AGENDA
ELKHART CITY BOARD OF ZONING APPEALS
THURSDAY, FEBRUARY 9, 2023 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 **157 230 2962** as the meeting number and "**BZA2021**" 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 jennifer.drlich@coei.org prior to the meeting.

1. **ROLL CALL**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES - JANUARY 12, 2023**
4. **APPROVAL OF PROOFS OF PUBLICATION**

5. **OLD BUSINESS**

22-UV-21 PETITIONER IS CITY OF ELKHART DEPARTMENT OF PARKS AND RECREATION
PROPERTY IS LOCATED AT 3499 NEWTON DR
To vary from Section 26.4.2, Permitted Use in the R-1, One-Family Dwelling District to allow for the installation of a new wireless communication facility with a one hundred thirty-five foot 135 foot tall cell tower.

23-BZA-02 PETITIONER IS DANIEL B TISER
PROPERTY IS LOCATED AT 1738 CASSOPOLIS ST
To vary from Section 26.4.A.1 – Fence Requirements, which only allows barbed wire on fences in manufacturing districts above seven (7) feet, to allow for a barbed wire fence above a six (6) foot chain link fence on a property zoned B-3, Service Business District and R-2, One-Family Dwelling District.

To also vary from Section 26.4.A.6 – Fence Requirements, which only allows split rail, wrought iron, and open picket fences not to exceed four (4) feet in a front or corner side yard, to allow a six (6) foot chain link fence with barbed wire above in a front and corner side yard on a through lot.

23-BZA-05 PETITIONER IS M M LYNN LLC
PROPERTY IS LOCATED AT 2016 BORNEMAN AVE
To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

To vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

6. **NEW BUSINESS**

23-BZA-06 PETITIONER IS WILLIE AND DOROTHY ROBINSON
PROPERTY IS LOCATED AT 1659 ROYS AVE
To vary from Section 5.4 of the R-2 One-Family Dwelling District Yard Requirements to allow the construction of a new home at a setback of four (4) feet nine (9) inches from the public right-of-way of East Cleveland Avenue. A reduction of two (2) feet three (3) inches from the Established Setback of seven (7) feet.

7. **STAFF ITEMS**

19-X-01U PETITIONER IS S W E INC AN IN CORP
PROPERTY IS LOCATED AT 706 W INDIANA AVE
Daycare review

19-X-02U PETITIONER IS ELVIRA AND ONECIMO HERRERA
PROPERTY IS LOCATED AT 1214 CONCORD AVE
Daycare review

8. **ADJOURNMENT**

PLEASE REMEMBER TO USE YOUR MICROPHONE WHEN SPEAKING.
ERRORS IN THE MINUTES MAY RESULT DUE TO VOICES BEING INAUDIBLE.

BOARD OF ZONING APPEALS
-MINUTES-
Thursday, January 12, 2023 - Commenced at 6:00 P.M. & adjourned at 7:38 P.M.
City Council Chambers – Municipal Building

MEMBERS PRESENT
Doug Mulvaney
Ron Davis
Andy Jones
Janet Evanega (Proxy)

MEMBERS ABSENT
None

REPRESENTING THE PLANNING DEPARTMENT
Ryan Smith, Planner
Nathan Hooley, Planner

LEGAL DEPARTMENT
Maggie Marnocha

TECHNOLOGY STAFF
Matt Griggs

RECORDING SECRETARY
Jennifer Drlich

APPROVAL OF AMENDED AGENDA
Mulvaney notes the petitioner for 22-UV-21 has requested to table until February.

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

APPROVAL OF MINUTES FOR DECEMBER 8, 2022
Jones makes motion to approve; Second by Davis. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION
Davis makes motion to approve; Second by Jones. Voice vote carries.

OPENING STATEMENT
Welcome to the **January 12, 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.

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OLD BUSINESS

22-UV-21 PETITIONER IS CITY OF ELKHART DEPARTMENT OF PARKS AND RECREATION
PROPERTY IS LOCATED AT 3499 NEWTON DR
To vary from Section 26.4.2, Permitted Use in the R-1, One-Family Dwelling District to allow for the installation of a new wireless communication facility with a one hundred thirty-five foot 135 foot tall cell tower.

Mulvaney notes the Park Board has requested a postponement until February 9, 2023.

Jones makes motion to table; Second by Davis.

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

Motion carries.

22-BZA-41 PETITIONER IS BEARDSLEY 530 LLC
PROPERTY IS LOCATED AT 530 W BEARDSLEY AVE
To vary from Section 6.4, Yard Requirements in the R-3 District, which requires corner side yard setbacks to be the established setback. The established setbacks at this location is 28 feet; the requested setback for a proposed garage to be attached to an existing nonconforming structure is 26 feet, a variance of two (2) feet.

Mulvaney calls petitioner forward.

Jeff Long appears via Webex. He states there is no garage on the property which is the same as or less than the setback of the home. They would not encroach any closer than the house does on Prospect. There is one parking space in front of the house, Street parking is not the best; his truck was struck while parked on the street and the road is narrow.

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

STAFF ANALYSIS
The petitioner recently purchased a 2,012 square foot residential structure built in 1880, according to Elkhart County Assessor records, on a .15-acre lot. They wish to construct an attached garage, of approximately 1,034 square feet, on the north side that will be even with the house, fronting on Prospect Street.

The house is legal nonconforming in terms of its setback, but only by approximately two (2) feet. The petitioner is proposing it to be even with the house for primarily aesthetic reasons. It does represent an expansion of a nonconforming structure, albeit a minor nonconformity given that it's approximately two (2) feet.

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 house is already established at that setback;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because it will not significantly affect sight lines or traffic;

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 house was constructed in 1880;

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 construction of a garage;

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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 hazard area.

Smith states 52 letters were mailed, none returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, calls for a motion.

Davis makes motion to approve; Second by Jones.

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

Motion carries.

22-BZA-43 PETITIONER IS THE CITY OF ELKHART ON BEHALF OF ZION MISSIONARY CHURCH PROPERTY IS LOCATED AT 1135 E HIVELY AVE
To vary from Sections 26.10.D.1 General Location Standards which requires all on premise signs to be located no closer than five (5) feet from any right-of-way to allow for a zero setback a variance of five (5) feet.

Mulvaney calls petitioner forward.

Hooley appears as representative.

Mulvaney clarifies this is because of the potential overpass, but has nothing to do with the actual overpass.

Hooley states it is because of the widening. There is potential for the church to have a new sign that will meet ordinance in the future, but in the interim this protects the existing sign.

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

STAFF ANALYSIS
The property consists of several building used by the Zion Missionary Church. Records show that the properties primary identification sign was installed in 1999. The City is going through a redesign of the Hively Avenue and Main Street intersection resulting in the need to widen the right-of-way along Hively Avenue. The new right-of-way line along the church's property will affect the front yard setback of the existing sign.

STAFF RECOMMENDATION
The Staff recommends **approval** of the developmental standard 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.

   Staff Comment: The review of Development Standard Variance request will not be injurious to the public health, safety, morals or general welfare of the community, based on the continue allowance of pre-existing monument sign to remain static in size and height and for the purposes of identification of Zion Missionary Church.

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner;

   Staff Comment: The surrounding properties will not be impaired in use or value by the requested Development Standard Variance, based on the fact, the sign will not change in size or height, nor in purpose that has been utilized for identification purposes for Zion Missionary Church.

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;

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Staff Comment: As mentioned above in the Variance Request section of the subject staff report, the expansion of Hively Avenue Overpass project will reduce the amount of existing right-of-way on Hively Avenue, therefore, creating a legal, non-conforming sign as a result of the project. The applicant has demonstrated a physical hardship based on the need for identification for the existing church signage on the northern portion of the lot on a major thoroughfare.

4. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the property's road frontage has been reduced over the years;

   Staff Comment: The subject property is located on Hively Avenue, the existing sign and building structure are located at the northern portion of the property with parking located to the southern end of the property. The expansion of Hively Avenue Overpass Project will impair the subject property, particularly, based on degree of right-of-way being acquired on the subject property. Thereby, special conditions and circumstances exist in the Development Standard Variance request for this property.

5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property;

   Staff Comment: The requirements of the Sign Section of the enacted Ordinance would place practical difficulties on the subject property, based on the requirements of the Sign section of the Ordinance would produce a reduction in proximity and ability to provide effective church identification from Hively Avenue.

6. The special conditions and circumstances **do not** result from an action or inaction by the petitioner.

   Staff Comment: The expansion of Hively Avenue Overpass project is the reasoning for the subject Development Standard Variance request, the applicant is responding to the expansion of the right-of-way by seeking Development Standard Variance to change the existing monument sign from legal, non-conforming to a legal conforming sign.

7. This property does not lie within a designated flood hazard area.

Hooley states there were 36 letters mailed, one returned in favor with no comments.

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

Davis makes motion to approve; Second by Jones.

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

Motion carries.

NEW BUSINESS

23-X-01 PETITIONER IS IGLESIA DEL DIOS VIVO COLUMNA Y APOYO DE LA VERDAD LA LUZ MUNDO EAST CHICAGO IN LLC & ETAL
PROPERTY IS LOCATED AT 1209 HARRISON ST
A Special Exception per Section 12.3.A, Special Exceptions Uses in the B-2 Neighborhood Business District, to allow for the establishment of a church in an existing commercial building.

Mulvaney calls petitioner forward.

Gabriel Lopez appears via Webex for petitioner. He states they are based in East Chicago, Indiana but have 6 members in Elkhart who would like to use the property for a Bible study.

Mulvaney asks for questions from the Board.

Evanega asks if the members will be living in the establishment.

DRAFT

Lopez states they will not. There will be Bible studies between 7-8 at night and possibly Sundays; however, they all meet in East Chicago on Sundays. He states it will basically be used during the week.

Mulvaney opens for public comments to speak in favor.

Dwight Fish asks if the structure of the building is in good enough shape for use. He states there has been a lot of rubble around it and it looked like there needed to be clean up.

Lopez states it used to be a clinic and the former owner has cleaned everything out. They are going to remove the non-loadbearing walls with permits, but the structure is safe.

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

STAFF ANALYSIS
The petitioner has purchased an existing office building with the intent of renovating the building to use as a church. This building was previously used as a clinic and the applicant is proposing some interior remodeling to accommodate the needs of their forty members. The floor plans provided show several existing offices that will be removed to create a large congregation space. Some of these spaces will remain for other church purposes. At this time, no proposals were made for changes to the exterior of the building. The site also has fifteen parking spaces that will accommodate the church members.

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;

2. The Special Exception **will not** reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;

3. The Special Exception **shall** conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Hooley states there were 38 letters mailed. Two returned not in favor with no comment. One returned not in favor with comment: There are too many auto repair shops in the immediate area. Some not licensed.

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

Evanega makes motion to approve; Second by Davis.

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

Motion carries.

23-X-02 PETITIONER IS ELKHART COUNTY YOUTH FOR CHRIST, INC
PROPERTY IS LOCATED AT 2721 PRAIRIE ST
A Special Exception per Section 8.3 Special Exception Uses in the R-5, Urban Residential District, to allow for a K thru 6 Charter School and for the expansion of a previous Board approved community center to include an additional property to the overall development.

Mulvaney calls petitioner forward.

Crystal Welsh with Abonmarche appears in person for petitioner. She states the Youth for Christ have partnered with a charter school and would like to extend the life and operation of the community center by combining with the school. There would be day, evening, and weekend activities for the community. She notes Kurt Weimer on the phone, Jeff Schaffer with Abonmarche, and a representative from DJ construction are available for questions

DRAFT

Mulvaney asks with which charter school the project is associated.

Kurt Weimer appears via Webex. He states it is Premiere Arts Academy.

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

STAFF ANALYSIS

The petitioner is a faith-based organization that has previously received approval for a Community Center at 2721 Prairie Street. The petitioner would like to expand this approval to include a property immediately to the north that currently has a house. They are also requesting to be permitted to operate a K-6 Charter school at this location.

These two uses would be able to utilize the same facility but operate at different times. The Community Center would use the building in the evenings and weekends and the school would operate during the workweek If approved the school would be able to accommodate two hundred students with a staff of twenty.

There are no set plans for the existing house located north of where the Charter School is being constructed. There was an original submittal to have the structure removed and add additional parking or it may just become additional outdoor activity space. It is also possible the house could become administrative offices for the Charter School. In any of these scenarios, the applicant will need to work with staff and the Building Department to pull all permits and meet all regulations.

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;

2. The Special Exception will not reduce the values of other properties in its immediate vicinity because it is a minor expansion of an already approved use;

3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Hooley states there were 23 letters mailed. One letter from Mayor Rod Roberson was submitted in favor and the item came from Plan Commission with a Do-Pass recommendation.

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

Davis makes motion to approve; Second by Jones.

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

Motion carries.

23-BZA-01 PETITIONER IS PAMELA J LONGBRAKE AKA PAMELA J SWAIN
PROPERTY IS LOCATED AT 1728 E BEARDSLEY AVE

To vary from Section 26.1.B.8.a, which limits the maximum size of a single accessory structure to seven hundred twenty (720) square feet to allow for the construction of a three hundred eight (308) square foot lean-to attached to an existing Board approved eight hundred thirty-two (832) square foot garage.

Mulvaney calls petitioner forward.

Pamela Swain appears in person. She requests the lean-to addition to the back of the existing structure so they can park the boat on the concrete that is already there.

DRAFT

Mulvaney asks for questions from the Board.

Evanega asks if they structure is at the back of the building and won't be seen from the street.

Swain states that it will not be seen.

Mulvaney asks if this is because they had the boat on the grass and wanted the protection for it.

Swain confirms, stating that it was a gift from her father-in-law and they had nowhere to store it. They did have a back patio already there.

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

STAFF ANALYSIS

The property currently has an existing garage that was built in 1996. A previous property owner requested a developmental variance to allow the garage to be built at eight hundred and thirty-two (832) square feet, exceeding the maximum square footage of seven hundred and twenty (720) square feet for a single structure. The petitioner desires to add a lean-to over an existing concrete pad on the back of the garage.

The property owner received notice of a boat being parked on the grass. To resolve the notice it was moved behind the garage onto the concrete pad. The lean-to was being added to the garage to help protect the boat from the weather. A letter was sent regarding construction of the addition without permits and because of the size of the existing garage, a developmental variance was needed.

The applicant is working through the Plan Review process with the Building Department to ensure that addition is built to all code requirements. This property is a portion of a large original subdivision lot and is a reasonable size for the amount of assessor structure space proposed. With the lean-to being located behind the garage, it will be screened from the public right-of-way.

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 as the lean-to will be built to City requirements;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property will continue to be used residentially;

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 as this is a larger residential lot;

4. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as the garage had an existing concrete pad;

5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property because it could place constraints on the proper storage of a vehicle;

6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the size of the existing garage already received previous approvals to exceed the size allowance;

7. This property does not lie within a designated flood hazard area.

Hooley states there were 38 letters mailed. One returned in favor with no comment. One returned not in favor with comments: the opinion was that the City should follow their own guidelines, the resident should have followed proper guidelines and permitting, there is no reason to approve the addition to an already oversized structure.

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

Davis makes motion to approve; Second by Jones.

DRAFT

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

Motion carries.

23-BZA-02 PETITIONER IS DANIEL B TISER
PROPERTY IS LOCATED AT 1738 CASSOPOLIS ST
To vary from Section 26.4.A.1 – Fence Requirements, which only allows barbed wire on fences in manufacturing districts above seven (7) feet, to allow for a barbed wire fence above a six (6) foot chain link fence on a property zoned B-3, Service Business District and R-2, One-Family Dwelling District.

Mulvaney notes the item has been requested for a one month table and calls for a motion.

Jones makes motion to table; Second by Davis.

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

Motion carries.

