

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

CANCELLED

Tuesday, July 5, 2022 - 4:00 p.m.
County-City Building
Fourth-Floor Council Chambers
www.tinyurl.com/sbbza

PUBLIC HEARING:

- Location:** 4007 KIRBY CT BZA#0116-22
Owner: JOHN C & SHARON K ENGSTROM
Requested Action: Variance(s): 1) to allow a fence to be erected so the finished side of the fence faces the interior of the lot
Zoning: S1 Suburban Neighborhood 1
- Location:** 3825 WILLIAM RICHARDSON DR BZA#0117-22
Owner: OLD DOMINION FREIGHT LINE INC ATTN: JERRY CANADA
Requested Action: Variance(s): 1) from the 6' maximum fence height in the established front yard to 8'; and 2) to allow barbed wire on the fence
Zoning: I Industrial
- Location:** 4316 Michigan BZA#0120-22
Owner: The BarClay Corporation
Requested Action: Variance(s): 1) from the required 200' lineal spacing from a public park to 162' and from the maximum allowable 35' height to 50' for a billboard
Zoning: C Commercial
- Location:** 404 INDIANA AVE BZA#0122-22
Owner: 466 WORKS COMMUNITY DEVELOPMENT CORPORATION
Requested Action: Variance(s): 1) to allow accessory structures without a primary building; and 2) from the 4' maximum fence height to 6'
Zoning: U1 Urban Neighborhood 1
- Location:** 1430 MISHAWAKA AVE BZA#0118-22
Owner: JAIME DIAZ
Requested Action: Variance(s): 1) to allow parking in the established front/corner yard; 2) from the 5' minimum parking area screening to none; and 3) from 1 shade tree for every 30' to none
Special Exception: Vehicle Service, Minor
Zoning: NC Neighborhood Center
- Location:** 223 N. LAFAYETTE BLVD BZA#0119-22
Owner: SOUTH BEND TRIBUNE % MARK HOCKER
Requested Action: Variance(s): 1) from the 60% minimum transparency to 5%
Special Exception: Vehicle Service, Minor
Zoning: DT Downtown

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

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – June 6, 2022
2. Minutes – June 6, 2022
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: 4007 KIRBY CT
Owner: JOHN C & SHARON K ENGSTROM

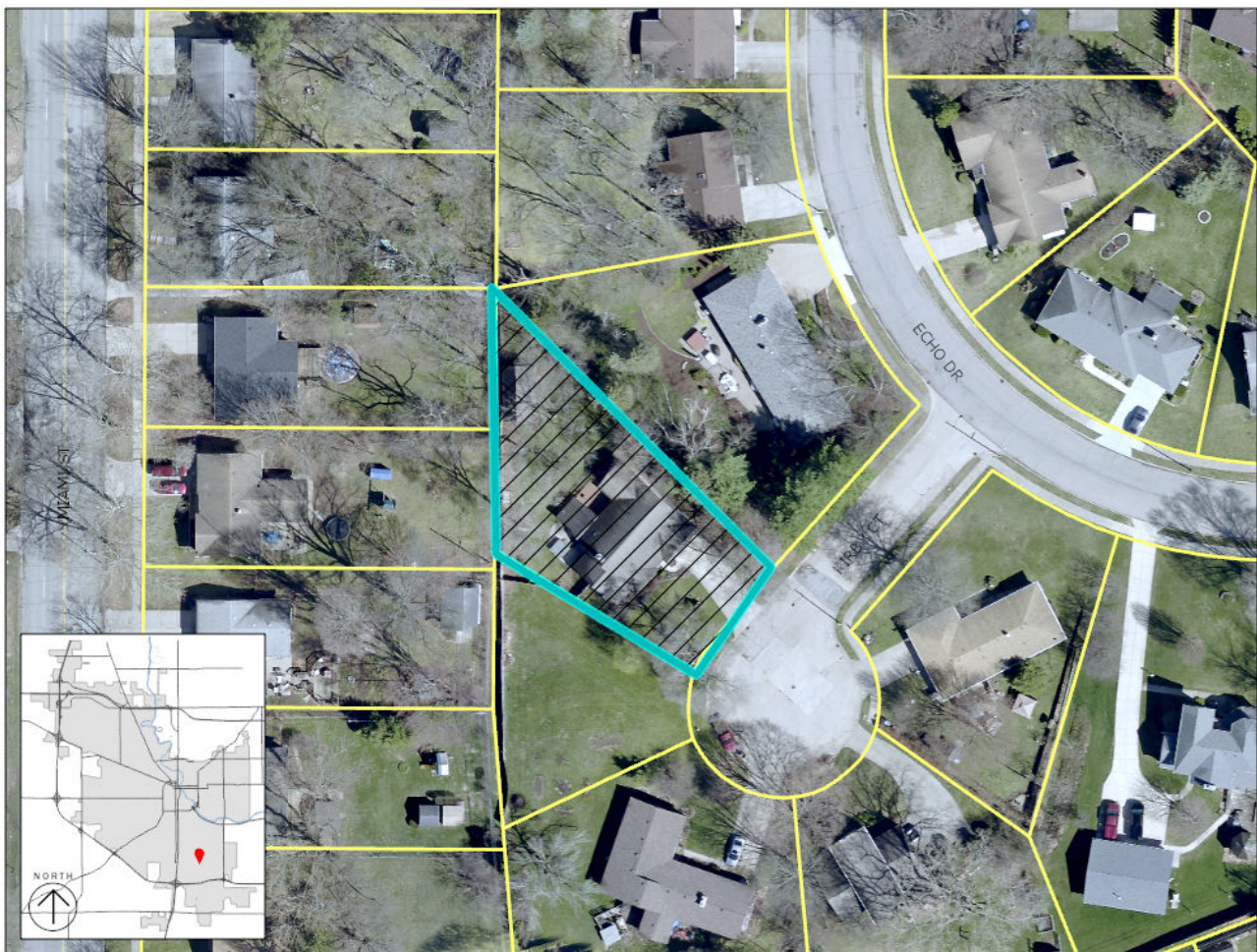
Project Summary

Erect a fence with the finished side facing the interior of the lot.

