

BOARD OF ZONING APPEALS DIVISION I

August 5, 2025

Case Number: 2025-DV1-036
Property Address: 8849 New Heritage Court (approximate address)
Location: Franklin Township, Council District #25
Petitioner: Heather Jo Douglas
Current Zoning: D-3
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the installation of a fence within a platted easement (encroachments not permitted).
Current Land Use: Single-family residential
Staff Recommendations: Staff recommends denial of this petition
Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

- This is the first public hearing for this petition.

STAFF RECOMMENDATION

- Staff recommends denial of this petition

PETITION OVERVIEW

- This petition would allow for the installation of a fence within a platted easement (encroachments not permitted).
- The subject site is improved with a single-family residence and is zoned D-3. The lot was platted as a part of a companion petition (2002ZON817 / 2002PLT817 / 2002VAR817) that established 69-lot subdivision. As a part of the subdivision, numerous easements were created including a drainage and utility easement located in the rear yard of the subject property. The proposed fence would be located well within the easement area, per the submitted site plan (see below).
- The petitioner originally applied for an encroachment license (ENC24-00087) which was denied by the Department of Business and Neighborhood Services (BNS). BNS has stated that proposed fences or any minor residential structures that would be located within a platted easement are to be denied, based on the language in Chapter 743, Article III, Section 6.A.4.D. which states;

- “On lots in the D-A, D-S, D-1, D-2, D-3, D-4, D-5, D-5II and D-8 dwelling districts improved with a Single-family detached dwelling, Single-family attached dwelling, or Two-family dwelling, minor residential structures...Shall not encroach upon, as the primary building shall not encroach upon, any platted easement.”
- Staff would note that the approval of this variance would not guarantee that a future encroachment license would be approved, nor would it prohibit any parties that have rights to the easement from removing the proposed fence, if desired.
- Staff does not find the proposed fence to represent good development practice, and see the approval of fences within platted easements to be a poor precedent that is likely to lead to future conflicts between the involved parties. Further, Staff does not find there to be any practical difficulty that necessitates the approval of this request, as the property has been and can continue to be used for residential purposes. Likewise, the platted easement does not prohibit the property owner from utilizing the area within the easement for leisurely or recreational purposes, it simply prohibits structures and barriers from being built within the easement area. This is standard practice for platted easements that is in place for the safety and ease of access for all parties that have rights to the easement. Therefore, Staff does not support the request and recommends denial of the petition.
- Additionally, Staff is aware that several adjacent properties presently have rear-yard fences that are located within the same drainage and utility easement, and Staff would note that those properties did not receive the necessary variance approval to construct said fences.

GENERAL INFORMATION

Existing Zoning	D-3	
Existing Land Use	Single-family residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	Zoning	Surrounding Context
	North: D-3	North: Single-family residential
	South: D-3	South: Single-family residential
	East: D-3	East: Single-family residential
	West: D-3	West: Single-family residential
Thoroughfare Plan		
New Heritage Court	Local Street	50 feet of right-of-way existing and _ 50 feet proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	6/30/25	
Site Plan (Amended)	N/A	

Elevations	N/A
Elevations (Amended)	N/A
Landscape Plan	N/A
Findings of Fact	6/30/25
Findings of Fact (Amended)	N/A

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book

Pattern Book / Land Use Plan

- The Marion County Land Use Plan pattern Book recommends the Suburban 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

- Not Applicable to the Site.

Indy Moves

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

- Not Applicable to the Site.



