

# City of South Bend

## BOARD OF ZONING APPEALS

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### AGENDA

**Monday, May 3, 2021 - 4:00 p.m.**  
County-City Building  
Fourth-Floor Council Chambers  
Virtual Option: [www.tinyurl.com/sbbza](http://www.tinyurl.com/sbbza)

#### PUBLIC HEARING:

- Location:** 904 WOODBINE WAY BZA#0051-21  
**Owner:** JOHN AND VICTORIA ERBY  
**Requested Action:** Variance(s): 1) From the 3' maximum fence height in an established corner yard to 6'  
**Zoning:** S1 Suburban Neighborhood 1
- Location:** 407, 411, 415, 419, 423, and 427 Frances Street BZA#0054-21  
**Owner:** RIVER WALK LLC  
**Requested Action:** Variance(s): 1) From the 5' minimum side yard setback to 0' for a deck over 30" tall; 2) From the 6' maximum wall or fence height to 8'; and 3) To allow an encroachment of a balcony in the required side yard  
**Zoning:** U1 Urban Neighborhood 1
- Location:** 1119 LINCOLNWAY WEST (As Tabled from April 5, 2021) BZA#0041-21  
**Owner:** WADAD EL-AMMORI  
**Requested Action:** Variance(s): 1) from the requirement that all vehicle sales or rental shall be located within a fully enclosed building or in an established rear yard and not visible from public right-of-way to allow vehicle sales in the established front yard, corner yard, and visible from public right-of-way. ; 2) from the maximum 3' height for a solid fence in an established corner yard to 6'; and 3) From the 60% minimum front facade transparency to 20%, and from the 20% minimum corner facade transparency to 0%  
- Special Exception: Vehicle Sales or Rental and Vehicle Service, Major  
**Zoning:** NC Neighborhood Center
- Location:** 2801 WESTERN AVE (As Tabled from April 5, 2021) BZA#0048-21  
**Owner:** CARL JR & JAYNE SUE WILLIAMS  
**Requested Action:** Special Exception: Vehicle Sales or Rental  
**Zoning:** NC Neighborhood Center
- Location:** 1614, 1618, and 1624 MARIETTA ST and 707, 709, BZA#0052-21  
713, and 717 DUBAIL AVE  
**Owner:** STEPHEN & RAQUEL STOREY  
**Requested Action:** Variance(s): 1) to allow accessory structures without a primary building  
- Use Variance: Plant Agriculture in a U1 Urban Neighborhood 1 District  
**Zoning:** U2 Urban Neighborhood 2

6. **Location:** 601 EDDY ST and 605 EDDY ST

BZA#0053-21

**Owner:** JACKSON TRANSPORT LLC

**Requested Action:** Special Exception: Beer/Wine/Liquor Sales & Tobacco/Hookah/ Vaping Sales

**Zoning:** NC Neighborhood Center

**ITEMS NOT REQUIRING A PUBLIC HEARING:**

1. Findings of Fact – April 5, 2021
2. Minutes – April 5, 2021
3. Other Business
4. Adjournment

**NOTICE FOR HEARING AND SIGN IMPAIRED PERSONS**

Auxiliary Aid or other services may be available upon request at no charge. Please give reasonable advance request when possible.

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**Property Information**

Location: 904 WOODBINE WAY  
Owner: JOHN AND VICTORIA ERBY

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**Project Summary**

To replace the existing chain link fence with a privacy fence.

