

BOARD OF ZONING APPEALS DIVISION II

December 9, 2025

Case Number: 2025-DV2-043 (Amended)

Property Address: 4360 Kessler Boulevard North Drive (approximate address)

Location: Washington Township, Council District #6

Petitioner: Tomasa Torres and Minerva Gomez, by Arnoldo Gonzales

Current Zoning: D-2

Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide a six-foot tall fence and wall within the front yards of Sylvan Road and Kessler Boulevard, encroaching within the right-of-way of Sylvan Road and the clear sight triangle of each driveway along Sylvan Road (maximum 3.5-foot tall fence permitted, encroachment of rights-of-way and clear sight triangles prohibited).

Current Land Use: Residential

Staff Recommendations: Staff recommends **denial** of the requested variances.

Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

The petitioner requested a for-cause continuance from the November 18th hearing date of Division II.

STAFF RECOMMENDATION

Staff recommends **denial** of the requested variances.

PETITION OVERVIEW

- 4360 Kessler Boulevard North Drive is a residential parcel located at the southwest corner of Kessler to the east and Sylvan Road to the north. The property is improved with a single-family residence that temporarily housed an accessory apartment unit (per approval of 90-UV3-23; since expired) and is accessed from Sylvan Road by two separate driveways.
- The violation case VIO24-005073 was opened in 2024 in relation to the placement of a front-yard fence along the Sylvan Road frontage that was six (6) feet in height when the maximum allowed would be 3.5 feet. Per available street photography, the fence appears to have been installed between 2019 and 2021 (see photos 2 and 4 within the Exhibits). Staff also notes that the fence is both within several required clear-sight triangles (see Exhibits) as well as the right-of-way of Sylvan Road.

- Approval of this variance would allow for (a) a front-yard fence with a height of six (6) feet when the maximum height allowed by the district would be 3.5 feet; (b) encroachment of the six-foot fence into the four (4) clear-sight triangular areas created by the intersection of Sylvan Road and the two private driveways used to access the site; and (c) encroachment of the six-foot front yard fence into the public right-of-way by approximately 15 feet. Staff would note that improvements with ROW would require an Encroachment License from the Department of Business and Neighborhood Services, and that this variance would not exempt the owner from that requirement.
- Between 2022 and 2025, 10 investigation cases were opened through the Mayor's Action Center. Nine (9) of these filed complaints were broadly related to the routine parking of 10+ vehicles at the site at any given time (visible in aerial photography and Photo 6 within the Exhibits), with multiple individuals mentioning concerns about the potential operation of a commercial automobile repair business from the subject site. The applicant indicated to Staff that the husband of the property owner collects cars and that there is no current or future intention for commercial use at the site. Staff would note that the violation case at the property did not include citation for any commercial use at the site, and that approval of this variance would not constitute permission for the operation of a commercial automobile repair use.
- The subject site is zoned D-2 to allow for suburban development with ample yards, trees and passive open spaces easily serving each individual lot. Similarly, the Comprehensive Plan recommends it to the Suburban Neighborhood typology to allow for predominantly single-family housing. Infill Housing Guidelines indicate that front-yard fences should be ornamental in scale and that privacy fences should not be installed in front yards. The current fence at the site runs directly counter to the recommendations of the Infill Housing Guidelines.
- Finding of Fact provided by the applicant primarily indicate safety as their rationale for approval of the variance. Staff would note that surrounding residential land uses appear to be able to function safely without 6-foot front-yard fences and that the subject site maintained an attractive front yard along Sylvan Road prior to recent installation of the fence. Additionally, the placement of a tall and opaque improvement in such close proximity to a public roadway creates a clear public safety hazard: the complete lack of clear-sight visibility between vehicles or pedestrians moving west on Sylvan Drive and the private driveways (see the Clear-Sight Triangle diagram and Photo 10 within the Exhibits) would increase the likelihood of a crash in a manner directly opposed to Ordinance and Vision Zero guidance on both yard appearance and vehicular safety.
- Staff would note that in addition to the legitimate public safety concerns created by the visual impediment within ROW and clear-sight triangles, no site-specific practical difficulty has been identified to justify approval of the variance requests (construction of the fence without a knowledge of relevant requirements would be a self-imposed difficulty). For reasons related to public safety as well as aesthetic concerns laid out within the Infill Housing Guidelines, staff recommends denial of the requested variances.

