

**AGENDA**  
**ELKHART CITY BOARD OF ZONING APPEALS**  
**THURSDAY, JUNE 13, 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](mailto:hugo.roblesmadrigal@coei.org) prior to the meeting.

1. **ROLL CALL**
2. **APPROVAL OF AGENDA**
3. **APPROVAL OF MINUTES MARCH 14, 2024 & MAY 9, 2024**
4. **APPROVAL OF PROOFS OF PUBLICATION**
  
5. **OLD BUSINESS**

**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-BZA-06 PETITIONER IS SFS REAL ESTATE HOLDING LLC**  
**PROPERTY IS LOCATED AT 444 N NAPPANEE ST**  
TABLED

**24-UV-07 PETITIONER IS GURPREET SINGH**  
**PROPERTY IS LOCATED AT 1900 & 1904 W FRANKLIN ST**

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the construction of a four family dwelling. Four family dwellings are not a permitted use in the M-1 District.

6. **NEW BUSINESS**

**24-BZA-08 PETITIONER IS STEVE MCGRATH & DAWN MCGRATH**  
**PROPERTY IS LOCATED AT 933 E BEARDSLEY ST**

To 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 an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

**24-BZA-09 PETITIONER IS MARK SHARP & COLLETTE SHARP**  
**PROPERTY IS LOCATED AT 1626 W EAST LAKE DR**

To vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part ‘For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,’ to allow for no public sidewalk.

**24-X-04 PETITIONER IS MALIK ENTERPRISES LLC**  
**PROPERTY IS LOCATED AT 1710 LEER DR**

A Special Exception per Section 13.3, Special Exception Uses in the B-3, Service Business District, to allow for a Trade School.

**24-BZA-10 PETITIONER IS THOMAS SHOFF**  
**PROPERTY IS LOCATED AT 2402 E JACKSON BLVD**

To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states ‘A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.’ To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

7. ADJOURNMENT

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

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, March 14, 2024 - Commenced at 6:00 PM & adjourned at 8:14 PM.  
City Council Chambers – Municipal Building**

**MEMBERS PRESENT**

Doug Mulvaney  
Ron Davis  
Janet Evanega Rieckhoff  
Phalene Leichtman

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Mike Huber, Director of Development Services  
Eric Trotter, Assistant Director for Planning

**LEGAL DEPARTMENT**

Maggie Marnocha

**RECORDING SECRETARY**

Hugo Madrigal

**APPROVAL OF AGENDA**

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

**APPROVAL OF MINUTES FOR JANUARY 14, 2024 AND FEBRUARY 8, 2024**

Doug Mulvaney says the minutes for January and February will be tabled until next month.

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the March 14, 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**

Mulvaney calls for a motion to nominate officers.

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

Mulvaney calls for a motion to nominate Evanega Rieckhoff as the Vice President.

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

Mulvaney calls for a motion to nominate Phalene Leichtman as the Secretary.

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

**OLD BUSINESS**

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

Mulvaney says that 24-BZA-03 will be tabled for one month.

**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.

Mulvaney calls the petitioner forward.

Catherine Beck and Tiffany Bowman appear in person on behalf of the petitioner. Beck says that revenue for the main event would increase if they add a couple of tattoo artists. She states that currently, the studio is in the red with just one artist and several hair stylists. She says that the business plan shows it is no longer feasible to continue along the same line, so the plan is to keep the exterior of the building up to city standards. However, the interior must be restructured to accommodate the additional artists. Beck then states they will change the tables and chairs to provide art classes in the future. She says that the community has talented artists who have reached out and would like to teach art classes. Beck explains that people tend to think tattoo studios attract undesirable people, however, that is not the case. As of June of 2023, she says there has yet to be one negative incident recorded. Beck states that the typical clientele mainly hold professional positions in the community. On average, Beck says a client will pay between 120 and 150 dollars an hour, and most tattoos take two to five hours to complete. Certain tattoos require more time than that, and clients would pay a premium for the upscale services at the main event. Beck then reiterates that she cannot imagine their clients negatively influencing the area, especially since this would bring more people to the downtown area. Afterward, Beck says that when the board agrees to the requested zoning change, she believes it would help them complement the area and allow it to remain a viable asset to the community.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that her husband will be disappointed losing his hairstylist since he goes to their salon.

Beck says they are not entirely phasing out the hairstylists.

Evanega Rieckhoff says her husband will be glad to hear that.

Leichtman asks Bowman what their hours of operation will be.

Bowman answers that the hours of operation will be from 10 AM to 10 PM.

Mulvaney opens for public comments to speak in favor.

Bowman appears in person in favor of the petition. She says she is the tattoo artist approved for Main Event Tattoo and Hair. Since July 2023, she has had the privilege of serving the community through her work at the business. Bowman says that she dedicates her time to the art of tattooing and setting a new standard of customer service and professionalism in the tattoo industry. She states that the tattoo studio can be more than just a place for art but a cornerstone and a hub of creativity. Since she has started, Bowman says she has worked to improve every aspect of their services, and their efforts have paid off. Previously, their rating on Google was 4.3 out of 5, and it increased to 4.8 out of 5, reflecting their commitment to excellence and the satisfaction of their clients. Bowman says she understands that there may be some concerns about the presence of a tattoo studio in the community. However, she assures that they maintain the highest standards of safety and professionalism. She added that they have implemented surveillance inside and outside the establishment to ensure a secure environment for their clients and community. Bowman then says she is expressing her commitment to making Main Event Tattoo and Hair a positive force in Elkhart, not just for decorating bodies, but also for upholding an art form and fostering a safe, welcoming space of artistic expression.

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

#### **STAFF ANALYSIS**

The petitioner came before this body in October 2023 for a use variance to allow 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. After that tattoo use variance approval, the department has not received any complaints about 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 must meet all state regulations, including those governing blood-borne 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 hurt adjacent properties

#### **STAFF RECOMMENDATION**

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

1. The approval will not be injurious to the public health, safety, morals, 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.

Trotter states there were 24 letters mailed with zero returned.

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

Evanega Rieckhoff asks Trotter if there will be any change in the signage that makes it prominent that there is a tattoo shop.

Trotter answers that the city has signage regulations that regulate the size and area of the building, so any changes the petitioner would like to make would need to be accommodated within what the city allows.

Leichtman asks Trotter if other tattoo parlors will be allowed in the central business district or if this is a notable exception. Trotter answers that currently, they are not listed in the Ordinance as a permitted use, so any other tattoo business would have to come before the board.

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-UV-03 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition, Second by Davis.

Davis – Yes  
Evanega Rieckhoff – Yes  
Phalene Leichtman – Yes  
Mulvaney – Yes

Motion carries.

**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 (20) feet is required, a variance of twenty (20) feet.

Mulvaney calls the petitioner forward.

Stephanie Floyd appears in person on behalf of the petitioner. Floyd says the current site is under development for a mini storage complex. She says they want to expand the complex into phase two; however, the property is odd-shaped. Listening to feedback for the mini storage, they would like to reduce the setbacks on the South and East lines, allowing them room to accommodate other suits.

Evanega Rieckhoff asks Floyd if she has gotten the easement from AEP...(unintelligible, off mic).

Floyd answers that AEP has yet to respond to their inquiries. However, on the road south of the property, there is already an easement, and they have access to it via the plat. Floyd added that AEP is currently moving their substation to the left, one lot over, but has yet to say if the road will ever go away because AEP has poles that run from County Road 17 heading east behind the property owners along State Road 120.

Mulvaney asks Floyd if one of the conditions staff requested was that approval be conditioned on getting the easement from AEP and if they would have an issue with that.

Floyd answered that she had talked to Eric and that it had been presented in two ways. If they had kept the zero setbacks, the city would have liked them to have the easement with AEP; however, with the reduction of five feet, they would not need it. This would give them enough room to maintain anything on the back side of the units because they will still have the front end and the other sides if needed.

Mulvaney asks for questions from the Board.

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 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 will be adjacent to the AEP property, containing an 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. Staff will not require the condition of requesting an additional easement for parking in order to do maintenance on the buildings with the petitioner amending their request to the five 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 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.

Trotter states there were 31 letters mailed with zero returned.

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

Mulvaney calls for a motion.

Davis makes a motion to approve 24-BZA-05 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Davis.

Davis – Yes  
Evanega Rieckhoff – Yes  
Phalene Leichtman – Yes  
Mulvaney – Yes

Motion carries.

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

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.

Mulvaney calls the petitioner forward.

Tom Shoff appears in person as the petitioner. Shoff says he is the president of Historical Elkhart River Queen Inc. and would like to give a brief history of the River Queen. Shoff stated that in 1948, Robert "Red" Macumber built and ran the boat for over 25 years until Macumber's nephew, Jeff Smoker, took over. He says that Smoker ran the boat for 22 years until Smoker sold the boat to former Elkhart mayor Dick Moore and John Cleveland. Shoff said the two were a partnership until Moore became mayor, leaving John to run the boat for 18 years. Shoff said that in 2014, John suffered a health setback, and the River Queen was destined for a scrap yard until Marley Whitsun reached out to him and offered to buy the River Queen as long as he would help manage it as a volunteer. Shoff says he and Stacy Shoff have jointly managed the River Queen for the last eight years. He says that HERQ is a non-profit organization that was formed in 2015 and has a board of directors. He stated that the River Queen allows people to enjoy the waterway and helps celebrate specialized birthdays. Shoff references his PowerPoint presentation, which displays an image of a woman celebrating her 80<sup>th</sup> birthday. He said the River Queen also caters to anniversaries and wedding receptions and welcomes church groups and Amish people. On his next slide, Shoff points out that the passengers of the River Queen would park around 900 E Jackson Street, where condos are currently in place. That worked for three to four years before the condos caused them to lose their parking privileges, so they moved across the river to American Park. Although not ideal, Shoff said it worked for a while until he received a call from Mayor Rod Roberson, who said the bridge to American Park is only designed to handle a

manageable amount of traffic. Shoff says he had conversations with Bradley Tracey, and they found that it was not feasible to continue using the island. He said he reached out to Bill Zimmerman, owner of Walley-Mills-Zimmerman Funeral Home, who let passengers of the River Queen park in their parking lot. This allowed for the purchase of golf carts that would transport passengers down an alley across Marine Avenue, where they would then go onto the sidewalk and up Bowers Court. Shoff stated that last December, he was approached by someone who wanted to sell 102, 106, and 108 Bowers Court. With the help of several donors, the houses were purchased and donated to the River Queen. Shoff says this led to him reaching out and contracting with GPR Engineering, and the initial plan was to tear down all three houses until GPR told them that they only needed to demolish 106 and 108 Bowers Court. Shoff says the residents of 106 Bowers Court were offered to rent out 102 Bowers Court from the River Queen, and everything seemed to work out for everyone. Shoff then states that in the eight years he and Stacy have managed the River Queen, the public has donated over \$500,000 in upgrade costs. This allowed the boat to receive a new propulsion system, and the River Queen now has brakes. Shoff asks the board to approve the request for several reasons, but the most important is safety. He says he wants to remove golf carts from the mix to reduce the risk of collisions when the River Queen's passengers are crossing streets. Shoff says there will be less traffic on Bowers Court because it will remove the dozens of trips passengers must make with the golf carts. With a golf cart, a group can park and walk to the River Queen and then 50 feet to the dock. As it stands now, Shoff says everyone disembarks the boat simultaneously, and they have to make multiple trips with the golf carts back to Walley-Mills-Zimmerman Funeral Home. Shoff says people will often walk through residential yards, but adding the parking lot would remove that. Lastly, Shoff says the parking lot will allow for handicapped parking because previously, if someone showed up with a walker or wheelchair, it would have to be strapped to the back of a golf cart. Public Works recommended that the River Queen install a porous surface so that the water drains through.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks Shoff how many spaces the River Queen will have for parking.

Shoff answers that it will be designed for 50 cars, but on average it's going to hold 25 cars.

Evanega Rieckhoff asks Shoff if, on an average visit, there are 25 cars.

Shoff answers yes and that they typically have 50 visitors, with an average of two per car.

Evanega Rieckhoff asks how will the... (Unintelligible, off mic).

Shoff answers that it will have an event-style parking rather than a typical parking lot with individual spaces. Shoff says that volunteers will take attendance and guide passengers. Shoff states that passengers will make an immediate right once they go past 102 Bowers, drive down, go along the back, and come out where their front end is facing Bowers Court. He says this is done to minimize disruption and for everybody to depart easily by just going out straight, with no one needing to back out. Shoff then said that the River Queen averages 30 cruises a season, from Memorial Day to Labor Day, which averages about one or two cruises a week. Throughout the winter, Shoff says there will only be traffic when he has to go down and check on the boat. Throughout the winter, the parking lot will remain empty and not be used.

Leichtman asks Shoff for his hours of operation.

Shoff answers that he lets people choose their cruise times, but typically, on Fridays and Saturdays, cruises run from 6 to 9 PM. Sundays usually are from 2 to 4 PM. During the week, he says they have bus tours that they like to rent out from 2 to 4 PM as well, but overall, cruises last about two hours.

Leichtman asks Shoff what kind of parking surface he plans on installing.

Shoff answers that the material is similar to asphalt but not asphalt. He says that contractors will lay down and roll over the material with a steamroller, and then the contractor will pour the material into the form that will create a hard surface. However, rainwater will run right through it.

Leichtman asks Shoff how many houses he has purchased in total.

Shoff answers that he purchased 106 Bowers Court, 102 Bowers Court, and 108 Bowers Court. Only two will be demolished.

Leichtman asks Shoff if a house is between the parking lot and the river.

Shoff answers yes, that 110 Bowers Court is there with the dock.



Mulvaney asks Shoff that the Board approved a different kind of permeable paver a few years ago, and wants to know what happened with that project.

Shoff answers that the project was set to be on two properties, one owned by Edward Smoker and another by Nancy Pletcher. Shoff says both entered an agreement that allowed them to park their vehicles. Shoff then says that he ran into several challenges with tech review on setbacks, curbing, and the issue of not owning the property. He stated that the board for the River Queen decided not to move forward with the project since the River Queen did not own the properties. However, Shoff says their new plan would solve the problem since they own the property.

Evanega Rieckhoff says she needs help understanding what Shoff said about 110 Bowers Court.

Shoff says 110 Bowers Court is the original red brick house and is rented by Jim Mcfall.

Evanega Rieckhoff asks Shoff if that person is affiliated with Shoff.

Shoff answers that Jim volunteers, checks on the boat, and always keeps an eye on it. He states there is also a boathouse on the property that he uses for refrigerators and freezers to keep their supplies.

Evanega Rieckhoff asks Shoff if he owns 110 Bowers Court.

Shoff answers that he does not own the property and is sure it will be mentioned whenever the next person comes up.

Davis asks Shoff if he believes the three properties will address his problem.

Shoff says he believes it will since the properties are profound; they go back 90 feet. Once the two houses are demolished and the trees are cut down, there will be ample space for the parking lot.

Leichtman asks Shoff if he will be taking down all the trees.

Shoff answers that most of the trees are on the boundary line, so they will not be going down. The trees will be used as a buffer zone between the parking lot and Nancy Pletcher. Shoff says that other than Ronda's house, most homes around the area are rental homes, including Pletchers.

Mulvaney opens for public comments to speak in favor.

Dwight Fish appears in person in favor of the petition. Fish says he has been a passenger and tour guide on the River Queen. He states that years ago, he did successful bus tours for the quilt gardens, and the River Queen became a part of that experience for out-of-towners. Fish says the River Queen is a statement when looking at Elkhart and what the city offers. Fish adds that cities worldwide prioritize river experiences, and when an opportunity arises like the River Queen with its parking needs, they take it. Fish says that with the petition, there would be a reduction in chances for accidents and injury by managing the safety part of this, which would help the River Queen immensely. Fish said that everyone he has interacted with brag about the River Queen. Fish asks the Board to pass the petition and keep an experience like the River Queen moving forward.

Jeff Wells appears in person in favor of the petition. Wells says he has lived by the river nearly his entire life and knew Robert "Red" Macumber. He says the River Queen is a tremendous asset for the city, and the parking would make it much better.

Mulvaney opens for public comments to speak in opposition.

Amber Bressler appears in person as the attorney for Edward Smoker and the Edward Smoker Revocable Living Trust of Elkhart County. Edward Smoker joins alongside her, appearing in person.

Smoker says he objects to demolishing two homes because it will ruin the value of his house and neighboring addresses. Smoker says he wrote a letter to Shoff on January 25, 2023, stating he was sorry for being late answering his first refusal to buy his property at 110 Bowers Court. He then said that his answer is the same as that of his attorney, who enclosed a copy of her letter. Smoker says the best place for the River Queen would be right next to the County Road 17 bridge, which can be easily seen and has plenty of parking space. Smoker said he loves the River Queen, but it's time to be wise with the location at 110 Bowers Court since there is too much congestion. He says the traffic is unbelievable from 2:00 PM to almost 6:00 PM. He says he has real compassion for his neighbors and those who own property. Smoker says it can be taken to many places, adding that when he

owned the River Queen for 22 years, he docked the boat but would take it, drive it, and pick people up. Smoker says there is no reason why the River Queen cannot be moved since the area is too congested.

Bressler says that Smoker does reside at 110 Bowers Court and that his trust owns the property. She states that the trust has an annual license agreement with the River Queen that is renewable yearly. Back in January, Smokers Trust sent a notice to the River Queen that they were not going to renew the license. Bressler says that the license with the River Queen expires at the end of the month, and the River Queen has been notified of the licensing termination and their need to relocate. Bressler states that the River Queen will not be at 110 Bowers Court and will be unable to use the property going forward, rendering the need for parking moot. Bressler says that even if the River Queen was going to be there, there are things that need to be discussed concerning the petition. She states that the Board of Zoning Appeals can only grant a variance if the petitioner shows several things, and they are clear that the petitioner has the burden of proof to show the approval of the use variance will not be injurious to the public health, safety, morals, and the community general welfare. She said that the petitioner has to show that the use and value of the adjacent area will not be affected substantially adversely. Also, the petitioner has to show that there is a need for the variance arising from a condition peculiar to the property involved in the variance petition. Additionally, the petitioner has to show that the strict application of the Ordinance will constitute unnecessary hardship if applied to the property for which the variance is sought. Lastly, the petitioner has to show that approval of the variance petitioner is okay with the comprehensive plan. Bressler states that those five requirements echo the statute verbatim. When looking at how the Indiana Appellate Courts have addressed those factors, the Appellate Courts have defined what constitutes the peculiarity requirement. Bressler says the courts have found that they look at the property's specific features differently from what the petitioner wants to do with it. She says the courts look at water runoff or accessibility to property, not what the petitioner wants to use the property. Bressler states that the Court of Appeals has looked at and defined unnecessary hardship and has said that an unnecessary hardship means the property cannot be reasonably put to a conforming use because of the limitations imposed by the Ordinance. The petitioner has to show that the land involved cannot yield a reasonable return if used only for the allowed zoned purpose, meaning that the owner cannot get a reasonable return on their land because of the zoning limitation. Bressler states that the court of appeals has also said that the petitioner seeking a use variance has to show that the authorized use will not alter the character of the locality. She says the petitioner wants to knock down two houses and build a parking lot, which will change the area's character, contrary to what the court of appeals has said. Bressler says the petitioner still needs to meet their burden, so she objects to the variance. She says she understands that the River Queen has been around for a long time and that she has also been on the River Queen and enjoyed it, but when looking at what is an acceptable inquiry, the petitioner still needs to meet the burden under the law. Therefore, the board is supposed to refuse the petition because it's not supposed to be whether or not someone likes the River Queen but because the petitioner still needs to meet the burden of proof. Bressler says the law is clear and that the Board is supposed to evaluate petitions under a particular set of criteria and follow a specific rubric. She says not all elements have been met, so the Board is compelled to make one decision: deny the petition under the law. She says she is asking the Board to do what the Board is obligated to do under both the Elkhart Ordinances and under state statute since the River Queen still needs to meet the burden of proof. Bressler says she is present on behalf of the Ed Smoker revocable trust, which owns 110 Bowers Court, and on behalf of the neighbors with concerns. Bressler adds that she has copies if the Board needs them.

