

BOARD OF ZONING APPEALS DIVISION III

September 16, 2025

Case Number: 2025-DV3-030
Property Address: 1226 McDougal Street (approximate address)
Location: Center Township, Council District #19
Petitioner: Christopher Hernandez, by Josh Smith
Current Zoning: D-5 (TOD)
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building addition resulting in a three-foot east side yard setback (seven feet required).
Current Land Use: Residential
Staff Recommendations: Staff recommends **denial** of this petition.
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 1226 McDougal Street is a residential parcel that had been improved with a single-family residence and detached garage structure prior to 2023 (see spring 2023 photo within Exhibits). The lot has a width of approximately 120 feet, with all current improvements on the eastern half of the parcel. The property is surrounded by residential development on adjacent properties as well as an unimproved alley to the north of the site.
- In 2023, a new building addition was constructed without permits in place that connected the existing home and garage together and resulted in a dramatic expansion of the building along the eastern side setback. A structural violation case (VIO23-006917) was opened later that year along with the issuance of a stop-work order, and a more recent zoning violation case (VIO25-007607) was opened in August 2025. The 2025 zoning violation cites the property for work done without issuance of an Improvement Location Permit, construction within the required side setback, and a portion of fence within the front yard exceeding the allowable height.

- A Variance of Development Standards would be required to make the work already done at the site legal. The initial site plan submitted showed a uniform 5-foot setback of the building, while aerial photography implied a smaller separation of around 0 feet from the existing home to the eastern property line. Additional site measurement has verified that the closest point of the original home is around 3 feet from the property line, while the new addition has a closest setback point of around 4 feet. This is reflected in the site plan shown below, and if required permit applications had been made prior to construction, the illegal expansion would not have been built.
- Approval of this variance would not serve as an exception from any applicable standards from the 2020 Indiana Residential Code for fire-rating of building materials, use of fixed or inoperable windows within close proximity to property lines, etc. Additionally, if the lot were to be subdivided in the future to create a second buildable lot on the western portion of the site, this petition would not serve as an exception from any applicable open space requirements. Finally, the height of the fence within the front yard as cited within the 2025 zoning violation would need to be addressed regardless of the result of this petition since it is not a part of this variance request.
- This property is zoned D-5 (Dwelling District Five) to allow for medium intensity residential development for urban, built-up areas of the city with a fine grain of accessibility for all modes of travel. It is also located within the Transit-Oriented Development secondary zoning district due to the site's proximity to the Garfield Park Red Line BRT stop. The Comprehensive Plan recommends it to the Traditional Neighborhood typology and places the site partially within an Environmentally Sensitive overlay (more information within Comprehensive Plan Analysis below).
- Additionally, the city's Infill Housing Guidelines indicate that sufficient side setbacks and minimum spacing can be crucial for proper maintenance of homes (allowing for ladder placement) and can also reduce the risk of fire spreading across buildings. The Guidelines also indicate that the massing and size of new construction and additions should be characteristic of surrounding buildings, particularly on local streets. Staff would note that although the spacing of the previous structure was legally non-conforming, the unpermitted addition results in an expansion of that non-conformity by 166.7% in a manner inconsistent with the size of surrounding properties.
- Findings of Fact provided by the applicant indicate that the single-family use is consistent with the area and that the lack of consistent side setback standards for the block should allow for deviation from Ordinance requirements. Staff would note that the both the size/massing of the enlarged structure and level of separation from the property to the east would be atypical for the block, and that other non-conforming setbacks on the block were not established by previous variances.
- Given the potential maintenance issues and negative externalities for this property and its neighbor to the east that might result from the expansion of the existing setback as well as the possibility that a future subdivision of the western half of the lot would lead to the creation of an open space violation at this site, staff recommends denial of the requested variance.