23-BZA-03 PETITIONER IS BAYER FEDERAL CREDIT UNION DBA MICHIANA CREDIT UNION
PROPERTY IS LOCATED AT 358 S ELKHART AVE
The request is to vary from Section 26.10.D.3 Table1 that limits an integrated message board to fifty (50)% of the sign area of the freestanding sign to allow a thirty-two point thirty-two (32.32) square foot message board as a primary sign.

Mulvaney calls petitioner forward.

Kerie Sekal appears in person for petitioner. She states they would like to update the existing monument sign for branding and improved communication capabilities. There will not be changes to the dimensions of the sign or its current positioning. It is currently an electronic sign. The change will support updates and improve efficiency of current antiquated technology as well as improve aesthetics.

Mulvaney asks for questions from the Board.

Jones asks if the sign will be the same size as Hopman's.

Sekal states that she is not sure.

Jones asks if there will be pictures.

Sekal confirms.

Evanega asks if they are just removing the "INOVA" portion so that the whole thing will be electronic.

Sekal confirms. She states the current bulbs are large and support a scrolling message. The new bulbs will be smaller with more capability to look like a complete image.

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

STAFF ANALYSIS
INOVA Federal Credit Union is operating their corporate headquarters from this property. An existing non-conforming freestanding sign serves the site. The petitioner is proposing to keep the main structure of the sign while replacing the face with an electric message board. A portion of the existing sign is a message board and the request would be a replace of the entire face. This is the only freestanding sign on the property serving the business.

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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 as the signs will not create a visual barrier;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property will continue to be used as an office;

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 particular to the land involved and which are not applicable to other lands or structures in the same district as the sign is preexisting;

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 on the visibility of the office;

6. The special conditions and circumstances **do not** result from an action or inaction by the applicant as the sign currently exist;

7. This property does not lie within a designated flood hazard area.

Hooley states there were 8 letters mailed. None returned.

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

Jones makes motion to approve; Second by Davis.

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

Motion carries.

23-BZA-04 PETITIONER IS EGAP ELKHART I LLC
PROPERTY IS LOCATED AT 154 HIVELY AVE
To vary from Section 12.4, Yard Requirements in the B-2 District, which requires a thirty (30) foot front setback and ten (10) foot side setbacks for buildings to allow the following: on Lot 2, a ten (10) foot front (south) and zero (0) foot side (east) setback, a variance of twenty (20) and ten (10) feet; on Lot 3, a ten (10) foot front (south) setback and zero (0) foot side (east and west) setbacks, a variance of twenty (20) and ten (10) feet; and on Lot 4, a side (west) setback of zero (0) feet, a variance of ten (10) feet in a proposed subdivision of an existing development.

To also vary from Section 12.4, Yard Requirements in the B-2 District, which allows building heights to be a maximum of thirty-five (35) feet, to allow an existing building on Lot 4 in a proposed subdivision to be thirty-nine (39) feet in height, a variance of four (4) feet.

To also vary from Sections 4.4, Yard Requirements in the R-1 District, and 12.4, Yard Requirements in the B-2 District, which requires seventy –five (75) feet of frontage for new parcels, to allow in a proposed subdivision on an existing development the following: on Lot 2, frontage of zero (0) feet, a variance of seventy-five (75) feet; on Lot 3, zero (0) feet of frontage, a variance of seventy-five (75) feet; and on Lot 4, twenty-nine (29) feet of frontage on Hively Avenue, a variance of forty-six (46) feet.

To also vary from Section 12.5.F.1 Landscape Requirements in the B-2 District, which requires a parcel greater than three (3) acres to have a twenty (20)-foot wide landscaped area adjacent to a residentially zoned or used property, to allow an existing development to maintain a zero (0) foot setback adjacent to an R-1 zone, a variance of twenty (20) feet.

Mulvaney calls petitioner forward.

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Jeff Barnes with Jones Petrie Rafinski appears in person for petitioner. He notes there are representatives for EGAP online as well. He states the site is the former Pierre Moran Mall which they want to improve and develop. They want to subdivide the property into 6 lots. Based on the geometry prepared for the subdivision plat, there are various setback and variance requirements that are (inaudible).

Mulvaney states that he understands that there is no active plan for development at this time, but simply making the property more likely to be redeveloped because of the separate lots.

Barnes states that is his understanding as well.

Jones states he is glad to see something new tried because of the stall in development.

Mulvaney opens for public comments to speak in favor.

Fish asks what type of business would be attracted to the new sizing.

Barnes states that he is not certain but the representatives online may be able to answer.

Ashley Meyer with Essential Growth Properties appears via Webex. She states they are a grocery anchored owner-operator in Cincinnati, Ohio. The parcel splits accommodate the overall site to drive additional traffic for the existing grocer and retailers. There is potential for multi-family.

Jones notes that it's seemingly right for mixed-use development with retail business on the first floor and residential above.

Meyer states that is certainly one scenario.

Mulvaney agrees that anything to move the area forward to use is positive. He opens for public comments to speak in favor. Hearing none, he opens for opposition.

Mark Troyer appears in person. He and his wife have lived to the north of the petitioner property for about 5 years. He wants the shopping center to succeed and believes it is an asset. He understands there are new owners and look forward to that. He is concerned because they and the neighbors had negative interactions with the previous owner. He asks the Board to look at the interests of the petitioner and the effects on the neighbors.

Jones asks if there is a through street from the residences to the site in question.

Troyer states they can go through Benham and Prairie.

Jones asks if they can go through the library and beyond to the north.

Troyer states they cannot.

Mulvaney notes there is a retention pond next to the library.

Troyer states Hawthorne dead-ends and there is a footpath.

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

Smith states the current zoning proposal for Lot 1 is R-1, which would be a single-family house. The rest is zoned B-2 which is a medium density business district. Any uses would have to fit those parameters or come back before this Board, Planning Commission, or Common Council for approval.

Jones asks if mixed-use would have to come back.

Smith states that it would need public notice and approval from a Board.

STAFF ANALYSIS

The Petitioners own two parcels comprising approximately 33.4 acres, including a 31.9 acre parcel zoned B-2 containing the Woodland Crossing shopping center and a vacant 1.6-acre property zoned R-1. The owner wishes to subdivide it into six lots in

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order to facilitate sale and adaptive reuse and/or redevelopment, which is to be considered by the Plan Commission in January under 23-SUB-01.

The proposed subdivision conceives of the property as having six buildings; the main building comprising Kroger and the former Sears would be split into three separate buildings on separate parcels to be redeveloped or reused by separate entities.
The property has already been developed with a complex system of parking areas and driveways. At this time no specific physical changes are proposed. However, in order to subdivide the property, a number of variances from the Zoning Ordinance are proposed. They include zero setbacks for the main building that is being subdivided, lot frontages less than 75 feet on Lots 2, 3, and 4, a building (Kroger) that is four feet taller than what is allowed (35 feet), and the existing lack of a buffer yard on the north section of the property adjacent to R-1 zoning.

The deviation from Zoning Standards, and multiple ownership with shared access is not common in shopping centers of this type. The proposed subdivision will facilitate the reuse and redevelopment of the property, which is a significant landmark within the City. The subdivision will also establish a common easement of access throughout the property, allowing any parcel the use of any "existing drive aisles and travel ways," enabling access to the lots with limited or no frontage.

No proposed physical changes have been proposed as of the writing of this staff report. While there are a number of aspects to the variance, they are to facilitate the subdivision of land, and should not be construed as changes to the property at this time. The petitioner has taken adequate measures through the establishment of a common easement to ameliorate the problems that may have been associated with the proposed configuration, allowing access for all of the parcels throughout the subdivision.

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 no physical changes or change in use that would not be allowed in the existing zoning district are being proposed at this time;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the use of the site will operate in generally the same way as it currently does;

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 it is an aged shopping mall in need of adaptive reuse;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would hinder reuse;

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 hazard area.

Smith states there were 61 letters mailed. None returned.

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

Evanega makes motion to approve; Second by Jones.

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

Motion carries.

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23-BZA-05 PETITIONER IS M M LYNN LLC
PROPERTY IS LOCATED AT 2016 BORNEMAN AVE

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

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

To vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

Smith notes they have had discussions with the applicant and are asking to table the variances from Section 26.7.C.7 (a, b, c) and 26.7.C.7.l.b.2 and only vote on Section 26.7.E.3.

Mulvaney calls petitioner forward.

Debra Hughes appears in person for petitioner. They would like the two requests tabled in order to create a plan. The remaining request is to use properties adjacent and across the street owned by the same owner, as well as the right-of-way to access the proposed truck dock on the north end. It will require the truck to back into the dock from the public right-of-way and using the property on the east side of Twentieth Street to access the new property on the west side of Twentieth Street. The area was developed as industrial 80 years ago when standards were very different, buildings and properties were smaller. It does not meet current standards. The variance is to allow for the backing into the truck dock which is similar to other uses in the area who are allowed to back into their truck docks. This is a targeted redevelopment area and the owner is investing about 5 million dollars in robotic welding technology and advanced manufacturing. They will bring in new manufacturing for the city.

Mulvaney asks what street will primarily be used to get to the dock.

Hughes states that the trucks would come in from Lusher Avenue, south on Twentieth Street which is lightly used, 4 blocks long, and dead ends at the south. They might also pull into the property on the east side of Twentieth Street and back straight across the property, into the dock. Staff has recommended them to install signage to advise truck drivers not to block the intersection. Staff also recommended an easement be recorded on the east side property for perpetual use.

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

STAFF ANALYSIS

Staff is currently working with the applicant to consider some revisions to the site plan, which would reduce the number of variance request. At this time, for the January meeting, staff requests the BZA to hear the request for the loading dock with turning movements in the right of way and to table the other two requests. Staff is recommending in favor of the turning movements with two conditions attached.

The petitioner owns approximately 1.2 acres of contiguous property in an established industrial district with lots that are generally smaller than the lots in more recently established industrial parks on the perimeter of the city. They also own other properties nearby which are part of their overall development plan.

This property currently has a building on the lot of approximately 14,000 square feet, and they wish to add a 10,088 square foot building onto the property that is part of a larger redevelopment and reinvestment program in the immediate area. The site plan submitted includes a loading dock, which would entail turning movements in the right of way, parking accessed directly from 20th Street, and a gravel lot, which would remain, that has a septic field underneath it.

As stated, staff is working with the applicant to possibly revise the gravel area and the parking accessed from the street, and is requesting a vote on the loading dock/turning movement at the January meeting. It is generally discouraged to have any turning movements in the right of way. However, the lack of available land limits the applicant's ability to accommodate truck movements on site. Staff recommends approval of the variance to allow right of way turning movements, as long as they are kept out of the intersection and guaranteed in perpetuity. To that end, the petitioner should work with Public works to install signs stating that no

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turning movements are allowed in the intersection, and record an easement on the property across 20th Street that would accommodate proposed turning movements.

STAFF RECOMMENDATION

The Staff recommends **approval** of the developmental variance to vary from Section 26.7.E.3, Off Street Loading Requirements to allow for a proposed loading dock to be constructed as part of a proposed building addition that will require the public right of way for maneuvering to access the proposed dock 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 efforts will be made to prevent turning movements in the right-of-way;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the land area available for expansion is limited;

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;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the land area is limited and does not allow for substantial expansion;

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 hazard area.

The Staff recommends **tabling until the February 9 meeting** the following developmental variances:

To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

To vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

CONDITIONS

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

1. Signs shall be posted for no turning movements in the intersection, subject to approval by Public Works.

2. An access easement shall be recorded at 1935 Markle allowing the demonstrated turning movements.

Smith states there were 16 letters mailed. None returned.

Mulvaney asks if there are questions from the Board for staff. Hearing none, he calls for a motion on Sections 26.7.E.3 and 26.7.C.7.l.b.2 which the petitioner requested to be tabled.

Davis makes motion to table requests to vary from Sections 26.7.E.3 and 26.7.C.7.l.b.2 for one month; Second by Jones.

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

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Motion carries.

Jones makes motion to approve variance from Section 26.7.E.3 with conditions; Second by Davis.

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

Motion carries.

23-X-03 PETITIONER IS WOLF PACK LLC
PROPERTY IS LOCATED AT 112 E LEXINGTON AVE
A Special Exception per Section 15.3, Special Exception Uses in the Central Business District (CBD), to allow an Event Center in an existing commercial building.

Mulvaney calls petitioner forward.

Ignacio Perez appears in person to request use of the property as an event center.

Mulvaney asks what type of events will be hosted.

Perez states weddings, quinceañeras, and all kind of different events.

Mulvaney asks if this would primarily be weekends or during the week.

Perez states it will be small events during the week, such as office parties.

Jones asks if it could still be used by Jazz Fest as the site is historically been a performance location.

Perez states he did not know that, but it would be nice if he had more information.

Jones asks if the awnings or outside will change.

Perez states he will just change the lettering.

Evanega asks if he is obtaining a liquor license.

Perez is working on that at the moment.

Evanega is concerned about people outside the building and drinking in the parking lot.

Perez states that will not be allowed.

Jones asks if that will be a Riverwalk license.

Perez confirms. It will be a 3-way license.

Davis asks if there will be cooking on the premises.

Perez states that will be in the future but for now they will bring their own food in.

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

STAFF ANALYSIS
The petitioner has purchased an existing commercial building in the downtown area just east of Main Street. This building was previously a Knights of Columbus meeting hall. The petitioner desires to use the building as an event center. The building has

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existing bar and kitchen facilities but the proposal is for clientele to cater their own food for events. The petitioner is looking into applying for a liquor license as a service to their business.

The property has a few parking spaces in the rear of the building and has access to on street parking as well as an adjacent public parking lot. At this time, the petitioner is not proposing any exterior changes to the building other than new signage for the business.

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;

2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;

3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

Hooley states there were 32 letters mailed. One returned not in favor with comment: There are other venues in close proximity to each other: The Lerner, Lenox, Hotel Elkhart, Winchester Mansion, and others in a small downtown area with restricted parking.

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

Evanega makes motion to approve; Second by Davis.

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

Motion carries.

23-UV-01 PETITIONER IS KENNETH WHITMAN
PROPERTY IS LOCATED AT 2734 HAWTHORNE ST
To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District, to allow for a single family dwelling. Single family dwellings are not a permitted use in the M-1 District.

Mulvaney calls petitioner forward.

Robert Kolean appears for the petitioner. He states the building has been residential since its construction in the 1950's and has residential homes across the street and in the area.

Mulvaney asks for questions from the Board.
Evanega asks if the home is being sold.

Kolean states it is, and needs the variance for financing purposes.

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

STAFF ANALYSIS
The home is located in an area with a mixture of residential, commercial, and light industrial development. The applicant has requested the variance, as the house would not be able to be rebuilt if it were damaged past fifty percent of the assessed value or was completely removed. According to the County Assessor's Office, the house was built in 1958 and appears to have only been used as a single family home.

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The properties to the west across Hawthorne Street are zoned R-2 One-Family dwelling and are occupied by single-family residences. An undeveloped property zoned light manufacturing separates this property from South Nappanee Street. A variance would permit the home to remain, while allowing the possibility of the property to be included in future redeveloped along the South Nappanee Street corridor.

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 use of the property is less intense then uses that are permitted in this zoning district;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the use of the property will remain residential;

3. The need for the variance arises from some condition peculiar to the property involved as the home **was** built at the time of the zoning districts establishment;

4. The strict application of the terms of this Ordinance **will** constitute an unnecessary hardship if applied to the property because it could restrict the houses ability to be repaired and rebuilt;

5. The approval does not interfere substantially with the Comprehensive Plan as the plan **does not** directly address this property and the size of the parcel limits development.

Hooley states there were 17 letters mailed. None returned.

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

Jones makes motion to approve; Second by Davis.

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

Motion carries.

