



BOARD OF ZONING APPEALS DIVISION III

July 16, 2024

Case Number: 2024DV3015
Property Address: 2522 South Pennsylvania Street (approximate address)
Location: Center Township, Council District #18
Petitioner: Juan Guardado, by Joseph D. Calderon
Current Zoning: D-5
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a detached carriage house and deck with a one-foot south side yard setback (five feet required).
Current Land Use: Residential
Staff Recommendations: Staff recommends **denial** of the request.
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This petition was continued from the June 18, 2024 hearing to the July 16, 2024 hearing in order to allow time for the required legal notice to be sent.

STAFF RECOMMENDATION

Staff recommends **denial** of the request.

PETITION OVERVIEW

- The subject property is currently developed for residential uses and is surrounded by residential uses and zoning. It is located to the east of the intersection of Meridian Street and Pleasant Run Parkway and is to the north of Concordia Cemetery.
- Prior to 2022, aerial photography indicates that the property contained a single-family residence on the eastern portion of the parcel as well as a rear attached deck and detached garage. Between 2021 and 2022, additional construction commenced without permits to create a two-story addition to the east of the detached garage as well as a rear deck addition connecting the new two-story addition and existing rear deck (see aerial photography and site plan within the below Exhibits).

- The violation case VIO23-003575 was opened in June of 2023 for, among other items, construction of the garage and deck additions without permits. The violation case also mentioned construction within the required 5-foot side setback as well as a vehicle repair use being conducted at the subject site. Permit applications were made later that year (October 2023) indicating the use of the 2-story addition as a secondary dwelling unit and with no mention of continuation of the disallowed vehicle repair use. The permit reviewer also noted the non-compliant side setback.
- Grant of this variance would legalize the construction already underway at the site and would allow for the deficient 1-foot side yard setback to the south. The height of the accessory dwelling unit (19 feet) is shorter than the existing residence (19.5 feet); therefore, no height variance would be required to legalize the development.
- Approval of this variance would not allow for operation of a vehicle repair use within D-5 zoning; the petitioner's agent has indicated to our offices that the use will not be continued. It additionally would not legalize other items within the violation unrelated to the buildings constructed without permits (i.e. parking of commercial vehicles, outdoor storage of junk, trash, or debris, etc.). The southern wall of the construction would also need to be properly fire-rated and would not allow for operable windows; these are not zoning issues but would need to be addressed prior to issuance of building permits to legalize the structure.
- The floorplans submitted along with elevations indicating that the second floor of the new structure would function as a 296 SF secondary dwelling unit while the space below would be 'storage'. Given the proposed framing on the first floor of the structure staff does have some concerns that this would be utilized as living space or an additional dwelling unit disallowed by ordinance.
- The site is zoned D-5 to allow for walkable neighborhood development either in new suburban neighborhoods or infill situations in established urban areas. The Marion County Land Use Plan Pattern Book recommends it for the Traditional Neighborhood typology to allow for a full spectrum of housing types within compact and well-connected neighborhoods with infill development continuing the existing visual pattern of surrounding buildings. While both the Pattern Book and Infill Housing Guidelines encourage the placement of secondary dwelling units, the latter specifies that the scale and height of the accessory structure should not overshadow the primary residence.
- Regulations on side setbacks exist to ensure adequate separations between buildings on adjacent properties. This priority is reinforced by the recommendations of the Pattern Book and Infill Housing Guidelines below. Staff was unable to identify any site-specific difficulty that would require a side setback so far out of compliance with ordinance requirements. The property and zoning do not require construction of a larger rear deck or secondary dwelling unit, and there was nothing preventing compliant construction (lack of permits would not qualify as a difficulty).



- To promote orderly development with adequate setbacks and avoid the precedent of building without permits and then having non-compliant work legalized after the fact, staff would recommend denial of the setback variance request. If the variance were to be approved over staff's recommendation, it should be subject to a commitment that the storage area on the first floor below the secondary dwelling unit should remain storage and cannot be utilized as living space or an additional dwelling unit in the future.

