

AGENDA
ELKHART CITY BOARD OF ZONING APPEALS
THURSDAY, MARCH 14, 2024 AT 6:00 P.M.
COUNCIL CHAMBERS – MUNICIPAL BUILDING

THIS MEETING WILL ALSO BE HELD ELECTRONICALLY VIA WEBEX.

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

1. **ROLL CALL**
2. **2024 ELECTION OF OFFICERS**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES JANUARY 14, 2024 AND FEBRUARY 8, 2024**
5. **APPROVAL OF PROOFS OF PUBLICATION**

6. **OLD BUSINESS**

24-BZA-03 PETITIONER IS NANCY SHAUM
PROPERTY IS LOCATED AT 3246 TOLEDO RD

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

7. **NEW BUSINESS**

24-UV-03 PETITIONER IS FRANK THOMPSON
PROPERTY IS LOCATED AT 211 NORTH MAIN ST

To amend case 23-UV-06 which permitted one tattoo artist to operate in the hair salon, to allow additional tattoo artists to operate in the salon. This request varies from Section 15.2, Permitted Uses in the CBD, Central Business District, to allow for a tattoo parlor. Tattoo parlors are not a permitted use in the CBD.

24-BZA-05 PETITIONER IS 123 COUNTY ROAD 17 – ELKHART LLC
PROPERTY IS LOCATED AT 123 COUNTY ROAD 17

To request to vary from Section 18.6, Yard Requirements in the M-1, Limited Manufacturing District to allow for a reduced side yard setback to zero (0) feet from the property line where twenty five (25) feet is required, a variance of twenty five (25) feet.

24-UV-04 PETITIONER IS HERG INC
PROPERTY IS LOCATED AT 106 & 108 BOWERS CT

To vary from Section 7.2, Permitted Uses in the R-4, Multiple Family Dwelling District to allow for the demolition of 106 and 108 Bowers Court and used for a parking lot to provide off street parking for the River Queen.

24-UV-05 PETITIONER IS M.S. INVESTMENT CORPORATION
PROPERTY IS LOCATED AT 1205 MIDDLETON RUN RD

To vary from Section 4.2, Permitted Uses in the R-1, One Family Dwelling District to allow for the former Disabled American Veterans building to be used for ADEC’s day programming and skills training, therapy services, employment services, youth programming as well as services that support the mission of ADEC.

24-X-01 PETITIONER IS FRANCISCO SESMAS AND MARIA TORRES
PROPERTY IS LOCATED AT 2006 BENHAM AVE

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

24-X-02 PETITIONER IS BALWINDER SINGH
PROPERTY IS LOCATED AT 115 W HIVELY AVE

A Special Exception per Section 12.3, Special Exception Uses in the B-2, Community Business District, to allow for a public school.

8. ADJOURNMENT

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

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, January 11, 2024 - Commenced at 6:00 P.M. & adjourned at 6:48 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Andy Jones
Evanega Rieckhoff (Proxy)

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

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

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES FOR NOVEMBER 9, 2023

Evanega Rieckhoff makes motion to approve; Second by Jones. 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 11, 2024, 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.

ELECTION OF OFFICERS

Trotter announced that the first item on the agenda was the 2024 election of officers. Trotter suggested that since the Board only has three regular members with one proxy and is short two appointments, the Board should elect officers this evening, as required by statute. Trotter proposes that the election of officers would only be for the meeting in January, and the item would stay on the agenda for February with the idea that council appointments will have been set and established for the February meeting.

Mulvaney calls for a motion to nominate officers.

Jones makes a motion to nominate Doug Mulvaney as Board President; Second by Davis. Voice vote carries

Mulvaney calls for a motion to nominate Ron Davis as the Vice President for the meeting.

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

Mulvaney calls for a motion to nominate Andy Jones as the Secretary for the meeting.

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

NEW BUSINESS

24-UV-01 PETITIONER IS FOUNDATIONS CHILD CARE CENTER, INC PROPERTY IS LOCATED AT 320 W HIGH ST

To vary from Section 15.2, Permitted Uses in the Central Business District, to allow for the establishment of a day care center at 320 W. High Street. Day care centers are not permitted in the Central Business District.

Mulvaney calls the petitioner forward.

Jennifer Fisher appears in person on behalf of the petitioner. Fisher introduced Tricia Pendleton as the director of operations and Bobby Ferrari as the general contractor with Fine Line Finishing. Fisher says they bought 320 W High St several years ago for office space and storage programs. They have five locations in Elkhart and St. Joseph County, serving several hundred children and offering significant employment within the community. Fishers says that Foundations Child Care has been in Elkhart for over 14 years and is a proud member of the Chamber of Commerce. They have no outstanding issues with the City of Elkhart, and recently, they filed for a Special Exception for a property they acquired last year. Fishers explained that their original goal with the High Street location was to sell it about a year ago because they had opened a 20,000-square-foot program in South Bend that provided office space and storage. However, the State of Indiana's Department of Family and Social Services came to them to inquire about vacant land they needed to utilize because Elkhart has a deficit in infant and toddler childcare programs. Fisher says Foundations Child Care is nationally accredited and ranked in the country's top eight percent in childcare. They are also a member of an accreditation association called NAEYC, the National Association for the Education of Young Children. Fisher then says that they offer the highest quality program rating that the state of Indiana provides, in which they are four levels past the quality providers. The State of Indiana offered them a grant to support the remediation of the inside of the building on 320 W High St to accommodate additional childcare seats. It was enough money to cover the complete build-out and more than six months of staffing their equipment should the City of Elkhart grant the variance. Fisher then gave insight on how, typically, child daycare programs create noise and traffic, but they are looking at creating 22 spots for children between the ages of six weeks and 23 months old. The facility would not be a school-age playground. They would use an eight-seater stroller to walk children around the block. Fisher says they are looking for 35 square feet of outside space for ten children. Additionally, they found out they own two parcels on High St, and the recent combination of those two parcels grants them the parking and space that allows them to egress out for cribs and playgrounds needed for children. Fisher says they would not increase noise standards or bring down the community in any way. They have recently remodeled the building by re-roofing it, repaving the parking lot, and aesthetically improving the property. Their physical presence five days a week detracts from some of the nuisances that the community and the apartment complex nearby might find. Fishers added that Elkhart is one of only a few cities that do not have a childcare program in their central business district. When you look at other developing cities in the country, almost all of them provide it because there's a strong need to support those working within the community. When you talk about ecological footprints, being on the third block on High St, people at the office work two blocks away. Government, businesses, banks, ministries, and other facilities within the area could quickly drop off their children without creating more of a carbon footprint. Fishers says they believe that Foundations Child Care would only help improve the community with their service and opportunities. They have demonstrated that in over a decade and are committed to staying and being present positively.

Mulvaney asks for questions from the Board.

Jones asks Fisher if they can meet the seven conditions that the staff has proposed.

Fisher answers yes, other than needing a larger playground where they must file for a parking variance. However, her director of operations looked at the one-to-six parking ratio for the different standards, and they concluded that they could meet it with the combined parcels.

Jones asks Fisher if they would be set with the 12 parking spaces.

Fisher says they would be good on that and the other conditions; the only issue was that it was not a preapproved use.

Jones states that the conditions are what staff has recommended to the board to approve the variance.

Evanega Rieckhoff states that the conditions are a typical list for all childcare facilities, and there are no problems.

Fisher answers that there are no problems adhering to the conditions set forth by the board.

Mulvaney asks Fisher, based on the ages of the children from zero to 23 months, if it is safe to say that most of their activities with the children will be indoors, with the kids being taken out on occasion in a stroller or something along those lines.

Fisher responded yes and that the maximum group size is ten for toddlers, so if anybody were outside at any time, it would be a maximum of ten toddlers between the ages of 12 and 23 months old. Fishers then says that if anybody has had or been around children, outside time is the most enjoyable time for them, and they would love it. Normally, they are not as loud and boisterous as you would find with preschool and school-age children.

Evanega Rieckhoff says she drove by the property address the other day because she was concerned when she saw that the daycare would be located in the Central Business District. However, she says it's a great building; she believes it would be a perfect setting for the petitioner and a wonderful location.

Mulvaney states that he has seen several agencies in and out of the property, so he is glad to see somebody taking it over and using it again.

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

Rosie Mesa appears via WebEx in opposition to the petition. Mesa states that she objects to the zoning change for the petitioner because it is a business district. It currently has attorneys, accountants, and insurance companies and needs to remain professional. Mesa says establishing a childcare center would fundamentally change the nature and character of the business district. She then says that lawyers need quietness to work, which would be harmed if parents dropped off and picked up their children from the daycare center. Mesa added that no increased noise is guaranteed because of the increased traffic and inability to muscle children. She explained that children make noise, and there's nothing wrong with children, but children do make noise. They then say that there is a reason why daycare centers are not permitted in business districts, and that is why. The daycare center would interfere with the quiet enjoyment of Mesa's business property and other lawyers who need quiet work time. Mesa says there could be a potential devaluation of her business property because there were no childcare centers when she bought it.

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

STAFF ANALYSIS

The petitioner is a 501(c)3 nonprofit corporation that operates 5 early childhood education programs, 4 of which are within the City of Elkhart, and has served Elkhart for 14 years. They currently own the property at 320 W. High, and have been primarily using the facility for storage and as a collection site for community donations. The building includes approximately 3,200 sf of finished space on a .235 acre parcel. Petitioner was awarded a grant from the State of Indiana to convert the building from its previous medical office set-up into infant and toddler classrooms that will increase available child care opportunities for Elkhart residents. The building is located within a cluster of primarily professional office uses.

The petitioner anticipates serving 22 children and employing 6-8 staff at the facility. While there are no income limits or restrictions on the families served ab the petitioner's programming, approximately 75% of the families they serve are low-income.

The location of this facility is convenient to a large density of both residents and downtown businesses who would benefit from access to high-quality childcare.

The petitioner is proposing to create an enclosed and fenced outdoor play area to allow for outdoor recreation for the toddlers. Based on the proposed number of employees and children served, the facility will require a total of 12 parking spaces and the proposed plan will meet the parking requirements.

STAFF RECOMMENDATION

The Staff recommends Approval of the use variance based on the following finding of fact;

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the day care must successfully pass all required inspections. Additionally, the use is not out of character for the in terms of intensity as compared to other uses permitted with the CBD district and within the immediate surrounding uses;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the because the site was formerly used for commercial (medical office) purposes and it has sufficient play and parking areas;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because the ordinance provides the variance process as relief;
4. Special conditions and circumstances do exist which are peculiar to the land involved because day care centers are not permitted by right in the CBD zoning district;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the existing building appears to be appropriate to accommodate the proposed use and will add a valuable amenity to the surrounding neighborhood and neighborhood businesses;
6. The special conditions and circumstances do result from any action or inaction by the applicant as the proposed use is a change from the existing storage uses;
7. This property does not lie within a designated flood area.

CONDITIONS

1. The petitioner shall provide a fenced-in play area for children. This area shall be separated from the parking lot.
2. Children will only be outside the building when being dropped off, picked up, or on walks or outings supervised by adult staff.
3. The facility and grounds shall be kept clean at all times.
4. The facility shall be subject to inspection, upon reasonable notice, by the Zoning Administrator during hours of operation.
5. A copy of the day care license shall be submitted by the petitioner to Department of Planning.
6. All building code requirements for the new use shall be met prior to occupancy. Petitioner shall request Certificate of Occupancy prior to opening for business.
7. The affected property must comply with all fire and building code requirements for fire rated construction and opening protection. Petitioner to confer with building officials to determine any required alterations.

Huber states there were 43 letters mailed. One returned in favor with no comment, and one returned not in favor with a comment from Rose Mesa, which echoed her previous statements.

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

Mulvaney calls for a motion.

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

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

24-BZA-01 PETITIONER IS STAR 004 LLC
PROPERTY IS LOCATED AT 1207 W LUSHER AVE

To vary from Section 12.4, Yard requirements in the B-2, Community Business District, to allow for a new convenience store to be constructed ten (10) feet from the rear property line where twenty feet is required with a ten (10) foot landscape area and to also vary from Section 12.4, Yard requirements to allow for the same convenience store to have a corner side setback of 28.44 feet, where 30 feet is required, a variance of one and fifty six (1.56) hundredths feet.

To vary from Section 26.7.D, Schedule of Off-Street Parking, to allow for seven (7) parking spaces where 18 are required, a variance of 11 parking spaces.

Mulvaney calls the petitioner forward.

Deborah Hughes appears in person on behalf of the petitioner. Hughes states there are two setback variances since it is a small site. Hughes says that the south setback variance is 10 feet, where 20 feet is required inside, and 28, where 30 is required. She says they have modified the building and the canopy size to meet the front setback of 15, and the west side setback of 10 feet is only half the requirement. Hughes adds that the existing site has no fence along the south side, with an alley and residential use on the other side. She says the existing site has no fence along the south side, with an alley and residential use on the other side. So the cars and traffic that use the existing facility will be more of a problem for the neighbors. Hughes states that the property will have a six-foot privacy fence on the South property line that will protect the property to the south from headlights and other things related to the vehicles going back and forth. Hughes then states that the parking variance of the city standards requires six parking spaces per 1000 square feet, which is quite a bit of parking. She says the building will be a 3000-square-foot structure requiring 18 parking spaces. She says the petitioner had provided seven, and then there would be an additional six at the fuel dispensers for a total of 13, so the variance would be seven. Hughes states that the property will be a destination for pedestrians from the neighborhood. Hughes added that the traffic to the store would be walking, with little driving traffic. The three variances should be approved, and she will address any questions or concerns.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks if there are currently any pumps at the property and if they will install the three.

Hughes answers that there will be three islands with six dispensers, with two on each side.

Hughes states that the property was a gas station in the past. However, the pumps and tanks were removed, so all that is left is an old-fashioned gas station with the services. The petitioner will be installing a new store and a new pump island.

Evanega Rieckhoff asks Hughes if they are counting parking at the pump parking space.

Hughes answers yes.

Evanega Rieckhoff asks Hughes if they cannot put any other parking spaces on the other side of the building.

Hughes responds that there would be a dumpster enclosure on the east side, so the access to the dumpster would need to stay open. Hughes adds that it is possible that some of the employees could park there when the dumpster is emptying. She says that the city standards do not allow them to be considered legit parking spaces, but they could be used functionally.

Jones states that trash is everywhere every time he visits a convenience store. He says that people seem to walk out of the store, unwrap something, and throw it to the ground. Jones then says that the property is next to a residential area, and he hopes the petitioner will keep it clean. Jones then explains that it feels like the employees believe it is not their responsibility to clean. He then states that the dollar stores are incredibly awful and extremely dirty.

Hughes says those are legitimate concerns and that the owner, Jason Patel, is online. Additionally, the other owner is present, so they are aware of Jones's concerns, and she will share Jones's concerns about keeping the store clean with them as well.

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

STAFF ANALYSIS

The petitioner is redeveloping the site at 1207 W Lusher Avenue for a new convenience store. The site has a long history of being used as an automotive repair shop and based on the site plan submitted as the plan for redevelopment, there are several variances required for this project. There are two (2) developmental variances for the new building – a rear yard variance of ten (10) feet and a corner side yard variance of one and fifty six hundredths (1.56) feet. The last is for a parking variance, providing relief of 11 spaces.

The characteristic of use for these types of commercial uses are typically of quick transactions and use of parking space is short term. Functionally the six (6) pump spaces serve to accommodate the service station parking requirements of the ordinance. As a result, the site would only lack five (5) spaces for parking to meet the 12 required for the convenience retail use.

The site plan is a fairly standard layout with the building to the rear of the property and the pump islands and fuel canopy in front of the building. The location is at the intersection of heavily trafficked streets in Elkhart that feed commercial and industrial areas in the city. The commercial zoning has been in place since 1957 surrounded by residential neighborhoods.

At the writing of this report, this redevelopment project had not yet been reviewed by the Technical Review Committee. Staff is not anticipating any insurmountable issues with the plan as submitted.

STAFF RECOMMENDATION

The Staff recommends Approval of the developmental variance based on the following finding of fact;

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the structure and property will be updated and improved, which would be mandated to meet the current state and local building code requirements. Additionally the tech review process will ensure the development does not create any negative traffic issues; and the appropriate screening of the adjacent residential uses;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the current state of the parcels dilapidated condition will be substantially improved, resulting in an attractive use of the parcel. Additionally the tech review process will ensure the development is appropriately screened from the adjacent residential uses;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows for a measure of relief when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved because of the lots small size. Without relief from the current development standards, this commercial project would not be possible;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property as it restricts the development of the desired commercial project on this parcel;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

Trotter states there were 33 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Jones makes motion to approve; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – Yes

Mulvaney – Yes

Motion carries.

**24-BZA-02 PETITIONER IS KENT MIKEL AND JANINE MIKEL
PROPERTY IS LOCATED AT 119 BANK ST**

To vary from Section 1.10.B.2.a, Regulations for Nonconformities, to allow for an existing single family dwelling's conversion of the attached garage to a master suite in the R-2, One Family Dwelling District. The current structure is one and one tenth (1.1) foot from the side property line, where seven (7) is required, a variance of five and nine tenths (5.9) feet to allow for a three (3) foot addition to the east (front) of the current garage and six (6) foot to the west (rear) of the current garage.

Mulvaney calls the petitioner forward.

Kent Mikel appears in person as the petitioner. Mikel states that he is in a situation because his home is over 100 years old, and the garage attached to the home is insufficient for use. The garage cannot hold any vehicles, so he uses it for storage but wants to utilize it by turning it into a master bedroom with a bath and storage area. Mikel explained that he would need to put a garage on the back of the property so as not to lose any garage space. Mikel then says the problem is that the home was built in the 1920s, so the house is right up on the property line. This would mean that for him to extend the size of the garage to accommodate the changes, he would need it to be running parallel to the property line. Mikel states that his request is not to move the property closer to the property line but to run it parallel to it to allow for the garage extension. This would allow for a little more space on the inside. However, a variance is required to make that adjustment. Mikel says that if he did not have the variance, the property would have to be brought up to code, which means that it would need to be torn down, so he is requesting it. Mikel says that he and his wife have been living at the property for 28 years, he has no intention of going anywhere else, and he wants to make it usable and keep it functional.

Mulvaney asks for questions from the Board.