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**Requested Action**

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

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**Site Location**

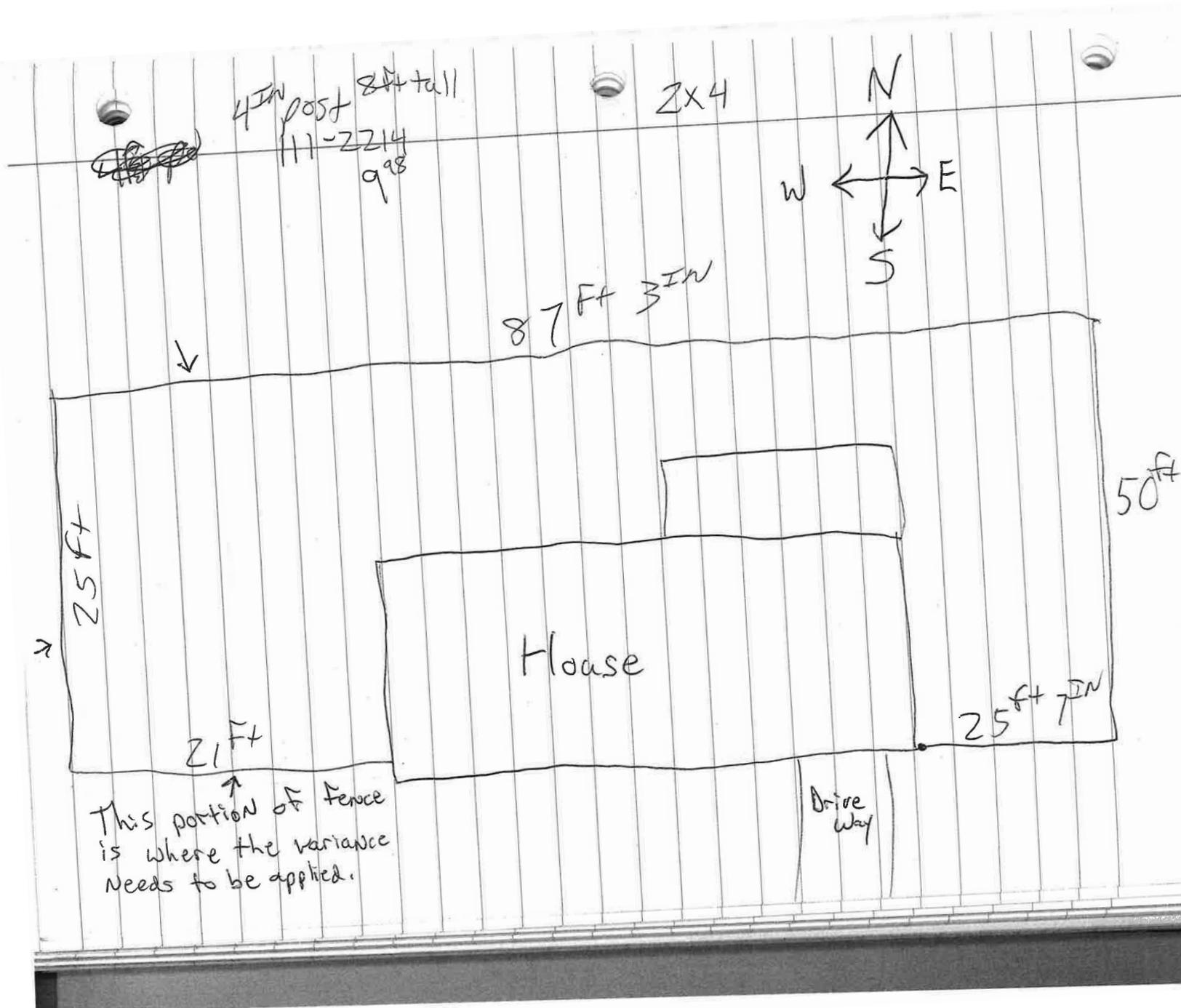


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**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance as requested, subject to a 15' setback from Woodbine.

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 in an established corner yard), 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 corner yard along a 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**

Because of the location of the home as it relates to the corner of the property, strict application of the ordinance would limit the privacy fence to a very small portion of the lot creating some practical difficulties.

**(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 15' from Woodbine Way in order to align with the required 15' minimum (corner) building setback for the property.

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

The hardship was created when the house was placed on the property and not caused by the current owner.

## Analysis & Recommendation

**Analysis:** Due to the location of the existing home being at a non-standard angle fronting Ardmore Trail, approving a privacy fence in the established corner yard with a 15' setback from Woodbine 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 as requested, subject to a 15' setback from Woodbine.

**Property Information**

Location: 407, 411, 415, 419, 423, and 427 Frances Street  
Owner: RIVER WALK LLC

