

BOARD OF ZONING APPEALS

-MINUTES-

**Thursday, April 9, 2026 - Commenced at 6:09 P.M. & adjourned at 8:37 P.M.
City Council Chambers – Municipal Building**

MEMBERS PRESENT

Janet Evanega Rieckhoff
Phalene Leichtman
Ann Linley
Rochali Newbill

MEMBERS ABSENT

None

REPRESENTING THE PLANNING DEPARTMENT

Eric Trotter, Assistant Director for Planning – *via WebEx*
Kyle Anthony-Petter, Planner II

LEGAL DEPARTMENT

Kevin Davis

RECORDING SECRETARY

Raen Levendoski

ELECTION OF OFFICERS

Evanega Rieckhoff postponed election of Secretary until next month, since Linley had not yet arrived.

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES FOR FEBRUARY 21, 2026

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

APPROVAL OF MINUTES FOR MARCH 12, 2026

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

APPROVAL OF PROOFS OF PUBLICATION

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

OPENING STATEMENT

Welcome to the April 9, 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, until our other member arrives. 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 meetings, 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-BZA-06 PETITIONER IS RIVER DISTRICT DEVELOPMENT

PROPERTY IS LOCATED AT 302 E JACKSON

Kyle Anthony-Petter, Planner II, presents.

The request is to vary from Section 26.10.D.5, Projecting signs, that no sign is suspended more than thirty-five (35) feet above the ground to allow for a projecting sign to be thirty-eight (38) feet above the ground, a variance of three (3) feet.

To also vary from Section 26.10.D – Table 1, Projecting signs in the CBD, that limits the size to 9 square feet to allow for a projecting sign that is 35 square feet, a variance of 26 square feet.

Evanega Rieckhoff calls the petitioner forward.

Todd Lehman, 1508 Bashor Rd in Goshen, representing Signtech Sign Services, appears in person. They are working with DJ Construction in the River District Development - the architect as well as the designer on the project. Their goal is to identify the building with a sign that's mounted vertically on the corner of the building that would be visible from multi directions. The height of this is because of it being a part of the structure; it's going to have internal components that protrude out of the building that the sign would then mount to, so the height of it is being determined by the placement of the sign on the building, where the structure is able to handle the sign. That's the height from grade to the sign. The square footage is just something they saw other examples of other buildings around the country, and they liked the way they looked. This is a color-coordinated sign background with dimensional lettering. It is not lit; it is just the dimensional lettering on the face of the sign.

Evanega Rieckhoff asks for questions from the Board.

Lehman also wants to mention the fact that because the building was built on the property line, the sign actually sits in the right-of-way. It's their understanding that if there are any issues, that will be discussed further.

Leichtman asks if there is any way to move it up, so the walkway can go under. Lehman clarifies that the sign is way off the ground.

Evanega Rieckhoff asks for any other 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

The petitioner is requesting to vary from Section 26.10.D.5, Projecting signs, that no sign is suspended more than thirty-five (35) feet above the ground to allow for a projecting sign to be thirty-eight (38) feet above the ground, a variance of three (3) feet. And to also vary from Section 26.10.D – Table 1, Projecting signs in the CBD, that limits the size to 9 square feet to allow for a projecting sign that is 35 square feet, a variance of 26 square feet.

The petitioner is requesting a developmental variance to allow for a sign that is 38 feet above the ground where 35 feet is the maximum. The requested sign will serve to identify the building within the River District from a distance. The petitioners are making efforts to respect the character of the commercial corridor while trying to promote the building.

The request is not out of scale for the building. Due to the location downtown, at the intersection of two throughfares (Jackson and North Clark), this site does not permit other forms of signage as ground or pylon signs are expressly prohibited. Projecting signs are typical within the central business district and would not feel out of place or out of character. The height of the building, at 4 stories tall, reduces the visual impact of a taller projecting sign than typically found within the central business district.

A permit for the sign was submitted on January 23, 2026, with staff letting the applicant know that the sign did not meet development standards for projection signs on February 4, 2026. The applicant then filed with the board on February 18, 2026.

Raen Levendoski, Board Recording Secretary, requests a pause to state on the record that member Ann Linley arrived at 6:15pm.

Staff recommends approval of this variance.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variance to vary from based on the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, or general welfare of the community as projecting signs of this size are not out of character and are typically found in the Central Business District;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the size of the proposed sign is not out of character for the Central Business District as projecting signage is one of the primary forms of advertisement in the district;
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 that are peculiar to the land involved as the building façade on which the sign will be located is located in a part of downtown with a higher level of signage standards that limit traditional wall signage;
5. The strict application of the terms of this Ordinance will result in practical difficulties in the use of the property by depriving the petitioner the ability to brand the development/building;
6. The special conditions and circumstances do not result from any action or inaction by the applicant because the current building is existing and the signable area on the building will not change as a result of this request;
7. This property does lie within a designated flood hazard area. However, the building was constructed to meet all applicable development standards and requirements.

CONDITIONS

None.

Anthony-Petter states there were six letters mailed with no mailed responses, and one telephone call received requesting more information.

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-06 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 there are no conditions; Second by Newbill.

Leichtman – Yes

Linley – Yes

Newbill – Yes

Evanega Rieckhoff – Yes

Motion carries.

26-UV-07 PETITIONER IS NEXINK REALTY LLC PROPERTY IS LOCATED AT VL 2000 BL SOUTH MAIN STREET

Anthony-Petter presents.

The request is to vary from Section 19.2 Permitted Uses in the M-2, General Manufacturing District, to allow for auto sales.

Evanega Rieckhoff calls the petitioner forward.

Nathan Flickner, 1402 E Mishawaka Ave, representative of Wightman for Nexink LLC, appears in person. They're looking to get the permitted use changed to allow auto sales on the lot. Right now, it's a vacant lot. It's already got a concrete pad, pretty much ready to go, it's just growing weeds and is pretty unsightly, across from some residential now. Down the street on that side, the railroad, are more uses that are commercial, like O'Reilly's Auto Parts was just built next door, and he believes the City of Elkhart or Redevelopment Commission owns the adjacent property, which they are planning to develop also. They are continuing to maybe add some more commercial businesses on the street - the manufacturers are hard to find to fill those spots.

Evanega Rieckhoff asks for questions from the Board.

Evanega Rieckhoff states that she drove by there today, and it does look unsightly. She is nervous about them saying, 'it's ready to build on', because the cement looks like it's a mess. Flickner states that it would be covered with something different, and confirms he would get rid of the weeds.

Leichtman asks if they are aware of all the conditions; Flickner confirms they are.

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 vacant property in the 2000 block of South Main Street to be used for auto sales. Section 19.2 Permitted Uses in the M-2, General Manufacturing District does not permit auto sales.

