

BOARD OF ZONING APPEALS DIVISION III

April 15, 2025

Case Number: 2025-DV3-007
Property Address: 426 Panola Court (*approximate address*)
Location: Warren Township, Council District #20
Petitioner: Donald & Sarah Richards, by Simeon Langham
Current Zoning: D-3
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a building addition encroaching within a platted easement (not permitted).
Current Land Use: Residential
Staff Recommendations: Staff recommends **approval** of this petition.
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **approval** of this petition.

PETITION OVERVIEW

- 426 Panola Street is a corner lot property that is currently improved with a 2-story single-family home. It is located within the Creekside Woods residential subdivision and is surrounded by other single-family homes on all sides. The site also contains a drainage and utility easement that runs parallel to the northern, western, and eastern property lines (see Exhibits).
- Permit applications were made in late 2023 to allow for the construction of a single-story addition that would contain an additional bedroom and bathroom. At its closest point, the proposed addition would have a front-yard setback of 25 feet from Creekside Woods Drive. Although this would comply with the 25-foot setback requirement for D-3 zoning, it would also partially encroach into the separation area (around 33 feet) required by the easement. For the addition to be built legally, issuance of both an encroachment license from the Department of Business and Neighborhood Services and a zoning variance would be required. An application for the encroachment license was made in early 2025 which could be issued by BNS upon approval of this variance request.

- The subject site is zoned D-3 to allow for low or medium intensity residential development (predominantly single-family residences) with good thoroughfare access, flat topography, and pedestrian connections to community services. Similarly, the Comprehensive Plan Pattern Book recommends it to the Suburban Neighborhood living typology to allow for predominantly single-family housing supported by neighborhood services and amenities. Infill Housing Guidelines indicate that front setbacks should match their surrounding context in areas with uniform front setbacks, and that the front setbacks on corner lots should reflect both frontages.
- It is likely that the atypically large width of the easement within the northern front yard of the site was a preventative measure due to the existing stream and floodway to the west and a lack of certainty about the potential runoff that might occur. Utilities that would typically access this easement include communications companies (AT&T) and electrical and energy services (AES, Citizens). For construction into platted easements, 'vacation of platted easement' petitions are sometimes utilized instead of variances of development standards. Although either petition type is allowable, staff typically reserves vacations of platted easements for commercial development where the likelihood of additional future encroachments is higher. Since this would likely be a one-time encroachment, the variance of development standards is the more appropriate petition type.
- Findings of Fact provided by the applicant indicate that one of the primary occupants of this property is wheelchair-bound and would benefit from ground-level bedroom and bathroom facilities, that the existing utility easement is abnormally large, and that they are in receipt of correspondence from their HOA and several utility agencies indicating a lack of opposition to the proposed addition. That correspondence is provided below within staff's report: the letter from Creekside Woods HOA indicates approval if the required zoning variance were to be approved, the Citizen's Energy letter indicates that 10 feet of horizontal separation from the existing sewer main would need to be maintained, and the other two letters limit their indication of approval to the specifics of this proposed expansion. Additionally, a representative from the Stormwater division of the Department of Public Works indicated to staff that they did not have concerns about approval of this encroachment since stormwater infrastructure is already present within the neighborhood and would not be impacted by this petition.
- Given that the proposed addition would comply with the setback required by Ordinance, has explicit permission granted by relevant utility holders and stormwater administrators, and would only constitute a minor deviation from Infill Housing Guideline recommendations due to the intervening street and distance from the house to west, staff would recommend approval of this variance application. Staff also notes that this property is somewhat unique in that 57% of the lot's area is comprised of easement, and that this recommendation of approval would not necessarily serve as precedent for other petitions related to easement encroachment.

GENERAL INFORMATION

Existing Zoning	D-3	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	<u>Zoning</u>	Surrounding Context
North:	D-3	North: Residential
South:	D-3	South: Residential
East:	D-3	East: Residential
West:	D-3	West: Residential
Thoroughfare Plan		
Panola Court	Local Street	50-foot existing right-of-way and 50-foot proposed right-of-way
Creekside Woods Dr	Local Street	60-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	02/18/2025	
Site Plan (Amended)	N/A	
Elevations	02/18/2025	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	02/18/2025	
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 Pattern Book recommend this property to the Suburban Neighborhood living typology to allow for predominantly single-family housing interspersed with attached and multifamily housing where appropriate and supported by a variety of neighborhood-serving businesses and amenities. Natural features should be preserved, and streets should be well-connected.

