

BOARD OF ZONING APPEALS

-MINUTES-

Thursday, May 14, 2026 - Commenced at 6:04 P.M. & adjourned at 7:30 P.M.

City Council Chambers – Municipal Building

MEMBERS PRESENT

Janet Evanega Rieckhoff
Phalene Leichtman
Ann Linley

MEMBERS ABSENT

Rochali Newbill

REPRESENTING THE PLANNING DEPARTMENT

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

LEGAL DEPARTMENT

Maggie Marnocha – *via Webex*

RECORDING SECRETARY

Raen Levendoski

ELECTION OF OFFICERS

Eric Trotter, Assistant Director for Planning, states that since all members are not present, the election of officers should be moved to next month.

APPROVAL TO AMEND AGENDA

Trotter proposes an amendment to the agenda, to move case 26-UV-14 to the first item of the meeting.

Linley makes a motion to approve; Second by Leichtman. Voice vote carries.

APPROVAL OF MINUTES FOR APRIL 9, 2026

Linley makes motion to approve; Second by Leichtman. Voice vote carries.

APPROVAL OF PROOFS OF PUBLICATION

Leichtman makes motion to approve; Second by Linley. Voice vote carries.

OPENING STATEMENT

Welcome to the May 14, 2026 meeting of the Elkhart City Board of Zoning Appeals.

If you are joining by video, your microphone will be automatically muted and your video will not be on when you enter the meeting. Please make sure you use both your first and last name. If you would like to speak, you must click on the “raise hand” action and wait to be called on in order to alert our IT attendant to unmute your speaker and turn on your video, which is necessary if you want to take part in the meeting. When you begin to speak, speak up and identify yourself before proceeding. When speaking: Petitioner, Public and Board members, make sure your mic is on and speak into it.

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 no later than 30 days after the decision is made in an appropriate court. 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. If you are here in person, 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. 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.

Tonight, we have our minimum quorum of three members present, which may include temporary appointed Members. While we can conduct business with three members, any votes taken must be unanimous. Anything less than a unanimous vote will be considered No Action and the case will be reset for the next month.

With respect to the public comment portion of the meeting, public comments will be taken only on the specific petition being heard before the board. Unlike the City Council meeting, where there is time for anyone to comment on any issue, we do not have that at the BZA and comments will only be taken for or against the petition before the board.

OLD BUSINESS

None.

NEW BUSINESS

**26-UV-14 PETITIONER IS CITY OF ELKHART REDEVELOPMENT COMMISSION
PROPERTY IS LOCATED AT 131 S MAIN ST**

Trotter presents.

The request is to vary from Section 15.2, Permitted Uses in the CBD, Central Business District to allow for Temporary Structures, not related to construction, for a temporary pocket park.

Evanega Rieckhoff calls the petitioner forward.

Mike Huber, Development Services Director for the City of Elkhart, appears in person. Huber thanks the Board for accommodating their request for the case to be moved to the top of the meeting. Huber is representing the Redevelopment Commission, who acquired the property at the Northwest corner of Main and Lexington through tax sale after a building was demolished there. They have maintained that space as a potential development site for some time, but they haven't had a significant development interest in it. It has continued to be used as a grassy area for residents, specifically used by residents walking pets. There's a new restaurant that moved in next door and new businesses on that block, so they want to improve the area and create a nice little pocket park, until they have a development proposal that could come on the site. As noted by staff, the variance tonight is for a couple of temporary structures – some nice pergolas to cover and shade some of the tables that are outside. They've been working on a small concept to take a storage container and turn it into a little bit of a pop-up pre-packaged food and drink station. They hope to put it out for RFP to have a vendor come in and actually operate during events and things. Just one more way to add vibrancy Downtown and present opportunities to small business owners to activate space. The variance is required because temporary structures are not currently permitted, so they would like the Board's permission to be able to install the temporary structures. They would be removed if they had a development come along at some point in the future.

Evanega Rieckhoff asks for questions from the Board.

Evanega Rieckhoff asks if the staff report pictures are close to what it will look like. Huber states that it's AI generated, but it's typical to what they would like the pergola to look like. The container might be a little longer, maybe not the stools in front, but yeah something similar to that. Evanega Rieckhoff states that it looks like they're selling beverages. Huber states that it could be beverages or pre-packaged food, but they do not know for sure yet because they do not have a selected vendor yet. Evanega Rieckhoff asks if they will have a person manning it. Huber states they would lease it to a small business; it wouldn't be the city operating it.

Leichtman asks if the ground will be left as grass. Huber states that it will be concrete pavers, a hardscape surface.

Evanega Rieckhoff 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 at 131 South Main Street to allow for Temporary Structures, not related to construction, for a temporary pocket park. Section 15.2 Permitted Uses in the CBD, Central Business District does not permit Temporary Structures unless associated with active construction on a site.

131 S. Main Street formerly housed a three-story building, within the Central Business District (CBD), that was demolished in 2019 due to neglect by the previous owner. The Redevelopment Commission took title to the vacant land through the tax sale in 2024.

