

City of South Bend

BOARD OF ZONING APPEALS

AGENDA

Monday, August 3, 2020 - 4:00 p.m.

County-City Building
Fourth-Floor Council Chambers

PUBLIC HEARING:

1. **Location:** 1223 THOMAS ST and 1227 THOMAS ST BZA#0009-20
Owner: MARLENE STEVENS
Requested Action: Variance(s): 1) To allow an accessory use without a primary structure
Zoning: U1 Urban Neighborhood 1
2. **Location:** 602 MICHIGAN ST BZA#0022-20
Owner: DAVID G & D KATHRYN MCALPIN REVOCABLE LIVING TRUST
Requested Action: Variance(s): 1) From the 4' maximum fence height in an established front and corner yard to 5'
Zoning: NC Neighborhood Center
3. **Location:** 517 RIVER AVE BZA#0023-20
Owner: LEAH R ZIMMER
Requested Action: Variance(s): 1) From the 5' minimum rear setback to 0'
Zoning: U1 Urban Neighborhood 1
4. **Location:** 1740 SOUTH BEND AVE BZA#0024-20
Owner: BEACH HOUSE LLC
Requested Action: Variance(s): 1) From the maximum height of 40' and 3 stories to 50' and 5 stories
Zoning: NC Neighborhood Center

ITEMS NOT REQUIRING A PUBLIC HEARING:

1. Findings of Fact – July 6, 2020
2. Minutes – July 6, 2020
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

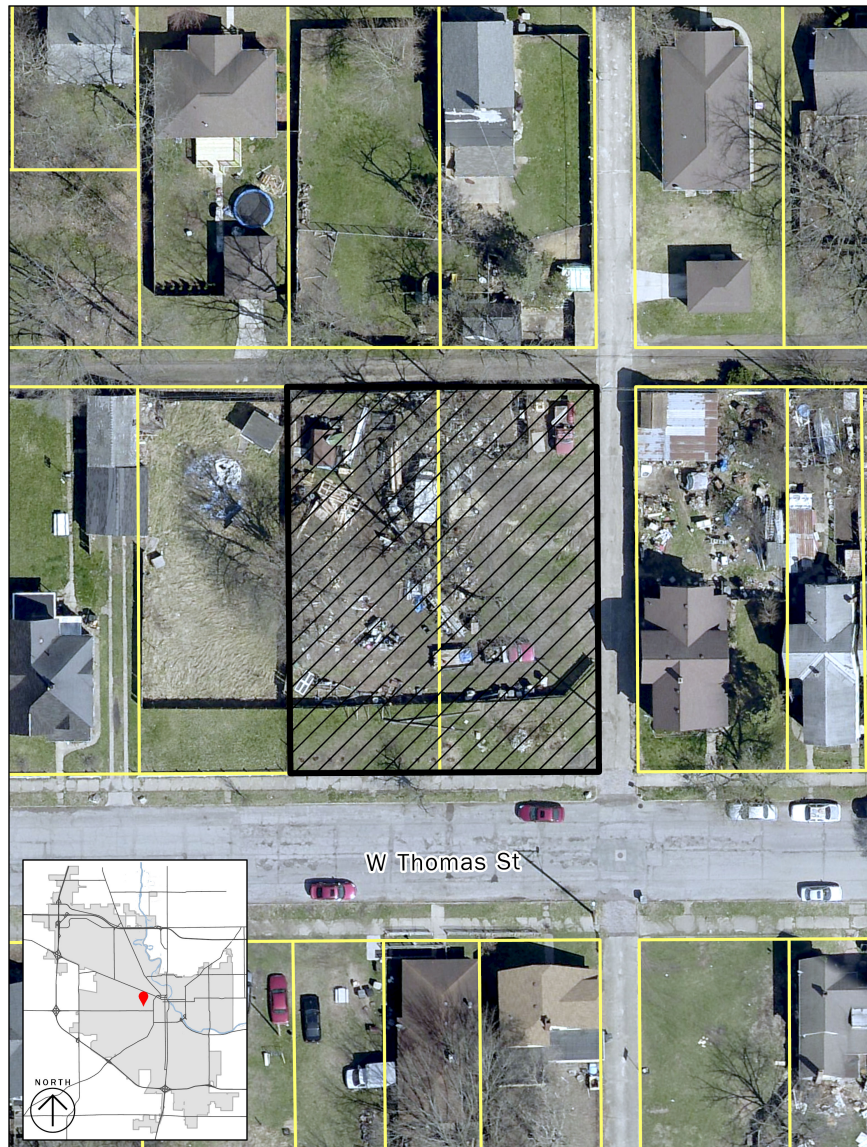
Location: 1223 THOMAS ST and 1227 THOMAS ST
Owner: MARLENE STEVENS

Project Summary

To allow a privacy fence on a property 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 deny the variance as requested.

