

**BOARD OF ZONING APPEALS DIVISION II**

**June 10<sup>th</sup>, 2025**

**Case Number:** 2025-DV2-019 (Amended)

**Property Address:** 3870 Broadway Street

**Location:** Washington Township, Council District #7

**Petitioner:** Carlos Garcia and Martha Rivas

**Current Zoning:** D-5 (TOD)

**Request:** Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a 6.5-foot tall fence within the front yards and clear sight triangles of Broadway Street and the front yards, clear sight triangle and encroaching within the right-of-way of 39<sup>th</sup> Street, with 9.5-foot tall fence posts (maximum height 3.5-foot-tall fence permitted, fence posts limited to one-foot taller than maximum fence height, encroachment of clear sight triangles not permitted, encroachment of right-of-way not permitted).

**Current Land Use:** Residential

**Staff**

**Recommendations:** Staff is recommending **denial** of this variance petition.

**Staff Reviewer:** Kiya Mullins, Associate Planner

**PETITION HISTORY**

**ADDENDUM AUGUST 12, 2025**

This petition was continued from the July 8, 2025, hearing to the August 12, 2025 hearing of Division II in order to allow Staff additional time to review the violation related to fence height.

After discussion with the Department of Business and Neighborhood Services, it has been confirmed that fence measurements associated with retaining walls are measured from inside of the fence. Based off of Google Street View imagery, the subject site appears to have been regraded between August 2022 and June 2024 (see Exhibit 10 below).

Photos from the original enforcement inspection on February 26, 2025 included a photo depicted that the measurement of the fence height from outside of the enclosed area both exceeded 42-inches in height and encroachment within the clear sight triangle of the intersecting streets (see Exhibit 11 below).

Photos from the follow up enforcement inspection on April 18, 2025, taken from within the enclosed area, also confirm that the fence height exceeds 42-inches (see Exhibit 12 below).

Given the confirmation of the zoning violation related to fence height, and the lack of any new information, Staff continues to recommend denial of the request.

## STAFF RECOMMENDATION

Staff is recommending **denial** of this variance petition.

## PETITION OVERVIEW

- The petitioner of the variance is requesting to maintain an existing six-and-a-half (6.5) foot tall fence that has nine-and-a-half (9.5) foot tall fence posts. The fence is over the permitted height maximum for both of the two (2) front yards of the corner lot and also encroaches into the Clear Sight Triangle and right of way of both Broadway Street and 39th Street.
- The property is 0.071-acre in the D-5 zoning district and is with the Transit Oriented Development overlay.
- In the front yard of a parcel in a dwelling district, a fence is only permitted to be 3.5 feet in height.
- The Infill Housing Guidelines recommend against large fences that obscure the view of the street or homes.
- The Clear Sight Triangle is a measured distance between two (2) roads that intersect. The Ordinance does not permit encroachment into this area because the Clear Sight Triangle is necessary to allow drivers to see incoming pedestrian or vehicular traffic from the opposite road, allowing the driver to go forward or turn safely.
- The public right-of-way is public property used by the general public for transportation or utilities.
- The fences in these locations meet transparency standards but still encroach into the Clear Sight Triangle, impeding the clear view of drivers. In combination with encroaching into the right of way, the fences in this location pose a potential safety hazard for pedestrians or vehicles coming through this intersection.
- The subject sites are within the Red Line Transit-Oriented Development Strategic Plan area and are beside the 38<sup>th</sup> & Park Transit stop.
- This area has multiple sidewalks that provide for pedestrian walkability and has a nearby school.
- The addition of the 6 (six) foot wooden fence takes up a large section of the side of the road and prevents drivers heading east down 39<sup>th</sup> Street, heading north up Broadway Street or turning onto either street to see pedestrians or drivers unless completely pulled forward.
- Staff is recommending **denial** of this variance petition. The fence occupies a large portion of the streetscape, obscuring the view of not only the home but also encroaching into the Clear Sight Triangle and right-of-way. The subject site is within an area designated as a safe and walkable neighborhood. Granting a fence that encroaches on the right-of-way and potentially creates a safety hazard will set a precedent that undermines the work that has already begun in the area.

