

## STAFF REPORT

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

**Case Number:** 2023-DV2-013  
**Address:** 4809 East 70<sup>th</sup> Street (approximate address)  
**Location:** Washington Township, Council District #3  
**Zoning:** D-2  
**Petitioner:** Abraham Jordan and Kaitlin Browning  
**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the erection of a six-foot tall fence within the front yard of Riley Avenue (fences within front yards limited to a height of 3.5 feet).

### 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-2	Metro	Residential (Single-family dwelling)
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##### SURROUNDING ZONING AND LAND USE

North	D-2	Residential (Single-family dwellings)
South	D-2	Residential (Single-family dwelling)
East	D-2	Residential (Single-family dwelling)
West	D-S	Residential (Single-family dwelling)

COMPREHENSIVE PLAN	The Comprehensive Plan recommends suburban neighborhood development.
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- ◇ The 0.78-acre subject site is developed with a single-family dwelling and a six-foot tall fence. It is surrounded by similarly developed single-family dwellings.

### VARIANCE OF DEVELOPMENT STANDARDS

- ◇ The grant of the request would allow a six-foot tall privacy fence in the front yard of Riley 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-DV2-013 (Continued)**

- ◇ The variance request is related to an open zoning violation case (VIO23-003391) that was the result of a complaint reported to the Mayor's Action Center regarding the existing fence.
- ◇ Height limitations for fences and walls are in place to limit bulk, maintain openness, create a consistent density and intensity, keep structures at a human-scale, eliminate blocked sight lines from adjacent properties, and prevent a canyon-like effect of the streetscape.
- ◇ 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 "the zoning ordinance's restriction on fence height limits the petitioner's ability to create an adequate level of privacy and security. Additionally, the zoning ordinance's restriction on fence height limits the safety of the petitioner's pets who require a secure outdoor space". However, privacy could be accomplished with dense, tall evergreen trees and certain types of other plants, plantings, or other adaptive design. Security could be provided with the installation of security cameras, and pets could safely be maintained within a six-foot fence located behind the front building line of the house without the need for a variance or with an Ordinance compliant four-foot-tall fence in the front yard.
- ◇ In staff's opinion, there is not a practical difficulty associated with the use of this site since the Ordinance offers fence options that could be proposed instead. Furthermore, the six-foot tall fence would reduce the security for pedestrians and negatively impact the residential character of the neighborhood.
- ◇ There are two example corner lots east and southeast of the site which show a privacy fence behind the front building line and a fence in the front yard that meets the opacity standards. This proves that there are viable options for the subject site to install a fence without the need for variances.
- ◇ Further review of the site plan resulted in the conclusion that the fence encroaches approximately 25 feet into a platted utility easement along the southern property boundary, which is not permitted. Staff would also note that an uncovered deck also falls approximately 10.5 feet within said easement. Another variance for the encroachments into the easement will be required, but the petitioner can either amend this request by continuing this petition or file for a separate variance later.

## **GENERAL INFORMATION**

### **THOROUGHFARE PLAN**

70th Street is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 120-foot existing right-of-way and a 50-foot proposed right-of-way.

Riley Avenue is classified in the Official Thoroughfare Plan for Marion County, Indiana as a local street, with a 52-foot existing right-of-way and a 50-foot proposed right-of-way.

### **SITE PLAN**

File-dated June 13, 2023.

### **FINDINGS OF FACT**

File-dated June 13, 2023.  
(Continued)

## **STAFF REPORT 2023-DV2-013 (Continued)**

### **ZONING HISTORY – SITE**

#### **EXISTING VIOLATIONS**

1. VIO23-003391; 4809 East 70<sup>th</sup> Street (subject site), 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).

#### **PREVIOUS CASES**

None.

### **ZONING HISTORY – VICINITY**

**2021-DV1-009; 6995 Barr Will Drive** (west of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to legally establish two sheds with 10-foot front setbacks and to provide for a detached garage, with an 18.5-foot front setback and within the front yard of East 70<sup>th</sup> Street, and a 7.5-foot side setback (40-foot front setback from the proposed right-of-way or average required, whichever is greater, accessory structures not permitted within the front yard, 15-foot side setback and 35-foot aggregate side setback required), **granted**.

**2008-DV3-003; 4801 East 70<sup>th</sup> Street** (west of site), Variance of development standards of the Wireless Communication Zoning Ordinance to provide for a wireless communication facility affixed to a telephone pole, extending the height of the pole by 15 feet, and with an approximately 25-square foot equipment cabinet within the right-of-way of 70<sup>th</sup> Street, **granted**.