The petitioner would like to use the site for used auto sales. The land had previously been used for manufacturing. The petitioner submitted a site plan for the hearing depicting striped areas for display, customer parking and employee parking. The plan also shows a modular sales office on the far east side of the lot adjacent to the railroad tracks.

The M-2 zoning for this site is a legacy zoning classification when area was used for more intensive uses because of its adjacency to the railroad. Between Lusher and Indiana there are only two parcels remaining that have an industrial zoning classification. Largely because the parcels are shallow and do not support the necessary truck movements required by most modern industrial uses – industrial users are challenging to find.

This section of South Main Street is largely zoned either B-1, B-2 or B-3 with R-4 and R-5 closer to Indiana where the residential uses are more concentrated. The request for a commercial use is in keeping with the overall land use pattern for the area of Main. The commercial zoning along Main Street acts as a developmental buffer between the residentially zoned properties to the west and the more intense uses along this section of Main Street which also backs up to the railroad.

Staff appreciate the petitioners' desire to put the property back to use but have concerns related to the aesthetics and maintenance/up-keep of the property. The city has invested a great deal in new infrastructure and public road improvements in the entire South Main Street corridor to improve the gateway into Downtown. Additionally, the Redevelopment Commission owns the adjacent property to the north. Redevelopment staff are in the process of defining the redevelopment vision for their 2.3-acre site and have rezoned the property R-4 for multi-family residential use. As a result, staff will be asking for conditions that require higher levels of screening, enhanced landscaping and condition of vehicles offered for sale. The intent is to prevent a sales lot where the cars do not run or are disabled after an accident and don't move from the site therefore becoming a junk yard for cars that have no home.

Because of the location and desire to maintain a high development standard for the corridor, staff are willing to recommend a two (2) year conditional approval. At the end of the two (2) year period, this request will come back to the board for a review of the site and overall condition of the use. At that time the board can grant the petitioner an additional two (2) year interval, amend the original approval or revoke the use variance for failing to meet the conditions placed on the site.

South Main Street is a main thoroughfare directing traffic downtown to the business district. And because of this, staff would like to have the petitioner look at and incorporate the necessary setbacks, landscape plantings and buffering for the residentially zoned property to the north. Requiring the petitioner to file a revised site plan for Technical Review will ensure the basic aesthetic elements and all development requirements are incorporated into the site for the new use.

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 property will only be used for the display of autos with the grounds meeting the proper buffering requirements;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because this use as an auto sales lot – all cars will be in proper running condition with the site developed to all required landscape buffering;
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 auto sales would not be permitted on this site;
5. The strict application of the terms of this Ordinance would result in practical difficulties in the use of the property because establishing a permitted M use would be challenging given the depth of the property and the need for most modern industrial users to have more area to navigate truck traffic for docks and deliveries;
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. Project shall be submitted for review and approval by the Technical Review committee – this is to ensure compliance with Public Works requirements and developmental standards for the Planning Department as if it were a new development.
2. Any new proposed structures must be connected to Municipal Utility Services.

3. Trash dumpster/receptacles must be properly screened as per Section 26.2.C.6.
4. Of specific concern - compliance with the aesthetic components of the project related to setbacks, buffering and landscaping.
 - a. The landscape buffer to the north – adjacent to the residentially zoned property must be a minimum of twenty-one (21) feet with a solid fence to screen from the residential use. Plantings to meet the standards found in Section 13.5 and 13.4.
 - b. The right of way (Main Street) buffer landscape strip shall meet the minimum requirements of twenty (20) feet, planted with street trees and understory plantings to soften and buffer the public frontage along Main Street. If the petitioner would choose to install a four (4) foot aluminum wrought iron style fence – the staff would permit a reduced front setback to ten (10) feet.
5. Any new signage must comply with the current B-3, Service Business District standards.
6. All cars offered for sale must be in running condition and be operable and street legal.
7. No mechanical work of any kind shall be permitted on-site. This lot is for display only.
8. The approval only applies to the current owner. Should the business close or cease operation for any reason, the approval is null and void.
9. If the business or land is sold the new owner must refile with the Board of Zoning Appeals to acknowledge compliance with the conditions of approval.
10. The approval is for a term of two (2) years and must be reheard as a staff item in April 2028.

Anthony-Petter states there were 30 letters mailed with no responses.

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

Evanega Rieckhoff clarifies that Staff worked with the petitioner on the conditions, and that they understand if they do not comply within 2 years, they could be gone. Flickner confirms off-mic.

Evanega Rieckhoff calls for a motion.

Newbill makes a motion to approve 26-UV-07 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 Leichtman.

Leichtman – Yes
 Linley – Yes
 Newbill – Yes
 Evanega Rieckhoff – Yes

Motion carries.

26-X-01 PETITIONER IS CITY OF ELKHART BOARD OF PUBLIC WORKS AND ERMINE MEADOWS INC PROPERTY IS LOCATED AT 626 W CLEVELAND AVE

Anthony-Petter presents.

The request is per Section 5.3, Special Exception Uses, (4.3.O) Parks and Playgrounds to allow for the establishment and expansion of a new park and playground. This comes from the Plan Commission with a due pass.

Evanega Rieckhoff calls the petitioner forward.

Matthew Moyers, City of Elkhart representative of the Parks & Recreation department, appears in person. The site they are talking about is the current location of Ullery Park, but there’s an opportunity that hasn’t been available to the city for a few decades. The other half of that block was the site of the Ullery School. It’s a vacant lot, now, that the Park and Recreation and Buildings and Grounds moved hands. In conversation with the neighborhood and owners, there’s an opportunity to expand that park and offer new features. That’s what they’re asking for – the opportunity to go ahead and add an open pavilion for family gatherings, a splash pad in the southeast corner, they intend to do some trail systems through the park, add a small pull-in parking area for handicap spaces on the backside, and increase the tree cover and do some landscaping. That’s the vision they have for the park. They’ve started their surveying work, they have strong community support, and a large portion of this is coming to them from private donation as well as not-for-profit and foundation support. They already have the splash pad and pavilion paid for. The Street Department is going to help with the pathways. This is a great opportunity for a minimal investment from the city for a tremendous return for that neighborhood.

Evanega Rieckhoff asks for questions from the Board.

Newbill asks if the alley that is currently unpaved will be paved when they add parking.

Moyers states that that is not a Parks and Recreation operation, but the question was asked at another meeting he attended, and it is his understanding that the Street Department does intend to pave that alley as part of this process.

Newbill states that Cleveland in front of the park is full of potholes and asks if they are also adding that to the project.

Moyers states that he will include that in the conversations. They anticipate that traffic and use on Cleveland will increase, especially because that is the side that people are likely to drop off kids for the splash pad, so he will make a mention of that, as well.

