

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, October 3, 2022 - 4:00 p.m.

County-City Building
Fourth-Floor Council Chambers
www.tinyurl.com/sbbza

PUBLIC HEARING:

- Location:** 1802 HUEY ST BZA#0137-22
Owner: MIKHAEL A BROWN
Requested Action: Variance(s): 1) From the 3' maximum height for a fence that is less than 50% open in an established front and corner yard to 6'
Zoning: U1 Urban Neighborhood 1
- Location:** 2615 WESTMOOR ST BZA#0138-22
Owner: DSN IRA LLC C/O JOSE NUNEZ
Requested Action: Variance(s): 1) From the required location of a garage either at the 5' setback or not less than 18' from the alley to 8'
Zoning: U1 Urban Neighborhood 1
- Location:** 832 SOUTH BEND AVE BZA#0133-22
Owner: SHAMROCK REALTY GROUP LLC
Requested Action: Special Exception: 1 Unit Dwelling
Zoning: NC Neighborhood Center
- Location:** 506 OLIVE ST BZA#0134-22
Owner: ALBERT AND ELLA WILLIAMS
Requested Action: Variance(s): 1) to allow parking in the established front and corner yards; 2) from the 5' minimum parking area screening to none; and 3) from 1 streetscape tree for every 30' of frontage to none
Special Exception: Vehicle Service, Major
Zoning: NC Neighborhood Center
- Location:** 510 MAIN ST BZA#0136-22
Owner: CIVIL CITY OF SOUTH BEND
Requested Action: A modification of Written Commitments to allow the extension of the use as the Weather Amnesty site.
Zoning: DT Downtown

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact
2. Minutes
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: 1802 HUEY ST
Owner: MIKHAEL A BROWN