Leichtman asks Bressler what proof she has that neighboring property values would decrease if the houses were torn down.

Bressler answers that the burden of proof is not hers to prove. When looking at case law, the burden of proof is on the petitioner to show that their proposed use would not adversely affect the property values of the surrounding adjacent property to show that neighboring property values will not decrease.

Amber Mahafey appears in person in opposition to the petition. Mahafey states that she lives next to the River Queen. She says that when she first moved there, she enjoyed a quiet neighborhood with beautiful scenery, and her kids rode their bikes down Bowers Court. Mahafey says that everything changed when the River Queen moved in, and while she enjoys a party, it's not great to live next to a party boat. She said they had many issues with people driving golf carts and other problems Shoff had already discussed. She says she fears for her three children as strangers are constantly in her backyard and often assume that the River Queen property is her backyard. She says it's a hindrance to her everyday life where she could just be gardening, and then a battalion of cars and people will descend upon the neighborhood. Mahafey says another reason why she opposes the request is that two houses were being demolished for a parking lot during a housing crisis and that she knew families in those homes, including a single mother with three children. Ultimately, one family could find accommodations, but another was kicked out of their home. Mahafey says she needs clarification about why the request is being heard since their license has not been renewed. She then revisited the issue of an ongoing housing crisis, as there should be no reason to destroy neighborhoods. Mahafey added that the area is for affordable housing, mainly rental properties. She says the quiet neighborhood is being destroyed and turned into a bustling commercial area that will reduce property values. Mafaey says she has worked in commercial appraisals for years, and its common knowledge that placing a business next to a house will bring down property values. She then says that the timing of Shoff buying the homes while Smoker was sick and in the hospital seemed opportunistic to her.

Rob Smoker appears in person in opposition to the petition. Rob says since he was born, the River Queen has been a part of his life and his family's legacy. Rob says the River Queen is an icon of Elkhart; however, time changes, and so do people. He said the biggest issue with the request is the demolition of dwellings because he and his family own three or four rental properties. The request would affect the chances of renting out the properties because he does not believe people want to live near a parking lot or in a high-traffic area. Rob proceeds to read a letter from his brother, Jeff Smoker, saying that they are opposed to the demolition of 106 and 108 Bowers Court homes for the creation of a parking lot. The project will lower the values of the surrounding homes and the neighborhood atmosphere. The purpose of the River Queen parking lot is to allow for extra parking for its visitors; however, the lease for the River Queen has not been renewed, so it can no longer operate in that location. The recommendation is for the River Queen to move locations to a vacant lot next to Six Pan Bridge, where the River Queen was dry-docked last year. This would render the need for a parking lot on Bowers Court pointless. Rob continued reading, saying there is already too much traffic on Jackson Street and that the ingress-egress concentration of vehicles for a specific event will increase the chances of an accident and hamper traffic flow on Jackson Street. Also, Bowers Court is just a little more than a narrow alleyway that is partially perpendicular to Jackson Street. This makes right turns off Jackson Street difficult for a bus or longer vehicles, and Rob says he can attest to that. Rob continues reading, saying that in the past, the city permitted patrons of the River Queen to park at American Park and walk over to the River Queen. This did not affect traffic on Jackson Street; however, the city did not allow for continued parking because the bridge into American Park was unsafe. Rob says Jeff believes the River Queen should allocate resources towards repairing the bridge at American Park so patrons can park there and not affect traffic on Jackson Street. Rob reads that there currently needs to be more affordable housing, especially near the river, and the loss of two more homes won't help adjacent ones. Rob states that he can attest to that again because he and his father don't charge an arm and a leg. Rob says his tenant Eric lives in a 2,400 square foot, four bedroom, and two bathroom house on the river for 1000 dollars a month. He adds that he rents out another property for 600 dollars a month and an additional two-bedroom, one-bath house for 850 and 550 a month.

Andrew Cohen appears in person in opposition to the petition. Cohen says that if a parking lot were to be added, assuming 50 people park their cars there, it would further escalate the lousy traffic around that intersection. He states that he lives on the corner of Jackson and Bowers Court and has seen a fair share of crashes. Cohen adds that he had recently seen one person get rear-ended and others driving too fast. He says that the city can try to mitigate the issue by posting a police offer there; however, eventually, they will be reassigned somewhere else, and people will begin speeding again.

Kim Cummings appears in person in opposition to the petition. Cummings states that she is Ed Smoker's daughter and lives at the River Queen property. She says that alcohol is served on the River Queen and has been on the boat their whole life; she knows that people are drunk and need an eye on them. Cummings says that having a parking lot next to children is dangerous. Additionally, she says that it costs 1500 dollars to rent the boat for a couple of hours, which is not affordable for the average person.

Erik Harris appears in person in opposition to the petition. Harris asks the Board if they have ever been on Bowers Court or Marine Avenue and at what time of day.

Mulvaney answers that he has been there at any time.

Evanega Rieckhoff says that she lives in the condos next door.

Harris asks Evanega Rieckhoff if she found it busy.

Evanega Rieckhoff answers that she has found it to be hectic.

Harris says he deals with it daily, and it would be much worse with a parking lot. He also states that Ed Smoker is creating affordable housing, and Harris himself is living proof of that, and cutting people off from that would hurt people like him, especially during COVID. Harris concludes by saying it would be a shame to see more accidents and congestion in the area.

Tabitha Kiner appears in person in opposition to the petition. Kiner says she lives on the corner of Jackson and Marine. She states that she disagrees with the request because Marine is already crazy enough, and with the extra traffic, it will be worse. Kiner also says that the River Queen is more often not running so the parking lot will be empty, which would not be a good look for the neighborhood. Another concern of Kiner is that there are a lot of kids in the neighborhood, and knowing that the River Queen serves alcohol draws concern. She then said that disembarking the boat and walking to one's car is much better than just getting into a car and driving. Lastly, Kiner says that the time she and others had to agree or disagree and return their response needed to be revised; hopefully, more time will be given next time.

Bressler returns to the podium to say that the city zoning ordinance authorizes the Board to grant the variance only if the approval is not injurious to the community's general welfare. She says she would submit that the comments that have been heard from the community, including the people who live in the neighborhood, would be harmed. Bressler says the people saying their welfare will be harmed is prima facie evidence that the request will injure the community's welfare.

Mulvaney asks Shoff if he could address the licensing issue because if he does not have a license to use the property to park the River Queen, what does that do to his need for parking if he cannot even dock there.

Shoff says he received the letter to terminate the license, so he called Edward Smoker to discuss the letter. Shoff states that he was informed that the selling price for the property was 500,000 dollars and was instructed to contact Jeff Smoker to discuss the sale further. When he reached out to Jeff, Jeff had confirmed the selling price would be 500,000 dollars. Shoff notes that the asking price is three times what the property is worth. Shoff then said one of his board members took over negotiations with Jeff, and last week, he was contacted by Edward Smoker's realtors, who told him the property was for sale for 500,000 dollars. Shoff says that he and his board told the realtor that it would take time to raise the money and asked if an extension could be granted until July 31, 2024. Shoff says that that is the latest regarding the situation as of this past Monday, but they will eventually agree to purchase the property. Next, Shoff says he wants to address a couple of things, the first being moving the River Queen to County Road 17. He states that the boat was taken out of the water and placed on a lot west of County Road 17 on a cul-de-sac off Sunset Lane. The county commissioners allowed the River Queen to be put there at no charge while removing the propulsion system. During the maintenance, Shoff says he received a letter from Ed Smoker recommending County Road 17 for the River Queen. He stated that he did not believe it was a bad idea, so he reached out to Hellman Architecture and sent them a mockup of how he foresaw the property. The property would contain parking, a utility building for refrigerators, restrooms, etc. Shoff was granted a meeting with the county commissioners and, in the meantime, had Jeff Hellman create a cleaner mockup of the property. Once in the meeting with the county, several reasons were given as to why the property could not be used. First, it was not for sale because the county is planning to build another bridge next to County Road 17, similar to the bridge on Johnson Street. Shoff said that the proposal would eliminate the ability for there to be parking. However, this led to the idea of a floating pier underneath the bridge, which was quoted at 175,000 dollars. Shoff says he cannot envision his elderly passengers attempting to navigate a floating dock, especially at night. Shoff says another reason why the River Queen cannot be placed there is because there is a tributary. Shoff points to his PowerPoint presentation, which shows a picture of the tributary from the River Queen. Additionally, when digging a hole for temporary service, Shoff says that the water table was hit after digging 30 inches. Shoff states he wants to address Amber and Eric's concerns. He says both have been renters of Edward Smoker for quite some time, including Mike Smith, who is not present. Shoff says that their children use the River Queens dock as a playground, so he does not understand why Amber is concerned about traffic when her children are all over the boat dock all the time. Shoff adds that Amber's home is on Marine, and their driveway comes off of Marine Avenue, so their traffic issue won't be affected. He then said that the two houses that will be demolished were built in 1910, and they are in terrible condition, so the quality of living there is low. Regarding the eviction of the single mother, Shoff said Brook notified him when the houses were donated that she was moving out in February. Shoff says he let her stay there a month longer without any rent paid so she could move to a mobile home off of County Road 7. He states that he even rented a U-Haul truck and hired some guys last Saturday to help Brook move the rest of her belongings. To address Kim Cummings concerns, Shoff says that back in the old days, people were allowed to bring their alcohol on board, and there was a lot of drinking and partying on the boat. However, Shoff says that when he took over the River Queen, he sought to obtain a license from the Alcohol Tobacco Commission. They went through the proper training, and Stacy is the bartender on the River Queen. He says he cannot think of one time in eight years when someone became intoxicated on the River Queen. He claims that in the two hours patrons are out there, people are not pounding drinks since the beer sold is eight dollars. Shoff also says he believes that Eric and Amber will continue to rent from Ed Smoker, and all the other people there will continue to do so. He closes by stating that he finds some of their reasoning skewed.

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

## 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.

## 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 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.

Trotter states that 30 letters were mailed, with two returned in favor with no comment and six returned not in favor with five comments.

Trotter says the first letter is from Edward Smoker and reads: He is sorry for being so late in answering the first refusal to buy his property at 110 Bowers Court. His answer is the same as his attorney's, and his letter also contains a copy of her letter. He says he would like to comment on the River Queen. The best and wisest place for the River Queen is right where it is now. The best location is the County Road 17 Bridge, which can be easily seen. Accessibility can be made from the south edge of the bridge on County Road 17, which has plenty of parking space and is called Sunset Lane. He also says that Shoff and his buddies must buy that property instead of going to the government. He adds that he loves the River Queen, but it is time to be competent on the location. He says 110 Bowers Court is already too congested.

Trotter presents the second letter from Mervin and Clara Hammon, who expressed their concerns about the property values near Bowers Court. They also raise issues about high traffic and public access, which they believe contribute to congestion in the area.

Trotter shares the third letter from Michael Kiner, who voices concerns about the declining property values and increased traffic on Jackson Boulevard. Kiner, a resident of the area for over 24 years, states that parking has never been a problem. He also questions the implications of the River Queen's unavailability and the parking lot use during such times.

Trotter says the fourth letter is from Martin Smith and reads: He resides at 116 Marine and has lived on the road for eleven years. Although he rents his home and property, he wants to voice his opinion. He says several small children live in the area and has seen them enjoy the neighborhood for the last several years. Smith adds that Bowers Court is a dead-end street seldom traveled except for the boat traffic during the season. He says few drivers respect the road and the laws, and many consider the road a race track, including Staff. He said he is not against progress and would support the request in a different location but not on a dead-end

street. There is also concern with the River Queen selling alcohol. Lastly, Smith has an issue with the congestion at Bowers Court since exiting from the parking lot onto Jackson would intensify. Smith says he has witnessed several collisions over the years.

Trotter states that the fifth letter is from Jeff Smoker, which was already read aloud by Rob Smoker.

Trotter asks the Board if they would like him to read it.

Mulvaney says no, that it is okay.

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

Evanega Rieckhoff asks Trotter if he was aware of the situation.

Trotter answers that he was not.

Evanega Rieckhoff asks Trotter if the petition can be tabled since the petitioner seems to be in the middle of negotiations.

Trotter answers that that would be entirely up to the Board to make that decision.

Mulvaney states that if there is no license, the reason for the variance no longer exists, so that is an issue.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to table until the April 11, 2024 meeting; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

Mulvaney states that tabling the request will pause it for a month because of apparent issues with the license and using the property. If there is no agreement on a license or ownership of the property, then the variance would not even be applicable because there would be no reason for the variance.

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

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.

Mulvaney calls the petitioner forward.

Chris Kingsley appears in person on behalf of the petitioner. Kingsley says he is the CEO of ADEC and is authorized to speak on the variance. He states that ADEC is in a purchase agreement with M.S. Investments for the 1205 Middleton Run Road property. Kingsley says that ADEC has been in business for 72 years as a nonprofit with the mission of serving people with intellectual and developmental disabilities. They provide various services to support positive outcomes and fulfillment for their population. He says the property will be used for day programming and skills and training programs for employment readiness. Before M.S. Investments bought the property, Kingsley says they were interested in acquiring it. When they heard the owner was interested in selling the property, he jumped at purchasing it because it was the most conducive he had found for what they do in the years of searching. Kingsley also says the property favors outdoor activities such as pick up and drop off and transportation. He states that he believes the usage they are proposing is consistent with the historic use of the property serving a special needs population. Regarding the burden of the five criteria, Kingsley says they have met those due to their decades of work, which will not reduce neighboring values. He adds that people can look at other properties in the county and adjacent ones that ADEC owns and see that they are well-maintained and controlled. He says that with that in mind, day programming is structured to give people with intellectual developmental disabilities a fulfilling day through skills and training, a program they run. It is a bridge to employment relationships, so the program exposes those to various opportunities.

An example is a mock hotel room where people can practice housekeeping skills. He then says that the building is already accessible as it was designed for accessibility. He states that it has a steel frame, which allows them to customize as they have learned things over the years. The property is also on the bus line, allowing them to teach self-sufficiency skills so people may use the available public transportation. Kingsley says there will also be music, recreational, and behavioral therapies. He says it will benefit the program and its space, which can be used for office use and other types of programming.

Mulvaney asks for questions from the Board.

Mulvaney says that it's a great opportunity and that ADEC does excellent work.

Evanega Rieckhoff states that the property looks like a natural place for ADEC.

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 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.

#### **STAFF RECOMMENDATION**

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

1. The approval will not be injurious to the public health, safety, morals 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.

Trotter states there were 10 letters mailed with one returned not in favor with no comment.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-UV-05 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Davis.

Davis – Yes  
Evanega Rieckhoff – Yes  
Leichtman – Yes  
Mulvaney – Yes

Motion carries.

**24-X-01 PETITIONER IS FRANCISCO SESMAS**  
**PROPERTY IS LOCATED AT 2006 BENHAM AVENUE**

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

Mulvaney calls the petitioner forward.

Francisco Sesmas appears in person as the petitioner. Sesmas says he wants to use the property as a daycare. He states that the house is being completely remodeled and that all the permits have been pulled for the property. His wife Maria runs all the daycares they own, and the teachers they employ take courses and have their licenses to take care of children.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that what Sesmas does is a beautiful thing.

Leichtman asks Sesmas if there are houses on each side of the property as well.

Sesmas answers that there is a daycare on one side and a house with people living in it on the other.

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 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 be 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.



**STAFF RECOMMENDATION**

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

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because there will be no exterior changes to the existing building;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

**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.

Trotter states that 24 letters were mailed, zero of which were returned in favor with no comment, and one telephone call not in favor, saying that the neighborhood is being turned into daycares and needs to stay residential.

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

Mulvaney calls for a motion.

Davis makes a motion to approve 24-X-01 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopting all conditions listed in the staff report; Second by Leichtman.

- Davis – Yes
- Evanega Rieckhoff – Yes
- Leichtman – Yes
- Mulvaney – Yes

Motion carries.

**24-X-02 PETITIONER IS BALWINDER SINGH  
PROPERTY IS LOCATED AT 115 WEST HIVELY AVENUE**

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

Mulvaney calls the petitioner forward.

Kurt Weimer appears in person on behalf of the petitioner. Weimer says he is the director of operations for Premier Arts Academy. He says they are asking for a special exception request to allow additional space for the public charter school to expand. He says

they currently enroll 192 students in K-6<sup>th</sup> grade. He states that as renters of the Lifeline building, they have had a great partnership with Lifeline. Typical days commence at 6 AM, offering before care until school starts at 8 AM. School is then let out at 2:30 PM, and Lifeline starts its programming, which lasts until 6 PM, so it's a well-used building. He adds that the school needs to expand because they had just completed an enrollment drive and have more than enough students for another five classrooms to be added. The Lifeline building does not have the capacity for that, so they are looking at the old Blockbuster Video from just north of the building. It offers an additional 6,500 square feet, which would allow for the accommodation of 120 students. The building would be considered an annex since they are not trying to duplicate many services but will be able to share things like cafeteria food service and other things. Weimer says the Blockbuster building has been vacant for almost five years. Weimer then says Balwinder Singh owns the Marathon gas station and liquor store just east of the vacant property. He says he has regularly discussed utilizing the property with Balwinder Singh. Weimer then says that if the Board would like to see maps to help understand the distance between the buildings and everything else, he could provide them.

Mulvaney asks for questions from the Board.

Mulvaney asks Weimer how far the old Blockbuster is from the Lifeline building.

Weimer answers that it's about 170 feet.

Evanega Rieckhoff asks Weimer...(sic, off mic).

Weimer answers that there will be a pair in every classroom that will go between the buildings anytime there is a need to go back and forth. Weimer adds that the back of the Blockbuster building, which is contiguous with the Lifeline building and has a fence around it, will be where they will enter and exit. Weimer says they will run a pathway on the inside of the fence. He said that dropoff will be on the north side, and a new parking lot will allow them to control traffic and help stagger start and end times.

Mulvaney opens for public comments to speak in favor.

Amanda Garmin appears in person in favor of the petition. Garmin states that she has two students who attend Premier Arts Academy. As a mother of students who has attended multiple schools around the area, she says Premier Arts Academy has gone above and beyond for her children. She said that Premier Arts Academy meets them academically and behaviorally inside the classroom. She says she is excited to see the school grow, do more for the community, and have more kids within the school. Garmin said she has two more children who will be attending the school in the next couple of years, and she is excited to see what they will do.

Stacy Shultz appears in person in favor of the petition. She says she has a kindergartener and sixth grader who love Premier Arts Academy. She says her eldest child attended public school but has done better where they are now. Shultz then says that she believes the new building will be great and trusts wholeheartedly that they will take care of her kids getting back and forth between the buildings.

