

# City of South Bend

## BOARD OF ZONING APPEALS

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### AGENDA

**Monday, December 6, 2021 - 4:00 p.m.**

County-City Building  
Fourth-Floor Council Chambers  
[www.tinyurl.com/sbbza](http://www.tinyurl.com/sbbza)

#### PUBLIC HEARING:

1. **Location:** 801 EMERSON AVE BZA#0091-21  
**Owner:** ROBERT CHRISTOPHER AND SARAH B PERKINS  
**Requested Action:** Variance(s): 1) from the maximum 3' privacy fence in an established corner yard to 6'  
**Zoning:** U1 Urban Neighborhood 1
2. **Location:** 1035 JEFFERSON BLVD BZA#0092-21  
**Owner:** KARL AND MARGARET EDMONSON  
**Requested Action:** Variance(s): 1) To allow an accessory structure on a lot without a primary structure  
**Zoning:** U1 Urban Neighborhood 1
3. **Location:** 2046 SOUTH BEND AVE BZA#0093-21  
**Owner:** DEV H12 LLC  
**Requested Action:** Variance(s): 1) From the 5' minimum front sign setback to 0'; and 2) From the 15' maximum sign height to 19'  
**Zoning:** C Commercial
4. **Location:** 2730 MISHAWAKA AVE BZA#0094-21  
**Owner:** STOYAN STOYANOV  
**Requested Action:** Variance(s): 1) From the minimum of 1 street tree per 30' on Mishawaka Ave to none; 2) To allow parking in the established front and corner yard; 3) From the 60% minimum transparency on the front and 20% minimum transparency on the corner facade to the existing windows; and 4) From the required parking area screening to none  
Special Exception: Minor Vehicle Service  
**Zoning:** NC Neighborhood Center

#### ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – October 4, 2021
2. Minutes – October 4, 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.



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**Property Information**

Location: 801 EMERSON AVE  
Owner: ROBERT CHRISTOPHER AND SARAH B PERKINS

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**Project Summary**

Install a 6 foot privacy fence in the established corner yard

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**Requested Action**

Variance(s): 1) from the maximum 3' privacy fence in an established corner yard to 6'

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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**

The approval of this variance may not be injurious to the public health or safety of the community. 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 6' 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. If petitioner does not wish to lower fence, another option is to move the 6' fence to a code compliant location in line with the house.

**(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 utilize a different fence option or install the fence in compliance with the ordinance and still retain about the same amount of usable yard space.

**(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 and a code compliant fence could provide the security and privacy desired by the applicant. Had the applicant applied for a fence permit, they would have been made aware of the location restrictions and applicable ordinance.

### Analysis & Recommendation

**Analysis:** There are no practical difficulties for the petitioner which would necessitate a 6' fence in this location. The proposed fence is not consistent with the intent of the ordinance. The site is already elevated above the street and 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.





