

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, March 6, 2023 - 4:00 p.m.

County-City Building

Fourth-Floor Council Chambers

www.tinyurl.com/sbbza

PUBLIC HEARING:

- Location:** 626 LINDENWOOD DR BZA#0170-23
Owner: TERRY VAN DUYNE
Requested Action: Variance(s): 1) From the 48' maximum duplex width to 80'; and 2) From the maximum one curb cut per street frontage to two
Zoning: U3 Urban Neighborhood 3
- Location:** 5010 BIRCHWOOD LN BZA#0171-23
Owner: BKMO2 LLC
Requested Action: Variance(s): 1) From the 48' maximum duplex width to 80'; and 2) From the maximum one curb cut per street frontage to two
Zoning: U3 Urban Neighborhood 3
- Location:** 1715 SCOTT ST BZA#0173-23
Owner: BRIDGETT C CARPENTER
Requested Action: Variance(s): 1) From the 6' maximum fence height to 7'-6"
Zoning: U1 Urban Neighborhood 1
- Location:** 825 POTTER POINT DRIVE BZA#0174-23
Owner: MICHAEL D & TERESA L HARDY
Requested Action: Variance(s): 1) from the maximum 1383.3 sq. ft. for an accessory structure to 3120 sq. ft; and 2) from the maximum 4 car capacity for all garages and carports to 5
Zoning: S1 Suburban Neighborhood 1
- Location:** 2101 MORRIS ST BZA#0176-23
Owner: RYAN & STEPHANIE DEBAILLIE
Requested Action: Variance(s): 1) from the 3' maximum fence height in the established corner yard to 6'
Zoning: U1 Urban Neighborhood 1
- Location:** 2621 MISHAWAKA AVE BZA#0169-23
Owner: JJB HOMES LLC
Requested Action:
Variance(s): 1) from the required 1 streetscape tree for every 30' of street frontage to none; and 2) from the required 1 shrub for every 5' of facade foundation landscaping to none
Special Exception: Restaurant
Zoning: UF Urban Neighborhood Flex

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

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – February 6, 2023
2. Minutes – February 6, 2023
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: 626 LINDENWOOD DR
Owner: TERRY VAN DUYNE

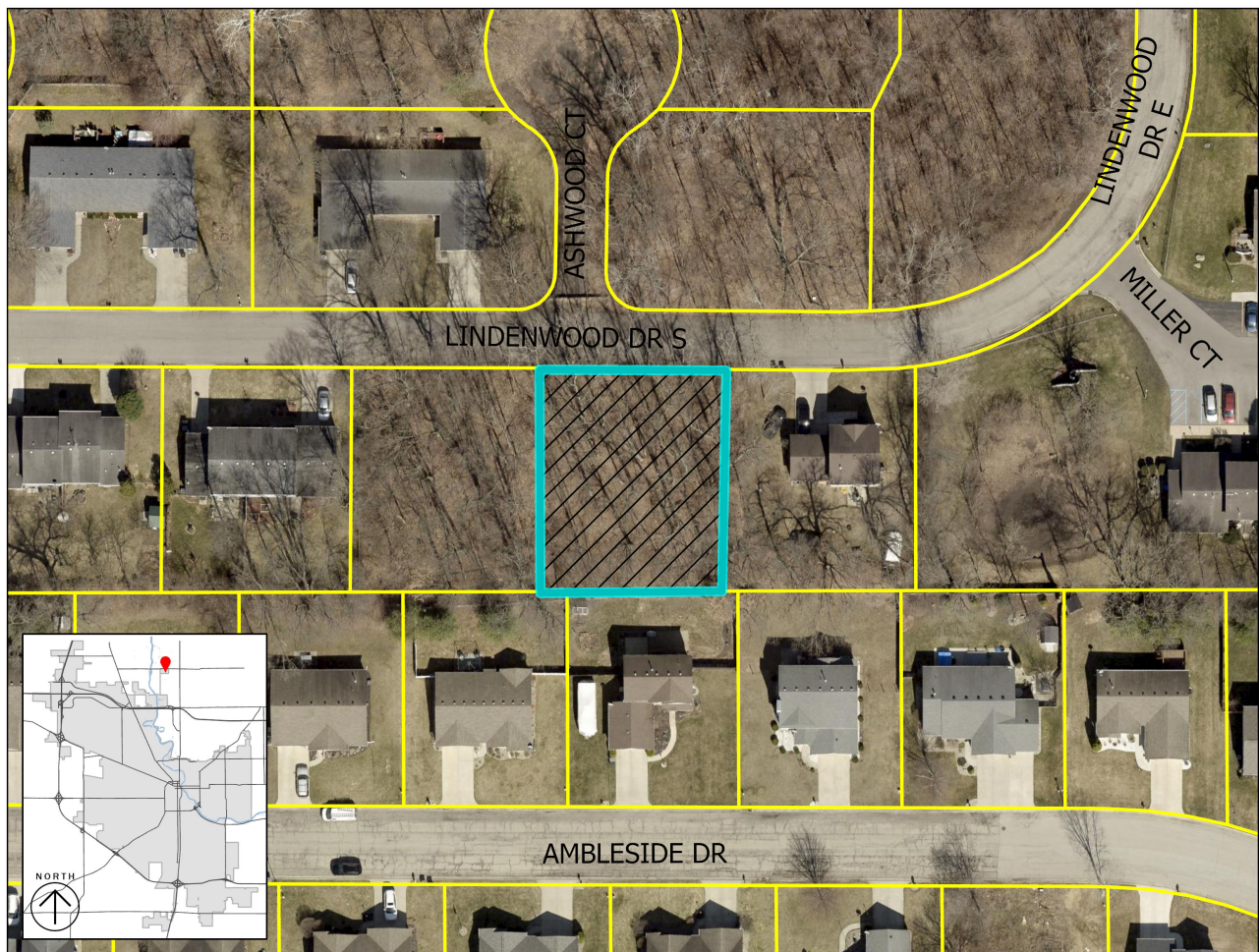
Project Summary

Construction of new duplexes with two curb cuts.

Requested Action

- Variance(s): 1) From the 48' maximum duplex width to 80'
- 2) From the maximum one curb cut per street frontage to two