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

#### **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.

**STAFF RECOMMENDATION**

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

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because it is a minor expansion of an already approved use;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor.

**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.

Trotter states that the petition comes to the Board with a do-pass recommendation from Plan Commission. The Plan Commission president of that Board wanted to make sure that there were easements in place because it is a shared parking lot with the Blockbuster and the store next door. Trotter then says that the petitioners did provide Staff that information reflecting the easement between the two property owners, however, Staff discovered in the documents provided that there were prohibited uses within that private agreement between those two property owners. Trotter says the petitioner’s agent is currently working on addressing those issues in that private agreement.

Trotter states that seven letters were mailed, zero of which were returned in favor, and one was returned not in favor with comment. The letter addresses concerns with crime around the area, specifically around the Marathon gas station and liquor store located next to the proposed school. There have been several incidents involving firearms around the area, and there are concerns for the children who attend the school.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-X-02 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopting all conditions listed in the staff report; Second by Davis.

- Davis – Yes
- Evanega Rieckhoff – Yes
- Leichtman – Yes
- Mulvaney – Yes

Motion carries.

**ADJOURNMENT**

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

\_\_\_\_\_  
Doug Mulvaney, President

\_\_\_\_\_  
Ron Davis, Vice-President

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, May 9, 2024 - Commenced at 6:00 P.M. & adjourned at 6:14 P.M.  
City Council Chambers – Municipal Building**

**MEMBERS PRESENT**

Doug Mulvaney  
Ron Davis  
Janet Evanega Rieckhoff  
Phalene Leichtman

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

Eric Trotter, Assistant Director for Planning  
Jason Ughetti, Planner II

**LEGAL DEPARTMENT**

Maggie Marnocha via WebEx

**RECORDING SECRETARY**

Hugo Madrigal

**APPROVAL OF AMENDED AGENDA**

Mulvaney says that the board is tabling 24-UV-04, 24-BZA-06, and 24-UV-07 until the next meeting.  
Evanega Rieckhoff makes motion to amend the agenda; Second by Davis. Voice vote carries.  
Davis makes motion to approve the amended agenda; Second by Evanega Rieckhoff

**APPROVAL OF MINUTES FOR JANUARY 11, 2024 AND FEBRUARY 8, 2024**

Davis makes a motion to approve January 11, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.  
Davis makes a motion to approve February 8, 2024 minutes; Second by Evanega Rieckhoff. Voice vote carries.

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the May 9, 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-BZA-07 PETITIONER IS CHRISTOPHER CHADWICK & PAMELA CHADWICK PROPERTY IS LOCATED AT 1 EDGEWATER DR

To vary from the requirements found in Section 26.1.B.2, Accessory Structures – General Provisions, which states ‘No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure’, to allow for an accessory structure (shed) to be built in the front yard.

Mulvaney calls the petitioner forward.

Jay Rohrer appears in person on behalf of the petitioner. Rohrer says the petitioner would like to build a storage building in front of their property because there is a slope on the back that would not be conducive for structure placement. Rohrer then says that woods incredibly shield the front lot so the building would not be visible. He said that staff would recommend approval to the Board with the condition that a driveway be attached so that the next inhabitants of the home can park a car in there and not have them drive through the yard. Rohrer states that he has amended the plans to remove the nine-foot overhead door and place a double six-foot hinge door, so putting a car in there would be nearly impossible, eliminating the need for a driveway and conditions placed by staff. Rohrer said he has brought revised drawings as EXHIBIT A and can show them to the Board if needed.

Mulvaney asks for questions from the Board.

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 wishes to vary from the requirements found in Section 26.1.B.2, Accessory Structures – General Provisions, which states ‘No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure’, to allow for an accessory structure (shed) to be built in the front yard.

This site is on the St. Joseph River and is a unique lot with just a narrow frontage on Edgewater Drive. There are homes directly in front of this property which effectively blocks the view of the proposed accessory structure from traffic traveling on East Jackson Boulevard.

There is a need for a detached garage for additional storage. Due to the slope of the rear yard, it is not possible to construct a detached accessory structure in the rear yard. Additionally the proposed accessory structure could block views for neighboring properties of the St. Joseph River if it was placed where the zoning ordinance requires it otherwise on this property.

It is not the petitioner’s desire to utilize the proposed detached accessory structure for vehicular storage. However a driveway would be required because the proposed detached accessory structure could accommodate motor vehicles. Because a door is installed large enough for a motor vehicle to be placed inside the structure a driveway is required.

### STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 26.1.B.2, Accessory Structures general provisions, which states “No portion of an accessory structure may be built closer to the front lot line than the nearest point of the principal structure”, to allow for an accessory structure (shed) to be built in the front yard 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 detached accessory structure will be built per all applicable current 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 detached accessory structure will be placed in the southwest corner of the property and will not be immediately adjacent to any other structures on the surrounding properties;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the unique characteristics of the lot having two front yards, neighboring properties view of the St. Joseph river could be blocked;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because this property has two front yards and placement in the Southwest corner is the most practical allowing adjacent properties to maintain their view of the St. Joseph River;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the grading of the property is of natural cause along with the shape and characteristics of the lot being unusual;
7. This property does not lie within a designated flood area.

Ughetti states there were 18 letters mailed with one returned in favor with no comment and one returned not in favor with no comment.

Mulvaney asks Jason if conditions will no longer be necessary since the petitioner is no longer installing overhead doors, therefore removing the requirement for the driveway.

Jason answered that the board would need to strike based on the conditions set by staff.

Mulvaney confirms that conditions will not be placed.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-07, and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Motion carries.

#### ADJOURNMENT

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

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Doug Mulvaney, President

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Ron Davis, Vice-President









# Staff Report

Planning & Zoning

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**Petition:** 24-UV-07

**Petition Type:** Use Variance

**Date:** June 13, 2024

**Petitioner:** Gurpreet Singh

**Request:** To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the construction of a four family dwelling. Four family dwellings are not a permitted use in the M-1 District.

**Site Location:** 1900 and 1904 W Franklin Street

**Existing Zoning:** M-1, Limited Manufacturing District

**Size:** +/- .24 Acres

**Thoroughfares:** W. Franklin Street

**School District:** Elkhart Community Schools

**Utilities:** Available and provided to the site.

**Surrounding Land Use & Zoning:**

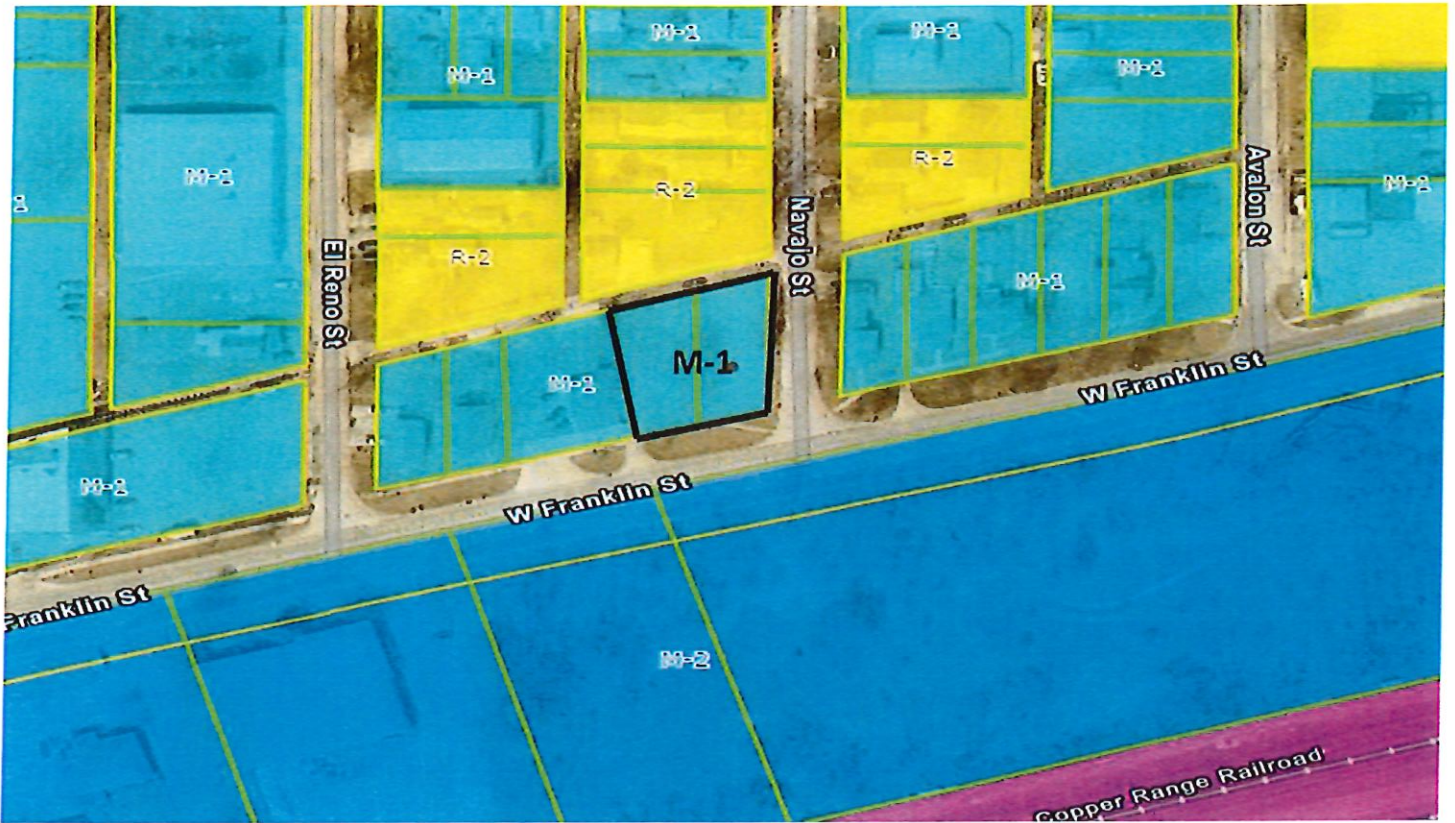
The properties are surrounded by a bar to the west zoned M-1, Limited Manufacturing District. Properties to the north and east are residential zoned M-1, Limited Manufacturing District. Land to the south vacant land zoned M-1, Limited Manufacturing District.

**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 proposing to construct a four family dwelling at the intersection of W Franklin and Navajo Streets. This section of Franklin has historically had manufacturing zoning mixed with various types of residential and commercial uses for almost 70 years. Since the 1950's, this area has been a mix of industrial, commercial and residential uses. Because of its adjacency to the railroad, the uses tended to be more intense along the south side of Franklin and became less intense the farther away one moved to the north from Franklin. Over time, the manufacturing and commercial uses have diminished with smaller industrial development moving to newer industrial areas, often adjacent to major thoroughfares and clustering with similar uses, in other parts of the city.

It is thought that in time much of this portion of the neighborhood will be considered for rezoning to some sort of residential or mixed use. Looking at the graphic above, there are a number of parcels on El Reno, Navajo and Avalon that sought and were granted rezoning to residential in 2005. This is noted to highlight the varying nature of uses in the neighborhood with a strong favor toward residential.

The need for a use variance is required in order to construct this project. The idea of a more intense residential use should not impact the surrounding uses or character of the neighborhood as this use is less intense than most commercial users or the permitted industrial uses.

Staff is supportive of this infill project. Proposals like this one are becoming more common in areas that have seen disinvestment over time and where the need for new and diverse housing options are needed. This proposal reflects a development pattern seen in other parts of the city that integrates varying levels of density within a neighborhood. This type of housing is considered the 'Missing Middle' – which the city is lacking. Because of the compact construction and it being developed where the necessary infrastructure is existing - it is more cost effective to construct. Therefore those costs do not have to be passed along to the tenant in the form of higher rent. This request adds to the inventory of alternative housing types needed in Elkhart.

It is anticipated that more of these requests will be coming in the future as staff looks for creative ways to reintroduce residential units on vacant infill property.

## Recommendation

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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 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 intensity of use will blend with the neighborhood that has a variety of residential, commercial and industrial uses along Franklin currently;
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 any residential redevelopment will require board action and the land does not support most industrial uses on the small site;
5. The special conditions and circumstances **do not** result from an action or inaction by the applicant.

# Photos



PETITION #: 24-WV-07

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): GURPREET SINGH

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Contact Person: TRAVIS SHELTER

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Subject Property Address: 1900 & 1904 W. FRANKLIN ST

Zoning: M-1

Present Use: VACANT Proposed Use: 2-FAMILY DUPLEX HOUSING

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): TRAVIS SHELTER

SIGNATURE(S): [Signature] DATE: 3/8/24

**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: [Signature] DATE: 3/8/24



# LAND & BOUNDARY

The Land And Boundary Resource Office

March 8, 2024

## Appeal Letter

TO: Board of Zoning Appeals City of Elkhart, IN

RE: Use Variance within the City of Elkhart

Parcels:

20-06-07-330-025.000-012 and 20-06-07-330-019.000-012

1900 & 1904 W. Franklin Street  
Elkhart, IN 46516

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

**Parcel I**

The 10.5 foot triangle in Northeast Corner of Lot Numbered 4 in Dinehart's Edgewater Addition to the City of Elkhart, Indiana as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.

**Parcel II**

Lot Numbered 5 in Dinehart's Edgewater Addition to the City of Elkhart, Indiana as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.

**EXCEPT:** All of Lot Numbered 3 and a part of Lots Numbered 4 and 5, as said lots are known and designated on the recorded plat of H.E. Dinehart's Edgewater Addition to Elkhart, Indiana, being more particularly as follows:

Assuming the West line of said Lot Numbered 3, to have a bearing of due North and South, beginning at the Southwest corner of said Lot Numbered 3; thence North 73°01' East along the Southerly line of Lots Numbered 3, 4 and a part of 5, a distance of 93.11 feet to an iron stake; thence North 09°07' West, 120.68 feet to an iron stake located on the Northerly line of Lot Numbered 4; thence South 73°01' West along the Northerly line of Lots Numbered 4 and 3, a distance of 73.10 feet to the Northwest corner of Lot Numbered 3; thence due South along the West line of said Lot Numbered 3, a distance of 125 feet to the place of beginning.

(Being 1904 West Franklin St.)



# LAND & BOUNDARY

The Land And Boundary Resource Office

## Parcel III:

Lot Numbered 6 in H. E. Dinehart's Edgewater Addition to the City of Elkhart as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.

(Being: 1900 West Franklin St.)

2. The above described real estate presently has a zoning classification of M-1 limited manufacturing district under the Zoning Ordinance of the City of Elkhart
3. Petitioner presently plans to develop the above described property in the following manner: A four-family residential four-plex building.
4. Petitioner desires to build a four-family residential four-plex in an M-1 zone.
5. The zoning ordinance of the City of Elkhart does not include four-family residential homes as a permitted use in the M-1 zoning district per section 18.2 of the ordinance.
6. Strict adherence to the zoning ordinance would create unusual hardship by preventing the owner from using the land in a similar manner to properties within the same platted subdivision. The majority of surrounding properties are used as single family residential.
7. Standards that must be considered for a use variance:
  - a. The approval will not be injurious to the public health, safety, morals and general welfare of the community as it will be of similar use to surrounding properties.
  - b. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as it will be of similar use to surrounding properties.
  - c. The need for the variance arises from property being zoned M-1 while in the middle of a residentially used area.
  - d. Strict application of the terms of the ordinance will constitute an unnecessary hardship because it would deny the owner the right to use the property for residential purposes while adjoining properties enjoy such use.
  - e. This petition does not interfere with the comprehensive plan because the proposed use is similar to the use of surrounding properties.



# LAND & BOUNDARY

The Land And Boundary Resource Office

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

Agent: Travis R. Shetler 4-15-2024

Travis R. Shetler, PS

Contact: Travis R. Shetler  
401 S. 3<sup>rd</sup> Street  
Goshen, IN 46526  
P. 574.320.5514  
E. [travis@landbro.com](mailto:travis@landbro.com)

Contact 2: Dave Miller  
Sunrise Home Builders  
60976 CR 33  
Goshen, IN 46528  
[davegloriamiller@yahoo.com](mailto:davegloriamiller@yahoo.com)  
[C. 574.536.8762](tel:574.536.8762)





# LAND & BOUNDARY

The Land And Boundary Resource Office

March 8, 2024

## Authorization Letter

Re: Replat Subdivision within the City of Elkhart; Use Variance within the City of Elkhart

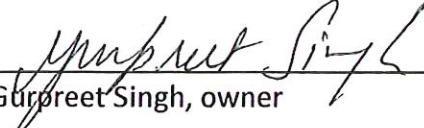
Parcels:

20-06-07-330-025.000-012 and 20-06-07-330-019.000-012

1900 & 1904 W. Franklin Street  
Elkhart, IN 46516

To whom it concerns.

I authorize Land and Boundary LLC to act as my agent for petition purposes to the city of Elkhart for the proposed development of 1900 and 1904 West Franklin Street Elkhart, IN.