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**Property Information**

Location: 1035 JEFFERSON BLVD  
Owner: KARL AND MARGARET EDMONSON

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**Project Summary**

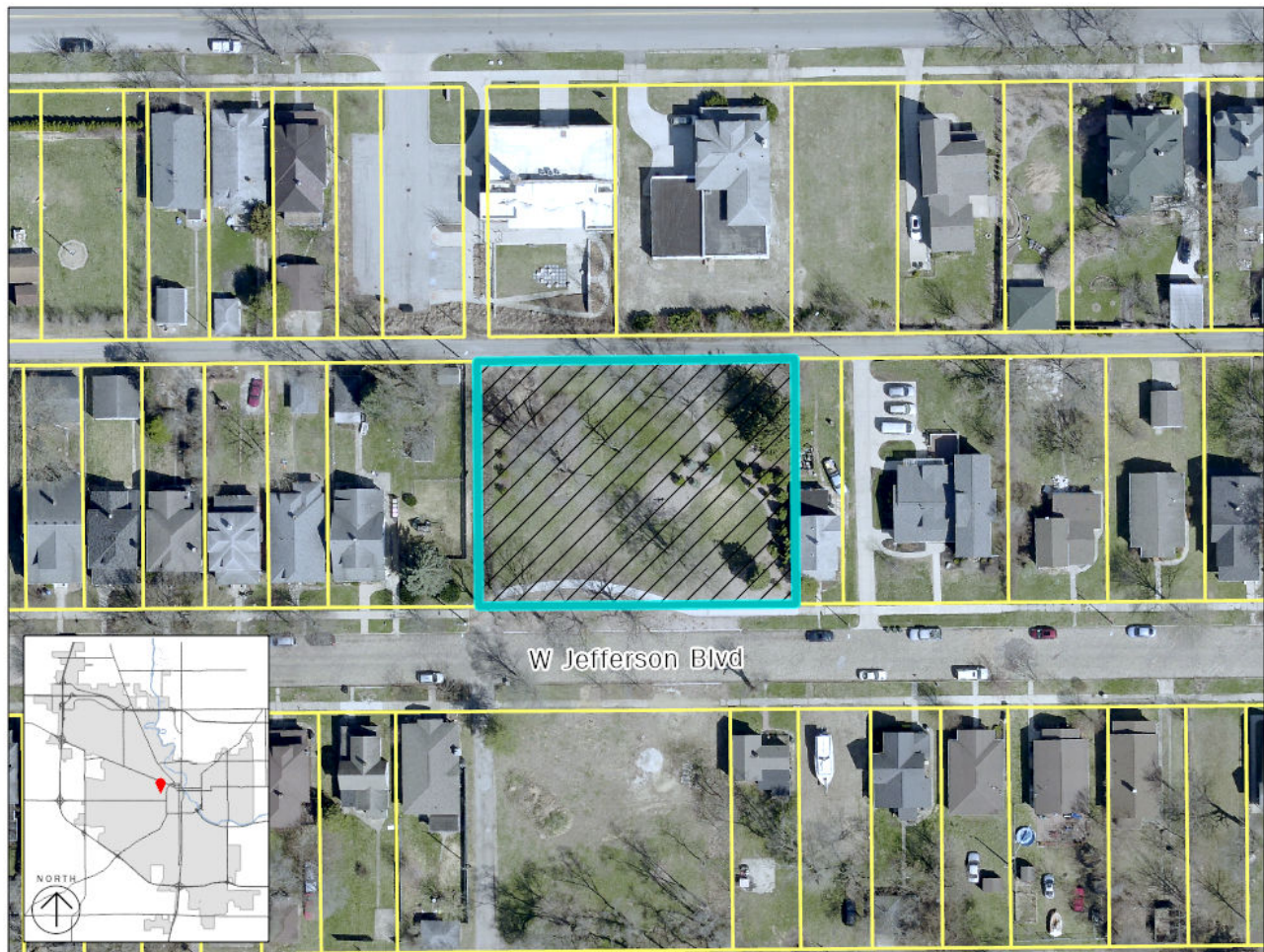
The lot has been used as a private "pocket park", available to the neighborhood for children and adults to gather in. The plan shows for the construction of a privacy fence on the eastern side of the lots for aesthetics and to further delineate the area as a park.

