

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, February 12, 2026 - Commenced at 6:05 P.M. & adjourned at 7:06 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Phalene Leichtman
Ann Linley
Rochali Newbill

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

Raen Levendoski

ELECTION OF OFFICERS

Eric Trotter, Assistant Director for Planning, states that last month when they had the election of officers, they didn't have a full slate and when they took the vote on Vice Chair they did not have a proper second. This evening, they will have to revote for Vice-Chair and, it is his thought to do just a one-month for the Secretary until they have all their members back from vacation.

Leichtman asks if anyone would like to make a nomination for Vice Chair.

Linley makes a motion to approve Leichtman for Vice Chair (Vice President) for the 2026 service year. Second by Newbill.

Leichtman asks if there are any other nominations for Vice Chair.

Leichtman – Yes
Linley – Yes
Newbill – Yes

Leichtman asks if there are any nominations for Temporary Secretary for the board. She makes a motion to nominate Newbill. Second by Linley.

Leichtman asks if there are any other nominations for Vice Chair.

Leichtman – Yes
Linley – Yes
Newbill – Yes

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES FOR DECEMBER 11, 2025

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

APPROVAL OF MINUTES FOR JANUARY 8, 2026

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the February 12, 2026 meeting of the Elkhart City Board of Zoning Appeals.

The video comments will only be taken on WebEx. You cannot comment on Facebook, you can watch only. If you are on video, please mute your mic when not speaking. Speak up and identify yourself before you begin to speak.

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. 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. If you are appearing by WebEx or Facebook, please put your name and address in the comment section. 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. 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.

NEW BUSINESS

26-BZA-03 PETITIONER IS POLLY PROPERTIES LLC PROPERTY IS LOCATED AT 345 COUNTRY CLUB DRIVE

The request is to vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for an eighteen point five (18.5) foot rear yard setback for an existing building where twenty (20) feet is required, a variance of one point five (1.5) feet.

To also vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for a zero (0) foot driveway setback where six (6) feet is required, a variance of six (6) feet.

Leichtman calls the petitioner forward.

Ben Stanley, of 2810 Dexter Dr, Goshen, with Surveying And Mapping, appears in person to represent this proposal and answer any questions. This is a property, or several different tracts all owned by the land owner – the Dairy Queen that's there on Cassopolis. This address on Country Club is a house, but it is not used as a house or residence, it is used as a business office. Back in 2017, there was some approvals to get some variance to expand the Dairy Queen business, back into the other parcels there. It is his understanding that this is to help create two separate parcels, which is another action that they're requesting of the Council at a different time. This is in conjunction with that, to basically have the house be its own parcel and the Dairy Queen be on its own.

Leichtman asks if Stanley signed in, and he confirms.

Leichtman asks for questions from the Board. Seeing none, she 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 presents.

The petitioner requests to vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for an eighteen point five (18.5) foot rear yard setback for an existing building where twenty (20) feet is required, a variance of one point five (1.5) feet. And, to also vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for a zero (0) foot driveway setback where six (6) feet is required, a variance of six (6) feet.

Currently, the petitioner has a rezoning request before the Common Council to rezone the property part of this request from R-3, Two Family Dwelling District to B-1, Neighborhood Dwelling District and a Minor Subdivision request pending for the same parcel to establish the lot in question for this action.

The home on Country Club is no longer used as a residence and is now used as a business office for the Dairy Queen restaurant at 1839 Cassopolis Street. In 2017, the then owner of the restaurant began the process of expanding the drive thru by means of acquiring the home at 345 Country Club Drive to use the rear yard for the business expansion. At that time staff and the then owner chose the path of requesting a use variance in order to expedite the business development/expansion timeline.

The need for the variance arises from the fact that when the original project was approved in 2017 and the current subdivision was filed, the natural dividing line between the properties necessitated this variance request. The existing driveway, which circles 345 Country Club Drive, remains intact and does not impact the generous side yard to the west.