Jones states that looking at the existing garage door, he is not sure how a vehicle would fit in there.

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

STAFF ANALYSIS

The petitioner owns a single family residence built in 1901, according to the Elkhart County Assessing information, and is comprised of one thousand four hundred and twenty four (1,424) Sqft on a .25 acre parcel located on the west side of Bank Street, south of East Jackson Boulevard. This property is surrounded by R-2 One Family Dwelling District to the east, west, and south. The properties to the north are zoned R-1 One Family Dwelling District.

The petitioner desires to convert and add on to the existing attached garage into a master suite. Currently the garage is one and one tenth (1.1) foot from the side property line, where seven (7) feet is required by the current zoning ordinance in Section 5.4, yard requirements for R-2 one family dwelling district, a variance of five and nine tenths (5.9) 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 conversion of the garage would be mandated to the current building code therefor will meet all state and local building requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the conversion of the garage to livable space would remain as a residential use in a residential zoned neighborhood;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance as a measure of relief is allowed when warranted as this is an older home that was built close to property lines prior to the current zoning development standards;
4. Special conditions and circumstances do exist which are peculiar to the land involved because the unique characteristics of this and surrounding parcels because the development of the site prior to the current zoning standards has resulted in structures that have been built within the current setback requirements for residential zones;
5. The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property because of the structure was built before the standards of the current zoning ordinance that requires greater setbacks;

6. The special conditions and circumstances do not result from any action or inaction by the applicant as the non-conformities have been long established;
7. This property does not lie within a designated flood area.

Ughetti states there were 50 letters mailed with one returned in favor with comment of not having any issues with the petitioners request.

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

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Jones – 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

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, February 8, 2024 - Commenced at 6:00 P.M. & adjourned at 6:44 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Phalene Leichtman

MEMBERS ABSENT

Evanega Rieckhoff

REPRESENTING THE PLANNING DEPARTMENT

Mike Huber, Director of Development Services
Jason Ughetti, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Amendment to the agenda to table 24-BZA-03
Davis makes motion to approve; Second by Leichtman. Voice vote carries.

APPROVAL OF MINUTES FOR DECEMBER 14, 2023

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the February 8, 2024 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.

NEW BUSINESS

24-UV-02 PETITIONER IS EOZ BUSINESS LLC

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

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

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

Mulvaney calls the petitioner forward.

Bob Haden appears in person on behalf of the petitioner. Haden states that the petitioner would like to see the petition approved and that staff has a favorable recommendation for it.

Mulvaney asks for questions from the Board.

Mulvaney asks Haden if the petitioner is seeking the variance because they want to build smaller one-bedroom apartments.

Haden answers yes, and it is being done to meet demand and create an atmosphere for that area.

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

STAFF ANALYSIS

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

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

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

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

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

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

Staff supports the variance request contained in the petition.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variances based on the following findings of fact:

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

Huber states there were 11 letters mailed and zero returned.

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

Mulvaney calls for a motion.

Davis makes motion to approve; Second by Leichtman.

Davis – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

24-BZA-04 PETITIONER IS LOTUS ENTERPRISES PROPERTY IS LOCATED AT 2101 BYPASS ROAD

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

Mulvaney calls the petitioner forward.

Robert Miller appears in person on behalf of the petitioner. Miller states that he agrees with the staff report and will transition the current unit from a static unit to an LED.

Mulvaney asks for questions from the Board.

Mulvaney states that the board first came across LED signs... (Unintelligible, off mic). The city was in the process of adopting a new ordinance concerning signs, which is still in the works. Mulvaney says it was an issue beforehand, so some petitions were kicked down the road. However, the proposal that is being presented would be consistent with... (Unintelligible, off mic). Mulvaney says that was one of the issues with what's being proposed... (Unintelligible, off mic).

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

STAFF ANALYSIS

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

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

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

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

STAFF RECOMMENDATION

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

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the off-premises sign already exists at this location;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the conversion of the sign to LED is in keeping with the trends in changing technology for billboard signs;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the sign already exists and without board action the conversion to LED would not be permitted;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it would require the sign to continue to utilize the existing non-LED sign face that is manually changed;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the sign is pre-existing;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. The variances related to sign area, height, and location shall apply to both signs/faces.
2. Movement, including video, flashing, and scrolling, is prohibited.
3. Message sequencing, where content on one message is related to content on the next message, is prohibited.
4. The minimum time duration of each message shall be 10 seconds.
5. The sign must be equipped with a sensor and programmed to automatically dim in response to changes in ambient light.
6. The maximum brightness shall not exceed three-tenths (0.3) foot candles over ambient light levels.
7. Light trespass shall not exceed one-tenth (0.1) foot candles as measured at the property line of any residential district.

8. The sign must either stay fixed on one message or go blank if there is a malfunction that would not permit the sign meeting the above conditions.
9. No sign message may depict, or closely approximate, official traffic control signage

Ughetti states there were 11 letters mailed with zero returned.

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

Mulvaney calls for a motion.

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

Davis – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

ADJOURNMENT

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

Doug Mulvaney, President

Ron Davis, Vice-President

LEGAL NOTICE #24-X-01

Hearing on proposed Special Exception #24-X-01

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Special Exception Petition #24-X-01.

Petitioner: Francisco Sesmas

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

Location: 2006 Benham Avenue

Zoning: R-2, One Family Dwelling District

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

LEGAL DESCRIPTION:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION FIVE (8), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS FIFTY-THREE AND THIRTY-FOUR HUNDREDTHS (53.34) FEET SOUTH OF THE SOUTHEAST CORNER OF BENHAM AVENUE AND HUBBARD AVENUE IN THE CITY OF ELKHART, INDIANA; THENCE EAST PARALLEL TO THE SOUTH LINE OF HUBBARD AVENUE ONE HUNDRED TWENTY-SIX (126) FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF BENHAM AVENUE FIFTY-THREE AND THIRTY-THREE HUNDREDTHS (53.33) FEET; THENCE WEST PARALLEL TO THE SOUTH LINE OF HUBBARD AVENUE ONE HUNDRED TWENTY-SIX (126) FEET; THENCE NORTH ALONG THE EAST LINE OF BENHAM AVENUE FIFTY-THREE AND THIRTY-THREE HUNDREDTHS (53.33) FEET TO THE PLACE OF BEGINNING.

SUBJECT TO ALL ROADWAYS, EASEMENTS, RESTRICTIONS OF RECORD AND TAXES.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspxlp

LEGAL NOTICE #24-UV-05

Hearing on proposed Use Variance #24-UV-05

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-05.

Petitioner: M.S. Investment Corporation

Request: To vary from Section 4.2, Permitted Uses in the R-1, One Family Dwelling District to allow for the former Disabled American Veterans building to be used for ADEC's day programming and skills training, therapy services, employment services, youth programming as well as services that support the mission of ADEC.

Location: 1205 Middleton Run Road

Zoning: R-1 One Family Dwelling District

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

LEGAL DESCRIPTION:

A part of the Northwest Quarter of Section 11, Township 37 North, Range 5 East, Concord Township, Elkhart County, Indiana, more particularly described as follows:

Commencing at a ½" Square iron pipe at the Southeast corner of the Northwest Quarter of said Section thence North 00 degrees 12 minutes East along the East line of the Northwest Quarter of said Section 935.38 feet to a set PK nail and the beginning point of this description; thence North 89 degrees 42 minutes 47 seconds West, a distance of 480.40 feet to a 1 ½" iron pipe; thence North 00 degrees 17 minutes 42 seconds East, a distance of 453.14 feet to a ½" inch pipe; thence South 89 degrees 50 minutes 20 seconds East, a distance of 479.61 feet to a set PK nail on the East line of the Northwest Quarter of said Section; thence South 00 degrees 12 minutes West, a distance of 454.26 feet to the place of beginning.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspxlp

TOWNSHIP OF PORTER PLANNING COMMISSION
PUBLIC HEARING AND MEETING

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE TOWNSHIP OF PORTER, CASS COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that the Porter Township Planning Commission will conduct a public hearing and meeting on March 20, 2024 commencing at 6:00 p.m. at the Porter Township Hall, 69373 Baldwin Prairie Road, Union, MI 49130, within the Township, to consider the following:

- The application of Jerry Bontrager, 69653 Sunset to rezone the property located at 69611 Sunset Blvd within the Township (Parcel No. 14-120-209-016-27) from the existing MHP Mobile Home Park District Zoning Classification to the LR Lake Residential District Zoning Classification.
- The Porter Township Planning Commission will also consider such other and additional business that shall come before the Planning Commission.

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LEGAL NOTICE #24-UV-04

Hearing on proposed Use Variance #24-UV-04

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-04.

Petitioner: HERG, INC – Historic Elkhart River Queen, Inc.

Request: To vary from Section 7.2, Permitted Uses in the R-4, Multiple Family Dwelling District to allow for the demolition of 106 and 108 Bowers Court and used for a parking lot to provide off street parking for the River Queen.

Location: 106 and 108 Bowers Court

Zoning: R-4, Multiple Family Dwelling District

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

LEGAL DESCRIPTION:

For APN/Parcel ID(s): 20-06-04-176-002.000-012 108 Bowers Court

Parcel 1:

A PART OF LOT NUMBER ONE (1) AS THE SAME IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 OF THE RECORDS IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH; COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT, THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE-TENTHS (25.5) FEET TO THE CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED SIXTY-EIGHT AND TWENTY-FIVE HUNDRETHS (268.25) FEET TO A CUT IN THE WALK FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE FEET (45) TO A CUT IN THE WALK. THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING. ALSO, A RIGHT TO USE THE DRIVEWAY ALONG THE WEST LINE OF SAID LOT NUMBER ONE (1).

For APN/Parcel ID(s): 20-06-04-176-003.000-012 106 Bowers Court

PARCEL 2:

A PART OF LOT NUMBER ONE (1) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART, INDIANA; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH; COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK, FOR BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE (45) FEET TO A CUT IN THE WALK; THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING.

ALSO, AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED REAL ESTATE: ASSUMING THE WEST LINE OF SAID LOT NUMBER ONE (1) TO HAVE A BEARING OF DUE NORTH AND SOUTH:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK; THENCE WEST TWENTY-FIVE (25) FEET TO THE WEST LINE OF SAID LOT; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT TO THE PLACE OF BEGINNING.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hsapxlp

LEGAL NOTICE #24-X-02

Hearing on proposed Special Exception #24-X-02

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Special Exception Petition #24-X-02.

Petitioner: Balwinder Singh

Request: A Special Exception per Section 12.3, Special Exception Uses in the B-2, Community Business District, to allow for a public school.

Location: 145 West Main Street

LEGAL NOTICE #24-BZA-05

Hearing on proposed Developmental Variance #24-BZA-05

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

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

Petitioner: 123 County Road 17 – Elkhart LLC

Request: To request to vary from Section 18.6, Yard Requirements in the M-1, Limited Manufacturing District to allow for a reduced side yard setback to zero (0) feet from the property line where twenty five (25) feet is required, a variance of twenty five (25) feet.

Location: 123 County Road 17

Zoning: M-1, Limited Manufacturing District

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

LEGAL DESCRIPTION:

Parcel I: Lot Numbered 4 as the said Lot is known and designated on the recorded plat of Lumber Site – Phase One-D.P.U.D., in Concord Township, Elkhart County, Indiana; said Plat being recorded in Plat Book 30, page 2 in the Office of the Recorder of Elkhart County, Indiana.

Parcel II: A non-exclusive Easement for rights of ingress and egress for the benefit of Parcel I created in Easement dated November 15, 2002 and recorded June 2, 2003 as Document Number 2003-22217 in the Office of the Recorder of Elkhart County, Indiana, over the following described property:

The North 25 feet of the following described Real Estate:

A piece of land in the Southeast Quarter of Section 36, Township 38 North, Range 5 East, Elkhart County, Indiana, beginning at a point on the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property and the East line of the Southeast Quarter of said Section 36; thence Northerly along the East line of the Southeast Quarter, a distance of 53.02 feet, this point is 50 feet distant at right angles to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property; thence Southwesterly on a line parallel to said Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property, a distance of 1453.3 feet; thence Southeasterly 50 feet along a line perpendicular to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail); thence Northeasterly to the point of beginning of this description.

Being a part of the lands conveyed to Indiana & Michigan Electric Company (now known as Indiana Michigan Power Company) to Valley Realty Company and recorded in Deed Book 158, page 203 in the Office of the Recorder of Elkhart County, Indiana.

Together with non-exclusive Easement for rights of Cross Access Easement as shown on the plat of Lumber Site Phase One – D.P.U.D., Plat Book 30, page 2.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspxlp

NOTICE OF PUBLIC HEARING BY THE BOARD OF SCHOOL TRUSTEES OF THE ELKHART COMMUNITY SCHOOLS, ELKHART COUNTY, INDIANA

The citizens of the Elkhart Community Schools, Elkhart County, Indiana (the "School Corporation"), are hereby notified that the Board of School Trustees of the School Corporation (the "Board") proposes to enter into one or more installment purchase agreements in 2024 with Apple Inc. in connection with the acquisition by the School Corporation of student devices and related technology equipment as part of the School Corporation's one-to-one student device program (collectively, the "2024 Apple Installment Purchase Agreements"). The School Corporation does not currently anticipate the total principal amount and the maximum repayment term of the 2024 Apple Installment Purchase Agreements to exceed \$2,001,420.00 or be longer than five (5) years, respectively.

Notice is hereby given by the undersigned that the Board will, on March 12, 2024, at 7:00 p.m. (local time), at the Pierre Moran Middle School, located at 200 West Lusher Avenue, Elkhart, Indiana 46517, conduct a public hearing during which additional information regarding the 2024 Apple Installment Purchase Agreements will be provided. All interested parties are entitled and encouraged to attend to present their testimony and ask any questions relative to the 2024 Apple Installment Purchase Agreements.

Subsequent to the public hearing, the Board expects to consider adoption of a resolution approving the 2024 Apple Installment Purchase Agreements and authorizing the President of the Board, the Superintendent of the School Corporation and/or the Chief Financial Officer of the School Corporation to execute the 2024 Apple Installment Purchase Agreements and all related document in form and substance acceptable to the person signing the 2024 Apple Installment Purchase Agreements and such related documents.

Dated this 1st day of March, 2024.

ELKHART COMMUNITY SCHOOLS, ELKHART COUNTY, INDIANA
By: Dr. Larry Huff, Superintendent
hspxlp

LEGAL NOTICE #24-UV-03

Hearing on proposed Use Variance #24-UV-03

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-03.

Petitioner: Frank Thompson

Request: To amend case 23-UV-06 which permitted one tattoo artist to operate in the hair salon, to allow additional tattoo artists to operate in the salon. This request varies from Section 15.2, Permitted Uses in the CBD, Central Business District, to allow for a tattoo parlor. Tattoo parlors are not a permitted use in the CBD.

Location: 211 North Main Street

Zoning: CBD, Central Business District

This meeting can also be accessed via WebEx. To join, go to

FOUR HUNDREDTHS (53.33) FEET SOUTH OF THE SOUTHEAST CORNER OF BENHAM AVENUE AND HUBBARD AVENUE IN THE CITY OF ELKHART, INDIANA; THENCE EAST PARALLEL TO THE SOUTH LINE OF HUBBARD AVENUE ONE HUNDRED TWENTY-SIX (126) FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF BENHAM AVENUE FIFTY-THREE AND THIRTY-THREE HUNDREDTHS (53.33) FEET; THENCE WEST PARALLEL TO THE SOUTH LINE OF HUBBARD AVENUE ONE HUNDRED TWENTY-SIX (126) FEET; THENCE NORTH ALONG THE EAST LINE OF BENHAM AVENUE FIFTY-THREE AND THIRTY-THREE HUNDREDTHS (53.33) FEET TO THE PLACE OF BEGINNING.

SUBJECT TO ALL ROADWAYS, EASEMENTS, RESTRICTIONS OF RECORD AND TAXES.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspaxlp

LEGAL NOTICE #24-UV-05

Hearing on proposed Use Variance #24-UV-05

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-05.

Petitioner: M.S. Investment Corporation

Request: To vary from Section 4.2, Permitted Uses in the R-1, One Family Dwelling District to allow for the former Disabled American Veterans building to be used for ADEC's day programming and skills training, therapy services, employment services, youth programming as well as services that support the mission of ADEC.

Location: 1205 Middleton Run Road

Zoning: R-1 One Family Dwelling District

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

LEGAL DESCRIPTION:

A part of the Northwest Quarter of Section 11, Township 37 North, Range 5 East, Concord Township, Elkhart County, Indiana, more particularly described as follows:

Commencing at a ½" Square iron pipe at the Southeast corner of the Northwest Quarter of said Section thence North 00 degrees 12 minutes East along the East line of the Northwest Quarter of said Section 935.38 feet to a set PK nail and the beginning point of this description; thence North 89 degrees 42 minutes 47 seconds West, a distance of 480.40 feet to a 1 ½" iron pipe; thence North 00 degrees 17 minutes 42 seconds East, a distance of 453.14 feet to a ½" inch pipe; thence South 89 degrees 50 minutes 20 seconds East, a distance of 479.61 feet to a set PK nail on the East line of the Northwest Quarter of said Section; thence South 00 degrees 12 minutes West, a distance of 454.26 feet to the place of beginning.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspaxlp

TOWNSHIP OF PORTER PLANNING COMMISSION
PUBLIC HEARING AND MEETING

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE TOWNSHIP OF PORTER, CASS COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that the Porter Township Planning Commission will conduct a public hearing and meeting on March 20, 2024 commencing at 6:00 p.m. at the Porter Township Hall, 69373 Baldwin Prairie Road, Union, MI 49130, within the Township, to consider the following:

The application of Jerry Bontrager, 69653 Sunset to rezone the property located at 69611 Sunset Blvd within the Township (Parcel No. 14-120-209-016-27) from the existing MHP Mobile Home Park District Zoning Classification to the LR Lake Residential District Zoning Classification.

The Porter Township Planning Commission will also consider such other and additional business that shall come before the Planning Commission.

Anyone interested in reviewing the application and proposed Ordinance referenced above; the Township Zoning Map or the Township Zoning Ordinance may examine a copy of the same by contacting the undersigned. The ordinance will furthermore be available at the public hearing. The Township Zoning Ordinance can be accessed on www.portertownship.org.