23-UV-02 PETITIONER IS BELMONT MENNONITE CHURCH INC
PROPERTY IS LOCATED AT 925 OXFORD ST
To vary from Section 5.2 Permitted Uses in the R-2 One Family Dwelling District to allow a day care center to operate in a portion of an existing church.

To also vary from section 26.4.A.6 Fence Requirements which states that no fence other than open decorative fencing, no taller than four (4) feet, shall be located in a front yard to allow the installation of a six (6) foot tall vinyl privacy fence in the front yard along Moyer Street.

Mulvaney calls petitioner forward.

Ray Hunsberger, Trustee for the church, appears in person. They would like to accommodate the New Creation Daycare Center at the church. They would like to stay within that community. The original church was down the street, they built in the Hudson-Sterling area because of their commitment to the area and believe the subsidized daycare is part of that commitment. The building will not change. It won't affect the way the church uses the building on Sunday, but the daycare will use it during the week.

Mulvaney asks if this is an existing daycare.

Hunsberger state that it is. It had been at the old church building, moved, and now needs to move again.

Mulvaney asks if there are any issues with the conditions.

Hunsberger is fine with the conditions.

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Evanega asks if he is aware of the limitation on the number of students to 45.

Hunsberger confirms that he is.

Mulvaney opens for public comments to speak in favor.

Fish appears in person to support the daycare in the church and their ongoing work in the area.

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

STAFF ANALYSIS

The Belmont United Methodist Church is located at the intersection of Moyer Avenue and Ren Street. The church's parking lot is situated to the north along Oxford Street across an alley. The church was approached by a daycare that would like to operate out of several of their classrooms. The daycare would also use the church's large multi-purpose room and an outdoor fenced-in activity area that is being constructed.

The church has a drop-off area on the north side of the building through an alley that the daycare will use. The drop-off area is far enough from Moyer Avenue to allow several cars to be stacked waiting for pick-up. The daycare will also utilize the church's parking lot for parent and staff parking. The daycare and the church will be using the church's facilities at different times so there should be little issue with parking.

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 it will operate under State guidelines;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the there are no proposed exterior changes to 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. The strict application of the terms of this Ordinance **will** result in practical difficulties in the property providing a service to the area;

5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

CONDITIONS

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

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 other than those approved for an institutional use.

5. A copy of the child care center 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.

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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 fifty-five (55) children meeting the children/staff supervision ratio established by the State.

9. Pickup and dropoff should be off the alley along the north side of the church with one-way traffic and from the main parking area on Oxford Street

10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by January 2025.

Hooley states there were 46 letters mailed. Three returned in favor with no comment.

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

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

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

Motion carries.

ADJOURNMENT

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

_____ _____

Doug Mulvaney, President Ron Davis, Vice-President

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City of Elkhart

Staff Report

Planning & Zoning

Petition: 22-UV-21

Petition Type: Use Variance

Date: November 10, 2022

Petitioner: City of Elkhart Department of Parks and Recreation

Request: To vary from Section 26.4.2, Permitted Use in the R-1, One-Family Dwelling District to allow for the installation of a new wireless communication facility with a one hundred thirty-five foot 135 foot tall cell tower.

Site Location: 3499 Newton Drive

Existing Zoning: R-1, One-Family Dwelling District

Size: +/- 15.9 Acres

Thoroughfares: Newton Drive, Jeanwood Drive and E Bristol St

School District: Elkhart Community Schools

Utilities: Available and provided to the site.

Surrounding Land Use & Zoning:

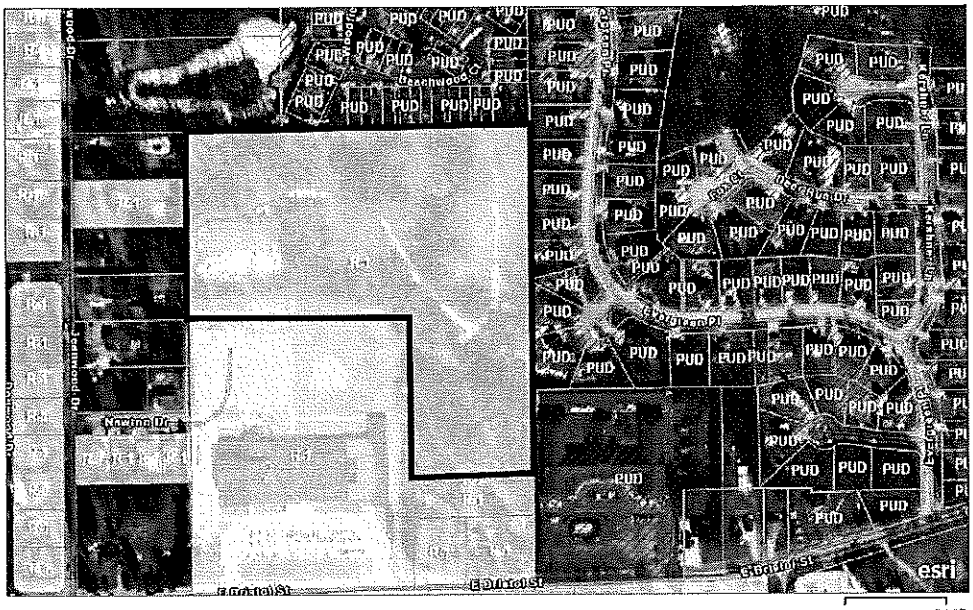
The properties to the north and east are PUD Planned Unit Development built to R-1 One-Family Dwelling District. The properties to the east are R1 One-Family Dwelling and properties outside the City limits of Elkhart. Pinewood Elementary that is located to the south is zoned R-1 One-Family Dwelling District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to develop residentially with this property to develop recreationally with adjacent institutional.



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Staff Analysis

The petitioner desires to lease a 50 by 50 foot area of Pinewood Park to use for the construction of a cell tower. The site location is north of an existing tennis court adjacent to a heavily wooded area. The proposed tower will be 135 feet in height and will have the appearance of a pine tree. A security fence will surround the lease area and there will be space for future collocate equipment.

Verizon Wireless is the designated user of the tower but it can handle an additional three carriers. The petition indicates there is a need in Elkhart for improved cellular service that this location would be able to provide. It also states that this tower would enhance the City's 911 first responders service. The site's ability to screen the tower with existing foliage and provide better coverage to the area were the reasons this site was selected.

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 or general welfare of the community because the proposed use will be in a secure location;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the tower's location is in a heavily wooded area of the park and will have the appearance of a pine tree;

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, as steps are being taken to reduce visibility of the proposed use;

4. The strict application of the terms of this Ordinance **will** result in practical difficulties in the ability to improve cellular service of the surrounding community;

5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

Network time is not synchronized

Site Location Plan

NORTH

50 0 50 100

1 inch = 100ft.

Know what's below. Call before you dig.
1-800-382-5544
1-800-428-5200

DOLAN
REALTY ADVISORS, LLC

MISSION 1
COMMUNICATIONS
6202 Constitution Drive, Suite C
Fort Wayne, IN 46804

CERTIFICATION:

PRELIMINARY NOT FOR CONSTRUCTION

RELEASE	
DATE	
08-09-22	LEASE EXHIBIT

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DRAWN BY: MJM
CHECKED BY: MJA

SITE NAME:

SE CASSOPOLIS CELL SITE

SITE ADDRESS:

NEWTON DR
ELKHART , IN 46514

SHEET TITLE:

SITE LOCATION PLAN - OPTION 1

A&E PROJECT NO.:

SHEET NO.:

C-1

PETITION #: 22-UV-21 **FILING FEE: $** 300.00

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

_____ Developmental Variance _____ Appeal from Staff Decision

X Use Variance _____ Special Exception _____ Conditional Use

Property Owner(s): City of Elkhart Department of Parks and Recreation

Mailing Address: 229 S. Second Street, Elkhart, IN 46516

Phone #: 574-295-7275 Email: Jamison.Czarnecki@coei.org

Contact Person: Melissa Olson

Mailing Address: 343 S. Kirkwood Rd. #5, Box 220130, Kirkwood, MO 63122

Phone #: 314-890-8566 Email: molson@dolanrealtyadvisors.com

Subject Property Address: 3499 Newton Dr., Elkhart, IN 46516

Zoning: R-1

Present Use: Pinewood Park Proposed Use: Cellular Communication Site

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) (PRINT): [signature] Sarah Santerre

SIGNATURE(S): [signature] DATE: 10.11.22

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 of the property.

✓ A completed Petition form signed by the legal owner of record.

✓ 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: [signature] DATE: 10/14/22

DATE: 9/15/2022

TO: Board of Zoning Appeals RE: Use Variance

City of Elkhart, Indiana

The undersigned petitioner respectfully shows the Board of Zoning Appeals:

1. I, ~~Jamison Ozarnecki~~, Sarah Santerre am authorized to act on behalf of the City of Elkhart Department of Parks and Recreation, the owner of the following described real estate located within the City of Elkhart, Elkhart Township, Elkhart County, State of Indiana, and we have entered into an agreement with DRA Properties, LLC, a Missouri Limited Liability Company, to lease land for the purposes of a communication site, to-wit:

2. The above described real estate presently has a zoning classification of R-1 District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently occupies (or proposes to occupy) the above described property in the following manner: The construction of a 135' cell tower disguised as a pine tree, including a 50' x 50' lease area. The site is being designed for Verizon Wireless but will be able to accommodate 3 additional carriers (AT&T, T-Mobile, etc.)

4. Petitioner desires to install a cell site to provide enhanced cell phone coverage and increase data speeds for the residents and visitors of Elkhart. This includes enhanced 9-11 service to emergency responders. At present, the R-1 use does not permit this use without a variance.

5. The Zoning Ordinance of the City of Elkhart requires: Section 27.1 B-1 states that the location of any wireless communication facility shall comply with other applicable standards of the zoning ordinance not specifically indication in this section, including but not limited to those for floodplains and wetlands. Section 27.1 B-2 states that all wireless communication facilities, with the exception of television and radio towers, shall be fully automated, shall not require attention on a daily basis and shall be visited only for periodic and necessary maintenance or emergencies. Section 4.2 notes that wireless communication facilities are not allowed in the R-1 district.

6. Explain why strict adherence to the Zoning Ordinance requirements would create an unusual hardship: The Pinewood Park location allows for the best coverage to the residents of Elkhart in this area. This location was selected due to its ability to be screened by existing foliage. Without this location, Elkhart will continue to receive degraded service.

7. Using the appropriate standards (developmental or use) from page 3, address each standard. You cannot answer simply "Yes" or "No"; you must state why this is true (the reasons for your answer).

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community: These towers are deemed safe by the Federal Government. These towers are licensed by the FCC and the FAA and regulated for safe operation. Enhanced 9-11 service will benefit Elkhart's first responders.

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner: This location was selected due to its setback from neighboring residents and will be constructed as a pine tree to blend in with the neighboring surroundings.

3. The need for the variance arises from some condition peculiar to the property involved: The Pinewood Park R-1 zoning limits its use. We are requesting this use variance to permit the cell site.

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: The strict application of this ordinance would result in a degradation of cell service.

5. The approval does not interfere substantially with the "Comprehensive Plan.": This cell site will result in enhanced services to the residents of Elkhart.

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

Signature of Property Owner: Sarah Oat

Printed Name: Sarah Oaterre

Agent for Verizon Wireless/DRA Properties: Melissa Olson

Printed Name: Melissa Olson

Contact Person: Melissa Olson, DRA Properties, LLC

Address: 343 S. Kirkwood Rd., #5, Box 220130, Kirkwood, MO 63122

Phone Number where you can be reached: (314) 890-8566

Email: molson@dolanrealtyadvisors.com

Proposed SE Cassopolis

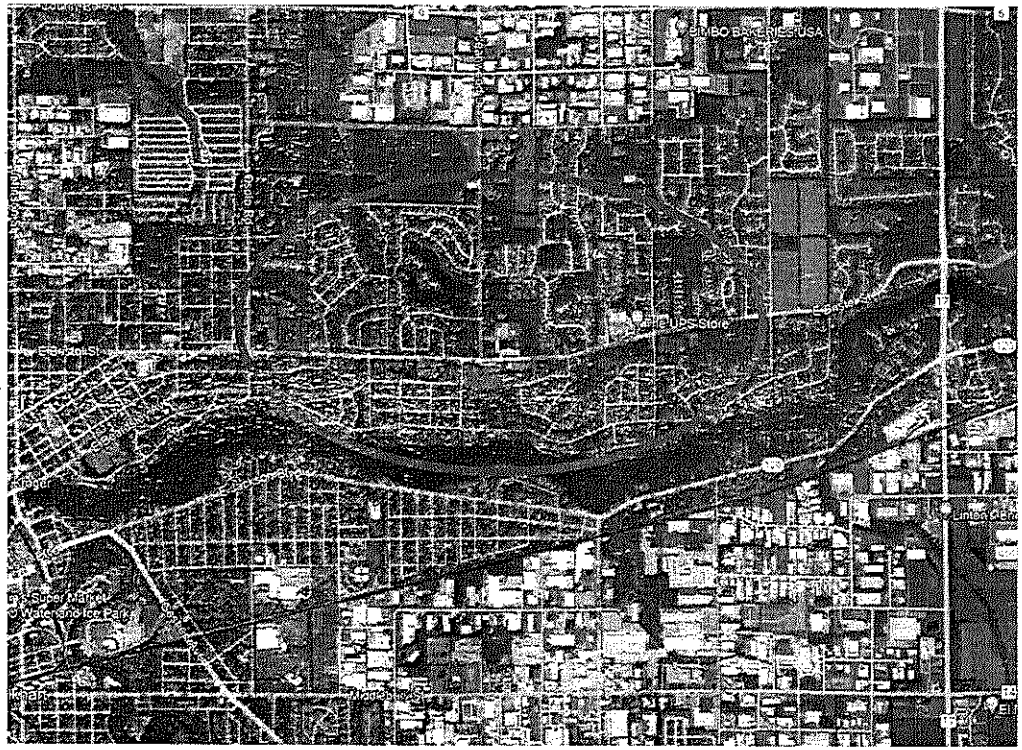
Pre-Integration Summary

Report Date: 9/13/22

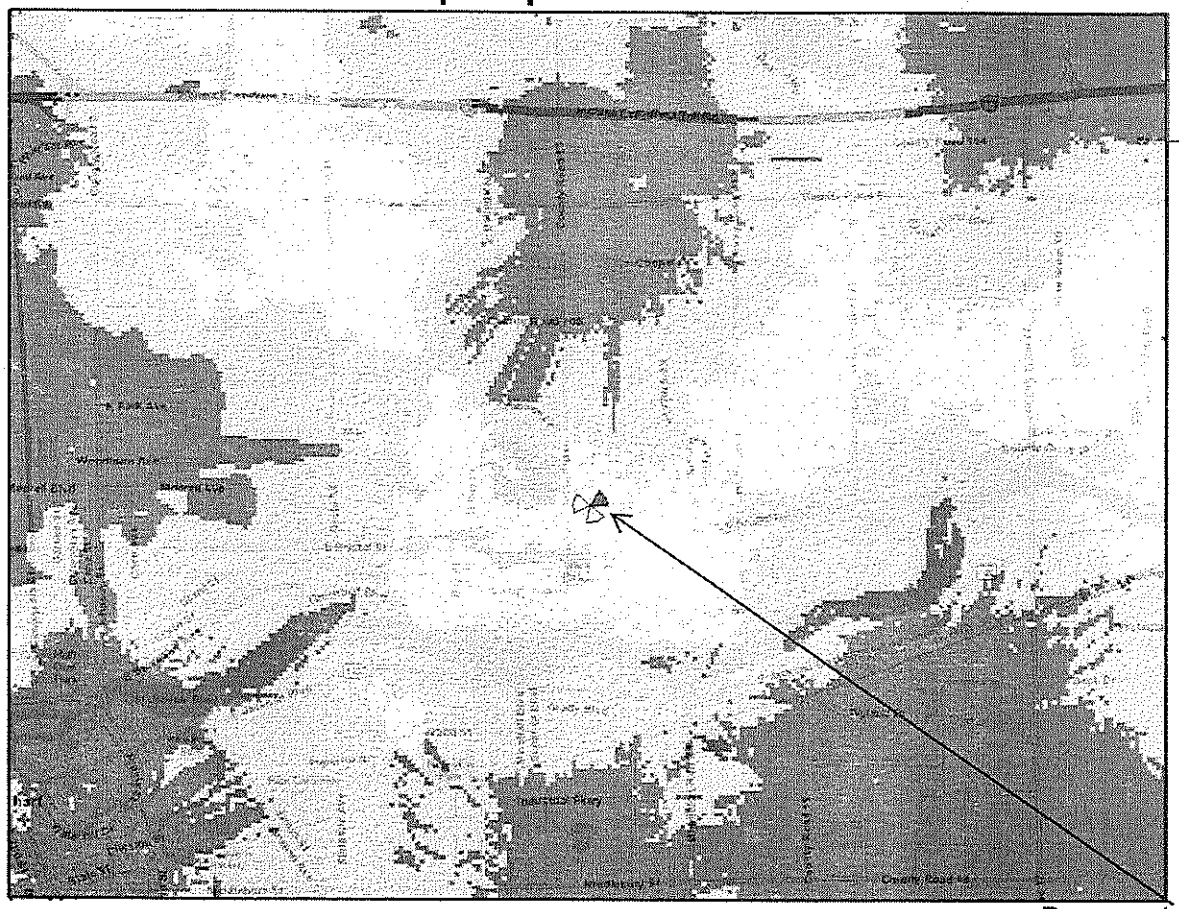
SE Cassopolis objectives

The primary objectives of this site are:

1. Improve reliable in-building and in-vehicle coverage in the area and along E Bristol St
2. Improve data speed and connectivity for daily commuters and local businesses/residences.
3. Provide capacity offload for the neighboring Verizon Wireless sites.



