to this action in December 2023 for a site on South Main Street and East Beardsley Avenue. Staff is supportive of the request and understand the technology is changing and feel there are adequate safeguards in place with the proposed conditions to ensure the current proposal meets the future language for the UDO.

The City of Elkhart is in the process of updating its zoning ordinance, including the sign ordinance components. It is anticipated that the new UDO will include allowances for and guidance related to electronic billboards, including standards related to movement, video elements, message sequencing, limits on message duration, and brightness. Accordingly, the proposed guidance will be included in the staff's recommendation related to this request.

Recommendation

The Staff recommends **approval** of the developmental variance to vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard 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 off-premises sign already exists at this location;
2. The use and value of the area adjacent to the property **will not be** affected in a substantially adverse manner because the conversion of the sign to LED is in keeping with the trends in changing technology for billboard signs;
3. Granting the variance **would be** consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 sign already exists and without board action the conversion to LED would not be permitted;
5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property because it would require the sign to continue to utilize the existing non-LED sign face that is manually changed;
6. The special conditions and circumstances **do not** result from any action or inaction by the applicant because the sign is pre-existing;
7. This property **does not** lie within a designated flood area.

Conditions

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 10 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage

Photos



PETITION #: 24-BZA-04

FILING FEE: \$ 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

☒

Developmental Variance

☐

Appeal from Staff Decision

☐ Use Variance

☐

Special Exception

☐

Conditional Use

Property Owner(s): LOTUS ENTERPRISES LLC

Mailing Address: 13 THE WOOD NE IOWA CITY, IA 52240

Phone #: 319-430-1850

Email: KARLAKAMAL16@gmail.com

Contact Person: DAVID HERMAN

Mailing Address: 1335 MISHAWAKA AVE SOUTH BEND, IN 46615

Phone #: 765-404-1848

Email: DHERMAN@LAMAR.Conn

Subject Property Address: 2101 BYPASS ROAD
415 N. WAPPANEE EIKHART, IN 46514

Zoning: B2 COMMUNITY BUSINESS

Present Use: DUNKIN DONUTS
ILoveMACSCH25 B:1 BOARD

Proposed Use: SAME (ALL EXISTING)

NOTE: The petitioner is the legal property owner of record, or a certified representative, and agrees the above information is accurate. Failure to provide a legal signature or accurate information will make this application null and void.

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Karla Kamal

SIGNATURE(S): Karla Kamal

DATE: 12/8/23

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Board of Appeals docket:

☒

One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.

☒

A completed Petition form signed by the legal owner of record (or approved representative).

☐

If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.

☒

A full and accurate legal description of the property.

☒

One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 12 copies must be submitted.

☐

Optional: any supplementary information the applicant may wish to include.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

upgrade to modern technology. The panel will still be static and will conform to INDOT's ordinance that they can't change more than once every 8 seconds. The face can not have or be animated or have any motion.

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. Since the billboard structure has been there for over 7 years the landscape would continue to be the same, this is only a face change.

3. The need for the variance arises from some condition peculiar to the property involved. For relief from the strict application of zoning regulations, the property involved has an existing billboard and technology keeps advancing, so converting makes more sense than putting additional structures in the community which is better for the city.

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. (Financial considerations do not qualify). The ordinance restricts what we can do to our existing business without a variance. The ordinance allows for the billboard structure, but requires a variance in order to convert to updated technology.

5. The approval does not interfere substantially with the Comprehensive Plan." The property is zoned B2 Business and is in a business district, so the variance is asking for an upgrade which will only benefit the business community. Since this is zoned B2 Business the use fits with the comprehensive plan.

WHEREFORE, Petitioner prays and respectfully requests a hearing on this appeal and that after such hearing, the Board of Zoning Appeals grant the requested variance.

Signature of property owner:

Karla Kamal

Printed Name:

Karla Kamal

Second property owner (if applicable):

Gagan

Printed name:

Gagan Kamal

Contact person:

Karla Kamal

Name:

Karla Kamal

Address:

13 The Woods NW, Tower City, IA 52240

Phone number where you can be reached:

319-430-1850

Email:

Karalakamal16@gmail.com



Legend

- SJC Parcel Dimensions
- SJC Parcels
 - ELK Parcels
 - SJC Street
 - ELK Street
 - Building Footprint
 - Railroad
 - Abandoned Railroad
 - Road Centerline
 - Railroad Bridge
 - Roadway Bridge



Michiana Regional GIS Website

txtSubTitle



Map Generated By: Public

Date Printed: 10/2/2023

Coordinate grid is based on Indiana East State Plane Coordinate System 1983 North American Datum.

Information shown on this map is not warranted for accuracy or merchantability. Reproduction or distribution of this material is not authorized without the express written permission of MACOG.



1 inch = 100.00 feet



2021-08358

ELKHART COUNTY RECORDER
JENNIFER L. DORIOT
FILED FOR RECORD ON
04/01/2021 02:26 PM
AS PRESENTED

Fidelity National
Title Company LLC

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Grantee / Tax Billing
13 The Wood NE
Iowa City IA
52240

Tax Parcel No. 20-05-01-427-002.000-006 and 20-05-
01-427-003.000-006

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, that BYPASS ROAD DEVELOPMENT, LLC, an Indiana limited liability company ("Grantor"), hereby SELLS and CONVEYS to LOTUS ENTERPRISES, LLC, an Iowa limited liability company ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate in Elkhart County, in the State of Indiana, described on Exhibit A attached hereto and made apart hereof (the "Real Estate").

This conveyance of the Real Estate is subject to: (i) zoning and building laws, ordinances and regulations; (ii) legal streets and highways; (iii) building setback lines, rights-of-way and covenants, restrictions, conditions, and easements of record; (iv) the lien of real estate taxes and assessments which are not now due and payable; (v) rights of tenants in possession under unrecorded leases; (vi) matters as would be disclosed by a current and accurate survey and physical inspection of the Real Estate, and (vii) any encumbrances created by or existing due to actions of or with consent Grantee.

TO HAVE AND TO HOLD the Real Estate to Grantee and Grantee's successors and assigns forever. Grantor covenants and warrants as its sole warranty of title that said Real Estate is free of any encumbrance made or suffered by said Grantor except any set forth above, and that Grantor and Grantor's successors shall warrant and defend the same to said Grantee and said Grantee's successors and assigns forever, against the lawful claims and demands of all persons claiming by, though, or under the said Grantor, but against none other.

DISCLOSURE FEE PAID
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER
Apr 01 2021
PATRICIA A. PICKENS, AUDITOR
01680
20.00

DEED

PAGE 1

KB

SD

The undersigned person executing this Limited Warranty Deed on behalf of Grantor represents and certifies that the undersigned is a duly authorized officer of Grantor and has been fully empowered to execute and deliver this Limited Warranty Deed; that Grantor has full corporate power and authority to convey the Real Estate; and that all necessary action for the making of such conveyance has been taken and done.

[Signature Page Follows]

**EXHIBIT A
LEGAL**

For APN/Parcel ID(s): 20-05-01-427-002.000-006 and 20-05-01-427-003.000-006

PARCEL I:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION ONE (1), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FOUR (4) EAST, IN CLEVELAND TOWNSHIP, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION, THENCE SOUTH ALONG THE EAST LINE OF SAID QUARTER SECTION TWO HUNDRED NINE AND EIGHTY-EIGHT HUNDREDTHS (209.88); THENCE WEST AT RIGHT ANGLES TO THE EAST LINE OF SAID QUARTER SECTION THREE HUNDRED FIFTY-EIGHT (358) FEET TO THE CENTER-LINE OF THE U.S. HIGHWAY NO. 112 BYPASS; THENCE NORTHEASTWARDLY ALONG THE SAID CENTERLINE APPROXIMATELY TWO HUNDRED FIFTY-FOUR (254) FEET MORE OR LESS TO THE NORTH LINE OF SAID QUARTER SECTION; THENCE EASTWARDLY ALONG THE NORTH LINE OF SAID QUARTER SECTION TWO HUNDRED SIXTEEN AND EIGHTY HUNDREDTHS (216.80) FEET TO THE PLACE OF BEGINNING.

EXCEPT:

A PART OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 4 EAST, ELKHART COUNTY, INDIANA AND THAT PART OF THE GRANTOR'S LAND LYING WITHIN THE RIGHT OF WAY LINES DEPICTED ON THE ATTACHED RIGHT OF WAY PARCEL PLAT, MARKED EXHIBIT "B", DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID QUARTER SECTION, SOUTH 89 DEGREES 41 MINUTES 52 SECONDS WEST 38.19 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION, SAID NORTHEAST CORNER DESIGNATED AS POINT "22" ON SAID PLAT, WHICH POINT OF BEGINNING IS ON THE WEST BOUNDARY OF S.R. 19 PER DEED RECORD 217, PAGE 104 (OFFICE OF THE RECORDER OF ELKHART COUNTY); THENCE SOUTH 0 DEGREES 06 MINUTES 48 SECONDS WEST 209.83 FEET ALONG THE WEST BOUNDARY OF S.R. 19 TO THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN INSTRUMENT NO. 2008-02480 (OFFICE OF SAID RECORDER); THENCE SOUTH 89 DEGREES 53 MINUTES 18 SECONDS WEST 14.90 FEET ALONG SAID NORTH LINE; THENCE NORTH 0 DEGREES 06 MINUTES 48 SECONDS EAST 77.55 FEET TO THE POINT DESIGNATED AS "345" ON SAID PLAT; THENCE NORTH 61 DEGREES 08 MINUTES 37 SECONDS WEST 24.63 FEET TO THE POINT OF DESIGNATED AS "384" ON SAID PLAT; THENCE SOUTHWESTERLY 228.15 FEET ALONG AN ARC TO THE LEFT HAVING A RADIUS OF 420.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 69 DEGREES 43 MINUTES 58 SECONDS WEST AND A LENGTH OF 225.35 FEET TO THE SOUTHEASTERLY BOUNDARY OF S.R. 112 PER PROJECT F.A. 574, SEC. A, (1936), DESIGNATED AS POINT "36916" ON SAID PLAT; THENCE ALONG THE BOUNDARY OF SAID S.R. 112, SOUTHWESTERLY 70.59 FEET ALONG AN ARC TO THE RIGHT HAVING A RADIUS OF 1,687.15 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 37 DEGREES 54 MINUTES 58 SECONDS WEST AND A LENGTH OF 70.59 FEET TO A CORNER OF THE TRACT OF LAND DESCRIBED IN SAID INSTRUMENT; THENCE NORTH 50 DEGREES 53 MINUTES 07 SECONDS WEST 50.00 FEET TO THE CENTERLINE OF SAID S.R. 112; THENCE ALONG THE CENTERLINE OF SAID S.R. 112, NORTHEASTERLY 269.01 FEET ALONG AN ARC

STAFF ANALYSIS AND RECOMMENDATION**GENERAL INFORMATION**

<u>PETITION #:</u>	16-BZA-14
<u>PETITION TYPE:</u>	Developmental Variance
<u>DATE:</u>	July 14, 2016
<u>PETITIONER:</u>	ByPass Road Development, LLC
<u>SITE LOCATION:</u>	2101 ByPass Road (fka 309 and 415 N Nappanee Street)
<u>REQUEST:</u>	<p>To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located two (2) feet from the property line, a variance of 28 feet.</p> <p>To also vary from Section 26.10.F.4.k, which states in part, "Off premises signs shall not be located in the front yard", to allow the reconstructed sign to be placed in the front yard", to allow the sign to be located in the front yard adjacent to ByPass Road.</p>
<u>EXISTING ZONING:</u>	B-3, Service Business District and M-1, Limited Manufacturing District
<u>SIZE:</u>	+/- 1.8 acres (309 & 415 N Nappanee Street Combined)
<u>THOROUGHFARES:</u>	ByPass Road and North Nappanee Street
<u>SCHOOL DISTRICT:</u>	Elkhart Community Schools
<u>UTILITIES:</u>	City of Elkhart Utilities are provided
<u>SURROUNDING LAND USE AND ZONING:</u>	

The surrounding property is B-3 to the north, R-1 to the south, R-2 to the East and R-2 to the West

APPLICABLE SECTIONS OF THE ZONING ORDINANCE:

Section 26.10.F.4.f and 26.10.F.4.k

COMPREHENSIVE PLAN:

The Comprehensive Plan calls for this area to be used for commercial uses.

