

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, February 7, 2022 - 4:00 p.m.

County-City Building

Fourth-Floor Council Chambers

www.tinyurl.com/sbbza

ADMINISTRATIVE ITEMS:

1. Election of Officers

PUBLIC HEARING:

1. **Location:** 2046 SOUTH BEND AVE BZA#0093-21
Owner: DEV H12 LLC
Requested Action: Variance(s): 1) From the 5' minimum front sign setback to 0'; and 2) From the 15' maximum sign height to 19'
Zoning: C Commercial
2. **Location:** 1017 THOMAS ST BZA#0097-22
Owner: ALEJANDRO AGUILAR LOPEZ
Requested Action: Variance(s): 1) from the 5' minimum side setback to 1'
Zoning: U1 Urban Neighborhood 1
3. **Location:** Northwest corner of Dubail Ave and Fellows St BZA#0099-22
Owner: UNITED WAY OF ST JOESPH COUNTY INC
Requested Action: Variance(s): 1) From the 60% minimum ground floor transparency to 49%
Zoning: NC Neighborhood Center
4. **Location:** 1701 KENDALL ST BZA#0100-22
Owner: 2010 INVESTMENT GROUP
Requested Action: Special Exception: a Dwelling, 2 Units
Zoning: U1 Urban Neighborhood 1
5. **Location:** 701 NILES AVE BZA#0101-22
Owner: 701 NILES LLC
Requested Action: Variance(s): 1) from the requirement to provide a bathroom for each room in a Hotel
Zoning: DT Downtown

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – January 3, 2022
2. Minutes – January 3, 2022
3. Other Business
4. Adjournment

NOTICE FOR HEARING AND SIGN IMPAIRED PERSONS

Auxiliary Aid or other services may be available upon request at no charge. Please give reasonable advance request when possible.