With-out proposed Vistula location



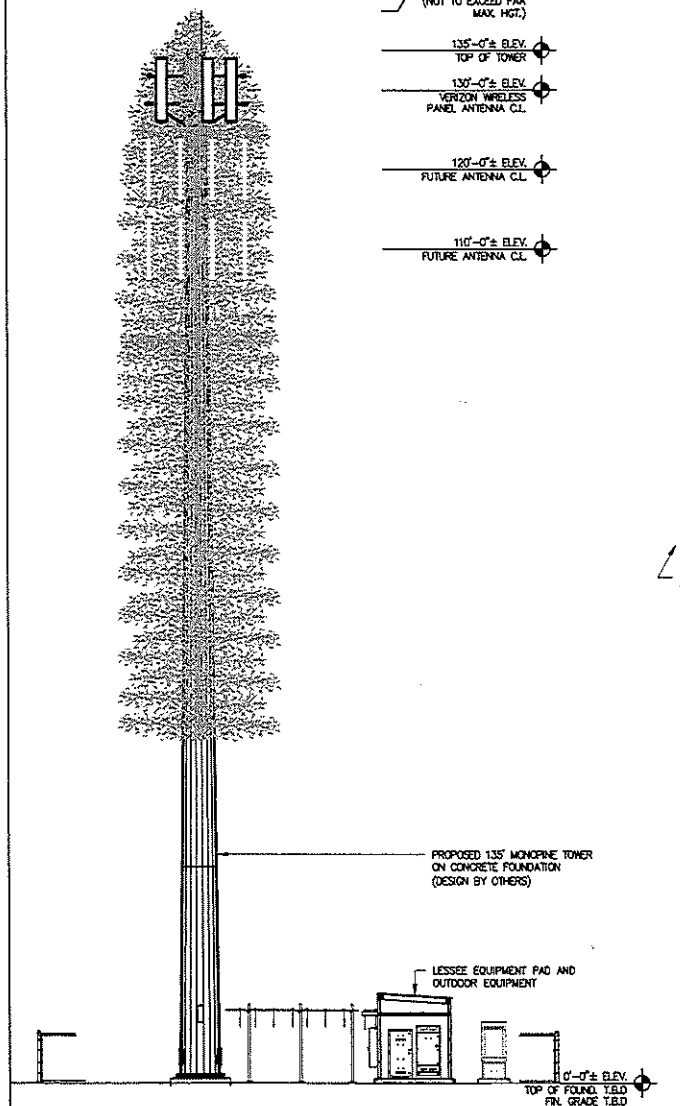
With-out proposed Vistula location

Proposed New Site

Reliable In-Building
Reliable In-Vehilce
Reliable On-Street

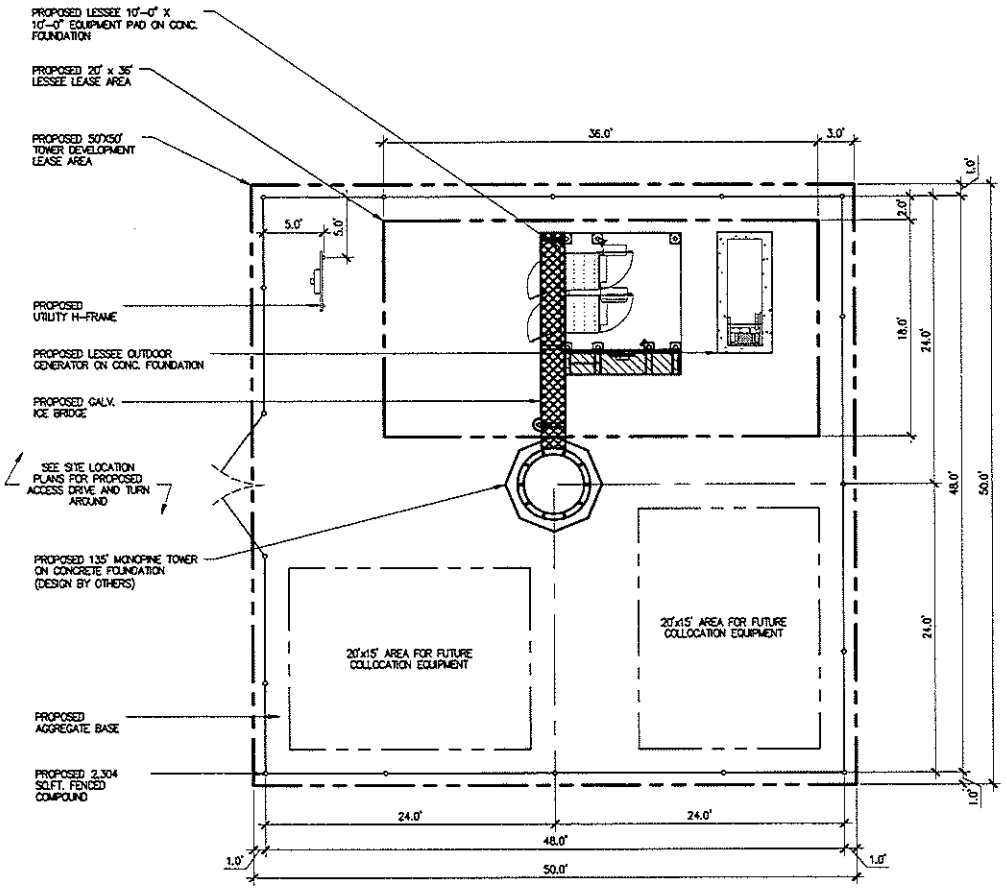
Conclusion

The proposed SE Cassopolis site is needed to provide reliable in-building and in-vehicle coverage in the area. The site will also provide capacity relief to the neighboring cell sites.



Tower Elevation

SCALE: N.T.S.



Enlarged Site Plan

NORTH

1 inch = 10ft.

Know what's below. Call before you dig.
1-800-382-5544
1-800-428-5200

DOLAN REALTY ADVISORS, LLC

MISSION 1 COMMUNICATIONS
6202 Constitution Drive, Suite C
Fort Wayne, IN 46804

CERTIFICATION:

PRELIMINARY NOT FOR CONSTRUCTION

RELEASE	
DATE	
08-09-22	LEASE EXHIBIT

THIS DRAWING IS COPYRIGHTED AND IS THE SOLE PROPERTY OF THE OWNER. IT IS PRODUCED SOLELY FOR USE BY THE OWNER AND ITS AFFILIATES. REPRODUCTION OR USE OF THIS DRAWING AND/OR THE INFORMATION CONTAINED IN IT IS FORBIDDEN WITHOUT THE WRITTEN PERMISSION OF THE OWNER.

DRAWN BY: MJM
CHECKED BY: MJA

SITE NAME:

SE CASSOPOLIS CELL SITE

SITE ADDRESS:

NEWTON DR
ELKHART , IN 46514

SHEET TITLE

TOWER ELEVATION & ENLARGED SITE PLAN

A&E PROJECT NO.:

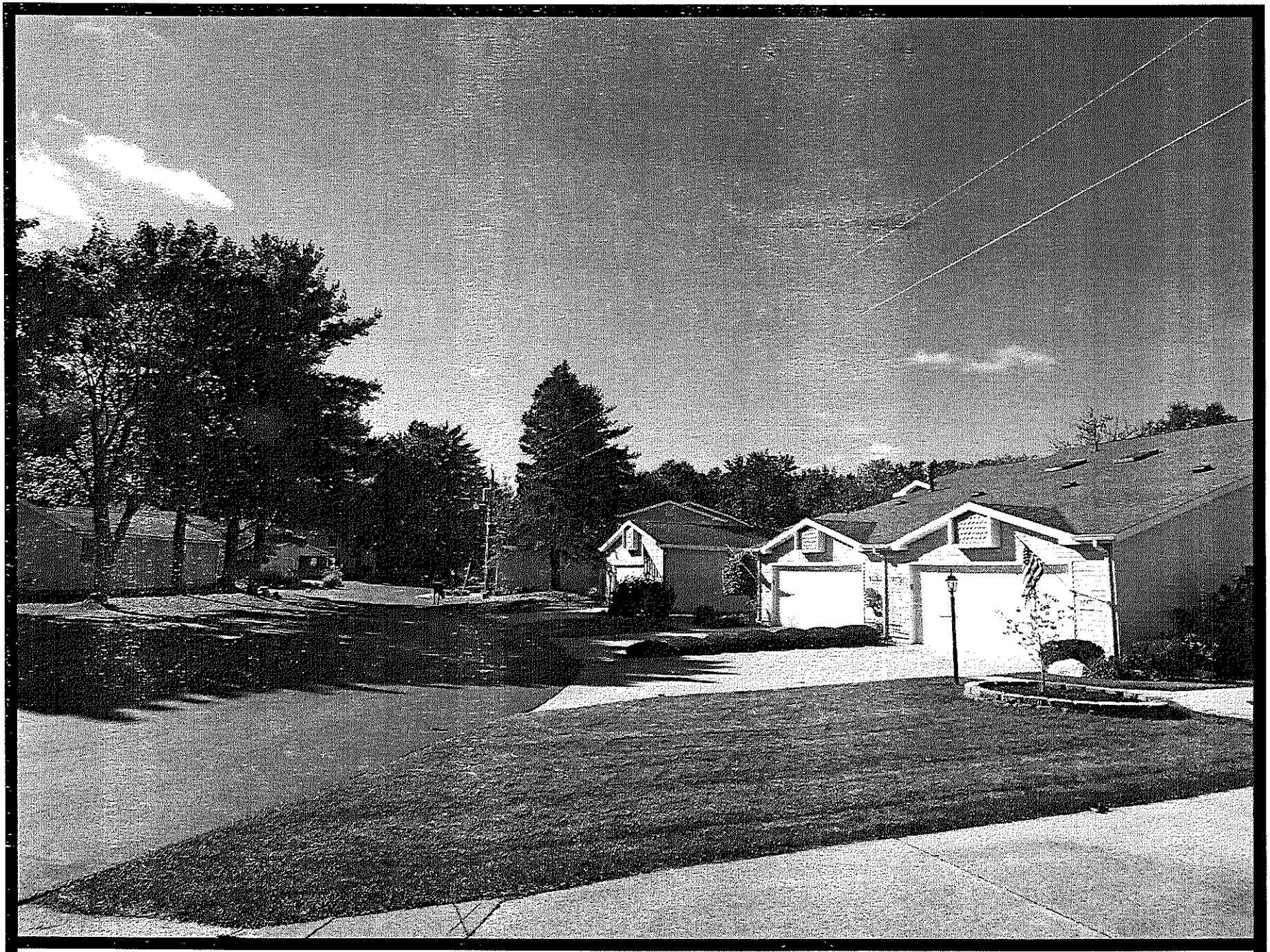
SHEET NO.:

C-3

MISSION 1 COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location Map

verizon



MISSION 1
COMMUNICATIONS

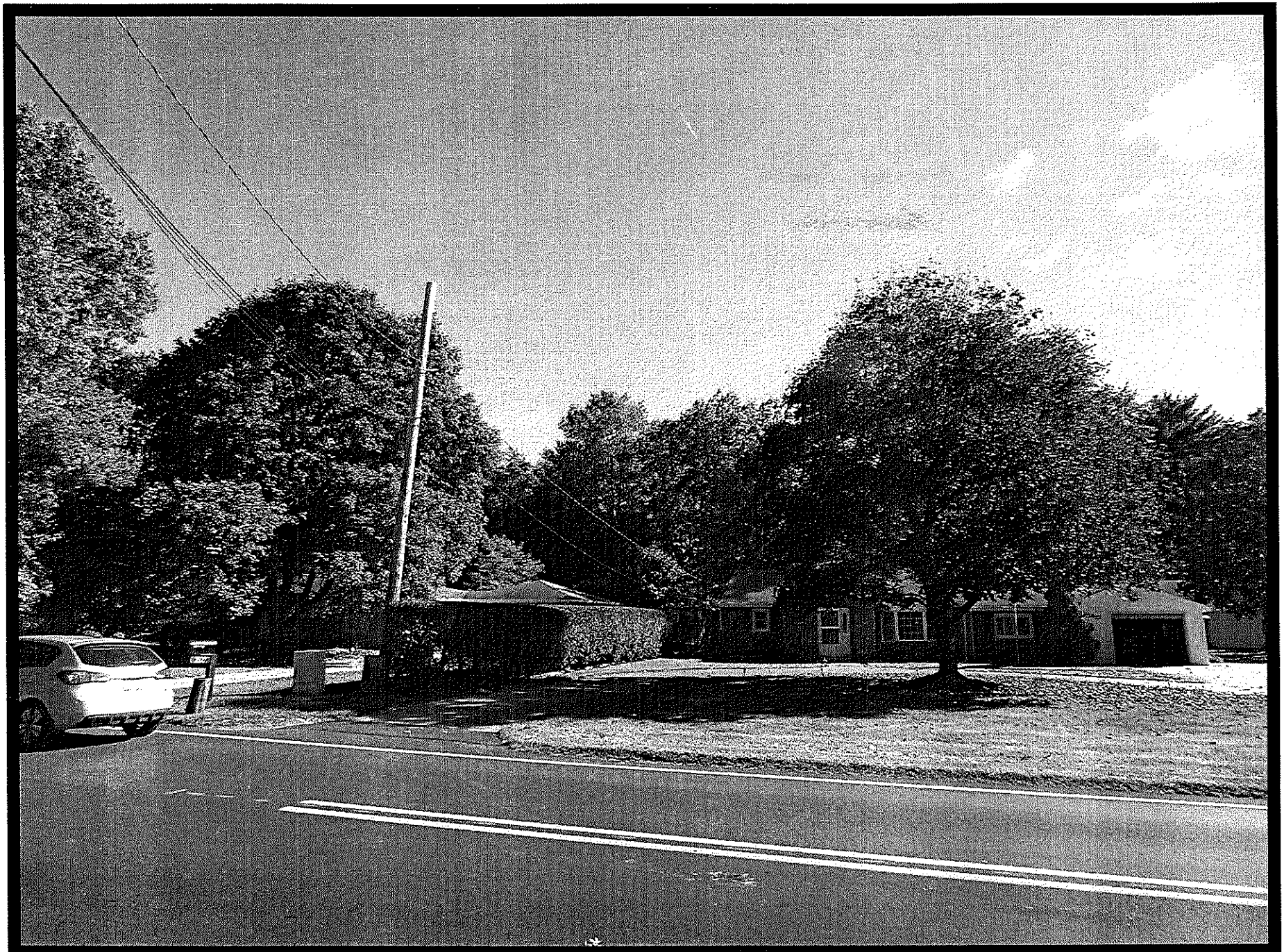
SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #1 (Existing)