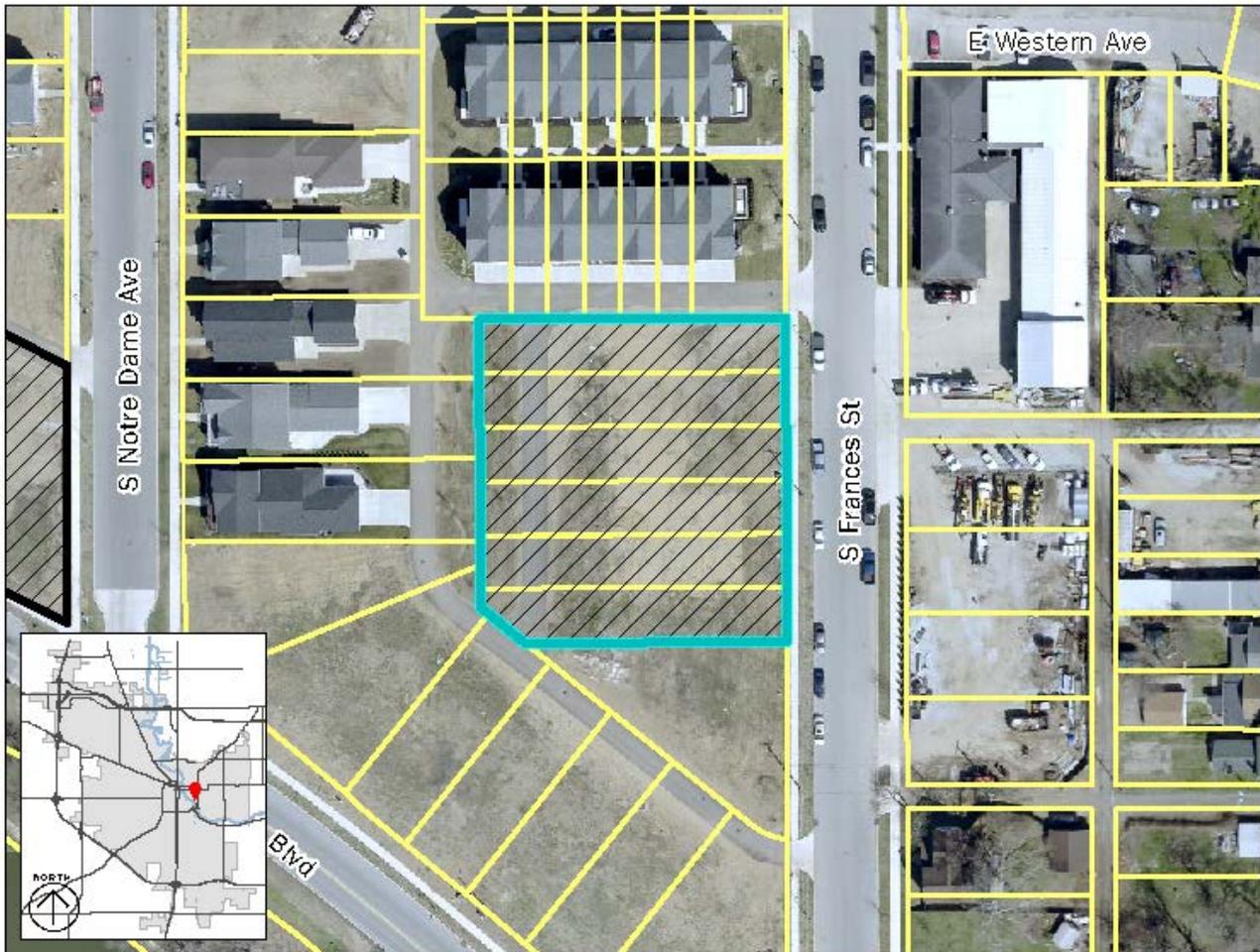
**Project Summary**

The allow for outdoor deck space and privacy screening in side yards opposite the shared property line for the attached home units.

**Requested Action**

Variance(s): 1) From the 5' minimum side yard setback to 0' for a deck over 30" tall; 2) From the 6' maximum wall or fence height to 8'; and 3) To allow an encroachment of a balcony in the required side yard

**Site Location**



**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board deny the 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 could be injurious to the general welfare of the community. The variances requested may negatively impact the use and character of the area by impeding side setbacks intended to protect adequate light and air between buildings.

**(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**

While the use of each side yard will be enhanced as private space, the overall layout of development may have an adverse impact on surrounding property values by creating a development out of character with the intent and standards of the district.

**(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 result in practical difficulties in the use of the property. The property is not unique from other dense urban development and could continue to be used for residential without the variances requested.

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

Because there is no hardship on the property, the same purpose as stated in the petitioner's request could be achieved through a patio and 6' fence as allowed in the zoning ordinance. Granting the variances would not be minimum request necessary for the property. While what is shown does not have a roof, the 8' walls essentially create outdoor rooms which, in turn, creates the character of a longer series of attached town homes, for which the property is not properly zoned.

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

The hardship is created by the size of the lots, the placement of the structures on the layout, and the layout of the residential units, all of which were created by the owner. The owner installed the fence and decking without a building permit at an height 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:** There are no practical difficulties or unique physical characteristics that support the variances requested. The hardship is created by the lot layout and building design chosen by the petitioner. The petition does not meet the required criteria.

