

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, March 13, 2025 - Commenced at 6:00 P.M. & adjourned at 9:04 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Doug Mulvaney (Via Web-Ex)
Ron Davis
Phalene Leichtman

MEMBERS ABSENT

Janet Evanega Rieckhoff

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning
Kyle Anthony-Petter, Planner II

LEGAL DEPARTMENT

Maggie Marnocha

RECORDING SECRETARY

Hugo Madrigal

APPROVAL OF AGENDA

Leichtman moves to approve the agenda.
Davis makes a motion to approve; Second by Newbill. Voice vote carries.

APPROVAL OF MINUTES FOR JANUARY 9, 2025

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the March 13, 2025 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

To begin the meeting, Leichtman says she would like to note the following regarding 23-WT-01 by the petitioner, Heidi Gaskill, Trustee. The request was initially heard by the BZA in September of 2023, at which time the Board denied the petition. The Board members failed to state any reason for the denial. By law, the Board must provide at least one reason for the denial. When it failed to do so, the petitioner filed suit. The court sent it back to the BZA on remand, the court ordered. The judge noted that the BZA can handle the request in one of two ways. The first way is for the BZA to simply state the reasons for denial. The second way is for the BZA to treat the petition as a new hearing. Due to the fact that the BZA membership has since changed, the prior decision was rendered, so the current Board cannot state the reasons for the previous Board's denial. Therefore, the Board will be rehearing this as if it's a new petition. The Board members received additional information from the petitioner in two letters dated March 12 and March 13. The Board members received a revised Staff Report on March 12, which was also posted on the BZA website on that date. Because all three communications violate BZA rules, procedure 5.01, the Board will first move to suspend rule 5.01 to consider this material. Under rule 1.02, the Board may suspend any rule by unanimous vote of the members present.

Leichtman call for a motion to suspend rule 5.01.

Davis makes a motion to approve; Second by Newbill.

Mulvaney – Yes

Newbill – Yes

Davis – Yes

Leichtman – Yes

Leichtman says that, as stated in the opening instructional statement provided at the start of this meeting, this is not an appropriate forum for the privilege of the floor. With that in mind, when they offer the floor to anyone to speak against the petition, they will only receive comments about the legally permissible reasons for the denial. Any health concerns are not legally permissible for reason of denial, so they will not be accepting comments to that point. The Federal Telecommunications Act has set a maximum allowable limit on radio frequency waves that do not harm humans. The BZA cannot legally deny any petition on that basis.

23-WT-01 PETITIONER IS NAME HEIDI GASKILL TRUSTEE OF THE HEIDI GASKILL REVOCABLE TRUST PROPERTY IS LOCATED AT 3424 EAST BRISTOL STREET - REHEARING

On February 7, 2025, the United States District Court, Northern District of Indiana, South Bend Division, has remanded the Wireless Tower request at 3424 E. Bristol Street, back to the Elkhart City Board of Zoning Appeals for reconsideration. The request is as follows: To vary from Section 4.2, Permitted use in the R-1, One-Family Dwelling District to allow for the installation of a new wireless communication facility (cellular tower) that is one hundred thirty-five foot 135 feet in height.

Leichtman calls the petitioner forward.

Doug Dolan, located at 450 James Ave, appears in person on behalf of the petitioner. Dolan states he is with Realty Advisors and serves as Heidi Gaskill's agent. He also mentions that he is the developer of the proposed cell site and has brought a PowerPoint presentation. The petition concerns the address at 3424 East Bristol Street, and tonight's presentation will demonstrate the need for a cell site in the area, highlighting that Verizon's radio frequency engineers have determined that the location lacks coverage and capacity. Dolan says they have attempted to address the coverage and capacity gap for several years. He notes that they appeared before the Board a year and a half ago but were turned down, so they are back to present their case on why the cell site is essential. Coverage and capacity are critical for home offices, businesses, and 911 services. Dolan indicates that Verizon has long recognized Bristol Street as a coverage gap. They have been trying to address it, and in the next few slides, he will demonstrate the extent of their efforts to close the coverage gap. Dolan explains that the displayed map is a propagation map produced by the network engineer at Verizon Wireless. The color coding indicates that yellow represents poor coverage, green indicates average coverage, and blue signifies good coverage. The triangular-shaped item on the previous screen marks the proposed location of the cell site. The area along Bristol Road is central to the coverage problem, and the site would provide the best coverage and capacity. He states that poor coverage can be seen on the left side. On the right-hand side is a propagation map showing the coverage once a cell site is in place. Purple indicates very good coverage in cars, homes, and residences. It's important to note that it also increases capacity. Dolan mentions that many video calls are being made, and a significant amount of data is transmitted. The area will greatly enhance and provide a much more robust system for the City of Elkhart. Dolan explains that the existing cell sites are the purple areas in the north, southeast, and southwest. The areas to the north, southeast, and southwest, where the edges of a purple area are, are where Verizon has existing cell sites. That's why the area triangulates to the location when people ask why the tower can't be moved north, south, east, or west. He states they have cell sites all over, but do not have anything on Bristol Street, so they are trying to cover it. On the next slide, the red dot identifies the proposed location. As mentioned, Dolan says they have appeared

before the Board twice. One time was for a wireless tower in Pinewood Park. He says they spoke to the Parks Department about a site at Pinewood Park and received opposition on that site, too. He says they worked with the City to try to find another location. Dolan states that the City encouraged them to find another site after the public opposition, and they did. Walker Park, the library, and the church were all considered sites on the south side of Bristol Street. Walker Park is a wide-open park. There are no natural trees that would shield the facility. The library has a retention pond behind the building. The church has an open field next to it, which doesn't offer any coverage or concealment for the facility. In discussions with Heidi Gaskill, he says they were fortunate enough to find a heavily wooded lot. It's 175 yards of dense woods to the nearest resident, which was a primary reason for choosing the spot. He said they prefer to attach antennas to existing buildings, towers, or water tanks, none of which are in the area. Dolan mentions they considered the existing communications tower at Pinewood Elementary School years ago. It is directly behind the main school building, but would not suffice, as it failed their structural report and is not structurally capable of holding their antennas and equipment. Dolan then says his map shows the nearest residents to the north and west, indicating that the nearest residents are 175 yards of woods between them. The site plan of their proposed site will include a dedicated access road. The utilities will be underground, leading to the site where they only need power and fiber, which they would bring underground. He says they are working with the highway department on access as they happen to be widening Bristol Street. He states they are collaborating with them on the access, but they will have separate access from the school. Dolan explains that it is a prepared report by the radio frequency engineer at Verizon Wireless. The report will be public record. He says they will leave it open and post it on the City website, which will show the reason for the need, as coverage and capacity are the two drivers, both lacking in that part of Elkhart. Dolan says it's important to note that when a new cell site is built, it helps the immediate area and benefits the rest of the community. The cell tower will be connected to other cell towers, providing a network or web of improved coverage and capacity to the rest of Elkhart. The site's importance lies with Verizon and the community, as it will help offload neighboring sites. Nearby cell towers are managing a significant amount of traffic, including many video calls, and are struggling with increased usage. The site will help relieve the existing cell towers within the community. On the next slide, Dolan says the red circle indicates the search area where coverage and capacity are the worst. They are faced with a largely residential area with no industrial parks. No existing towers, water tanks, or rooftops are tall enough to provide the coverage needed for Elkhart. Therefore, the proposed SE Cassopolis site must ensure reliable in-building and in-vehicle coverage. The site will also provide capacity relief to neighboring cell sites. He states that towers aren't standalone towers; they're interconnected with neighboring sites, which will also increase coverage and capacity. Dolan mentions he has an RF statement that addresses RF needs for additional coverage and capacity along Bristol Street. On the next slide, he notes he has a copy of the FAA approval, emphasizing that the cell tower will be 135 feet tall. It's below the 200-foot limit that the FAA requires for lighting. Thus, the cell tower will not have any lighting, strobe, red, or white lights. It will be completely dark at night. Additionally, it will need to go through the federal approval process, including NEPA. He mentions that he has also considered wildlife, which was addressed earlier. Dolan states that the property's site plan shows the concealment factor, with all cables inside the pole, antennas at the top, and equipment at the bottom. There will be no external cables, wires, or anything that could compromise the base's security. He states it will be a fenced and secure facility, surrounded by a six-foot fence. It will also secure equipment and... (unintelligible, off mic). Dolan indicates he wants to discuss Radio Frequency safety and cites resources listed by the FCC that cannot be used as reasons for denial. It is often on the minds and hearts of the public. It's important to direct the public to resources that address safety and illustrate how safe these sites are. Wireless networks are all governed and receive feedback, guidelines, and requirements from the EPA, FCC, FDA, and OSHA, the major organizations that shape the guidelines. He states they will operate the cell site at a fraction of what the FCC allows. It's the same radio waves used by AM towers, FM towers, and the signals received in vehicles when the public turns on their radio. They are federally regulated and operate at a fraction of the standards set by the FCC. Dolan mentions another report from a third-party company called Site Safe, which was contracted to provide and demonstrate the safety of a site as electrical engineers prepare assessments. The assessments are not prepared by anyone else whose background may not be sufficient to comment on the safety of cell towers. The American Cancer Society has a website that states the ground level near typical cellular base stations has an amount of energy from RF waves that is hundreds of thousands of times less than the safe exposure limits set by the FCC and other regulatory authorities. Dolan indicates the FCC has been clear, and it's difficult for boards to hear comments regarding safety concerns. It's challenging for a board to weigh in on the safety of a cell site. The Board does not have the training, so it's evident that people recognize it's safe once someone with training assesses it. Dolan then states that people may be concerned about the school nearby. He then points to a slide showing a picture of Chaminade College Preparatory, where antennas have been mounted on the school for over 20 years without any issues. Next, Dolan notes that at his son's school, antennas have also been placed there for over 20 years at that location, with zero problems. Dolan then shows antennas mounted directly to Notre Dame University buildings, about 50 yards from the Golden Dome. The service has been available for over 40 years, demonstrating its safety. Dolan says that the World Health Organization has stated that, from all evidence accumulated so far, no adverse short or long-term health effects have been shown to occur from RF signals produced by base stations. Dolan states that those comments are not his opinion but authoritative remarks from authorities. He then shows another slide with a photo simulation of the proposed cell site. The tower will be a 135-foot-tall single pole. There will be no guy wires, nor will there be lights. However, it will provide the coverage and capacity the City of Elkhart desperately needs. Dolan then says that they hired a structural engineer who demonstrated the safety of the tower. He says they determined it has a 0-foot fall rate radius, which means it will not fall outside its area. They can say that because towers are designed for a direct 150-mph impact. Not only will the tower perhaps bend, but there won't be anything left in that particular area. In other words, there'll be no structure to fall into. If the event is strong enough to damage the tower, there

