

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, May 2, 2022 - 4:00 p.m.
County-City Building
Fourth-Floor Council Chambers
www.tinyurl.com/sbbza

PUBLIC HEARING:

- Location:** 813 and 817 ARNOLD ST BZA#0106-22
Owner: GUADALUPE ALVAREZ
Requested Action: Variance(s): 1) to allow for accessory structures without a primary structure; 2) from the maximum 1 detached accessory structure to 4; 3) from the 720 sq.ft. maximum area of all detached accessory structures to 1025 sq.ft.; 4) from the 5' minimum side and rear setback for a detached accessory structure to 0'; and 5) from the maximum 6' privacy fence to 7'
Zoning: U1 Urban Neighborhood 1
- Location:** 701 MARQUETTE BLVD BZA#0107-22
Owner: JANICE M BROCK
Requested Action: Variance(s): 1) From the required 10' clear sight area to allow a 4' fence; and 2) To allow a detached accessory structure in the established corner yard
Zoning: U1 Urban Neighborhood 1
- Location:** 912 WHITEHALL DR BZA#0108-22
Owner: JEREMY A SCOTT
Requested Action: Variance(s): 1) from the 5' minimum side setback for a detached accessory structure to 3'
Zoning: S1 Suburban Neighborhood 1
- Location:** 122 NILES AVE BZA#0110-22
Owner: RIVER RACE TOWNHOMES LLC
Requested Action: An Administrative Appeal to citations issued at 122 S. Niles, more specifically did the Zoning Administrator improperly issued citations to Rive Race where petitioner contends a legal non-conforming parking lot has been in continuous use since before the cited ordinance existed
Zoning: DT Downtown
- Location:** 701 NILES AVE BZA#0111-22
Owner: 701 NILES LLC
Requested Action: An Administrative Appeal to a determination made by the Zoning Administrator, more specifically did the Zoning Administrator review 701 Nile's application by arbitrarily defining "hotel" without reference to Indiana legal authority.
Zoning: DT Downtown

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – April 4, 2022
2. Minutes – April 4, 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: 813 and 817 ARNOLD ST
Owner: GUADALUPE ALVAREZ

