

# City of South Bend

## BOARD OF ZONING APPEALS

---

### AGENDA

**TUESDAY, September 7, 2021 - 4:00 p.m.**

County-City Building

Fourth-Floor Council Chambers

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

#### PUBLIC HEARING:

- Location:** 1223 THOMAS ST and 1227 THOMAS ST BZA#0009-20  
**Owner:** MARLENE AND DAVID STEVENS  
**Requested Action:** Variance(s): 1) To allow an accessory use without a primary structure  
**Zoning:** U1 Urban Neighborhood 1
- Location:** 614 ST JOSEPH ST BZA#0077-21  
**Owner:** CHARITY STOWE  
**Requested Action:** Variance(s): 1) from the minimum 5' side setback to 0'  
**Zoning:** U1 Urban Neighborhood 1
- Location:** 525 SUNNYSIDE AVE BZA#0078-21  
**Owner:** EILEE ZHU AND JONATHAN MAHONEY  
**Requested Action:** Variance(s): 1) From the 3' maximum fence height in the established corner yard to 5'  
**Zoning:** U1 Urban Neighborhood 1
- Location:** 137 Michigan and 108 COLFAX AVE BZA#0079-21  
**Owner:** 137 NORTH MICHIGAN LLC  
**Requested Action:** Variance(s): 1) from the 10% maximum facade area per street frontage for all building signs to 27% for the east elevation and 12% for the north elevation.  
**Zoning:** DT Downtown
- Location:** 2519 E PLEASANT ST BZA#0076-21  
**Owner:** ERIC YOUNG  
**Requested Action:** Special Exception: a duplex  
**Zoning:** U1 Urban Neighborhood 1

#### ITEMS NOT REQUIRING A PUBLIC HEARING:

- Findings of Fact – August 2, 2021
- Minutes – August 2, 2021
- Other Business
- 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: 1223 THOMAS ST and 1227 THOMAS ST  
Owner: MARLENE AND DAVID STEVENS

---

**Project Summary**

Allow an accessory use without a primary structure.

---

**Requested Action**

Variance(s): 1) To allow an accessory use without a primary structure

---

**Site Location**



---

**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance to allow a fence, subject to the following: 1) the existing 25' front setback should be maintained; and 2) at least one side adjacent to a public right-of-way shall be a minimum of 50% open or a maximum of 4' in height.

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 fence is located and or behind the location that would be permissible if the alley did not exist.

**(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 affected in an adverse manner if the property was not properly maintained. Limiting the location and height of the fence in certain areas may help minimize any impact on surround 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 permit any structures on this lot because there is an alley that separates the home from the yard. The City discourages alley vacations in this situation because the alley still serves a wider context of properties.

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

A fence that meets the associated setbacks or minimum openness would be the minimum necessary to provide privacy and security for the property.

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

The alley has been in existence since the original platting of the neighborhood. The fence appears to have been installed around 2017. However, no permits were able to be found.

## Analysis & Recommendation

**Analysis:** While the staff does not typically support a fence on a lot without a primary structure, the need to maintain the alley as a public access outweighs the value of vacating the alley and adjoining it to the home, creating a practical difficulty. Since the variance would remain with the property, which would negate the hardship, at least 1 side of the fence that is visible from a public right-of-way should remain open by either limited a solid fence to a maximum 4' height or requiring the fence be at least 50% open.

**Staff Recommendation:** Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance to allow a fence, subject to the following: 1) the existing 25' front setback should be maintained; and 2) at least one side adjacent to a public right-of-way shall be a minimum of 50% open or a maximum of 4' in height.