GENERAL INFORMATION

Existing Zoning	D-5 (TOD)	
Existing Land Use	Residential	
Comprehensive Plan	Traditional Neighborhood	
Surrounding Context	<u>Zoning</u>	Surrounding Context
North:	D-5	North: Undeveloped
South:	D-5	South: Residential
East:	D-5	East: Residential
West:	D-5	West: Residential
Thoroughfare Plan		
McDougal Street	Local Street	50-foot existing right-of-way & 48-foot proposed right-of-way
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	08/11/2025	
Site Plan (Amended)	09/04/2025	
Elevations	08/11/2025	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	08/11/2025	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- TOD Red Line Strategic Plan
- Infill Housing Guidelines

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Traditional Neighborhood living typology to allow for a full spectrum of housing types, ranging from single family homes to large-scale multifamily housing. Infill development should continue the existing visual pattern, rhythm, or orientation of surrounding buildings when possible.

- The property is also within an Environmentally Sensitive overlay which is intended for areas containing high quality woodlands, wetlands, or other natural resources. Development of detached housing should be oriented to minimize impacts on trees, and development should preserve or add at least 30% of the entire parcel as tree canopy of naturalized area.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The TOD Red Line Strategic Plan recommends this area to the District Center typology for dense, mixed-use infill at the heart of the area nearest the BRT stop with residential uses beyond.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Infill Housing Guidelines related to the spacing of buildings indicate that sufficient side setbacks and minimum spacing can be crucial for proper maintenance of homes (allowing for ladder placement) and can also reduce the risk of fire spreading across buildings. The Guidelines also indicate that the massing and size of new construction and additions should be characteristic of surrounding buildings, particularly on local streets.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

ZONING HISTORY – SITE

N/A

ZONING HISTORY – VICINITY

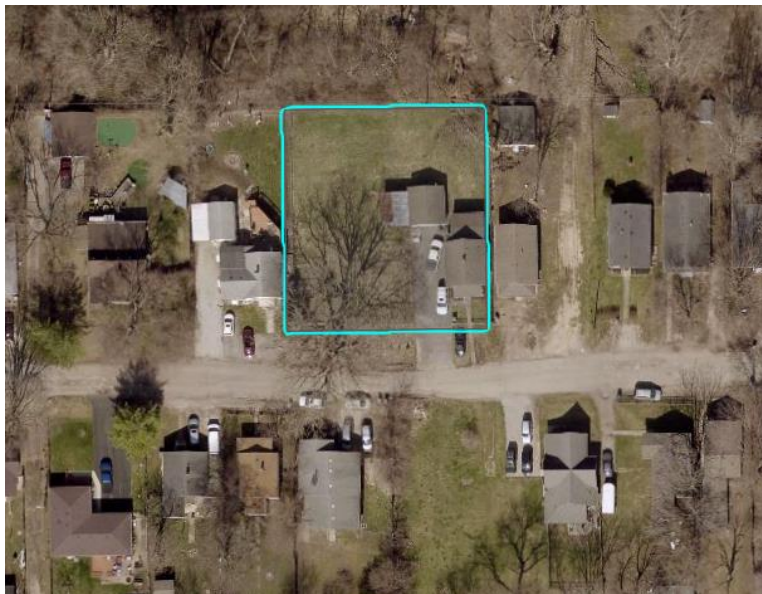
2021UV1011 ; 1125 McCord Street (northwest of site), Variance of use and development standards of the Consolidated Zoning and Subdivision Ordinance to provide for an addition to a single-family dwelling to convert it into two dwelling units (not permitted) on a 60-foot wide lot (70-foot wide lot required), and the construction of a detached garage with access to McCord Street (access required from improved alley), **approved**.