Property Information

Location: 2046 SOUTH BEND AVE
Owner: DEV H12 LLC

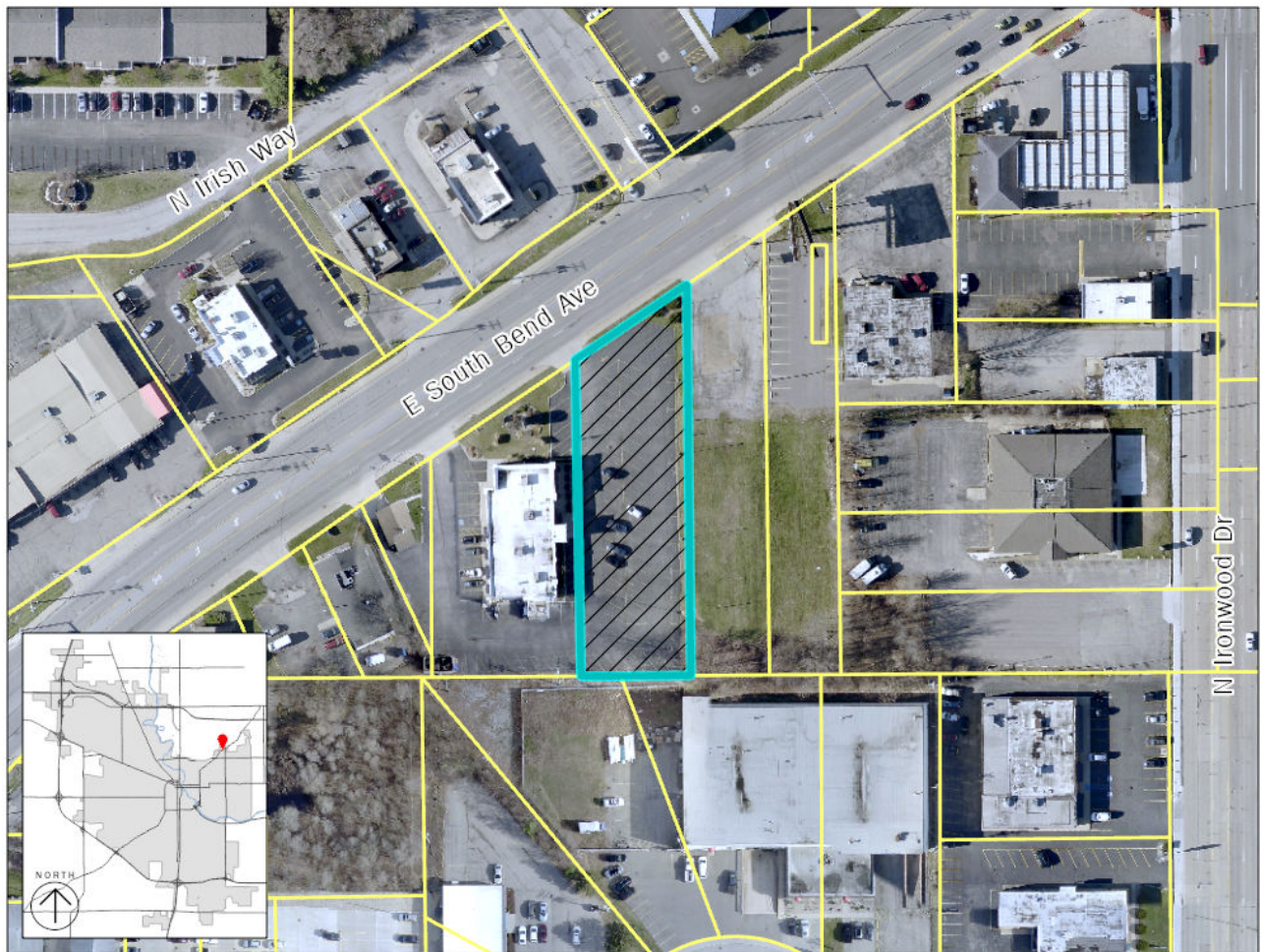
Project Summary

Legalize a sign installed.

Requested Action

Variance(s): 1) From the 5' minimum front sign setback to 0'
2) From the 15' maximum sign height to 19'

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board deny the variances as presented.

Criteria for Decision Making: Variance(s)

State statutes and the Zoning Ordinance require that certain standards must be met before a variance can be approved. The standards and their justifications are as follows:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community

Approval of the variance could be injurious to the public health, safety, morals and general welfare of the community. Granting the variance would give an undue advantage to the property owner which could negatively impact the use of the adjacent properties as well as setting a precedence for the surrounding area. The site already has restricted visibility due to the road curve. Further restricting the view will cause cars to have to pull into the pedestrian area in order to safely exit the site.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

Granting the variance would give an undue advantage to the property owner which could negatively impact the use of the adjacent properties, as well as setting a precedence for the surrounding area. Other signs in the area are legal non-conforming and will need to be adapted in the future. They are also predominately pole style signs that allow for adequate clearance and clear sight area.

(3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property

Strict application of the ordinance would not result in practical difficulties in the use of the property. The use of the property is not related to the size or location of the sign. The sign was granted a permit in a code compliant location and later changed by the petitioner.

(4) The variance granted is the minimum necessary

The practical difficulties on the site are self created, so the variance is not the minimum necessary. The petitioner should not be granted a variance for the sign location due to poor site planning on their part.

(5) The variance does not correct a hardship cause by a former or current owner of the property

The variance requested is based on the desire of the petitioner, not a practical difficult of the site. The petitioner made a conscious decision to move the sign location and constructed the sign at a taller height, against prior approved plans for a code compliant sign. The variance requested is to avoid the cost of relocating the sign and to maintain the height above what is allowed by code.

Analysis & Recommendation

Analysis: The petitioner had received permit approval for the construction of a code compliant sign in a code compliant location. The petitioner intentionally built the sign at a larger height and in a location that places the sign right against the right-of-way.

Granting the variance would give an undue advantage to the property owner, which could negatively impact the use of the adjacent properties. It would also set a precedence which would promote the practice of permitting something compliant with the ordinance, but installing something different than what is appropriate.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board deny the variances as presented.

