

AREA BOARD OF ZONING APPEALS
of
St. Joseph County, Indiana

Wednesday, February 13, 2019
Fourth-Floor Council Chambers

1:30 p.m.
County-City Building

AGENDA

- 1 The petition of R&A COLFAX PROPERTY, LLC seeking the following variance(s): 1) from the 18' minimum front façade height to 10' and 2) from the 12' maximum front yard and building setback to 46' on Colfax Avenue and 70' on Notre Dame Avenue, property located at 829-831 E COLFAX AVE, Portage Township. Zoned MU Mixed Use District (South Bend).
- 2 The petition of VANDNA PATEL seeking the following variance(s): 1) from the 30' minimum front yard and building setback to 6'-7" for a drive-through and bailout lane, property located at 4836 WESTERN AVENUE, Portage Township. Zoned CB Community Business District (South Bend).
- 3 The petition of UNITY GARDENS INC seeking the following variance(s): 1) from the required architectural standards for external building finish, property located at 3701 (3611) PRAST BLVD, Portage Township. Zoned CB Community Business District (South Bend).
- 4 The petition of MBP8, LLC seeking the following variance(s): 1) from the required 40' minimum rear yard setback to 3' along the north property line for a playground and shade canopy, property located at VACANT LAND APPROXIMATELY 800' SOUTHWEST OF ELM ROAD ON THE NORTHERLY SIDE OF STATE ROAD 23, Harris Township. Zoned R: Single Family District (County).
- 5 The petition of GREATER LOWELL HOLDINGS LLC seeking the following variance(s): 1) from the 22' minimum front façade height to 7'6", property located at 504 E LASALLE AVE, Portage Township. Zoned CBD Central Business District (South Bend).
- 6 The petition of EL-AMMORI WADAD seeking a Special Exception Use for a car wash, property located at 1119 LINCOLN WAY W, Portage Township. Zoned LB Local Business District (South Bend).
- 7 The petition of BAUER LEGAL LLC seeking the following: Administrative appeal of the issuance of an Improvement Location Permit based on the following: 1) lack of an application; 2) inadequate parking under the zoning ordinance; and 3) unlawful reconstruction/expansion of a legal non-conforming building, property located at 806 E HOWARD ST, Portage Township. Zoned O Office District (South Bend).

ITEMS NOT REQUIRING A PUBLIC HEARING

1. Findings of Fact
2. Minutes
3. Other Business
4. Adjournment



MEMORANDUM

DATE: January 30, 2019
TO: Area Board of Zoning Appeals
FROM: Jordan Wyatt, Planner
SUBJECT: February 13, 2019 Area Board of Zoning Appeals Hearing

The following comments are being made concerning items to be heard at the Area Board of Zoning Appeals meeting on February 13, 2019. The absence of comments on any particular item should not be construed to mean that the staff agrees with the request.

Variances

A variance from any of the development standards of the Zoning Ordinance may only be approved upon the Board of Zoning Appeals making a written determination and adopting appropriate Findings of Fact, based upon the evidence presented at a public hearing, that:

- (1) The approval will not be injurious to the public health, safety, morals and 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; and,*
- (3) The strict application of the terms of this Chapter would result in practical difficulties in the use of the property.*

4. Petition of MBP8, LLC.

Based on information available prior to the public hearing, the staff recommends denial of the variance. Locating a structure and use that close to the property line could adversely affect the value and use of the adjacent property. Playgrounds can produce large amounts of noise that could impose a negative effect on the neighboring property. Locating structures that close to the property line could affect how the adjacent property is developed.

Special Exception / Special Use

A special exception use / special use may only be granted upon making a written determination and adopting appropriate Findings of Fact, 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;*
- (2) The proposed use will not injure or adversely affect the use of the adjacent area or property values therein;*
- (3) The proposed use will be consistent with the character of the district in which it is located and the land uses authorized therein;*
- (4) The proposed use is compatible with the recommendations of the Comprehensive Plan.*

6. Petition of El-Ammori Wadad

Based on information available prior to the public hearing, the staff recommends the Special Exception Use be sent to the Common Council with a favorable recommendation subject to the following written commitment: No vehicles may be stored onsite overnight unless located within the building.

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

Locating the proposed use along a major corridor and within an existing building should not be injurious to the public health, safety, or 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.*

Utilizing the existing building for the proposed use should not negatively affect the use or value of the adjacent property values.

(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 proposed use is consistent with the character of the LB Local Business District.

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

The proposed use is consistent with the City Plan, South Bend Comprehensive Plan (November 2006): Objective ED 1.2: Encourage reuse of abandoned and underutilized land and structures.

