

BOARD OF ZONING APPEALS DIVISION III

February 18, 2025

Case Number: 2024-UV3-016
Property Address: 425 & 435 South Gibson Avenue (*approximate address*)
Location: Warren Township, Council District #20
Petitioner: Oscar Garcia Cruz, by Steven A. Brown
Current Zoning: D-2

Request: Variance of Use and Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the storage and occupancy of more than two recreational vehicles for more than 15 days per year (maximum of two recreational vehicles may be parked outside per lot, may not be occupied for more than 15 days) within gravel parking areas (hardscaping required) and the location of a six-foot tall privacy fence within the front yard of Gibson Avenue and encroaching within the clear sight triangle of the driveway (limited to 3.5-foot tall, encroachment of clear sight triangles not permitted).

Current Land Use: Residential / Undeveloped
Recommendations: Staff recommends **denial** of this petition.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

1/21/24: A timely automatic continuance request was filed by a registered neighborhood organization to have this petition moved to the February 18th hearing a date. A full staff report will be made available in advance of that hearing date.

11/19/24: The petitioner is planning to request a continuance for this petition from the November 19th hearing date to the January 21st, 2025, hearing date to allow for time for sufficient notice to be sent and given that the owner will be out of the county for the December Division III hearing date. Staff is supportive of this request but would likely not be supportive of additional continuance requests beyond January. A full staff report will be made available in advance of the January hearing date.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- The subject site is comprised of two (2) separate parcels under shared ownership: the northern lot (425) is undeveloped except for a gravel parking area and the southern lot (435) contains a

single-family home and a recently constructed rear accessory shed along with gravel parking. The property is surrounded by other single-family residential uses on all sides. It does not appear that a driveway permit was obtained for the gravel drive recently added to the northern parcel.

- VIO24-006064 was opened earlier this year at the property in relation to the use of gravel parking areas for multiple recreational vehicles on the property, and partial construction of a front-yard fence with 6 feet in height and encroaching into the required clear-sight triangle.
- Grant of this variance would seek to allow for the parking of six total RVs on the property (three vehicles per lot). Although the plan of operation indicated that the vehicles would strictly be for the personal use of the petitioner, staff has concerns that these vehicles might be utilized for full-time residential occupancies or rentals beyond the scope of this variance. Approval would solely allow for the parking of the RVs and not for any additional commercial or residential uses.
- The submitted site plan appears to show placement of the fence with a front-yard setback of approximately 20 feet. Based on aerial and site photography (see Exhibits) this does not appear to be accurate, and the portions of the fence currently constructed roughly correspond with the front property line. This, coupled with the driveways on the property, is why the request for clear-sight triangle encroachment was added to the request language.
- This property is zoned D-2 (Dwelling District Two) for use within suburban areas with ample yards, trees and passive open spaces at a typical density of 1.9 units per gross acre. Similarly, the Comprehensive Plan recommends it for estate-style homes on large lots within rural or agricultural areas that prioritize natural features such as rolling hills, high-quality woodlands, and wetlands. Finally, Infill Housing Guidelines indicate that in front yards, fences should be ornamental in style and that privacy fences should not be installed within front-yard contexts.
- Documentation provided along with the application did not identify any site-specific practical difficulties requiring deviation from ordinance standards (the placement of disallowed vehicles, gravel paving and driveway, non-compliant fences, etc. would be considered a self-imposed hardship). The petitioner did not provide clear information on how the RVs would be utilized (beyond that they were for 'personal to the petitioner' and would enter/exit the site around once a month). Staff also noted what appears to be several additional commercial vehicles and mounds of some sort of material from aerial photography.
- Ordinance restrictions on the height of front-yard fences within residential areas exist to allow for vibrant and pedestrian-friendly streetscapes and to reduce any visual impairment by motorists of pedestrians. Both this fence and any other fence within a residential context would not be allowed with the proposed height of six (6) feet within the front yard based on both ordinance and Infill Housing Guidelines, and this fence would also compromise the required clear-sight area which would negatively impact the safety and sightline both of vehicles on this property as well as the northern neighbor (see Photo 5 in Exhibits). Given this context and the lack of practical difficulty, staff recommends denial of the variance request for a fence exceeding height requirements.