Property Information

Location: 1017 THOMAS ST
Owner: ALEJANDRO AGUILAR LOPEZ

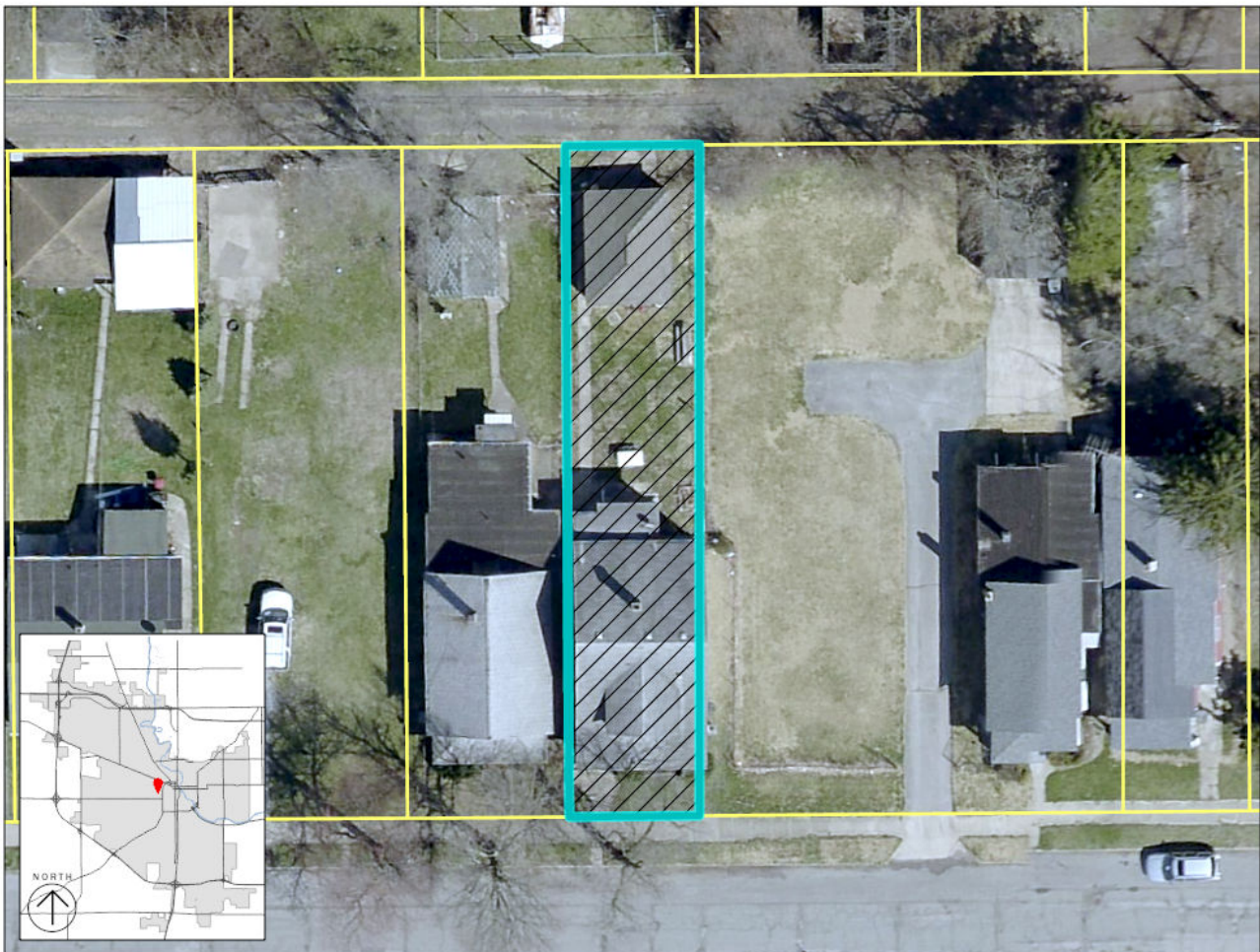
Project Summary

Garage addition encroaching in side yard setback.

Requested Action

Variance(s): 1) from the 5' minimum side setback to 1'

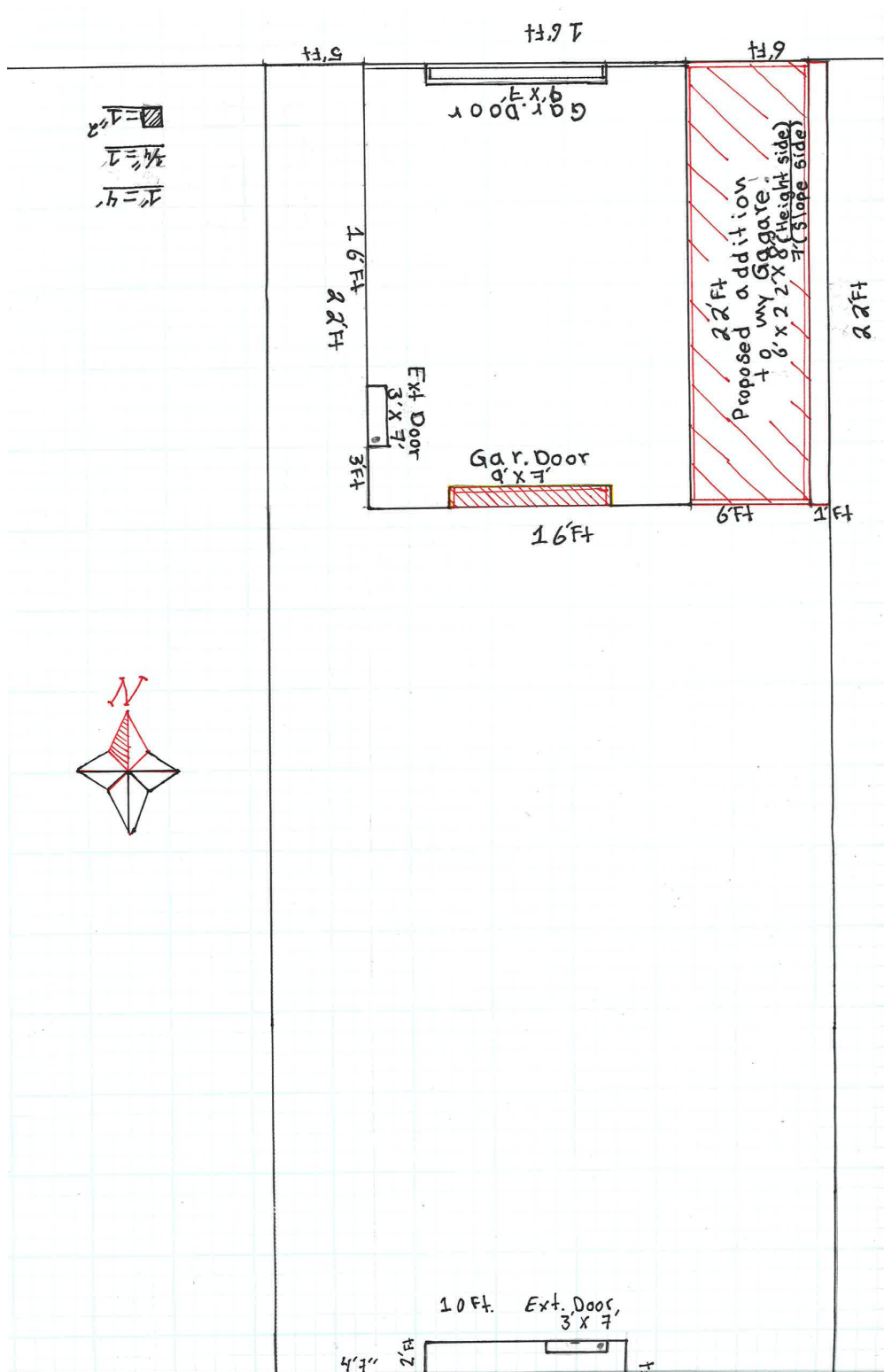
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board deny the variance, as presented.

