

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
November 25, 2025
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	ABSENT
BOARD MEMBER	JOHN SMITH	PRESENT
BOARD MEMBER	KYRAH TATE	PRESENT
BOARD MEMBER	ED ZIELINSKI	PRESENT

Town Manager, Steve Martin
Code Enforcement Officer, Nicole Facciolo – Present
Code Enforcement Officer, Mark Bowers – Present

PUBLIC COMMENT:

APPROVAL OF MINUTES:

Minutes from the October 28, 2025, Board of Adjustment Meeting

ACTION: Board Member Smith made a motion to approve the minutes from the October 28, 2025, Board of Adjustment meeting with no corrections. Board Member Tate seconded the motion.

VOTE: 3 in favor 1 Absent 1 Abstained Motion carried

Acton – Absent, Smith – Yes, Personti – Yes, Tate – Yes, Zielinski – Abstained

OLD BUSINESS: None

OPENING STATEMENT: Administrative Assistant for the Code Department Denise Lardani read the opening statement.

NEW BUSINESS:

1. Review Petition 26-02, Tax Parcel # 19-00400-215

The applicant seeks to operate an automotive repair shop at the subject parcel. The Planning Commission shall determine whether the automotive repair shop meets the Harmonious Development Intent of the Town of Elsmere Code 225-9. The Board of Adjustment will review and render a decision regarding this petition.

The applicant Fausto Siquencia stated he is the present owner of 1306 Kirkwood Highway, where we are applying for a mechanic shop since it was there for about 50 years before, and we are applying to reopen as a new owner of the business, of the property, not the business. We presented our case prior to the Board, and thank God we got approved in that part, and now we are presenting the case to you guys. I would like you; my daughter is going to help him explain to you better, and I am going to let her speak for me.

Ms. Gutierrez, the daughter of Mr. Siquencia stated we are looking to reopen and operate a commercial automotive repair shop at 1306 Kirkwood Highway. The basic rundown of this business will be it will run from 8 a.m. to 5 p.m., and it will be a Monday through Friday business. It will conduct tune-ups and other mechanical work and no repairs to the body or body work. Other than that, the people that are going to be working in the business are my dad and one other worker that lives at 1308, and it has five bays, and most importantly, it will be by appointment only. Only if you call in advance will you be able to receive service from us. This used to be previously owned and operated by Mr. Harold Reed and has been purchased by us, and we are looking forward to operating it now. Some important approvals that we have gotten is we have gotten approval from the Fire Department for safety measurements, and you can find that in 26-02M. we've also received approval from the Planning Commission's Board, who has agreed that there has been a harmonious intent 26-02AK.

As you can see in this picture 26-02J in the back on the bottom side of the exhibit, you can see the actual mechanics shop, and it shows our ingress and egress. So, as you can see, there are five bays. The ingress and egress will be on that. It would be your right side, I believe you can see cars will be coming in and out. There is increase in egress from the actual mechanics shop as well. And according to Elsmere Code, we need 12 to 25 feet for ingress and egress, which we do meet because we have 19 feet. That is between 1306 and 1304.

In terms of the harmonious development and harmonious intent, according to 225-9A, it needs to preclude creation of traffic flow, and general value of the property within the town needs to remain the same. It needs to be safe and comfortable enjoyment of the property as well. Any sense of traffic flow will be mitigated through the ingress and egress. Additionally, because it is by appointment only, there will not be an excessive number of cars coming in and out of the repair shop at any point in time. Additionally,

according to 225-9 B4, it has to be proposed use of the property not substantially different from the prior usage and also does not increase traffic. Again, once more, we have addressed the traffic issue, and previously it was a repair shop owned by Mr. Harold Reed.

We are maintaining that same standard of it needing to be not substantially different from a prior usage. While we do not have the setback because it was an existing building, we are willing to put up a 10-foot-wide fence on the back end to kind of help the neighbors with any noise or any sort of light. On the term of noise complaints, it is important to note that Kirkwood Highway is a main road and a very large commercial road, actually one of the largest in Delaware. Therefore, to not be able to have a commercial shop there is kind of excluding us from having that opportunity to create welfare for us. Additionally, I feel like there's always cars coming by on Kirkwood Highway, and anybody that lives on that road can attest to that. No noise will not be significantly higher than it usually is. Additionally, any noise that will be generated within the actual repair shop will be minimal and actually be minimized by that fence that we are putting up as well.

Any disposal of fluids will also be mitigated through a special container that will be held outside of the repair shop. And the way that that works is all fluids that need to be discarded will go into this container, and then a special company will come by and recycle those so that we maintain and ensure that we are being environmentally friendly and also disposing of any fluids in the correct manner.

Odors will not be significant considering it is a repair shop. We will not have any body work done or any sort of spray or anything like that going on other than the regular oil changes.

So overall, if you take a look at how the properties are being handled now, we have gone from a complete junkyard to an absolutely, I will say, gorgeous place. We have turned 1306 for the better, and we have made sure to comply to any sort of permits that are required to be put up. Additionally, we have come before you and have gotten previous permission from the Planning Commission to actually move forward and come to you guys, the Board of Adjustments. We are really looking to bring back this business and kind of fulfill my dad's retirement dream to actually run a repair shop, of course, and also just have a business of our own to create any generational wealth that could be enabled by this business.