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

- Front setbacks help to shape the perceived size of streets by establishing the visual distance from streets and sidewalks to houses. The Guidelines recommend that in areas where front setbacks are uniform that development should match existing contexts, and that corner sites should reflect the context of both 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

88-Z-280, rezoning of 129.9 acres from the A-2 to the D-2 zoning designation to allow for single-family residential development, **approved**.

88-Z-71, rezoning of 135.50 acres from the A-2 to the D-3 zoning designation, **denied**.

EXHIBITS

2025DV3007 ; Aerial Map



13123' PROPERTY LINE

120.44' PROPERTY LINE

LINE OF EXISTING SANITARY LINE

821

EXISTING CHAINLINK FENCE

EXISTING PLATTED 20' BL 4 P.U.E

EXISTING TREE (PROTECT)

RELOCATED FENCE GATE

822

NEW TREATED WOOD RAHP

EXISTING RAHP

EXISTING PATIO

EXISTING 2-STORY HOME

RELOCATED A/C UNIT + NEW PAD

EXISTING 1-STORY GARAGE

EXISTING ELECTRIC METER

EXISTING PLATTED 25' BL 4 P.U.E

EXISTING CITY 20' SETBACK

EXISTING CONCRETE STOOP + SIDEWALK

EXISTING CONCRETE DRIVE

EXISTING SITE DRAINAGE FLOW

823

824

NEW 1-STORY ADDITION

NEW A/C UNIT + PAD

LINE OF EXISTING SANITARY BRANCH LINE

EXISTING SITE DRAINAGE FLOW

5113' PROPERTY LINE

6422' PROPERTY LINE

80.0' PROPERTY LINE

NEW S/LT FENCE (2' OC)

LIMIT OF DISTURBANCE

EXISTING PLATTED 25' BL 4 P.U.E

EXISTING CITY 20' SETBACK

EXISTING CONCRETE STOOP + SIDEWALK

EXISTING CONCRETE DRIVE

EXISTING SITE DRAINAGE FLOW

823

824

80.0' PROPERTY LINE

[illegible]

Architectural drawing of the exterior elevation of a house. The drawing shows a gabled roof with a dormer window. The front facade features a porch with a railing and a large garage door. The drawing includes various annotations and dimensions.

Annotations and dimensions include:

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2025DV3007 ; Findings of Fact

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

Grant of encroachment does not present any danger to the public health, safety, morals, and general welfare of the community because, it does not adversely affect the extra large utility easement or encroach in any significant way to affect health, safety or welfare of any citizen as proofed by approval documentation provided by the utility companies themselves.

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:

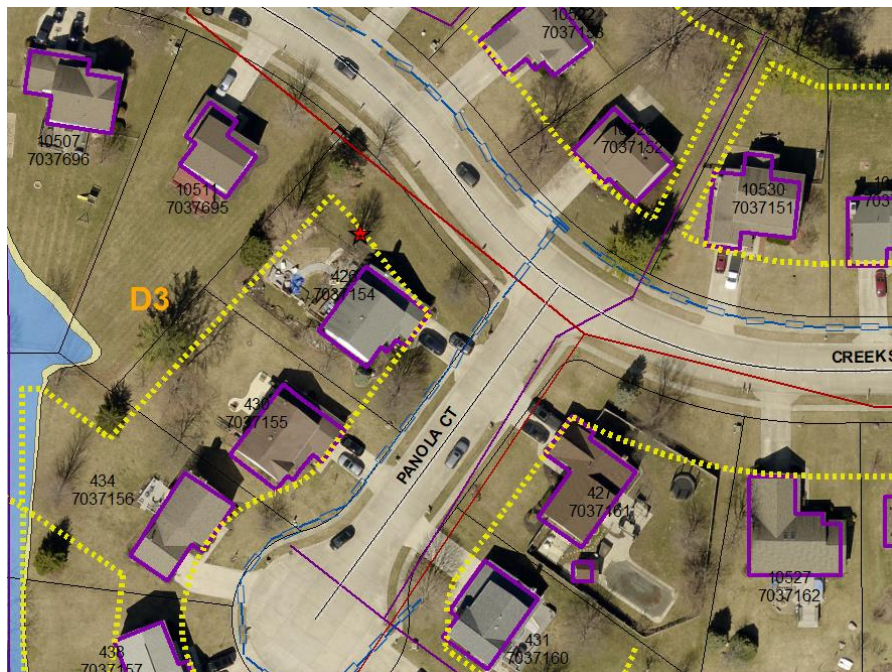
the encroachment does not significantly encroach on the utility easement. Current utility easement is larger than typical.