The goal of local redevelopment commissions is to facilitate development on underutilized property in cities within a specific boundary area. In an ongoing effort to activate underutilized parcels around the downtown core within Elkhart – the Redevelopment Commission is developing a plan for a temporary pocket park on the land until a more permanent plan for a new building is determined.

The need for the use variance comes from the fact that temporary structures are only permitted as a part of an active construction site. The specific request is to permit the placement of two (2) shade structures, a small kiosk/container, seating and bollards (to act as a barrier from the alley at the western edge of the site) as a part of the temporary pocket park. Parks are a permitted use within the CBD.

This temporary park use will activate the property and allow people within the downtown neighborhood a place to stop and eat lunch, rest under one of the shade canopies or buy a sandwich and a drink from a vendor leasing space in the kiosk/container structure. There will be no power outlets provided, seating designed for individual users rather than benches and will also be well lit. All of the elements incorporated in the pocket park will be reused at other parks or in other places within the city once a building is approved for redevelopment on the site.

Staff are in the process of working with a local architecture firm to develop elevations that reinforce the historic context for this and other infill development sites within the downtown. This work will be used as a part of the request for proposals to reinforce the visual aesthetic desired for the vacant infill lots.

This temporary pocket park and structures are intended to be just that - temporary. The ultimate goal is to replace the building on the site with a structure that will reinforce the urban edge.

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 temporary canopy and kiosk will be built per all applicable building codes;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the temporary structures will allow for some gathering space and should not impact negatively surrounding uses or values;
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 without board action because the temporary structures are not associated with a construction site on this parcel would not be permitted;
5. The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property because without some relief from the standards, the temporary park elements would not be permitted;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because no construction has started;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

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

1. The approval is for a term of two (2) years and must be reheard as a staff item in May 2028 if a redevelopment plan for a new building has not yet been approved by the Redevelopment Commission.

Trotter states there were 38 letters mailed with one returned in favor with no comment.

Evanega Rieckhoff asks if there are questions from the Board for staff.

Leichtman asks if there is already water and sewage there to be tapped into. Trotter states that they will not be utilizing them for restrooms, but there is water and sewer available that can be accessed.

Evanega Rieckhoff calls for a motion.

Leichtman makes a motion to approve 26-UV-14 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt the one condition in the staff report; Second by Linley.

Leichtman – Yes

Linley – Yes

Evanega Rieckhoff – Yes

Motion carries.

**26-UV-09 PETITIONER IS LYNDON MARTIN
PROPERTY IS LOCATED AT 2111 S SEVENTEENTH ST**

Kyle Anthony-Petter, Planner II, presents.

The request is to vary from Section 18.2 Permitted Uses in the M-1, Limited Manufacturing District, to allow for auto sales.

Evanega Rieckhoff calls the petitioner forward.

Lyndon Martin, 2111 S Seventeenth St, appears in person. Martin purchased the property and it hadn't had water or gas for about 25 years. As shown, it has been transformed into a class A property. It was in the past a repair shop, and they still want to do some repairs, tending, something like that, and also request to do auto sales out front. It's not really set up for manufacturing, what it's zoned for. Staff put a concern about trucks parking out; it's not going to be a big auto lot; they would not be bringing in semi loads. Just small, a car or two here, that type of thing. If it would become semis, Martin owns a self-storage facility around the corner, about ¼ of a mile away and would be happy to allow parking there with large quantities.

Evanega Rieckhoff asks for questions from the Board.

Evanega Rieckhoff states that the property looks nice, and she's not a huge fan of car lots, but what he's done with the lot makes it look like it would be nice looking and fairly appropriate for the neighborhood.

Martin states that the way he fixed the property is the way they'd like to continue operating this business. He had some inquiries about towing companies, but he doesn't want smashed cars there. When he fixed this property up, the neighbors got excited and also fixed their properties, and transformed the whole corner.

Evanega Rieckhoff asks if Martin has seen the conditions and wants to know if he would agree to all the conditions. Martin confirms and says they'd have higher standards.

Leichtman asks about a 2-year condition. Evanega Rieckhoff states it's not in this one, but what they do have is if the property sells, the right to have a used car lot there will not transfer with the sale. Leichtman acknowledges and asks if after the two years, does he have to come back every two years and re-ask, to make sure things are maintained.

Evanega Rieckhoff tells Staff they're going to add a seventh condition, that in two years they want the petitioner to come back, they'll take a look again and drive by, see how everything looks, see how the traffic patterns are, and if everything is good, they'll be good to go. Martin confirms that is acceptable.

Evanega Rieckhoff 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 at 2111 South 17th Street to be used for Auto Sales. Section 18.2 Permitted Uses in the M-1, Limited Manufacturing District does not permit Auto Sales.

The land had previously been used for contractor office and storage facilities from 2013 to roughly 2025. The property has a long history of being used for Motor Vehicle repair and adjacent uses. The petitioner has recently repaved the parking area in March 2026, and improvements have been made to the property with new siding and a roof in 2025.