Proposed Site Plan



Criteria for Decision Making: Variance(s)

State statutes and the Zoning Ordinance require that certain standards must be met before a variance can be approved. The standards and their justifications are as follows:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community

Minimum setbacks are established to set the minimum distance needed in order to protect the health, safety, and general welfare of the community.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

The side setbacks are designed for the protection of adjacent property owners. The proposed variances may adversely impact the use and value of adjacent properties.

(3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property

The strict application of the ordinance would not result in practical difficulties in the use of the property. Nothing on the property necessitates reducing the side setback. The garage could have been extended within the established setbacks to the south.

(4) The variance granted is the minimum necessary

Because there is no hardship on the property, the proposed garage could be installed in compliance with the ordinance.

(5) The variance does not correct a hardship cause by a former or current owner of the property

The owner installed the garage without a building permit in an area that is not allowed per the ordinance. Due to this, approving this variance would correct a hardship that was caused by the current owner of the property.

Analysis & Recommendation

Analysis: Minimum setbacks are established to set the minimum distance needed in order to protect the health, safety, and general welfare of the community. The strict application of the ordinance would not result in practical difficulties in the use of the property. Nothing on the property necessitates reducing the side setback. The garage could have been extended within the established setbacks to the south.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board deny the variance, as presented.

Property Information

Location: Northwest corner of Dubail Ave and Fellows St
Owner: UNITED WAY OF ST JOESPH COUNTY INC