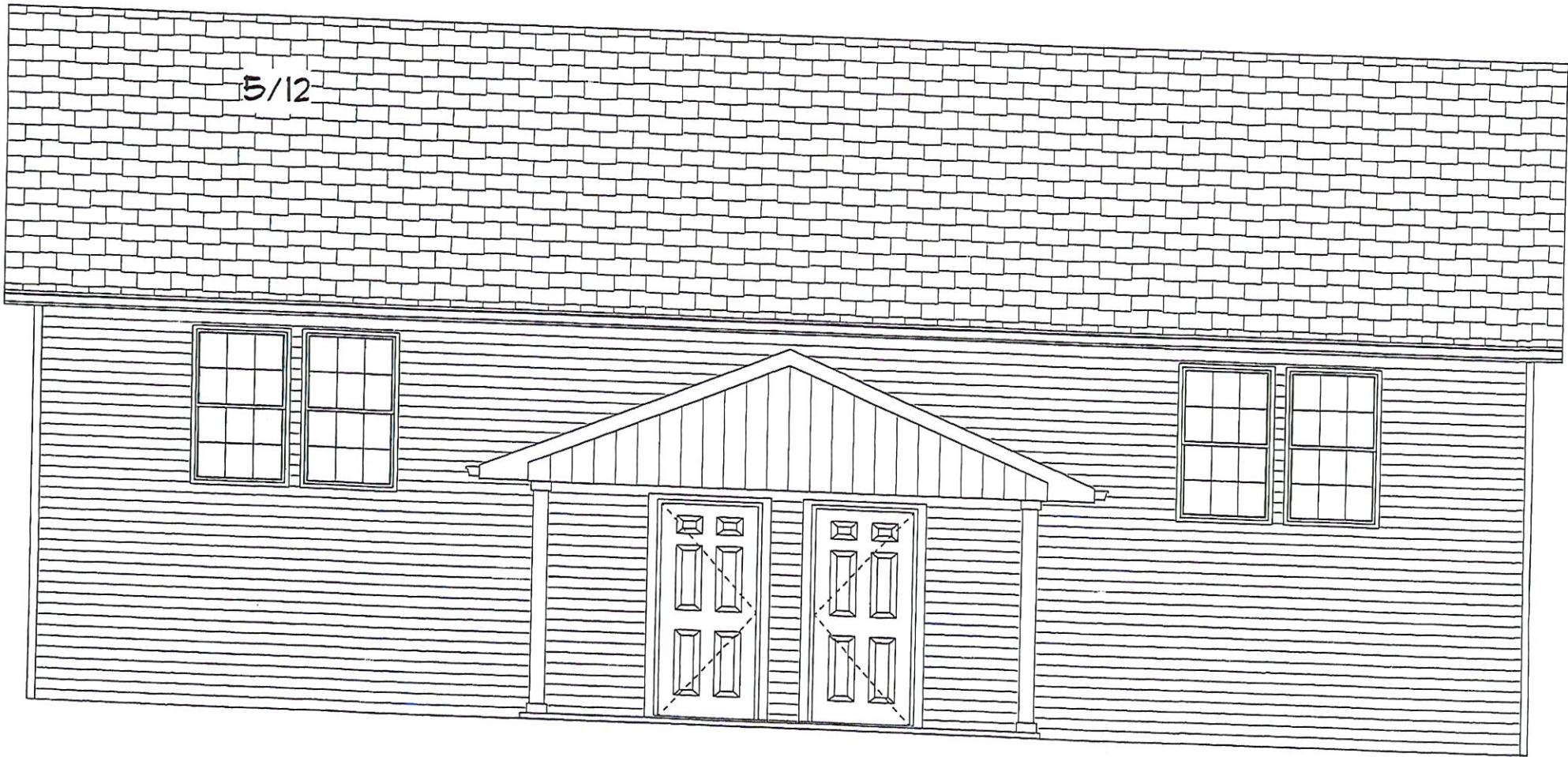
 Date: 03/08/24  
Gurpreet Singh, owner

Phone: (269) 325-9401

Email: bobby1279@bcglobal.net

Shipping Address: 64863 Apple Lane  
Goshen, IN 46526

5/12



*West*



East



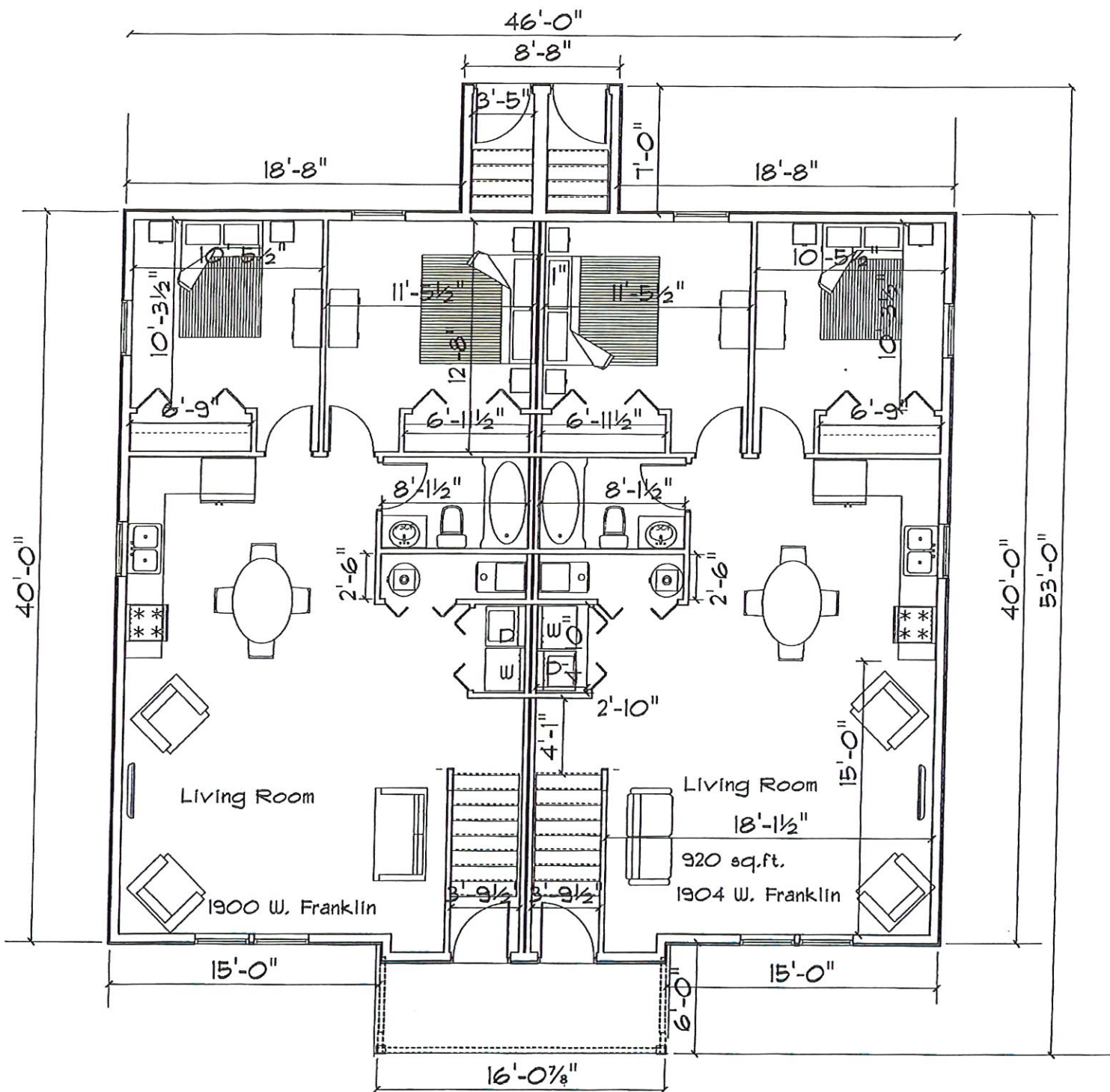
North Elevation



South Elev.

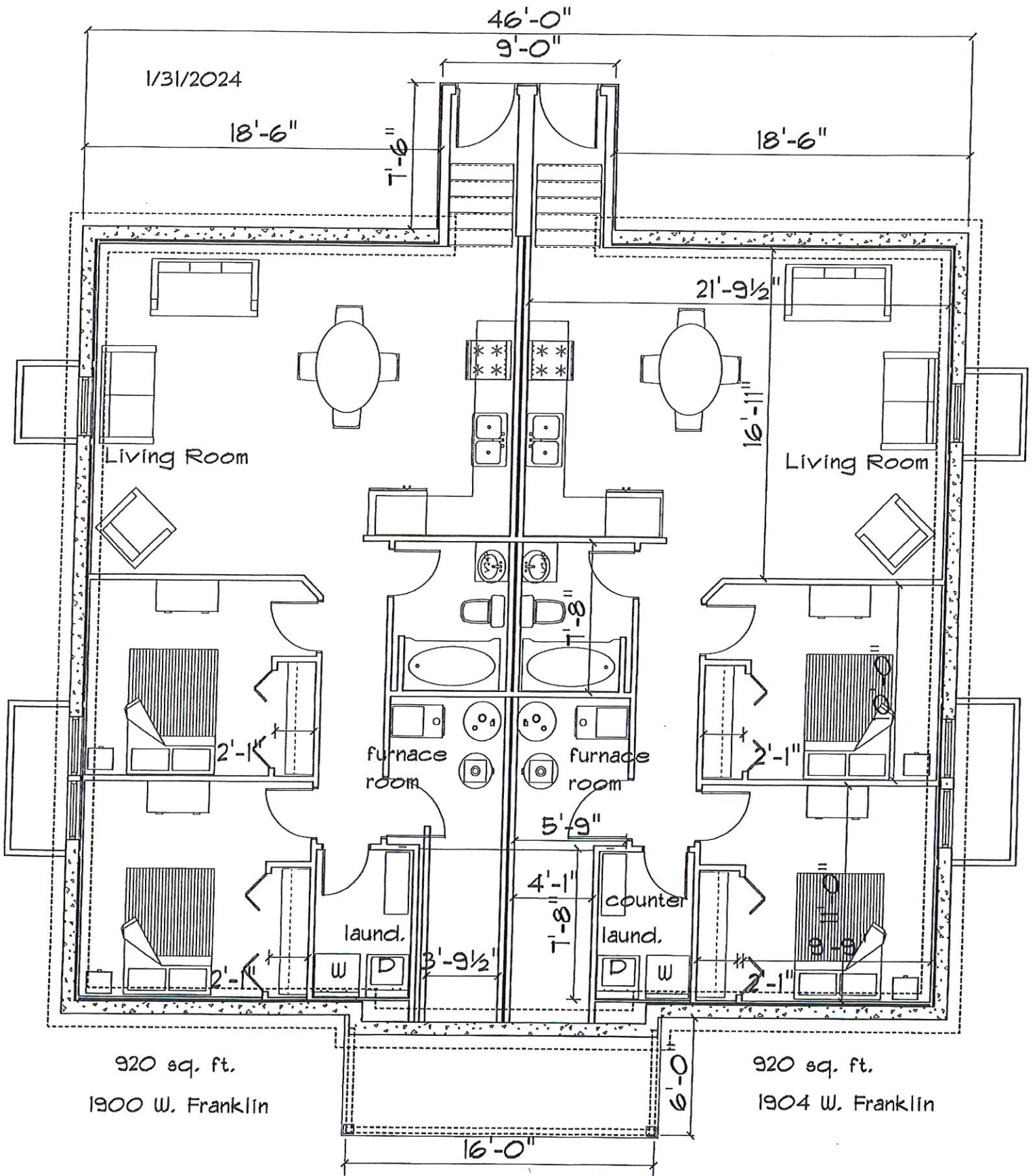


# 4 Unit apartment Upper level

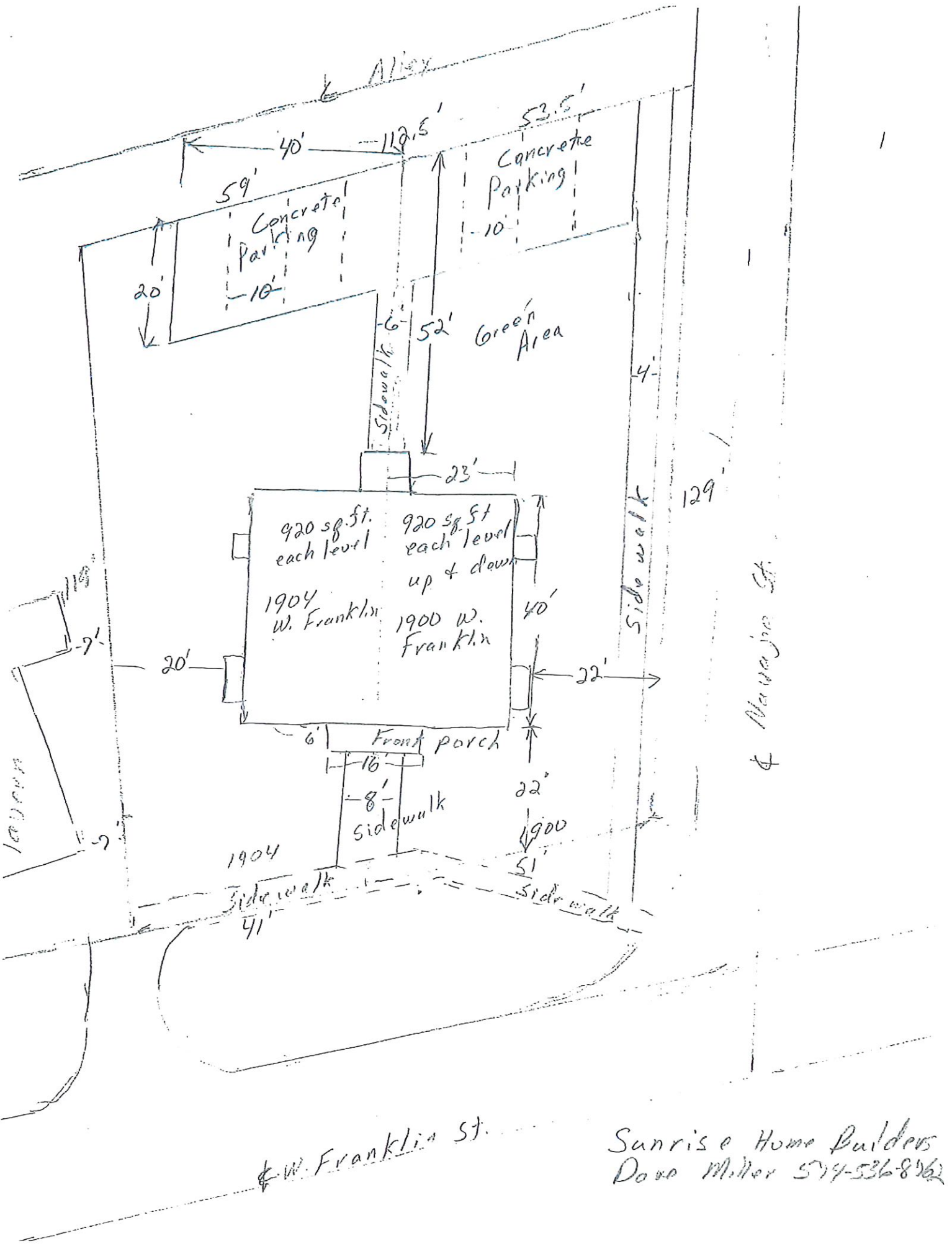


1/31/2024

# 4 unit apartment Lower level

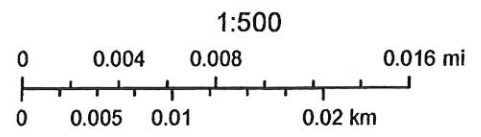
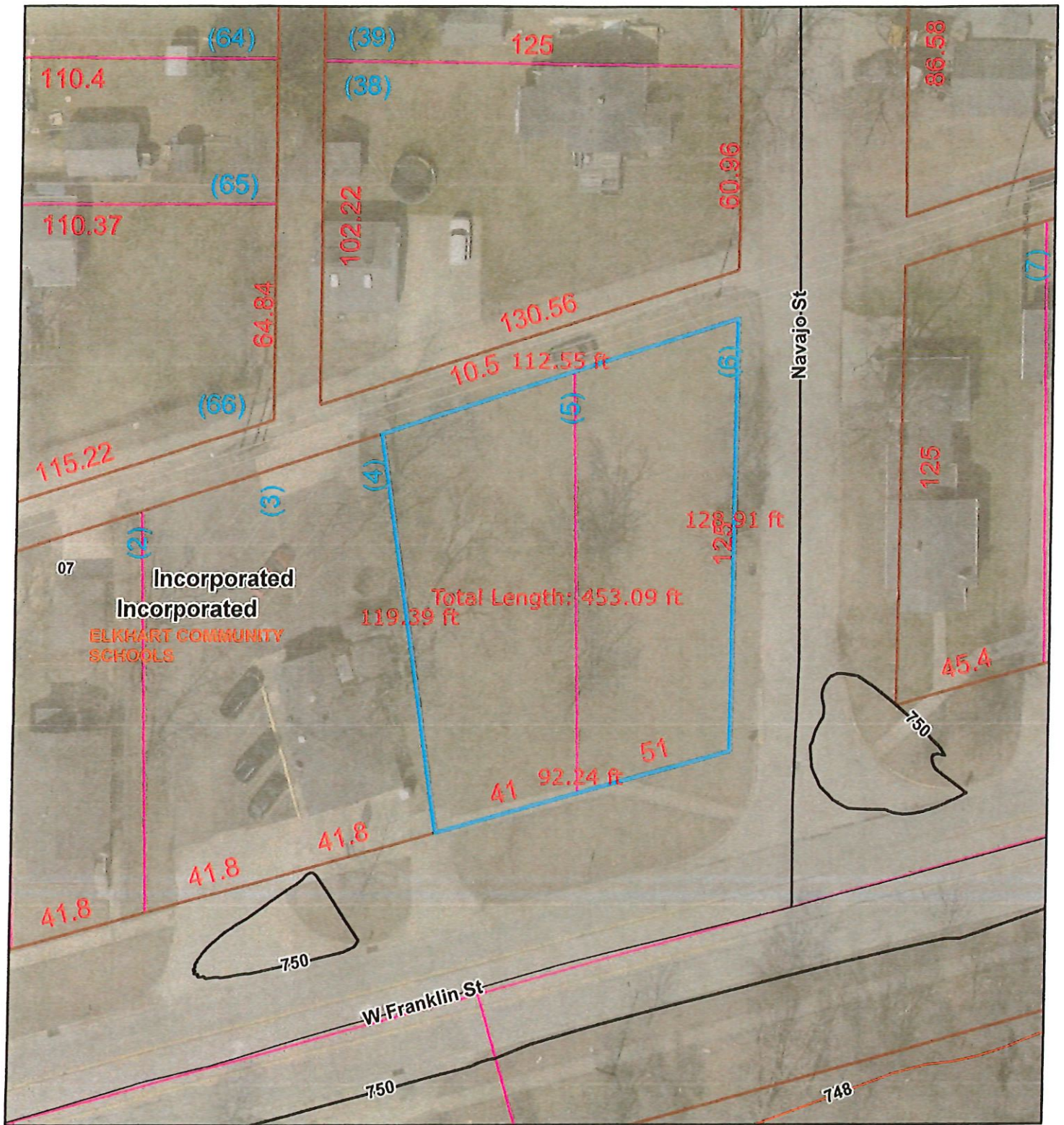




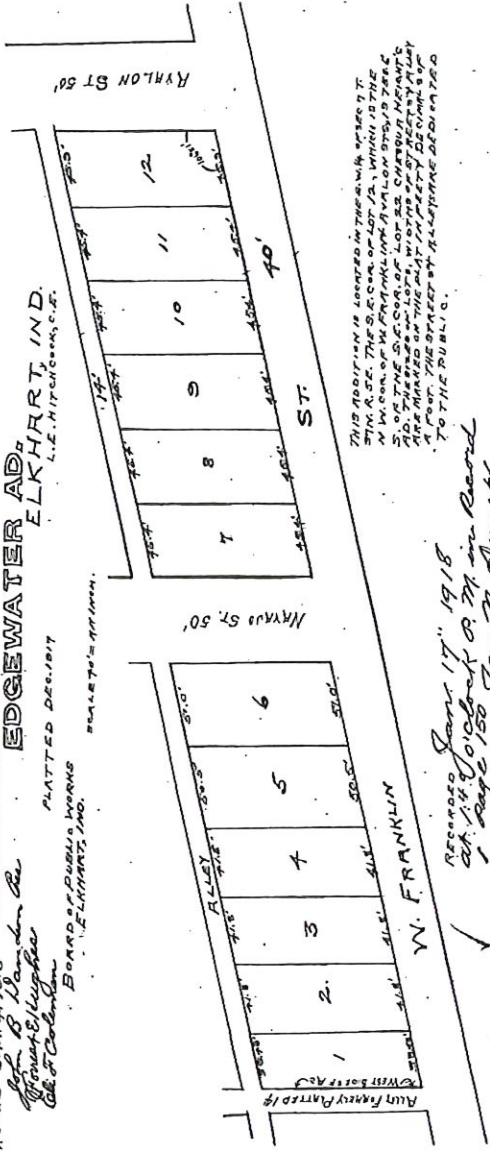


W. Franklin St.

Sunrise Home Builders  
Dore Miller 574-536-8162



APPROVED Jan 4, 1918  
 W. E. DINEHART'S  
 EDGEWATER ADDITION  
 ELKHART, IND.  
 L. E. HITCHCOCK, C. E.  
 PLATTED DESIGN  
 BOARD OF PUBLIC WORKS  
 ELKHART, IND.