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 could be injurious to the public health, safety, morals, and general welfare of the community. The addition of the fence directly perpendicular to the alley could lead to visual issues entering or exiting they alley and has been put in place to screen a use not allowed in this district.

(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 would be affected in an adverse manner due to the fence being placed to screen junk and debris that violates the property maintenance ordinance of the City. Allowing a privacy fence to secure a lot that does not contain a primary structure promotes uses of the property in a manner not consistent with the zoning ordinance and other City ordinances.

(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 the Zoning Ordinance would not result in practical difficulties in the use of the property, the property could still be used without a privacy fence. The petitioner presented no justification for the requested variance.

(4) The variance granted is the minimum necessary

The petitioner is not asking for the minimum necessary, the request is for a 6' privacy fence on a lot without any type of other structure.

(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 that supports the granting of a variance.

Analysis & Recommendation

Analysis: Allowing a privacy fence on a property that does not contain a primary structure encourages use of the property in a manner that violates the Zoning Ordinance and other ordinances within the City.

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

Property Information

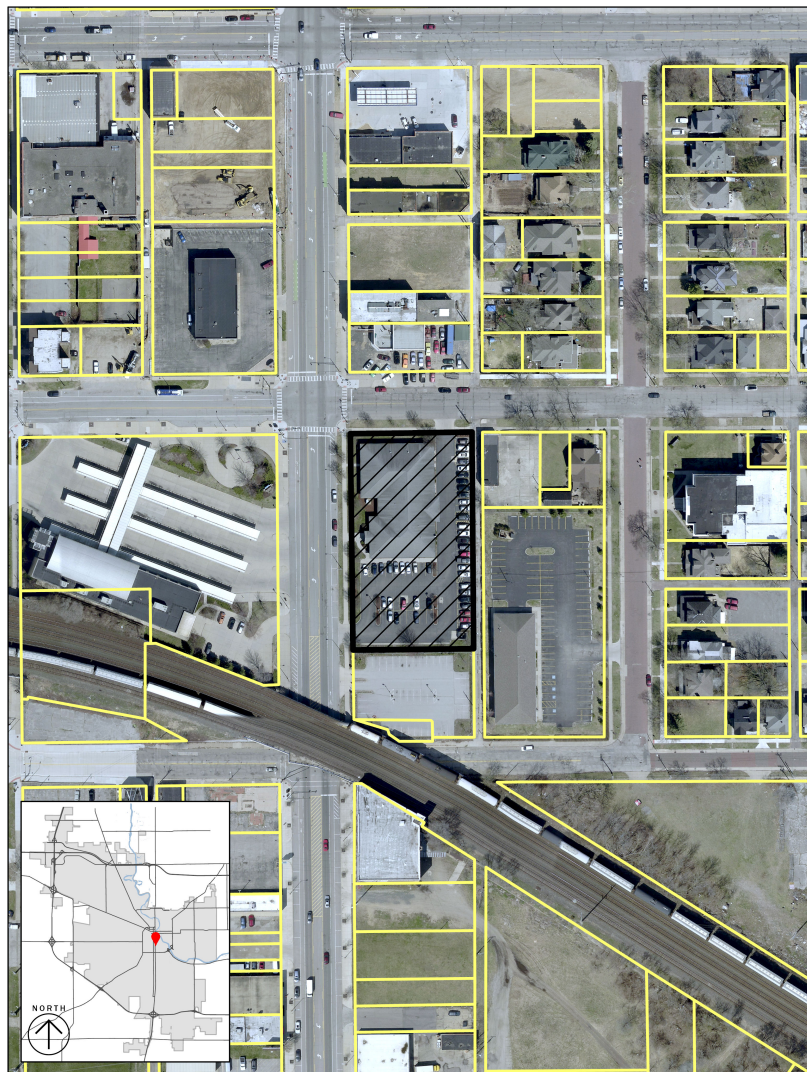
Location: 602 MICHIGAN ST
Owner: DAVID G & D KATHRYN MCALPIN REVOCABLE LIVING TRUST

Project Summary

Installation of a security fence around the parking lot at the Social Security Administration Office to protect the public and employees from outside influences.

