

**THE AREA PLAN COMMISSION OF  
ST. JOSEPH COUNTY, INDIANA**

**MINUTES**

Tuesday, April 19, 2016  
3:30 p.m.

4th Floor, Council Chambers  
County-City Building, South Bend, IN

MEMBERS PRESENT:

Daniel Brewer, Adam DeVon,  
Oliver Davis, John DeLee, Karen  
Iovino, Matthew Peterson, Robert Hawley, John  
R. McNamara, Elizabeth Maradik, Gerry  
Phipps, Deborah Davis, Phil Sutton, Dr. Jerry  
Thacker

MEMBERS ABSENT:

Steve Vojtko, Jordan Richardson

ALSO PRESENT:

Larry Magliozzi, Angela M. Smith,  
Matthew Chappuies, Jennifer S. Parcell, Staff;  
Mitch Heppenheimer, Counsel

PUBLIC HEARING - 3:30 P.M.

1. REZONINGS:

- A. A proposed ordinance of Bruno & Rosa Cataldo to zone from A: Agricultural District (County) to CB Community Business District (City), property located at 22027 State Road 23, City of South Bend - APC# 2774-16.

**MATTHEW CHAPPUIES:** The petitioner is requesting a zone change from A: Agricultural District (County) to CB Community Business District (City). On site is a single family home and an accessory building. To the north is an agricultural field zoned A: Agricultural District in the County. To the east is a single family home zoned A: Agricultural District in the County. To the south across S.R. 23 are vacant lots zoned SF1 Single Family & Two Family District in the City of South Bend. To the west are agricultural fields zoned A: Agricultural District and a mini-warehousing facility zoned C: Commercial District in the County. The CB - Community Business District is established to provide a location for high volume and high intensity commercial uses. Activities in this district are often large space users which may include limited amounts of outdoor sales or outdoor operations. Developments within the CB District shall be coordinated to facilitate vehicular and pedestrian access from nearby residential districts. The site plan shows a proposed integrated commercial center on 9.7 acres, including a gas station with convenience store, two drive-through restaurants, and four spec-buildings with a cumulative 60,000 square feet of commercial space. A total of 402 parking spaces are shown on the lot. The northwest corner of the site is reserved for a retention basin. Three access points are proposed along S.R. 23, which will require INDOT approval. This site has been zoned Agricultural since prior to 1979. In 2000, the property to the west was rezoned to C Commercial District for mini-storage warehouses. S.R. 23 has two lanes that split in to 4 lanes near the west end of the property. The site will be extending and connecting to municipal sewer and water. The County Surveyor recommends approval. The City Engineer recommends approval subject to the developer extending water and sewer to the site and installing curb and sidewalk along S.R. 23. Department of Community Investment recommends approval subject to the utilization of complete streets principles (bike/ped connectivity). INDOT will require a traffic impact study to be completed at the developer's expense prior to issuance of curb cuts. The petitioner is not proposing any written commitments. The petition is consistent with City Plan, South Bend Comprehensive Plan (November 2006): Objective ED 8: Promote economic

development efforts that expand the property tax base. The future land use map identifies this area for industrial growth. There are no other plans in effect for this area. The south side of S.R. 23 between the U.S. 31 Bypass and Kaley Street has developed with both multifamily and single family homes on large lots. The north side has seen industrial development east of New Energy Drive since 1996, and commercial development in the form of a construction office and mini-warehousing between 1999-2000. The most desirable use for this site is one that is compatible with this developing commercial node. With the proper buffering, surrounding properties should not be adversely affected by the development of this site as a commercial center. It is responsible development and growth for this property to be zoned commercial to serve motorists from the bypass and any future development to the south. This site is currently being annexed into the City of South Bend. Based on information available prior to the public hearing, staff recommends this petition be sent to the Common Council with a favorable recommendation. Rezoning this property to CB Community Business District will provide a logical connection between the industrial property to the east and the commercial node at the intersection of State Road 23 and the U.S. 31 bypass.