Written comments will be received from any interested persons concerning the foregoing by the Porter Township Clerk at the addresses below at any time during regular business hours up to the date of the hearing and may be further received by the Planning Commission at the hearing.

All interested persons are invited to be present at the aforesaid time and place.

Porter Township will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed material being considered at the hearing, to individuals with disabilities at the hearing upon four (4) days' notice to the Porter Township Clerk. Individuals with disabilities requiring auxiliary aids or services should contact the Porter Township Clerk at the address or telephone number listed below.

PORTER TOWNSHIP PLANNING COMMISSION

By: David Nagy, Chairman

By: Beth Russell, Clerk

69373 Baldwin Prairie Road

Union, MI 49130

269-641-2375

porter@portertownship.org

www.portertownship.org

hspaxlp

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

LEGAL DESCRIPTION:

For APN/Parcel ID(s): 20-06-04-176-002.000-012 108 Bowers Court

Parcel 1:

A PART OF LOT NUMBER ONE (1) AS THE SAME IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 OF THE RECORDS IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH; COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT, THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE-TENTHS (25.5) FEET TO THE CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED SIXTY-EIGHT AND TWENTY-FIVE HUNDRETHS (268.25) FEET TO A CUT IN THE WALK FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE FEET (45) TO A CUT IN THE WALK. THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING. ALSO, A RIGHT TO USE THE DRIVEWAY ALONG THE WEST LINE OF SAID LOT NUMBER ONE (1).

For APN/Parcel ID(s): 20-06-04-176-003.000-012 106 Bowers Court

PARCEL 2:

A PART OF LOT NUMBER ONE (1) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART, INDIANA; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK, FOR BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE (45) FEET TO A CUT IN THE WALK; THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING.

ALSO, AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED REAL ESTATE: ASSUMING THE WEST LINE OF SAID LOT NUMBER ONE (1) TO HAVE A BEARING OF DUE NORTH AND SOUTH:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK; THENCE WEST TWENTY-FIVE (25) FEET TO THE WEST LINE OF SAID LOT; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT TO THE PLACE OF BEGINNING.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hsapxlp

LEGAL NOTICE #24-X-02

Hearing on proposed Special Exception #24-X-02

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Special Exception Petition #24-X-02.

Petitioner: Balwinder Singh

Request: A Special Exception per Section 12.3, Special Exception Uses in the B-2, Community Business District, to allow for a public school.

Location: 115 West Hively Avenue

Zoning: B-2, Community Business District

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

LEGAL DESCRIPTION:

LOT NUMBERED 1 OF BLOCKBUSTER VIDEO SUBDIVISION AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT; SAID PLAT BEING RECORDED IN PLAT BOOK 30, PAGE 85 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA. Parcel No.: 06-17-427-011-011 State ID: 20-06-17-427-011.000-011 Commonly known as 115 West Hively Boulevard, Elkhart, Indiana

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspaxlp

for the benefit of Parcel 1 created in Easement dated November 15, 2002 and recorded June 2, 2003 as Document Number 2003-22217 in the Office of the Recorder of Elkhart County, Indiana, over the following described property:

The North 25 feet of the following described Real Estate:

A piece of land in the Southeast Quarter of Section 36, Township 38 North, Range 5 East, Elkhart County, Indiana, beginning at a point on the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property and the East line of the Southeast Quarter of said Section 36; thence Northerly along the East line of the Southeast Quarter, a distance of 53.02 feet, this point is 50 feet distant at right angles to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property; thence Southwesterly on a line parallel to said Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property, a distance of 1453.3 feet; thence Southeasterly 50 feet along a line perpendicular to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail); thence Northeasterly to the point of beginning of this description.

Being a part of the lands conveyed to Indiana & Michigan Electric Company (now known as Indiana Michigan Power Company) to Valley Realty Company and recorded in Deed Book 158, page 203 in the Office of the Recorder of Elkhart County, Indiana.

Together with non-exclusive Easement for rights of Cross Access Easement as shown on the plat of Lumber Site Phase One – D.P.U.D., Plat Book 30, page 2.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspaxlp

NOTICE OF PUBLIC HEARING BY THE BOARD OF SCHOOL TRUSTEES OF THE ELKHART COMMUNITY SCHOOLS, ELKHART COUNTY, INDIANA

The citizens of the Elkhart Community Schools, Elkhart County, Indiana (the "School Corporation"), are hereby notified that the Board of School Trustees of the School Corporation (the "Board") proposes to enter into one or more installment purchase agreements in 2024 with Apple Inc. in connection with the acquisition by the School Corporation of student devices and related technology equipment as part of the School Corporation's one-to-one student device program (collectively, the "2024 Apple Installment Purchase Agreements"). The School Corporation does not currently anticipate the total principal amount and the maximum repayment term of the 2024 Apple Installment Purchase Agreements to exceed \$2,001,420.00 or be longer than five (5) years, respectively.

Notice is hereby given by the undersigned that the Board will, on March 12, 2024, at 7:00 p.m. (local time), at the Pierre Moran Middle School, located at 200 West Lusher Avenue, Elkhart, Indiana 46517, conduct a public hearing during which additional information regarding the 2024 Apple Installment Purchase Agreements will be provided. All interested parties are entitled and encouraged to attend to present their testimony and ask any questions relative to the 2024 Apple Installment Purchase Agreements.

Subsequent to the public hearing, the Board expects to consider adoption of a resolution approving the 2024 Apple Installment Purchase Agreements and authorizing the President of the Board, the Superintendent of the School Corporation and/or the Chief Financial Officer of the School Corporation to execute the 2024 Apple Installment Purchase Agreements and all related document in form and substance acceptable to the person signing the 2024 Apple Installment Purchase Agreements and such related documents.

Dated this 1st day of March, 2024.

ELKHART COMMUNITY SCHOOLS, ELKHART COUNTY, INDIANA
By: Dr. Larry Huff, Superintendent
hspaxlp

LEGAL NOTICE #24-UV-03

Hearing on proposed Use Variance #24-UV-03

NOTICE is hereby given that the City of Elkhart Board of Zoning Appeals will meet in the Council Chambers on the second floor of the Municipal Building, 229 South Second Street, Elkhart, Indiana on **THURSDAY, MARCH 14, 2024 at 6:00 P.M.** concerning the following request:

A public hearing will be conducted on a Use Variance Petition #24-UV-03.

Petitioner: Frank Thompson

Request: To amend case 23-UV-06 which permitted one tattoo artist to operate in the hair salon, to allow additional tattoo artists to operate in the salon. This request varies from Section 15.2, Permitted Uses in the CBD, Central Business District, to allow for a tattoo parlor. Tattoo parlors are not a permitted use in the CBD.

Location: 211 North Main Street

Zoning: CBD, Central Business District

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

LEGAL DESCRIPTION:

THE SOUTH ONE-HALF OF LOT 22, AS THE SID LOT IS KNOWN AND DESIGNATED ON THE RECORDED ORIGINAL PLAT OF THE TOWN (NOW CITY) OF ELKHART; SAID PLAT BEING RECORDED IN DEED RECORD 1, PAGE 34, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

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

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

Dated at Elkhart, Indiana this 26th day of February, 2024, by the City of Elkhart, Board of Zoning Appeals.

Publication Date: March 1, 2024
hspaxlp

Extra Business is as
easy as asking for it!

DO IT HERE, DO IT NOW!



Staff Report

Planning & Zoning

| | |
|--------------------------------|--|
| <u>Petition:</u> | 24-UV-03 |
| <u>Petition Type:</u> | Use Variance |
| <u>Date:</u> | March 14, 2024 |
| <u>Petitioner:</u> | Frank Thompson |
| <u>Request:</u> | To amend case 23-UV-06 which permitted one tattoo artist to operate in the hair salon, to allow additional tattoo artists to operate in the salon. This request varies from Section 15.2, Permitted Uses in the CBD, Central Business District, to allow for a tattoo parlor. Tattoo parlors are not a permitted use in the CBD. |
| <u>Site Location:</u> | 211 North Main Street |
| <u>Existing Zoning:</u> | CBD, Central Business District |
| <u>Size:</u> | +/- .223 Acres |
| <u>Thoroughfares:</u> | South Main Street |
| <u>School District:</u> | Elkhart Community Schools |
| <u>Utilities:</u> | Available and provided to the site. |

Surrounding Land Use & Zoning:

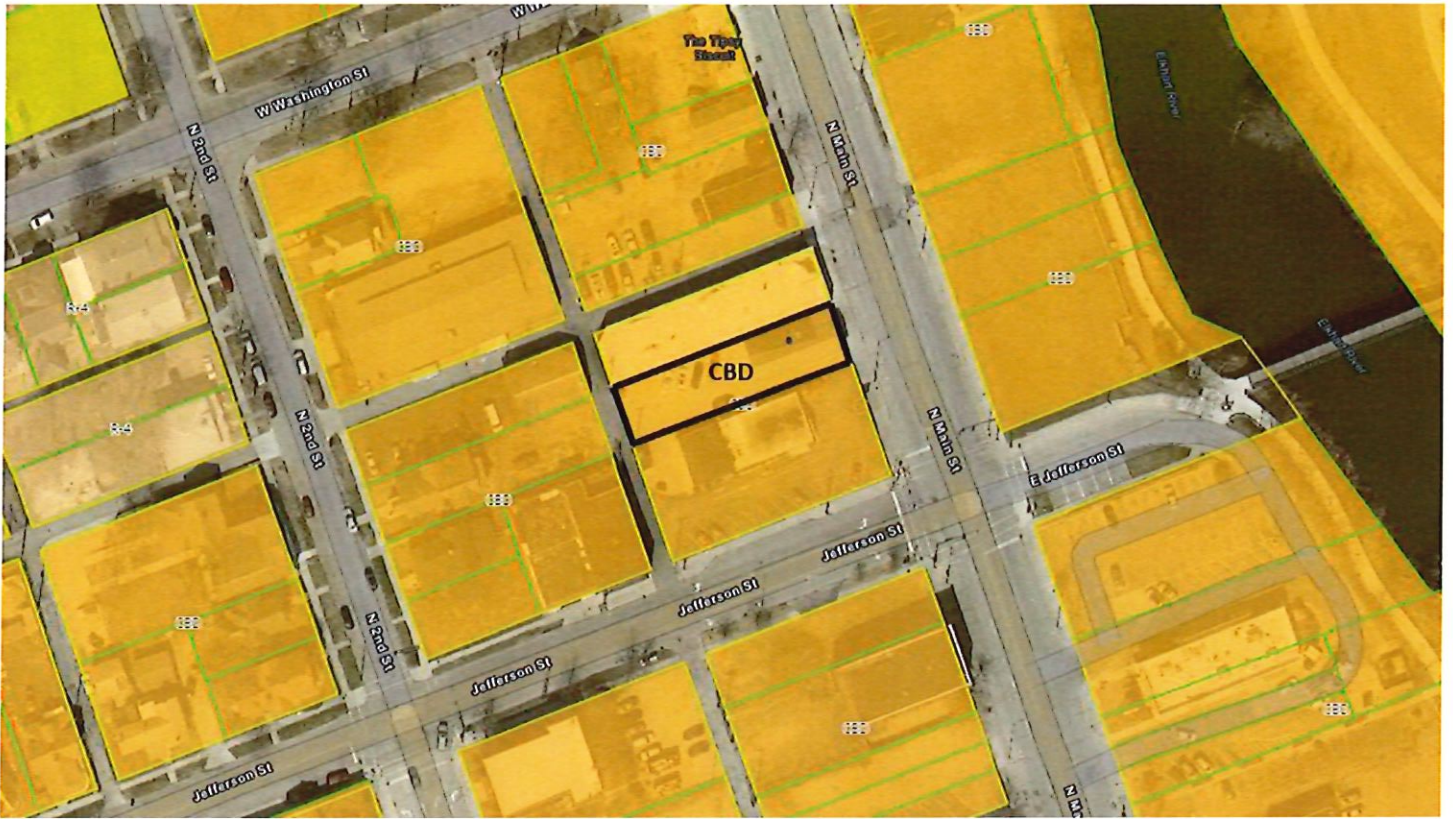
The property is located in the downtown area. It is surrounded by commercial and vacant properties zoned CBD, Central Business District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

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



Staff Analysis

The petitioner came before this body in October 2023 for a use variance to allow for the Main Event hair salon to add a tattoo artist. The request was approved, which allowed for the salon to have one artist in a corner of the main floor of the salon – 23-UV-06. Subsequent to that tattoo use variance approval, the department has not received any complaints related to the tattoo use.

The petitioner indicates in the application material that the salon is planning on closing. The current request is asking for additional artists to utilize the area that will be vacated by the salon. Any renovations would require relevant permits and have to meet any applicable building codes. Similarly the tattoo operation would be governed by the Indiana State Department of Health and be required to meet all state regulations, including those governing bloodborne pathogens.

The property has adequate parking for the proposed use – including 11 spaces in the rear plus curbside parking on Main Street. The tattoo shop will be by appointment only; business will be carried out entirely indoors, and it is unlikely that this will have a negative effect on adjacent properties.

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 tattoo operation will be required to follow all state and local regulations;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the operation will be appointment-only and be conducted entirely indoors;
3. The need for the variance arises from some condition peculiar to the property because a tattoo business is not a permitted use in the Central Business District;
4. The strict application of the terms of this Ordinance **will** constitute an unnecessary hardship if applied to the property because it would restrict a limited use that is becoming more common in downtowns;
5. The approval does not interfere substantially with the Comprehensive Plan which calls for the area to be developed with mixed uses.

Photos









PETITION #: 24-UV-03

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): FRANK THOMPSON

Mailing Address: _____

Phone #: _____ Email: _____

Contact Person: Catherine Beck

Mailing Address: _____

Phone #: _____ Email: _____

Subject Property Address: 211 NORTH MAIN ST. ELKHART

Zoning: CENTRAL BUSINESS DISTRICT (CBD)

Present Use: SALON HAIR Proposed Use: TATTOO STUDIO

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

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): FRANK THOMPSON

SIGNATURE(S): [Signature] Catherine Beck DATE: 1-24-24

STAFF USE ONLY:

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

January, 2024

Board of Zoning Appeal City of Elkhart, Indiana

RE: Use Variance – Art/Tattoo Studio in, Central Business District (CBD)

1. I, Frank Thompson, am the owner of the following described real estate found within the City of Elkhart, Concord Township, Elkhart County, State of Indiana to-wit:

A. See attached documentation for full legal description and common address.

2. The above-described real estate presently has a zoning classification of CBD, under the Zoning Ordinance of the City of Elkhart, Concord Township, Elkhart County, State of Indiana.

3. I, Frank Thompson, presently occupy the above-described property as a Hair Salon & Tattoo Parlor. Currently, I have approval for only one tattoo artist, in the room located at the anterior of the building. No issues have arisen since approval for the one tattoo artist over six months ago. I have supported the reputable history proven at this property.

4. I, Frank Thompson, desire to close the Main Event hair design, we continue to suffer a deficit solely as a hair salon. Our family wishes to be an asset to the downtown community exclusively as a tattoo studio. I have hired one tattoo artist, which was approved through the Zoning Commission (Petition #23-UV-06 – dated: October 2, 2023). There have been zero issues since we started tattooing. Our business reviews have gone from a 4.4 star when it was only a salon, to a 4.8 star due to the tattoo experiences we've offered in the last six months. We haven't had a single negative experience and have focused on being a complimentary asset. It's going great and has been received by the community positively. I have more tattoo artists that would love an opportunity to be in the downtown area with hopes to offer more art, and to continue to change the stereo type that is antiquated with tattoo artists and tattoo shops in the past. My current approval is for only one tattoo artist in one room, and I'd like to adjust that; to having the freedom to tattoo where best fits our needs the client's needs and the freedom to introduce more tattoo artists. I do not plan to close the Main Event Hair Design right away, but for some time it has been a struggle to retain quality stylists. I understand this business has been around for years, but change is necessary in all avenues for the good of the community. This requires a use variance according to Section 15.2 of the Zoning Ordinance of the City of Elkhart

5. Elkhart Zoning Ordinance 15.2 states, tattooing is not an approved use of the above-described real estate without obtaining a use variance with the application and hearing by the Board of Zoning, City of Elkhart.

6. Approval of this request for a tattoo shop with added artists, would allow higher volume of artists to be included in the artistic center of our community which is home to some already amazing artistic venues, i.e., the Jazz Festival, The Lerner Performing Arts Theatre, etc.,. Part of our vision is to market and reach an audience of recognized professional artists while using an established store front with ample off street parking. We will be hard pressed to reach that audience with just the one approved artist. We aim to compliment the aesthetics of our downtown environment. With our out of state contacts we would like to bring in; we feel they would help drive and influence the creative spirit within our community. It appears the community has really taken to the tattoo side of our services, as we are currently bringing in

more revenue for tattoos than the hair salon. We have taken google reviews from 11 reviews with a 4.4 rating to a current 4.8 rating of 34 reviews.

7. Standards:

A. Upon approval, we will continue being non-injurious to the public health, continue safety, morals, and general welfare of the community as we have already begun to prove a reputable tattoo parlor. The artists we would be adding; are well respected and keep strict adherence to public health, safety standards, and practices needed for both client and personal safety.

B. The use and value of the area connected to the property will not be affected in an adverse manner as we have already made a substantial investment in both the interior and exterior façade of the building. We will not be making any changes other than we will not be offering any hair services and we would be adding 4-5 artists. We will be working several hours later in the evenings than some of the local businesses, which will add a presence downtown, possibly helping to deter crime in the area.

C. The need for the variance arises as it is not an approved use of properties in the CBD, Central Business District, according to Section 15.2 of the Zoning Ordinance of the City of Elkhart, Indiana.

D. The strict application of the terms of Ordinance 15.2 will cause unnecessary hardship if applied to the property for which the variance is sought because it will limit the ability of our artists to both expose and be exposed to the center of the growing downtown art and entertainment environment. We have added more attractions by offering unique and quality fine art and high-quality tattoo work. One thing we want to do is hold art classes and hope to invite several international award-winning artists, which I cannot presently do. Due to one full time tattoo artist and not having the space or the approval for more than one artist, in the one front room. These plans which I will be able to do if allowed, will bolster both revenue and exposure to city events and other venues in the beautiful downtown area Elkhart

E. Approval of this variance will not interfere with the "Comprehensive Plan" of the CBD as it is in line with the already intensive creative venues which are a fundamental part of the city and downtown area. Examples are the Jazz Festival, music school, fashion, fine dining, the Lerner Theatre and Elkhart Hotel.

