

# City of Elkhart

## INSTRUCTIONS AND FILING PROCEDURE FOR DEVELOPMENTAL AND USE VARIANCES

The City of Elkhart Board of Zoning Appeals shall consider petitions for two types of variances; developmental and use. Developmental variances are seeking relief from the developmental standards (such as height, bulk, or area) of the Zoning Ordinance. Use variances are seeking relief from the list of permitted uses in a particular zoning district. When granting either type of variance, the Board may impose such conditions on the approval of the variance as the Board may deem advisable.

Variance Petitions must be filed with the Office of Planning and Development, Planning Services Division, 229 S. Second Street, Elkhart, Indiana. Petitions must be filed no later than the filing deadline dates shown on the Board of Zoning Appeals (BZA) calendar with all required signatures in permanent ink.

### Variance Petitions must contain the following information:

1. A completed Appeal Form included with these instructions and including such data and/or information necessary for a clear understanding of the situation by the Board of Zoning Appeals. The appeal must address and discuss each of the applicable standards that the Board must use to make a judgment. Please include any other pertinent data that will assist the Board in determining whether or not the literal enforcement of the provisions of the Zoning Ordinance will result in unnecessary hardship. Financial considerations do not constitute a hardship.
2. A completed Petition form signed by the legal owner of record of the property that is the subject of the Petition. **The owner(s) of record at the time the petition is filed shall be considered the applicant and must sign the petition.** If the appeal is filed by any person other than the legal owner or the owner's attorney, written authorization of the legal owner authorizing the person to act as the owner's agent for petition purposes must be filed with the petition. If the applicant is not an individual, the name(s) and title(s) of the person(s) who are authorized to execute legal documents for the applicant shall be supplied. Land Contract Purchasers or Renters cannot bring petitions without authorization from the owner of record.
3. A full and accurate legal description of the property for which the use variance is being requested. (Not the abbreviated version shown on a tax form)
4. One (1) copy of an 11" x 17" or smaller scale drawing showing the dimensions of the property, buildings, yard setbacks, parking layouts, distances to adjoining buildings, and any other information that is pertinent to your petition. If drawing is larger than 11" x 17" 12 copies of the site plan must be provided.
5. *When changes to a building are involved*, the plans for the proposed variance must be provided and scaled to proportion.
6. Any supplemental information you wish to provide to the Board of Zoning Appeals.
7. A filing fee in the amount listed in Section 29.12 of the Zoning Ordinance. Checks must be made payable to the City of Elkhart.

Petitions for Variances are reviewed by the Planning Services staff prior to the public hearing and decision of the Board of Zoning Appeals. You or your designated representative **must** be present at the Board of Zoning Appeals meeting to make a presentation and answer any questions that may arise. In making your presentations to the BZA, you will have the burden of presenting sufficient evidence to persuade the Board to grant your request. The evidence must relate to the standards listed below, as well as any other information you feel is pertinent to your petition. After you have completed your presentation, any proponents or opponents to your petition will be asked to speak. You will then be allowed to respond to any comments or answer any questions which may arise concerning your petition. This will be at the discretion of the Board Chairman.

**Standards that must be considered for a Developmental Variance:** I.C. 36-7-4-918.4 and Section 29.9 A. of the City of Elkhart Zoning Ordinance states: "No variance shall be granted by the Board unless the Board specifically finds that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. Granting the variance would be consistent with the intent and purpose of the Zoning Ordinance.
4. Special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district.
5. The strict application of the terms of this Ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance. (Financial considerations do not qualify).
6. The special conditions and circumstances do not result from any action or inaction by the applicant.
7. In designated flood hazard areas, the variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, or conflict with existing laws or ordinances.

**Standards that must be considered for a Use Variance:** Section 29.9 B. of the City of Elkhart Zoning Ordinance states: "No variance shall be granted by the Board unless the Board specifically finds that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. The need for the variance arises from some condition peculiar to the property involved.
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. (Financial considerations do not qualify).
5. The approval does not interfere substantially with the Comprehensive Plan.

The Planning Services staff will consider these standards when making a recommendation to the Board of Zoning Appeals. You **must** address these standards within the body of your Appeal.

Failure to meet any of the above requirements will result in your application **not** being accepted by the staff until such time as said requirements are met.

The Board of Zoning Appeals normally meets on the second Thursday of every month in the Council Chambers on the second floor of the Municipal Building at 6:00 p.m. Notice of the public hearing before the BZA shall be published in the newspaper 10 days prior to the meeting. Please check the current year's calendar for filing deadlines and meeting dates.

Please note that any Variance that is granted must be implemented within twelve (12) months or the Variance shall be null and void.

