

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, June 6, 2022 - 4:00 p.m.

County-City Building

Fourth-Floor Council Chambers

www.tinyurl.com/sbbza

PUBLIC HEARING:

1. **Location:** 525 SUNNYSIDE AVE BZA#0109-22
Owner: EILEE ZHU
Requested Action: Variance(s):1) from the 3' maximum fence in the established corner yard to 6'
Zoning: U1 Urban Neighborhood 1
2. **Location:** 3030 NORTHSIDE BLVD BZA#0113-22
Owner: BEVERLY J STEELE
Requested Action: Variance(s): 1) from the 10' minimum front building setback to 0'
Zoning: U1 Urban Neighborhood 1
3. **Location:** 614 IRELAND RD BZA#0114-22
Owner: GOLDEN YEARS REAL ESTATE LLC
Requested Action: Variance(s): 1) from maximum 2,500 square foot for a Retail & Service use to 3,950 square feet
Zoning: UF Urban Neighborhood Flex
4. **Location:** 1425 WOODSIDE ST BZA#0115-22
Owner: NICKLE ANDREW W AND ERNESTINE C
Requested Action: Variance(s): 1) From 48" maximum fence height for a 50% open fence in the established front and corner yard to 54"
Zoning: S1 Suburban Neighborhood 1

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact
 - a. Order, Findings of Fact, and Conclusions of Law: BZA#0110-22 An Administrative Appeal to citations issues at 122 S. Niles, more specifically did the Zoning Administrator improperly issue citations to Rive Race where petitioner contends a legal non-conforming parking lot has been in continuous use since before the cited ordinance existed.
 - b. Order, Findings of Fact, and Conclusions of Law: BZA#0111-22 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
 - c. Remaining Public Hearing Items for May 2, 2022
2. Minutes – May 2, 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: 525 SUNNYSIDE AVE
Owner: EILEE ZHU