won't be any structures to fall into. So it is improbable, and it is extremely safe. On the following slide, Dolan says they are expanding the wireless network because people no longer use landlines. Home phones and home office phones are now cell phones. Video calls and data downloads are increasing. So, the current problem will grow and worsen without a solution. So much like power and water companies, they reached the capacity limit and need a new facility to offload. That's the reason they are before the Board today. The 911 calls to first responders are critical, and it will be a much more robust system with the cell site in place. He states that the Verizon service is degraded and will further degrade without the cell site. Cell sites will offload traffic from neighboring cell sites and create a more efficient network for all citizens. He emphasizes the importance of the school and parents having reliable communication. He considers having a school without good cell phone coverage in a designated area a public safety issue. Schools, parents, administration, and everyone going to and from the school must have reliable phone coverage, making home cell phone coverage a priority for home buyers. Purchasing a home without reliable cell phone coverage is becoming a significant issue. Some people are forced to keep their landlines, yet for new buyers, the demand for good cell phone coverage in homes has been growing for generations. Next, Dolan mentions that they hired an appraiser to evaluate the effects of the cell site on property values. Cohn Reznick, an MAI appraiser and member of the Appraisal Institute, determined the cell site's impact on real estate values. He reports that his appraiser identified existing cell sites and conducted a study on the impact on value. The appraiser focused on one area, at 1526 Cedar Street, to compare the value of homes closer to a cell site with those further away. The appraiser found no measurable difference in value based on proximity to the cell tower. Dolan asserts that it is not merely an opinion or concern, but a finding from an MAI-certified appraiser who conducted the report. He goes on to say that they found higher prices within 1320 square feet. While it could be an anomaly, the reality is that properties closer to the tower had higher values. Dolan states that his appraiser has 4500 hours of appraisal experience, must be certified, and pass an exam, which positions them as top-tier real estate appraisers. Additionally, Dolan mentions that they consulted the Elkhart County assessor about any concerns regarding property values nearby, and they indicated there were none. He says Elkhart County does not lower the assessed value due to proximity to cell towers. A summary signed by the MA appraiser stated that no consistent negative impact has been found on property values that could be traced to proximity to a tower. To conclude, Dolan reiterates that no consistent negative impact has been identified on adjacent property values related to proximity to the cellular communication tower. The report is 36 pages long and can be accessed via the provided link. Regarding environmental impact, he states that any tower construction requires an environmental impact assessment. He indicates that they hired an environmental firm to conduct the report, which takes about 90 days to complete as they examine the area for wildlife and any associations with floodplains or endangered species, ultimately submitting a report that includes approval from the US Fish and Wildlife Service. Dolan states that the wireless tower will be built to accommodate other carriers, including AT&T, T-Mobile, and even Dish, which will improve coverage without building new towers. Reliable wireless service is essential to residents, business owners, public safety officials, and visitors to the City of Elkhart. The cell site will provide service, capacity, and coverage to the City of Elkhart. It will lead to fewer dropped calls and faster data transfers. Dolan closes by saying that the cell site is the best available in the search area. It's well located to serve Elkhart's needs.

Leichtman asks for questions from the Board.

Newbill asks Dolan how broad was his search.

Dolan says it was about a quarter mile.

Newbill asks Dolan if it was in each direction.

Dolan answers yes, in each direction.

Davis asks Dolan how close the cell tower will be to the school.

Dolan says it's on private property adjacent to the school, so about 50 feet.

Newbill states that he thought it was 175 yards.

Dolan says it's 175 yards to the nearest residence.

Newbill asks Dolan if the cell site would not affect property values.

Dolan says it will not.

Newbill asks Dolan if he has that in writing.

Dolan says that he has a signed appraisal from an MAI appraiser.

Newbill asks Dolan if he has more than one appraisal.

Dolan says he only has one appraisal.

Leichtman opens for public comments to speak in favor.

Heidi Gaskill, located at 3424 E Bristol, appears in person in favor of the petition. Gaskill supports the proposed cell tower to be built on her property. She states that she understands the room's differing opinions tonight and would like to share hers. She mentions that she is self-employed and works from home. Cell service on her property is intermittent and crucial for her business. Calls are dropped regularly, and she recounts that just today, she counted four incoming calls that were dropped. Gaskill indicates that the issue is not limited to her house; anywhere between Osolo Road and County Road 15, she experiences intermittent service. She claims that Martin's grocery store at Cobblestone is another area where calls frequently drop. Additionally, a large area with no cell service exists across the street at Walker Park. One comment she would like to make is that she has been a real estate broker for 10 years and is dual licensed in Indiana and Michigan, giving her a comprehensive understanding of property values that the general public does not possess. She asserts that she is not concerned about the tower negatively impacting the property value of her home. In her opinion, Gaskill believes the tower is very much needed.

Lori Snyder, whose location is unknown, appears in person in favor of the petition. Snyder states she is the manager of two real estate offices and has long been in the business. She made one observation as people moved to Elkhart: People seek quality cell service and streaming platforms. Snyder suggests that inadequate cell service could impact property values. It becomes undesirable if someone cannot call because the connection drops four times while viewing a house. She indicates that this presents a challenge for the community. Additionally, she highlights that most people are on their cell phones, which is normal, but she is concerned about how some individuals travel on the road or work from home. Recently, she experienced a flat tire and could not call anyone in Martin's parking lot due to cell service issues. Snyder explains that she had to drive away from the parking lot to make a connection and seek assistance for her tire. She states that one complaint about the potential erection of the tower at Walker Park is that it may be unsightly, yet she maintains that people will not be able to see the tower. Moreover, she underscores the issue of RF energy, stating that research indicates that the closer one is to a tower, the more it significantly reduces RF energy emissions. The FCC, WHO, and the American Cancer Society have documented this information.

Rene Echarte, located at 54549 Sundale Place, appears in person in favor of the petition. Echarte states that he will start from a personal standpoint. He mentions that he is a caregiver for his parents and falls into that service dead spot. If something happens to his parents, he needs to receive communication from Brentwood Assisted Living. He says that just the other day, his mom fell and broke her hip. He explains that he was rushing when a call was made, but the call dropped. It was his sister who was trying to reach him. He recalls hearing only that an ambulance was coming before the call disconnected. He adds that his dad attempted to call, but that call also kept dropping. He describes how it continued to drop until he traveled further south, reaching the Greenleaf Boulevard area. Echarte remarks that's when he could reconnect and understand what was happening. He describes the experience as extremely frustrating and frantic. He shares that the issue occurs frequently, as he often only receives one bar or no bars while sitting at home. He has worked from home for the last 10 years, managing high-level clients for whom he is responsible and is their point of contact. He emphasizes that the situation affects him professionally. The other day, he received a call from one of his customers, who works for a large company in Elkhart, but the call kept dropping, prompting him to go outside and walk down the driveway. He asserts that the impacts him both personally and professionally. He mentions that his wife is also a real estate agent and has heard her conversations with lenders and clients waiting to enter homes, during which calls dropped. The lack of service is an ongoing issue that is likely to continue. He says he is happy to see Verizon investing in Elkhart, which he believes will help him. He recognizes that he is not the only person affected by the issue, noting several neighbors he knows who could not attend and are similarly impacted. He then says he examined what the surrounding communities offer and stated that there are 29 towers in the Elkhart area. He highlights that the third largest owner of towers on their property is the Elkhart Community School District, which he observed was one attached to Pinewood Elementary. In comparing the City of Elkhart to other cities and counties, he found that most wireless towers are owned by healthcare providers, school districts, and universities, positively impacting the City and the area. Again, he emphasizes that it is important because he does not want to miss a vital emergency call.

Lucinda Lowe, located at 20891 Riverbrook Lane, appears in person in favor of the petition. Lowe states she is a realtor and a resident of the area near the cellular tower. In this technological age, cellular service is no longer a luxury but is essential. As a realtor, she explains that the lack of a strong signal can become one of the primary determinants for potential buyers. It is evident as people are on their phones, taking pictures, and videoing individuals who cannot be there. Many work from home and engage in e-commerce, so buyers want to ensure strong connectivity. She notes that buyer demand for smart homes is becoming very popular, as people can control lights, alarm systems, and utilities using apps on their cell phones. She emphasizes that its growing popularity is a significant factor that should also be considered. In a market where everything is interconnected, the lack of robust coverage creates an obstacle that can hinder economic growth and community development. Strong service is crucial for

businesses' daily operations, particularly in real estate. Agents primarily rely on mobile apps to manage listings, enter homes, communicate with clients, and respond to offers. She recounts how often calls have dropped or texts have arrived hours later, or how she has missed critical parts of conversations due to weak service. Lowe mentions that she has to physically step outside, which is the poster child for Verizon's campaign of "Can you hear me now?" Most importantly, she asserts that strong, reliable cell service is a matter of public safety. Whether it's a medical emergency, a fire, or a traffic incident, the ability to call or send a message can be a matter of life and death. A cell tower could be a lifeline for people needing help during an emergency. She acknowledges concerns about a cellular tower's visual or environmental impact; however, modern cell towers are designed to blend into the landscape as much as possible. Verizon is committed to following all environmental regulations and is working to ensure that the tower is placed in a location that minimizes its impact on the community. Regarding home valuations, she states that she frequently performs market analyses in that area and affirms that it will not negatively impact home prices. A lack of strong cellular service will negatively affect them, as that is what people look for when buying a home. In conclusion, Lowe emphasizes that a cellular tower in the area is not just a convenience but a necessity. It will enhance public safety, support local businesses, and improve the quality of life for families. As a realtor and member of the community, she urges approval for the installation of the cellular tower.