Newbill asks about the circulation of the water that will be utilized, and asks if the filtration system will be reusing that water.

Moyers explains that there are two types of splash pads. The first that Newbill is speaking about is a closed system, where beneath the splash pad there is a large tank with chemical monitoring, like any other type of pool. This one will be using an open system, which means the water will come in through the city water pipes and flushes back out into the return system for the sewers. Surprisingly, it is more economical and the other benefit is that the splash pad is not classified as a pool, which means they do not have to do the chemical tests or shut it down if they suspect contamination. So, that is the reason they are selecting the open-end model.

Newbill asks how far the pavilion building is from the splash park. Moyers states that if you look at the entire block of the park, he thinks it's targeted to 40ft by approximately 25, and they'll have concrete skirting around it to allow for additional use. The pavilion was in response to requests from neighbors, who asked specifically for places for families for social gatherings.

Evanega Rieckhoff states that it looks beautiful, and asks Moyers to explain the Ermine Meadows part of the project. She asks if that is going to transfer to the city.

Moyers states that he can give his best understanding. Ermine Meadows was the organization, a not-for-profit, that preserved the land where Ullery School used to be located; that's the half of the park that's untended. The plan is, if they come up with a design that Ermine Meadows approve of, it meets the community need, and they include some memorial elements for Ullery School, they're willing to transfer that land to the city and make it a unified park for the entire design. That's what they're working towards. He can't speak to whether that transfer has happened, but both parties have approved of that transfer after the work is complete.

Leichtman clarifies that the transfer will happen after the work is complete. Moyers states that he believes that is correct.

Evanega Rieckhoff states that she would feel more comfortable if it'd happen before. Moyers' understanding is that right now the Park Foundation is the holder of the title, and they'll transfer it to the City after.

Leichtman asks if they have confirmation on the title transfer, but Moyers is unsure. The Board discusses adding this to the conditions, and Moyers states that he thinks it's entirely reasonable.

Leichtman asks if grey water was ever considered for all the extra water runoff, using it to water the actual vegetation.

Moyers states that there are some issues they will have to explore after approval. They are adding a significant amount of non-porous surface, the concrete for the splash pad and the pavilion; they haven't done a stormwater survey yet to see how they'll adjust to that. Moyers thinks with the addition of the landscaping features and the increase of the trees, they should be close to a break even, but they haven't done the study yet.

Linley asks, when looking at the concept and noting the responses to the questionnaires, there is lighting proposed around the exterior, but she doesn't see anything in the design for lighting on the interior.

Moyers states that he is not sure if they have a complete lighting plan laid out yet. The desire of the neighborhood was not to have the park brightly lit in late hours. The only lighting element he is certain they have committed to is inside the shelter along the roofline inside for lighting there, but they have not committed further than that.

Linley asks if the intent of timing on the use of the park would be dawn to dusk, or slightly thereafter. Moyers states that the expectation is that it will follow the same timing cycle that all the parks do.

Linley asks if, given where the portable restroom is suggested versus where the splash pad was, if there are other options.

Moyers states that there is a reason they're suggesting having the temporary portable restroom in that location. If fundraising goes well, it doesn't have to be a portable building. If they have it spaced out and the electrical lines laid down, it gives them an opportunity for a more permanent conversation.

Evanega Rieckhoff asks if there are any other questions. Seeing none, she calls staff forward.

STAFF ANALYSIS

The request is per Section 5.3, Special Exception Uses, (4.3.O) Parks and Playgrounds to allow for the establishment and expansion of a new park and playground at 626 W. Cleveland Avenue. The request is considered an expansion of the park and therefore a new petition request is required.

The City of Elkhart and Ermine Meadows are submitting a joint special exception request to expand the existing Ullery Park onto land owned by the Ermine Meadows organization. The reimagined park master plan has an emphasis on activating the space and community vision for the amenities at the park.

Based on information provided by the City of Elkhart Parks Superintendent, Jamison Czarnecki, the master plan and vision for the park came from a series of neighborhood meetings, feedback collected in door-to-door survey work and additional outreach conducted in both English and Spanish. The new master plan elements call for an open-air pavilion, off street parking, additional landscaping, a new walking path and a splash pad.



Ullery Park - Concept 3
Elkhart, Indiana

5/1/2025



Park Master Plan

STAFF RECOMMENDATION

Staff recommends approval of the request based on the following findings of fact:

1. The Special Exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected; The Ullery Park improvements are being designed to add amenities to make this park a premier park for the City of Elkhart. The improvements to the playground, parking, additional landscape plantings and splash pad will allow for future growth and attendance to increase usage.
2. The Special Exception will not reduce the values of other properties in its immediate vicinity because the additional amenities proposed will add to the quality of place for Ullery Park and enhance the city's park system. The park is part of the Mayor's ASPIRE Initiative to enhance the vibrancy and increase usage of the City's parks and greenspaces.
3. The Special Exception shall conform to the regulations of the zoning district in which it is to be located because it will not generate adverse effects on adjacent properties in the form of noise, smoke, or odor. The proposed amenities will add to the vibrancy of the neighborhood and allow for more programming for the Parks Department. The open-air pavilion will be built to conform to all necessary building construction requirements and have been submitted for Technical Review and addressed all comments raised during the review.

CONDITIONS

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

1. The petitioner shall submit* for Technical Review to ensure all developmental requirements have been met (**amended by staff during report reading*).

Anthony-Petter states there were 52 letters mailed with one response received in favor, with no comments.

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

Leichtman asks if they need to add the condition for the land. Evanega Rieckhoff states that they will when they make the motion. Leichtman asks if there is a way they should word it, so it's correct in the conditions.

The Board asks for Legal assistance so that they word it to give their approval under the condition that the Ermine Meadows portion of the land is being legally held by the Parks Department.

Kevin Davis, City Legal, asks if they want the title by the completion of the project. Leichtman states they think before, and Evanega Rieckhoff asks when they should require Parks to hold the deed.

Leichtman states she thought that Parks had it currently. Moyers clarifies that the Park Foundation has the deed off-mic.

Davis states that they can make the approval subject to verification that the Park Foundation has the deed, and if it doesn't then the property must be transferred into the Park Foundation by a certain date, whatever makes the Board comfortable.

Evanega Rieckhoff calls for a motion.

Leichtman begins the motion, but the Board has a question on the deadline for date verification.

Leichtman asks if it can be open-ended. Davis states that they're looking for the property to transfer title at some point, so they want a deadline on it, rather than leaving it open and having to revisit it. Leichtman asks if there is a date for the park to be completed. Moyers states that every park has some flexibility, but the target is to have the splash pad and pavilion ready to go by August of 2026.

