

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, April 11, 2024 - Commenced at 6:00 P.M. & adjourned at 7:22 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney
Ron Davis
Janet Evanega Rieckhoff

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

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

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AMENDED AGENDA

Amendment to the agenda to table 24-UV-04, 24-BZA-06, and 24-UV-07
Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the April 11, 2024 meeting of the Elkhart City Board of Zoning Appeals. There will be video comment through WebEx only.

The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the board. If no decision is made, the petition will be set for another hearing.

If a decision is made that you disagree with, either as the petitioner or an interested party, you must file for an appeal of the Board's decision in an appropriate court no later than 30 days after the decision is made. If you think you may potentially want to appeal a decision of this Board, you must give this Board a written appearance before the hearing. Alternatives: A sign-in sheet is provided which will act as an appearance. You should sign the sheet if you want to speak, but also if you do not wish to speak but might want to appeal our decision. Forms are provided for this purpose and are available tonight. A written petition that is set for hearing tonight satisfies that requirement for the petitioner. If you file your appeal later than 30 days after the decision of this Board or give no written appearance tonight you may not appeal the Board's decision. Because the rules on appeal are statutory and specific on what you can do, the Board highly suggests you seek legal advice. If you are the petitioner, in addition to filing an appeal, you may first file a motion for rehearing within 14 days of the Board's decision.

OLD BUSINESS

24-BZA-03 PETITIONER IS NANCY SHAUM

PROPERTY IS LOCATED AT VACANT-LOT TOLEDO RD - 06-11-251-013

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

Mulvaney calls the petitioner forward.

Terry Lang appears in person on behalf of the petitioner. Lang says the petition is for a rear yard variance, and he has met with the Planning and Engineering departments on the position of the building. He states that following the required 20-foot rear yard setback would eliminate extensive parking for using the B-2 site. Lang says the neighboring property north of the site is the AEP industrial-type warehouse where transformers and cables are stored. He then states they are asking for the variance because they want to slide the building back 10 feet to the north.

Mulvaney asks for questions from the Board.

Mulvaney asks Lang if the building being built has a tenant.

Lang answers that the proposed building does not have a tenant.

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

STAFF ANALYSIS

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

The site is located on Toledo Road, an arterial road within the city. The proposed building, again submitted with the request, has no end user and use is still unknown. Subsequent to the second filing, representatives from both planning and engineering met with the owner and representative. From the City's perspective, we wanted assurances of the type and level of quality of construction to expect at the property in question. The petitioner assured Staff the building would be quality and an asset to the City. The petitioner also understands the uses allowed within the list of permitted uses in the B-2 District.

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

The Toledo Road corridor effectively serves as the southern boundary of the Corporate limits in this area connecting the City to the US 20 bypass, with a mix of City and County properties fronting on the road. Land uses in the corridor between Goshen Avenue and Middleton Run Road is characterized by a mix of commercial, industrial and multi-family uses. Land Uses east of Middleton Run Road, where the subject property is located, become less intense, with a larger presence of lower density single-family residential and small office uses. While the Comprehensive Land Use Plan does call for Industrial Use at this site, the character of the uses immediately surrounding the subject property are not conducive to manufacturing or production uses, but would be better suited to supporting neighborhood or community business uses.

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 reduced Rear Yard Setback will not place the proposed structure at an unsafe distance from surrounding structures,
2. The use and value of the area adjacent to the property **will not** be affected in a substantially adverse manner because the rear yard abuts a large campus occupied by Indiana Michigan Power;
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 particular to this property as the proposed building could not be constructed within the required development standards;

5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property as it the parcel may not be of sufficient size to accommodate some of the potential B-2 uses such as: appliance stores, dry cleaner and laundry, indoor recreation and liquor stores are examples of uses requiring larger footprint building approved within the B-2 uses;
6. The special conditions and circumstances do result from an action or inaction by the applicant as the proposed building design is driving the request for the variance;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

If the Board chooses to approve the requested developmental variance, Staff recommends that the following condition be placed upon the approval:

1. The petitioner shall submit plans for review and approval at Technical Review for the site and proposed façade elevations.

