

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Tuesday, September 6, 2022 - 4:00 p.m.

County-City Building

Fourth-Floor Council Chambers

www.tinyurl.com/sbbza

PUBLIC HEARING:

- Location:** 4007 KIRBY CT BZA#0116-22
Owner: JOHN C & SHARON K ENGSTROM
Requested Action: Variance(s): 1) to allow a fence to be erected so the finished side of the fence faces the interior of the lot
Zoning: S1 Suburban Neighborhood 1
- Location:** 4316 Michigan BZA#0120-22
Owner: The BarClay Corporation
Requested Action: Variance(s): 1) from the required 200' lineal spacing from a public park to 162' and from the maximum allowable 35' height to 50' for a billboard
Zoning: C Commercial *Request to Withdraw*
- Location:** 1432 DUBAIL AVE BZA#0126-22
Owner: CHAD MICHAEL WARNOCK
Requested Action: Variance(s): 1) from the 5' minimum side yard setback to 0'
Zoning: U1 Urban Neighborhood 1
- Location:** 1943 HUEY ST BZA#0127-22
Owner: ERIN REAL ESTATE INC
Requested Action: Variance(s): 1) from the 3' maximum fence height in an established front yard to 6'
Zoning: S1 Suburban Neighborhood 1
- Location:** 1133 MILTON ST BZA#0128-22
Owner: ERIC FRICKSON
Requested Action: Variance(s): 1) from the 5' minimum side setback to 2' 6"
Zoning: U1 Urban Neighborhood 1
- Location:** 720 PARK AVE BZA#0129-22
Owner: JAN KRZYSZTOF SIKORSKI & MONICA M SIKORSKI
Requested Action: Variance(s): 1) from the 5' minimum side yard setback to 2'
Zoning: U1 Urban Neighborhood 1

City of South Bend **BOARD OF ZONING APPEALS**

7. **Location:** 5910 DYLAN BZA#0132-22
Owner: WAGGONERS DAIRY FARM INC % CHESTER W WAGGONER
Requested Action: Variance(s): 1) To allow off-street loading in the corner yard
Zoning: I Industrial
8. **Location:** 316 N OLIVE ST BZA#0123-22
Owner: AMANCIO RODRIGUEZ
Requested Action: Variance(s): 1) from the 60% minimum transparency to the existing transparency; and 2) to allow parking in the established front and corner yards
Special Exception: Vehicle Service, Minor
Zoning: NC Neighborhood Center
9. **Location:** 1702 WESTERN AVE BZA#0130-22
Owner: ANDREW J HOFFMAN & MICHAEL J & JOHN T
Requested Action: Variance(s): 1) to allow parking in the established front and corner yard; 2) from the 5' minimum parking area screening to none; and 3) from 1 streetscape tree for every 30' to none
Special Exception: Retail Sales
Zoning: UF Urban Neighborhood Flex

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – August 1, 2022
2. Minutes
 - a. August 1, 2022
 - b. August 5, 2022 Executive Session
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: 4007 KIRBY CT
Owner: JOHN C & SHARON K ENGSTROM

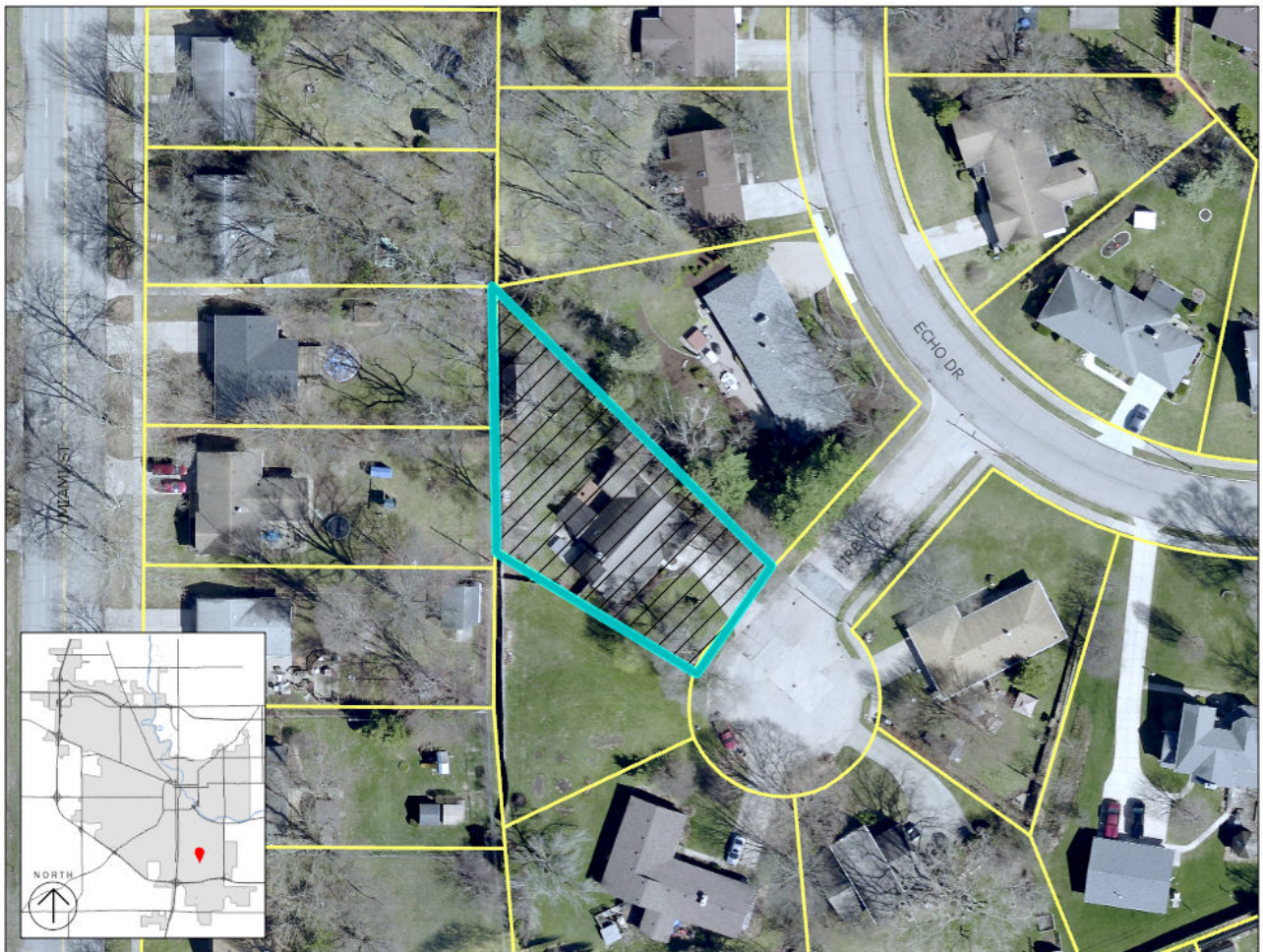
Project Summary

Erected a fence with the finished side facing the interior of the lot.