Requested Action

Variance(s): 1) to allow a fence to be erected so the finished side of the fence faces the interior of the lot

Site Location



Staff Recommendation

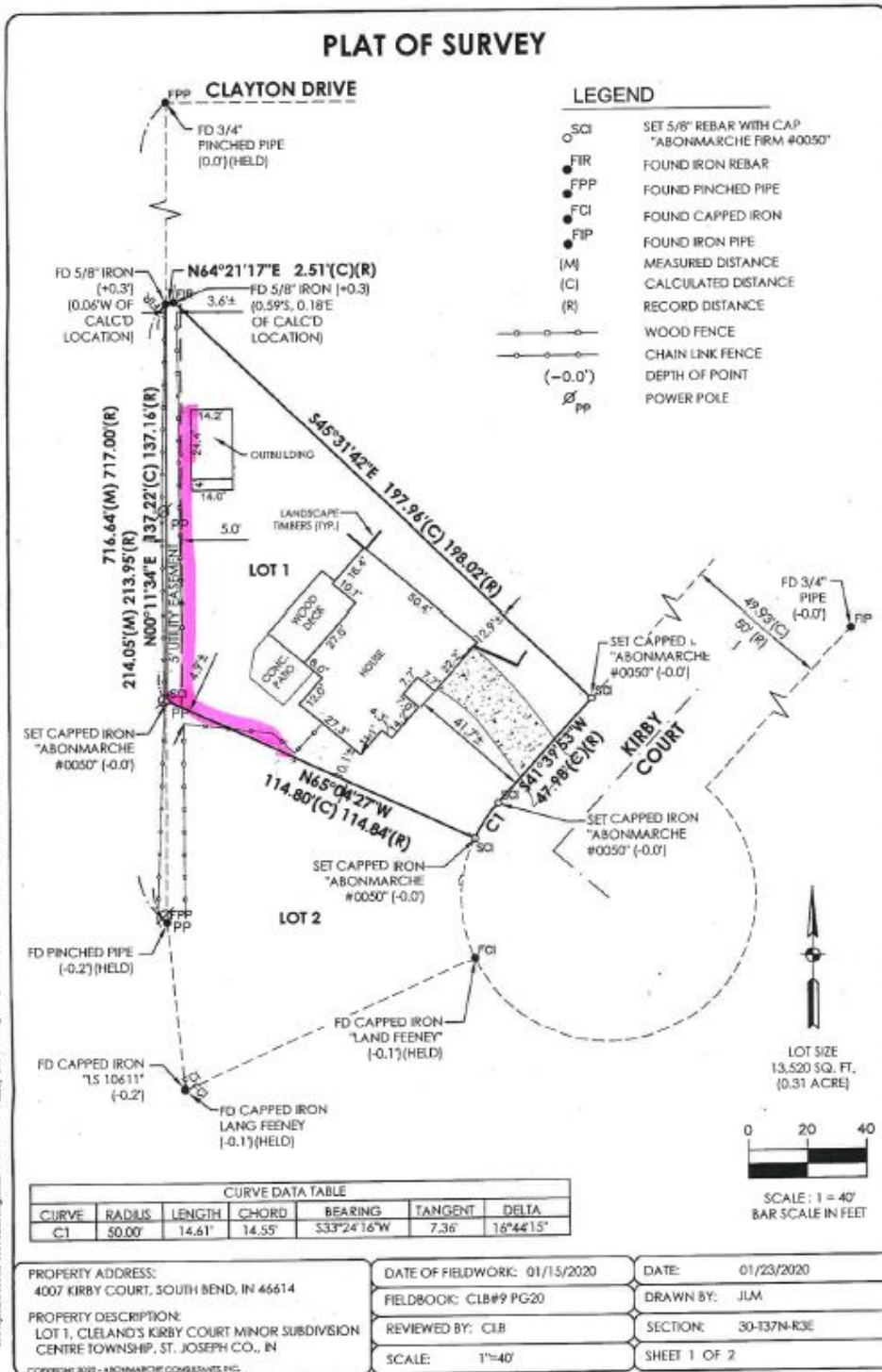
Based on the information available prior to the public hearing, the Staff recommends the Board approve the variance as presented.

Proposed Site Plan



750 Lincoln Way East
 South Bend, IN 46601
 T 574.232.8700
 F 574.251.4440
 abonmarche.com

Benton Harbor
 Portage
 South Haven
 Fort Wayne
 Goshen
 Hobart
 Lafayette
 South Bend
 Valparaiso
 Engineering · Architecture · Land Surveying



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

Granting the variance should not impact the public health, safety, or general welfare of the community. Orienting the fence with the support structure facing out may pose security concerns for the property owner, but since this is not the street facing side, it should not impact the public.

(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

Orienting the fence with the support structures facing the neighbor may impact their property values. However, constructing it with the finished side out also requires permission from the neighbor. If the neighbor is unwilling to provide the permission, the assume the consequence.

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

Strict application would require the fence to be located 2' - 3' off the property line so as to not encroach on the neighbors property when installing the fence. This creates awkward strips of land between properties that may be difficult to maintain.

(4) The variance granted is the minimum necessary

The petition is not requesting a variance for the portion of the fence that faces the street, only the side where access is limited.

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

The hardship in placing a fence with the finished side out on the side and rear of the property is the inability to get access from the neighbor. This is not a a hardship caused by the current or former owner.

Analysis & Recommendation

Analysis: The standards for the orientation of the fence are designed to protect the safety of the property owner and the property value of the adjacent neighbor. However, the ability to install a fence in this manner requires either permission from the neighbor or the fence to be installed 2' - 3' off the adjacent property. The latter may result in areas difficult to maintain in the future.