## GENERAL INFORMATION

<b>Existing Zoning</b>	D-5 and TOD	
<b>Existing Land Use</b>	Residential	
<b>Comprehensive Plan</b>	Traditional Neighborhood	
<b>Surrounding Context</b>	<b><u>Zoning</u></b>	<b>Surrounding Context</b>
North:	D-5	North: Traditional Neighborhood
South:	MU-1	South: Village Mixed-Use
East:	C-3	East: Urban Mixed-Use
West:	D-5	West: Traditional Neighborhood
<b>Thoroughfare Plan</b>		
39 <sup>th</sup> Street	Local Street	50 feet of right-of-way existing and 48 feet proposed.
Broadway Street	Local Street	50 feet of right-of-way existing and 48 feet proposed.
<b>Context Area</b>	Compact	
<b>Floodway / Floodway Fringe</b>	No	
<b>Overlay</b>	Yes	
<b>Wellfield Protection Area</b>	No	
<b>Site Plan</b>	5/20/2025	
<b>Site Plan (Amended)</b>	N/A	
<b>Elevations</b>	N/A	
<b>Elevations (Amended)</b>	N/A	
<b>Landscape Plan</b>	N/A	
<b>Findings of Fact</b>	5/6/2025	
<b>Findings of Fact (Amended)</b>	N/A	

## COMPREHENSIVE PLAN ANALYSIS

### Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Red Line Transit-Oriented Development Strategic Plan
- Infill Housing Guidelines

### Pattern Book / Land Use Plan

- The Traditional Neighborhood typology includes a full spectrum of housing types, ranging from single family homes to large-scale multifamily housing. The development pattern of this typology should be compact and well-connected, with access to individual parcels by an alley when practical. Building form should promote the social connectivity of the neighborhood, with clearly defined public, semi-public, and private spaces. Infill development should continue the existing visual pattern, rhythm, or orientation of surrounding buildings when possible. A wide range of neighborhood serving businesses, institutions, and amenities should be present. Ideally, most daily needs are within walking distance. This typology usually has a residential density of 5 to 15 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.

### **Red Line / Blue Line / Purple Line TOD Strategic Plan**

- Red Line (38<sup>th</sup> & Park)
  - Existing Conditions
    - In the immediate station area is a mixture of historic apartment buildings and older, historic homes, along with a few smaller retail structures with surface parking.
    - The area surrounding the intersection is made up of grid pattern residential neighborhoods, including the historic Watson-McCord neighborhood to the south.
    - 38<sup>th</sup> Street itself is very busy arterial throughfare with a large amount of crosstown traffic. It has been upgraded with a planted median and decorative lights and crosswalks.
  - Land Use and Property Control
    - Land around the station is primarily low to medium density residential with some commercial properties along 38<sup>th</sup> Street.
    - There are some mixed-use properties along northern 38<sup>th</sup> Street and clusters of medium and high-density commercial properties at the meridian and College intersections.
    - Properties are mostly privately owned with some brownfields near the station.
  - Typology Characteristics
    - Walkable Neighborhood
      - Mix of uses at station area and primarily residential beyond.
      - Maximum of 3 stories throughout
      - No front or side setbacks at core; 0-15 ft front setbacks and 0-20 ft side setbacks at periphery.
      - Mix of multi-family and single-family housing
      - Structured parking at the core and attractive surface parking at the periphery.

### **Neighborhood / Area Specific Plan**

- Not Applicable to the Site.

### **Infill Housing Guidelines**

- 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.
- 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.

#### **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

- 2007-HOV-020: 3916 North College Avenue
  - Variance of Use of the Commercial Zoning Ordinance to legally establish as single-family dwelling (not permitted).
    - Approved
- 2012-HOV-009: 3902 North Park Avenue
  - Variance of Use of the Dwelling Districts Zoning Ordinance to legally establish a six-unit multifamily dwelling (not permitted).
    - Approved
- 2021-UV2-003: 3854 North College Avenue
  - Variance of Use of the Consolidated Zoning and Subdivision Ordinance to provide for a two-family dwelling with an attached garage (not permitted).
    - Approved