Leichtman makes a motion to approve 26-X-01 and adopt the petitioner's documents and presentation, together with the Staff's finding of fact, as the Board's findings of fact in the present petition and to adopt the staff's condition number one and in addition, a second condition: The petitioner shall verify that Parks & Recreation have possession of the Deed to the property. If it is not in their possession, it must be transferred by July 1, 2026; Second by Newbill.

Leichtman – Yes

Linley – Yes

Newbill – Yes

Evanega Rieckhoff – Yes

Motion carries.

Moyers asks if they can provide verification to the Planning or Permitting department. Leichtman and Evanega Rieckhoff confirm.

26-BZA-07 PETITIONER IS DIOCESE OF FORT WAYNE-SOUTH BEND/ST. VINCENT DE PAUL CATHOLIC CHURCH

PROPERTY IS LOCATED AT 1128 S MAIN ST

Anthony-Petter presents.

The request is to vary from Section 26.4.A.8, Fence Requirements, which states in part, "Fence materials may include treated wood, painted wood, treated split rail, ornamental wrought iron, brick, stone, masonry block, decorative painted or vinyl coated aluminum, or other materials as approved by the Planning and Zoning Office. Scrap lumber, plywood, sheet metal, plastic or fiberglass sheets are specifically prohibited, to allow for a plastic fabric to cover an existing fence to remain.

Evanega Rieckhoff calls the petitioner forward.

Father Craig Borchard, 1108 S Main St, pastor of St. Vincent's, appears in person. They are asking the Board to approve a variance to allow them to keep a fabric screen they have installed on their school playground fence. The primary reason for this screen is for safety and security. Before the installation of the screen, they had issues with strangers approaching children off the street, to have conversations with them, and even since installation of the screen, they've had one incident of a person still trying to communicate with children through the screen. Furthermore, there have been several shootings and violent crime in that area. There was a shooting on February 2021 at the gas station south of them, and really close to that there was another incident that took place at a home across the street from their playground. Kindergarteners were on the playground at the time the police arrive, and it was a scary scene for the children. Again, for safety, security, and privacy they did install that fabric screen just to provide some form of barrier for their children. They believe it does not negatively impact any of the surrounding area, because it strengthens their school and the security of their property.

Evanega Rieckhoff asks for questions from the Board.

Leichtman asks if they are considering in the future, a wood or something stronger and more private fencing, or would they prefer to leave it like this indefinitely.

Borchard states they could potentially be open to that in the future. It's currently a regular aluminum fence with the fabric cover.

Leichtman just wondered if, safety-wise, that might help. Borchard states that down the road it could, and that they have dreams of moving the playground off the street, but that's further off the road.

Rieckhoff states that the covering looks as nice as it can look. She doesn't have a problem with the way that it looks. She understands why they have that written into the rules, but she thinks they've made it looked as nice as it can look. Leichtman agrees, but is concerned about how it will weather in a few years.

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 seeking to vary from Section 26.4.A.8, Fence Requirements, which states in part, "Fence materials may include treated wood, painted wood, treated split rail, ornamental wrought iron, brick, stone, masonry block, decorative painted or vinyl coated aluminum, or other materials as approved by the Planning and Zoning Office. Scrap lumber, plywood, sheet metal, plastic or fiberglass sheets are specifically prohibited, to allow for a plastic fabric to cover an existing fence to remain.

Zoning staff cited the property for a zoning violation for the installation of a fabric screening material on a plastic-coated chain-link fence. The screening material is not included on the approved material list included in the zoning ordinance, which makes the placement of the screening prohibited by zoning ordinance. The school was cited on January 29, 2026.

In discussions with a school representative, the fabric was placed on the fence to prevent people passing on the public sidewalk from talking to or interacting with the children outside playing on the playground. Plus, a gun related incident in close proximity to the campus played an additional part in the decision to place the fabric. The school's position is that the safety of the students is paramount and this material was necessary.

Staff recommends approval of the proposed variance. Staff views the circumstance at the school as a unique situation. The school has a legally placed fence and now outside circumstances have changed and require a small accommodation for this particular site.

The City of Elkhart is in the process of updating its zoning ordinance, including the fence regulations. The updated UDO will permit fence wraps, like the one referenced in this case. However, the updated ordinance will only permit them around construction sites. Staff feels this requirement is correct and appropriate as most construction sites require temporary screening for security to prevent people from seeing onto an active construction site. Also, to discourage an attractive nuisance where people may want to and cause damage or hurt themselves. And for other circumstances and locales an appropriately opaque fence can be installed to provide privacy for most situations.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental 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 fence fabric was placed as an additional means of safety for the children on the playground;

2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because the fabric placed on the fence has a similar effect as that of a solid fence which is a common element around outdoor recreation areas that require additional security;
3. Granting the variance would be consistent with the intent and purpose of this Ordinance because a measure of relief is allowed when warranted in order to provide the necessary security for the use;
4. Special conditions and circumstances do exist as the subject property is located on a main thoroughfare with large numbers of pedestrian traffic;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property as any number of solutions is possible;
6. The special conditions and circumstances do result from an action or inaction by the applicant however, the security for the playground, for this circumstance, is paramount;
7. This property does not lie within a designated flood hazard area.

CONDITIONS

None.

Anthony-Petter states there were 24 letters mailed with no responses.

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

Leichtman asks if, after a few years, Staff goes by to check on upkeep of this material, or if that's a condition they need to add.

Anthony-Petter states that Jason Ughetti deals with the zoning side of going around and checking when individuals are not in compliance. Leichtman states that because this is only temporary, she is concerned about safety and upkeep, since it's right downtown.

Evanega Rieckhoff also states it looks very nice right now, but in a few years it might not. She thinks they should make it expire in two years and have them come back. Anthony-Petter asks if they would do it like a staff approval. Evanega Rieckhoff requests Davis's advice – what would be the best way to do this, if they should have this approval expire in two years and have them come back to get it renewed, or if they have Staff check on it.

Davis states that to play devil's advocate, the city will check on the property because it's in the downtown area and as Kyle said, Jason Ughetti is out and about in the area, and also the school has a vested interest in making sure the material is sound because it's designed to protect the children on the playground, so if it starts to weather, they have a vested interest in making sure that material is repaired or replaced. Evanega Rieckhoff asks if she thinks there's limited risk. Davis confirms.

Linley adds that in the letter sent by the Diocese of Fort Wayne, they stated the temporary wrap has been in place since May 2022, and the city only caught it in 2026. Leichtman asks if it's weathered okay, and Borchard state off mic that they have only had to provide a few small repairs. Evanega Rieckhoff states that the color has weathered incredibly well – it's still very dark and vibrant.

Evanega Rieckhoff calls for a motion.

Newbill makes a motion to approve 26-BZA-07 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 Leichtman.

