

**BOARD OF ZONING APPEALS DIVISION III**

**May 28, 2024**

**Case Number:** 2024-DV3-004  
**Property Address:** 1328 Lawrence Avenue (approximate address)  
**Location:** Perry Township, Council District #23  
**Petitioner:** Amy DiVincenzo & William Esquivel Najera  
**Current Zoning:** D-4

**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a six-foot tall fence that faces the primary entrance of the dwelling unit across Otterbein Avenue (fence heights on corner lots in the Compact Context Area limited to 3.5 feet when facing a primary entrance of a dwelling unit across the street), and that encroaches into the clear sight triangle (not permitted).

**Current Land Use:** Residential

**Staff Recommendations:** Staff recommends approval of this petition

**Staff Reviewer:** Noah Stern, Senior Planner

**PETITION HISTORY**

**ADDENDUM FOR MAY 28, 2024 BZA III HEARING**

- This petition is to be continued to amend the language of the request, requiring new mailed notice. The petitioner has requested a two-month continuance to the May 28, 2024 BZA Division III hearing due to a scheduling conflict during the April 16, 2024 BZA Division III hearing.

**STAFF RECOMMENDATION**

- Staff recommends approval of this petition.

**PETITION OVERVIEW**

- This petition would allow for a six-foot tall fence that faces the primary entrance of the dwelling unit across Otterbein Avenue (fence heights on corner lots in the Compact Context Area limited to 3.5 feet when facing a primary entrance of a dwelling unit across the street), and that encroaches into the clear sight triangle (not permitted).
- Permits are not required to construct fences. The fence in question was flagged for a violation in late 2023 at which point, the owner filed for the variance.



- The subject site is a corner lot and contains frontage along both Lawrence Avenue and Otterbein Avenue. The front lot line of corner lots in D-4 zoning districts in the Compact Context Area is the lot line along the street that has the greater number of lots fronting upon it, and the other lot line is to be considered a side lot line. Therefore, the lot line along Lawrence Avenue is considered the front lot line, and Otterbein Avenue is considered a side lot line. Typically, residential fences are permitted to be up to six feet in height in side yards. However, in the Compact Context Area, any yard that faces a primary entrance of a dwelling unit on the opposite side of the street is limited to 3.5 feet in height, per Chapter 744. Article V. Section 10C. This standard is in place because, on corner lots such as the subject site- where one of the lot lines with frontage is, by definition, a side lot line- the side lot line still functions as a front lot line in that it fronts right-of-way and has front entrances to other dwellings facing it. Further, the standard promotes orderly development that enhances the pedestrian experience along sidewalks and overall visual character of the neighborhood.
- The residence on the subject site has deficient front and rear setbacks. The ability to operate a back yard is difficult since the property fronts three rights-of-way, and the rear of the residence contains approximately 10 feet of depth. Therefore, Staff does find the request for a privacy fence in one of the remaining yards that fronts along public right-of-way to be reasonable. While privacy fences that are six feet in height along right-of-way are not preferred by Staff nor commonplace, it is noteworthy that only a portion (approximately 37 feet) of the side yard along Otterbein Avenue contains the six-foot privacy fence, with the remaining 21 feet containing a compliant 3.5-foot see-through fence, reducing the impact on neighborhood character and visibility from across the street.
- Additionally, the fence in question impedes into the clear sight triangle by approximately 3 feet in distance. Otterbein Avenue and Lawrence Avenue create a 3-way stop intersection and are both local streets containing a speed limit of 30 miles per hour. While the fence does inhibit visibility of the line of sight in between these two streets to a degree, the encroachment of the clear sight triangle is minor and the vast majority remains visible. Further, no members from DPW raised concerns regarding motorist visibility as a result of the fence.
- To conclude, while Staff does find there to be a minor impact on the neighborhood character and experience, there is a substantial practical difficulty for the petitioner to have privacy given the nature of the subject site and, therefore, does recommend approval of the variances requested.