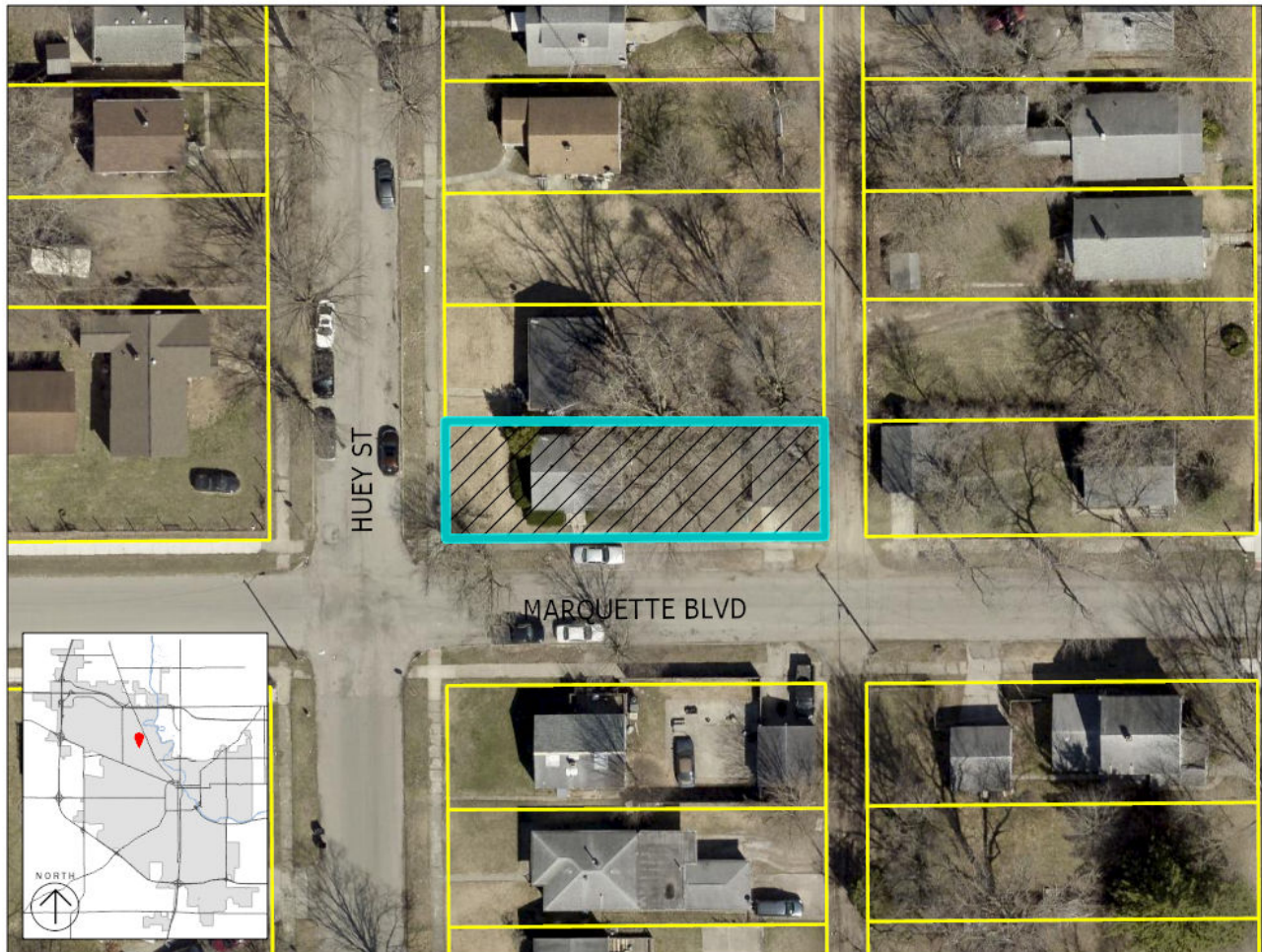
Project Summary

Construct a 6' privacy fence in the front/corner yard.

Requested Action

Variance(s): 1) From the 3' maximum height for a fence that is less than 50% open in an established front and corner yard to 6'

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



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 should not be injurious to the public health, safety, morals and general welfare of the community. The variance is to allow the fence to be installed without disturbing a natural gas line.

(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 an adverse manner. The fence is not proposed to go all the way to the sidewalk, providing a setback similar to the existing garage.

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

Due to the location of the gas meter, strict application of the Ordinance would result in practical difficulties. The main gas line to the home is at the corner of the house where the fence was planned. Any structure needs to be a minimum of 3' from the buried gas line. Moving the fence to the north would create a practical difficulty.

(4) The variance granted is the minimum necessary

The variance requested is the minimum necessary to allow for a privacy fence on the property. The proposed location of the fence is located at the maintenance boundary of the gas line.

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

The proposed variance does not correct a hardship caused by a former or current owner. The gas company dictates where the gas meter and lines are located.

Analysis & Recommendation

Analysis: The variance requested is the minimum necessary to allow for the fence to be constructed in a reasonable location. The owner had intended to located the fence in-line with the home, but when the utilities were marked it was determined that a burried gas line ran the entire length of the proposed fence installation. Any structures need to be located a minimum of 3' from the buried line. If the fence was moved 3' to the north of the line, the remaining portion of the yard would be impractical. The fence is not proposed to go all the way to the sidewalk providing a setback similar to the existing garage.

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: 2615 WESTMOOR ST
Owner: DSN IRA LLC C/O JOSE NUNEZ