CONDITIONS

1. Both existing off-premises signs shall be removed prior to construction of the proposed off-premises sign.

ATTACHMENTS

Petition, narrative, etc.



STAFF ANALYSIS AND RECOMMENDATION

Prepared by -

Eric Trotter

GENERAL INFORMATION

<u>PETITION #:</u>	16-Z-06
<u>PETITION TYPE:</u>	Rezoning
<u>DATE:</u>	September 6, 2016
<u>PETITIONER:</u>	Bypass Road Development, LLC
<u>SITE LOCATION:</u>	2101 Bypass Road
<u>REQUEST:</u>	Per Section 29.11 Map Amendments, a request to re-zone vacant land at Bypass Road and Nappanee Street from B-3, Service Business District and M-1, Limited Manufacturing District to B-2, Community Business District.
<u>EXISTING ZONING:</u>	B-3, Service Business District and M-1, Limited Manufacturing District
<u>SIZE:</u>	+/- 1.8 acres
<u>THOROUGHFARES:</u>	ByPass Road and North Nappanee Street
<u>SCHOOL DISTRICT:</u>	Elkhart Community Schools
<u>UTILITIES:</u>	City of Elkhart Utilities are provided
<u>SURROUNDING LAND USE AND ZONING:</u>	

The surrounding property to the north and west is an automobile dealership zoned M-1, Limited Manufacturing District, land to the south is a restaurant zoned B-2, Community Business District and land to the east is primarily commercial zoned B-2, Community Business District and B-3, Service Business District.

APPLICABLE SECTIONS OF THE ZONING ORDINANCE:

Section 29.11 Amendments

COMPREHENSIVE PLAN:

The Comprehensive Plan calls for this area to be developed with commercial uses.

STAFF ANALYSIS AND RECOMMENDATION**GENERAL INFORMATION**

<u>PETITION #:</u>	16-UV-16
<u>PETITION TYPE:</u>	Use Variance
<u>DATE:</u>	July 14, 2016
<u>PETITIONER:</u>	ByPass Road Development, LLC
<u>SITE LOCATION:</u>	2101 ByPass Road (fka 309 and 415 N Nappanee Street)
<u>REQUEST:</u>	To vary from Section 26.10.F.4.a, Off-Premises Signs, which states "Off premises signs shall only be permitted in the B-3 and "M", Manufacturing Districts" to allow for the placement of a new off premises sign on the parcel. The land will be rezoned to B-2, Community Business District to match the proposed use as quick serve restaurant and retail uses.
<u>EXISTING ZONING:</u>	B-3, Service Business District and M-1, Limited Manufacturing District
<u>SIZE:</u>	+/- 1.8 acres (309 & 415 N Nappanee Street Combined)
<u>THOROUGHFARES:</u>	ByPass Road and North Nappanee Street
<u>SCHOOL DISTRICT:</u>	Elkhart Community Schools
<u>UTILITIES:</u>	City of Elkhart Utilities are provided

SURROUNDING LAND USE AND ZONING:

The surrounding property is B-3 to the north, R-1 to the south, R-2 to the East and R-2 to the West

APPLICABLE SECTIONS OF THE ZONING ORDINANCE:

Section 26.10.F.4.a

COMPREHENSIVE PLAN:

The Comprehensive Plan calls for this area to be used for commercial uses.

CONDITIONS

1. The two (2) existing off-premises signs shall be removed prior to construction of the new proposed off-premises sign.

ATTACHMENTS

Petition, narrative, etc.

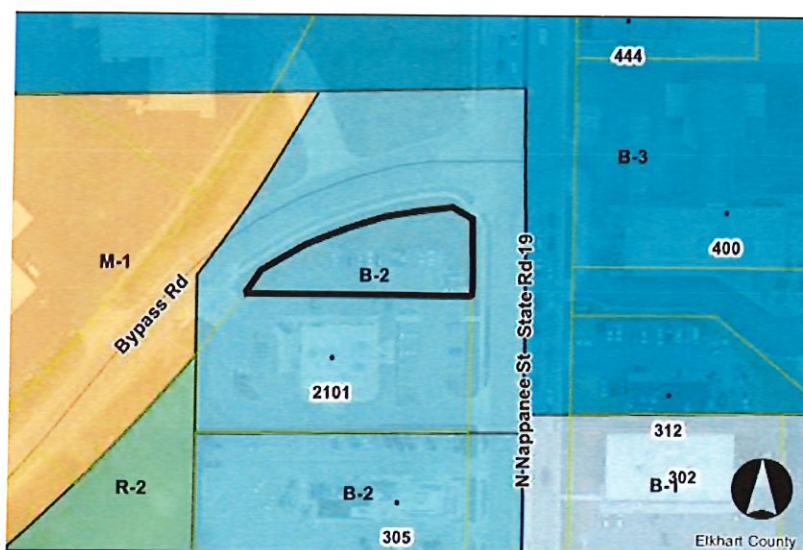




Staff Report

Planning & Zoning

<u>Petition:</u>	20-BZA-40
<u>Petition Type:</u>	Developmental Variance
<u>Date:</u>	December 10, 2020
<u>Petitioner:</u>	Bypass Road Development, LLC
<u>Site Location:</u>	2101 Bypass Road
<u>Request:</u>	<p>To vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.</p> <p>To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.</p>
<u>Existing Zoning:</u>	B-2, Community Business District
<u>Size:</u>	+/- .12 Acres
<u>Thoroughfares:</u>	Bypass Road, Nappanee Street
<u>School District:</u>	Elkhart Community Schools
<u>Utilities:</u>	Available and provided to site.



Surrounding Land Use & Zoning:

Commercial, zoned B-2, B-3, and M-1.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be developed with commercial land uses.

Staff Analysis

Staff recognizes that the request for an LED billboard represents a contemporary trend in the sign industry, and that the city is likely to receive similar requests in the future. At this time, our ordinance does not address internally-illuminated billboards other than to prohibit them outright. Since we have received several requests and staff opinion will likely represent a precedent that a potential code change might be based upon in the future, staff is requesting the Board table all requests for digital billboards until the January meeting, to allow staff time to research contemporary billboard research and policy

Recommendation

The Staff recommends the Board table the developmental variance until January 2021.

Photos



Attachments

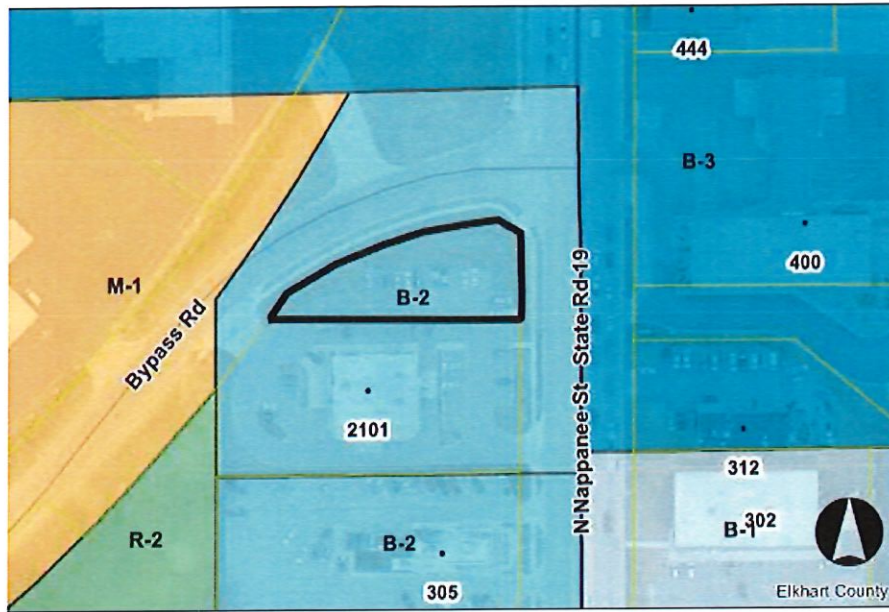
Petition, appeal letter, site plan.



Staff Report

Planning & Zoning

<u>Petition:</u>	20-BZA-40
<u>Petition Type:</u>	Developmental Variance
<u>Date:</u>	December 10, 2020
<u>Petitioner:</u>	Bypass Road Development, LLC
<u>Site Location:</u>	2101 Bypass Road
<u>Request:</u>	<p>To vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.</p> <p>To also vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.</p>
<u>Existing Zoning:</u>	B-2, Community Business District
<u>Size:</u>	+/- .12 Acres
<u>Thoroughfares:</u>	Bypass Road, Nappanee Street
<u>School District:</u>	Elkhart Community Schools
<u>Utilities:</u>	Available and provided to site.



Surrounding Land Use & Zoning:

The subject site is one of two parcels that comprise a multi-tenant commercial building, currently home to Dunkin' Donuts and Jimmy Johns. The parcel includes a portion of the parking lot and the existing "V" shaped (double-sided) off-premise sign, ie billboard. It sits in the southwest corner of the N Nappanee St/SR 19 and Bypass Rd intersection. To the west of the site is a vacant automobile dealership. To the north is a large-lawn area within the right-of-way and beyond that is the Heart City Toyota automobile dealership. To the east, across N Nappanee St/SR 19, are a variety of commercial businesses including a car wash, motor vehicle service and repair business, and general merchandise retailer. To the south is the associated multi-tenant commercial building and beyond that, a restaurant.

The subject property is within the B-2, Community Business District. The vacant automobile dealership to the west is within the M-1 District. Development to the north and east is zoned B-3, to the southeast is B-1, and to the south is B-2. While it does not immediately abut the subject property, the associated parcel shares a portion of the property line with an R-2 district to the southwest. This is the northeast corner of the West Side Middle School property.

The subject off-premise sign received several variances in 2016 to permit its use and location. The height variance was not included at that time, so has subsequently been included with this petition to replace one traditional sign face with a digital (LED) sign.

Applicable Sections of the Zoning Ordinance:

Section 26.10 Sign Regulations

F. Supplemental Sign Regulations

4. Off-Premises Signs

- d. Off-premises signs shall not exceed thirty (30) feet in height.**

- h. Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited. Off-premises signs shall not include automatically changeable copy signs.

Comprehensive Plan:

The Comprehensive Plan does not specifically address off-premise signs. The subject property is included in an area identified for commercial use on the future land use map.