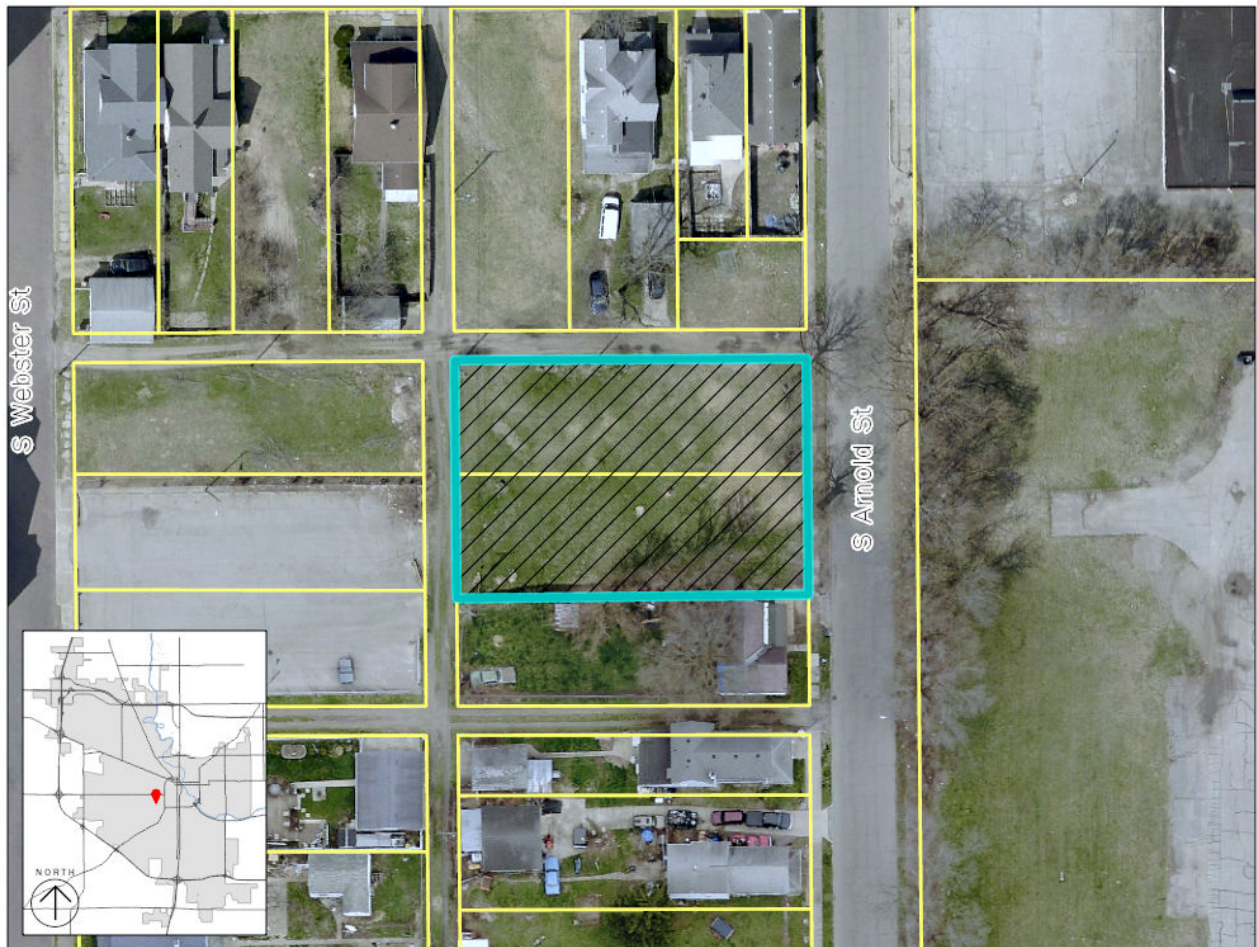
Project Summary

Permission to allow removable gazebo type shelter and small shed to store items (chairs) for enjoyment for children, grandchildren, families of park-like setting lot.

Requested Action

- Variance(s): 1) to allow for accessory structures without a primary structure
- 2) from the maximum 1 detached accessory structure to 4
- 3) from the 720 sq.ft. maximum area of all detached accessory structures to 1025 sq.ft.
- 4) from the 5' minimum side and rear setback for a detached accessory structure to 0'
- 5) from the maximum 6' privacy fence to 7'

Site Location



Staff Recommendation

Based on the information available prior to the public hearing, the Staff recommends the Board approve variances #1 #2 and #3 as presented. The Staff recommends the Board deny variances #4 and #5 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

Variations #1, #2, and #3 should not be injurious to the public health, safety, morals and general welfare of the community. The subject property consists of two vacant lots and the owner lives across the alley from the two lots. The close proximity of the residence of the owners of the property should limit any potential negative impacts on the surrounding community. As it is two vacant lots, the extra space should mitigate any impacts from the number or size of the accessory structures.

Variations #4 and #5 may negatively impact the general welfare of the community. The variations would still be required even if there was a primary structure on the lot. Both variations could negatively impact the surrounding community by approval of items outside of the intent of the Zoning Ordinance.

(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

Variations #1, #2, and #3 should not adversely affect surrounding properties. The variations are required as there is no primary structure. Since the owner's primary residence is across the alley, there is functionally no difference in the use of the property. These variance has no negative impacts on surrounding properties.

Variations #4 and #5 may adversely affect neighboring properties. Approving extra height and structures in the minimum setback would be out of character for the area and contrary to the intent of the ordinance, having a significant impact on surrounding properties.

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

For Variations #1, #2, and #3 the strict application of the terms of this Chapter would result in practical difficulties in the use of the property. The variations are only needed as there is no primary structure on the site. As the petitioner lives across the alley, the lots function more as a side yard of a nearby house than independently used lots.

For Variations #4 and #5 the strict application of the terms of this Chapter would not result in practical difficulties in the use of the property. A shorter, code compliant fence can still provide security and privacy of the property while moving the shed would still allow for storage on the site.

(4) The variance granted is the minimum necessary

For Variations #1, #2, and #3 the variations are the minimum to provide privacy and security for the property as well as make the property usable to a nearby property owner.

For Variations #4 and #5, since there is no practical difficulty to overcome, the variance requested is not the minimum necessary. The petitioner could utilize a different fence option

or install the fence in compliance with the ordinance and still retain about the same amount of usable yard space.

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

For Variances #1, #2, and #3, the variances do not correct a hardship caused by a former or current owner. The lots are separated from the petitioner by an alley. The alley has been in existence since the original platting of the neighborhood over a century ago.

For Variances #4 and #5, there is no hardship on the property. Had the applicant applied for a fence permit and shed permit, they would have been made aware of the location restrictions and applicable ordinance.