BRIAN MCMORROW: I am with Abonmarche Consultants with offices located at 715 Lincolnway East, South Bend. Rosa and Bruno Cataldo asked us to investigate their parcel of land which as Matthew has stated, has about 9.7 acres along State Road 23 to be rezoned from Agricultural to Community Business. Candidly, the thought was prompted by a request from the city last year that maybe a sanitary sewer easement could be granted along the northerly and westerly side of the property. They considered that and heard of some of the other development plans in the area, so they thought it was time to consider the rezoning petition. We were retained to prepare the conceptual plan that you see on the screen. We are proposing to utilize the driveway where the existing driveway is for the home. Then we felt that it was appropriate and probably useful to have a gas station/convenience store on that most westerly side. We acknowledge reports from the staff. We recognize we have some work to do if the rezoning were to be put in place in order to get INDOT and City approval. We don't object to any of those recommendations or conditions that were imposed.

#### IN FAVOR

There was no one present to speak in favor of this petition.

#### REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

OLIVER DAVIS: I would just like to say I am very pleased with development there. It is in the district that I represent. The idea of having another gas station there, I think, is going to be very beneficial, with everything else we have been talking about there on State Road 23. One thing I would like to question is what about lighting?

BRIAN MCMORROW: It is dark along that stretch of roadway. The integrated development that we are talking about would have the appropriate site lighting to make sure it was safe and secure for people who would use the new uses over there. Along the State Highway, INDOT is going to have jurisdiction over that. When we apply to them for the driveway access, I am sure we will get into the street lighting as well.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, the proposed ordinance of Bruno & Rosa Cataldo to zone from A: Agricultural District (County) to CB Community Business District (City), property located at 22027 State Road 23, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. Rezoning this property to CB Community Business District will provide a logical connection between the industrial property to the east and the commercial node at the intersection of State Road 23 and the U.S.

- B. A combined public hearing on a proposed ordinance of Wadad El-Ammori and George Kalafat, and Lincoln Park Development, LLC to zone from CB Community Business District and SF2 Single Family & Two Family District to MU Mixed Use District, and seeking the following variance(s): 1) From the required minimum 50% of a building's front façade to be located within the minimum and maximum setback to 39% along Lincolnway West; 2) From the required minimum 20' parking setback along Lincolnway West to 15'; 3) From the maximum allowable 8,000 square feet for a single retail use to 8,225 square feet, property located at 424, 426, 430 Cushing Street and 726, 736 Lincolnway West, City of South Bend - APC# 2776-16.

MATTHEW CHAPPUIES: The petitioner is requesting a zone change from CB Community Business District and SF2 Single Family & Two Family District to MU Mixed Use District and seeking 3 variances from the development standards. On site is a vacant parking lot. To the north across Lincolnway West is a bank and a gas station zoned LB Local Business District. To the east is a retail store zoned CB Community Business District. To the south are vacant lots zoned SF2 Single Family & Two Family District. To the west across Cushing Street is a community center zoned MU Mixed Used District and a single family home zoned SF2 single Family & Two Family District. The MU Mixed Use District is established to promote the development of a dense urban village environment. The regulations are intended to encourage all the elements of a traditional urban village, including: storefront retail; professional offices; and, dwelling units located either in townhouse developments or in the upper stories of mixed-use buildings. The development standards in this district are designed to: encourage a pedestrian oriented design throughout the district; and, maintain an appropriate pedestrian scale, massing and relationship between buildings and structures within the district. The site plan shows and 8,225 square foot retail building situated on the northwest corner of this 0.9 acre site. Access to the 30-space parking lot is proposed from both Cushing Street and Lincolnway West. An alley divides the lot at this time, but is proposed to be vacated. A portion of the site, known as 426 Cushing Street, was rezoned from CB Community Business District to SF2 Single Family & Two Family District in 2011 for a single-family home, which was never built. Cushing Street has two lanes. Lincolnway West has two lanes and a center turn lane, along with on-street parking adjacent to the site. This site will be served by municipal sewer and water. The County Surveyor recommends approval. The City Engineer recommends approval, subject to review and approval of engineering plans for drainage, water, sewer, and other infrastructure improvements on site. The Department of Community Investment recommends approval, but recommends that Smart-Streets principles be used to enhance the site and the façade be constructed according to the West Side Main Streets Design Guidelines. The petitioner is not proposing any written commitments. The petition is consistent with the West Side Main Streets Plan (2014): Create Destinations and Focus Retail into Nodes rather than Strip Development. The Future Land Use Map identifies this area as a Neighborhood Commercial Node. There are no other plans for this area. Lincolnway West between downtown South Bend and Sherman Avenue is a neighborhood commercial corridor with a mixture of commercial and residential uses. The most desirable use is on that is compatible with the mixed use nature of the corridor. Due to the existing commercial nature of Lincolnway West, surrounding property values should not be adversely

