

**BOARD OF ZONING APPEALS**

**-MINUTES-**

**Thursday, July 11, 2024 - Commenced at 6:00 P.M. & adjourned at 7:01 P.M.  
City Council Chambers – Municipal Building**

**MEMBERS PRESENT**

Doug Mulvaney  
Ron Davis  
Janet Evanega Rieckhoff  
Phalene Leichtman (via Web-Ex)  
Dan Boecher (Proxy)

**MEMBERS ABSENT**

None

**REPRESENTING THE PLANNING DEPARTMENT**

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

**LEGAL DEPARTMENT**

Maggie Marnocha

**RECORDING SECRETARY**

Hugo Madrigal

**APPROVAL OF AMENDED AGENDA**

Mulvaney moves to approve an amended agenda and tabling 24-UV-04, 24-BZA-06, and 24-BZA-12.  
Davis makes motion to approve; Second by Evanega Rieckhoff. Voice vote carries.

**APPROVAL OF MINUTES FOR APRIL 11, 2024**

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

**APPROVAL OF PROOFS OF PUBLICATION**

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

**OPENING STATEMENT**

Welcome to the July 11, 2024 meeting of the Elkhart City Board of Zoning Appeals. The purpose of this meeting is to review and consider all requests for relief from any standard in the Zoning Ordinance including variances, use variances, special exceptions, conditional use requests, and administrative appeals. All of the cases heard tonight will have a positive, negative, or no decision made by the Board. If no decision is made, the petition will be set for another hearing.

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

**OLD BUSINESS**

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

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

Trotter states that since there was a lack of a majority vote last month, Staff suggests that if the municipality reconstructs the public right of way, the homeowner will not object to installing public sidewalks as a part of the project. Trotter says that if the Board approves the request, Staff offers a condition that if the municipality reconstructs the public right of way, the homeowner will not object to installing public sidewalks as part of the project.

Mulvaney calls the petitioner forward.

Mark Sharp and Collette Sharp appear in person as the petitioners. Mark states that he has no objections to the condition put forward by Staff.

Mulvaney asks for questions from the Board.

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

**STAFF ANALYSIS**

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

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

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

As a compromise to the lack of majority vote last month, Staff offers this suggestion - In the event the municipality undertakes a reconstruction of the public right of way, the home owner will not object to the installation of public sidewalks as a part of the project.

**STAFF RECOMMENDATION**

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

1. The approval will be injurious to the public health, safety, morals or general welfare of the community because it is necessary to establish standards regulating off street parking, pedestrian movement and in part for the enhancement of the community;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the new home is in an area of the subdivision with no existing sidewalk system;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted;

4. Special conditions and circumstances do not exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the public sidewalk in question could have been installed at the time of construction;
5. The strict application of the terms of this Ordinance not will result in practical difficulties in the use of the property because the public sidewalk in question could have been installed at the time of construction;
6. The special conditions and circumstances do result from any action or inaction by the applicant because the petitioner chose not to install the sidewalk and file for relief from the requirement;
7. This property does not lie within a designated flood area.

**CONDITIONS**

Should the BZA choose to approve the request, the Staff offers the following condition:

1. In the event the municipality undertakes a reconstruction of the public right of way, the home owner will not object to the installation of public sidewalks as a part of the project.

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

Mulvaney calls for a motion.

Evanega Rieckhoff makes a motion to approve 24-BZA-09 and adopt the petitioner’s documents and presentations 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
- Leichtman – Yes
- Mulvaney – Yes
- Boecher – Yes

Motion carries.

**NEW BUSINESS**

**24-BZA-11 PETITIONER IS ROGER ELLSWORTH & KELLY ELLSWORTH  
PROPERTY IS LOCATED AT VAC-LOT 406 RIVER POINTE DRIVE (CURRENTLY VACANT) - 20-05-12-201-017.000-006**

To vary the requirements of Section 4.4, Yard Requirements, for the front yard average established setback of sixty-two and eight hundredths (62.08) feet, to allow the construction of a single family residence at a front yard setback of forty-three and eight tenths (43.8) feet, a variance of eighteen and twenty eight hundredths (18.28) feet.