ZONING HISTORY

ZONING HISTORY – SITE

2002ZON817, rezoning of 110 acres, from the D-P, to the D-3 to provide for single-family residential development, **approved, subject to commitments.**

2002VAR817, variance of development standards of the Dwelling District Zoning Ordinance to provide for 69 lots with a 13-foot side yard aggregate (minimum 16-foot side aggregate required), **approved.**

ZONING HISTORY – VICINITY

N/A

EXHIBITS

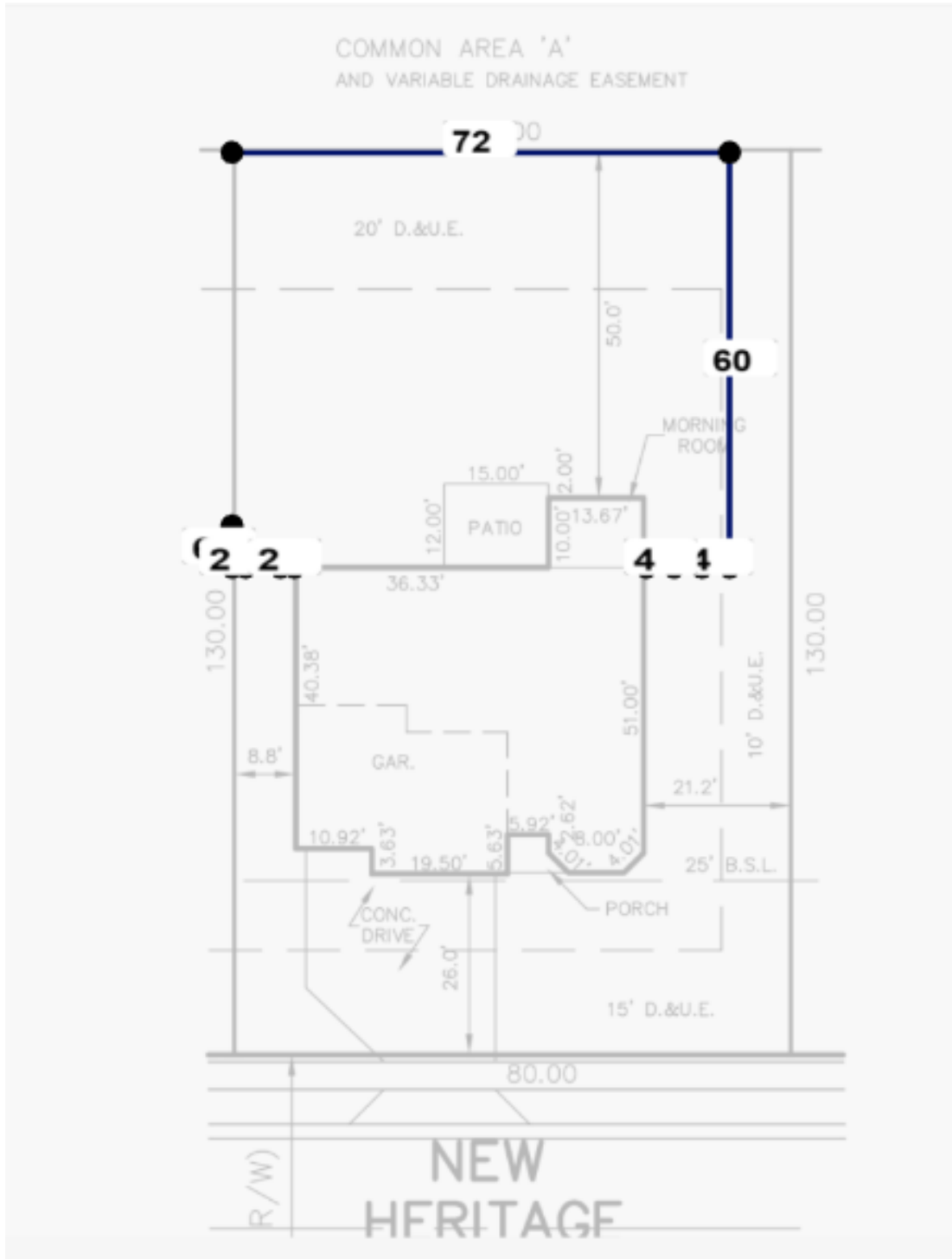