Requested Action

Variance(s): 1) From the 4' maximum fence height in an established front and corner yard to 5'

Site Location

Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to the following: 1) the fence shall be limited to 5' in height; and 2) the fence shall be installed at the back of curb for the parking lot.

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

With proper setbacks, the approval should not be injurious to the public health, safety, or general welfare of the 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

Provided the variance granted is for the minimum necessary, the use and value of adjacent properties should not be adversely affected.

(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 be installed through the parking lot on the north side of the building. There is not a practical difficulty on the west property line.

(4) The variance granted is the minimum necessary

The proposed variance is not the minimum necessary. If the fence was installed immediately adjacent to the parking lot, a variance would not be required for the west property line. A variance would still be required for the north property line, but would minimize the encroachment.

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

The variance, if granted, would not be to correct a hardship caused by the current or former owner of the property. The location of the parking was constructed under a previous zoning ordinance.

Analysis & Recommendation

Analysis: While the current conditions of adjoining properties creates unique security issues, that is likely a temporary situation. The fact that the parking lot encroaches into the established corner yard creates a hardship in providing a fence that serves the intended purpose on the north, however, the site would allow for a code compliant fence on the west side of the property. Slightly relocating the proposed fence would greatly reduce the variances needed.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, subject to the following: 1) the fence shall be limited to 5' in height; and 2) the fence shall be installed at the back of curb for the parking lot.

Property Information

Location: 517 RIVER AVE
Owner: LEAH R ZIMMER

Project Summary

Build a 10x12 shed and fence on back property line.

Requested Action

Variance(s): 1) From the 5' minimum rear setback to 0'

Site Location

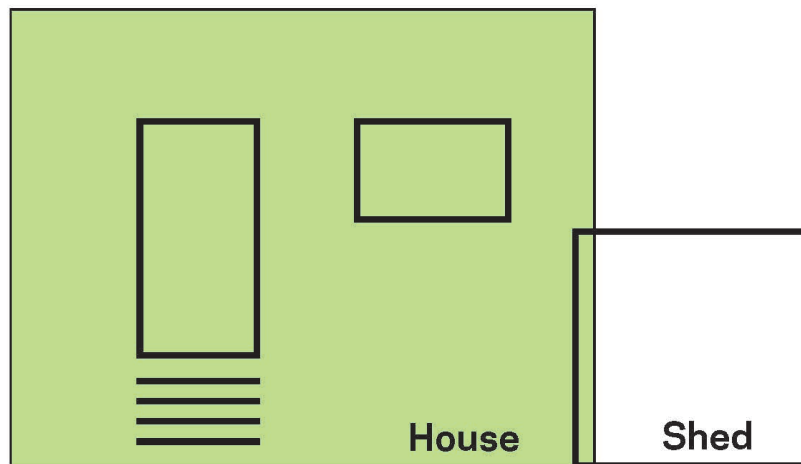
Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, as presented, subject to a minimum rear and side setback of 18".