Requested Action

Variance(s): 1) to allow a fence to be erected so the finished side of the fence faces the interior of the lot

Site Location



Staff Recommendation

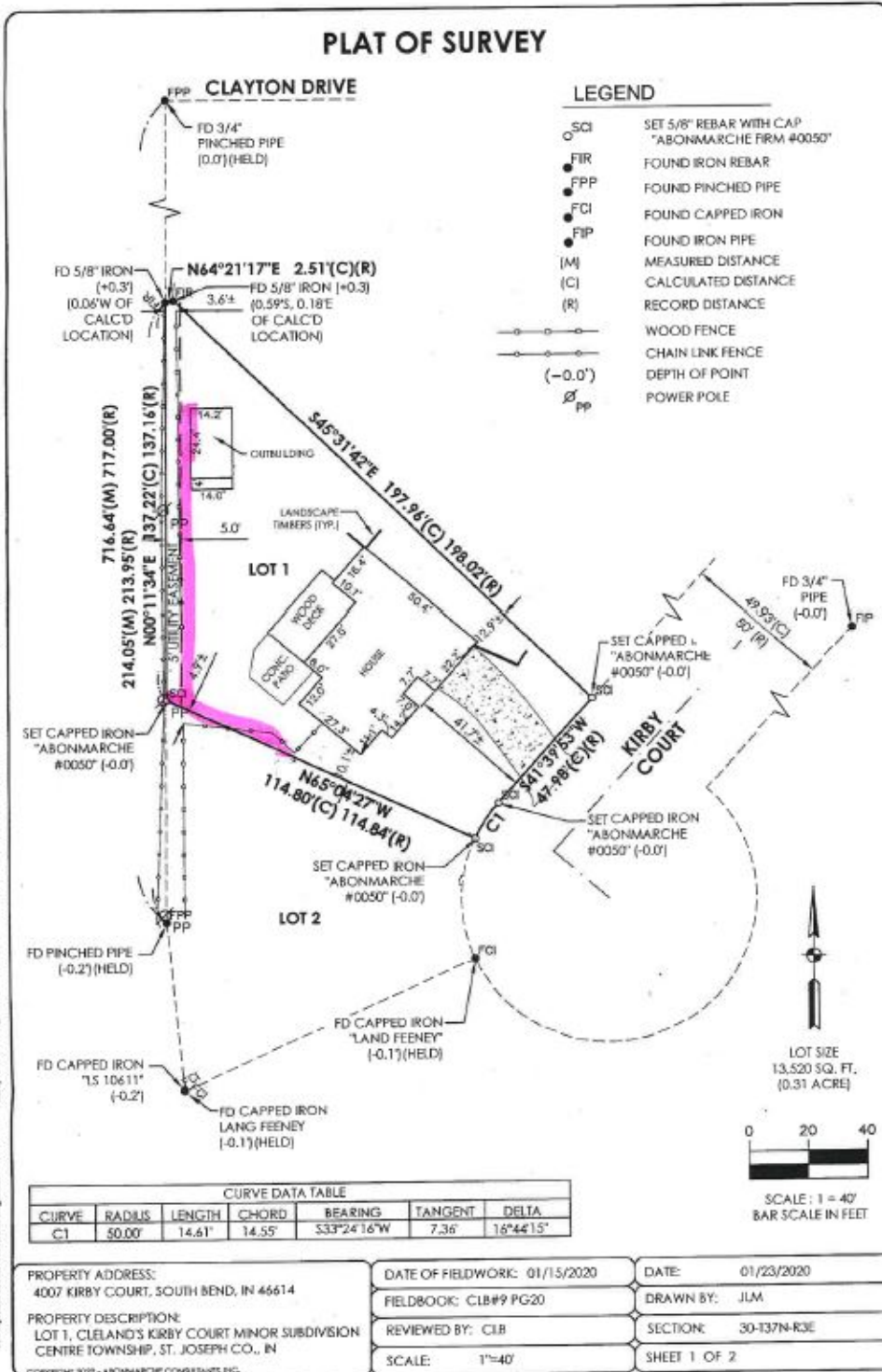
Based on the information available prior to the public hearing, the Staff recommends the Board approve the variance as presented.

Proposed Site Plan



750 Lincoln Way East
 South Bend, IN. 46601
 T 574.232.8700
 F 574.251.4440
 abonmarche.com

Benton Harbor
 Portage
 South Haven
 Fort Wayne
 Goshen
 Hobart
 Lafayette
 South Bend
 Valparaiso
 Engineering - Architecture - Land Surveying



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

Granting the variance should not impact the public health, safety, or general welfare of the community. Orienting the fence with the support structure facing out may pose security concerns for the property owner, but since this is not the street facing side, it should not impact the 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

Orienting the fence with the support structures facing the neighbor may impact their property values. However, constructing it with the finished side out also requires permission from the neighbor. If the neighbor is unwilling to provide the permission, the assume the consequence.

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

Strict application would require the fence to be located 2' - 3' off the property line so as to not encroach on the neighbors property when installing the fence. This creates awkward strips of land between properties that may be difficult to maintain.

(4) The variance granted is the minimum necessary

The petition is not requesting a variance for the portion of the fence that faces the street, only the side where access is limited.

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

The hardship in placing a fence with the finished side out on the side and rear of the property is the inability to get access from the neighbor. This is not a a hardship caused by the current or former owner.

Analysis & Recommendation

Analysis: The standards for the orientation of the fence are designed to protect the safety of the property owner and the property value of the adjacent neighbor. However, the ability to install a fence in this manner requires either permission from the neighbor or the fence to be installed 2' - 3' off the adjacent property. The latter may result in areas difficult to maintain in the future.

