

BOARD OF ZONING APPEALS DIVISION I

November 07, 2024

Case Number: 2024DV1032
Property Address: 4527 North College Avenue (*approximate address*)
Location: Washington Township, Council District #7
Petitioner: Heather Harvey
Current Zoning: D-5 (TOD) (W-5)
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the installation of a six-foot tall fence within the front yard of College Avenue and encroaching within the clear sight triangle of the driveway (maximum 3.5-foot-tall fence permitted, encroachment of clear sight triangles not permitted).
Current Land Use: Residential
Staff Recommendations: Staff recommends **denial** of this petition.
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This is the first public hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 4527 North College Avenue is currently improved with a single-family residence and a detached garage within the rear yard that has direct vehicle access onto College Avenue. The site is surrounded by other residences with detached garages in the Meridian-Kessler neighborhood. The property is located both within a Wellhead Protection Area and the Transit-Oriented Development overlay. The front yard of the property had several trees installed between 2011 and 2014 that largely obstruct the view of the front porch when viewed directly from the west.
- A fence was installed within the front yard in June of 2024 as shown by the below site plan and photographs. The fence is around eleven (11) feet from the front property line and is constructed with wood panels. A violation case (VIO24-005152) was opened later that month for a fence with a height of six (6) feet within the front yard. Staff also notes that the fence would partially encroach into the required clear-sight triangular area for driveways.

- The applicant claims that representatives from the Department of Business and Neighborhood Services informed them on three (3) separate occasions that such a fence would (a) not require a permit and (b) could be placed with a non-compliant front yard height due to the 'naturally occurring obstruction' within their front yard between the fence area and public right-of-way. Although permits aren't needed for fence installation, erection of this fence requires a variance for the front yard height and clear-sight triangle encroachment.
- This property is zoned D-5 to allow for medium and large-lot housing formats (primarily detached housing) within walkable suburban neighborhoods or established urban areas, and the Meridian Kessler Neighborhood Plan recommends it to the Traditional Neighborhood living typology for similar uses while also encouraging open view of front porches to increase interaction between homeowners and pedestrians. Infill Housing Guidelines also indicate that fences installed in front yards should be ornamental in nature and that privacy fences and landscaping that limits visibility by blocking windows, doors or corners are discouraged.
- Findings of fact provided by the applicant indicate that the fence is screened from view by existing landscaping and that a variance would be appropriate given the amount of recent crime in the area as well as the information provided by BNS prior to installation. Staff would contend that although the fence is screened when viewed directly from the west, (a) it is viewable to passersby from the southwest and northwest and (b) the addition of extra screening beyond the non-conforming fence height already installed would deviate even further from the Infill Housing Guidelines. Additionally, there could be a variety of alternative methods to secure property and privacy that don't involve placement of a six-foot fence in the front yard. If there was any miscommunication regarding the fencing requirements, it was unintentional and, while unfortunate, that alone does not constitute a practical difficulty specific to the site. A fence can be built without a permit as long as it meets the standards of the Ordinance.
- Staff has additional concerns about the encroachment of this fence within the required clear-sight triangle created by the intersection of the driveway with both College Avenue and the sidewalk running between College Avenue and the petitioner's home. Rules about clear-sight triangular areas are in place to ensure that motorists can adequately identify and avoid pedestrians or other motorists at points of intersection between roads and driveways; given that the city of Indianapolis has seen 565 pedestrians and cyclists hit by cars in 2024 alone (with 30 fatalities), exceptions for rules designed to prioritize pedestrian safety should only be granted in cases of extreme need. The current zoning ordinance would require alley access for new developments within this context to minimize the pedestrian risk from front driveways, and legalization of a fence in the clear sight area would increase that risk without an identifiable site-specific practical difficulty.
- Given that the neighborhood plan for Meridian-Kessler mentions visibility of front porches and that variances for front yard fences were denied for nearby properties in 1997 and 2016, staff feels that there is precedent for maintaining pedestrian-friendly development patterns along this corridor. It is unclear to staff how a 6-foot fence would provide substantially greater security than a 3.5-foot fence, and the encroachment into required clear-sight areas would likely result in a net negative for public safety. Staff would recommend denial of the variance requests.