**Property Information**

Location: 614 ST JOSEPH ST  
Owner: CHARITY STOWE

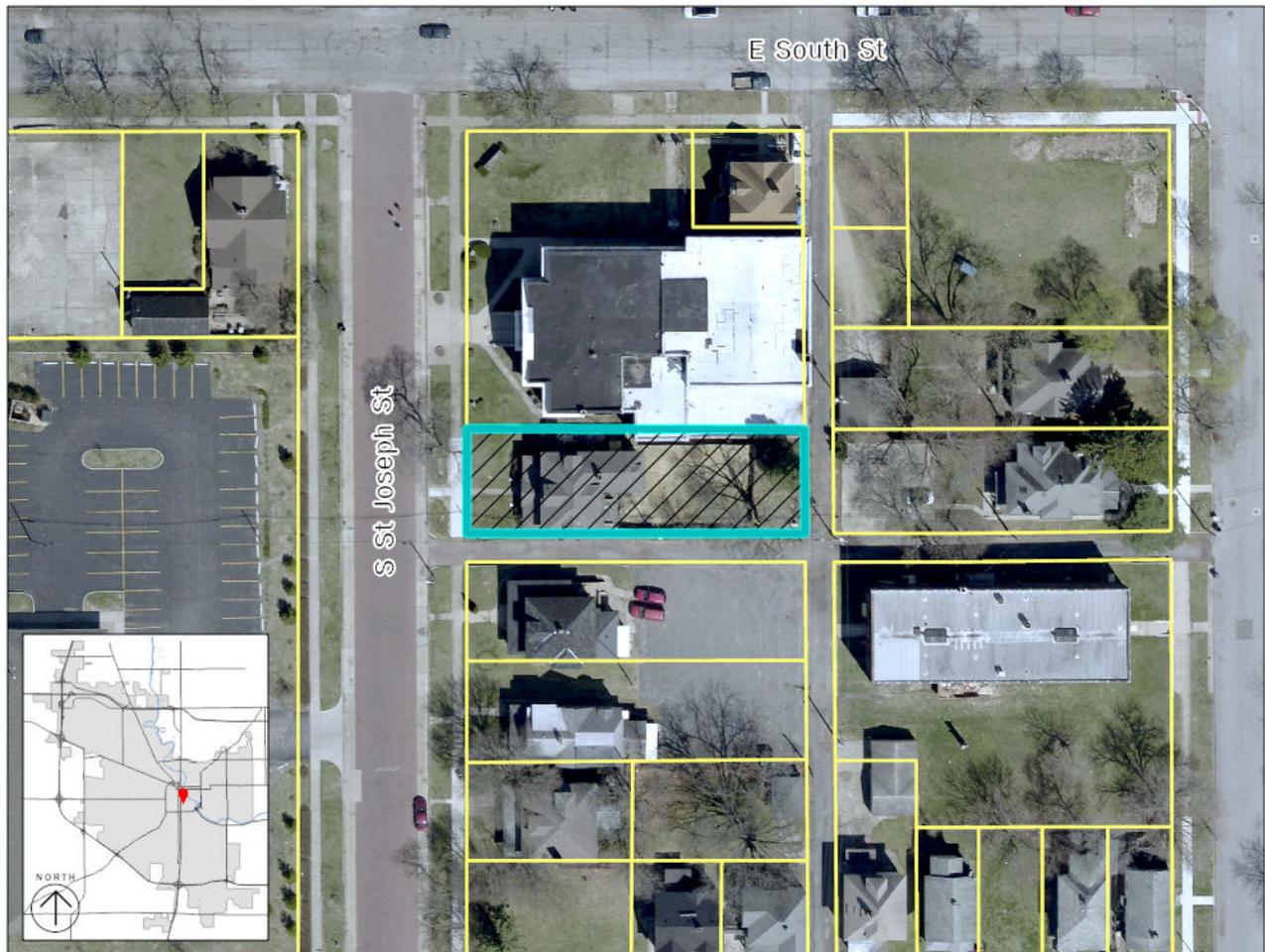
**Project Summary**

Rebuild a small 3'x4' deck up to the side entrance. The current stairs and landing have fallen and are in need of a total rebuild. I would like to build something suitable to the character of the home. The walkway to this entry will come from the front and remain inside property line.