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

### Property Information

Location: 1119 LINCOLNWAY WEST  
Owner: WADAD EL-AMMORI, Ali Elammori

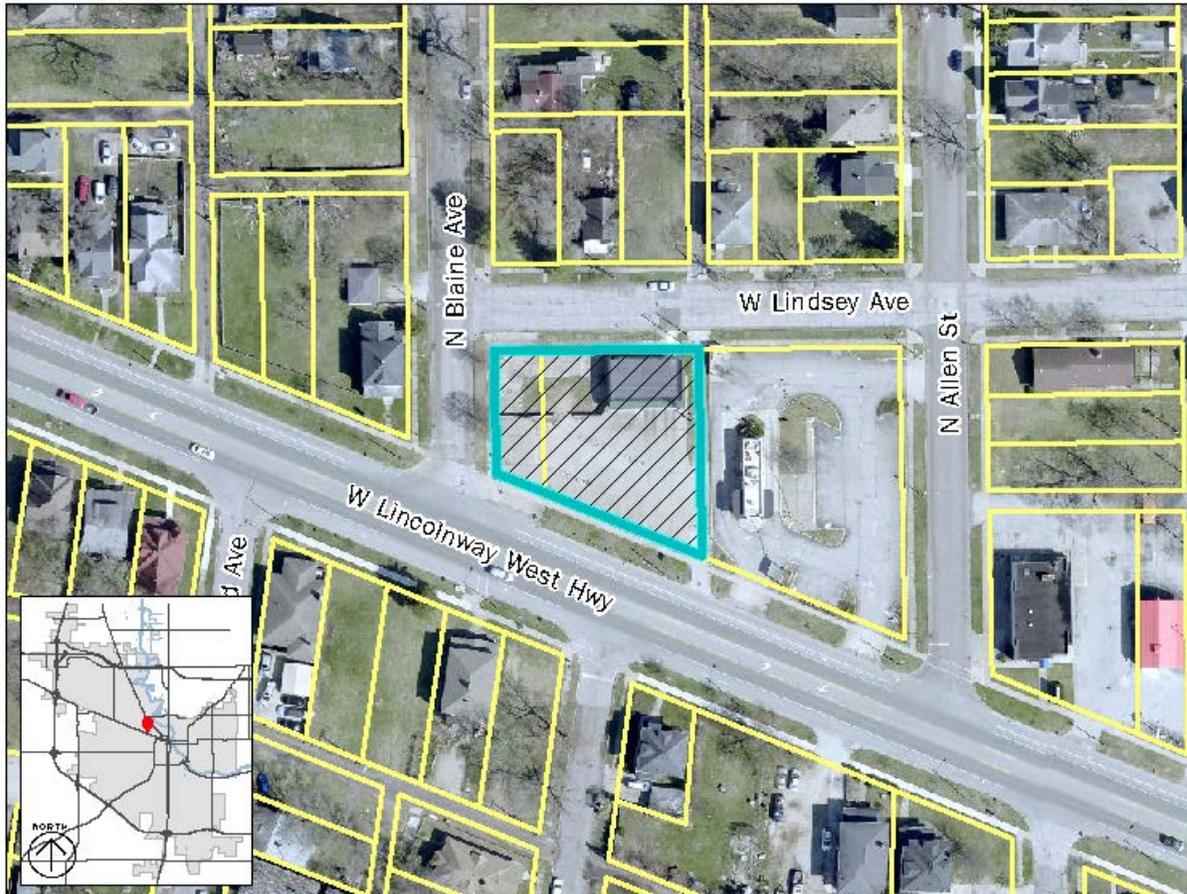
### Project Summary

A special exception to allow the use of the site for vehicle sales and repair.

### Requested Action

Special Exception: Vehicle Sales or Rental and Vehicle Service, Major  
Variance(s): 1) from the requirement that all vehicle sales or rental shall be located within a fully enclosed building or in an established rear yard and not visible from public right-of-way to allow vehicle sales in the established front yard, corner yard, and visible from public right-of-way; 2) from the maximum 3' height for a solid fence in an established corner yard to 6'; and 3) From the 60% minimum front facade transparency to 20%, and from the 20% minimum corner facade transparency to 0%

### Site Location



### Staff Recommendation

Based on the information available to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation. The Staff recommends the Board deny 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 uses could be injurious to the general welfare by degrading the urban environment developing along Lincoln Way West.

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

The proposed uses, both auto sales and auto repair, could adversely affect the use of the adjacent areas by further reinforcing the auto-centric nature of Lincoln Way West. There has been renewed interest, both from local neighborhood planning efforts and City initiatives, in restoring the pedestrian orientated nature of Lincoln Way West. Expanding the use of this property to two auto-centric uses would further degrade that progress.

**(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 proposed uses of auto sales and auto repair are not consistent with the character of the Neighborhood Center zoning district. The intent of the Neighborhood Center zoning district is to promote the development of higher intensity, urban neighborhood centers at a pedestrian orientated scale. The use of auto sales is not consistent with this intent.

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

The proposed uses are not compatible with the recommendations of the Comprehensive Plan. The West Side Main Streets Plan (2015), an amendment to the Comprehensive Plan, encouraged restoration of the historic walkable development pattern along Lincoln Way West. Allowing the proposed uses would be counter to that intention.

### 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 variances that substantially affect the character of the development in a manner that is not consistent with the district could be injurious to 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 adjacent properties could be adversely affected by the variances being granted. By allowing car sales in the established front yard, it further degrades the pedestrian experience along Lincoln Way West while discouraging a walkable 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 Zoning Ordinance would not result in practical difficulties in the use of the property. The property could be used for any permitted use within the Ordinance. When a Special Exception is required, it is often because strict adherence to the development standards of the district are critical in ensuring the use is consistent with the intent of that district.

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

The variances requested are not the minimum necessary. The standards for Auto Sales and Auto Repair in a Neighborhood Center District are intended to allow the uses while keeping to the traditional urban fabric of the district. The privacy fence is not a necessity of the proposed use. Improvements could be made to the building to increase transparency.

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

The variances proposed are directly linked to the use proposed on the property, thereby created by the owner of the property.

## Analysis & Recommendation

**Analysis:** The variances requested are not consistent with the intent of the Neighborhood Center District. The standards for Auto Sales and Auto Repair in a Neighborhood Center District are intended to allow the uses while keeping to the traditional urban fabric of the district. By allowing broad variances from those standards, the zoning ordinance's ability to produce desired outcomes is weakened.

The proposed uses, both auto sales and auto repair, could adversely affect the use of the adjacent areas by further reinforcing the auto-centric nature of Lincoln Way West. There has been renewed interest, both from local neighborhood planning efforts and City initiatives, in restoring the pedestrian orientated nature of Lincoln Way West. Expanding the use of this property to two auto-centric uses would further degrade that progress.

**Staff Recommendation:** Based on the information available to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation. The Staff recommends the Board deny the variances, as presented.

**Property Information**

Location: 2801 WESTERN AVE  
Owner: CARL JR & JAYNE SUE WILLIAMS, Aaron Wills

**Project Summary**

Special exception for used auto sales at the existing building.