THIS ADDITION IS LOCATED IN THE S.W. 1/4 OF SEC. 7 T. 31 N. R. 5 E. THE S.E. COR. OF LOT 12, WHICH IS THE S.W. COR. OF THE FRANKLIN RYHLON ST. 50' 1/2 BLDG. LOTS. THE STRAITS OF LOTS 7, 8, 9, 10, 11 AND 12 ARE MARKED ON THIS PLAT IN PART BY DECOMPOSITION OF THE PUBLIC STREETS BY ALLEGEDLY TO THE PUBLIC.

RECORDED Jan 17, 1918  
 at 1:40 o'clock P. M. in Record  
 Page 150 Jan 7, 1918  
 REGISTER ELKHART, IND.  
 CERTIFICATE and ACKNOWLEDGMENT OF PLAT

H. E. DINEHART'S Addition to the City of Elkhart, Indiana

State of Indiana, Elkhart County, ss:-

The undersigned hereby certify that the attached map is a true plat of an addition to the City of Elkhart, Elkhart County, Indiana, to be known as H. E. Dinehart's Edgewater Addition to the City of Elkhart, and that the lots are numbered set forth on such map, and that the streets and alleys represented are of the width as shown on such map and such streets and alleys are hereby dedicated as public highways.

In testimony whereof, we have hereunto set our hands and seals this 13<sup>th</sup> day of December, 1917.

Harvey G. Dinchart (seal) Benjamin F. Tuhon (seal)  
Tina G. Dinchart (seal) Chas Tuhon (seal)  
Elizabeth Barnsdollar (seal)

Subscribed in my presence and sworn to before me this 13<sup>th</sup> day of December, 1917.

Emil V. Anderson  
Representative-General Assembly  
State of Indiana, Elkhart County

My Commission expires  
November 5<sup>th</sup> 1918 I.S.

ELKHART COUNTY RECORDER  
JENNIFER L. DORIOT  
FILED FOR RECORD ON  
07/24/2020 02:57 PM  
AS PRESENTED

Tax ID Number(s):  
20-06-07-330-025.000-012  
20-06-07-330-019.000-012

*Meridian Title (JH)*

CORPORATE WARRANTY DEED

THIS INDENTURE WITNESSETH THAT

LaCasa of Goshen, Inc., an Indiana non-profit corporation

CONVEY(S) AND WARRANT(S) TO

Gurpreet Singh, for Ten Dollars and other valuable consideration the receipt whereof is hereby acknowledged, the following described REAL ESTATE in Elkhart County, in the State of Indiana, to wit:

SEE ATTACHED EXHIBIT "A"

Subject to Real Estate taxes now due and payable and thereafter.

Subject to covenants, restrictions and easements of record.

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly authorized to act for the Grantor and have been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, the Grantor has executed this deed this 23rd day of July, 2020.

LaCasa of Goshen, Inc., an Indiana non-profit corporation

By: *Chris Kingsley*  
Chris Kingsley, President

By: *James N. Davis*  
James N. Davis, Chief Operating Officer

MTC File No.: 20-26878 (UD)

Page 1 of 4

DM

MC

DISCLOSURE FEE PAID  
DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER  
Jul 24 2020  
PATRICIA A. PICKENS, AUDITOR  
03653  
20.00

State of Indiana, County of Elkhart ss:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named **Chris Kingsley, President and James N. Davis, as Chief Operating Officer of LaCasa of Goshen, Inc., an Indiana non-profit corporation**, who acknowledged the execution of the foregoing Deed and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS, my hand and Seal this 23rd day of July, 2020.

June 30, 2024  
My Commission Expires:  
685832  
Commission No.

ELKHART COUNTY, INDIANA  
Notary Public, County and State of Residence

This instrument was prepared by:  
Andrew R. Drake, Attorney-at-Law  
11711 N. Pennsylvania St., Suite 110, Carmel, IN 46032

Property Address:  
1904 West Franklin Street, Elkhart, IN 46516  
1900 West Franklin Street, Elkhart, IN 46516

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. Andrew R. Drake

Kathleen A. Irelan  
Signature of Notary Public  
KATHLEEN A. IRELAN  
Printed Name of Notary



Grantee's Address and Mail Tax Statements To:  
433 Silverwood Ln Apt 6  
Goshen, IN 46526



CERTIFICATE OF PROOF

WITNESS to the signature(s) on the foregoing instrument to which this Proof is attached:

Angela Emmons  
Witness Signature  
Angela Emmons  
Witness Name (must be typed / printed)



PROOF:

STATE OF INDIANA }  
COUNTY OF ELKHART }



Before me, a Notary Public in and for said County and State, personally appeared Angela Emmons, the above named WITNESS to the foregoing instrument, who, being known or proved to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by Chris Kingsley, President and James N. Davis, as Chief Operating Officer of LaCasa of Goshen, Inc., an Indiana non-profit corporation, in the foregoing subscribing witness' presence.

Witness my hand and Notarial Seal this 23rd day of July, 2020.

My Commission expires:  
June 30, 2024

Signature: Kathleen A. Irelan  
Printed: KATHLEEN A. IRELAN  
Resident of ELKHART County, Indiana

## EXHIBIT A

### Parcel I

The 10.5 foot triangle in Northeast Corner of Lot Numbered 4 in Dinehart's Edgewater Addition to the City of Elkhart, Indiana as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.

### Parcel II

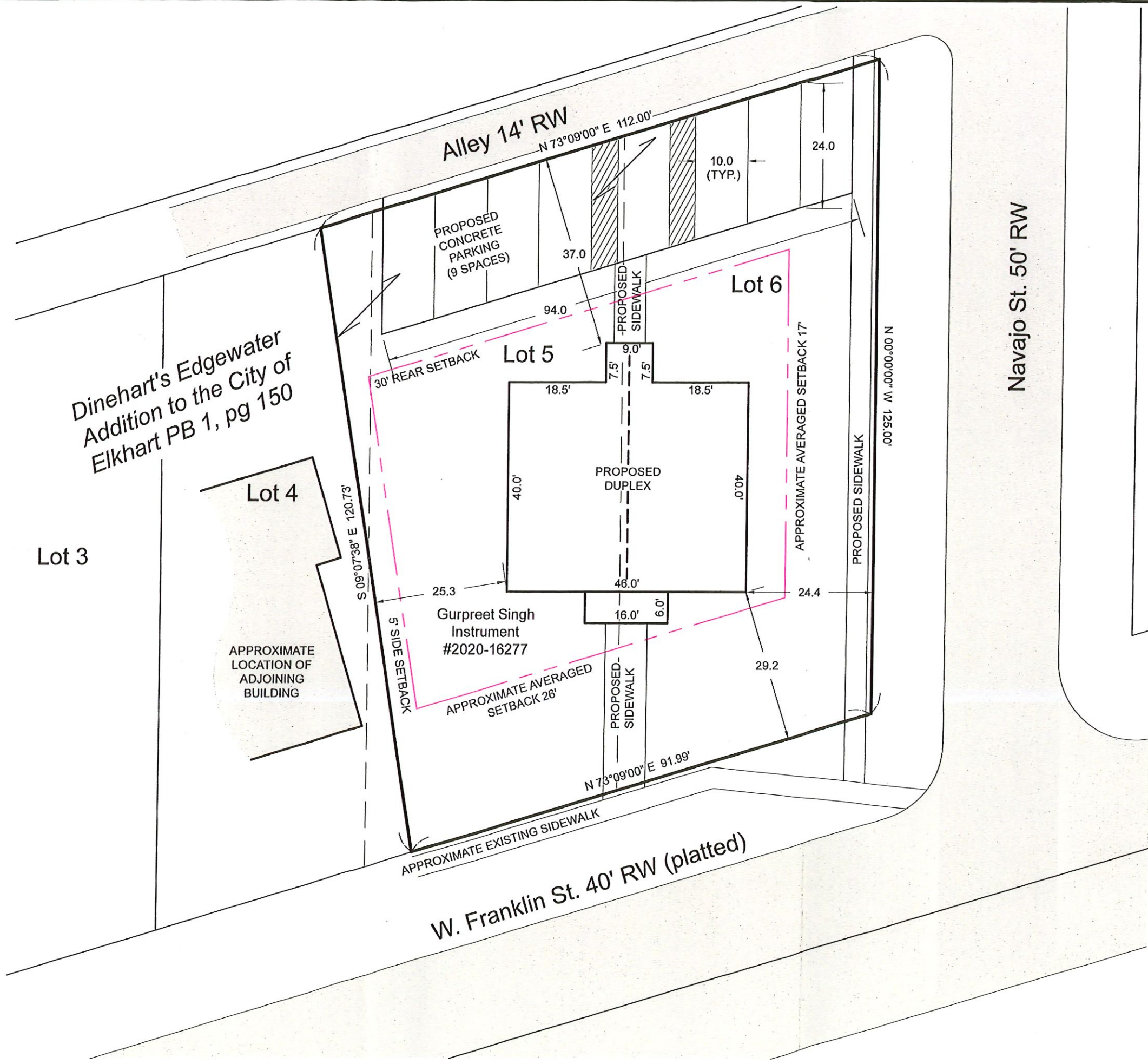
Lot Numbered 5 in Dinehart's Edgewater Addition to the City of Elkhart, Indiana as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.

EXCEPT: All of Lot Numbered 3 and a part of Lots Numbered 4 and 5, as said lots are known and designated on the recorded plat of H.E. Dinehart's Edgewater Addition to Elkhart, Indiana, being more particularly as follows:

Assuming the West line of said Lot Numbered 3, to have a bearing of due North and South, beginning at the Southwest corner of said Lot Numbered 3; thence North  $73^{\circ}01'$  East along the Southerly line of Lots Numbered 3, 4 and a part of 5, a distance of 93.11 feet to an iron stake; thence North  $09^{\circ}07'$  West, 120.68 feet to an iron stake located on the Northerly line of Lot Numbered 4; thence South  $73^{\circ}01'$  West along the Northerly line of Lots Numbered 4 and 3, a distance of 73.10 feet to the Northwest corner of Lot Numbered 3; thence due South along the West line of said Lot Numbered 3, a distance of 125 feet to the place of beginning.  
(Being 1904 West Franklin St.)

Parcel III: Lot Numbered 6 in H. E. Dinehart's Edgewater Addition to the City of Elkhart as per plat thereof recorded in Plat Book 1, page 150 in the Office of the Recorder of Elkhart County, Indiana.  
(Being: 1900 West Franklin St.)

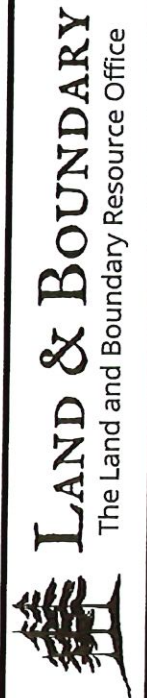




Dinehart's Edgewater Addition to the City of Elkhart PB 1, pg 150

THIS DRAWING IS NOT INTENDED TO BE REPRESENTED AS A RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, A ROUTE SURVEY, OR A SURVEYOR LOCATION REPORT.

**Sketch of Use Variance**  
 Lot 6 and part of Lot 4 & 5 of  
 Dinehart's Edgewater Addition to the City of Elkhart  
 Concord Township, Elkhart County  
**State of Indiana**



401 SOUTH 3RD STREET GOSHEN, IN 46526  
 (574) 320-5514  
 INFO@LANDBRO.COM

DATE OF FIELD WORK: N/A  
 SCALE: 1" = 20'  
 SHEET 1 OF 1

PROJECT NUMBER: 240301  
 AUTHORIZED BY: TRS  
 DRAFTING BY: TRS





# Staff Report

## Planning & Zoning

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**Petition:** 24-BZA-08

**Petition Type:** Developmental Variance

**Date:** June 13, 2024

**Petitioner:** Steve McGrath and Dawn McGrath

**Site Location:** 933 E Beardsley Avenue

**Request:** To 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 an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

**Existing Zoning:** R-5, Urban Residential Dwelling District

**Size:** +/- 0.71 acres

**Thoroughfares:** East Beardsley Avenue

**School District:** Elkhart Community Schools

**Utilities:** Available and provided to site.

**Surrounding Land Use & Zoning:**

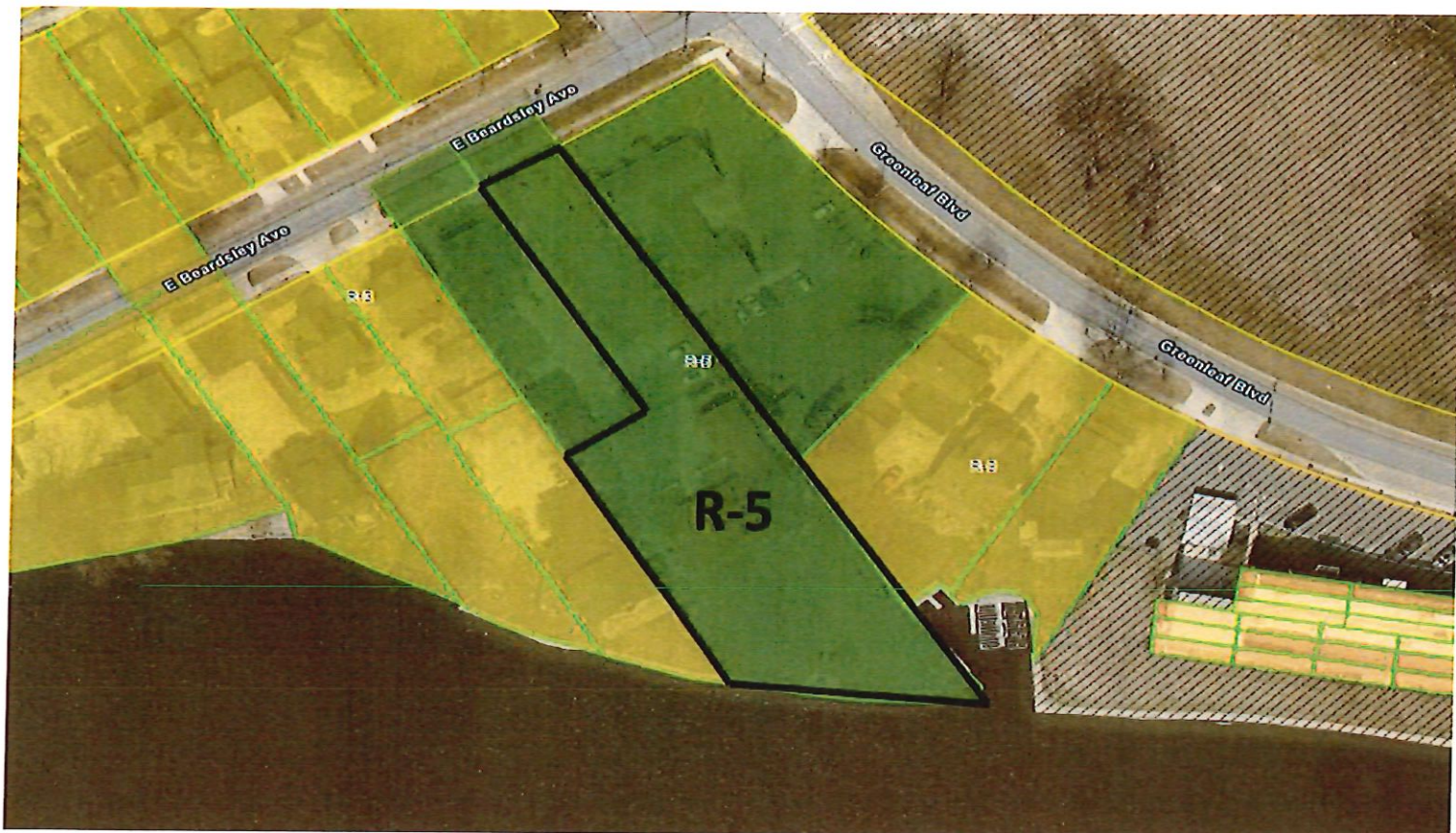
The surrounding properties mostly residential and are zoned both R-3, Two Family Dwelling District and R-5, Urban Residential Dwelling District.

**Applicable Sections of the Zoning Ordinance:**

Enumerated in request.

**Comprehensive Plan:**

The Comprehensive calls for this area to be developed as residential. The subject property is included in an area identified for residential use on the future land use map.



## Staff Analysis

The petitioner wishes to vary from the requirements found in Section 6.2, which references the minimum size of a residential dwelling unit as seven hundred fifty (750) square feet to allow for an additional residential unit in this structure to be three hundred thirty five (335) square feet, a variance of four hundred fifteen (415) square feet.

The property is zoned R-5, Urban Residential District. Multiple dwelling units in the structure are allowed by right.

This site abuts the St. Joseph River on East Beardsley Avenue just west of Greenleaf Boulevard. The structure was built in 1973 according to Elkhart County tax records and sits toward the rear of the property. The kitchen area and bath were existing when the petitioner purchased the property. The property currently has six off street parking spaces therefore having adequate parking for an additional unit.

There are single family and multifamily homes that surround the property. There is also a commercial building, currently used for Cressy & Everett Real Estate, northeast of the site.

Staff supports the variance request contained in the petition. There will be no outward change to the building. This request reinforces the demand for walkable and affordable housing and begins to address the market gap in housing diversity.

# Recommendation

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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 residential unit within the structure is built per all applicable current building codes;
2. The use and value of the area adjacent to the property **will not be** affected in a substantially adverse manner because many of the adjacent properties are also multifamily dwellings. The use is permitted by right with, the size of the unit in question being of typical size for an efficiency unit;
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 there will be no change to the outward appearance of the structure. Additionally, the unit is contained within the footprint of the structure;
5. The strict application of the terms of this Ordinance **will** result in practical difficulties in the use of the property because without board action the additional unit would not be a legal dwelling unit because of its size;
6. The special conditions and circumstances **do not** result from any action or inaction by the applicant because the elements of unit (kitchen and bath) existed in the structure when the petitioner purchased the property;
7. This property **does not** lie within a designated flood area.

# Photos

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PETITION #: 24 BZA-08

FILING FEE: \$ 200

### 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): Steve and Dawn McGrath

Mailing Address: [REDACTED]

Phone #: [REDACTED]      Email: [REDACTED]

Contact Person: Same

Mailing Address: \_\_\_\_\_

Phone #: \_\_\_\_\_      Email: \_\_\_\_\_

Subject Property Address: ~~1330~~ 933 E Beardsley

Zoning: R-5

Present Use: primary residence      Proposed Use: primary residence + rentals

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): Steve McGrath      Dawn McGrath

SIGNATURE(S): Dawn McGrath      DATE: 4/22/24

**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: [Signature]      DATE: \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF VARIANCE PETITION**

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

1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
2. I make this affidavit in support of my variance petition filed contemporaneously herewith.
3. I am now and at all times relevant herein have been, the owner of record of the property located at 933 E Beardsley Ave Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 26 day of April, 2024.

Dawn L McGrath

Printed: Dawn L. McGrath

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.

Dawn L McGrath

Printed: Dawn L. McGrath

STATE OF INDIANA )

) SS:

COUNTY OF ELKHART )

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Dawn McGrath, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 26 day of April, 2024.

Hugo Robles Madrigal

Printed: Hugo Robles Madrigal



My Commission Expires:

10/31/2031

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



April 26, 2024

TO: Board of Zoning Appeals  
City of Elkhart, Indiana

RE *Developmental Variance*

The undersigned petitioner respectfully addresses the following to the Board of Zoning Appeals:

I, Dawn McGrath, along with my husband, Steve, are the owners of the home at 933 E. Beardsley Avenue. This real estate is located within the City of Elkhart, Concord Township, Elkhart County, Indiana. The scale drawing and the full legal description is provided in the attached survey. The real estate under consideration presently has a zoning classification of R5 - Urban Residential District under the Zoning Ordinance of the City of Elkhart.