**Requested Action**

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

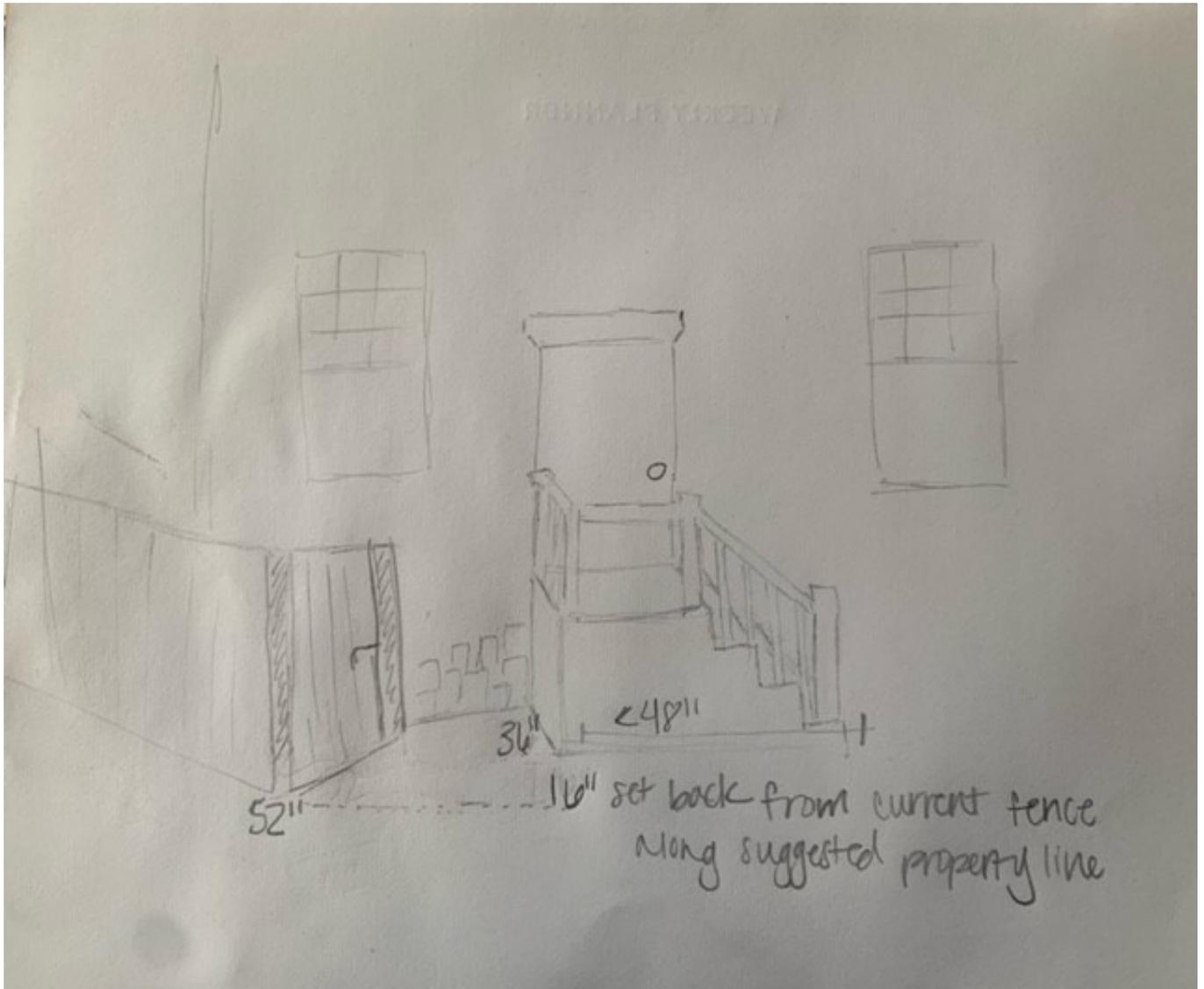
**Site Location**



**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance 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 structure is a Local Historic Landmark and the petitioner is desiring to restore the building. The proposed variance is to allow a landing and stairs to the home, similar to how it was initially constructed when the home was built in 1907. Allowing for the restoration of the function of the houses as it once existed should not be injurious to the general community or neighboring 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 use and value of the area adjacent to the property should not be affected adversely. The variance does not inhibit the neighbor from using their property.

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

The construction of new stairs will require they be built to the current 36" wide standards, creating the necessary encroachment. Strict application of the Zoning Ordinance would result in the property owner being unable to restore the house to its historic configuration and use.

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

The variance requested is the minimum necessary to allow for the use of the existing side door, while meeting current building standards of a minimum 36" access stair.

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

The house and property were developed in 1907 when structures were allowed to build up to property lines. The variance is not intended to correct a hardship caused by the current or former owner.

## Analysis & Recommendation

**Analysis:** The structure is a Local Historic Landmark, and the petitioner is desiring to restore the building. The existing door, which will open onto the landing, is original to the house with a similarly designed landing at the initial construction of the home. The location of the encroachment is not adjacent to other single family or a property that would be significantly impacted by the granting of the variance.