**Requested Action**

Special Exception: Vehicle Sales or Rental

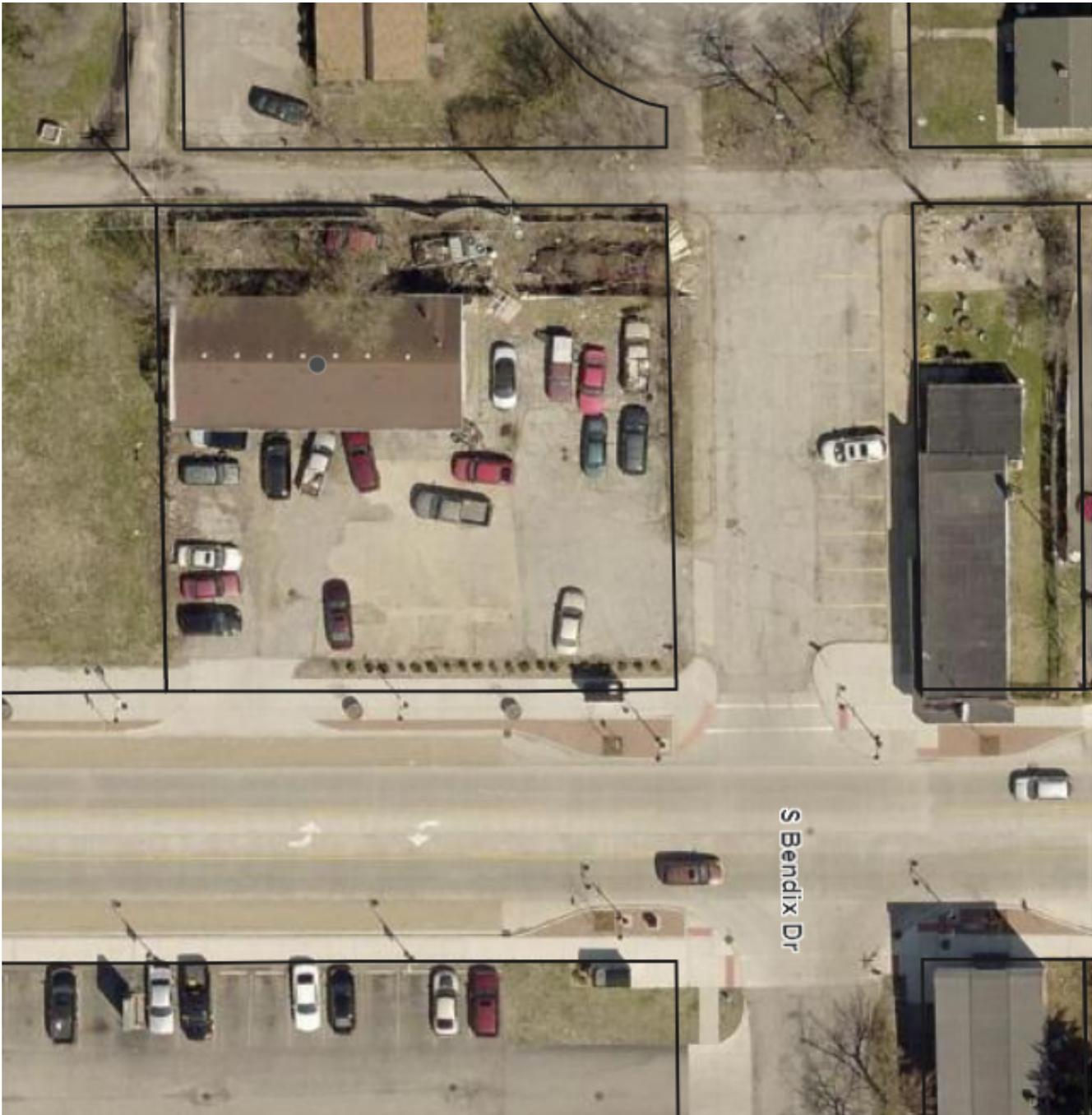
**Site Location**



**Staff Recommendation**

Based on the information available prior to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation.

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;**

Western Avenue has become a center of renewed investment, both private and public, with the intention of creating a walkable and primarily urban space. The proposed use could be injurious to the general welfare by degrading the urban environment developing along Western Avenue.

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

Over the past five years, the City in partnership with local neighborhood organizations, businesses, and residents have taken steps to improve the walkability, visual appeal, and usability of Western Avenue as a vital corridor through the western portion of South Bend. These steps have materialized into large public investment in improving Western Avenue as well as small scale investment from private actors. Approving the Special Exception and allowing for an auto-centric use pushes against the work done in improving Western Avenue. The use of this site for car sales may adversely affect usability of this section of Western as a vital neighborhood center.

**(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 proposed use of auto sales is not consistent with the character of the Neighborhood Center zoning district nor of the section along Western Ave. where this proposed use would take place. The intent of the Neighborhood Center zoning district is to promote the development of higher intensity, urban neighborhood centers at a pedestrian orientated scale. The use of auto sales is not consistent with this intent.

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

The proposed use is not compatible with the recommendations of the Comprehensive Plan. The West Side Main Streets Plan (2015), an amendment to the Comprehensive Plan, encouraged restoration of the historic walkable development pattern along Western Avenue. Allowing the proposed use would be counter to that intention. This property is located in a West Site Main Streets Plan node, where walkability is even further emphasized.

## Analysis & Recommendation

**Analysis:** Over the past five years, the City has partnered with local neighborhood organizations, businesses, and residents to take steps to improve the walkability, visual appeal, and usability of Western Avenue as a vital corridor through the western portion of South Bend. The proposed use of auto sales is not consistent with the character of the Neighborhood Center

zoning district, nor the character of the section along Western Avenue where this proposed use would take place. The proposed use is not consistent with the West Side Main Streets Plan, which shows this section of Western as a pedestrian friendly mixed-use node, key in creating a vital neighborhood center.

**Staff Recommendation:** Based on the information available prior to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation.