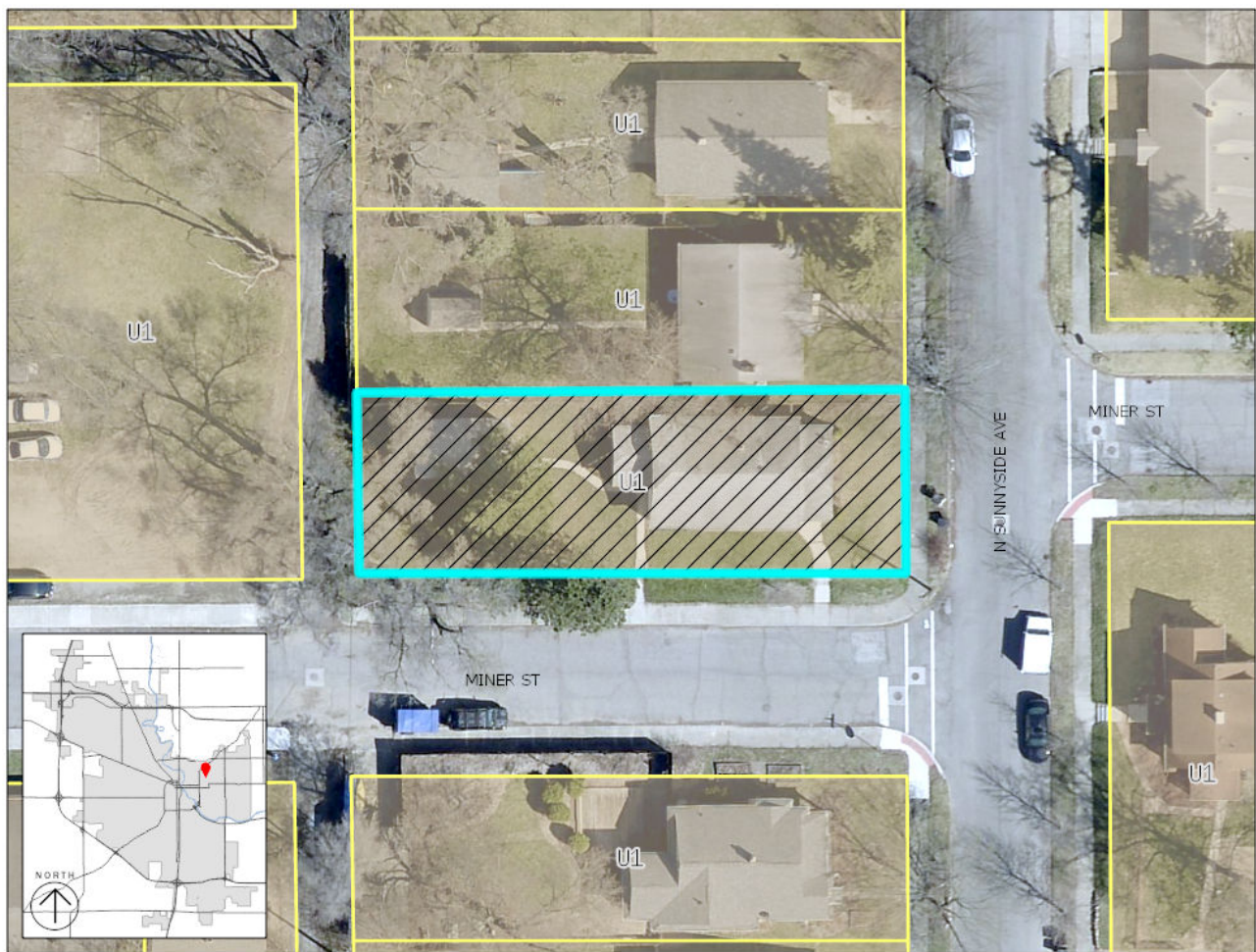
Project Summary

Installation of a 5' privacy fence in an established corner yard.

Requested Action

Variance(s): 1) from the 3' maximum fence in the established corner yard to 6'

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the Staff recommends denial of the variance 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

The approval of this variance may be injurious to the public health, safety, or general welfare of the community since it will be out of character and will not meet the intent of the 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

The use and value of the area adjacent to the property could be affected in an adverse manner if the variance was granted. Approving a fence that is 5' tall on top of a hill that is already significantly above grade would create a scenario that would be out of character for the area and contrary to the intent of the ordinance, giving an undue advantage to this particular property without any practical difficulty to support the variance.

(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 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, especially because the site is already significantly elevated from the public sidewalk. The fence could also be installed in line with the house, which would have a minimal impact on the amount of enclosed yard.

(4) The variance granted is the minimum necessary

The practical difficulty for the site is self created, so the variance requested is not the minimum necessary. The petitioner could have utilized a different fence option or installed the fence in compliance with the ordinance.

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

The petitioner chose to install the fence against the prior decision of the Board of Zoning Appeals and without any permits. The variance requested is to avoid further costs of relocating the fence to the appropriate setback off the property line and to maintain the height above what is allowed by code. The site is already elevated above the street and a code compliant fence could provide the security and privacy desired by the applicant.

Analysis & Recommendation

Analysis: There are no practical difficulties for the petitioner which would necessitate a 5' fence in this location. The current fence is not consistent with the intent of the ordinance. The site is already elevated above the street and a code compliant fence could provide the security and privacy desired by the applicant. The property owner installed the fence without a permit and in violation of a decision previously made by the Board of Zoning Appeals.

Staff Recommendation: Based on the information provided prior to the public hearing, the Staff recommends denial of the variance as presented.