Staff supports the request. The residential zoning is no longer appropriate for this property on Country Club Drive as the use as residential no longer exists and is now being used as an office. The rezoning request on Cassopolis Street reflects the use of the property.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for an eighteen point five (18.5) foot rear yard setback for an existing building where twenty (20) feet is required, a variance of one point five (1.5) feet; And to vary from Section 11.4 Yard Requirements in the B-1, Neighborhood Business District, to allow for a zero (0) foot driveway setback where six (6) feet is required, a variance of six (6) feet 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 there will be no perceptible change or use of the land as the layout for the adjacent business was established in 2017 with no apparent harm to the public;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the current layout of the properties has been in place since 2017 with no impact to adjacent use or value to other 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;
4. Special conditions and circumstances do exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district because this building setback was established when the expanded drive thru for the adjacent business was developed and previously approved by this body;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because without some measure of relief the current structure will be non-conforming. The decision was made for this developmental circumstance in 2017 when the adjacent business expanded;
6. The special conditions and circumstances does result from an action or inaction by the applicant because this request will legalize the developmental condition for this property. However, it does not create any extraordinary conditions or circumstances as a result of this request;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

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

1. If the rezoning request, 25-Z-04 has not become effective by the date of this hearing, February 12, 2026, the requested developmental variances will become effective once the statutory wait time for the pending rezoning has passed.

Trotter states there were 16 letters mailed with none returned.

Trotter calls attention to a new item on staff reports – on the first page, they are trying to list previous board action, if they can find it and it’s readily available, and are doing their best to include with the staff reports.

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

Newbill makes a motion to approve 26-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 and adopt all conditions listed in the staff report; Second by Linley.

Linley – Yes
 Newbill – Yes
 Leichtman – Yes

Motion carries.

**26-UV-03 PETITIONER IS KAJO INC – JOSEPH T. LIVINGS & KATHRYN LIVINGS
 PROPERTY IS LOCATED AT 2111 CASSOPOLIS ST**

The request is to vary from Section 13.2, Permitted Uses in the B-3, Service Business District to allow for a private club or lodge at 2111 Cassopolis Street.

Jason Auvil, 22368 Fireside Drive, Goshen, appears in person representing Joseph Livings as well as members from Tyrian Lodge #12. Their request is to convert the existing building located at 2111 Cassopolis Street to a Masonic Lodge. It is located in a B-3 Service District, and unfortunately in the City of Elkhart zoning ordinance, private clubs or lodges are not allowed by right, and that’s why they’re here with the use variance request.

Leichtman asks for questions from the Board. Seeing none, she 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

Kyle Anthony-Petter, Planner II, presents.

The petitioner is requesting a use variance to allow the property at 2111 Cassopolis Street to be used as a lodge. Section 13.2 Permitted Uses in the B-3, Service Business District does not permit lodges.

The property was formerly long time business Printers Plus. The property is currently vacant and being marketed for sale. There is now interest by the Masonic Lodge to relocate to this site from Industrial Parkway on the east side of town. The current membership of the lodge is small enough to where this location is ideal for the organization. The onsite parking is sufficient for the members – parking available on the west end of the building and the east. The adjacent parking lot for the Matterhorn is available for overflow when needed.

Based on material submitted, most lodge meetings occur during the week on the first Monday of the month normally from 6:00 to 9:00 pm. There are occasional Saturday morning meetings normally ending by noon. The building will require some interior remodeling. There are no plans or current need to expand the structure itself.

Staff supports the request. The property is located in an area of Cassopolis Street transitioning from lower density and less intense uses to the north to more intense uses to the south and east. The proposed use as a lodge should not pose any harm or create any hardship to adjacent uses.

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 building will not be expanded and any necessary updates will be performed 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 there will be no 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 a lodge 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 developing a permitted B use could be achieved with both adjacent structures used commercial 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 zoning for the property has existed for some time;
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. When interior modifications are made, all necessary/required building permits be issued by the Building Department.

Anthony-Petter states there were 13 letters mailed with 0 responses.

Leichtman asks if there are questions from the Board for staff, seeing none she calls for a motion.

Linley makes a motion to approve 26-UV-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 and adopt all conditions listed in the staff report; Second by Newbill.

Linley – Yes

Newbill – Yes

Leichtman – Yes

Motion carries.

