

# City of South Bend

## BOARD OF ZONING APPEALS

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### AGENDA

Monday, April 4, 2022 - 4:00 p.m.

County-City Building

Fourth-Floor Council Chambers

[www.tinyurl.com/sbbza](http://www.tinyurl.com/sbbza)

#### PUBLIC HEARING:

- 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
- Location:** 4502 MICHIGAN ST BZA#0105-22  
**Owner:** 4502 SOUTH MICHIGAN STREET LLC  
**Requested Action:** Variance(s): 1) from the 40% minimum ground floor transparency to 0%; 2) from the maximum 1.0 foot candle at the property line for outdoor lighting to 18.3; and 3) from the 25% maximum surface area of the facade for a freestanding canopy sign to 100% on the south side of the canopy  
**Zoning:** C Commercial
- Location:** 1033 OAK ST BZA#0104-22  
**Owner:** PREMIER PROPERTY COMPANY LLC  
**Requested Action:** Special Exception: Dwelling, Two Units  
**Zoning:** U1 Urban Neighborhood 1

#### ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – March 7, 2022
2. Minutes – March 7, 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.

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**Property Information**

Location: 701 NILES AVE  
Owner: 701 NILES LLC

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**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.

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**Requested Action**

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

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**Site Location**



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**Staff Recommendation**

Based on the additional information provided by the applicant during the public hearing on February 7, 2022, 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**

Approving the variance would encourage the use of a property that is not in compliance with the Zoning Ordinance. Without going through the appropriate approval process, the request may be injurious to the public 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 building is in an area with a mix of institutional uses, office space, and other nonresidential uses. While approving the variance may not affect the immediate area, it could have a significant impact on other developments in the area by setting a precedent for developing property that is not consistent with the intent and regulations of the Ordinance.

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

There are no practical difficulties that would prohibit the petitioner from installing the appropriate number of bathrooms and bringing the building into compliance with the Building and Zoning Standards for a hotel.

**(4) The variance granted is the minimum necessary**

Since there are no practical difficulties on the site, the variance requested is not the minimum necessary.

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

The building was originally constructed as an institutional use. The property owner was aware of the constraints of the building when purchased. There are mechanisms by which the property owner could seek legal occupation of the building.

## Analysis & Recommendation

**Analysis:** While details originally provided by the petitioner supported the interpretation of the use as a hotel and lead to the variance request, it is clear at this point that the actual (and intended) use is more consistent with a Group Residence. As such, the petitioner should apply for a Special Exception to allow a Group Residence in the DT Downtown District. To ensure the granting of the variance pertains to the *actual* use allowed within the building, it is premature to approve a variance for a hotel until such time as the Commercial Design Release reflects a hotel use consistent with the Ordinance.

**Staff Recommendation:** Based on the additional information provided by the applicant during the public hearing on February 7, 2022, the staff recommends the Board deny the variance, as presented.