Property Information

Location: 3030 NORTHSIDE BLVD
Owner: BEVERLY J STEELE

Project Summary

Construct a porch in the front setback

Requested Action

Variance(s): 1) from the 10' minimum front building setback to 0'

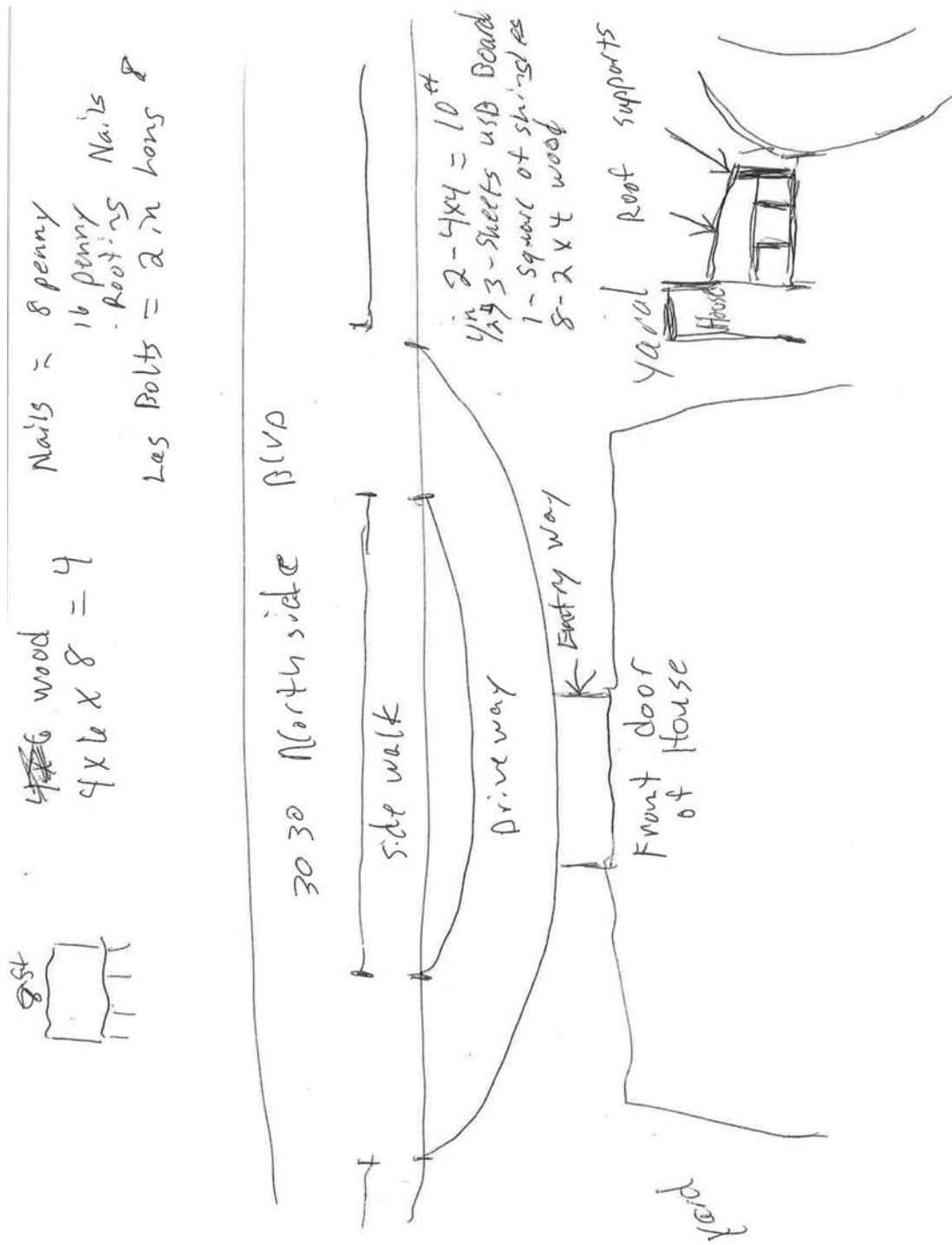
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance subject to approval of an encroachment from the Board of Public Works.

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

The approval will not be injurious to the public 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

The use and value of the area adjacent may not be adversely affected with the approval of this variance. The front porch being at or on the property line is not out of character for the surrounding properties.