Seeing no one else to speak in favor, Leichtman opens for opposition.

Jill Szyarto, located at 1627 Evergreen Place, appears in person in opposition to the petition. She states that she has expressed her concerns each of the four times the petition has come before the Board. When the first notice was issued, she claimed she was the only neighbor who had responded with 'maybe.' She believes the other neighbors responded 'no.' She says she was open to hearing the rationale for needing a cell phone tower, as presented by Mr. Dolan in the infamous red oval. Szyarto asserts that no logical reason for the tower has been presented, other than Cell Co.'s desire for it. The document from Mapbox states that Elkhart has a 99.95% cell phone coverage, and both AT&T and T-Mobile are at 100%. Verizon achieves 99.97% cell phone coverage. She says they had an independent tester review the same cell phone towers and conclude there was no justification for another one. Elkhart ranks 58th in Indiana for cell phone coverage, ahead of Granger, Mishawaka, Goshen, and Bristol. Meanwhile, in Trenton, Missouri, Mr. Dolan's home state, that City has a coverage rate of 74.64% across the four major carriers. My second concern pertains to the new look of Bristol Street. Millions of dollars are being invested in it, and right now, adding an access road for the tower on a narrowing stretch might be overly ambitious. Szyarto notes that from 3424 East Bristol to Evergreen Place, there are two roads, Glenwood Park in and out, and 12 driveways. She asks if a 13th driveway should be added. The property in question has no cutout, according to the parcel assessment. The investment the City has made in Walker Park is impressive. The Parks Department has added new picnic tables, pathways, and a playground, and is currently adding a new restroom facility. The Parks Department has enhanced these features while honoring Max and Elizabeth Walker's vision. It's a case of 'if you build it, they will come,' and indeed, people have come. It's wonderful that so many individuals are enjoying Walker Park. There were probably a hundred kids tonight when she said she passed by. The request from Heidii Gaskill and Cell Co. is for a 130-foot tower. Referring to the map box information, the other three towers owned by Cellco in Elkhart measure 33.5 ft, 41.1 ft, and 57.9 ft tall. She acknowledges that taller towers can yield more rentals or sales to other companies, but she asks why this one needs to be 135 feet tall. If the zoning changes, Szyarto says they will not know who Cellco will rent or sell to and for what purpose. The closest structures of this height are the Amazon building to the east and Hotel Elkhart to the west, located several miles away. She expresses confusion over the variance request because it claims Gaskill owns 0.8 acres, while Realtor.com and Zillow indicate that the property is only 6.63 acres. Parcel 20-023-515-3006.00027 has no curb cut or frontage. According to the county assessor, it's also listed as a flood hazard. Szyarto states she has not seen a signed contract between Ms. Gaskill, Cellco, and the trust beneficiaries. She does not know what stipulations are on Gaskill, nor has she been presented with the revocable trust. She is unaware of who the beneficiaries are and whether they agree on the proposal. If not, the contract appears highly questionable. However, since it's a revocable trust, Szyarto states that Gaskill could modify it tomorrow, leaving Elkhart responsible for a cell phone tower while they merely benefit financially. She says she is unsure whether it is legal for her to be both the recipient and the trustee of the trust. She then asks that if the proposal passes, the Board ensure Gaskill and their family have \$125000 in an escrow account before the construction of the wireless communication tower, for the removal of the tower, decommissioning the access road, and restoring the land to its original condition. According to the FCC, Gaskill has four months to remove the tower once Cellco has finished using it. Elkhart has been battling a housing shortage for several years. Allowing the wireless communication tower in an R1 zone exacerbates the problem. She says there are about 75 homes in Glenwood Park, 130 in Walnut Trails, Foxwood, Evergreen Place, and 55 in the Walnut Trails townhomes. All of these homes would suffer negative consequences from the tower. It's reminiscent of the old enterprise zone from 50 years ago, which still has not stabilized. There are business zones less than a mile away where a Verizon communication tower could be established without significant rezoning, but that isn't what Cellco desires. Szyarto states that Elkhart needs to provide its citizens with opportunities for employment, clean water, clean air, and a safe environment, not merely monetary gains. If the Board votes to change the zoning, nothing would stop Gaskill from altering the parameters of the Ordinance and inserting whatever they wish, leaving the citizens of Elkhart powerless to contest it. Accordingly, Szyarto says she strongly objects to the placement of the cell phone tower in the specific location due to the lack of clear evidence of need and the potential negative impact on the surrounding neighborhoods. Szyarto then asks the Board to please not grant the variance.

Jody Froelich, located at 3621 Beechwood Court, appears in person in opposition to the petition. Froelich states that she lives in a condo close to the school, where she can see the woods adjacent to the school from her back windows. She mentions that she has lived in her condo for around 10 years and has never encountered any issues with her phone or anything else. Froelich claims to have good cellular service; she owns an iPad and an iPhone, and has never experienced a problem. However, her biggest concern is the children at school and in the park. She expresses that it's scary because these are children. Although she is not a doctor, she is a mom and a grandmother. She did some substitute teaching for a time and believes many things could be in the air, which worries her. Therefore, she hopes the tower will not be built.

David Henke, located at 229 S Second St, appears in person in opposition to the petition. Henke states that he is the councilman for the district where the proposed tower will be located. He finds it interesting because he feels much drama enters the conversation when it should focus on the facts. It seems only realtors experience dropped calls, and if their provider is Verizon, they should consider switching to another provider. Henke mentions that he has had Verizon for 32 years and has experienced no dropped calls, call issues, or signal problems in his area. He clarifies that he is not the issue, but states that the petitioner has the burden to prove specific subject areas. He insists it cannot harm the environment, individuals, or property, including home values. Although he admits he is unfamiliar with things from a seller's perspective, he approaches the situation from a buyer's viewpoint. He believes a wireless tower would distract him and devalue a home if he were to buy it, either because it would disrupt his view or due to years of research on wireless tower radiation. Next, he expresses surprise at the frequency of the petition, noting that by law, it cannot be reheard for less than six months. He points out that, due to the court order, the public must return and defend itself again, and he hopes the Board keeps these people in mind. Henke continues, stating that he was involved in earlier discussions about cellular sites, such as those on County Road 106, which were proposed. People in that district were amenable to it because it's located in a corner of a manufacturing area. In front of Martins, there is already a Verizon station, which likely belongs to Verizon. He finds it difficult to accept how the relationship has deteriorated to this extent. Henke notes that the City of Elkhart is a significant consumer of Verizon cell phones, as all police and city employees use them. Yet, Verizon took the City of Elkhart to court despite the City having other options. Henke emphasizes that the third district has the highest tax values by home values and is crucial for the City of Elkhart's revenue. He poses a question regarding fundamental values and uses in that area. While walking around, he asserts that protection is evident. It's a major attraction for Pinewood Elementary School, featuring school playgrounds, tennis courts belonging to the City, and surrounding natural woodlands. He highlights the importance of preserving the beauty of the natural landscape, noting that a cell tower currently disrupts this. He expresses a desire to keep the area as it is. Henke also suggests they have Surf Internet, including buried fiber optic lines throughout East Lake and the surrounding area. The installation was completed last fall, and connections are still being made. These lines run right underneath his sidewalk, all around his cul-de-sac. He believes this option is cheaper, and fiber optics are superior to cell towers. Henke shares his opinion on a couple of discussions and disputes them. He urges everyone to look up the American Cancer Society's statements right now, as they assert that more research is needed because the guidelines for cell towers are outdated. He suggests that people can see there are over 20,000 different writings that highlight serious concerns regarding human radiation exposure, with many experts having a more in-depth understanding of the issue than the general public. He emphasizes human exposure, mentioning how the radiation from a cell phone connects to a tower and retrieves signals. He explains that a splatter effect occurs as more devices connect to the tower. Furthermore, he refers to Pinewood School, stating that research indicates that all forms of cancer, including those from radiation and sun exposure, disproportionately affect younger children because their bone structure, including the skull, is more susceptible to absorption. They are at increased risk. He urges people to research, as Pinewood School serves grades one through five. He notes that they face another crisis at a medical clinic, pointing out how many people have been affected. If they had known earlier, they could have taken action. He expresses concern about the tower's potential impact and stresses a desire to avoid future legal troubles stemming from decisions affecting their community.

Richard Eppers, located at 1616 Evergreen Place, appears in person in opposition to the petition. Eppers says he wants to discuss a couple of points he wrote down. The first point is about property values. He notes that Verizon paid for an appraisal and is getting favorable results, but he wants to discuss real-life impact studies on how home values were affected. Eppers claims that in Georgia, a study was conducted that suggests that being closest to cell phone towers can reduce the selling price by up to 7.6%. These are actual results, not hypotheticals, funded by Verizon's appraisal people. He says these findings are consistent with other high-end results from other studies. He points out that the University of South Alabama analyzed 23,000 home sales in Mobile County, Alabama, relative to the proximity of cell phone towers. Researchers found that if a person is within 0.72 km of cell phone towers, home values increased by an average of 2.65%. Additionally, considering the cell phone tower is 130 feet in the air, Eppers notes he will be able to see it. He states that he moved away from Chicago in his thirties and does not want to see a cell phone tower. He says he came to Elkhart to raise his family in a beautiful place. Next, he mentions that real estate people come to the podium claiming that the towers might not affect property values, but he says he has examples from other communities where they did have an impact. He references studies from Verizon concerning wireless towers and home values. Another study published in the Journal of Real Estate and Finance shows that properties within 0.72 km of the closest cell tower declined by 2.46% to 9.78%. Numerous studies in the United States have long documented how cell phones and 5G towers impact properties. He says he also