Mulvaney calls the petitioner forward.

Crystal Welsh appears in person on behalf of the petitioner. Welsh says the petition intends to allow for the construction of a single-family residence. She states that one of the main attractions of a property like the petitioners is river and water access. So, the developer is looking for the best way to get a house on the lot without impacting adjacent property views. Welsh says the setbacks were chosen to be far from the water; however, they infringe on average setbacks for the front yard. She says they are looking for the best solution, and encroaching on the front yard less impacts the neighbors than the rear yard setbacks.

Mulvaney asks for questions from the Board.

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

**STAFF ANALYSIS**

The petitioner wishes to vary the requirements of Section 4.4, Yard Requirements, for the front yard average established setback of sixty-two and eight hundredths (62.08) feet, to allow the construction of a single family residence at a front yard setback of forty-three and eight tenths (43.8) feet, a variance of eighteen and twenty eight hundredths (18.28) feet.

The petitioner is proposing to build a new single family dwelling on the river front Lot 27 in the Lexington Landing Subdivision. The proposed home meets the setback requirements for the river frontage and because of the configuration of the home, a front yard variance is required. The lot, by the zoning ordinance development standards has two front yards – the street frontage and the river front side of the property. The ordinance requires the setback be calculated for the front and rear (for river front lots) be established by determining the average for that part of the street. This method for determining setback, helps to protect the adjacent property owners' views to the river. Which is why most people live on the river – the view.

Since 2007, this is the third developmental type variance for setback on River Pointe Drive. On a river front lot, in a developed neighborhood, this is not that uncommon a variance. Most times, the homeowner will want to maximize the view of the river and in order to also not block the view of other surrounding properties, some sort of variance is required. The proposed L-shaped home configuration is also common for water front parcels where the property owner wishes to maximize the number of rooms in the home having water views.

The scale of home is not out of character for the neighborhood and may in fact be desirable in terms of property values. Given the constraints of the established setback, it will not allow a home of this scale to be built without some measure of relief.

**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 both the front and rear setbacks are similar to adjacent properties;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the proposed structure will have a significant setback in both the front and rear yards;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the established setbacks create a hardship on this particular plot of land;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it limits the scale of housing on the lot;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the setbacks were established by neighboring properties;
7. This property does lie within a designated flood area. That part of the subdivision has an approved LOMR-F. The applicant will take appropriate steps to raise the floor level above the base flood elevation.

Trotter states that 15 letters were mailed, two of which were returned in favor, with one comment that they have concerns with the 54-foot side where the rear setbacks will align with their property. Trotter says one letter was 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-BZA-11 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
- Boecher – Yes

Motion carries.

**24-BZA-13 PETITIONER IS MARIA LOURDES LARIOS SALMERON  
PROPERTY IS LOCATED AT 1517 WEST FRANKLIN STREET**

To vary from Section 6.4, Yard Requirements, Front Yard setbacks, to allow the front porch to be enclosed which alters the average front yard setback for the block. The average front yard setback for the block is 15.38 feet. To allow the front porch to be enclosed that would have a new setback of 11 feet, a variance of four and thirty eight hundredths (4.38) feet.

Mulvaney calls the petitioner forward.

Maria Lourdes Larios Salmeron appears in person as the petitioner. Hugo Robles Madrigal, the Secretary of the Board of Zoning Appeals, translates for the petitioner. Salmeron states that she wants to enclose her front porch due to safety concerns for her children.

Mulvaney asks for questions from the Board.

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

William Lane appears in person in opposition to the petition. Lane says the petitioner has failed to integrate positively into the neighborhood since moving to Franklin Street. Lane states that Salmeron's grass is almost always knee-high, they have chickens in the backyard and no control over their pets. He says he is concerned about what kind of enclosure will go on the front porch. Lane says the house is already a two thousand foot three-story house, so he needs to understand how enclosing the front porch will benefit the front house. He states that he and his wife will be moving soon, so he is concerned about how the addition will adversely affect his property value since the petitioner seeks to build an unattractive addition to the neighborhood.