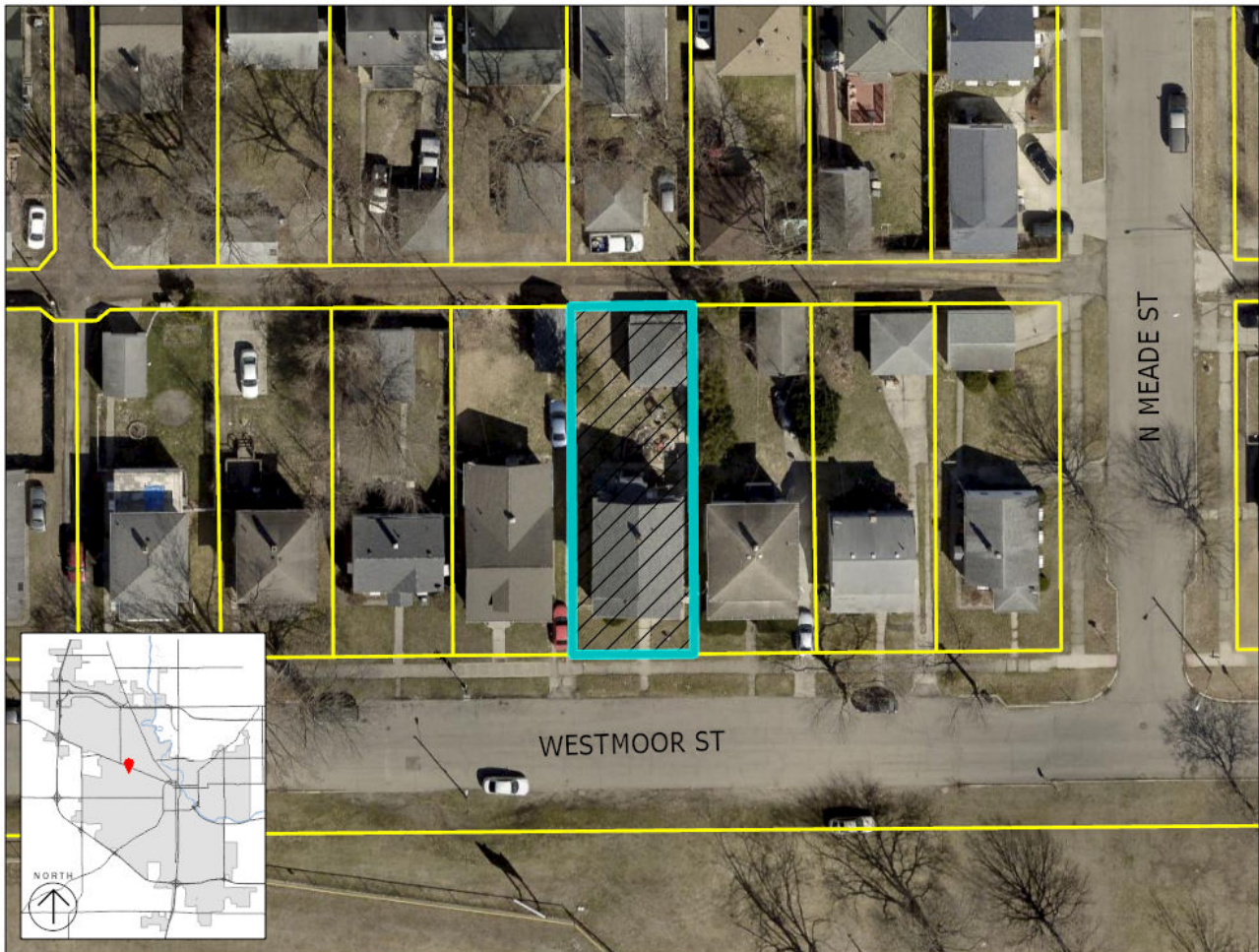
Project Summary

Construct a garage addition 8' from the rear property line.

Requested Action

Variance(s): 1) From the required location of a garage either at the 5' setback or not less than 18' from the alley to 8'