Leichtman – Yes

Linley – Yes

Newbill – Yes

Evanega Rieckhoff – Yes

Motion carries.

**26-UV-08 PETITIONER IS K&J PROPERTY LLC
PROPERTY IS LOCATED AT 2101 W FRANKLIN**

Anthony-Petter presents.

The request is to vary from Section 19.2, Permitted Uses in the M-2, General Manufacturing District, to allow for the construction of a Drive thru Coffee Shop. Drive-thru Coffee Shop are not a permitted use in the M-2 District.

Evanega Rieckhoff calls the petitioner forward.

Jeff Campbell, 2101 W Franklin St, of K&J Property, appears in person. They have a building already on the property - it's a warehouse, basically unmanned, with limited use on that. There's room on the property for the coffee shop, so they would like to get the variance changed to allow the coffee shop. It's going to be a Bigby franchise.

Leichtman asks if they will own the land and the coffee shop. Campbell confirms that he will be a partial owner of the coffee shop, with his son owning the other half.

Evanega Rieckhoff asks for confirmation that it is a franchise, and they will be making sure it looks nice. Campbell confirms and states he has updated pictures from the architect on the proposed building and the drive, as well. Campbell submits Petitioner's Exhibits 26-UV-08 A-C showing the mentioned pictures.

Evanega Rieckhoff clarifies that Campbell owns the whole thing and the structure that is already on there. She states it looks like there is a lot of land in between the two structures. Campbell confirms it's an acre and a half lot. They have a 32x45 warehouse office that they receive trucks in about every six weeks to unload, and that's for the business he currently owns. The additional business will be the coffee shop. Evanega Rieckhoff states that all of the land between where the coffee shop is going and the warehouse is not very pretty. Campbell confirms that it is gravel that was there when they bought the property. They intend to put grass and trees – it will be fixed up at the same time that the building is put in. It is a requirement of Bigby, as well – when they talked about the site location, there will be lots of improvements. Evanega Rieckhoff understands why they didn't want to put money into the property with just the warehouse, but with it becoming a retail establishment, it needs to be brought up to a different standard. Campbell agrees.

Evanega Rieckhoff asks if there are any other questions from the Board. Seeing none, she opens for public comments to speak in favor. Seeing none, she opens for opposition.

Bill Zimmerman, 2100 W Franklin, owner of Elkhart Cremation Services, appears in person. Elkhart Cremation Services sits directly across from 2101 Franklin. He has three properties right across the street from this location. Being a crematorium, they get a lot of people in and out of the building, especially elderly that have trouble driving and possibly seeing. Zimmerman states that West Franklin Street is a main thoroughfare coming out of the City of Elkhart and going west into St. Joe County, and vice versa, so there's a lot of traffic on Franklin Street. Also into the mix is a Dollar General and the gas station, and all that has done is increase the traffic flow on Franklin Street, and it is horrible. Zimmerman speaks about traffic issues he has experienced at another property he owns, Walley-Mills Zimmerman Funeral Home, which have worsened to a point where it now causes the business problems. Zimmerman states he doesn't need another business shut down because people can't get in and out of the property. He is asking the Board to please deny this petition – it is not allowed in the current zoning, and he is concerned about the area being built up and the street being widened, threatening his business. He doesn't want to move out of Elkhart, as an Elkhart native and after putting 52 years of service into funeral care to service the families of this town, but if he gets put out of business, it could happen. As he mentioned earlier, there are a lot of elderly people driving their cars and trying to get in and out of the parking lot, and at certain times of day, it's pretty fierce. Not nearly as fierce as Jackson Boulevard, but pretty fierce. More businesses along that district are just going to increase that traffic flow.

Evanega Rieckhoff requests Zimmerman come up and show the Board where his property is located on their site plan. Zimmerman approaches the Board and indicates where his property is located.

Evanega Rieckhoff asks if people could go on the side streets to get to Zimmerman's building. Zimmerman states that they can turn off of Franklin Street onto Okema Street or Waurika Street, but they still have to turn across traffic, and they'd still need to get out. There is a public city alley that dead-ends in his parking lot and Waurika Street. There is no city alley going to Okema Street. Evanega Rieckhoff asks if there are other ways getting to them besides going down Franklin. Zimmerman confirms and says they can come down Indiana and come up that way, but the business sits right on Franklin, on the corner of West Franklin and Okema, and he is very concerned about the traffic.

Leichtman asks since he has several properties, does he have plans to add anything in eventually or will he sell it. Zimmerman states it depends on what happens with the traffic and the flow there. They added onto the funeral home three different times, added onto their parking and their building, put a lot of capital expense into that, and the business is not doing well because people cannot get in and out of the facility. Elkhart Cremation was founded in that building in 2000. They've been there 26 years, and he's put additions onto that building and upgraded the parking lot. He put a lot of money and equipment into this location. He reiterates that he doesn't want to move, but if he has to, he will, and that he is asking the Board to deny this variance.

Leichtman asks Campbell to approach the mic and indicates on Petitioner's Exhibit 26-UV-08 A where Franklin Street and the drive are. Campbell states that it is the current drive they already have for the office warehouse. They are expecting in the

neighborhood of 100-150 cars a day, and a lot of that traffic is already on Franklin Street. They aren't going to be pulling massive amounts of cars off 19 to come. They hope to get some of that traffic, but a lot of it is going to be traffic that's already going by. There is a turn lane, it's set up for traffic.

Leichtman asks if their entrance and exit are right in front of Elkhart Cremation's entrance and exit. Campbell states that their entrance and exit is directly in front of the side street that Elkhart Cremation is on. If they went straight out of their drive, they'd be on his side street.

Evanega Rieckhoff calls staff forward.

STAFF ANALYSIS

The petitioner is requesting a use variance to allow the property at 2101 West Franklin Street to allow for the construction of a Drive-thru Coffee Shop. Section 19.2, Permitted Uses in the M-2, General Manufacturing District, does not allow Drive-thru Coffee Shops.

The property currently contains a 1,400sq foot building built in 2017 used for cold storage and warehouse purposes. There is an interest from the owner in constructing a second structure on the property for a drive-thru coffee shop.

The property is located along West Franklin Street and is near the South Nappanee Street intersection. With the site being located on the south side of the street, adjacent to the railroad, this type of automobile related use should capture morning commuter traffic. The existing uses along West Franklin Street are a mix of light manufacturing, commercial and residential uses serving as a gateway into the city.

This section of Franklin has historically had manufacturing zoning mixed with various types of residential and commercial uses for almost 70 years. Since the 1950's, this area has been a mix of industrial, commercial and residential uses. Because of its adjacency to the railroad, the uses tended to be more intense along the south side of Franklin and became less intense the farther away one moved to the north from Franklin. Over time, the manufacturing and commercial uses have diminished with smaller industrial development moving to newer industrial areas, often adjacent to major thoroughfares and clustering with similar uses, in other parts of the city.