Board Member Tate asked if they are rentals on the side of this property. The response was yes but it is their cousins who are living there. 1308 Kirkwood is the cousin who will be helping out with the mechanic shop that currently lives there. 1304 Kirkwood is a rental as well and is aware of the mechanic's shop and has no issues with it.

Board Member Tate asked if a fence will be installed between the properties as a safety measure and the response was yes there will be if they are approved. They are going to work in a safe manner all the way that they can. There will not be cars running at a high rate of speed or anything like that. For the record we have gotten approval from all of our neighbors. You can find them in the exhibits towards the end. We have gotten from the surrounding neighbors that are directly affected by this and any other neighbors within the area. We personally walked door by door asking our neighbors behind and next to us if they have some kind of idea about the mechanic shop to be reopened and they have signed it with their handwriting and given us the permission for us to reopen the shop.

Code Enforcement Officer Nicole Facciolo stated Mr. Chairman, I just have input really quick for the letters that they are speaking about. We had more letters submitted today, so I am just letting the record show that Exhibits 26-02AL through AO have been submitted and they were left on your desks. If anyone needs any, they are also provided in the bins.

Board Member Zielinski stated I have a question. In the event of a spill, how would the waste be contained if you have a spill from the container? How would you stop that from spreading all over the ground? I am referring to the spill going into the ground itself, how will you prevent it from going into the soil?

Mr. Siquencia responded it is like a powder that we use. Every other mechanic uses the same powder we can control it right away with any spill that comes from the vehicles. It is a plastic container that normally comes with a minimum of 500 gallons up to 5,000 gallons. We collect that and we have a special company that hauls it out and disposes it properly.

Board Member Zielinski stated I was just concerned with if there is a crack or a leak, what is going to prevent it from going into the ground?

Mr. Siquencia stated where the container is placed has concrete underneath it. It is not sitting on the ground it is sitting on concrete. It is a steel container with a lock.

Chairman Personti stated it has been brought to our attention that Chapter 225 and Zoning Article 6, 225-5-32, about abandonment of nonconforming use of this property. The business was abandoned years ago. It reverts back to conforming use, which is 225-34, says that no nonconforming use shall occupy it once it went back to conforming use. Where do we stand there?

Town Manager Steven Martin stated he talked to the Town's Solicitor in regard to that and he indicated there is no reversion back to nonconforming use. Once it loses its designation after three months there is no way to convert back.

Chairman Personti asked can this be a Special Exception Use? This is Chapter 225, Zoning Article 5, special exception use, and it does show that motor vehicle stations, from what I am reading here, can be a special exception use. What is the difference between nonconforming and special exception? Do we need to get some kind of legal interpretation of that?

Town Manager Steven Martin stated if you want to get down to that level of detail, we will need the attorney to give us more information on that, but I did present this to him, and he said that, unfortunately, the business to petition is not permitted. It will be a legal liability to the town. It would cause us hardship for future petitioners because now it sets a precedence that the nonconforming use can be changed, and also for historical petitioners. He was steadfast in saying that there is no way this can revert back because it exceeds the 90-day period.

Board Member Smith asked if we cannot revert back to that, then we cannot go forward with this petition? We might as well make a motion to deny the petition.

The response for Town Manager responded yes that is correct. Unless again, the petitioner wants to take further action on it. That is up to them, but based on our solicitor, which is what he told me.

Joseph Janvier, 1310 Kirkwood Highway stated he thinks the solicitor should be present and does not understand why. He is the neighbor to 1306 Kirkwood Highway and over the last 2 years or so he has done nothing but enhance the entire property. He stated he has been in the business here 20 years. He never had a petition to open my business that was closed for 2 ½ years. I renovated the building and opened it up for business.

Town Manager Steven Martin stated a jewelry store is under a different condition. It is a permitted primary use, but a repair shop is not and needs a special exception.

Mr. Janvier stated it seems like you are limiting this property to be a rental but not a mechanic's shop that was there for well over 50 years to be something different.

Town Manager Steven Martin stated the mechanic shop lost its designation after 90 days. It is in our Code, and we have to abide by the Code. That is what keeps our Town in the condition that it is or that we try to keep it in.

Mr. Janvier asked although it loses its designation, is it not allowed to be re-designated?

Town Manager Steven Martin stated yes, you can, as long as it is within these permitted uses, and there are quite a few permitted uses that are acceptable but for a garage, it has to be a special exception. This loss is a permitted use as far as the special exception.

Town Manager Steven Martin agrees the owners have done a nice job cleaning up the property on Kirkwood Highway but, again, if we accept this, then we put the Town in liability for future developments, future petitioners, and also historical petitioners. It would jeopardize future petitioners coming to this same board asking for the same thing. They are going to say, well, you let them have it, how come I cannot have it? Also, for historical petitioners who were denied this, then they would come back and say, well, you let them do it, why can't you let me do it?

Mr. Janvier asked what is their next step? They have to petition the community. How does it work? To get them back to being able to say they can actually have a mechanic's shop.

Town Manager Steven Martin stated it has lost its permitted use.