EXHIBITS

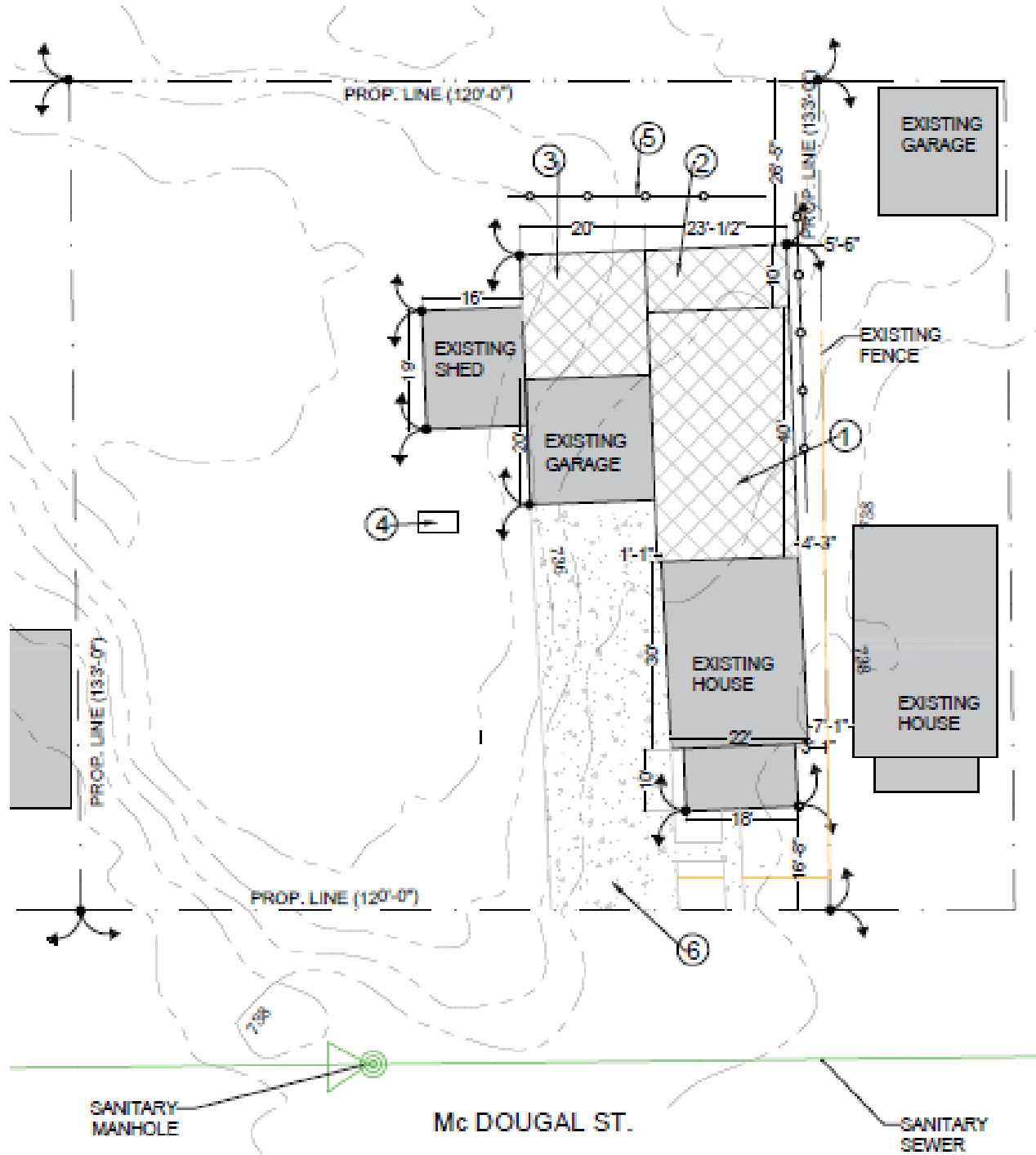
2025DV3030 ; Aerial Map

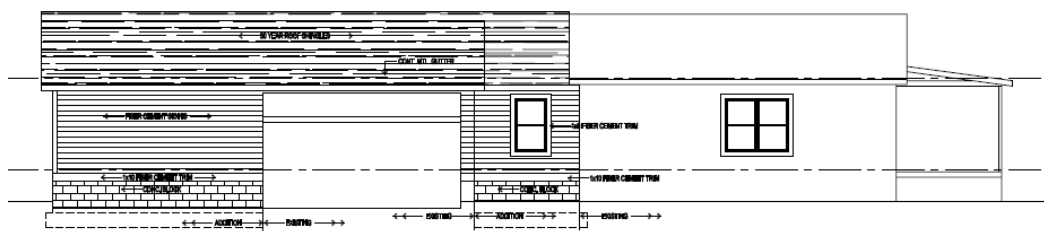
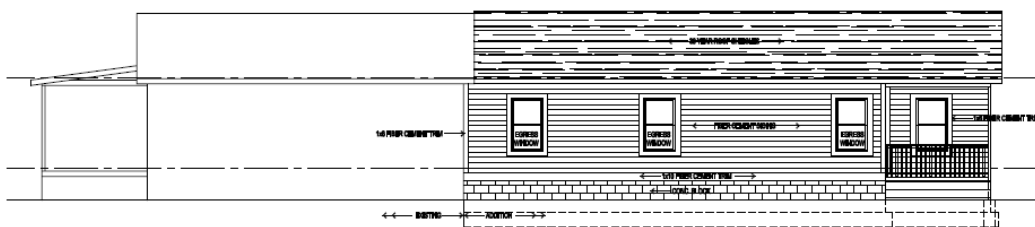