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**Property Information**

Location: 1614, 1618, and 1624 MARIETTA ST and 707, 709, 713, and 717 DUBAIL AVE  
Owner: STEPHEN & RAQUEL STOREY

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**Project Summary**

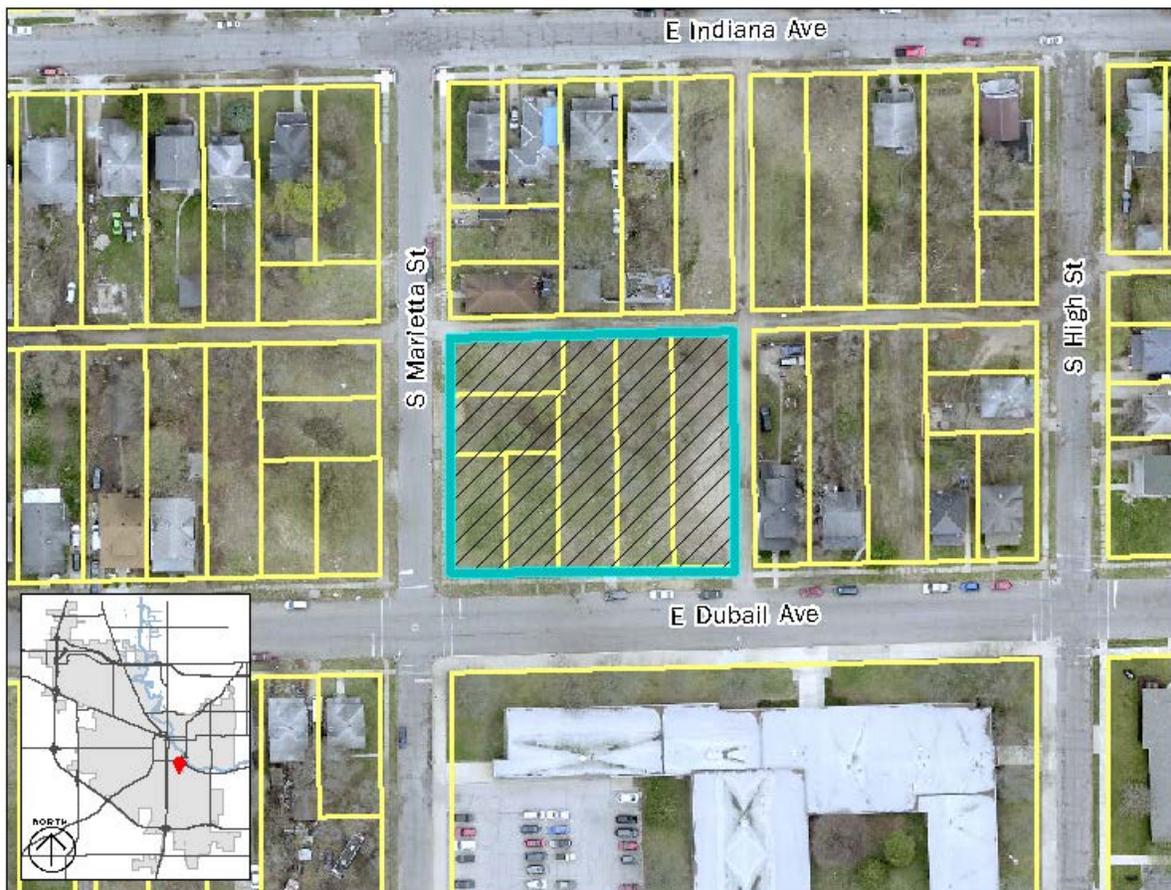
To allow a large fruit, flower, vegetable, and herb garden. The fresh produce will be grown for personal use and for sale at a local farmer's market.

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**Requested Action**

Use Variance: Plant Agriculture in a U1 Urban Neighborhood 1 District  
Variance(s): 1) to allow accessory structures without a primary building

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**Site Location**

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**Staff Recommendation**

Based on the information provided prior to public hearing, the Staff recommends the Board send the Use Variance to the Common Council with a favorable recommendation, subject to the site being held to any future urban-agriculture ordinance established.

Based on on the evidence provided prior to public hearing, the Staff recommends the Board approve the variance as presented, subject to the following: 1) the shed being located with a minimum setback of 60' from the front or corner lot lines; and 2) the Use Variance being approved by Council.

Proposed Site Plan



### Criteria for Decision Making: Use Variance

**A Use Variance may only be granted upon making a written determination, based upon the evidence presented at a public hearing, that:**

**(1) The approval will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;**

The property is currently vacant. The proposed use would put the property back to a productive use should 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 lot included in the variance will not be affected in a substantially adverse manner;**

As the current land is vacant, the proposed use should not have any more adverse affects than the current situation. The site is large enough to provide adequate space for the desired use while the entire property is surrounded by right-of-way providing adequate buffering to the neighboring residential properties.

**(3) The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the lot for which the variance is sought;**

The strict application of the terms of the zoning ordinance would not allow for the use to take place in any district except as a Special Exception in C Commercial and I Industrial. Neither of those districts would be appropriate for the proposed property.

**(4) The approval does not interfere substantially with the comprehensive plan.**

The approval of the desired Use Variance does not substantially interfere with the Comprehensive Plan. The use would help achieve Object ED7 "Support neighborhood-based economic development" by allowing for the creative use of vacant lots within the neighborhood.

### 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 structures would be related to the new primary use. If properly placed on the property, they should not be injurious to the public health, safety, morals and general welfare of the community.

