

# City of South Bend

## BOARD OF ZONING APPEALS

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### AGENDA

**Monday, August 2, 2021 - 4:00 p.m.**

County-City Building

Fourth-Floor Council Chambers

[www.tinyurl.com/sbbza](http://www.tinyurl.com/sbbza)

#### PUBLIC HEARING:

- Location:** 1705 SOUTH BEND AVE BZA#0065-21  
**Owner:** IRISH DREAMS INC  
**Requested Action:** Variance(s): 1) From the maximum height of 40' and 3 stories to 61' and 5 stories  
**Zoning:** NC Neighborhood Center
- Location:** 4921 WESTERN AVE BZA#0068-21  
**Owner:** EXPO EMPIRE LLC  
**Requested Action:** Variance(s): 1) From the 10' minimum setback for parking to 5' along Summit Drive; and 2) To allow drive-through stacking in an established corner yard  
**Zoning:** C Commercial
- Location:** 2112, 2036 and 2046 SOUTH BEND AVE BZA#0069-21  
**Owner:** DEV H12 LLC  
**Requested Action:** Variance(s): 1) From the maximum 120 sq.ft. for an exempt flag to 500 sq.ft.; and 2) From the maximum 40' in height for an accessory structure to 60'  
**Zoning:** C Commercial
- Location:** 1314 COLLEGE ST BZA#0070-21  
**Owner:** KENNETH J SWANSON  
**Requested Action:** Variance(s): 1) From the required location of a garage either at 5' or not less than 18' from an alley to 7'  
**Zoning:** U1 Urban Neighborhood 1
- Location:** 1400 IRELAND BZA#0071-21  
**Owner:** TARGET CORP ATTN: Mathew Flansburg  
**Requested Action:** Variance(s): 1) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 40 sq.ft. at 12' (Beacon Signs); 2) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 11 sq. ft. at 7' (Post and Panel Signs); and 3) To allow internally illuminated parking lot signs  
**Zoning:** C Commercial

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

6. **Location:** 304 Main STREET BZA#0072-21  
**Owner:** ST JOSEPH COUNTY PUBLIC LIBRARY  
**Requested Action:** Variance(s): 1) To allow internally illuminated parking lot (directional) signs; and 2) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 9 sq.ft. at 4'-6"  
**Zoning:** DT Downtown
7. **Location:** 701 PORTAGE AVE BZA#0073-21  
**Owner:** SEVEN ENTROPY DESIGN STUDIO INC  
**Requested Action:** Variance(s): 1) To allow a parking lot in an established front and corner yard; 2) From the minimum 24' parking drive aisle width to 12'; 3) From the requirement that all drives and off-street parking areas be hard surfaced to allow crushed lime stone gravel surface; 4) From the required 1 ADA parking space on site, to none; 5) From required Type 1 Parking Area Screening to none; and 6) From the required Streetscape Trees to no new additional trees  
**Zoning:** UF Urban Neighborhood Flex
8. **Location:** 1093 RIVERSIDE DR BZA#0074-21  
**Owner:** WILLIAM B SKIDMORE  
**Requested Action:** Variance(s): 1) From the 5' minimum side setback to 0'  
**Zoning:** U1 Urban Neighborhood 1
9. **Location:** 510 MAIN ST BZA#0075-21  
**Owner:** CIVIL CITY OF SOUTH BEND  
**Requested Action:** Modification of Written Commitments to allow the extension of the use as the Weather Amnesty  
**Zoning:** DT Downtown

**ITEMS NOT REQUIRING A PUBLIC HEARING:**

1. Findings of Fact – July 6, 2021
2. Minutes – July 6, 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.

**Property Information**

Location: 1705 SOUTH BEND AVE  
Owner: IRISH DREAMS INC

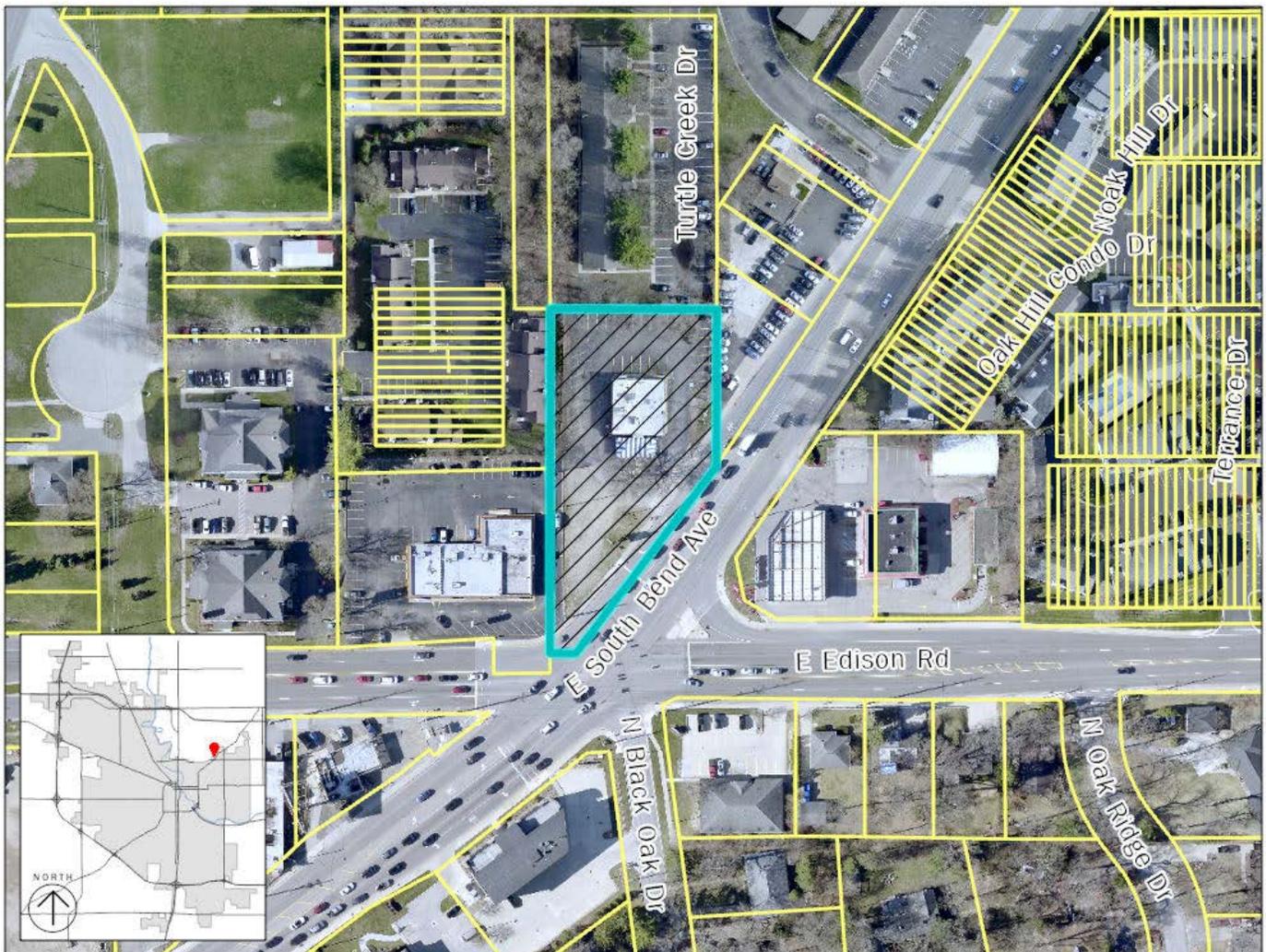
**Project Summary**

Development of a multi-story mixed use multi-family project with commercial/retail at the main level along with a podium that houses covered parking vehicles.

**Requested Action**

Variance(s): 1) From the maximum height of 40' and 3 stories to 61' and 5 stories