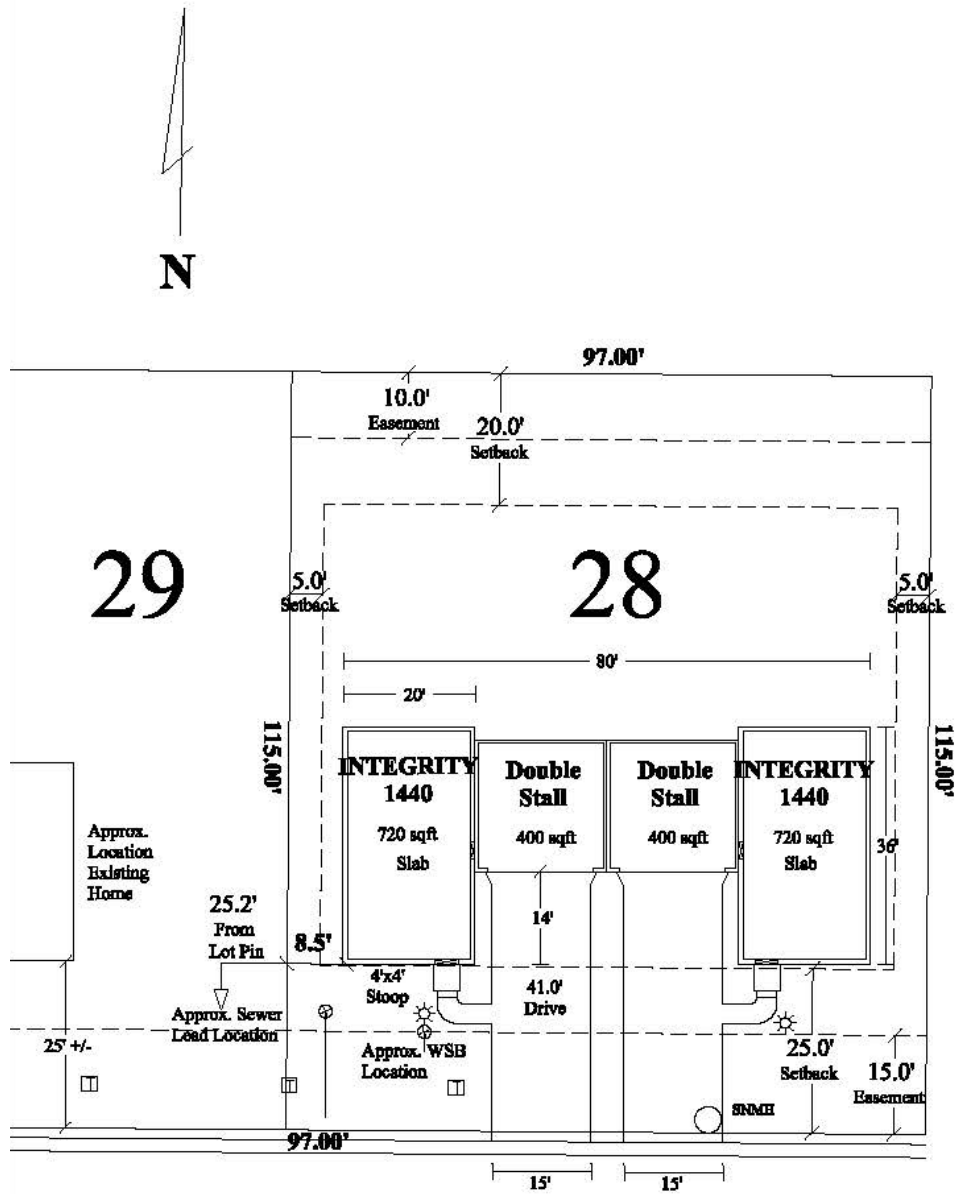
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variances as presented, subject to reconfiguring the garage layout to the outside of the building to create separation between the driveways.

Proposed Site Plan



Scale: 1" = 20'-0"	SITE PLAN LOT #28 LAUREL WOODS TBD LINDENWOOD DRIVE	ALLEN EDWIN HOMES
	ALLEN EDWIN HOMES 2186 EAST CENTRE PORTAGE, MI 49002	

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

A variance to increase the maximum width of a duplex should have no impact on the public health, safety, morals and general welfare of the community. Similarly the curb cut variance will ensure adequate access to each duplex, the additional space between the two will ensure engineering standards are met for the safe development of the property.

(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 duplexes have been designed with the intent to blend in with the current neighborhood context. The proposed variances allow the site to develop consistently with the existing built environment.

(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 the construction of buildings that are out of character for the area. The duplex variance allows for the structures to meet the minimum transparency requirements, especially without the presence of an alley. The curb cut variance specifically allows the garage to be placed on the site, modifying the layout to the outside of the duplexes will make it so it does not conflict with engineering standards.

(4) The variance granted is the minimum necessary

The proposed building width variance is nominal and the minimum necessary to allow the building to be designed in a way that is consistent with the intent of the ordinance. The curb cut variance is the minimum necessary to allow access to both dwellings.

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

The subdivision and layout of lots were developed under previous standards. Changes in the zoning ordinance since the establishment of the subdivision have created hardships in development of this property within the established neighborhood context.

Analysis & Recommendation

Analysis: The proposed variances are consistent with the character of the area and the intent of the ordinance. Approving the variance will allow for the construction of a multi-unit dwelling consistent in scale with the surrounding neighborhood.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variances as presented, subject to reconfiguring the garage layout to the outside of the building to create separation between the driveways.

Property Information

Location: 5010 BIRCHWOOD LN
Owner: BKMO2 LLC

Project Summary

Construction of new duplexes with two curb cuts.

Requested Action

Variance(s): 1) From the 48' maximum duplex width to 80'
2) From the maximum one curb cut per street frontage to two

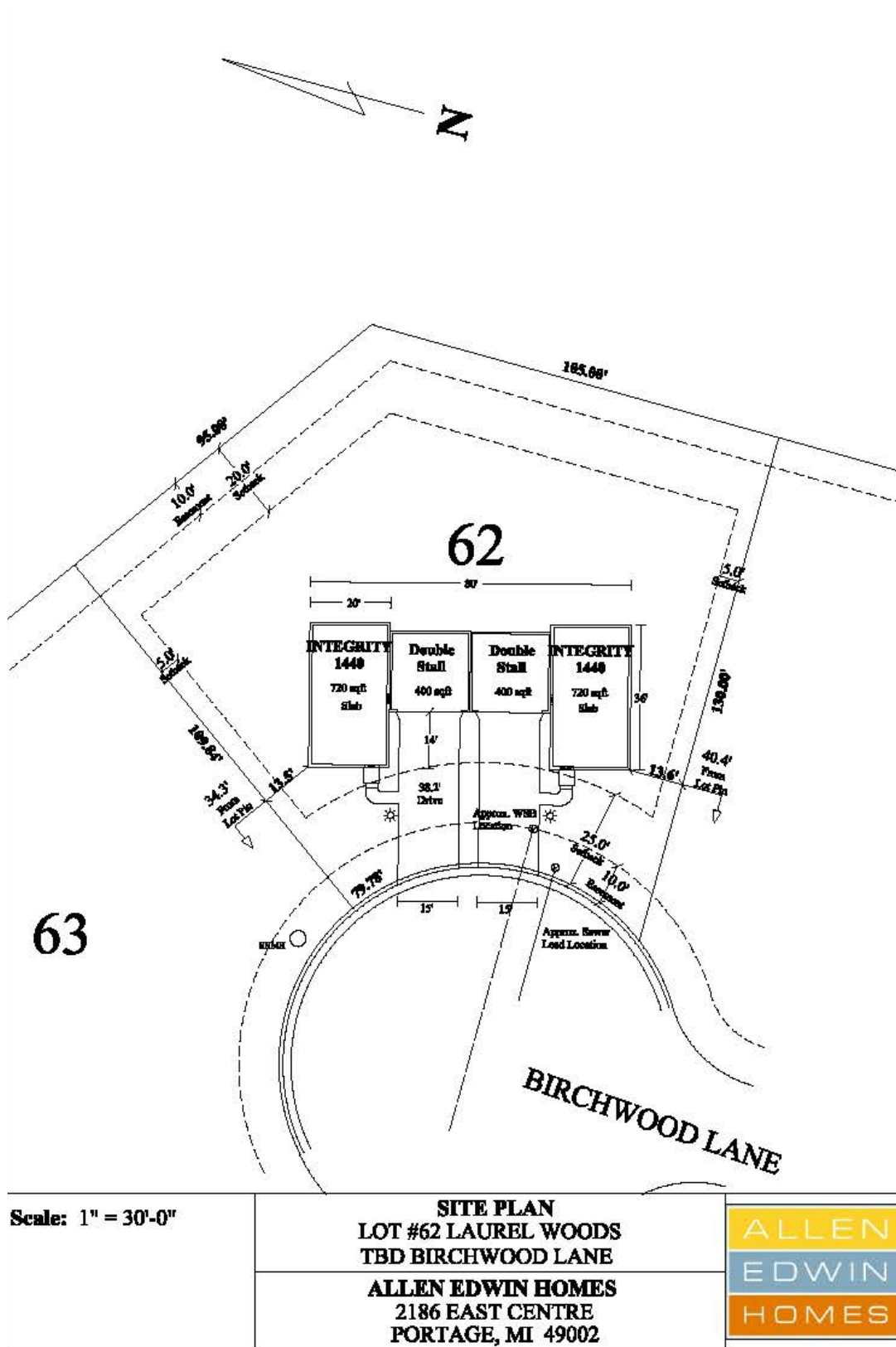
Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variances as presented, subject to reconfiguring the garage layout to the outside of the building to create separation between the driveways.