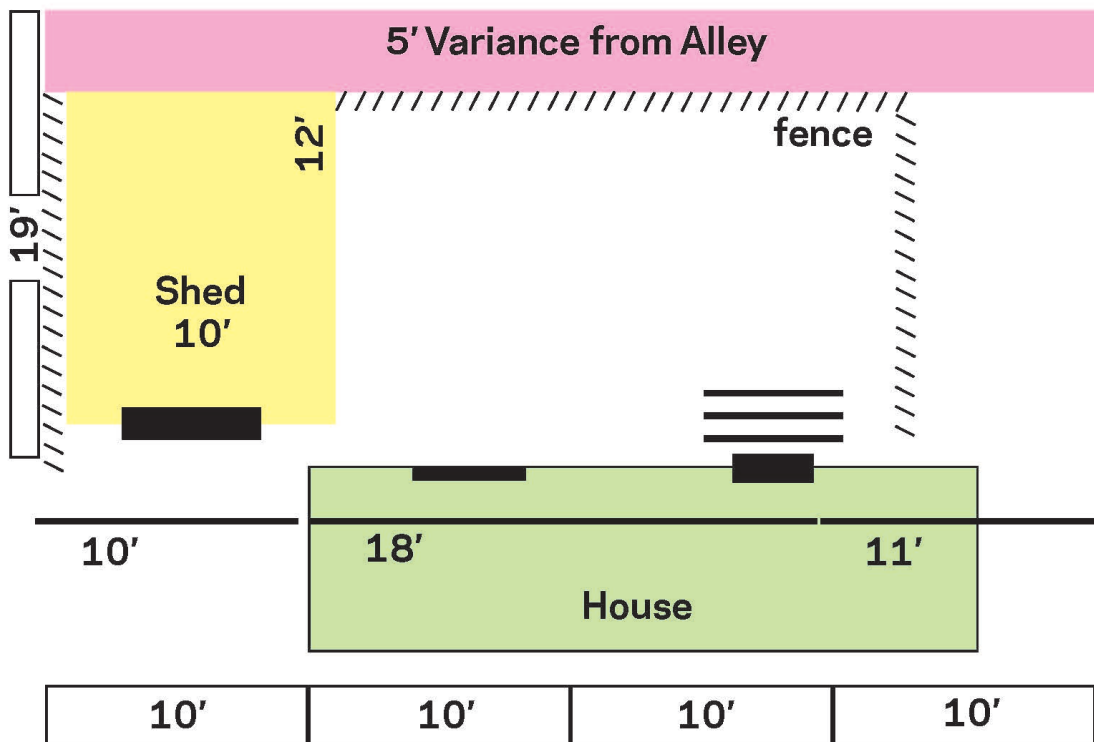
Proposed Site Plan

517 River Ave

View from Back



View from Top



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 alley has multiple structures with a similar setbacks. If the structure is placed 18" off of the alley and property line, the alley will still remain as usable public right of way.

(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. Multiple properties along the same alley have similar garages and sheds built close to the alley. The variance does not inhibit either 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 rear yard of the property is 19' deep. Strict application of a 5' side and rear setback would result in the shed being placed in the middle of yard. Constructing a shed would effectively take up the entire yard.

(4) The variance granted is the minimum necessary

The staff recommend the variance be granted with a rear and side setback of 18". This is the minimum necessary to allow the rear yard to be useable while providing adequate distance from the property line and the alley.

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

The house and the property were developed in the 1920's 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: Due to the small size of the lot and the prevailing neighborhood standard of building structures closer than the 5' setback, it is reasonable to allow construction to be built up to 18" from both the rear and side lot lines.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, as presented, subject to a minimum rear and side setback of 18".

Property Information

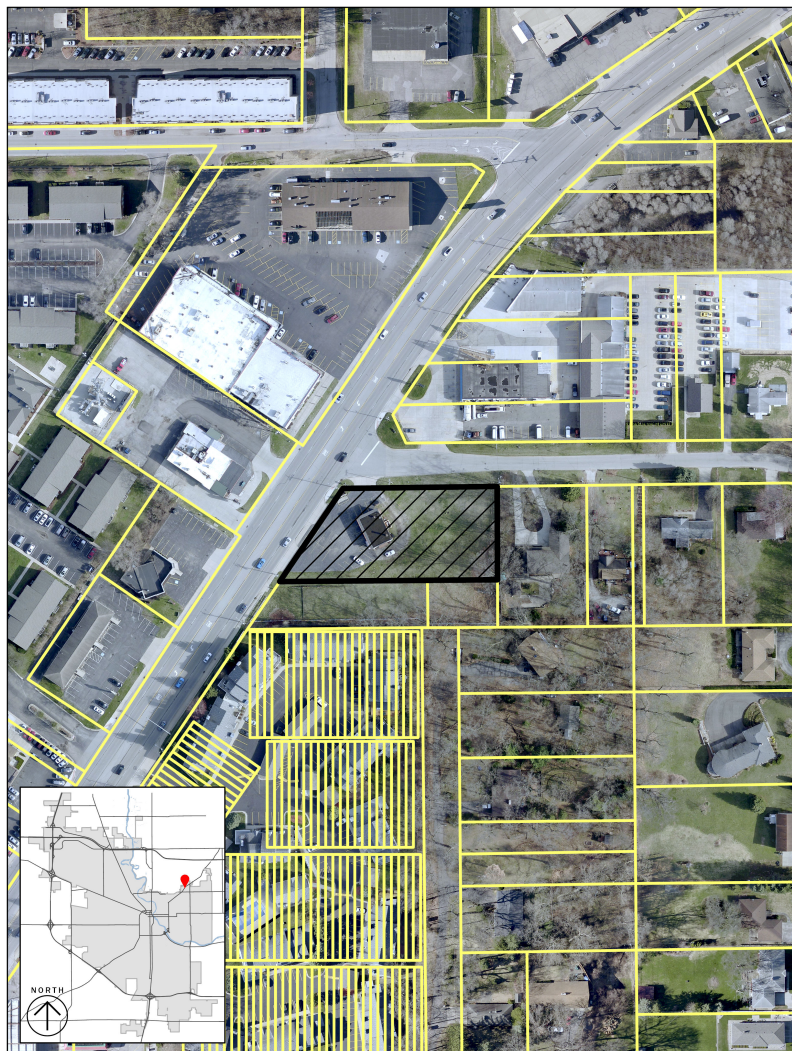
Location: 1740 SOUTH BEND AVE
Owner: BEACH HOUSE LLC