has other documents reflecting various studies showing negative impacts on home values. Eppers then expresses confusion regarding Mr. Dolan's presentation. He says he attempted to print a coverage map from Verizon's website but faced difficulties and had to get assistance from his IT department. Eppers shows the Board a coverage map for Verizon's 5G service, which he claims shows no existing dead spots. The map shows it is for 5G, not 4G or non-coverage. Therefore, there is no reason to place the cell phone tower in their neighborhood. He says Verizon proposed a site that currently boasts the highest coverage rating in Elkhart County, enjoying at least the minimal required coverage. The FTC appeals court has ruled that they don't need excellent or amazing coverage; they only need reasonable coverage, which Eppers claims he already has. He mentions current laws and decisions about other communities because Mr. Dolan gains from visiting small towns like Elkhart. He is prepared to provide relevant court cases for the Board to reference. Another issue he wishes to address is the residential area. Eppers notes that city code regulates land use and promotes public health and safety while encouraging beneficial development within districts like R1, R2, R3, and R4. The purpose of R1 is to provide low-density single-home residential developments requiring larger lots. The intent is to protect and conserve existing and future residential developments, especially in more recently developed areas. He adds that there are many positive developments underway downtown. About a year ago, he participated in an advisory group for the Elkhart Community Foundation. They discussed how many people come to Elkhart, earn a lot of money, and then move away. He says they are trying to encourage these individuals to remain in Elkhart. This effort includes improving schools and downtown development without driving away residents and decreasing home values. Eppers states that he will sell and relocate if the tower is constructed. He does not want to see the property tax revenue that the City of Elkhart depends on vanish because studies demonstrate that property values decline. He previously mentioned recent cases similar to one involving Mr. Dolan. In Geneva, the Board voted no, and Verizon subsequently took them to court, but the appeals court upheld their decision. He highlights the town of Cedarburg, Wisconsin, where the appeals court affirmed its choice regarding residential zoning. The PA Commonwealth Court upheld a township's denial of a cell phone tower application, ruling that the proposed tower was incompatible with the residential district. Middlesex Zoning Board rejected the proposal after residents expressed concerns about its adverse effects on health and property values. Returning to Geneva, Eppers highlights how Mr. Dolan is an expert who uses his presentations to target small communities. He points out that Mr. Dolan's website states that he specializes in site acquisition and development in small cell areas across seven Midwest states. He concludes by emphasizing that residents, who are paying property taxes, face the intrusion of an outsider seeking profit without considering the community's stability. The appeals court has consistently upheld the decisions regarding residential zoning in the face of similar applications. There are no laws requiring a change in zoning. The law clearly states that only reasonable cell phone tower service is necessary, which is already being met, as shown by their website and supporting studies. Eppers says he appreciates the Board's time and urges the Board to vote no.

Newbill asks Eppers if he could bring him the documents Eppers was citing.

Eppers asks Newbill if he leaves it at the podium.

Newbill asks Eppers if he could bring it to him.

Marnocha states that it needs to go to the clerk first.

Leichtman asks Eppers if he could also leave the red map of the coverage.

Tony Gianesi, located at 2720 California Road, appears in person in opposition to the petition. Gianesi states he is the Chief Operating Officer of Elkhart Community Schools and would like to clarify some information provided this evening. First, Elkhart Community Schools does not have any cell towers. He explains that they have towers for their repeaters for their CB radios. The tower on the back side of Pinewood Elementary has been approached numerous times to permit someone to install a cell tower, but they have always declined. He clarifies that it is not a cell tower; they do not own any cell towers. Secondly, he mentions that their phone system operates over the internet, using Surf Internet. All of their buildings have Surf Internet, and they have excellent coverage. In their buildings, Gianesi states they have never had an issue with their cell phone, phone, or internet coverage unless the line goes down due to a construction issue, causing the fiber line to be cut. He mentioned that he has Verizon, and the school system also has Verizon. One of his duties as a school employee involves checking the roads and the weather. So whenever there's inclement weather, he is out at 3:45 AM. His area extends from Ash Road to Bristol Road, and his route back takes him down Bristol Street. He has never experienced a call drop. He states he needs to rely on his phone coverage and has never faced a call issue. The cell tower location, which Mr. Dolan pointed out when asked, is 50 feet from the school. He would like to note two things: a structural engineer is only as sound as the design on paper. The Tacoma Narrows Bridge collapse and the Hyatt Regency walkway collapse were both designed and certified by structural engineers; 216 people died because of their work. No structural engineer can guarantee that the 135-foot tower will not collapse upon itself. If and when it does collapse, it poses an imminent danger to the students and Staff in that building because being 50 feet away means that a large portion of the tower could come down right on the building. That building section contains nine classrooms and can house over 200 students and nine staff members. If that tower comes down, there will be fatalities. Gianesi does not want to be responsible for that and doesn't want to

respond to it. But part of his job would be to go there and deal with the aftermath. It may never happen, but it may happen. It's a part of the reality they face. Finally, there's been a lot of talk about how this is a great location and that it's not visible to the community, but it is visible to the students and staff who will have to look at it from 50 feet away every day for 177 days a year. Fifty feet away is fifty times more than the distance across the room, and that's the danger the students are being put in. In closing, he expresses that he supports everyone here speaking in opposition because they're part of the family.

Doug Weaver, located at an unknown address, appears in person in opposition to the petition. Weaver says this isn't rocket science since it is not about dropped calls but money. He argues that if everyone were being honest with each other, normal individuals would vote with their feet when they encounter a problem; they switch carriers. He notes that dropped calls are a normal fact of life. Some people must accept it and switch carriers, or they can move. Weaver then asserts that cell phone coverage is not a constitutional right anywhere he knows. Pinewood Elementary has parents coming in the morning and afternoon to pick up their children, and while they wait, they are on their cell phones. Weaver then states that in his 13 years on the school board, he has never had a single parent complain about cell phone coverage at Pinewood Elementary School. And trust me, if there were a coverage problem there, they would call us. Okay, it would be all over Facebook. He then mentions that he finds it interesting that Verizon would risk their marketing brand over one cell tower with a supposedly perfect location. There are plenty of good cell phone tower locations. The enemy of an ideal cell tower location is the enemy of a good one, which is happening here.

Eddie Hruby, located at 23977 County Road 10, appears in person in opposition to the petition. Hruby states that he lives on the other side of the school from Heidi. He then expresses that he doesn't want to wake up in the morning and sit on his back deck, drinking coffee and looking at a cell tower; he prefers looking at the woods. He conveys that he isn't impressed by the school's need for a gymnasium, resulting in a wall for him to look at. Although he hasn't lived there for a considerable time, he notes many unusual changes. He mentions that he never loses service. His wife is self-employed and cares for his mother, so he assists her with her business, which is their source of income. Hruby points out that she needs the internet because she continuously lists items online. They have a router inside the house, which suffices for their needs. She conducts much of her business at Conrail Rail Yard on the other side of town. Hruby states that there is no service there, describing it as terrible. He adds that he doesn't see a reason for the new service; they don't need the tower since he always gets cell service. He also mentions that it has been a while since he visited Walker Park for a walk, yet he doesn't recall ever losing a call there. Hruby then explains that while caring for his mother, who has dementia, he picks her up in the morning. When the weather is nice, they sit on the back deck, where she looks towards Pinewood School. Hruby points out that many trees he planted with his father have been removed from the front of the property. Those trees were transplants—the first ones he planted when he was three. They had to be relocated when the road was widened. Hruby says there have been changes at his home, which he has maintained his entire life, emphasizing that it's a great place to live and invites others to visit. He then recounts an incident where he received two burn marks on the back of his neck from wearing his Bluetooth headphones for a week, expressing concerns about electromagnetic radio pulse and speculating that it could be radiation poisoning. However, he reassures the audience that it is not a significant issue. Hruby concludes that he doesn't believe there is a need for the tower, emphasizing his adequate coverage. He references a map showing the coverage services provided when companies like Verizon sell their plans, suggesting they claim coverage in every area. Hruby states that the tower will impact him since he will have to see it continuously, and if any electromagnetic radiation emanates from it, it will affect him for the rest of his life, as long as he chooses to live there.

Kellie Mullins, located at 1825 Woodland Drive, appears in person to oppose the petition. Mullins states that she is a representative of the Elkhart Community School Board of Trustees and a resident of the neighborhood where she has lived for over 24 years. The Walnut Trails apartments are behind her home on Woodland Drive. Her family frequently bikes and walks with her children and grandchildren. There have never been issues with cell phone service. She then says she wants to address the businesses operating inside homes. Her husband works from home several days a week, providing services to the government and NASA. He has absolutely no problems managing his business remotely. He needs to handle everything from home, especially since he can't be away sometimes due to the need for privacy. Mullins then mentions that she operates a salon and is constantly on the phone with clients, and there are no issues. There's only one small area, right after leaving Horizon Bank before reaching Grant Street, where music briefly cuts out, but aside from that, communication remains intact. Mullins then states that she recently visited Martin's since people have complained about being unable to talk on the phone in the grocery store. She expresses confusion about why one must speak on the phone while grocery shopping; shopping is not enjoyable, but her husband handles it anyway. Mullins then notes that it was found that the only place in Martin's where problems occur is aisle eight, near the magazines, and around the milk area. In the rest of the store, communication is effective with anyone. Time was taken to observe this, considering it is an issue. She then said she contemplated using her phone in the council chambers, but her granddaughter noticed the sign prohibiting cell phone usage. Out of respect for her and the rules, it was decided against, and even though her husband was asked to call for special effects, she was called out on it, so she chose not to proceed with her plan. Mullins then points out one crucial aspect noted during the discussion: once the tower is installed, multiple other towers can connect to it. This is another primary concern. Is it one? Is it two? Is it four? So now there could be four towers within 50 feet of the school and the entire community. She says it needs to be remembered that this isn't just discussing one tower; it potentially involves four. As an elected official, she says her constituents are very worried about this. She then mentions that Tony Gianesi made a good point. If there was an issue with cell phone service,

officials know better than anyone that it would be the constituents who would call it out in the blink of an eye. Thus, gratitude is extended to all present. There would never be a desire to impede peers and friends from growing successful businesses, but the truth must be told: this is simply a bad situation and a poor choice. Apologies for the Board's position, but appreciation is expressed for their consideration in saying no.