GENERAL INFORMATION

Existing Zoning	D-5	
Existing Land Use	Residential	
Comprehensive Plan	Traditional Neighborhood	
Surrounding Context	Zoning	Surrounding Context
North:	D-5	North: Traditional Neighborhood
South:	D-5	South: Traditional Neighborhood
East:	D-5	East: Traditional Neighborhood
West:	D-5	West: Traditional Neighborhood
Thoroughfare Plan		
Pennsylvania Street	Local Street	51-foot right-of-way existing and 48-foot right-of-way proposed
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	03/26/2024	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	03/26/2024	
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 Traditional Neighborhood Typology to allow for a full spectrum of housing types within compact and well-connected neighborhoods with infill development continuing the existing visual pattern, rhythm, or orientation of surrounding buildings when possible. Secondary units are encouraged.

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 spacing between houses should establish a consistent rhythm and that new construction should reflect and reinforce spacing on the existing block with room left for maintenance of properties.
- The Guidelines also encourage placement of secondary dwelling units for reasons related to affordability and diversity of housing, but also indicate that the scale, height, size, and mass should not overshadow primary buildings on the lot.

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

96-HOV-117 ; 59 E Pleasant Run Parkway (north of site), variance of development standards of the Sign Regulations to provide for the installation of 12'8" by 4' ground sign externally illuminated (ground signs for subdivision or project signs permitted), **approved**.

96-HOV-93 ; 3536 S Delaware Street (southeast of site), variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a 24x40 garage addition with a one foot rear yard setbacks (minimum five feet required), **approved**.

EXHIBITS

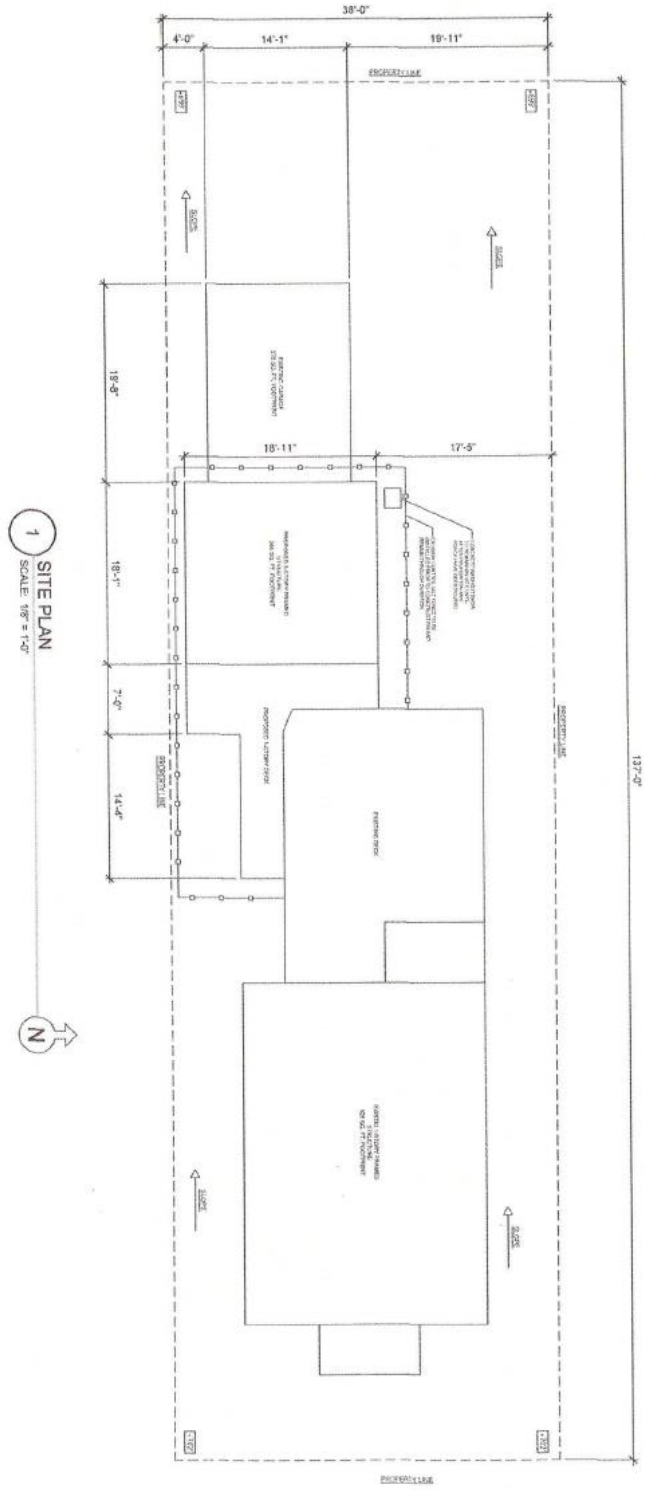
2024DV3015 ; Aerial Map (2023)