EXHIBITS

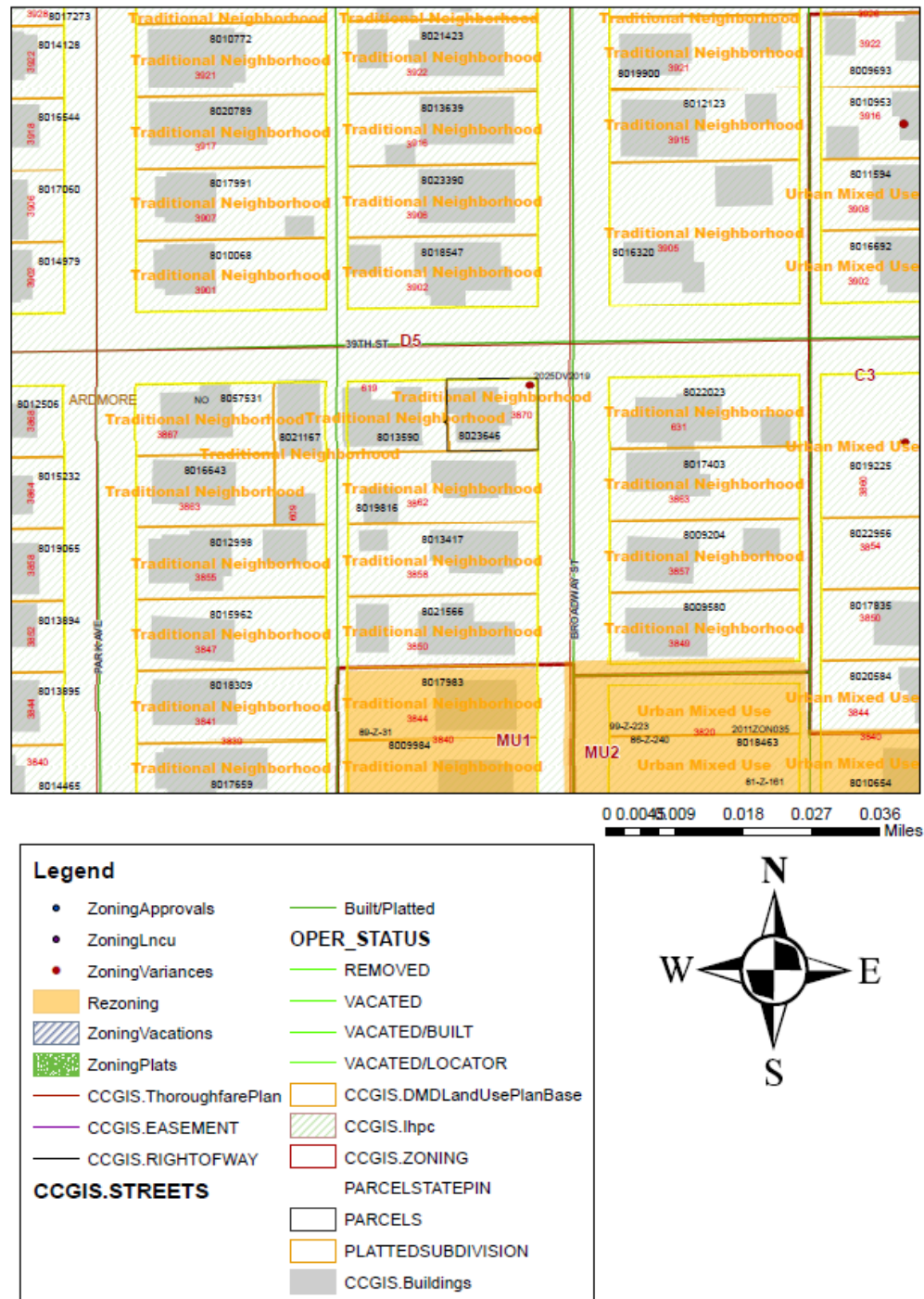


Exhibit 1: ArcGIS map of the subject site and surrounding properties.