Sarah Eppers, located at 1616 Evergreen Place, appears in person to oppose the petition. Eppers states that she has never experienced issues with cell phone service. She mentions that she frequently takes her children to Walker Park, where they play on the new playground. Internet access is reliable for making calls and visiting Martin's grocery store several times a week, including walking through the neighborhood, so she has never encountered a problem. Eppers further expresses that the cell phone tower would be visible from her residence and would present a significant eyesore for daily viewing. She then says various real estate agents inform her that home values could decrease by up to 20%. While health issues may not be grounds for the BZA Board to deny a cell phone tower, the health of small children is taken very seriously, and compromising it is not an option. Although the FCC considers cell phone towers safe, allegedly above scrutiny, it is essential to recognize that the FCC is a captured agency. The FCC exemplifies how the industry can control the agencies it regulates. An exposé published by the Harvard Edmond Safra Center for Ethics illustrates the wireless industry's connections to the US federal government and the Federal Communications Commission, revealing how influence is purchased over a central US regulatory agency. The exposé points out that a captured agency indicates control by the industry it is meant to regulate, akin to a wolf watching the henhouse. At the FCC, former wireless company lawyers and lobbyists led the agency as commissioners. Once in office, former FCC commissioners and top officials often take positions in the industry they once regulated. The situation resembles a high-speed revolving door, impacting both political parties. In 2020, Bloomberg News highlighted that the tech industry has become one of Washington's most significant spenders, rivaling the pharmaceutical industry and other big business lobbies. The five most prominent tech companies spent a combined \$62.2 million in 2019, surpassing the pharmaceutical industry, which had previously been a leading trade group. The Harvard Book on Captured Agencies discusses the revolving door between the industry and the government, noting that wireless and cable companies strongly influence the FCC. Current and former FCC commissioners participate in the exchange among the industry, government, and law firms contesting consumer rights related to wireless radiation. Furthermore, several FCC commissioners and lead staff members have previously worked for law firms representing the industry and cell phone carriers in cases involving brain cancer and other consumers fighting against cell phone towers due to radiation exposure. Eppers asserts that although the FCC claims the radiation is safe, numerous agencies worldwide maintain the contrary position—that it is not safe. Given the status of a captured agency, making health and livelihood decisions based on something untrustworthy is not feasible. Eppers expresses that she and her children must live near the cell phone tower. Frankly, she does not trust those studies. She believes independent studies worldwide are more credible and suggests that the situation is unsafe. She then expressed her hope that the Board would oppose the petition.

Leichtman states that she would like to remind everyone that health issues are not legally something the Board can rule on. She says she completely understands their concerns, but as a reminder, moving forward.

Christopher Baker, located at 529 South Second Street, appears in person in opposition to the petition. Baker states that he is an Elkhart resident and the Parks and Recreation Board president. He mentions that much has been said against the proposed cell tower tonight, so he will keep his opinion succinct. However, he wants to point out that two park assets are located close to the project site: Pinewood Park and Walker Park, across the street. As stated earlier in the evening, he notes that they have made a considerable financial contribution to Walker Park and are committed to making it one of the park system's crown jewels. He believes the public is responding well, but does not think those people visit the parks to see cell towers. Instead, he asserts they go to see trees, enjoy wildlife, spend time outdoors with their families, and appreciate their surroundings. Regarding property values, he mentions that, for the assets under their control, those two parks, it's hard to say definitively, but he believes it would hurt the value of those assets and what they provide to the community.

An unknown member of the public appears in person to oppose the petition. She claims that the petitioner will not only build a cell phone tower but also remove many trees from the area. The aspect regarding road construction and the ample space required for their equipment hasn't been mentioned. However, she emphasizes that they have avoided discussing how much they would take away or how much of the area would be affected.

Leichtman asks Marnocha whether the petitioner needs to wait before speaking again when the public forum is over.

Marnocha says the petitioner can respond after the Board has completed all public comments.

Henke returns to the podium in opposition to the petition. He mentions Physicians for Safe Technology and asks people to look it up, even though the Board is not permitted to consider something of that nature. He adds that, in reality, the FCC was successfully sued for relying on outdated data regarding cell towers. While evidence of harm can be found, the more critical issue is the reliance on obsolete technology for the established guidelines. If they are using outdated guidelines, no one knows the implications. He

asserts that if they are measuring against outsourced data while now possessing more powerful equipment, he would also like to refute that. He next expresses appreciation for the concern regarding home values. Henke states that this is his backyard, and he does not mind paying the taxes for what he receives, which reflects the value of where he lives. However, the situation may diminish some of the value he bases his home's worth on.

Seeing none, she closes the public portion of the meeting and calls Dolan forward.

Dolan states that he will attempt to summarize and address the concerns tonight. One concern is the tower's height of 135 feet, which is optimal for providing the best coverage and capacity for the City of Elkhart. A shorter, smaller tower creates coverage gaps along the edges of the service area. He then mentions that they have been considering a total of fourteen sites and have been working on this for approximately three years, examining these fourteen locations within that red circle, all of which are inferior to the primary site for various reasons—stormwater, floodplain issues, insufficient space, or uninterested landlords—multiple factors; but this is the best site in the search area. The other item concerns coverage. He says there are comments regarding coverage and whether there is a legitimate need in the area. Dolan reminds Board members that they have a certified report from a network engineer, whose specialization is electrical engineering, stating that there is a desperate need. They have a demonstrable need; it is not merely reports from individuals claiming their cell phones work well. Do they have Verizon? Do they have AT&T? There are comments about cell phone functionality and suggestions for switching carriers. However, as they know, they cannot be partial to any companies. They want their service to function well, like AT&T and T-Mobile. Therefore, being denied service in the area would be unfair because competitors have better service. He states that another point concerns property values. There are comments regarding online reports about property values. Dolan states they hired an independent third-party MAI appraiser to assess the site and its effects on property values. That was a thirty-five-page report included in their statement. Thus, an MAI appraiser comments directly on the impact on property values. Dolan says the next concern addresses the safety of their tower, an aspect they take very seriously. It is built to the latest standards, featuring a forty-foot concrete and steel foundation supporting the tower. He states that a gentleman from the school raises alarming concerns about the potential consequences if the tower falls. Dolan suggests Gianesi should share the same concerns regarding the tower at the back of Pinewood Elementary School. If Gianesi has concerns, Dolan says Gianesi should promptly conduct a structural analysis of the tower, as it is an older, lightweight structure. Gianesi should shut down his tower if his concerns about the children's safety are valid.

Lisa Lawless, located at 2414 North 85th, appears in person as the petitioner's counsel. Lawless states she did go to Indiana University Bloomington Law School, so she has a connection to the state and clerked for the Indiana Supreme Court. She noted her objections to the way the proceedings have been recorded. She also objected to the Staff reversing its position on the recommendation for the cell phone tower. Initially, Staff recommended approval, finding that the proposed structure's variance elements were met. Nothing has changed factually, and there is no basis to reverse course on those. She inquired whether the City maintained the same position as a month ago, and the city attorney confirmed that it does. Therefore, she strongly objects to the last-minute change. She does not know the City's evidence and cannot speak until it presents its case. The evidence the Board is considering is whether the petitioner has demonstrated substantial evidence to support its request for a variance. Mr. Dolan's detailed presentation constitutes substantial evidence, as it is factual and includes expert reports and a certified appraisal from an independent appraiser regarding whether the structure would affect property values. Her detailed presentation explains the need for the structure. Whether person A or B has acceptable cell phone service is not the main issue. Anecdotal evidence that she believes her service is adequate does not counter the proof that modeling and technological studies have identified dead spots, establishing a need for a cell phone tower to connect with other areas. Streaming services and people's streaming needs cannot wait until everyone experiences dropped calls before installing the structure. She states that the evidence from Mr. Dolan's record shows the location is the best option within the search ring, having examined many other potential locations. It is heavily wooded, and the pole will be thin, without lights or guy wires. There is no evidence that it will obstruct anyone's view. Simply stating that someone doesn't want to look at it is not substantial evidence that it will impair the area or property values. The City permitted Pinewood School to have the structure depicted in the photograph near the school, not shielded by trees. That structure wouldn't have been allowed if that were truly a concern. Therefore, it would be fundamentally unfair to vote against the structure, which is shielded by many trees, just because some people do not want it in their area. That is not substantial evidence against the variance request. The proof concerning property values includes studies from other states and cities. She does not know the years those studies were conducted or their proximity to the cell phone structure relative to the residences. She also does not know the circumstances of the areas being studied. All of that does not indicate whether this particular structure, the monopole, will impact property values in the area. Over time, these poles have become thinner, less noticeable, and less intrusive. Past studies of property values do not establish that the structure will negatively impact property values in the area. The proof from the certified appraiser indicates that it will not affect property values, and citizens have testified that it will improve theirs due to better cell phone service. Additionally, it is essential to note that the petitioner submitted all the site plans and the structural engineer's report, providing proof of the need for the cell phone tower and the rationale for the chosen location. City staff did not request additional information or state that their application was incomplete. Back in September 2023, city staff approved or recommended approval of the variance request, finding it met all the criteria of the variance ordinance. She asserts that nothing justifying a reversal of the recommendation from approval to disapproval has changed factually. It is worth noting that this is the second time the petitioner has sought approval for a

location for a cell phone tower to meet local needs. The previous attempt, as mentioned, was at Pinewood Park. In that case, there was a lease with the Parks Board, but the City later stated that the Parks Board was not authorized. Consequently, the petitioner sought another location. Suppose the location, situated in a heavily wooded area and not in a residential area, is deemed inappropriate for a structure to meet the demonstrated needs. In that case, she asks, where would it be? Denying the request would effectively prohibit cell phone service and violate the Telecommunications Act (TCA). Lastly, she has noted several times that concerns about RV emissions and health cannot be considered. She argues that all the elements of the variance ordinance are met here. She states they have demonstrated that the structure could not negatively impact property values; they would likely improve. She says they have shown that it will not affect residents' use, health, or safety, as it is situated in a heavily wooded area and will be set back, occupying a relatively small footprint. The City originally found that it would not harm the area or its residents, as it is not located in a residential area and is shielded by trees. The photo simulation shows that the proposed structure is not obtrusive and is more shielded than the school structure that the City allows. The structure will not substantially affect the area's use and value. The City's reversed position in its report merely states that the value could be affected or the use could be impacted. No evidence from city staff indicates that the structure will affect property values, and she has not seen any certified reports. Without that information, there is no substantial evidence to support the denial of the structure.

STAFF ANALYSIS

The petitioner desires to lease a 50 by 50 foot area of the property to use for the construction of a cell tower. The site location is in the northwest corner of the subject property in a heavily wooded area. The proposed tower will be 135 feet in height. A security fence will surround the lease area and there will be space for future collocate equipment.