We occupy the property as our primary residence and desire to rent an attached furnished studio space that includes a private entrance and entryway, a private bathroom, a kitchenette, and a walkthrough closet with the optional use of an attached garage. There are no changes to the structure that are required and the living space measures a total of 335 ft<sup>2</sup>.

Although our home is in an R-5 zone, we were directed that we would be in violation of an ordinance that is provided for R-3 zoned property, specifically 6.2(B) which requires a minimum width of 24 feet and a minimum of seven hundred fifty (750) square feet of dwelling unit space, with the primary facade of the structure facing a public street.

The approval will not be injurious to the public health, safety, morals and general welfare of the community in that it will simply allow an additional person to live in a space that is already used as living space. The adjacent properties are similarly used as rental units divided from single family homes on the west and north side and a realtor parking lot to the east, so no harm will be done to the areas adjacent to this property. The property currently offers six off-street parking spaces in addition to those already in use. Granting the variance would be consistent with what appears to be allowable for R-5 property given that there are no size restrictions provided in the ordinance for R-5 zoned units and may not be relevant to this circumstance. Strictly applying the R-3 limits on the dwelling space would deprive an Elkhart resident access to a modest, upscale space in close proximity to engaging in a vibrant downtown. There is no interference with the Comprehensive Plan in that this proposal alters nothing of significance.

WHEREFORE, Petitioner respectfully requests a hearing on this appeal and consideration by the Board to grant the requested *Developmental Variance*.

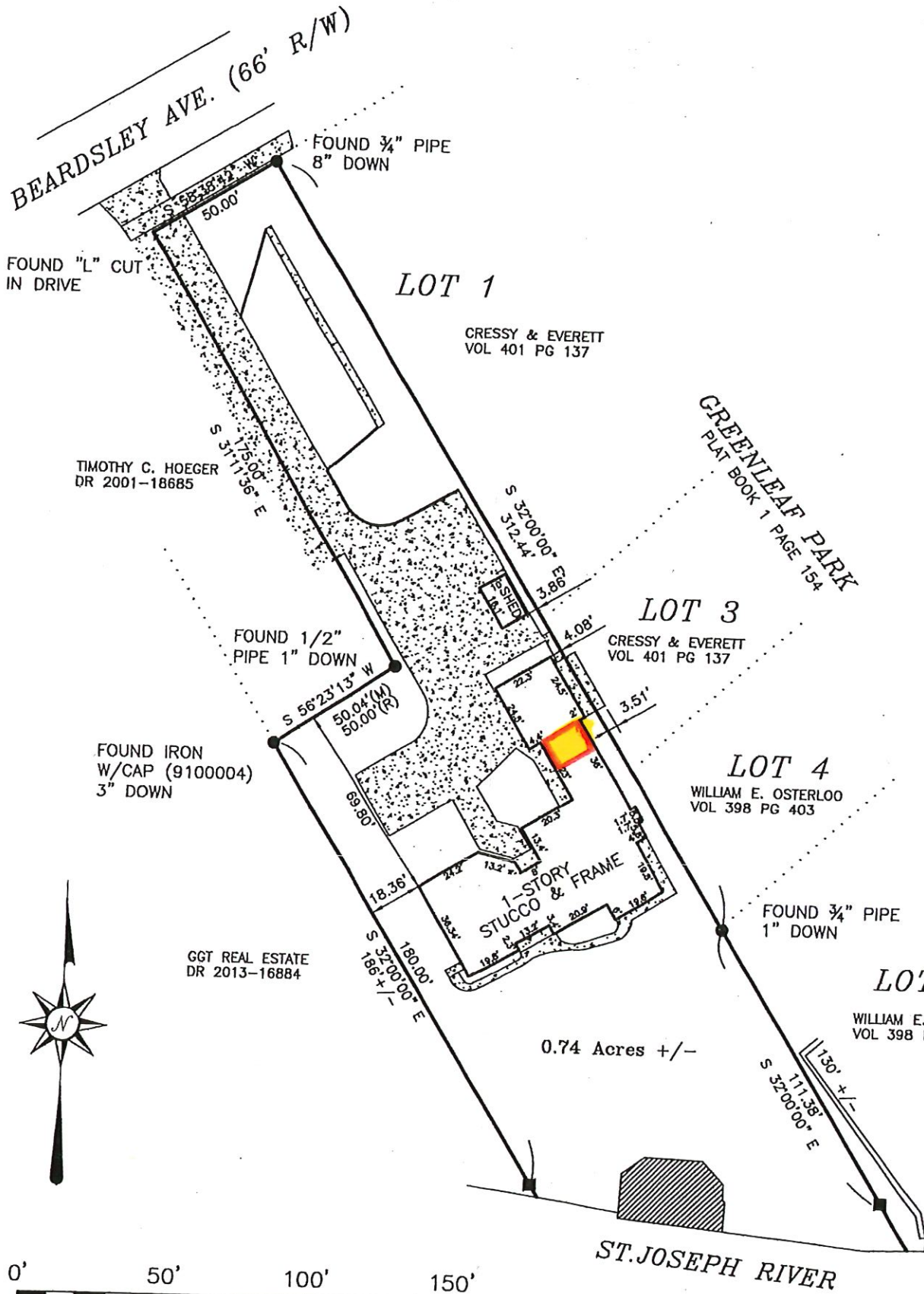
Signatures of Property Owner and Contact Person



Dawn L. McGrath  
933 E. Beardsley Avenue, Elkhart, IN 46514  
[dawnmcgrath2012@gmail.com](mailto:dawnmcgrath2012@gmail.com)  
574.606.2609



Steven F. McGrath

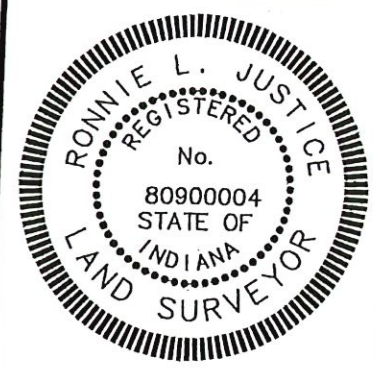


**LEGAL DESCRIPTION**

LAND SITUATED IN THE COUNTY OF ELKHART, STATE OF INDIANA, IS DESCRIBED AS FOLLOWS: PARCEL I:  
 A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION FOUR (4), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING EIGHTY (80) FEET SOUTH, FIFTY-EIGHT (58) DEGREES WEST OF THE INTERSECTION OF DEARBORN AVENUE WHEN EXTENDED AND EAST BEARDSLEY AVENUE, FORMERLY KNOWN AS ELKHART AVENUE; THENCE SOUTH, FIFTY-EIGHT (58) DEGREES WEST, FIFTY (50) FEET; THENCE SOUTH, THIRTY-TWO (32) DEGREES EAST, TO THE LOW WATER MARK OF THE ST. JOSEPH RIVER; THENCE SOUTH, SIXTY-FIVE (65) DEGREES EAST, ALONG SAID RIVER PARALLEL WITH THE WESTERN LINE OF SAID TRACT TO EAST BEARDSLEY AVENUE, FORMERLY KNOWN AS ELKHART AVENUE, TO THE PLACE OF BEGINNING.

PARCEL II:  
 A PART OF THE NORTHWEST QUARTER (NW1/4) OF SECTION FOUR (4), TOWNSHIP THIRTY-SEVEN (37) NORTH, RANGE FIVE (5) EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ONE HUNDRED THIRTY (130) FEET SOUTH, FIFTY-EIGHT (58) DEGREES WEST OF THE INTERSECTION OF DEARBORN AVENUE, WHEN EXTENDED AND ELKHART AVENUE; THENCE SOUTH FIFTY-EIGHT (58) DEGREES WEST FIFTY (50) FEET; THENCE SOUTH THIRTY-TWO (32) DEGREES EAST TO THE LOW WATER MARK OF THE ST. JOSEPH RIVER; THENCE SOUTH SIXTY-FIVE (65) DEGREES EAST TO THE POINT OF COMMENCEMENT, AND THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID TRACT TO ELKHART AVENUE, THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND: BEGINNING AT A CHISEL CUT ON THE SOUTHERLY LINE OF EAST BEARDSLEY AVENUE (FORMERLY ELKHART AVENUE), SAID CHISEL CUT BEING SOUTH FIFTY-EIGHT (58) DEGREES WEST A DISTANCE OF ONE HUNDRED THIRTY (130) FEET FROM THE INTERSECTION OF THE SOUTHERLY LINE OF SAID EAST BEARDSLEY AVENUE WITH THE CENTERLINE OF DEARBORN STREET EXTENDED, SAID CHISEL CUT BEING THE NORTHMOST CORNER OF LAND CONVEYED TO RALPH MONTAGANO, JR. IN DEED RECORD 420, PAGE 596; THENCE SOUTH FIFTY-EIGHT (58) DEGREES WEST ALONG THE SOUTHERLY LINE OF SAID EAST BEARDSLEY AVENUE A DISTANCE OF FIFTY (50) FEET, TO A CHISEL CUT; THENCE SOUTH THIRTY-TWO (32) DEGREES EAST A DISTANCE OF ONE HUNDRED SEVENTY-FIVE (175) FEET TO AN IRON STAKE; THENCE NORTH THIRTY-TWO (32) DEGREES WEST A DISTANCE OF ONE HUNDRED SEVENTY-FIVE (175) FEET TO THE PLACE OF BEGINNING OF THIS DESCRIPTION.



**SURVEYOR'S REPORT**

IN ACCORDANCE WITH TITLE 865, ARTICLE 1, CHAPTER 12, SECTION 1 THROUGH 30 OF THE INDIANA ADMINISTRATIVE CODE, THE FOLLOWING OBSERVATIONS AND OPINIONS ARE SUBMITTED REGARDING THE VARIOUS UNCERTAINTIES IN THE LOCATION OF THE LINES AND CORNERS ESTABLISHED ON THIS SURVEY AS A RESULT OF:

- A) VARIANCES IN THE REFERENCE MONUMENTS;
- B) DISCREPANCIES IN RECORD DESCRIPTIONS AND PLATS;
- C) INCONSISTENCIES IN LINES OF OCCUPATION;
- D) RANDOM ERRORS IN MEASUREMENTS (RELATIVE POSITIONAL ACCURACY)

THE RELATIVE POSITIONAL ACCURACY OF THE CORNERS OF THE SUBJECT TRACT ESTABLISHED THIS SURVEY IS WITHIN THE SPECIFICATIONS FOR A SUBURBAN (0.13 FEET PLUS 100 PARTS PER MILLION) SURVEY. THIS SURVEY IS A RETRACEMENT SURVEY OF A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA. SEVERAL IRONS OF THE SUBJECT TRACT WERE FOUND AS SHOWN AND DESCRIBED ON DRAWING. BEARINGS AND DISTANCES WERE CHECKED ON THESE POINTS. NO POINTS WERE FOUND NEAR THE RIVER SO NEW POINTS WERE SET AT RANDOM DISTANCE NEAR THE WATERS EDGE. IRONS SET AT RIVER WERE SET PARALLEL TO IRONS FOUND ALONG THE EAST LINE OF THIS TRACT. MONUMENTS AS FOUND WERE ACCEPTED AS THE SET CORNERS FOR THIS TRACT. DISCREPANCIES IN MEASUREMENTS ARE SHOWN AS MEASURED (M) AND RECORDED (R) ON DRAWING. AS A RESULT OF THE ABOVE OBSERVATIONS, IT IS MY OPINION THAT THE UNCERTAINTIES IN THE LOCATION OF THE LINES AND CORNERS ON THIS SURVEY ARE AS FOLLOWS:

DUE TO VARIANCES IN THE REFERENCE MONUMENTS: 0.04 FEET EAST-WEST  
 DUE TO DISCREPANCIES IN THE RECORD DESCRIPTION: NONE  
 DUE TO INCONSISTENCIES IN THE LINES OF OCCUPATION: A CONCRETE PAD AND FENCE AT THE NORTHEAST CORNER OF THE HOUSE APPEARS TO BE 3.51 FEET OVER LINE  
 BASIS OF BEARINGS IS TAKEN FROM DEED AS SOUTH 32 DEGREES 00 MINUTES 00 SECONDS EAST ON IRONS FOUND ALONG THE EAST LINE OF THE SUBJECT PROPERTY, WITH ALL OTHER BEARINGS HEREIN CONTAINED RELATIVE.

PROPERTY ADDRESS: 933 BEARDSLEY AVENUE  
 ELKHART, INDIANA 46514  
 SELLER: RALPH MONTAGANO, JR.  
 BUYER: STEVE & DAWN McGRATH

**LEGEND**

- CONCRETE
- FOUND IRON
- SET 5/8" REBAR W/CAP JUSTICE 900004

I HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF INDIANA AND THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE WITHIN PLAT REPRESENTS A SURVEY MADE UNDER MY SUPERVISION APRIL 30, 2015 IN ACCORDANCE WITH IAC 865, 1-1-12. I DO NOT CERTIFY TO THE DETERMINATION OF OWNERSHIP, COMPLIANCE WITH BUILDING AND ZONING RESTRICTIONS OR SUITABILITY OF THE PROPERTY FOR ANY PURPOSE. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.

REGISTERED LAND SURVEYOR'S SIGNATURE *Ronnie Justice*  
 RONNIE L. JUSTICE  
 IND. REG. NO. 80900004

ADVANCED LAND SURVEYING  
 OF NORTHERN INDIANA INC.  
 17120 COUNTY ROAD 46, NEW PARIS,  
 INDIANA 46553  
 (574) 831-5870 - FAX (574) 831-5875  
 RONNIE L. JUSTICE P.L.S.

DATE: MAY 5, 2015	PROJECT NUMBER: 150503
SCALE: 1" = 50'	AUTHORIZED BY: R. L. J.
SHEET 1 OF 1	DRAFTING BY: R. L. J.





# Staff Report

## Planning & Zoning

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<b><u>Petition:</u></b>	24-BZA-09
<b><u>Petition Type:</u></b>	Developmental Variance
<b><u>Date:</u></b>	June 13, 2024
<b><u>Petitioner:</u></b>	Mark and Colette Sharp
<b><u>Site Location:</u></b>	1626 East Lake Drive West
<b><u>Request:</u></b>	To vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk.
<b><u>Existing Zoning:</u></b>	R-1, One Family Dwelling District
<b><u>Size:</u></b>	+/- 0.4 acres
<b><u>Thoroughfares:</u></b>	East Lake Drive West
<b><u>School District:</u></b>	Elkhart Community Schools
<b><u>Utilities:</u></b>	Available and provided to site.

### **Surrounding Land Use & Zoning:**

The surrounding properties are R-1, One Family Dwelling District.

### **Applicable Sections of the Zoning Ordinance:**

Enumerated in request.

### **Comprehensive Plan:**

The Comprehensive calls for this area to be developed as residential. The subject property is included in an area identified for residential use on the future land use map.



## Staff Analysis

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The petitioner wishes to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part ‘For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,’ to allow for no public sidewalk.

The petitioner built a home, which was completed earlier this year, on one of the last remaining vacant tracts of land within the East Lake Subdivision north of Bristol Street; there are two or three vacant lots remaining throughout the subdivision. This subdivision was established in the mid 1950’s with the majority of the homes being built into the 1990’s. The site that is part of the request is in the third phase of the subdivision where no adjacent sidewalks currently exist. Typically, the later phases (three or four) of the eleven, in the subdivision have public sidewalks, mainly in the central and northern part of the neighborhood.

Staff recognizes the concerns posed by the petitioner in their submittal material around maintenance and aesthetics. However, this circumstance is not unlike many other circumstances in the city where development has occurred over time – even this subdivision is evidenced where sidewalks exist in some areas and not others. Sidewalks provide a designated place for pedestrians and allow for the separation of pedestrians from automobile traffic. Part of living in a more urban area include the urban elements which include sidewalks.

# Recommendation

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The Staff recommends **denial** of the developmental variance to vary from the requirements found in Section 26.7.C.7.o.ii.(a), Pedestrian Access, which states in part 'For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed,' to allow for no public sidewalk based on the following findings of fact:

1. The approval **will be** injurious to the public health, safety, morals or general welfare of the community because it is necessary to establish standards regulating off street parking, pedestrian movement in part for the enhancement of the community;
2. The use and value of the area adjacent to the property **will not be** affected in a substantially adverse manner because the new home is in an area of the subdivision with no existing sidewalk system;
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 not** exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the public sidewalk in question could have been installed at the time of construction;
5. The strict application of the terms of this Ordinance **not will** result in practical difficulties in the use of the property because the public sidewalk in question could have been installed at the time of construction;
6. The special conditions and circumstances **do** result from any action or inaction by the applicant because the petitioner chose not to install the sidewalk and file for relief from the requirement;
7. This property **does not** lie within a designated flood area.

Photos



PETITION #: 24-BZA-09

FILING FEE: \$ 200

### PETITION for APPEAL to the BOARD of ZONING APPEALS

**PETITION TYPE: DEVELOPMENTAL VARIANCE**

Property Owner(s): Mark & Collette Sharp

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Contact Person: Collette Sharp

Mailing Address: [REDACTED]

Phone #: [REDACTED] Email: [REDACTED]

Subject Property Address: 11226 W East Lake Dr, Elkhart 46514

Zoning: R-1 - One Family Dwelling

Present Use: R-1 Proposed Use: R-1

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): Collette Sharp ; Mark Sharp

SIGNATURE(S): [Signatures] DATE: 4-22-24

**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: \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF DEVELOPMENTAL VARIANCE PETITION**

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

1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
2. I make this affidavit in support of my variance petition filed contemporaneously herewith.
3. I am now and at all times relevant herein have been, the owner of record of the property located at 1624 E Lake Dr. W Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 30<sup>th</sup> day of April, 2024.

Collette Sharp

Printed: Collette Sharp

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.

Collette Sharp

Printed: Collette Sharp

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Collette Sharp, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 30 day of April, 2024.



My Commission Expires:  
10/31/2031

Hugo Robles Madrigal

Printed: Hugo Robles Madrigal

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



Date: 4/22/2-24

RE: Developmental Variance

Subject: Developmental Variance Request

To: Board of Zoning Appeals  
City of Elkhart, Indiana

Dear Board of Zoning Appeals,


We, Mark and Collette Sharp, are the owners of 1626 West E Lake Dr in the City of Elkhart, Osolo Township, Elkhart County, State of Indiana. Our property is currently classified as R-1: One Family Dwelling District under the Zoning Ordinance of the city of Elkhart. We plan to use this property as our primary residence and raise our son here.

We are writing to request a developmental variance for Section 26.7.C.7.o.2.a of the Elkhart Zoning Ordinance, which obligates us to install a new sidewalk in front of our home. We believe that a sidewalk would detract from the natural beauty of our surroundings. Additionally, we are concerned about the long-term maintenance required to keep the sidewalk in good condition, especially as we grow older. We feel that it would be unfair to burden us with this responsibility for years to come. Furthermore, adding a sidewalk would make our house stand out among the rest of the neighborhood, compromising the area's charm.