If approved, it is my desire to help bring a larger audience of both artists and collectors to a city I dearly love. I hope you find favor in this application as my current approvals are great, but I hope to offer something special to the heart of downtown, Elkhart.

Sincerely,

Frank Thompson


A handwritten signature in blue ink, appearing to read 'Frank Thompson', with a large, stylized loop at the end.

AFFIDAVIT IN SUPPORT OF SPECIAL EXCEPTION PETITION

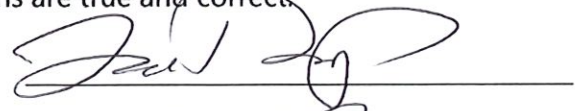
I, Frank Thompson, being first duly sworn upon his/her oath deposes and says that he/she is familiar with and has personal knowledge of the facts herein and, if called as a witness in this matter, would testify as follows:

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 special exception 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 24764 Corbin Drive Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 24 day of Jan, 2024.


Printed: Frank Thompson

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


Printed: Frank Thompson

STATE OF INDIANA)

) SS:


COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Frank Thompson, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 24 day of January, 2024.

My Commission Expires:

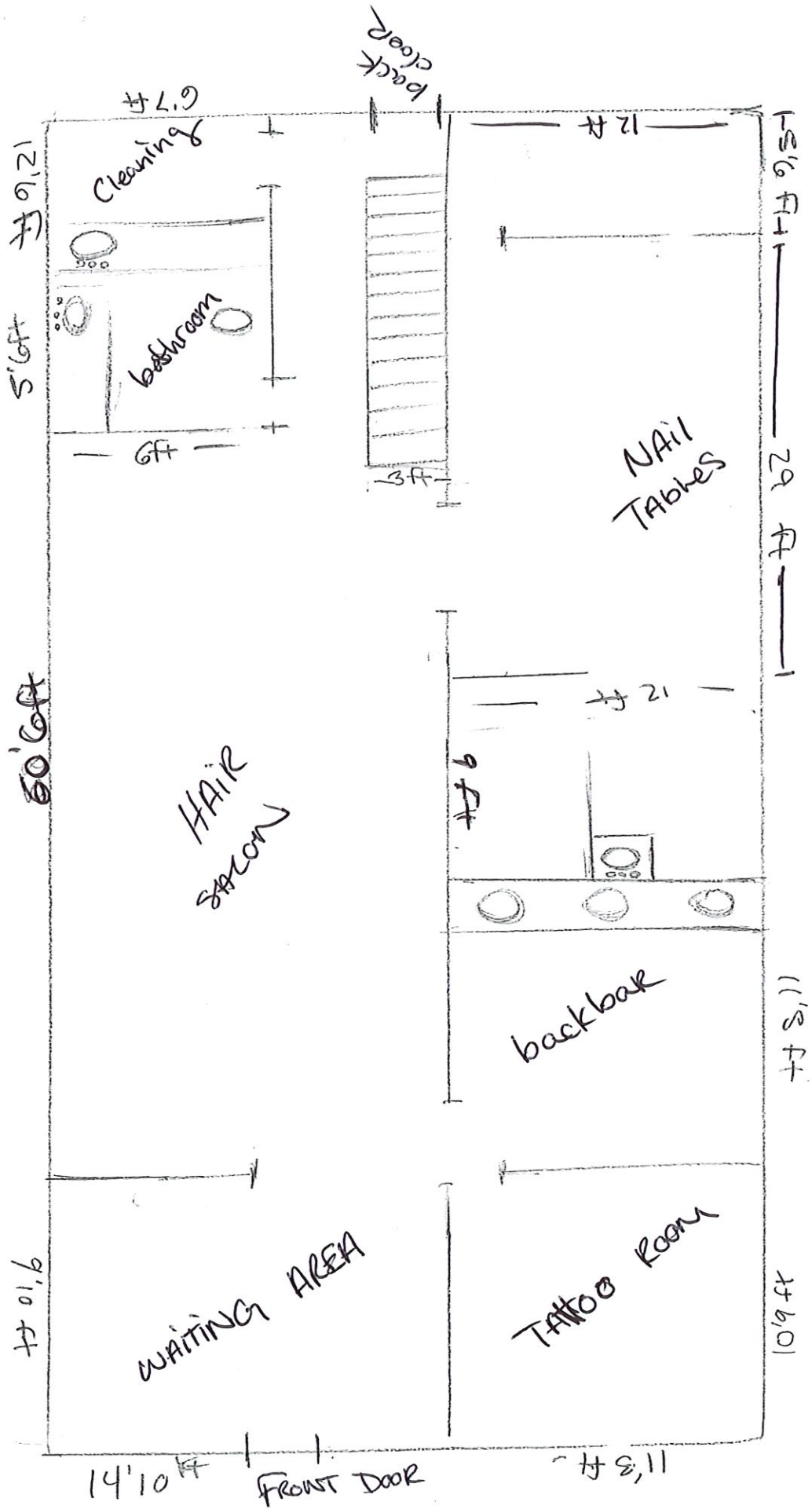
10/31/2031




Printed: Hugo Robles Madrigal

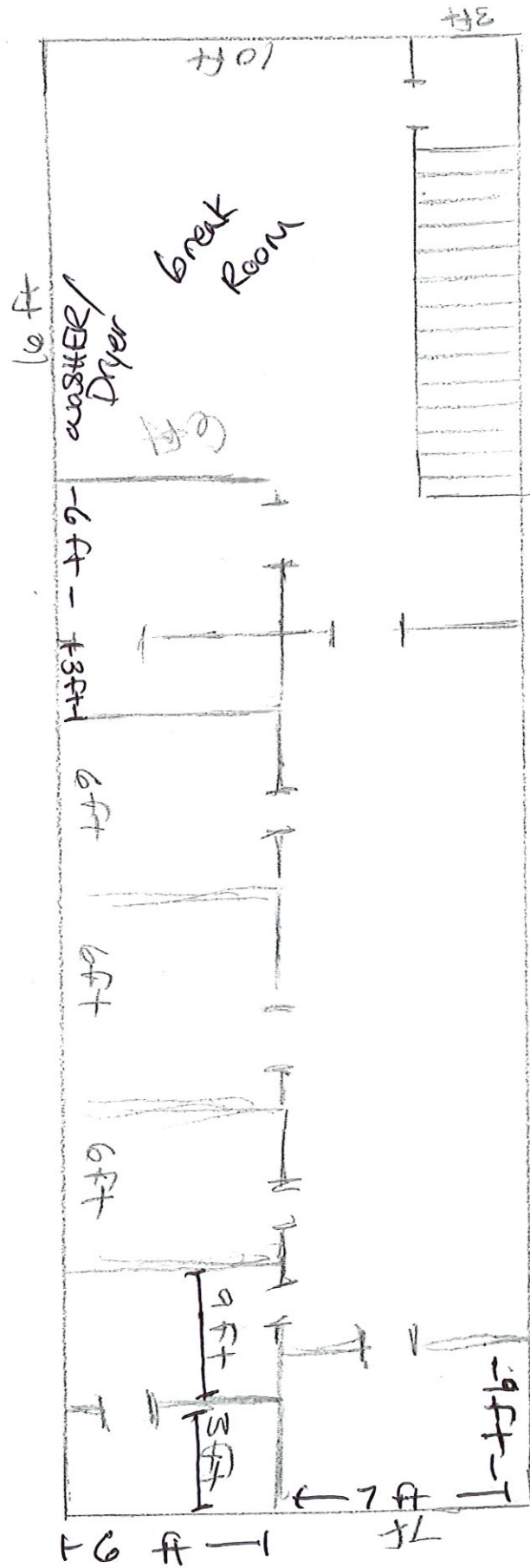
Notary Public in and for the State of Indiana
Resident of Elkhart County, Indiana

MANE EVENT HAIR DESIGN 211 N. MAIN ST. ELKHART



* Several off street parking

* 11 PARKING SPOTS in the back





Staff Report

Planning & Zoning

| | |
|--------------------------------|---|
| <u>Petition:</u> | 24-BZA-05 |
| <u>Petition Type:</u> | Developmental Variance |
| <u>Date:</u> | March 14, 2024 |
| <u>Petitioner:</u> | 123 County Road 17 – Elkhart LLC |
| <u>Site Location:</u> | 123 County Road 17 |
| <u>Request:</u> | To request to vary from Section 18.6, Yard Requirements in the M-1, Limited Manufacturing District to allow for a reduced side yard setback to zero (0) feet from the property line where twenty five (25) feet is required, a variance of twenty five (25) feet. |
| <u>Existing Zoning:</u> | M-1, Limited Manufacturing District |
| <u>Size:</u> | +/- 15.28 acres |
| <u>Thoroughfares:</u> | County Road 17 |
| <u>School District:</u> | Concord Community Schools |
| <u>Utilities:</u> | Available and provided to site. |

Surrounding Land Use & Zoning:

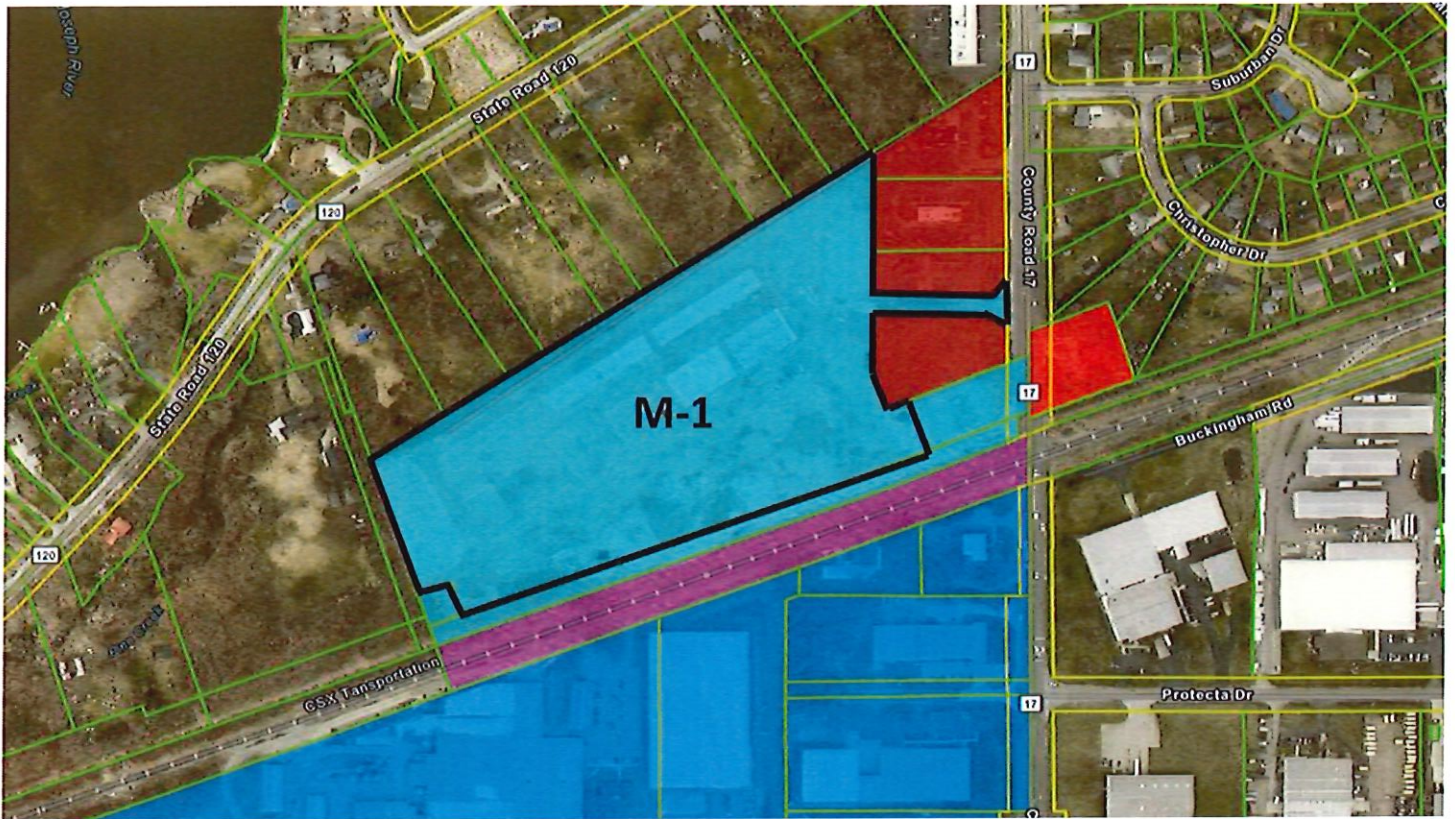
The site is surrounded by residential properties in Elkhart County on the north and west. Industrial land uses to the south zoned M-2, General Manufacturing District, commercial land uses to the east zoned B-3, Service Business District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be commercial/industrial land uses.



Staff Analysis

The petitioner is building self-storage units on the former Banks Lumber site. The project is being built in two phases – moving from the north to the south. Phase One is currently under construction and is largely complete. Phase two which will be adjacent to the AEP property containing a ingress and egress easement. The site is irregular in shape which does limit the number of structures that can be built on the property.

Based on plans submitted, there would be four new buildings that would be built at the zero foot setback. Historically, the AEP property has been used for accessing land along its boundary and this request would be consistent with how the AEP land has been used in the past. Considering the AEP property will not have built structures on its land, a zero foot setback seems reasonable.

Staff does not have an issue with the zero foot setback request. However, because maintenance of those self-storage building will require utilizing the AEP property – acknowledgment from AEP in the form of an easement is necessary.

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 buildings will be built per all applicable building codes;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the setback will not substantially impact the way the property is used;
3. Granting the variance **would** be consistent with the intent and purpose of this Ordinance as a measure of relief is allowed when warranted;
4. Special conditions and circumstances **do** exist which are peculiar to the land involved because of the shape of the property it limits the density at which the site can be developed;
5. The strict application of the terms of this Ordinance **would** result in practical difficulties in the use of the property;
6. The special conditions and circumstances **do not** result from any action or inaction by the applicant;
7. This property does **not** lie within a designated flood area.

Conditions

1. An easement from American Electric Power (AEP) shall be required in order to allow the petitioner to perform any future maintenance required on the self-storage buildings referenced in the petition from the AEP property along the south line of the petitioner's property.

Photos





PETITION #: 24-BZA-05

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): 123 County Road 17-Eikhart LLC
Mailing Address: 53149 Discovery Drive Eikhart, IN 46514
Phone #: 574-296-8000 Email: Sfloyd@Shanproperties

Contact Person: Stephanie Floyd
Mailing Address: 53149 Discovery Drive Eikhart, IN 46514
Phone #: 574-352-3007 Email: Sfloyd@Shanproperties.net

Subject Property Address: 123 County Road 17, Eikhart, IN 465
Zoning: M1

Present Use: Mini-storage Proposed Use: Mini-storage

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

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Stephanie Floyd

SIGNATURE(S): [Signature] DATE: 1/30/24

STAFF USE ONLY:

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

January 30, 2024

Board of Zoning Appeals
City of Elkhart, IN

Re: Developmental Variance -
Property Line Setback

I, Amit Shah for 123 County Road 17-Elkhart LLC, am the owner of the following described real estate located with the City of Elkhart, IN, Concord Township, Elkhart County, State of Indiana, to-wit:

Parcel I: Lot Numbered 4 as the said Lot is known and designated on the recorded plat of Lumber Site – Phase One-D.P.U.D. in Concord Township, Elkhart County, Indiana; said Plat being recorded in Plat Book 30, page 2 in the Office of the Recorder of Elkhart County, Indiana.

Parcel II: A non-exclusive Easement for rights of ingress and egress for the benefit of Parcel I created in Easement dated November 15, 2002 and recorded June 2, 2003 as Document Number 2003-22217 in the Office of the Recorder of Elkhart County, Indiana, over the following described property:

The North 25 feet of the following described Real Estate:

A piece of land in the Southeast Quarter of Section 36, Township 38 North, Range 5 East, Elkhart County, Indiana, beginning at a point on the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property and the East line of the Southeast Quarter of said Section 36; thence Northerly along the East line of the Southeast Quarter, a distance of 53.02 feet, this point is 50 feet distant at right angles to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property; thence Southwesterly on a line parallel to said Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail) property, a distance of 1453.3 feet; thence Southeasterly 50 feet along a line perpendicular to the Northerly line of The Lake Shore and Michigan Southern Railway Company (now Conrail); thence Northeasterly to the point of beginning of this description.

Being a part of the lands conveyed to Indiana & Michigan Electric Company (now known as Indiana Michigan Power Company) to Valley Realty Company and recorded in Deed Book 158, page 203 in the Office of the Recorder of Elkhart County, Indiana.

Together with non-exclusive Easement for rights of Cross Access Easement as shown on the plat of Lumber Site Phase One – D.P.U.D., Plat Book 30, page 2.

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

The petitioner presently occupies the above-described property for the purpose of a mini-storage complex.

The petitioner is requesting a setback variance for the East and South property lines. Currently there is a 25-ft setback requirement on both sides. On the south line there is an access road for Indiana Michigan Power and south of that is the RR crossing. Along the East property line there is an existing fence that runs North-South with retail business at the North and East sides. Along the SE corner of our parcel lies the Indiana Michigan power station.

The current zoning setback requirements are as follows for M-1:

18.6 Yard Requirements

The yard requirements for the M-1, Limited Manufacturing District are as follows: (All standards are minimums except as noted.)

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

| Lot Size | Frontage | Setbacks | | | Height | Maximum Lot Coverage for Structures | F.A.R |
|------------|------------|------------|---|---|--|-------------------------------------|-------|
| | | Front Yard | Side Yards | Rear Yard | | | |
| No Minimum | No Minimum | 25 feet | 15 feet each or 25 feet each when abutting a residential district | 10 feet or 30 feet when abutting a residential district | 75 feet; maximum of 2 towers with a maximum height of 90 feet each | 60% total | 3 |

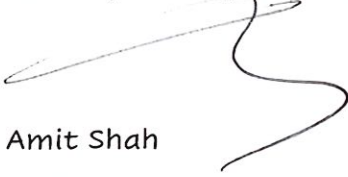
We are seeking this variance to allow us the maximum use of the site for additional storage units for what is considered Phase II of the development. Because the lot is irregular in shape, the yield to add additional units is challenging.