Verizon Wireless is the designated user of the tower but it can handle an additional three carriers. The petition indicates there is a need in Elkhart for improved cellular service that this location would be able to provide. It also states that this tower would enhance the City's 911 first responders service. The site's isolation from adjacent residential properties and ability to provide enhanced coverage to the area were the reasons this site was selected.

STAFF RECOMMENDATION

The Staff recommends denial of the use variance 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 the proposed tower could be detrimental to the natural viewshed from the surrounding properties;
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner because the tower's proximity to the surrounding existing residences could negatively impact the value of the surrounding homes;
3. The need for the variance arises from some condition peculiar to the property because of the residential zoning and the height of the proposed tower;
4. The strict application of the terms of this Ordinance will not constitute an unnecessary hardship as the property can still be used for single family dwelling residential development;
5. The approval does interfere substantially with the Comprehensive Plan because the plan calls for low density residential uses.

Trotter says five letters were mailed, with one returned in favor, with no comment, and one phone call not in favor, with a comment.

The not in favor comment reads as follows:

“As a tax paying citizen, the City must defend its citizens from harmful requests.”

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

Leichtman asks Trotter if the City knows of any problems with 911 dispatch and first responders.

Trotter says that he is not aware of anything.

Leichtman calls for a motion to accept the petitioner's petition and presentation as the Board's finding of fact and grant the variance.

Davis – No
Mulvaney – No
Newbill – No
Leichtman – No

Motion denied.

Leichtman calls for a motion to accept the Staff's findings of fact as the Board's findings of fact and deny the petitioner's request for a variance. Davis makes a motion to approve; Second by Newbill.

Davis – Yes, based on the Staff's findings.

Mulvaney – Yes, he says he is voting yes because he believes the proposed tower will harm the natural viewshed from the surrounding properties. He also thinks it will adversely affect property values in those surrounding areas and substantially interfere with the comprehensive plan, which calls for low-density residential use rather than commercial uses.

Newbill—Yes, based on Staff's analysis and the facts they found, as well as property values, and he thinks it's an attractive nuisance regarding the height.

Leichtman—Yes, she is voting that way because she does not believe it's compatible with the zoning ordinance in the R-1 district, and she believes it will be unsightly and affect property values.

Motion carries.

Leichtman calls for a five-minute recess to let everyone out.

Leichtman calls the meeting back to order.

25-BZA-03 PETITIONER IS JASON PATEL
PROPERTY IS LOCATED AT 1207 WEST LUSHER AVENUE

To vary from Section 26.10.D.1, General Location Standards, which states in part, 'All on premise signs shall be located no closer than five (5) feet from any right of way' to allow for a free standing sign to be two (2) feet from the Lusher Avenue right of way, a variance of three (3) feet.

To vary from Section 26.10.D.4.d, General Location Standards, Free standing signs, which states 'Free standing signs shall be centered on the property, or if not possible, at least twenty (20) feet from any adjacent property line' to allow for a new sign to be located two (2) foot from the (corner) side property line, a variance of eighteen (18) feet.

Leichtman calls the petitioner forward.

Ron Mitchell, located at 4707 East Washington Boulevard, appears in person on behalf of the petitioner. He believes the Board has the complete packet with the site plan showing the proposal for a monument sign. The monument sign complies with city code. He is unsure if the Board has visited the property to see the improvements, but the request is to revitalize a rundown property in a neglected area. Mr. Patel is here with him tonight. He has done a fantastic job renovating and rebuilding the property, turning it into a convenience store that will be a mobile gas station with a couple of eateries: Noble Roman's Pizza and Crispy Crunchy Chicken. The property is a corner lot, making it difficult to place the sign in the center of the property due to its location at the intersection of Lusher and Oakland. He says that if the Board has the site plan, they can see that the ingress and egress will be at the center point of Lusher and Oakland. Their best option is to request a variance to place an 8-foot-tall monument sign at the corner, angling it appropriately as indicated in the site plan. Given the tightness of the lot and the need to navigate traffic and pedestrians, placing the sign three feet back into the property would hinder traffic flow. So again, they seek the Board's blessing to allow them to place the monument sign two feet from the sidewalk, reducing the standard 20-foot setback to two feet based on its position at the corner.

Leichtman asks for questions from the Board.

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

STAFF ANALYSIS

The petitioner is requesting two (2) variances for a proposed sign at the north east corner of the property located at 1207 W. Lusher Avenue. The variances are for distance from front property line and distance from the (corner) side property line.

The subject property, formerly an auto repair shop, is being redeveloped as a convenience store with fuel. As with any new development or redevelopment project, the developer's agent submitted a site development plan in the fall of 2023. The plans reviewed and approved through the City's Technical Review process included building location, landscape, sign location, canopy and pumps, and parking. Technical review includes both planning and engineering staff. Any plan deficiencies noted during review were addressed with three exceptions – landscape buffer, corner side setback and parking. In January 2024, the variance request was heard before this body and all three requests were approved.

That approved site plan depicted one (1) pylon sign, which was located at the corner of W. Lusher and Oakland Avenues. During Tech Review, Staff made comment that a developmental variance(s) would be required because of the sign location. Sign contractors are required to submit a separate plan package due to ordinance bonding and permitting requirements.

The petitioner has demonstrated some hardship related to the conditions of the site. The redevelopment plan was not designed to accommodate a compliant freestanding sign. Wall and canopy signs will be visible from the street and function as additional wayfinding and branding signage.

The sign submitted for the variance request meets the development standards and is within of scale for the property. Furthermore, the property is at a signalized intersection which gives drivers in one direction or another time to see the sign while waiting on the light to change.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from the requirements found in Section 26.10, Sign Regulations 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 sign will be constructed and will meet all current building standards;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the sign meets the size development standards for the street but not the location;
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 redevelopment of the small site, not sufficient room for approved location.
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property as it would be a safety hazard for West Lusher Ave approved location.
6. The special conditions and circumstances do not result from any action or inaction by the applicant because of the location the applicant has already come to the Board for three development variations to be able to build.
7. This property does not lie within a designated flood area.

Trotter says 23 letters were mailed with none returned.

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

Leichtman calls for a motion.

Leichtman makes a motion to approve 25-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; Second by Davis.

Davis – Yes
Mulvaney – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

NEW BUSINESS

25-X-02 PETITIONER IS JANELYA GATES PROPERTY IS LOCATED AT 709 FIELDHOUSE AVENUE

Per Section 5.3, Special Exception Uses, (4.3 F) Day Care Home to allow for the establishment of a new day care home at 709 Fieldhouse Avenue.

Leichtman calls the petitioner forward.

Janelya Gates, located at 709 Fieldhouse Avenue, appears in person as the petitioner. Gates says she is here to seek approval for her in-home daycare. She has worked with kids for seven years and earned her associate's degree in Early Childhood Education. She is committed to helping her community with this in-home childcare and has obtained all the necessary state permits.

Leichtman asks for questions from the Board.

Davis asks...(unintelligible, off mic).

Gates states she is here to obtain a letter confirming that she does not need a business permit to operate, to proceed with the state licensing process to become licensed. Therefore, if she receives approval from the Board, she can submit her application to the state.

Newbill asks Gates if her backyard is fenced in.

Gates says yes, it's fenced in.

Leichtman asks Gates if the driveway is accessible.

Gates says she has a two-car driveway, so she will park on one side while her parents will park on the other. Most of the parents will arrive at staggered times, which should prevent traffic on the road or in her driveway.

Leichtman asks Gates how many children she will help.

Gates says that, for her sanity, she will help up to 10.

Leichtman opens for public comments to speak in favor. Seeing none, she opens for opposition. Seeing none, she closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is seeking local permission to operate a home day care at 709 Fieldhouse Avenue. The City of Elkhart requires, in addition to state approvals, an approved special exception to operate a home day care.

The house, built in 2024, based on assessor records comprises approximately 960 square feet on a .224-acre site. The house and grounds appear to be in good condition. The house has a spacious backyard with a small driveway; parents may use part of the driveway or the two streets to drop off and pick up children. The daycare will necessitate a license from the Indiana Family and Social Service Administration (FSSA)

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 the site has a fenced yard and parents can park on either of the two intersecting streets;
2. The special exception will not reduce the values of other properties in its immediate vicinity because the site must retain its residential character;
3. The special exception shall conform to the regulations of the Zoning District in which it is to be located because there can be no noise, smoke or odors that would compromise the neighboring properties.

CONDITIONS

If the Board chooses to approve the requested special exception, staff recommends that the following conditions be placed upon the approval:

1. All children shall be restricted to the building and fenced-in play area except when arriving and leaving or on supervised walks or outings.
2. The facility and grounds shall be kept clean at all times.
3. The facility shall be subject to inspection upon reasonable notice, by the zoning administrator during hours of operation.
4. There shall be no exterior display, signs, or other forms of advertising on the premises.
5. A copy of the child care home license shall be submitted to the Department of Planning and Zoning upon receipt from the Indiana Family and Social Services Administration.
6. If the day care ceases to operate for more than one (1) year, or the license is revoked, the Special Exception becomes null and void.
7. Any violation of the terms of this Special Exception as determined by the City Zoning Administrator shall render the Special Exception invalid.
8. There shall be a maximum twelve (12) children.
9. The operator of the day care shall live on the premises.
10. The Special Exception is for two (2) years and shall be reviewed as a staff item by the Board of Zoning Appeals by March 13, 2027.

Trotter says 31 letters were mailed with zero returned.

Leichtman asks if there are questions from the Board for staff.

Davis asks Trotter if the petitioner is aware of the conditions.

Trotter says yes, the petitioner was made aware at Plan Commission.

Leichtman calls for a motion.

Davis makes a motion to approve 25-X-02 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Newbill

- Davis – Yes
- Mulvaney – Yes
- Newbill – Yes
- Leichtman – Yes

Motion carries.

**25-BZA-01 PETITIONER IS ELKHART COUNTY YOUTH FOR CHRIST INC
PROPERTY IS LOCATED AT 2721 PRAIRIE STREET**

To vary from the requirements found in Section 26.10, Sign Regulations, Table 1, to allow a new freestanding sign that is forty two square feet in area where the maximum area allowed (for Places of Worship and Educational Institutions) is thirty two square feet, a variance of ten (10) square feet.