Staff Analysis

Improvements in technology and reductions in price have led to an outdoor advertising trend away from traditional billboards to digital billboards. Some communities have enacted complete bans on digital billboards specifically, or electronic message signs more broadly. Others have elected to permit such signs in certain locations or districts, and with certain development standards. There is conflicting literature regarding digital billboards and driver distraction as compared to traditional billboards. It is often hard to control for the many variables that account for driver distraction and sometimes the studies are funded or sponsored by organizations with interests in outdoor advertising. Some studies have suggested digital billboards, especially at night, create a greater distraction in number of glances or duration of distraction. Other studies suggest the impacts are similar to traditional billboards if additional safety standards are put in place. This would include factors such as controlling brightness, lengthening dwell time, limiting video or messages that include motion, and ensuring the sign doesn't conflict with or display images that may be confused with traffic control signage. Court cases regarding regulation of billboards have upheld bans on digital signs by accepting local government arguments that the bans serve traffic safety and aesthetic interests.

As mentioned above, this billboard received several variances in 2016 to permit its construction. The need for a height variance was not identified at that time. Because the previous variances were approved for the current sign, it is appropriate to approve the variance from Section 26.10.F.4.d, to allow for a sign thirty-five (35) feet in height.

The existing billboard is approximately 35 feet from the edge of Bypass Road; it is approximately 215 feet from the center of the N Nappanee St/SR 19 and Bypass Rd intersection. Even with conditions to limit brightness and lengthen the dwell time of each sign message, conversion to a digital billboard at this location would likely lead to undesirable traffic safety conditions. In addition to proximity to the intersection, there are a number of curb cuts/driveways along both N Nappanee St/SR 19 and Bypass road near this sign. Increased driver distraction could lead to more accidents along the busy corridor. Until additional research can show that digital billboards do not lead to increased distraction when compared to traditional billboards, such conversion should not be approved at this location.

Recommendation

The Staff recommends **approval** of the developmental variance from Section 26.10.F.4.d, to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet, 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 off-premises sign already exists at 35 feet in height;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the off-premises sign already exists at 35 feet in height;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 sign already exists and was previously granted several variances for the current structure;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would require removal or complete reconstruction of the sign for which several variances were already approved;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the sign is pre-existing;
7. This property does not lie within a designated flood area.

The Staff recommends **denial** of the developmental variance from Section 26.10.F.4.h, to allow for the conversion of an existing billboard to an LED billboard, based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the proposed digital sign could increase distractions near the intersection of N Nappanee St/SR 19 and Bypass Rd. This is a busy thoroughfare with a signalized intersection and numerous driveways/curb cuts in the vicinity of the sign;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the traditional billboard is pre-existing and the surrounding area is a busy commercial corridor;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because of potential negative impacts to public health and safety as well as community aesthetics;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because it includes an existing, occupied multi-tenant commercial building and a traditional billboard with current advertising signage;
6. The special conditions and circumstances do result from an action by the applicant because the property is currently being used for its intended purpose; the owner simply wishes to change the sign display type;
7. This property does not lie within a designated flood area.

Conditions

If the Board chooses to approve the requested developmental variance from Section 26.10.F.4.d, staff recommends that the following conditions be placed upon the approval:

1. Off-premise signs shall not exceed thirty-five (35) feet in height.

2. No incidental structures, lighting, components, or sign elements shall be added, which extend above the existing thirty-five foot sign height.

Photos



Attachments

Petition, appeal letter, site plan.

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, January 14, 2021 - Commenced at 6:00 P.M. & adjourned at 9:07 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney - in person
Ron Davis - online
Jeff Schaffer - online
Andrew Strycker - online

MEMBERS ABSENT

McNeal Stewart

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning
Ryan Smith, Planner

LEGAL DEPARTMENT

Randy Arndt, Deputy City Attorney

TECHNOLOGY STAFF

Victor Limon

RECORDING SECRETARY

Jennifer Drlich

APPROVAL TO AMEND AGENDA

Mulvaney states that the petitioner for 21-BZA-02 has withdrawn their request and asks the board for a motion to amend the agenda to remove the item until the next meeting.

Motion to remove item by Strycker; Second by Davis. Voice vote carries.

Trotter states that we also need to address the Election of Officers for 2021.

Schaffer nominates current officers for 2021. Second by Davis. Voice vote carries.

APPROVAL OF MINUTES FOR NOVEMBER 12, 2020 AND DECEMBER 10, 2020

Motion to approve November 12, 2020 minutes by Davis; Second by Schaffer. Voice vote carries.

Motion to approve December 10, 2020 minutes by Davis; Second by Schaffer. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Motion to approve by Schaffer; Second by Davis. Motion carries.

OPENING STATEMENT

Welcome to the January 14, 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.

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

STAFF ANALYSIS

Improvements in technology and reductions in price have led to an outdoor advertising trend away from traditional billboards to digital billboards. Some communities have enacted complete bans on digital billboards specifically, or electronic message signs more broadly. Others have elected to permit such signs in certain locations or districts, and with certain development standards. There is conflicting literature regarding digital billboards and driver distraction as compared to traditional billboards. It is often hard to control for the many variables that account for driver distraction and sometimes the studies are funded or sponsored by organizations with interests in outdoor advertising. Some studies have suggested digital billboards, especially at night, create a greater distraction in number of glances or duration of distraction. Other studies suggest the impacts are similar to traditional billboards if additional safety standards are put in place. This would include factors such as controlling brightness, lengthening dwell time, limiting video or messages that include motion, and ensuring the sign doesn't conflict with or display images that may be confused with traffic control signage. Court cases regarding regulation of billboards have upheld bans on digital signs by accepting local government arguments that the bans serve traffic safety and aesthetic interests.

As mentioned above, this billboard received several variances in 2016 to permit its construction. The need for a height variance was not identified at that time. Because the previous variances were approved for the current sign, it is appropriate to approve the variance from Section 26.10.F.4.d, to allow for a sign thirty-five (35) feet in height.

The existing billboard is approximately 35 feet from the edge of Bypass Road; it is approximately 215 feet from the center of the N Nappanee St/SR 19 and Bypass Rd intersection. Even with conditions to limit brightness and lengthen the dwell time of each sign message, conversion to a digital billboard at this location would likely lead to undesirable traffic safety conditions. In addition to proximity to the intersection, there are a number of curb cuts/driveways along both N Nappanee St/SR 19 and Bypass road near this sign. Increased driver distraction could lead to more accidents along the busy corridor. Until additional research can show that digital billboards do not lead to increased distraction when compared to traditional billboards, such conversion should not be approved at this location.

STAFF RECOMMENDATION

The Staff recommends **approval** of the developmental variance from Section 26.10.F.4.d, to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet, 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 off-premises sign already exists at 35 feet in height;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the off-premises sign already exists at 35 feet in height;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 sign already exists and was previously granted several variances for the current structure;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would require removal or complete reconstruction of the sign for which several variances were already approved;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the sign is pre-existing;
7. This property does not lie within a designated flood area.

The Staff recommends **denial** of the developmental variance from Section 26.10.F.4.h, to allow for the conversion of an existing billboard to an LED billboard, based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because the proposed digital sign could increase distractions near the intersection of N Nappanee St/SR 19 and Bypass Rd. This is a busy thoroughfare with a signalized intersection and numerous driveways/curb cuts in the vicinity of the sign;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the traditional billboard is pre-existing and the surrounding area is a busy commercial corridor;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because of potential negative impacts to public health and safety as well as community aesthetics;
4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because it includes an existing, occupied multi-tenant commercial building and a traditional billboard with current advertising signage;

**20-BZA-41 PETITIONERS ARE THE BARCLAY CORPORATION
PROPERTY IS LOCATED AT VACANT LOT, EAST BEARDSLEY AVENUE**

To also vary from Section 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet.

To also vary from Section 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet.

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

To also vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard.

To also vary from Section 26.10.F.4.j, which states in part "Off-premises signs shall not be located within thirteen hundred (1,300) feet of the St. Joseph River," to allow an existing off-premises sign three-hundred-fifty (350) feet from the St. Joseph River, a variance of nine-hundred-fifty (950) feet.

Mulvaney calls petitioner forward.

Terry O'Brien appears in person. He states that Burkhart looks forward to working with City Council and staff regarding these petitions.

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

STAFF ANALYSIS

Improvements in technology and reductions in price have led to an outdoor advertising trend away from traditional billboards to digital billboards. Some communities have enacted complete bans on digital billboards specifically, or electronic message signs more broadly. Others have elected to permit such signs in certain locations or districts, and with certain development standards. There is conflicting literature regarding digital billboards and driver distraction as compared to traditional billboards. It is often hard to control for the many variables that account for driver distraction and sometimes the studies are funded or sponsored by organizations with interests in outdoor advertising. Some studies have suggested digital billboards, especially at night, create a greater distraction in number of glances or duration of distraction. Other studies suggest the impacts are similar to traditional billboards if additional safety standards are put in place. This would include factors such as controlling brightness, lengthening the dwell time of each message, limiting video or messages that include motion, and ensuring the sign doesn't conflict with or display images that may be confused with traffic control signage. Court cases regarding regulation of billboards have upheld bans on digital signs by accepting local government arguments that the bans serve traffic safety and aesthetic interests.

In the case of this existing billboard and variance request, the south facing sign is approximately 5 feet from the property line, 20 feet from the edge of the roadway, and only 77 feet from the center of the E Beardsley Ave and Johnson St intersection. The sign is approximately 350 feet from the bank of the St. Joseph River. Because the billboard is currently legal, non-conforming with respect to several development standards of the zoning ordinance, the variances to permit the larger size, taller height, reduced setback from the property line, and reduced setback from the river, would allow the billboard to be reconstructed if damaged or abandoned. The small size and odd shape of the parcel make it unlikely to support development in accordance with the provisions of the B-2 district.

However, replacement of one of the traditional, static sign faces with a digital (LED) sign face so close to the intersection and St. Joseph River, as well as potentially being visible from the River District, would lead to undesirable traffic safety and aesthetic conditions. The proximity to the roadway and intersection would likely lead to increased driver distraction and exacerbate dangerous conditions at an already busy intersection with offset geometry, where there are also numerous curb cuts/driveways nearby. At night, the illuminated sign could interfere with visibility of the traffic control signals, especially for westbound traffic on E Beardsley Ave.

The zoning ordinance prohibits billboards within 1320 feet (one-quarter mile) of the St. Joseph River specifically to enhance aesthetics along the scenic river. The variance to reduce this setback to 350 feet is only warranted because the sign already exists. A proposed billboard seeking this variance would likely be denied. As such, conversion to a digital billboard so close to the river represents a significant negative impact to the aesthetic character along the riverfront.

Motion carries.

Schaffer makes motion to approve variance from Section 26.10.F.4.h; Strycker seconds.

Davis - No
Schaffer - No
Strycker – No
Mulvaney – No

Motion fails.

Schaffer makes motion to deny variance from Section 26.10.F.4.h; Strycker seconds.

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

Motion carries.

**20-UV-21 PETITIONERS ARE THE BARCLAY CORPORATION
PROPERTY IS LOCATED AT VACANT LOT, EAST BEARDSLEY AVENUE**

To vary from Section 26.10.F.4.a, Off-Premises Signs, which states “Off premises signs shall only be permitted in the B-3 and “M”, Manufacturing Districts” to allow for an existing off premises sign on the parcel in a B-2 District.

Mulvaney calls petitioner forward.

Terry O’Brien appears in person.

