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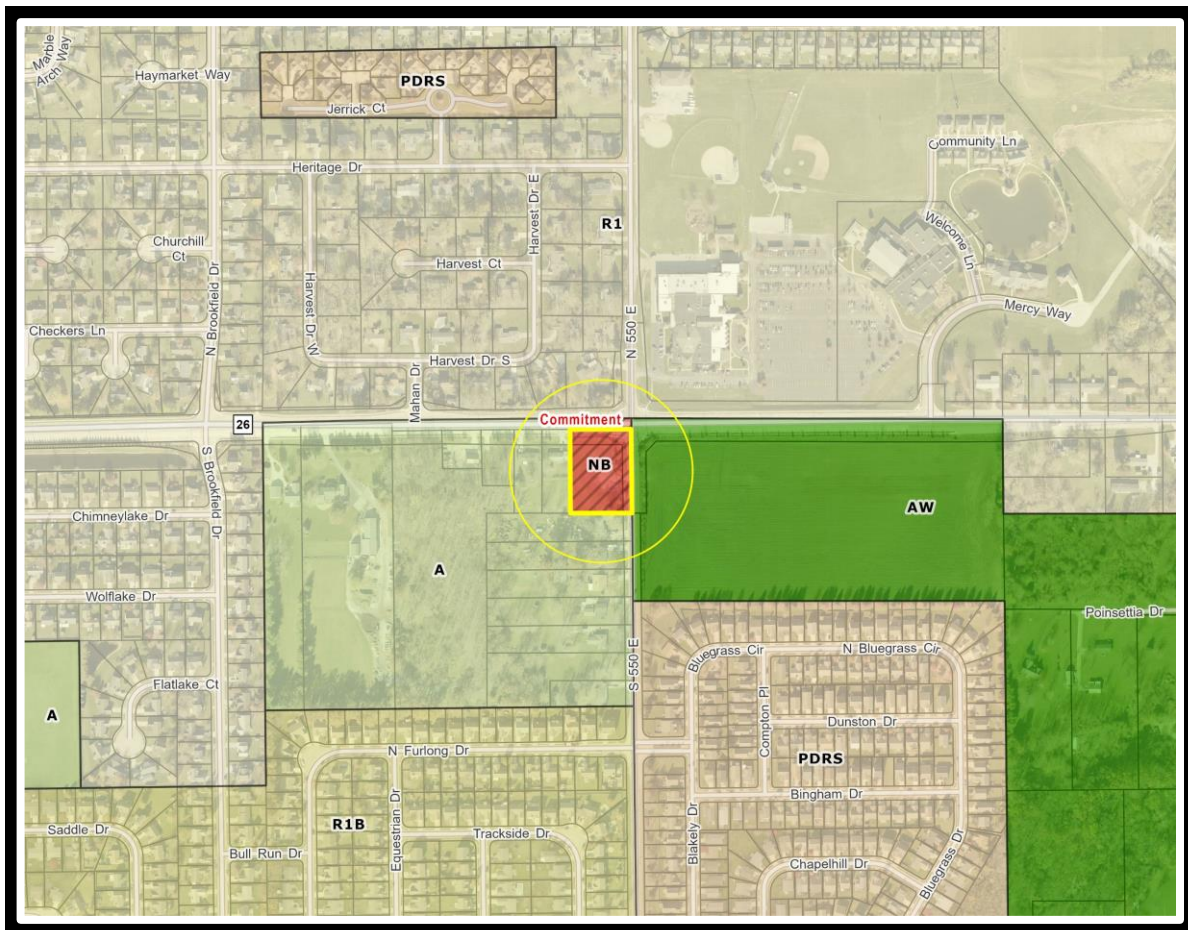
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**BZA-2072  
TIM VALIANT  
(variance)**

**STAFF REPORT  
March 17, 2022**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, Tim Valiant, owner and operator of Kona Ice, is requesting a parking variance that would allow 16 spaces (10 standard, 1 handicapped and 5 compact) instead of the required 46 spaces for a proposed building located at the southwest corner of SR 26 East and CR 550 East. Kona Ice plans to use the site for storage of its 7 trucks and other business equipment; the proposed building would also have an 1,820 square foot space for an unknown future user. The property is commonly known as 10 S 550 E and is located outside of city limits in Perry 30 (NW) 23-3.