Project Summary

The Project entails two multi-story buildings with parking between. East Building proposed is 4-story podium design with a parking garage at lowest level, partially underground with 3 floors of apartments/condos above. A partial 5th floor roof deck is proposed. West building is a 3 story building.

Requested Action

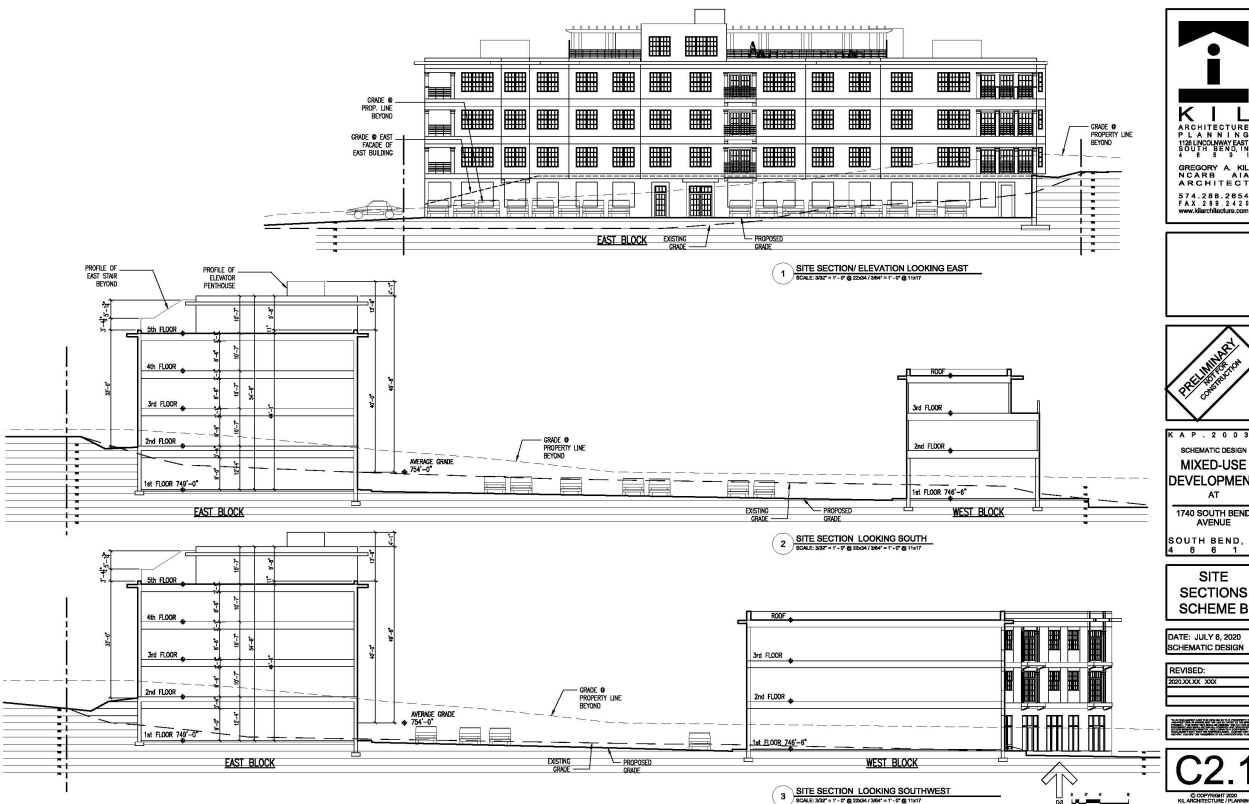
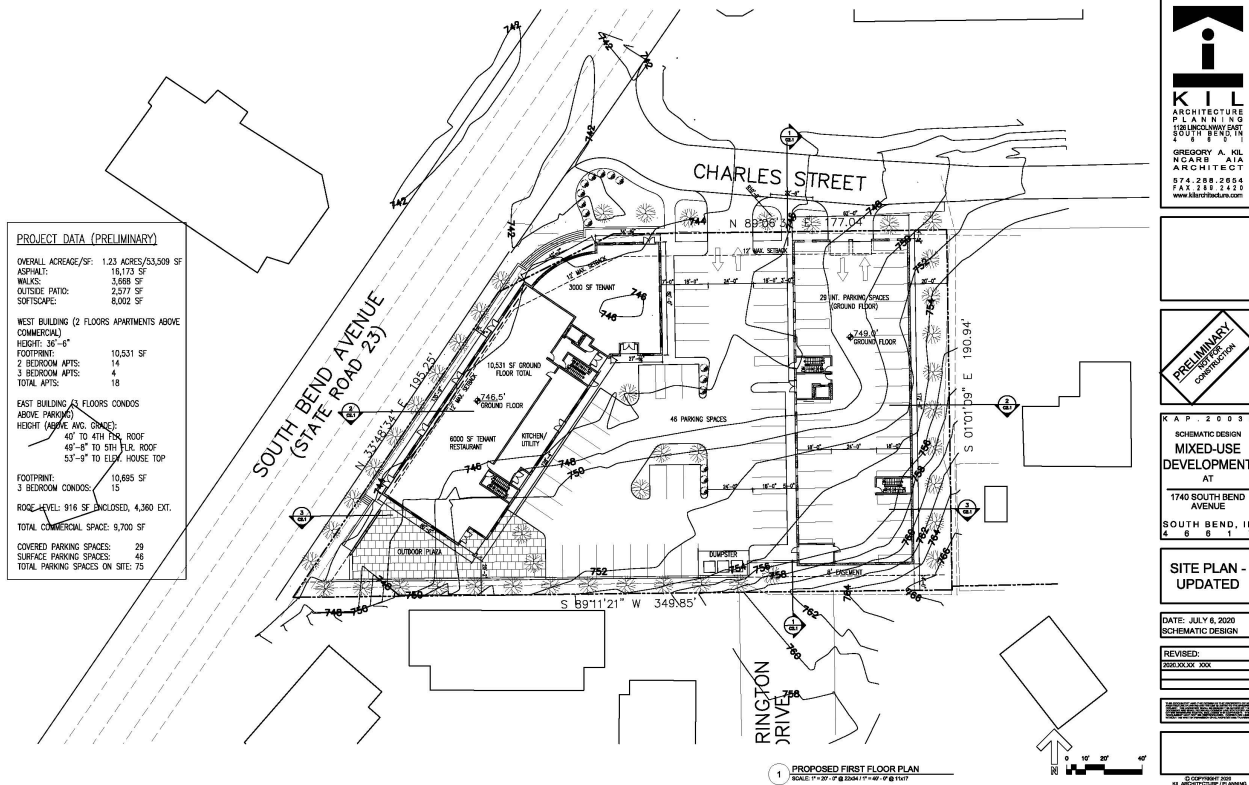
Variance(s): 1) From the maximum height of 40' and 3 stories to 50' and 5 stories