Analysis & Recommendation

Analysis: The property is being used as a private park-like facility for the house across the alley. The proposed number and size of the accessory structures are consistent with the residential area, especially for a lot that size. However, the request for the setback of the detached accessory structures and the height of the fence wouldn't be allowed even if the home was on the same lot. There are no practical difficulties that support those variances.

Staff Recommendation: Based on the information available prior to the public hearing, the Staff recommends the Board approve variances #1 #2 and #3 as presented. The Staff recommends the Board deny variances #4 and #5 as presented.

Property Information

Location: 701 MARQUETTE BLVD
Owner: JANICE M BROCK

Project Summary

New fence installation on corner lot

Requested Action

Variance(s): 1) From the required 10' clear sight area to allow a 4' fence
2) To allow a detached accessory structure in the established corner yard

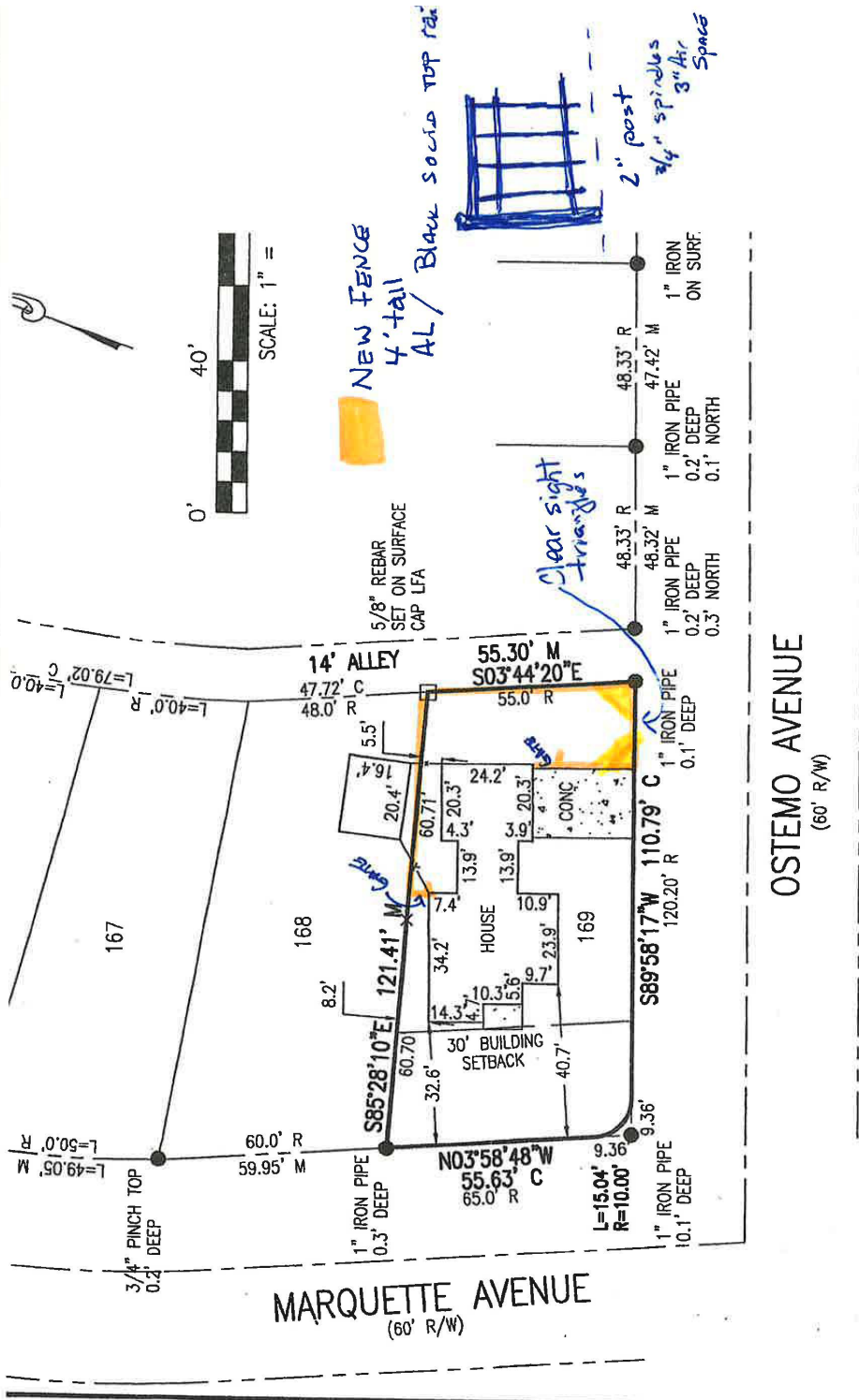
Site Location



Staff Recommendation

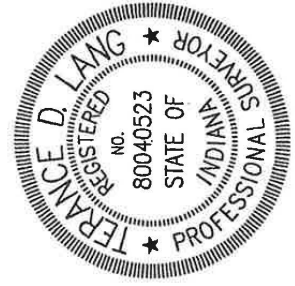
Based on the information available prior to the public hearing, the staff recommends the Board deny variance #1 for the fence and approve variance #2 for the detached accessory structure.

Proposed Site Plan



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Terence D. Lang
TERENCE D. LANG, P.S.



- LEGEND**
- IRON FOUND
 - 5/8" REBAR SET WITH LFA CAP
 - (M) MEASURED
 - (P) PLAT
 - (C) CALCULATED
 - X— FENCE

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

If there are obstructions that block the clear sight area, especially at the intersection of the alley and the street, approval of the variance could be injurious to the public safety of the community. The detached accessory structure in the established corner yard should not impact the health, safety, or 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

Because the property is adjacent to an alley, the use and value of the adjacent properties should not be impacted. However, the use of the public right-of-way may be adversely impacted if the variance is granted for the clear sign triangle.