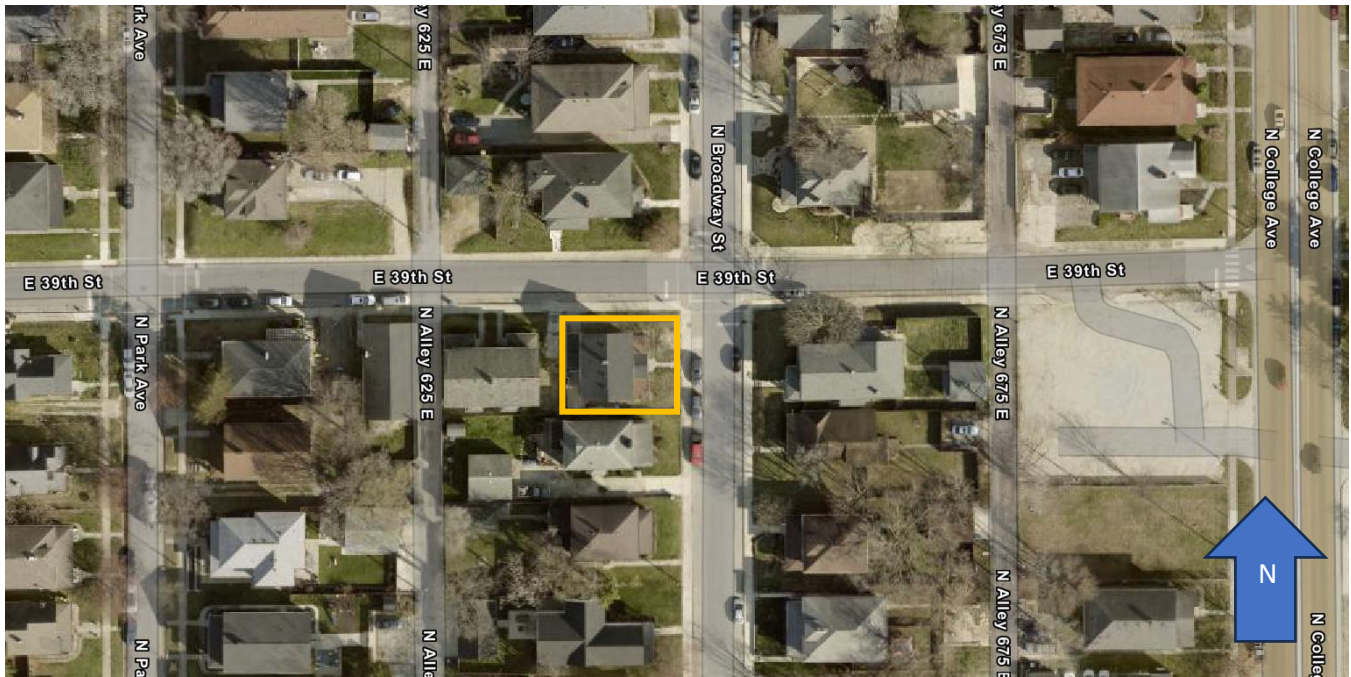


Exhibit 2: Aerial of the subject site.