**Property Information**

Location: 4502 MICHIGAN ST  
Owner: 4502 SOUTH MICHIGAN STREET LLC

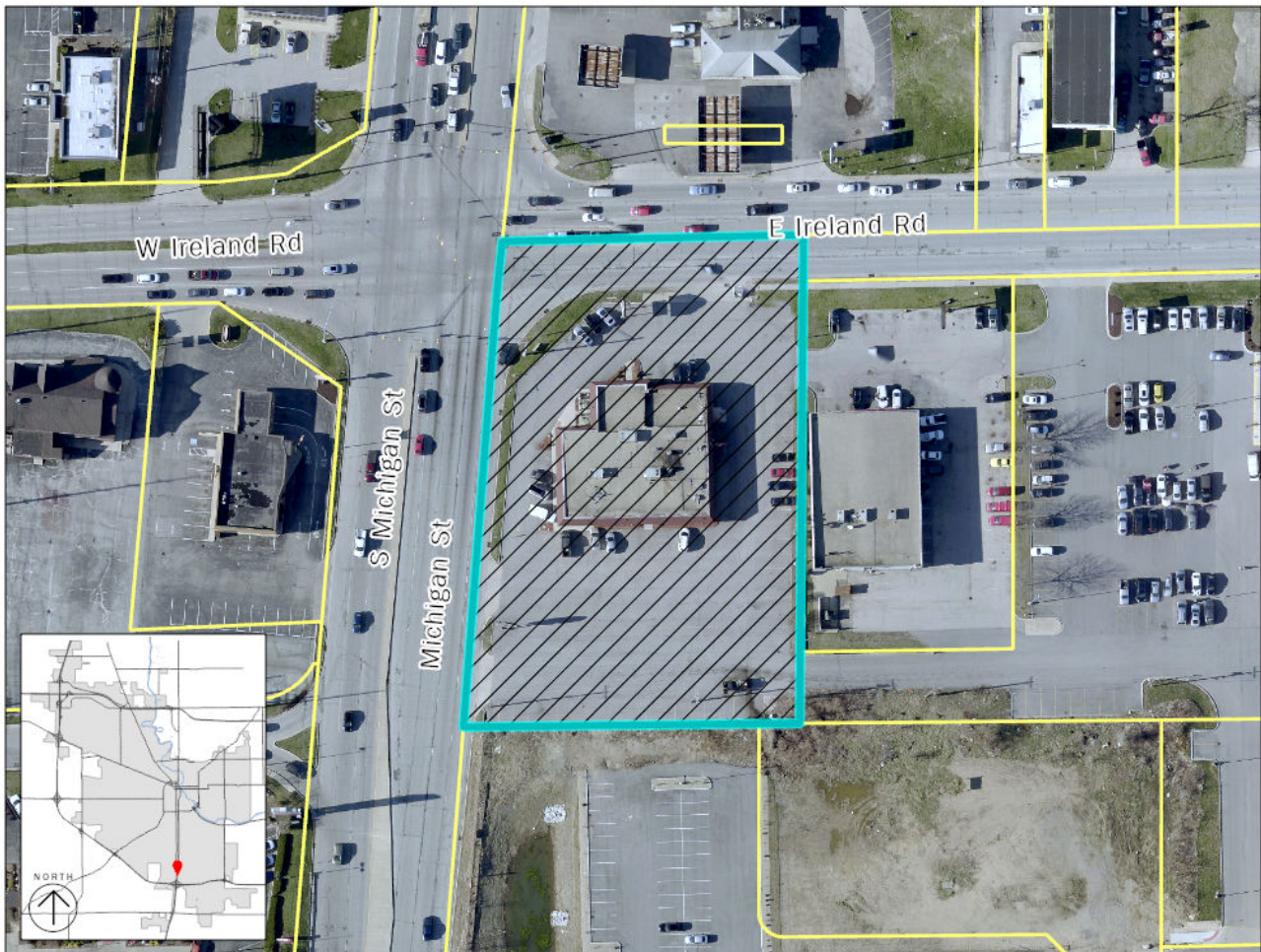
**Project Summary**

New Carwash Facility for Mike's Carwash. New 7,700 SF. Carwash building, free standing Canopy, and new Site Development & amenities for the new Facility.

**Requested Action**

- Variance(s): 1) from the 40% minimum ground floor transparency to 0%
- 2) from the maximum 1.0 foot candle at the property line for outdoor lighting to 18.3
- 3) from the 25% maximum surface area of the facade for a freestanding canopy sign to 100% on the south side of the canopy