This M-1 district is typically associated with the manufacturing and distribution of goods produced in smaller planned Manufacturing Districts. The permitted uses allowed in the M-1 district are more intense than the request which are allowed by right.

The petitioner is requesting a use variance to allow the property to be used for used auto sales to lease the property out to someone interested in using the site for auto sales. The request comes to us based on a phone call from the petitioner with zoning staff about the process of using the site for auto sales.

Staff appreciate the petitioners' desire to put the property back to use but have concerns related to this location being used for auto sales. The loading and unloading of cars from a transport truck would have to be done in a public street which would block the road due to the small size of the lot. As the variance runs with the land, the size of the parcel will not change, loading and off-loading will always be a challenge.

The property is located in M-1 zoning district. The purpose of the Limited Manufacturing District is to accommodate limited manufacturing uses having a minimal impact on surrounding areas. The intent is to allow manufacturing development by reason of location and the availability of adequate transportation and infrastructure systems, while protecting the surrounding uses from negative external effects.

Some examples of M-1 uses are automobile and truck repair, professional offices, contractor offices, shops and storage facilities. Business activity must be conducted wholly within a completely enclosed building, including but not limited to, loading docks and doors, dumpsters, etc. shall be screened.

The city supports redevelopment activity that falls in line with the current permitted uses found in the M-1 section of the ordinance. Surrounding the property is a mix of commercial and industrial 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 not be injurious to the public health, safety, morals or general welfare of the community because the property will only be used for the display of autos;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the use as an auto sales lot is less intense than the other permitted uses;
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 M-1 section of the zoning ordinance could be established on this site;
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 without board action auto sales on this parcel would not be permitted;
5. The strict application of the terms of this Ordinance would not result in practical difficulties in the use of the property because establishing a permitted M use could be established on this site;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because the zoning classification has been in place for decades and no auto sales have been established;
7. This property does not lie within a designated flood hazard 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 vehicles must be in running condition; no flat tires, broken windshields, or cars that require major auto body repair work.
2. All vehicles shall be parked on an approved surface.
3. No vehicle parts may be stored outside. Outside storage is prohibited.
4. The parking lot is to be kept in good repair, striped and weed free.
5. The approval only applies to the current owner. Should the business close or cease operation for any reason, the approval is null and void.
6. As the site has limited on site navigating area, no on street loading or off-loading of vehicles is permitted.
7. In two years, this will be reviewed as a staff item in the May 2028 meeting (**amended by staff during staff report reading*).

Anthony-Petter states there were 12 letters mailed with none returned.

Evanega Rieckhoff asks if there are questions from the Board for staff.

Evanega Rieckhoff wants to make sure condition number five states what they want it to say. It doesn't say if the lot is sold that the license carries on. It says if the business closes or ceases operation. Trotter states that is because the license goes with the business owner. That's different than the use by this board locally. The license goes with the individual business owner, so should the business close they have to re-apply for a business license. Evanega Rieckhoff states she understands that, but wants to know if the lot is sold to someone else, will the business be able to keep running or will it have to cease operations and will they want it to.

Trotter states that the way he wrote it relates to the owner of the property. The owner could lease it out and sell it, but the tenant could stay. If the Board wants to differentiate that it doesn't matter the owner or the business, they would still come back in two years regardless, that would happen.

Evanega Rieckhoff says on the first reading, she didn't notice it, but sees the owner is leasing the operation of the used car lot. She asks Martin if he is the person that is going to be running the used car lot. Martin states that he will be leasing it, but will be heavily involved, especially in the first two years as far as financially and making sure it is going to be successful. He's fixed it up successful, and wants it to continue to be successful.

Linley clarifies that the second part of condition five directly applies to Martin as it is his business. Martin says yes, but further clarifies that the business and auto license will not be in his name. Evanega Rieckhoff states he is leasing the business out and is not the owner of the business. Martin confirms that he will not be the owner of the business, but will be heavily in the financial end.

Evanega Rieckhoff calls for a motion. There is some deliberation on how the motion and vote should go.

Trotter states that since Staff has recommended against, and if the Board wants to recommend an approval rather than denial, the recommendation is still in the affirmative, but then the Board would adopt the petitioner's – *(someone on the board says something off mic, unintelligible)* – yes. Linley asks *(unintelligible and off-mic)* still a yes or a no? Trotter responds that is correct, but then they still have to adopt the staff's recommendations along with the petitioners. Evanega Rieckhoff asks for clarification – if they would vote yes to approve the petitioner's findings and then they would have to put in the staff's conditions. Trotter confirms.

Linley makes a motion to approve 26-UV-09 and adopt the petitioner's documents and presentation as the Board's findings of fact in the present petition and adopt all conditions listed in the staff report, of which there were 6, and adopt the following condition, a seventh, which is the two-year review; Second by Leichtman.

Leichtman – No

Linley – Yes

Evanega Rieckhoff – Yes

Motion is tabled.

Evanega Rieckhoff states that since there was not a majority, the petitioner will need to come back next month.

26-BZA-12 PETITIONER IS HYDRO EXTRUSION USA, LLC
PROPERTY IS LOCATED AT 3406 REEDY DR

Trotter presents.