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

Property Information

Location: 1432 DUBAIL AVE
Owner: CHAD MICHAEL WARNOCK

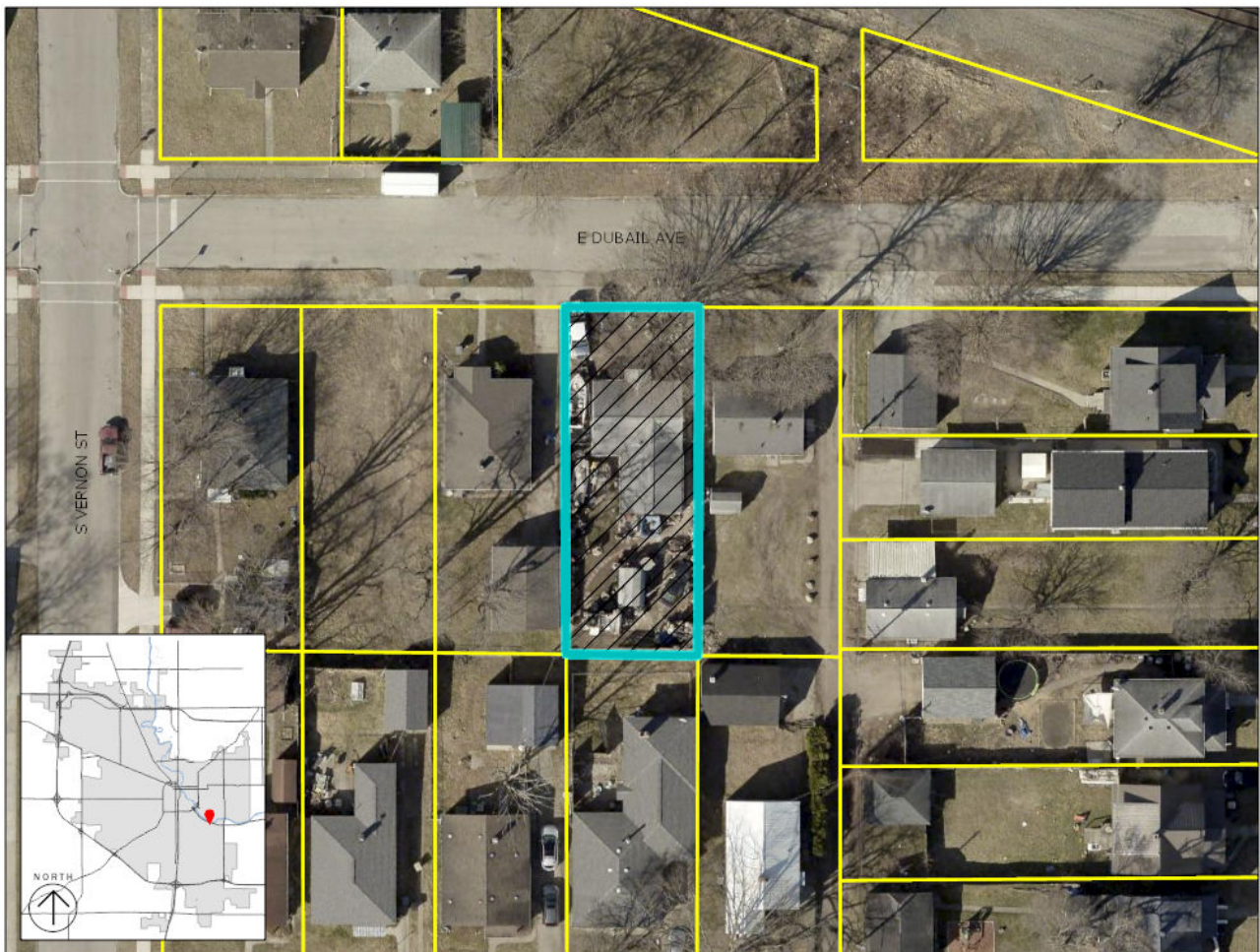
Project Summary

Allow the construction of a garage.

Requested Action

Variance(s): 1) from the 5' minimum side yard 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 all active violations be rectified and all outstanding fines be paid.

Proposed Site Plan



Sides: 6ft
Rear: 6ft

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 the variance should not be injurious to the public health, safety or general welfare of the community, the neighborhood developed with a pattern of garages at or near the setback.

(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 should not be affected in a substantially adverse manner. The neighborhood developed with a pattern of detached garages being installed at or near the property line. This is not out of character for the existing neighborhood.

(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, a strict adherence to the side setback would force the garage 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 0' setback necessary.

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

The owner began to install the garage without a permit. In order to continue the construction, a variance will be needed.

Analysis & Recommendation

Analysis: Provided the owner can rectify the active building violations, building the garage at the setback 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, subject to all active violations be rectified and all outstanding fines be paid.

Property Information

Location: 1943 HUEY ST
Owner: ERIN REAL ESTATE INC, Ramona Cruz

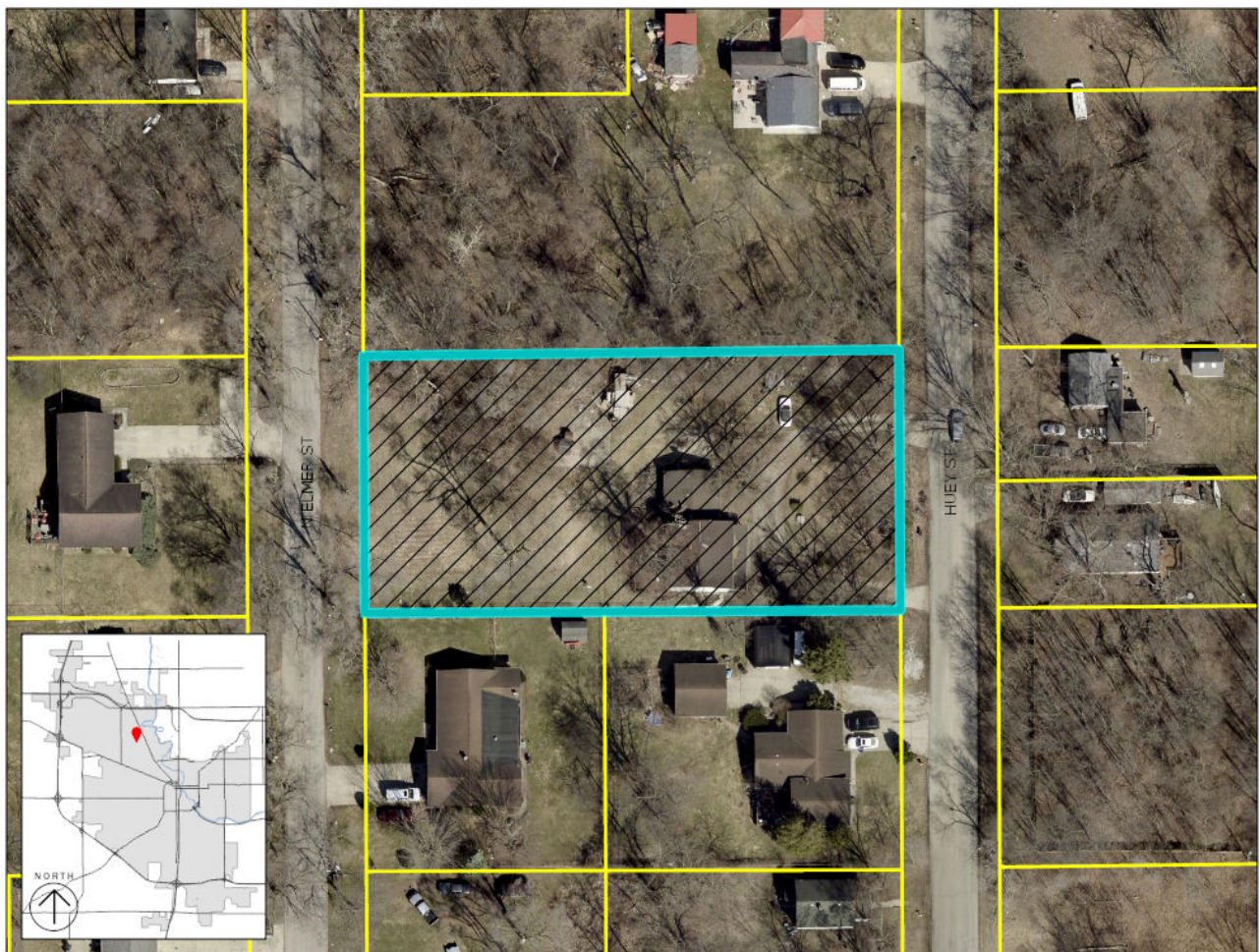
Project Summary

To allow a 6' privacy fence around the home and back yard (adjacent lot).

Requested Action

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

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance as requested, subject to a 25' setback from Elmer St.

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 setbacks, the proposed variance 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

Like building setbacks, a proper setback of a fence (or limiting the height along Elmer St.), is designed to maintain an open line of sight along a street frontage. Allowing a solid structure, such as a privacy fence, that interrupts or blocks the established rear yard along Elmer St. street can negatively impact the use and value of adjacent properties. It can also reduce the comfort and safety of pedestrians using the sidewalk. With adequate setbacks established, the proposed variance would allow use of the lot without causing the negative effects previously described.

(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 allow for a fence over 4' tall being installed anywhere on this lot. There are no practical difficulties that prevent the fence from being installed at the 4' maximum height (if 50% open) or with a 25' minimum setback as recommended by the staff.