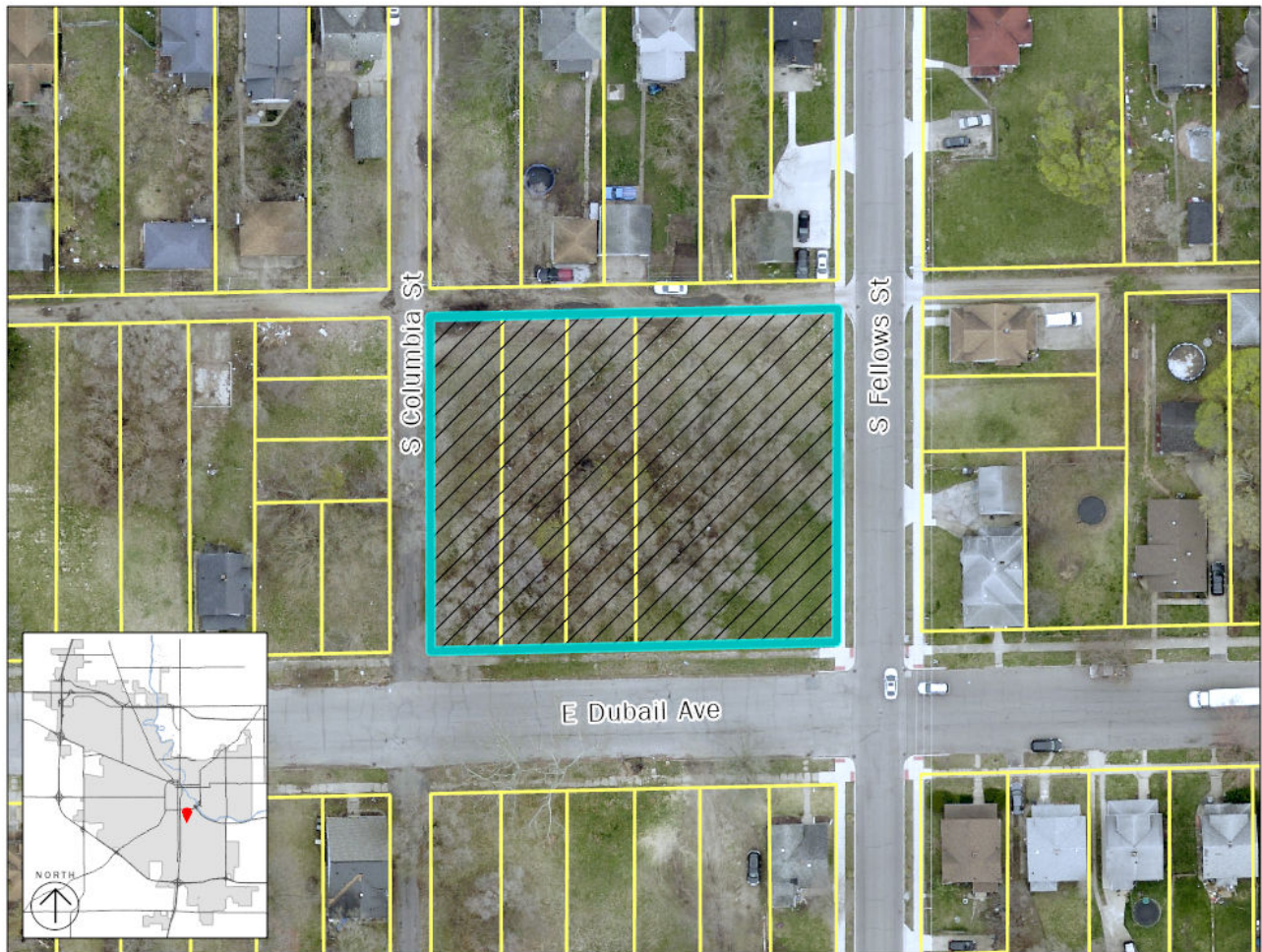
Project Summary

Construction of a community center with four main functions: early learning center for children; community center; pharmacy, and clinic offices.