This request will not increase flood heights, create additional threats to the public safety, cause additional public expense, create nuisances or conflict with any existing laws or ordinances.

Per Section 29.9 B, of the City of Elkhart Zoning Ordinance:

- a. The approval will not be injurious to public health, safety, morals and general welfare of the community.
- b. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
- c. The need for the variance arises from some condition to the property involved.
- d. 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.
- e. The approval does not interfere substantially with the Comprehensive plan.

Thank you for your consideration,



Amit Shah
Property Owner
Shah Properties LLC



Builders build buildings. Visionaries build futures.

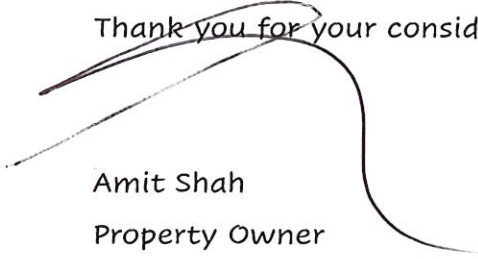
January 30, 2024

Board of Zoning Appeals
City of Elkhart, IN

Re: Developmental Variance -
Property Line Setback

I, Amit Shah for 123 County Road 17-Elkhart LLC, am the owner of the following described real estate located with the City of Elkhart, IN, Concord Township, Elkhart County, State of Indiana. I am authorizing Stephanie Floyd, the property manager of the site to present this application on my behalf.

Thank you for your consideration,



Amit Shah
Property Owner
Shah Properties LLC

1. **Current Zoning:** "PUD" Planned Unit Development.
2. **Proposed Zoning:** Rezone from "PUD" and rezone to "M-1" Limited Manufacturing District.
3. **Proposed Use:** Storage for PMA, Coca Cola, Specialty Vehicles and other vehicles.
4. The project site will be zoned with City of Elbert Municipal zoning sewer and water main.
5. Setbacks shall conform to the City of Elbert Zoning Ordinance unless the proper authorities have been approved.
6. Site/fencing drainage shall be managed within use new stormwater retention.
7. All signs and parking shall be placed and privately owned.
8. All road dimensions are in slope of pavement unless otherwise noted.
9. All landscaping, fencing and signage shall be in accordance with the City of Elbert Zoning Ordinance.

Office / Service Building = 7,800 SF
Phase Two Is Subject To Utility Relocations / Release Existing Easements

| PHASE ONE | | PHASE TWO | |
|----------------|-----------------|-----------|--|
| 14° x 40° = 65 | 10° x 10° = 58 | | |
| 14° x 45° = 58 | 10° x 15° = 25 | | |
| 14° x 50° = 31 | 10° x 20° = 120 | | |
| 20° x 40° = 6 | 10° x 30° = 39 | | |
| 20° x 45° = 7 | 14° x 35° = 24 | | |
| 20° x 50° = 6 | 20° x 35° = 6 | | |
| Total = 173 | Total = 274 | | |

| Site Area | 16.2± Acres |
|-----------|---------------|
| Phase One | = 11.1± Acres |
| Phase Two | = 5.1± Acres |

| PHASE ONE | Area (Acres) | Percentage |
|--------------------|--------------|------------|
| Proposed Buildings | 5.6 | 35 |
| Hard Surface | 5.6 | 35 |
| Grass / Open Space | 2.8 | 17 |
| Unimproved | 16.2± | 100% |

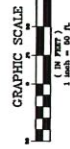
Parking Required: 1 Space per 300 SF for Office
2,000 ± SF Office / 300 SF = 7 Spaces

Parking Provided: 7 Spaces (Including 1 ADA Space)
Proposed Spaces are 9 ft. x 20 ft.

Parking Required: 1 Space per 300 SF for Office
2,000± SF Office / 300 SF = 7 Spaces

Parking Provided: 7 Spaces (including 1 ADA Space)
Proposed Spaces are 9 ft. x 20 ft.

| | |
|---|---|
| ① | Number of Printing Strokes |
| ② | ATA International Symbol of Accessibility |
| ③ | ATA Parking Sign and Post |
| ④ | ATA Staircase Ramp |
| ⑤ | ATA Staircase Railing |
| ⑥ | Parking Bumper |
| ⑦ | Remove Existing Light Pole and Fixture |
| ⑧ | Secret Calling Platform/Curb to Create a Clean Built Joint |
| ⑨ | Security Fence, Chain Link with Gray Privacy Slats, 6 Feet High |
| ⑩ | Security Fence, Decorative Aluminum Plated Slat, 6 Feet High |
| ⑪ | Security Fence, Decorative Aluminum Plated Slat, 6 Feet High |
| ⑫ | Concrete Staircase, 4" Thick |
| ⑬ | Integral Staircase and Curb, 3 feet wide, 4" thick sidewalk |
| ⑭ | Concrete Staircase, 4" Thick |
| ⑮ | Concrete Staircase, 4" Thick |
| ⑯ | Concrete Staircase, 4" Thick |
| ⑰ | Concrete Staircase, 4" Thick |
| ⑱ | Concrete Staircase, 4" Thick |
| ⑲ | Concrete Staircase, 4" Thick |
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| 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |

C1.0

■ ABONNEMARCHE

CR 17 STORAGE UNITS
PHASE ONE
123 COUNTY ROAD 17, ELYHART, IN 46516

SITE DEVELOPMENT PLAN

| | |
|--------------|------------|
| DATE | 06-20-2021 |
| COUNT REVIEW | |
| ITEM REVIEW | |
| REMARKS | |
| QUANTITY | |
| UNIT PRICE | |
| TOTAL | |

100

HARD COPY EDITION TO

GRAPHIC QUALITY MAY NOT
BE ACCURATE FOR ALL

[illegible]

21-0628 / 22-1252

C1.0

Phase 2 - Proposed

751 S. State Street, Suite C
Lewes, DE 19757
P: 302.461.2099

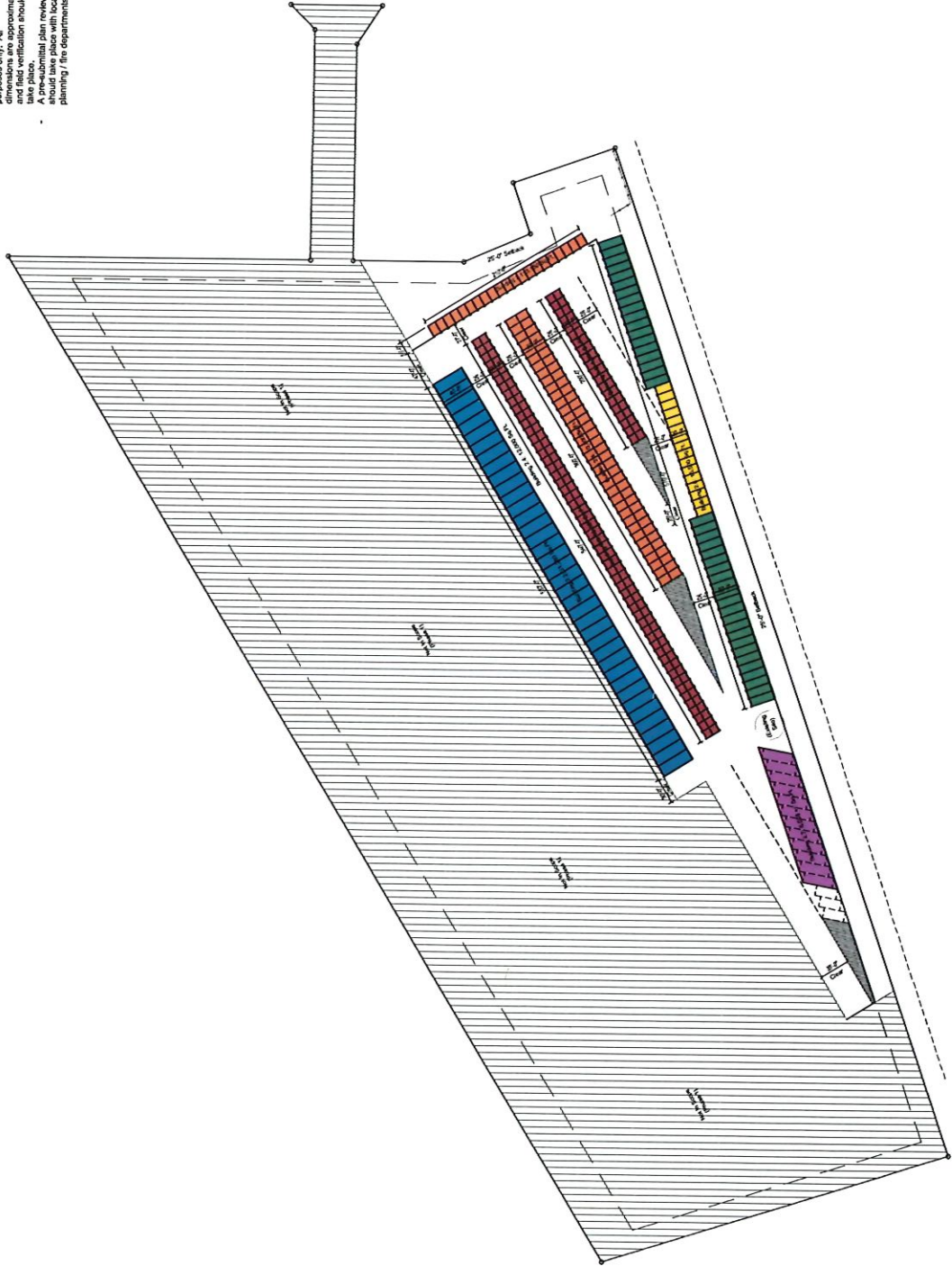
Building Outlet Corporation



Legend

- Zone 2**
- A - 10' x 12' (14)
 - B - 10' x 10' (8)
 - C - 10' x 20' (16)
 - D - 10' x 30' (41)
 - E - 14' x 40' (26)
 - F - 14' x 40' (12)
- Phase 2 Unit Totals = 348

Disclaimer:
Existing building / plot dimensions are approximate and have been recreated to fit the needs of our utility based upon the information provided. This plan is for design purposes only. All dimensions are approximate and field verification should take place. A pre-submittal plan review should be placed with local planning / fire departments.

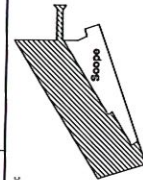


0 30 60 120
SCALE: 1" = 60'-0"

Site Utilization Plan

| Issued For | No. | Date | Description |
|------------|-----------|--------------------|----------------------|
| 1. | 12.7.2020 | CLIENT REVIEW | NOT FOR CONSTRUCTION |
| 2. | 1.25.2021 | CLIENT COMMENTS #1 | NOT FOR CONSTRUCTION |
| 3. | 1.09.2024 | CLIENT COMMENTS #2 | NOT FOR CONSTRUCTION |
| 4. | 1.12.2024 | CLIENT COMMENTS #3 | NOT FOR CONSTRUCTION |

Key Plan:



Project Number:
202042.00

Date:
December 15 2020

Sheet Title:
Site Utilization Plan

Sheet Number:

AS-01



Staff Report

Planning & Zoning

| | |
|--------------------------------|--|
| <u>Petition:</u> | 24-UV-04 |
| <u>Petition Type:</u> | Use Variance |
| <u>Date:</u> | March 14, 2024 |
| <u>Petitioner:</u> | HERG, INC – Historic Elkhart River Queen, Inc. |
| <u>Request:</u> | To vary from Section 7.2, Permitted Uses in the R-4, Multiple Family Dwelling District to allow for the demolition of 106 and 108 Bowers Court and used for a parking lot to provide off street parking for the River Queen. |
| <u>Site Location:</u> | 106 and 108 Bowers Court |
| <u>Existing Zoning:</u> | R-4, Multiple Family Dwelling District |
| <u>Size:</u> | +/- .20 Acres |
| <u>Thoroughfares:</u> | Bowers Court |
| <u>School District:</u> | Elkhart Community Schools |
| <u>Utilities:</u> | Available and provided to the site. |

Surrounding Land Use & Zoning:

The properties are in a primarily residential neighborhood on a low volume dead end street. Properties to the east are residential zoned CBD and R-5, property to the west is residential zoned R-1, and is bordered by waterways to the north and south.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

The Comprehensive Plan calls for this area to be developed with low density residential uses.



Staff Analysis

The petitioners own two residential lots in the 100 block of Bowers Court. The plan is to raze the existing structures and build a parking area for patrons of the River Queen. The River Queen is an amenity on the St. Joseph River that provides tours and is available to rent for events. The River Queen has traditionally faced a challenge for parking as there are no parking lots in the adjacent area adequate for the usage of its clientele.

The proposed parking lot will allow parking within the block of where people board the boat. Currently, passengers are shuttled from the Walley Mills Zimmerman parking lot across public rights of way by golf carts, as there are no other alternatives for parking within a several block radius. A site plan will be required to be submitted for Technical Review. At this point the design is conceptual; a detailed design has not been completed as of the writing of this report. A previous approval was granted in 2022, case number 22-UV-13 for a permeable paver lot around the corner in the 900 block of E. Jackson Boulevard. That plan has been abandoned for financial reasons.

Patrons of the River Queen will be directed to park in the lot, walk down along Bowers Court north to the River Queen. It is planned for cars to be stacked in a tandem fashion as the cruise times are set with all passengers arriving within a short window of time and leaving within a short window of time. While generally commercial lots are discouraged in residential zones, the proposed lot is located on a dead end street with extremely low traffic, it will be used occasionally and not have the same amount of traffic many commercial uses have. With the proposed parking lot several lots off E Jackson Boulevard, this will allow for the lot to blend into the neighborhood.

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 lot will be constructed to city standards;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the pavers will allow the lot to blend in with the neighborhood;
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 use of the site because the River Queen does not have access to a parking lot;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

Photos





PETITION #: 24-UV-04

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): HEIRG, INC

Mailing Address: 722 MIDDLETON RUN ROAD ELKHART, IN 46516

Phone #: 574-320-8888 Email: TOM@SHOFF.COM

Contact Person: TOM SHOFF

Mailing Address: 722 MIDDLETON RUN ROAD ELKHART, IN 46516

Phone #: 574-320-8888 Email: TOM@SHOFF.COM

Subject Property Address: 106 & 108 BOWERS COURT ELKHART, IN 46516

Zoning: R4

Present Use: RESIDENTIAL

Proposed Use: 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) OR REPRESENTATIVE (PRINT): HEIRG, INC.

SIGNATURE(S): 

DATE: 1/30/24

STAFF USE ONLY:

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

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

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

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

☒ A full and accurate legal description of the property.

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: 

DATE: 2/1/2024

Thursday, February 1, 2024

Board of Zoning Appeals
City of Elkhart

Re: Use Variance

1. The undersigned petitioner respectfully shows the Board of Zoning Appeals:

Historic Elkhart River Queen, Inc. (HERQ) an Indiana Not-Profit Indiana Corporation is the owner of the following real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:

The Historic Elkhart River Queen, Inc. operates a paddle style river tour boat on the Upper St. Joseph River in Elkhart. The River Queen used to have passengers parking in the old abandoned Alick Drug Property but after the condos were built we had to find other parking, the closest we could find is at Wally -Mills – Zimmerman and we are not guaranteed continued use. We transport passengers to and from the boat using four golf carts, we cross two streets, traverse an alley, a side-walk and then another road.

We are asking for a variance to put a parking lot right next to the Queens Dock property. This will dramatically improve the safety of our passengers.

Please see Exhibit A

2. The above-described real estate presently has a zoning classification of R4 District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently does not occupy the above-described property. The homes are vacant.

4. Petitioner desires to demolish the homes and install a parking lot.

5. The Zoning Ordinance of the City of Elkhart requires a Use Variance for this request, the plots are located in Section 7.2.

6. Strict adherence to the Zoning Ordinance requirements would create an unusual hardship in that we could not install the parking lot.

Standards:

7.1 The approval will not be injurious to the public health, safety, morals and general welfare of the community.

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

7.3 The need for the variance arises from the need to rezone the lots to allow for the parking lot.

7.4 The strict application of the terms of the parking lot will be closer to the launch point and provide the necessary oversight and security for the River Queen. It is a public safety risk to continue to utilize the Wally - Mills - Zimmerman parking lot.

7.5 The approval does not interfere substantially with the Comprehensive plan.

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:  Pres. HEBB, INC.

Printed Name: TOM SHOFF

Contact Person: Tom Shoff

Address: 722 Middleton Run Road, Elkhart, Indiana 46516

Phone: 574-293-5530

Email: tom@shoff.com



EXHIBIT A

Order No.: 692301706

For APN/Parcel ID(s): 20-06-04-176-002.000-012 108 Bowers CT.

PARCEL 1:

A PART OF LOT NUMBER ONE (1) AS THE SAME IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 OF THE RECORDS IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, STATE OF INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH; COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT, THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE-TENTHS (25.5) FEET TO THE CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED SIXTY-EIGHT AND TWENTY-FIVE HUNDREDTHS (268.25) FEET TO A CUT IN THE WALK FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE FEET (45) TO A CUT IN THE WALK, THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING. ALSO, A RIGHT TO USE THE DRIVEWAY ALONG THE WEST LINE OF SAID LOT NUMBER ONE (1).

For APN/Parcel ID(s): 20-06-04-176-003.000-012 106 Bowers CT.

PARCEL 2:

A PART OF LOT NUMBER ONE (1) AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT OF WILLOW VIEW, AN ADDITION TO THE CITY OF ELKHART, INDIANA; SAID PLAT BEING RECORDED IN PLAT BOOK 1, PAGE 138 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE WEST LINE OF SAID LOT TO HAVE A BEARING DUE NORTH AND SOUTH; COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK, FOR THE BEGINNING POINT OF THIS DESCRIPTION; THENCE SOUTH FORTY-FIVE (45) FEET TO A CUT IN THE WALK; THENCE EAST AT RIGHT ANGLES TO THE WEST LINE OF SAID LOT TO THE EAST LINE OF SAID LOT; THENCE NORTHWARDLY ALONG THE EAST LINE OF SAID LOT TO A POINT DUE EAST OF THE PLACE OF BEGINNING; THENCE WEST TO THE PLACE OF BEGINNING.