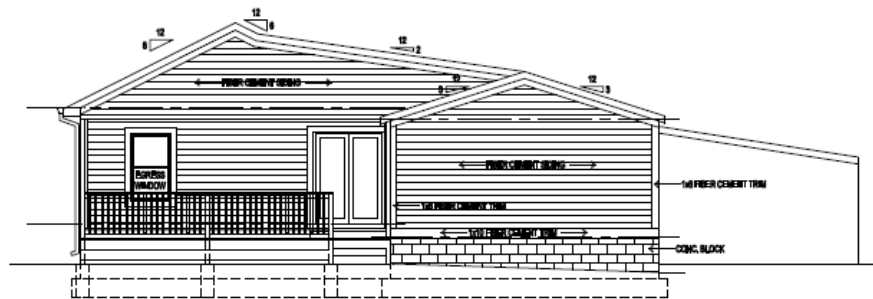
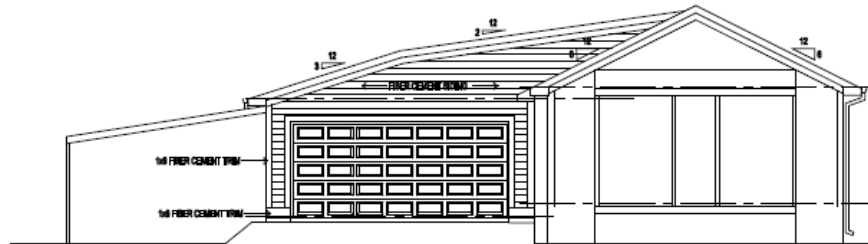


2025DV3030 ; Aerial Map (spring 2023)