The original subdivision Developer granted additional utility easement to the utility companies at the time of original land development .

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

It will not allow for the addition of an ADA compliant master bedroom and bathroom addition to be constructed for the disabled veteran who is wheelchair bound and is a long time resident of this residence and community. Afore mentioned resident has not been able to shower or access current dwelling facilities that allow for the typical creature comforts and quality of life necessary to continue occupying the dwelling in its current state.

2025DV3007 ; Easement Boundaries (yellow dashes)



2025DV3007 ; Citizens Energy Letter



REAL ESTATE

2150 Dr. Martin Luther King Jr. St. | Indianapolis, IN | 46202

September 24, 2024

Via Email

Simeon Langham
Sapphire Home Improvements, LLC
7002 Graham Road, Suite 204
Indianapolis, IN 46220

RE: Property located at: 426 Panola Court

Dear Mr. Langham:

CWA Authority, Inc has reviewed your plans for the proposed project at 426 Panola Court in Creekside Woods Section 1, Lot 49. CWA Authority, Inc. has no objection to the encroachment into the existing 30' Drainage and Utility Easement along the north side of Lot 49 per the Plat for Creekside Woods Section 1, Recorded as Instrument #890079160 in the Office of the Recorder of Marion County, Indiana. A minimum of 10' of horizontal separation from the existing sewer main should be maintained.

Thank you very much for your time and attention to this matter. Should you have any questions please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "CKehl", on a light blue rectangular background.

Chris L. Kehl
Real Estate – Supervisor
2150 Dr. Martin Luther King Jr. St.
Indianapolis, IN 46202
Office 317-927-4538
Mobile 317-512-4353
ckehl@citizensenergygroup.com
Enclosures

2025DV3007 ; AT&T Letter



Network Services
5870 N College Ave
Indianapolis, IN 46220
Phone: 317-292-3888

Joshua P Hewitt
Right of Way Manager

May 23rd, 2024

Simeon Langham
Sapphire Home Improvements

RE: Encroachment upon Utility Easement

To whom it may concern,

In response to the request to encroach onto or upon the public utility easement for the construction of a home addition within the property commonly known as;

426 Panola Ct, Indianapolis, In 46239 Lot 49 in Creekside Woods

AT&T has no objection to this request subject to the following conditions.

Indiana Bell Telephone Company dba AT&T Indiana, an Indiana corporation hereby waives its rights to maintain suit for the removal of said encroachment but otherwise retains all of its rights in and to said easement including, but not limited to, the recovery of damages for injury to its plant whether buried or aerial or to its employees cause by you or your agents, employees, contractors, successors or assigns whether resulting from the erection, maintenance or use of said encroachment or otherwise. Furthermore, the company will not pay for any relocation of the plant for said encroachment should it be deemed necessary.

Moreover, where said encroachment is located in close proximity to aerial plant serviced, altered, replaced, modified or maintained by Indiana Bell Telephone Company dba AT&T Indiana, an Indiana Corporation, said Company's liability to you for damage to said encroachment resulting from such servicing, alteration, replacement, modification or maintenance is limited to restoring said encroachment to its prior existing state to the extent such can reasonably be done under the circumstances.

Sincerely,

A handwritten signature in black ink that reads "Joshua Hewitt".

