

SOUTH BEND BOARD OF ZONING APPEALS

MINUTES

Monday, May 3, 2021
4:00 p.m.

4th Floor, Council Chambers
County-City Building, South Bend, IN

MEMBERS PRESENT:

Dan Brewer
Mark Burrell
Kyle Copelin (virtually)
Kaine Kanczuzewski
Kathy Schuth

ALSO PRESENT:

Angela Smith
Joseph Molnar
Rachel Boyles

PUBLIC HEARINGS:

- 1.a. The petition of JOHN AND VICTORIA ERBY seeking the following variance(s): 1) From the 3' maximum fence height in an established corner yard to 6', property located at 904 WOODBINE WAY. Zoned S1 Suburban Neighborhood 1. (Audio Position: 11:19)**

Upon a motion by Dan Brewer, being seconded by Mark Burrell and unanimously carried, the petition was tabled to June 7, 2021.

- 2. The petition of RIVER WALK LLC seeking the following 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, property located at 407, 411, 415, 419, 423, and 427 Frances Street. Zoned U1 Urban Neighborhood 1. (Audio Position: 16:14)**

STAFF REPORT

The staff report was presented by Joseph Molnar.

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.

PETITIONER

Mike Huber with Abonmarche Consultants, 1315 W Jefferson Blvd. South Bend, IN 46601 and David Sieradzki with Century Builders, 314 W Catalpa Dr. Ste. F Mishawaka, IN 46545, spoke as the petitioners.

INTERESTED PARTIES

Twenty-five written letters were submitted in favor of this petition.

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PUBLIC COMMENT

There was no one from the public to speak.

After careful consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Kyle Copelin and unanimously carried, a petition by RIVER WALK LLC seeking the following variances: 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 was approved as presented, and will issue written Findings of Fact.

Dan Brewer - Yes
Murray Miller - Yes
Kaine Kanczuzewski -Yes
Mark Burrell -Abstain
Kathy Schuth – No

1.b. Upon a motion by Kaine Kanczuzewski, being seconded by Mark Burrell and unanimously carried, the previous vote was rescinded and the first agenda item was moved to the end of the agenda due to the petitioner arriving.

- 3. The petition of WADAD EL-AMMORI seeking a Special Exception to allow Vehicle Sales or Rental and Vehicle Service, Major, and seeking the following 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%, property located at 1119 LINCOLNWAY WEST. Zoned NC Neighborhood Center. (Audio Position: 1:06:49)**

Upon a motion by Dan Brewer, being seconded by Kaine Kanczuzewski and unanimously carried, the petition was dismissed due to lack of petitioner present for two consecutive meetings.

- 4. The petition of CARL JR & JAYNE SUE WILLIAMS seeking a Special Exception to allow Vehicle Sales or Rental, property located at 2801 WESTERN AVE. Zoned NC Neighborhood Center. (Audio Position: 1:09:28)**

STAFF REPORT

The staff report was presented by Joseph Molnar.

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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.

PETITIONER

Carl Williams, 2135 Riverside Dr. South Bend, IN 46616, and Aaron Wills, 812 S. Jackson St. South Bend, IN 46619, spoke as the petitioners.

INTERESTED PARTIES

Denise Johnson, 218 Liberty St. South Bend, In 46619, spoke against this petition.

PUBLIC COMMENT

There was no one present to speak on this petition.

REBUTTAL

Aaron Wills provided a rebuttal.

After careful consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Kyle Copelin and unanimously carried, a petition by CARL JR & JAYNE SUE WILLIAMS seeking a Special Exception for Vehicle Sales or Rental for property located at 2801 WESTERN AVE, City of South Bend, is sent to the Common Council with an unfavorable recommendation, and will issue written Findings of Fact.

Dan Brewer - Yes

Murray Miller - Yes

Kaine Kanczuzewski - Yes

Mark Burrell - Yes

Kathy Schuth - Yes

- 5. The petition of STEPHEN & RAQUEL STOREY seeking a Use Variance to allow Plant Agriculture in a U1 Urban Neighborhood 1 District, and seeking the following variance(s): 1) to allow accessory structures without a primary building, property**

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located at 1614, 1618, and 1624 MARIETTA ST and 707, 709, 713, and 717 DUBAIL AVE. Zoned U2 Urban Neighborhood 2. *(Audio Position: 1:31:26)*

STAFF REPORT

The staff report was presented by Joseph Molnar.

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 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.

PETITIONER

Stephen Storey, 910 Milton St. South Bend, IN 46613, spoke as the petitioner

INTERESTED PARTIES

There was no one from the public to speak.

PUBLIC COMMENT

There was no one from the public to speak.

After careful consideration, the following action was taken:

Upon a motion by Mark Burrell, being seconded by Dan Brewer and unanimously carried, a petition by STEPHEN & RAQUEL STOREY seeking a Special Exception for Plant Agriculture in a U1 Urban Neighborhood 1 District for property located at 1614, 1618, and 1624 MARIETTA ST and 707, 709, 713, and 717 DUBAIL AVE, City of South Bend, is sent to the Common Council with a favorable recommendation, and will issue written Findings of Fact.