(4) The variance granted is the minimum necessary

The variance requested is not the minimum necessary in order to allow for use of the property. The staff suggests the privacy fence be setback a minimum of 25' from Elmer St. in order to align with the required 25' minimum (front/rear) building setback for the property.

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

The current owner installed the fence without a building permit at an height that is not allowed per the ordinance and oriented with the unfinished side facing the street. Approving this variance would correct a hardship that was caused by the current owner of the property.

Analysis & Recommendation

Analysis: While this particular property became a through lot when they purchased the additional lot, that is not the pattern of development for the block or neighborhood. Approving a privacy fence in the established front yard with a 25' setback from Elmer St. would allow the property owner adequate use of the lot while meeting the intent of the Ordinance.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to a 25' setback from Elmer St.

Property Information

Location: 1133 MILTON ST
Owner: ERIC FRICKSON

Project Summary

To allow a garage/utility storage building.

Requested Action

Variance(s): 1) from the 5' minimum side setback to 2' 6"

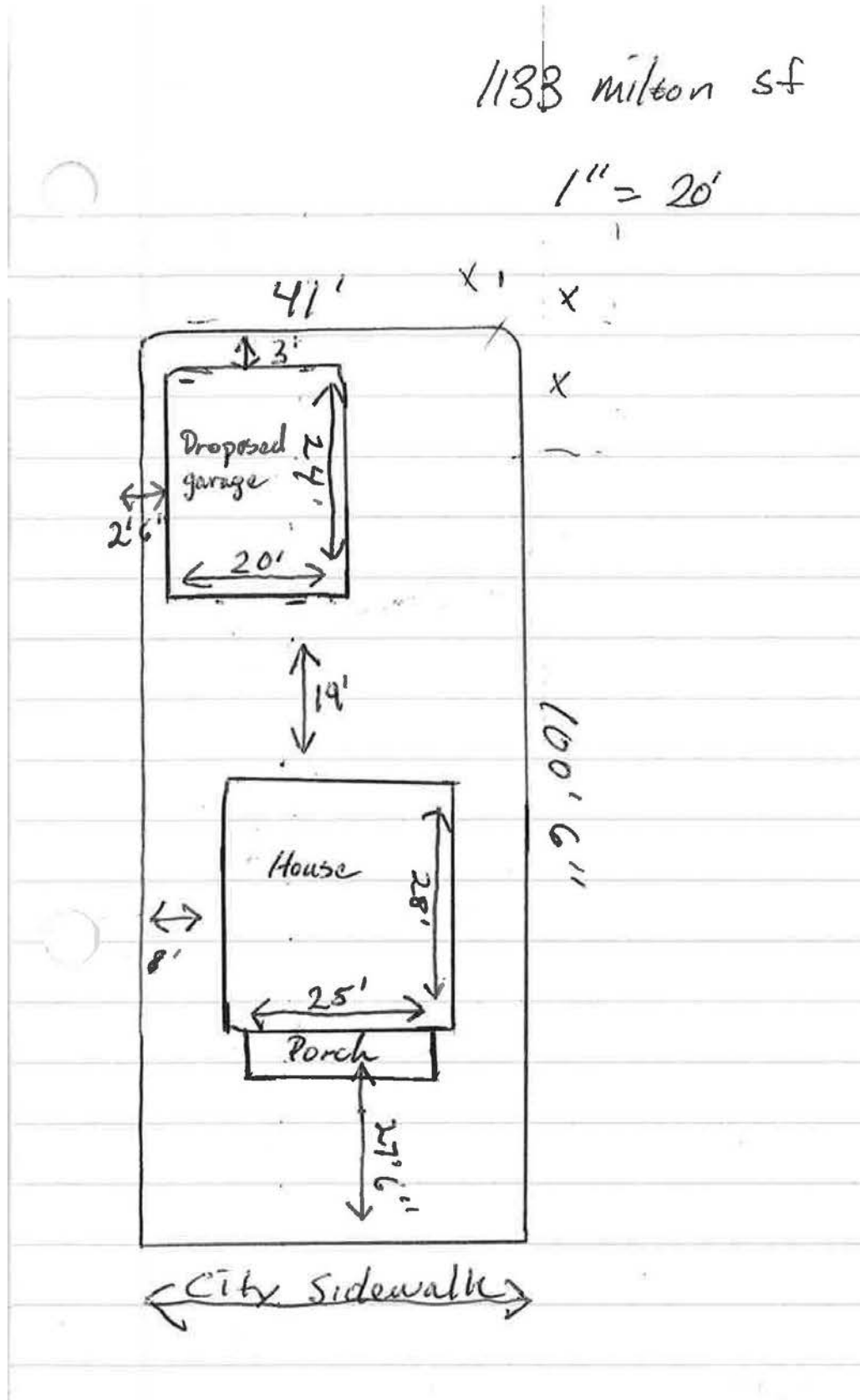
Site Location



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 neighborhood has developed with a pattern of detached garages being installed at or near the property line. If the garage was being installed in a similar manner as others in the neighborhood, it would not affect 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 use and value of the area adjacent to the property should be affected in an adverse manner. While it is common for garages to be constructed near the property line, the added space is designed to ensure proper air, light, and fire protection.

(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 prevent the garage from being located in a code compliant location. The garage is not located in line with the driveway, so there is nothing to prevent it from being installed in the proper location.

(4) The variance granted is the minimum necessary

The variance granted is not the minimum necessary since there is no practical difficulty.

(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: While there is a pattern of garages located on shared drives in the neighborhood, which puts the garages at or near the setback, that is not the situation for this particular storage building. There is no practical reason it cannot meet the side setback on the west.

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: 720 PARK AVE
Owner: JAN KRZYSZTOF SIKORSKI & MONICA M SIKORSKI