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

Property Information

Location: 3825 WILLIAM RICHARDSON DR
Owner: OLD DOMINION FREIGHT LINE INC

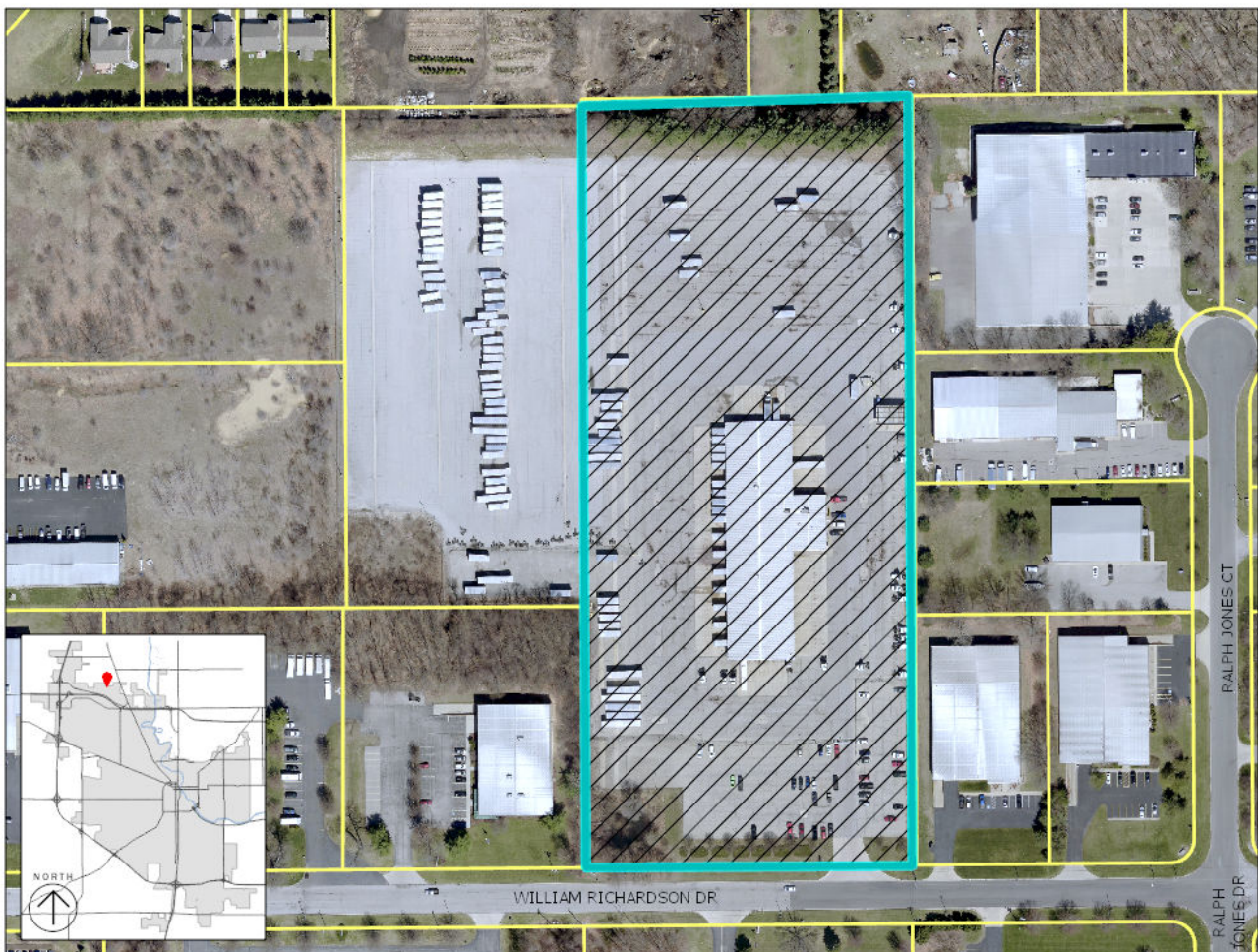
Project Summary

Replace existing fence with the addition of barbed wire.

Requested Action

Variance(s): 1) from the 6' maximum fence height in the established front yard to 8'
2) to allow barbed wire on the fence