Huber states that 12 letters were mailed, with zero returned in favor and one returned not in favor with no comment.

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

Davis asks Huber why the Council failed to second the motion.

Huber answers that he is assuming the Council followed the Staff's advice, which was recommended for denial.

Evanega Rieckhoff states that it was a different petition in which the petitioner was asking for a rezoning, whereas now they are asking to move the proposed building back so it's closer to the property line.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-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 and adopt all conditions listed in the staff report; Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

NEW BUSINESS

24-X-03 PETITIONER IS NM VYT, LLC (d/b/a Voyant Beauty)

PROPERTY IS LOCATED AT 1919 SUPERIOR STREET

A Special Exception per Section 18.3.L, Special Exception Uses in the M-1, Limited Manufacturing District, for the storage of any liquid or gas in excess of 10,000 gallons, to allow for the addition of 2 – 10,000 gallon tanks and 2- 5,000 gallon tanks.

Mulvaney calls petitioner forward.

Brian McMorrow appears in person on behalf of the petitioner. McMorrow says he was retained last fall to prepare site plans in connection with a proposal from Voyant to construct a building expansion on the back of the existing building. The building would be about 60,000 square feet to increase the plant capacity of the product that has been manufactured. McMorrow stated that his firm prepared site plans and submitted them to the city last month. He then says he met with engineering staff to review the tech review comments that Staff had written. He says that last December, he met with Eric Trotter, Mike Huber, and other staff members to introduce plans for the expansion. During the meeting, Eric Trotter had asked if there would be any chemical storage tanks as part of their proposal. McMorrow confirmed there would be, so he says he was directed to apply for a Special Exception request to appear before the Plan Commission and Board of Zoning Appeals. McMorrow says it's appropriate to go through the process because Voyant has been conducting business in the facility for about 25 years. This opportunity would allow them to provide the city with complete inventory listings of all on-site storage tanks. He says the packet information that was submitted to the Board includes not only a site plan but also a list of all 19 storage tanks that are in the facility. The ones highlighted in red are the proposed new ones that will be included in the expansion. McMorrow reiterates that the purpose of the expansion is to increase capacity, and they are not introducing any new chemicals that are not already in use in the facility.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks McMorrow if there will be two new 10,000-gallon tanks in addition to the eight existing ones.

McMorrow answers that that is correct.

Evanega Rieckhoff asks McMorrow if there will be two new 5,000-gallon tanks in addition to the six existing 5,000-gallon tanks.

McMorrow answers yes.

Evanega Rieckhoff states that it's important to remember that several tanks are already on the premises.

Evanega Rieckhoff asks McMorrow if new jobs are provided with the expansion.

Eric Collins appears in person on behalf of the petitioner. Collins answers that Voyant will be hiring 10 additional people per shift, for a total of 30 new jobs.

Mulvaney asks Collins if one of the proposed four tanks will be bulk water.

Collins answers yes.

Mulvaney asks Collins what specific chemicals will be in the other proposed tanks.

Collins answers that the end product is an aerosolized room spray, and the customer owns a lot of that information. Collins then says the property has alcohol tanks as well as water tanks, so most of what's in the proposed tanks will be a combination of those two ingredients.

Mulvaney asks Collins if the proposed tanks would have everything mixed.

Collins answers yes.

Mulvaney asks if the bulk alcohol will be used to create the powder mixture.

Collins answers yes.

Mulvaney asks Collins if there are any risks with flames or explosions with the tanks.

Collins answers no, and when talking about alcohol and its flash point, the room itself is with the electrical and other components in it that are protected against that flash point, so the risk is relatively low. Some tanks are about 15 years old; others were added in 2014.

Evanega Rieckhoff asks Collins how long they have had tanks in that building.