verizon

MISSION 1
COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #1 (Proposed)

verizon



MISSION 1
COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #2 (Not Visible)

verizon

MISSION 1
COMMUNICATIONS

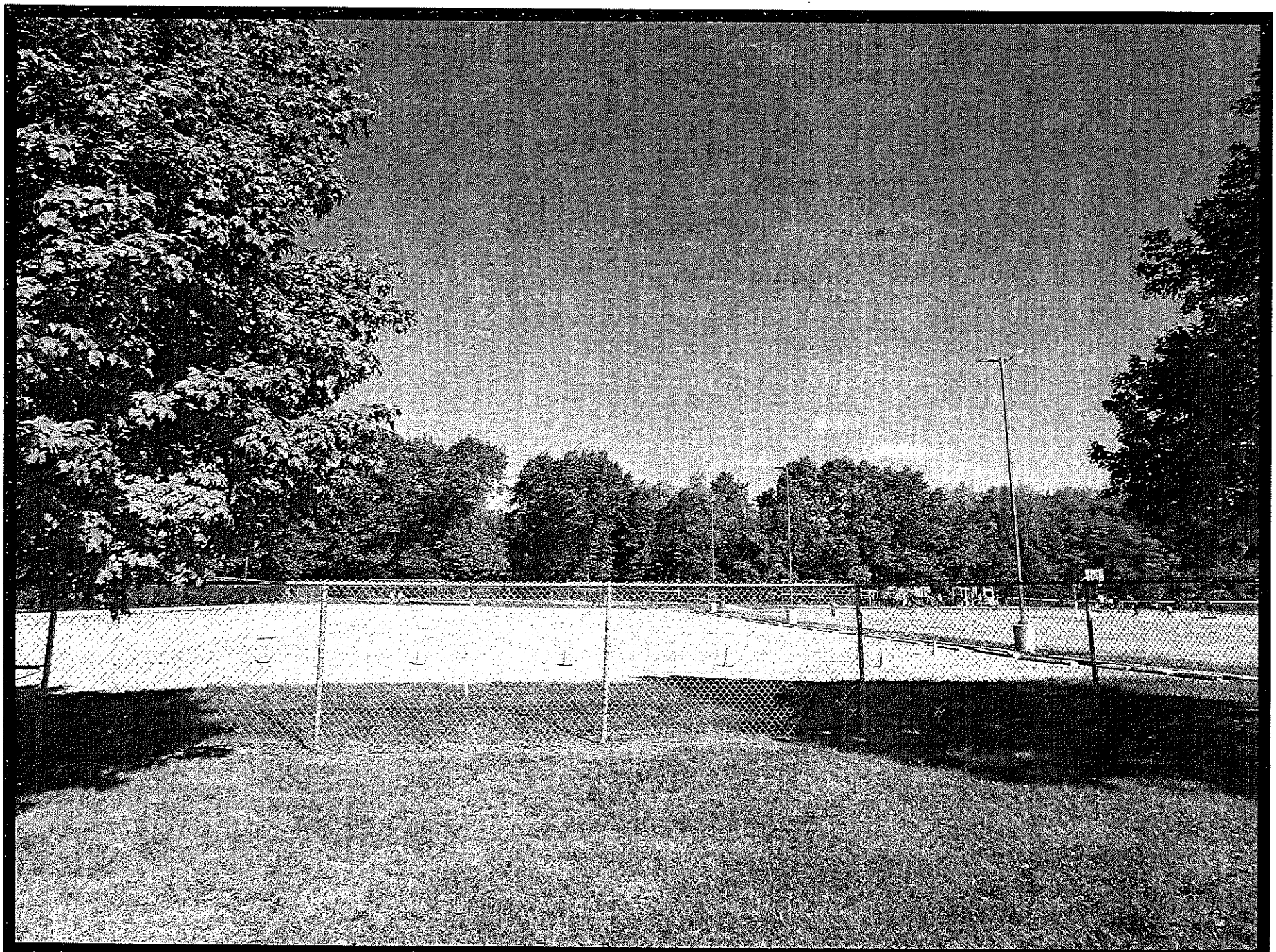
SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #3 (Existing)

verizon

MISSION 1
COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #3 (Proposed)

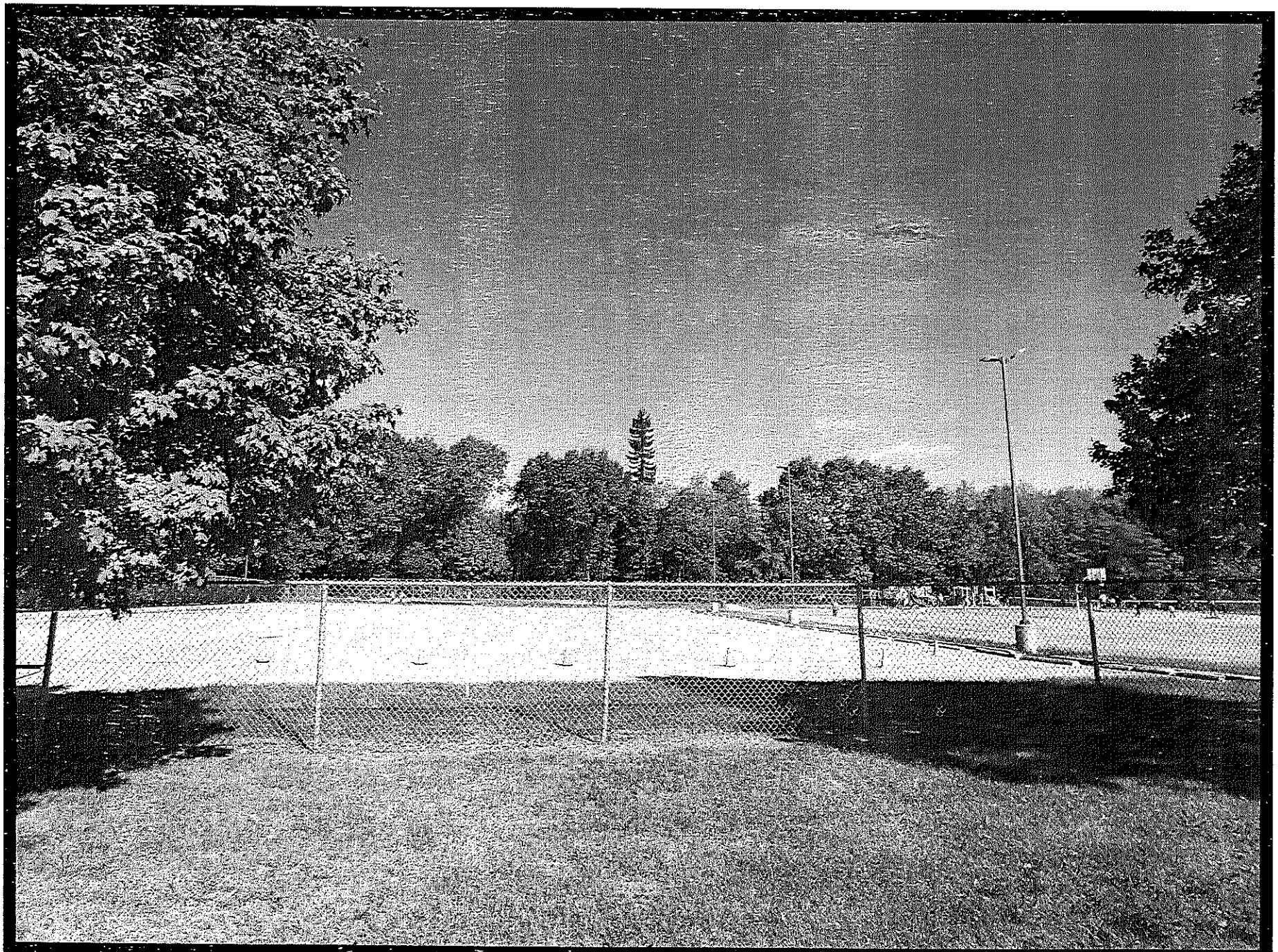
verizon



MISSION 1
COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #4 (Existing)

verizon



MISSION 1
COMMUNICATIONS

SE Cassopolis Cell Site
135' Monopine Photosimulation
Photo Location #4 (Proposed)

verizon

DATE: 9/15/2022

TO: Board of Zoning Appeals RE: Use Variance

City of Elkhart, Indiana

The undersigned petitioner respectfully shows the Board of Zoning Appeals:

1. I, ~~Jamison Czarnecki~~ Sarah Sanierre, am authorized to act on behalf of the City of Elkhart Department of Parks and Recreation, the owner of the following described real estate located within the City of Elkhart, Elkhart Township, Elkhart County, State of Indiana, and we have entered into an agreement with DRA Properties, LLC, a Missouri Limited Liability Company, to lease land for the purposes of a communication site, to-wit:

2. The above described real estate presently has a zoning classification of R-1 District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently occupies (or proposes to occupy) the above described property in the following manner: The construction of a 135' cell tower disguised as a pine tree, including a 50' x 50' lease area. The site is being designed for Verizon Wireless but will be able to accommodate 3 additional carriers (AT&T, T-Mobile, etc.)

4. Petitioner desires to install a cell site to provide enhanced cell phone coverage and increase data speeds for the residents and visitors of Elkhart. This includes enhanced 9-11 service to emergency responders. At present, the R-1 use does not permit this use without a variance.

5. The Zoning Ordinance of the City of Elkhart requires: Section 27.1 B-1 states that the location of any wireless communication facility shall comply with other applicable standards of the zoning ordinance not specifically indication in this section, including but not limited to those for floodplains and wetlands. Section 27.1 B-2 states that all wireless communication facilities, with the exception of television and radio towers, shall be fully automated, shall not require attention on a daily basis and shall be visited only for periodic and necessary maintenance or emergencies. Section 4.2 notes that wireless communication facilities are not allowed in the R-1 district.

6. Explain why strict adherence to the Zoning Ordinance requirements would create an unusual hardship: The Pinewood Park location allows for the best coverage to the residents of Elkhart in this area. This location was selected due to its ability to be screened by existing foliage. Without this location, Elkhart will continue to receive degraded service.

7. Using the appropriate standards (developmental or use) from page 3, address each standard. You cannot answer simply "Yes" or "No"; you must state why this is true (the reasons for your answer).

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community: These towers are deemed safe by the Federal Government. These towers are licensed by the FCC and the FAA and regulated for safe operation. Enhanced 9-11 service will benefit Elkhart's first responders.

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner: This location was selected due to its setback from neighboring residents and will be constructed as a pine tree to blend in with the neighboring surroundings.

3. The need for the variance arises from some condition peculiar to the property involved: The Pinewood Park R-1 zoning limits its use. We are requesting this use variance to permit the cell site.

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: The strict application of this ordinance would result in a degradation of cell service.

5. The approval does not interfere substantially with the "Comprehensive Plan.": This cell site will result in enhanced services to the residents of Elkhart.

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

Signature of Property Owner: Sarah Santerre

Printed Name: Sarah Santerre

Agent for Verizon Wireless/DRA Properties: Melissa Olson

Printed Name: Melissa Olson

Contact Person: Melissa Olson, DRA Properties, LLC

Address: 343 S. Kirkwood Rd., #5, Box 220130, Kirkwood, MO 63122

Phone Number where you can be reached: (314) 890-8566

Email: molson@dolanrealtyadvisors.com

AFFIDAVIT IN SUPPORT OF VARIANCE PETITION

I, ~~Jamison Garnecki~~ Sarah Santerre, 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 3499 Newton Dr. Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 11 day of 10, 2022.

Sarah Santerre

Printed: Sarah Santerre

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.

Sarah Santerre

Printed: Sarah Santerre

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Sarah Santerre, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 11th day of October, 2022.

NOTARY PUBLIC SEAL INDIANA
SOMMER N. BOWERS
Notary Public, State of Indiana
Elkhart County
Commission # 712839
My Commission Expires
April 19, 2026

Sommer N Bowers

Printed: Sommer N. Bowers

My Commission Expires:
4-19-26

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

City of Elkhart

Staff Report

Planning & Zoning

Petition: 03-BZA-02

Petition Type: Developmental Variance

Date: January 12, 2023

Petitioner: Daniel B Tiser

Site Location: 1738 Cassopolis Street

Request: To vary from Section 26.4.A.1 – Fence Requirements, which only allows barbed wire on fences in manufacturing districts above seven (7) feet, to allow for a barbed wire fence above a six (6) foot chain link fence on a property zoned B-3, Service Business District and R-2, One-Family Dwelling District.

To also vary from Section 26.4.A.6 – Fence Requirements, which only allows split rail, wrought iron, and open picket fences not to exceed four (4) feet in a front or corner side yard, to allow a six (6) foot chain link fence with barbed wire above in a front and corner side yard on a through lot.

Existing Zoning: B-3, Service Business District and R-2, One-Family Dwelling District

Size: +/- 1.4 acres

Thoroughfares: Cassopolis Street, Woodlawn Avenue, Canton Streete

School District: Elkhart Community Schools

Utilities: Available and provided to site.

Surrounding Land Use & Zoning:

The Property is located on a major commercial corridor on the edge of a residential district. Properties to the west are commercial zoned B-3. Property to the east is residential zoned R-2. Property to the north is commercial zoned B-3 and residential zoned MHP. Property to the south is commercial zoned B-3 and residential zoned R-2.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

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

Zoning parcels for viewing at neighborhood (large) scales. Published 02/09/2021

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Staff Analysis

The petitioner owns three parcels bordering on Cassopolis Street, Woodlawn Avenue, and Garden Street, totaling approximately 1.4 acres. In 2021, he received a variance to allow the use of the R-2 property for his rental business. Earlier this year, he installed a six foot fence with barbed wire surrounding the rear of the property without the benefit of permits. Additionally, the petitioner has started work on the pavement on the property without receiving approval through Technical Review or any permits.

There was an existing fence on the property prior to the applicant's ownership that was similar in configuration. However, that fence was legal nonconforming – meaning it could not be replaced or expanded – and took up much less space than the current fence:

1: Approximate location of previous fence

While there may be some existing barbed wire fences along Cassopolis Street, those are legacy fences; to staff's knowledge no new fences with this type of configuration along the corridor have been approved in recent decades.

The Cassopolis Street corridor is a key gateway into the city, a major commercial corridor, and the subject of considerable investment of both public and private entities in recent years, who have sought to elevate the image of the corridor. The barbed wire fence does not contribute to the character of the corridor; if the Board finds in favor of the requested variance, it should be setback at least as far as the building on Cassopolis Street and Woodlawn Avenue, and at least 30 feet from Garden, which is the front yard building setback. Nowhere in the city is a six foot or chain link fence allowed by right in the front yard.