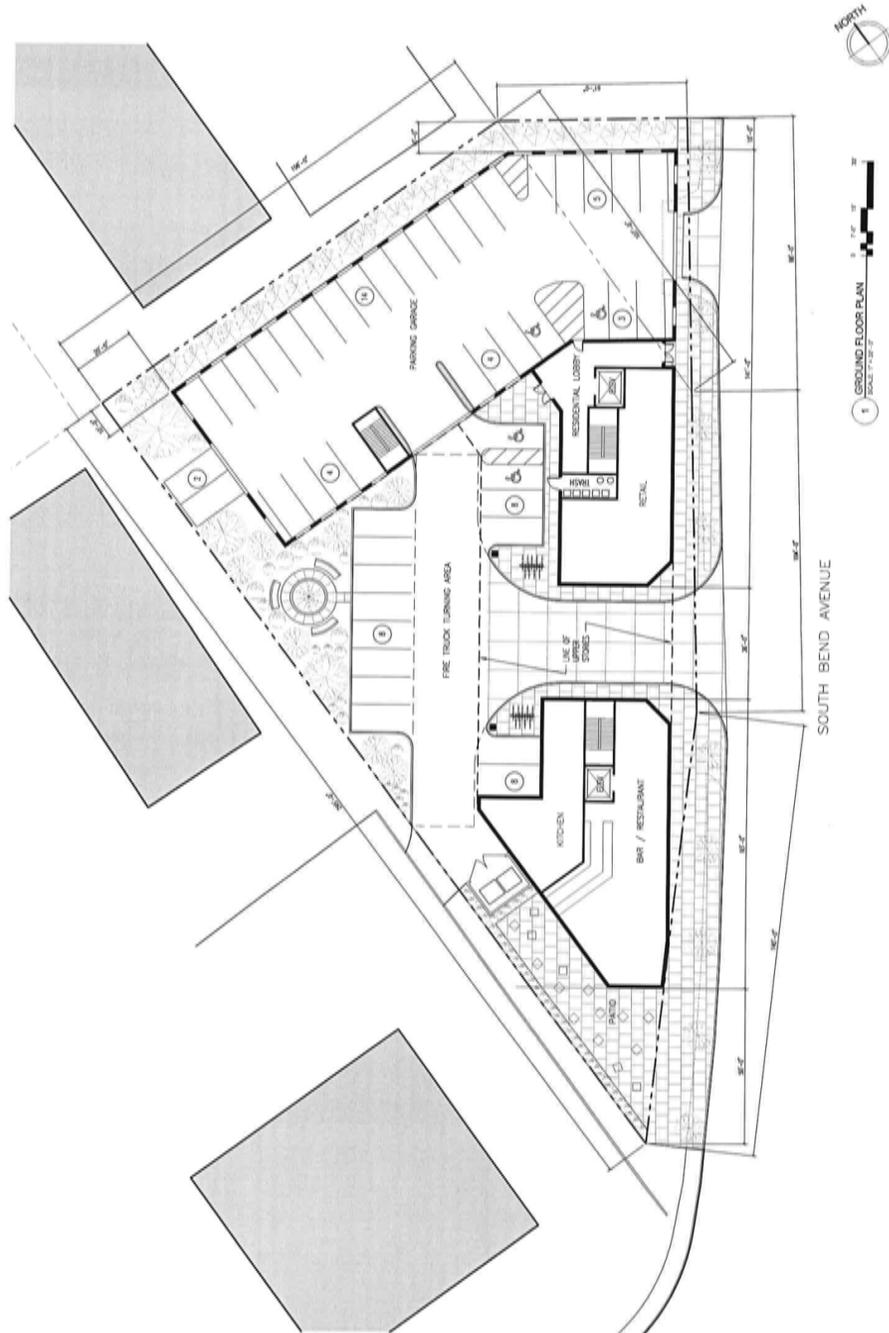
**Site Location**



Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to limiting the five story area to the south-eastern wing of the building along State Road 23.

Proposed Site Plan

<p><b>KILL</b> ARCHITECTURE ARCHITECTURE PLANNING LANDSCAPE ARCHITECTURE INTERIOR DESIGN</p> <p>GREGORY A. KILL ARCHITECT ARCHITECT 974.288.2854 FAX 974.288.2123 www.killarchitect.com</p>	<p>NO USE FOR CONSTRUCTION PERMITS OR OTHER REGULATORY AGENCIES WITHOUT THE ARCHITECT'S SIGNATURE</p>	<p>K.A.P. - 21.03.11 SCHEMATIC DESIGN</p> <p><b>1 7 0 5</b> SOUTH BEND AVE MIXED USE DEVELOPMENT</p> <p>1000 SOUTH BEND AVE SOUTH BEND, IN 46708 21.03.11</p>	<p><b>GROUND FLOOR PLAN</b></p>	<p>DATE: APR 2, 2021 URGENT SUBMITTAL</p>	<p>REVISED:</p>		<p><b>A1</b></p>



## 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**

State Road 23 is a main commercial corridor into the city. A height increase in this area should not affect 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**

Because the site is located in an area with no S1, U1, or U2 zoning, the proposed variance should not adversely affect the use or value of adjacent properties. The proposed use is predominately consistent with the standards of the NC District. The site is surrounded by commercial and multiunit residential uses. The extensive right-of-way width of State Road-23 makes a building at this height reasonable. Consideration should be given to the multiunit residential west and north of the site by limiting the use of the rooftop features.

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

The site geometry and constrained access create a practical difficulties for the property. The width of the street, as well as the volume of traffic along the corridor, increases the difficulties of developing the site. In order the accommodate access and maneuvering for the emergency vehicles, the building footprint of the site is limited unless a podium construction method is utilized.

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

The proposed development is consistent with the intent of the NC District and the Ordinance. The building was designed to minimize the appearance of the upper floor from the public right-of-way.

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

The shape of the property and the width of the adjacent right of way was not created by the current or previous owner.

## Analysis & Recommendation

**Analysis:** The unique shape and topography of the property, as well as being located along a significant corridor with a wide right-of-way, creates a hardship in developing the site in a manner consistent with the intent of the NC Neighborhood Center District. The variance requested will allow for a mixed-use urban development along a major corridor of the City.

**Staff Recommendation:** Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to limiting the five story area to the south-eastern wing of the building along State Road 23.



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**Property Information**

Location: 4921 WESTERN AVE  
Owner: EXPO EMPIRE LLC, Vequity LLC

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**Project Summary**

To allow proposed new construction of 6,608 square foot retail center with an endcap drive-through.

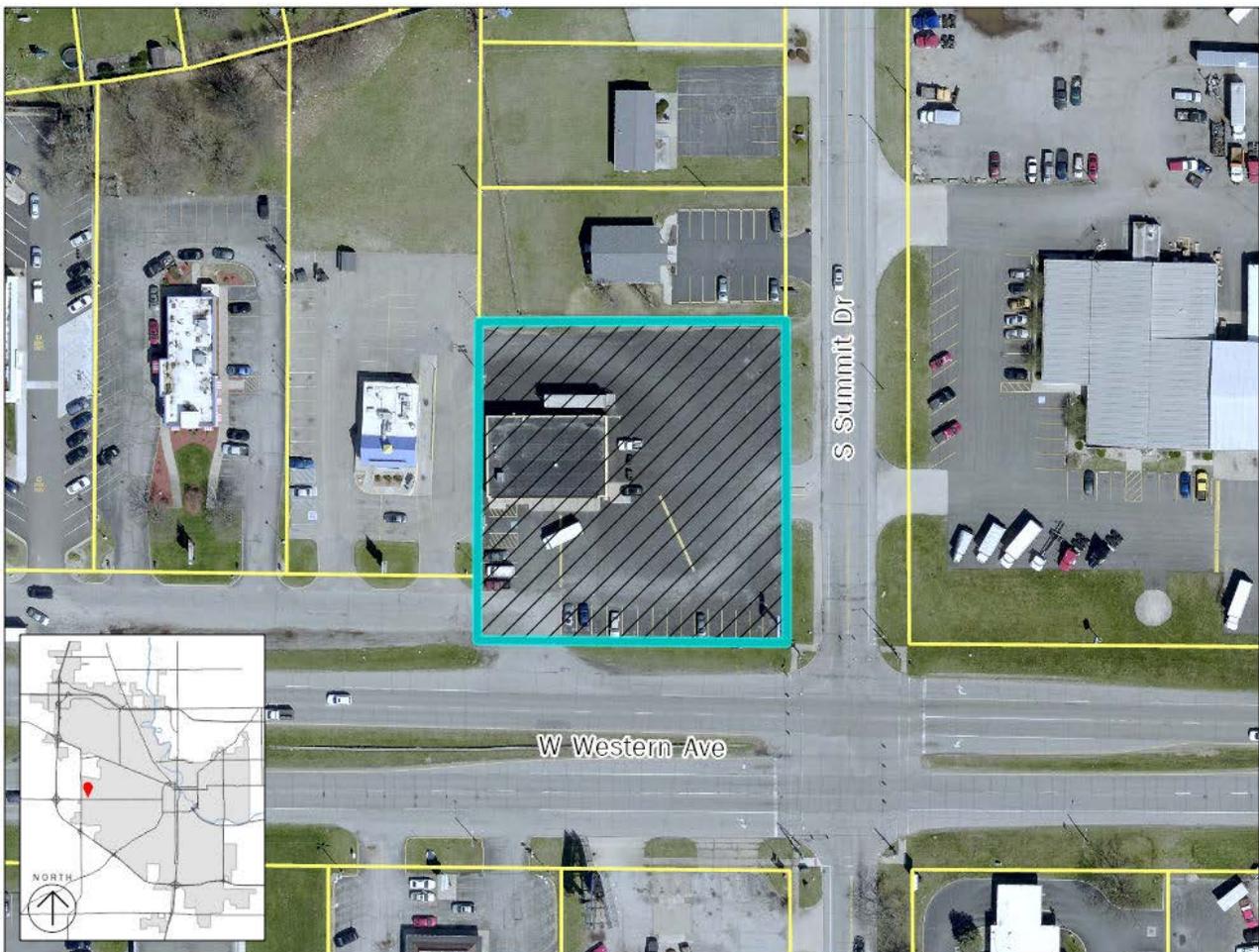
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**Requested Action**

Variance(s): 1) From the 10' minimum setback for parking to 5' along Summit Drive  
2) To allow drive-through stacking in an established corner yard