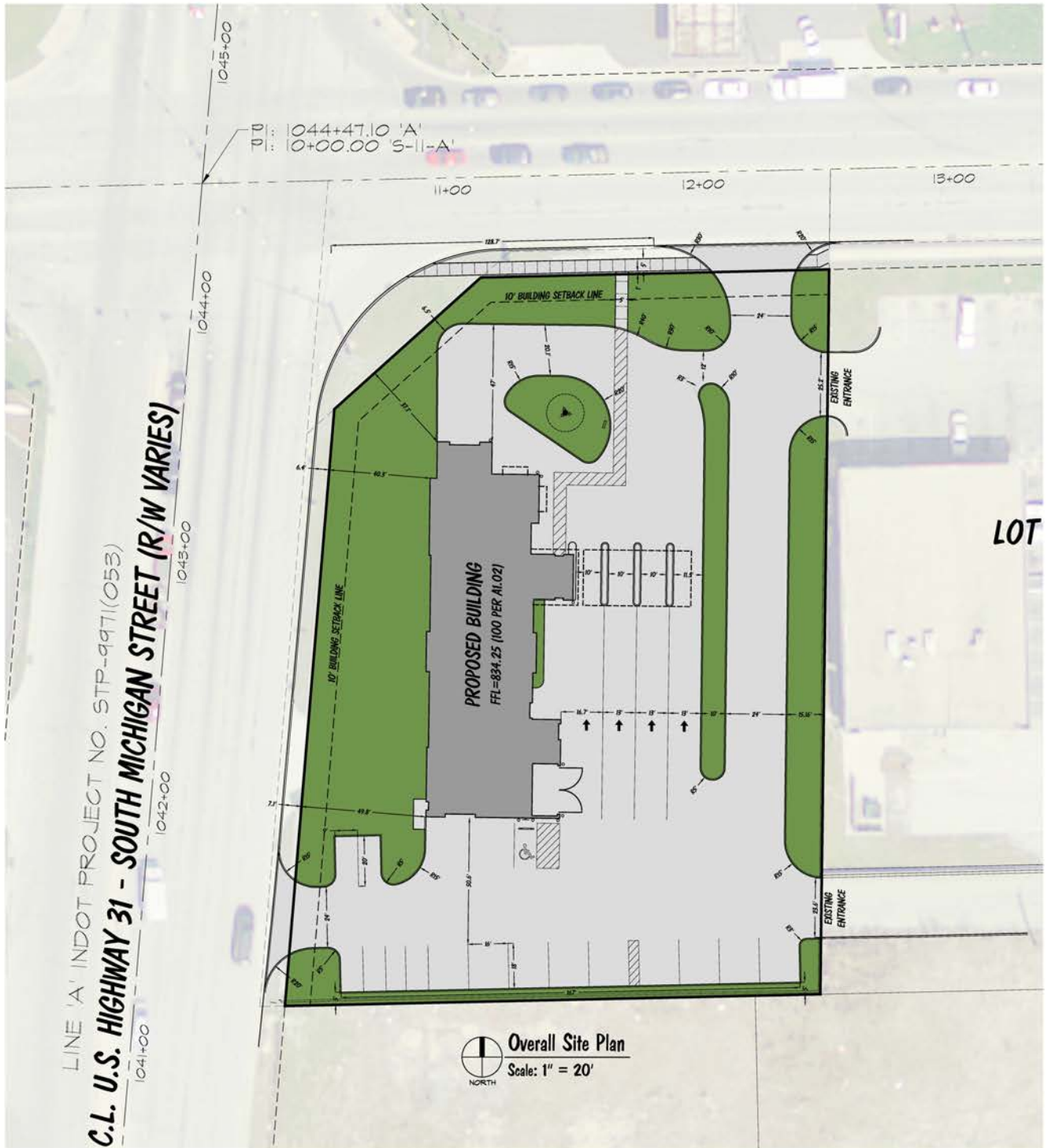
**Site Location**



**Staff Recommendation**

Based on information provided prior to the public hearing, the staff recommends the Board approve variances #1 and #3, as presented, and deny variance #2.

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**

With proper buffering, the proposed variances should not be injurious to the public health, safety, morals 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 redevelopment of the site should have a positive impact on the use and value of the adjacent properties. The proposed development meets the intention of the zoning ordinance by providing glazing at the levels required for transparency in the C Commercial District. The sign variance should have no adverse affects on surrounding properties as it is internal to the site and not visible from the public right of way.