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

The relatively small size of the property and the close proximity of the house to the property line create practical difficulties in adhering to the strict application of the Ordinance. However, the public safety concern, especially at the alley, outweigh the desire of the property owner to fence in their yard. The small size of the yard does leave little to no area outside of the established corner yard to install the pergola. Strict application of the Ordinance would not prohibit the use of the property for residential use.

(4) The variance granted is the minimum necessary

The property owner could lower the fence to 3' within the clear sight triangle and still maintain a fenced yard. Because the pergola is relatively small and is located toward the rear of the lot, it is the minimum necessary even though it is technically in the established corner yard.

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

Even though the limitation of the property size was not created by the current property owner, the placement of the pergola and fence are based on the desire of the current owner.

Analysis & Recommendation

Analysis: Even though the fence is more than 50% open, the line of sight is impaired. The clear sight triangle is critical to maintain. This is especially true along the alley, with less of a concern at the driveway. With the relatively small size of the yard and the proximity of the neighbor's house and detached garage to the property line, the established corner yard is one of the only areas for the placement of the detached structure (pergola).

Staff Recommendation: Based on the information available prior to the public hearing, the staff recommends the Board deny variance #1 for the fence and approve variance #2 for the detached accessory structure.

Property Information

Location: 912 WHITEHALL DR
Owner: JEREMY A SCOTT

Project Summary

Garage addition in the side setback.

Requested Action

Variance(s): 1) from the 5' minimum side setback for a detached accessory structure to 3'