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

A variance to increase the maximum width of a duplex should have no impact on the public health, safety, morals and general welfare of the community. Similarly the curb cut variance will ensure adequate access to each duplex, the additional space between the two will ensure engineering standards are met for the safe development of the property.

(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 duplexes have been designed with the intent to blend in with the current neighborhood context. The proposed variances allow the site to develop consistently with the existing built environment.

(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 the construction of buildings that are out of character for the area. The duplex variance allows for the structures to meet the minimum transparency requirements, especially without the presence of an alley. The curb cut variance specifically allows the garage to be placed on the site, modifying the layout to the outside of the duplexes will make it so it does not conflict with engineering standards.

(4) The variance granted is the minimum necessary

The proposed building width variance is nominal and the minimum necessary to allow the building to be designed in a way that is consistent with the intent of the ordinance. The curb cut variance is the minimum necessary to allow access to both dwellings.

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

The subdivision and layout of lots were developed under previous standards. Changes in the zoning ordinance since the establishment of the subdivision have created hardships in development of this property within the established neighborhood context.

Analysis & Recommendation

Analysis: The proposed variances are consistent with the character of the area and the intent of the ordinance. Approving the variance will allow for the construction of a multi-unit dwelling consistent in scale with the surrounding neighborhood.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variances as presented, subject to reconfiguring the garage layout to the outside of the building to create separation between the driveways.

Property Information

Location: 1715 SCOTT ST
Owner: BRIDGETT C CARPENTER

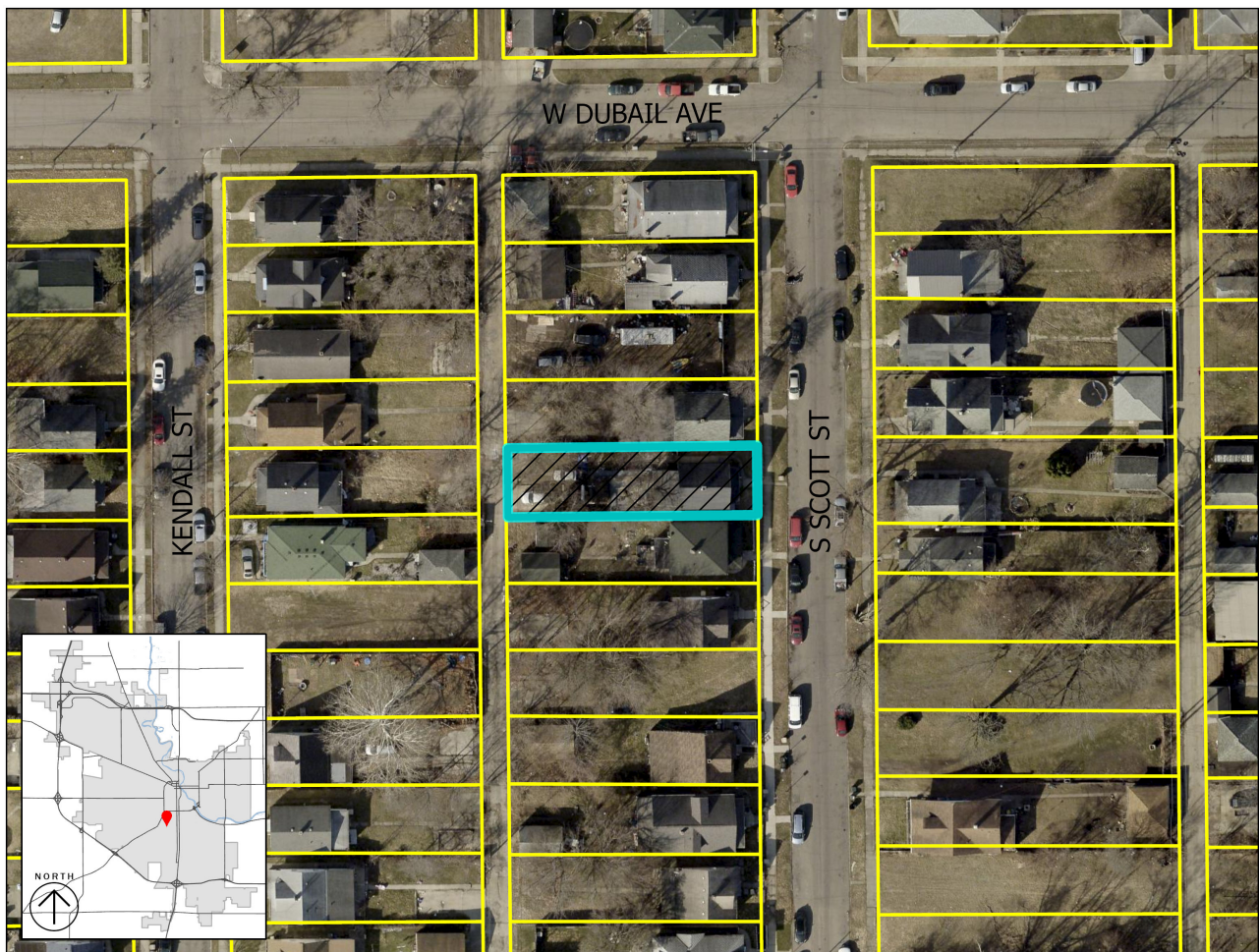
Project Summary

Extend a section of privacy fence.