Mr. Janvier asked and you say it is never going back again. The response from Town Manager was never again, no. Mr. Janvier said I do not understand that part. To be able to tell someone you cannot open a certain business, it was the prior business and because of the time limit they are not allowed. He stated this should be amended and to deny the people a chance to open up a mechanic shop that was in business for over 50 years is absurd.

Mary Steppi, 113 Locust Avenue, stated I have served on the Planning Commission. I have served four years on town council as well. But tonight, I am here as a concerned resident to relate to the Board of Adjustment and everyone else. My take on what transpired at the November 4th Planning Commission meeting regarding this petition. Here it goes. The Planning Commissioners completely went off the rails with little to absolutely zero focus on their responsibilities as related to Elsmere's municipal code and comprehensive plan. Comments against the petition were offered by myself, Councilman John Holloway, Councilwoman Sally Jensen, and Town Manager Steven Martin. Our comments against the petition were based in experience and a knowledge base of the town's municipal code, yet our comments were dismissed, disregarded, and disrespected throughout the meeting. I truly hope that this will not be the same experience tonight.

The investor presented a plea that he simply wanted to reopen the existing auto mechanic shop so that he could build generational wealth for his family. The generational wealth argument must have been repeated over a dozen times. The facts are that there is no existing auto mechanic shop as it was closed in 2014, and also investment income and generational wealth cannot be argued as hardship regarding this or any other investment property in town. Fact, the parcel itself is defined, which is defined as land and structures, is noted as legal nonconforming, meaning the parcel was grandfathered in respect to block coverage and setbacks as it was developed under much older code just like many other parcels in town. Fact, the parcel is zoned community commercial, and as outlined in

Chapter 225-19, there are numerous permitted uses, two pages of them, but this investor is requesting a special exception use. Fact, the parcel is noncompliant with regards to the request as a special exception use for an auto mechanic shop as noted in Chapter 225-28D, which outlines more stringent code requirements due to the light industrial nature and the storage of hazardous materials on the parcel. This parcel violates nearly all requirements of Chapter 225-28D. Fact, the related land use or activity on the land on this parcel operated as an owner-occupied auto mechanic shop for many years. The operation of the business had a grandfathered nonconforming use. Fact, the shop closed in 2014, and under Chapter 225-32, the grandfathered nonconforming use was then abandoned and discontinued for 11 years. The land use then remained primarily as residential in nature, meaning it reverted back to residential in nature. Under Chapter 225-34, once abandoned, a nonconforming land use cannot revert back in time, as the town manager just stated, but instead must now conform to current codes.

The intent of this nonconforming land use section of the code is not to encourage the survival of such nonconformities, but to gradually eliminate, through abandonment, these nonconformities, which are incompatible with our current code, as well as the Town's comprehensive plan. The Board of Adjustment, the Planning Commission, and the Town Manager do not have the authority to override the code specific to nonconforming uses. Only mayor and council have that authority, and only through a specific legislation process.

I am going to give you an example. There was a previous petition heard in 2018. For the record, petition number 17-15 is related to a parcel on Jefferson Avenue. For many years, this parcel operated as a commercial use in a residential area. This is a very good example of nonconforming land use. Previously, it was Hopkins Moving Company, then Art Floor LLC, then Dewson Construction purchased the property in 2018. Since there was no abandonment of the nonconforming commercial use on this parcel, Dewson filed a petition for a hearing requesting a nonconforming use permit in order to gain a business license. The fee for that petition was \$500. It included an attorney review, and it had to go before the Planning Commission and Board of Adjustment as well. The petition was granted. However, there is no nonconforming use permit application for this parcel due to the abandonment. And regardless of any variances, regardless of any special exception use granted, it would operate as an illegal, nonconforming, and noncompliant business, and this would be egregious.

This would set a huge precedent with serious legal implications, as the town for many years to come. In my opinion, this petition should have never had a hearing. This has been a huge waste of time and resources. The integrity of our municipal code, the integrity of our comprehensive plan must be held to the highest standards throughout this hearing tonight. I appreciate your time and attention. Thank you.

Justin, Fausto, and Carmita stated, I would like to take a moment to appreciate the petitioner's very animated response and apologize for the disrespect that was apparently incurred. He started off by saying we are requesting relief so that we can continue operating a mechanic shop on a property that has historically been used for similar commercial purposes. We believe the evidence shows that our use is consistent with the property's established history, and the strict application of the new code creates an unnecessary hardship for us as a family.