- The Zoning Ordinance also places limits on gravel parking to avoid negative externalities of dust or mud and broadly prohibits the parking of heavy vehicles in residential areas to ensure harmonious development with uses of differing intensity separated. Placement of multiple large vehicles would not be contextually appropriate within D-2 zoning or the Rural and Estate Neighborhood typology and could place strain on both the local road if RVs are frequently entering or exiting as well as any septic tank that might exist on-site. Given this context and the lack of practical difficulty, staff recommends denial of the variance request for parking of six recreational vehicles on a gravel parking area.

GENERAL INFORMATION

Existing Zoning	D-2		
Existing Land Use	Residential / Undeveloped		
Comprehensive Plan	Rural or Estate Neighborhood		
Surrounding Context	Zoning	Surrounding Context	
	North:	D-2	North: Residential
	South:	D-2	South: Residential
	East:	D-2	East: Residential
	West:	D-2	West: Residential
Thoroughfare Plan			
Gibson Avenue	Local Street	50-foot existing right-of-way and 50-foot proposed right-of-way	
Context Area	Metro		
Floodway / Floodway Fringe	No		
Overlay	No		
Wellfield Protection Area	No		
Site Plan	10/28/2024		
Site Plan (Amended)	N/A		
Elevations	N/A		
Elevations (Amended)	N/A		
Landscape Plan	N/A		
Findings of Fact	08/21/2024		
Findings of Fact (Amended)	N/A		

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Infill Housing Guidelines

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Rural or Estate Neighborhood living typology to allow for estate-style homes on large lots within rural or agricultural areas. This typology prioritizes natural features such as rolling hills, high-quality woodlands, and wetlands. Density should be less than one dwelling unit per acre unless housing is clustered to preserve open space or existing topography.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- The Infill Housing Guidelines indicate that in front yards, fences should be ornamental in style and that privacy fences should not be installed within front-yard contexts.

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

2000DV1037 ; 8361 Beechwood Avenue (east of site), variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish 1,844 square feet of accessory use area or 154 percent of the total floor area of the primary dwelling (maximum 99 percent of the total floor area of the primary dwelling permitted), and to provide for the construction of a 1,200-square foot pole barn, creating 1,360 square feet of accessory building area or 113 percent of the main floor area of the primary dwelling (maximum 900 square feet or 75 percent of the main floor area of the primary dwelling permitted), and 3,044 square feet of accessory use area or 253 percent of the total floor area of the primary dwelling (maximum 99 percent of the total floor area of the primary dwelling permitted), **approved.**