**2004-DV2-048; 5102 East 70<sup>th</sup> Street (northeast of site)**, Variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish the storage of a commercial trailer, **granted for one year**.

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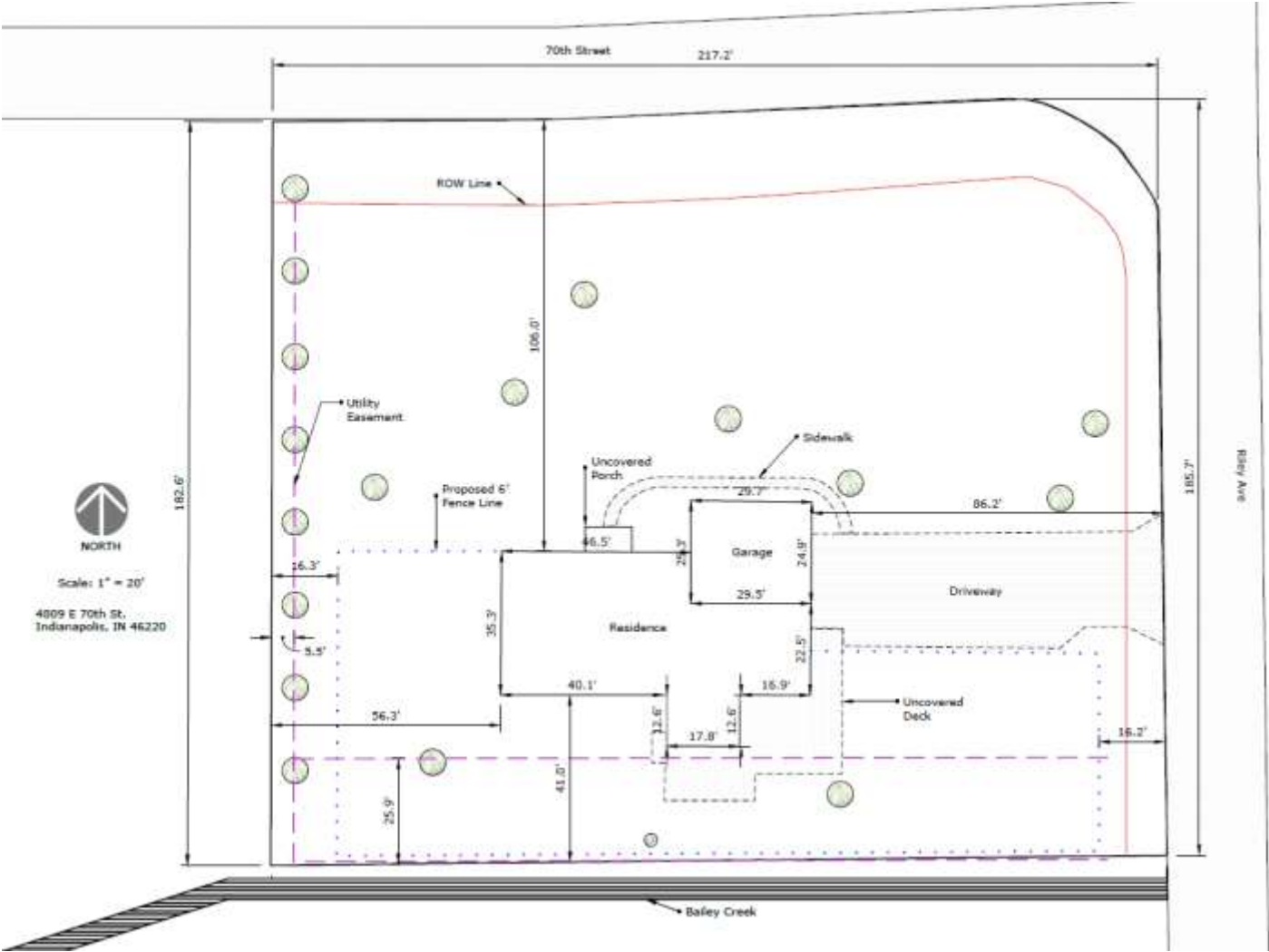
## 2023-DV2-013; Location Map



## 2023-DV2-013; Aerial Map



2023-DV2-013; Site Plan





**2023-DV2-013; Photographs**



Photo of the Subject Property: 4809 East 70th Street



Photo of the Subject Property: 4809 East 70th Street





Photo of the subject site looking south from 70<sup>th</sup> Street.



Photo of single-family dwellings north of the site across 70<sup>th</sup> Street.





Photo of a compliant privacy fence not within the front yard of the corner lot east of the site.



Photo of a compliant chain link fence in the front yard of another corner lot southeast of the site.