Requested Action

Variance(s): 1) From the maximum 6' fence height in the established side yard to 7'-6"

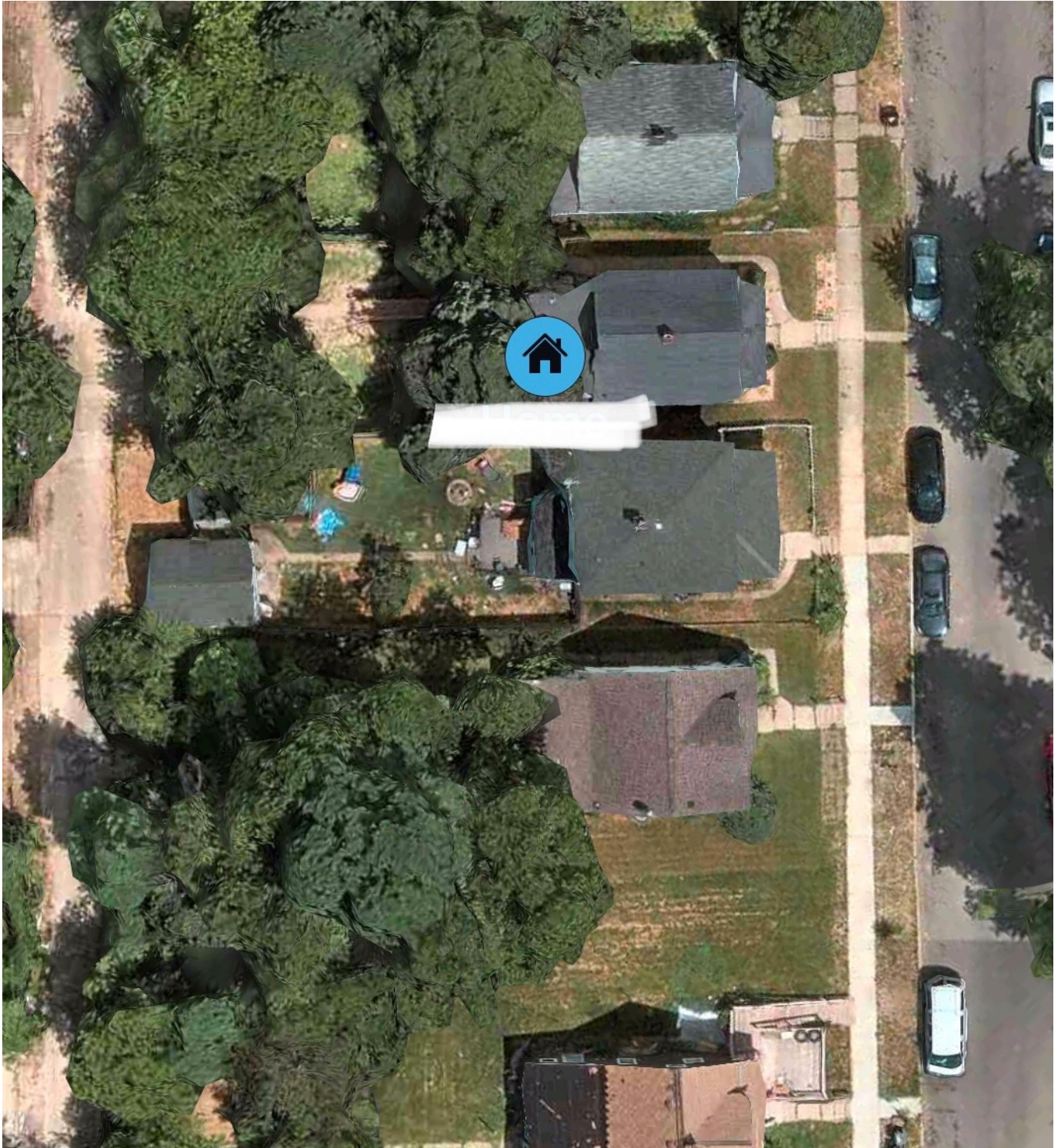
Site Location



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 approval of this variance may be injurious to the public health or safety of the community. Allowing a fence at this height could be injurious to the community because 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 proposed fence is out of character with the area, which could have an impact on the value of surrounding properties. A fence in excess of 6' is not appropriate for a residential area. The location on the side lot line would have a significant impact on the adjacent property.

(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. The property can still be secured with a code compliant fence. A neighbor dispute is not a practical difficulty.

(4) The variance granted is the minimum necessary

The variance asked for is not the minimum necessary to have the desired effect of privacy in a rear yard. A 6' privacy fence would provide the privacy. Landscaping could be used to enhance the privacy if needed.

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

If a permit was requested before the fence was installed, the property owner would have been aware of the development standards. There is no hardship on the property. The desire for the taller fence is self created.

Analysis & Recommendation

Analysis: There are no practical difficulties for the petitioner which would necessitate a 7'-6" fence in this location. The proposed fence is not consistent with the intent of the ordinances or the character of the area. If a fence permit was sought before the construction of the new fence, the applicant would have been aware of the zoning regulation.

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: 825 POTTER POINT DRIVE
Owner: MICHAEL D & TERESA L HARDY