The request is to vary from Section 26.4.A.6, Fence Requirements, which states in part that, 'No fences, other than split rail, wrought iron, or open picket fences not to exceed four (4) feet in height, shall be permitted on any front yard or corner side yard' to allow for a seven (7) foot chain link fence (six (6) foot fence and one (1) foot 3-strand barbless wire fence) in the front yard, a variance of three (3) feet.

Evanega Rieckhoff calls the petitioner forward.

Paul Macumber, 3406 Reedy Dr, owner of Patriot Fence and designated representative of Hydro Extrusions appears in person. Currently, there is no fence out front, and there is an entrance and exit, and it is pandemonium a little bit, there is a lot of traffic out there day and night. Semis going in load off the East side of the building, there is a scale out there, they would erect the fence just North of the scale with an automated gate on the East and West side of the scale. They're asking for the variance, he believes, where it comes to the front yard, turns 90 degrees and goes south, then turns 90 degrees West, then 90 degrees North back into the building. What that does is contain all overhead doors and give enough turnaround space for trucks to pull in and back to actually access all the garage and still keep the public safely away from this area. They've had instances of cars going in the opposite direction against everything, and this fence would create a barrier to remedy the situation.

Evanega Rieckhoff states she drove by and, like Macumber said, it was pandemonium and asks if this fence will help. Macumber states that it will create a direction of entry and exit. The entry point will be on the east side of the scale, which is the furthest away point from the building. There is an existing 6-foot fence on that side, running north and south, and then along the toll road. This is just to contain that area, create a direction of entry and exit. The west side will be considered a free exit; they'll put sensors up, so when a vehicle comes the gates will open and they can leave, which gives a directional entry. On the west side of the building, too, there are parking lots for regular cars and automobiles, and they're going to run the fence just north of that to separate that public

parking and then back into the building, which keeps the manufacturing area and the shipping and receiving separate from those areas. Since there are public parking spaces and then the main pandemonium express, there are semis going in and out of there all the time.

Evanega Rieckhoff says that on that street there are other buildings that do have fences in the front, they just do not go across the nice part of the building where people walk in and out, and if their fence stops before that section of the building, she thinks it will be okay.

Evanega Rieckhoff asks for questions from the Board.

Linley thanks Macumber for the extra information. Macumber states that he did bring pictures of the barbless wire as an example, which is not related to the chain link fence. He submits Petitioner's Exhibit A, which shows that there are no sharps on it to injure anybody under seven foot. It is tipped out and, like the standard barbed wire form, it's a climb preventative. Nobody can come up and easily jump over the fence.

Evanega Rieckhoff 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

Trotter states for the record that this is an amended staff report being read, which has been provided to the members as well as the petitioner's updated findings and a graphic that will be referred to in the staff report.

The petitioner is seeking to vary from Section 26.4.A.6, Fence Requirements, which states in part that, 'No fences, other than split rail, wrought iron, or open picket fences not to exceed four (4) feet in height, shall be permitted on any front yard or corner side yard' to allow for a seven (7) foot chain link fence (six (6) foot of which is fence and one (1) foot is 3-strand barbless wire fence) in the front yard, a variance of three (3) feet.

The petitioner is seeking a variance to provide additional security at the facility and add separation from the public parking area from the manufacturing/shipping operation area in front of the building. The fence would front (Reedy Drive) before connecting into an existing fence at the east side of the property.

A permit for the fence was submitted on January 7, 2026, with staff alerting the applicant that the fence did not meet development standards for fencing in the front yard on January 8, 2026. The applicant then filed with the board on March 17, 2026.

The portion of the fence closest to Reedy (see attached figure) is why a developmental variance is required. The circled area is the area being referred to. This approximately 100 feet of fence is proposed to be placed closer to the street than the building to enclose outdoor storage of materials.



There are similar fences already existing to the west of the property that encloses, directly adjacent, AEP equipment and a recreational RV business beyond to the west. This area was annexed some years ago from Elkhart County. The county regulations are different from the city related to fencing. It is very likely the nonconforming fence for the RV plant was placed prior to annexation as our rules for industrial fence placement have been in place for over 20 years. The area is zoned for

manufacturing and some relief from fence placement requirements is not that out of line for the zoning district. Trotter adds that the fence around the AEP equipment they have no control over; that is a public utility and they have to be able to secure it; staff has no regulating authority over that equipment (*amended by staff during staff report reading).

The request for security and to separate the public and private areas is understood. This is a very common occurrence in industrial areas. Upon further investigation and a site visit by staff, there is outdoor storage placed in the front yard. And based on aerial photographs, the outdoor storage area has grown over time and is now permanently located within the front yard, which is not permitted by ordinance.

Staff is willing to offer a compromise. Staff would like to have additional discussions with the petitioner to understand the needs of the business and work toward a solution that comes closer to complying with the outdoor storage requirements. Staff would like to see if some of the material could be relocated on the campus to reduce the amount of material stored in the front yard. A truck scale was constructed around 2015. That is located in the front yard, located closer to the road than the business (**amended by staff during staff report reading*).