2024DV3015 ; Aerial Photography (2020)



2024DV2019 ; Site Plan



2024DV2019 ; Findings of Fact

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

the structure will be similarly situated to other accessory structures on lots in the area and located in a fenced in yard. It will not create any traffic hazard.

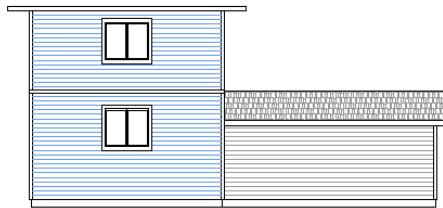
2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because:

the structure is similarly situated to other accessory structures on the north and south adjoining properties and will not interfere with access to the accessory structures on the north and south adjoining properties.

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

the width of the property is insufficient to provide for a five foot (5') side yard setback, particularly in light of the fact of historical precedent of accessory structures being built very close to the side yard lot lines in the block which includes the subject property.

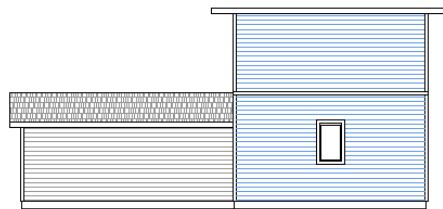
2024DV2019 ; Elevations Submitted for Permitting



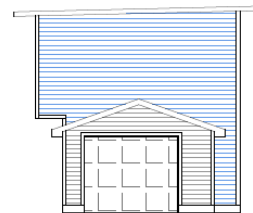
1 NORTH ELEVATION
 3/16" = 1'-0"