Joshua Hewitt
AT&T Right of Way Manager

2025DV3007 ; AES Consent to Encroachment

CONSENT TO ENCROACHMENT

THIS INDENTURE WITNESSETH:

WHEREAS, Indianapolis Power & Light Company d/b/a AES Indiana (hereinafter referred to as the "Company"), has an interest in the following described real estate located in Marion County, Indiana, to-wit:

Lot 49 in Creekside Woods, Section 1, a subdivision in Marion County, Indiana as per plat thereof recorded August 15, 1989 as Instrument Number 89-79160 (A198900079160 in the office of the Recorder of Marion County, Indiana.

because of the existence of a platted Utility Strip (hereinafter referred to as "easement") adjoining the east side of said Lot 49, and

WHEREAS, a room addition to be built upon said real estate and extending into and encroaching upon said easement approximately 10', as shown on the drawing attached hereto, made a part hereof and marked "Exhibit A" (hereinafter referred to as the "encroachment"), and

WHEREAS, the encroachment does not interfere with the operation of the Company insofar as such operations involve the use of said easement;

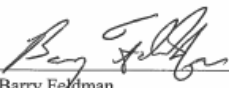
NOW, THEREFORE, in consideration of the premises and other valuable consideration, receipt of which is hereby acknowledged, the Company, by and through its duly authorized officials, does hereby grant unto Donald R. Richards and Sarah H. Richards, husband and wife, the present owners of record of said real estate per Warranty Deed recorded as instrument number A199100048292, in the Office of the Recorder of Marion County, Indiana, their successors and assigns, its consent to the encroachment; provided, that the encroachment shall be limited to that as described above and on Exhibit A, attached hereto and made a part hereof, except that repairs and maintenance may be performed so long as the height and area thereof within said easement is not increased or otherwise extended; that such limitation shall be construed also as a condition upon which this grant is made and accepted, for breach of which the Company may recover damages and, without prejudice thereto, may compel by injunction or otherwise the removal of all or any part of the encroachment.

The owners of said real estate, by acceptance of this instrument hereby agree for themselves, their successors and assigns, to indemnify and save harmless the Company, its successors and assigns, from and against any and all damages and loss that may result to the facilities and equipment or any property owned or used by the Company upon said easement, and from and against any and all legal and other expenses, claims, costs, losses, suits and judgment for damages or injuries resulting to persons or property by reason of the encroachment.

This instrument shall not be construed as a release or waiver of any rights of the Company in the aforesaid easement other than the right to object to the encroachment as proposed to be built and described.

IN WITNESS WHEREOF, Indianapolis Power & Light Company d/b/a AES Indiana, has caused this indenture to be executed by its duly authorized officials this 13 day of AUGUST, 2024.

INDIANAPOLIS POWER & LIGHT
COMPANY, d/b/a AES Indiana



Barry Feldman
T&D Metering & Operations
Technology Sr. Director, T&D Operations

2025DV3007 ; Creekside Woods HOA Letter



The Creekside Woods Homeowners Associations, Inc

March 5, 2024

Donald & Sarah Richards
426 Panola Court
Indianapolis, IN 46239

Reference: 426 Panola Court, Lot

Dear Donald & Sarah Richards:

We are pleased to inform you that the Committee of The Creekside Woods Homeowners Associations, Inc has approved your application for the listed item(s) with the following stipulation(s):

Item(s): ADA Certified House Addition.

Stipulation(s): Agree with 10' extension into City Easement if City of Indianapolis will approve it.

The approval is contingent upon compliance with the specifications set forth in the approved application to include the above stated stipulation(s). If your change or addition requires a county permit, it must be obtained before construction. Please retain this approval as it should be passed on to future owners if the property is sold.

If you have any questions, please contact our community manager with Community Association Services of Indiana, Kelli Stallworth at (317) 875-5600.

Sincerely,

The Creekside Woods Homeowners Associations, Inc

2025DV3007 ; Photographs



Photo 1: Subject Site Viewed from East



Photo 2: Subject Site Viewed from North

2025DV3007 ; Photographs (continued)



Photo 3: Easement Area/Proposed Addition Site Viewed from East



Photo 4: Adjacent Property to South

2025DV3007 ; Photographs (continued)



Photo 5: Adjacent Property to West



Photo 6: Adjacent Property to East

2025DV3007 ; Photographs (continued)



Photo 7: Adjacent Property to North



Photo 8: Adjacent Property to Northwest