GENERAL INFORMATION

Existing Zoning	D-5 (TOD)	
Existing Land Use	Residential	
Comprehensive Plan	Traditional Neighborhood	
Surrounding Context	Zoning	Surrounding Context
	North:	North: Residential
	South:	South: Residential
	East:	East: Residential
	West:	West: Residential
Thoroughfare Plan		
College Avenue	Primary Arterial	80-foot existing right-of-way and 78-foot proposed right-of-way
Context Area	Compact	
Floodway / Floodway Fringe	No	
Overlay	Yes	
Wellfield Protection Area	Yes	
Site Plan	09/12/2024	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	07/21/2024	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Red Line Transit-Oriented Development Strategic Plan
- Meridian Kessler Neighborhood Plan (2016)
- Infill Housing Guidelines

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Traditional Neighborhood typology to allow for a full spectrum of housing types, ranging from single family

homes to large-scale multifamily housing. The property is also within Transit-Oriented Development and Residential Corridor Reserve overlays: the latter is intended for areas where the residential nature of a corridor is at risk due to encroachment from other institutional land uses.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The subject site is closest to the College and 46th BRT stop of the Red Line which means that it would fall under the Walkable Neighborhood typology. This typology is for areas that are primarily residential but may have a commercial node of 1-2 city blocks, and development should be primarily small lot single-family attached or detached structures.

Neighborhood / Area Specific Plan

- The Meridian Kessler Neighborhood Plan recommends this site for Traditional Neighborhood uses and notes its place along the College Avenue corridor. Open porches are encouraged for more interaction between porch-dwellers and passers-by. The property is just to the south of Critical Area 108 (College Avenue at 46th Street) which is designed to support commercial uses that would be appropriate for the proximity to residential uses.

Infill Housing Guidelines

- The Infill Housing Guidelines indicate that in front yards, fences should be ornamental in style and that privacy fences should not be installed. It also indicates that landscaping should be thoughtfully designed with trees matching the surrounding context to provide shade in front yards while retaining visibility without blocking windows, doors, or corners.

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

2017CVR800 ; 4573 N College Avenue (north of site), Variance of development standards of the Commercial Zoning Ordinance and the Sign Regulations to provide for a restaurant, with 27, 162-square foot parking spaces (44, 180-square foot parking spaces required), within a 60-foot parking bay (63 feet required), to legally establish seven-foot front setbacks and zero-foot and seven-foot transitional side setbacks (10-foot front setbacks, eight-foot side transitional (alley) setbacks and 10-foot side transitional setbacks required), and to legally establish the existing encroachments into the site distance triangles of the adjoining streets and alleys (not permitted), **approved**.

2016DV3007 ; 4565 Broadway Street (northwest of site), Variance of development standards of the Dwelling Districts Zoning Ordinance to provide for a six-foot tall fence in the front yard of 46th Street (maximum 3.5-foot tall fence permitted), **denied**.

97-V3-63 ; 4528 N College Avenue (west of site), variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish the placement of a stone structural barrier being 72 inches in height along the right-of-way of North College Avenue (maximum 42 inches height in the required front yard permitted), **denied**.

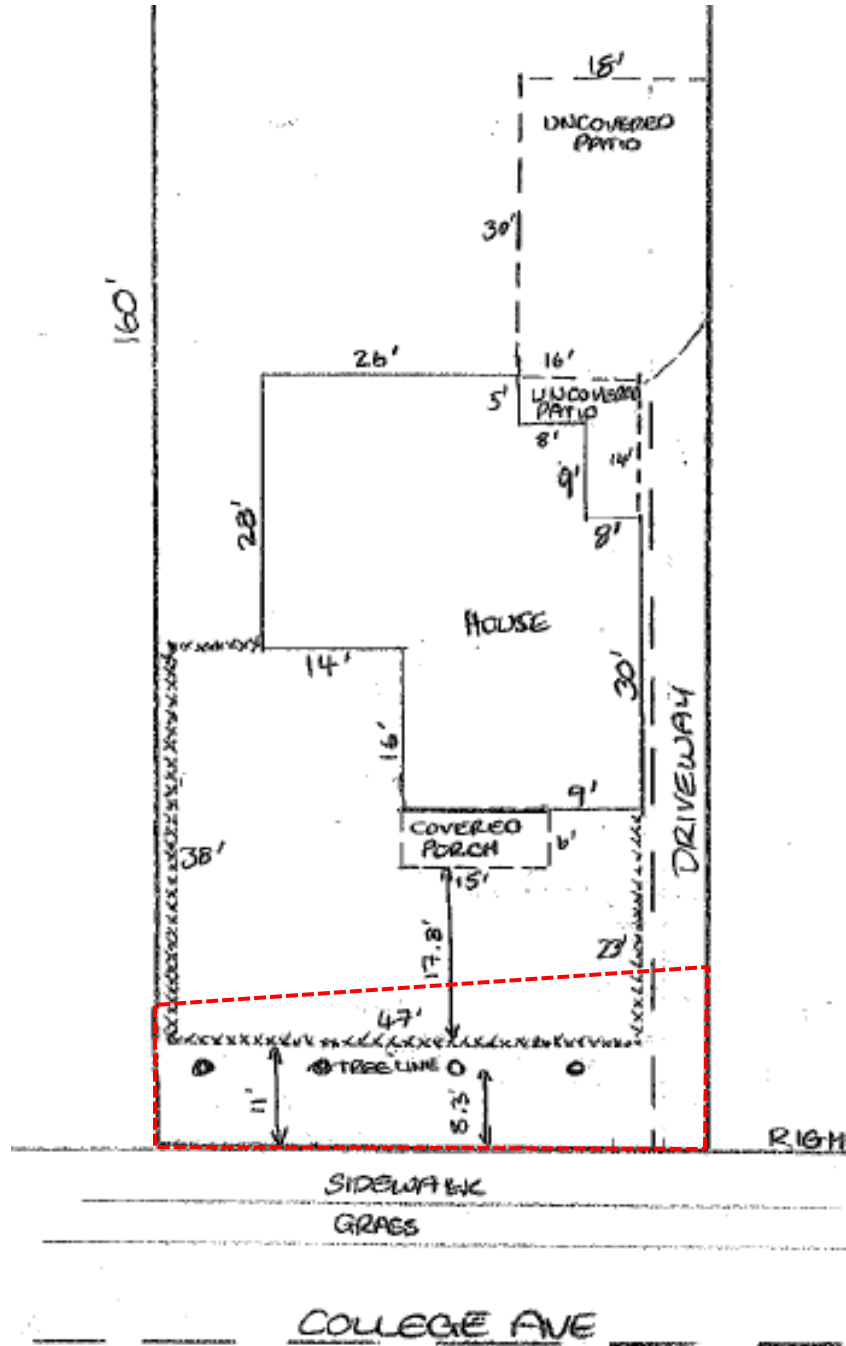
86-HOV-64 ; 4505 Broadway Street (southwest of site), variance of development standards of the Dwelling Districts Zoning Ordinance to provide for an addition to a detached garage with a 1 foot rear setback (5 feet required), **approved**.