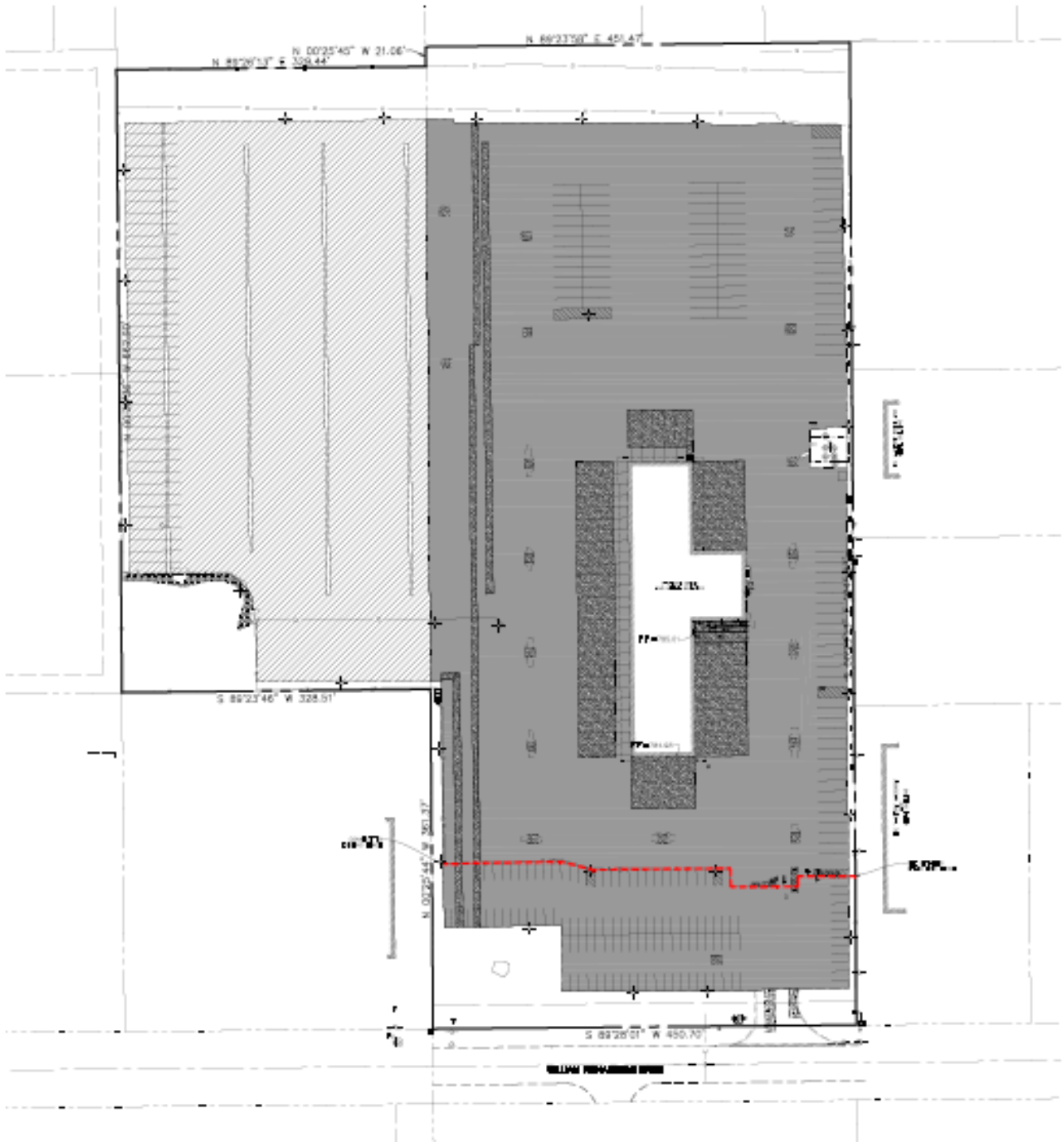
Site Location



Staff Recommendation

Based on information provided prior to the public hearing, the staff recommends the Board approve variance #1 for the height of the fence, and deny variance #2 for the addition of barbed wire.

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 height variance should not be injurious to the public health, safety, morals and general welfare of the community. The primary building is set back significantly from the right of way, creating a very large established front yard. Allowing a taller fence where indicated on the site plan should not be injurious to the public health, safety or general welfare of the community.

The proposed barbed wire variance may be injurious to the public health, safety, morals and general welfare of the community. Barbed wire is not an appropriate material to be used in the city for fences unless where specifically stated in the Zoning Ordinance where restricted public access is vital. Furthermore, barbed wire is not allowed in front or corner yards for even those allowed uses.

(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 height variance should not impact the use or value of the adjacent properties due to the significant setback of the proposed fence and primary building.

The proposed barbed wire variance may be injurious as it is an inappropriate material for fencing material.

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

Due to the significant setback of the building, strict application of the ordinance would result in practical difficulties. The requirements of the industry necessitate an 8' fence for security purposes. With the building setback 250' from the front property line, strict application would either require the removal of additional trees and large paved areas being installed on adjacent properties or a variance that exceed the height in an appropriate location on the property.

There are no practical difficulties on the property that would support the request for barbed wire. The use of the property does not require a barbed wire fence, it is simply preferred by the operator.

(4) The variance granted is the minimum necessary

The proposed height variance is the minimum necessary to provide adequate security to the property. The significant setback of the fence, behind on-site parking minimizes the impact of the added fence height.

The proposed barbed wire variance is not the minimum necessary to provide security to the property. The 8' fence height is adequate to provide the necessary security and is consistent with what is existing on the property.

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

The owner is proposing to reuse the existing building and site layout. The large setback of the existing building and existing fence height were in place when the property was acquired. The slight adjustment requires the extension of the fence and installing a gate.

The petitioner's desire for the barbed wire is a hardship created by the petitioner.

Analysis & Recommendation

Analysis: The primary building is approximately 225' from the right of way, creating a larger than normal established front yard. Allowing a taller fence where indicated on the site plan should not have injurious impacts on the community. While it is technically in the established front yard it is set back a significant distance from the road and behind other site improvements on the property. The proposed height variance should not impact use and value of the adjacent properties due to the significant setback of the primary building.

The proposed barbed wire variance, however, is not an appropriate material to be used in the City, especially in the front yard. This is not a use in which the federal or state government require that security measure. There are other security measures available to the petitioner, including the height variance for the fence.

Staff Recommendation: Based on information provided prior to the public hearing, the staff recommends the Board approve variance #1 for the height of the fence, and deny variance #2 for the addition of barbed wire.