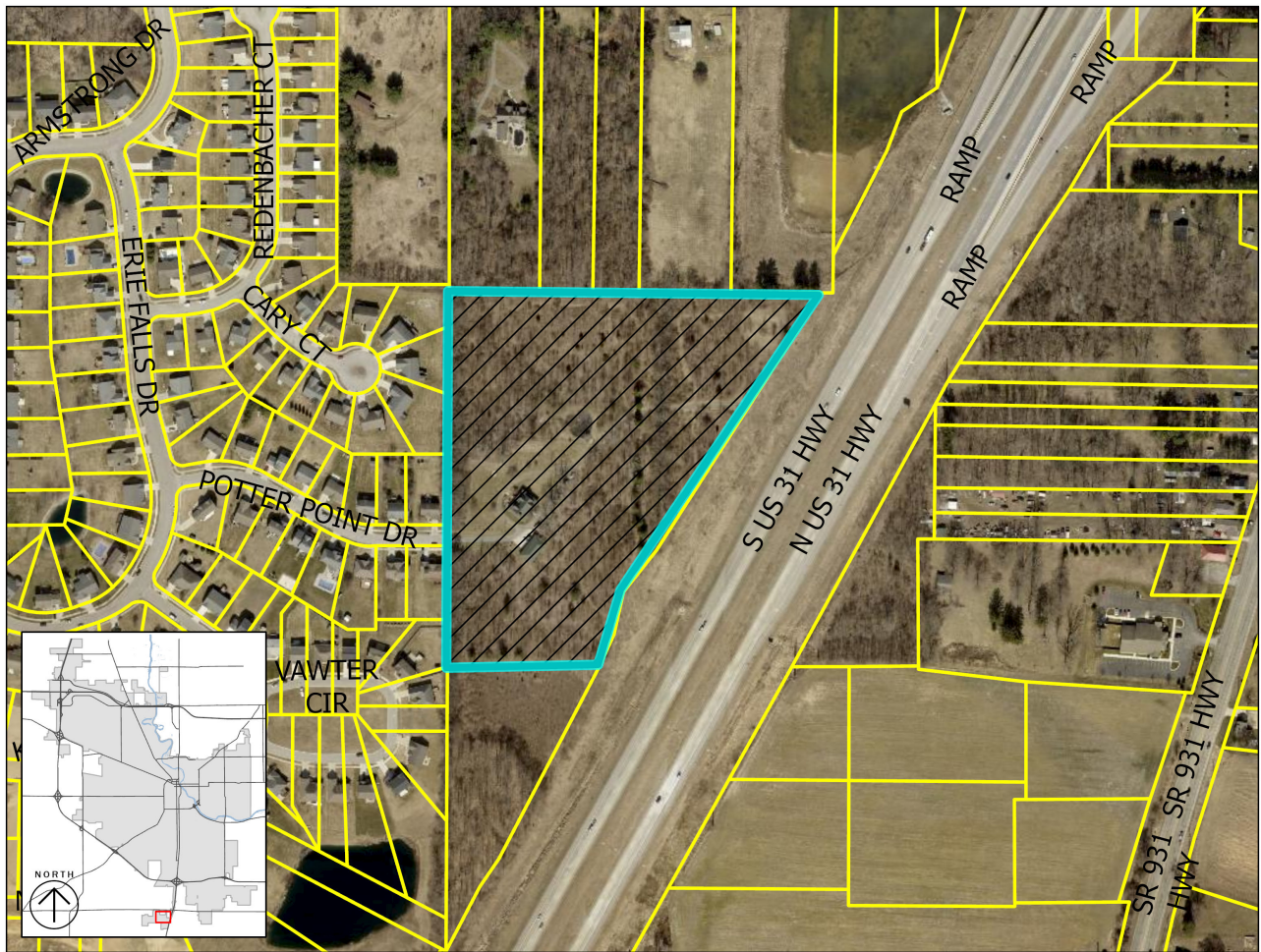
Project Summary

An addition to the existing garage

Requested Action

Variance(s): 1) from the maximum 1383.3 sq. ft. for an accessory structure to 3120 sq. ft
2) from the maximum 4 car capacity for all garages and carports to 5

Site Location



Staff Recommendation

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

Proposed Site Plan

 <p>WIGHTMAN 1820 MARSHALL RD. FORT VALLEY, IN 46030 PHONE: 765.232.1346 www.wightman.com</p>		<p>ADDRESS: 825 POINT POTTER DRIVE SOUTH BEND, IN. 46814</p>	<p>PREPARED BY: MIKE HARDY</p>
<p>DATE: 2/21/23</p>		<p>SCALE: 1" = 30'</p>	
<p>REVISIONS: 1. 2/21/23 - PREPARED FOR PERMITTING</p>		<p>CHECKED BY: 2/22/23 - AJS</p>	
<p>PROJECT: SITE PLAN</p>		<p>DATE PLOTTED: 2/22/23</p>	
<p>PROJECT NO.: Model</p>		<p>DATE: 2/22/23</p>	

AREA BOARD OF ZONING APPEALS

PART OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 36 NORTH,
 RANGE 2 EAST, CENTRE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA

FOR:

MICHAEL & TERESA HARDY
 825 POTTER POINT DRIVE
 SOUTH BEND, INDIANA 46614

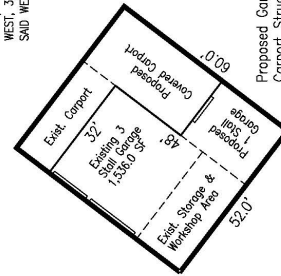
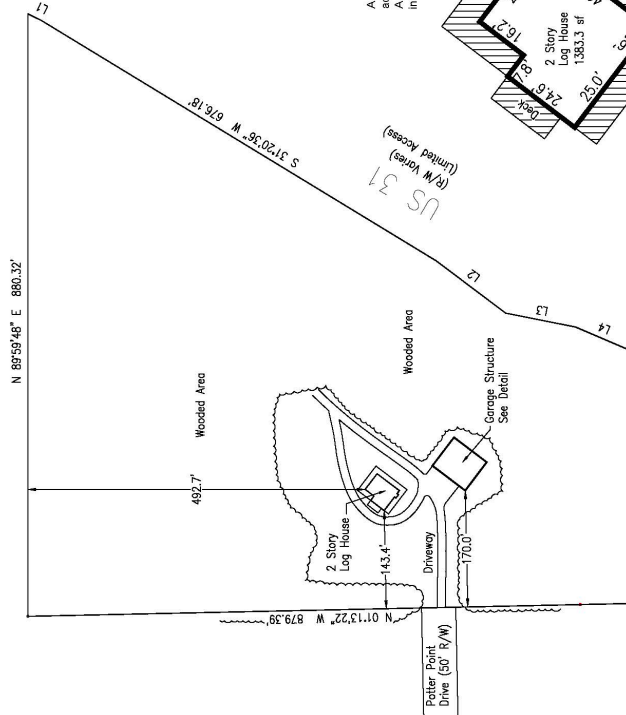
PROPERTY ADDRESS:
 825 POTTER POINT DRIVE
 SOUTH BEND, INDIANA 46614

CURRENT ZONING:
 SUBURBAN NEIGHBORHOOD 1

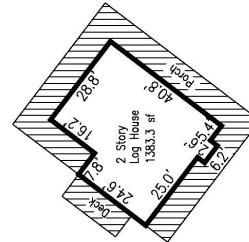


LEGAL DESCRIPTION:
 PART OF THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 36 NORTH, RANGE 2
 EAST, CITY OF SOUTH BEND, CENTRE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA BEING
 MORE PARTICULARLY AS COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST
 QUARTER OF SAID SECTION 2, THENCE SOUTH 01°13'22" EAST, 995.68 FEET TO THE
 POINT OF BEGINNING; THENCE NORTH 89°59'48" EAST, 860.32 FEET TO THE WESTERLY
 RIGHT-OF-WAY OF U.S. HIGHWAY 31 AS DESCRIBED IN ST. JOSEPH COUNTY, INDIANA
 COURSE (1); THENCE SOUTH 37°02'32" WEST, 125.59 FEET; (2) SOUTH 31°20'36" WEST,
 498.18 FEET; (3) SOUTH 25°48'16" WEST, 21.33 FEET; (4) U.S. HIGHWAY 31, THE NEXT
 COURSE (5); SOUTH 37°02'32" WEST, 125.59 FEET; (6) SOUTH 31°20'36" WEST,
 498.18 FEET; (7) SOUTH 25°48'16" WEST, 21.33 FEET; (8) U.S. HIGHWAY 31, THE NEXT
 COURSE (9); SOUTH 37°02'32" WEST, 125.59 FEET; (10) SOUTH 31°20'36" WEST,
 498.18 FEET; (11) SOUTH 25°48'16" WEST, 21.33 FEET; (12) U.S. HIGHWAY 31, THE NEXT
 COURSE (13); SOUTH 37°02'32" WEST, 125.59 FEET; (14) THENCE SOUTH 11°15'10"
 WEST, 104.40 FEET; (15) SOUTH 23°11'18" WEST, 84.67 FEET, THENCE SOUTH 89°48'11"
 WEST, 370.57 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ALONG
 SAID WEST LINE, NORTH 01°13'22" WEST, 879.39 FEET TO THE POINT OF BEGINNING.