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



---

**Property Information**

Location: 525 SUNNYSIDE AVE  
Owner: EILEE ZHU AND JONATHAN MAHONEY

---

**Project Summary**

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

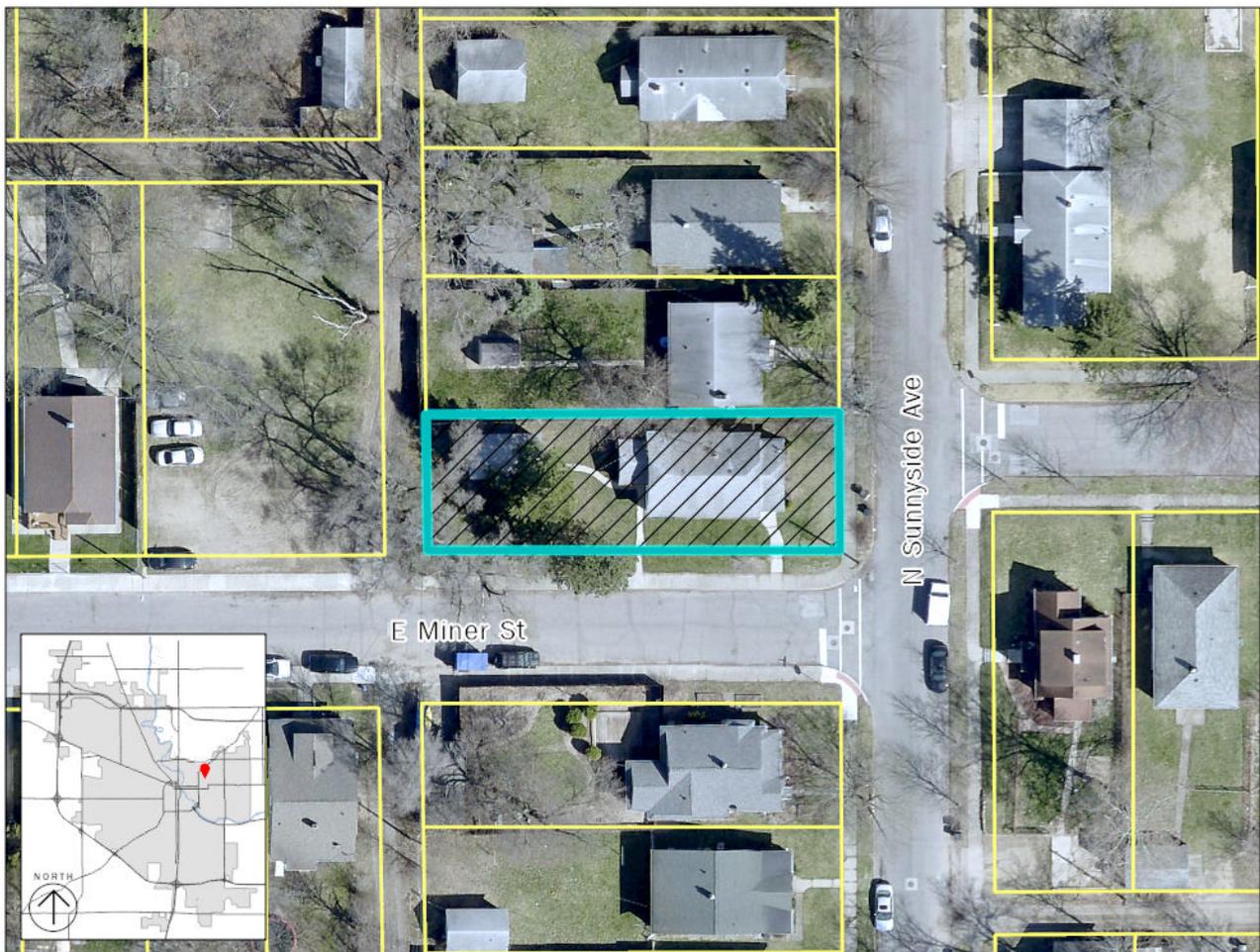
---

**Requested Action**

Variance(s): 1) From the 3' maximum fence height in the established corner yard to 5'

---

**Site Location**



---

**Staff Recommendation**

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

Proposed Site Plan



## Criteria for Decision Making: Variance(s)

**State statutes and the Zoning Ordinance require that certain standards must be met before a variance can be approved. The standards and their justifications are as follows:**

**(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community**

The approval of this variance may not be injurious to the public health or safety of the community as long as site visibility at the intersection is preserved. However, allowing a fence in an established corner yard 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 use and value of the area adjacent to the property could be affected in an adverse manner if the variance was granted. Approving a fence that is 5' tall on top of a hill that is already significantly above grade would create a large enclosed space that would be out of character for the area and contrary to the intent of the ordinance, having a significant impact on 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 not result in practical difficulties in the use of the property. A shorter, code compliant fence can still provide security and privacy of the property, especially because the site is already significantly elevated from the public sidewalk.