Recommendation

The Staff offers **no recommendation** on the developmental variance.

Conditions

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

1. The applicant shall submit an application to Technical Review within sixty (60) days.
2. The fence shall be set back as far as the building fronting on Cassopolis and Woodlawn, and be setback at least thirty (30) feet from the property line fronting on Garden Street.

Photos

PETITION #: 23-BZA-02 **FILING FEE: $** 300.00

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): Daniel B. Tiser

Mailing Address: 24730 Pine Lake St., Edwardsburg, MI 49122

Phone #: [redacted] Email: _____

Contact Person: Daniel B. Tiser

Mailing Address: 24730 Pine Lake St., Edwardsburg, MI 49122

Phone #: [redacted] Email: _____

Subject Property Address: 1738 Cassopolis St., Elkhart, IN 46514

Zoning: R2/B-2

Present Use: Rental Equipment Proposed Use: Same

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) (PRINT): Daniel Tiser

SIGNATURE(S): _____ DATE: 12-6-22

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 of the property.

✓ A completed Petition form signed by the legal owner of record.

✓ 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): 26.4.A.1

Map #: _____ Area: _____

RECEIVED BY: Matthew C Hooley DATE: 12/7/22

DATE: December 6, 2022

TO: Board of Zoning Appeals
City of Elkhart, Indiana

RE: Developmental Variance

I, **Daniel B. Tiser**, the undersigned petitioner respectfully shows the Board of Zoning Appeals:

1. I am the owner of the following described real estate located within Oslo County, State of Indiana, to-wit:

(Legal Description and Common Address Attached)

2. The above-described real estate presently has a zoning classification of **R2 One-family Dwelling and B3 Service-Business District** under the Zoning Ordinance of the City of Elkhart.

3. **I am in possession of the property located at 1738 Cassopolis St., Elkhart, Indiana, and am using the property and existing building and grounds as an equipment rental building. The need for the variance arises from the need to protect the personal property stored there.**

4. In connection with my use of the property it is necessary for protection of rental equipment that a fence be installed in order to deter unauthorized entry and for protection of the rental equipment stored outside for barbed wire to be attached at the top of the fencing. This is peculiar to my property as other real estate owners do not have the same exposure to theft and vandalism.

5. Section 26.4 of the City of Elkhart Ordinance prohibits the use of barbed wire except in manufacturing districts and if the fence is more than 7' (Feet) above the adjacent ground level. The fence located on my property is 6' (Feet). Petitioner is desiring a variance as the barb wire violates the provision of the Zoning Ordinance. The barbed wire creates no hazard or injury to anyone legally present on the property and strict adherence to the Zoning Ordinance exposes m to theft and damage and would impact the success of my business by reducing inventory.

6. **This creates hardship in that it would encourage unauthorized presence and possibility of vandalism or theft of my inventory. These conditions are created by the general reaction from some elements in the general population and need to be guarded against.**

7. The property is not a flood plain.

APPROPRIATE STANDARDS:

1. The barbed wire fence will not come in contact with anyone lawfully on the property and creates no condition which will be injurious to the public health, morals or safety.

2. The surrounding property is not affected adversely, but on the contrary the fence enhances the appearance and use of the surrounding properties.

3. The peculiar conditions of storing inventory outside of the building creates the need to discourage people on the site.

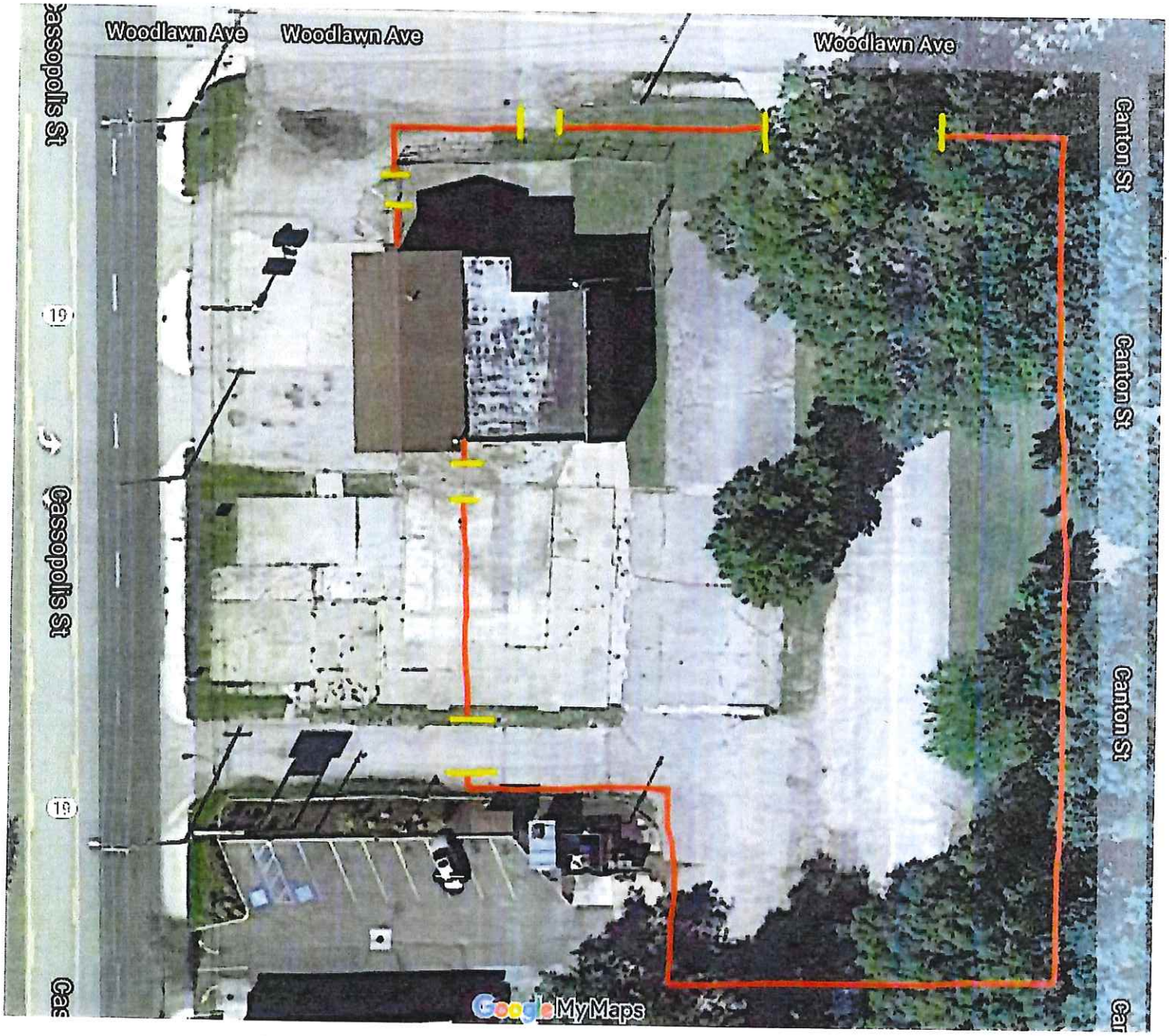
4. The present zoning classification only allows for fences without barbed wire. **Present zoning does not allow commercial uses for retail sales to the general public. Without the variance an unnecessary hardship exists in that it exposes inventory to the threat of vandalism and theft.**

5. The neighboring properties are not impacted by the proposed use and the fence improves the general appearance of the neighborhood.

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

Daniel B. Tiser

Contact Person: Daniel B.Tiser
24730 Pine Lake St.
Edwardsburg, MI 49112
[redacted]


Woodlawn Ave
Woodlawn Ave
Woodlawn Ave
Cassopolis St
Cassopolis St
Canton St
Canton St
Canton St
19
19
Google My Maps

City of Elkhart

Staff Report

Planning & Zoning

Petition: 23-BZA-05

Petition Type: Developmental Variance

Date: January 12, 2023

Petitioner: M. M. Lynn LLC

Site Location: 2016 Borneman Avenue

Request: To vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for an existing gravel lot in the front yard to remain despite a substantial improvement to the property.

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

To vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) feet.

Existing Zoning: M-1, Limited Manufacturing District

Size: +/- 1.2 acres

Thoroughfares: Borneman Avenue, 20th Street, Markle Avenue

School District: Elkhart Community Schools

Utilities: Available and provided to site.

Surrounding Land Use & Zoning:

Property is surrounded by industrial properties zoned M-1.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

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

Zoning parcels for viewing at neighborhood (large) scales. Published 02/09/2021

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Staff Analysis

Last month the Board reviewed and approved the second part of the variance request, for a truck dock allowing turning movements in the right of way, with conditions. At the February meeting staff and the petitioner are asking you to consider the remaining two.

The site plan has been updated to reflect that no new right of way parking will be built as part of the proposal, and the remaining right of way parking and gravel lot will remain for the time being. However, plans are in the works for sewer improvements that would allow the petitioners to cease using the septic under the gravel area, and for a campus wide parking plan that would allow them to phase out the existing parking spaces that are partially in the right of way.

As a result, the petitioners and staff believe that both variances will no longer be necessary after a period of two years. Staff therefore recommends approval of the two remaining variance requests, with the condition that they

expire after two years. Additionally, the variances should only apply to the existing conditions and not be expanded.

The expiration condition should only apply to the variance requests for the parking lot setback and the gravel, and not for the turning movements in the right of way.

Recommendation

The Staff recommends **approval** of the developmental variance to vary from Section 26.7.C.7 (a, b, c) which states in part that parking lots must be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers, and where storage yards for partially or fully finished product may be surfaced with gravel or slag may be located only in a rear yard to allow for an existing gravel lot in the front yard to remain despite a substantial improvement to the property, and to vary from Section 26.7.C.7.l.b.2, Parking Lot Landscaping, which requires a front setback of ten feet along a right of way for parking lots with one (1) to seventy-five (75) spaces, to allow for a parking lot with thirteen (13) spaces at a zero (0) foot setback, a variance of ten (10) 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 it is allowing existing conditions to continue for a period of only two (2) years;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the nonconformities are long-established;

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;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because improvements required to phase out the nonconformities will not be constructed for a period of time;

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 hazard area.

Conditions

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

1. The variances for the existing gravel lot will expire after a period of two (2) years, and the gravel lot may not be expanded.
2. The variance for the parking spaces at a zero (0) foot setback shall only apply to the existing parking spaces, shall not be expanded, and shall expire after a period of two (2) years.

Photos

PETITION #: 23-BZA-05 **FILING FEE: $** 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

x Developmental Variance _____ Appeal from Staff Decision

_____ Use Variance _____ Special Exception _____ Conditional Use

Property Owner(s): M.M.Lynn LLC

Mailing Address: 28891 County Road 26, Elkhart IN 46517

Phone #: [redacted] Email: [redacted]

Contact Person: Debra Hughes, P.E., Surveying and Mapping LLC

Mailing Address: 3220 Southview Drive, Elkhart, IN 46514

Phone #: 574-266-1010 Email: debra.hughes@sam.biz

Subject Property Address: 2016 Borneman Avenue, Elkhart, IN 46517

Zoning: Manufacturing

Present Use: Undeveloped Proposed Use: Proposed building and parking lot

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) (PRINT): Mark Carboneau, Authorized Representative

SIGNATURE(S): Mark C Carb DATE: 12/8/2022

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 of the property.

_____ A completed Petition form signed by the legal owner of record.

_____ 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: Nathan CHooley DATE: 12/9/22

December 8, 2022

Petition to the Board of Zoning Appeals, City of Elkhart, Indiana
Regarding: Developmental Variances for M.M.Lynn LLC

The undersigned Appellant respectfully shows the Board:

1. M.M. Lynn LLC is the owner of the property. The Land Description is:
   WARRANTY DEED – 2018-01388
   LOTS NUMBERED 215, 216, 217, 218, 219 AND 220 AS THE SAID LOT4 ARE KNOWN AND DESIGNATED ON THE RECORDED PLAT OF FIELDHOUSE'S WEST SIDE ADDITION TO THE CITY OF ELKHART, INDIANA; SAID PLAT BEING RECORDED IN DEED RECORD 115, PAGE 447 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.
   ALSO: THE SOUTH 1/2 OF THE VACATED ALLEY LYING NORTH OF AND ADJACENT TO SAID LOTS.

   WARRANTY DEED – 2021-21892
   LOTS NUMBERED 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, AND 176 AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE RECORDED PLAT OF FIELDHOUSE'S WEST SIDE ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN DEED RECORD 115, PAGE 477 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.
   ALSO: THE NORTH 1/2 OF THE VACATED ALLEY LYING SOUTH OF AND ADJACENT TO LOTS 162, 163 AND 164.

2. The above described real estate presently has a zoning classification of:
   M-2 Manufacturing

3. Appellant presently occupies the above described property in the following manner:
   The property is used for manufacturing of industrial racks and shelving materials with associated parking and access drives.

4. Appellant desires the following:
   To allow an existing gravel parking and loading area south of 2016 Borneman Avenue Building. The purpose is to provide access to the building while allowing an existing septic tank and septic system drainage field to remain under a pervious surface.

   To allow truck access to a proposed truck dock on the north end of the proposed building addition. The purpose is to allow truck access from a lightly traveled city street by backing into the proposed truck dock.

5. The Zoning Ordinance of the City of Elkhart requires the following:
Section 26.7.C.7.a. All off-street parking areas, driveways, loading areas, and maneuvering access thereto…shall be surfaced with an all-weather, dustless, impervious, hard-surface pavement, including drainage which shall meet City specifications as prescribed by the Board of Public Works.

Section 26.7.E. Off-street loading facilities shall be located in a manner to prevent vehicle maneuvering in or blockage of rights-of-way.

6. Explain why strict adherence to the Zoning Ordinance requirements would create an unusual hardship.

a. The Owner uses the south parking and access area for the business operations at 2016 Borneman Avenue. The original building was constructed in 1956, which was prior to the City Zoning Ordinance.
   1) The property was permitted to use the existing gravel parking and access area for many years without damage to any adjoining property or the public use of the right of way.
   2) The property does not have access to City sanitary sewer, and uses an on-site septic tank and infiltration field beneath the gravel parking and access area. It would be damaging to the owner to install pavement over the septic tank and field because access for maintenance or repair to the septic tank and infiltration field would be restricted.

b. Properties in this industrial area have been permitted to use the public right of way to back into the property without restrictions for many years. The owner requests that this permission be extended to this proposed building and proposed truck dock.

7. Using the appropriate standards from the previous page, address each standard.

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
The existing gravel parking lot and proposed truck dock with truck backing maneuvers will not be injurious because the gravel parking lot has been in place for many years without any damage to the community. The proposed truck dock with truck backing maneuvers is similar to truck access to other nearby manufacturing properties.

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
The existing gravel parking lot and proposed truck dock with truck backing maneuvers will not cause any negative impact to adjoining properties because the gravel parking lot has been in place for many years without damage to adjoining properties. The proposed truck dock with truck backing maneuvers is similar to truck access to other nearby manufacturing properties.

3. Granting the variance would be consistent with the intent and purpose of the Zoning Ordinance.

The Zoning Ordinance intent is to allow for the owner's intended use of properties without disruption or damage to adjoining owners. The existing gravel parking lot and proposed truck dock with truck backing maneuvers will allow highest and best use of these properties. The proposed building will add manufacturing capacity for a thriving Elkhart business. This will allow the business to expand, hire additional workers and contribute tax revenue to the City.

4. Special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district.

The existing gravel parking lot has an existing septic tank and infiltration field beneath it. Pavement over this tank and field would limit the owner's ability for maintenance or repair of the system. There is no City sanitary sewer available in Borneman Avenue.

The proposed truck dock with truck backing maneuvers will allow finished products to be shipped from the north end of the proposed building addition. This will allow the manufacturing operations to be organized in the most efficient manner inside the building.