**This is NOT a fill-in form.**  
**It is a sample form to be used as a guide**  
**when preparing your letter to the Board of Zoning Appeals**

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

TO: Board of Zoning Appeals  
City of Elkhart, Indiana

RE: Developmental or Use Variance  
State type of variance you are seeking)

The undersigned appellant respectfully shows the Board:

1. I, *(insert property owner(s) name(s))*, am the owner of the following described real estate located within the City of Elkhart, \_\_\_\_\_ Township, Elkhart County, State of Indiana, to-wit:

***Attach the accurate legal description and common address— a tax key number is not a legal description. This may be submitted electronically to [kathy.kalman@coei.org](mailto:kathy.kalman@coei.org).***

2. The above described real estate presently has a zoning classification of \_\_\_\_\_  
\_\_\_\_\_ District under the Zoning Ordinance of the City of Elkhart.
3. Appellant presently occupies *(or proposes to occupy)* the above described property in the following manner: (explain).
4. Appellant desires to *(Explain what is proposed that violates the provisions of the Zoning Ordinance)*.
5. The Zoning Ordinance of the City of Elkhart requires *(Explain ordinance requirements and note the Section Number of the Ordinance)*.
6. Explain why strict adherence to the Zoning Ordinance requirements would create an unusual hardship. *(Please note that the Board cannot consider financial hardship. The Light Co., Inc. v. Houghton et. al. 226 N.E. 2<sup>nd</sup> 341(Ind. Ct. App. 1967).*
7. Using the appropriate standards *developmental or use*, from the previous page, address each standard. You cannot answer simply Yes or No; you must state **why** this is true (the reasons for your answer).

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

*Signature of Property Owner:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

*Second Property Owner:* \_\_\_\_\_

*Printed Name:* \_\_\_\_\_

Contact Person: \_\_\_\_\_

Name: \_\_\_\_\_

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

Phone Number where you can be reached: \_\_\_\_\_

Fax Number: \_\_\_\_\_

PETITION NUMBER: \_\_\_\_\_

Date Filed: \_\_\_\_\_

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

**PETITION TYPE:**

\_\_\_\_\_ Developmental Variance  
\_\_\_\_\_ Use Variance

\_\_\_\_\_ Special Exception  
\_\_\_\_\_ Conditional Use

\_\_\_\_\_ Appeal from  
Staff Decision

Property Owner(s): \_\_\_\_\_

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

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Subject Property Address: \_\_\_\_\_

Zoning: \_\_\_\_\_ Present Use: \_\_\_\_\_

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

**Checklist (✓) for submittal of the Variance to the Board of Appeals docket: you must include:**

- o One copy of the Appeal Letter signed in ink by the owner of the property.
- o A completed Petition form signed by the legal owner of record.
- o If any other person other than the legal owner or the legal owner's attorney files the appeal, written authorization from the property owner must be supplied.
- o A full and accurate legal description of the property.
- o One to scale drawing of the property, smaller than 11" x 17". If larger than 11" x 17", 12 copies must be submitted.
- o Cash or check made payable to the City of Elkhart.

**Optional: any supplementary information you wish to include.**

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

PROPERTY OWNER(S) (PRINT) \_\_\_\_\_

SIGNATURES \_\_\_\_\_

RECEIVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Remit To:  
CITY OF ELKHART -OFFICE OF PLANNING AND DEVELOPMENT - Planning Services Division  
Municipal Building, 229 South Second Street, Elkhart, IN 46516

(staff to complete)

Ordinance Requirement: Section(s): \_\_\_\_\_

MAP #: \_\_\_\_\_

AREA: \_\_\_\_\_

## 2021 ELKHART CITY BOARD OF ZONING APPEALS CALENDAR

<u>File by Date</u>	<u>Meeting Date</u>
Friday, December 11, 2020	Thursday, January 14, 2021
Friday, January 15, 2021	Thursday, February 11, 2021
Friday, February 12, 2021	Thursday, March 11, 2021
Friday, March 12, 2021	Thursday, April 8, 2021
Friday, April 9, 2021	Thursday, May 13, 2021
Friday, May 14, 2021	Thursday, June 10, 2021
Friday, June 11, 2021	Thursday, July 8, 2021
Friday, July 9, 2021	Thursday, August 12, 2021
Friday, August 13, 2021	Thursday, September 9, 2021
Friday, September 10, 2021	Thursday, October 14, 2021
Friday, October 15, 2021	<b>Wednesday, November 10, 2021</b>
Friday, November 12, 2021	Thursday, December 9, 2021
Friday, December 10, 2021	Thursday, January 13, 2022

Note: All meetings are held in the Council Chambers, 2<sup>nd</sup> floor, City Municipal Building at 6:00p.m., the 2<sup>nd</sup> Thursday of each month unless indicated.

Reviewed and adopted by the City of Elkhart Board of Zoning Appeals at its regular meeting December 10, 2020.

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Doug Mulvaney, Chair

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Ron Davis, Vice-Chair