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**Site Location**

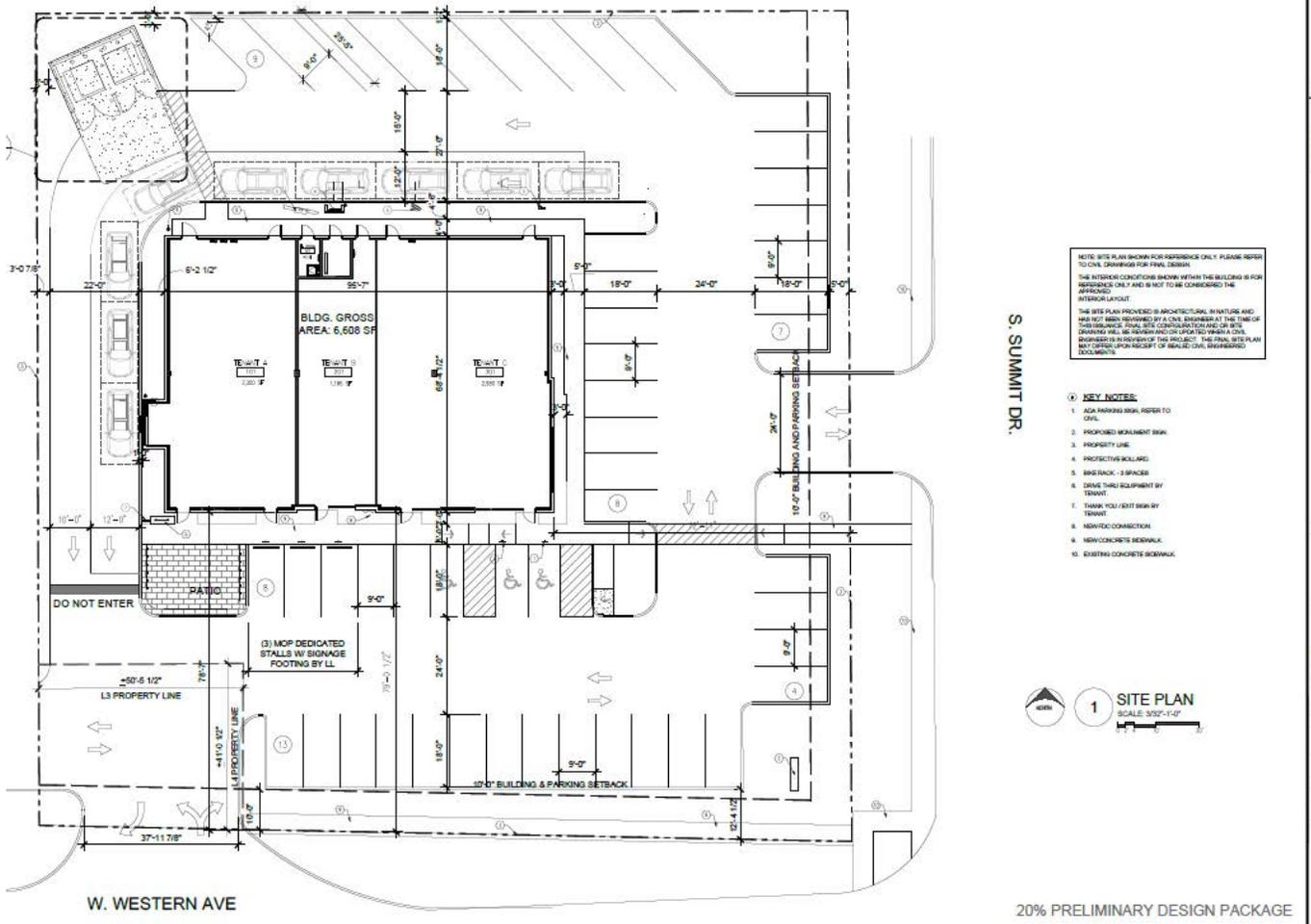


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**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance as 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 variances should not be injurious to the public health, safety, morals and general welfare of the community. The site contains adequate spacing so that waiting cars do not impede the right-of-way. The large right-of-way on Summit Drive mitigates any negative impacts of reducing the parking setback by 5'.

**(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 adversely impacted by granting the variances. The wide right-of-way of Summit Drive and the positioning of the ordering windows reduces impacts on surrounding properties.

**(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 reduce the use of the property due to the dedicated right of way on Summit narrowing drive widths on the site.

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

The proposed variances are the minimum necessary to allow for proper site circulation without negatively impacting surrounding properties while preserving the intent of the zoning ordinance.

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

The excessive right-of-way width predates the development of this site.

## Analysis & Recommendation

**Analysis:** Due to the excessive right-of-way width on Summit Drive as well as the placement of the ordering windows, the proposed variances meet the intent of the zoning ordinance while not adversely impacting neighboring properties.

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



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**Property Information**

Location: 2112, 2036 and 2046 SOUTH BEND AVE  
Owner: DEV H12 LLC

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**Project Summary**

To install a flag pole at a height of 60' with a flag size of 25'x20'

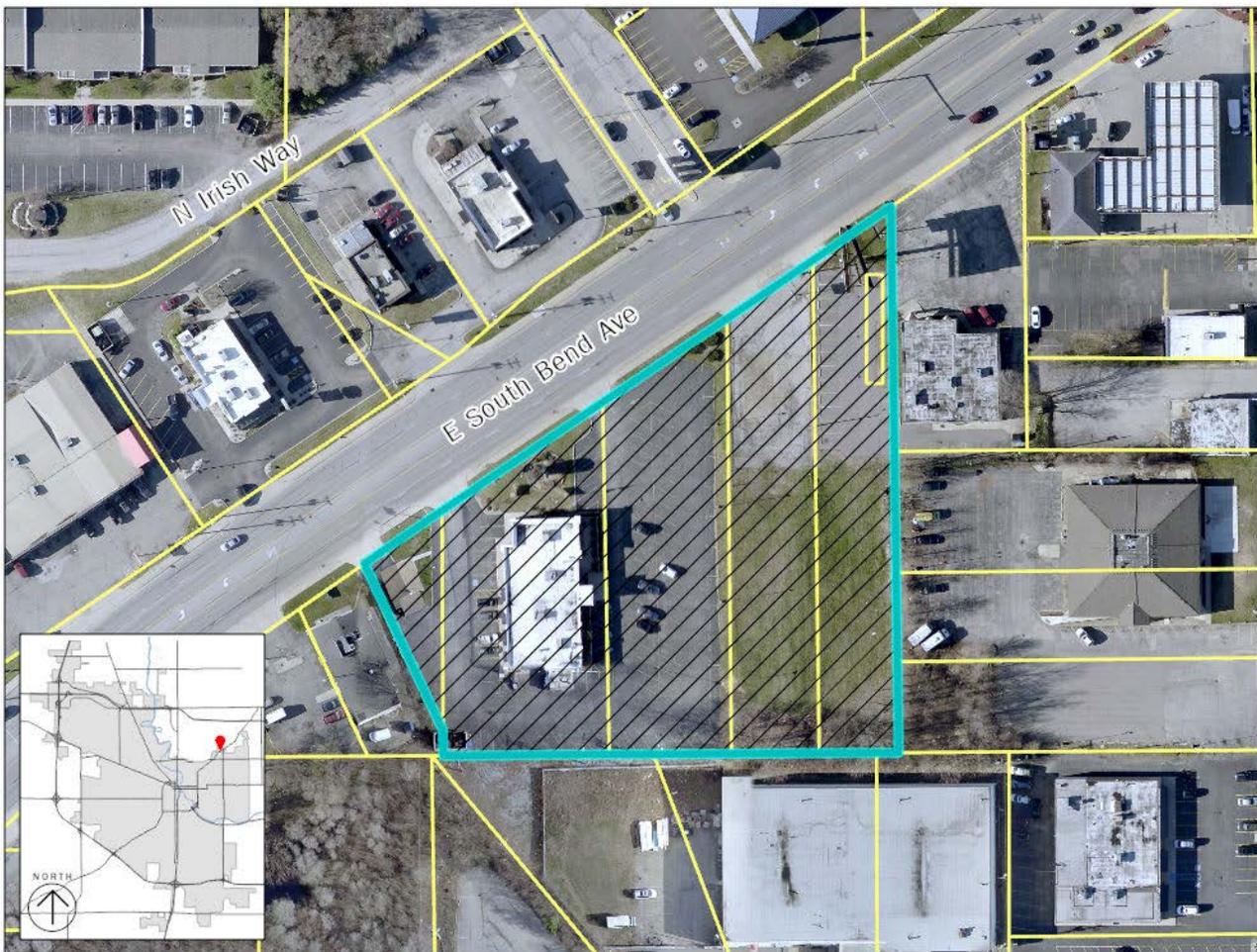
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**Requested Action**

Variance(s): 1) From the maximum 120 sq.ft. for an exempt flag to 500 sq.ft.  
2) From the maximum 40' in height for an accessory structure to 60'

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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 deny 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**

Approval of the variance could be injurious to the public health, safety, morals and general welfare of the community. A flag this size is out of character for the area and would serve as an attention getting device which could be a distraction to drivers.

**(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**

Granting the variance would give an undue advantage to the property owner which could negatively impact the use of the adjacent properties, as well as setting a precedence for the surrounding area. Since the Ordinance cannot restrict the content of the flag, approval of the variances would be the equivalent of granting a 500 sq.ft. sign on the property as it could be changed to a commercial flag at any time.

**(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 not result in practical difficulties in the use of the property. The use of the property is not related to the size of the flag. The allowed size for a flag exemption is generously sized and the flag pole height is consistent with other structures in this district.

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

The proposed variance is not the minimum necessary to have a flag and flag poll prominent on the site. There are numerous sites along this portion of the corridor that have flags consistent with the Ordinance.