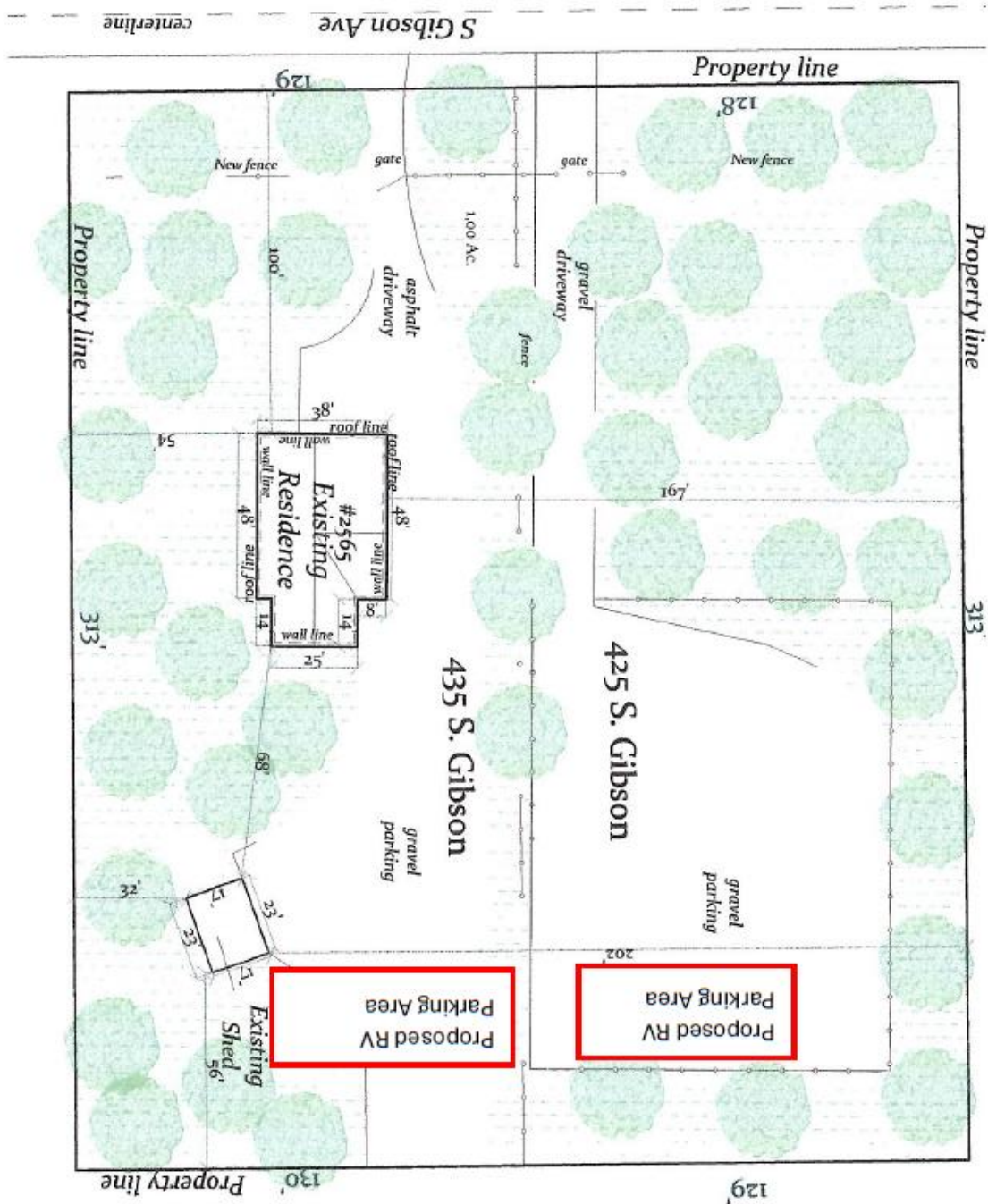
99-V1-131 ; 465 South Gibson Avenue (south of site), variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a variance of development standards of the Dwelling Districts Zoning Ordinance to provide for the construction of a 1,042 square foot addition to an existing single-family dwelling with a front setback of 16 feet from the right-of-way of Gibson Avenue (minimum 25 feet required), and a front yard setback of 17 feet along the right-of-way of Rawles Avenue (minimum 30 feet required), **approved.**

EXHIBITS

2024UV3016 ; Aerial Map



2024UV3016 ; Site Plan



(Note: the location of the fence shown on this site plan does not appear to be accurate: aerial and site photography indicate the fence is around 0 feet from the front property line instead of around 20 feet)

2024UV3016 ; Findings of Fact

1. THE GRANT WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE COMMUNITY BECAUSE

The Parcels are within an established residential where many other parcels either have 6' fences. Additionally, the Parcel are large parcels that can accommodate the parking of upwards of ten recreational vehicles without overcrowding the Parcels. While the Parcels can accommodate upwards of ten recreational vehicles, the Petitioner only desires to have the ability to park four recreational vehicles on each parcel. Because of the large parcels within the neighborhood, the modifications requested within the Petition will not affect any surrounding parcels.