**(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner**

The construction of accessory structures would help in the administration of the property as an agricultural endeavor. With proper location on the property, the variance should not adversely affect the the use and value of the 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 the zoning ordinance would prohibit the property from being developed to its fullest extent as a Plant Agricultural use. If the Use Variance is granted, this would result in practical difficulties.

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

The requested fence is consistent with what would be permitted in an established front yard in this district. The proposed shed is likely the minimum necessary to support the use of the property. However, the placement should be carefully considered so that the character is consistent with the adjacent residentially used properties.

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

The proposed variances are related to the requested Use Variance and not to correct a hardship caused by the current or former owner of the property.

## Analysis & Recommendation

**Analysis:** Granting the Use Variance for Plant Agriculture will allow for the adaptive reuse of the vacant lots at this location. The variances will allow for accessory structures associated with the new use.

**Staff Recommendation:** Based on the information provided prior to public hearing, the Staff recommends the Board send the Use Variance to the Common Council with a favorable recommendation, subject to the site being held to any future urban-agriculture ordinance established.

Based on the evidence provided prior to public hearing, the Staff recommends the Board approve the variance as presented, subject to the following: 1) the shed being located with a minimum setback of 60' from the front or corner lot lines; and 2) the Use Variance being approved by Council.

**Property Information**

Location: 601 EDDY ST and 605 EDDY ST  
Owner: JACKSON TRANSPORT LLC, Advisors

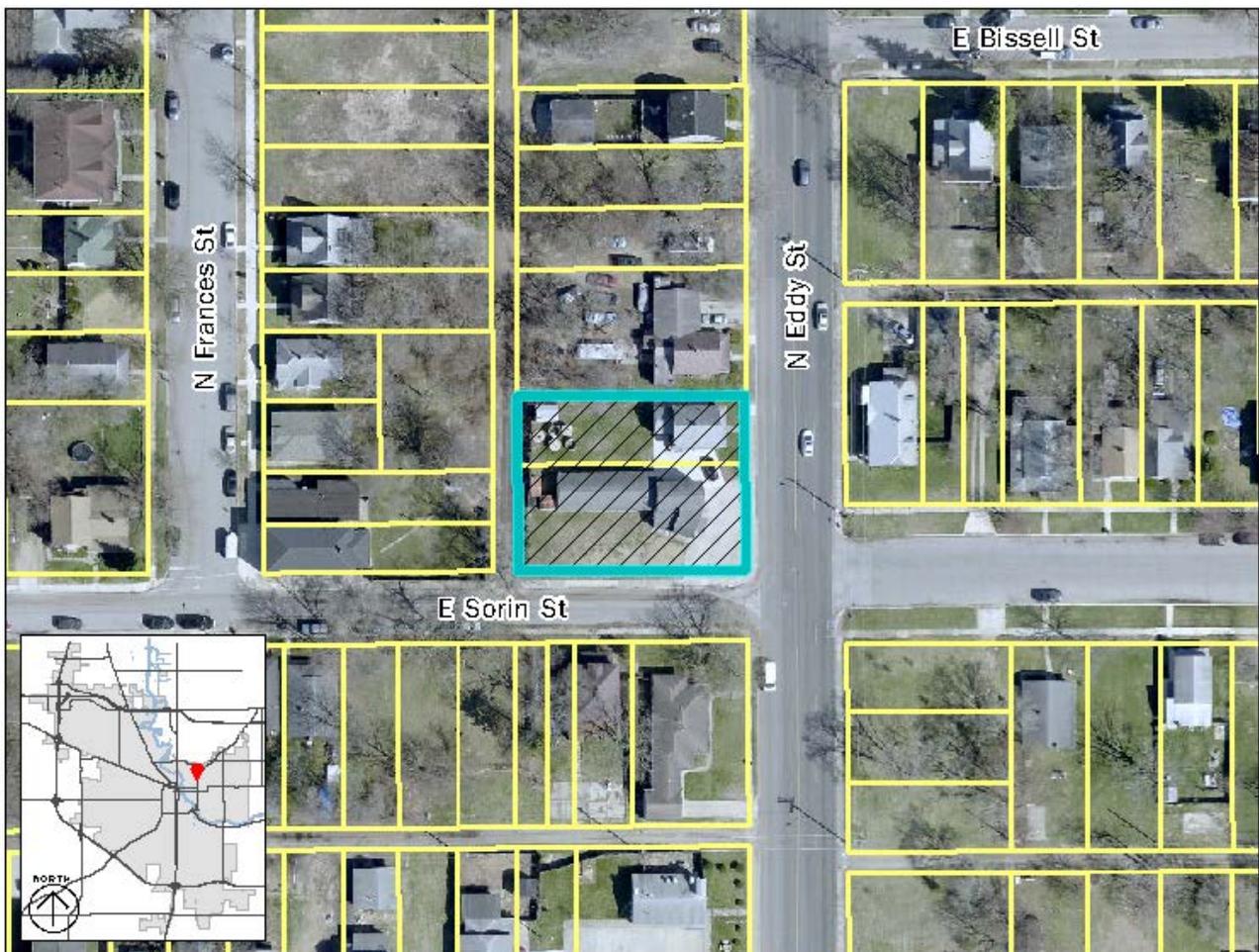
**Project Summary**

To demolish both existing structures and build new 3600-5600 sq/ft building for a liquor and Cigar Shop with on-line ordering & delivery services.