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

STAFF ANALYSIS

The existing off-premises signs are considered legal, non-conforming uses, because it is assumed they were legally permitted at the time of construction, but no longer conform to the provisions of the zoning ordinance. As indicated above, off-premises signs shall only be permitted in the B-3 and M districts.

Approval of the use variance would make the existing signs legally conforming, as opposed to legally non-conforming, for the subject property. The zoning ordinance includes provisions that state non-conforming uses shouldn’t be increased, expanded, moved, and so on. For off-premise signs, that means the sign message or copy can be changed but the remainder of the structure should remain as is, while allowing for basic maintenance. The non-conforming status remains indefinitely unless the use is destroyed, discontinued, or abandoned for more than one year. Should the sign structure be damaged beyond repair, it could not be rebuilt. Basically, the sign is already allowed to exist because of the legal, non-conforming status. Granting the variance would simply allow it to be re-built should it be discontinued or destroyed.

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 the property already contains the off-premise signs;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner because the property already contains the off-premises signs;
3. The need for the variance does arise from some condition peculiar to the property because the off-premise sign structure was already established before the ordinance limited such signs to the B-3 and M districts;
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 the signs would have to be removed and any future use of the property is unlikely given the very small size of the parcel and location at the intersection;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be developed with commercial uses.

Smith states there were 6 letters mailed, 0 returned.

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

STAFF ANALYSIS

Improvements in technology and reductions in price have led to an outdoor advertising trend away from traditional billboards to digital billboards. Some communities have enacted complete bans on digital billboards specifically, or electronic message signs more broadly. Others have elected to permit such signs in certain locations or districts, and with certain development standards. There is conflicting literature regarding digital billboards and driver distraction as compared to traditional billboards. It is often hard to control for the many variables that account for driver distraction and sometimes the studies are funded or sponsored by organizations with interests in outdoor advertising. Some studies have suggested digital billboards, especially at night, create a greater distraction in number of glances or duration of distraction. Other studies suggest the impacts are similar to traditional billboards if additional safety standards are put in place. This would include factors such as controlling brightness, lengthening the dwell time of each message, limiting video or messages that include motion, and ensuring the sign doesn't conflict with or display images that may be confused with traffic control signage. Court cases regarding regulation of billboards have upheld bans on digital signs by accepting local government arguments that the bans serve traffic safety and aesthetic interests.

In the case of this existing billboard and variance request, design of the adjacent roadway and the context of surrounding development suggest that conditions can mitigate the potential negative impacts a digital sign could create. Specifically, conditions are recommended to control brightness, limit motion, and slow the frequency of message changes to correspond to roadway speed and sight distance. This sign is also located more than 1,000 feet from the nearest signalized intersection. Additionally, the adjacent railroad right-of-way and wooded area to the north and east help to buffer the sign from the residential properties in that direction. If the Board finds to approve the variances, staff strongly suggests that all conditions be required, and that they be signed as a written commitment by the property owner and recorded against the property, to aid in enforcement should it be required.

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 off-premise sign already exist. Conversion of one sign face to a digital (LED) face will not be injurious so long as the recommended conditions are required and met;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the off-premise sign already exists, and conversion of one face to a digital (LED) face, if properly dimmed, can result in less light trespass onto adjacent properties;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed 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 parcel is limited in size and oddly shaped because of the adjacent roadway and railroad. Little other development could occur on the property;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would limit the ability of the property to be used for commercial purposes;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the existing off-premise sign is legal, non-conforming and the ordinance does not presently address digital off-premise signs in accordance with current technology;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. The variance related to illumination, to permit an LED face, shall only apply to the southeast facing sign/face.
3. Movement, including video, flashing, and scrolling, is prohibited.
4. Message sequencing, where content on one message is related to content on the next message, is prohibited.
5. The minimum time duration of each message shall be 20 seconds.
6. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
7. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
8. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
9. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
10. No sign message may depict, or closely approximate, official traffic control signage.

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

STAFF ANALYSIS

The existing off-premises signs are considered legal, non-conforming uses, because it is assumed they were legally permitted at the time of construction, but no longer conform to the provisions of the zoning ordinance. As indicated above, off-premises signs shall only be permitted in the B-3 and M districts.

Approval of the use variance would make the existing signs legally conforming, as opposed to legally non-conforming, for the subject property. The zoning ordinance includes provisions that state non-conforming uses shouldn't be increased, expanded, moved, and so on. For off-premise signs, that means the sign message or copy can be changed but the remainder of the structure should remain as is, while allowing for basic maintenance. The non-conforming status remains indefinitely unless the use is destroyed, discontinued or abandoned for more than one year. Should the sign structure be damaged beyond repair, it could not be rebuilt. Basically, the sign is already allowed to exist because of the legal, non-conforming status. Granting the variance would simply allow it to be re-built should it be discontinued or destroyed.

While the subject property is zoned B-2, it will never be developed with B-2 uses. Uses permitted in the adjacent PUD districts are comparable to those uses that would be permitted in the B-3 and B-4 districts. Additionally, rail right-of-way is adjacent to the site to the north and east, and the single-family homes beyond that are screened by a wooded area between the rail line and CR 45.

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 the property already contains the off-premise signs;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner because the property already contains the off-premises signs and additional development on the site is highly unlikely;
3. The need for the variance does arise from some condition peculiar to the property because the off-premise sign structure was already established before the ordinance limited such signs to the B-3 and M districts;
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 the signs would have to be removed and any future use of the property is unlikely given utility infrastructure and the odd shape of the parcel between South Main Street and the railroad;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be developed with commercial uses.

Smith states there were 13 letters mailed, one not in favor with comments, but the comments did not come through in the fax.

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

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

Davis - Yes

Schaffer - Yes

Strycker – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

20-X-06 PETITIONER IS NEW VISION OF LIFE CHURCH PROPERTY IS LOCATED AT 400 MISHAWAKA RD

A Special Exception per Section 4.3, Special Exception Uses in the R-1, One-Family Dwelling District, to allow for the expansion of an existing Day Care Center, to allow for school age children and up to 45 children, where previously the operation was limited to 30 children aged 2-5.

Mulvaney calls petitioner forward.

Yuhui Lu appears via WebEx. He states that he is the director of Rock Foundation Preschool and Day Care at this address. Two years ago this Board approved this church building to use a classroom as a daycare center which has since provided daycare for the

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

Motion carries.

21-X-01 PETITIONER IS FRANCISCO SESMAS AND MARIA TORRES
PROPERTY IS LOCATED AT 2215 S SIXTH STREET

A Special Exception per Section 5.3, Special Exception Uses in the R-2, One-Family Dwelling District, to allow for a Day Care Center.

Mulvaney calls petitioner forward.

Francisco Sesmas and Maria Torres appear via WebEx. He states that they are asking for a special exception for a daycare. It is one of five mentioned in previous petitions they have had. It complied with all regulations from the state. It has a state license and a capacity of 12.

Mulvaney asks for questions from the Board. Seeing none, he asks if the petitioners have seen the conditions from staff.

Sesmas states that they have; there is currently a schedule to fix the garage for this month, and there is some painting to do on the outside on the siding.

Mulvaney asks if they have any problems with any of the conditions there would be imposed

Sesmas states that they do not.

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

STAFF ANALYSIS

The petitioner owns a house that was formerly a residence on a .28-acre lot and has been using it as a daycare center for several years without the required special exception which is a violation of the zoning ordinance. Under Elkhart's zoning ordinance, a daycare in a residential house in which the provider does not live is classified as a daycare center. The business currently has a license for up to 12 children, and operates only during the summer months.

The buyer under contract, Maria Torres, currently operates several other daycares in the area. According to the Elkhart County Assessor's records state the house is 732 square feet the spatial standards for daycares are 35 square feet per child, making the space adequate for the maximum licensed capacity of 12 children. Generally speaking, Ms. Torres has a good recent record with state inspections of her operations, without an excessive number of critical violations. Records dating back to 2018 for this location have been reviewed by staff, and there have been no critical violations.

The interior of the house appears to be well established for a daycare. The exterior includes playgrounds in the front and back, and the entire property is enclosed by a fence. However, the fence has a large gate in front for the driveway; daycare staff should take care to ensure the fence is closed while children are outside. One safety violation noted that the gate was open during an inspection by the state's Family and Social Services Administration (FSSA).

The site is currently not served by sewer and water, and only a water line currently exists along Sixth Street. A sewer extension has been requested for the adjacent property to the south, and is scheduled for 2021. Should the septic system fail, it would need to be serviced until a sewer connection is available.

Staff has some concerns about the site. First and foremost are a couple of health and safety concerns. During staff's inspection, the exterior of the house had fungi growing on it. Removing this growth should be a part of normal maintenance. Additionally, the garage has a roof that's in poor condition and appears to be in danger of failing. The petitioner should repair, demolish, or block off access to the garage (with a barrier such as a fence).

Additionally, there is an unimproved driveway leading to the garage. The daycare clients are apparently using this driveway and part of the lawn area for drop off/pick up in violation of the zoning ordinance. The petitioner should install a paved parking/pick-up/drop-off area, subject to staff's prior approval.

21-BZA-01 PETITIONER IS FLEXIBLE CONCEPTS, INC
PROPERTY IS LOCATED AT 1620 MIDDLEBURY STREET

To vary from Section 26.7.E.3, Off Street Loading Requirements to allow for a proposed additional loading dock to be constructed that will require the public right of way for maneuvering to access the proposed dock.

Mulvaney calls petitioner forward.

Matt Schuster appears on WebEx for JPR, 300 Nibco Parkway, Suite 250. He states they are seeking to construct a new 20 ft. wide by 50 ft. long truck dock in front of an existing overhead door located on the east side of Riverview Avenue. It is adjacent to an existing truck dock at the northwest corner of their building. The existing dock uses the public right of way to maneuver and back in and this dock would need to do the same. They are requesting to add this dock to allow for faster loading and unloading with less queuing of vehicles on the street.

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

STAFF ANALYSIS

The petitioner owns an existing building at the intersection of Middlebury Street and Riverview Avenue. According to Elkhart County Assessor's records the property was built in 1965 and comprises approximately 134,000 square feet.

The industrial park where the building is located is older, on a corner lot, that does not afford the ability to design and build a conforming loading dock with onsite maneuvering. There is not sufficient room at the rear of the building with the way the building is configured. In order to facilitate that type of design it would be cost prohibitive due to the current building configuration.

Riverview Avenue is a minor street that serves the industrial park and the adjacent athletic fields. The timing for the trucks is infrequent enough that staff does not object to the request before this body. This will allow trucks waiting to be unloaded a space to park while waiting rather than being queued on the street.

The need for the additional dock will allow for a faster off loading and loading on their property. This request is also due to the fact that the business is growing and this dock will be of benefit to the daily business operation.

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 impacted street is low volume and the loading maneuvering is variable;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed dock will be the same size and adjacent to an existing dock on the building;
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 was developed prior to the current loading dock requirements;
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 because the structure was pre-existing;
7. This property does not lie within a designated flood area.

Smith states there were 20 letters mailed, one returned in favor with no comments.

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

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

Davis - Yes

Schaffer - Yes

Strycker - Yes

Mulvaney - Yes

Motion carries.

Kuhns states that they do not do engines so there will not be oil. The wooded area is not part of this petition. (Inaudible, not speaking into microphone.)

Mulvaney states there was also concern about anything done outside.