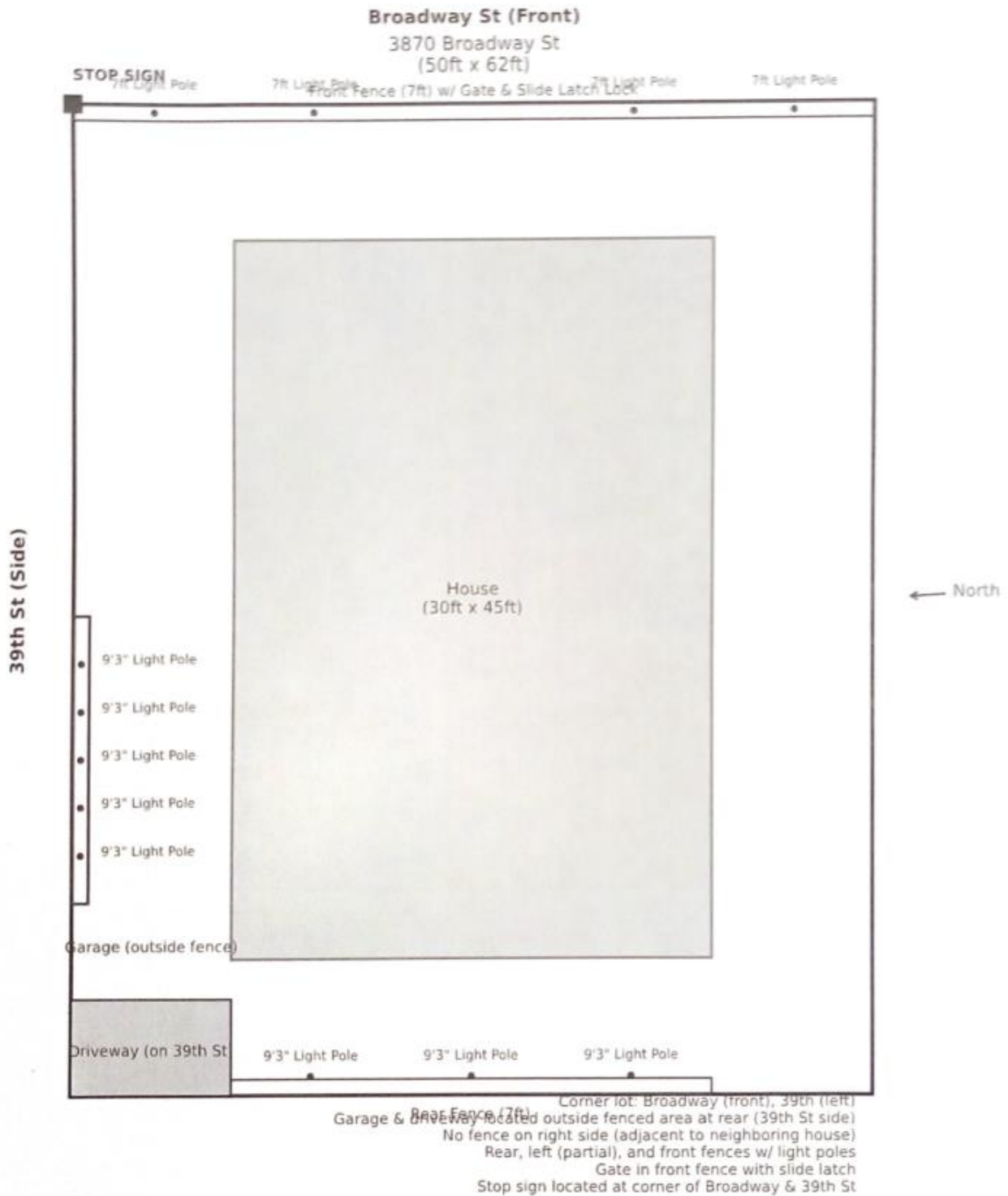


Exhibit 3: The submitted site plan.

**METROPOLITAN DEVELOPMENT COMMISSION  
HEARING EXAMINER  
METROPOLITAN BOARD OF ZONING APPEALS, Division \_\_\_\_\_  
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:

The subject property is a corner lot located at the intersection of Broadway Street and 39th Street. A stop sign is present at the corner, and the existing fencing is positioned to avoid obstructing the clear sight triangle required under Section 740-304. The fence is constructed with a 3-foot concrete and brick base and 4 feet of wooden planks, for a total height of 7 feet. Integrated lighting poles, measuring between 7 feet and 9 feet 3 inches, are located along the rear, left, and front portions of the fence. The fence is not present along the side of the property, allowing openness adjacent to the neighboring lot. These improvements enhance safety, visibility, and security without impairing traffic views or the general welfare of the area.

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 fencing and lighting improvements are constructed of durable, visually compatible materials and are appropriately placed within the property boundaries. No portion of the fence encroaches upon adjacent lots or rights-of-way, and the absence of fencing on the right side preserves the openness between homes. The lighting poles offer added safety during nighttime hours without creating glare or nuisance. The improvements are consistent with the residential nature of the neighborhood and do not impair the use, enjoyment, or value of surrounding properties.

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 where a documented public safety incident occurred on May 2, 2024, near the intersection of Broadway Street and 38th Street. Due to proximity to that event, heightened safety concerns affect the practical use of the property. The added fence height and integrated lighting are necessary to improve security and privacy. Strict adherence to the 6-foot fence height limit and fence post restrictions under Sections 744-510-2 and 744-510.C.3 would prevent effective implementation of safety and lighting features. The fence design respects the lot layout and provides access to a detached garage and driveway located outside the fenced area along 39th Street.

Exhibit 4: The submitted Findings of Fact.



Exhibit 5: The subject site looking southwest.





Exhibit 6: The subject site looking northwest.



Exhibit 7: The subject site looking southeast.



Exhibit 8: Looking north up North Broadway Street.



Exhibit 9: Looking east down East 39<sup>th</sup> Street.



