

# City of Elkhart

## INSTRUCTIONS AND FILING PROCEDURE FOR DEVELOPMENTAL VARIANCES 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.

**A complete Variance Petition (see page 2)** must be filed with the Planning & Zoning Department located at the Permit Center at 229 S. Second Street, Elkhart, Indiana. **Petitions must be filed no later than the filing deadline dates as shown below** on the Board of Zoning Appeals (BZA) calendar, and with all required signatures in permanent ink.

### **2022 CITY OF ELKHART BOARD OF ZONING APPEALS CALENDAR**

#### **File by Date**

Friday, December 10, 2021

Friday, January 14, 2022

Friday, February 11, 2022

Friday, March 11, 2022

**Thursday, April 14, 2022**

Friday, May 13, 2022

Friday, June 10, 2022

Friday, July 15, 2022

Friday, August 12, 2022

Friday, September 9, 2022

Friday, October 14, 2022

**Thursday, November 10, 2022**

Friday, December 9, 2022

#### **Meeting Date**

Thursday, January 13, 2022

Thursday, February 10, 2022

Thursday, March 10, 2022

Thursday, April 14, 2022

Thursday, May 12, 2022

Thursday, June 9, 2022

Thursday, July 14, 2022

Thursday, August 11, 2022

Thursday, September 8, 2022

Thursday, October 13, 2022

Thursday, November 10, 2022

Thursday, December 8, 2022

Thursday, January 12, 2023

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

## APPLICANT CHECKLIST – VARIANCE PETITION

### A complete Variance Petition must contain the following information:

1. \_\_\_\_ **A Variance appeal letter patterned after the sample form on page 4** 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 (see page 3)** 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 (see pages 5 & 6)** 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 variance is being requested. **The abbreviated version shown on a tax form is NOT an acceptable legal description.** A full legal description may be found on the recorded deed or possibly on a certified survey. If the legal description is in a Word or PDF format, please email it to [PlanningAndZoning@coei.org](mailto:PlanningAndZoning@coei.org).
  
4. \_\_\_\_ One (1) to scale drawing of the property, measuring 11" x 17" or smaller 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. The Permit Center accepts Visa, Mastercard, and Discover credit cards or a check made payable to the City of Elkhart.

Use Variance Fees:	
\$200.00	Residential (One & Two Family)
\$300.00	Multi-Family, Business & Manufacturing

Developmental Variance Fees:	
\$200.00	Residential (One & Two Family)
\$300.00	Multi-Family, Business & Manufacturing

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

## DEVELOPMENTAL VARIANCE & USE VARIANCE PROCEDURE

Petitions for Variances are reviewed by the Planning Department 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. The presentation must include sufficient evidence relating to the **standards listed below** (as well as any other information you feel is pertinent to your petition) to persuade the Board to grant your request.

After you have completed your presentation, public comments are heard for or against your petition.

You may be allowed to respond to any comments or answer any questions which may arise concerning your petition; this is 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 Department staff will consider these standards when making a recommendation to the Board of Zoning Appeals. You **must** address the above standards within the body of your appeal letter (see page 4).

Notice of the public hearing is prepared by the Planning Department staff and published in the newspaper 10 days prior to the meeting. Please refer to the BZA calendar (see page 1) for filing deadlines and the meeting location, time and dates.

**Note:** Any Variance that is granted must be implemented within 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**  
**appeal 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 petitioner respectfully shows the Board of Zoning Appeals:

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.***
2. The above described real estate presently has a zoning classification of \_\_\_\_\_  
\_\_\_\_\_ District under the Zoning Ordinance of the City of Elkhart.
3. Petitioner presently occupies (or proposes to occupy) the above described property in the following manner:  
*(Explain existing use).*
4. Petitioner 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 page 3**, address each standard. You cannot answer simply "Yes" or "No"; you must state **why** this is true (the reasons for your answer).

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

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

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

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

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

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

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

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

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

Email: \_\_\_\_\_

PETITION #: \_\_\_\_\_

FILING FEE: \$ \_\_\_\_\_

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

**PETITION TYPE:**

\_\_\_\_\_ Developmental Variance      \_\_\_\_\_ Appeal from Staff Decision  
\_\_\_\_\_ Use Variance      \_\_\_\_\_ Special Exception      \_\_\_\_\_ Conditional Use

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

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

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

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

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

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

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

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

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

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

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

SIGNATURE(S): \_\_\_\_\_ DATE: \_\_\_\_\_

**STAFF USE ONLY:**

Staff Checklist for the applicant's submittal of a complete Petition to the Board of Appeals docket:

- \_\_\_\_\_ One copy of the Appeal Letter signed in ink by the owner of the property.
- \_\_\_\_\_ A completed Petition form signed by the legal owner of record.
- \_\_\_\_\_ If any person other than the legal owner or the legal owner's attorney files the appeal, written and signed authorization from the property owner must be supplied.
- \_\_\_\_\_ A full and accurate legal description of the property.
- \_\_\_\_\_ One to scale drawing of the property, measuring 11" x 17" or smaller. If larger than 11" x 17", 12 copies must be submitted.
- \_\_\_\_\_ Optional: any supplementary information the applicant may wish to include.

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

Map #: \_\_\_\_\_ Area: \_\_\_\_\_

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