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

There is no hardship on the property. The variance requested is based on the desire of the petitioner, not a practical difficult of the site.

## Analysis & Recommendation

**Analysis:** There are no practical difficulties or unique characteristics that support the variance requested. The petition does not meet the required criteria. A properly sized flag could be placed on the property without needing any variances. Granting the variance would give an undue advantage to the property owner which could negatively impact the use of the adjacent properties as well as setting a precedence for the surrounding area. If a flag pole was installed at the allowed height and size, the setback requested would be reasonable.

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



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**Property Information**

Location: 1314 COLLEGE ST  
Owner: KENNETH J SWANSON

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**Project Summary**

To allow construction of a new garage.

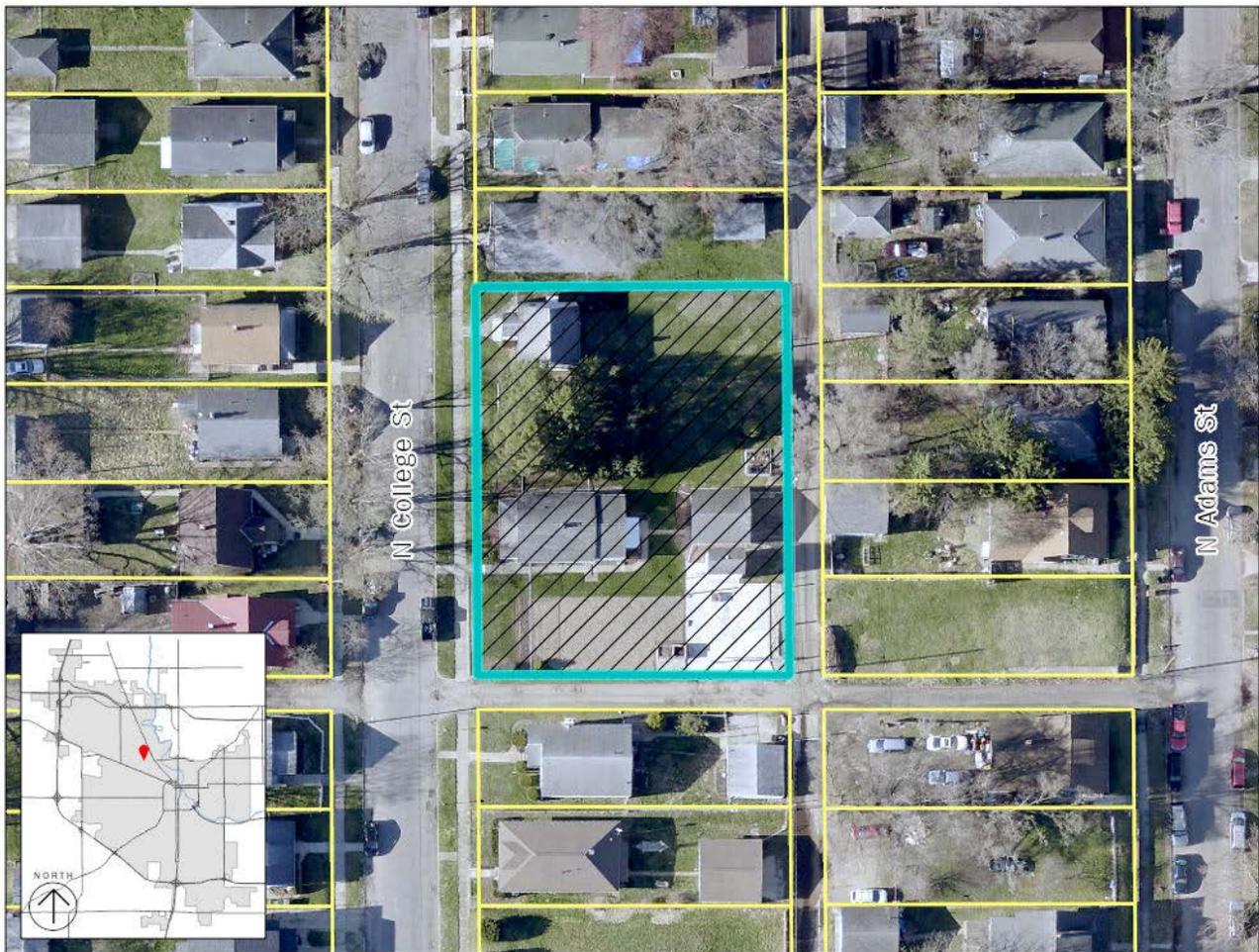
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**Requested Action**

Variance(s): 1) From the required location of a garage either at 5' or not less than 18' from an alley to 7'

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**Site Location**

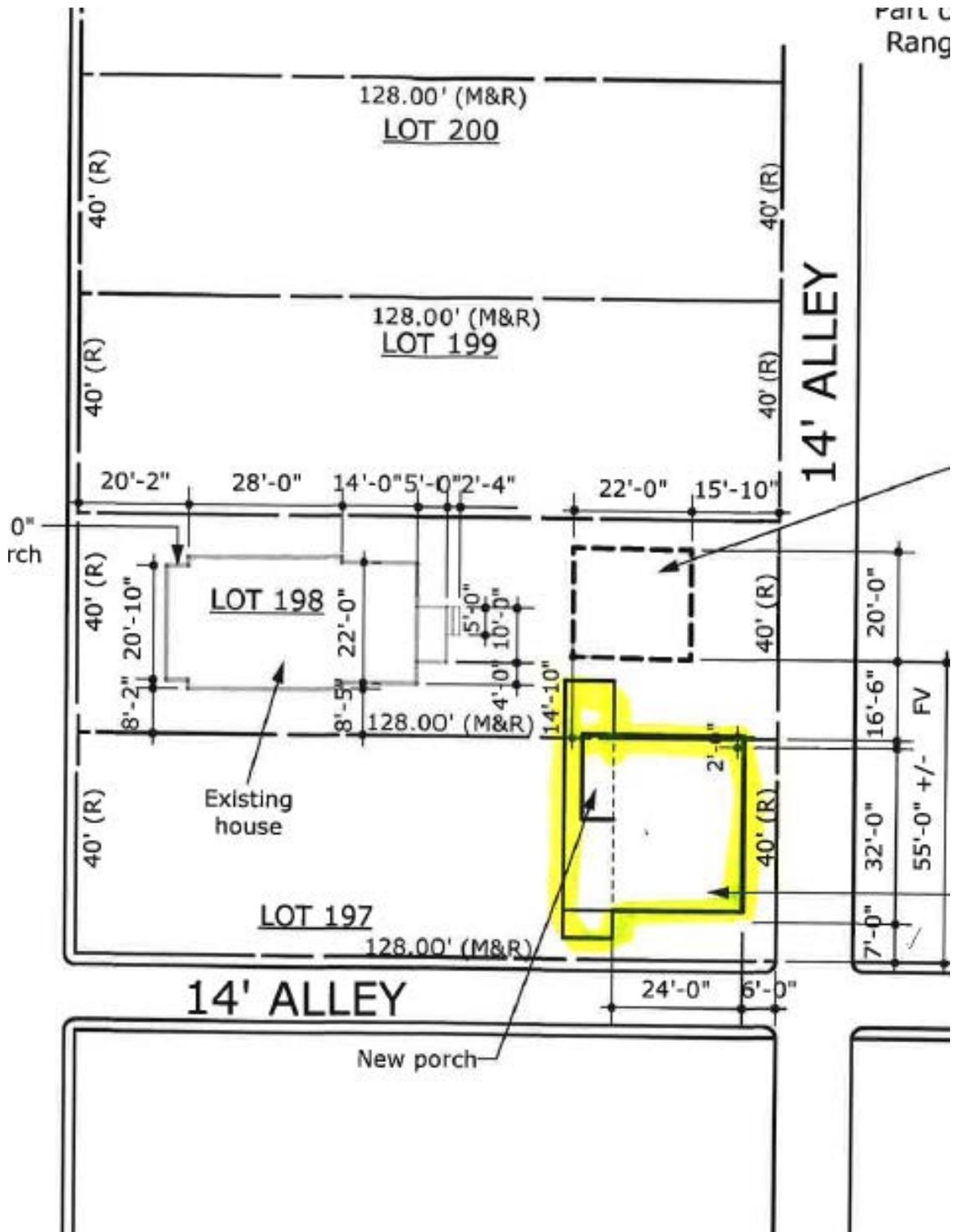


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**Staff Recommendation**

The staff recommends the Board approve 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 variance should not be injurious to the public health, safety, morals and general welfare of the community. The garage is proposed to be erected, while out of conformance with the ordinance, adheres to the local neighborhood context on placement of garages.

**(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 adversely. The variance does not inhibit surrounding neighbors from using their properties while allowing for the petitioner to use their expanded lot in a productive capacity.

**(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 difficulties in the use of the property as the project was begun under different standards. Holding the petitioner to the current standards would result in significant challenges in altering the already completed foundation.

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

The variance granted is the minimum necessary to allow for the completion of the project while adhering to the intentions of the ordinance.

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

The hardship was created when the zoning ordinance regulations were changed during the middle of the project with no fault to the current owner.

### Analysis & Recommendation

**Analysis:** The foundation for the new garage was established prior to the updated Zoning Ordinance limiting garages accessed off an alley to be 5' or greater than 18' from the alley. Allowing the petitioner to finish construction on the garage should not have negative impacts on the surrounding properties.