ALSO, AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED REAL ESTATE:

ASSUMING THE WEST LINE OF SAID LOT NUMBER ONE (1) TO HAVE A BEARING OF DUE

EXHIBIT A
(continued)

NORTH AND SOUTH:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT; THENCE NORTHEASTWARDLY ALONG THE SOUTH LINE OF SAID LOT TWENTY-FIVE AND FIVE TENTHS (25.5) FEET TO A CUT IN THE SIDEWALK; THENCE NORTHWARDLY PARALLEL WITH THE WEST LINE OF SAID LOT TWO HUNDRED TWENTY-THREE AND TWENTY-FIVE HUNDREDTHS (223.25) FEET TO A CUT IN THE WALK; THENCE WEST TWENTY-FIVE (25) FEET TO THE WEST LINE OF SAID LOT; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT TO THE PLACE OF BEGINNING.

2024-01577

ELKHART COUNTY RECORDER
KAALA BAKER
FILED FOR RECORD ON
01/29/2024 04:19 PM
AS PRESENTED

WARRANTY DEED

Fidelity National Title Company, LLC File No.: 692301706

THIS INDENTURE WITNESSETH, that Jon J. Stahl and Patricia A. Stahl, as to parcel 2 and Ryan M. Stahl, as to parcel 1 (Grantor) CONVEY(S) AND WARRANT(S) to Historic Elkhart River Queen, Inc. an Indiana Non-Profit Corporation (Grantee) for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate in Elkhart County in the State of Indiana, to wit:

For APN/Parcel ID(s): 20-06-04-176-002.000-012 and 20-06-04-176-003.000-012

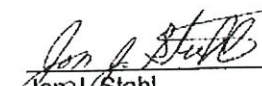
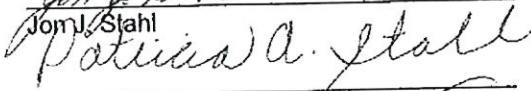
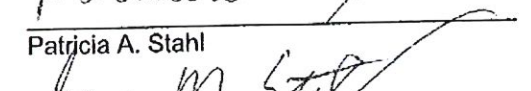
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Property: 108 Bowers Court, Elkhart, IN 46516 and 106 Bowers Ct., Elkhart, IN 46516

Subject to all current real estate taxes and assessments and all subsequent taxes and assessments.

Subject to all easements, covenants, conditions, and restrictions of record.

IN WITNESS WHEREOF, Grantor has executed this deed this 19 day of January, 2024.


Jon J. Stahl

Patricia A. Stahl

Ryan M. Stahl

DISCLOSURE FEE NOT REQUIRED

DULY ENTERED FOR TAXATION

SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

Jan 29 2024

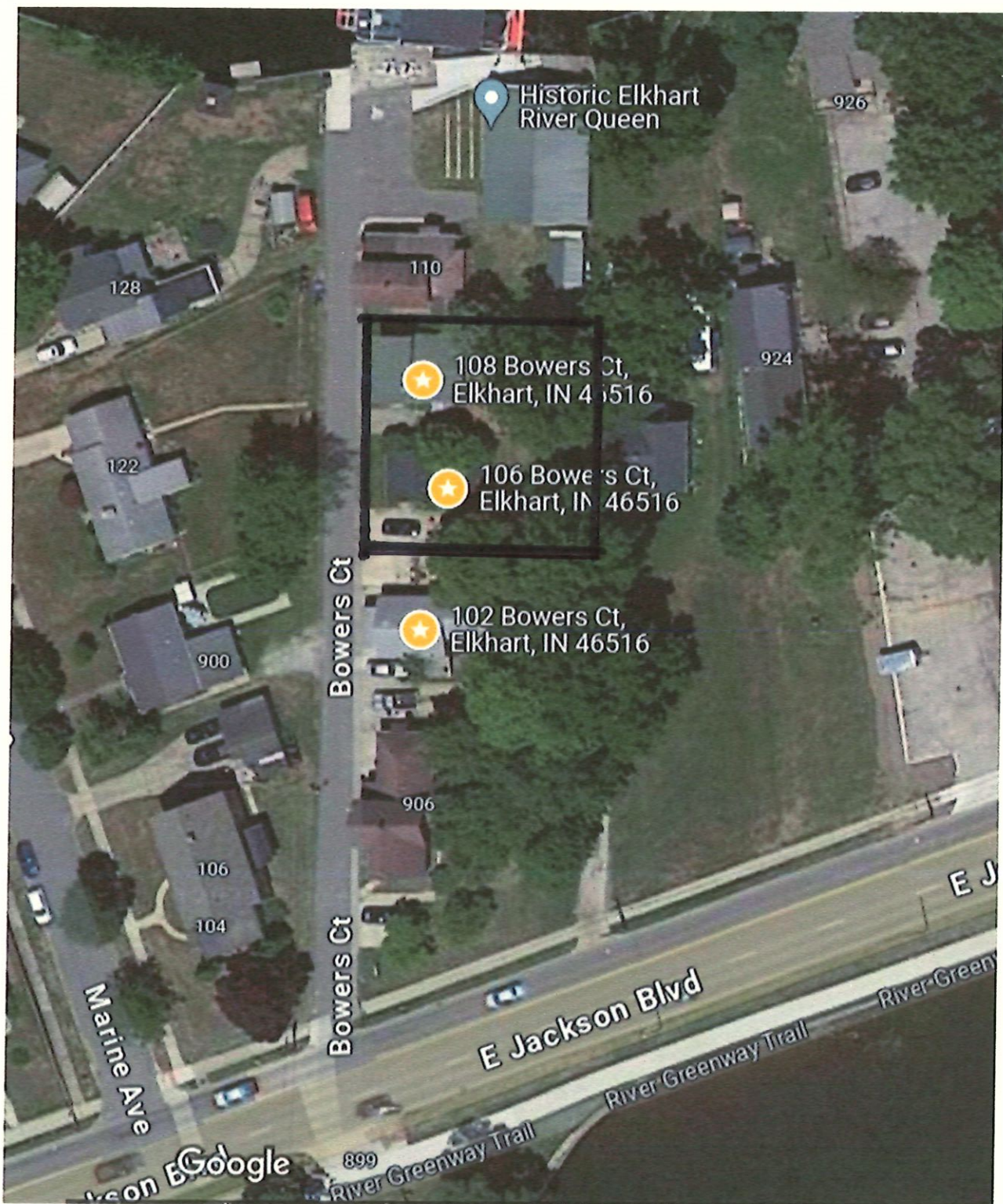
PATRICIA A. PICKENS, AUDITOR

00402

20.00

AL

DM





Staff Report

Planning & Zoning

| | |
|--------------------------------|---|
| <u>Petition:</u> | 24-UV-05 |
| <u>Petition Type:</u> | Use Variance |
| <u>Date:</u> | March 14, 2024 |
| <u>Petitioner:</u> | M.S. Investment Corporation |
| <u>Request:</u> | To vary from Section 4.2, Permitted Uses in the R-1, One Family Dwelling District to allow for the former Disabled American Veterans building to be used for ADEC's day programming and skills training, therapy services, employment services, youth programming as well as services that support the mission of ADEC. |
| <u>Site Location:</u> | 1205 Middleton Run Road |
| <u>Existing Zoning:</u> | R-1 One Family Dwelling District |
| <u>Size:</u> | +/- 5 Acres |
| <u>Thoroughfares:</u> | County Road 13 |
| <u>School District:</u> | Concord Community Schools |
| <u>Utilities:</u> | Available and provided to the site. |

Surrounding Land Use & Zoning:

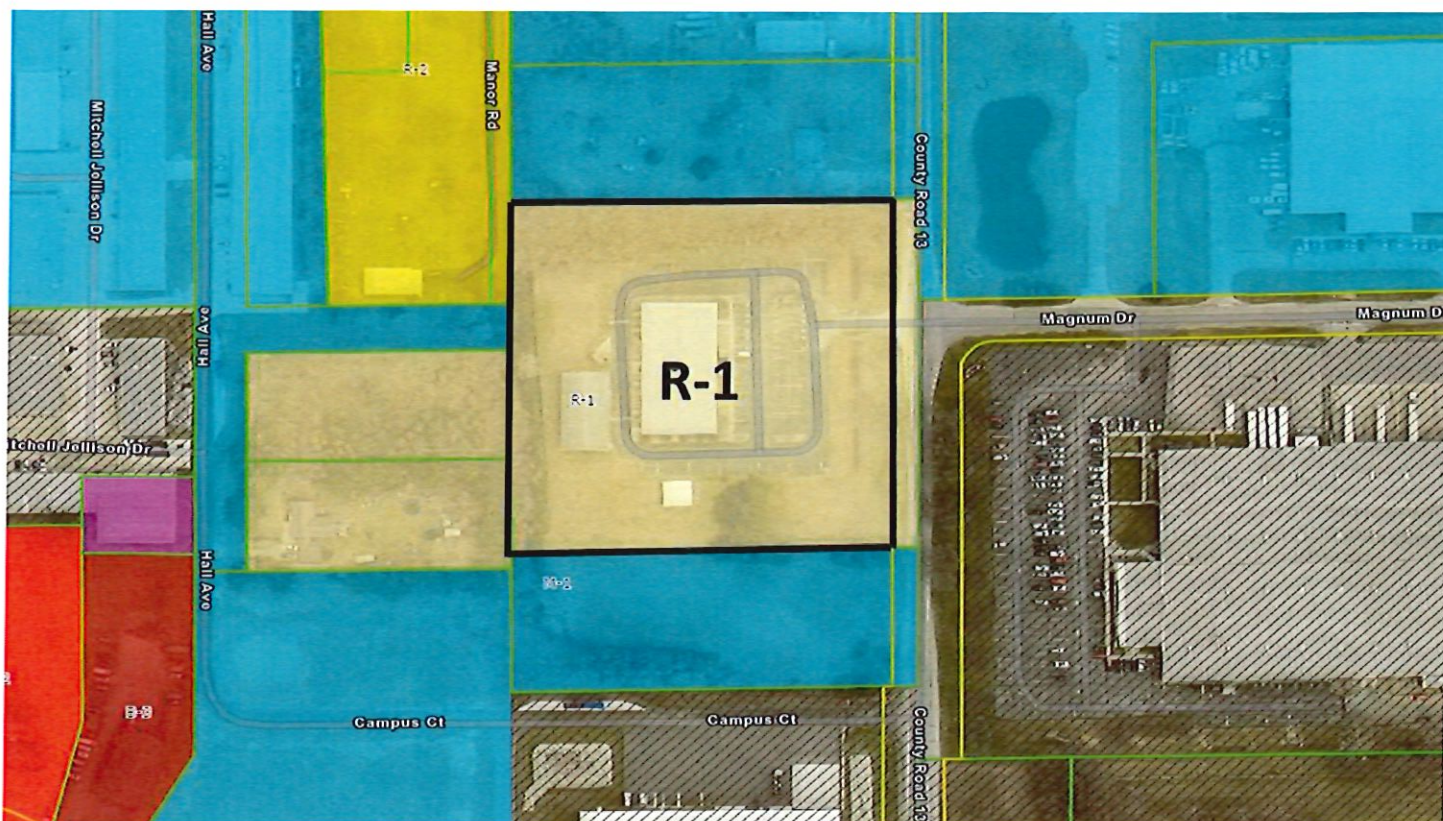
The property is surrounded by a mix of industrial and commercial uses zoned M-1, Limited Manufacturing District and M-2, General Manufacturing District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

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



Staff Analysis

The petitioner is requesting a use variance to allow the former DAV (Disabled American Veterans) building to be used by ADEC for the purpose of day programming and skills training, therapy services, employment services, youth programming as well as other services that support the mission of ADEC.

From the perspective of the petitioner, the building lends itself quite well to the proposed use. With the historical use by the DAV, the building is largely barrier free. The building has accessible restrooms, barrier free entry and an existing parking lot that will accommodate the pick-up and drop off of clients without causing traffic issues on Middleton Run Road; while also leaving more than enough room for employee and guest parking. The former use was permitted by Special Use action in Elkhart County to allow the DAV – the proposed use for ADEC will also be a tax exempt organization.

The location of the building also allows for those clients utilizing job skills training and employment services an opportunity to be sited within a large industrial area to further promote inclusion and greater self-sufficiency for clients for themselves with potential employers. Staff recognizes the benefit of the location for that purpose.

Any modifications to the building will require Building Department review and approval. Submittal at Technical Review will not be required unless renovation plans require exterior changes to the footprint of the building or additional paving.

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 building will continue to be used as a place that provides services and fellowship to a population in need of specialized care;
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the proposed use by ADEC will not change the exterior of the building, create any additional traffic or cause disruption to the neighborhood;
3. The need for the variance arises from some condition peculiar to the property involved because without board action the use would not be permitted;
4. The strict application of the terms of this Ordinance **will** constitute an unnecessary hardship if applied to the property for which the variance is sought because the building was constructed originally for the DAV and retrofitting the building to an industrial use would be a burden to the owner;
5. The approval does not comply with the Comprehensive Plan which calls for the area to be developed with industrial uses, however this site was historically used as a facility that provided space for community gathering. The proposed use is similar in its mission.

Photos







PETITION #: 24-UV-05

FILING FEE: \$ 300-

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

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

Property Owner(s): M.S. Investment Corporation

Mailing Address: 57157 Raider Drive, Elkhart, IN 46516

Phone #: 574-202-5635 Email: nvshaum@aol.com

Contact Person: Chris Kingsley, ADEC, Inc.

Mailing Address: 1671 W. Vistula St., Bristol, IN 46507

Phone #: [REDACTED] Email: Kingsleyc@adecinc.com

Subject Property Address: 1205 Middleton Run Road, Elkhart, IN 46516

Zoning: R-1

Present Use: Disabled American Veterans Facility Proposed Use: ADEC programs and offices

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

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Chris Kingsley, ADEC, Inc.

SIGNATURE(S): [Signature] DATE: 1/29/2024

STAFF USE ONLY:

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: [Signature] DATE: 2/1/2024

January 12, 2024

To whom it may concern,

The purpose of this letter is to grant permission for Adec Inc which has a purchase contract to purchase 1205 Middleton Run Road Elkhart, Indiana 46516 from M.S. Investment Corporation to apply for necessary variances needed for them to utilize the property for their intended purposes.

Nancy Shaum Jan. 12, 2024
Nancy Shaum Owner Date

Donald Shaum Jan. 12, 2024
Donald Shaum Owner Date



ADEC

1671 W. Vistula St, Bristol, IN 46507
574.848.7451 | Bristol FAX 574.848.5917

January 19, 2024

To: Board of Zoning Appeals
City of Elkhart, Indiana

Re: Use Variance

The undersigned petitioner respectfully shows the Board of Zoning Appeals:

1. I, Chris Kingsley, President/CEO of ADEC, Inc., who is authorized to seek a use variance on behalf of M.S. Investment Corporation, the owner of the following described real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:

Commonly known as: 1205 Middleton Run Road, Elkhart, IN 46516

Property description: See attached

2. The above described real estate presently has a zoning classification of R1, One-Family Dwelling District under the Zoning Ordinance of the City of Elkhart.
3. The property was previously used as a Disabled American Veterans facility.
4. Petitioner desires to use the property to provide services to individuals with intellectual and developmental disabilities (heretofore referred to as IDD) from the Elkhart area. Proposed uses include:
 - a. Day program and a skills and training center for adults with IDDs,
 - b. Offices for staff members of ADEC, Inc.,
 - c. Therapies services for individuals with IDDs,
 - d. Employment services for individuals with IDDs,
 - e. Youth programming for children with IDDs,
 - f. Other similar services that carry out the mission of ADEC, Inc.
5. As detailed in Section 4 of the Zoning Ordinance of the City of Elkhart, R-1 designation requires one-family detached dwelling with certain square footage, facade, and setback requirements. In addition to single-family residency, other uses consistent with a single-family residential neighborhood are permitted, such as police and fire stations, sheltered living homes, and radio towers. Special exception uses consistent with residential neighborhoods are also included. ADEC's proposed use is very close to special exception uses listed in this section, such as Day Care Centers, Community Centers, and Schools.
6. Strict adherence to the Zoning Ordinance requirements would create an unusual hardship for ADEC's ownership of this property. The property's historical approved use as a Disabled American Veterans Facility enabled a facility and property layout uniquely conducive to the carrying out of ADEC's nonprofit mission of advocating for and serving people with intellectual and developmental disabilities so they can live lives full of informed choice and possibility. Specifically, the current facility is designed for accessibility for people with disabilities. There is a shortage of adequate available commercial real estate conducive to ADEC's programs and services that provide a critical resource to the City of Elkhart and the



ADEC proudly advocates for and serves people with intellectual and developmental disabilities so they can live lives full of informed choice and possibility.

community at large. The inability to use this property to meet these needs will limit ADEC's capacity to meet our area's needs.

7. The proposed use meets the standards outlined for the granting of a use variance as follows:

- a. The approval of the proposed use will not be injurious to the public health, safety, morals and general welfare of the community. The use is consistent with the property's history of serving a vulnerable population through a tax-exempt nonprofit organization. It is consistent with its history as a gathering place and the property and road infrastructure are adequate for the traffic related to the use. ADEC's programs and services will enhance the public health, safety, morals and general welfare of the community by providing quality services to people with IDD's that increase their self-sufficiency and ability to contribute to the local community and economy, while enabling loved ones to work local jobs with the peace of mind their loved ones are receiving quality care.
- b. The use and value of the area adjacent to the property will not be affected in a substantially adverse matter. The use is very consistent with the historic use of the property. The facility will be renovated for the proposed use in ways that enhance the property value and curb appeal, which will support the values of area properties. ADEC's Bristol campus, group homes, and other owned properties are good examples of the pride the organization takes in curb appeal, grounds maintenance, and being a good neighbor.
- c. The need for the variance arises from conditions peculiar to the property. As mentioned earlier, the facility and property are uniquely suitable for the carrying out of the programs of ADEC that bring benefit to the community. The lot size and layout, the amount of parking, the conduciveness for drop-offs and pickups, and the accessibility of the building combine to create the best option ADEC has found for programs that promote skill-building, employability, and thriving for community members with IDD's.
- d. Part 6 of this letter details why strict adherence to the zoning ordinance would create an unusual hardship for ADEC's ownership of this property.
- e. Approval of this use does not interfere substantially with the Comprehensive Plan. As noted above, the proposed use is very close to other R-1 Special Exception uses. In addition, the property is in an industrial area that relies heavily on a local workforce. Programs offered at this facility will focus on skill-building, employability, job placement, and support for job placements in our local economy. The purpose of the use is comparable to that of other nearby facilities focused on training the manufacturing workforce.