Leichtman calls the petitioner forward.

Todd Lehman, located at 1508 Basctor Road, appears in person on behalf of the petitioner. He states that that while working with Daryl on effective communication with the community about the happenings in the building, the idea of a cell tower was never mentioned. He then clarifies that they devised the idea of a sign divided for all four current tenants in the building at that time and increased the size by an additional 10 sq ft to accommodate the space needed for them. Daryl also informed him that Thorough would occupy the last space on the sign, meaning the building would then be full.

Leichtman asks for questions from the Board.

Leichtman opens for public comments to speak in favor. Seeing none, she opens for opposition. Seeing none, she closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a developmental variance to allow for a sign that is 42 square feet when the maximum allowed is 32 square feet.

This property is currently used for a youth ministry and charter school. They are proposing a new freestanding monument style sign to be located along the north side of Prairie Street. The proposed sign will be internally lit and 9 feet back from the property lines and 20 feet south of the property line. The variance is needed as the ordinance requires all freestanding signs in Residential Districts to be 32 square feet.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance e 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 a freestanding monument style sign of this size is typically found in the nearby business districts;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner as the property will continue to be used as an office building;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a small measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist which are particular to the land involved and which are not applicable to other lands or structures in the same district as the signs are preexisting;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because it places constraints on the visibility of the building;
6. The special conditions and circumstances do not result from an action or inaction by the applicant;
7. This property does not lie within a designated flood hazard area.

Trotter says 20 letters were mailed with one returned in favor with no comment.

Leichtman asks if there are questions from the Board for staff.

Leichtman calls for a motion.

Davis makes a motion to approve 25-BZA-01 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition; Second by Newbill.

Davis – Yes
Mulvaney – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

25-UV-03 PETITIONER IS JEREMY STONE
PROPERTY IS LOCATED AT 640 EAST JACKSON BOULEVARD

To vary from Section 15.2 Permitted Uses in the CBD, Central Business District, to allow for auto sales at 640 E. Jackson Boulevard.

Leichtman calls the petitioner forward.

Jeremy Stone, located at 53812 Homeland Road, appears in person as the petitioner. Jeremy states he requests permission to open an auto dealership. That location has been involved in auto sales since the mid-1980s, and most people in Elkhart know that the property has been sitting there for a while. Therefore, he decided to purchase it and plans to renovate everything. He now understands that it doesn't align with the future of the central business district. However, nothing he does on the property or in the business itself will negatively impact any surrounding businesses. If it can't be a permanent home for the business, he is seeking at least two or three years to establish himself before moving to a new location. This time should be sufficient for him to get established and started. It should also be emphasized that he will not run a rundown, junky car dealership like it has been in the past; it will be a higher-end operation. Everything will be renovated in the building, and a significant part of the business will involve giving back to the community. The goal is to do what can be done for everyone around them on all fronts. He says he has been around Elkhart his whole life and cares for others, which is the foundation of his business philosophy.

Leichtman asks for questions from the Board.

Leichtman opens for public comments to speak in favor.

Beverly Stone, located at 53812 Homeland Road, appears in person in favor of the petition. Beverly states that the overall vision for this property, as Jeremy mentioned, is that it has been a used car dealership for many years. She appreciates the vision and plan that the city is pursuing. She understands that operating a used car dealership will not be injurious to the public or to the surrounding neighbors, as they are committed to maintaining an aesthetically pleasing environment being developed downtown, which she recognizes as important. She drives through that area daily, is from here, lives here, and is a significant part of this community, so she fully understands the situation. However, she seeks the opportunity to pursue her dream. She took the necessary steps by obtaining a business loan to acquire this property, which required her to create a business plan. She had to outline her intentions and plans. Unfortunately, she learned that certain circumstances changed some time ago. It is her understanding that the reason any grandfathered clause for the previous car dealership lapsed was related to the utilities and the timeline of when they were turned off. She believes the utilities were off before she even purchased the property, and she had no way of knowing this, nor was she aware that it was a grandfathered property. She acknowledges that while she might have found out, she didn't. They worked diligently to restore the utilities, but unfortunately, due to neglect and how poorly the property had been maintained, it took about three months after closing to turn them on. She says they made efforts to revitalize the property; she knows it is currently an eyesore for the community, and she wants to breathe new life into it. She aims to provide a service to the community. Additionally, as Jeremy mentioned, even before opening, she has hosted coat drives for the children in the community and allowed food trucks to operate there to raise funds for Elkhart Community Schools. Jeremy is very committed to giving back and ensuring everything is done correctly. She also acknowledges the existing plan and hopes to use this opportunity to establish her business. She is not trying to stay indefinitely or detract from the wonderful work done downtown; she hopes to continue the long-standing progress.

Leichtman opens for opposition. Seeing none, she closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow the property to be used for auto sales. The current zoning of the Central Business District does not permit auto-oriented land uses which includes auto sales.

Based on assessor records, the building was built around 1968 and is approximately 1914 square feet over one level. The building was originally used as a gas station and repair shop. Over the last several decades the site had been known as Dick Choler Cars. After Choler cars closed the subsequent businesses operated for several years before closing and utilities to the site shut off in March 2023.

The request comes to us based on a complaint and an investigation by zoning staff that observed a new business at the location after seeing activity and cars parked around the building. The building had recently been purchased.

Staff reached out to the new owner and asked to meet with them to understand the desired use of the property. Staff met with the owner/petitioner in January 2025 and heard their plans for the site. Staff explained the allowable uses and what uses are permitted and more importantly, also covered the non-conforming use regulations found in the zoning ordinance (See Figure 1 below). Staff relayed that the use had been abandoned for more than one (1) year and that the owners would need to file in order for the use to resume.

The primary way staff determines whether or not a non-conforming use has lapsed is with active utility usage. Based on no water or sewer activity for 18 months, staff determined the use had lapsed. Water service was turned off on March 15, 2023 and reestablished on September 16, 2024.

The new owners/petitioner did not understand the limitations of the current zoning and were under the assumption that based on the previous use as a used car lot they could again operate a used car lot. Unfortunately, the new property owner did not do the sufficient due diligence before purchasing the property.

The property is located in CBD zoning district. The purpose of the Central Business District is to encourage a diversity of uses which together contributes to the vitality of the downtown core. The district recognizes the unique character of downtown and its function as a center of business, government, finance, residential, and social activity in the community. Land uses and building design are integral to the image and theme of the Central Business District.

Some examples of CBD uses are drug stores, live/work units, medical offices, multi-family residential dwellings, offices, restaurants and retail sales. The Development Conditions for the district shall comply with Type I and Type II Design Standards as specified in Section 24. Business activity must be conducted wholly within a completely enclosed building, except for legally permitted outdoor eating areas and sidewalk sales. Where businesses in this district are adjacent to residentially zoned or used property, all service areas, including but not limited to, loading docks and doors, dumpsters, etc. shall be screened.

The other concern staff has with this request is the property is located at the eastern bookend of the River District. The River District Plan, authored by Jeff Speck focused on the goal of establishing a pedestrian, walkable urban area. The primary uses outlined in the plan to achieve those goals were office, housing, retail, dining, entertainment, hospitality, schools, recreation and worship. The city has expended tremendous resources and has supported the vision of the Speck plan and others to reimagine downtown Elkhart.

The city supports redevelopment activity that falls in line with the River District Plan and the current permitted uses found in the CBD section of the ordinance. Surrounding the property is a mix of commercial and residential uses. The staff cannot support the request.

STAFF RECOMMENDATION

The Staff recommends denial of the use variance 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 the proposed use is inconsistent with the purpose of the district and is more intense than the permitted CBD uses;
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner because the proposed use is not in keeping with the purpose of the CBD district intended in part to function as the center of business, government, finance, residential and social activity in the community as well as not in keeping with the vision of the River District Plan;
3. The strict application of the terms of this Ordinance will not constitute an unnecessary hardship if applied to the property for which the variance is sought because many of the permitted uses listed in the CBD section of the zoning ordinance could be established on this site;
4. The request does not comply with the Comprehensive Plan which calls for the area to be developed with mixed uses.

Trotter says 17 letters were mailed with one returned not in favor with comment.

The not in favor comment reads as follows:

“We don’t need a car lot in the River District and traffic control is terrible in and out.”

Leichtman asks if there are questions from the Board for staff.

Davis asks Trotter if petitioner bought the property.

Trotter says the petitioner did purchase the property.

Beverly says she is hoping to get clarification on how it would be injurious or how it would negatively affect the surrounding properties, considering it has been this way for many years. It is also my understanding that if we were aware that utilities had been shut off, not by us, and if we had immediately resumed utilities, we potentially wouldn't be in this situation and could have continued to conduct business as normal.

Leichtman asks Beverly whether she has met with city officials or spoken to anyone in Planning and Zoning.

Beverly says her husband did, but she didn’t believe that was a part of the conversation.

Jeremy states he had a meeting with the staff and was unaware of its utility aspect. He was just informed that it lapsed due to being left vacant. Additionally, as Beverly mentioned, he indicates they understand the future plan for the central business district and all that it entails, but if they were to be granted two years, he personally doesn't believe anything will be developed in that timeframe.

Beverly mentioned that something was raised regarding his purchase of an auto dealership, and they didn't perform their due diligence. They later realized that this was due to certain title issues that the buyers should address. They operated under the assumption that since they submitted a business plan specifically for a car lot to obtain a business loan for purchasing the property, everything would be fine. This situation was quite confusing and frustrating. Additionally, they discovered that conversations had been ongoing about this matter, but no one was necessarily notified. She says she is unsure, but they believe they have completed the due diligence needed to proceed with their intentions for the property.

Leichtman asks Jeremy if he had his two years, what would his two-year plan be?

Jeremy says he will start back up tomorrow, preparing the building and everything. Then, a few months in, he will begin looking for another property because it takes time to find a good piece of land for this business. His goal is to grow enough so that they can relocate everything and keep operations running smoothly. He did car sales years ago and has established a very good reputation. Jeremy says he is honest and a good person. He has finally had the opportunity to fulfill his dream, and that's what they are aiming for.