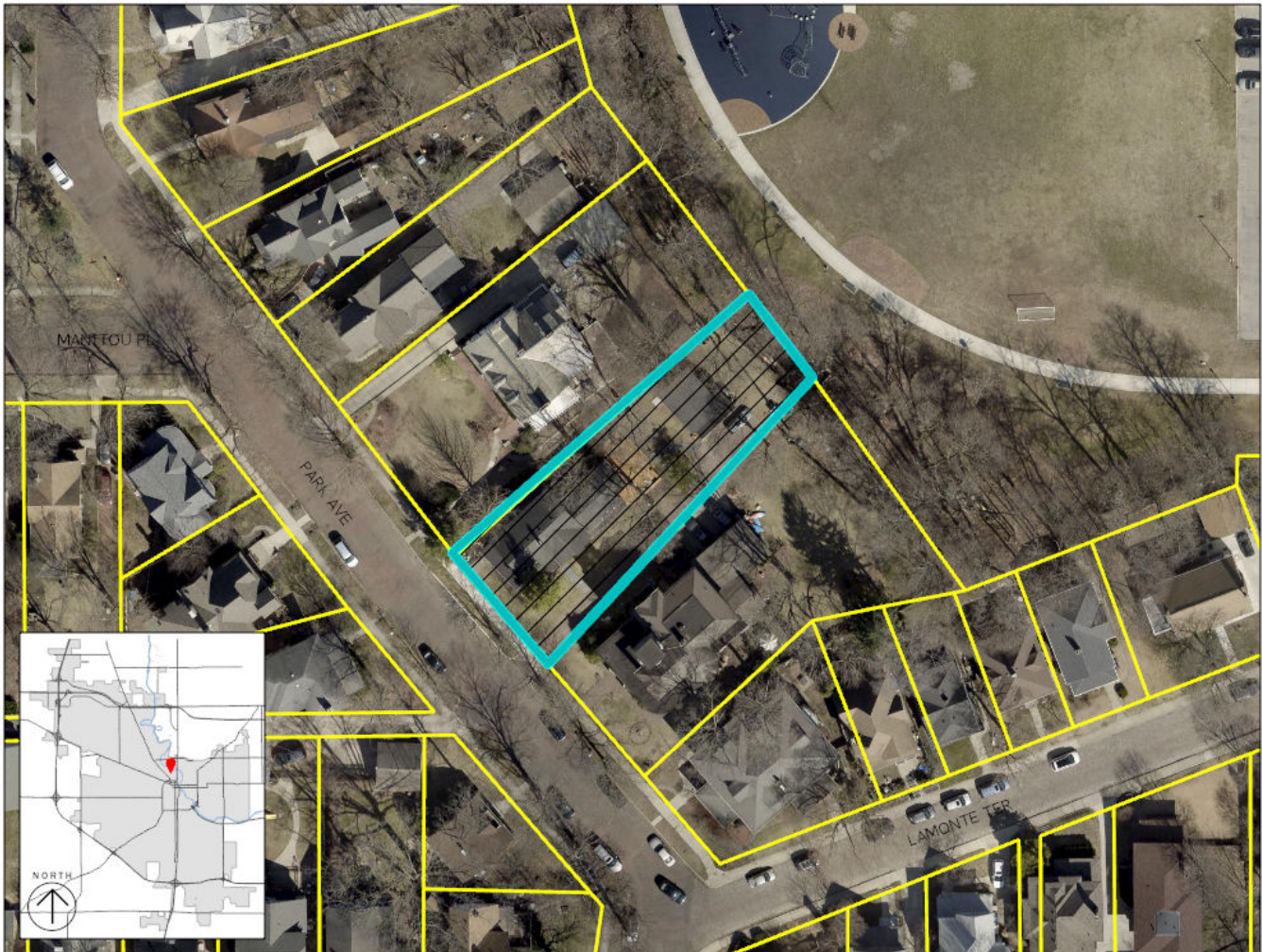
Project Summary

To allow for the moving and relocation of an existing barn/garage.

Requested Action

Variance(s): 1) from the 5' minimum side yard setback to 2'

Site Location

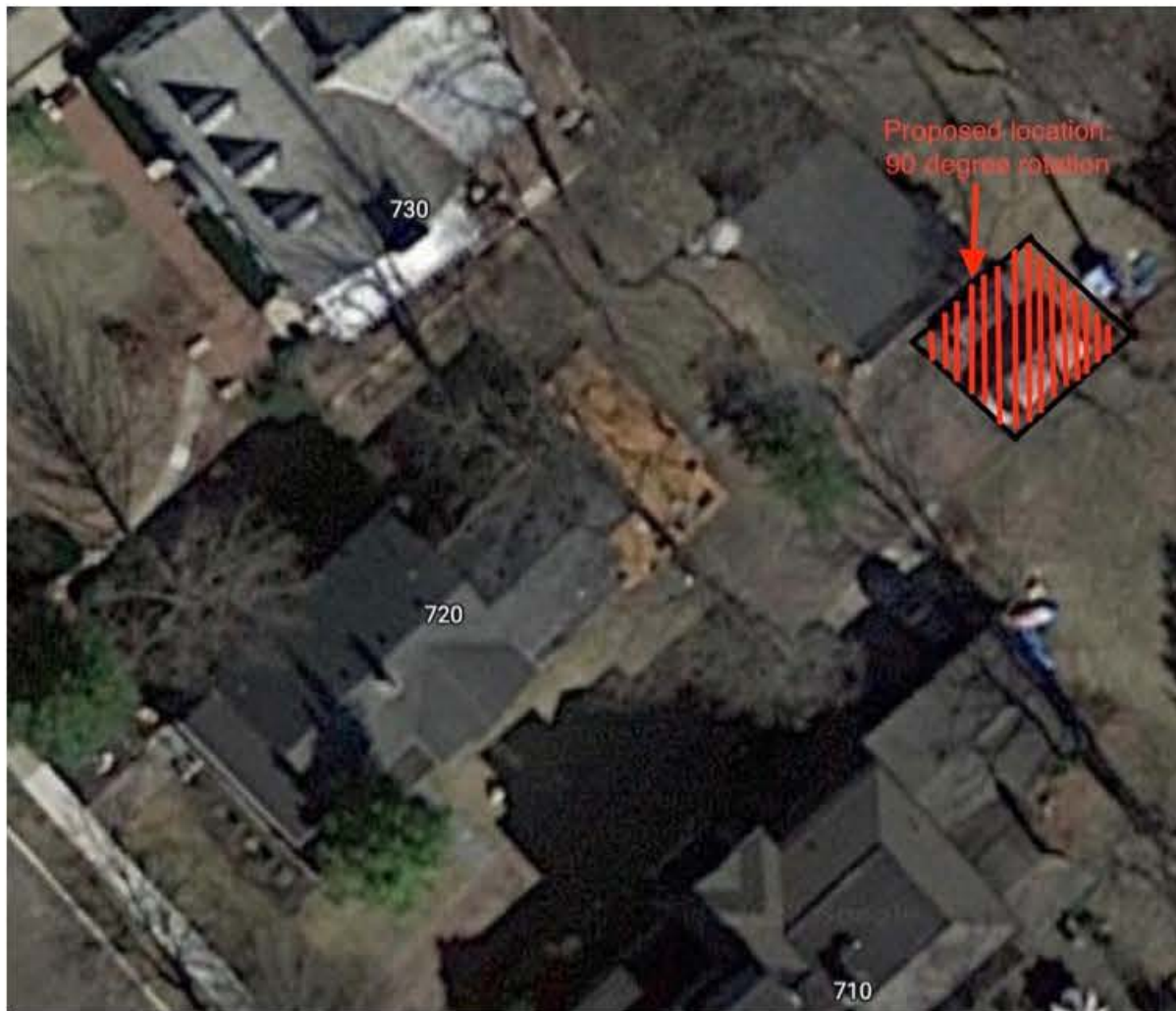


Staff Recommendation

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

Proposed Site Plan

Proposed 90-degree rotation and slight move:



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 the existing garage is being relocated it should not affect the general welfare of the community. Allowing the setback variance will preserve the historical development pattern in 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

The variance requested is for the structure that currently exists on site and would be relocated so, this 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 driveway a strict adherence to the side setback would force the garage into an impractical location making maneuverability of the cars difficult and dangerous.

(4) The variance granted is the minimum necessary

The neighborhood developed with a pattern of structures being installed at or near the property line. The physical constraints of the property, such as elevation changes and driveway location, make a 2' setback necessary.

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

The driveway location has been located along the eastern property line since the home was built. The current location and orientation of the garage make it difficult to access with a modern car.

Analysis & Recommendation

Analysis: 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.

Property Information

Location: 5910 DYLAN
Owner: WAGGONERS DAIRY FARM INC % CHESTER W WAGGONER, GLC Portage Prairie V

Project Summary

To allow loading on the north and south sides of the building. The loading on the north is in the corner yard.