7. Petition of BAUER LEGAL LLC

There are several concerns that have been expressed and decisions made that are not under the authority of the current Area Board of Zoning Appeals (“Board”). In 1991, the South Bend Common Council approved a rezoning from “A” Residential to “C-1” Commercial. The staff emphasized to the Council at the time that they are “making a land use decision that commercial zoning is appropriate for this site”. Ultimately the Council not only approved the rezoning but reaffirmed the non-residential land-use by designating the property as O Office District during the Zoning Ordinance revision and the City-wide map amendment in 2004. The use of the property as an office is a CONFORMING USE of the property.

As part of that petition, in 1992 the property owners at the time were granted a variance by the BZA from the required 32 parking spaces to 4. There were no conditions placed upon the approval of the variance, thus legalizing the reduction of the required 32 spaces to 4. Whether or not the variances should have been granted or whether or not that variance would have been granted today is NOT a consideration of the Board today.

The current development is completely independent of the petition that was filed in 2017 on the site. The ABZA petition from 2017 was addressing the issue of adding a residential unit to this site. That petition has been withdrawn and any action (or lack of action) on that petition has no impact on the current site development. The building plans filed for plan review did not include a dwelling unit.

Finally, whether or not the Ordinance adequately covers the concerns of the neighbors or needs of the developer are also not under the authority of the Board. The content of the Zoning Ordinance is determined by the Council. The Board is limited to determining whether or not the 3 items specifically appealed have enough merit to overturn the decision of the Staff.

Items of appeal:

- 1) *Lack of an application* – A building permit application and all required plans were filed through the Building Department’s Plan Review Process in August of 2018. (Application attached). This item is moot as there is evidence that an application was filed.
- 2) *Inadequate parking under the zoning ordinance* – Section 21-07.04(b)(2)(C) states the following:

“Additional *off-street parking spaces* shall be required whenever a change of *use*, units, or size of a *building, structure, or lot* results in an increase in the minimum number of required *off-street parking spaces* of twenty-five (25) percent or more from the number of *off-street parking spaces* existing on the effective date of this Ordinance, whether such total increase occurs at one (1) time or in successive stages.”

In this case, there were 4 legally established parking spaces in existence on the effective date of the Ordinance. The proposed development constitutes a change in use from the approved retail use in 1992 and a change in building size. The minimum number of parking spaces is determined by the gross floor area dedicated to each specific use within the building. Based on the proposed uses within the structure and as a result of the recent changes to the parking section of the Zoning Ordinance the proposed development resulted in a reduction, not an increase, in the number of required parking for the site. Therefore, no additional off-street parking spaces are required. The staff determined they meet the parking provisions of the Ordinance.

3) *Unlawful reconstruction/expansion of a legal non-conforming building*

The O Office District has a 50' height limit and no limit on square footage or a particular building or use. As such, the height, mass, intensity, and density of the building are NOT a consideration of the Board today. These items are all in conformance with the Ordinance. The only legal non-conforming aspect of the building is the front setback. Section 21-03.11(f)(1) of the Ordinance states:

"The minimum front yard, minimum side yard or minimum rear yard for any legally established nonconforming building having a setback which is less than that which is required by this Ordinance shall be allowed to expand one (1) or more times along such legally established nonconforming setback..." provided they can adhere to one of 3 options. In this case, the site will bring a minimum of 2 other application development standards in to compliance with the requirements of the district. Therefore, they may expand (i.e. add additional stories) along the legally established nonconforming front building setback.

The amended appeal by the petitioner claims that it "is incomprehensible for any reasonable person to conclude that the work being done amount to only 50% of the cost of the pre-existing structure." However, the petitioner fails to recognize the significant costs associated with new construction. While the costs of the current renovation are significant, they do not exceed the 50% threshold.

While the petitioner may dislike the scale of the project and feel additional parking *should* be required, the staff determined that at the time of submittal for an Improvement Location Permit/Building Permit that the plans met all the requirements of the Zoning Ordinance and therefor issued an Improvement Location Permit. The use of the property was authorized by the rezoning in 1991. The parking was legalized by the BZA in 1992. The Zoning Ordinance contains provisions that address non-conforming buildings, changes in intensity of use of a site, and additional standards for expansion along non-conforming setback. While some may not agree with these provisions, they exist uniformly across the City and for all similar properties in the City. The proper method to address these issues would be a text change to the Zoning Ordinance, which is not under the Authority of the Area Board of Zoning Appeals. The only issue before the Board is whether or not the staff incorrectly applied the Zoning Ordinance. We contend there is no evidence of that claim.