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

**STAFF ANALYSIS**

The petitioner is requesting to vary from Section 6.4, Yard Requirements, Front Yard setbacks, to allow the front porch to be enclosed which alters the average front yard setback for the block. The average front yard setback for the block is 15.38 feet. To allow the front porch to be enclosed that would have a new setback of 11 feet, a variance of four and thirty eight hundredths (4.38) feet.

The petitioner is seeking this variance due to the theft of personal belongings and to keep people from accessing the front door of the home. The variance is less than five (5) feet and Staff supports the request.

**STAFF RECOMMENDATION**

The Staff recommends approval of the developmental variance to vary from 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 petitioner will be required to complete the modifications in a workmanlike manner and have inspection by the building department;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the variance requested is small and should be imperceptible from the street;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because it allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved because of the need to provide safety and security for the home;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because of the need to provide safety and security of the home;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because no work has begun;

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

CONDITIONS

The petitioner cannot begin construction until city codes have been met.

Ughetti states there were 44 letters mailed with zero returned.

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

Mulvaney asks Trotter if the petitioner would be subject to building and construction codes.

Trotter answers that the petitioner would be required to submit plans to the building department, which would be subject to inspection. The plans would have to pass the inspection before being released for use.

Evanega Rieckhoff asks Trotter if that is normal, and if adding a condition is unnecessary.

Trotter answers that that is already required. He states they are before the Board since the petitioner still needs to meet setback requirements. Afterward, the petitioner will be required to submit plans to the building departments, and once approved, will need an inspection once the project is complete.

Leichtman asks Trotter if the petitioner's main concern was safety; however, Salmeron did not mention it during her presentation.

Trotter answers that the petitioner did include safety in her petition material; however, she did not mention that during her presentation.

Evanega Rieckhoff asked Trotter if Davis had a question about the chickens and if the Board could add a condition to the petition requesting their removal.

Marnocha appears in person as the attorney for the Board of Zoning Appeals. Marnocha says it would be reasonable criteria for the property to uphold city codes only after she conforms.

Mulvaney asks if Marnocha is suggesting that the Board add a condition.

Marnocha answers that she is telling the Board they can make it a condition. For example, the Board can make a motion to approve the variance with the condition that the petitioner cannot begin any construction if they violate the city code.

Trotter states that he wants the petitioner to approach the podium and have her understand the requirements for the variance.

Salmeron says she understands and confirms that she has three egg-laying chickens on the property.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-13 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 the following condition: The petitioner cannot begin construction until city codes have been met.

Second by Davis.

Davis – Yes

Evanega Rieckhoff – Yes

Leichtman – Yes

Mulvaney – Yes

Boecher – Yes

Motion carries.

**24-BZA-14 PETITIONER IS NELSON B HOLDINGS  
PROPERTY IS LOCATED AT 529 SOUTH SECOND STREET**

To vary from Section 26.4.B.1, which states in part, 'In a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street'. To allow for a fence that is six (6) feet in height to be placed in the required side (Harrison Street) yard.

Mulvaney states that Phalene Leichtman is recusing herself.

Mulvaney calls the petitioner forward.

Christopher Baiker appears via Webex as the petitioner. Baiker states that he purchased the property around three years ago and has had numerous issues with theft and vandalism. He says he would like to secure the property with a fence in the back near the parking area. Baiker states he knows his property lines and that the four-foot fence would be too easy for some people to scale.

Mulvaney asks for questions from the Board.

Evanega Rieckhoff asks where the fence will go and whether it will be around the parking lot or the side yard up to the front porch.

Baiker says it will go through the back parking lot and connect to the building. It will just enclose the parking lot. Baiker says he has had incidents where people have smashed car windows, defecated on the house, and slept on the porch. He says he recently had an incident where a worker was sleeping by the entryway. He states he would feel safer if he were allowed a six-foot-high fence.

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 to vary from Section 26.4.B.1, which states in part, 'In a corner lot, no fence, wall or vegetation exceeding four (4) feet in height or a fence wall or vegetation that is opaque may be placed, built or installed: 1. In the required side yard adjacent to the street'. To allow for a fence that is six (6) feet in height to be placed in the required side (Harrison Street) yard.