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

The existing porch is a standard porch that the Zoning Ordinance requires for any new residential construction. The strict application of the terms of this Chapter could result in a practical difficulty for the property, due to the approx. 3 foot between the front facade of the home and right of way.

(4) The variance granted is the minimum necessary

The neighborhood developed with a pattern of porches or homes being installed at or near the property line. The physical constraints of the site make a 0' setback necessary.

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

The location of the right of way was dedicated by the City and not the current property owner. If the right of way was dedicated under the current standards it would be located roughly a foot behind the sidewalk, therefore, the variance would not be correcting a hardship created by the current property owner.

Analysis & Recommendation

Analysis: Provided the owner can retain water run-off and approval from Board of Public Works, the porch addition is similar in character and should not adversely impact the surrounding properties or the general welfare of the community. The right of way is wider than normal in this area, the surrounding neighborhood was developed with porches or the front facade of the home at or near the property line.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance subject to approval of an encroachment from the Board of Public Works.

Property Information

Location: 614 IRELAND RD
Owner: GOLDEN YEARS REAL ESTATE LLC

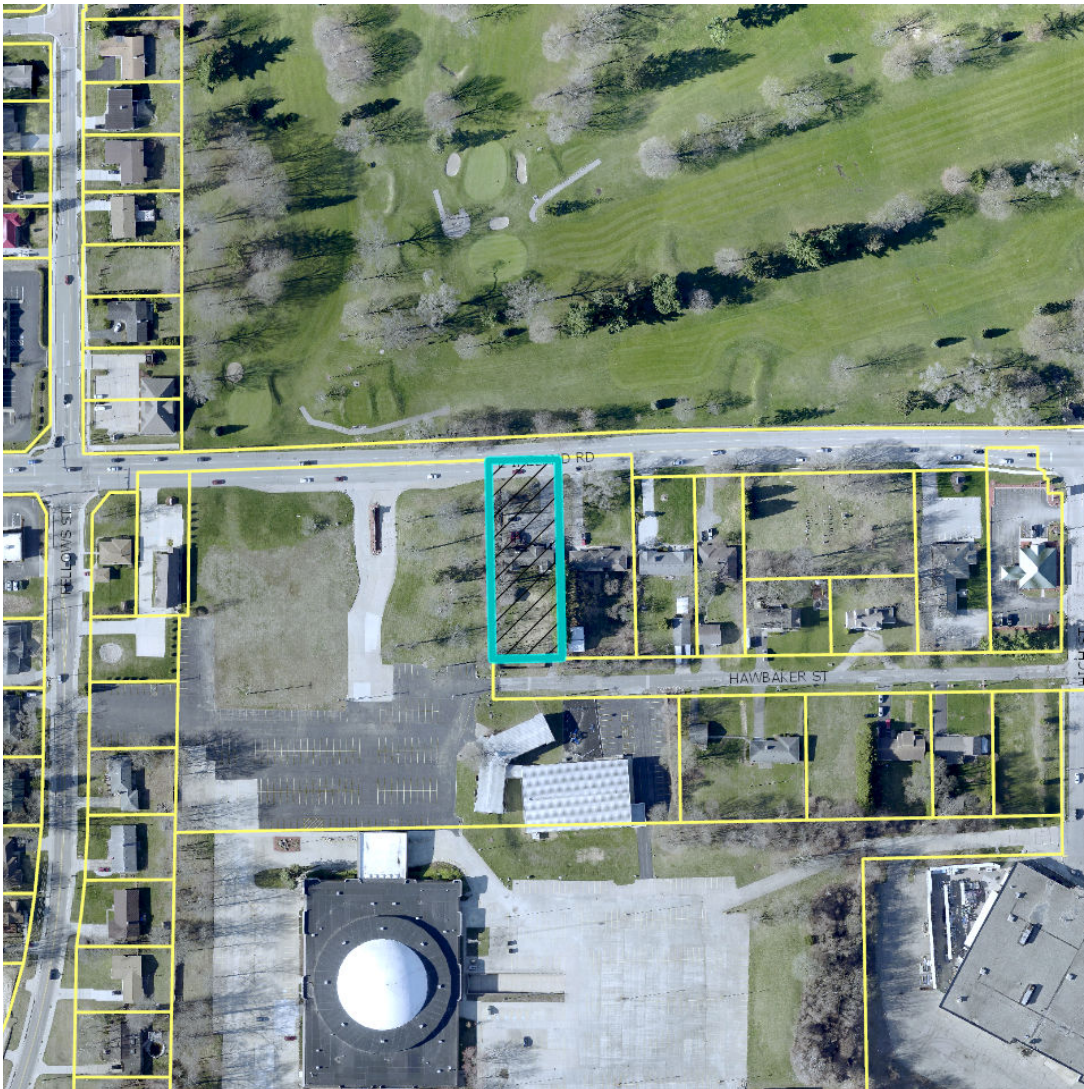
Project Summary

A rear addition to existing structure exceeding the maximum building square footage.

Requested Action

Variance(s): 1) from maximum 2,500 square foot for a Retail & Service use to 3,950 square feet

Site Location



Staff Recommendation

Based on information provided prior to the public hearing, the staff recommends the Board approve both 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

The proposed variances should not be injurious to the public health, safety, morals and general welfare of the community. Expanding the existing building should have a positive impact on the surrounding area.

(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 proposed development meets the intention of the zoning ordinance. Neither variance should have adverse affects on surrounding properties due to the large size of the lot. Approval of the variance allows for the use to remain in the current zoning district and not upzone to a more intense district such as C Commercial. As the proposed use is not retail nature, the increase in square footage should not have adverse impacts to the neighborhood.

(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 in practical difficulties in the continued use of the property. The lot is significantly larger than the typical UF Urban Neighborhood Flex lot.

(4) The variance granted is the minimum necessary

The proposed variance is the minimum necessary to allow for the current use to expand while not upzoning to a more intense zoning district. The variance allows for current expansion of the building while making sure the allowed uses on the site are maintained.

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

The site location along a major corridor, along with the large size of the lot, 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 along a heavily trafficked corridor where larger buildings are typically acceptable and is a larger lot than typically found in the UF Urban Neighborhood Flex district. As the proposed use is not retail in nature, expanding the size of the building should have minimal impacts on surrounding neighborhoods. The only other option available to use the lot to its fullest extent would be a rezoning to the more intense zoning district C Commercial which would not be desirable for the surrounding properties.