GENERAL INFORMATION

Existing Zoning	D-2	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	<u>Zoning</u>	Surrounding Context
North:	D-S	North: Residential
South:	D-2	South: Residential
East:	D-2	East: Residential
West:	D-2	West: Residential
Thoroughfare Plan		
Kessler Boulevard N Dr	Primary Arterial	100-foot existing right-of-way and 90-foot proposed right-of-way
Sylvan Rd	Local Street	58-foot existing right-of-way and 50-foot proposed right-of-way
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	No	
Site Plan	10/17/2025	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	10/17/2025	
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 Suburban Neighborhood typology is predominantly made up of single-family housing mixed with attached and multifamily housing where appropriate. This typology should be supported by a variety of neighborhood serving businesses and amenities and should treat natural corridor and features such as stream corridors, wetlands, and woodlands as focal points for development.

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

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

Indy Moves

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

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

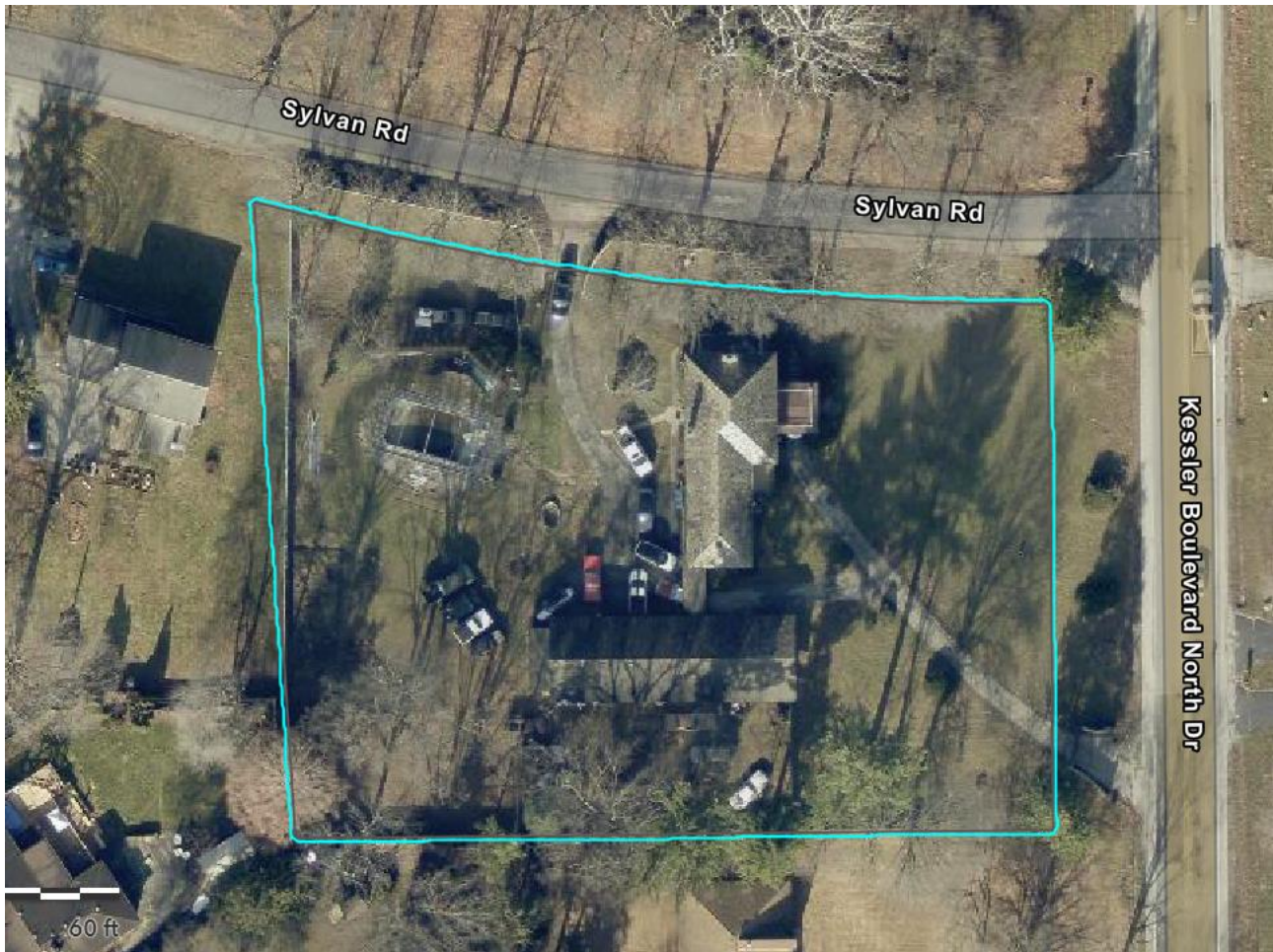
90-UV3-23, Variance of Use of the Dwelling District Zoning Ordinance to permit a portion of an existing detached garage to be converted to an apartment, **temporary approval**.