Property Information

Location: 4316 Michigan
Owner: The BarClay Corporation

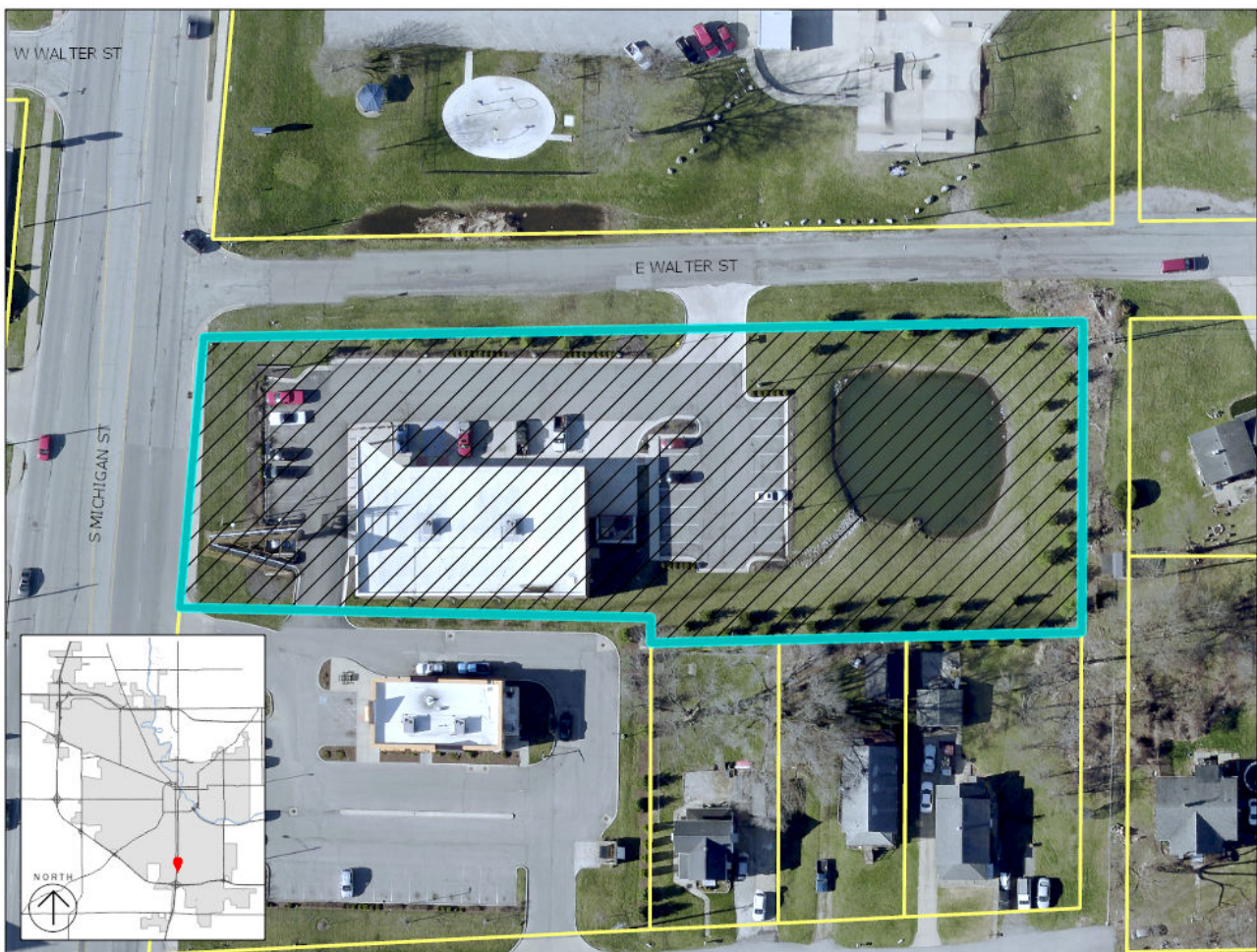
Project Summary

Replace existing static billboard with a digit face.

Requested Action

Variance(s): 1) from the required 200' lineal spacing from a public park to 162' and from the maximum allowable 35' height to 50' for a billboard

Site Location



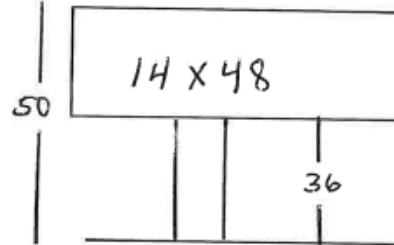
Staff Recommendation

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

Proposed Site Plan

Site Plan

Address: 4316 South Michigan Street, South Bend, IN 46614
 Key # 023-1025-1444 / 71-08-25-177-005.000-002
 Owner The Barclay Corporation
 Number of faces 2
 Type of Structure: X 14 x 48 (2)
 Digital (R)
 Type of Sign: X V



EXISTING 14x48 1 static face + 1 digital face
 to be converted to 2 Digital Faces
 Placement, Height, size + set back will NOT change
 if Variance Request is approve. static cabinet will be
 removed and replaced with a digital cabinet.

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 would have a negative impact on the public health, safety, and general welfare of the community. Two important purposes of the sign regulations in the Zoning Ordinance are to protect public and private investment in buildings and open spaces and eliminate potential hazards to motorists and pedestrians resulting from signs. By granting the variances, the non-conforming off-premise sign face would be replaced with a digital display facing a nearby park. This would not only affect the public and private investment nearby, but creating a changing display may create a hazard to motorists as well.

(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 adjacent properties may be negatively impacted if the variances are approved. Allowing an off-premise sign to be legalized in a location not otherwise allowed by the Ordinance is in conflict with the intent of the sign regulations, which could have a negative impact on 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

There are no practical difficulties created by the strict application of the Ordinance. The sign can continue to exist in the current manner until such time as the structure needs to be replaced. The only practical difficulty is the sign owners desire to remove the sign face to replace it with a digital display.

(4) The variance granted is the minimum necessary

There are no practical difficulties on the property, so the variance requested is not the minimum necessary. The sign is legal non-conforming. The sign is allowed to be refaced as needed, which allows the use to continue as originally approved. When a variance was pursued to allow a digital display, the petitioner specifically stated that it would only be limited to the south face in order to limit the exposure to the park.

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

The variance requested is not to correct a hardship, but because the sign owner has a desire to convert the static display to a digital display in order to generate more income.

Analysis & Recommendation

Analysis: The non-conforming provisions of the Ordinance are designed to allow legally established structures to continue, but not encourage their survival. Granting the variance requested would legalize the structure and allow it to exist in perpetuity. Any conversion of a sign from a static display to a digital display should be treated as a new sign. If there is no

practical difficulty that would warrant the installation of a new off-premise sign in a manner that doesn't meet the current separation and height requirements, than the variance should not be approved.

