

BOARD OF ZONING APPEALS DIVISION I

February 11th, 2025

Case Number: 2025-DV1-001
Property Address: 4235 East 46th Street (Approximate Address)
Location: Washington Township, Council District #8
Petitioner: Tamara Brown Living Trust 8/13/2024 by Krieg DeVault LLP & Kevin G. Buchheit
Current Zoning: D-1
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the installation of a six-foot tall ornamental fence within the front yard of East 46th Street (maximum 3.5-foot tall fence permitted).
Current Land Use: Residential
Staff Recommendations: Staff recommends **denial** of this variance petition.
Staff Reviewer: Kiya Mullins, Associate Planner

PETITION HISTORY

This is the second public hearing of this variance petition.

The first public hearing occurred on February 4th, 2025 where this variance petition was transferred to the Division II due to an insufficient number of board members needed to cast a vote.

STAFF RECOMMENDATION

Staff recommends **denial** of this variance petition.

PETITION OVERVIEW

- This petitioner requests that a six-foot-tall decorative fence be allowed in the front yard of a property along East 46th Street.
- This property is two parcels totaling in 1.57 acres in a D-1 zoning district.
- The ornamental wrought iron style fence, which has already been constructed on the property, is intended to contain pets, to prevent the owners' grandchildren from leaving the property, and to prevent the public from coming onto the property. This property has had issues with citizens using it as a location to turn vehicles around and get back onto 46th street.
- The City of Indianapolis Consolidated Zoning/Subdivision Ordinance only permits a fence in the front yard to be 3.5 feet in height.

- Staff is recommending **denial** of this variance petition because there is no practical difficulty. The 6 (six) foot fence can be decreased in size to match the Ordinance standards.

GENERAL INFORMATION

Existing Zoning	D-1	
Existing Land Use	Residential	
Comprehensive Plan	Suburban Neighborhood	
Surrounding Context	Zoning	Surrounding Context
North:	D-1	North: 0-1.75 Residential Units Per Acre
South:	SU-34	South: Suburban Neighborhood
East:	D-2	East: Suburban Neighborhood
West:	D-2	West: Suburban Neighborhood
Thoroughfare Plan		
46 th Street	Primary Arterial	101 feet of right-of-way existing and 102 feet of right-of-way existing
Context Area	Metro	
Floodway / Floodway Fringe	Yes	
Overlay	No	
Wellfield Protection Area	Yes	
Site Plan	12/18/2024	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	12/18/2024	
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 Suburban Neighborhood typology is predominantly made up of singlefamily housing, but is interspersed with attached and multifamily housing where appropriate. This typology should be

supported by a variety of neighborhood-serving businesses, institutions, and amenities. Natural Corridors and natural features such as stream corridors, wetlands, and woodlands should be treated as focal points or organizing systems for development. Streets should be well-connected and amenities should be treated as landmarks that enhance navigability of the development. This typology generally has a residential density of 1 to 5 dwelling units per acre, but a higher density is recommended if the development is within a quarter mile of a frequent transit line, greenway, or park (pg 17).

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

- Design ornamental elements, such as fences and retaining walls, to be simple, fit the context of the block and neighborhood, do not obstruct views of the front of the house, and do not obstruct public sidewalks (pg 17).
- Fencing around dwellings should be carefully placed. See-through fencing is the safest. In the front, fences should be ornamental in style. Do not install privacy fences in front yard (pg 18).

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 – SURROUNDING AREA

- 2003-ZON-050: 5050 East 42nd Street
 - Rezone 10.49 acres from D-2 to SU-2 to provide for educational uses.
 - AP
- 2005-DV3-057: 3817 Devon Drive
 - Legally establish a 1,026-square foot paved off-street parking area located within the front yard and extending into the right-of-way (front yard only permitted to contain enough paving for access to/from the required off-street parking area; private improvements not permitted within the right-of-way), and to legally establish a 60-square foot shed with a zero-foot west side yard setback and a 96-square foot dog pen with a zero-foot east side yard setback (minimum seven-foot side yard and nineteen-foot aggregate side yard setbacks required) in D-2.
 - DIS
- 2008-SE3-004: 4602 North Emerson Avenue
 - Special Exception of the Wireless Communications Zoning Ordinance to provide for a 70-foot tall, wood pole wireless communications tower and associated ground equipment.
 - AP
- 2014-ZON-010: 4718 Fall Creek Parkway N Drive
 - Rezoning of 8.48 acres, from the D-4 (FF) (W-5) District, to the C-1 (FF) (W-5) classification to provide for a nursing home.
 - Approved
- 2019-ZON-073: 4227 East 46th Street
 - Rezoning of 2.9 acres from the SU-1 district to the D-1 district.
 - Approved
- 2021-DV2-018: 4102 East 42nd Street
 - Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for a six-foot tall privacy fence in the front yard of Forest Manor Avenue (maximum 3.5-foot tall fence permitted within the front yard).
 - Approved
- 2022-UV2-019: 4305 Glencairn Lane
 - Variance of Use of the Consolidated Zoning and Subdivision Ordinance to provide for a solar array within the front yard (not permitted).
 - Withdrawn
- 2023-CPL-859: 3838 East 46th Street
 - (Amended) Approval of a Subdivision Plat, to be known as Devon Creek, dividing 4.22-acres into ten single-family detached lots and one common area, including the vacation of an irregular portion of right-of-way at the northwest corner of the intersection of East 46th