Staff is willing to consider that 2015 structure as the outermost structure on the campus and have the fence be in line with the scale.

STAFF RECOMMENDATION

Staff recommends approval of the developmental variance to vary from Section 26.4.A.6, Fence Requirements, which states in part that, 'No fences, other than split rail, wrought iron, or open picket fences not to exceed four (4) feet in height, shall be permitted on any front yard or corner side yard' to allow for a seven (7) foot chain link fence (six (6) feet of which is the fence and one (1) foot is the 3-strand barbless wire fence) in the front yard, a variance of three (3) feet – modified to be in line with the truck scale.

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the fence will be built and installed in a workmanlike manner;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because a fence is a typical element found in industrial districts. The fence's location should not affect the use and value of an adjacent property;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted. Additionally, only a portion of the fence requires the filing of the developmental variance;
4. Special conditions and circumstances do exist as the proposed fence is to provide security and separate the public from the campus. This site has several hundred feet of frontage which does require security. A fence is a typical element to provide security;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the proposed fence provides for some measure of security and would provide for some measure of organization for the outside storage for finished product;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the fence has not yet been installed;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

None.

Trotter states there were 10 letters mailed with one returned in favor with no comment.

Evanega Rieckhoff asks if there are questions from the Board for staff. Seeing none, she calls for a motion.

Leichtman makes a motion to approve 26-BZA-12 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, no conditions; Second by Linley.

Leichtman – Yes

Linley – Yes

Evanega Rieckhoff – Yes

Motion carries.

26-BZA-14 PETITIONER IS WASTE-AWAY GROUP PROPERTY IS LOCATED AT 707 N WILDWOOD AVE

Anthony-Petter presents.

The request is to vary from Section 18.6 Yard Requirements in the M-1, Limited Manufacturing District, to allow for a sixteen (16) foot front yard setback when twenty-five (25) feet are required, a variance of nine (9) feet.

To vary from Section 26.4.A.6, Fence Requirements, which states in part that, 'No fences to exceed four (4) feet in height, shall be permitted on any front yard or corner side yard' to allow for an eight (8) foot welded steel fence in the front and corner side yard, a variance of four (4) feet.

Evanega Rieckhoff calls the petitioner forward.

Brian McMorrow, 510 Lincolnway East in Mishawaka, licensed professional engineer with V3 companies, appearing on behalf of the applicant and owner, Waste-Away Group. Joining virtually is their architect, Morgan Filipiak of Harris Architects, in case there are any questions about the building. Joining McMorrow here in person is Dominic Remmes, a region engineer with Waste Connections Inc, the parent company of Waste Away Group. Hopefully, anything he doesn't provide initially they've got the professionals to respond. Waste-Away Group has been doing business in Elkhart for 60 years and they employ about 250 people here. The subject property is really 14 different tax parcels that are contiguous and together form a campus of about 4.7 acres of land. There is about 760 feet of frontage along the westerly side of Wildwood Avenue that extends from West Beardsley on the north down to where Laurel Street terminates at Wildwood. A sister company, Cottonwood Properties, owns several tax parcels to the west, two of which have frontage on North Nappanee Street. One of the parcels is being used as a common storm water management facility, to treat runoff from the developed portion of this project. The objective is to construct, operate, and maintain a new one-story shop building near the corner of West Beardsley and Wildwood. Having a footprint of 100x156 and a roofline that slopes from east to west – so it'll be 27 foot high on one side and 25 foot high on the other side. There will be seven garage doors on the east face and seven on the west face, to allow trucks to pass from east to west and make their way back into the yard as they exit. Routine maintenance of their fleet is going to be done in this building. The shop building was proposed with a north-south orientation to provide the appropriate on-site traffic circulation just mentioned, and also to be sensitive to the fact that West Beardsley may be considered a gateway to Elkhart, so they're going to have no garage doors facing north along West Beardsley. There is also to the south of the building the presence of an AEP Indiana Michigan Power overhead line that doesn't allow them to move the building further south. They all contribute, these factors, to having them have at least a portion of the building in the front yard along West Beardsley. He draws attention to an image included in the packet, the aerial – the highlighted area shows precedent for a building to be as close as 21 ½ feet to the curb line of West Beardsley. Their building is going to be 24.9 feet back from the curb line, three feet further than the building which is at 1621 West Beardsley, the health clinic. Lastly, on the same exhibit, the two metal sheds with earthen floors that exist there today are going to be removed and replaced with their shop building. There will be new paving, new landscaping, and the decorative fence they talked about. Staying with the same exhibit, there's an existing curb cut on West Beardsley that they are going to take out and it is going to be landscaped. There is also along Wildwood, about 100-foot of continuous driveway opening with gravel and there are dumpsters there right now. That's all coming out, it's going to be landscaped, and they think it's going to be an attractive upgrade to the neighborhood. He's happy to be a part of the team that has, except for these two provisions needing relief from the zoning ordinance, complies in every other respect to the code, and is of the opinion that will provide a significant aesthetic impact to this corner of the city. Their process does include two petitions that were filed at about the same time – a minor subdivision plat, which consolidated a number of those 14 tax parcels to eliminate a number of variances that might have otherwise been triggered, and they are going through final site plan tech review. They have not yet completed that process, and are happy to work with staff to maybe tweak some of the aesthetics in a way that may be even better than what they're proposing.