This property has been used for automotive and commercial activity long before the new zoning rules. Yes, I am sorry, but if she felt disrespected, I am feeling pretty disrespected right now as well. This property has been used for automotive and commercial activity long before the new zoning rules and intent standards were established. Our application is not a new use. It is a continuation of a longstanding one. The new code cannot retroactively eliminate a lawful use that existed before the change. The exhibits already submitted show the history of the site and the existing improvements. Our intention has always been to continue what was already permitted on the property. The physical characteristics of the property create a hardship under the newer code requirements. The law is small, the shape is restrictive, and there simply is not the space to meet the newly updated standards. This hardship is not self-created. We purchased the property as is with the understanding that the prior commercial use made it suitable for a mechanic's shop. Strict enforcement of the new standard makes the use impossible. Even though it worked for decades under the prior configuration, this is exactly the type of situation where variations are intended. Some have argued that our use conflicts with the harmonious intent of the new ordinance, but our exhibits show the opposite. The area around this property has other commercial uses like the jewelry store, and this shop has historically coexisted with its surroundings. We have already made improvements that make the site cleaner, safer, and more organized than before. Nothing about our proposal disrupts the character of the neighborhood. In fact, it keeps the property active, maintained, and visually improved. My parents have invested a significant amount of time, money, and labor into this property. We did so in good faith, relying on longstanding use and the approvals already granted in previous steps of this process. We are not large developers. We are a family trying to build stability and opportunity. My parents struggle with the language, and this shop is their dream and our chance to move forward. Denying this relief would create a real hardship for us while offering no meaningful benefit to the public. What we are asking for is, A, to recognize the prior nonconforming use that is continuing, and B, grant the variance needed due to the property's unique physical limitations. This allows us to operate in a way that respects the property's history, aligns with the area, and avoids placing unnecessary burden on our family. We appreciate your time and consideration. We have acted in good faith every step of the way, and we are simply asking for a chance to continue a use that has always existed on this property. And

finally, there has been a lot of talk about setting precedents and how it would be detrimental to the entire town of Elsmere, but this property is uniquely small and narrow, with conditions that do not exist on other sites. This is why variances are handled case by case. Granting relief here does not create a precedent for other properties because of the uniqueness of this one. Thank you.

Board Member Tate asked if I heard you invested a lot of money in the property correctly? Did you talk with the town before you invest the money to see?

The response from the homeowner Fausto was yes; we spoke with the gentleman. Basically, they gave us a list of what we needed to do before we come before you guys. We spent \$4,000.00 for recommendations from the Fire Marshalls office and for drawings to apply for permits the information came from this office, they gave us steps and how to follow them but never told us we cannot do it.

Town Manager Steven Martin stated to correct the gentlemen's statement, he did come into the Code Office, and they brought them into my office, and he asked what he needs to do to open up the shop. Basically, we were giving him what we knew was permissible, the variances they asked for, the setbacks, the barriers. We gave him all that. We did not know about this not performing use until after I did some further research. So, yes, I did say that. But actually, after I did some additional research, I found out that the non-conforming use was abandoned, and it cannot be reversed.

Justin stated no disrespect at all, but it has been mentioned very much that we needed to do our due diligence before buying property. So, my question would be, is coming to the Town and asking, not doing our due diligence?

Town Manager Steven Martin stated before you bought the property. This is after you bought the property. You had already made repairs to the houses.

Board member Tate stated this is what I am trying to figure out. If you came and said, I want to open up a mechanic shop, okay, and they told you, oh, it is okay, you just need this, this, and this, then I can see where you went down the path you went down but if that was not said and the question that was asked was ambiguous, like up in the air, we don't know what you're going to put there. We do not know what you are going to do. If you were just saying, if I want to start a business. How well was the communication on your part to say, I want this specific item? Because usually you would bring in something saying, this is what I am going to open up. These are our hours, because I started a business, and that is what I had to bring forward. I told them what kind of business I wanted up front so there was no confusion later.

Town Manager Steven Martin stated that they did ask us, after they purchased the property, about reinstituting the garage. It was after and we did our due diligence. We looked at what they needed to do, new setbacks, and so forth and so on but we were not aware of this non-conforming use. I did some further research, and that is when this came about.

Board Member Zielinski asked the Town Manager did he reach out to the applicant and explain to him what he found out with his due diligence and the response was no he did not.

Justin, the son, stated we did our own due diligence by coming to the Town and did the necessary steps we were instructed to do.

Town Manager stated you came to the town after you bought the property. I am just saying, any real developer would find out what is permitted prior to acquiring the property. This is not anything personal. This is something I found that is in our code. This is part of our charter, And I am doing what I have to do to protect the integrity of the Town. You have to understand that. For us to give you a waiver of certain things would be a hardship on this Town for years and years and years to come. You have to understand that.

Justin stated yes, sir. I completely understand your point and, obviously, I mean no disrespect at all. I am doing my best to maintain composure and not interrupt anybody. But all I am saying is, I understand we made the mistake of buying the property first and asking questions later. But once we bought the property, we did do our due diligence. And how is it, again, no disrespect, but I am simply saying, if the town itself had no idea, how would we?

Chairman James Personti stated, the Planning Commission just reviews what you are doing. This board will give you the variances and between the time that the planning commission recommended that we could approve this if we wanted, this charter violation came too light. The way I see it is the head of this Board of Adjustment, we cannot even vote on this, according to town charter. That is my take on this. I could be wrong. We could get legal advice from the town's solicitor. We cannot even vote on this legally, according to charter, because it lost its nonconforming use and as stated, it has to go through council. And they would have to make a change. Now, I could be wrong.

The applicant's daughter Pamela Gutierrez questioned the \$4,000.00 already invested into this property was for nothing?

Mayor Joann Personti stated first, I want to apologize to you all. It is apparent that errors occurred all around here. What I suggest is that they be refunded the money that they put

in for these hearings. Then we need to get a special legal review of what has occurred so that this never happens again. My recommendation would be at this point to refund them what they paid, to make these applications so that we can discuss these issues with our attorney and make sure they do not happen again.