Requested Action

Variance(s): 1) To allow off-street loading in the corner yard

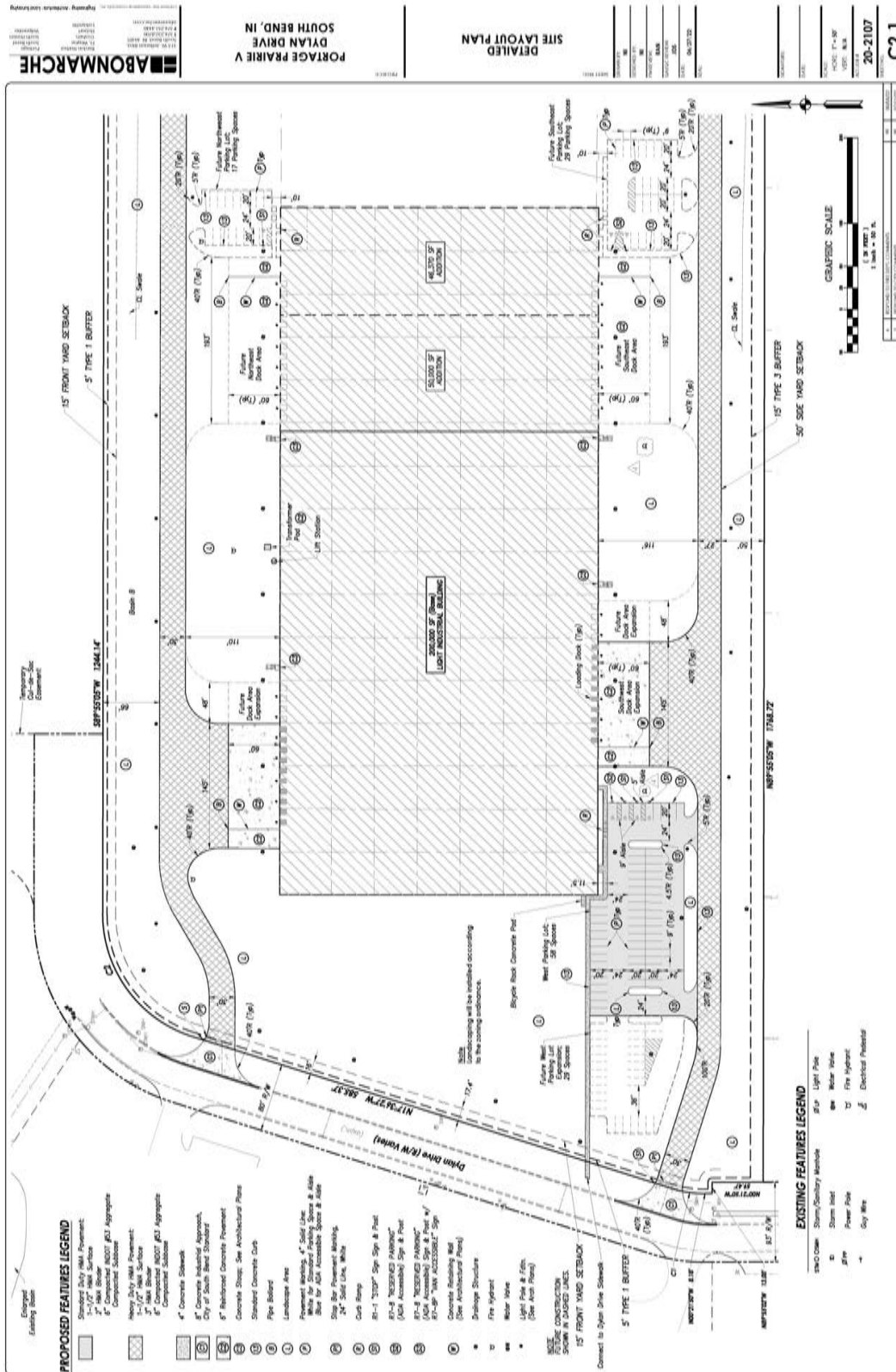
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to installation of a Type 3 Buffer between the loading areas and the street.

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 the variance should not be injurious to the public health, safety, morals or general welfare of the community. Only a small portion of the loading area will be between the building and the street.

(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 should not be affected in an adverse manner. The petition site is located internally of an exclusively industrial area that produce similar traffic patterns.

(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 result in practical difficulties because the property has multiple street frontages. The industrial park serves users with high loading requirements, which create challenges with site development.

(4) The variance granted is the minimum necessary

The proposed loading area was located as far east as possible to avoid conflict with the street and still allow for additional expansions. The portion located between the building and the street is limited.

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

The hardship is self created, however, the overall design of the industrial park was laid out to prohibit access to Mayflower Rd. This created the need for an internal streets system and the road dead ends in the industrial park. The only properties affected by this are other industrial sites utilizing the access in the same manner.

Analysis & Recommendation

Analysis: The overall design of the industrial park was laid out to prohibit access to Mayflower Rd. This created the need for an internal streets system and the road dead ends in the industrial park. The only properties affected by this are other industrial sites utilizing the access in the same manner. The property has 3 frontages and limiting the site to one access would not allow for an industrial use to use the site. The approval of the variance should not be injurious to the public health, safety, morals or general welfare of the community. The surrounding properties were all developed with two access drives along the same frontage.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to installation of a Type 3 Buffer between the loading areas and the street.