Collins answers that he has been employed with Voyant for around ten years, so he knows that before Voyant, it was Custom Products, which was sold by Kick, which Kick bought from White Haul Industries.

Evanega Rieckhoff asks Collins if they have ever had any spillage or any explosion.

Collins answers no, not at that address.

Davis asks Collins if any additional safety measures will be put in place.

Collins answers yes, and they already have safety measures in place that will be expanded to where the tanks will be. Collins says that a lot of it has to do with the vapors, so as the alcohol gets added, if vapors are detected, alarms will be set off. This would shut off any alcohol being fed into the tanks until the problem can be assessed.

Evanega Rieckhoff asks Collins...(unintelligible, off mic).

Collins answers yes.

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

Dale McDowell appears in person in opposition to the petition. McDowell says he is the president of the Riverview Association and has lived there for over 60 years. He states that some of the people in his neighborhood are concerned about how the request was written. McDowell says he was not far away when an explosion occurred at Accra Pac, so there would be concerns naturally. He says that in the variance request, the petitioner is asking for several liquid and gas tanks, so he would like to ask if there will be LP gas in the building.

Collins answers...(unintelligible, off mic).

McDowell then asks Mulvaney if additional variance requests can be added to existing ones.

Mulvaney answered no, and the Board would have to approve any changes or new proposed projects if the petitioner made them.

McDowell states that he is still concerned for the neighborhood, the school, clinic, daycare, and adult daycare. He says that after what he saw years ago, he does not want to bring the project into the neighborhood and put anyone in that situation.

Susan Gingaman appears in person in opposition to the petition. Susan says she lives across the street from the factory. She says she has lived at her home for 66 years and was brought up there. She said that when she was a little girl, her parents told her that the property was safe for wildlife. Additionally, she says the public notice sent out did not say anything about the add-on to the factory. Susan says that if they are going to be asking for more flammables, then obviously, they are going to build a building. She also states that she asked a guy who was working on the property what kind of project they would be working on, and the worker told her that he was marking where the new factories would be extended. Susan says that when she looks out the kitchen windows, she will see a factory in front of her house. She then states that traffic there is terrible and has complained to the city before because the ballpark and skating park also bring in much traffic. Susan is concerned that although the skating park is for kids, some adults use it who are not from there. She says she found an empty McDonald's bag with a receipt from Mishawaka as proof that outside traffic congested the area. Susan then states that she went to the library for two hours, receiving much information about when Accra Pac exploded. She says she believes it was two buildings that the explosion had affected. Next, she says that Voyant used to be White Haul, and then it was Accra Pac, but she says she believes they are all the same, just different owners. Susan fears water contamination and another explosion. She states that when the building exploded, 19 emergency responders were burnt the first time around, so it's a common sense decision to have additional tanks in the neighborhood. She then says that every year, she asks the city to paint some marker to alert drivers that there is a school nearby so that people are aware of slowing down for kids. Gingaman stated that the city repaved Superior, which was done two years ago. Curbs and sidewalks were also installed so the city knew what was forthcoming. Gingaman says a neighbor told her it was all politics, and the city had already decided.

Craig Gingaman appears in person in opposition to the petition. Craig says he received the letter Monday about building the new factory and adding two 10,000-gallon tanks and two 5,000-gallon tanks without saying what is in them. Craig acknowledges they have to have a propellant, and he knows Voyant sells pressurized cans, which are propellants. This could cause a fire and explode. He then says that the field is not supposed to be built up as it is city-owned, and its use is reserved for wildlife, so he needs to understand how that happened. Craig states that no one was advised about the new building and was given short notice. He says he is underprepared, given that he was notified of the structure on Monday. He says another reason why he is against it is because there is too much traffic with the school and parks nearby. With the addition the factory is proposing, he says there will be a parking lot in front of his house, which was supposed to be for wildlife.

Susan asked the Board how many letters had been sent out within a 300-foot radius.

Mulvaney answers that Eric Trotter will tell them how many letters were sent.