5. The strict application of the terms of this Ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance.

Strict application of the Ordinance would require that the owner construct a paved parking lot and restrict access to the existing septic tank and infiltration field for needed maintenance or repair activity.

Strict application of the Ordinance would require that there be no truck dock on the proposed building because there is inadequate room for truck turning on the property. This would restrict use of this property and could cause the owner to move the business out of the City.

6. The special conditions and circumstances do not result from any action or inaction by the applicant.

The owner uses the south property and gravel parking lot as it was when the property was purchased in 2018. The proposed building addition with proposed truck dock would use 20th Street for backing into the proposed truck dock. 20th Street has minimal traffic so there will be minimal negative impact to general traffic in the area.

7. In designated flood hazard areas, 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.

The site is not in a flood hazard area, there is no threat to public safety by the gravel parking lot or truck backing maneuvers to the proposed truck dock. There is no public expense for any part of this project. The gravel parking lot and proposed truck dock with truck backing maneuvers will not create a nuisance or conflict with existing laws or ordinances.

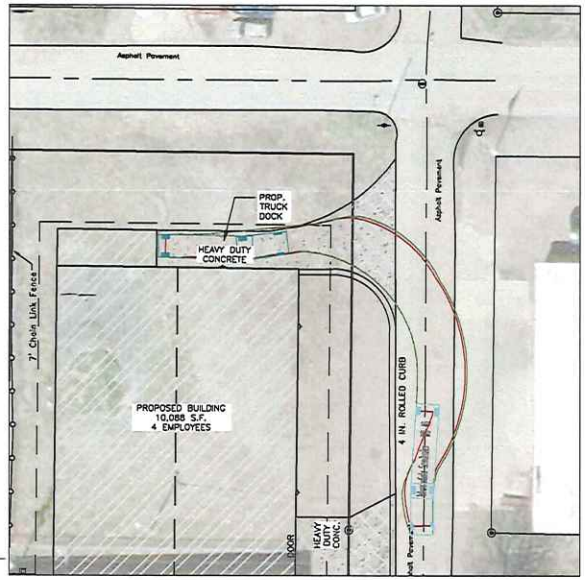
WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

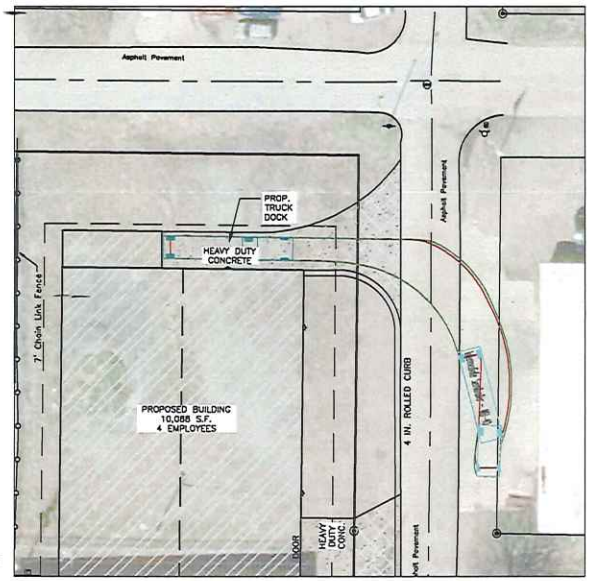
Signature of Property Owner: _____

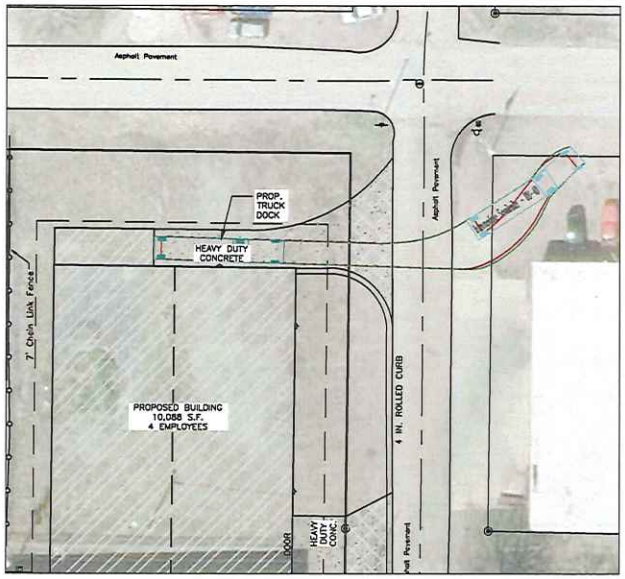
Printed Name: _Mark Carboneau, Authorized Representative, M.M.Lynn LLC_____

Contact Person:
Mark Carboneau
M.M. Lynn LLC
288961 County Road 26
Elkhart IN 46517
[redacted]

Documents Prepared By:
Debra S. Hughes, P.E., Senior Professional Engineer
Surveying and Mapping LLC
3220 Southview Drive
Elkhart IN 46514
(574) 266-1010
Debra.hughes@sam.biz







NO.	REVISIONS	BY	DATE
1	WIDEN TRUCK DOCK, ADD EMPLOYEE COUNT, ADD STRIPING FOR EXISTING PARKING AREAS	DSH	12/02/2022
2	REVISE PROPOSED PARKING FOR CITY COMMENTS	BLS	12/13/2022

SAM™
3220 Southview Drive
Elkhart, IN 46514
Phone: 574-266-1010
Email: info@sam.biz

DRAWING FILE: 1022073476-DESIGN.DWG	
CERTIFICATION DATE: 12/13/2022	
HORIZONTAL SCALE: 1"=20'	
VERTICAL SCALE: NONE	
ENGINEER: Debra S. Hughes, P.E.	
TECHNICIAN: BLS	

Xref Q:\

Xref Q:\DSH Fil

BACKING MANEUVERS EXHIBIT

M.M Lynn, LLC, 2016 Borneman Avenue, Elkhart
Lots 162-164 and 215-220 Fieldhouse's West Side Addition,
Part of the NE 1/4, SEC. 18, T37N, R5E,
Concord Township, Elkhart County, Indiana

JOB NUMBER: 1022073476

SHEET 1
OF 1

LOCATION MAP

OWNER:
M.M. LYNN, LLC
28891 COUNTY ROAD 26
ELKHART, IN 46517

GENERAL CONTRACTOR:
ENDEAVOUR CONSTRUCTION
BRENT MILLER
22047 ENDEAVOUR DRIVE
ELKHART, IN 46514

LEGAL DESCRIPTION

WARRANTY DEED – 2018-01388

LOTS NUMBERED 215, 216, 217, 218, 219 AND 220 AS THE SAID LOT4 ARE KNOWN AND DESIGNATED ON THE RECORDED PLAT OF FIELDHOUSE'S WEST SIDE ADDITION TO THE CITY OF ELKHART, INDIANA; SAID PLAT BEING RECORDED IN DEED RECORD 115, PAGE 447 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

ALSO: THE SOUTH 1/2 OF THE VACATED ALLEY LYING NORTH OF AND ADJACENT TO SAID LOTS.

WARRANTY DEED – 2021-21892

LOTS NUMBERED 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, AND 176 AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE RECORDED PLAT OF FIELDHOUSE'S WEST SIDE ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN DEED RECORD 115, PAGE 477 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

ALSO: THE NORTH 1/2 OF THE VACATED ALLEY LYING SOUTH OF AND ADJACENT TO LOTS 162, 163 AND 164.

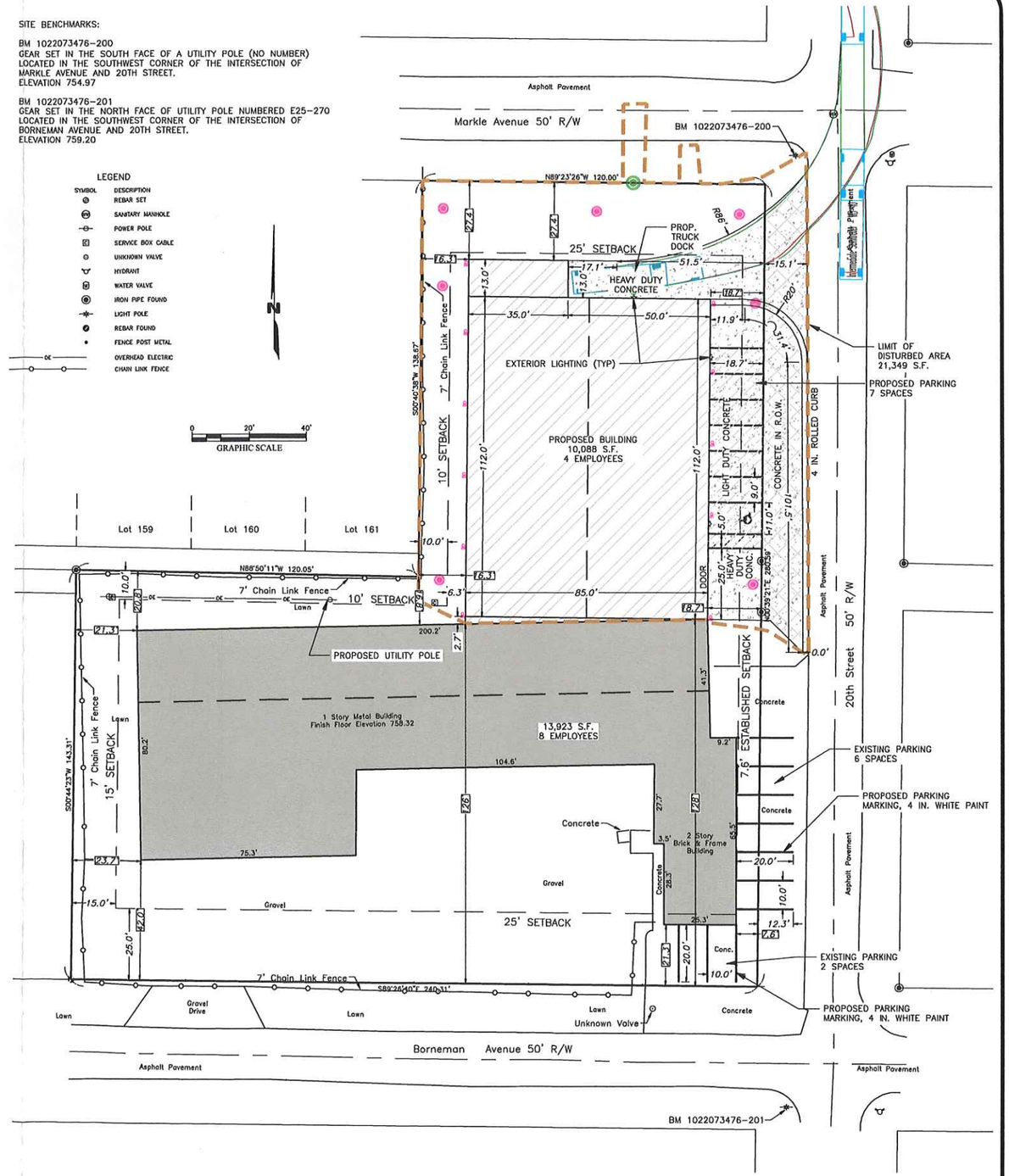
LOT COVERAGE TABLE	
EXISTING STRUCTURE	13,923 S.F.
PROPOSED STRUCTURE	10,088 S.F.
TOTAL LOT AREA	50,831 S.F.
LOT COVERAGE	47.20%

SITE PLAN NOTES:
1. SITE AREA: 50,831 S.F. = 1.17 AC.
2. ZONING: M-1 LIGHT MANUFACTURING DISTRICT
3. PARKING REQUIREMENTS:
   - 3.1. 1 SPACE PER EMPLOYEE ON LARGEST SHIFT,
   - 3.2. 1 SPACE PER 300 S.F. OF PUBLIC OFFICE AREA
   - 3.3. EMPLOYEES IN NEW BUILDING ADDITION: 4
   - 3.4. EMPLOYEES IN EXISTING BUILDING: 8
   - 3.5. PUBLIC OFFICE AREA: 0 S.F.
   - 3.6. PARKING REQUIREMENT: 12 + 0/300 = 12 PARKING SPACES
   - 3.7. PARKING PROVIDED: 14 STANDARD, 1 HANDICAP: 15 TOTAL
4. LIGHTING REQUIREMENTS:
   - 4.1. OUTDOOR LIGHTING SHALL BE INSTALLED ACCORDING TO THE LIGHTING PLAN
   - 4.2. MAXIMUM HEIGHT OF LIGHT POLES: 20 FT.
5. SETBACK REQUIREMENTS
   - 5.1. FRONT YARD BUILDING: 25 FT. REQUIRED (MARKLE AVE. & BORNEMAN AVE.)
     - 5.1.1. PROPOSED BUILDING ADDITION ON MARKLE AVE.: 27.4 FT.
     - 5.1.2. EXISTING BUILDING ON BORNEMAN AVE: 21.3 FT.
   - 5.2. CORNER SIDE YARD BUILDING ESTABLISHED ON 20TH ST.: 7.6 FT.
     - 5.2.1. EXISTING BUILDING: 7.6 FT.
     - 5.2.2. PROPOSED BUILDING ADDITION: 18.7 FT.
   - 5.3. REAR YARD BUILDING SETBACK: 10 FT. (WEST PROPERTY LINE)
     - 5.3.1. PROPOSED BUILDING ADDITION: 16.3 FT.
   - 5.4. PARKING: 0 FT.
     - 5.4.1. PROPOSED 20TH ST. : 0 FT.
6. LANDSCAPE REQUIREMENTS:
   - 6.1. YARD LANDSCAPING NOT REQUIRED WITHIN "M" ZONING DISTRICTS EXCEPT FOR PROPERTY FRONTING ARTERIAL STREETS.
     - 6.1.1. NO ARTERIAL STREETS ON FRONTAGE
7. PROPOSED BUILDING
   - 7.1. MAXIMUM HEIGHT: 50 FT
   - 7.2. NUMBER OF FLOORS: 1 FLOOR

SITE BENCHMARKS:

BM 1022073476-200
GEAR SET IN THE SOUTH FACE OF A UTILITY POLE (NO NUMBER) LOCATED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF MARKLE AVENUE AND 20TH STREET.
ELEVATION 754.97

BM 1022073476-201
GEAR SET IN THE NORTH FACE OF UTILITY POLE NUMBERED E25-270 LOCATED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF BORNEMAN AVENUE AND 20TH STREET.
ELEVATION 759.20



NO.	REVISIONS	BY	DATE
1	WIDEN TRUCK DOCK, ADD EMPLOYEE COUNT, ADD STRIPING FOR EXISTING PARKING AREAS	DSH	12/02/2022

SAM™
3220 Southview Drive
Elkhart, IN 46514
Phone: 574-266-1010
Email: info@sam.biz

DRAWING FILE:	1022073476-DESIGN.DWG
CERTIFICATION DATE:	12/02/2022
HORIZONTAL SCALE:	1"=20'
VERTICAL SCALE:	NONE
ENGINEER:	Debra S. Hughes, P.E.
TECHNICIAN:	BLS

DEBRA SMITH HUGHES — REGISTERED — No. PE880266 — STATE OF INDIANA — PROFESSIONAL ENGINEER
Debra S. Hughes

PROPOSED SITE PLAN

M.M Lynn, LLC, 2016 Borneman Avenue, Elkhart
Lots 162-164 and 215-220 Fieldhouse's West Side Addition,
Part of the NE 1/4, SEC. 18, T37N, R5E,
Concord Township, Elkhart County, Indiana

JOB NUMBER: 1022073476

PLOTTED:Friday, December 2, 2022 4:43:07 PM
PATH:\Users\DSH\Projects\1022073476\1022073476-DESIGN.DWG

City of Elkhart

Staff Report

Planning & Zoning

Petition: 23-BZA-06

Petition Type: Developmental Variance

Date: February 9, 2023

Petitioner: Dorothy and Willie Robinson

Site Location: 1629 Roys Avenue

Request: To vary from Section 5.4 of the R-2 One-Family Dwelling District Yard Requirements to allow the construction of a new home at a setback of four (4) feet nine (9) inches from the public right-of-way of East Cleveland Avenue. A reduction of two (2) feet three (3) inches from the Established Setback of seven (7) feet.