Requested Action

Variance(s): 1) From the 60% minimum ground floor transparency to 49%

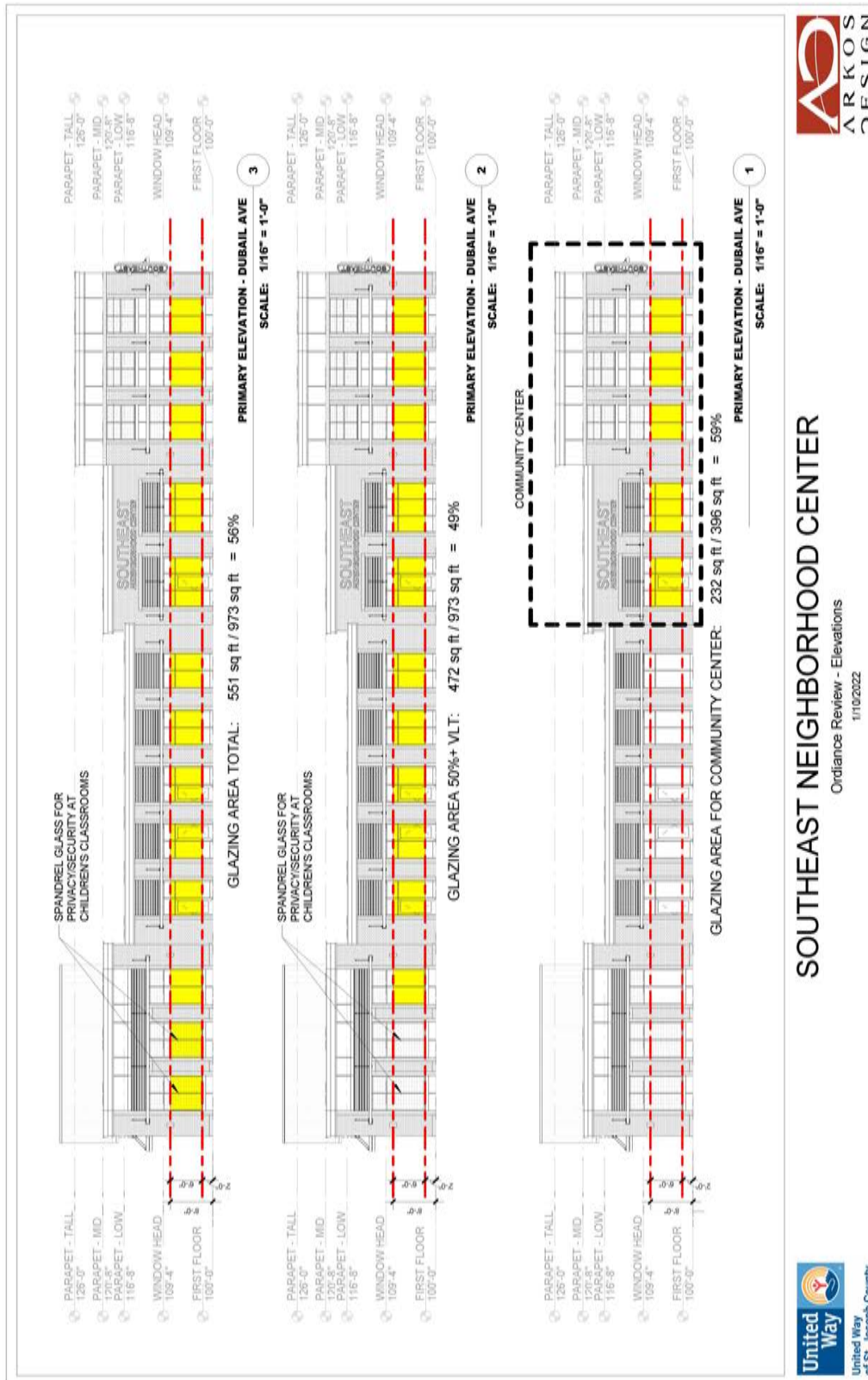
Site Location



Staff Recommendation

Based on the evidence available prior to the public hearing, the staff recommends the Board approve the variance, as presented.

Proposed Site Plan



SOUTHEAST NEIGHBORHOOD CENTER

Ordinance Review - Elevations
 1/10/2022



Criteria for Decision Making: Variance(s)

State statutes and the Zoning Ordinance require that certain standards must be met before a variance can be approved. The standards and their justifications are as follows:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community

The variance to reduce the minimum transparency should not be injurious to public health, safety, morals and general welfare.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

The construction of United Way on a previously vacant property within the neighborhood should help stabilize the surrounding blocks, having a positive impact on the use of adjacent properties. The Neighborhood Center District transparency standards assume a retail urban environment along commercial corridors. This site is located in the interior of a neighborhood surrounded by single family houses where transparency and street activation is not the primary concern.

(3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property

The function of a civic building, as opposed to a retail or dining establishment, create practical difficulties of strict application of transparency requirements of the Ordinance. Fitting a multi-use space within an existing single family urban setting provides challenges to designing the building.

(4) The variance granted is the minimum necessary

The building was designed with the neighborhood character in mind. Unlike other mixed use building along corridors or in commercial areas, the design meets the intent of the ordinance without an overly commercial feel. The transparency requested is the minimal necessary from the Zoning Ordinance while still allowing the site to function as needed.

(5) The variance does not correct a hardship cause by a former or current owner of the property

The multi-purpose institutional use of the building is inherent in its use and not something that is correcting a hardship. The neighborhood being primarily single family residential and not a commercial corridor is not a hardship created by the petitioner.

Analysis & Recommendation

Analysis: The construction of United Way should help stabilize the surrounding blocks and serve as a resource to the neighborhood. The Neighborhood Center District transparency standards assume a retail urban environment along commercial corridors. This site is located in the interior of a neighborhood surrounded by single family houses where transparency and street activation is not the primary concern.

Staff Recommendation: Based on the evidence available prior to the public hearing, the staff recommends the Board approve the variance, as presented.