The requested lighting variance may have adverse affects on neighboring properties by allowing more light pollution than is allowed by the ordinance.

**(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 zoning ordinance would result not necessarily result in difficulties redeveloping the site for some uses. However, this particular development is unique in the long-term impact of strict application. The impact of the chemicals on the windows will lead to less than desirable impact on the appearance of the building. The strict application of the regulations for canopy signs would create a practical difficulty by creating traffic confusion on the site.

**(4) The variance granted is the minimum necessary**

The building was designed to appear to meet the minimum transparency requirements by providing the appropriate amount of windows. By using spandrel glass, the building will appear to meet the ordinance even though the strict transparency is not met. The requested increase in the canopy signage is on an interior façade location not visible from the street. If the canopy had been connected the building, a variance may not have been necessary. While the petitioner is using fully shielded lights, the large variation in the request for illumination levels indicates it is not the minimum necessary. While a slight increase may be justified, efforts should be made to find an alternative to ensure it's the minimum variance needed.

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

The site location and size, along with the particular constraints of the use, create the hardship for the property. While the use is self-created, the petitioner has made efforts to minimize the variances and adhere to the intent of the ordinance.

## Analysis & Recommendation

**Analysis:** The site is located at a heavily trafficked intersection with a five lane street to the north and a divided five lane state highway to the west. The site constraints limit the type of use that can be located on the property. Due to the nature of the proposed use as a carwash, strict adherence to the ordinance is challenging. With the exception of the lighting, the petitioner has made efforts to minimize the variances and adhere to the intent of the ordinance.

**Staff Recommendation:** Based on information provided prior to the public hearing, the staff recommends the Board approve variances #1 and #3, as presented, and deny variance #2.



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**Property Information**

Location: 1033 OAK ST  
Owner: PREMIER PROPERTY COMPANY LLC

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**Project Summary**

Converting a Dwelling, 1 unit to a Dwelling 2 Unit.