affected. It is responsible development and growth to rezone this property to MU Mixed Use District, the most prevalent zoning district in this neighborhood corridor, and also the most appropriate based on the MU Mixed Use development standards. The petitioner is seeking the following variances: 1) From the required minimum 50% of a building's front facade to be located within the minimum and maximum setback to 39% along Lincolnway West; 2) From the required minimum 20' parking setback along Lincolnway West to 15'; and 3) From the maximum allowable 8,000 square feet for a single retail use to 8,225 square feet. State statutes and the South Bend 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: Only a small portion of two parking spaces will be encroaching into the 20' setback. The proposed structure is 3% larger than what is allowed. The relatively small variations requested are consistent with the character of the area and will not be injurious to the general welfare of the community. The petitioner is providing all the appropriate buffering and screening. (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 of off-street parking area screening landscaping will minimize the impact of the parking being located closer to the right of way. The slight increase in building size will not adversely affect surrounding property values. (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property: The irregular shape of the parcel creates a practical difficulty in meeting the strict application of the maximum building setback and parking setback. The proposed retail building is based on a pre-designed square footage calculation that has been optimized for the store's success. The strict application of the ordinance would force the developer to alter their proven layout model. This is a combined public hearing procedure, which includes a rezoning and 3 variances from the development standards. The Commission will forward the rezoning to the Common Council with or without a recommendation and either approve or deny the variances. The staff strongly encourages the petitioner to continue working with the Department of Community Investment regarding site layout and quality of site design due to this location's strategic value within the MLK Commercial Node. Based on information available prior to the public hearing, the staff recommends that the rezoning petition be sent to the Common council with a favorable recommendation. Staff recommends approval of the variances. The rezoning of this site, along with the proposed alley vacation, will create a larger, cohesively zoned parcel ideal for development. The proposed retail store will eliminate what are currently vacant lots, and provide goods to neighborhood residents.

OLIVER DAVIS: There was discussion this past week regarding this project with some of the Common Council members. There was a concern that, if you look at the Family Dollar on South Michigan Street as an example, with the way they upkeep their property that it has not been what some people would consider to the standard that they would like to have. There was concern that this is coming over there with some of the same potential of having a store with the upkeep not being quality. The talk was to have the concept of having some written commitments with them that talk about how they keep their property. Is that something that we deal with here or at Council? I don't know, but that was thrown at me.

ANGELA SMITH: In general, written commitments are usually recommended at the Area Plan Commission level and then the Council can amend them. However, those sound like property maintenance issues, which would actually be covered by your Code Enforcement Department. If it is trash, weeds, and maintaining the property, that should be handled by the Code Enforcement office.

DAVID YONTZ: I am an Attorney with Dubin Singer 123 N. Wacker Drive, Suite 1600, Chicago, IL. My client, the developer is purchasing the property, will build the building and ultimately lease it to Family Dollar. I just have a couple of quick slides to show you a couple of things Family Dollar likes to touch on. Their average revenue is 1.3 million dollars with 7,200 square foot average leasable area. That

would be pretty consistent with the proposed building on this property. Family Dollar likes to emphasize that they are not a dollar store despite the name. They are a discount variety store. They sell name brand products. They don't sell second hand goods. Everything is first hand and name brand. Typically, a store will employ between 8-10 employees between full time and part time positions. They hire directly from the community. By way of background, when we first started out considering this project, the idea was to put the building in the southeast corner of the property with the parking and drives in front of the building. As we got into it we became more familiar with the Comprehensive Plan and the street scape intent behind it. We shifted the building to where it is now. This is actually the site plan that was submitted with our original application (pointing to the powerpoint). Since then, based on the feedback we got, we have revised it slightly to show some additional landscaping in front of the parking areas and added landscaping around the dumpster enclosure. We have extended the sidewalk west in front of the building to Cushing Street to try to keep it consistent with the Comprehensive Plan. As far as maintenance, I would say we will have a Family Dollar that will maintain the property. My client would be landlord.

OLIVER DAVIS: Do you own Family Dollar on South Michigan?

DAVID YONTZ: My client does not.

OLIVER DAVIS: Does it own any other Family Dollar in South Bend?