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**Requested Action**

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

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**Site Location**

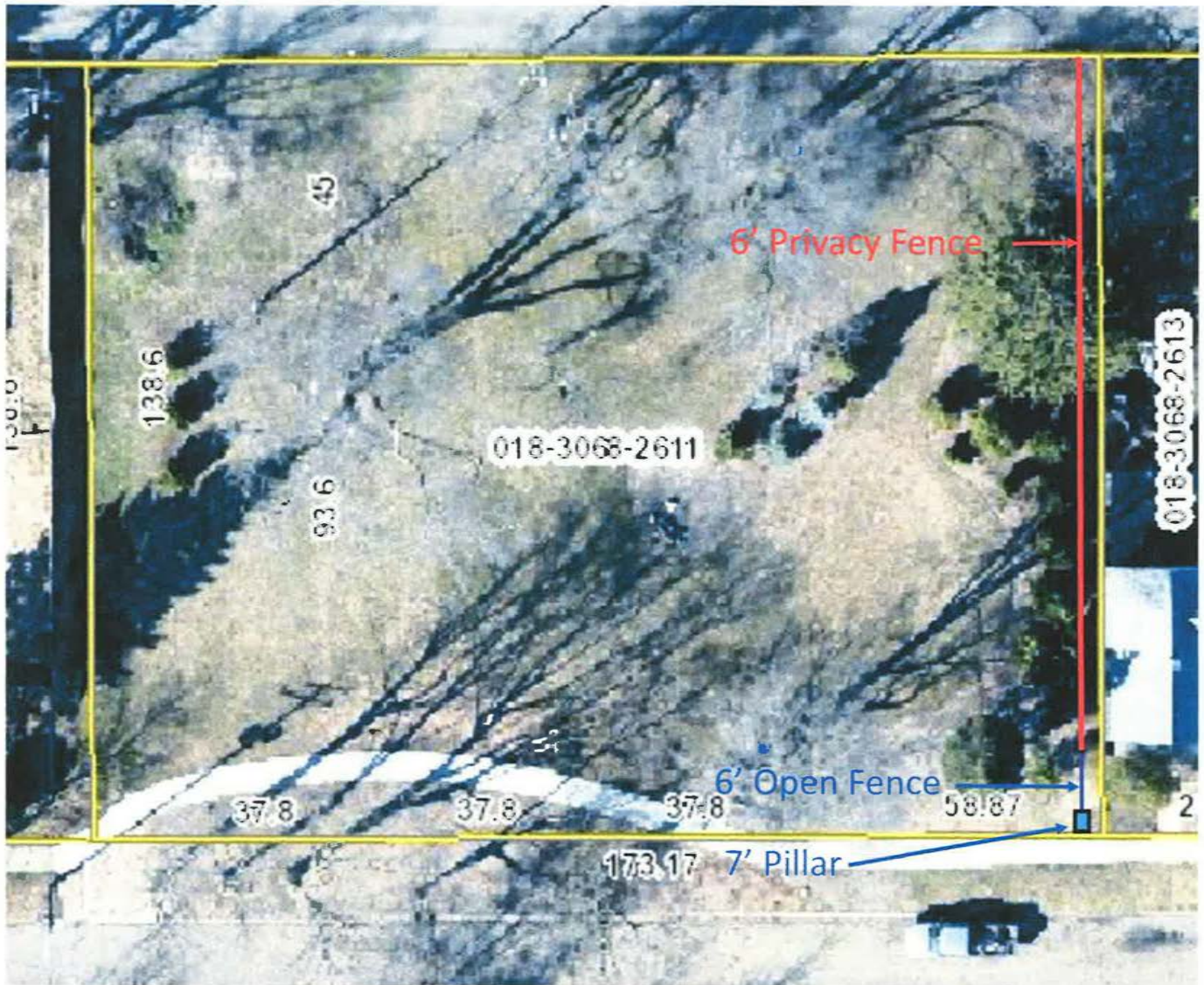
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**Staff Recommendation**

Staff recommends the Board approve the variance, subject to it being limited to the east property line and setback a minimum of 25' from the street



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 will not be injurious to the public health, safety, morals and general welfare of the community provided the fence is limited to a privacy fence similar to what would be allowed if a primary building was on the site. The fence proposed will not block access to the lot or limit visibility of the lot.

**(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 requested variance places the fence at a location which would be allowed if there was a primary use present on the lot.

**(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 practical difficulties in the use of the property. The petitioner has acquired several vacant lots and developed them in a manner to serve as an unofficial park for the neighborhood. Allowing a fence along the eastern property line helps further define the unofficial park space, while limiting any negative consequences for surrounding property owners.