Site Location

Staff Recommendation

Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, as presented, subject to limiting the rooftop feature to the west half of the building in a manner consistent with the illustrations provided.

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

State Road 23 is a main commercial corridor into the city. A height increase in this area should not affect the public health, safety, or general welfare of the 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

The proposed use is predominately consistent with the standards of the NC District. Because the slope will essentially create a building with a perceived height from adjacent properties of 3 stories, it will have the look and feel of a code compliant building. Therefore, the proposed variance should not adversely impact the use or value of the adjacent property.

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

The site geometry and sloping grades create a practical difficulty for the property. The ordinance classifies each level, including the parking, which is partially underground, and the rooftop feature, which occupy only a portion of the roof.

(4) The variance granted is the minimum necessary

The proposed development is consistent with the intent of the NC District and the Ordinance. The building was designed to utilize the sloping area of the site to accommodate a parking structure, which would not require windows on the east. The residential units are limited to 3 floors, consistent with the ordinance. If the rooftop feature is limited to the western half of the building, it will be the minimum necessary.

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

The slope and shape of the property was not created by the current or previous owner.

Analysis & Recommendation

Analysis: The unique shape and topography of the property create a hardship in developing the site in a manner consistent with the intent of the NC Neighborhood Center District. The variance requested will allow for a mixed-use urban development along a major corridor of the City.

Staff Recommendation: Based on the information provided prior to the public hearing, the staff recommends the Board approve the variance, as presented, subject to limiting the rooftop feature to the west half of the building in a manner consistent with the illustrations provided.