ZONING HISTORY – VICINITY

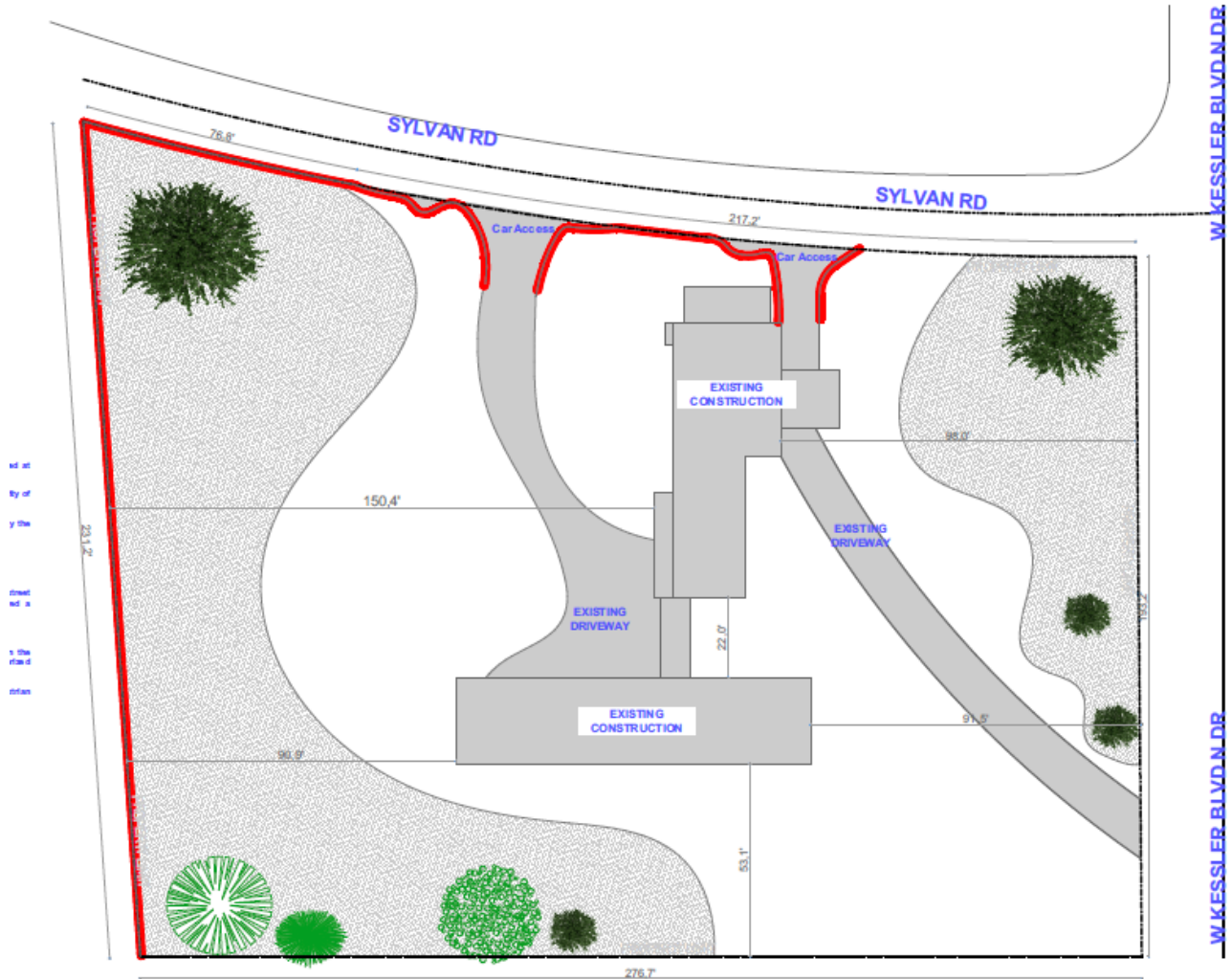
N/A

EXHIBITS

2025DV2043 ; Aerial Map

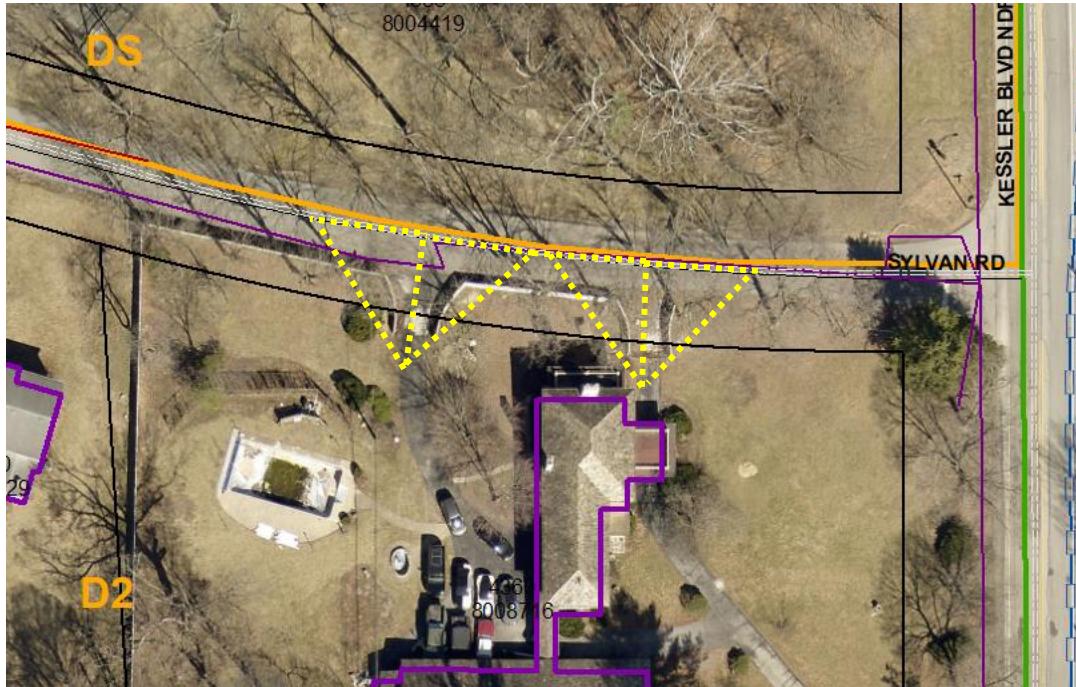


2025DV2043 ; Site Plan



Note: site plan appears to conflate the northern property line and the edge of the street. Staff would note the accurate location of the property line is shown in the aerial photograph on the previous page, and that the current fence appears to encroach into public ROW by about 15 feet.