Evanega Rieckhoff asks for questions from the Board.

Evanega Rieckhoff asks what the purpose of the fence is as it runs along Beardsley. McMorrow states that it is primarily for safety, any pedestrians walking on the lawn (there is no sidewalk there), that is going to be an active vehicular area with trucks moving, so it's primarily safety to keep any pedestrians out from cutting across that corner. It's going to be a black wrought iron-like, so it's going to be an attractive fence there. Evanega Rieckhoff asks why 8 feet as opposed to the four feet. McMorrow responds that four feet, in their view, is more of a residential neighborhood height, and was probably what was intended when the code was written, and can be easily scaled by someone who wants to jump the fence. The 8-foot should do the trick and keep pedestrians separated from the vehicles.

Leichtman asks why not six feet instead of eight.

Dominic Remmes, region engineer with Waste Connections, appears in person. They're happy to be here in Elkhart, they purchased the HEIMCO business a couple of years ago, it's been a fantastic business, and they've been working on making upgrades to some of the facilities. The city has been great with giving permits to do the building that they've been proposing. This one is really a nice upgrade. Their mechanics are literally working in buildings that are over 100 years old doing preventative maintenance, and they can barely fit these modern truck in them. They're excited about this new facility for the mechanics and they're just great technicians, and finding technicians to work on vehicles, they're like gold, so they want to give them a nice facility to work in. To speak on the height of the fence, 8 feet, for them, is a typical fence height for around their facilities. Not only from the safety of pedestrians, keeping them impeded from or the notion of even trying to climb it, but also from a theft

standpoint. They've found around their facilities, folks want to jump into their trucks and go through them for personal items, loose change, whatever, and just vandalism and whatnot. They've found 8 feet to be a common fence height around their facilities around the country – they build shops for their business in 46 states and five provinces in Canada – they do a lot of this, and it's just a typical fence height.

Evanega Rieckhoff opens for public comments to speak in favor.

Paul Macumber, Patriot Fence, appears in person. He states that the fence they're proposing, he is familiar with it, and it creates a better aesthetic for the property. Chain link is more industrial, and you can go 6-7-8 foot with all that, but their investment is a beautification for Elkhart. He would love to see a lot of it put up. They are investing in this fence. Eight foot is virtually climb-proof, especially when it's ornamental because of the upright structures, there's no way to post your feet, it will actually provide more safety while also giving a very good aesthetic to the property. It costs more, and costs more to repair, but Macumber feels it creates a better aesthetic along the roadside in a somewhat heavily pedestrian-trafficked area.

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

STAFF ANALYSIS

Trotter presents.

The petitioner is requesting a developmental variance in order to construct a new storage building at the corner of West Beardsley Avenue and North Wildwood Avenue.

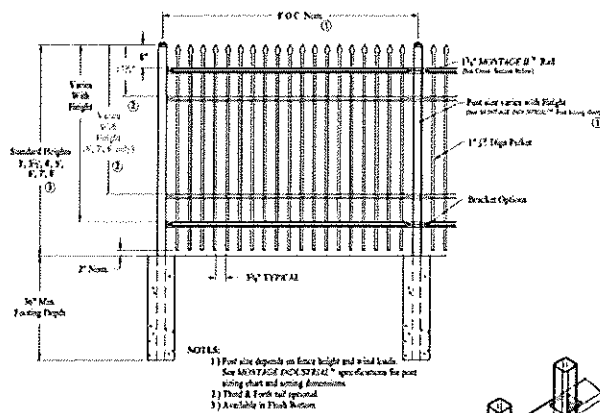
The request is to vary from Section 18.6 Yard Requirements in the M-1, Limited Manufacturing District, to allow for a sixteen (16) foot front yard setback when twenty-five (25) feet are required, a variance of nine (9) feet.

Also to vary from Section 26.4.A.6, Fence Requirements, which states in part that, 'No fences to exceed four (4) feet in height, shall be permitted on any front yard or corner side yard' to allow for an eight (8) foot welded steel fence in the front and corner side yard, a variance of four (4) feet.

The petitioner is in the process of tearing down an existing 1,400 square foot storage building and building a new 15,600 square foot shop. The facility will be used to repair and provide maintenance to equipment used by the applicant.

Due to the configuration of the property and placement of the building, the building layout requires some relief from the developmental standards. Placement of the building matches (1730, 1710 and 1642 West Beardsley Avenue) which are used for auto repair. The narrow side of the building faces the street with garage doors along the east and west side of building. The project has been submitted through technical review and this variance action is one of the few last items to be addressed for complete project approval.

The proposed placement of the fence along West Beardsley Ave and North Wildwood Avenue will be an eight (8) foot wrought iron style fence in the front and corner side yard. The fence is meant to provide added security to the site and reduce possible break ins while equipment is being repaired.



STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance for a wrought iron style fence based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals or general welfare of the community because the fence will be built and installed in a workmanlike manner;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because a fence is a typical element found in industrial districts. The fences location should not affect the use and value of an adjacent property;

3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted. Additionally, only a portion of the fence requires the filing of the developmental variance;
4. Special conditions and circumstances do exist as the proposed fence is to be installed on the subject property in a corner side yard and front yard;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the proposed fence provides for some measure of security and would otherwise greatly limit the amount of outside storage for finished product without the fence;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as the fence has not yet been installed;
7. This property does not lie within a designated flood hazard area.

The Staff recommends approval of the developmental variance for setbacks 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 storage building will be constructed and inspected to ensure it is built to all applicable code requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the area is located within an M district and storage buildings are a common use;
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 due to the location of the existing buildings – the area left for development is somewhat limited thus requiring a variance for development;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the owner would not be able to place the structure in the most practical location;
6. The special conditions and circumstances do not result from an action or inaction by the applicant because no construction has begun;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

Subsequent to staff writing, and in conversations with the petitioner's agent, Staff would like to add one condition at the end of this approval.

Evanega Rieckhoff asks for which variance. Trotter responds to the setback, because it's related to the building.

1. There must be wainscoting added along the front façade of the building along West Beardsley Avenue (**amended by staff during staff report reading*).

Leichtman asks if the petitioner is aware of that condition. They confirm off-mic.

Trotter states that it is a gateway to downtown, and they wanted to add something to elevate the building.

Trotter states there were 21 letters mailed with one returned in favor with no comment, one returned not in favor with comments: related to the height and reduced setback would negatively impact the visual appearance of the area and create visibility concerns near the roadway.

Trotter makes a correction to the record for letters mailed. There were 21 letters mailed with one returned not in favor. The in favor was for the Use Variance case, and got added accidentally.

Evanega Rieckhoff asks if there are questions from the Board for staff.

Leichtman asks about the fence height and why they did they choose to go with eight over seven or six, which isn't really standard for them.

Trotter responds that in Staff's perspective, the style of the fence, while it is taller than what they normally see in front yards. Taking a few things into consideration, in Staff's minds, made this circumstance unique. One, the location – it is a gateway coming into downtown, and the style of the fence really impressed them. They normally get much more basic fences, so this was greatly appreciated. Secondly, they do agree with the petitioner with regard to the security and safety. Eight feet is going to create a real and perceived barrier for people trying to get into the building. They are not going to be able to scale that as easily, and if they get halfway up, hopefully someone would see them and call the police or an alarm would go off.

Evanega Rieckhoff calls for a motion and states that they are going to do this with two motions.

Leichtman makes a motion to approve 26-BZA-14, section 26.4.A.6, 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, no conditions; Second by Linley.

Leichtman – Yes

Linley – Yes

Evanega Rieckhoff – Yes

Motion carries.

Linley makes a motion to approve 26-BZA-14, section 1 for the section 18.6 yard requirements, and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and adopt the condition listed in the staff report, which is the addition of a brick wainscot façade to the north side; Second by Leichtman.

Leichtman – Yes

Linley – Yes

Evanega Rieckhoff – Yes

Motion carries.

**26-UV-10 PETITIONER IS MOUNT NORTH CAPITAL
PROPERTY IS LOCATED AT 421 S SECOND ST**

Anthony-Petter presents.

The request is to vary from Section 15.2, Permitted Uses in the CBD, Central Business District to allow for an Amusement parlor.

Evanega Rieckhoff calls the petitioner forward.

Jackie Bloss and Tim Bradley, 421 S Second St, appear in person. They were petitioning to change, it's now a storage unit/warehouse, and they want to make it a family entertainment center with pool tables, indoor putt-putt, a golf simulator, VR games. Something for children and family, teenagers, a little bit for everybody. Bradley states that the entertainment center is not for a particular age, it varies, and they welcome all ages for entertainment, arcade and simulator entertainment. Different fun entertainment for the family, something he feels is well needed in the area. They have to travel to Mishawaka when they really want to venue out with the kids, so thought it would be nice if they brought it in this area. Bloss states that with the Honey Pot right around the corner, with the kids already there, it draws them.

Evanega Rieckhoff asks for questions from the Board.

Linley asks the proposed hours of operation. Bradley states they will close by 11 pm.

Linley states she didn't see anything about food or if it's just going to be amusements. Bradley states that if they did venture off, that's another phase, but if it's food it wouldn't be any kitchen-accessible food being served out of there, it would only be something that could be bought across the counter and handed over. Bloss states pre-packaged chips and pop, things of that nature. Nothing they need to cook.

Evanega Rieckhoff asks about the 11pm time. Leichtman states that she lives in the area, and that is an acceptable time. She states there are bars around that are lively and make much more noise than she imagines they would make.

Leichtman asks if they are in the Opportunity Zone and recommends they look into it.

Evanega Rieckhoff opens for public comments to speak in favor.