The petitioner is seeking the variance due to the vandalism that has occurred on their property. Damage has occurred to both the ehicles parked on site and the building. Windows has been broken on the bot, and Windows supports the request and understands the need for security for the building and personal property on site.

**STAFF RECOMMENDATION**

The Staff recommends approval of the developmental variance to vary from 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 fence will be installed in a workmanlike manner;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because security fences are not that uncommon in urban areas;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because its allows a measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist that are peculiar to the land involved because the property is located on a corner the need for the variance exists;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the need for safety and security is important for the viability of the business;
6. The special conditions and circumstances do not result from any action or inaction by the applicant;
7. This property does not lie within a designated flood area.

**CONDITIONS**

The proposed fence shall meet the development conditions found in Section 15.5.C. of the CBD, Central Business District development standards chapter.

Ughetti states that 23 letters were mailed, with one returned in favor, citing safety and vandalizing issues.

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

Mulvaney calls for a motion.

Davis makes a motion to approve 24-BZA-14 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

Leichtman – Yes

Mulvaney – Yes

Boecher – Yes

Motion carries.

**24-BZA-15 PETITIONER IS JAMES HUBBARD & SHARRON FERRIN  
PROPERTY IS LOCATED AT 3620 GORDON ROAD**

To vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height. The in ground pool will have an automatic pool cover.

Mulvaney calls the petitioner forward.

James Hubbard appears in person as the petitioner. Hubbard states that the zoning requirement asks for a six-foot fence; however, Elkhart will adopt a new ordinance for a four-foot fence to meet state requirements. He says his property is already enclosed with a four-foot fence, and part it was removed for the construction project. He says he intends to replace that fence and plans to also install an automatic pool cover.

Mulvaney states that Hubbard is the second or third person to request a similar variance within the last couple of months, so it’s about time the city caught up with state requirements.

Mulvaney asks for questions from the Board.

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

**STAFF ANALYSIS**

The petitioner wishes to vary from the requirements found in Section 26.1.C.3, Swimming Pools, which states 'A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.' To allow for a perimeter fence that is four (4) feet in height. The in ground pool will have an automatic pool cover.

The home site is located along the St. Joseph River. Based on county tax data, the home was built in 1953 and is surrounded by single family dwellings. The petitioner is in the process of constructing an in-ground pool with an automatic pool cover. The proposal is to have a four (4) foot fence surround the rear yard where the pool is being constructed. The intent is to also have the river bank act as the fourth side of the fence as any person wanting to enter from the north side of the property would have to enter by boat or swim up to the bank – this request is similar to other developmental variance requests heard by this body.

Staff shared the Planning Department is in the process of updating the current zoning ordinance. One of the regulations that would change is the pool development requirements. Although still in the draft form – the requirement would be for an in-ground pool



with an automatic pool cover, a four (4) foot fence would be required. This proposed language will more closely mirror state code. It is anticipated that the new ordinance will have public hearings in the late fall. Staff supports this request as it is similar to other water front developmental variances that this Board has approved in the past.

**STAFF RECOMMENDATION**

The Staff recommends approval of the developmental variance to vary from based on the following findings of fact:

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

Trotter states that 22 letters were mailed, four of which were returned in favor. One comment said the property was already fenced and to let the petitioner do what he wanted.

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

Leichtman asks Trotter if it is a load-bearing pool cover.

Trotter answers yes.

Mulvaney calls for a motion.

Evanega Rieckhoff makes motion to approve 24-BZA-15 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

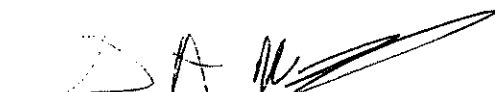
Mulvaney – Yes

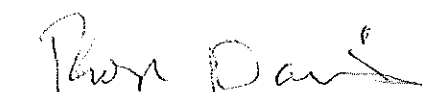
Boecher – Yes

Motion carries.

ADJOURNMENT

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

  
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Doug Mulvaney, President

  
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Ron Davis, Vice-President