**26-BZA-04 PETITIONER IS MELINDA MCCAREY
PROPERTY IS LOCATED AT 1620 SOUTH NINTH STREET**

The request is to vary from Section 5.4, Yard Requirements in the R-2 One-Family Dwelling District, to allow for a six (6) foot side yard setback where seven (7) feet are required, a variance of one (1) foot.

To vary from Section 5.4, Yard Requirements, Rear Yard to allow for a twenty-five (25) foot rear setback where thirty (30) feet is required, a variance of five (5) feet.

To vary from Section 5.4, Yard Requirements, for the front yard average established setback of twelve (12) feet, to allow for the construction of a one family detached dwelling at a front yard setback of eleven (11) feet, a variance of one (1) foot.

To vary from Section 5.2.B, Permitted Uses, which requires a one family detached dwelling to be a minimum of 600 square feet on the ground floor to allow for five hundred fourth (540) square feet on the ground floor, a variance of sixty (60) square feet.

Leichtman calls the petitioner forward.

Hugh Williams appears in person, representing Melinda McCarey. As Kyle alluded to what they wanted to do. At an R-2 zoning at 1620, the property is not exactly large enough to meet the established setback requirements. The property was an established property for an existing home in the past. That's all they're asking – to put a like property back in the neighborhood, two-story to match all the existing two-story homes in the area, and in doing so, clearing up some of the vacant lots in the area.

Leichtman asks for questions from the Board. Seeing none, she 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

Anthony-Petter presents.

The petitioner is requesting to vary from Section 5.4, Yard Requirements in the R-2 District which requires a seven (7) foot side yard setbacks to allow for a six (6) feet from the property line, a variance of one (1) foot. To also vary from Section 5.4, Yard Requirements in the R-2 District which requires a thirty (30) foot rear yard setback to allow for twenty-five (25) feet from the rear property line, a variance of five (5) feet.

To also vary from Section 5.4, Yard Requirements, for the front yard average established setback of twelve (12) feet, to allow for the construction of a one family detached dwelling at a front yard setback of eleven (11) feet, a variance of one (1) foot.

To vary from Section 5.2.B, Permitted Uses, which requires a one family detached dwelling to be a minimum of 600 square feet on the ground floor to allow for five hundred fourth (540) square feet on the ground floor, a variance of sixty (60) square feet.

The petitioner is proposing to build a new two-story single-family dwelling on an infill parcel in the 1600 block of South 9th Street. Due to the size of the parcel, the proposed home does not meet the rear, side and front setbacks or the minimum square footage for the ground floor requirements. Because of the configuration of the parcel, a front yard rear, and side yard variances are required. This type of variance is not uncommon for parcels in established neighborhoods where new infill homes are placed on parcels that do not meet the development standards.

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

The City of Elkhart is in the process of updating its zoning ordinance, including new Development Standards. The requested setbacks are consistent with proposed regulations found in the anticipated UDO and this request to the board would have only included relief from front yard setback requirements if under the new UDO.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variances 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 house 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 proposed structure will have similar setbacks in both the front, rear and side yards to nearby properties;

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 that are peculiar to the land involved and which are not applicable to other lands or structures in the same district because the setbacks create a hardship on this particular plot of land;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because the current development standards limits the scale of housing that can be developed on the parcel;
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.

Anthony-Petter states there were 34 letters mailed with no responses.

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

Leichtman asks if this will affect if they ever want to put a fence in. Staff responds off-screen and off-mic that it will not. Williams speaks inaudibly off-mic.

Leichtman calls for a motion.

Newbill makes a motion to approve 26-BZA-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 Linley.

Linley – Yes

Newbill – Yes

Leichtman – Yes

Motion carries.

26-UV-04 PETITIONER IS AMERICA RIVERA
PROPERTY IS LOCATED AT 2005 SOUTH MAIN STREET

The request is to vary from the uses found in Section 13.2, Permitted Uses in the B-3, Service Business District to allow for an existing structure to be used as a single-family dwelling. Single-family dwellings are not a permitted use in the B-3 District.