**Staff Recommendation:** The staff recommends the Board approve the variance as presented.



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**Property Information**

Location: 1400 IRELAND  
Owner: TARGET CORP ATTN: Mathew Flansburg, Eric Fiacable

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**Project Summary**

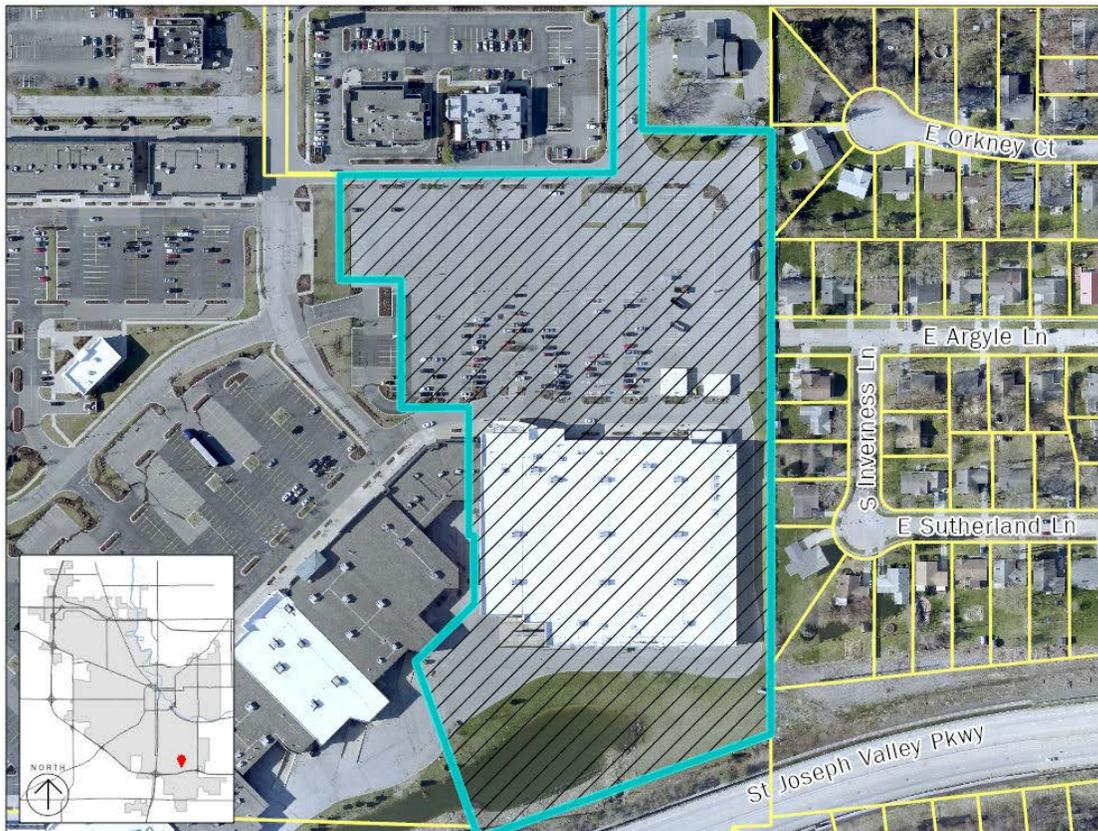
To add signs to the existing parking area in order to facilitate drive-up grocery pickup.

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**Requested Action**

- Variance(s): 1) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 40 sq.ft. at 12' (Beacon Signs)  
2) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 11 sq. ft. at 7' (Post and Panel Signs)  
3) To allow internally illuminated parking lot signs

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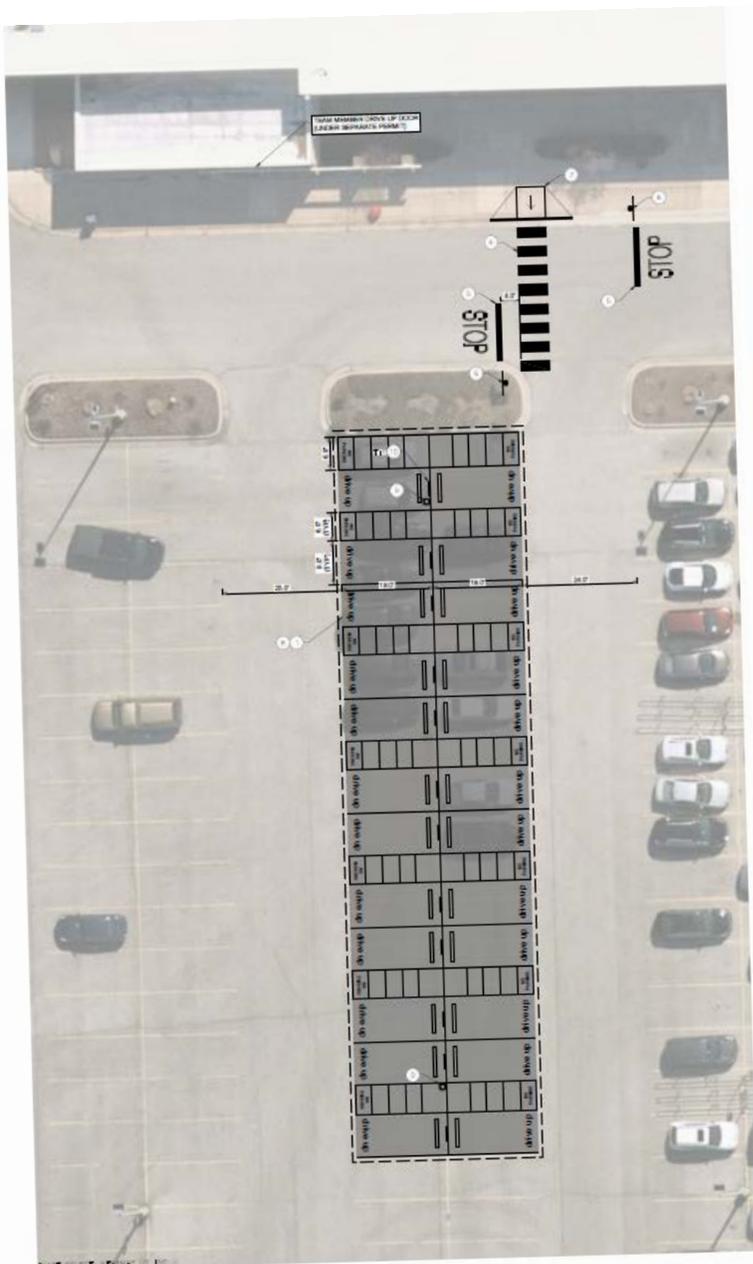
**Site Location**

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**Staff Recommendation**

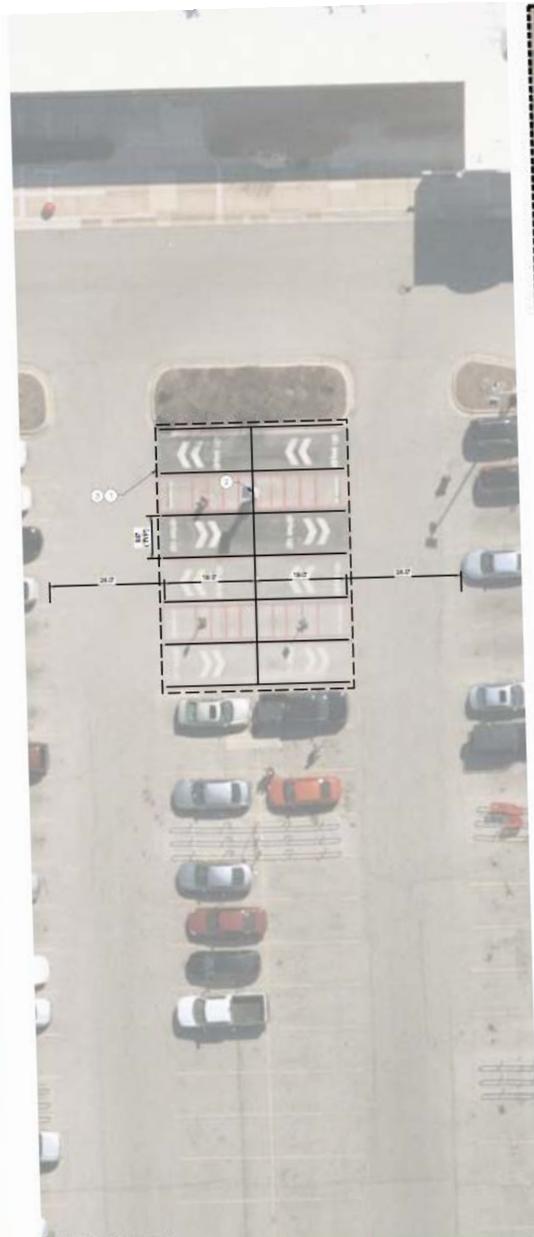
Based on the information provided prior to the public hearing, the staff recommends the Board deny variance #2 for the post and panel signs and approve the other variances, subject to a maximum 8' in height for the Beacon Sign.

Proposed Site Plan



PROPOSED DRIVE UP STALLS  
7/1/21

slow.  
e you dig.