We believe that the absence of a sidewalk in front of our house will not pose any threat to public health, safety, morals, or general welfare. Our neighborhood does not experience high traffic and it is safe for pedestrians to walk on the street. Walking on the road is familiar to everyone in our area, so there are no confusion or safety issues. Moreover, the park adjacent to our property already has a walking area, parking lot, and access, so adding a sidewalk to our property will not affect it or change its value. Granting this variance would align with the intent and purpose of the zoning ordinance since the safety of the area will not be compromised. Approving the variance will also not have any impact on the flood hazard area since we are not located in one, and it will not result in any additional public expenses, as there will be no repairs or maintenance for the city to worry about. The absence of sidewalks in neighboring properties means that not having one in our property will maintain uniformity in the area and will not harm the value of other properties. If a sidewalk installation is mandated in our vicinity, we fear losing the privilege of enjoying the same rights as our neighbors, who are not burdened with the responsibility of sidewalk upkeep. We chose to build our homes on unoccupied land in an established community, and we wish to remain here without the added expense and maintenance of a sidewalk that is not necessary.

The land in question does not have any special circumstances or conditions that are specific to this land and not applicable to other lands or structures within the same district. Furthermore, there have been no actions that resulted in unique conditions or circumstances on the land. Our property is similar to other lands in the district.

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

Signature of Property Owner: 

Printed Name: Collette Sharp

Second Property Owner:

Printed Name: Mark Sharp 

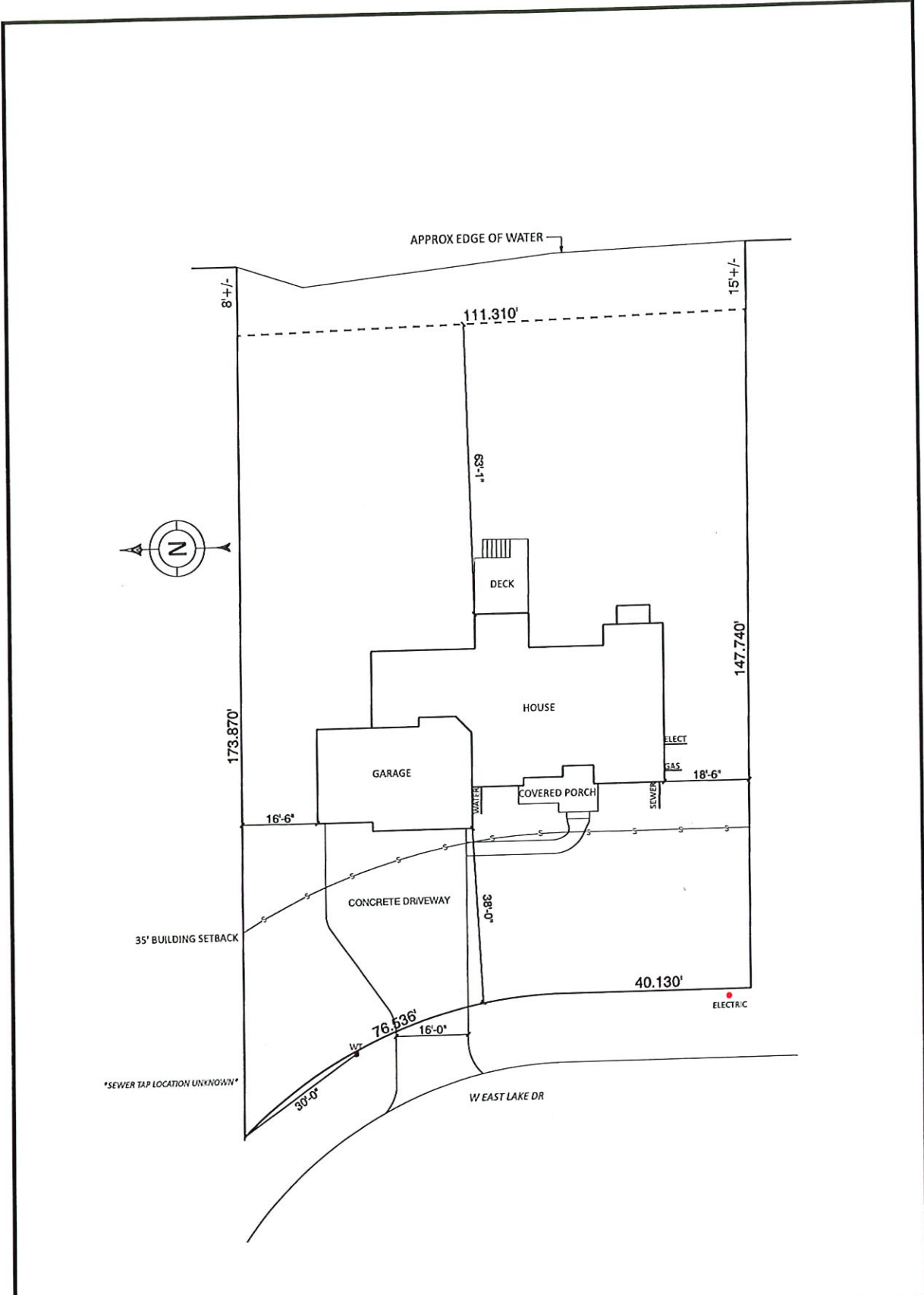
Contact Person

Name: Collette Sharp

Address: 1626 W East Lake Dr, Elkhart, IN 46514

Phone number: 

Email: 



**beam**  
 construction  
 company, inc.  
*a better way to build*  
 1843 W. Lincoln Ave  
 Gary, IN 46528  
 574.533.3100

THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF BEAM CONSTRUCTION CO., INC. AND IS NOT TO BE REPRODUCED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF BEAM CONSTRUCTION CO., INC. BEAM CONSTRUCTION CO. AND ASSOCIATES ARE NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS.

LOT SIZE: 17,511sf
NOTES

JOB NAME	SHARP Collette & Mark
JOB LOCATION	1626 E Lake Dr W Elkhart 46514
SCALE	1" = 20'-0"
DATE	11/2/2023
DRAWING	SITE PLAN



# Staff Report

## Planning & Zoning

---

**Petition:** 24-X-04

**Petition Type:** Special Exception

**Date:** Plan Commission: June 3, 2024; Board of Zoning Appeals June 13, 2024:

**Petitioner:** Malik Enterprise, LLC

**Site Location:** 1710 Leer Drive

**Request:** A Special Exception per Section 13.3, Special Exception Uses in the B-3, Service Business District, to allow for a Trade School.

**Existing Zoning:** PUD, Planned Unit Development – B-3 standards

**Size:** +/- 0.16 Acres

**Thoroughfares:** Leer Drive

**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 Planned Unit Development.

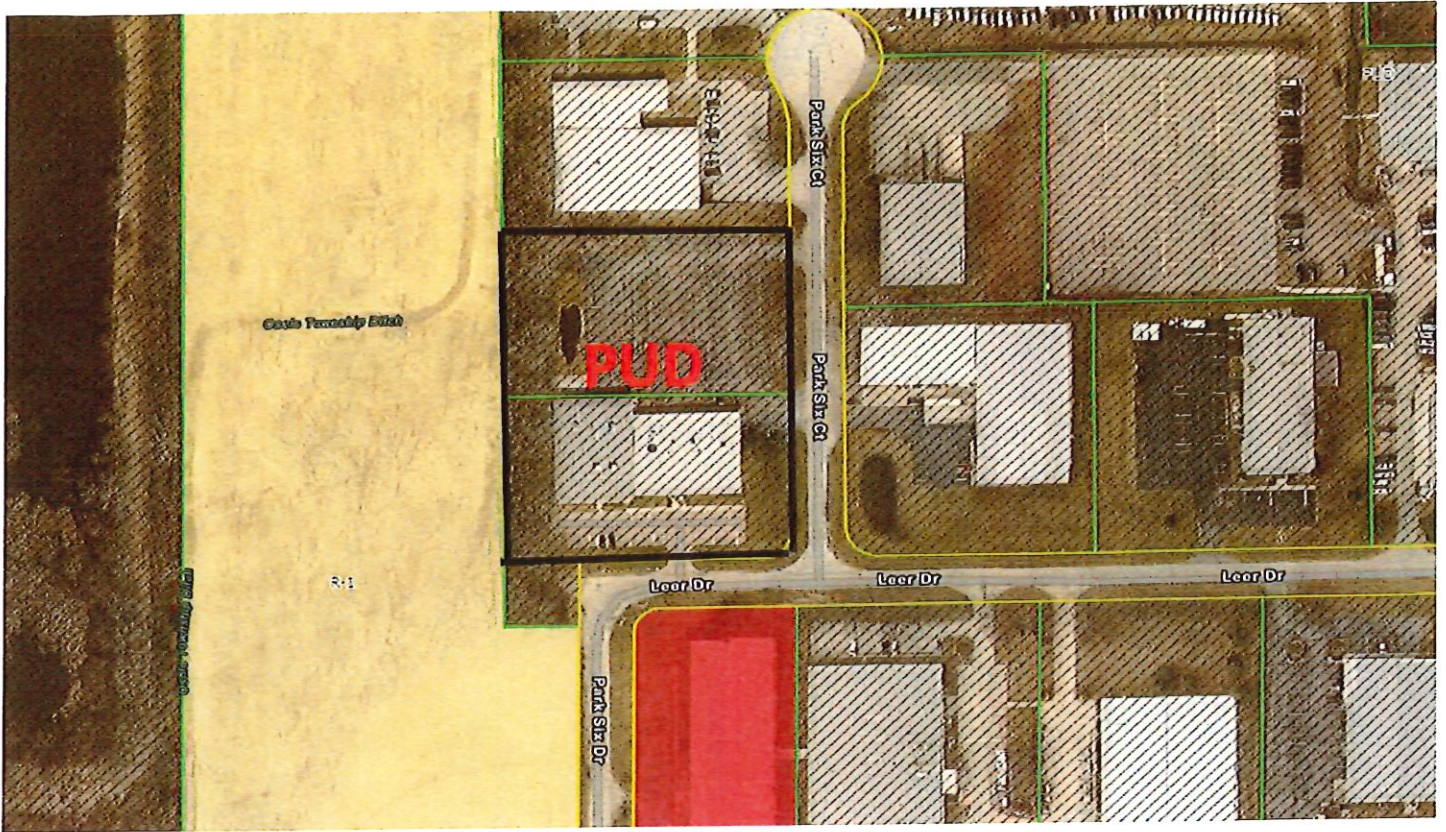
**Applicable Sections of the Zoning Ordinance:**

Enumerated in request.

**Comprehensive Plan:**

The Comprehensive Plan calls for this area to be developed with a mix of commercial and industrial uses.

**Plan Commission Action:** Recommendation to Board of Zoning Appeals.



## Staff Analysis

The petitioners are submitting an application to establish a trade school at 1710 Leer Drive in the Park Six Industrial Park. Trade schools are a special exception use.

The building was most recently used as a home medical equipment facility. The request as a trade school works well for the area along County Road 6, in an area largely populated with industrial users that would benefit from skilled workers completing the program. Based on information provided with the petition, the school is affiliated with Vincennes University and is accredited by NCCER, the National Center for Construction Education and Research.

# 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. Any/all necessary permits be obtained from the Building Department for interior renovations prior to occupancy.

# Photos







PETITION #: 24-X-04

FILING FEE: \$ 300

### PETITION for APPEAL to the BOARD of ZONING APPEALS

**PETITION TYPE: SPECIAL EXCEPTION**

Property Owner(s): Malik Enterprise LLC,

Mailing Address: 51075 Quail Hollow Ct Granger, In 46530-6524

Phone #: [REDACTED] Email: [REDACTED]

Contact Person: Crystal Welsh Abonmarche

Mailing Address: 303 River Race Drive, Goshen, IN 46526

Phone #: 574-314-1027 Email: cwelsh@abonmarche.com

**Subject Property Address:** 1710 Leer Drive, Elkhart, In 46514

Zoning: Park Six PUD District with B-3 zoning standards

Present Use: Serenity Home Medical Equipment Proposed Use: Trade School and Office

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): Alessandra Malik, Member of Malik Enterprise LLC.

SIGNATURE(S): *Alessandra Malik* DATE: 5/1/2024

**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: \_\_\_\_\_ DATE: \_\_\_\_\_

**AFFIDAVIT IN SUPPORT OF SPECIAL EXCEPTION PETITION**

I, Alessandra Malik, 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 \_\_\_\_\_ Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 1 day of May, 2024.

Alessandra Malik  
Printed: Alessandra Malik

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.

Alessandra Malik  
Printed: Alessandra Malik

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

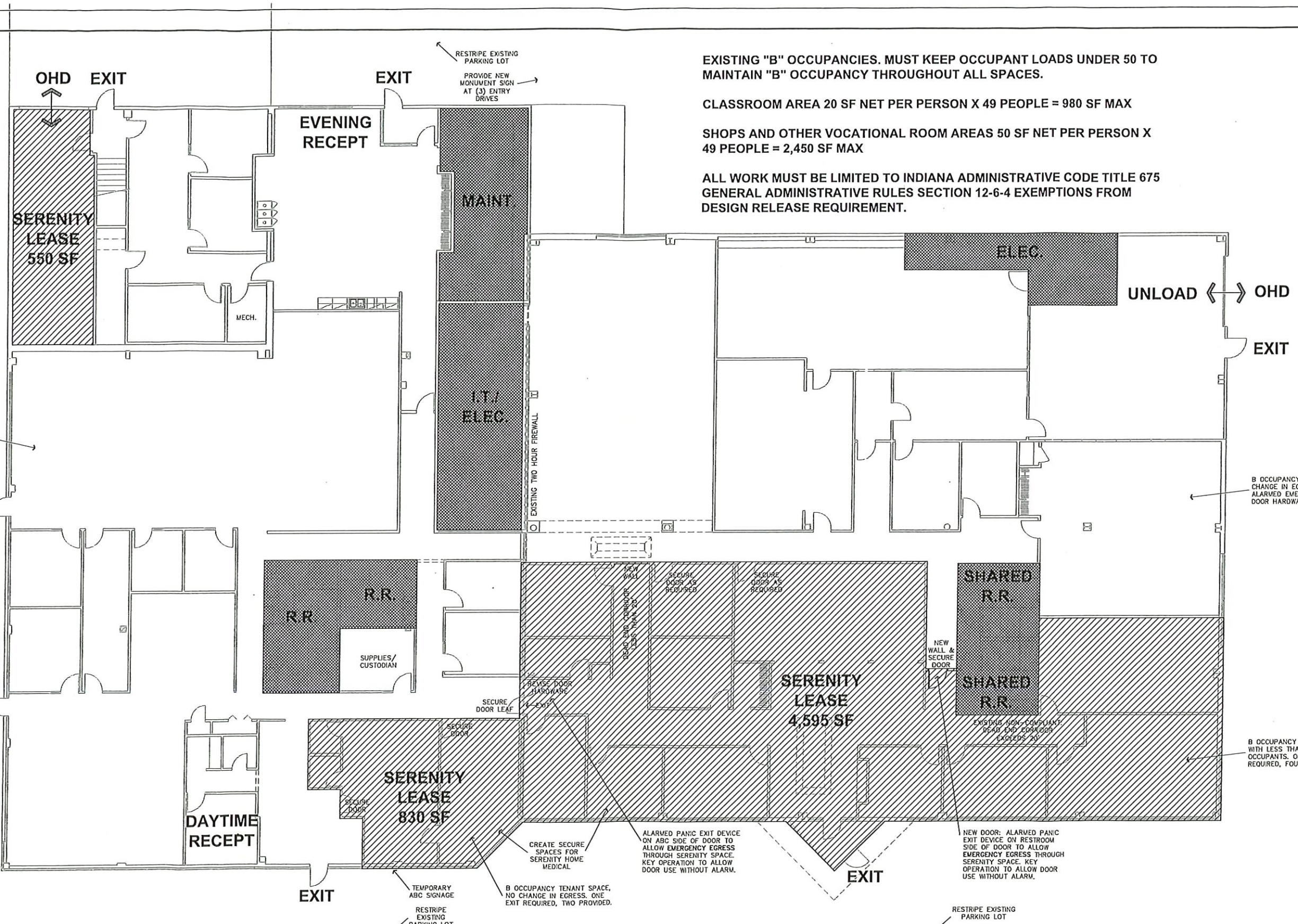
Before me the undersigned, a Notary Public in and for the State of ~~Indiana~~ <sup>Michigan</sup>, personally appeared Alessandra Malik, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 1 day of May, 2024.

FIDEL MIRELES JR.  
Notary Public, State of Michigan  
County of Berrien  
My Commission Expires Jun. 11, 2025  
Acting in the County of St. Joseph

Fidel Mireles Jr.  
Printed: Fidel Mireles Jr.

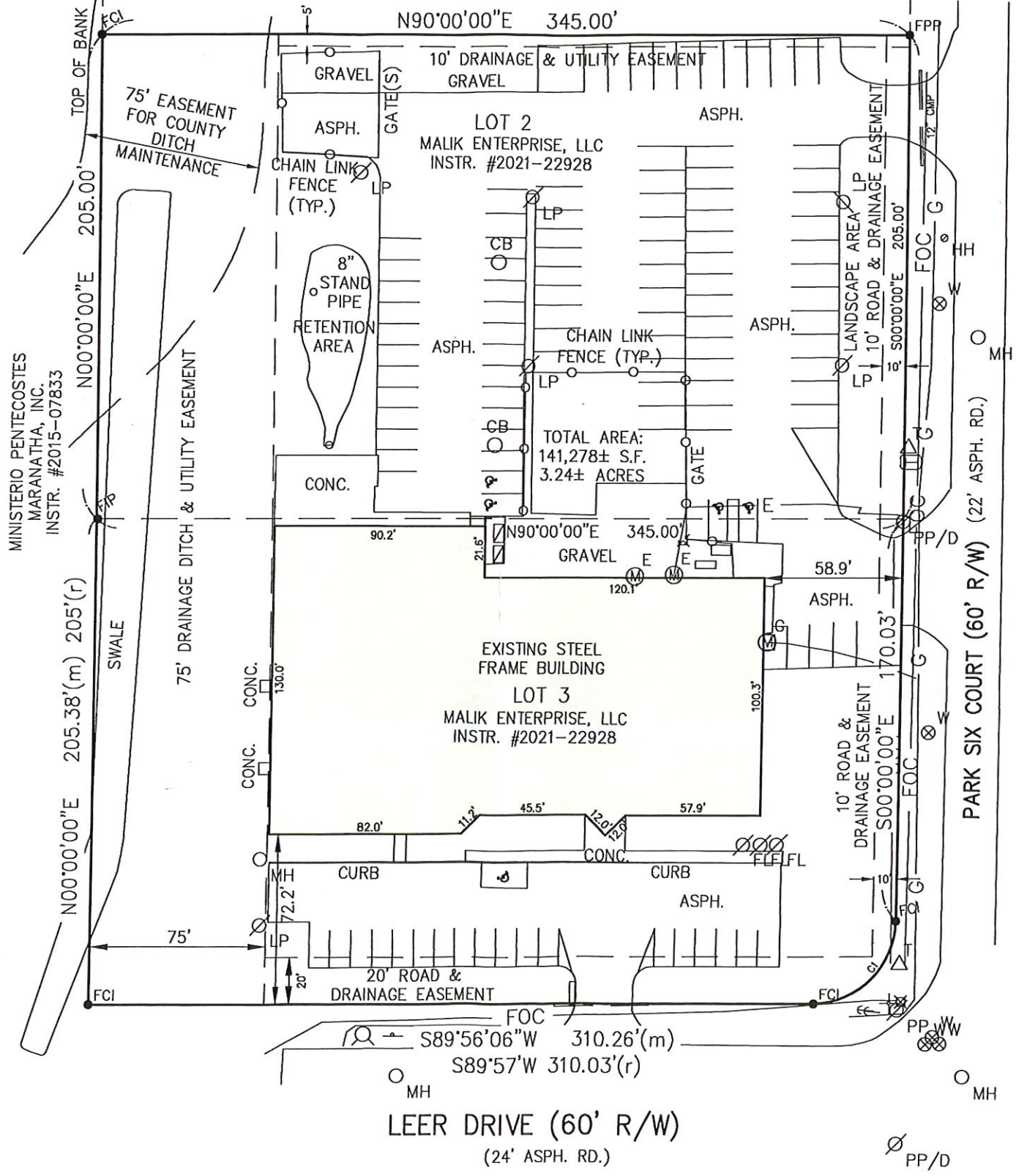
My Commission Expires:  
6-11-25

Notary Public in and for the State of <sup>Michigan</sup> ~~Indiana~~  
Resident of Berrien County, ~~Indiana~~ <sup>MICHIGAN</sup>



# SPECIAL EXCEPTION EXHIBIT

REPLAT PARK SIX P.U.D.  
 PLAT BOOK 17, PAGE 21  
 LOT 1  
 MILLER/HALL INVESTMENTS, INC.  
 INSTR. #2001-38234



**LEGAL DESCRIPTION**

**PARCEL 1:**

LOT NUMBER THREE (3), AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED REPLAT PARK SIX P.U.D. IN OSOLO TOWNSHIP; SAID PLAT BEING RECORDED IN PLAT BOOK 17, PAGE 21 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

**PARCEL 2:**

LOT NUMBER TWO (2), AS THE SAID LOT IS KNOWN AND DESIGNATED ON THE RECORDED REPLAT PARK SIX P.U.D. IN OSOLO TOWNSHIP; SAID PLAT BEING RECORDED IN PLAT BOOK 17, PAGE 21 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA.