Kuhns states that all disassembly is done inside. They use box trucks. (Much of his statement is inaudible as he is not speaking directly into the microphone.)

Howard states that loudest noise might be a Sawzall (inaudible, not speaking into microphone).

Mulvaney requests digital displays of the pictures presented by the petitioners for all present and online. He closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner owns a 1.5-acre property located at the southwest corner of Cassopolis and McDowell Street. The property includes two buildings; a retail commercial space fronting on Cassopolis Street and an industrial/warehouse building fronting on McDowell Street. The petitioner wishes to lease the property to a business with two aspects to it – an auto salvage/recycling operation and a resale/antique shop. The latter is allowed by right in the B-3 district and would be housed in the retail building on Cassopolis Street. The auto salvage/recycling operation is not allowed by right and necessitates a variance.

The lessee has stated that the auto salvage/recycling operation would be held entirely inside of the building and no outside storage would occur. The building, which predates current ownership, is well suited to this type of operation. By containing all activity within the building, the likelihood of any nuisance or eyesores to adjacent properties is minimal.

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 it will be located entirely within an industrial building;
2. Use and value of the area adjacent will not be affected in a substantially adverse manner;
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 the space was created for industrial uses;
5. The approval of this variance will be consistent with the comprehensive plan which calls for this area to be developed with commercial uses.

CONDITIONS

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

1. All salvage activity shall occur completely within the building; outside storage of parts or salvage vehicles will not be allowed.
2. There shall be no queuing of vehicles into McDowell Street.
3. The salvage activity shall not create a nuisance to adjacent properties in the form of noise, smoke, or odor.
4. The building shall be inspected and approved for the proposed use by the Building and Fire Departments prior to operation.

Smith states there were 21 letters mailed. One returned in favor with no comment. Six returned not in favor, four with comments. There was also another email that did not explicitly state whether they were for or against. Smith reads the correspondence:

"I wholly appose [sic] to an auto salvage operation moving into the 1919 Cassopolis St address. There are many reasons why, but here are a few of the most notable ones:

1. The presence of an auto salvage operation almost directly across the street from our home will surely drive property values down drastically.
2. With vehicles in disrepair sitting so close to our home, as well as a creek, I worry what the chemicals and various biohazards present in the water runoff will do to our well water.
3. If there is an auto salvage operation nearly across the street from my home, we will lose the quiet, secluded atmosphere that was the main reason for use purchasing our home. We will lose nearly all privacy and peace.
4. There is a large wildlife population located within the wooded area that would be torn down to make room for the auto salvage location. It would be absolutely deplorable to displace so many animals that call those woods home.
5. There is already an astounding amount of crime in this area, namely burglary/theft. It is almost a guarantee that someone is going to start breaking into the derelict vehicles. What's to stop them from branching out the one of the many homes located so close by? It's almost begging them to case our homes for potential theft opportunities.

Mulvaney asks for questions from the Board. Seeing none, he calls for a motion.

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

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

Motion fails.

Schaffer makes motion to deny the petition; Second by Davis.

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

Motion carries.

Mulvaney calls for next petition to be 19-X-02U so that petitioner can leave for work on time.

19-X-02U

PROPERTY IS LOCATED AT 706 W INDIANA AVENUE

Staff and BZA review of Special Exception 19-X-02, which allowed for the establishment of a Day Care Home at 1214 Concord Avenue.

STAFF ANALYSIS

On January 7, 2019, a special exception was granted to Elvira Herrera's daycare home at 1214 Concord Avenue. The approval came with nine conditions:

1. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum of twelve (12) children, including those of the petitioner.
9. The operator of the day care home shall live on the premises.
10. The alley cannot be used for drop off and pickup, clients must park in the driveway or on the street.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by January 14, 2021.

Staff visited the site on December 29 and found the owner to be fully in compliance with the conditions placed upon the special exception. Additionally, according to the state's Family and Social Services Administration (FSSA) child care finder site, the day care has an exemplary inspection record, with no critical violations in the last three years.

STAFF RECOMMENDATION

Staff recommends that the special exception for this property remain in effect for an additional two (2) years, and that it shall be reviewed as a staff item by the Board of Zoning Appeals by January 12, 2023.

Mulvaney calls for a motion.

Schaffer makes motion to approve extension; Second by Davis.

pulling into and backing out of 60-degree parking spaces. This configuration is slightly different since the RVs will not be backing out onto the drive aisles but pulling forward; the 15' width should meet a minimum level of functionality. Another of which is the paving material – the project proposes using gravel for all parking pads and nearly all drive aisles. Staff's concern for the gravel revolves around dust – especially tracking it from the campground onto city streets, and is recommending for the drive aisles to be paved while allowing for the parking pads to be gravel. This is a similar configuration to many state campgrounds.

The petitioner has also requested relief from sidewalk requirements. This lot is in an industrial zone without public sidewalks on adjacent properties. Most (but not all) of the industrial zones in the city do not have sidewalks, nor do adjacent properties have sidewalks. Additionally, a paved sidewalk will be provided on-site to the hotel to the south.

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 drive aisles will be adequate given their configuration and a pedestrian path will be provided to the hotel to the south;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it is a low-impact design that is adjacent to more intense commercial and industrial 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 a recreational use in an industrial district;
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 drive aisles shall be paved with an all-weather, dustless, impervious, hard-surface pavement, including drainage which shall meet City specifications as prescribed by the Board of Public Works.

Smith states there were 7 letters mailed, 0 returned.

Mulvaney asks for questions from the Board. Hearing none, he asks if staff would have issue with allowing the 2 years for installation.

Trotter states he would be amenable to the 2 years with the caveat that if the gravel is not being maintained on-site that they would need to come back to the board to revisit the term of 24-months grace period.

Mulvaney calls for a motion.

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

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

Motion carries.

STAFF ITEMS

19-X-01U

PROPERTY IS LOCATED AT 706 W INDIANA AVENUE

Staff and BZA review of Special Exception 19-X-01, which allowed for the continuation of a Day Care Center at 706 W. Indiana Avenue.

ADJOURNMENT

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

Doug Mulvaney, President

Ron Davis, Vice-President

ELKHART CITY BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, July 14, 2016 – Commenced at 6:00 PM & Adjourned at 7:30 PM
City Council Chambers – Municipal Building**

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

MEMBERS PRESENT

Jackie Hughes
Jim Gouker
Ron Davis
Ann Kalman, Proxy

MEMBERS ABSENT

Doug Mulvaney
Bill Lavery

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director of Planning
Mike Bogart, Zoning Administrator

LEGAL DEPARTMENT

Larry Meteiver, City Attorney

RECORDING SECRETARY

Kathy Kalman

AMEND AGENDA TO MOVE 16-UV-15 TO END OF AGENDA

Hughes made motion to move 16-UV-15 to end of agenda, second by Ann Kalman. Motion carried.

APPROVAL OF AMENDED AGENDA

Hughes made motion to approve the agenda, second by Ann Kalman. Motion carried.

APPROVAL OF PROOFS OF PUBLICATION

Ann Kalman made motion to approve Proofs of Publication, second by Gouker. Motion carried.

OLD BUSINESS:

None

NEW BUSINESS:

**16-BZA-09 PETITIONER IS GERALD AND CYNTHIA DARLING
PROPERTY IS LOCATED AT 1407 DOTSON STREET**

Trotter asks if anyone is here representing 1407 Dotson Street. No one replied. They had indicated that they would be here this evening. This case was postponed due to family illness last month. It is up to Mr. Davis to decide to move or postpone. We could either move this to the end of the agenda after 16-UV-15. Davis indicated this case would be moved to the end of the agenda if they come or postponed until the next meeting.

such as a fence. The "Safety Barrier Guidelines for Residential Pools" publication from the Consumer Product Safety Commission states, "Barriers are not child proof, but they provide layers of protection for a child when there is a lapse in adult supervision. Barriers give parents additional time to find a child before the unexpected can occur."

The petitioner is willing to implement all of the above additional measures/layers of security while still preserving their and the adjacent neighbors view of the river with their proposed four (4) foot metal picket style fence. Staff would submit that the petitioner's submittal does not address the issue of neighboring children having the ability to gain access over the proposed four (4) foot metal picket style fence and entering the swimming pool area. The City of Elkhart's zoning ordinance is clear on the reason for the six (6) foot fence with self closing and locking gates as a general welfare and safety precautionary measure.

STAFF RECOMMENDATION

The Staff recommends **denial** of the use variance based on the following findings of fact:

1. The denial **will not** be injurious to the public health, safety, morals or general welfare of the community because with the City of Elkhart zoning ordinance calls for a six (6) fence with a self closing and locking gate to provide a measure of protection and safety for the swimming pool area;
2. The use and value of the area adjacent to the property **should not be** affected in a substantially adverse manner because the required six (6) foot fence by City of Elkhart zoning ordinance will be contained to the petitioners property;
3. Granting the variance **would not be** consistent with the intent and purpose of the Zoning Ordinance because the installation of the four (4) metal picket style and additional security measures are not a permitted substitute for the required six (6) foot fence around the swimming pool area;
4. Special conditions and circumstances **do not** exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because meeting the ordinance requirements by installing a six (6) foot fence surrounding the swimming pool is possible;
5. The strict application of the terms of this Ordinance **will not** constitute an unnecessary hardship if applied to the property for which the variance is being sought because a six (6) fence required by City of Elkhart zoning ordinance would be consistent with other swimming pools in the City of Elkhart;
6. The special conditions and circumstances **do** result from any action or inaction by the petitioner because the petitioner has elected to install an inground pool at this location that by current ordinance requirements necessitates the installation of a six (6) foot fence.

Trotter: There were 19 letters sent and two returned in favor.

Davis calls for questions for staff.

Ann Kalman comments that BZA has heard several cases regarding the height of a pool fence and suggests perhaps the Plan Commission and City Council should review the fence requirements surrounding a pool.

Hughes states that the county does allow pool covers. Gouker asks that the city has never allowed the electric cover. Trotter indicates that the state mandates a five foot fence and the city has elected to go to a six foot fence.

Abigail Gilbert asks to speak to correct a statement. She has a citation for the State of Indiana and it is a four foot requirement at the state level. She states that initially some of the jurisdictions started to go to an exception

Davis calls for anyone wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against the petition. Seeing none, he calls staff forward.

STAFF ANALYSIS

The petitioner is proposing to install an 18,000 gallon propane storage tank. The zoning ordinance requires the filing of a special exception when the storage of any liquid or gas is in excess of 10,000 gallons or when liquids or gases require filing a Tier 1 or 2 SARA (Superfund Amendment and Reauthorization Act) report or when liquids or gases exceed an NFPA (National Fire Protection Association) classification of 2.

Based on review of the plans submitted, staff finds this location is well suited for this type of use. This facility is surrounded by manufacturing uses and is located in the center of the industrial park. The proposed tank will be labeled and will utilize industry standards for safety design for the tank. The project must still be reviewed by the building department and the fire department prior to the issuance of permits. The original case was reviewed and approved by this body in 2009 – case #09-X-01.

STAFF RECOMMENDATION

Staff recommends **approval** of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare **will** be protected because the proposed use is surrounded by manufacturing uses and is proposed to be located in the section of the Planned Unit Development calling for more intense uses;
2. The Special Exception **should not** reduce the values of other properties in its immediate vicinity because intense industrial uses are permitted and the project will meet all building and fire requirements prior to construction;
3. The Special Exception **shall** conform to the regulations of the zoning district in which it is to be located because this use is listed as Special Exception in the M-1 and M-2 districts and the activity shall not cause a nuisance from noise, smoke or odor.