To also vary from Section 26.1.B.3, Accessory Structures, General Provisions, which states, 'an accessory structure shall not be located closer than three (3) feet to an interior side yard lot line' to allow for a variance of two point six (2.6) feet.

To also vary from Section 26.1.B.8, Accessory Structures, General Provisions, which states in part, 'A maximum of two (2) accessory buildings allowed on each lot to allow for three (3) accessory structures, a variance of one (1) structure.

Leichtman calls the petitioner forward.

Brenda Balcazar appears in person, representing America Rivera. She would like to answer any questions regarding the two structures. The first structure, the accessory structure, was put in place for her to have more privacy against her neighbors who are predominantly male. Rivera has young nieces, and wants to keep them protected. The second structure is the shed. The garage that is there is very small, and can only fit a car. The mower and gardening equipment cannot fit. The shed would be for this equipment, without it being in the way of nieces and nephews.

Leichtman asks for questions from the Board.

Leichtman asks for clarification on the garage, which was not pictured. Trotter and Anthony-Petter approach the Board to clarify which pictures are for which accessory structures, and where each is located on the site map.

Linley asks if the concern is the house to the North – the grey home – where they're concerned about people over-looking. Balcazar confirms.

Leichtman asks if that structure is occupied, if people live there. Balcazar confirms.

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

Trotter presents.

The petitioner is requesting a use variance to allow for an existing structure to be used as a single-family dwelling. Single-family dwellings are not a permitted use in the B-3 District. The petitioner is also requesting relief from the location standards and relief from the number of accessory structures found in the zoning ordinance. The need for relief is due to the fact that the petitioner constructed a 13' x 24' sun shelter in her rear yard 6" from the property line. Additionally, the home has an existing freestanding garage and a previously permitted 10' x 10' garden shed. With the construction of the new sun shelter, that action resulted in one too many structures that are allowed by right.

The zoning ordinance requirement is found in Section 26.1.B.3, Accessory Structures, General Provisions, which states in part, 'an accessory structure shall not be located closer than three (3) feet to an interior side yard lot line' to allow for a structure that is 6 inches from the property line, a variance of two point six and (2.6) feet. And to also vary from Section 26.1.B.8, Accessory Structures, General Provisions, which states in part, 'A maximum of two (2) accessory buildings allowed on each lot to allow for three (3) accessory structures, a variance of one (1) structure.

Because the property is zoned B-3, the use variance is required in order to address the developmental requirements. The house predates the current zoning ordinance and is considered a legally non-conforming use. Because the use was expanded the use variance was necessary as a first step to legalize the use and the variance requests.

Zoning enforcement cited the property for a zoning violation for the construction of the detached accessory structure on July 25, 2025. Staff determined there was no permit for the structure. The petitioner contacted staff after receiving the notice.

Staff met with the petitioner onsite on August 14, 2025, to inspect the structure and discuss next steps from a zoning standpoint. The goal of this interaction was to work with the petitioner to chart a path to bring the structure into compliance. The 13' x 24' accessory structure had been constructed in the backyard without permits or inspections from the Building Department. The Building Department is waiting on the outcome of this petition before conducting any additional inspections.

This request is a challenge for staff. We understand the petitioner's desire to improve her home but the lack of obtaining the necessary approvals and permits can be a safety issue for not only the owner but also the public. This process will allow the petitioner to bring the structure into compliance and allow them to work with the building department to ensure safety and code compliance.

Staff supports the request. The board is being asked to approve the use variance and development variances associated with this project.

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 accessory structure will be 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 majority of surrounding uses are residential and are 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 without board action residential development on this parcel would not be permitted;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property because developing a permitted B use is not easily achieved with both adjacent structures used residentially and providing for required off street parking would be challenging;

6. The special conditions and circumstances do result from any action or inaction by the applicant because the property owner started construction without the necessary permits or approvals;
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 be required to submit for zoning and building permits for the accessory structure.

Trotter states there were 30 letters mailed with none returned.

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

Leichtman asks if it would be an appropriate condition to say they could keep the structure but have to remove the shed, or if that would fall into the UDO.