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 BECAUSE

Adding a 6' high fence along the front of the parcels will only increase the curb appeal and increase the property value. Additionally, the fence and proposed use will match the surrounding parcels.

3. THE NEED FOR THE VARIANCE ARISES FROM SOME CONDITION PECULIAR TO THE PROPERTY INVOLVED BECAUSE

The Petitioner recently purchases the property and desires to add privacy fencing and utilize the large parcel to its entirety. The parcel's large footprint allows for ample parking of recreational vehicles to which the Petitioner wishes to utilize.

4. THE STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE CONSTITUTES AN UNUSUAL AND UNNECESSARY HARDSHIP IF APPLIED TO THE PROPERTY FOR WHICH THE VARIANCE IS SOUGHT BECAUSE

Without the variance, the Petitioner will be unable to provide adequate privacy to his property. Additionally, Petitioner will be unable to store his recreational vehicles even though the parcels can accommodate such parking without interfering with the use or the parcels or neighboring parcels.

5. THE GRANT DOES NOT INTERFERE SUBSTANTIALLY WITH THE COMPREHENSIVE PLAN BECAUSE

The comprehensive plan allows for residential use to which the Petitioner continues to use the parcels for. The Petition adds to the comprehensive plan by allowing a residential privacy fence with gate. Further, the parking of recreational vehicles helps the Petitioner to use the parcels as storage of personal property, again adding to the use of a residential property.

2024UV3016 ; Plan of Operation

The Petitioner desires to park three (3) recreational vehicles on each of his two adjacent parcels, for a total of six (6) possible recreational vehicles. The recreational vehicles will consist of drivable recreational camping vehicles and pull behind camping trailers. The Petitioner does not plan on allow others to park recreational vehicles on the parcels.

The Petitioner plans to have the ability to park the three (3) recreational vehicles on each parcel in the back of each parcel and as depicted below. Because the recreational vehicles are personal to the Petitioner, there will be no separate facilities or employees required for the recreational vehicle parking.



2024UV3016 ; Notice of Violation (VIO24-006064)

RE: 435 S GIBSON AVE

Dear CRUZ, OSCAR D GARCIA:

A recent inspection of the above referenced property indicated violation(s) of the Revised Code of Indianapolis and Marion County as follows:

Section 740 -1004.A.2. Stop Work Order

Specific Violation: FENCES IN THE REQUIRED FRONT YARD SHALL NOT EXCEED 42 INCHES IN HEIGHT...6 FT. FENCE IN THE REQUIRED FRONT YARD.

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-2 district; (740-304. - No obstructions shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede visibility between the heights of 2.5ft. and 8ft. above grade level of the adjoining right-of-way within a Clear Sight Triangular Area...privacy fence

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-2 district; (743-306.AA.2. - No more than 2 recreational vehicles shall be permitted to be parked outside in a D-2 zoning district).

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-2 district; (743-306.AA.3. - Parked recreational vehicles shall not be occupied or used for living, sleeping, or housekeeping purposes for more than one instance, not to exceed 15 days per calendar year).

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-2 district; (744-404.D.6.a. - Parking areas in front yards shall be paved with bricks, concrete, asphalt, permeable pavers or pavement, or a gravel surface with a distinct edge boundary to retain the gravel; the parking of vehicles on grass in the front yard is prohibited).

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-2 district; (744-510.C.3. - Fence post height exceeding 1ft. above the permitted height of the fence).

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-2 district; (Table 744-510-2: - Fence height exceeding 42 inches in the front yard with more than 30% opacity...privacy fence).

2024UV3016 ; Photographs



Photo 1: Subject Site (425) from West



Photo 2: Subject Site (435) from West

2024UV3016 ; Photographs (continued)



Photo 3: Commercial Vehicles on Subject Site (435, July 2024)



Photo 4: Front Yard of Subject Site (435)

2024UV3016 ; Photographs (continued)



Photo 5: Adjacent Property to North



Photo 6: Adjacent Property to West (June 2024)