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



ADEC proudly advocates for and serves people with intellectual and developmental disabilities so they can live lives full of informed choice and possibility.

Signature of Authorized Representative of Property Owners: Chris Kingsley

Printed Name: Chris Kingsley, CEO, ADEC, Inc.

Contact Person: Chris Kingsley

Address: 1671 W. Vistula St., Bristol, IN 46507

Phone Number where you can be reached: 574-848-2420

Email: KingsleyC@adecinc.com



ADEC proudly advocates for and serves people with intellectual and developmental disabilities so they can live lives full of informed choice and possibility.



Fidelity National Title Insurance Company

EXHIBIT "A"

A part of the Northwest Quarter of Section 11, Township 37 North, Range 5 East, Concord Township, Elkhart County, Indiana, more particularly described as follows:

Commencing at a 1/2" Square Iron pipe at the Southeast corner of the Northwest Quarter of said Section thence North 00 degrees 12 minutes East along the East line of the Northwest Quarter of said Section 935.38 feet to a set PK nail and the beginning point of this description; thence North 89 degrees 42 minutes 47 seconds West, a distance of 480.40 feet to a 1 1/2" iron pipe; thence North 00 degrees 17 minutes 42 seconds East, a distance of 453.14 feet to a 1/2" pinch pipe; thence South 89 degrees 50 minutes 20 seconds East, a distance of 479.61 feet to a set PK nail on the East line of the Northwest Quarter of said Section; thence South 00 degrees 12 minutes West, a distance of 454.26 feet to the place of beginning.

This page is only a part of a 2021 ALTA Commitment for Title Insurance Issued by Fidelity National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

27C170B

ALTA Commitment for Title Insurance (7-1-21)

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Listing Broker (Co.) N/A () By N/A ()
 office code individual code
 Selling Broker (Co.) Myers Trust Real Estate () By David Myers ()
 office code individual code



PURCHASE AGREEMENT
COMMERCIAL-INDUSTRIAL REAL ESTATE

For use only by members of the Indiana Association of REALTORS®

DATE: December 12, 2023

A. PARTIES: MS Investment Corporation

agrees to sell and convey to Adec Inc.
 ("Seller")
 ("Buyer")

and Buyer agrees to buy from Seller the following property for the consideration and subject to the following:

B. PROPERTY: The property is commonly known as

1205 Middleton Run Road, Elkhart, IN 46516
 in Concord Township, Elkhart County, Elkhart Indiana, 46516
 including all buildings and permanent improvements and fixtures attached owned by Seller; all privileges, easements and appurtenances pertaining thereto including any right, title and interest of Seller in and to adjacent streets, alleys, rights-of-way, leases, rents, security deposits, licenses and permits with respect to the property, trade name, and warranties or guaranties relating to the property being sold, and any personal property specified herein; all of the above referred to as the "Property," the legal description of which is ☐ (attached as Exhibit "A") ☒ (described as follows): Tax # 200611177005.000011
181.31X480.49-936.28FTN OF ; SE COR NW 1/4 SEC 11; 5.00A

; subject to exact determination by survey pursuant to Paragraph J.

The following items of personal property are INCLUDED in the sale:

All other personal property and the following additional items are EXCLUDED from the sale:

C. PRICE: The purchase price shall be _____ Dollars
 (\$ _____) U.S. Dollars, payable ☒ (in cash at closing) ☐ (in accordance with the terms and conditions in this Agreement).

D. EARNEST MONEY: Buyer submits \$ _____ U.S. Dollars as Earnest Money to be held by _____ as Escrow Agent within 2 days of execution and receipt of this Agreement by both parties. If Buyer fails for any reason to timely submit Earnest Money, Seller may terminate this Agreement upon notice to Buyer prior to Escrow Agent's receipt of the Earnest Money. The Earnest Money shall be applied to the purchase price at closing unless returned to Buyer, released to Seller, or otherwise disbursed in accordance with this Agreement. The Escrow Agent is not a party to this Agreement and does not assume or have any liability for performance or non-performance of any party. Before the Escrow Agent has any obligation to disburse the Earnest Money in the event of dispute, Escrow Agent has the right to require from all parties a written release of liability of the Escrow Agent, termination of the Agreement and authorization or court order to disburse the Earnest Money. If the Escrow Agent is the Listing Broker ("Broker") described above, Broker shall be absolved from any responsibility to make payment to the Seller or Buyer unless the parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 8-2-2 (release of earnest money). Upon notification that Buyer or Seller intends not to perform, Broker holding the earnest money may release the Earnest Money as provided in this Agreement. If no provision is made in this Agreement, Broker may send to Buyer and Seller notice of the disbursement by certified mail of the intended payee of the Earnest Money. If neither Buyer nor Seller enters into a mutual release or initiates litigation within sixty (60) days of the mailing date of the certified letter, Broker may release the Earnest Money to the party identified in the certified letter. Buyer and Seller agree to hold the Broker harmless from any liability, including attorney's fees and costs, for good faith disbursement of Earnest Money in accordance with this Agreement and licensing regulations.

E. ADDITIONAL PROVISIONS: Included in this Agreement are the following addenda: (Place an "X" on the appropriate line or lines)

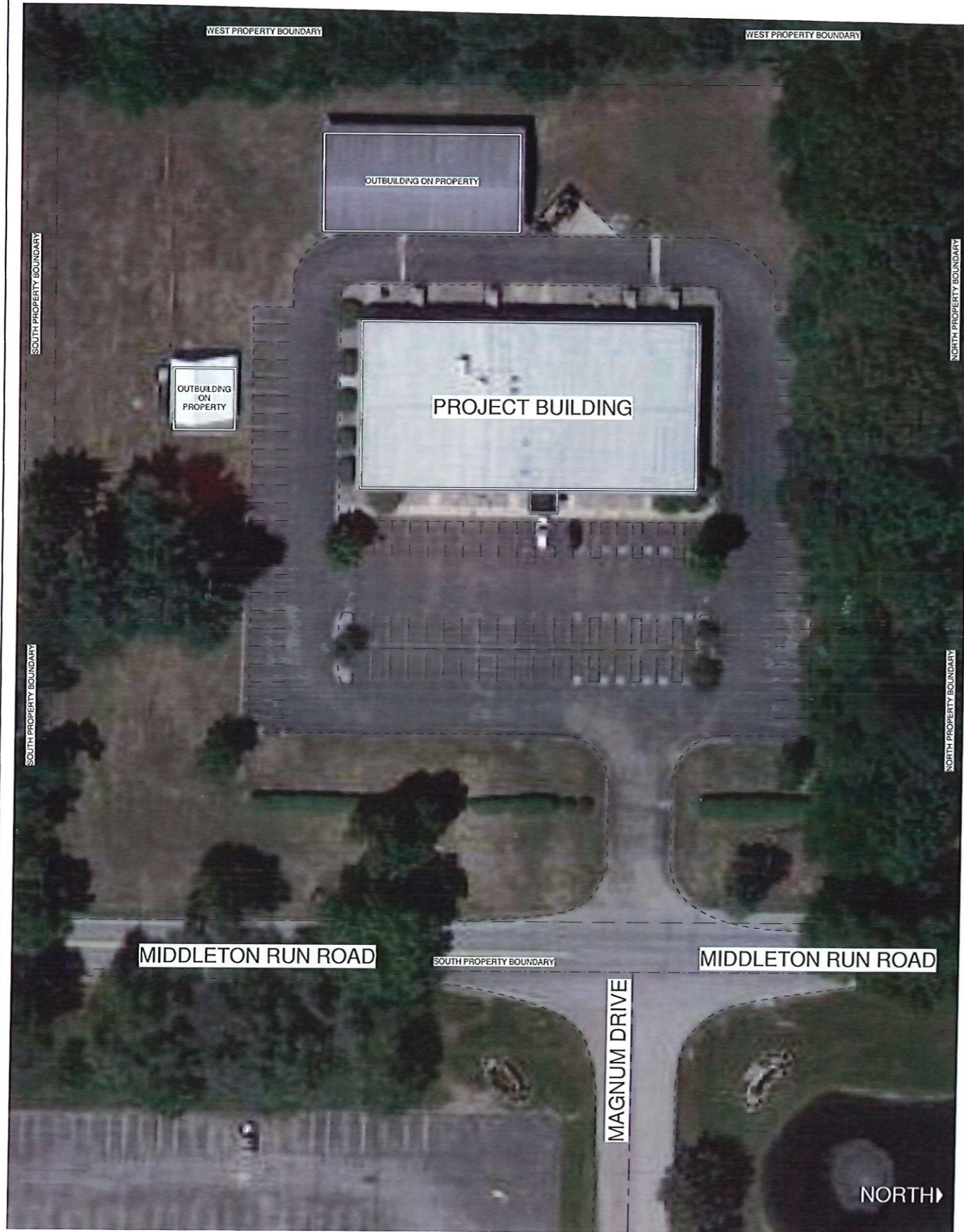
☐ Financing Addendum ☐ Feasibility Study Addendum
☐ Leased Property Addendum ☐ Exchange Addendum
☐ Zoning/Governmental Approval Addendum ☐ Representations & Warranties of Seller Addendum
☐ Alternative Dispute Resolution Addendum ☐ Lead-Based Paint Disclosure Addendum
☐ Addendum to Purchase Agreement

F. CLOSING: The closing of the sale shall take place at ☒ (the Title Company) ☐ ()
 on or before April 15, 2024 or within _____ days after the end of both the Inspection Period and any of the periods described in any of the above referenced Addenda which are part of this Agreement, whichever is later, (the "Closing Date") or this Agreement shall terminate unless the Closing Date is changed in writing by Seller and Buyer, or otherwise extended pursuant to this Agreement.

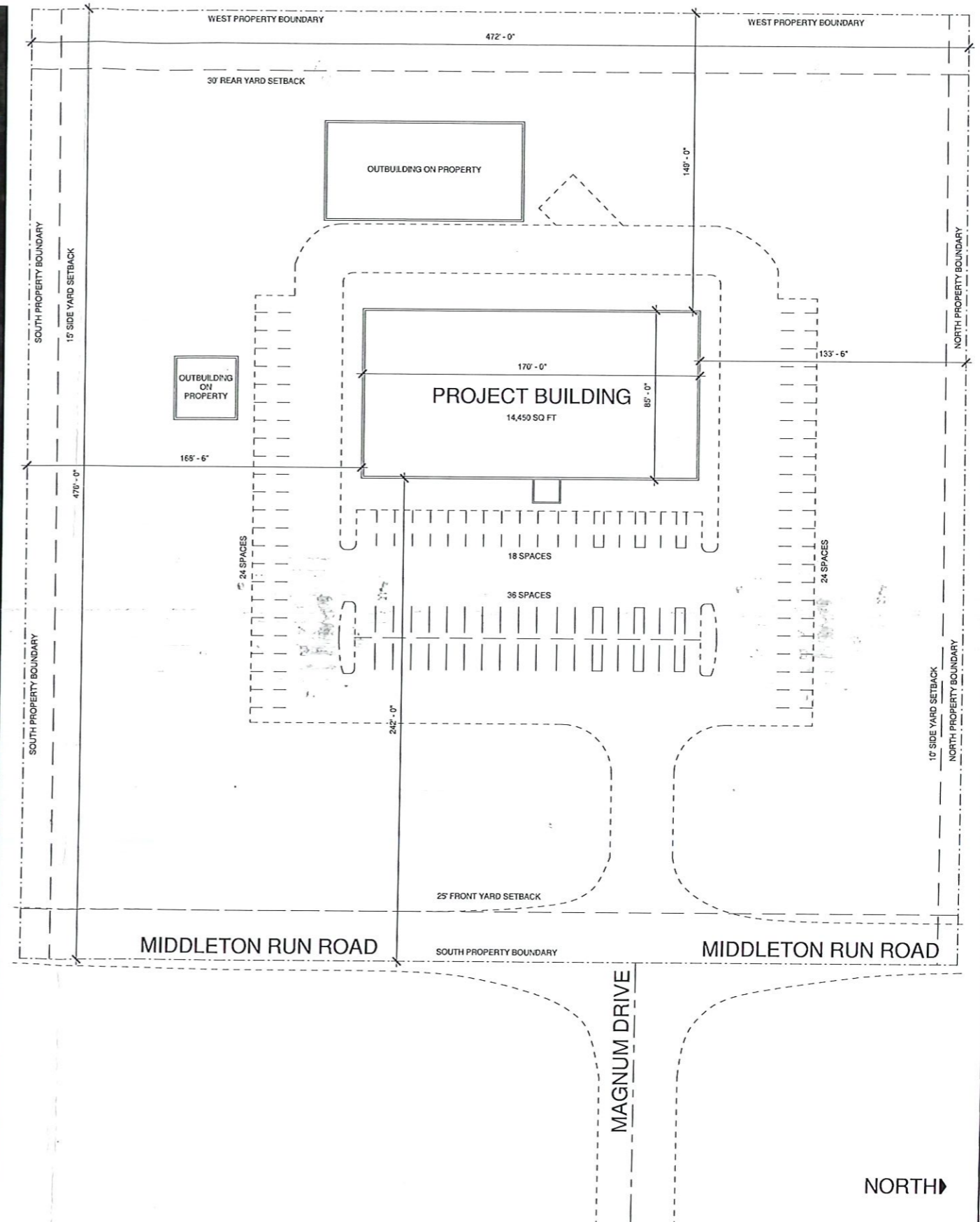
G. POSSESSION: The possession of the Property shall be delivered to Buyer, subject to the rights of tenants in possession, if any, in its present condition, ordinary wear and tear excepted, on the Closing Date. Seller shall maintain the Property, including

[Handwritten Signature]

[Handwritten Initials CK]



② Site Existing (With Aerial Photo)
1" = 30'-0"



NORTH

① Site Existing
1" = 30'-0"

DJ CONSTRUCTION
decidedly different

NOT FOR
CONSTRUCTION

ADEC Elkhart
1205 Middleton Run Rd., Elkhart, IN 46516

Site Plan Sketch

SCALE:
1" = 30'-0"
SCALED TO:
36" X 24"
JOB NUMBER:
2024.001
DATE:
01/30/24
DRAWN BY:
BVE

SHEET:
A000



Staff Report

Planning & Zoning

Petition: 24-X-01

Petition Type: Special Exception

Date: Plan Commission: March 4, 2024; Board of Zoning Appeals March 14, 2024:

Petitioner: Francisco Sesmas

Site Location: 2006 Benham Avenue

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

Existing Zoning: R-2 One Family Dwelling District

Size: +/- 0.16 Acres

Thoroughfares: Benham Ave

School District: Elkhart Community Schools

Utilities: Available to site.

Surrounding Land Use & Zoning:

The properties to the north, south, east, and west are all zoned 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 be developed with low density residential.



Staff Analysis

The petitioners are submitting an application for a daycare at 2006 Benham Avenue this month. There are an existing five other daycares on the same block of Benham also owned and operated by the petitioners. They have been able to expand and fill their childcare openings in part because of the demonstrated need for daycare in Elkhart.

The house at 2006 Benham is 1032 square feet and built in 1950, according to Elkhart County Assessor records. The lot is .15 acres. At the writing of this report, staff had not yet visited the site. Information provided in the petition application, there will some demolition of interior walls and the back yard will be fenced.

They plan to apply for a Class II license with the state's Family and Social Services Administration (FSSA), which allows for up to 16 children. Pick up and drop off for the facility will be handled from the alley on the east of the building. There is ample parking in the rear for employees. Based on information provided in the petition, they plan on enrolling in the Child and Adult Care Food Program (CACFP) to provide healthy meals. They also become members of The National Association for Family Child Care (NAFCC).

In terms of space, the house is adequate. The state requires a minimum of 560 square feet for a Class II license.

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.

Conditions

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

1. The petitioner shall submit plans for the building renovations to the building department within 14 days of approval, and obtain permits for any work done there within 45 days of approval.
2. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
3. The facility and grounds shall be kept clean at all times.
4. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
5. There shall be no exterior display, signs, or other forms of advertising on the premises.
6. 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.
7. 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.
8. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
9. There shall be a maximum sixteen (16) children.
10. Pickup and dropoff shall be from the alley at the rear of the property.
11. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by March 14, 2026.

Photos



PETITION #: 24-X-01

FILING FEE: \$ 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

☐ Developmental Variance

☐ Appeal from Staff Decision

☐ Use Variance

☒ Special Exception

☐ Conditional Use

Property Owner(s): Francisco Sesmas and Maria Torres

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Contact Person: Maria Torres

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Subject Property Address: 2006 Benham Ave. Elkhart, IN 46516

Zoning: B-2

Present Use: Vacant house Proposed Use: Daycare

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

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): Francisco Sesmas / Maria Torres

SIGNATURE(S): Francisco Sesmas / Maria Torres DATE: 1/26/24

STAFF USE ONLY:

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: _____ DATE: _____

January 26, 2024

TO: Plan Commission & Board of Zoning Appeals
City of Elkhart, Indiana

RE: Special Exception Request

Francisco Sesmas and Maria Torres, are the owners of the following described real estate located within the City of Elkhart, on 2006 Benham Ave., Elkhart In 46516-3413.

LEGAL DESCRIPTION ATTACHED TO THIS LETTER

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

Petitioner presently occupies the above-described property in the following manner:

VACANT.

Petitioner desires: to provide daycare services on a daily basis from Monday to Friday from 05:00 a.m. to 04:00 p.m. We will work to achieve level 4 on Paths of Quality I. We will get a daycare license class II following all the standards, requirements, and procedures from Family Social Services Administration (FSSA) and Early Learning Indiana (ELI). We will be enrolled in the Child and Adult Care Food Program (CACFP) and provide healthy meals. We will become members of The National Association for Family Child Care (NAFCC).

Section 5.3 Special Exception used in the R-2 District. The Zoning Ordinance requires a Special Exception for a daycare home in the R-2 District.