Beverly also thinks it's important to establish a name in the community and secure funding. They have now used all of their funds to purchase the property and need more funds to find another property.

Leichtman asks Trotter if there is a way to add a sunset clause to a temporary approval.

Trotter says he is trying to determine whether they are legal. He states that he understood the courts had ruled these matters as not permissible because either the use is allowable or not. Trotter adds that counsel is working on making that determination and exploring whether a condition could be placed.

Leichtman asks Marnocha if the Board should table the request to allow more time to determine if such a decision is legal.

Marnocha says she knows that Zionsville put a sunset clause on requests a couple of years ago, but she does not know how that turned out.

Leichtman asks Marnocha whether, without a sunset clause, they could be required to return in two years.

Marnocha states that a review differs from providing it to them for a few years. Marnocha mentions that they are discussing the possibility of tabling the request.

Davis asks Marnocha whether the lot could be removed from the CBD.

Marnocha says she believes that it would be more difficult.

Marnocha states that if the Board could table the request, it would allow her to get a more definitive answer for the Board, and the petitioners are amenable to that.

Leichtman calls for a motion to table the request for a month.

Davis – Yes
Mulvaney – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

**25-UV-04 PETITIONER IS WILLIAM W ZIMMERMAN
PROPERTY IS LOCATED AT 1129 PRAIRIE STREET**

To vary from Section 4.2 Permitted Uses in the R-2, One Family Dwelling District, to allow for one (1) dwelling unit (apartment) above the funeral home at 1129 Prairie Street.

Leichtman calls the petitioner forward.

Bill Zimmerman, located at 54590 Colonial Ridge Drive, appears in person as the petitioner. Zimmerman states that he is the current owner and operator of the funeral home. He explains that the structure was originally a two-story home built in the early 1900s. During that time, two-story structures were common. The funeral home is on the main level, while the owner lives in quarters above it. An addition was made to the funeral home in the early 1960s, and the lower level will continue to operate as a funeral home. He is requesting that the zoning permit be multi-use, allowing the funeral home to be used along with a rental unit. They have invested significantly in renovations since they purchased the property: a new parking lot has been installed, a new roof has been added, and new windows have been put into the structure. The upper level has been fully renovated, and he requests permission to use it as an apartment with living quarters. Given the limited housing, particularly in that district, they believe this would be a beneficial use of the upper level of the funeral home. As mentioned, the lower level will remain a funeral home operation, while the upper level will be an apartment. Therefore, they are seeking a zoning variance to operate a rental unit in the upper level of the funeral home.

Leichtman asks Zimmerman how large is the upstairs.

Zimmerman states that the upstairs area is 1200 sq ft. It includes three bedrooms, two full baths, a kitchen, and a dining room, all completely renovated. New flooring and ceilings have been installed, along with HVAC. The upper level has all-new electrical wiring to meet current codes. Everything has been repainted, resulting in a completely transformed structure upstairs. Thank you.

Zimmerman says the upstairs is

Leichtman asks for questions from the Board.

Leichtman opens for public comments to speak in favor. Seeing none, she opens for opposition. Seeing none, she closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow the property to use the existing living quarters for an apartment rental unit.

The request comes to us from a request from a local funeral home looking to utilize their upper level of their building for a rental apartment.

Based on assessor records, the building was built around 1900 and is approximately 7,900 square feet over two levels with about 6,600 square feet on the first floor and on the second floor is 1200 square feet. The building had been originally used as a house but has since been converted into a funeral home with living quarters previously used by staff on the upper level.

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 proposed use was remodeled with all necessary permits and inspections;
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 is often found above funeral homes;
3. 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 without action by this body the apartment would not be able to be rented legally;
4. The request does comply with the Comprehensive Plan which calls for the area to be developed with medium density residential;
5. The apartments unit was originally used by staff and is being underutilized, the adding of an existing unit will not negative impact the surrounding neighborhood.

Trotter says 47 letters were mailed with none returned.

Leichtman asks if there are questions from the Board for staff.

Leichtman calls for a motion.

Leichtman makes a motion to approve 25-UV-04 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
Mulvaney – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

**25-BZA-05 PETITIONER IS TOLSON CENTER
PROPERTY IS LOCATED AT 1320 BENHAM AVENUE**

To vary from Section 26.7.C.7.k.v, Parking Lot Design Lighting, which states in part, ‘all project light standards shall be of uniform height and except when lights abut or fall within seventy five (75) feet of a residential use property, where the maximum height shall not exceed twenty (20) feet,’ to allow for the light poles for the new outdoor soccer fields to be sixty (60) feet in height, a variance of forty (40) feet.

Leichtman calls the petitioner forward.

Crystal Welsh, located at 303 River Race Drive, appears in person on behalf of the petitioner. Welsh states that the Tolson Center has undergone the approval processes for the redesign and redevelopment of the facility over the past couple of years. From the beginning, the special use exception indicated that there would be outdoor sports fields, that this process was approved, and that the site plan was assembled. She notes that the building is constructed, it's operational, it's beautiful, and it's functioning well. They're finally into the second phase, which involves the construction and design of those outdoor sports fields. She mentions that at this point, the lighting company came in and began analyzing what it would take to illuminate the entire soccer field. They quickly discovered that 20 feet adjacent to residential properties would not suffice, leading to significant dark spots on the field that would render it unusable for evening games. They have provided the schematic plans that illustrate the lighting design and have attempted to mitigate any negative impacts on the adjacent properties through their design. She adds that outdoor operations will only occur from April to October or early November. Therefore, they hope much of the play will occur during daylight when

there is natural ambient light in the community. The hours are from 09:00 A.M. to 08:00 p.m. in April and May, 09:00 A.M. to 10:00 P.M. in June, July, and August, and 09:00 A.M. to 09:00 P.M. in September and October. Thus, many of those hours will be during normally lit hours, and they hope the facility will not create excessive negative ambient light. She believes any impact will be outweighed by the significant positive benefits of the Tolson Center in the neighborhood, and they hope the residents come out and enjoy the games and the facility.

Leichtman asks Welsh if the lights will be used every day, Monday through Friday, and weekends.

Breanna Allen, located at 1320 Benham Avenue, appears in person on behalf of the petitioner. Allen says they anticipate frequent use during the open months of April through October, with various soccer practices, games, and potential tournaments.

Leichtman asks for questions from the Board.

Leichtman opens for public comments to speak in favor.

Norman Anderson, located at 1320 Benham Avenue, appears in person in favor of the petition. He says the facility will significantly impact the community, especially the Hispanic community. He states that there is a strong interest in the soccer fields; the lights they plan to install are directed onto the field. He doesn't have to worry about ambient light spilling outside the area that will disturb the neighbors or the community. He says he strongly supports these lights.

Seeing none, she opens for opposition. Seeing none, she closes the public portion of the meeting and calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a Developmental Variance to allow the new Tolson athletic fields to be illuminated by 60-foot-tall light poles. The request comes to us as Tolson expands the services provided to the community to include the sports field as a part of the final phase of the campus master plan.

The petitioner's contractor and lighting consultant feel that shorter poles would not adequately illuminate the fields and need the taller light poles to light the field are necessary.

The regulations for lighting in the zoning ordinance come in two parts. First, the amount of light cast from fixtures measured in foot candles. The second is the glare caused by the fixtures themselves. The first part is straight forward to measure and regulate. Review of the foot candle reading are completed by overlaying the photometric plan on the site plan and generating by computer the foot candle readings on the plan to ensure the readings are within regulation. The second, glare, is far more subjective. In the past staff regulated glare by whether or not the light emitted from the fixture emits light directionally offsite that causes a nuisance to adjacent properties. Oftentimes staff is alerted to such a violation by complaint and the solution is often having the fixture redirected down so the light shines away from other properties where no direct light emission is visible. Wall pack light fixtures mounted on the sides of buildings often generate the most complaints.

There are a mix of commercial and residential uses that surround this property. The primary concern staff has with the request is the amount of spray the lighting will cast and the height of the poles themselves. The proposed height of the light poles could impact residential properties leading to a loss of enjoyment because of the increase in off-site light emitted from the fixtures. The Tolson Center sits in the center of the Benham Avenue neighborhood planning area. The light from the proposed fixtures could impact the redevelopment efforts for new infill housing in the area surrounding the field.

In reviewing the lighting plan for the site, the light level behind each light is at the maximum of what is allowed by zoning ordinance at the property line when adjacent to residential.

Section 26.7, Lighting Standards, states in part that all exterior lighting shall be shielded to avoid casting light above three-tenths (0.3) foot candles or glare upon any property located in a residentially zoned district or used for residential purposes. Additionally, the section reads unless otherwise approved, all project light standards shall be of uniform height, not to exceed thirty (30) feet in height, except when lights abut or fall within seventy-five (75) feet of a residential use property, where the maximum height shall not exceed twenty (20) feet.

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 proposed light poles will be shielded and will not cause glare onto adjacent residential structures;
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 was previously approved and the light fixtures for the athletic field will be shielded and will not cause glare onto adjacent residential structures;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a small measure of relief when uniquely warranted;
4. Special conditions and circumstances do exist which are particular to the land involved and which are not applicable to other lands or structures in the same district because the professionals hired to examine the light needs for the field were unable to achieve the required light coverage with shorter poles;
5. 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 based on the professionals hired to examine the light needs for the field the necessary light standards for the filed cannot be met with shorter poles;
6. The request does comply with the Comprehensive Plan which calls for the area to be developed with mix of parks and recreation uses;
7. This property does not lie within a designated flood area.

CONDITIONS

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

1. All exterior lighting shall be shielded to not cast direct light on street rights-of-way or adjacent properties and minimize neighborhood lighting nuisances by reducing allowable spill and glare disruption.

Trotter says 61 letters were mailed with two returned in favor with no comment.

Leichtman asks if there are questions from the Board for staff.

Leichtman calls for a motion.

Newbill makes a motion to approve 25-BZA-05 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopt all conditions listed in the staff report; Second by Davis.

- Davis – Yes
- Mulvaney – Yes
- Newbill – Yes
- Leichtman – Yes

Motion carries.

ADJOURNMENT

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

Janet Evanega Rieckhoff , President

Phalene Leichtman, Vice-President

DRAFT