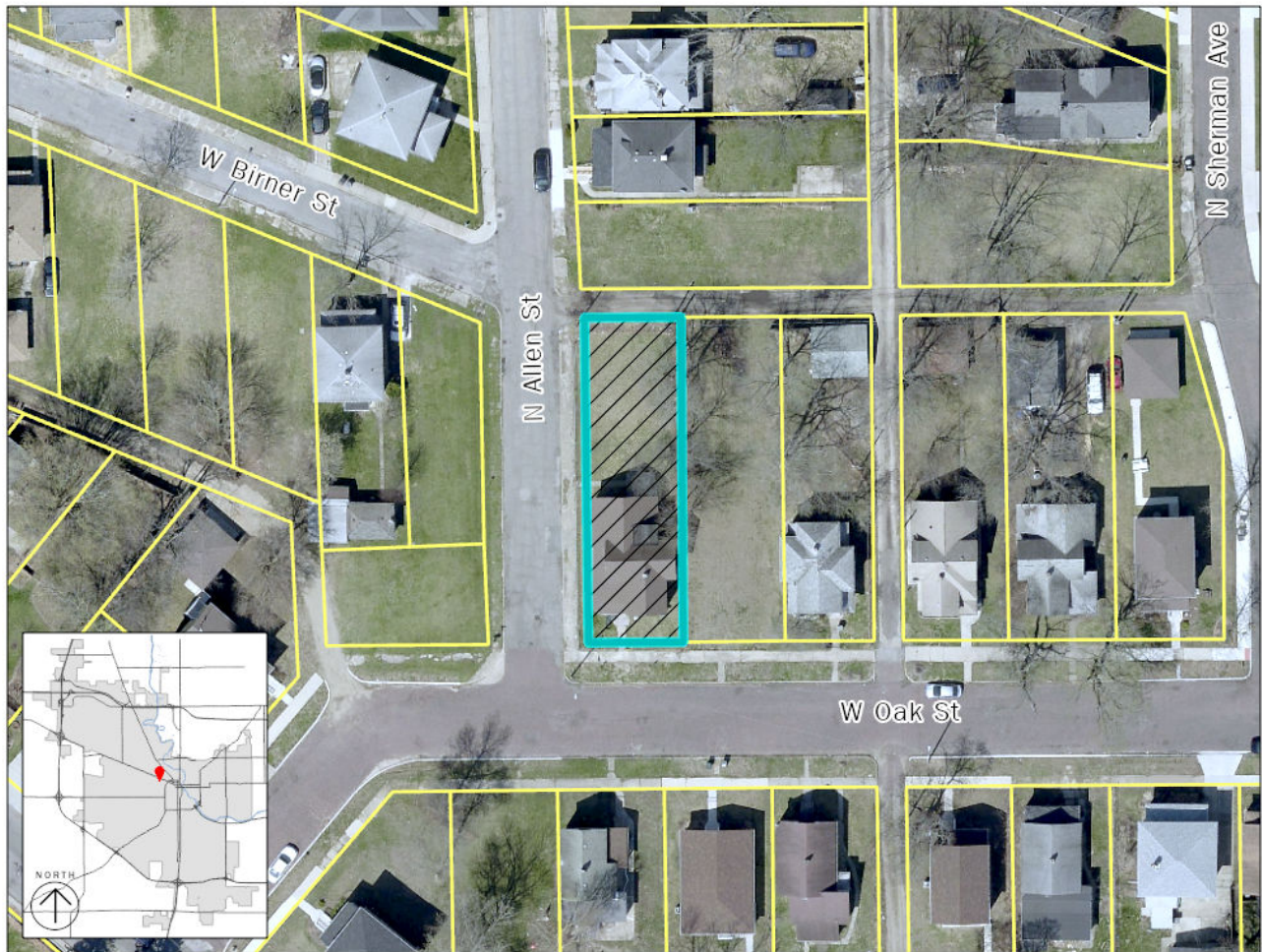
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**Requested Action**