DAVID YONTZ: No.

OLIVER DAVIS: So you are a brand new owner from that stand point.

DAVID YONTZ: Yes. My client has done numerous deals with Family Dollar, but not in South Bend.

OLIVER DAVIS: I recognize that you said it would be Code Enforcement, but given the history of some of the other issues, that may be some of the questions that come your way at council, so if they could be prepared to address them.

JOHN DELEE: Did the enhancement of Lincolnway West have anything to do with selecting this site? Was that a consideration?

DAVID YONTZ: No, I don't think it was. It certainly played into our site plan.

#### IN FAVOR

MICHAEL DIVITA: I am a planner with the City of South Bend's Department of Community Investment, with offices on the 14<sup>th</sup> floor of this building. I manage the City's revitalization efforts along the Lincolnway West corridor. I am here to support the rezoning request to MU for properties at the southeast corner of Lincolnway West and Cushing Street because it supports the West Side Main Streets Plan for Lincolnway and the City's redevelopment objectives. The proposed rezoning would be consistent with the mixed-use node around Lincolnway West and MLK Drive featured in the Plan. A building placed near the corner can help support the pedestrian-oriented environment desired here. The modest variance for retail square footage is reasonable given the use of prototype buildings and the petitioner's business model. Still, as this project moves to the full development stage, the City recommends that the petitioner take additional steps to ensure that the development meets the intent of the West Side Main Streets Plan and its design guidelines and that it is in keeping with the character of

surrounding buildings. The building should be placed as close to the Lincolnway and Cushing frontages as is practical, and those facades should feature full storefront windows. The building shall be of good design, with brick and other quality building materials for the facing, cornice, and any awnings. The triangular area near the corner should be designed to support an urban environment through appropriate sidewalk connections and use of attractive landscaping, including shade trees. The City and its partners offer incentives to assist with these items. With those additional recommendations, I ask the Commission to support the request presented here.

### REMONSTRANCE

There was no one present to speak in remonstrance of this petition.

ELIZABETH MARADIK: You noted in your petition that the West Side Main Streets Plan calls for development to occur that is pedestrian friendly, however, you are requesting a variance to allow less than 50% of the façade to be within 20 feet of the property line, which does not seem consistent with that goal. Based on looking at the site plan, it does not seem very burdensome for your client to shift the building north which might result in not requiring a variance or getting much closer to getting the required 50% minimum. I am curious as to why you chose to move it away from Lincolnway as opposed to getting a little closer, potentially meeting that minimum.

DAVID YONTZ: I think the way it is set up now, recognizing that the lot is oddly configured, it wasn't going to run parallel to Lincolnway West. I think the set up right now was prepared by our engineers just as being the most efficient way to lay out the site.

ELIZABETH MARADIK: Most efficient, but maybe not most pedestrian friendly.

DAVID YONTZ: We have added elements to make it more pedestrian friendly and to go with the comments we received with the initial application. We have added expanded sidewalks in the front and landscaping so it is sort of this streetscape development.

DAN BREWER: Ms. Maradik, I don't exactly understand what you are saying.

ELIZABETH MARADIK: Just because it is shifted farther back from the street. It is hard to see on the plans that are on the screen. There is space, I would estimate maybe 8 feet or so, before you get to the 5 foot minimum setback, which would mean that the rest of the façade could be closer to the street, recognizing that it is a triangular site. You are obviously not going to get all of the façade unless you angled it which would not be the most practical. There is room that you could shift it north which would bring more of the façade closer to the street, which would make it more pedestrian friendly.

ADAM DEVON: It would probably make it more....Pulling out of Cushing Street though, it would block sight, would it not?

ELIZABETH MARADIK: No. Cushing is farther north than the building. So it wouldn't block. It would still be within the setback.

DAN BREWER: Where is the parking setback along Lincolnway West?

ANGELA SMITH: (Pointing to the powerpoint and showing where it is located)

DAN BREWER: So that is not what you are talking about?

ELIZABETH MARADIK: No.

ANGELA SMITH: I think what Ms. Maradik is talking about is to move this up (Pointing to the powerpoint).

ELIZABETH MARADIK: Yes.

ANGELA SMITH: This will be closer. (Pointing to the powerpoint)

JOHH DELEE: So that would be make the 15 foot smaller then?