Furthermore, for Code, I want to say that the cut and paste for the agenda does not even reference that the Board of Adjustment was going to be hearing variances. It has the verbiage from the Planning Commission meeting. There are plenty of errors all around here. I am very, very upset. Again, I apologize to the applicants. But this is my opinion what needs to happen at this point. Refund them the money and let us get with our attorney and get this right. Thank you.

Mary Steppi, regarding this due diligence factor, prior to the properties being bought, the investor owns all four properties on the 1300 block. It was an eyesore, junkyard. I have filed many complaints over the years. I was excited to see the for-sale signs went up, and I actually pulled the real estate listing for 1306 and brought it with me tonight.

I am just going to read this briefly. A note, real estate agents will not list a property with an illegal intent. They either check with the municipal code or market it as such. This will answer your questions. About this home, 1306 Kirkwood Highway. There is a great opportunity for a handy owner-occupied or investor to own a four-bedroom, two full bathroom property in Elsmere, it is commercially zoned, meaning community commercial. This property can be used as a residence or for your own business. If you are tired of paying for office space, this is a great opportunity for a business such as an accountant, insurance, antique shop, specialty store. Additionally, there is a five-car garage on the property, ideal for storage or hobbies. It says the possibilities are endless. Never was this marketed as an auto mechanic shop because it could not have been. Because that real estate agent would have lost his license because the real estate agent checks with municipal code. So, the chicken-or-the-egg argument goes nowhere.

This is non-conforming because it was abandoned for 11 years. Not only that, but the variances are also egregious. You need a 15,000 square-foot lot for an auto mechanic shop. This is only 9,375 square feet. The setbacks are 25 feet all around. They are only 5 feet in the back and 5 feet on each side. You talk about the neighbors and kids playing and hazardous material. That is why you need 15,000 square feet, because it is light industrial. So, all around, I agree with Mayor Personti, this should never have happened.

Code should have written a letter after accepting the application and noted the chapters in our code where this just would not fit. There are two pages of permitted uses for this property in Commercial Zone. This is not a hardship. This was not marketed by the real estate agent as an auto mechanic shop. It has not existed since 2014 as such. Any other business can go in there. This means any other property on Kirkwood Highway,

regardless if they have a garage or not, they can put up a carport, can open an auto mechanic shop 5 feet from their neighbor's property. Are you kidding me? We have a code for good reasons, to protect the health, safety, and welfare of the residents and small businesses in our town, and to make it an attractive and sustainable community for all, not just for one investor.

Board Member Tate stated that I just wanted to be clear. When I was asking the questions of how the information came out, I like to ask questions to see where we can fix it in the future. So, when someone comes in and says something, we need to ask that question. These are the things you do; this is our charter. It is not fair to both sides.

Mary Steppi stated I agree, and I have had a very frank discussion with the Town Manager with functions within this building. I am a taxpaying resident, and this is unacceptable to me that the processes and administration happen this way especially as somebody who has been on the Planning Commission and heard petitions, and also on Council. I have found this egregious all around. I am embarrassed for the Town.

Mr. Janvier asked if there are exceptions for Meineke and the other muffler shops in Elsmere. The response was Meineke is not in Town limits. The other muffler shops have been in existence and if they cease operations for more than 90 days they will lose their grandfather too.

The applicant's daughter Pamela Gutierrez feels like this has become a very heated and, as you might try to say this is not personal, it has become very, very personal. There has been a lot of banging of desks and getting very close to microphone's, and I think it is becoming a little bit disrespectful at this point. I would like everyone to either take a deep breath or if you need to, step out of the room, because, frankly, it has become absurd. On the terms of noting that there are two pages worth of exceptions that we could use to put into this repair shop, the truth of the matter is that there are five bays.

These bays were specifically meant to become a repair shop, and within the special exceptions use, the Town of Elsmere Code mentions motor vehicle service stations as a special exception use, which may include some repair activities. However, a special exception use repair shop is also addressed by the general regulations regarding all repair work needing to be conducted within an enclosed building and meeting specific location and distance requirements from certain public facilities. We cannot change the fact that this has been an existing building. We cannot pick up the whole building and place it so that it fits these exact requirements, which is why it is a special exception use and why we have worked so hard to put this into effect. It is mentioned that you want to make sure that the Town of Elsmere is safe and it is appealing to a lot of people, and most of all, this is a commercial highway. It is a highway where there are so many different businesses. So, to have this be put in and not have a variance be used on a case-by-case basis is

absolutely absurd. I thank the mayor for any help that they could give us if this does not end up being approved. However, I would really appreciate it if we actually took into effect the fact that variances are case-by-case. This would not set a specific disregard or any sort of precedent that would cause any detrimental harm to the Town of Elsmere. Additionally, if any variances or any differences were found after we had asked, no matter if we had asked to do the repair shop before or after buying the property, they should have been correctly communicated to us within that time manner because we have put an extensive amount of resources, time, and money into this. Thank you.