Susan says that not everyone received a letter, that the radius only extended three houses back on her street, and that it was the same on the next street. She also says no one at the school was notified of the request either. Susan then asked what 10,000 gallons of fuel would be created if it exploded, especially with the number going up to 40,000 gallons.

Mulvaney answers that they are chemicals, not fuel.

Susan states that that's what it says in the letter they received.

Mulvaney asks if the petitioner's representatives want to address the public's concerns.

Collins says the tanks will not contain gas. The liquid will go into a can, which would be charged with a propellant, which is strictly nitrogen-based. Collins says there is only one propellant on site.

Craig states that it has to be stopped before there is an accident...(unintelligible, off mic).

Mulvaney asks Craig if he realizes eight existing tanks are already on the property.

Craig answers yes. However, it's down the street, and their building blocks the existing tanks.

McMorrow says that based on what he has heard, there appears to be some confusion about the flags. When looking at the site plan, the building that is being proposed is behind the existing structure, so the green field that exists out there will not change in any way. The flags being marked on the property are merely survey flags that indicate the limits of the property.

Susan says that McMorrow's statements help a lot.

Craig says his letter was the first notice he received, and he needed to know where the new building would be placed.

McMorrow says the letter did not come with a site plan, so it would be difficult to know. However, he is glad he can clarify.

Evanega Rieckhoff asks McMorrow if the new structure will be between the factory and the railroad tracks.

McMorrow answers yes.

Collins asks McMorrow if the new building is behind the present building.

McMorrow answers yes, it would be, and no change is proposed to the original building. All of the planned building expansion is behind the parking lot. To be clear, he says the Board is not approving the building expansion. It's subject to a site plan review and carefully reviewed by the engineers and the planners.

Susan states she spoke with Eric Trotter and asked him when the field was sold. If the field is part of the petitioner's property, she was told the city sold it. If that happened, she wonders if the buyer was ever informed that the field must remain since it's designated for wildlife.

Mulvaney states that when Staff comes forward, the Board can ask about the status of the property.

Evanega Rieckhoff states that the field is not part of the project.

Susan says that is right, but the public notice needed to be more precise than what was sent. Additionally, now that McMorrow showed her the site plan, she says there is a nearby daycare, close to where the tanks will be. Also, years ago, the city said the traffic was crazy there so that Simpson Street would be expanded.

Evanega Rieckhoff states that the project will add 30 new jobs, so there may be new traffic with the additional hired people, but some of those people will be staggered with each shift.

Craig asks McMorrow where the tanks are going to be placed.

McMorrow answers that the tanks listed and the ones being proposed...(unintelligible, off mic). McMorrow says four tanks will go behind the building in a cross-hatched area. There are anywhere between 16 and 18 tanks throughout the building today.

Susan says water contamination is also a concern of hers too.

Greg Deisenroth appears in person in opposition to the petition. He says he has lived in the area since 1959, so he knows what happened with Accra Pac. The city at the time sent every piece of fire equipment available to fight the fire. During that time, it was promised that the owner of Accra Pac would be able to install two 50,000-gallon LP tanks. Deisenroth says those are bombs and was able to vote that down. Deisenroth states that people were assured that everything would have modern fire suppression and mediation procedures. He says it's unfortunate that a company that comes in every ten years wants to occupy the building for a specific reason. He then states that the area now has a school, health center, and ballparks, and hopes everything goes smoothly. He says he understands that the representatives are saying they will not use compressed LP gas and only water and alcohol. However, LP gas is the go-to for compressed aerosol cans. Next, he states that he has been handling hazardous materials for most of his life, so he has a wealth of knowledge. He says he hopes the petitioner will not put compressed LP Gas in there. It's too dangerous, and he would like to see the tanks on the outside of the building. He hoped that the explosion and shockwave would go toward the railroad or the NipSCO property if there were ever to be an explosion. He says he understands that he is within 300 feet of the property; however, with a combination of 30,000 gallons, he and others would be in danger, so he hopes the petitioner keeps their word. Deisenroth lastly says that traffic routes should enter on the southwest corner off of Simpson, not up to Superior Street, so he wants to keep a handle on things so that the petitioner operates safely.