Based on materials submitted for this case, the building will be 25' by 40' and will use the existing driveway for in and out traffic onto West Franklin Street. With higher levels of activity during the morning and evening hours. It is important for the board to understand this project has not yet been submitted for Technical Review to ensure compliance with developmental standards for the Public Works Department, Fire Department and the Planning Department. This request is for the use only. It is anticipated and expected the petitioner will submit for review and approval civil engineering drawings to be formally reviewed by city staff. It cannot be guaranteed the layout as depicted on the plan for this case will not remain unchanged.

Staff supports the request for use only.

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 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 many of surrounding uses along this part of the W Franklin corridor are commercial uses and are commercial 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 this project 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 M use could be challenging given that there is an existing use on site;
6. The special conditions and circumstances do not result from an action or inaction by the applicant as no additional action has taken place on site;
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. A complete set of civil engineering plans shall be submitted for review and approval at Technical Review – to ensure compliance with developmental standards for the Public Works and Planning Departments.

Anthony-Petter states there were 13 letters mailed with no responses.

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

Leichtman asks if during the review by Planning, if traffic is taken into consideration. Anthony-Petter confirms and states that is what engineering takes into consideration during the technical review process. Leichtman wants to make sure there isn't a public safety issue with additional traffic. Evanega Rieckhoff expresses concern about cars being backed up, waiting to get into the lot, and wants to know if they'll be checking that out, too. Anthony-Petter confirms.

Leichtman states they just have to approve the variance use, and then asks if it still has to go through review. Kyle confirms that it will need to go through technical review. What the board was given is the same thing the staff saw. Leichtman asks if there is a reason it came to the Board first, instead of the other departments. Kyle clarifies that because it is zoned heavy manufacturing, the use variance would need to go through before development.

Evanega Rieckhoff calls for a motion.

Newbill makes a motion to approve 26-UV-08 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 Leichtman.

Leichtman – Yes

Linley – Yes

Newbill – Yes

Evanega Rieckhoff – Yes

Motion carries.

Leichtman clarifies that the petitioners were made aware of the conditions. They confirm off-mic.

26-BZA-09 PETITIONER IS CRB4, LLC
PROPERTY IS LOCATED AT 4800 BRISCOLA CT

Anthony-Petter 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 corner side yard, a variance of three (3) feet.

Evanega Rieckhoff calls the petitioner forward.

Paul Macumber, 21525 Maple Glen Dr, representative for CRB4 and owner of Patriot Fence, appears in person. The original job site was approved, a building approval, the General Contractor on site is J.A. Wagner, and the owners directly hired him. There is a safety factor with this project – they're looking at 6 feet; it's a boat manufacturer. The north side of the building is the back part of the lot; the main offices are out the south side pointing towards County Road 4. There is a very large retention pond on the north side, and also there is a county park. The park property is directly north of that retention pond. There is an ordinance about retention ponds that it should have a minimum of 6-foot fence around it. This retention pond hyperextends past the sides of the building out towards County Road 15 and east towards 17. The plan for the fence – it comes off the north side of the building, extending out the sides, which was the 6 feet, and goes north to entrap the retention pond, and then it goes across the north side of it. There is a manual entrance gate off of County Road 4, which is a construction entrance, probably only construction will ever use that so they don't go down Briscola Court. So, it's a back entrance but he doesn't believe that entrance will be utilized except for temporary. He's trying to maintain the safety through the retention pond, because he believes it's a fairly deep retention pond, plus possible visitors to the north in the park. A four-foot fence, there would be people trying to fish, kids trying to do stuff, they want to make a proper boundary, a security boundary, between public and the private matters of the business. That north side of the property, being pontoons, they'll be driving manufacturing equipment in and out, parking them out in the parking lot, plus the semis come in on the east side of the building. There will be two employee and large vehicle access entrances to come through. Then on the south side it would be another open gate for semis to exit. The extra one foot of barbless wire, they're well aware of

the City's newer ordinance of barbless wire requiring sharps 7 feet or higher. That means seven-foot fence with barbed wire 8 foot, not to exceed the 8-foot maximum for manufacturing districts. The structure of the fence is two-inch steel galvanized posts with galvanized chain link. He suggests top rail on chain link fence, if you've gone around these facilities with the tension wire on top – it's a fine preventative, but it sags and doesn't look good after a while. The top rail usually maintains a nice uniform top, which adds to aesthetics of the fence. With the barbless wire, it comes out and creates a climb preventative. They're trying to create a positive boundary for the manufacturing side of this building and the public from entering this or unauthorized people into this area, to keep them safe.

Evanega Rieckhoff asks for questions from the Board.

Newbill asks for an explanation of what barbless wire is. Macumber states that the City of Elkhart adopted a 'no sharps below seven feet'. Six-foot fence is the minimum requirement for the retention pond. The foot extra is barbless wire - that is three straight strung strands that tip out a little bit towards the outside of the fence, which is the preventative. Leichtman requests he include a picture with his variance requests next month. Macumber agrees.

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 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 fence and one (1) foot 3-strand barbless wire fence) in the corner side yard, a variance of three (3) feet.

The petitioner is in the process of building a new 192,000 square foot manufacturing facility in the new industrial development north of County Road 4 (Sanford School Road) and east of County Road 15. The facility will build boats for the marine industry and is proposed to have some inventory in the rear (northwest) portion of their campus. The project went through Technical Review in 2025 and was approved. Plans call for an eventual addition to the current building under construction that would mostly block the storage area from the south and partially from the west.

Plans also call for a buffer mound to be placed east of County Road 15 with landscaping to buffer the outside storage. The tallest portion of the mound will be approximately six (6) feet in height (directly west of the storage area) and should obscure the proposed fence and the inventory stored in the rear part of the campus.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental 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 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;
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.

CONDITIONS

None.

Anthony-Petter states there were eight letters mailed with no mailed responses, and one phone call received not in favor with no comment.

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

Linley states that in the staff analysis, it says plans also call for a buffer mound to be placed east of County Road 15. She assumes that is part of the original zoning application, and asks if that has been approved through all the technical reviews. Anthony-Petter confirms both.

Evanega Rieckhoff calls for a motion.

Newbill makes a motion to approve 26-BZA-09 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 Leichtman.

Leichtman – Yes
Linley – Yes
Newbill – Yes
Evanega Rieckhoff – Yes

Motion carries.

**26-BZA-11 PETITIONER IS IGNACIO PEREZ
PROPERTY IS LOCATED AT 431 MIDDLEBURY**

Anthony-Petter presents.