Special Exception: Dwelling, Two Units

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**Site Location**

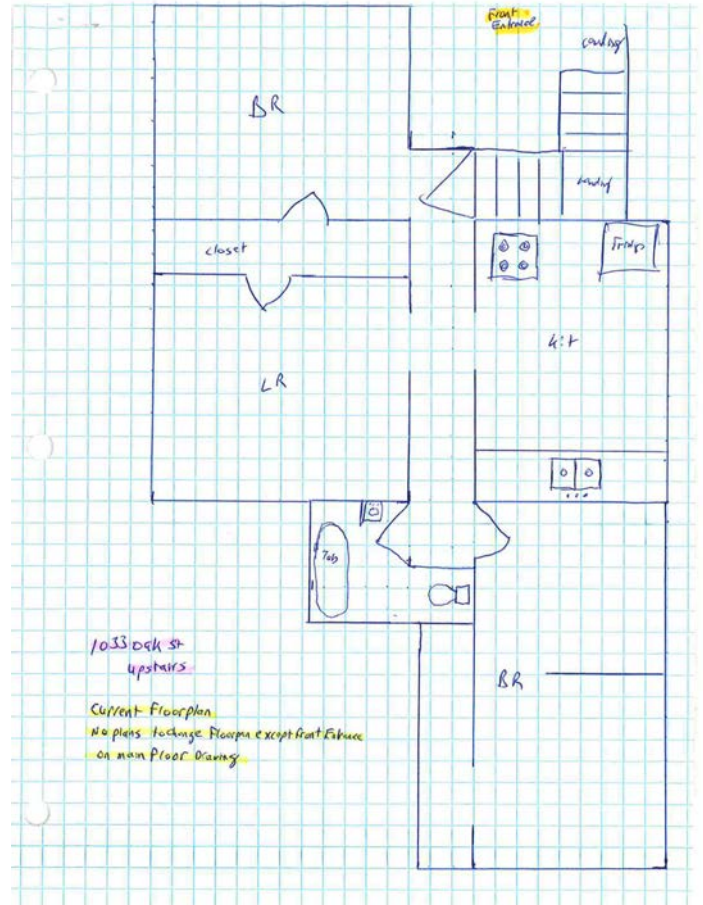
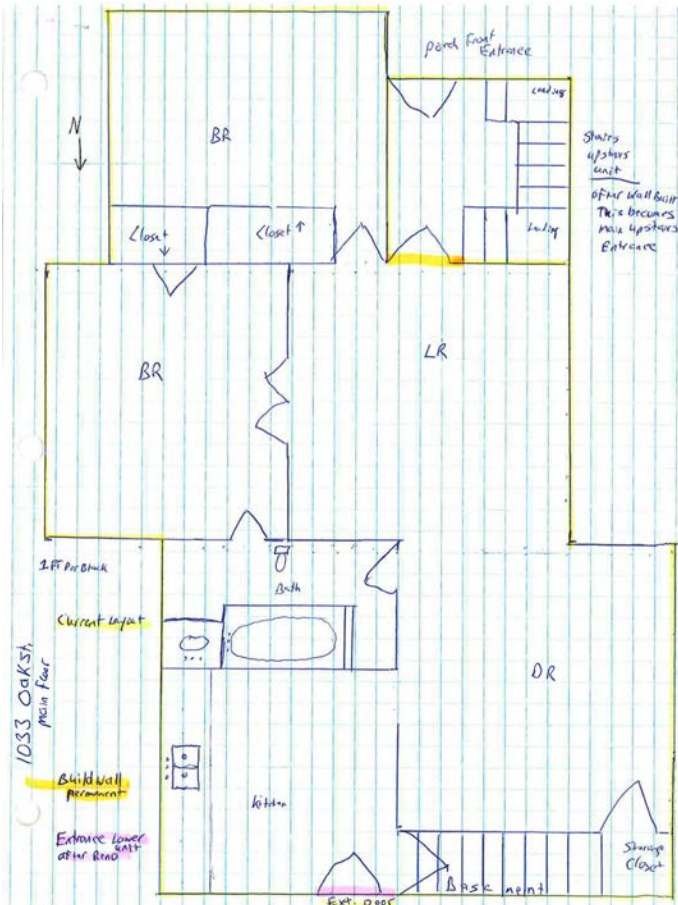


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**Staff Recommendation**

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 severe loss of population - a decline of 75% - that the neighborhood has experienced over the past fifty years has led to a decrease in the stability and general welfare of the community. Reactivating a current vacant building will add more residents to the neighborhood, which will increase safety and general welfare.

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

Adding an additional unit to an existing building should not injure or adversely affect the use or value of the adjacent area or property values, provided the current residential character is maintained. Renovation of the building should strengthen nearby property values and prevent the building from being demolished. The proposed site plan shows no changes to the exterior of the building, preserving the single unit appearance.

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

This two unit dwelling will be consistent with the character of the district and neighborhood in both use and style of construction.

**(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.

The Lincoln Park Neighborhood Revitalization Plan (2012) states "Existing multi-family housing located in the neighborhood that utilize originally built single-family structures are supported but opportunities to revert these properties back to single family are also encouraged." Page 19.

## Analysis & Recommendation

**Analysis:** Conversion of single-unit dwellings to two-unit dwellings should be done with care. The current proposal appears to be sensitive to the current conditions of the structure. The conversion and rehab of a current one unit dwelling to a two unit dwelling will further complement the existing housing stock in the surrounding area and be visually indistinguishable from nearby 1-unit dwellings, as well as providing more housing options for residents. The petitioner is proposing no significant changes to the exterior of the building, leaving the option to revert back to a single unit dwelling in the future.

As the broader neighborhood has lost over 56% of its housing units over the past half century, allowing for the creation of a new housing unit while renovating an existing building is a positive development for the 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.