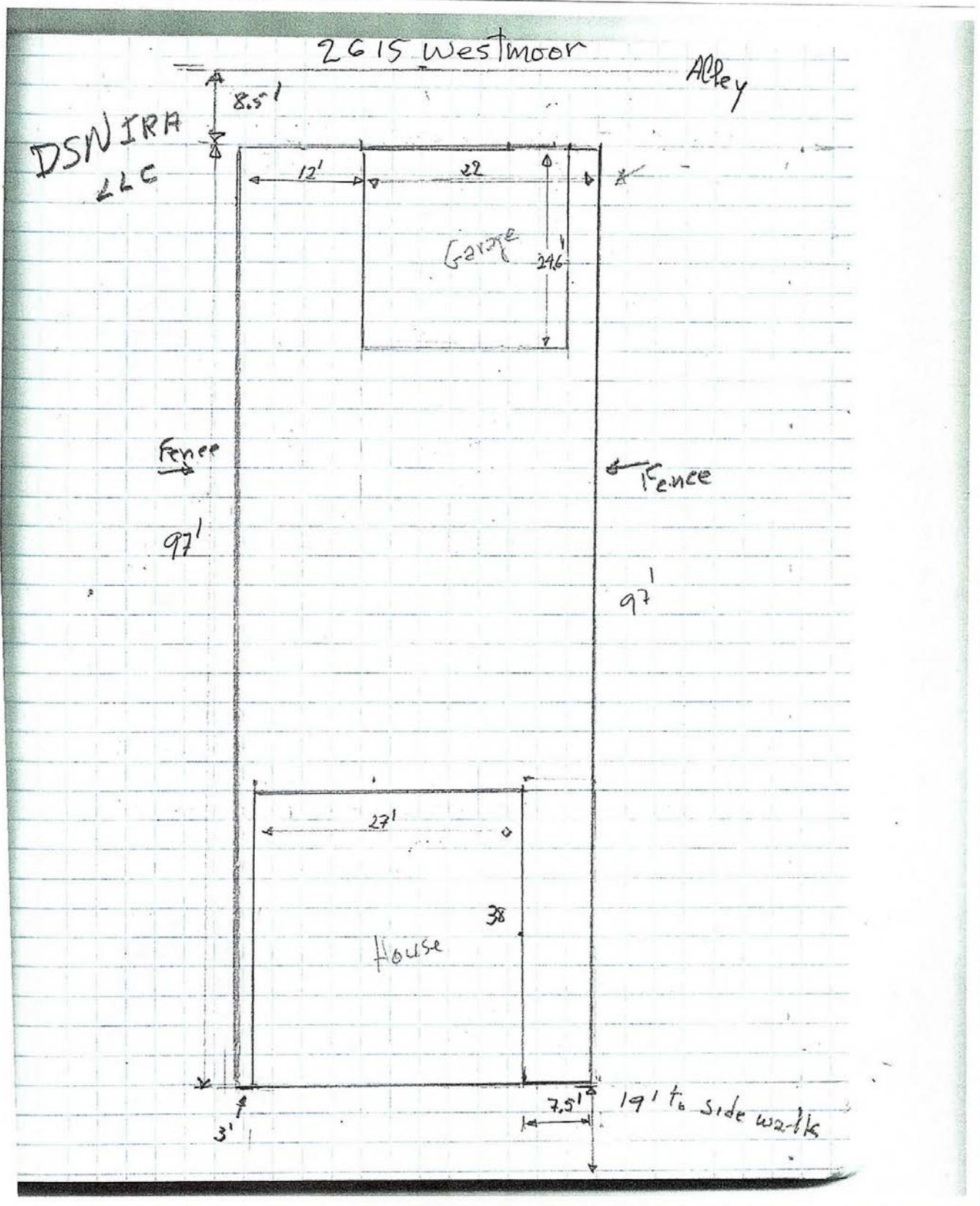
Site Location



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

Minimum setbacks provide the minimum needed in order to protect the health, safety, and general welfare of the community. The requirement that the garage be installed at the 5' minimum setback line or at least 18' from the rear lot line is designed to ensure that if there is space to park a vehicle it is adequately deep to prevent a vehicle from blocking the alley. Allowing the garage at 8' has the potential for the alley being blocked.

(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 setback between 5'-18' from the rear lot line may result in a vehicle parked in a manner that would block safe access through the alley.

(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 a practical 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 garage could exist at the appropriate setback and not lose any functionality.

(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 a newly constructed structure that was built without proper permitting. The variance requested is caused by the owners expansion of the garage and decision to rebuild the garage, not a hardship of the property.