Kathy Deisenroth appears in person to state that the semi-trucks come down their street and tear the wires off her and her husband's house. Once, they tore off their house siding and were concerned that there would be even more issues with the expansion. She says the truck traffic needs to stay at the back of the business, where they go onto Simpson Street and then turn onto Middlebury Street.

Evanega Rieckhoff states that, unfortunately, the Board cannot do anything about that. However, Eric Trotter can help and discuss their issues with them.

Bob Barnes appears in person and says he is present because neighbors who received the letters went through the neighborhood like Facebook. He states that he has questions because he worked at the White Haul plant and is unsure if the air handlers are still there. Nonetheless, the previous tenant had chemicals on the southwest corner of the building where the bottles were packaged. Barnes says it was all explosion-proof there, and there were many flammables when it was White Haul. He says he was not there when other occupants were in the building. He wants to know about an emergency response plan, how neighboring properties are notified, and how possible evacuations are handled. Barnes states that nitrogen-based gasses are not flammable but wants to know if any of the chemicals are hazardous. Other than that, Barnes says he believes the petitioner is doing a fine job because he knows people who work with them, and they commit to good work practices in manufacturing and handling flammable liquids. Nevertheless, if the representatives could answer his questions, he would like to know their answers.

Mulvaney asks if the representatives could address their emergency response plan and specifics on tank spill protection.

Collins says that the emergency response plan exists, but he only knows some of its extent because it would be with their ESH department. He says he knows it's in place, and it calls for contacting emergency services, who is in charge, and who gets contacted if a situation arises. To address the other question, Collins says the tanks will be embedded into a six-foot bottomless pit, and any spillage will be accounted for and collected there.

Mulvaney asks Collins if that would comply with federal and state laws.

Collins answers yes and says existing tanks on the property also have pits, which would keep that standard.

Barnes says that if the petitioner installs the tanks in pits, anything that spills will be contained, so he has no concerns.

Cindy Goff appears in person in opposition to the petition. Goff says that everyone has touched on everything she wanted to say. However, her main concern remains the proximity of the school. She says there have been explosions at the location with previous tenants. She says the latest incident was about seven years ago, but when it happened, she was walking her dog when it happened on the dock where trucks are loaded. She says that although the incident was contained quickly, the risk of it still concerns her, especially with kids and a ballpark being so close.

Glenn Miller appears in person in opposition to the petition. He says he has lived across the factory for over 30 years. Miller states there is a tremendous amount of truck traffic, and his concerns are about the tankers that come during the night. He wonders if the trucks are hiding something. Miller then says that truck traffic is ridiculous, especially since the entrance to the facility is poorly marked, and the semis have to stop on Superior Street. Miller says he has to direct the truck drivers where to go because the signs are poorly marked. He says he understands that the Board cannot address traffic issues. However, he asked the Board if they could make it a requirement as a part of the petition because it's tearing up the road and ties up traffic. He says he knows the road was not made to handle that size of vehicle. Miller added that even though he lives across the street from the factory, he received the letter everyone else did when the neighbor gave him a copy of one.

Elizabeth Bond appears in person and states that 24 years ago, Accra Pac appeared before the Board requesting large LP tanks. There was a neighborhood gathering, and it turned into an organization called CORP, which stood for Citizens Organized for Residential Protection. A year ago this month, she said there was a hearing in front of the Board, and the residents won the case, but the petition was turned down. Bond says she is neither for nor against the petition, but she wants to let the Board know that there is sensitivity with the placement of the building. Bond states that the building should have never been built there, but it is, so she wants the Board to understand its history. She says she wants them to realize that there has been a long history of that type of business in the area, and it draws concerns from neighborhood residents. Bond says she hopes the project is safe and that they can guarantee the neighborhood that it is secure and will not cause harm. She says she knows they will go out of their way for safety. However, human error is a factor, so the petitioner must ensure they are careful with their work.