EXISTING DRIVE UP STALLS  
7/1/21

## 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 of the location of the proposed signs, they 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 property included in the variance will not be affected in a substantially adverse manner**

This is a commercially zoned shopping out of view from the public right-of-way, so it should not adversely impact the use or value of adjacent property owners.

**(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 Ordinance would not result in practical difficulties. However, the ordinance does not address all circumstances.

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

The proposed variance is not the minimum necessary. While the intent of the beacon sign is to reduce sign clutter and driver confusion, it is significantly larger than a typical way finding sign. The intended outcome could be achieved through a lower sign, which would also reduce the square footage of the sign. Because the sign is illuminated, the Beacon sign would not need to be 12' tall. If a variance is granted to allow the beacon sign, there is no need for the larger post and panel signs. The size and height are consistent with what is allowed at other commercial locations that offer similar services.

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

While the design of the shopping center was created prior to the offering of this type of service, the proposed signs are designed by the petitioner.

## Analysis & Recommendation

**Analysis:** Because the property is located away from the public right-of-way, the illumination of the signs should not have a significant impact. However, the overall size of the signs are inconsistent with the intent of the ordinance. With no practical difficulty, other than an attempt to reduce sign clutter, the variances as requested fail to meet the criteria for approval. If the illuminated signs are granted, even at a reduced height, the other variances requested would not be necessary or justified.

**Staff Recommendation:** Based on the information provided prior to the public hearing, the staff recommends the Board deny variance #2 for the post and panel signs and approve the other variances, subject to a maximum 8' in height for the Beacon Sign.



**Property Information**

Location: 304 Main STREET  
Owner: ST JOSEPH COUNTY PUBLIC LIBRARY, Legacy Sign Group

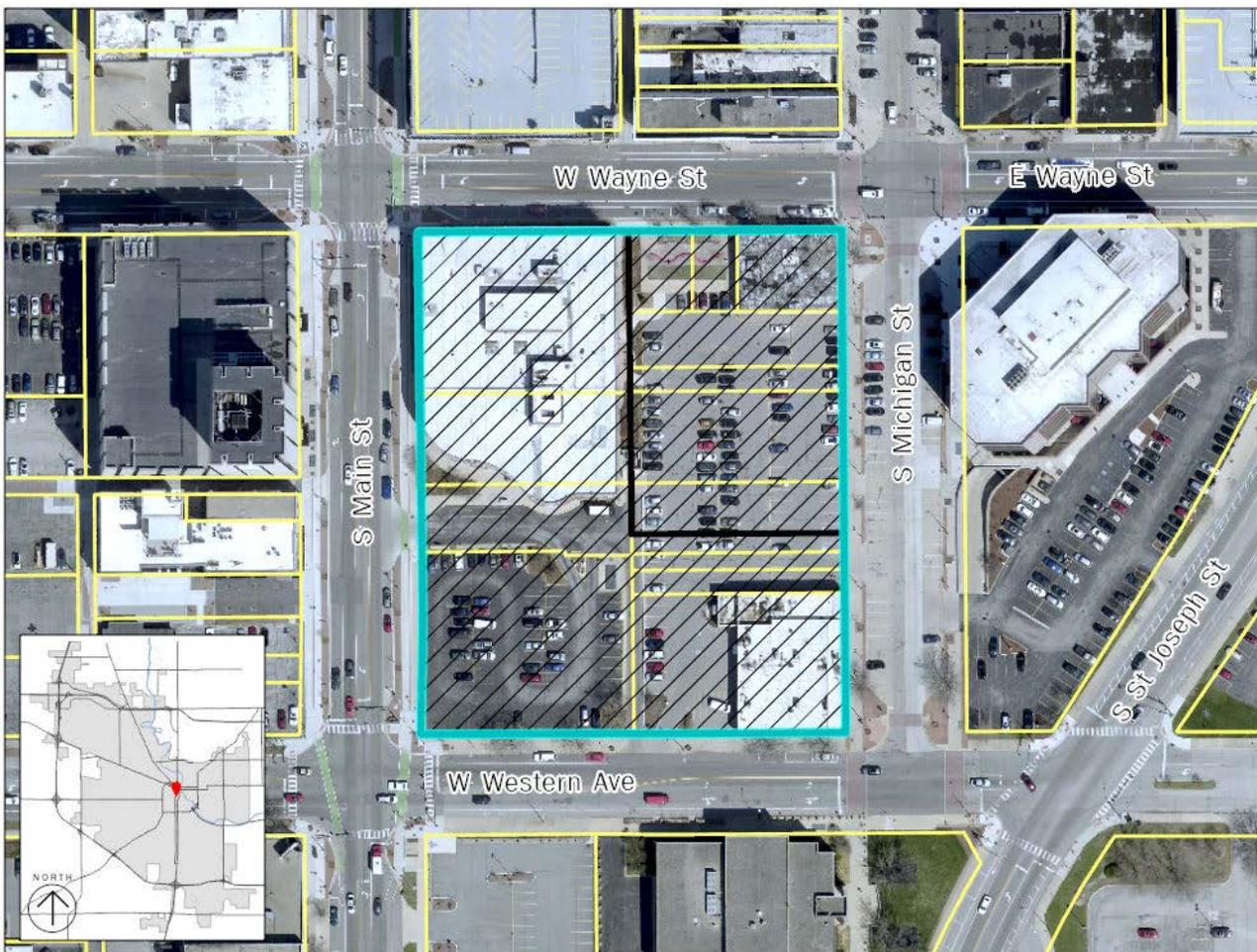
**Project Summary**

To allow one (1) double face LED illuminated parking/directional sign and two (2) single face LED illuminated parking/directional signs in the parking lot area of the property.

**Requested Action**

Variance(s): 1) To allow internally illuminated parking lot (directional) signs  
2) From the maximum 6 sq.ft. at 4' in height for a parking lot sign to 9 sq.ft. at 4'-6"

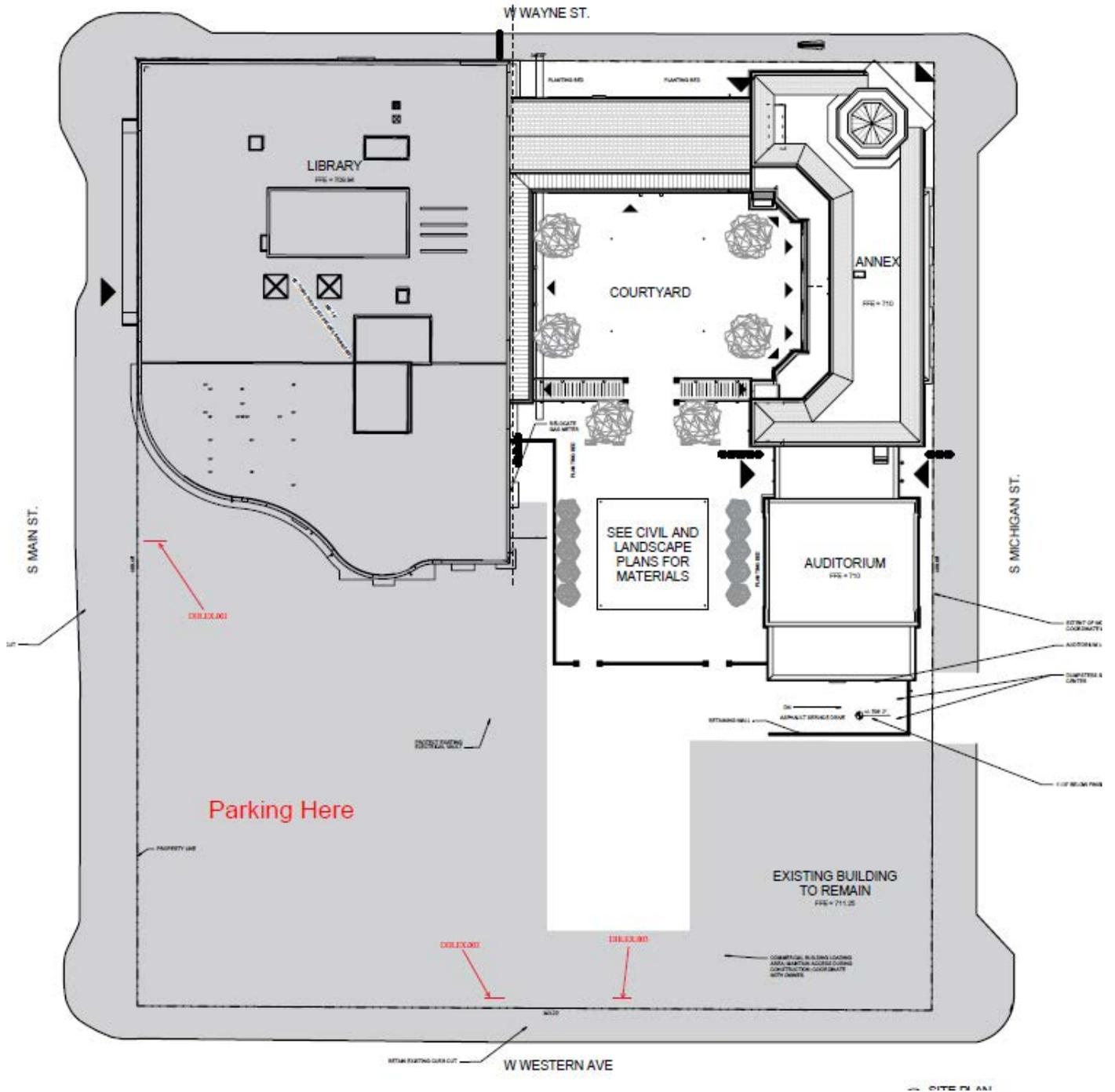
**Site Location**



**Staff Recommendation**

Based on the information available prior to the public hearing, the staff recommends approval of the variances.