**GENERAL INFORMATION**

<b>Existing Zoning</b>	D-4	
<b>Existing Land Use</b>	Residential	
<b>Comprehensive Plan</b>	Traditional Neighborhood	
<b>Surrounding Context</b>	<b><u>Zoning</u></b>	<b>Surrounding Context</b>
North:	D-4	North: Single-family residential

	South:	D-3	South: Single-family residential
	East:	D-4	East: Single-family residential
	West:	D-4	West: Single-family residential
<b>Thoroughfare Plan</b>			
Lawrence Avenue	Local Street		40 feet of right-of-way existing and 48 feet proposed
Otterbein Avenue	Local Street		52 feet of right-of-way existing and 48 feet proposed
<b>Context Area</b>	Compact		
<b>Floodway / Floodway Fringe</b>	No		
<b>Overlay</b>	No		
<b>Wellfield Protection Area</b>	No		
<b>Site Plan</b>	12/19/23		
<b>Site Plan (Amended)</b>	N/A		
<b>Elevations</b>	N/A		
<b>Elevations (Amended)</b>	N/A		
<b>Landscape Plan</b>	N/A		
<b>Findings of Fact</b>	12/19/23		
<b>Findings of Fact (Amended)</b>	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 the Traditional Neighborhood typology for this site.

**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

- With regards to fencing, the Infill Housing Guidelines document recommends:
  - Ornamental elements, such as fences, should be simple and fit the context of the block and neighborhood
  - Build thoughtful fences- fencing around dwelling should be carefully placed

### Indy Moves

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

- Not Applicable to the Site.