CONDITIONS

1. A copy of the annual SARA report shall be provided to the Planning Department for permanent record.
2. Any change in the chemicals, other than what was indicated in the original application or any increase in the amount of chemicals in the original application, will require a new special exception application to the Plan Commission.

Trotter: There were 14 letters sent, none returned and this comes from the Plan Commission with a Do-Pass recommendation.

Davis calls for a motion.

Hughes made motion to approve 16-X-03 and adopt the staff's conditions, second by Ann Kalman.

Hughes – Yes

Ann Kalman – Yes

Gouker – Yes

Davis – Yes

Gouker made motion to approve 16-X-04, second by Hughes.

Gouker – Yes

Hughes – Yes

Ann Kalman – Yes

Davis – Yes

**16-UV-14 PETITIONER IS BOARD OF PUBLIC WORKS – CITY OF ELKHART
PROPERTY IS LOCATED AT VACANT LAND FREMONT STREET**

To vary from Section 6.2, Permitted uses in the R-3, Two Family Dwelling District to allow for the construction of a greenhouse (high tunnel style); greenhouses are not listed as a permitted use. This request serves as an amendment to a previous case 13-UV-04 for a community garden. That request was approved in 2013.

Davis calls the petitioner forward.

Natasha Kauffmann from Church Community Services indicates there were awarded a grant through the Community Foundation of Elkhart County to set up a greenhouse. They saw fit to give CCS a grant because they saw the value of having a greenhouse which is directly behind the campus of CCS. This saves a drive to their space in Middlebury but also because they see the value to having it in the community to better train folks. Different groups work in the garden and attend classes in the winter. They hope to teach folks how to grow vegetables themselves. The same arguments they used in 2013 for a community garden apply to this request. It correlates with the goals to improve quality of life in the neighborhood. They think their program has succeeded since 2012. The thing they really value about that garden space is that it allows people the opportunity to pick vegetables for themselves. They hope to build this in the beginning of August and get things put in the ground to have root vegetables by February.

Davis asks if the produce will be for sale or given away. Kauffmann states they do not plan on selling produce. They are considering using donated seeds to plant hanging baskets for a fundraiser in the spring. The vegetables grown in the ground will go directly to the food pantry.

Davis asks for any questions. Seeing none, he calls for anyone else wishing to speak in favor of this request.

Jimmy Furlow lives directly across the street and is appreciative of the work done at CCS.

Davis calls for anyone else wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against this request. Seeing none, he calls staff forward.

STAFF ANALYSIS

The petitioner is seeking approval to use a vacant land parcel along Fremont Street as a Community Garden that would also consist of the addition of a High Tunnel Greenhouse to the property.

The Elkhart based Church Community Services, with easement permission from the Board of Public Works, will use the vacant land parcel as a Community Garden area, which passed the Board of Zoning Appeals on April 11, 2013. (13-UV-04)

Church Community Services would now add a High Tunnel Greenhouse, which has an overall height of twelve (12) feet, a width of twenty-four (24) feet and an overall length of ninety-six (96) feet. The structure would be secured using 10"-12" inch diameter by 28"-32" inch concrete anchors with a spacing of four (4) feet on center for the entire length of the structure. Each concrete anchor will have a forty (40) inch by 2.197" inch galvanized steel tube inserted. The framing of the structure will consist of galvanized steel tubing and secured with carriage bolts and brace bands. The entire structure is then enclosed using a four (4) year six (6) Mil IRAD Greenhouse Cover.

Hughes – Yes
Davis – Yes

16-BZA-13 PETITIONER IS MARTIN'S SUPERMARKET
PROPERTY IS LOCATED AT 3800 EAST MISHAWAKA ROAD

To vary from Section 26.10.D.4.c.ii, which states in part, "The permitted height of a free standing sign may be increased at the rate of one (1) foot for every two (2) feet the sign is located in excess of the required five (5) feet minimum distance from the right of way. The sign may be increased in height to a maximum of twenty feet", to allow for the placement of a free standing sign at a height of twenty-eight (28) feet at a distance of forty (40) feet from the right of way, a variance of eight (8) feet.

To also vary from Section 26.10.D.4.c.i, which states, "The permitted size of a free-standing sign face may be increased at the rate of two (2) square feet for every one (1) foot the sign is located in excess of the required five (5) feet minimum distance from the right-of-way" to allow for same sign to be 140.875 square feet in area plus an integrated message board of 55.125 square feet (representing a total of 196 square feet), where 75 square feet maximum sign area is allowed plus an integrated message board of 37.5 square feet (representing a total of 83.5 square feet), for a variance of 83.5 square feet.

Davis calls petitioner forward.

Randy Whiteman with US Signcrafters speaking on behalf of Martin's Supermarkets. Signs look smaller in reality than what they might look like if you were standing next to them. The sign in the proposed location is not out of scale with the property or the use of the building and the architecture or the neighborhood. It is hundreds of feet off the road and they feel that the proposed sign needs to be of this size in order to be effective for advertising and for way-finding and ingress/egress for safe travel of its customers.

Davis asks if this is the same size as other locations. Whiteman indicates yes. The last page of the drawing is the sign that appears at Cassopolis Street. This sign looks different but it is exactly the same square footage and height. They try to do the same sign at every location to build their brand and their recognition in the community. Martin's is a fabulous corporate citizen and they do a lot of good in the community.

Hughes asks if the sign faces Mishawaka Road and if there will be any additional signage at Center Drive. Whiteman says he is not aware of any signs at Center Drive but there are wall signs on the store itself.

Davis asks for any further questions. Seeing none, he calls for anyone wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against the petition. Seeing none, he calls staff forward.

STAFF ANALYSIS

Petitioner is seeking this Developmental Variance to erect a twenty-eight (28) freestanding sign at the new Martins Supermarket located at 3800 East Mishawaka Road at a distance of forty (40) from the right of way. The City of Elkhart zoning ordinance allows a freestanding sign to have a maximum height of twenty (20) feet when located thirty-three (33) feet from the right of way. This request exceeds the maximum height allowed by eight (8) feet.

Petitioner is also seeking a Developmental Variance for to allow for a sign face size of 140.875 square feet in area with the addition of an integrated message board having a size of 55.125 square feet. Both of which when calculated would have a total square footage of 196 square feet, where seventy-five (75) square feet maximum sign area is allowed plus the addition of a integrated message board of thirty-seven and a half (37.5) square feet, which totals eighty-three and a half (83.5), hence the need for the variance of 83.5 square feet.

In 2006, Concord Mall requested an amendment to the Planned Unit Development to establish a comprehensive sign package, creating a cohesive freestanding, wall and directional signage. The goal was to unify and

Davis – Yes

16-UV-16 PETITIONER IS BYPASS ROAD DEVELOPMENT, LLC
PROPERTY IS LOCATED AT 2101 BYPASS ROAD

To vary from Section 26.10.F.4.a, Off-Premises Signs, which states “Off premises signs shall only be permitted in the B-3 and “M”, Manufacturing Districts” to allow for the placement of a new off premises sign on the parcel. The land will be rezoned to B-2, Community Business District to match the proposed use as quick serve restaurant and retail uses.

Davis calls petitioner forward.

Arvin Delacruz, architect with Abonmarche Consultants. They are requesting a variance that would be consistent with the redevelopment with the two parcels into a single parcel that is also consistent with the City of Elkhart Comprehensive Plan. As such, they are seeking signage for off-premise signs for the property. The property is currently B-3 and M and it is going to be B-2. They are going to have quick serve restaurants and as such they want to demolish two off-premise signs and in lieu of that, place one newer off-premise sign. It becomes a gateway corridor into Elkhart. They feel it enhances the location as well as the aesthetics of the area.

Davis calls for any questions.

Hughes states they are taking down two billboards and adding another large outdoor sign. She asks if that sign will not be advertising the businesses behind it.

Delacruz indicates that is correct. That sign will be a billboard similar to the billboard that is currently there but they want to consolidate that and have one newer billboard on the property.

Hughes asks if the billboard is larger than what exists.

Delacruz indicates the billboard will be 14 x 48 and it is going to be 18 feet from the grade. It will also be high enough that it is not going to impact the visibility of the buildings behind it.

Terry O'Brien from Burkhart Advertising. The larger of the two signs that are currently there is the same size as what they are putting back up. One sign is 14 x 48 and one is 12 x 25. Both are being removed and one 14 x 48 is going back up.

Hughes asks about the development of the property behind it and if there will be monument signage.

Delacruz indicates there will be signage for the business that will be compliant with the signage ordinance for the city. That signage will only be on the building.

Davis calls for anyone else wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against the petition. Seeing none, he calls staff forward.

STAFF ANALYSIS

Petitioner is seeking the Use Variance to remove the two (2) existing off-premise signs that are currently on the property and erect a off premise sign in the front yard area at 2101 Bypass Road (fka 309 and 415 North Nappanee Street)

The purpose of the Zoning Ordinance is to encourage growth and development of the City in accordance with our comprehensive plan. Two of the specific purposes of the ordinance are to provide for the gradual elimination of non-conformities and to regulate the location, height, bulk, area and use of buildings, structures and intensity of use of land. Furthermore, the sign regulations section of the ordinance states in part, ‘to provide

not be the case by the time construction is underway. The filing of the rezoning to B-2, was a condition of the prior board action. It is unusual, but sequentially the rezoning may take effect before this is reinstalled.

Ann Kalman made motion to approve 16-UV-16 and include staff's condition, second by Hughes.

Ann Kalman – Yes

Hughes – Yes

Gouker – Yes

Davis - Yes

16-BZA-14 PETITIONER IS BYPASS ROAD DEVELOPMENT, LLC

PROPERTY IS LOCATED AT 2101 BYPASS ROAD (fka 309 and 415 NORTH NAPPANEE STREET)

To vary from Section 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located two (2) feet from the property line, a variance of 28 feet.

To also vary from Section 26.10.F.4.k, which states in part, "Off premises signs shall not be located in the front yard", to allow the reconstructed sign to be placed in the front yard", to allow the sign to be located in the front yard adjacent to ByPass Road.

Davis calls petitioner forward.

Arvin Delacruz with Abonmarche Consultants. Due to the layout of the property and the routing of the roads for the drive-through, the location that can accommodate the sign is on the front of the building. The sign will not impede the views of the building.

Davis calls for any questions.

Hughes asks if the sign will be visible in two directions. Delacruz responded yes and permits will be obtained and placement of sign will be reviewed with INDOT who also has jurisdiction on that location.

Davis calls for anyone else wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against the petition. Seeing none, he calls staff forward.

STAFF ANALYSIS

Petitioner is seeking the Developmental Variance to remove the two (2) existing off-premise signs that are currently on the property and erect an off-premises sign in the front yard area at 2101 ByPass Road (fka 309 and 415 North Nappanee Street). The City of Elkhart zoning ordinance states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located".

The petitioner is seeking to place the new off-premise sign in the front yard with a setback of two (2) feet from the property line where the requirement of thirty (30) feet is required. Hence the need for the twenty-eight (28) foot variance.

The two (2) older Off-premise signs on the property are to be removed prior to the construction of the new sign.