A variance from the allowable 1383.3 square feet for an
 accessory structure to 3120 square feet.
 A variance for a total capacity of 5 parking spaces on site
 instead of the 4, allowable.



Proposed Garage &
 Carport Structure
 Total Roofed Area = 3120 sf



2 Story Existing
 Log House
 1383.3 sf

LINE	BEARING	DISTANCE
L1	S 25°48'16" W	21.33'
L2	S 37°02'32" W	125.59'
L3	S 11°15'10" W	104.40'
L4	S 23°11'18" W	84.67'

Scale: 1" = 30'
 Detail:

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 variances should not be injurious to the public health, safety and general welfare of the community. The property is a large parcel isolated between a suburban development and the US-31 Highway.

(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 structures are setback from the public street, so the use and value of the adjacent area should not be affected in an adverse manner. Due to the large lot size and the rear property line fronting a US highway their should be minimal impact on 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 strict application of the terms of this chapter would result in a practical difficulty in the use of the property. The property is significantly larger than a typical City property. The Ordinance does not anticipate lots of this size.

(4) The variance granted is the minimum necessary

The variance granted is the minimum necessary to allow for expansion of a garage on the lot. The lot could be subdivided in the future and meet the intentions of the ordinance.

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

The location of the rerouted US highway lead to the creation of a lot that has a rural size and character. The location of the highway and resulting lot are not created by the current or former owner.

Analysis & Recommendation

Analysis: The 12 acre parcel is bound by a suburban residential development and US-31 Highway. The size of the property warrants consideration and relief from the strict application of the Ordinance.

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

Property Information

Location: 2101 MORRIS ST
Owner: RYAN & STEPHANIE DEBAILLIE

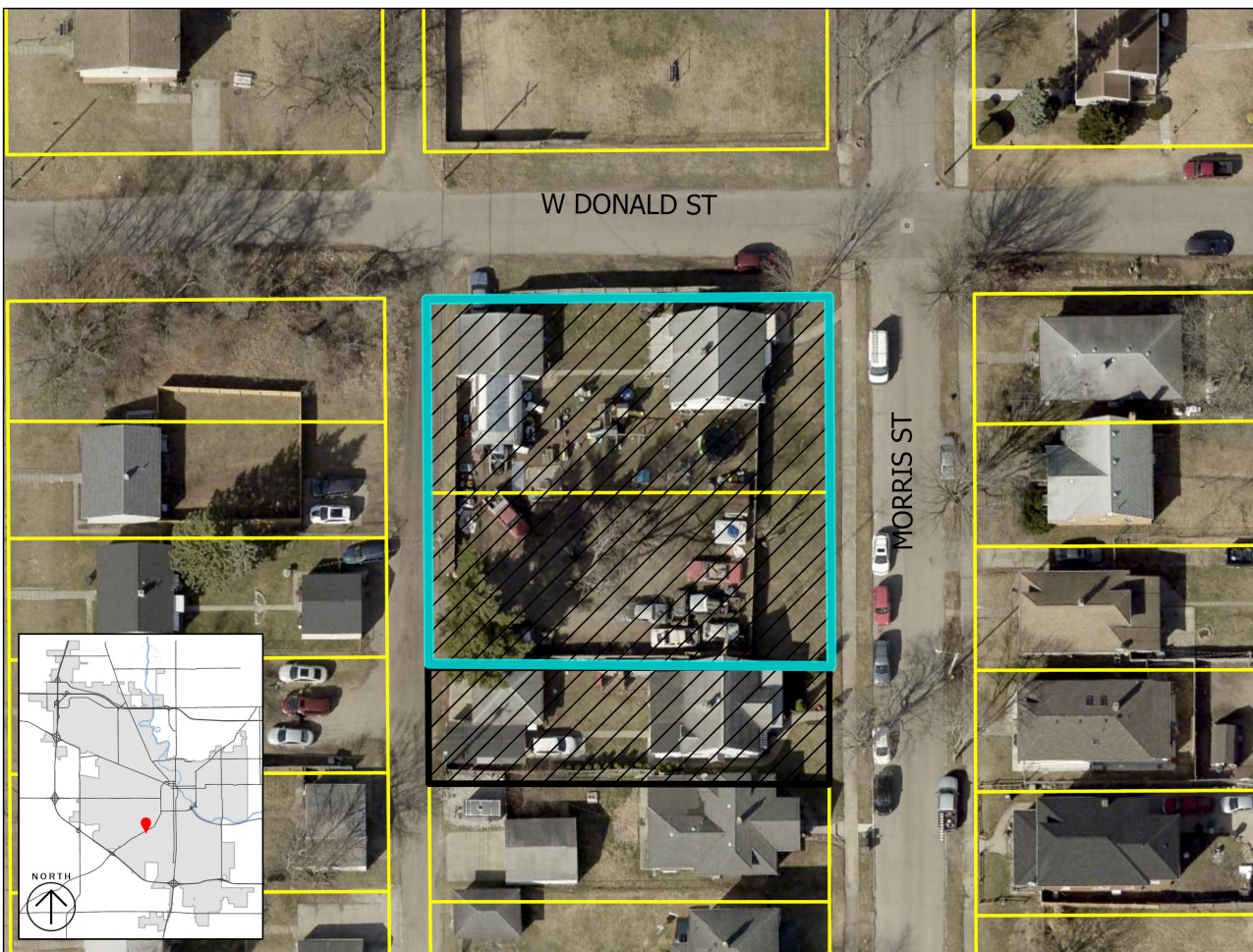
Project Summary

Build a privacy fence.