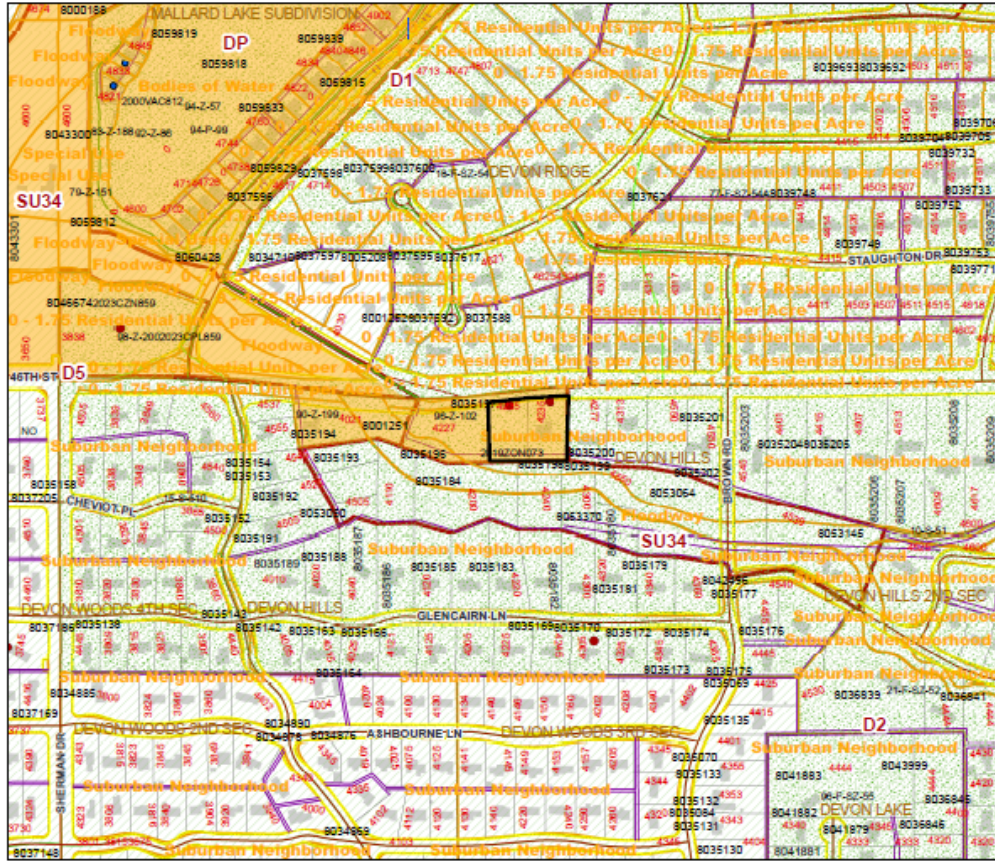


**Department of Metropolitan Development
Division of Planning
Current Planning**

Street and Millersville Road containing 2,307.8 square feet, with a waiver of the sidewalk requirement along a 65-foot segment of Millersville Road.

- Approved
- 2023-CVR-859: 3838 East 46th Street
 - Variance of Development Standards to provide for an access drive extending 34-feet into the Stream Protection Corridor of Devon Creek for a maximum length of 107 feet (100-foot Stream Protection Corridor Required) and a 68-foot front setback along 46th Street for property address 3860 East 46th Street (front building line range of 20 to 50 feet required).
 - Approved
- 2023-CZN-859: 3838 East 46th Street
 - Rezoning of 4.22 acres from the SU-1 (FW) (FF) to the D-5 (FW) (FF) district to provide for residential uses.
 - Approved

EXHIBITS



Legend

• ZoningApprovals	— Built/Platted
• ZoningLncu	OPER_STATUS
• ZoningVariances	— REMOVED
■ Rezoning	— VACATED
▨ ZoningVacations	— VACATED/BUILT
■ ZoningPlats	— VACATED/LOCATOR
— CCGIS.ThoroughfarePlan	■ CCGIS.DMDLandUsePlanBase
— CCGIS.EASEMENT	▨ CCGIS.lhpc
— CCGIS.RIGHTOFWAY	■ CCGIS.ZONING
CCGIS.STREETS	□ PARCELSTATEPIN
	□ PARCELS
	■ PLATTEDSUBDIVISION
	■ CCGIS.Buildings



Exhibit 1: ArcGIS map around 4235 East 46th Street.



METROPOLITAN DEVELOPMENT COMMISSION
HEARING EXAMINER
METROPOLITAN BOARD OF ZONING APPEALS, Division [redacted]
OF MARION COUNTY, INDIANA

PETITION FOR VARIANCE OF DEVELOPMENT STANDARDS

FINDINGS OF FACT

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

There is no measurable injury to any community interest by the fence to either the subject property or to any surrounding property, the fence is an up-scale, attractive and ornate design that is a positive visual addition to the community, it does not provide any visual barrier (near-zero opacity), is in good scale and proportion to the 1.57-acre property, and is necessary to provide secure containment for pets and safety for children playing in the yard.