The petitioner believes the new Off-Premise will afford passing motorist's the opportunity and ability to have a more visible sign to view showing places for a quick serve restaurant and additional retail use along this corridor into the City of Elkhart while not causing any additional visual clutter or visual obstruction for passing vehicular traffic.

come in from out of town. They have five rv craftsmen who are trying to get out of the rat race of running hundreds of units a day. They want to apply their trade doing recovering and installation which is more tedious work but it is slow and methodical. People leave our county happy that they got what they need. There are a lot of rallies at the county fair and they will have booths set up there. They recently obtained a permit to install a 14 x 14 overhead door so that all work can be done inside. There is a Holiday Inn right behind this building and handy for rv owners to stay should their unit require more time for work.

Davis asks if they will be replacing furniture in rv's. Nickel says yes. If the customer wants to keep the same furniture it will be removed and reupholstered.

Hughes asks if they will assemble new furniture or just upgrading and installing. Nickel says yes and there will be a small retail showroom in the front.

Hughes asks if they are using the existing signage. Nickel says yes. Most of his customers find them through the internet or through shows.

Gouker asks if they are selling new furniture. Nickel says yes. Oftentimes a new piece doesn't fit and his staff can make it fit. Even pieces they manufacture can also require some adjustment to fit.

Davis calls for other questions. Seeing none, he calls for anyone wishing to speak in favor of the petition. Seeing none, he calls for anyone wishing to speak against the petition. Seeing, none he calls staff forward.

STAFF ANALYSIS

The petitioner is seeking a use variance for the property located at 3606 South Nappanee Street, which formerly housed the 10,792 square foot Grainger facility. The property in question is currently located in the PUD (Planned Unit Development) B-3, Service District, which does not allow for the petitioners proposed use of light assembly and the installation operations.

If the use variance is granted the petitioner is proposing to use the property for the sales of RV aftermarket products in 90% of the facility, with the remaining 10% of the facility used for light assembly and the installation of RV furniture.

The petitioner states he will be adding up to ten (10) employees to the proposed business who will be handling all of the operations of installation work at the facility in doors to prevent any undue noise, vibration, smoke, heat or odors.

The petitioner will be installing an additional fourteen (14) foot by fourteen (14) foot overhead door on the south side of the building for receiving materials and product.

STAFF RECOMMENDATION

The Staff recommends **Approval** of the use variance based on the following findings of fact:

1. The approval **will not** be injurious to the public health, safety, morals and general welfare of the community because the light assembly and installation operations will be maintained inside of the building;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the proposed use is adjacent to the M-1, Limited Manufacturing District, which allows similar uses;
3. The need for the variance **does** arise from some condition peculiar to the property because the proposed use is not permitted in the PUD, Planned Unit Development B-3, Service Business District;

December 18, 2023

Indiana Michigan Power (AEP)
ATTN: David Herman
1335 Mishawaka Ave
South Bend, IN 46615

Petition #23-BZA-39
VACANT LOT US 33, PARCEL 20-06-22-426-004.000-011

Dear David Herman,

This letter certifies that the Elkhart City Board of Zoning Appeals, at its regular meeting on **Thursday, December 14, 2023**, heard the above petition to vary from Section 26.10.F.4.h, which states "Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited," to allow for the conversion of an existing billboard to an LED billboard, 26.10.F.4.c, which states in part, "Off premises signs shall not exceed three hundred (300) square feet in area, to allow for an existing off premises sign of 672 square feet, a variance of 372 square feet, 26.10.F.4.d, which states in part "Off-premises signs shall not exceed thirty (30) feet in height," to allow for an existing off-premises sign thirty-five (35) feet in height, a variance of five (5) feet, 26.10.F.4.f, which states in part, "Off premises signs shall be located behind the required building setback line of the lots on which they are located" to allow the sign to be located five (5) feet from the property line, a variance of 25 feet.

The commission voted **4 to 0 to approve** the request with conditions:

If the Board chooses to approve the requested Developmental Variance, staff recommends that the following condition be placed upon the approval:

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 10 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.
8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage



Staff Report

Planning & Zoning

<u>Petition:</u>	24-BZA-03
<u>Petition Type:</u>	Developmental Variance
<u>Date:</u>	February 8, 2024
<u>Petitioner:</u>	Nancy Shaum
<u>Site Location:</u>	Vacant Land Toledo Road – parcel - 06-11-251-013
<u>Request:</u>	To vary from Section 12.4 Yard Requirements in the B-2, Community Business District, to allow for a ten (10) foot rear yard setback where twenty (20) feet is required, a variance of ten (10) feet.
<u>Existing Zoning:</u>	B-2, Community Business District
<u>Size:</u>	+/- 1.3 Acres
<u>Thoroughfares:</u>	Toledo Road
<u>School District:</u>	Concord Community Schools
<u>Utilities:</u>	Available to site.

Surrounding Land Use & Zoning:

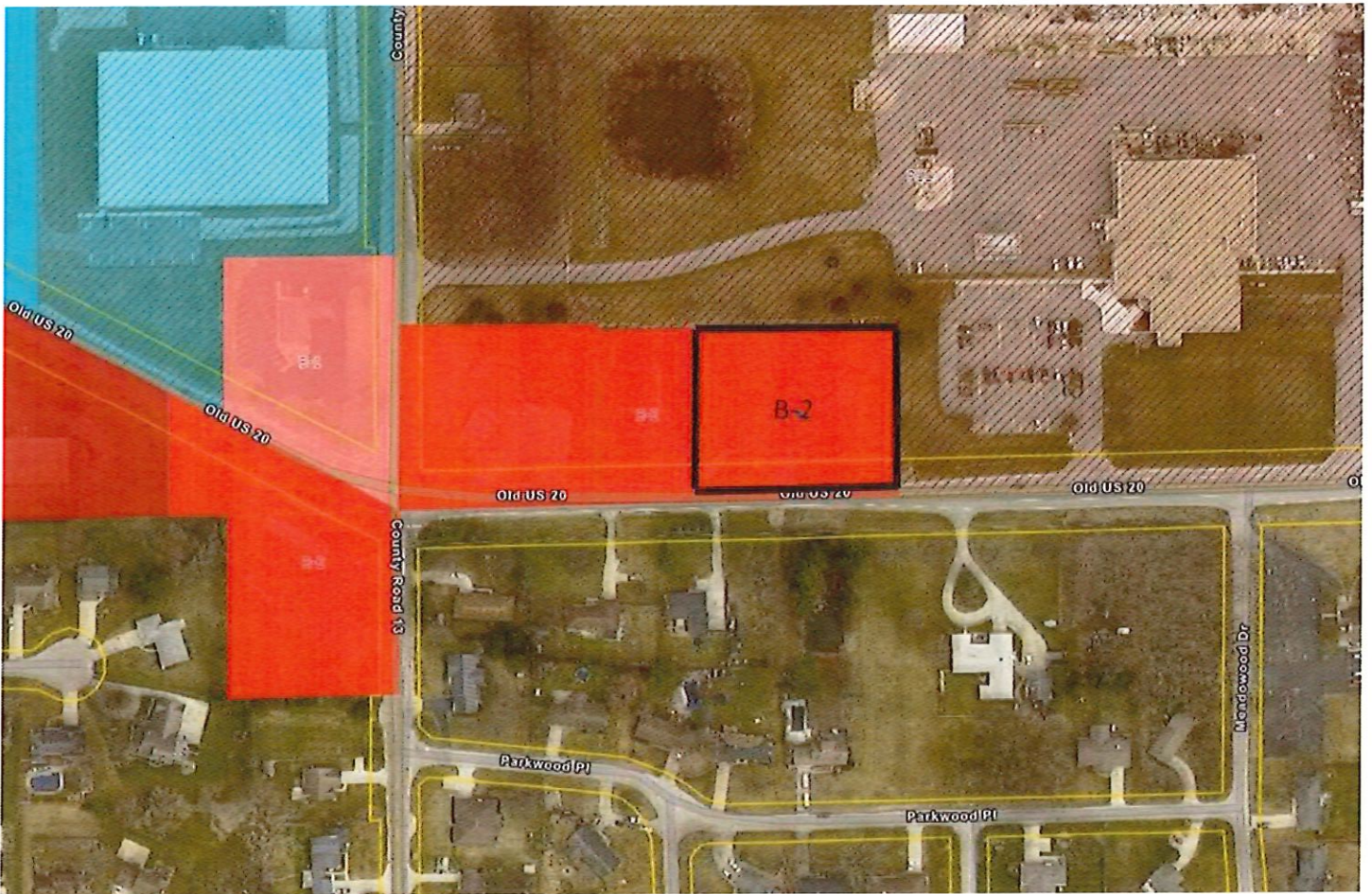
The property is located along an arterial road within a cluster of primarily commercial retail and office uses to the west and the north. Property to the east and south, while located within the county, are low density residential, religious and small commercial office uses.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be developed with industrial uses.



Staff Analysis

The petitioner owns the approximately 1.3 acre parcel on the north side of Toledo Road, east of Middleton Run Road. The developer has submitted a proposal to develop the property as a 16,000 square foot building, with associated areas for off-street loading and parking.

The site is located on Toledo Road, an arterial road within the city. The proposed building, again submitted with the request, has no end user and use is still unknown. As a staff, we struggle to support unknown uses and users. Staff would suggest that once there is a development proposal with more details, we would be open to a larger discussion around the site and potential accommodations for the end use that meets the district's intent and purpose.

The property is currently zoned B-2, Community Business District. The comprehensive land use plan does reflect industrial use for this area, drawing from the density of industrial uses found north and west of the site. Petitioner had previously submitted a petition to rezone the property to M-1, Limited Manufacturing District. At council, the ordinance failed to progress for lack of a second motion.

The Toledo Road corridor effectively serves as the southern boundary of the Corporate limits in this area connecting the City to the US 20 bypass, with a mix of City and County properties fronting on the road. Land uses in the corridor between Goshen Avenue and Middleton Run Road is characterized by a mix of commercial, industrial and multi-family uses. Land Uses east of Middleton Run Road, where the subject property is located, become less intense, with a larger presence of lower density single-family residential and small office uses. While the Comprehensive Land Use Plan does call for Industrial Use at this site, the character of the uses

immediately surrounding the subject property are not conducive to manufacturing or production uses, but would be better suited to supporting neighborhood or community business uses.

Recommendation

The Staff recommends **denial** 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 reduced Rear Yard Setback will not place the proposed structure at an unsafe distance from surrounding structures,
2. The use and value of the area adjacent to the property **will** be affected in a substantially adverse manner because of the proximity of higher intensity manufacturing and productive uses allowed within the M-1 limited manufacturing uses;
3. Granting the variance **would not be** consistent with the intent and purpose of this Ordinance because the proposed building design is driving the request for the variance;
4. Special conditions and circumstances **do not exist** which are particular to this property as the proposed building could be constructed within the required development standards;
5. The strict application of the terms of this Ordinance **will not** result in practical difficulties in the use of the property as it the parcel is of sufficient size and has access to the utilities necessary to develop within B-2 standards;
6. The special conditions and circumstances **do** result from an action or inaction by the applicant as the proposed building design is driving the request for the variance;
7. This property does not lie within a designated flood hazard area.