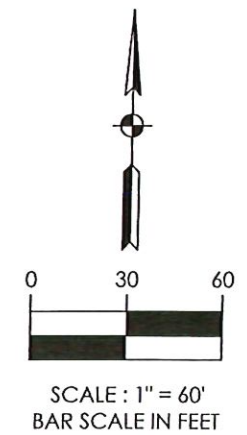
**PARCEL NUMBER:** 20-02-21-402-002.000-027 (LOT 2); 20-02-21-402-003.000-027 (LOT 3)

**ADDRESS:** 1710 LEER DRIVE, ELKHART, IN 46514

Curve #	Length	Radius	Delta	Tan
C1	54.95'	35.00'	89°57'	34.97'
C2	55.01'	35.00'	90°03'	35.03'

**LEGEND**

- FIP FOUND IRON PIPE
- FCI FOUND CAPPED REBAR "ABONMARCHE 0050"
- FPP FOUND PINCHED PIPE
- ▭ AIR CONDITIONING
- ⊙ LP LIGHT POLE
- ⊙ PP POWER POLE
- ⊙ PP/D POWER POLE W/DROP
- ▭ MAILBOX
- GUY ANCHOR
- △ T TELEPHONE PEDESTAL
- CB CATCH BASIN/INLET
- E ELECTRIC METER
- ⊗ BURIED CABLE MARKER
- ⊗ FIRE HYDRANT
- (d) DEEDED VALUE
- (m) MEASURED VALUE
- + SIGNS
- ⊙ FL FLAG POLE
- ♿ HANDICAP PARKING
- ⊙ FL FLAG POLE
- MH MANHOLE
- ⊙ G GAS METER
- ⊞ UTILITY TUB
- CHAIN LINK FENCE
- ASPH. ASPHALT
- CONC. CONCRETE
- ⊗ W WATER VALVE
- FOC FIBER OPTIC LINE
- G GAS LINE



**ABONMARCHE**  
 303 River Race Drive, Unit 206  
 Goshen, IN, 46526  
 T 574.533.9913  
 F 574.533.9911  
 abonmarcne.com  
 Engineering Architecture Land Surveying

LOTS 2 & 3 IN REPLAT  
 PARK SIX P.U.D.

SPECIAL EXCEPTION  
 EXHIBIT

SHEET TITLE:

DRAWN BY: **TRM**

DESIGNED BY:

PM REVIEW:

QA/QC REVIEW: **CMW**

DATE: **4/22/24**

SCALE:  
 HORZ: 1" = 60'  
 VERT:

ACI JOB #  
**24-0265**

SHEET NO.



# Staff Report

Planning & Zoning

---

**Petition:** 24-BZA-10

**Petition Type:** Developmental Variance

**Date:** June 13, 2024

**Petitioner:** Tom Shoff

**Site Location:** 2402 E. Jackson Boulevard

**Request:** To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

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

**Size:** +/- 1.19 acres

**Thoroughfares:** East Jackson Boulevard

**School District:** Elkhart Community Schools

**Utilities:** Available and provided to site.

**Surrounding Land Use & Zoning:**

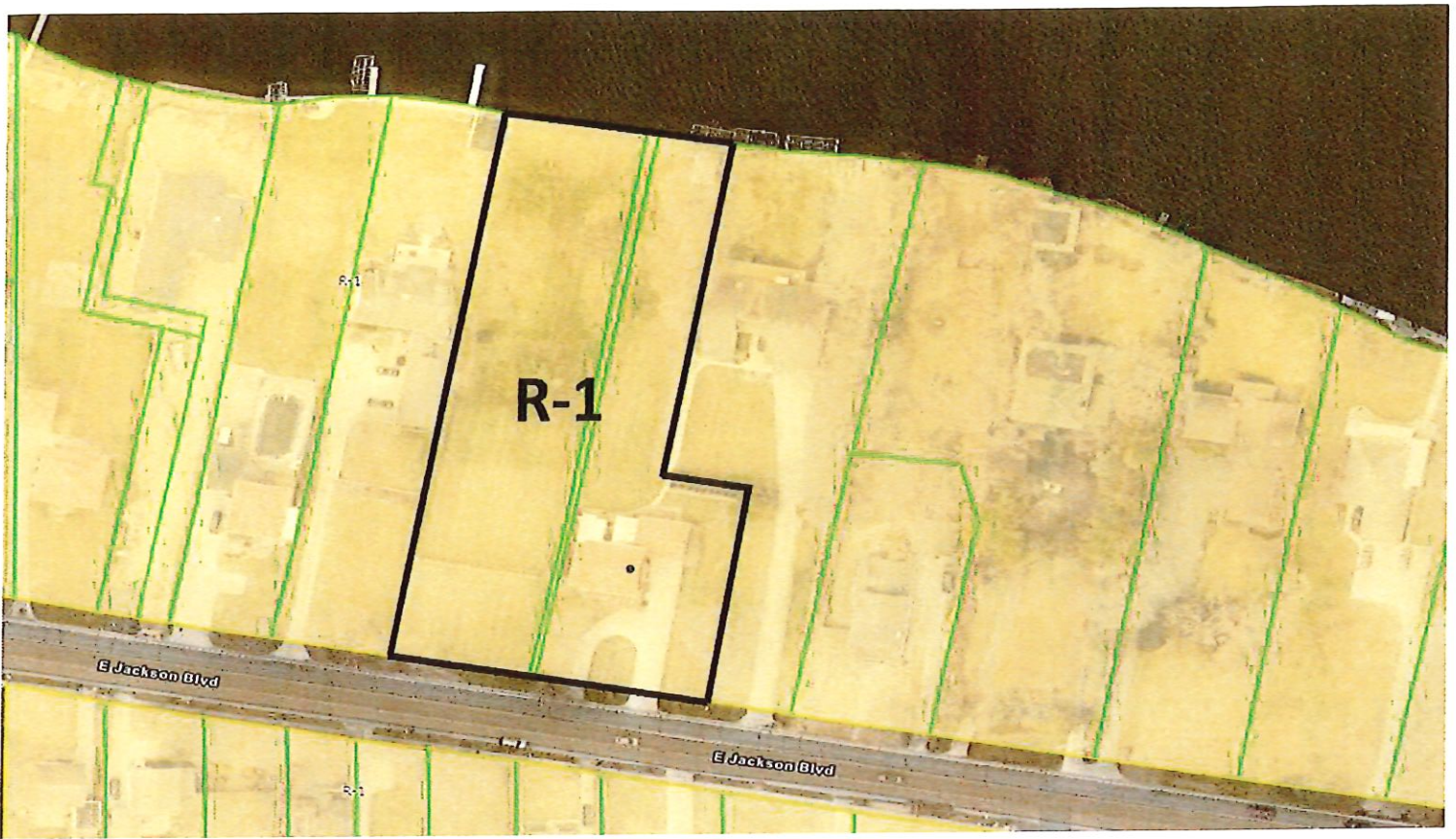
The surrounding properties are R-1, One Family Dwelling District.

**Applicable Sections of the Zoning Ordinance:**

Enumerated in request.

**Comprehensive Plan:**

The Comprehensive calls for this area to be developed as residential. The subject property is included in an area identified for residential use on the future land use map.



## Staff Analysis

---

The petitioner requests to vary from the requirements found Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. The in ground pool will have an automatic pool cover.

The home site is located along the St. Joseph River. Based on county tax data, the home was built in 1921 and is surrounded by single family dwellings. The petitioner is in the process of constructing an in-ground pool with an automatic pool cover. Prior to commencing construction, staff met with the petitioner to understand the scope of the pool project. At that time staff relayed the development requirements for in-ground pool construction. The proposal is to have a four (4) foot fence surround the rear yard where the pool is being constructed. The intent is to also have the river bank act as the fourth side of the fence as any person wanting to enter from the north side of the property would have to enter by boat or swim up to the bank – this request is similar to other developmental variance requests heard by this body.

After hearing the petitioner’s proposal, staff indicated a variance would be required. Staff at the same meeting shared the Planning Department is in the process of updating the current zoning ordinance. One of the regulations that would change is the pool development requirements. Although still in the draft form – the requirement would be for an in-ground pool with an automatic pool cover, a four (4) foot fence would be required. This proposed language will more closely mirror state code. It is anticipated that the new ordinance will have public hearings in the late fall.

Staff supports this request as it is similar to other water front developmental variances that this board has approved in the past.

# Recommendation

---

The Staff recommends **approval** of the developmental variance to vary from Section 26.1.C.3, Swimming Pools, which states “A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.” To allow for a perimeter fence that is four (4) feet in height and to allow for no fence along the St. Joseph River. based on the following findings of fact:

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



# Photos



PETITION #: 24-BZA-10

FILING FEE: \$ 200

**PETITION to the BOARD of ZONING APPEALS**

**PETITION TYPE: DEVELOPMENTAL VARIANCE**

Property Owner(s): THOMAS SHOFF

Mailing Address: 2402 E. JACKSON BLVD.

Phone #: [REDACTED] Email: TOM@SHOFF.COM

Contact Person: SAME AS ABOVE

Mailing Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Subject Property Address: 2402 E. JACKSON BLVD.

Zoning: \_\_\_\_\_

Present Use: \_\_\_\_\_ Proposed Use: \_\_\_\_\_

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): THOMAS SHOFF

SIGNATURE(S): [Signature] DATE: 5-3-24

**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: \_\_\_\_\_

2015-24417

ELKHART COUNTY RECORDER  
JENNIFER L. DORIO  
FILED FOR RECORD ON  
AS PRESENTED  
11/25/2015 2:31 PM

Metropolitan Title  
**WARRANTY DEED**

**Property Address:**  
2402 E. Jackson Boulevard  
Elkhart, IN 46516

**Tax Parcel No.:** 20-02-34-377-011.000-012

*This Indenture Witnesseth*, That **Rhonda J. Havlish, surviving spouse of Mark S. Havlish, deceased**  
*Convey(s) and Warrant(s) to* **Thomas C. Shoff**

for the sum of **Ten & 00/100 Dollars (\$10.00)** and other valuable consideration, the following described real estate in **Elkhart** County, in the State of **Indiana**:

A part of the Northwest Quarter of Section Three (3), Township Thirty-seven (37) North, Range Five (5) East, and a part of the East Half of the Southwest Quarter of Section Thirty-four (34), Township Thirty-eight (38) North, Range Five (5) East, in Concord Township, Elkhart County, State of Indiana, being more particularly described as follows:

Assuming the North line of East Jackson Boulevard to have a bearing of North 79°31' West; commencing at an iron stake where the North and South centerline of Section Three (3), Township Thirty-seven (37) North, Range Five (5) East, intersects the North line of East Jackson Boulevard; thence North 79°31' West, along the North line of said Boulevard, 979 feet to an iron stake for the beginning point of this description; thence South 79°31' East along the North line of said Boulevard, 142 feet to an iron stake; thence North 10°29' East at right angles with the North line of said Boulevard, 146.2 feet to an iron stake; thence North 77°53' West, along a fence set in concrete 92.65 feet; thence North 10°49' East along a fence set in concrete, a distance of approximately 234 feet to the St. Joseph River or lands of the Indiana & Michigan Electric Company; thence Westwardly along said river or said Electric Company's land to a point which is North 10°29' East of the place of beginning; thence South 10°29' West to the place of beginning.

EXCEPTING THEREFROM: A part of the Northwest Quarter of Section 3, Township 37 North, Range 5 East, in Concord Township, Elkhart County, State of Indiana, being more particularly described as follows:

DISCLOSURE FEE PAID

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

Nov 25 2015

PAULINE GRAFF, AUDITOR

5463

5.00

File No.: 4041-80809

Page 1 of 3

PW

Assuming the North line of East Jackson Boulevard to have a bearing of North 79°31' West; Commencing at an iron stake where the North and South centerline of said Section 3, Township 37 North, Range 5 East, intersects the North line of East Jackson Boulevard; thence North 79°31' West, along the North line of said Boulevard, a distance of 837 feet to the place of beginning of this description, said place of beginning being the Southeasterly corner of land conveyed to Ronald C. Hart and Deborah F. Hart (Elkhart County Deed Record 422, page 549); thence North 10°29' East, along the Easterly line of said Hart land, a distance of 146.2 feet; thence North 77°53' West, along a fence set in the concrete and along the Northerly line of said Hart land, a distance of 35.01 feet; thence South 10°29' West, parallel with and 35 feet Westerly of (measured at right angles) to the Easterly line of said Hart land, a distance of 147.18 feet to the North line of said Boulevard; thence South 79°31' East, along the North line of said Boulevard, a distance of 35 feet to the place of beginning.

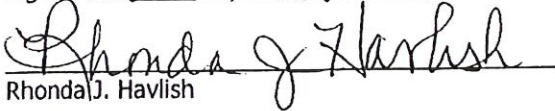
Subject to real estate taxes not yet due and payable.

Grantor certifies that the land described herein is the same land as that conveyed in the deed to the grantor herein, recorded as Instrument No. 91 005144. The description herein is corrected in accordance with the tax duplicate.

Rhonda J. Havlish, the grantor herein, states that she is the surviving spouse of Mark S. Havlish, deceased, with whom she acquired title to said premises described above as tenants by the entireties by a deed recorded April 2, 1991 in the Office of the Recorder of Elkhart County, Indiana, as Instrument No. 91-005144, and that this grantor, Rhonda J. Havlish, and Mark S. Havlish remained husband and wife continuously from the date they acquired title to said premises until the date of the death of Mark S. Havlish which occurred on November 13, 2007.

**Subject To** any and all easements, agreements, and restrictions of record, and to legal highways.

Signed this 23 day of Nov, 2015.

  
Rhonda J. Havlish

Acknowledgement

State of Indiana; Elkhart County:

Before me, a Notary Public in and for the said County and State, personally appeared **Rhonda J. Havlish**, who acknowledged the execution of the foregoing Warranty Deed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 23 day of November, 2015.

My commission expires:

Signature

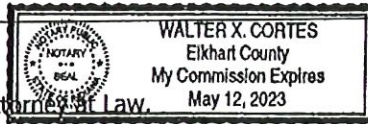
*Walter X. Cortes*

Printed

Notary Public

Residing in

County, Indiana



This instrument prepared by Jeffrey S. Harlan, Attorney at Law.

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.

WALTER X. CORTES

Name:

**Grantee's Mailing Address and Mailing Address for Tax Bills:  
(must be a street address)**

*Am...*

**AFFIDAVIT IN SUPPORT OF DEVELOPMENTAL VARIANCE PETITION**

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

1. I am over eighteen (18) years of age and am competent to testify to the matters contained herein.
2. I make this affidavit in support of my variance petition filed contemporaneously herewith.
3. I am now and at all times relevant herein have been, the owner of record of the property located at 2402 E. JACKSON Elkhart, Indiana.
4. FURTHER AFFIANT SAYETH NOT.

EXECUTED on the 3rd day of May, 2024.

[Signature]  
Printed: Thomas Shoff

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.

[Signature]  
Printed: Thomas Shoff

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ELKHART )

Before me the undersigned, a Notary Public in and for the State of Indiana, personally appeared Thomas Shoff, and acknowledged his/her execution of the foregoing. Subscribed and sworn to before me this 3 day of May, 2024.

W. Habri  
Printed: W. Habri



W HABIC, Notary Public  
Elkhart County, State of Indiana  
Commission Number NP0738657  
My Commission Expires January 23, 2030

My Commission Expires:  
01/23/2030

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

2024  
May 3<sup>rd</sup>, 2020

Board of Zoning Appeals  
City of Elkhart

Re: Developmental Variance

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

Tom Shoff is the owner of the following real estate located within the City of Elkhart, Concord Township, Elkhart County, State of Indiana, to-wit:

We are asking for a variance to up a four foot fence to enclose our swimming pool.

*Please see Exhibit A*

2. The above-described real estate presently has a zoning classification of R1 District under the Zoning Ordinance of the City of Elkhart.

3. Petitioner presently does occupy the above-described property.

4. Petitioner desires to install a four-foot fence.

5. The Zoning Ordinance of the City of Elkhart requires a Use Variance for this request, the plot is located in Section Z 6.1.C.3Req 6" fence

6. Strict adherence to the Zoning Ordinance requirements would create an unusual hardship because the city is in the process of updating the requirements for pool fences to more closely match the State regulations.

Standards:

7.1 The approval will not be injurious to the public health, safety, morals and general welfare of the community because an automatic pool cover will be installed as well as a four-foot fence.

7.2 The use and value of the area adjacent to the property will not be affected in a substantially adverse manner. because an automatic pool cover will be installed as well as a four-foot fence.

7.3 The need for the variance arises from the need to rezone the lot to allow for a four-foot fence.

7.4 The property will still provide a measure of security with a proper fence.

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

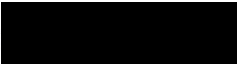
WHEREFORE, Petitioner prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Signature of Property Owner: 

Printed Name: TOM SHOFF

Contact Person: Tom Shoff

Address: 2402 E. Jackson Blvd, Elkhart, Indiana 46516

Phone: 

Email: [tom@shoff.com](mailto:tom@shoff.com)



Tom Shoff

---

From: Tom Shoff  
Sent: Wednesday, May 15, 2024 12:27 PM  
To: Tom Shoff  
Subject: 2402

Follow Up Flag: Follow up  
Flag Status: Flagged