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:

There is no measurable adverse impact to any surrounding property by an up-scale attractive and ornate fence design with near-zero opacity that frames the residential property nicely and proportionally to the lot size and does not detract from the quality of the surrounding community.

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

The extra height of the fence is necessary to provide secure containment for pets and safety for children playing in the yard that a regulation-height fence cannot provide in a way that achieves the spirit and intent of the regulation to maintain an attractive street view and not exceed structural opacity.

Exhibit 2: Findings of Fact submitted by the petitioner.

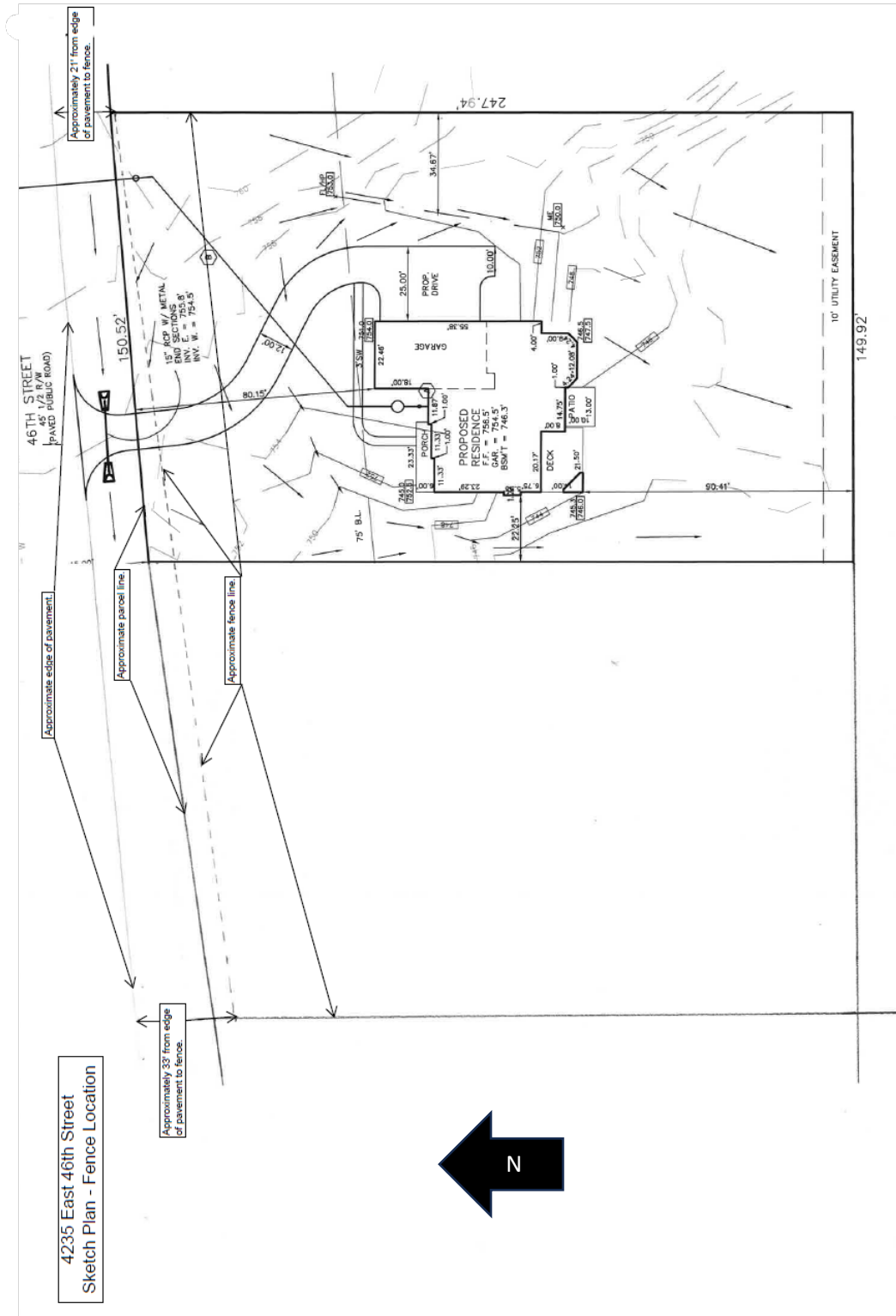


Exhibit 3: Site Plan of 4235 East 46th Street.



Exhibit 4: Aerial image with already constructed fence.



Exhibit 5: The primary structure at 4235 East 46th Street.



Exhibit 6: The fence.



Exhibit 7: The rest of the fence.



Exhibit 8: Looking down the length of the fence.



Exhibit 9: Looking east down 46th Street.



Exhibit 10: Looking west down 46th Street.



Exhibit 11: Neighbor across 46th Street from the subject property.