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

If the variance is approved subject to being limited to the east property line and setback a minimum of 25' from the street, it would be the minimum necessary to define the property while still meeting 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 variance granted does not correct a hardship caused by the former or current owner. The properties were vacant when the current owner acquired them.

### Analysis & Recommendation

**Analysis:** The petitioner has acquired several vacant lots and developed them in a manner to serve as an unofficial park for the neighborhood. There is already a privacy fence on the property to the west in a similar location. By limited the location and setback of the fence, it creates a clear separation from the adjacent property without completely enclosing the lot.

**Staff Recommendation:** Staff recommends the Board approve the variance, subject to it being limited to the east property line and setback a minimum of 25' from the street



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**Property Information**

Location: 2046 SOUTH BEND AVE  
Owner: DEV H12 LLC

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**Project Summary**

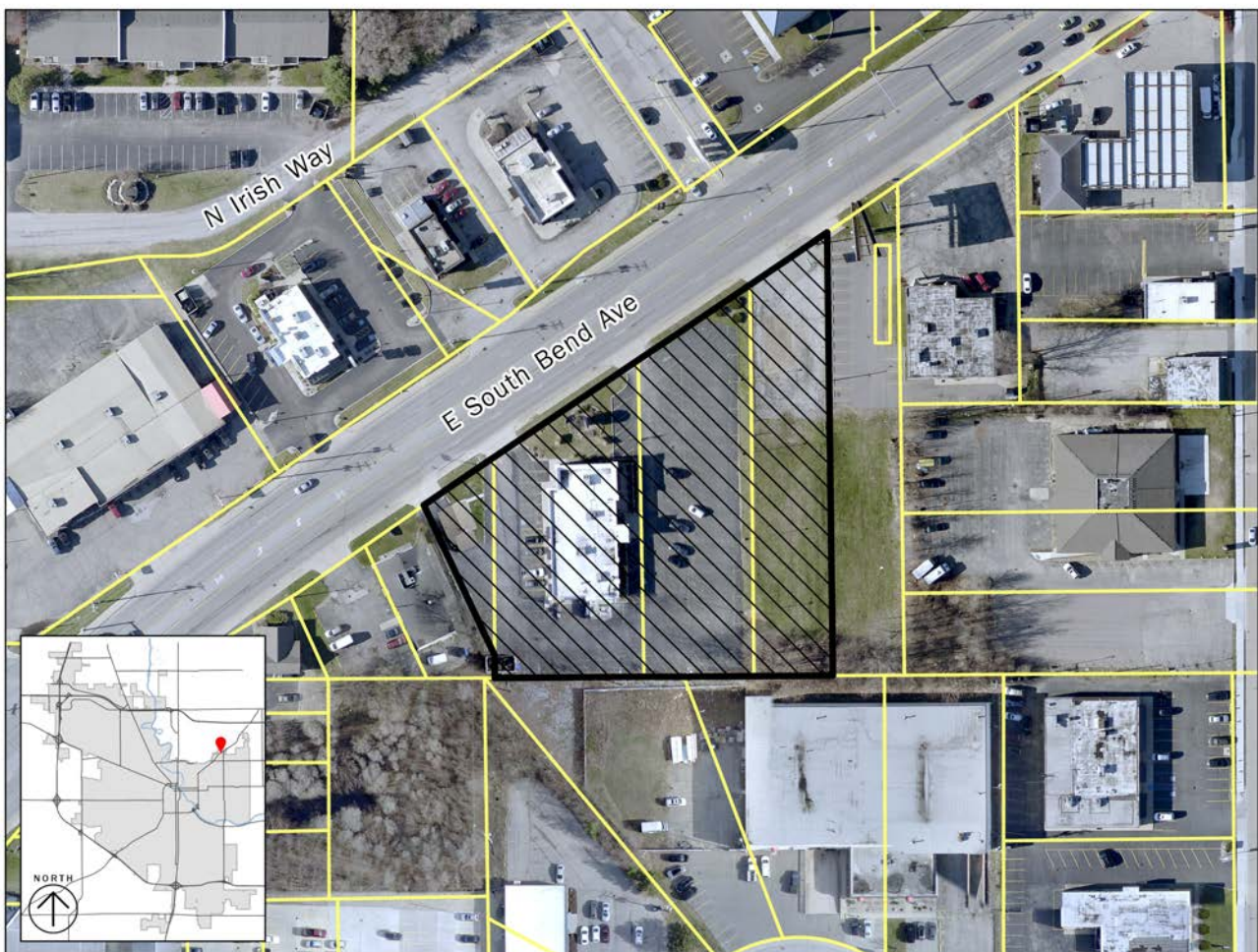
Legalize a sign installed.