Analysis & Recommendation

Analysis: There are no practical difficulties or unique characteristics that support the variance requested. Granting a variance to allow a garage to be constructed between 5' to 18' from the rear property line could potentially cause access issues of the alley. As a newly constructed garage, there were no practical difficulty that would have prevented the construction of the garage in accordance with the Ordinance.

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: 832 SOUTH BEND AVE
Owner: SHAMROCK REALTY GROUP LLC

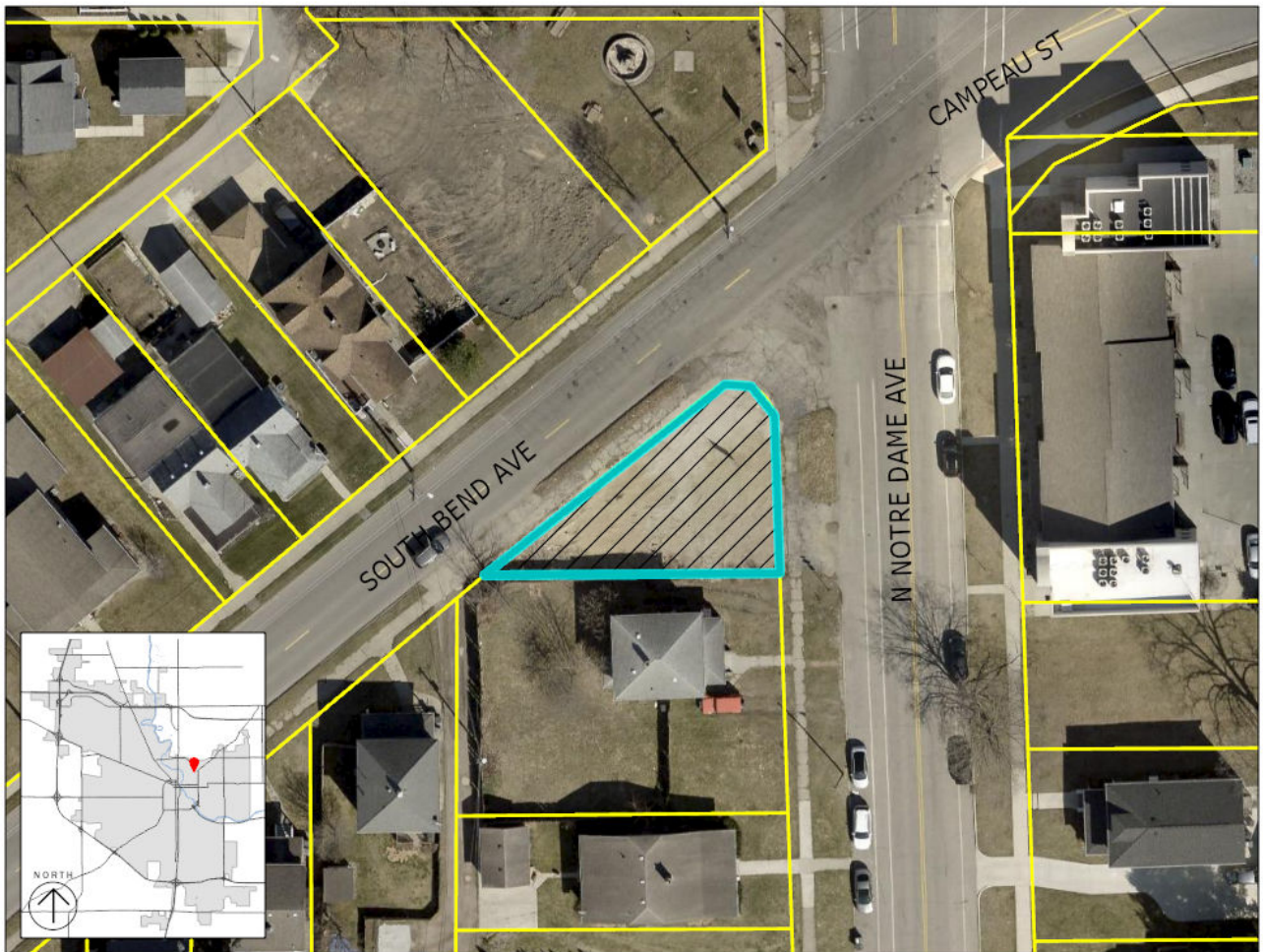
Project Summary

To construct a 1 unit dwelling on a property zoned NC Neighborhood Center.

