



Elkhart County Planning & Development

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Written Interpretation – Renewal of Use Variances

Question: When must an approved Use Variance be renewed?

Relevant Code Citations:

ZONING ORDINANCE: ARTICLE 6. ADVISORY BOARD OF ZONING APPEALS.

SECTION 7. Powers and Duties.

a. The Board:

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- (5) Shall hear, and approve or deny, variances of use from the terms of the Zoning Ordinance. A use variance may be approved by the Board only upon a written determination that:
 - (a) The approval will not be injurious to the public health, safety, morals and general welfare of the community.
 - (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - (c) The need for the variance arises from some condition peculiar to the property involved;
 - (d) The strict application of the terms of the Zoning Ordinance would constitute an unnecessary hardship if applied to the property for which the variance is sought; and
 - (e) The approval does not interfere substantially with the County Comprehensive Plan.

BZA RULES OF PROCEDURE: ARTICLE 6. FINAL DISPOSITION OF CASES

6.01 Action by the BZA

Except as otherwise allowed by these Rules, action by the BZA shall follow the following guidelines:

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B. Variance of Uses

Final action by the BZA shall be in the form of a decision either approving or denying the petition. The petition may be voted on as submitted or as modified by the petitioner. Modifications to the proposal as submitted shall be made part of the motion. The BZA may impose reasonable conditions as part of its approval; including but not limited to requiring or allowing the owner of the parcel of real property involved in the petition to

make a written commitment under Section 6.06.B of these Rules to the BZA concerning the use or development of the parcel.

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Interpretation: As a general rule, Variances should run with the land since their approval should be related to unique or special conditions related to the property itself. The Zoning Administrator discourages tying future use variance approvals to property owners or tenants.

In the past, some existing approved Use Variances have been approved and tied to the property owner or tenant by the BZA. If the conditions or commitments for an approved Use Variance indicate that the tenant or property owner must renew the Use Variance, then Planning Staff will honor such conditions or commitments and require renewal. The staff recommendation on the renewal of such cases, if they have a positive recommendation, will be for indefinite approval.

In Indiana, car dealers must submit a car dealer form to the State along with a signature from the Zoning Administrator indicating that the use is permitted on the property. Some car lots have approved Use Variances for which the previous Zoning Administrator has informally required renewal whenever the tenant or owner changes. Unless renewal is required by commitment or condition, as mentioned above, the owner or tenant is not required to have the Use Variance renewed due to changing of the tenant or property owner.

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