Existing Zoning: R-2, One-Family Dwelling District

Size: +/- .13 acres

Thoroughfares: East Cleveland Avenue and Roys Avenue

School District: Elkhart Community Schools

Utilities: Available and provided to site.

Surrounding Land Use & Zoning:

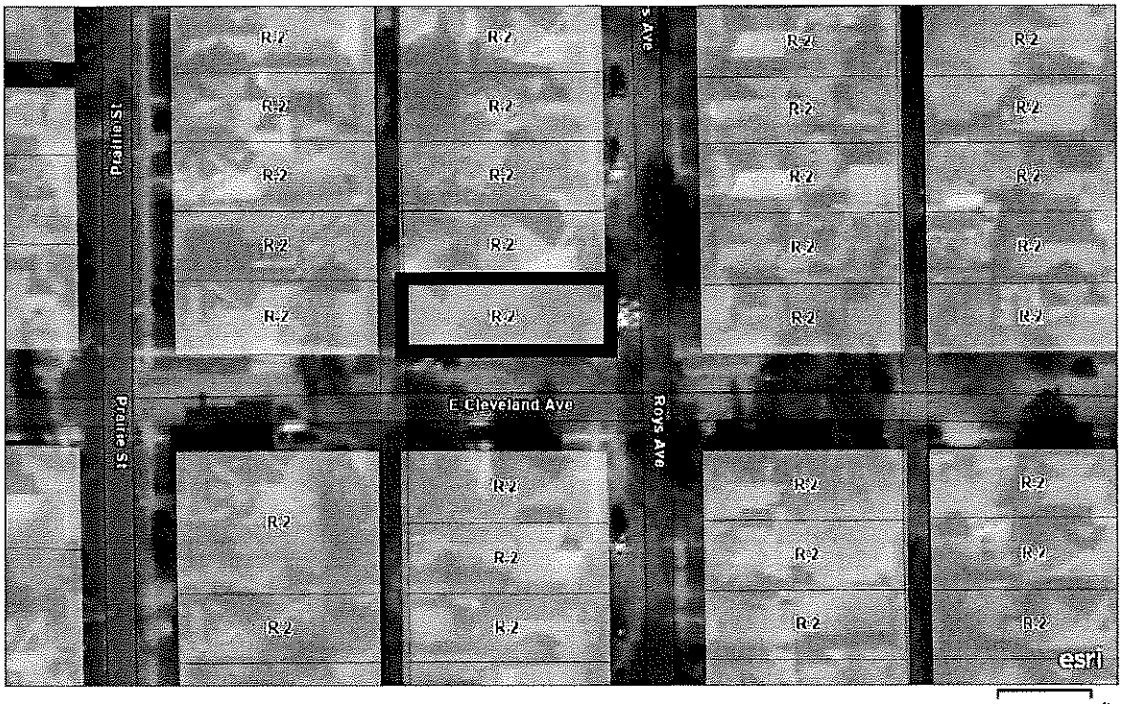
The surrounding properties are R-2 One-Family Dwelling District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to develop with low-density residential uses.



City of Elkhart | Elkhart GIS | Maxar, Microsoft | Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Staff Analysis

This property is located at the intersection of Cleveland and Roys Avenue. On the western side of the property there is an existing home built in 1910 that faces Cleveland Avenue. This house was damaged by a fire and is planned to be demolished. The applicants are proposing a new home on the eastern side of the property that will face Roys Avenue.

This is a nonconforming-platted lot within the Morehous Subdivision, as it currently does not meet the lot width requirements. As this is a corner lot, it has two front yard setbacks. The proposed site plan shows the new home at four (4) feet nine (9) inches from the right-of-way of Cleveland Avenue requiring a request for a reduction from the required seven (7) foot Established Front Yard Setback. The submitted site plan does show the house meeting the required north side yard setback and the front setback along Roys Avenue.

Recommendation

The Staff recommends **approval** of the developmental variance request to vary from Section 5.4, Yard Requirements in the R-2 District, to allow a house to be constructed at four (4) feet nine (9) inches from Cleveland Avenue.

1. The approval **will not** be injurious to the public health, safety, morals or general welfare of the community;

2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner as the property will continue to be residential;

3. Granting the variance **would be** consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted as this parcel nonconforming to current parcel width requirements;

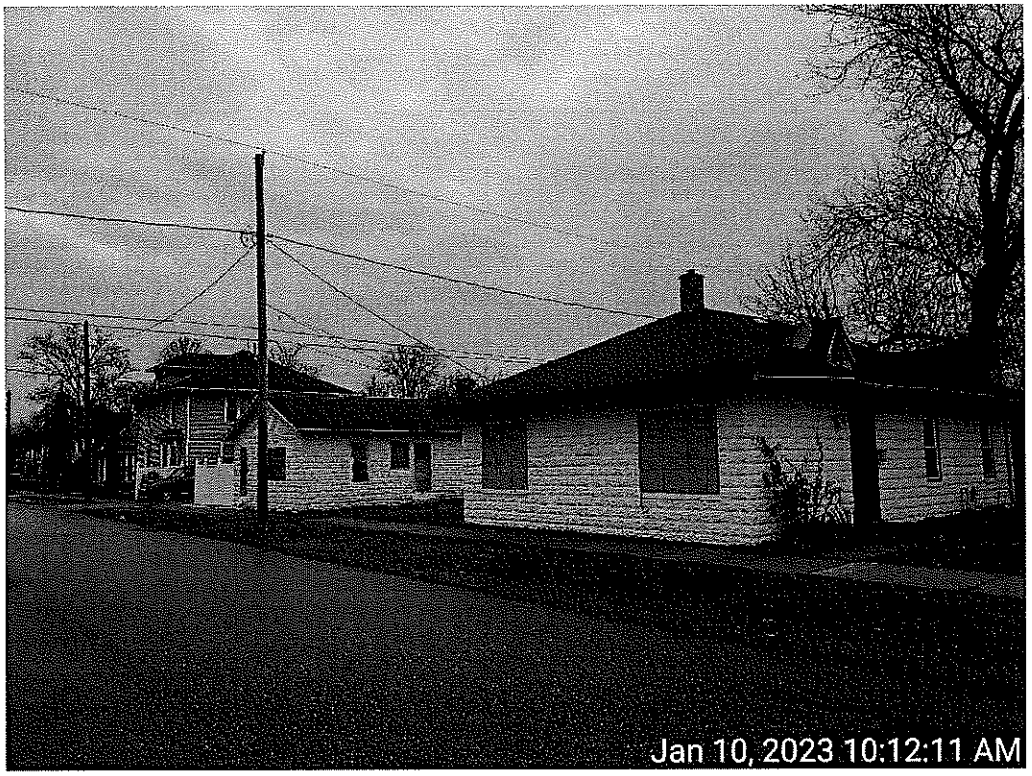
4. Special conditions and circumstances **do exist** which are particular to the land involved and which are not applicable to other lands or structures in the same district as this is a nonconforming corner parcel;

5. The strict application of the terms of this Ordinance **will** result in practical difficulties in placing a new single family home on the parcel;

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 hazard area.

Photos



PETITION #: 23-BZA-06 **FILING FEE: $**200

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

x Developmental Variance _____ Appeal from Staff Decision

_____ Use Variance _____ Special Exception _____ Conditional Use

Property Owner(s): DOROTHY & WILLIE ROBINSON

Mailing Address: 1629 ROYS AVE, ELKHART, IN 46516

Phone #: [redacted] Email: N/A

Contact Person: KENNETH L. HOLMES, PROJECT MANAGER, MODWAY HOMES, LLC

Mailing Address: 2049 E. MARKET ST, NAPPANEE, IN 46550

Phone #: 574.612.2526 Email: kenny@modwayhomes.com

Subject Property Address: 1629 ROYS AVE, ELKHART, IN 46516

Zoning: R2 ONE FAMILY DWELLING SECTION 5

Present Use: n/a Proposed Use: SINGLE FAMILY RESIDENCE

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) (PRINT): DOROTHY & WILLIE ROBINSON

SIGNATURE(S): Willie Robinson Dorothy Robinson DATE: 1/6/2023

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 of the property.

✓ A completed Petition form signed by the legal owner of record.

✓ 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: Matthew C Hoole DATE: 1/6/23

DATE: 1/6/2023

TO: Board of Zoning Appeals
City of Elkhart, Indiana

RE: Developmental Standards Variance

The undersigned petitioner respectfully shows the Board of Zoning Appeals:

1. I, ***DOROTHY & WILLIE ROBINSON,*** am the owner of the following described real estate located within the **City of Elkhart, Concord Township, Elkhart County, State of Indiana**, to wit:

   MOREHOUS ADD LOT 80 – Deed Document# 90-18926

2. The above-described real estate presently has a zoning classification of **R2 ONE FAMILY DWELLING SECTION 5** District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently occupies (or proposes to occupy) the above-described property in the following manner:

   Currently, the residence of this house is uninhabitable due to a fire that rendered this home a total loss and plans on building a new single-family home.

4. The petitioner desires to ***add a new modular home that would conform to all Elkhart City Standards, but we request a variance for the setbacks off the roads. The Cleveland Avenue side to the established setback down to 4' 9".***

5. ***This residence is uninhabitable due to a fire, and the home's current conditions are not feasible to live in any longer. The home is scheduled for demolition to bring in a modular home purchased through ModWay Homes, LLC; built by Fairmont Homes, Inc. Unfortunately, the neighborhood and lots are very small, and many homes are not within current setback codes and often encroach on property lines. We request a variance for the setback off Cleveland Avenue and the North Property Line.***

   The request is a variance of 2' 3" Yard Requirements for the established front yard and side yard setback.

6. ***The size of the parcel is nonconforming per the ordinance lot that is supposed to be 60' wide; which makes it difficult to build a compatible home to the rest of the neighborhood.***

7. Using the **appropriate standards *(developmental or use)* from page 3**, address each standard. You cannot answer simply "Yes" or "No"; you must state **why** this is true (the reasons for your answer).

   1. ***The approval will not injure the community's public health, safety, morals, and general welfare. We are replacing the home with a smaller home and floor plan to stay within ordinances.***

2. ***The use and value of the area adjacent to the property will not be affected substantially adversely. The placing of this home will not adversely affect the homes to the North, as there is only one home on Roy's that can be affected, and we foresee no issues with any values being reduced.***
3. ***Granting the variance would be consistent with the intent and purpose of the Zoning Ordinance. This would allow us to place the home on Roys Avenue, consistent with the local zoning ordinances and appropriate setbacks. The properties are generally up to the sidewalk, and there is still an existing easement from the road to the sidewalk, making the conditions still safe for habitation.***
4. Special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district. ***Yes, this lot is nonconforming due to the lot sizes of the lot that is a corner lot, and as a corner lot that has two (2) front yards; this creates additional hardships due to increased setbacks.***
5. The strict application of the terms of this Ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance. (Financial considerations do not qualify). ***This ordinance was originally established after the neighborhood had been created and the lot size has not changed since it's original conception. Therefore; making it very difficult and nearly impossible to build a new home on this lot.***
6. The special conditions and circumstances do not result from any action or inaction by the applicant. ***There was a fire that renders the home inhabitable.***
7. In designated flood hazard areas, 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." ***It is not in a flood plain.***

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

Signature of Property Owner:	Willis Robinson 1.6-23
Printed Name:	**Willie Robinson**
Second Property Owner:	Dorothy Robinson 1-6-23
Printed Name:	**Dorothy Robinson**
Contact Person:	Kenneth Holmes Project Manager, ModWay Homes, LLC
Address:	2049 E. Market St Nappanee, IN 46550
Phone Number:	574.612.2526 [redacted]
Email:	kenny@modwayhomes.com

TO: Board of Zoning Appeals
City of Elkhart, Indiana

RE: Developmental Standards Variance

We, **Dorothy and Willie Robinson,** living at 1629 Roys Avenue, Elkhart, IN 46516, grant permission to Kenneth L. Holmes, Nick Spirito, Sarah Holmes, and Adam Cobane of ModWay Homes, LLC, to represent us in the developmental variance of our proposed new home.

Sincerely,

x Willie Robinson

Willie Robinson

Date: 1-6-23

x Dorothy Robinson

Dorothy Robinson

Date: 1-6-23

City of Elkhart

Staff Report

Planning & Zoning

Petition: 19-X-01U

Petition Type: Staff Item – Review of 19-X-01

Date: February 9, 2021

Petitioner: City of Elkhart Planning & Zoning Department

Site Location: City of Elkhart

Request: 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.

Staff Analysis

On January 7, 2019, a special exception was granted to Barnes' Playhouse daycare center at 706 W. Indiana Avenue. On January 14, 202, the Board extended the approval for additional two years, The initial 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 in excess of existing signage.
5. A copy of the child care center 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 eighty-five (85) children.
9. 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 January 20, 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 not had any critical health and safety violations in the last two years.

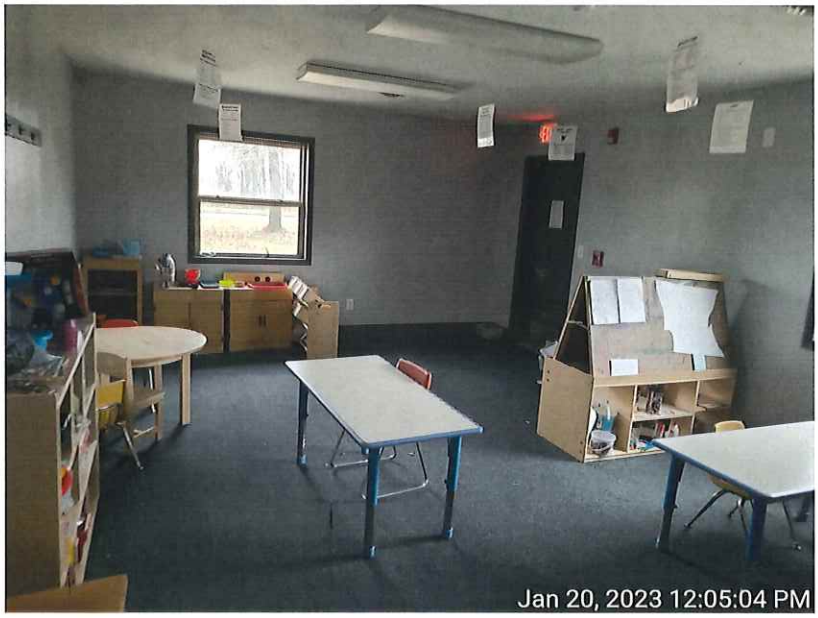
Recommendation

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 9, 2025.

Photos

Jan 20, 2023 12:02:38 PM

Jan 20, 2023 12:04:48 PM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Network: Dec 28, 2020 at 10:29:37 AM EST

ALPHABET
Network: Dec 28, 2020 at 10:29:50 AM EST

City of Elkhart

Staff Report

Planning & Zoning

Petition: 19-X-02U

Petition Type: Staff Item – Review of 19-X-02

Date: February 9, 2023

Petitioner: City of Elkhart Planning & Zoning Department

Site Location: City of Elkhart

Request: 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. On January 14, 2021, the special exception was reviewed as a staff item and approved for an additional two years. 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 January 19 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 two years.

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 9, 2025.

Photos

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