Requested Action

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

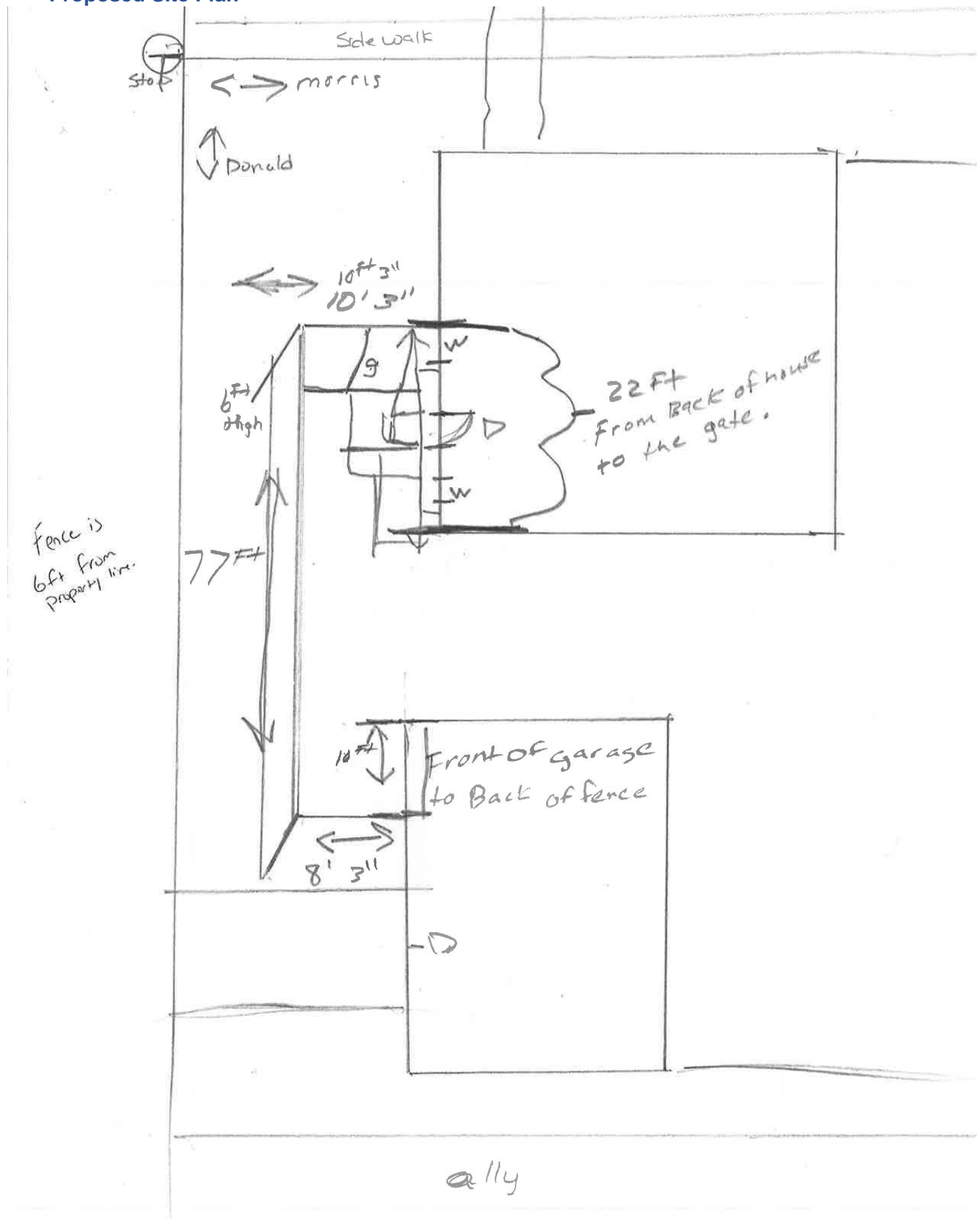
Site Location



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

Approval of the fence would be injurious to the public health, safety, and morals of the community. The establishment of a privacy fence in close proximity to the sidewalk negatively impacts the general welfare of the community by adversely impacting the pedestrian experience.

(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

Placing the 6' closed fence in close proximity to the sidewalk creates an unpleasant experience for pedestrians along Jacob Street. Allowing a privacy fence in an established corner yard may also adversely impact the value of adjacent properties within the same block and adversely impact the character of the neighborhood as a whole.

(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 not result in practical difficulties in the use of the property. Placing the fence in the allowed location would not limit the use of the backyard.

(4) The variance granted is the minimum necessary

The variance proposed is not the minimum necessary to utilize the property to its fullest extent. The same security and privacy can be achieved by placing the privacy fence in its allowed location. The primary building is relatively close to the property line. A code compliant location would not impact the use of the yard.

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

The variance is being requested in order to correct a hardship caused by the current owner. The fence was installed without the appropriate permit. If a permit was requested before the fence was installed, the property owner would have been aware of the development standards.

Analysis & Recommendation

Analysis: There are no practical difficulties for the petitioner which would necessitate a 6' fence in this location. The proposed fence is not consistent with the intent of the ordinances. If a Building permit was sought before the construction of the new fence, the applicant would have been aware of the zoning regulation.

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: 2621 MISHAWAKA AVE
Owner: JJB HOMES LLC

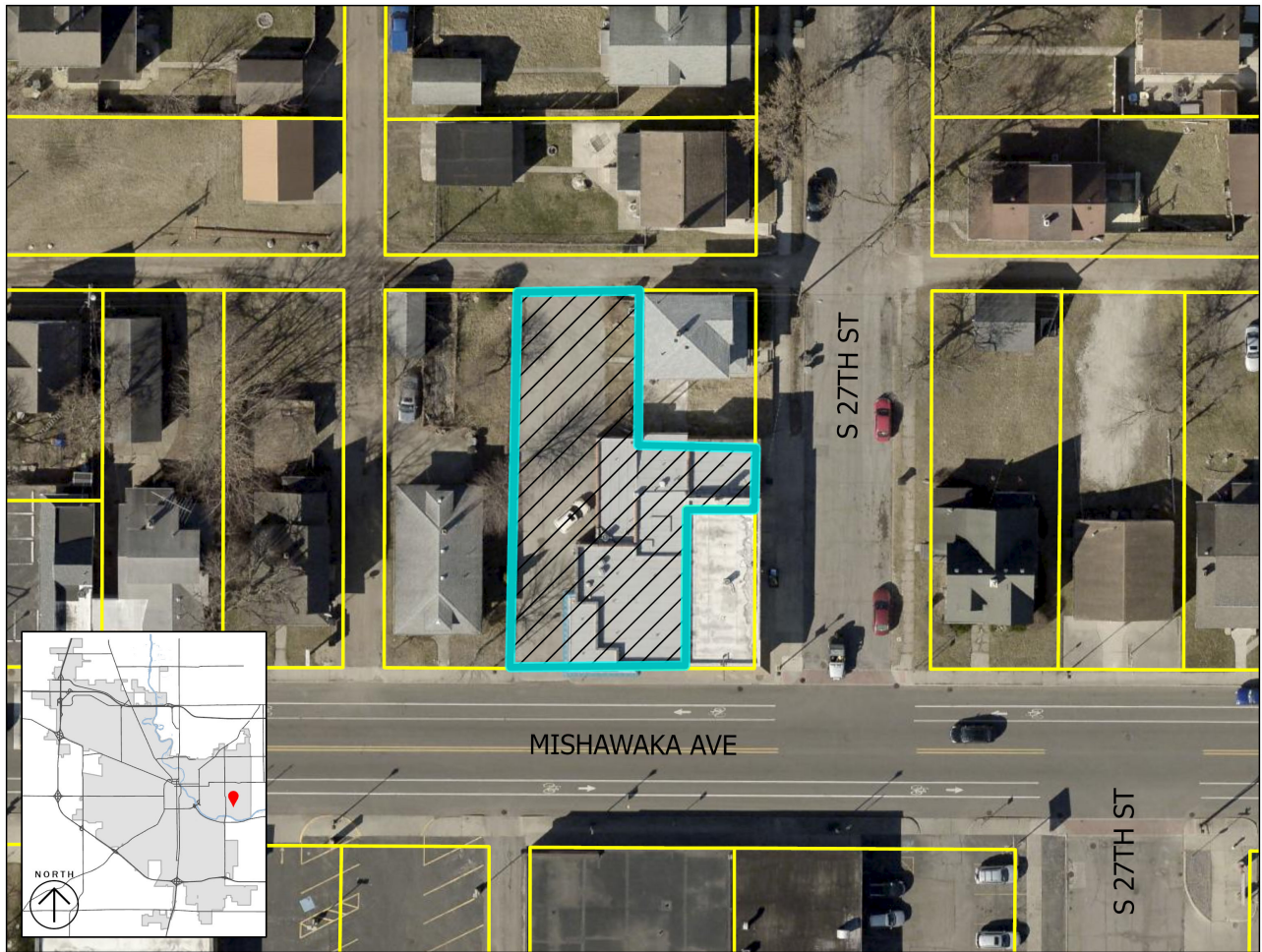
Project Summary

Establish a restaurant

Requested Action

Special Exception: Restaurant
Variance(s): 1) from the required 1 streetscape tree for every 30' of street frontage to none
2) from the required 1 shrub for every 5' of facade foundation landscaping to none