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

Property Information

Location: 1425 WOODSIDE ST
Owner: NICKLE ANDREW W AND ERNESTINE C

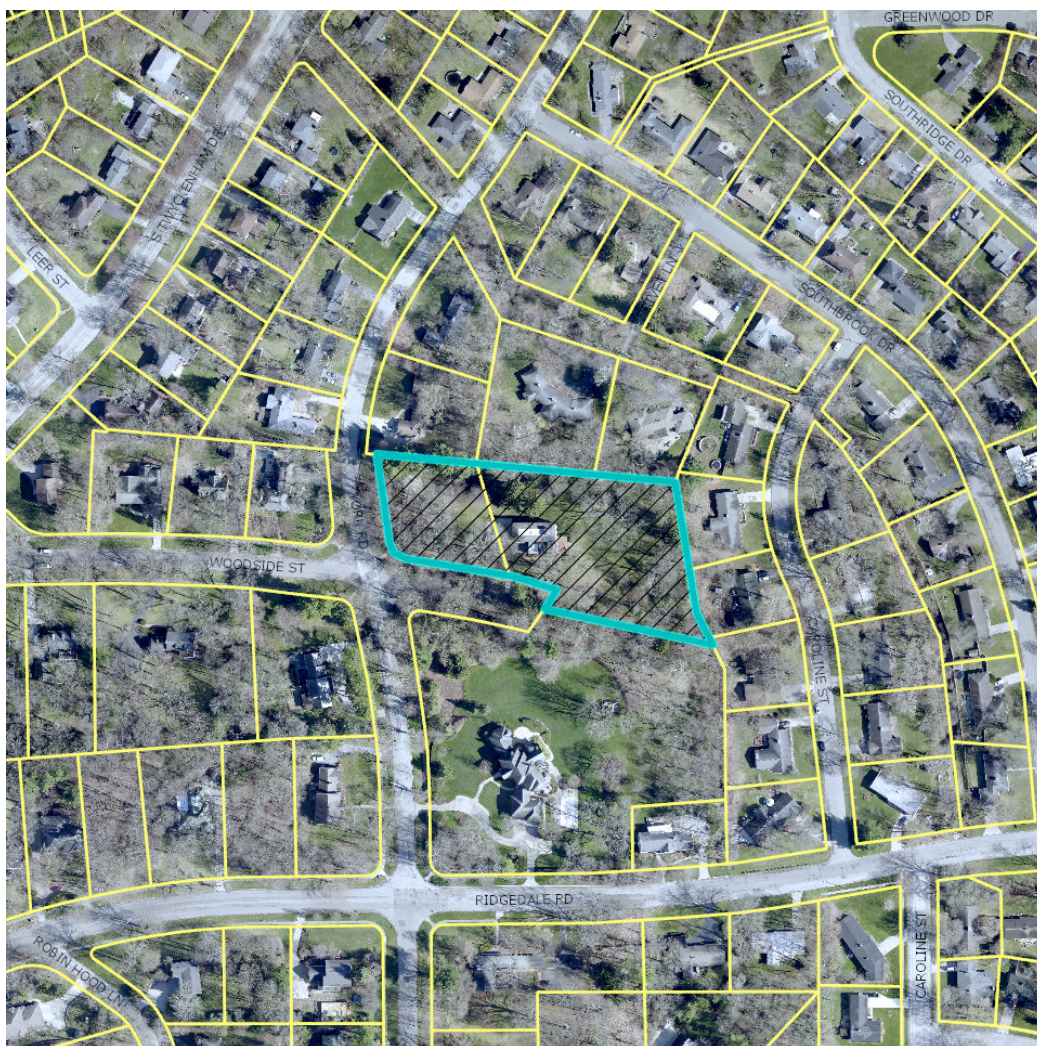
Project Summary

Install a 54" 50% open fence in the established front yard.

Requested Action

Variance(s): 1) From 48" maximum fence height for a 50% open fence in the established front and corner yard to 54"