ANGELA SMITH: No. The setback requirements are a 5 foot minimum setback. That is their only setback they are required to meet. Then 50% of the façade is supposed to be between that five foot and a maximum of a 20 foot setback. They had asked for a reduction from the required 50% down to 39% of the building's façade. She is suggesting that if we shift the building up it could in fact get the 50% of their façade in the 5-20 foot range.

OLIVER DAVIS: What do you suggest the staff recommendation should be?

JOHN DELEE: Of course, then you have more room up front to put in something that looks beautiful and attractive too.

#### REBUTTAL

DAVID YONTZ: I would say we have spent a considerable amount of time laying out this site plan. From an overall perspective the building is the most efficient and at the same time trying to comply the best we can with the mixed use provisions.

OLIVER DAVIS: I understand that, but can you see what she is saying?

DAVID YONTZ: I guess I will have to have some discussion with the engineers who have laid out the site plan. I guess I can't answer the question. I don't know if there is a specific reason that would prevent that.

OLIVER DAVIS: I would ask the staff if they have a recommendation?

DAN BREWER: Well, staff has recommended that we grant the variances and that we approve the petition.

OLIVER DAVIS: I understand that, but in light of what she said in terms of what her recommendation is.

LARRY MAGLIOZZI: We worked pretty extensively with the engineer on this site and also with the Department of Community Investment to try to get them as close as possible. I don't know if there are easements in that area that they could not encroach on. I think the tradeoff here is if you move forward you will have a lot more green space fronting on Lincolnway. With a triangular piece of property, we can't really do much with that. If you move it up then you increase concrete on the south side of the building, which they can't use for anything. There are some tradeoffs here and our staff recommendation reflects our comfort level.

After due consideration, the following action was taken:

Upon a motion by John DeLee, being seconded by Oliver Davis and unanimously carried, the combined public hearing on a proposed ordinance of Wadad El-Ammori and George Kalafat, Lincoln Park Development, LLC to zone from CB Community Business District and SF2 Single Family & Two Family District to MU Mixed Use property located at 424, 426, 430 Cushing Street and 726, 736 Lincolnway West, City of South Bend, is sent to the Common Council with a FAVORABLE recommendation. The rezoning of this site, along with the proposed alley vacation, will create a larger, cohesively zoned parcel ideal for development. The proposed retail store will eliminate what are currently vacant lots, and provide goods to neighborhood residents.

Upon a motion by Oliver Davis, being seconded by John DeLee and unanimously carried, the following three variances 1) From the required minimum 50% of a building's front façade to be located within the minimum and maximum setback to 39% along Lincolnway West; 2) From the required minimum 20' parking setback along Lincolnway West to 15'; and 3) From the maximum allowable 8,000 square feet for a single retail use to 8,225 square feet were approved subject to the rezone being approved by the Common Council.

#### ITEMS NOT REQUIRING A PUBLIC HEARING

1. Miscellaneous:

- A. Appointment of Abby Shelton of Purdue Cooperative Extension to the Plat Committee as Phil Sutton's Alternate.

LARRY MAGLIOZZI: This is an appointment of Abby Shelton as Phil Sutton's alternate on the Plat Committee.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Oliver Davis and unanimously carried, Abby Shelton was appointed to the Plat Committee as an alternate of Phil Sutton.

2. Executive Director's Report:

LARRY MAGLIOZZI: Lakeville and North Liberty are both considering initiating a zoning and annexation for certain properties in their respective jurisdictions. That would be initiated by the Towns.

You have noticed that you are getting site plans in your final packets again. We thought since you are considering variances that it is obviously helpful to have the site plans.

3. Minutes and Expenditures:

- A. Approval of the minutes from the March 15, 2016 meeting of the Area Plan Commission.

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Oliver Davis and

unanimously carried, the minutes from the March 15, 2016 meeting of the Area Plan Commission were approved.

B. Approval of the expenditures from March 16 through April 19, 2016.

Adams Remco - \$69.31; Dept. of Public Works - \$19.37

After due consideration, the following action was taken:

Upon a motion by John McNamara, being seconded by Robert Hawley and unanimously carried, the expenditures from March 16 through April 19, 2016 were approved.

4. Adjournment: 4:03 p.m.

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DANIEL H. BREWER  
PRESIDENT OF THE COMMISSION

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LAWRENCE P. MAGLIOZZI  
SECRETARY OF THE COMMISSION