## ZONING HISTORY

### ZONING HISTORY – SITE

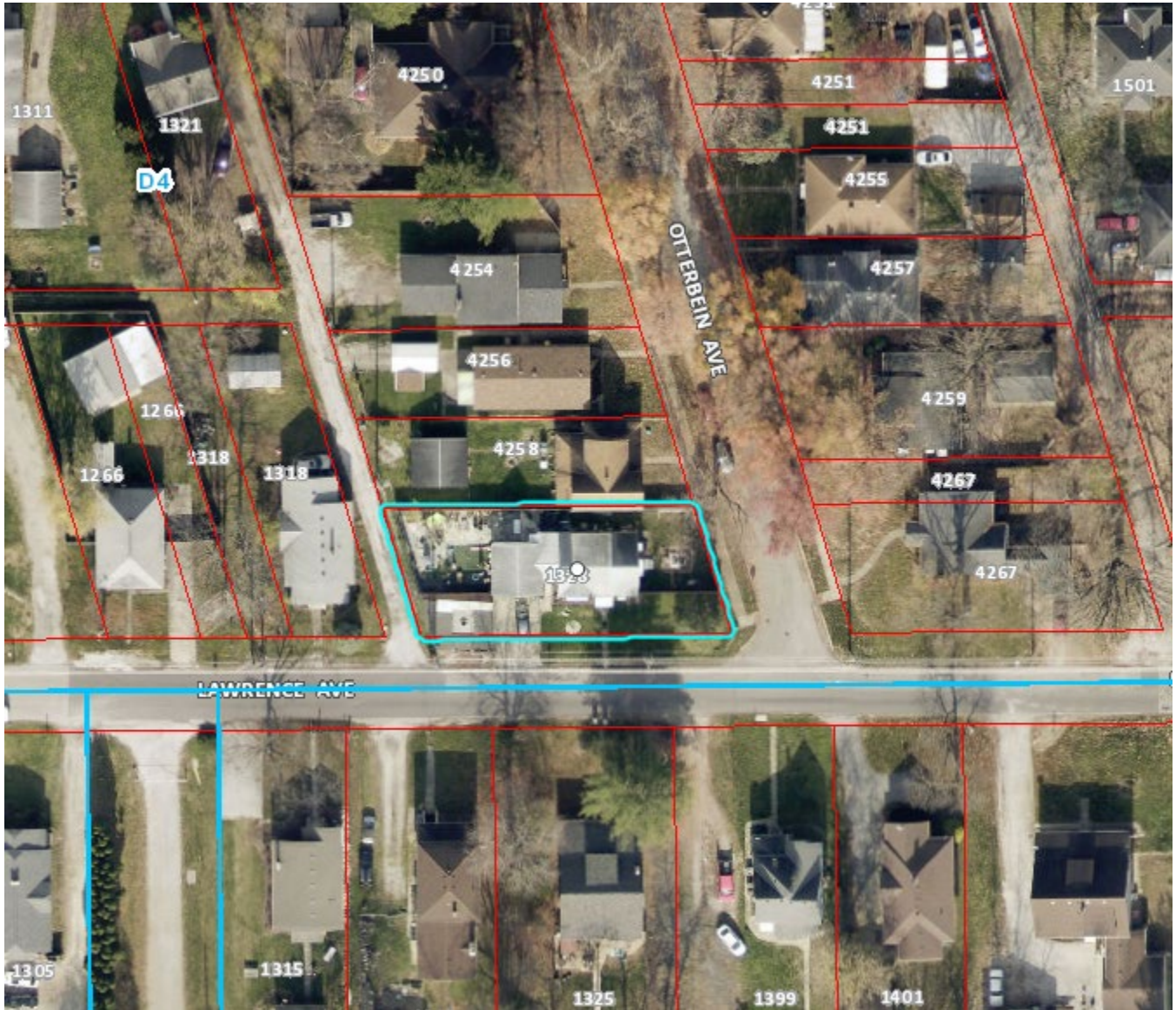
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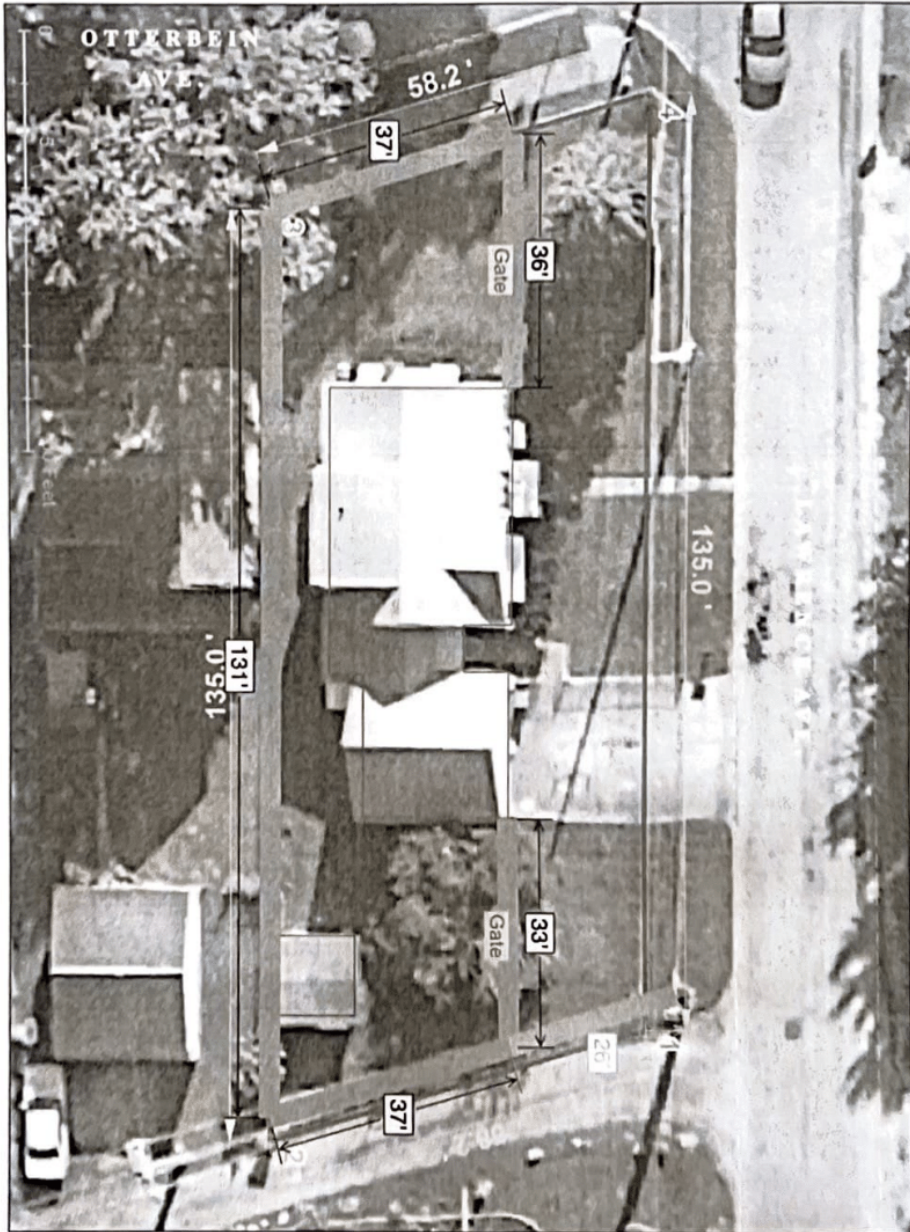
### ZONING HISTORY – VICINITY