Councilman John Holloway, 4th District, 1304 Maple Avenue. I am a 25-plus-year resident. I stand here before you tonight to discuss Petition 26-02A-AK. First off, as a paying tax member of Elsmere, I believe that we are governed by the Town Council, the Planning Commission, and the Board of Adjustment to help steer and guide the town to be a desirable location to reside and prosper in peace and comfort harmoniously together. After extensive reading and examination of this petition, many, many questions have arisen. There are many unanswered questions about the current codes in place when the property was purchased by this investor and how they apply to this specific property such as parking, setbacks, and lot coverages. My main concern is for the surrounding neighbors in that vicinity that will be subjected to additional noise, smells, and increased traffic. Furthermore, when looking at the code summary box on the Exhibit 26-02N, a building data completed by the Fire Marshal's details the building as light industrial with moderate hazardous storage. When Exhibit 26-02L lists the details of the inspections in the state, a preliminary review was conducted indicating no further motion nor final review was required by the State Fire Marshal's Office. Issue Certificate of Occupancy at your discretion. As shown on the Exhibit 26-02M, at the bottom of the page states, even though the final inspection was not conducted by this agency, code compliance shall be required and is the sole responsibility of the owner. To date, this investor has a less than acceptable history with the compliance aspect in his past track record. When this shop was last operated by a resident owner-operator, it was under the old codes and ordinances. Since that time period, new codes and ordinances have been adopted for the residents of the town to comply with. Under the new codes, there are many items that the investor cannot comply with. Now this proposed business would be operated by an investor non-resident. When this business last sold, the realtor listed permitted uses for the property, including accountants, insurance, or antique shops. No mention of a shop located to rear the property in question.

On Saturday, November 15th, I went to all of the residences the petitioner had provided signatures to, just to verify the signatures were authentic as presented. I also noted that the exhibits numbers 26-02AB, 26-02AC, and 26-02AD were not residents or employees of nearby businesses, so were not included. I was knocking on the door at 28 Oak Lane when I saw the resident of 28 Oak Lane, Barbara Jones. I approached her, introduced

myself, and explained my reason for stopping by to ensure that the info on the sheets provided by the petitioner was correct. She told me that she was approached but refused to sign the document. She said that after many years of looking at the junk stored behind the shed and on the adjacent property, her upstairs window looks down on the rear of the property, shocking question. She has her upstairs window directly down on the rear of the property. She also stated there had been a lot of digging and concrete work done over the last couple of years. It was during this time period that the deforestation also took place. She called her sister Linda, who was the owner of 2 Oak Avenue, to come out and listen to the conversation. She said she was not really thinking about it. She signed the paper when they asked her. She really did not know what was going on. I spoke to the residents of 4 Oak Lane, John and Mary O'Mesho, and they did sign, but they were also unaware of the current status of the petition. 3A Bungalow Avenue, I spoke with Bernardo Lopez, the property owner. I explained my visit and verified the signature. He said he did not sign it. It appeared to be his juvenile son's signature. The owner was unaware of the situation with the properties adjoining him. I informed him of this meeting, and he said he may attend. 5 Bungalow Avenue, I spoke with the resident. He did not sign the form. The property owner's signature does not appear on the document. It is an unknown signature. 11 Bungalow Avenue, I spoke with the resident. He did sign but was unaware of the overall progress of the investor's petition. On Sunday, I returned to 3 Oak Avenue and spoke with the owner's residents, and he confirmed his signature. The couple also stated they were not aware of the current status of the petition. I told them the meeting date and time. I request that this board should deny the investor's petition based on all the discrepancies presented here tonight. Thank you.

Oh, one other final thought. She stated earlier, 5 bay garages, on Exhibit 26-02N, that building has four doors, or I cannot see. Where is the fifth bay?

Ms. Gutierrez stated one of the bays is big enough to fit two cars. This is just so personal, it is excessive at this point.

Chairman Personti stated I think what we need to do is make a motion to table 26-02 until we get legal advice from the town solicitor.

Sally Jensen, 2nd district councilwoman stated she would not be at the next meeting and wanted that on the record.

Board Member Zielinski stated could I add one more thing. There is a discrepancy in 26-02L. Paragraph 2, it says, description use details. Open existing auto body shop. They are applying for a mechanic shop with the fire marshal, so there is a discrepancy right there.

Sally Jensen, 2nd District Councilwoman, 504 Baltimore Avenue. First of all, I would like to reiterate basically what the town manager and Ms. Steppi stated. The mechanic

shop was abandoned 11 years ago and reverted back to non-conforming use. As the chair here said, this petition should not have been heard. I also agree with the mayor's suggestion that the town should return the fees paid by this investor. As far as my comments, as you may be aware, this petition was first heard and tabled at the October 7, 2025, Planning Commission meeting due to the many questions asked by me that were not addressed in the petition.

My questions were such that the chairman asked my questions to be forwarded to the commission, and the town manager ensured it was added to the petition that was reheard at the November 4, 2025, Planning Commission meeting. It is in your packets as Exhibit 2602T. Note that not all of the questions were addressed by the petitioner or investor, nor did the Planning Commission ask about what had not been answered and let me assure you, this is not personal. It is based on the use that you are requesting.

Fausto and Carmita started to interrupt Councilwoman Jensen, and she responded please do not interrupt me. This is my time at the podium. And that is why I asked you to stop now. I ask that you might gavel her if she does it again.

A major question not answered by the petitioner and the investor was that of parking and how the investor proposes to ensure requirements of the code are met. Note, there is no plan addressing parking attached to this petition. Neither was it when it was heard by the Planning Commission on two occasions, and now that is before the board.