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

Property Information

Location: 404 INDIANA AVE
Owner: 466 WORKS COMMUNITY DEVELOPMENT CORPORATION

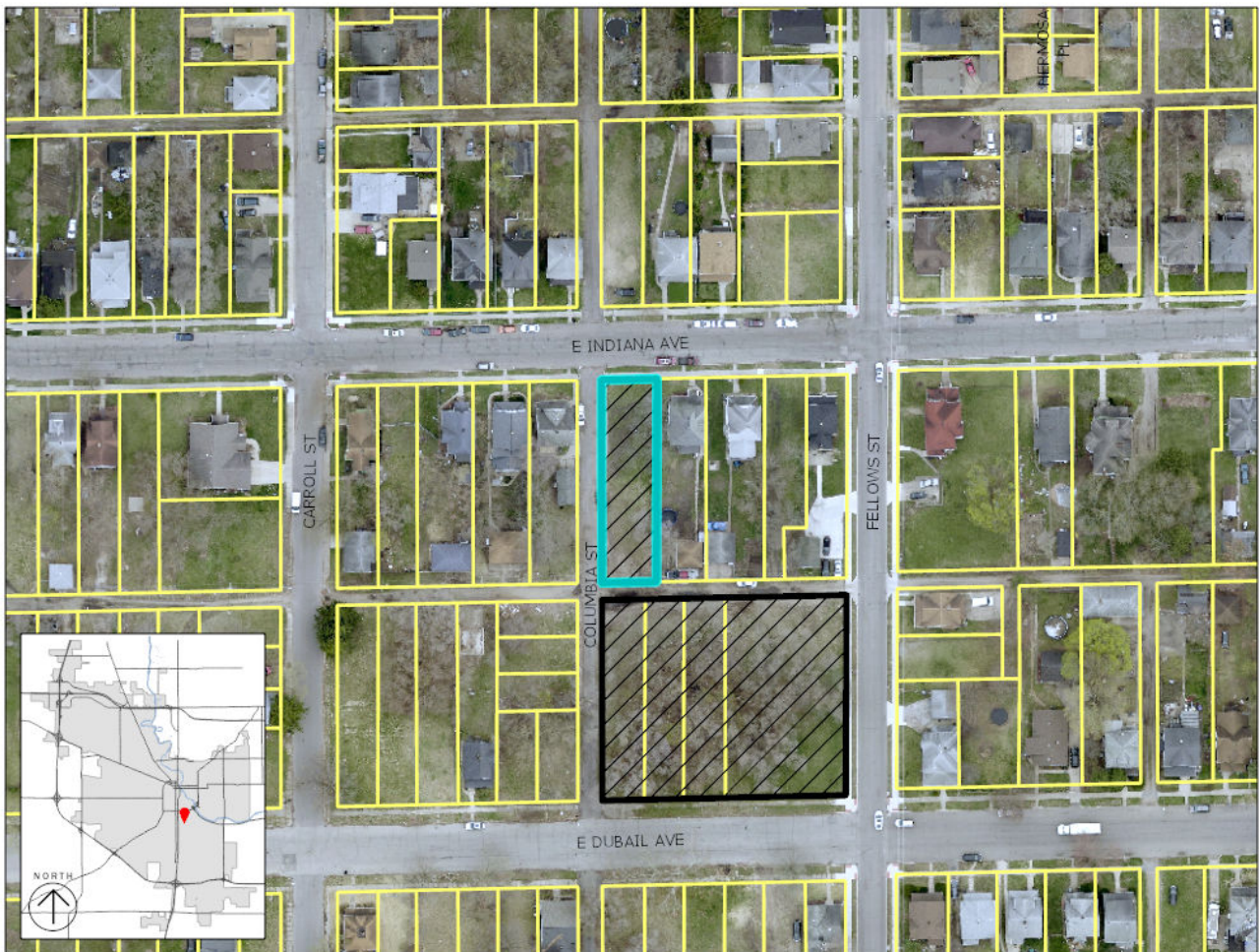
Project Summary

To allow for a temporary fenced play area for the new neighborhood center's daycare until construction of the playground can be completed.

Requested Action

Variance(s): 1) to allow accessory structures without a primary building
2) from the 4' maximum fence height to 6'

Site Location



Staff Recommendation

Based on the information available prior to the public hear, the staff recommends the Board approve the variances as presented, subject to the fence being removed when the permanent playground is installed.

Proposed Site Plan

119-093
446 WORKS SITE -
TEMPORARY
PLAYGROUND

Exhibit 01

LOT IS ZONED AS U2 - URBAN NEIGHBORHOOD 2

Table 25.090 Fences & Walls Maximum Height

District	Established Front & Corner Yard	Established Side & Rear Yard
U2	6'	6'
U2-C	6'	6'
U2-NC	6'	6'
U2-UC	6'	6'
U2-NC-UC	6'	6'

On Building Placement

Lot Site	Front	Side	Rear
U2	6'	6'	6'

For Building Placement

Lot Site	Front	Side	Rear
U2	6'	6'	6'

Notes:

1. In the RZDO, fences and walls shall also comply with the provisions of Section 25.020(2)(3).
2. A fence shall not be located within a setback area.
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100. A fence shall not be located within a setback area.

Criteria for Decision Making: Variance(s)

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

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

The proposed variance is to install a fence in order to ensure the safety and welfare of the daycare children.

(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 fence is located behind the front facade of the adjacent house and in a manner consistent with the residential character of the area, surrounding property values should not be adversely impacted. The proposed use is temporary and can be removed after the permanent playground is constructed.

(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 prohibit the installation of the fence to secure the play area.

(4) The variance granted is the minimum necessary

Because the fence is located behind the front lot line of the adjacent house and is only needed for a temporary enclosure of a play area, the variance requested is the minimum necessary to meet the licensing requirements.

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

The need for the variance to allow a temporary playground is the result of the project contractors being behind schedule, thus not caused by the current or former owner.

Analysis & Recommendation

Analysis: The proposed variance is to allow a temporary use of the property as a playground for the daycare on the adjacent property. Because of licensing requirements, the fence must be permanently affixed to the ground.

Staff Recommendation: Based on the information available prior to the public hear, the staff recommends the Board approve the variances as presented, subject to the fence being removed when the permanent playground is installed.