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**Requested Action**

Variance(s): 1) From the 5' minimum front sign setback to 0'  
2) From the 15' maximum sign height to 19'

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**Site Location**

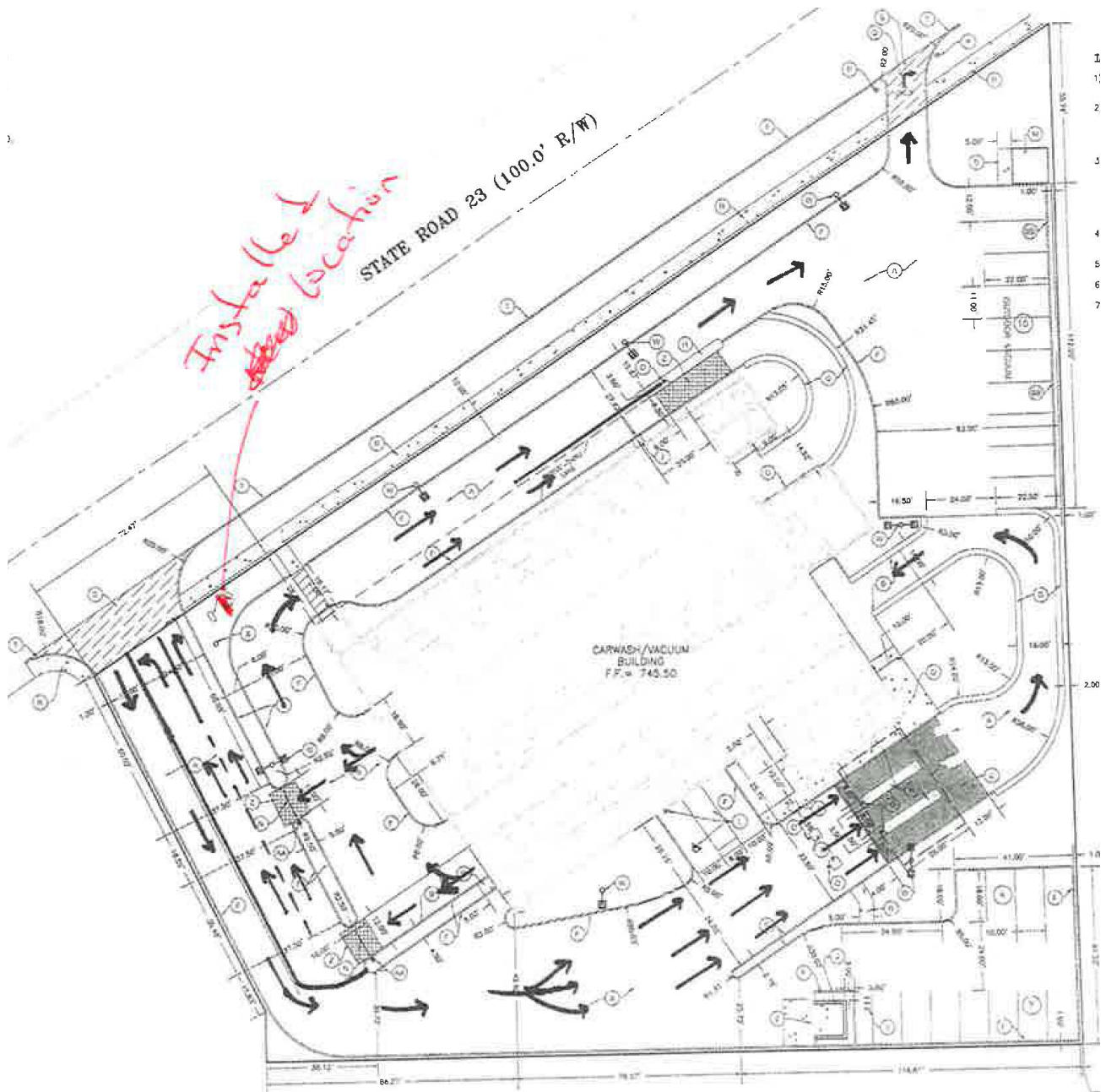
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**Staff Recommendation**