Property Information

Location: 316 N OLIVE ST
Owner: AMANCIO RODRIGUEZ

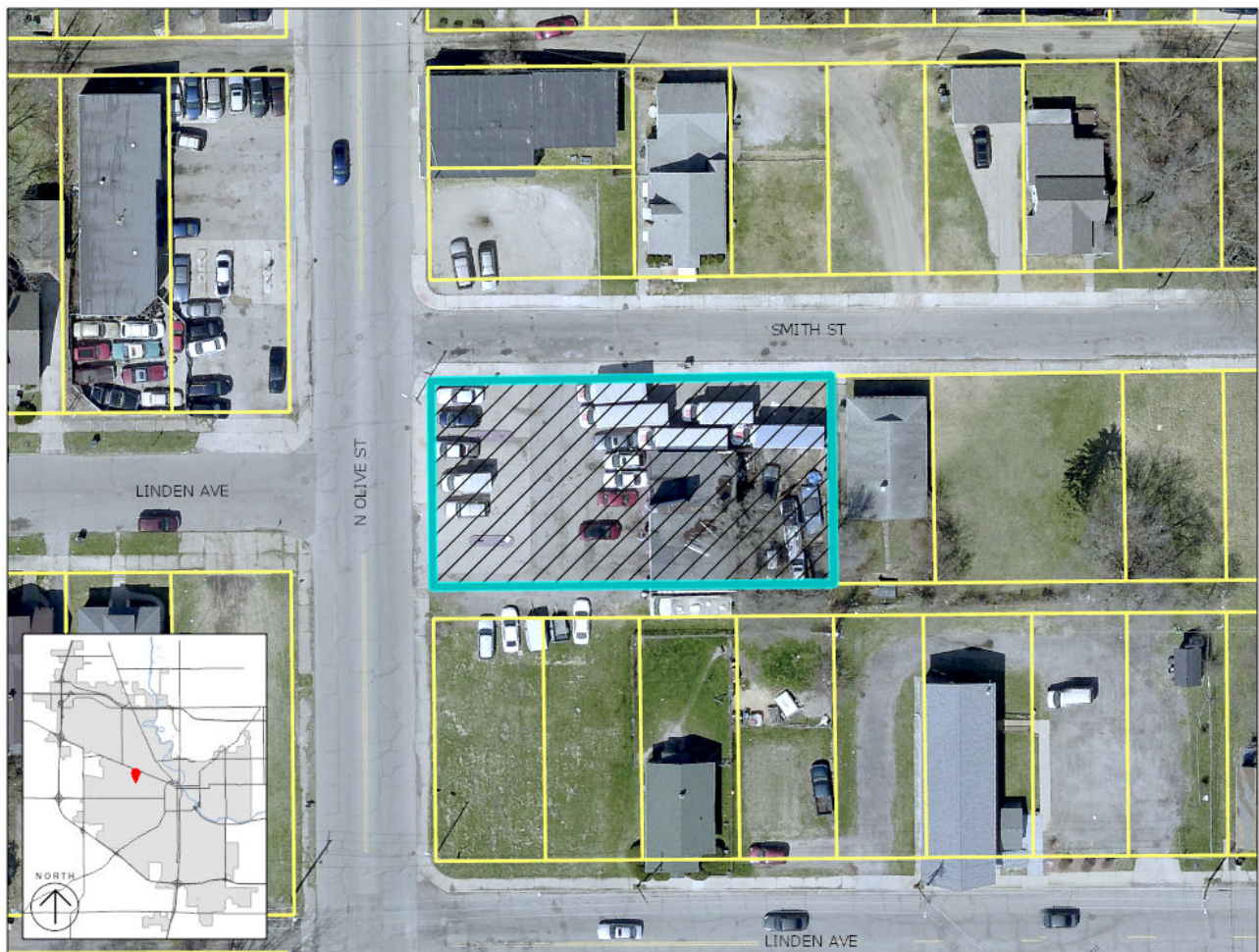
Project Summary

Apply for a Special Exception use to allow for automotive repair

Requested Action

Special Exception: Vehicle Service, Minor
Variance(s): 1) from the 60% minimum transparency to the existing transparency
2) to allow parking in the established front and corner yards

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The Staff recommends the Board approve the variances and presented.

Proposed Site Plan



Criteria for Decision Making: Special Exception

A Special Exception 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;

Provided the proper landscaping and screening are provided, the proposed use should not be injurious to the public health, safety, comfort, or general welfare of the community. The site development standards in the Ordinance are established to limit potentially negative impacts on the surrounding properties.

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

The building was constructed in the 1960s to accommodate a gas station which could have a more negative impact than vehicle repair, the approval of the Special Exception should not injure or adversely affect the use of adjacent area.

(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 original development of this property was for a gas station. The NC Neighborhood Center District allows vehicle repair as a Special Exception in order to evaluate the appropriateness in specific areas. At this location, the reactivation of the vacant building to its original use is consistent with the character of the district and surrounding area.

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

The proposed use is consistent with City Plan (2006) Objective LU 2: Stimulate the rehabilitation and adaptive reuse of the property in the city

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 Variances should not be injurious to the public health, safety and general welfare of the community. These variances allow for the building to be used for its original intent. To help mitigate any potential impact on the general community, proper parking area screening and site landscaping should be upheld.

(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 included in the variance should not be affected in a substantially adverse manner. The site has existed in this layout since the 1960s. While parking in the established front/corner yard is not preferred, the proper parking

area screening and site landscaping should reduce any negative impact on the surrounding properties use and value.

(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 require the building to be demolished and relocated in order to allow access and parking in a different configuration. The addition of landscaping, however, could easily be accomplished.

(4) The variance granted is the minimum necessary

The variance for parking location is the minimum necessary to operate the intended use in a reasonable manner. Though parking is not required, providing some off-street parking would be practical for the business. There is no practical difficulty for the requested landscaping variances, so it is not the minimum necessary.

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

This site has been in this configuration since the 1960s. The Zoning regulations at the time did not prohibit parking in the front yard. Variance #1 is not correcting a hardship caused by the current owner.

Analysis & Recommendation

Analysis: The original intent of the building was for a gas station, though the Neighborhood Center Zoning District outlines pedestrian orientated development, the use of Vehicle Service, Minor is an allowed Special Exception in the district for such instances. Because the proposed use should have less of an impact than the original use it is within the character of the district and surrounding area.

The current building would have to be moved to another location on the building in order to accommodate the onsite parking needs in a code compliant location. It is not practical to ask for this to be done. The staff encourages the property owner to utilize available grant funds to improve the transparency for the building.

Staff Recommendation: Based on the information provided prior to the public hearing, Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The Staff recommends the Board approve the variances and presented.

Property Information

Location: 1702 WESTERN AVE
Owner: ANDREW J HOFFMAN & MICHAEL J & JOHN T

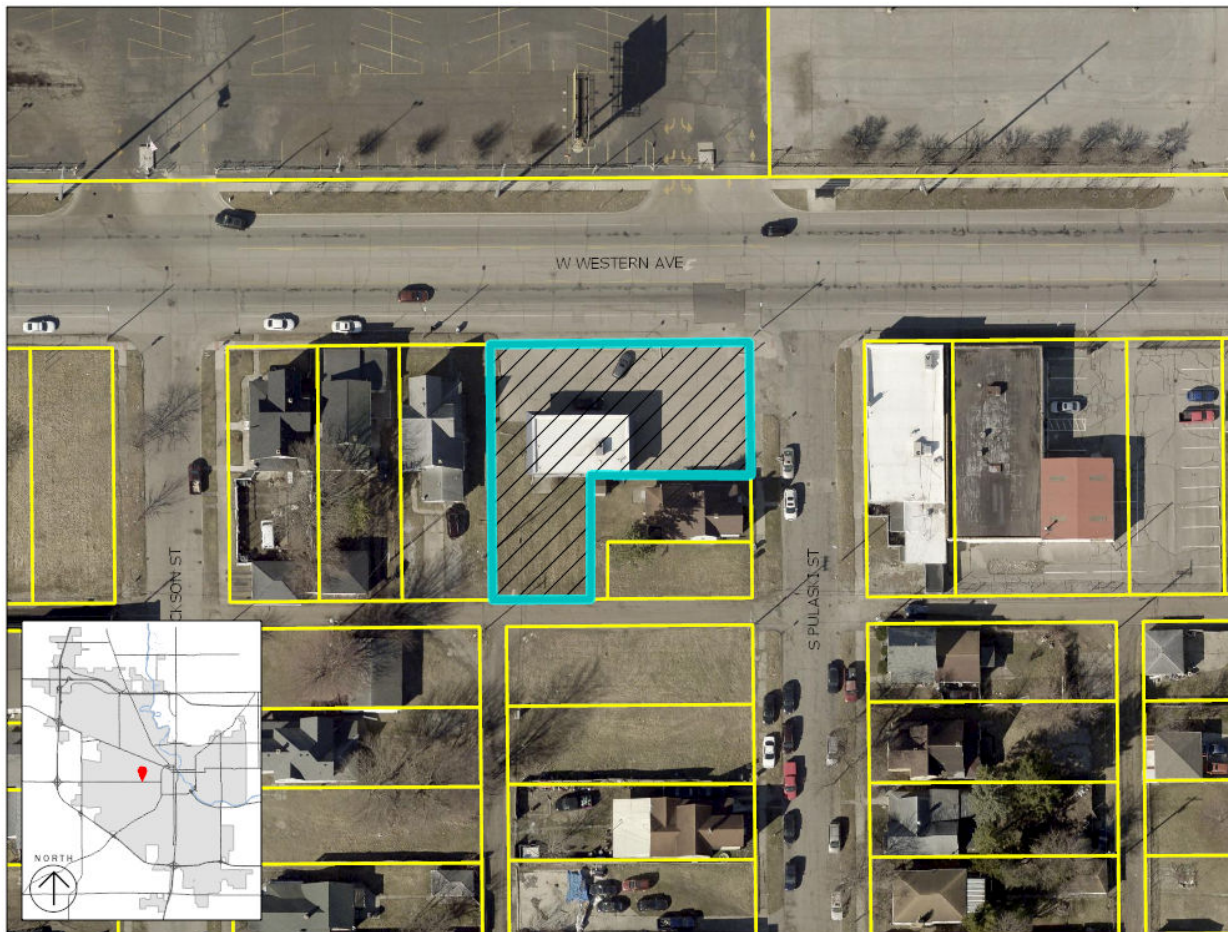
Project Summary

To allow an A&M Wireless, Inc (Boost Mobile Cellular Store) retail store in the existing building.