Property Information

Location: 1430 MISHAWAKA AVE
Owner: JAIME DIAZ

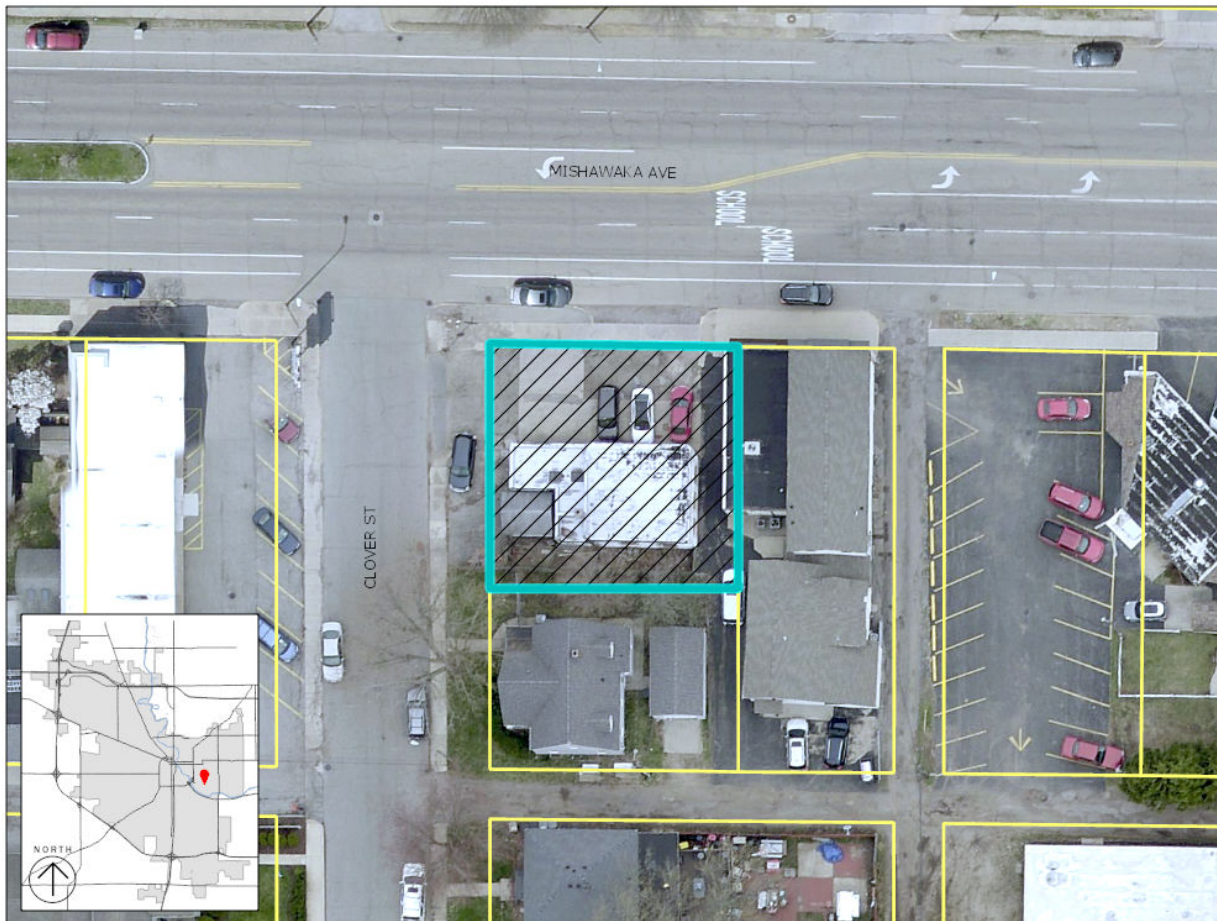
Project Summary

Operation of an automotive repair shop

Requested Action

Special Exception: Vehicle Service, Minor
Variance(s): 1) to allow parking in the established front/corner yard
2) from the 5' minimum parking area screening to none
3) from 1 shade tree for every 30' to none

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The staff recommends the Board approve Variance #1 to allow parking in the established front/corner yard. The staff recommends the Board deny Variance #2 from the minimum 5' parking area screening to none and Variance #3 from 1 shade tree for every 30' to none.

Proposed Site Plan



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;

Provided the proper landscaping and screening are provided, the proposed use should not be injurious to the public health, safety, comfort, or general welfare of the community. The site development standards in the Ordinance are established to limit potentially negative impacts on the surrounding properties.

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

Mishawaka Avenue is a long established mixed use corridor. The building was constructed in 1930 to accommodate an automotive repair use. The approval of the Special Exception should not adversely affect the use or value of adjacent area, provided the appropriate landscaping and buffering is installed.

(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 original development of this property was for vehicle repair. The NC Neighborhood Center District allows this as a Special Exception in order to evaluate the appropriateness in specific areas. At this location, the reactivation of the vacant building to its original use is consistent with the character of the district and surrounding area.

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

The plan is consistent with City Plan (2006) Objective LU 2: Encourage a compatible mix of land uses in the community.

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 Variance #1 should not be injurious to the public health, safety and general welfare of the community. This variance allows for the building to be used for its original intent. To help mitigate any potential impact on the general community, proper parking area screening and site landscaping should be upheld.

(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 in a substantially adverse manner. The site has existed in this layout for almost 100 years. While

parking in the established front/corner yard is not preferred, the proper parking area screening and site landscaping should reduce any negative impact on the surrounding properties.

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

Strict application of the Zoning Ordinance would require the building be demolished and relocated in order to allow access and parking in a different configuration. The addition of landscaping, however, could easily be accomplished.

(4) The variance granted is the minimum necessary

The variance for parking location is the minimum necessary to operate the intended use in a reasonable manner. Though parking is not required, providing some off-street parking would be practical for the business. There is no practical difficulty for the requested landscaping variances, so it is not the minimum necessary.

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

This site has been in this configuration for almost 100 years. the Zoning regulations at the time did not prohibit parking in the front yard. Variance #1 is not correcting a hardship caused by the current owner. There are remedies that would allow the petitioner to install the proper landscaping.

Analysis & Recommendation

Analysis: The original intent of the building was for an automotive repair shop. Though the Neighborhood Center Zoning District is designed for pedestrian orientated development, the use of Vehicle Service, Minor is a Special Exception to allow for this type of use where appropriate. The property was rezoned in the mid 2010's to allow for auto repair. Because the proposed use is consistent with the original use and is located along a mixed use corridor, it is within the character of the district and surrounding area.

The current layout of the parking area, if brought into conformance would hinder the usability and reactivation of the building. However, the site contains no practical difficulties and it would not affect the usability of the site to install code compliant landscaping.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. The staff recommends the Board approve Variance #1 to allow parking in the established front/corner yard. The staff recommends the Board deny Variance #2 from the minimum 5' parking area screening to none and Variance #3 from 1 shade tree for every 30' to none.