Photos



PETITION #: 24-B2A-03

FILING FEE: \$ 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

☒ Developmental Variance ☐ Appeal from Staff Decision
☐ Use Variance ☐ Special Exception ☐ Conditional Use

Property Owner(s): Nancy V. Shaum c/o Mid-States Construction
Mailing Address: 57157 Raider Drive, Elkhart, Indiana 46514
Phone #: 574-264-9547 Email: MidStates@MidStatesConstruction.com

Contact Person: Wightman c/o Terry Lang
Mailing Address: 1402 Mishawaka Avenue, South Bend, Indiana 46615
Phone #: 574-233-1841 Email: TLang@GoWightman.com

Subject Property Address: 3246 TOLEDO ROAD, ELKHART, INDIANA
Zoning: B-2 Community Business District
Present Use: vacant land Proposed Use: light assembly business

NOTE: The petitioner is the legal property owner of record, or a certified representative, and agrees the above information is accurate. Failure to provide a legal signature or accurate information will make this application null and void.

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Nancy V. Shaum

SIGNATURE(S): Nancy V. Shaum DATE: 1-4-'24

STAFF USE ONLY:

Staff Checklist for the applicant's submittal of a complete Petition to the Board of Appeals docket:

- ☒ One copy of the Appeal Letter signed in ink by the owner (or representative) of the property.
- ☒ A completed Petition form signed by the legal owner of record (or approved representative).
- ☒ If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.
- ☒ A full and accurate legal description of the property.
- ☒ One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 12 copies must be submitted.
- ☐ Optional: any supplementary information the applicant may wish to include.

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

January 2, 2024


TO: Board of Zoning Appeals
City of Elkhart, Indiana

RE: Developmental Use Variance

The undersigned petitioner respectfully shows the Council and Plan Commission:

1. We, Nancy V. Shaum, owner of the following described real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:
A part of the West Half of the Northeast Quarter of Section 11, Township 37 North, Range 5 East, in Concord Township, City of Elkhart, Indiana. Beginning at the southwesterly corner of the recorded plat of Middlebury Street Industrial park (Elkhart Plat Book 20, Page 12), said point also lying on the south line of said Quarter Section; thence South 89 degrees 14 minutes West along the South line of said Quarter Section a distance of 264 feet; thence North 00 degrees 04 minutes East a distance of 220.20 feet to an iron stake on the southerly line of said recorded plat; thence north 89 degrees 15 minutes 25 seconds east (north 89 degrees 15 minutes East recorded) along the southerly line of said plat a distance of 264 feet to an iron stake; thence South 00 degrees 04 minutes West along the southwesterly line of said recorded plat a distance of 220.17 feet to the beginning point of this description.
2. The above described real estate presently has a zoning classification of a B-2 Community Business District under the Zoning Ordinance of the City of Elkhart.
3. Petitioner presently occupies the above described property in the following manner:
The site is currently vacant.
4. Petitioner desire to construct a building with the appropriate number of parking spaces for the facility. The shallow depth of the lot is not adequate to accommodate enough parking space without pushing the building into the required 20' rear yard setback. **Therefore needing a rear yard setback variance from the required 20' to a 10' rear yard setback.**
5. Is in accordance with Comprehensive Plan: Yes, this shall follow the continuity of the surrounding area and stay within the City's Comprehensive Plan.
Current conditions and the character of current structures and uses in each district: The new construction shall follow the continuity of the surrounding area and shall meet the construction and zoning guidelines.
The most desirable use for which the land in each district is adapted: light assembly business is similar to companies that exist within this area, this facility is well suited for the needs within the area.
The conservation of property values throughout the jurisdiction: This new construction shall closely follow the continuity of the surrounding area and shall not adversely affect the use and value of the area adjacent to the property.
Responsible growth and development: The new development will not be injurious to the public health, safety, morals and general welfare of the community. This shall help promote positive growth.

WHEREFORE, Petitioners pray and respectfully requests a hearing on this appeal and that after such hearing, the Plan Commission make a do pass recommendation and the Council, after hearing, pass on appropriate ordinance rezoning the above described parcel of land located in the City of Elkhart to Planned Unit Development or amending the PUD as described on the petition.


Nancy V. Shaum

Contact Person:
Wightman c/o Terry Lang
1402 Mishawaka Avenue
South Bend, Indiana 46615
574-233-1841
TLang@GoWightman.com

Legal Description:

A part of the West Half of the Northeast Quarter of Section 11, Township 37 North, Range 5 East, in Concord Township, City of Elkhart, Indiana.

Beginning at the southwesterly corner of the recorded plat of Middlebury Street Industrial park (Elkhart Plat Book 20, Page 12), said point also lying on the south line of said Quarter Section; thence South 89 degrees 14 minutes West along the South line of said Quarter Section a distance of 264 feet; thence North 00 degrees 04 minutes East a distance of 220.20 feet to an iron stake on the southerly line of said recorded plat; thence north 89 degrees 15 minutes 25 seconds east (north 89 degrees 15 minutes East recorded) along the southerly line of said plat a distance of 264 feet to an iron stake; thence South 00 degrees 04 minutes West along the southwesterly line of said recorded plat a distance of 220.17 feet to the beginning point of this description.

AFFIDAVIT IN SUPPORT OF VARIANCE PETITION

I, Nancy V. Schaum, being first duly sworn upon his/her oath deposes and says that he/she is familiar with and has personal knowledge of the facts herein and, if called as a witness in this matter, would testify as follows:

1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
2. I make this affidavit in support of my variance petition filed contemporaneously herewith.
3. I am now and at all times relevant herein have been, the owner of record of the property located at 3246 TOLEDO ROAD, Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 4th day of Jan 20, 2024

Printed: Nancy V. Schaum

I certify under the penalties for perjury under the laws of the United States of America and the State of Indiana that the foregoing factual statements and representations are true and correct.

Printed: Katie Yoder

STATE OF INDIANA)

) SS:

COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Nancy V. Schaum, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 4th day of January, 2024.

Printed: Stephen H. Musbaum

My Commission Expires:

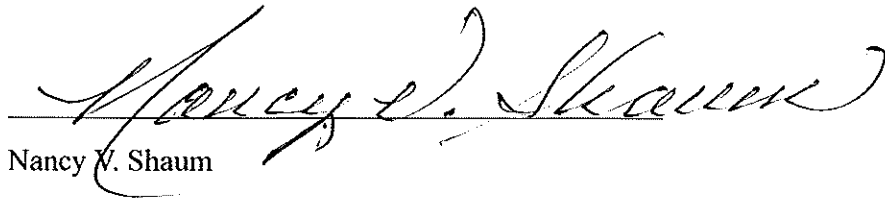
June 01, 2024

Notary Public in and for the State of Indiana
Resident of Elkhart County, Indiana

LETTER OF AUTHORIZATION

January 4, 2024

I, Nancy V. Shaum, hereby authorize the Wightman firm by Terance D. Lang to submit a petition for the Board of Zoning Appeals for a rear yard setback variance at my property located at 3246 Toledo Road, Elkhart, Indiana.


Nancy V. Shaum

SECTION 12

B-2 COMMUNITY BUSINESS DISTRICT

Section

- 12.1 Purpose**
 - 12.2 Permitted Uses**
 - 12.3 Special Exception Uses**
 - 12.4 Yard Requirements**
 - 12.5 Required Conditions**
 - 12.6 Supplemental Regulations**
-

12.1 Purpose

The B-2 District is designed to provide for business or service establishments located along major street corridors. These establishments are intended to serve the needs of consumers beyond the immediate neighborhood, but are not regional in focus.

12.2 Permitted Uses

- A. All Permitted Uses under the B-1 Neighborhood Business District without size restriction.
- B. Amusement parlors.
- C. Appliance Stores
- D. Auction Rooms
- E. Convenience Stores
- F. Department Stores
- G. Dry Cleaning and Laundromats
- H. Financial Institutions
- I. Grocery and Food Stores
- J. Hotels and Motels
- K. Indoor Recreation
- L. Liquor Stores
- M. Medical Supply Stores
- N. Motor Vehicle Service Stations, including oil change facilities and minor motor vehicle repair

- O. Motor Vehicle Wash, Self and Full Service
- P. Movie and stage theaters, including dinner theaters
- Q. Outdoor Sales, if accessory to primary use and is less than fifteen percent (15%) of interior sales area.
- R. Pet Stores
- S. Photography Studios
- T. Professional and Business Offices
- U. Restaurants and Catering, including those with drive-thru service, alcoholic beverage service, or outdoor dining up to fifty percent (50%) of the interior seating
- V. Retail Businesses (sales and/or service)
- W. Shopping Centers, not greater than one hundred twenty thousand (120,000) square feet in area.
- X. Taverns
- Y. Video Rental
- Z. Wireless Communication Facilities, as defined in Section 27 of this ordinance. (as amended per Ordinance No. 4457 on December 8, 1999).
- AA. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

12.3 Special Exception Uses

- A. All Special Exception Uses under B-1 Neighborhood Business District
- B. Airports or aircraft landing fields and heliports
- C. Charitable Organizations
- D. Cultural and sports facilities including but not limited to auditoriums, stadiums, arenas, museums, and planetariums
- E. Homeless or temporary shelter providing housing and/or meals
- F. Tattoo Parlors
- G. Trade Schools

SECTION 11 B-1 NEIGHBORHOOD BUSINESS DISTRICT

Section

- 11.1 Purpose
 - 11.2 Permitted Uses
 - 11.3 Special Exception Uses
 - 11.4 Yard Requirements
 - 11.5 Development Conditions
 - 11.6 Supplemental Regulations
-

11.1 Purpose

The B-1 District is designed to accommodate convenient and accessible business and service establishments with less than seven thousand five hundred (7,500) square feet of floor area. The intent is to serve the daily convenience needs of surrounding residential neighborhoods.

11.2 Permitted Uses

- A. Bakery Shop, to include only the baking and processing of food products for retail sale only on the premises.
- B. Barber and Beauty Shops
- C. Book Store
- D. Candy/Ice Cream Shop
- E. Delicatessen
- F. Drug Store
- G. Dry Cleaning, pick up or delivery
- H. Florist
- I. Food Store, Retail
- J. Laundromat
- K. Medical and Dental Offices and Clinics
- L. Offices, business and professional
- M. One residential dwelling located above or to the rear of a commercial use if occupied by the owner of the commercial use or the owner of the property.
(amended per Ordinance No. 4405 on March 1, 1999)

- N. Restaurant or Cafe, excluding drive-in restaurant, serving non-alcoholic beverages only, and including outdoor dining up to fifty percent (50%) of the interior seating.
- O. Police and fire stations, located on a primary or thoroughfare street
- P. Post office branch
- Q. Other retail sales and service businesses serving the immediate neighborhood
- R. Funeral Homes, Crematories and Similar Services (as amended per Ordinance No. 4431 on July 23, 1999)
- S. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

11.3 Special Exception Uses

- A. Churches
- B. Convents, monasteries, rectories, parish houses
- C. Parks, playgrounds, and community centers
- D. Public utilities and public service uses including but not limited to:
 - 1. Fire Station, located on streets other than Primary or Thoroughfare
 - 2. Police Station, located on streets other than Primary or Thoroughfare
 - 3. Public Utility Facilities
- E. Recreational Buildings, public or non-profit
- F. Public schools, elementary and secondary
- G. Sheltered Living Home
- H. Meeting Hall/Banquet Facility
(As amended Ordinance No. 4683 July 10, 2002)

11.4 Yard Requirements

Yard requirements for the B-1, Neighborhood Business District are as follows: (All standards are minimums except as noted.)

"Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street."