**Requested Action**

Special Exception: Beer/Wine/Liquor Sales & Tobacco/Hookah/ Vaping Sales

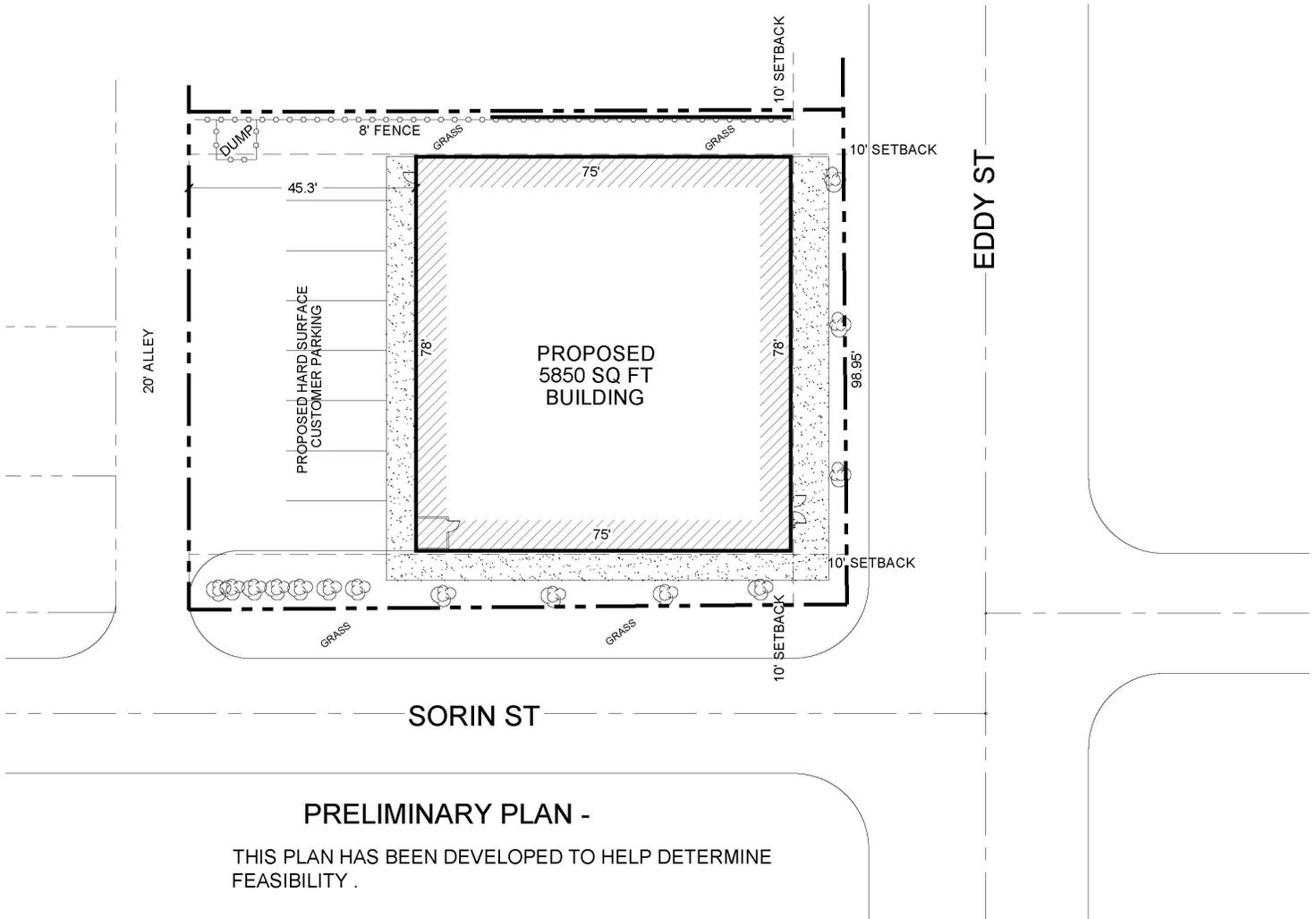
**Site Location**



**Staff Recommendation**

Based on the information available prior to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation.

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 uses could be injurious to the general welfare by degrading the residential character still remaining along this section of Eddy Street.

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

The proposed uses could be injurious to the use and value of adjacent properties, because it may have a detrimental affect on the residential uses that are in close proximity.

**(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 proposed use is not consistent with the character of the surrounding properties. In this section of Eddy Street, the surrounding properties have mostly retained their residential character. While the property is zoned for mixed uses, both alcohol sales and tobacco sales are not consistent with the character of a largely residential neighborhood.

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

The proposed uses are not compatible with City Plan (2006) Policy LU 2.4 Provide buffer spaces between non-compatible uses. Demolishing two smaller structures, one of which is residential, to build a larger retail establishment removes the buffers inherent in the existing uses. This area is also part of an active planning process. Approving a land-use of this nature prior to the completion of the plan may negatively impact the ability to achieve goals established within that plan.

## Analysis & Recommendation

**Analysis:** The proposed use is not consistent with the character of the surrounding properties. In this section of Eddy Street, the surrounding properties have retained their residential character. While the property is zoned for mixed uses, both alcohol sales and tobacco sales are not consistent with the character of a largely residential neighborhood.

**Staff Recommendation:** Based on the information available prior to the public hearing, the Staff recommends the Board send the petition to the Common Council with an unfavorable recommendation.