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

Since there is no practical difficulty to overcome, the variance requested is not the minimum necessary. The petitioner could install the fence in compliance with the ordinance and still retain about the same amount of usable yard space with the desired privacy.

**(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 site is already elevated above the street. A code compliant fence could provide the security and privacy desired by the applicant.

## Analysis & Recommendation

**Analysis:** There are no practical difficulties for the petitioner that would necessitate a 5' fence in this location. The proposed fence is not consistent with the intent of the ordinance. The site is already elevated above the street. A code compliant fence could provide the security and privacy desired by the applicant.

**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: 137 Michigan and 108 COLFAX AVE  
Owner: 137 NORTH MICHIGAN LLC

---

**Project Summary**

Enhance the facade of the 137 N Michigan building with signage for an incoming high-tech advertising, public relations, and startup incubator business.

---

**Requested Action**

Variance(s): 1) from the 10% maximum facade area per street frontage for all building signs to 27% for the east elevation and 12% for the north elevation.

---

**Site Location**



---

**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends approving the variance subject to a maximum sign area of 10% of the combined facade area.

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 proposed signs will not have a significant impact on the public health or safety of the community. However, if not carefully considered, signs in excess of what the code permits could be injurious to the general welfare of the community by impacting the character of the area.

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

Allowing variations in sign allowance may adversely affect adjacent property owners by creating unequal business identification signs, giving an undue advantage to some.

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

The fact that the building is located at the corner of an intersection that has restricted traffic in one direction does present a practical difficulty in the strict application of the ordinance. The long facade of the building is oriented to a street that would not benefit from view from southbound traffic along Michigan. With this, a variance to allow the proposed sign area calculation based on the entire facade instead of calculating each facade independently would be appropriate. However, there is no practical difficulty that prevents the petitioner from adhering to the maximum 10% of the facade as allowed by the Ordinance.

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

The proposed variance is not the minimum necessary. Even if the allowance to transfer allowed area from one facade to the other is granted, the proposed request is for a total sign area of 16% of the total facade area. Signs designed at 10% of the combined facade area would be the minimum necessary to overcome the practical difficulty of the building location.

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

The restricted traffic in front of the Morris Performing Arts Center is not the result of an action or decision by this property owner.

## Analysis & Recommendation

**Analysis:** The site is uniquely situated at what is, essentially, a three-way intersection. Granting a variance to allow a portion of the sign area to be able to be transferred from the north facade to the east facade is appropriate. However, the combined area should be limited to 10% of the total facade area to limit the variance to the minimum necessary.

**Staff Recommendation:** Based on the information provided prior to the public hearing, the staff recommends approving the variance subject to a maximum sign area of 10% of the combined facade area.