Requested Action

Special Exception: 1 Unit Dwelling

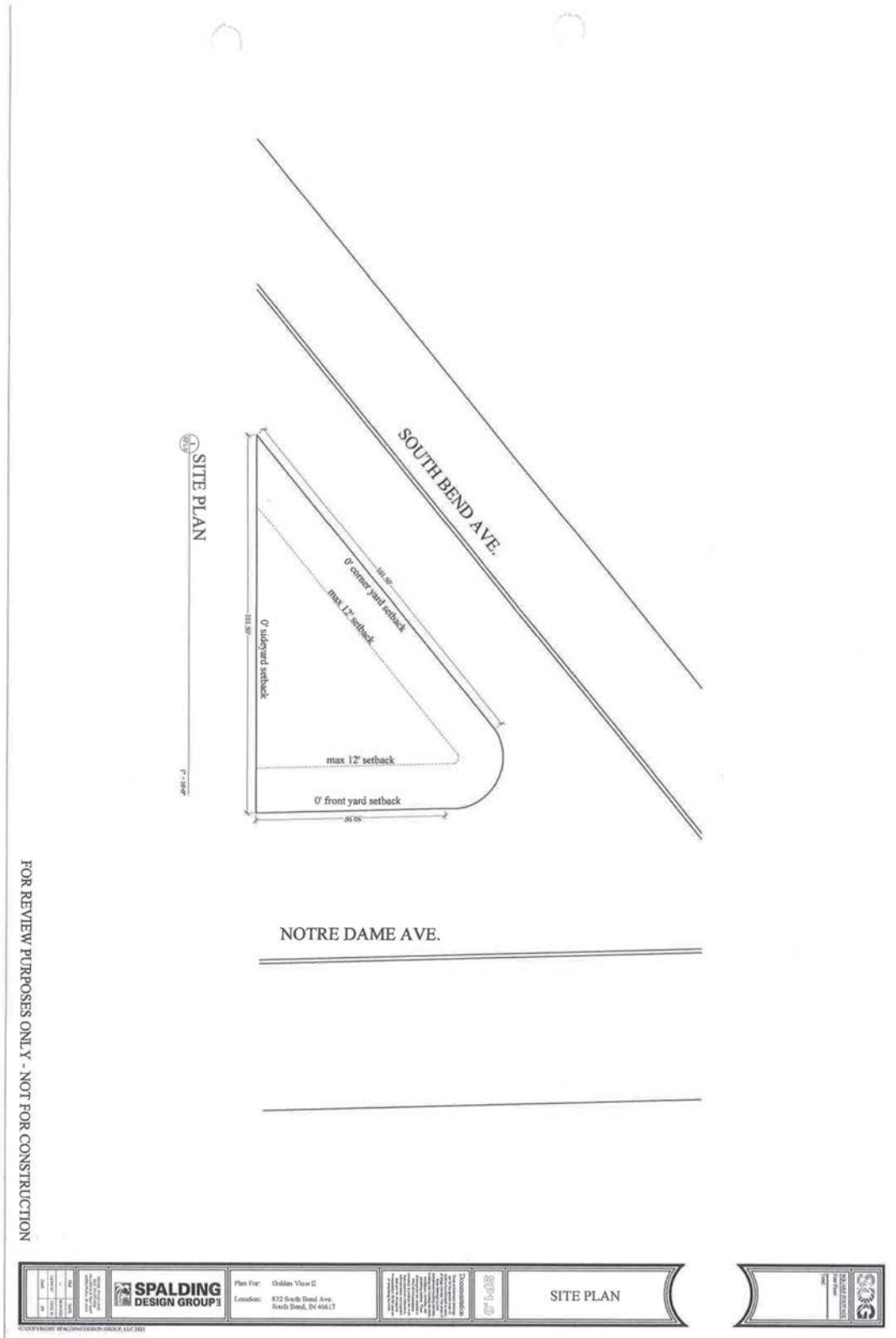
Site Location



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.