This property is suited to the special exception use being requested because We have a parking space in the rear of the property on a non busy alley to have a safe pick up and drop off.

In addition to that, the location of this property is very convenient for the community in need of daycare services in this area.

1. The Special Exception is so defined, located, and proposed to be operated that the public health, safety, and welfare will be protected; **Yes** this daycare will provide healthy meals under the supervision and sponsorship of the Child and Adult Care Food Program. We will follow guidelines from the local Health Department and CDC. We will notify the Fire Department of the daycare and they will inspect alarms and extinguishers. The property is fenced in to provide a safe play area. Parking and drop-off will be in the back of the property in a non-busy alley. Staff will meet the requirements such as National Criminal History, drug test, CPR, TB test, Physical exam, child abuse, and neglect courses, and safe sleep practices.
2. The special exception will not reduce the values of other properties in its immediate vicinity; **NO**, this property is well maintained and will continue to be maintained and in very good shape with no changes to its residential appearance.
3. The special exception shall conform to the regulation of the zoning district in which it is to be located; **Yes**, the property will continue to have its original residential appearance.

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 Francisco Sesmas

Printed Name: Francisco Sesmas

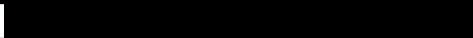
Second Property Owner Maria Torres

Printed Name: Maria Torres

Contact Person: 

Name: Francisco Sesmas

Address: 

Phone number where you can be reached: 

2023-02530

ELKHART COUNTY RECORDER
KAALA BAKER
FILED FOR RECORD ON
02/16/2023 10:12 AM
AS PRESENTED



QUIT-CLAIM DEED

The Grantor: Thomas W. Humes, II

whose address is: 2006 Benham Avenue, Elkhart, IN 46516,

conveys and quit-claims to: Francisco Sesmas

whose address is: 2018 Benham Avenue, Elkhart, IN 46516,

the following described premises situated in the County of Elkhart, State of Indiana:

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION EIGHT (8),
TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS FIFTY-THREE AND THIRTY-FOUR
HUNDREDTHS (53.34) FEET SOUTH OF THE SOUTHEAST CORNER OF
BENHAM AVENUE AND HUBBARD AVENUE IN THE CITY OF ELKHART,
INDIANA; THENCE EAST PARALLEL TO THE SOUTH LINE OF HUBBARD
AVENUE ONE HUNDRED TWENTY-SIX (126) FEET; THENCE SOUTH
PARALLEL TO THE EAST LINE OF BENHAM AVENUE FIFTY-THREE AND
THIRTY-THREE HUNDREDTHS (53.33) FEET; THENCE WEST PARALLEL TO
THE SOUTH LINE OF HUBBARD AVENUE ONE HUNDRED TWENTY-SIX (126)
FEET; THENCE NORTH ALONG THE EAST LINE OF BENHAM AVENUE FIFTY-
THREE AND THIRTY-THREE HUNDREDTHS (53.33) FEET TO THE PLACE OF
BEGINNING.

SUBJECT TO ALL ROADWAYS, EASEMENTS, RESTRICTIONS OF RECORD
AND TAXES.

Property Address: 2006 Benham Avenue, Elkhart, Indiana 46516.

Parcel No.: 20-06-08-478-002.000-012

DISCLOSURE FEE PAID

DULY ENTERED FOR TAXATION

SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

2-16-2023

Donna A. Baker AUDITOR

000590

TRANSFER FEE 10

PARCEL NO. ✓

KEK
02/16/23

For the sum of One Dollar (\$1.00) and other good and valuable consideration.

Dated this 15 day of February, 2023.

Signed by Grantor:

Thomas W. Humes, II

Thomas W. Humes, II

STATE OF INDIANA)

) SS:

COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thomas W. Humes, II and acknowledged the execution of the above and foregoing document as his own free act and deed.

WITNESS my hand and official seal this 15 day of February, 2023.

My Commission Expires:

February 7th, 2026

Printed: Jose Mauricio Chavez De La Torre

Notary Public

Residing in Elkhart County, Indiana

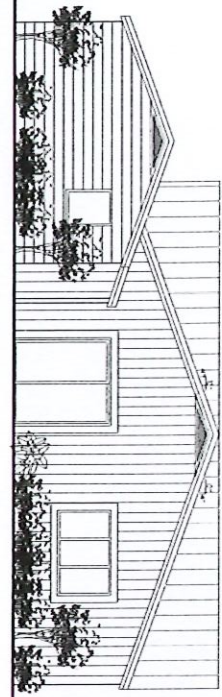
Grantee's Address and Tax Billing Address:

Francisco Sesmas
2018 Benham Avenue
Elkhart, IN 46516

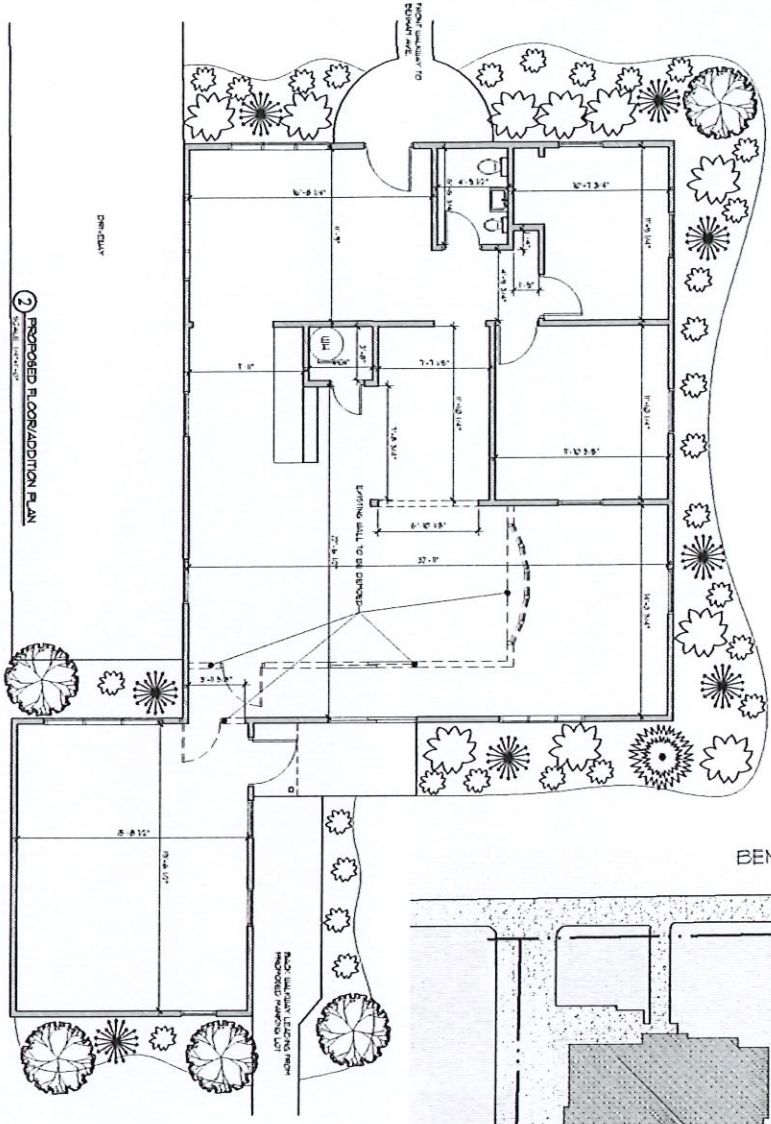
JOSE MAURICIO CHAVEZ DE LA TORRE
Notary Public - Seal
Elkhart County - State of Indiana
Commission Number 710244
My Commission Expires Feb 7, 2026

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. William G. Lavery

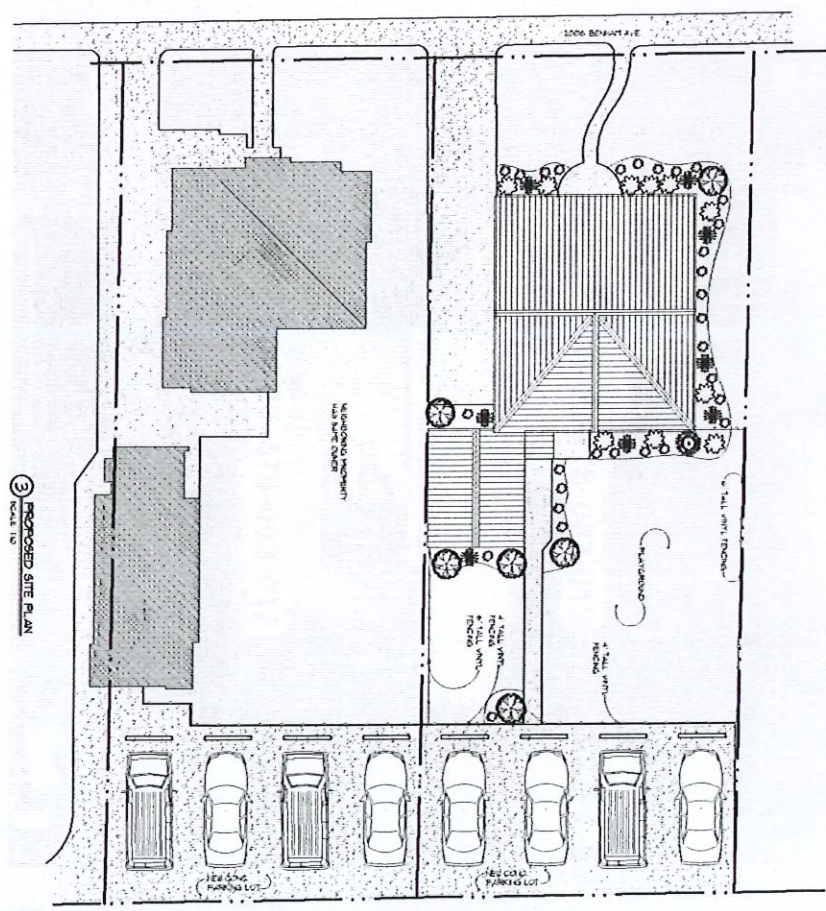
This instrument prepared by: William G. Lavery, LAVERY LAW, LLC, Attorney at Law, 600 South Main Street, Suite 200, Elkhart, Indiana 46516; Telephone: (574) 293-2434.



① PROPOSED ELEVATION
SCALE: 1/4" = 1'-0"



② PROPOSED FLOOR ADDITION PLAN
SCALE: 1/8" = 1'-0"



③ PROPOSED SITE PLAN
SCALE: 1/8" = 1'-0"



Staff Report

Planning & Zoning

Petition: 24-X-02

Petition Type: Special Exception

Date: Plan Commission: March 4, 2024; Board of Zoning Appeals March 14, 2024:

Petitioner: Balwinder Singh

Site Location: 115 West Hively Avenue

Request: A Special Exception per Section 12.3, Special Exception Uses in the B-2, Community Business District, to allow for a public school.

Existing Zoning: B-2 Community Business District

Size: +/- 0.85 Acres

Thoroughfares: West Hively Ave

School District: Concord Community Schools

Utilities: Available to site.

Surrounding Land Use & Zoning:

The properties to the north of this site are B-2 Community Business District. The properties to the east are B-2 Community Business District and R-5 Urban Residential District, the properties to the west are R-4 Multiple Family Dwelling District, and the properties to the south are R-5 Urban Residential District.

Applicable Sections of the Zoning Ordinance:

Enumerated in request.

Comprehensive Plan:

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



Staff Analysis

The petitioner is requesting a special exception to allow the former commercial retail space to be used for classrooms, music space and a dance studio. The property in question at 115 W. Hively Avenue is adjacent to the Premier Arts Academy at 2721 Prairie Street, which was approved for the use as a school in January 2023. Due to the growth at the school, there is a need to accommodate additional classroom space for 5th, 6th and 7th grades serving up to an additional 125 students.

Based on information provided in the petition submittal, in order to provide movement between the main campus and the building on Hively, a path will be constructed allowing students, with supervision, to move between the two buildings while keeping the existing fence.

The pick-up and drop off will remain at the main campus on Prairie Street. Only late arrivals will be permitted at the Hively Avenue facility. Additionally, the same safety measures will be installed at the Hively building as the main campus building – security cameras both inside and out, electronic monitors for door entry system, adult supervision of students moving between buildings and an active early warning system. For additional security, appliques will be applied to the windows to limit visibility into the classrooms.

With the growth of Premier Arts Academy, the proposed building on Hively is convenient and will allow for the growth at the school.

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.

Conditions

1. Plans for all modifications to the building at 115 W Hively Avenue be submitted for review and approval to the Building Department to ensure all necessary requirements are met for the safety of the occupants of the school.

Photos





PETITION #: 24-X-02

FILING FEE: \$ 300

PETITION for APPEAL to the BOARD of ZONING APPEALS

PETITION TYPE:

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

Property Owner(s): BALWINDER SINGH

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: NICKIBABA@GMAIL.COM

Contact Person: KURT WEIMER

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: KWEIMER@PREMIERARTS.ORG

Subject Property Address: 115 W. HIVELY

Zoning: B-2

Present Use: VACANT Proposed Use: SCHOOL

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

PROPERTY OWNER(S) OR REPRESENTATIVE (PRINT): KURT WEIMER

SIGNATURE(S): [Signature] DATE: 2-2-24

STAFF USE ONLY:

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

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

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

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

☒ A full and accurate legal description of the property.

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

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

Ordinance Requirement: Section(s): _____

Map #: _____ Area: _____

RECEIVED BY: [Signature] DATE: 2/2/24

February 1, 2024

TO: Plan Commission & Board of Zoning Appeals

FR: Balwinder Singh, president of Nickibaba, LLC and owner of the property at 115 W Hively Ave,
and
Kurt Weimer, tenant representative and Director of Operations, Premier Arts Academy

RE: Special Exception Request

The undersigned petitioner respectfully shows the Plan Commission and Board of Zoning Appeals:

1. I, Balwinder Singh, president of Nickibaba, LLC, am the owner of the following described real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:

LOT NUMBERED 1 OF BLOCKBUSTER VIDEO SUBDIVISION AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED PLAT; SAID PLAT BEING RECORDED IN PLAT BOOK 30, PAGE 85 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

Parcel No.: 06-17-427-011-011

State ID: 20-06-17-427-011.000-011

Commonly known as 115 West Hively Boulevard, Elkhart, Indiana

2. The above described real estate presently has a zoning classification of B-2 District under the Zoning Ordinance of the City of Elkhart.
3. Petitioner proposes to lease the building and property to Premier Arts, Inc. for the purposes of expanding the Premier Arts Academy (PAA) campus adjacent to the Lifeline Hub building at 2721 Prairie St.
4. Petitioner's tenant (PAA) desires to renovate the existing interior 6500 sq ft to accommodate 5 additional classrooms including 5th, 6th, and 7th grade STEM and humanities classrooms as well as a music room and dance studio. This will allow the public charter school to increase offerings to an additional 125 students.
5. The Zoning Ordinance of the City of Elkhart requires a Special Exception Use for "Public Schools, elementary and secondary" 12.3-A via 11.3-F
6. The south end of the Blockbuster property at 115 West Hively Avenue is located adjacent/contiguous to the north end of the current Lifeline/PAA property at 2721 Prairie St. The proximity allows the school/tenant to:
 - a. Be within radio communication range with the main building
 - b. Be within a reasonable emergency response range to the main building and staffing
 - c. Have a very short distance for students to move between buildings for lunch and specials classes that provides for less loss of instructional time as opposed to bussing to a further site
 - d. Connect existing internet, camera, and electronic entry monitoring with the main campus building which allows the existing infrastructure to serve both buildings simultaneously providing a cohesive safety and security process

- e. Utilize expanded parking adjacent to the north end of the main campus for cohesive and dropoff and pickup with ample capacity
- f. Not duplicate several physical services at a distant site such as
 - i. Food service kitchen and cafeteria
 - ii. Nurses station
 - iii. Record keeping
 - iv. Custodial storage
 - v. Central office space

7. Standards that must be considered for a Special Exception:

- a. The Special Exception is so defined, located and proposed to be operated that the public health, safety, and welfare will be protected.

The current school presence at the adjacent Lifeline facility at 2721 Prairie Street has proven to be a great fit for student families as well as being a positive local community presence. The intention of the school/tenant is to maintain the existing rear fence and create a passageway between buildings that also allows the ample north parking lot of the existing Lifeline/school property for car rider drop off and pickup of students beginning their day at the annex. This will limit automobile traffic to the storefront entrance off Hively to just late arrivals and early pickups.

To address the proximity of the liquor store, grocery store, and gas station to the proposed school annex, the school would point to an incident free school year thus far. The school has had nothing but positive interactions with our local neighborhood community. Further, the owner of the leased property for the school annex also owns and maintains the gas station and liquor store. School officials have been in regular communication with the property owner working through solutions as they complete the scope and definition of the project.

The school/tenant will be adding the same safety measures in place at the main campus building:

- i. Security cameras inside and outside*
- ii. Electronic monitored door entry system*
- iii. Adult supervision of student transfer between buildings*
- iv. Active Early Warning System*

In addition, the school/tenant will treat the windows with "false spandrel" appliques to restrict passers-by from viewing into the instructional space while still allowing natural lighting into the classrooms. The scope of the renovation will include all necessary requirements of E-occupancy scholastic use.

- b. The Special Exception will not reduce the values of other properties of other properties in its immediate vicinity.

The Blockbuster building and property has sat vacant for a number of years and the immediate area will benefit from visible use and occupancy. There will be some exterior improvements and eventually some branding/signage that will enhance the property profile along the 100 W. Hively block.

- c. The Special Exception shall conform to the regulations of the zoning district in which it is to be located.

The proposed occupancy and use as a school facility at 115 W. Hively Ave aligns with the City of Elkhart Zoning Ordinance 12.3-A via 11.3-F "Public schools, elementary and secondary" use.

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

Signature of Property Owner:  _____

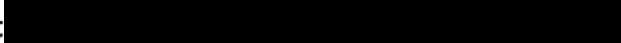
Printed Name: **Balwinder Singh, President of Nickibaba, LLC**

Signature of Second Property Owner: _____ N/A _____

Printed Name: _____ N/A _____

Signature of Contact Person: _____

Printed Name: **Kurt Weimer** _____

Address:  _____

Phone number:  _____

Email: kweimer@premierarts.org _____