---

**Property Information**

Location: 2519 E PLEASANT ST  
Owner: ERIC YOUNG

---

**Project Summary**

To allow a duplex on a U1 zoned lot

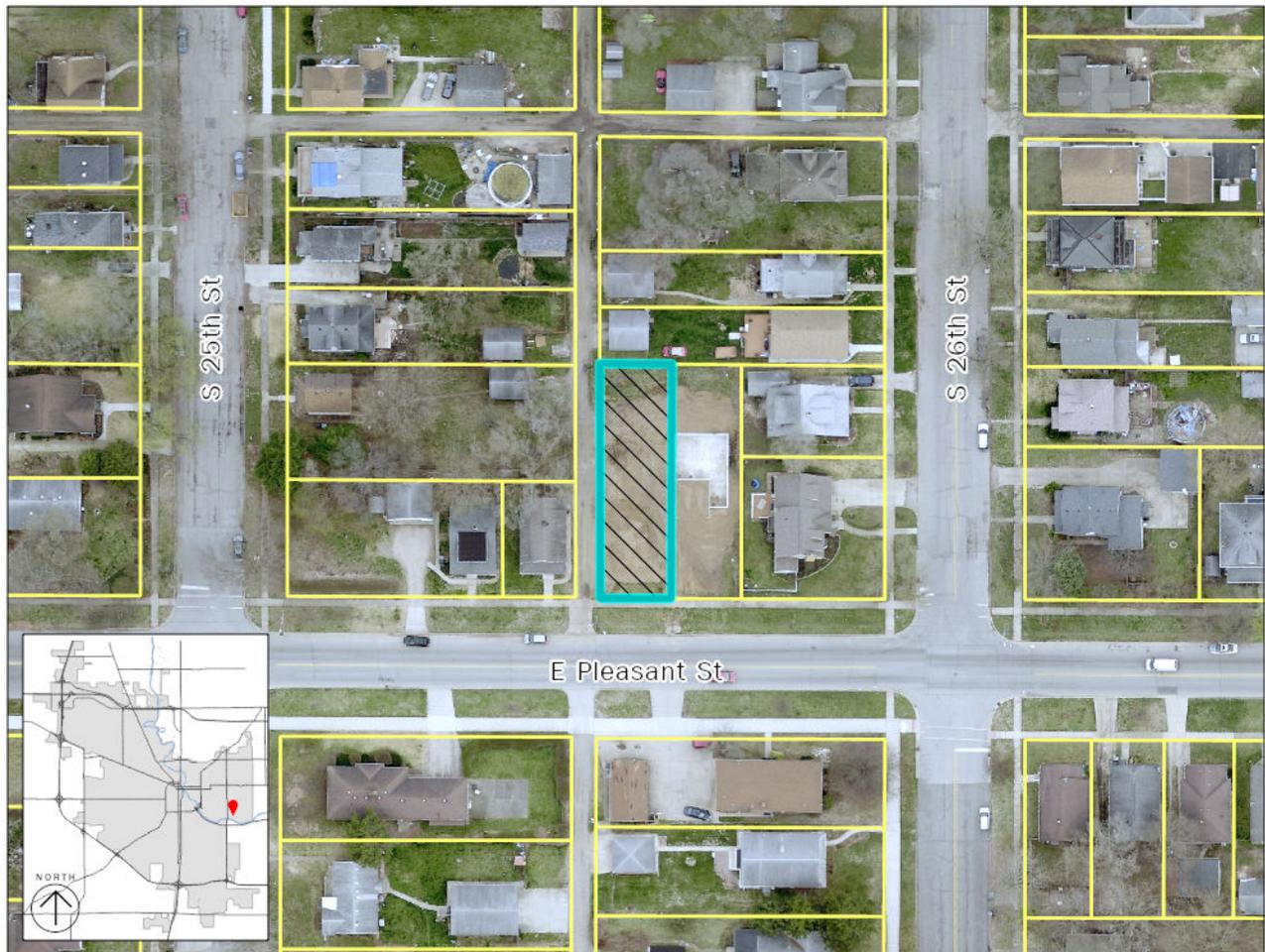
---

**Requested Action**

Special Exception: a duplex

---

**Site Location**



---

**Staff Recommendation**

Based on the information provided prior to the public hearing, the staff recommends the Board send the petition to the Common Council with a favorable recommendation as presented.



## Criteria for Decision Making: Special Exception

**A Special Use 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;**

Approval of the Special Exception will not be injurious to the public health, safety, morals or general welfare of the community. The scale of the proposed duplex is comparable to a single family home and will be used for residential use. Reactivating a vacant lot will provide more residents to the neighborhood which will increase safety and the 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;**

Adding a duplex on a currently vacant lot should not injure or adversely affect the use of the adjacent area or property values. New construction that fits the scale of the current residential properties should strengthen nearby property values.

**(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 current context of the neighborhood provides a mix of single family homes and small scale multifamily apartments. This duplex will be consistent with the character of the district and neighborhood in both uses and style of construction.

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

The petition is consistent with the City Plan, South Bend Comprehensive Plan (2006), Objective H 1: Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of households now and in the future.

## Analysis & Recommendation

**Analysis:** The proposed construction of a duplex will further compliment the existing housing stock in the surrounding area, as well as providing more diverse housing types for residents.

**Staff Recommendation:** Based on the information provided prior to the public hearing, the staff recommends the Board send the petition to the Common Council with a favorable recommendation as presented.