Aerial photo

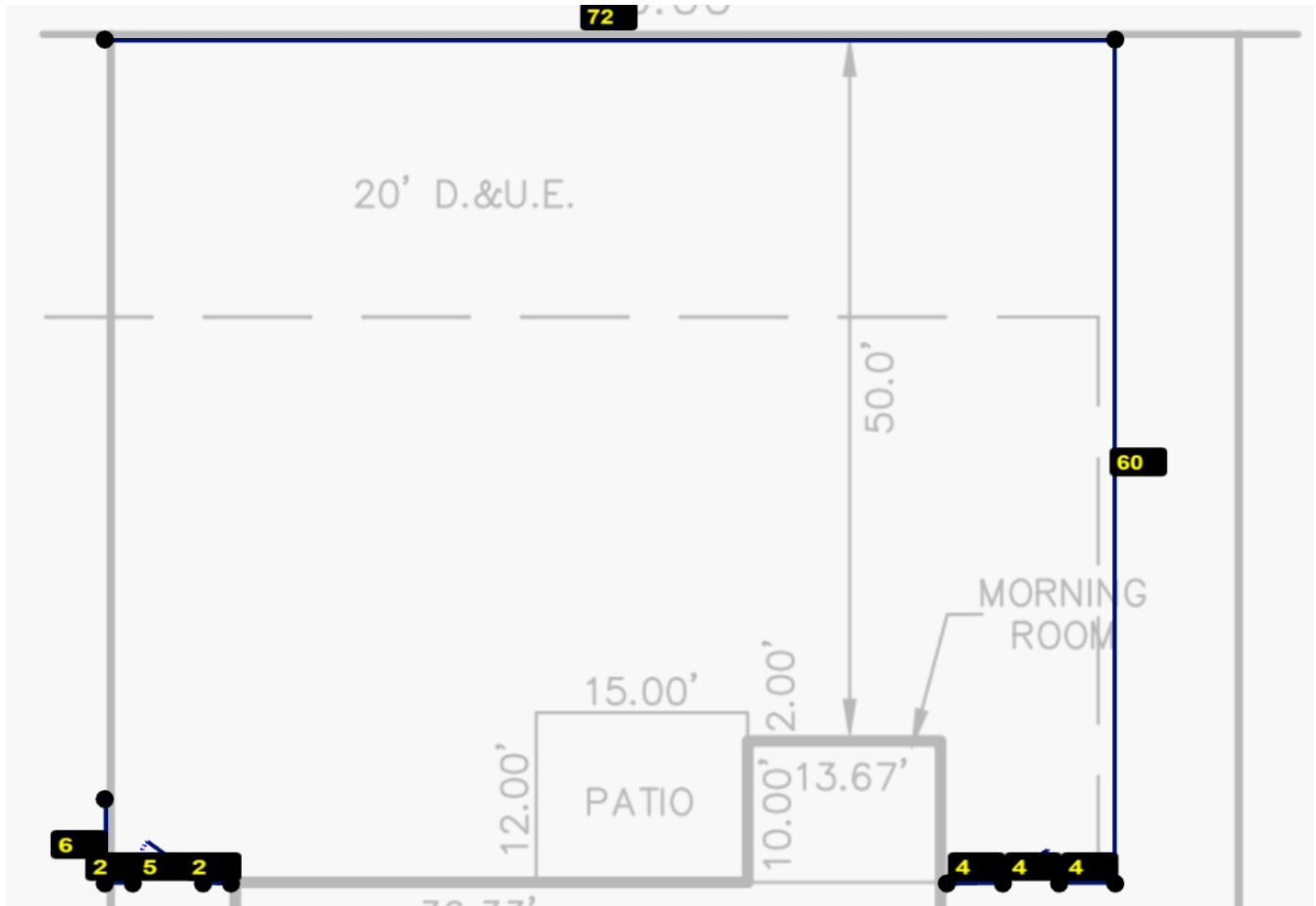
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Aerial showing the platted drainage and utility easement in light blue



Site Plan



Zoomed-in site plan



Residence with the back yard in the background



Residence with the back yard in the background



Residence with the back yard in the background



View of front yard



View of front yard



View of new Heritage Court looking West |