The request is to vary from Section 8.5, Yard Requirements to allow for a parcel with an established lot size of 3,040 square feet and lot frontage of 38 feet variance to be used as a two-family dwelling. The minimum lot size for a two-family dwelling is 7,200 square feet and a lot frontage of 60 feet, a variance of 4,160 square feet for the lot area and 22 feet for the lot frontage.

To vary from Section 8.5, Yard Requirements in the R-5 Urban Residential District, to allow for a five (5) foot side yard setback where seven (7) feet are required, a variance of two (2) feet.

To vary from Section 8.5, Yard Requirements, Rear Yard to allow for a thirteen (13) foot rear setback where thirty (30) feet is required, a variance of seventeen (17) feet.

To vary from Section 8.5, Yard Requirements, for the corner side yard average established setback of thirteen (13) feet, to allow for the construction of a two-family dwelling at a corner side yard setback of seven (7) feet, a variance of six (6) feet.

To vary from Section 26.7.D, Schedule of Off-Street Parking Space Requirements, to allow for zero (0) off-street parking spaces where four (4) off-street parking spaces are required, a variance of four (4) off-street parking spaces.

Evanega Rieckhoff calls the petitioner forward.

Jeremy Perez, 431 Middlebury St, representing Ignacio Perez, appears in person. They are looking to build a single-story duplex, where the back end would be a 2-bedroom, 1 bath, with the front being a 1 bedroom, 1 bath. They're looking to build it at 24 feet wide, plus a 52-foot-long building. They're wanting to stay away from doing a two-story, it's a lot harder on the workers and there are more safety risks when doing a two-story. They're looking to do street parking; there is street parking availability on the east and west sides of Monroe. They are aware that there is a fire hydrant on the front of the property on Middlebury Street, which is why they are asking for the parking spaces to be in the rear. They did notice that before 2019 on Monroe Street, there was a smaller yellow stripe on the corner of Monroe and Middlebury Street, and it has gotten extended. It's about 44 feet of the actual property that has been taken up from the yellow stripe itself. They do have about 44 feet outside of the yellow stripe for parking, as well as on the west side of Monroe. They are looking to do the single-story duplex, having the main entrance of the main unit being off of Middlebury Street and then having a rear entrance for the rear duplex. One of the reasons why they're going off of the setback on the side yard on the west side of the property, the house behind it has an extra lot that is on the rear of the house, which allowed them to push the house further back. With corner lots requiring a setback of its adjacent houses, their required setback would be a lot further than what they're asking for.

Evanega Rieckhoff asks for questions from the Board.

Newbill states that the numbers aren't working, and asks why they are afraid of making it a two-story to get away from all of the requirements that are way over what they're normally looking at. He requests Perez breaks down the safety reasons.

Perez responds that they're the owners of the property and they're wanting to do a lot of the structural work themselves. If they were to go to a two-story, they would need more workers to be able to help with that and they would have to set a lot more safety measures. They would have to use bigger cranes to get the framing up, and with it being close to the property beside them, they don't want to risk anything there. There are also kids next door to them, so they want to try to work as quick as possible, without having that building be open for too long, especially since there are a lot of kids walking through there.

Evanega Rieckhoff states that it would obviously be more expensive per square foot if they built two stories instead of one story. She asks if they can make money on this if they do a two-story unit as opposed to one story. Perez confirms they would be able to make money, but they are trying to do it so it's below market rate rent. They're trying to make it as economical as possible so that they can have many members who can't pay as much rent as the market rate is now.

Leichtman asks about long-term safety with cars parked on the street, around the corner, and states if they could do a two-story with a driveway and garage or something. Perez responds that if they were to do a driveway on the rear end of the lot, there is a huge difference in elevation – about two feet – and there is a big concrete barrier back there, as well. The sewer lines run pretty close to where that concrete barrier is, in order to have four vehicles, they would be using about 18 feet of the backyard, which would have to take up where that concrete barrier is at now.

Newbill asks if they've ever built a two story. Perez states they have not. Newbill asks if they've ever built a building similar to this before, and Perez responds they've built a single story, but not a duplex. He has been in real estate, and has renovated and has been fixing and flipping houses, as well as renting houses here in Elkhart, and they have an idea of what it would look like to do a side-by-side duplex. It'd just be two regular-sized, single-family homes, side-by-side. He does know there are different regulations of the middle partition wall, so those would be considered into plans and those would have to be approved before they start building.

Leichtman asks if a single-family home is something they have considered. Perez confirms and says that if for any reason they aren't allowed to do the duplex, they decided to revise plans and create it into a single-family and sell it or rent it out.

Newbill asks if they would consider doing a two story. Perez states that they would not.

Evanega Rieckhoff states that they and the staff are so far apart on this, and wants to know if they've talked about it. Perez confirms that they've worked through and talked about it, and met up the day before the meeting when Anthony-Petter let them know the status of the staff report. Perez said he figured he'd give it a shot anyways.

Leichtman asks how they feel about the recommendations. Evanega Rieckhoff states that's what they were just talking about, and they would build a single story if they had to. Perez confirms that they would.

Perez states that he's looking to see if they can get an extension on the revised plans condition, 30-50 days. Evanega Rieckhoff responds that she doesn't think they need to do that, if they go along with what the staff recommends, they would just have to file it. If they did a single story, the parking would be the only concern. Perez states that it would be the parking and the width of the actual building, because there's a minimum of a 24-foot-wide building, with it being only 38 feet wide, the setbacks are still the same. Evanega Rieckhoff says it's the side setbacks they're so worried about. Perez agrees.

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 to vary from Section 8.5, Yard Requirements to allow for a property with an established lot size of 3,040 square feet and lot frontage of 38 feet variance to be used as a two-family dwelling. The minimum lot size for a two-family dwelling is 7,200 square feet and a lot frontage of 60 feet, a variance of 4,160 square feet for the lot area and 22 feet for the lot frontage.

To vary from Section 8.5, Yard Requirements in the R-5 Urban Residential District, to allow for a five (5) foot side yard setback where seven (7) feet are required, a variance of two (2) feet; To vary from Section 8.5, Yard Requirements, for the corner side yard average established setback of thirteen (13) feet, to allow for the construction of a two family dwelling at a corner side yard setback of seven (7) feet, a variance of six (6) feet; To vary from Section 8.5, Yard Requirements, Rear Yard to allow for a thirteen (13) foot rear setback where thirty (30) feet is required, a variance of seventeen (17) feet; To vary from Section 26.7.D, Schedule of Off-Street Parking Space Requirements, to allow for zero (0) off-street parking spaces where four (4) off-street parking spaces are required, a variance of four (4) off-street parking spaces.

The petitioner is proposing to build a new one-story two-family dwelling on an infill parcel at 431 Middlebury Street. Due to the size of the parcel, the proposed home requires a number of developmental variances to address the current zoning standards.