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 variances requested should not be injurious to the public health, safety, or general welfare.

**(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 variances related to parking lot signs for a civic use within the Downtown District should have no impact on the use or enjoyment of surrounding properties.

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

The proposed signs are smaller than the existing signs located in the parking lot, decreasing the non-conformity. Strict application would allow the petitioner to reface the existing, larger signs, but to replace them with smaller signs requires them to bring them into conformance. The proposed signs are consistent with exempt parking lot signs, but the design would require including the entire frame of the sign even though the text is much smaller.

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

The signs are designed with an opaque background to limit the size of the message to what would be consistent with the ordinance. The proposed variances are significantly less than what was existing on site.

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

The layout of the parking lot is not changing as part of the library renovation. Sign locations have been chosen to promote safe maneuvering through the parking lot.

## Analysis & Recommendation

**Analysis:** The signs proposed replace existing non-conforming parking lot signs. The proposed signs are smaller than the existing signs, so it will lessen the degree of non-conformance. Since the 2 signs adjacent to Western are only illuminated on the interior side, the impact should be minimal.

**Staff Recommendation:** Based on the information available prior to the public hearing, the staff recommends approval of the variances.



### Property Information

Location: 701 PORTAGE AVE  
Owner: SEVEN ENTROPY DESIGN STUDIO INC, Norrie Emmons

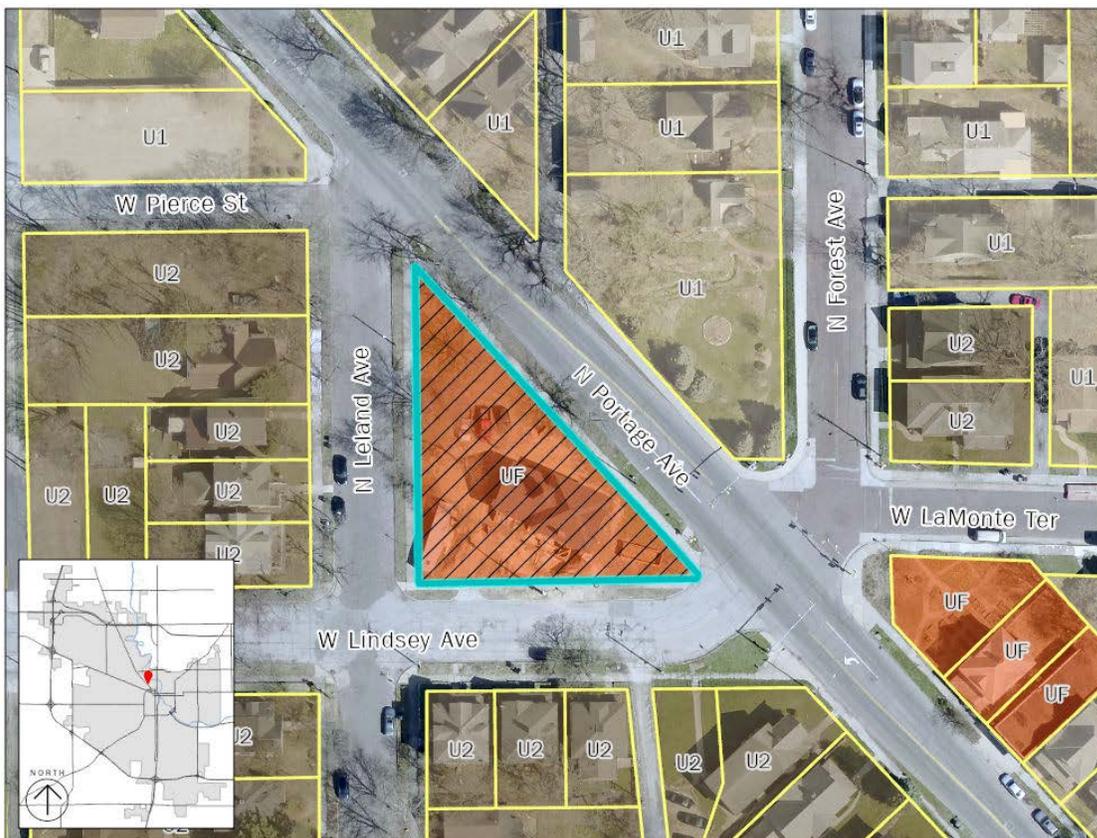
### Project Summary

To allow expanded gravel driveway to accommodate vehicles serving restaurant and 5 new parking spaces.

### Requested Action

- Variance(s):
- 1) From the minimum 24' parking drive aisle width to 12'
  - 2) From the requirement that all drives and off-street parking areas be hard surfaced to allow crushed lime stone gravel surface
  - 3) From the required 1 ADA parking space on site, to none
  - 4) From required Type 1 Parking Area Screening to none
  - 5) From the required Streetscape Trees to no new additional trees

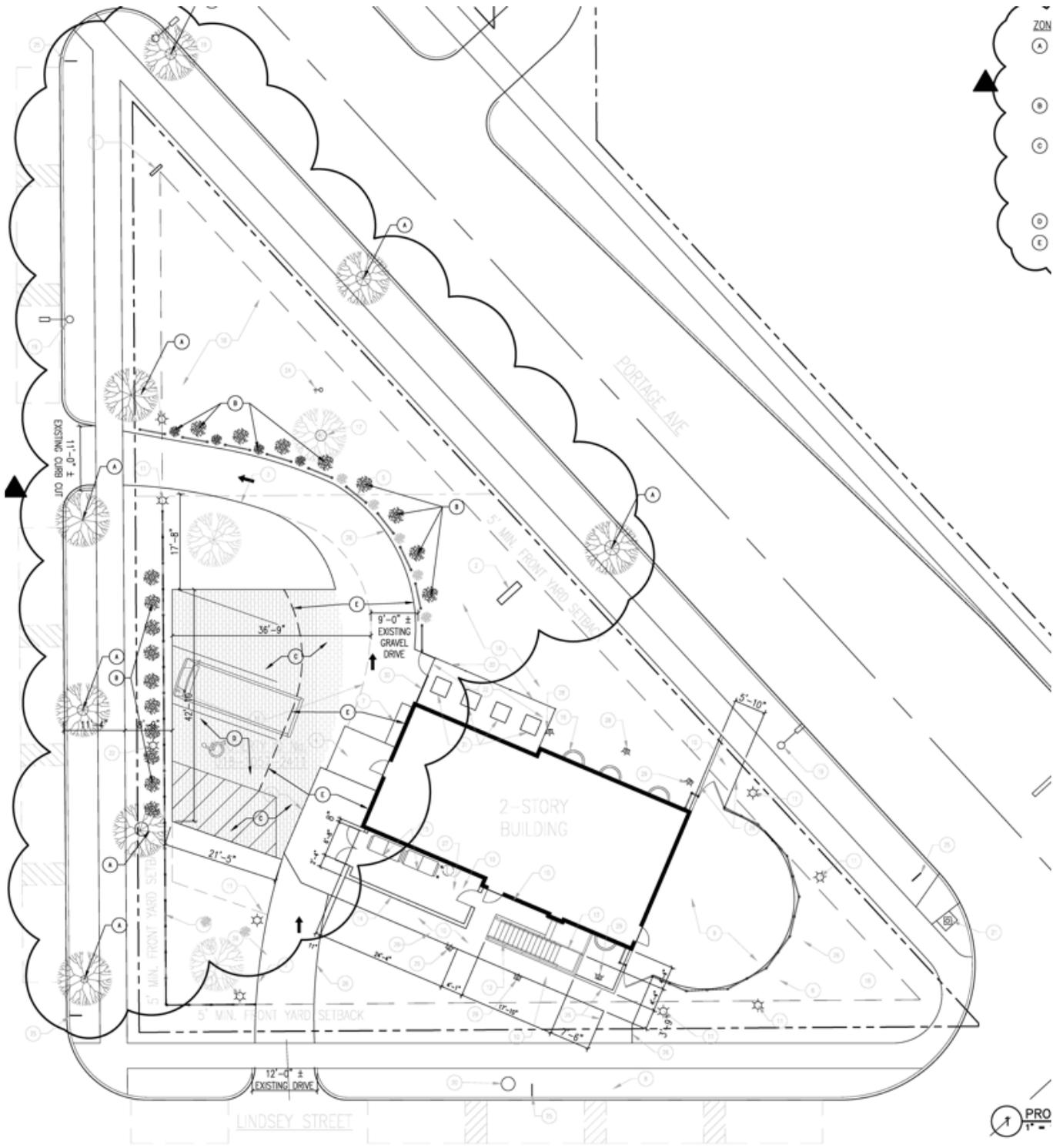
### Site Location



### Staff Recommendation

Based on information provided prior to the public hearing, the staff recommends the Board approve variance #2, subject to the limiting of the variance to the drive aisle as it previously existed. The staff recommends the Board deny the other variances 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 development standards for parking lots are designed to ensure public safety. Granting the proposed variances may have a negative impact on the public health, safety, 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 variances requested present the possibility of adversely affecting the value of the surrounding properties. The requirements of ADA (American Disability Act) requirements, parking screening, and streetscape trees area all established to provide safe, accessible, and well designed urban places. As the site is located within a dense urban neighborhood, variances from the zoning ordinance could lead to adverse affects on neighboring properties.