EXHIBITS

2024DV1032 ; Aerial Map



2024DV1032 ; Site Plan



(Note: approximation of clear-sight triangular area in red added by staff)

2024DV1032 ; Context for Fence Installation (provided by Applicant)

Due to a long string of violence and safety concerns in the area, the Prosecutor's Office and the Mayor's Neighborhood Advocate informed neighbors in 2022 that the best way to mitigate the ongoing concerns is to close off our properties. Therefore, I closed off my property with a fence line. The fence promotes public safety by protecting property and residents from intruders. Adjacent property (4528 N College) has 6-foot stone fence located in front yard along sidewalk. The following cases were approved by BZA for similar safety concerns: Board I, June 6, 2023; Board II, August 8, 2023; Board III, June 20, 2023.

I was informed by the Assessor's Office that there are no Permits required in Marion County to build a fence on your property. I called DBNS and they confirmed I did not need a permit, and there were some variances that were allowed to the 3.5ft ordinance for front yards, specifically, they referred to "off the dwelling" and "naturally occurring obstructions." After multiple calls with DBNS, I altered my original fence specs to meet the instructions they gave.

Late May 2024 The Assessor's Office and Recorder's office to determine property line and informed me that I needed to confirm plans with DBNS. DBNS confirmed I did not need a permit, and there were some variances that were allowed to the 3.5ft ordinance for front yards, specifically, they referred to "off the dwelling" and "naturally occurring obstructions."

May 29, 2024- The terminology "Naturally occurring obstruction" was told to me by DBNS office. I figured whoever told me that was referencing something specific in the code. When I called this time, I was instructed that I could build behind tree line and be ok. DBNS informed if I wanted to install the 6 foot fence, I would need to move the specs of fence to behind the already existing 16foot evergreen tree line. I asked for this in writing but was informed that because it's not an actual permit or citation, there is nothing they could print.

June 3, 2024 –with the information and instruction given to me by DBNS, I updated my specs with the fence company and called DBNS one more time to confirm 6 feet was ok before we put in the 811 request to dig. The Build began June 18th and was completed June 19th. The letter with my Citation was dated June 20th. I would never have moved forward with the fence specs if DBNS hadn't told me on 3 separate occasions that it was ok and since there are no permits required, I was ok to build. During this last conversation I asked again if I could get anything in writing and I was informed that the only documentation they give out is for permits and since a fence build does not require a permit, I wouldn't get anything in writing. I figured that my conversations with this city entity would be noted or recorded in some manner, but I have been informed by Kyle Willis (issuer of citation) that I was misinformed and there is no recourse for the misinformation I was given other than to file a \$600 Variance request that may or may not be granted.

June 27, 2024 – received citation dated June 20, 2024

** the front of the property is enclosed with trees and shrubbery on the West and North sides of the yard. The fence is only visible from the South. I am more than willing to install trees or shrubbery on the South end of the yard to completely block the site of the fence.



2024DV1032 ; Findings of Fact

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

The fence has no capacity to affect the public health, morals, or general welfare. The fence will promote public safety by protecting Petitioner from intruders and providing privacy to the Petitioner.

