

BOARD OF ZONING APPEALS DIVISION I

May 14, 2024

Case Number: 2024-DV-1006 (amended)
Property Address: 5565 Bertha Street (approximate address)
Location: Wayne Township, Council District #17
Petitioner: Juan Carlos Lopez Cortes and Silvia Canchola Medina
Current Zoning: D-4
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the location of a detached garage within an electrical utility easement (not permitted), with a 4.5-foot rear yard setback and a two-foot east side yard setback (five-foot side and rear yard setbacks required).
Current Land Use: Residential
Staff Recommendations: Staff recommends denial of this petition
Staff Reviewer: Noah Stern, Senior Planner

PETITION HISTORY

ADDENDUM FOR MAY 14, 2024 BZA DIVISION I HEARING

- This petition was continued from the March 5, 2024 BZA Division I hearing to the April 2, 2024 BZA Division I hearing to allow Staff to amend the request.
- The petition was continued a second time to the May 14, 2024 BZA Division I hearing due to an indecisive vote.

STAFF RECOMMENDATION

- Staff recommends denial of this petition.

PETITION OVERVIEW

- This petition would provide for the location of a detached garage within an electrical utility easement (not permitted), with a 4.5-foot rear yard setback and a two-foot east side yard setback (five-foot side and rear yard setbacks required).
- Construction of buildings within utility easements is not permitted. This is both to allow for easy access to those utilities if needed, and to ensure that there is no potential for interference with the utilities. With the drainage and utility easement being located parallel to the rear lot line at a distance of five feet from the rear lot line, the accessory structure encroaches into the easement by approximately .5



feet. Additionally, with the subject site being of sufficient sizing for D-4 zoning standards, Staff finds no practical difficulty for the petitioner to not meet the side and rear setback standards.

- The structure in question was erected without the application and issuance of required permits. In these instances, Staff generally views any related practical difficulty to be self-imposed, and insufficient in obtaining a favorable Staff recommendation. Further, Staff has concerns that recommending approval of such requests may promote similar use of poor building practices.
- In addition, Staff would note that the structure is an open-air structure and can be more easily relocated than enclosed structures on a permanent foundation.
- Finally, Staff would note that any structure located within an easement may be lawfully removed by any party with rights to that easement. To avoid any such instance, Staff strongly requests that the plans be modified to relocate the structure wholly outside of the easement.

GENERAL INFORMATION

Existing Zoning	D-4	
Existing Land Use	Residential	
Comprehensive Plan	5-8 residential units per acre	
Surrounding Context	Zoning	Surrounding Context
North:	D-4	North: Single-family residential
South:	D-4	South: Single-family residential
East:	D-4	East: Single-family residential
West:	D-4	West: Single-family residential
Thoroughfare Plan		
Bertha Street	Local Street	53-feet of right-of-way existing and 48-feet proposed
Context Area	Metro	
Floodway / Floodway Fringe	No	
Overlay	No	
Wellfield Protection Area	No	
Site Plan	1/19/24	
Site Plan (Amended)	N/A	
Elevations	N/A	
Elevations (Amended)	N/A	
Landscape Plan	N/A	
Findings of Fact	1/19/24	
Findings of Fact (Amended)	N/A	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- West Washington Street Corridor Plan (2012)

Pattern Book / Land Use Plan

- Not Applicable to the Site. Please see Neighborhood / Area Specific Plan (etc.) below.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- Not Applicable to the Site.