**(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 not result in practical difficulties in the use of the property. If properly laid out, there would be adequate space on the property for parking in conformance with the ordinance. There is ample room for the required landscaping with no practical difficulties that prevent installation. Strict application of the ordinance would require the hard surfacing of the historic drive. Allowing an alternate, similar surface, that would minimize the impact to the petitioner. The Historic Preservation standards prohibit asphalt in the front yard, but both the HPC standards and the zoning ordinance allow for a wide variety of other hard surfaces for the parking area. Limiting the variances to just the drive would ensure the historic drive remains in place while all additional changes to the property are brought up to current zoning standards for safety, accessibility, and urban aesthetic.

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

The drive width and hard surfaced variances are the minimum necessary to conform with the historic design and nature of the drive as it has existed on the property for decades. All other variances requested are not the minimum necessary to ensure the property conforms with current zoning standards.

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

The drive location and surface have existed on the property for many years. However, the expanded parking area has only been installed within the past few months. The drive would have been allowed to remain as legal non-conforming. The property owner's choice to add parking to the site created the need for the other variances.

## Analysis & Recommendation

**Analysis:** The drive width and surface material were established before current zoning standards were established. As the drive has been in its historic configuration and surface type for decades, it is reasonable to grant variances allowing for its continued use without expecting negative impacts on the public or surrounding property owners. All other requested variances are to remedy hardships created by the current property owners desire to establish a parking lot on the site. There are no practical difficulties that prevent adhering to the current zoning standards for parking, buffering, and ADA accessibility.

**Staff Recommendation:** Based on information provided prior to the public hearing, the staff recommends the Board approve variance #2, subject to the limiting the variance to the drive aisle as it previously existed. The staff recommends the Board deny the other variances as presented.



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**Property Information**

Location: 1093 RIVERSIDE DR  
Owner: WILLIAM B SKIDMORE, Michael Holt

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**Project Summary**

To allow a covered deck built in side yard

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**Requested Action**

Variance(s): 1) From the 5' minimum side setback to 0'

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**Site Location**

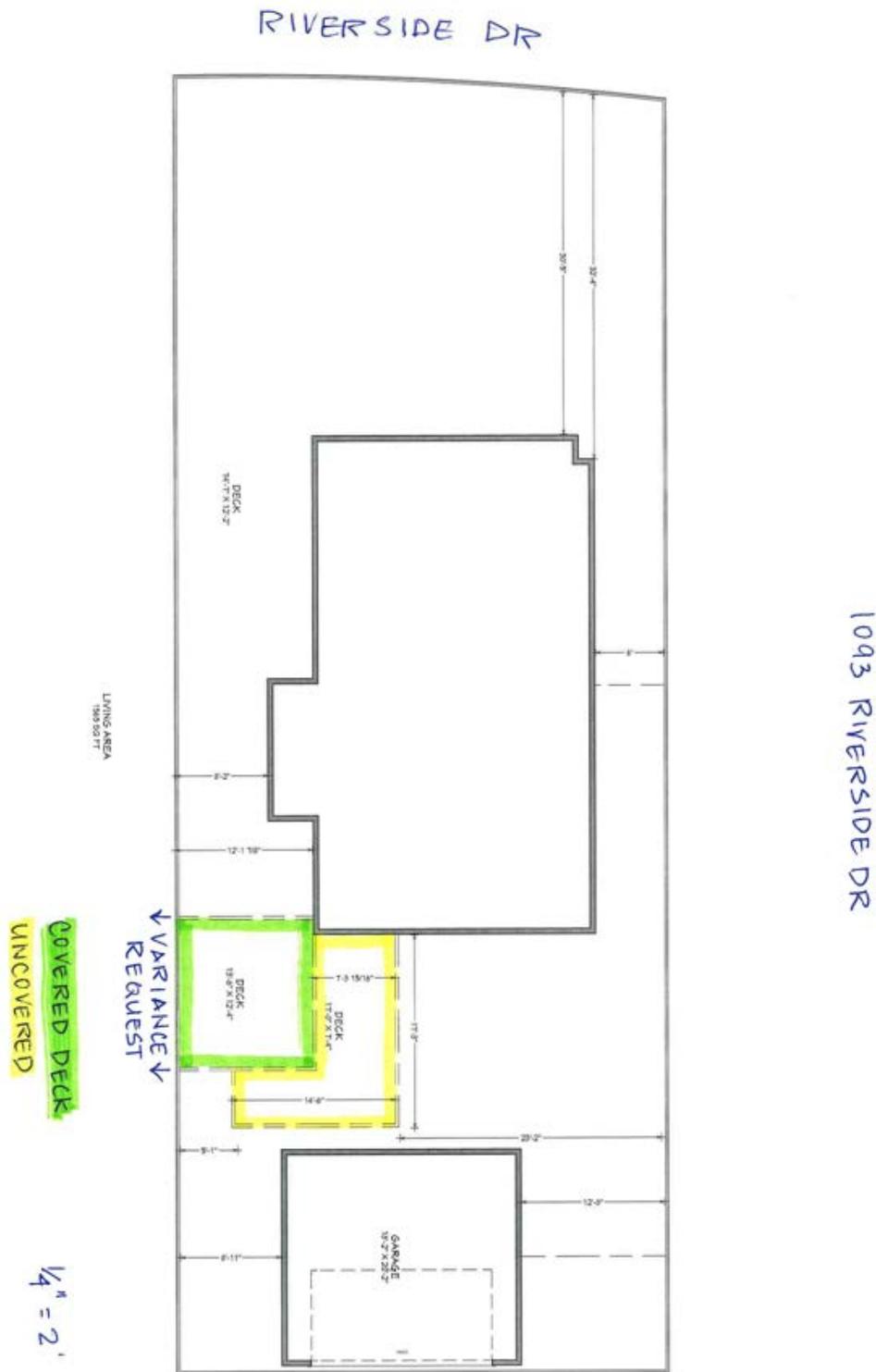


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**Staff Recommendation**

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

Minimum setbacks are established to set the bare minimum needed in order to protect the health, safety, and general welfare of the community. Granting a variance would greatly reduce access to the rear of the property, since the only access to the rear portion of these properties is between the homes due to the alley being completely blocked off by fencing and garages. Maintaining a minimum of 10' between structures is critical for emergency access and public safety.

**(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 property may be adversely affected if the variance is granted. A smaller setback could lead to difficulties in maintaining both properties as well as setting precedence for expanding all houses of the neighborhood into the side setback without just cause. The roof portion also appears to encroach into the neighboring 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 Zoning Ordinance would not result in practical difficulties in the use of the property. There is nothing unique about the property that creates difficulty in the residential use of the property.

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

The variance granted is not the minimum necessary. The deck with a roof could be constructed, with slight modifications, at the side setback with similar results.

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

The variance requested is an attempt to legalize an existing structure which was built without proper permitting. The variance requested is caused by the owners desire to build a deck in a particular way, not a hardship of the property.

## Analysis & Recommendation

**Analysis:** There are no practical difficulties or unique characteristics that support the variance requested. As demonstrated on the site plan submitted by the petitioner, the entire deck could be placed 5' to the east which would remove the need for a variance. Minimum setbacks, especially along the side lot line, are critical for maintaining adequate light, air, and safety standards.

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

**COMMITMENTS MODIFYING OR TERMINATING EXISTING COMMITMENTS  
CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE  
MADE IN CONNECTION WITH A SPECIAL EXCEPTION OR A  
VARIANCE FROM THE TERMS OF THE ZONING ORDINANCE.**

In accordance with I.C.36-7-4-921, the Owner of the real estate located in the City of South Bend, St. Joseph County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of the following described parcel of real estate:

**LEGAL DESCRIPTION:**

Lots Numbered Thirty-one (31) through Thirty-five (35) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the vacated alley lying between Lots 33 and 34.

STATEMENT OF MODIFICATION OR TERMINATION OF COMMITMENTS existing in Instrument Number 2019-28311 as recorded in the Office of the Recorder of St. Joseph County, Indiana, as made in connection with Bill #19-56 by the Common Council of South Bend, Indiana:

1. The petitioner agrees to cease the operation of the group residence on or before May 1, 2024.

These modified COMMITMENTS shall be binding on the Owner of the above-described real estate, subsequent owners of the above-described real estate, and other persons acquiring an interest in the above-described real estate.

These modified COMMITMENTS may be further modified or terminated by a decision of the City of South Bend Board of Zoning Appeals made at a public hearing after proper notice has been given.

Modified COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the City of South Bend Board of Zoning Appeals in petition #\_\_\_\_\_.

These COMMITMENTS may be enforced jointly or severally by:

1. The City of South Bend, Indiana;
2. Owners of all parcels of ground adjoining the real estate to a depth of three-hundred (300) feet from the subject property, and all owners of real estate within the area included in the petition who were not petitioners. ; and
3. South Bend Board of Zoning Appeals

The undersigned hereby authorizes the Secretary of the City of South Bend Board of Zoning Appeals to record this Commitment in the office of the Recorder of St. Joseph County, Indiana,