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 fence will be confined to Petitioner's property and thus cannot affect the use of the adjacent area. The fence will be screened by trees and thus will not affect the aesthetics of the adjacent area.

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

the property is located in an area that has recently experienced a surge in both violent and property crime. The ordinance limits front yard fences to a height that is inadequate to protect Petitioner from intruders.

2024DV1032 ; Photographs



Photo 1: Subject Site Viewed from West (further sidewalk)



Photo 2: Subject Site Viewed from West (closer sidewalk)

2024DV1032 ; Photographs (continued)



Photo 3: Subject Site Viewed from Southwest (June 2024)



Photo 4: Subject Site Viewed from Southwest

2024DV1032 ; Photographs (continued)



Photo 5: Subject Site Viewed from Northwest (June 2024)

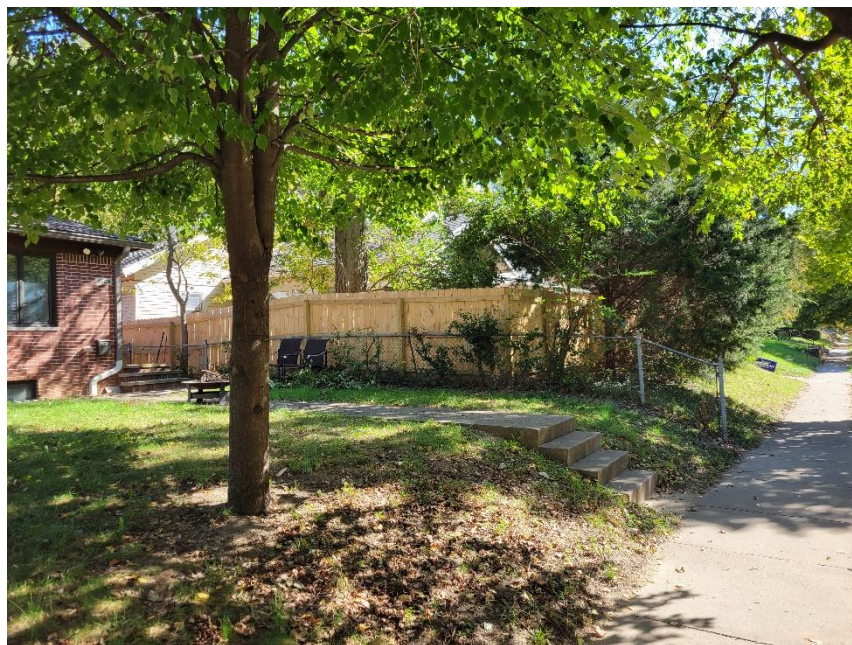


Photo 6: Subject Site Viewed from Northwest

2024DV1032 ; Photographs (continued)



Photo 7: Clear-Sight Triangular Area from Driveway

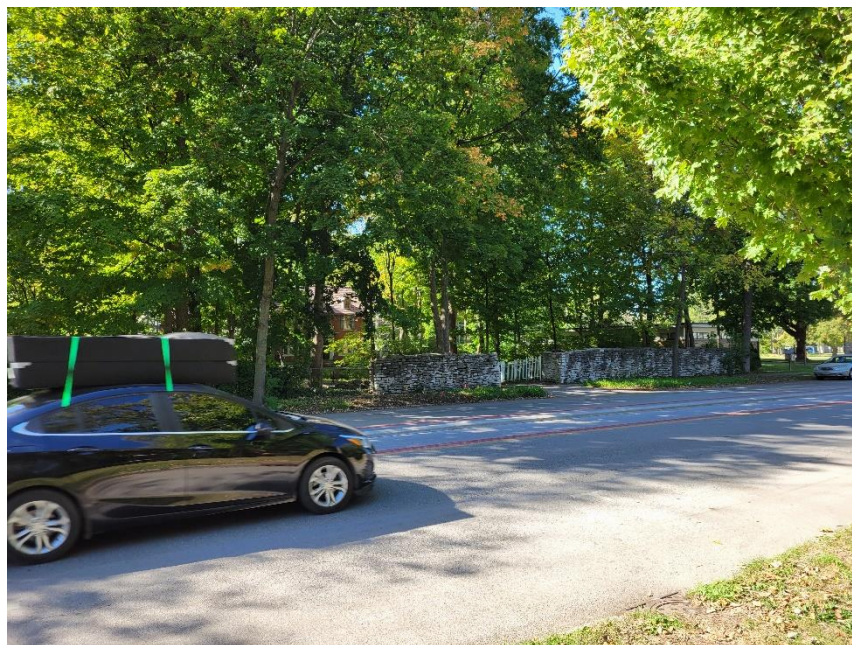


Photo 8: Adjacent Property to Northwest