Property Information

Location: 223 N. LAFAYETTE BLVD
Owner: SOUTH BEND TRIBUNE

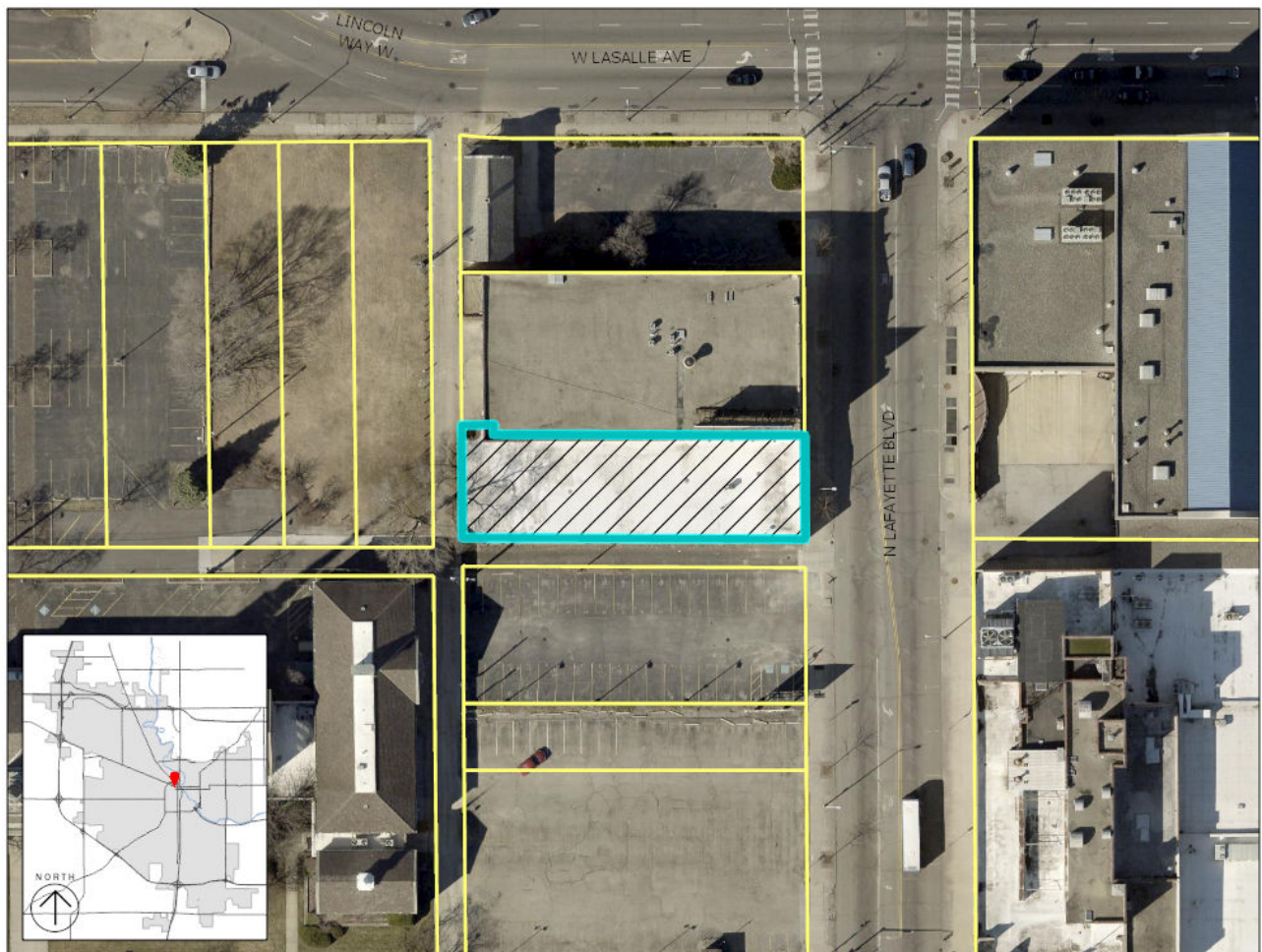
Project Summary

Request a Special Exception to allow for automotive detailing services

Requested Action

Special Exception: Vehicle Service, Minor
Variance(s): 1) from the 60% minimum transparency to 5%

Site Location



Staff Recommendation

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

Proposed Site Plan



Criteria for Decision Making: Special Exception

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

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

The proposed use should not be injurious to the public health, safety, or general welfare of the community. The building has been designed for automotive services for several decades. All the vehicle service activities occur within the fully enclosed building. There are not hazardous materials being used or fumes created by this particular automotive service.

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

Since all the vehicle service activities occur within the fully enclosed building, approval of the Special Exception should not injure or adversely affect the use of the adjacent area.

(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 Downtown Zoning District encourages active building frontages at or close to the sidewalk. Although it would be preferred to have a service door with higher level transparency and more windows along the street frontage, the practice of having the door open during normal business hours provides an active frontage encouraged in the district.

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

The petition is consistent with City Plan (2006) Objective ED1: Stimulate the rehabilitation and adaptive reuse of property in the City.

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 or general welfare of the community. The variance allows for the building to be reused as an active business in the core of the City.

(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 reduced transparency should not adversely affect the use and value of adjacent properties. The building has existed with the current level of transparency for over 2 decades. While we would encourage the property owner to improve the overall transparency

for the building frontage, the buildings in the surrounding area where all built with roughly the same amount of transparency.

(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 require a extensive remodel of the front of the buiding in order for this business to operate the vehicle service use. The building has been used for automotive purposes in the past and is well suited for the reuse in this manner. While the building owner is strongly encouraged to make improvements to the façade with additional transparency, the tenant’s operations happen completely inside the building. There are limited uses which would be able to utilize this space without a special exception. If the special exception wasn’t needed, the building improvements would not be required.

(4) The variance granted is the minimum necessary

The variance requested is the minimum necessary to operate in a reasonable manner. The business owner operates with the overhead door open during business owners. While there is not a window install, this does create the active store front and interaction with the street that is intended by the minimum transparency requirements.

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

The building has not undergone any modifications to the facade in at least two decades, therefore, the hardship was not created by the current property owner.

Analysis & Recommendation

Analysis: The proposed use as a vehicle service center, namely car detailing, is a desirable reuse of a building that has existed for 100 years. Because the use requires a special exception, the building is required to be brought to current standards. To fully restorer the façade of the building would be a large undertaking. The petitioner is meeting the intent of the ordinance by ensuring the existing windows are not covered and operating with the overhead door open during the day, which creates the vibrancy expected in a downtown location.

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