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 for the addition of four (4) new tanks as a part of an expansion project at the Superior Street facility. The petitioner, d.b.a. Voyant Beauty, is a manufacturing and packaging plant for aerosol blend configurations and specialty viscous liquids in bottles, tubes and jars; for use in hair, body, face, sun and natural formulations.

The plan is to add additional product lines to increase capacity. The tanks are proposed to be used as a part of the product line expansion. No new chemicals are being added – just additional capacity. Based on plans submitted to the City for review, the tanks will be contained within an enclosure that will have a drain connected to the existing monitored sanitary sewer line, should the tank need to be drained.

The construction plans have been submitted for review and approval at Tech Review for a +/- 60,000 square foot addition on the south side of the current building on Superior Street. This addition is adjacent to the Norfolk Southern Railroad.

STAFF RECOMMENDATION

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

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected because all tanks will be built per all applicable codes, located within the building and have the necessary floor drains connected to the sanitary sewer system;
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the additional tanks will not change the use of the property and will not impact the adjacent uses;
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because the tanks will not generate adverse effects on adjacent properties with noise, emissions or vibrations.

Trotter states there were 56 letters mailed with zero returned in favor and one returned not in favor with no comment. There were three telephone calls not in favor and an email from Richard Bond, in which he asked for some expansion or clarification on the meeting record as to the nature of the liquids being stored and permitted to be stored in the new tanks. He says the petition indicates that one 10,000-gallon tank will be bulk water storage, but the other tanks list some numbers and letters for the contents. Then, asking specifically, do the liquids intended to be stored, or permitted to be stored, have volatile, hazardous, flammable, or explosive characteristics? For context, recall the high-profile LP bulk storage tank permitting matter involving Accra Pac from 20+ years ago at this location. He concludes by saying that the Riverview neighborhood remains sensitive about the nature of industrial operations that are bordering it to the south.

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

Mulvaney asks Trotter who the appropriate authority would be to address traffic concerns.

Trotter answers that it would be the engineering department, and he would relay those concerns.

Mulvaney calls for a motion.

Davis makes motion to approve 24-X-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 Evanega Rieckhoff.

Davis – Yes

Evanega Rieckhoff – Yes

Mulvaney – Yes

Motion carries.

**24-UV-06 PETITIONER IS JAMES RUPRIGHT
PROPERTY IS LOCATED AT 2020 INDUSTRIAL PARKWAY**

To vary from Section 18.2, Permitted Uses in the M-1, Limited Manufacturing District to allow for the property to be used for a daycare center. Daycare Centers are not allowed by right in the M-1 district.

Mulvaney calls petitioner forward.

Trishana Wright-Middleton appears in person on behalf of the petitioner. She states that she operates a licensed childcare center in the South Bend area. She says she is petitioning for the location to be a high-end upscale childcare center in Elkhart.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff states that Trishana must do much work on the building. However, the good thing is that there will be a lot of children in the building.

Evanega Rieckhoff asks Wright-Middleton how many children she will be taking care of.

Wright-Middleton answers that it will be between 150 and 200 children.

Mulvaney opens for public comments to speak in favor.

James Rupright appears in person in favor of the petition. He says Elkhart General Hospital used the building for classes, and it is mainly empty office space.

James Middleton appears in person in favor of the petition. Middleton states that another reason to support the petition is the economic benefits for the community. Along with employment, he says people need to think about better serving the community's children, and it's a great opportunity.

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 industrial building at 2020 Industrial Parkway to be a daycare center. Based on Assessor's records the building was built in 1967 and is just under 30,000 square feet in area and is sited on a 3.37 acre parcel. The operator of the daycare center will lease the building with an option to buy at a later date. The proposed age range of children cared for onsite, will be newborn to 12 years of age. In speaking with the potential operator, she plans on having ultimately 150-200 children and around 100 staff. Utilizing aerial photographs, Staff determined the current parking area would accommodate approximately 106 parking spaces.