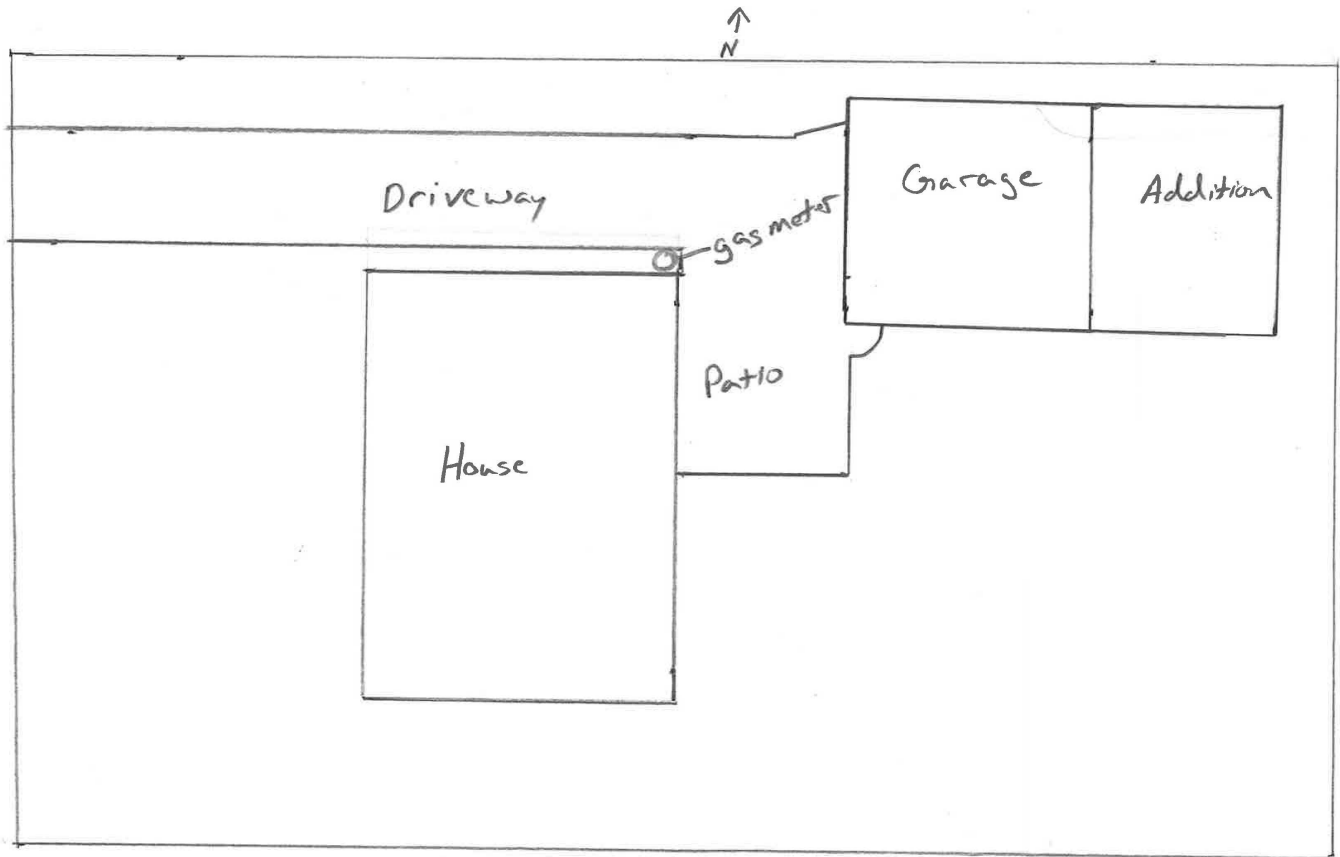
Site Location



Staff Recommendation

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

Proposed Site Plan



This addition would conform to the characteristics of the neighborhood. Many houses have large garages close to the property line.

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

Because this is an addition at the rear of a garage at the existing setback, it should not affect the general welfare of the community. Allowing the setback variance will preserve the historical development pattern of the neighborhood.

(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

Because the garage is already existing and the addition is to the rear of the property, it should not adversely affect the adjacent property.

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

Due to the original placement of the house, garage and gas meter, a strict adherence to the side setback would force the addition into an impractical location making maneuverability of the cars or trailers difficult and dangerous.

(4) The variance granted is the minimum necessary

The neighborhood developed with a pattern of detached garages being installed at or near the property line. The physical constraints of the site make a 3' setback necessary.

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

The location of the gas meter is selected by utility companies and the original garage was built in 1953 when the house was constructed. During that time side setbacks were not strictly enforced for detached accessory structures, therefore the variance would not be correcting a hardship created by the current owner.

Analysis & Recommendation

Analysis: Provided the owner can retain the water run-off from the roof, building the addition at a similar side setback as the existing garage should not adversely impact the surrounding properties or the general welfare of the community. The surrounding neighborhood developed with a pattern of detached garages being installed at or near the property lines. Approving the variance would be in line with the established neighborhood development.

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

memo

To: Board of Zoning Appeals
From: Angela M. Smith
CC: Tom Panowicz
Date: April 22, 2022
Re: Administrative Appeal for 122 S. Niles

On March 6, 2022 an Administrative Appeal was filed in relation to property located at 122 S. Niles (018-5010-028510). In the filing, the following appeal was made:

Issue 1: Did the Zoning Administrator Improperly issue citations to River Race where a legal non-conforming parking lot has been in continuous use since before the cited ordinance existed?