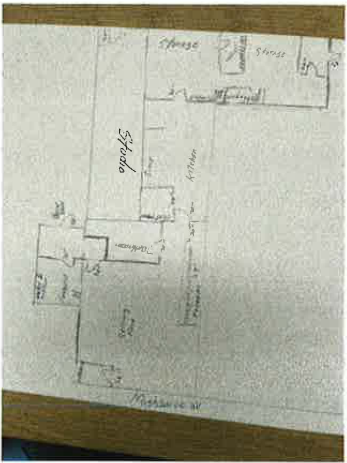
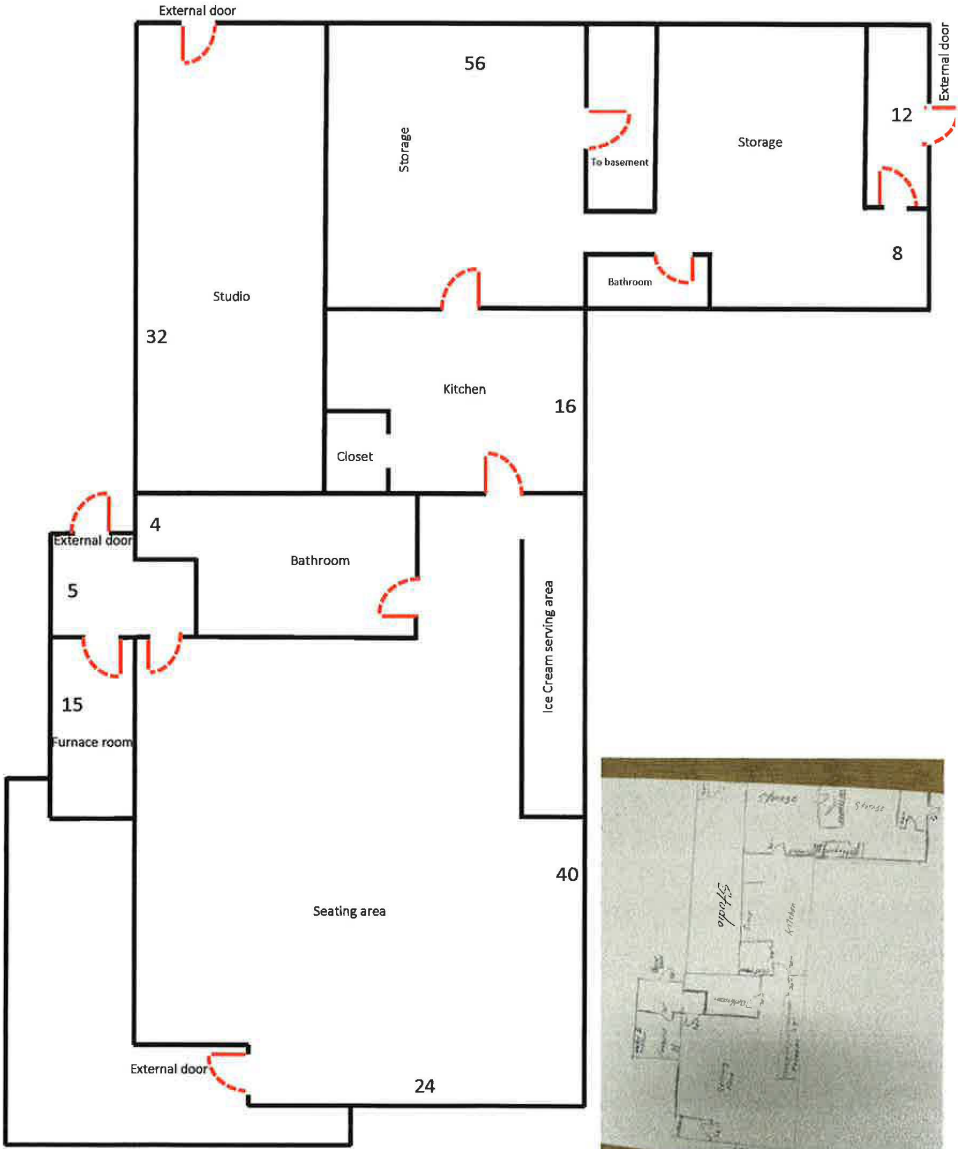
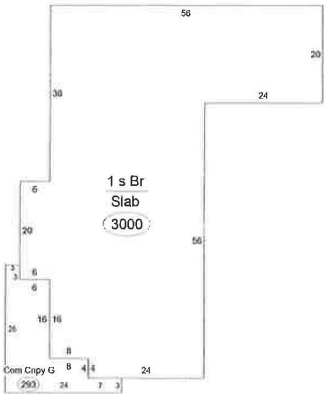
Site Location



Staff Recommendation

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

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 proposed use would be in a building that was previously a veterinary clinic along a commercial corridor, so it should not adversely impact the use or value of 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 Mishawaka Ave Corridor.

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

City Plan (2006) (Objective ED2) recommends the city "Retain existing businesses and recruit new ones to the city." Allowing a restaurant use on this site will help recruit a new business to the city in an appropriately located area.

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 should not be injurious to the public health, safety or general welfare of the community. The area was developed in an Urban manner pushing the buildings closer to the property line. Installation of the code compliant landscaping may reduce the sidewalk to a width that is not ADA compliant.

(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 a substantially adverse manner, The site has existed without foundation landscaping or streetscape trees since it was constructed. There will be no change that would affect the use or 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 terms of this Chapter would result in practical difficulties in the use of the property because the building was developed on the property line and there is no established tree lawn so the building would have to be demolished and relocated on the property.

(4) The variance granted is the minimum necessary

The variance requested is the minimum necessary because there is no space between the building and ROW line to install landscaping safely.

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

The variance granted does not correct a hardship caused by a former or current owner because the ROW lines are not determined by the property owners.

Analysis & Recommendation

Analysis: The site had been used as a veterinary clinic for many years. Allowing the use to be reestablish on the commercial corridor will allow a vacant building to be rehabilitated into an active business. The area was developed in an Urban manner pushing the buildings closer to the property line, installation of code compliant landscaping reduces ADA compliance and safety of pedestrian traffic.

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