Proposed Site Plan



FOR REVIEW PURPOSES ONLY - NOT FOR CONSTRUCTION

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. Reactivating a vacant lot with a residential dwelling 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;

The proposed use should not adversely affect the use of the adjacent area or property values. The site is located in an exclusively residential portion of the neighborhood. New construction that fits the scale of the current residential properties should strengthen nearby property values and will be less intensive than a non-residential use.

(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 site is zoned NC Neighborhood Center because it previously had a non-residential use on the site. There are no other NC properties in the area. The proposed use will be the least likely to impact the surrounding neighborhood negatively.

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

The petition is consistent with the Northeast Neighborhood Plan (2022): Fill vacant and underutilized lots with medium-density residential development. While a one unit dwelling is not generally considered medium-density, a one unit dwelling on this particular site will fit the intent of the goal because of the irregular and small size of the lot. A commercial use would be difficult to develop in a way that meets all current Zoning and Engineering development standards.

Analysis & Recommendation

Analysis: Reactivating a vacant lot will provide more residents to the neighborhood, which will increase safety and the general welfare of the community. This site has been a variety of nonresidential uses over the years. However, given the size of the lot it would limit the type of nonresidential development to could go on this site. The proposed use will be the least likely to negatively impact the surrounding neighborhood. New construction that fits the scale of the current residential properties should strengthen nearby property values.

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.