This plan, if it were to go forward, should indicate the number of parking spaces required by code. In other words, the number of spaces required for residents of the house in front, in this case renters, number of spaces required for employees, in this case, and as the investor said, himself and one other employee, customers, and vehicles awaiting repair or delivery of parts, because nowadays you can't get parts, and how the parking lot will be laid out. Please keep in mind the driveway cannot count towards the parking requirements per the code, and the need to utilize the driveway for the auto mechanic shop will not allow the renters of the property to use the driveway for parking because employees, customers, renters of the property to use the driveway at delivery vehicles, hazardous materials picking up, people picking up their vehicles must use the driveway to access the parking lot. This should be very concerning to both the town and the board. It is important to consider whether the absence of a parking plan in both the original and revised petition was a deliberate decision, potentially because my questions regarding parking requirements remain unanswered. The lack of a clear proposal addressing how the investor intends to meet the code's parking requirements, including the specific number of spaces needed for renters, employees, customers, and vehicles awaiting repair or delivery, remain a major concern. This submission raises questions about the adequacy of planning and transparency for this project, especially given the driveway's exclusions

from parking calculations and its necessary use for business operations, deliveries, and hazardous materials pickup. The continued absence of a detailed parking plan should be of significant concern for both the town and the board as they review this petition. I wonder if parking was the reason that, in addition to 1306 Kirkwood Highway being paved, 1300, 1304, and 1308, any grass that was existing has been removed. And they were also, I use the word paved, it is hard packed, stone may be in it, and I understand there was a strong smell of asphalt or oil when it was installed. They were paved, or were they being made more accommodating for parking, rather being left as green backyards for children to play in on those existing homes that were currently being rented. The minimum lot requirement for this type of business per the code is 15,000 square feet, yet the existing is 9,375 square feet, more than 33% or one-third below requirements. This will certainly prohibit parking requirements being met per the code on this parcel. I would like to point out that this type of business may have been permissible by the code years ago, but the code has changed since that time, meaning non-conforming. Additionally, the petitioner is requesting a special exception use permit to open the Elsmere Mechanic Shop, the former automotive repair shop this investor wants to reopen, has not been in operation for 11-plus years, and therefore is considered abandoned and cannot revert to its previous non-conforming use. According to town code specifically, Chapter 25-32, Abandonment, and I quote, a non-conforming use shall be adjudged as abandoned when there occurs a cessation of any use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of three months from the date of cessation or discontinuance. And keep in mind, this falls on the previous owner for, you know, this having been abandoned. Based on this section of the town code, I believe that this petition to reopen an auto mechanic repair shop should be denied in its entirety. I have many concerns regarding the property located at 1306 Kirkwood Highway, as well as 1300, 04, and 08 Kirkwood Highway, which were purchased by this same investor. I have filed complaints. A former council person has filed complaints. I do not know who else may have, not to mention the numerous violations noted by code enforcement officers. I have grave concerns that, based on past practice or actions by this investor or employees, friends, or contractors who worked on these properties, violations will continue to be made, and complaints will continue to be filed. I ask you to think about how neighbors of these properties and the town can be assured that the code will be complied with going forward and lastly, these four properties that I've mentioned, and I'll say them again, 1300, 1304, 1306, and 1308 Kirkwood Highway have not always been gravel or a type of parking surface. Exhibits 26-02V through shows 26-02-Z show trees and grass on all four of these parcels, or all one needs to do is Google it. Thank you for your attention.

Chairman Personti stated there is a motion to table petition 26-02.

Board Member Smith asked about the parking and the driveway. That the driveway belongs to 1304 and not 1306.

Fausto Siquencia the owner of 1306 Kirkwood Highway stated the driveway belongs to 1306. When I presented the drawing, you can see clear the driveway is just for in-and-out vehicles, and the left side of the drawing, it shows two parking spots cars only because, as we said before, this mechanic shop is not supposed to collect 20 cars over there. This is a small business. This is going to be made by appointment only.

Board Member Smith stated I am just talking about the driveway. It is marked on the thing as shared driveway. The response is no it is not a shared driveway. Board Member Smith stated well it is on the paperwork in black and white.

Mr. Siquencia stated that it is not. The driveway I gave belongs to only 1306. 1304 has a driveway on the other side of the property.

Mr. Smith asked if we are going to table this because there is no sense talking. And the driveway on Exhibit 26-02J, it says right on the left side of the property, on 1304, it says shared gravel driveway. If you look at the center line, it is a shared driveway. Right there. I am sorry. It is black and white.

Mr. Siquencia said I insist. There is a 75 feet wide lot. 75 feet wide and 19 feet wide is the driveway that belongs only to 1306. If you can see, right next to the driveway, you can see another line. That is what divides 1306 with 1304. This driveway belongs only to 1306.

Town Manager Steven Martin stated I think he is showing in and out.

Mr. Siquencia said yes, that is what I am showing here. If you are confused, I am showing how the vehicle is going to be in and out, but it is not shared. Actually, if you see it on the opposite side, I have, like, two vehicles over there. I am just showing you we have enough space for parking. But as we explained before, this is a small business. This is not an industrial. It is a family business. Very small as we used it before. We have five days to accommodate five vehicles so that we are going to be able to make five units at a time. So, we have more than enough space for that.