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 current development standards. The scale of the 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 on the corner side yard, it will not allow a home of this scale to be built without some measure of relief.

Due to the high cost of land development and new structures like the one in this request are being developed where the necessary infrastructure exists - it is then more cost effective to construct. Therefore, those development costs do not have to be passed along to the tenant in the form of higher rent.

This request adds to the inventory of housing in Elkhart. Proposals like this one are becoming more common in areas that have seen disinvestment over time and where the need for new and diverse housing options are needed.

Staff are supportive of the side and corner side yard setbacks. Because of the size of the parcel – these variances are reasonable. Most new construction infill homes will require variances. Therefore, with most new infill proposals, staff would anticipate similar variance requests.

This proposal reflects a development pattern seen in other parts of the city that integrates varying levels of density within a neighborhood. Staff are supportive of this infill project, however, the proposal for a two-family dwelling may be too intense for this site. The fact that there is no room for off-street parking is of great concern for staff. For this specific project, it is the opinion of staff that a revised, one family structure be proposed for this infill parcel – something that reflects a similar footprint to the homes west of this site.

Staff struggles with the request for reducing parking. We don't want to discourage walkability within a neighborhood and encourage other transportation options. However, some off-street parking is necessary. It is important for the petitioner to provide off-street parking.

Staff are aware that some of the neighborhoods surrounding downtown are higher density and some residents may not own cars. The Elkhart East Bus line has a bus stop and a route within walking distance of the project.

The City of Elkhart is in the process of updating its zoning ordinance, including new residential Development Standards. The requested setbacks are consistent with proposed regulations found in the anticipated UDO. This request to the board would have only included relief from parking and potential unit size and lot size requirements if under the new UDO.

In subsequent conversations with the petitioner after filing and by reworking the site plan, the side yard setback request was eliminated by moving the house over two feet.

Because of the multiple developmental variances and the complexity of the request, staff has broken out the request into grouped similar developmental motions.

STAFF RECOMMENDATION

The Staff recommends approval of the developmental variances (corner side setback and lot frontage/area) 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 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 proposed structure will have similar setbacks in both the front 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 size of the parcel makes redevelopment that meets current development standards challenging;
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 limit the scale of structure that can be developed on this 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.

The Staff recommends denial of the developmental variance requesting no off-street parking based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals, or general welfare of the community because off street parking is possible with a site plan depicting a smaller structure footprint;
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner because a structure with a smaller footprint, will have similar setbacks to nearby properties;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because there is the potential for off street parking if a smaller structure were proposed;
4. Special conditions and circumstances do not exist that are peculiar to the land involved and which are not applicable to other lands or structures in the same district because at least one space could be achieved on site;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because a structure with a smaller footprint could be constructed to accommodate some room for off street parking;
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.

The Staff recommends denial of the developmental variance for reduced rear yard setback based on the following findings of fact:

1. The approval will be injurious to the public health, safety, morals, or general welfare of the community because a smaller structure with a smaller footprint can be achieved on this parcel;
2. The use and value of the area adjacent to the property will be affected in a substantially adverse manner because the proposed structure with a revised site plan depicting a smaller footprint would be in line with other properties in the neighborhood;
3. Granting the variance would not be consistent with the intent and purpose of this Ordinance because there is the potential for a smaller structure that could be achieved on this parcel;
4. Special conditions and circumstances do not exist that are peculiar to the land involved and which are not applicable to other lands or structures in the same district because a structure with a smaller footprint could be achieved on site;
5. The strict application of the terms of this Ordinance will not result in practical difficulties in the use of the property because a structure with a smaller footprint could be constructed on this 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

CONDITIONS

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

1. A revised plan be submitted that meets the rear yard and off-street parking requirements.

Anthony-Petter states there were 41 letters mailed with one response in favor with no comment.

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

Evanega Rieckhoff asks Davis if they split the motion into two. Davis states they need to split them up because there are two recommendations, that way there's an individual record for each of the recommendations.

Leichtman asks where the condition would be placed. Evanega Rieckhoff states she thinks it would be on both, because they are following the staff recommendation in both cases, so she imagines they'd have to put the condition on both – the approval and the denial. Anthony-Petter confirms.

Evanega Rieckhoff calls for a motion.

Leichtman makes a motion to approve 26-BZA-11 and approve the developmental variances for the corner side setback and lot frontage/area based on 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.

Leichtman asks Trotter if that sounded correct. Eric Trotter, Assistant Director for Planning, confirms.

Second by Linley.

Leichtman – Yes
Linley – Yes
Newbill – No
Evanega Rieckhoff – Yes

Motion carries.

Evanega Rieckhoff asks if they need to break up the denials into two or if they can do it in one. Trotter states that in his experience, as long as they express both requests in the motion, they can do it as one motion. Davis concurs – because it's going to be a denial anyways, if you're going to vote to deny it, you just have to be clear that you're denying it with some specificity.

Leichtman asks for clarification on which motion guide to use. Davis states that it needs to be a positive motion – it can't be a vote to deny. They need to vote to approve it, when no one votes to approve it, then on the counter they can vote against it that makes it a denial. The motion needs to be a positive motion; they vote to approve whatever the petitioner's asked for. If they get a second, then you can call for the vote. All in favor can vote aye, those who are opposed can vote nay. Then that way, they have a positive motion and if they vote to go with the staff's recommendation, they just vote against it.

Evanega Rieckhoff calls for the second motion.

Leichtman makes a motion to approve 26-BZA-11 of the developmental variance requesting no off-street parking and for a reduced rear yard setback 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.

Evanega Rieckhoff clarifies that what this means is that the vote is for the petitioner going and building as it is stated there. If it isn't seconded, then that is a negative. Davis states that if it isn't seconded then it doesn't come for a vote. To get it off the agenda to be discussed, they need to have a motion and second. Once they have a second, then they can take it for a vote.

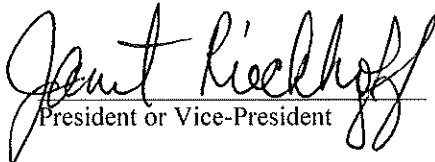
Second by Newbill.

Leichtman – No
Linley – No
Newbill – No
Evanega Rieckhoff – No

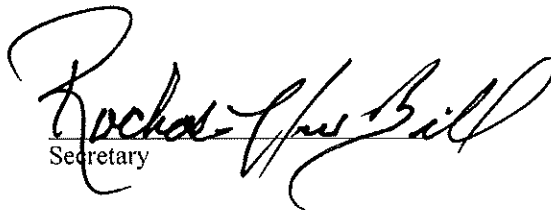
Motion is denied.

ADJOURNMENT

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



President or Vice-President



Secretary