Sam Voss, project manager for Mount North Capital - Enterprise Building, appears in person. Voss thinks it would be something that is unique and provide entertainment for the community. They have the Honey Pot in that building, which is pottery, and they provide pretty much the same thing, they have a lot of kids around. It's something else they thought would add to the building and the community.

Leichtman asks if there is overflow parking in the back of the building. Voss says that yes, there is parking behind the building and they own that parking lot as well as the parking lot behind the restaurant, Kao's, across the street.

Evanega Rieckhoff asks if there is an entrance in the back. Voss confirms and says there will be an entrance in the back parking lot.

Evanega Rieckhoff opens for public comments to speak in 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 at 421 South 2nd Street to be used as an Amusement parlor. Section 15.2 Permitted Uses in the CBD, Central Business District does not permit Amusement parlors. Amusement Parlor (Room) is defined as any public area or room containing one (1) or more amusement machines.

Amusement Machine are defined as any machine or device designed or modified to be operated by a coin, coins, or token, or for which change is made for the operation thereof. Such a machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine.

A potential tenant for one of the lease spaces wants to open an arcade in a currently empty space in the building. Golf and racing simulators, putting area, pool tables, darts and arcade games are some of the proposed amusement games for the space.

The CBD zoning district does not permit Amusement parlors as a permitted use. The property is currently known as the Enterprise Building but formerly the Elkhart Truth building. The proposed amusement parlor would be located in a vacant retail space on the north end of the building. The building has already undergone substantial indoor remodeling for the existing tenant spaces.

Amusement parlors are permitted in the B-2 and B-3 business Districts, but are not listed in the Central Business District. Staff support the use for an amusement parlor within the Enterprise Building. The downtown area of the city is growing and having a diverse business base that provides activities for its residents is important.

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 is within a building with a variety of uses and should blend well within the downtown;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because there will only be minor exterior changes to the existing building and the proposed use should not cause any nuisance to adjacent uses;
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 without board action an amusement parlor on this parcel would not be permitted;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because establishing a permitted CBD use could be achieved on this site and providing for required off-street parking would be possible;

6. The special conditions and circumstances do not result from an action or inaction by the applicant as the use does not currently exist;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

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

1. The petitioner will schedule an on-site meeting with the Fire and Building Departments within 90 days of approval to discuss building and fire requirements.

Anthony-Petter states there were 21 letters mailed with one phone call received in favor with no comment.

Evanega Rieckhoff asks if there are questions from the Board for staff.

Leichtman asks, if like with the used car dealership, if they approve this variance use and the business ceases to operate or a new owner comes along, can they put a condition on it that they have to come back and re-ask for a variance use, or does it go with the building.

Trotter states that the use variance would go with the building, because they would be essentially modifying the list of permitted uses for this particular property. Once this use variance is approved, it would go with the property irrespective of the ownership of the business. The reason they place the condition is because they did not have a chance to meet with the petitioners prior to Staff Reports going out – the Fire Department will help establish the capacity for the space, and the Building Department will help them to understand what will require very likely a commercial Construction Design Release, because there are some openings that are proposed to be closed up, specifically the area leading from the area into the truck dock. That will be closed up, and since they are modifying a commercial building with egress and ingress, they are very likely going to have to file for a commercial Construction Design Release. In addition, the entry area that will have to be constructed on the back of the building that will allow them proper means of ingress and egress out of the “entrance” on the back side of the building will also very likely require a commercial Construction Design Release because this is a commercial building and they will have to make sure they have ADA requirements – proper steps, handrails, all that. That’s why Staff added the condition.

Evanega Rieckhoff calls for a motion.

Leichtman makes a motion to approve 26-UV-10 and adopt the petitioner’s documents and presentation, together with the Staff’s finding of fact, as the Board’s findings of fact in the present petition and adopt the one condition of meeting with the Fire and Building Departments within 90 days of approval; Second by Linley.

Leichtman – Yes

Linley – Yes

Evanega Rieckhoff – Yes

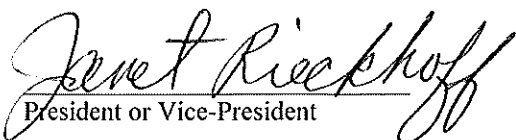
Motion carries.

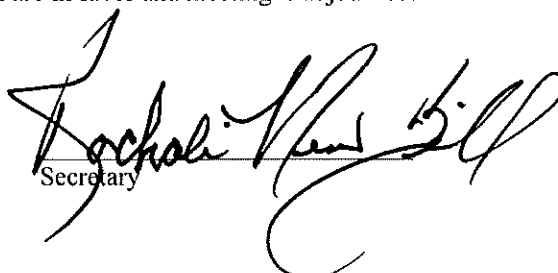
STAFF ITEM

Trotter states that they need to correct the record. When 26-UV-14 was heard, there were 38 letters mailed out. Unfortunately, because there was a BZA-14 and UV-14, one of the responses for UV-14 was placed in the BZA file. To correct the record for 26-UV-14, there were two responses received in favor with no comments.

ADJOURNMENT

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


President or Vice-President


Secretary