Trotter states that for this particular circumstance, it is a little unique. First of all, the property is zoned commercially. They had to start with the use variance first, because once a non-conforming use is expanded, the non-conformity is lost. Therefore, they must have a use variance to start on the developmental variances. The way staff looks at this particular circumstance with the size of the garage being as small as it is, having necessary on-site storage that is able to be secured, the shed is necessary. The accessory structure that they have with the sun shade in theory could be enclosed, but it is not being used that way. If, in theory, what you could say is that with the existing sun shade, if you're looking to preserve the harmony, you could potentially say that they could not enclose the sunshade area, that it has to remain a pergola-type structure. From Staff's perspective, with the size of the lot, the size of the existing structures, the shed and the garage are really necessary. To get yourself some shade, it's not that out-of-the-ordinary – some people just put the pop-up things up and take them down in the fall, so this is more of a permanent structure. So, in this circumstance it is not that far out of the realm of reality.

Newbill asks if there was an inspection done on August 14, 2025, and if there will be another inspection.

Trotter states that that was just for zoning and to chart a path forward. The Building Department is not doing inspections until this Board makes their determination, because then they will go in and make the determination on whether it was constructed soundly, footers are correct, and all that. They didn't want to make those judgment calls ahead of time because it is a cart-horse situation.

Leichtman asks if it's possible to switch it [the sunshade] and have it like a porch for the house.

Trotter states that it would be practically be very difficult for the home owner because of the way it is constructed now. Leichtman states that her concern is how close it is to the fence itself and for the safety, having a structure like that. Trotter states that with the way it is constructed, it would be difficult for them to switch because it is in there pretty good.

Linley states that Trotter mentioned no letters were returned, and wants to know where in the documentation the Neighbor Support Statements come in – are those considered letters, or were they submitted by the applicant.

Trotter states that those were submitted by the applicant, and that Staff cannot take those into account. Staff can say there are people in support, but from the petitioner's perspective, they have gone to seek support for their project. From Staff perspective, they cannot count that.

Leichtman calls for a motion.

Linley makes a motion to approve use variance 26-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 and adopt all conditions listed in the staff report; Second by Newbill.

Linley – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

26-REV-01 PETITIONER IS CITY OF ELKHART
PROPERTY IS LOCATED AT VACANT LOT WADE DRIVE

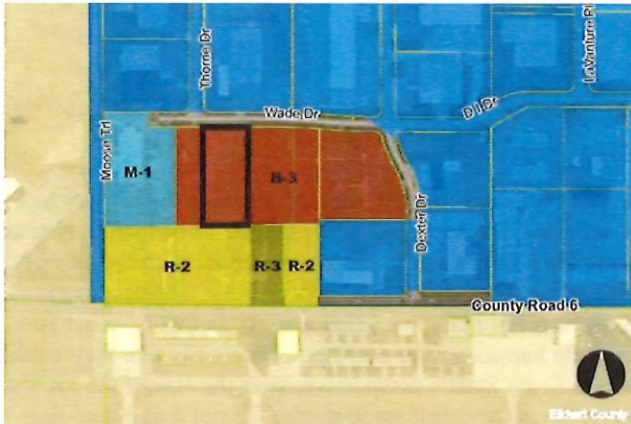
A request by the City of Elkhart to revoke 22-UV-01 which was approved January 13, 2022 to grant a use variance to allow for the creation of a recreational vehicle finished goods storage lot.

Since the City is the petitioner, Trotter continues to the Staff Report.

STAFF ANALYSIS

Trotter presents.

On January 13, 2022, the Board of Zoning Appeals approved a use variance for a vacant parcel on Wade Drive. The request was to permit a recreational vehicle finished goods storage lot, case number 22-UV-01. The specific lot is marked/outlined in black below.



This use variance from 2022 will need to be revoked as the use requested is not consistent with the current development plan presented with the new use. In December 2025, case number 25-BZA-27, this body approved several developmental variances to support a new use and business for both this parcel as well as the building to the east. At that time, staff highlighted in the case analysis the need for the previous use variance to be revoked as the previous use variance was no longer relevant.