Dan Brewer - Yes

Murray Miller - Yes

Kaine Kanczuzewski - Yes

Mark Burrell - Yes

Kathy Schuth - Yes

Upon a motion by Dan Brewer, being seconded by Kaine Kanczuzewski and unanimously carried, a petition by STEPHEN & RAQUEL STOREY seeking the following variances: 1)

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to allow accessory structures without a primary building was approved as presented, subject to the shed having a 60' setback from Marietta St. and Dubail Ave. and the Use Variance being approved by Council, and will issue written Findings of Fact.

Dan Brewer - Yes
Murray Miller - Yes
Kaine Kanczuzewski -Yes
Mark Burrell -Yes
Kathy Schuth - Yes

- 6. The petition of JACKSON TRANSPORT LLC seeking a Special Exception to allow Beer/Wine/Liquor Sales & Tobacco/Hookah/ Vaping Sales, property located at 601 EDDY ST and 605 EDDY ST. Zoned NC Neighborhood Center.** *(Audio Position: 1:49:19)*

STAFF REPORT

The staff report was presented by Joseph Molnar.

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.

PETITIONER

John Tiffany from Tiffany Group, 706 N Eddy St. South Bend, IN 46617, and Bhola Singh, 7106 Grape Rd. Granger, IN 46530, served as the petitioner.

INTERESTED PARTIES

Michael Papagiannis, 610 Eddy St. South Bend, IN 46617, spoke against this petition.

Joe Jackson with Jackson Transport LLC, 940 Sorin St. South Bend, IN 46617, spoke in favor of this petition.

Les Jackson with Jackson Transport LLC, 601 Eddy St. South Bend, IN 46617, spoke in favor of this petition.

Joe Tiffany, 124 N. Eddy St. South Bend, IN 46617, spoke in favor of this petition.

PUBLIC COMMENT

Bill Stem with NNRO and NENC, 1020 E Colfax Ave South Bend, IN 46617, spoke against this petition.

Samuel Brown, 222 E Navarre St. South Bend, IN 46601, spoke in favor of this petition.

Angie Logan, 25821 Sly Fox Ct. South Bend, IN 46628, asked questions on this petition.

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Brad Toothacher, 112 W Jefferson Blvd. South Bend, IN 46601, spoke in favor of this petition.

REBUTTAL

John Tiffany provided a rebuttal.

After careful consideration, the following action was taken:

Upon a motion by Mark Burrell, being seconded by Kyle Copelin and unanimously carried, a petition by JACKSON TRANSPORT LLC seeking a Special Exception for Beer/Wine/Liquor Sales & Tobacco/Hookah/ Vaping Sales for property located at 601 EDDY ST and 605 EDDY ST, City of South Bend, is sent to the Common Council with a favorable recommendation, and will issue written Findings of Fact.

Dan Brewer - Yes

Murray Miller - Yes

Kaine Kanczuzewski - Yes

Mark Burrell - Yes

Kathy Schuth – Yes

- 7. The petition of JOHN AND VICTORIA ERBY seeking the following variance(s): 1)**
From the 3' maximum fence height in an established corner yard to 6', property located at 904 WOODBINE WAY. Zoned S1 Suburban Neighborhood 1. *(Audio Position: 2:31:20)*

STAFF REPORT

The staff report was presented by Joseph Molnar.

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.

PETITIONER

John Erby, 904 Woodbine Way South Bend, IN 46628, spoke as the petitioner.

INTERESTED PARTIES

One resident called in with a statement against this petition.

Resident, 924 Sussex Dr. South Bend, IN 46628, called with a statement in favor of this petition.

PUBLIC COMMENT

There was no one from the public to speak.

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After careful consideration, the following action was taken:

Upon a motion by Dan Brewer, being seconded by Kaine Kanczuzewski and unanimously carried, a petition by JOHN AND VICTORIA ERBY seeking the following variances: 1) From the 3' maximum fence height in an established corner yard to 6' was approved as presented, subject to the fence having a 15' setback from Woodbine Way, and will issue written Findings of Fact.

Dan Brewer - Yes
Murray Miller - Yes
Kaine Kanczuzewski -Yes
Mark Burrell -Yes
Kathy Schuth - Yes

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact – April 5, 2021

Upon a motion by Dan Brewer, being seconded by Mark Burrell and unanimously carried, the findings of fact from the April 5th, 2021 Board of Zoning Appeals were approved.

2. Minutes – April 5, 2021

Upon a motion by Dan Brewer, being seconded by Mark Burrell and unanimously carried, the minutes from the April 5th, 2021 Board of Zoning Appeals were approved.

3. Other Business


4. Adjournment – 6:38 p.m.

RESPECTFULLY SUBMITTED,



KATHY SCHUTH,
Chair

ATTEST:



ANGELA SMITH,
Secretary of the Board