Board Member Smith commented he recommends withdrawal the motion and withdrawal the petition, the entire packet. If we are giving them their \$4,000 back in the money, then we should withdraw the whole thing. And then when they have it all settled, we get it all settled, they reapply and start out fresh with all the correct information on the paperwork. That's the motion.

Board Member Zielinski stated I second.

Board Member Tate asked do we need to table this?

Chairman Personti stated we have to make a motion to table it or deny it or approve it. Well, we cannot even approve or deny it because we do not have the legal authority. We need to table it until we get the legal authority.

Mr. Siquencia stated we are following the steps. We have been guided by the city, by the town. The town told us that we got to go through the first meeting and then the second meeting, which is you guys. I think if you guys do not have the authority, I do not see another authority.

Chairman Personti stated we do not have the authority. To say what we can do. We have to get legal advice. We cannot make a decision.

Board Member Zielinski made the motion to table.

Board Member Smith withdrew his motion and seconded this motion.

Chairman Personti stated we tabled this until we get legal advice on how to further proceed.

Code Enforcement Officer Facciolo stated she would just like to state on the record that everything that was applied for was shown to the building official. This does not fall on the code enforcement department. We did what we were supposed to do. That is the building official. This is not on me or my department.

Town Manager Steven Martin stated to the Commission, I will contact our Town Solicitor. I will give him the full package for him to review. Also, I will talk with Max, who is also an attorney on land use, and then find out exactly what we will have to do. I will make sure that the petitioner is informed of the progress and also inform you guys as well.

Ms. Gutierrez stated I am in medical school, so I have not had time to research pages and pages of hours of things. So now that it was clearly seen that we had not known about this whole issue going into it, even though we asked, we do ask now that you take into consideration the large amount of money that we had spent into this. Not so that we can move forward with it. I understand that you are saying no, as far as that goes, but so that we can be reimbursed, as the mayor said, for all the amount of money that we had put into this, and it is much more than \$4,000. Yes, the hearings with town, the permits going forward with it, everything that you guys have asked for, and the time that we have gone into it.

Mayor Joann Personti stated the dollar amount that you paid for the hearing, we have to have a legal review, and then we will get a decision if the matter is to move forward and how it is to move forward. This is what we need to know from our attorney.

Then as far as the money that we have spent going into it for permit wise, is that just lost to us? Is that something that we need to speak to our lawyer about then for the town going forward?

Chairman Personti I cannot give you that advice.

Board Member Tate stated I know I agree with the lady that was talking, your daughter, I think it was. It is a little heated now. So that is why we said let us get some more information, because I do not want to make a decision that is going to hurt either party. Let us get some more information. I understand you want to get this done and get it started. I get that. Or even if we do not. And if it is said that it cannot be done, then that would be taken up with the council to see how they are going to reimburse you or to see if they could even reimburse you, because I am not sure of the ramification. What are the guidelines for reimbursement? Do you know what I am saying? I do not know that. We are just saying now that we want to table this because we do not have enough information. Both arguments are valid. We just want to make sure as far as we hearing it. But we cannot make a decision, and I hope you respect that. We will try to get more information so that we can give you accurate information. Because maybe it is something out there that when an attorney tells us, like, yes, okay, this happened, but because of these actions, we may have to honor it. We do not know that.

Ms. Gutierrez stated I just do ask that you guys please also when you are asking about that, ask about the amount of money that was spent on this. Now that the council manager, I believe you said, or the town manager had said that this was not even a possibility in the first place, we obviously would not have spent, again, thousands of dollars going into this. So just that could be a question that could be asked by the attorney as well, how that reimbursement process would go. Thank you.

Councilwoman Sally Jensen, I really feel that I am a loudmouth and that is why I did that. I apologize. As a council person, while I appreciate the fact that the investor and his family have spent a lot of money to improve these properties, the four houses, well, let's just say the three, 1300, 1304, and 1306, those houses were improved upon and they are renting them out. In my opinion, as a council member, I would not vote to reimburse them that as far as any other improvements to the garage, if that was, if improvements were made so that this could be an auto mechanic shop prior to this being approved, recommended by the planning commission. If it were to have been approved by the board of adjustments tonight, that's not the town's fault because they should not have spent the money until they had the approvals. I am just saying that as a council person, I would not

count on money for improvements being reimbursed, but as the mayor said for these hearings, especially if it was our mistake, the town's mistake, those fees, and that is it. Thank you.

ACTION: Board Member Zielinski made a motion to table the decision we speak to the Town Solicitor. Board Member Smith seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Acton – Absent, Smith – Yes, Personti – Yes, Tate – Yes, Zielinski – Yes

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS: None

PUBLIC COMMENT: None

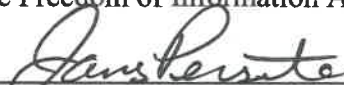
ADJOURNMENT:

ACTION: Board Member Smith made a motion to adjourn. Board Member Zielinski seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Acton – Absent, Smith – Yes, Personti – Yes, Tate – Yes, Zielinski – Yes

These minutes summarize the agenda items and other issues discussed at the November 25, 2025, Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.



JAMES PERSONTI, CHAIRMAN



JOHN ACTON, SECRETARY