Planning Staff, building and fire inspectors toured the facility at 2020 Industrial Parkway on April 5, 2024. During the tour a number of observations were made – the concrete block building had a large number of classroom sized rooms as well as several larger open space areas that would be well suited for indoor play equipment and open space for children. The building had a large kitchen area that is intended for warming only. There were three (3) sets of restrooms. At least one (or otherwise as specified by the State) will need to be modified with smaller fixtures to accommodate children.

It was apparent that much of the building's carpet would either need to be replaced, cleaned and/or removed entirely. Many of the ceiling tiles (there is a dropped ceiling in most of the building) will need to be replaced. As the building was most recently a small manufacturing company, the walls will also need to be repaired and painted to restore the walls. They look to have been damaged from likely moving furniture out of the building. In the past the building was previously owned by Elkhart General Hospital for some sort of medical and office use.

Based on the building tour, Fire Department inspectors relayed necessary and critical information to the operator. A plan would need to be developed meeting Chapter 34 of the Building Code to ensure the occupancy requirements are met as the functional classification is changing. Those plans will need to be signed and sealed by a by a design professional willing to certify the plans and submitted to the State for review and approval.

Staff recognizes there is a critical need for additional daycare facilities. The location of the building would seemingly allow those individuals who work in this and surrounding industrial parks an opportunity for child care within close proximity of their workplace.

The daycare operator shall be required to obtain licensing per Indiana Code 12-17.2. 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 be required to be modified to the current building code requirements as well as any condition or stipulation required by the State of Indiana Family and Social Services Administration, Office of Childhood and Out of School Learning;
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 as a daycare center most all activities will occur indoors and would be an asset as this facility would provide a needed service for the workers in the area;
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 with many offices and open spaces which lends itself reasonably well to the proposed use. Most contemporary industrial users require much more ceiling height and open area for production;
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.

CONDITIONS

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

1. The petitioner shall submit plans for building renovations to the State as per Chapter 34 of the Building Code. The petitioner shall also obtain permits for any work performed on the premises from the City of Elkhart.
2. All children shall be restricted to the building or any future exterior fenced-in play area except when arriving and leaving.
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. Any exterior display, signs, or other forms of advertising on the premises shall be required to obtain a zoning clearance prior to installation. Signage is required to be installed by a bonded sign contractor.
6. A copy of the child care license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
7. If the daycare ceases to operate for more than one (1) year, or the license is revoked, the Use Variance becomes null and void.
8. Any violation of the terms of this Use Variance as determined by the City Zoning Administrator shall render the Use Variance invalid.
9. The number of children to be cared for at this location will be calculated by the Indiana Family and Social Services Administration.
10. Pickup and drop-off shall occur onsite and any after care bus drop-offs must take place onsite and not from the public right of way.
11. The Use Variance is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by April 11, 2026.

Trotter states there were 22 letters mailed with one telephone call returned not in favor with no comment and two returned not in favor with comments. The first one reads that the area is unsafe and has industrial noise, and it's close to railroad tracks. The second one says the building on the east side of 2020 Industrial Parkway has semi's that come in and off all day long, pulling next to the proposed daycare. Another concern is that traffic in front of the property can be dangerous since drivers are arriving late to their jobs, and often speed fast past businesses. The same is said when those workers get off of work when they are in a hurry to arrive home and are driving way too fast.

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

Mulvaney calls for a motion.

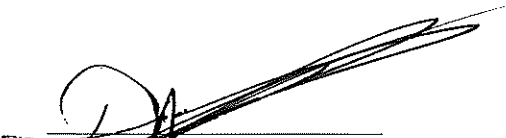
Evanega Rieckhoff makes motion to approve 24-UV-06 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Davis.

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


Motion carries.

ADJOURNMENT

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



Doug Mulvaney, President



Ron Davis, Vice-President