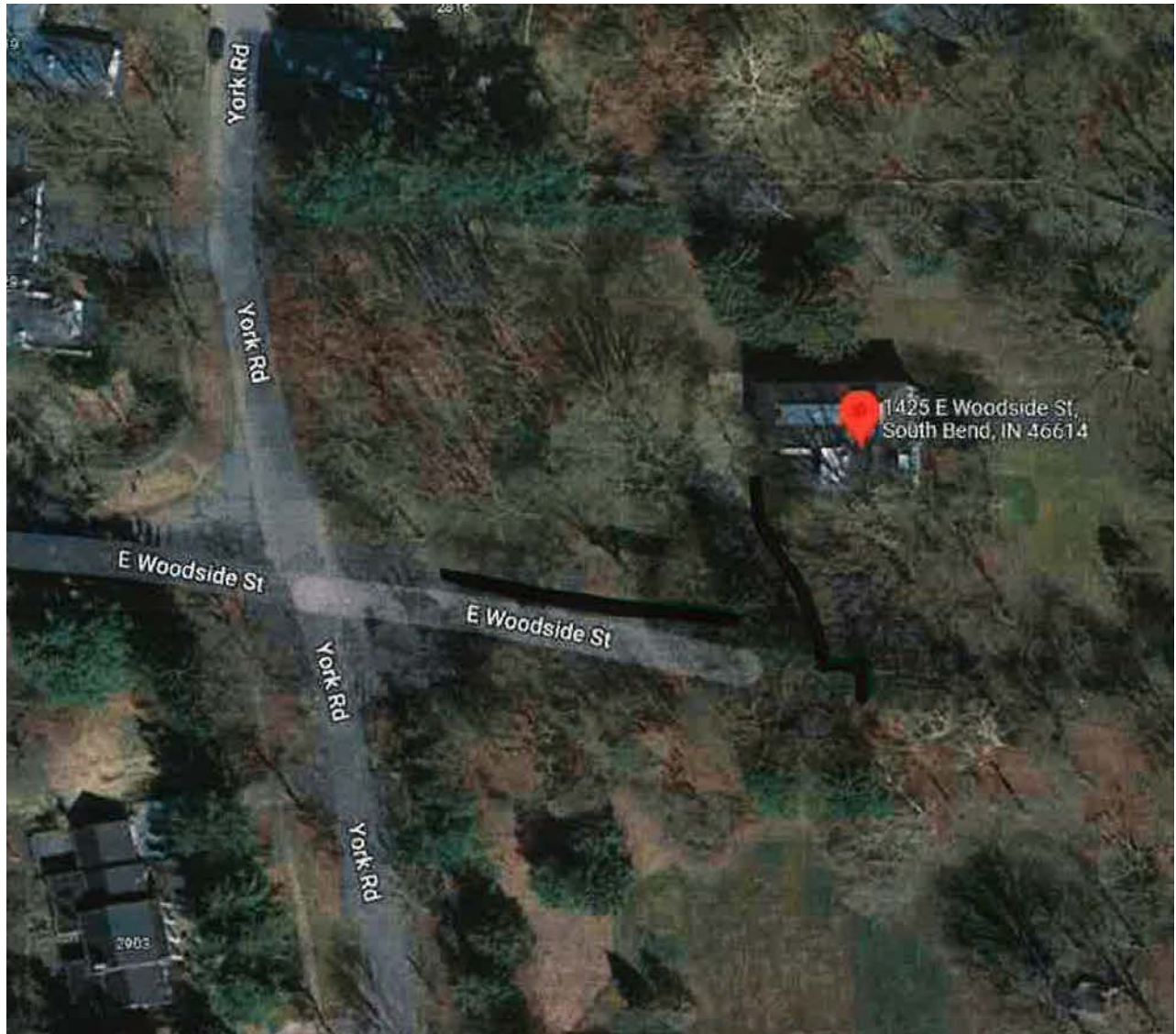
Site Location



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

The approval of this variance may not be injurious to the public health, safety however approving variances without practical difficulties undermines the Zoning Ordinance and could have a negative impact on the 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 use and value of the area adjacent to the property may not be adversely affected if the variance is granted. However, granting this variance would be out of character for the area and contrary to the intent of the ordinance, having a significant impact on the surrounding neighborhood.

(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 terms of this Chapter would not result in practical difficulties in the use of the property. A shorter, code compliant fence would still provide the intended aesthetic for the property.

(4) The variance granted is the minimum necessary

Since there is no practical difficulty to overcome, the variance requested is not the minimum necessary. The petitioner could utilize a code compliant fence option. The style of the fence is the preferred aesthetic for the petitioner not a practical difficulty.

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

There is no practical difficulty and financial hardship can not be considered in granting a variance. Reducing the height of the fence to be code compliant would not take away from the aesthetic that the petitioner is seeking.

Analysis & Recommendation

Analysis: There are no practical difficulties for the petitioner which would necessitate a 54" fence in this location. The strict application of the terms of this Chapter would not result in practical difficulties in the use of the property. The property can still be secured with a shorter code compliant fence that does not prohibit security or privacy of the property. Aesthetic preference is not a practical difficulty.

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