Requested Action

- Special Exception: Retail Sales
Variance(s): 1) to allow parking in the established front and corner yard
2) from the 5' minimum parking area screening to none
3) from 1 streetscape tree for every 30' to none

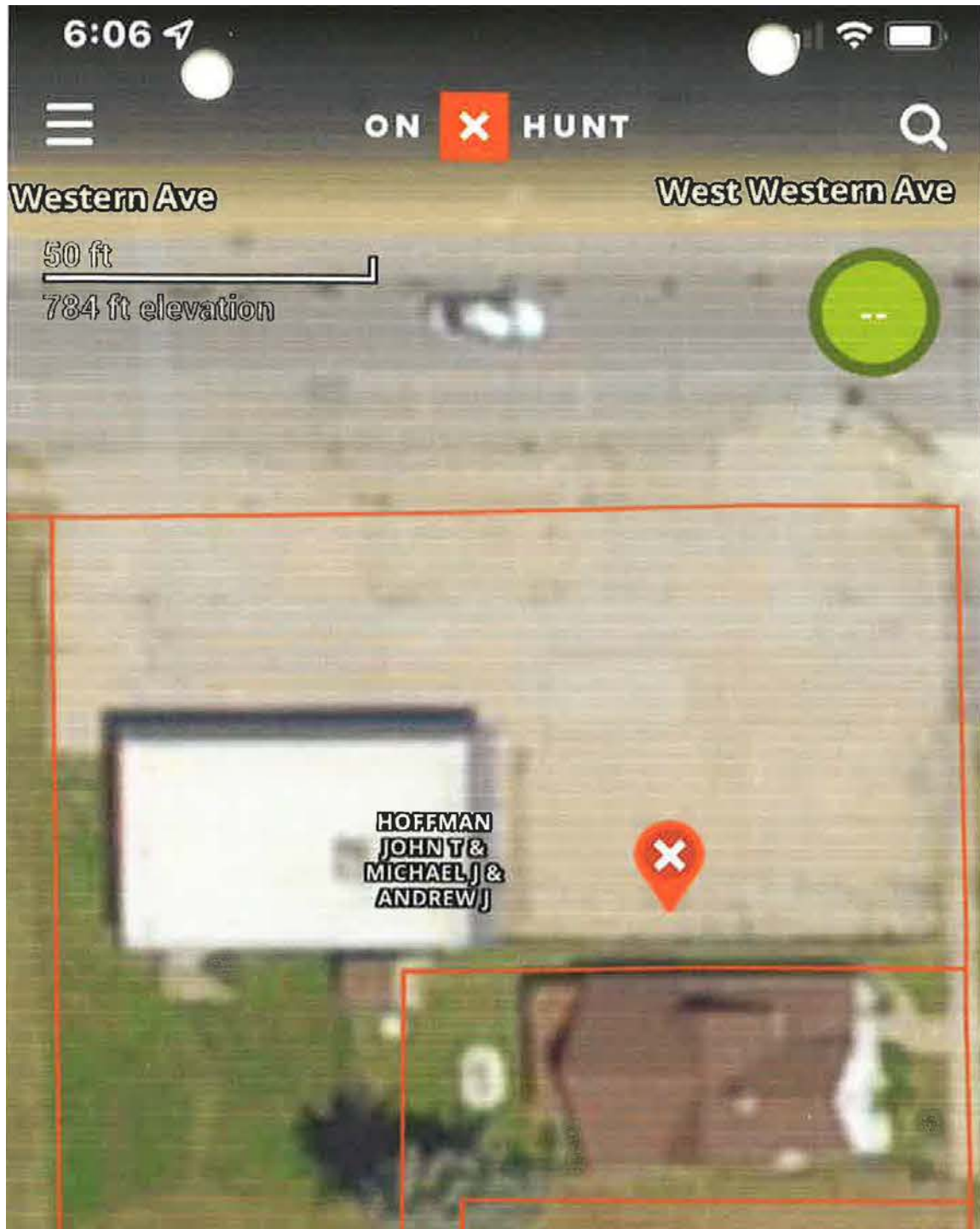
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The staff recommends the Board approve Variance #1 to allow parking in the established front yard, and deny variances #2 and #3 for landscaping.

Proposed Site Plan



Criteria for Decision Making: Special Exception

A Special Exception 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;

The proposed use is appropriate for the location and should not be injurious to the public health, safety, or 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;

The building has been used for commercial purposes for decades, allowing retail sales at this location should not adversely impact the use or value of the adjacent properties. Reinvesting in the existing building should improve the site.

(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 site is located along a commercial corridor with a mix of commercial and residential uses. The proposed use is consistent with the character of the UF Urban Flex District and the Western Avenue Corridor.

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

The proposed use is consistent with City Plan (2006) Objective ED 2: Retain existing businesses and recruit new ones to the city. Allowing commercial retail use on this site will help recruit a less intense business to the city in an appropriately located

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 Variance #1 should not be injurious to the public health, safety and general welfare of the community. This variance allows for the building to be used for its original intent. To help mitigate any potential impact on the general community, proper parking area screening and site landscaping should be upheld.

(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 included in the variance should not be affected in a substantially adverse manner. The site has existed in this layout for almost 50 years. While parking in the established front/corner yard is not preferred, the proper

parking area screening and site landscaping should reduce any negative impact on the surrounding properties use and value.

(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 require the building to be demolished and relocated in order to allow access and parking in a different configuration. The addition of landscaping, however, could easily be accomplished.

(4) The variance granted is the minimum necessary

The variance for parking location is the minimum necessary to operate the intended use in a reasonable manner. Though parking is not required, providing some off-street parking would be practical for the business. There is no practical difficulty for the requested landscaping variances, so it is not the minimum necessary.

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

This site has been in this configuration for almost 50 years. The Zoning regulations at the time did not prohibit parking in the front yard. Variance #1 is not correcting a hardship caused by the current owner. There are remedies that would allow the petitioner to install the proper landscaping.

Analysis & Recommendation

Analysis: The site is located along a major commercial corridor. A retail use at this location should not adversely affect the surrounding neighborhood.

The site contains no practical difficulties to warrant the variance for landscaping. However the current layout of the parking area, if brought into conformance would hinder the usability and reactivation of the building.

Staff Recommendation: Based on the information provided prior to the public hearing, Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The staff recommends the Board approve Variance #1 to allow parking in the established front yard, and deny variances #2 and #3 for landscaping