The BZA may revoke a use variance whenever one or more of the following exists:

1. The BZA determines that the variance was obtained by the applicant by fraudulent or misleading statements;
2. That there has not been compliance with any requirement contained in the variance;
3. That circumstances have materially changed since a variance was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.

Staff have determined that circumstances have materially changed for the property. The land is being redeveloped with a new user and this body previously approved developmental variances with recent board action therefore, meeting one of the points above for revocation for case number 22-UV-01.

STAFF RECOMMENDATION

The Staff recommends approval of revocation for case number 22-UV-01 that permitted a use variance to allow for the creation of a recreational vehicle finished goods storage lot based on the fact the circumstances have materially changed and the need for the previous use variance is no longer valid.

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

Leichtman opens for public comments to speak in favor. Seeing none, she opens for opposition.

Daraleigh Stephenson, 1400 County Road 6 West, appears in person. Stephenson’s back yard abuts directly to the vacant lot area they are using for storage. They weren’t planning on speaking, and not understanding if the letters they sent in would be available for the board to hear, they are appearing as a neighborhood representative. Stephenson is not opposed to the storage, but is opposed to changing the zoning. They are agreeable to another variance, but is concerned about what could go in that space in the future should they decide to change their mind again, or if they sold that property and rezoned, what could be going into the back. Their backyard butts up into it; they have children and grandchildren that play there. They are concerned about safety, not now in the present, but in the future if it is rezoned. They are agreeable to the change in the variance that was already granted, but they do not want that area completely rezoned permanently. Just for affecting their houses, future safety and the values of their home.

Trotter states that he neglected to read the letters and responses, and will read that into the record. He apologizes.

Trotter states there were 13 letters mailed with two returned not in favor with comments. Comments were: concern for children's safety in backyard, safety of citizens in area, concern with zoning change, and concern with home values.

Trotter clarifies that this is not a zoning change. It will remain unchanged for their properties as well as the properties behind. This case came about because the previous owner, an RV company, sought permission to use one of the parcels behind these folks' home as a storage lot, and that was not permitted by right so they had to obtain the use variance. The City is asking the Board of Zoning Appeals to revoke that previously granted use variance from 2022 because in 2025, a different company bought the building and all of those parcels, including the storage lot, for a new use. There were some developmental variances that were requested and approved by this body, and during that time, Staff mentioned during the staff analysis that this current use variance would need to be revoked, which is the action being taken tonight. It's not something typically done, and staff is really trying in earnest, which is why the staff reports have been changed to include any past board action, to bring back to the Board, so that when they are no longer relevant or applicable, they'll be revoked to tidy up the bookkeeping.

Leichtman clarifies essentially nothing is changing. Trotter confirms and states that this is revoking the action that had been previously approved because this Board has already approved another action back in 2025. Trotter asks Stephenson if that makes sense, she responds no. Leichtman clarifies that nothing is changing, because the Board already voted on that in December, but there was an old use variance granted in 2022 that the Board has to revoke so it can be used in the new request.

Trotter adds that the other use was allowed by right and there were some developmental variances. They have not gone through Tech Review, Staff is aware that there are residential properties adjacent, they are going to make sure the buffering and everything is appropriate for the next user.

Stephenson asks what zoning it is going back to. Trotter clarifies that there is no change in zoning, and it will stay B-3.

Leichtman states that, essentially, what the Board is doing tonight by revoking an old case from 2022, they're just making it more – Trotter states they're just keeping the books straight. Leichtman clarifies that this is essentially housekeeping, and it won't change what they voted on in December. Trotter states he is happy to speak with Stephenson after the meeting.

Leichtman closes the public meeting and asks if there are any other questions for staff.

Newbill voices concern about the children playing. Leichtman reiterates the purpose of this revocation and states everyone will still be safe.

Leichtman calls for a motion.

Linley makes a motion to approve 26-REV-01 and adopt the petitioner City of Elkhart'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.

Linley – Yes
Newbill – Yes
Leichtman – Yes

Motion carries.

STAFF ITEMS

Leichtman asks if there are any staff items. Trotter states that no, there are no staff items, but Staff is thanking the Board in advance for their attendance and participation on the 21st.

ADJOURNMENT

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


President or Vice-President


Secretary