Property Information

Location: 1701 KENDALL ST
Owner: 2010 INVESTMENT GROUP

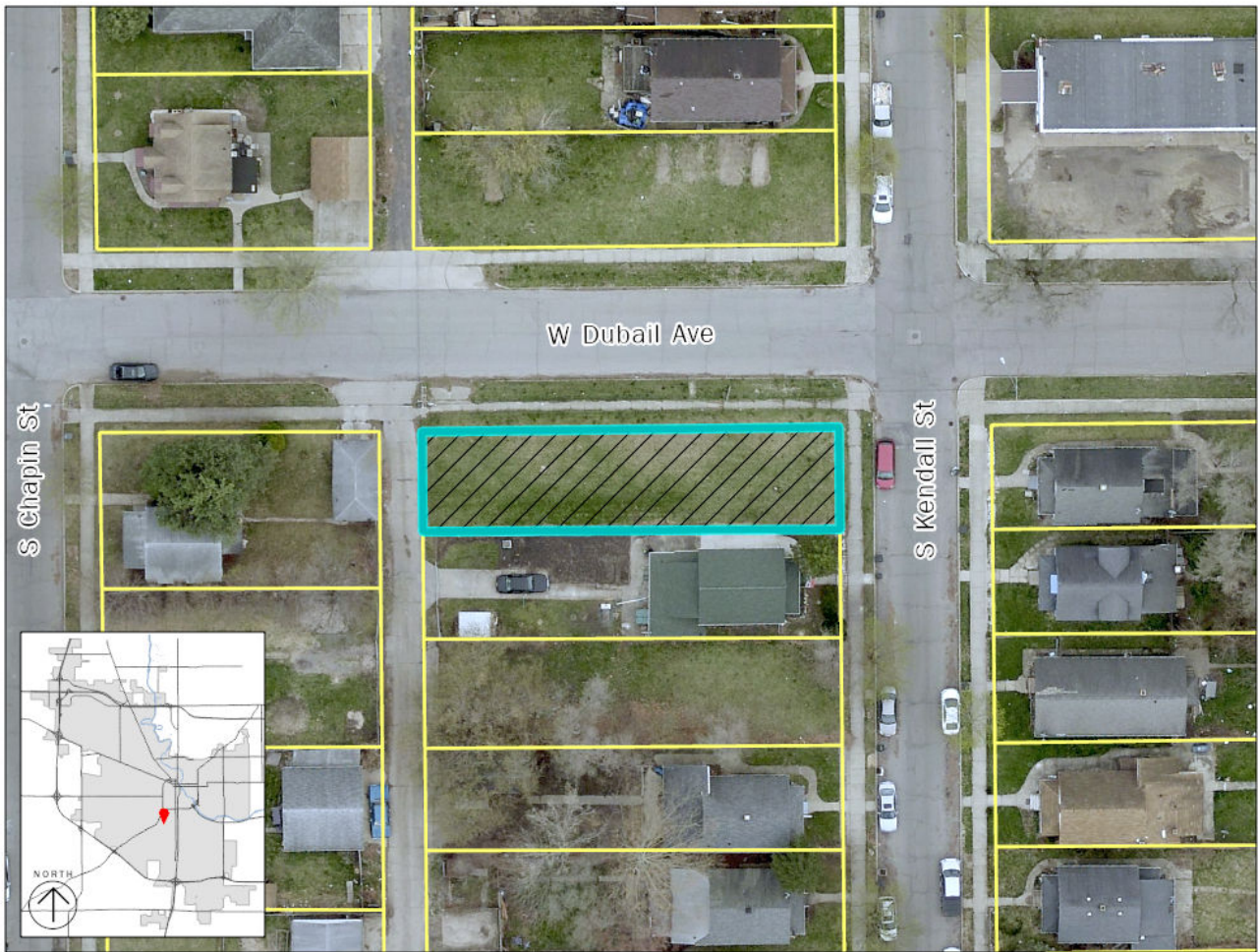
Project Summary

Construction of a duplex on the vacant lot located at 1701 Kendall Street.

Requested Action

Special Exception: a Dwelling, 2 Units

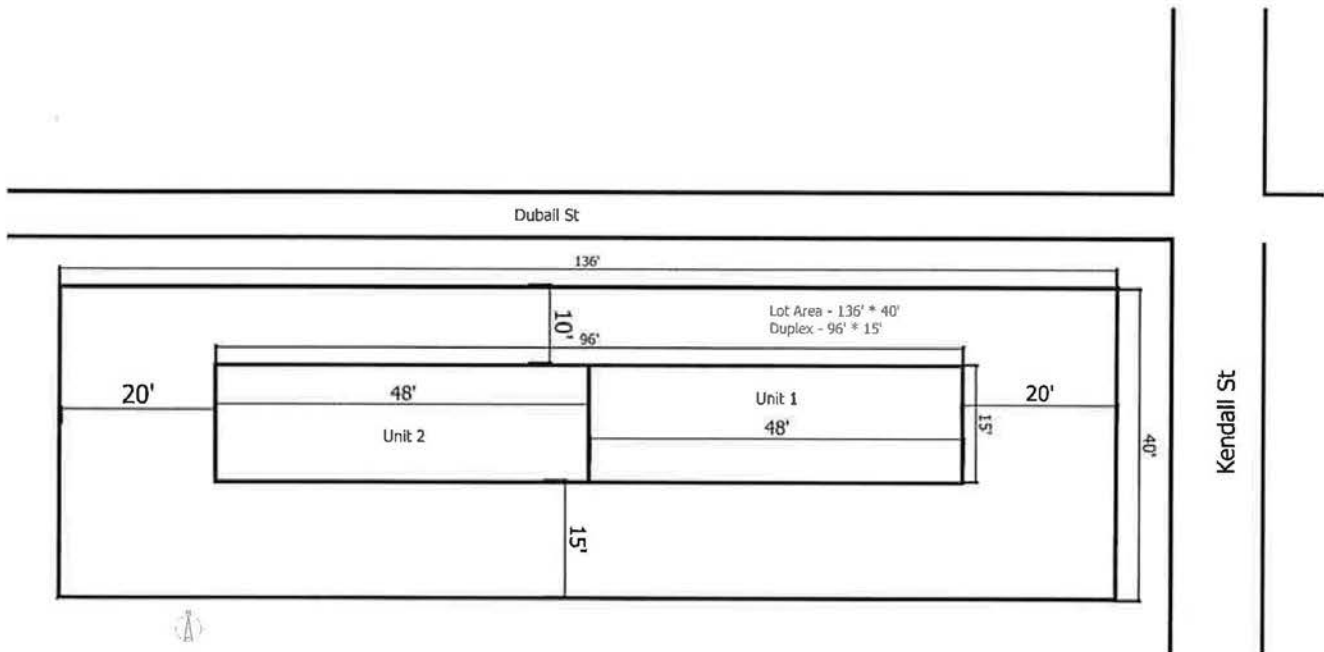
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board send the petition to the Common Council with a favorable recommendation as presented.

