

## STAFF REPORT

### Department of Metropolitan Development Division of Planning Current Planning Section

**Case Number:** 2023-DV3-016  
**Address:** 1616 Marlowe Avenue (approximate address)  
**Location:** Center Township, Council District #17  
**Zoning:** D-8  
**Petitioner:** James A. Allen, by David E. Dearing  
**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a six-foot tall fence within the front yard of Marlowe Avenue (front yard fences limited to 3.5-feet in height).

### RECOMMENDATIONS

Staff **recommends denial** of this request

### SUMMARY OF ISSUES

The following issues were considered in formulating the recommendation:

#### LAND USE

##### EXISTING ZONING AND LAND USE

|     |         |                                      |
|-----|---------|--------------------------------------|
| D-8 | Compact | Residential (Single-family dwelling) |
|-----|---------|--------------------------------------|

##### SURROUNDING ZONING AND LAND USE

|       |     |                                      |
|-------|-----|--------------------------------------|
| North | D-8 | Commercial                           |
| South | D-8 | Residential (Single-family dwelling) |
| East  | D-8 | Residential (Two-family dwelling)    |
| West  | D-8 | Undeveloped Lot / Funeral Home       |

|                    |                                                                |
|--------------------|----------------------------------------------------------------|
| COMPREHENSIVE PLAN | The Comprehensive Plan recommends urban mixed-use development. |
|--------------------|----------------------------------------------------------------|

- ◇ The 0.11-acre subject site is developed with a single-family dwelling and a six-foot tall fence in the front yard. It is surrounded by residential dwellings to the south and east with an undeveloped lot to the west, and a commercial use to the north.

#### VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would allow for a six-foot tall fence in the front yard of Marlowe Avenue.
- ◇ A fence with 30% opacity or less could permit a maximum height of four feet in the front yard without a variance. However, the type of fence on site is a privacy fence that is limited to 3.5 feet in height in the front yard.

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## **STAFF REPORT 2023-DV3-016 (Continued)**

- ◇ The variance request is related to an open zoning violation case (VIO23-000001) that was the result of a complaint reported to the Mayor's Action Center regarding the existing fence. Another item in the violation is for a parking area in front yard that exceeds 30 feet in width or 50% of the lot width.
- ◇ It is staff's understanding that the other violation will be corrected since the petition in question is only for the fence height.
- ◇ The Findings of Fact note that the strict application of the terms of the Zoning Ordinance would result in the practical difficulty in the use of the site because "without a 6-foot fence, Petitioner's home will lack privacy and protection". However, protection can be provided by the installation of security cameras and privacy could be accomplished with the installation of evergreen trees or shrubs in the front yard.
- ◇ The purpose of the limitation in fence heights in the front yard is to create an open appearance along public sidewalks, to prevent blocking of views at intersections, and prevent a canyon-like effect of the streetscape.
- ◇ In staff's opinion, there is not a practical difficulty associated with the use of this site. Furthermore, the six-foot tall fence would present a significant impediment to the free flow of light and air, reduce the security for pedestrians and negatively impact the residential character of the neighborhood.

## **GENERAL INFORMATION**

### THOROUGHFARE PLAN

Marlowe Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 37-foot existing right-of-way and a 48-foot proposed right-of-way.

### SITE PLAN

File-dated April 24, 2023.

### FINDINGS OF FACT

File-dated April 24, 2023.

## **ZONING HISTORY – SITE**

### EXISTING VIOLATIONS

1. **VIO23-000001** - Failure to comply with use-specific standards and zoning district development standards for the D-8 district; (Table 744-510-2: - Fence height exceeding 42 inches in the front yard with more than 30% opacity...privacy fence). Failure to comply with use-specific standards and zoning district development standards for the D-8 district;(Table 744-404-1 - The parking area in front yards shall not exceed 30 feet in width or 50% of the lot width, whichever is lesser). Failure to comply with use-specific standards and zoning district development standards for the D-8 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)

(Continued)

## **STAFF REPORT 2023-DV3-016 (Continued)**

### **PREVIOUS CASES**

None.

### **ZONING HISTORY – VICINITY**

**2022-CVR-845; 1601 East New York Street, 322 & 324 North Summit Street, and 1612 Marlowe Avenue** (west and northwest of site); Variance of Development Standards to provide for a townhome development with zero-foot front setbacks (ten feet required) and zero-foot corner side setbacks (eight feet required), with encroachments into the clear-sight triangles of the adjacent alleys (not permitted),

**2021-DV1-026; 244 North Summit Street** (southwest of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish a single-family dwelling, with three feet between dwellings, a two-foot west rear setback and a zero-foot north side setback and 43% open space (10 feet between dwellings, four-foot side setback, 15-foot rear setback and 55% open space required), **granted**.

**2021-DV3-058A; 1523 Marlowe Avenue** (southwest of site), Variance to legally establish vehicular access from Marlowe Avenue, **granted**.

**2021-DV3-058B; 1523 Marlowe Avenue** (southwest of site), Variance to legally establish a three-story, two-family dwelling with a five-foot front setback, five-foot rear setback, 44% open space, and with an encroachment into the clear sight triangle of the abutting street and alley, **granted**.

**2021-DV3-015; 1523 Marlowe Avenue** (southwest of site), Variance to provide for a single-family dwelling and attached garage with a five-foot front setback, five-foot rear setback, 47% open space, and with an encroachment into the clear sight triangle of the abutting street and alley, **approved**.

**2018-DV1-042; 314 North State Avenue** (east of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for a single-family dwelling, with a 15-foot front setback (18-foot setback required) and with a secondary dwelling in a detached garage, **granted**.

**2004-UV1-031; 1601 East New York Street** (west of site), Variance of use of the Dwelling Districts Zoning Ordinance to legally establish an existing funeral home in a residential district and to provide for a crematorium, **approved**

**99-UV2-94; 302 North State Street** (east of site), Variance of use and development standards of the Dwelling Districts Zoning Ordinance to provide for the replacement of a previously established building, being the 5<sup>th</sup> dwelling unit on one lot (not permitted), with a front setback of 8.8 feet along Marlowe Avenue (minimum 25 feet required), being detached from another 4-dwelling unit building on the same lot, **granted**.

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### 2023-DV3-016; Location Map



### 2023-DV3-016; Aerial Map



## 2023-DV3-016; Site Plan



**2023-DV3-016; Photographs**



Photo of the Subject Property: 1616 Marlowe Avenue



Photo of the rear yard of the subject site.



Photo of the single-family dwelling south of Marlowe Avenue.



Photo of an undeveloped lot southeast of the site.



Photo of the dwellings southeast of the site.