The representative for the property owner (applicant) is appealing the citation for the property on the claim that the parking lot was legal non-conforming and has remained in continuous use since it was established. No evidence was filed to substantiate their claim. In order to be considered legal non-conforming, the use has to be legally established under the Zoning Ordinance in place at the time and has to remain in continuous use without being abandoned or discontinued for a period of 12 months or more. Aerial photography evidence shows the following:

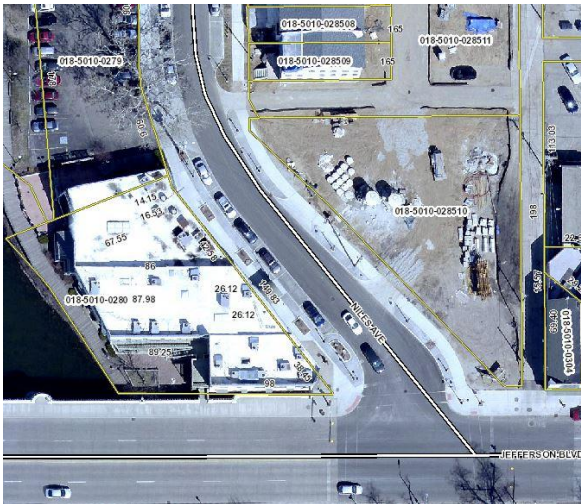
2002 – Multiple buildings were on the site with a paved parking area existed between them. This would have been legal as the parking would be accessory to the businesses on the property.



2005-2011 – The buildings were demolished, but the paved parking area remained. Unless established as a commercial parking lot through grant of a Special Exception, a parking lot may only exist on a property if there is a building on the property for which the parking is associated. After the building was removed, the parking would no longer be permitted as there was no primary use on the property. It is possible that it was legal non-conforming if it was accessory to other businesses in the area (through a lease or other mechanisms). However, any expansion beyond the existing paved area would be illegal.



2013-2017 – The paved parking area was removed, and the site was converted into a construction staging area. Any legal non-conforming parking was abandoned at that point.



2019 – Construction trailers are no longer on the property, but other equipment still is present.



memo

To: Board of Zoning Appeals
From: Angela M. Smith
CC: Tom Panowicz
Date: April 22, 2022
Re: Administrative Appeal for 701 N. Niles

On March 7, 2022 an Administrative Appeal was filed in relation to property located at 701 N. Niles (018-5010-028510). In the filing, the following appeal was made:

Issue 1: Did the Zoning Administrator review 701 Nile’s application by arbitrarily defining “hotel” without reference to Indiana legal authority?

The representative for the property owner (applicant) is appealing language related to things commonly associated with a hotel in an interpretation letter provided on February 24, 2022. In this communication, I state that the proposed use of 701 Niles does not qualify as a hotel, and that it more closely relates to a Group Residence.

Section 21-02.01(a) of the City of South Bend Zoning Ordinance states that words not defined in the Zoning Ordinance are interpreted in accord with their usual dictionary meaning and customary usage. Because of the extensive discussion at the February 7, 2022 BZA meeting related to what defines a hotel, I developed a list of things typically associated with a hotel. This list was developed through research of local and state codes, common industry practices, and other information gathered from various sources. However, I did not rely on this list of typical attributes to make my interpretation and the resulting determination that a Special Exception would be required for the property’s proposed use; the letter does not even indicate those items as being part of the definition or required.

Section 21-02.02(f) grants the authority to the Zoning Administrator to interpret and assign all possible uses to individual districts. Any use not specifically set forth *shall* be reviewed by the Zoning Administrator for consistency with the intent set forth for each district and compatibility with those districts. Non-transient hotel is not specially set forth in the Zoning Ordinance. As stated in the letter, the interpretation that a non-transient hotel does not qualify as a hotel under the Zoning Ordinance is based on two reasons:

- The Zoning Ordinance defines a hotel as a place providing temporary lodging
- A non-transient hotel is covered under the state Building Code’s R-2 (Residential Group) occupancy, which states that those are primarily permanent in nature. This is further regulated by a minimum stay of 30 days in order to be qualify as non-transient.

In determining the appropriate classification of a non-transient hotel with the City of South Bend, I looked at the other uses listed under the R-2 classification, all of which require a Special Exception for a specific use or Group Residence. Therefore, I determined that a non-transient hotel would be permitted under the Zoning Ordinance in the same manner as a Group Residence. A Group Residence is only allowed by the grant of a Special Exception in the U3, UF, NC, and DT District and by right in the U University District.

The property at 701 N. Niles Avenue is zoned DT Downtown District. The petitioner has applied for a change of use that includes portions of the building being classified as a non-transient hotel. My determinations is that a Special Exception will be required for the non-transient hotel portion of the property in the same manner as a Group Residence.