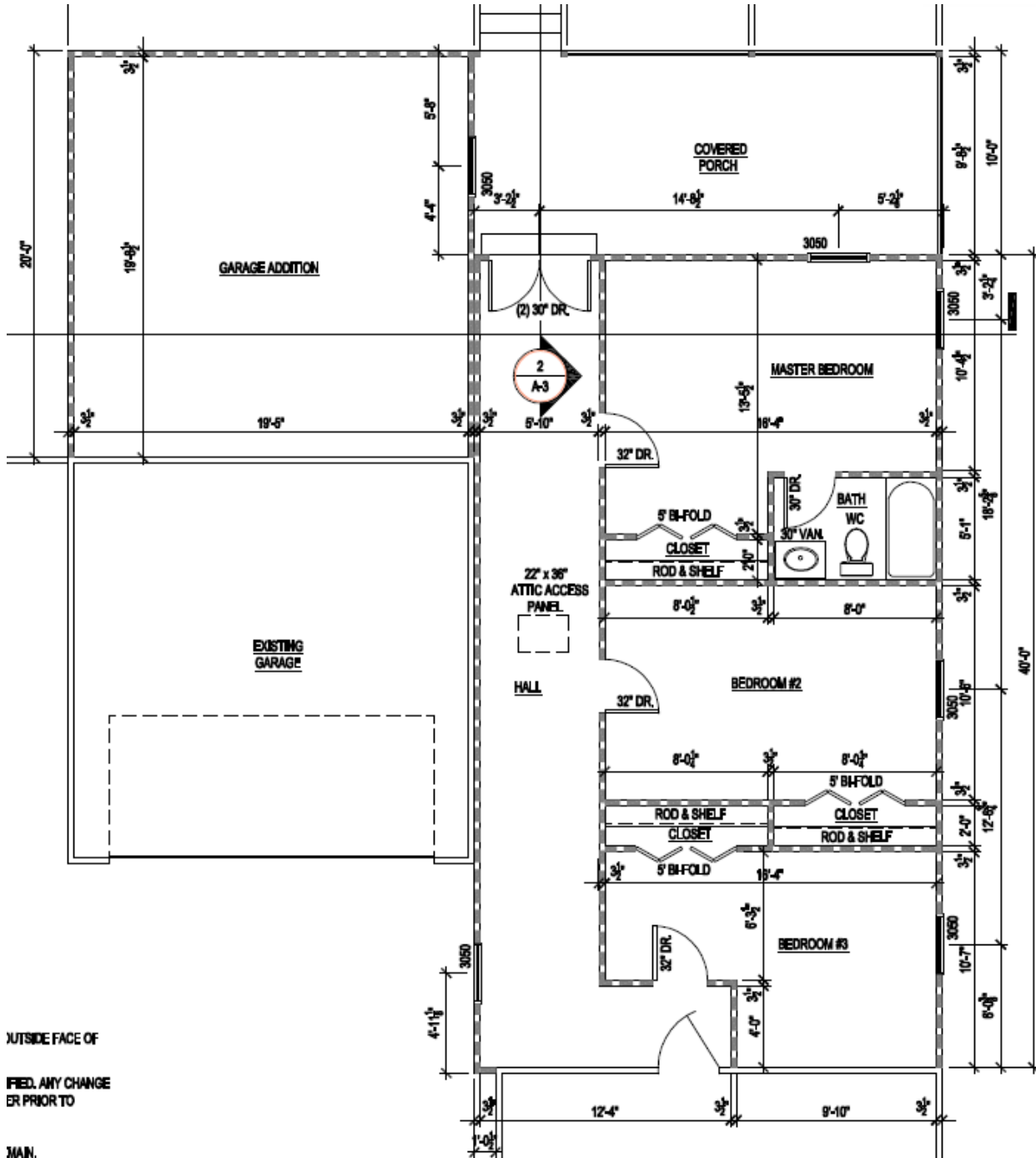
2025DV3030 ; Site Plan





SOUTH ELEVATION

2025DV3030 ; Floorplan



2025DV3030 ; Findings of Fact

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because:

The use of the home and property will remain a single family home with a larger footprint. The single family use is consistent with the area.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

The use of the property will remain a single-family home with no change in use.

If granted, the proposed setback would be in-line with what is required for other lots on this same block.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because:

Due to the varying lot widths of this block of homes, there is no consistent side setback requirement the platted subdivision on the same street with the same zoning designation. This block has lots varying from 30ft wide to 120ft wide due to lots being combined and split since the original platting. The smaller lots at 30ft are required to have 3ft side setback; the mid size 45ft lots are required to maintain a 5ft side setback, and the larger lots 60ft wide and larger are required to have a 7ft side setback.

2025DV3030 ; Notice of Violation (VIO25-007607)

Section 740 -1005.A.2. Civil Zoning Violation

Specific Violation: The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of the Zoning Ordinance; (740-801.A.2. - Failure to obtain an Improvement Location Permit (ILP) for increasing the height, size or lateral bulk of the structure...rear addition).

Section 740 -1005.A.8. Civil Zoning Violation

Specific Violation: Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (Table 744-201-1: - Rear addition located in the 7ft. side yard setback).

Section 740 -1005.A.8. Civil Zoning Violation

Specific Violation: Failure to comply with use-specific standards and zoning district development standards for the D-5 district; (Table 744-510-2: - Fence height exceeding 42 inches in the front yard with more than 30% opacity...privacy fence).

2025DV3030 ; Photographs



Photo 1: Subject Site and Eastern Neighbor from South



Photo 2: Subject Building Viewed from Southwest

2025DV3030 ; Photographs (continued)



Photo 3: Addition Viewed from Northwest



Photo 4: Addition Viewed from North

2025DV3030 ; Photographs (continued)



Photo 5: Addition & Fence Viewed from Southeast



Photo 6: Separation Between House and Fence to East