

**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 SHAM 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, 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. Lastly, 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 Shoff would help manage it as a volunteer. Shoff says he and Stacy Shoff have jointly managed the River Queen for the last eight years and the HERQ is a non-profit organization that was formed in 2015 with its own 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 a buffer zone between the parking lot and Nancy Pletcher. Shoff says that besides 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 the petition would reduce chances for accidents and injury by managing the safety part, 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.

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 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. Mahafey 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 then says that Bowers Court is a dead-end street seldom traveled except for the boat traffic during the season. Smith alleges that 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 claims 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...( Unintelligible, 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 have 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 a sixth grader who love Premier Arts Academy. She says her eldest child attended public school but has done better where they are now. Shultz 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 ensure easements were 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 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.

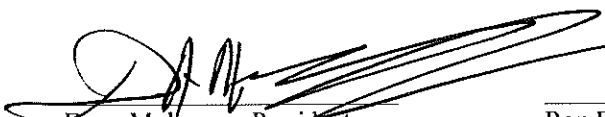
Evanega Rieckhoff makes motion to approve 24-X-02 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopting all conditions listed in the staff report; Second by Davis.

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

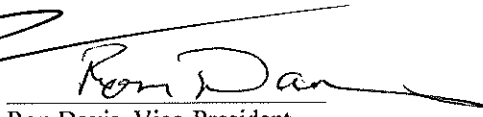
Motion carries.

**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