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

Approval of the variance could be injurious to the public health, safety, morals and general welfare of the community. 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. The site already has restricted visibility due to the road curve. Further restricting the view will cause cars to have to pull into the pedestrian area in order to safely exit the site.

**(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. Other signs in the area are legal non-conforming and will need to be adapted in the future. They are also predominately pole style signs that allow for adequate clearance and clear sight area.

**(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 or location of the sign. The sign was granted a permit in a code compliant location and later changed by the petitioner.

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

The practical difficulties on the site are self created, so the variance is not the minimum necessary. The petitioner should not be granted a variance for the sign location due to poor site planning on their part.

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

The variance requested is based on the desire of the petitioner, not a practical difficult of the site. The petitioner made a conscious decision to move the sign location and constructed the sign at a taller height, against prior approved plans for a code compliant sign. The variance requested is to avoid the cost of relocating the sign and to maintain the height above what is allowed by code.

## Analysis & Recommendation

**Analysis:** The petitioner had received permit approval for the construction of a code compliant sign in a code compliant location. The petitioner intentionally built the sign at a larger height and in a location that places the sign right against the right-of-way.

Granting the variance would give an undue advantage to the property owner, which could negatively impact the use of the adjacent properties. It would also set a precedence which would promote the practice of permitting something compliant with the ordinance, but installing something different than what is appropriate.

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



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**Property Information**

Location: 2730 MISHAWAKA AVE  
Owner: STOYAN STOYANOV

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**Project Summary**

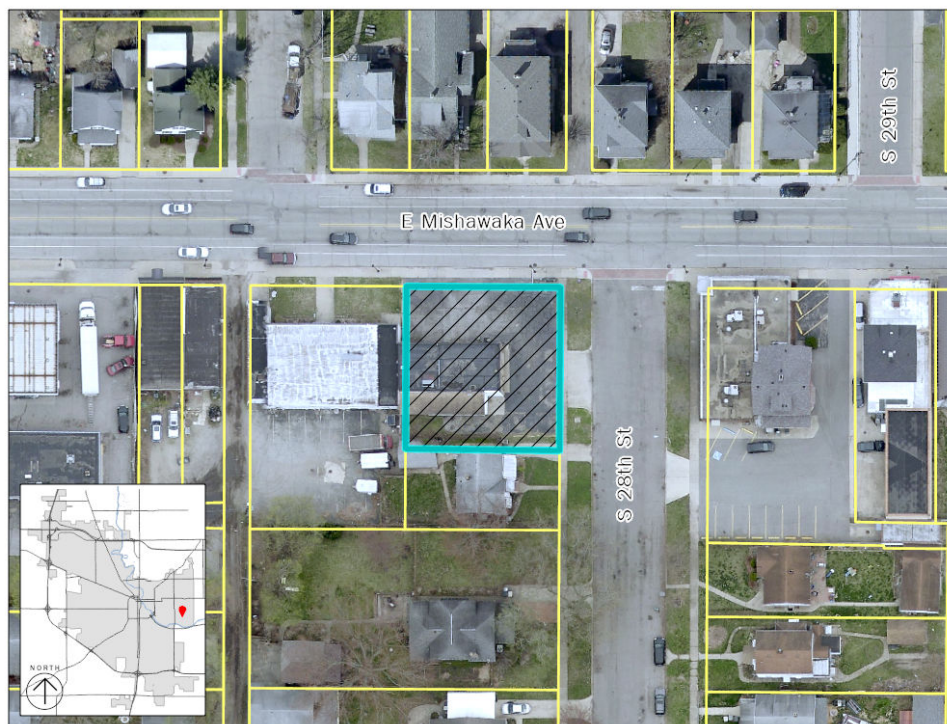
The property owner is requesting a special exemption and a variance to allow his renter to obtain an automotive repair and service license and open a shop in listed property.