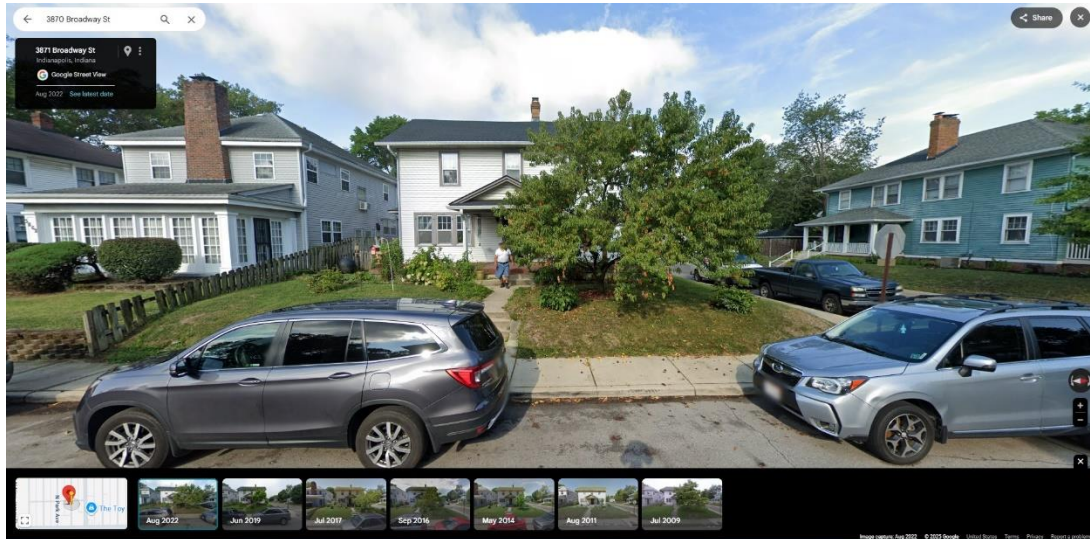


Exhibit 10: Google Streetview

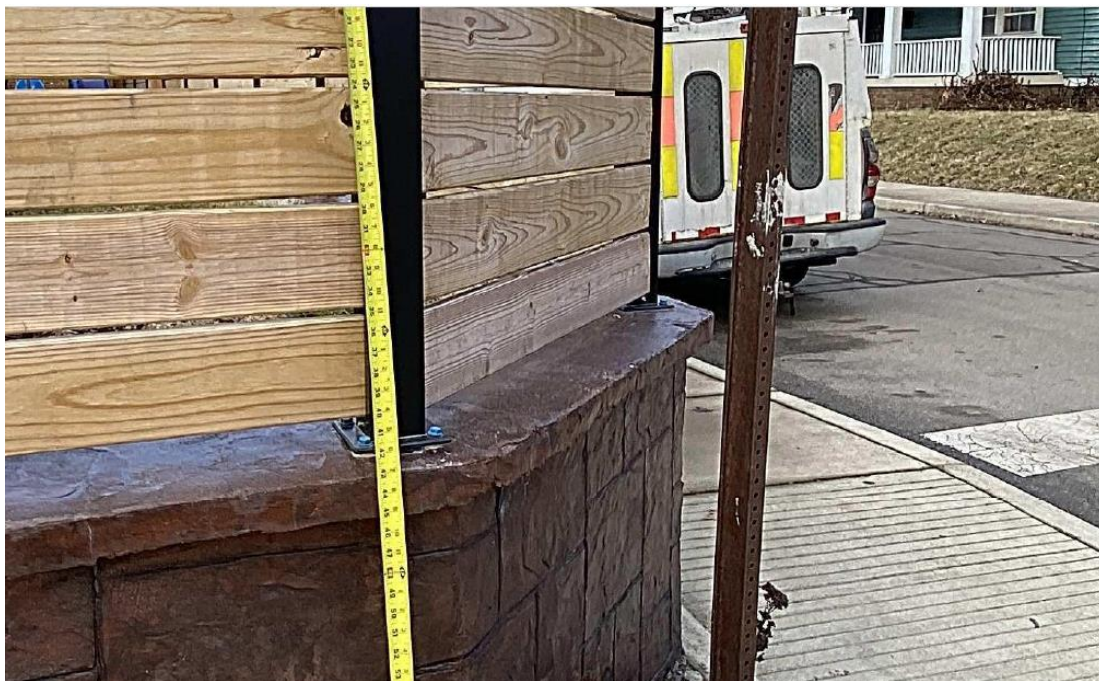


Exhibit 11: February 26, 2025, Enforcement Photo Depicting Height Exceeding 42-Inches and Clear Sight Triangle Encroachment



VIO24-008211, 3870 BROADWAY ST, 4/18/25, 12:07PM--JFS



Exhibit 12: Enforcement Picture Taken April 18, 2025 Depicting Fence Height Exceeding 42-Inches,  
Taken From Within The Enclosed Area