**AREA ZONING PATTERNS:**

This 1.5-acre tract of land was rezoned in 2019 from A to NB with a commitment that prohibited several uses including but not limited to automotive dealers and repair, restaurants, convenience stores and liquor stores (Z-2775). Land adjacent to the south and west is zoned Agricultural and east across CR 550 is Agricultural Wooded zoning. R1 zoning is located on the north side of SR 26 E.

**AREA LAND USE PATTERNS:**

The site in question is currently unimproved. Single-family homes adjoin on the west and south sides as well as to the north across SR 26. A church and school are located northeast across the intersection; a farm field is east across the county road.

**TRAFFIC AND TRANSPORTATION:**

This property is located at the southwest corner of SR 26 E and CR S 550 E, classified as a rural primary arterial and rural local road respectively per the adopted *Thoroughfare Plan*. Access to the site will be from CR 550 per the submitted site plan.

The proposed use falls under SIC 596, nonstore retailers. In the UZO, this category has the same parking standard as a typical retail establishment: one parking space per 200 square feet of gross floor area. According to the petitioner, the Kona Ice business would occupy 7,140 square feet requiring 36 spaces.

The vacant space on the north end of the proposed building is 1,820 square feet. Petitioners are marketing the space to a user that requires 1 parking space per 200 square feet of gross floor area equating to 10 parking spaces; these ten spaces plus the 36 for Kona Ice give a total parking requirement of 46 spaces.

## ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

A type B bufferyard measuring 20 feet in width is shown along the western and southern property lines where this NB-zoned property abuts A-zoned land. Public utilities will serve the site.

## STAFF COMMENTS:

The proposed use, a nonstore retailer, is unique because customers would never come to the site negating the need for customer parking. Some examples of nonstore retailers include catalog/mail-order businesses, sale of vending machine products and house-to-house selling businesses. Kona Ice employees would drive to this location and leave in Kona Ice work trucks, then return at the end of the day to pick up their personal vehicles. The parking standard for this use is one space per 200 square feet of gross floor area. With a footprint of 7,140 square feet, 36 parking spaces are required. Staff believes that a parking standard based on the maximum number of employees makes more sense than calculating the parking based on square footage. Eight employees of Kona Ice are anticipated according to the petitioner.

Because the user of the north end of the proposed building is unknown, a typical NB parking standard of 1 space per 200 square feet of gross floor area is also being used to determine that future business's number of required spaces. Ten spaces would be required for this tenant space. (If Kona Ice were to someday expand into the entire building, a second parking variance would not be needed.) Minimum relief for this site in staff's opinion, is 18 spaces since no customers would be coming to Kona Ice: so 8 spaces for Kona Ice employees and 10 to meet the parking standard for a future business in the north end of the proposed building.

Petitioner's site plan shows a total of 16 spaces with only 10 spaces being the standard 9' x 18'. Five additional 'compact' spaces measuring 8' x 16' are shown as well as one standard handicapped parking space near the building. The ordinance does not currently allow for compact spaces, and these smaller than the required 9' x 18' parking spaces likely should have also been the subject of a variance request. This subject will be revisited as staff undertakes an overhaul of all current parking regulations in the zoning ordinance. Approval of this variance would allow these compact spaces (as shown on the submitted site plan) to be used.

Regarding the ballot items:

1. The Area Plan Commission at its March 16, 2022 meeting determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. Because no customers would come to the business, a reduced parking standard for this site would have no negative impact on public health and safety.

3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. A reduced parking standard for these 1.5 acres of commercial land will have no impact on the use and value of surrounding properties because a nonstore retailer will generate less traffic than most retail businesses; only employees of Kona Ice will visit the site.
4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. The parking standard for nonstore retailers, where no customers will be present, is not adequately addressed in the ordinance.
5. Strict application of the terms of the zoning ordinance **WILL** result in an unusual or unnecessary hardship as defined in the zoning ordinance. Requiring 36 (out of 46) parking spaces for a business that will never have customers is excessive.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS NOT** self-imposed or solely based on a perceived reduction of or restriction on economic gain because petitioners have designed their site to accommodate their business which does not cater to the general public.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. Minimum relief would be for 18 spaces, 8 of which would be used by Kona Ice and 10 of which would be used by the future tenant.

**STAFF RECOMMENDATION:**

Denial