3 EAST ELEVATION
 3/16" = 1'-0"

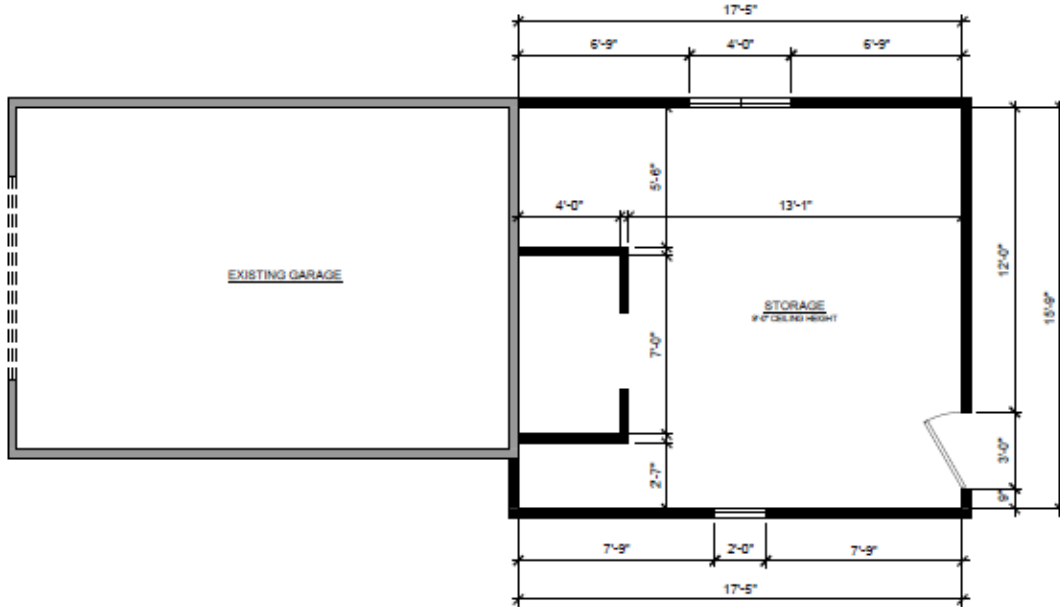


2 SOUTH ELEVATION
 3/16" = 1'-0"

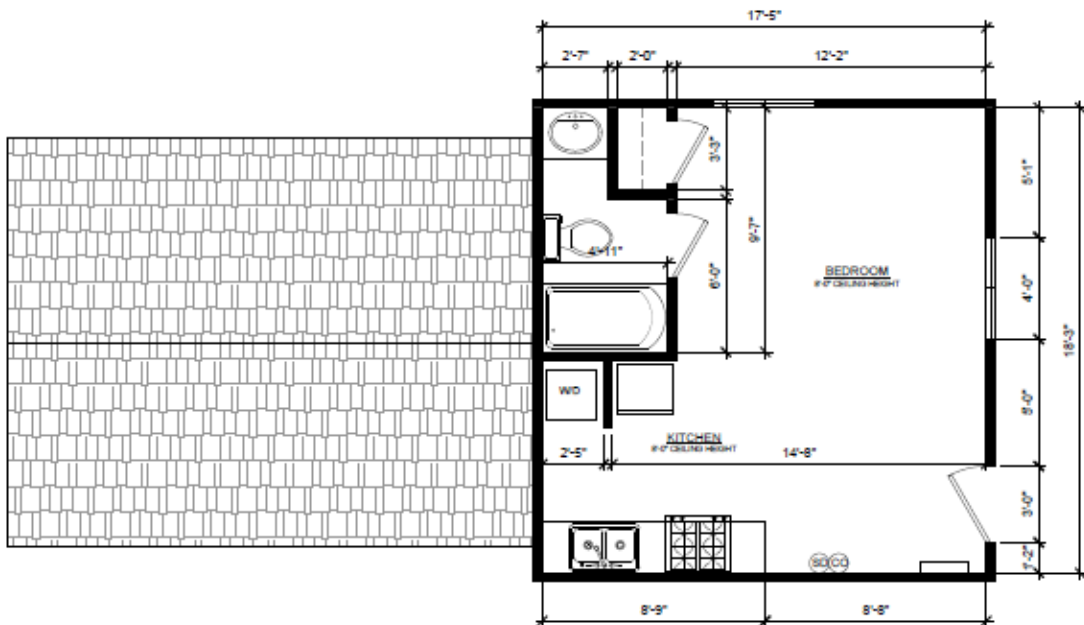


4 WEST ELEVATION
 3/16" = 1'-0"

2024DV2019 ; Floorplans Submitted for Permitting



1 FIRST FLOOR PLAN
 1/4" = 1'-0"



1 SECOND FLOOR PLAN
 1/4" = 1'-0"

2024DV2019 ; Photographs



Photo 1: Subject Site Viewed from Front Yard (Pennsylvania)



Photo 2: Existing Side Setback to North

2024DV2019 ; Photographs (continued)



Photo 3: Southern Setback of Primary Residence + New Deck and Accessory Structure



Photo 4: Adjacent Property to the East

2024DV2019 ; Photographs (continued)



Photo 5: View of Primary + Accessory Structure from Side Alley to South



Photo 6: View of Subject Site from Rear Alley to West