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**Requested Action**

Special Exception: Minor Vehicle Service

- Variance(s):
- 1) From the minimum of 1 street tree per 30' on Mishawaka Ave to none
  - 2) To allow parking in the established front and corner yard
  - 3) From the 60% minimum transparency on the front and 20% minimum transparency on the corner facade to the existing windows
  - 4) From the required parking area screening to none
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**Site Location**

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**Staff Recommendation**

Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation. Staff recommends the Board deny Variance #1 From the minimum of 1 street tree per 30' on Mishawaka Ave to none and Variance #4 From the required parking area screening to none. Staff recommends the Board approve Variance #2 To allow parking in the established front and corner yard and Variance #3 From the 60% minimum transparency on the front and 20% minimum transparency on the corner facade to the existing windows, subject to a 5' parking setback to allow space for the landscaping.

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;**

The proposed use should not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare. The building was initially constructed for automotive repair. The zoning ordinance has standards in place to help limit any negative impacts on surrounding properties or the community at large.

**(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 Vehicle Service, Minor 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.**

City Plan (2006) recommends the City "Stimulate the rehabilitation and adaptive reuse of property in the city." (Objective ED1). By approving the Special Exception the possibility of a vacant property in the city increases.

### 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 #2 and Variance #3 should not be injurious to the public health, safety, morals and general welfare of the community. The variances allow for the building and site to be reused for its original intent. However, proper screening is needed to mitigate the impact on the general 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**

With property landscaping and buffering the reduced transparency variance should not adversely affect the use and value of adjacent properties. The building already has existed with the current level of transparency. While parking in the established yard is not preferred, proper buffering will help mitigate the impact on the use and value of adjacent 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 not allow for the property to be used for vehicle repair as originally built. While vehicle repair is permitted as a special exception, strict application would require the building to be demolished and relocated. The addition of landscaping, however, could easily be accomplished.

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

While parking is not required, it is practical for the business to need some off-street parking. The variances requested for transparency and parking location are the minimum necessary to operate in a reasonable manner. The 5' setback requested by staff is the minimum necessary to allow for the required parking screening and streetscape landscaping required. 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**

The zoning regulations mandating minimum transparency levels and prohibiting parking in the front yard both postdate the construction and placement of the building.

## Analysis & Recommendation

**Analysis:** While the Neighborhood Center Zoning District encourages pedestrian orientated development, the use of Vehicle Service, Minor 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.

Variances which allow for the current configuration of the building to remain as is for the parking lot and for transparency are reasonable to allow for the reuse of the building as originally constructed. Variance from the required landscaping are viewed unfavorably as they do not prohibit the use or the usability of the site. The site contains no practical difficulties for establishing code compliant landscaping on the site.

**Staff Recommendation:** Staff recommends the Board send the Special Exception to the Common Council with a favorable recommendation.

Staff recommends the Board deny Variance #1 From the minimum of 1 street tree per 30' on Mishawaka Ave to none and Variance #4 From the required parking area screening to none. Staff recommends the Board approve Variance #2 To allow parking in the established front and corner yard and Variance #3 From the 60% minimum transparency on the front and 20% minimum transparency on the corner facade to the existing windows, subject to a 5' parking setback to allow space for the landscaping.