Proposed Site Plan



Criteria for Decision Making: Special Exception

A Special Use may only be granted upon making a written determination, based upon the evidence presented at a public hearing, that:

(1) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

Approval of the Special Exception will not be injurious to the public health, safety, morals and general welfare of the community. The scale of the proposed duplex is comparable to a single unit dwelling and will be used for residential use. Reactivating a vacant lot will provide more residents to the neighborhood, which will increase safety and the general welfare of the community.

(2) The proposed use will not injure or adversely affect the use of the adjacent area or property values therein;

Adding a two unit dwelling on a currently vacant lot should not injure or adversely affect the use or value of the adjacent area or property values. New construction that fits the scale of the current residential properties should strengthen nearby property values.

(3) The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein;

The current context of the neighborhood provides a mix of single family homes and small scale commercial. This two unit dwelling will be consistent with the character of the district and neighborhood in both use and style of construction. The Rum Village Neighborhood has a history of small scale multi unit dwellings which this project will further compliment and enhance.

(4) The proposed use is compatible with the recommendations of the Comprehensive Plan.

The petition is consistent with the City Plan, South Bend Comprehensive Plan (2006) Objective H1.1: Encourage residential developments to contain a mix of housing types, densities, price ranges, and amenities.

Analysis & Recommendation

Analysis: The proposed construction of a two unit dwelling will further compliment the existing housing stock in the surrounding area, as well as providing more diverse housing types for residents. The proposed project will fit into the existing setting, and reactivate a vacant lot providing needed housing to the Rum Village Neighborhood.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board send the petition to the Common Council with a favorable recommendation as presented.

Property Information

Location: 701 NILES AVE
Owner: 701 NILES LLC, Velvet Canada

Project Summary

This building was previously used as the Madison Center for Children Hospital and was built in 1995. A proposed change of use from I to R-2 in portions of the building is planned.

Requested Action

Variance(s): 1) from the requirement to provide a bathroom for each room in a Hotel

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance subject to the following: 1) Occupancy by any one guest shall not exceed 90 consecutive nights; and 2) The variance shall only apply to the areas identified as PODS on the supplemental site plan.

Proposed Site Plan



Criteria for Decision Making: Variance(s)

State statutes and the Zoning Ordinance require that certain standards must be met before a variance can be approved. The standards and their justifications are as follows:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community

Provided the site meets all minimum building and fire safety codes, approval of the variance should not be injurious to the public health, safety, morals and general welfare of the community. The property owner is proposing to use a portion of the building for a suite-style hotel. The interior distinction should be unnoticeable to the general public.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner

A hotel on this property should not affect the use or value of the adjacent properties in an adverse manner. The building is in an area with a mix of institutional uses, office space, and other nonresidential uses. The variance to allow multiple rooms to share a bathroom within a hotel, which should not have an outward impact on the property.

(3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property

The building was designed with a specific use in mind, and once that was vacated it left limited options for the future of the building. Parts of the building are set up in multi-bedroom areas (pods), sharing a common bathroom. Strict application of the Ordinance limits the use of that space based on various definitions and depending on the specific use. The State Construction release was for a non-transient hotel. A Hotel per the Zoning Ordinance requires a bathroom for every room. The variance would allow the property owner to rent the rooms without a bathroom as separate units instead of as a single suite.

(4) The variance granted is the minimum necessary

There are 6 pods in the building with 6 rooms each. If the variance is limited to only the portions of the building identified in these 6 pods, it would be the minimum necessary to allow those to be used as hotel rooms.

(5) The variance does not correct a hardship cause by a former or current owner of the property

The building was originally constructed with a specific institutional use as its main purpose. The discontinuation of that use created a hardship not caused by the current owner.

Analysis & Recommendation

Analysis: The building was originally constructed with a specific institutional use as its main purpose. While the building could still be used as an institutional use, the property owner is seeking to convert the building to an R-2 building classification as a non-transient hotel. This would allow the building to be used for short term stays (no less than 30 days per the building code, but no more than 90 days per zoning). The variance would allow the petitioner to seek R-

2 occupancy for the portions of the building not set up with a bathroom in each room (pods) to be used as non-transient hotel rooms rented to individuals or family units.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance subject to the following: 1) Occupancy by any one guest shall not exceed 90 consecutive nights; and 2) The variance shall only apply to the areas identified as PODS on the supplemental site plan.