Property Information

Location: 506 OLIVE ST
Owner: ALBERT AND ELLA WILLIAMS

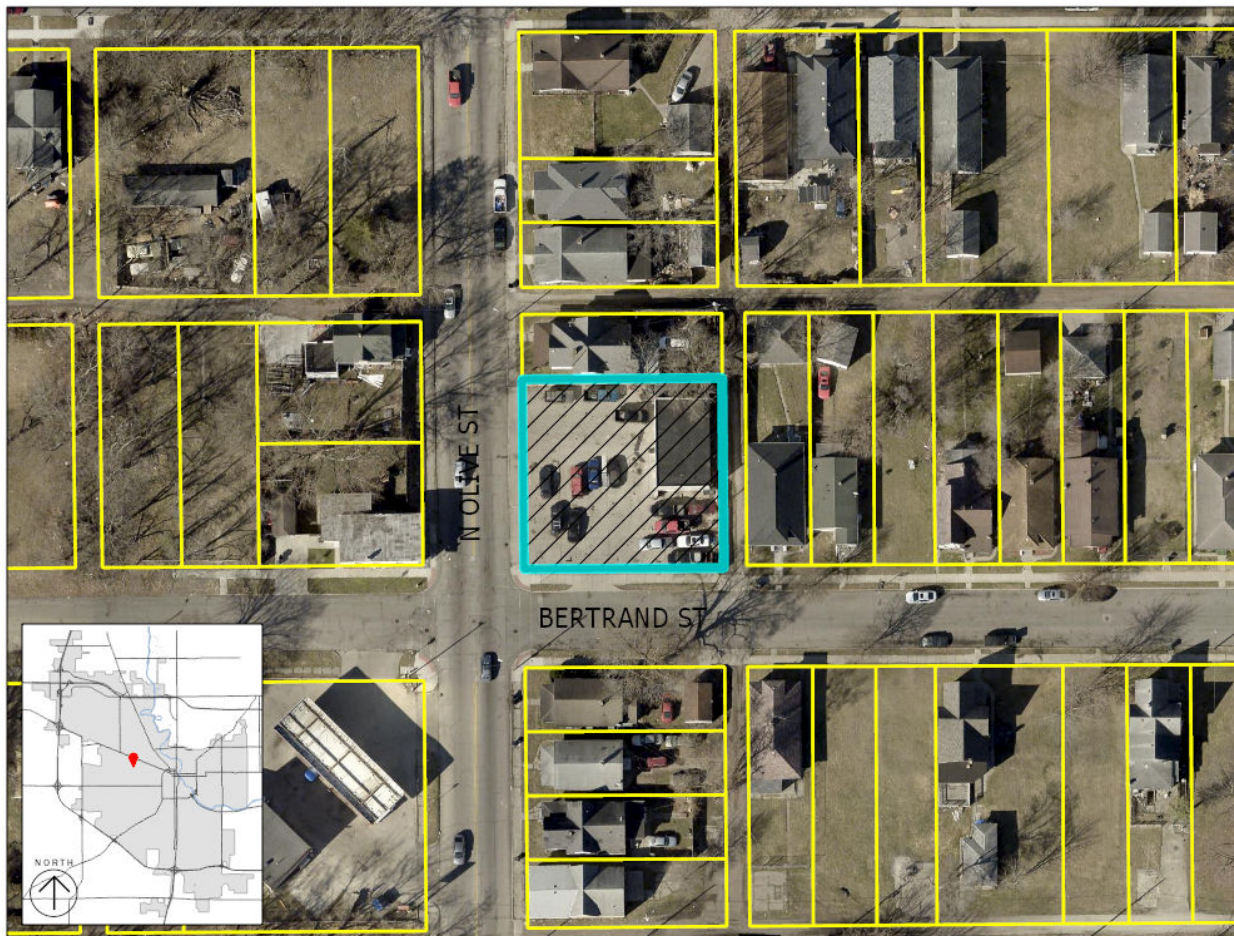
Project Summary

Allow for vehicle repair (rebuilding transmissions and light general repair) and maintain the site in the current configuration.

Requested Action

Special Exception: Major Vehicle Service
Variance(s): 1) to allow parking in the established front and corner yards
2) from the 5' minimum parking area screening to none
3) from 1 streetscape tree for every 30' of frontage to none

Site Location



Staff Recommendation

Based on the information provided prior to the public hearing, 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 and corner yards, subject to no outdoor storage, and deny Variances 2 and 3.

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;

Provided the proper landscaping and screening are installed, 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;

As the property was initially constructed for the proposed use, approval of the Special Exception should not injure or adversely affect the use of the 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;

While the Neighborhood Center Zoning District encourages pedestrian orientated development, the use of Major Vehicle Service is an allowed Special Exception in the district for instances such as this where the original intent of the building was for an automotive repair shop. Activation of a currently 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 Kennedy Park Neighborhood Plan (2022) makes no specific mention of this use. The proposed use is consistent with City Plan (2006) Objective LU 2: Stimulate the rehabilitation and adaptive reuse of the 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 Variances should not be injurious to the public health, safety and general welfare of the community. These variances allow 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 since the 1960s. While parking in the established front or corner yard is not preferred, the proper parking area screening and site landscaping should reduce any negative impact on the surrounding properties use and value.

(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 to 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. There is more than

(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 since the 1960s. 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: While the Neighborhood Center Zoning District encourages pedestrian orientated development, the use of Major Vehicle Service is an allowed Special Exception in the district for instances such as this where the original intent of the building was for an automotive repair shop.

Approving a variance to allow parking in the established front and corner yard will allow for the reuse of the existing building without forcing a reconfiguration of the site. To mitigate the impact of the parking variance, it is important to enforce the landscaping requirement. The site contains no practical difficulties that would prevent the installation of the appropriate landscaping for the site.

Staff Recommendation: Based on the information provided prior to the public hearing, Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. Staff recommends the Board approve Variance #1 to allow parking in the established front and corner yards subject to no outdoor storage, and deny Variances 2 and 3.

**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, 2023.

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 BZA#0136-22

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,