**2018DV1027; 1266 Lawrence Avenue (west of site)**, Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a seven-foot tall fence (maximum six-foot tall fence permitted), **approved**.

**2019ZON011; 1200 Lawrence Avenue (south of site)**, Rezoning of 6.194 acres from the D-3 and C-3 Districts to the SU-18 classification to provide for a wireless communications facility on the site of the existing substation, **approved**.

EXHIBITS





**HOA** FENCE COMPANY  
 HOAFence.com  
 Home Owner Approved

*-This is a non-certified site plan accurate to the GIS lot lines. No liability will be assumed for any use of the data for new construction projects or fences.*

Client Name : Amy DiVincenzo  
 Address : 1328 Lawrence Ave.,  
 Indianapolis IN 46227  
 Lot Area : 7,536.4 sqft  
 Lot Perimeter : 386.4 ft  
 Year built : 1951

**Legend Key**

- Eaves Line
- Property Line

Scale Reference  
1" = 17'

**Site Plan Coordinates**

ID	Longitude	Latitude
1	86° 8' 3.528" W	39° 42' 10.240" N
2	86° 8' 3.744" W	39° 42' 10.790" N
3	86° 8' 2.017" W	39° 42' 10.801" N
4	86° 8' 1.801" W	39° 42' 10.251" N

**Projection Information**  
 WKID: 2985 Authority: EPSG  
 Projection: Transverse Mercator  
 Geographic Coordinate System:  
 GCS North American 1983  
 Production Date : 8/07/2023







Petition Number \_\_\_\_\_

**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division \_\_\_\_\_  
OF MARION COUNTY, INDIANA**

**PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS**

**FINDINGS OF FACT**

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

The fence is of high quality and professional installed. In addition, the fence does not impede clear sight of vehicles, pedestrians or cyclists when traversing the intersection of Otterbein Avenue and Lawrence Avenue, nor the intersection of the adjacent alley and Lawrence Avenue. The fence would improve public health and safety by preventing property encroachments from neighboring canines and ensure school aged children and pets residing at the property cannot leave the premises unauthorized.

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 fence is of a material and installation quality that is commonly applied in residential settings, including the immediate area that the property is located within.

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

The property is substandard, particularly when compared to lot dimensions commonly associated with corner lots, as evidenced by the failure of the property to meet modern minimum front and rear yard setbacks. This results in a severely limited area to erect a fence of the maximum height permitted by the zoning ordinance. This unduly limits the ability of the property owners to enjoy an enclosed, secure, outdoor private area as enjoyed by other residents of the area.

**DECISION**

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

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