2025DV2043 ; Clear-Sight Triangle Diagram



2025DV2043 ; Notice of Violation (VIO24-005073)

RE: 4360 KESSLER BLVD NDR

Dear TORRES, TOMASA YADIRA & MINERVA GOMEZ:

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

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).

2025DV2043 ; Findings of Fact

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

The intention to build a 6 feet fence helps ensure the safety on the property located on a corner lot in a busy street, where at the Sylvan Rd. are missing light poles, and at nights it becomes so dark and dangerous; if there were no visible tall fence it could be worse.

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

The use and value of the adjacent properties will not be affected in a substantially adverse manner. The existing fence was installed strictly for security and safety purposes. Ensuring the safety in the neighborhood will have a positive impact on the life of neighbors and their families

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

The property sits on a corner lot facing a heavily traffic street, been the property quite large, have a private driveway and the fence prevent the unauthorized use by drivers like a public shortcut, leading to infringement on privacy and property rights.

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

The constant use of the private driveway like if this were a public one provoke a noticeable damage on the lawn and landscaping due to frequent unauthorized automobile traffic, and even the loss items in the house due to pedestrians trespassing into the property

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

It will ensure the safety in the neighborhood, fulfilling the City of Indianapolis comprehensive plan

2025DV2043 ; Photographs



Photo 1: Western Driveway Viewed from North



Photo 2: Western Driveway Viewed from North (June 2019)

2025DV2043 ; Photographs (continued)



Photo 3: Eastern Driveway Viewed from North



Photo 4: Eastern Driveway Viewed from North (June 2019)

2025DV2043 ; Photographs (continued)



Photo 5: Subject Site Viewed from North

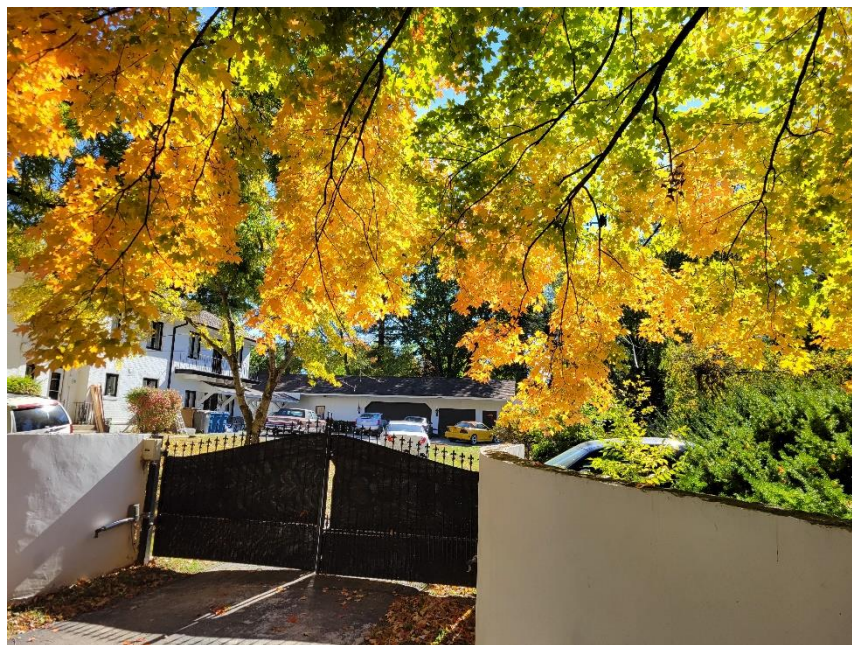


Photo 6: Partial Site Interior Viewed from North

2025DV2043 ; Photographs (continued)



Photo 7: Subject Site Viewed from Northwest



Photo 8: Subject Site Viewed from Northeast

2025DV2043 ; Photographs (continued)



Photo 9: Clear-Sight Triangular View from West



Photo 10: Clear-Sight Triangular View from East

2025DV2043 ; Photographs (continued)



Photo 11: Adjacent Property to West



Photo 12: Adjacent Property to Northwest