Neighborhood / Area Specific Plan

- The West Washington Street Corridor Plan recommends residential uses at 5-8 units per acre for this 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

N/A

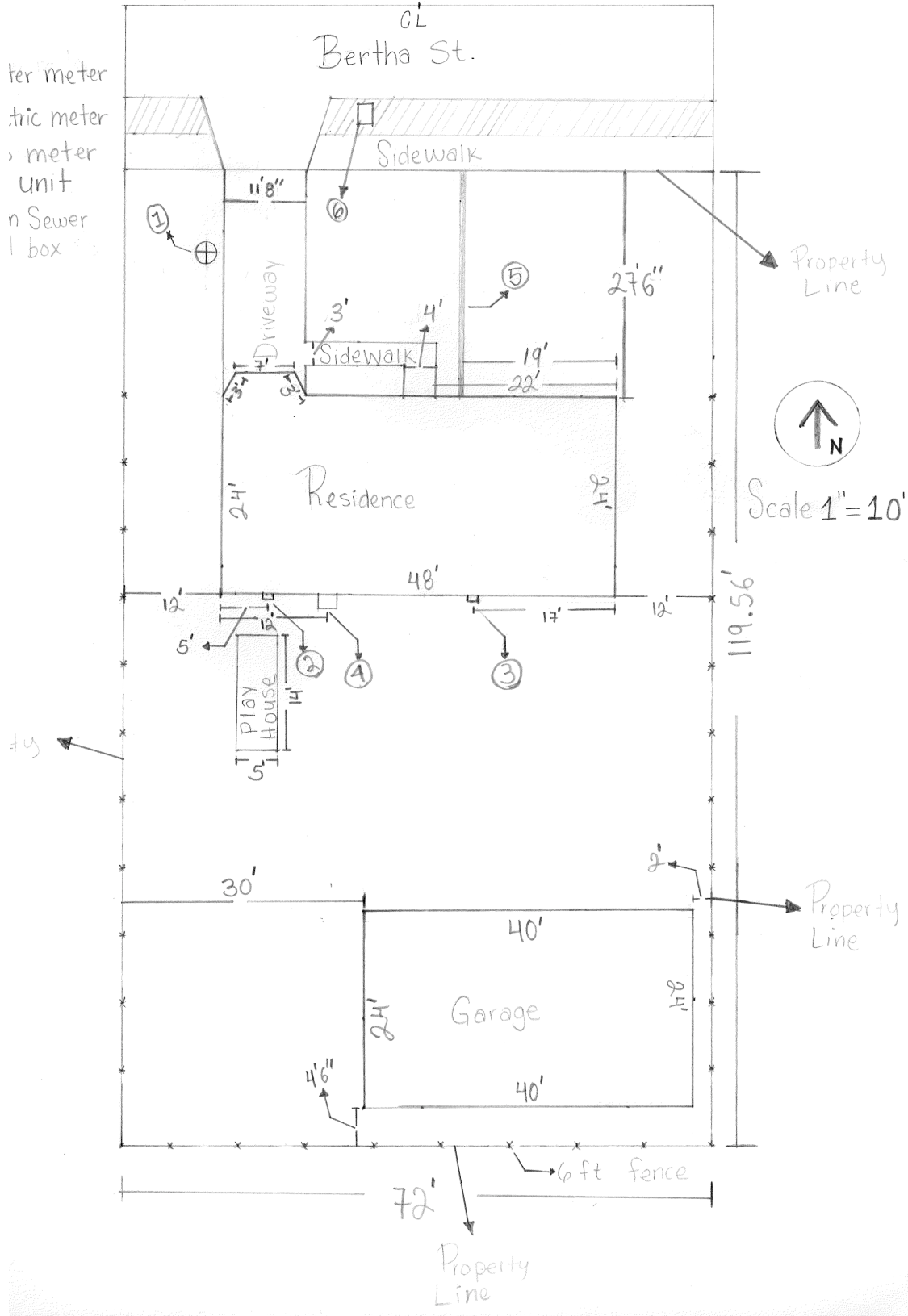
ZONING HISTORY- VICINITY

2020DV3047; 5682 W Ray Street (south of site), Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for 47-foot tall wood and metal poles for small cell wireless communications facilities, with associated equipment and antennas within the right-of-way (underground utilities only permitted after January 1, 1973.), **withdrawn**.

95-V2-22; 5564 Bertha Street (north of site), variance of development standards of the Dwelling Districts Zoning Ordinance to legally establish a carport addition, with a 3-foot side yard setback (minimum 5 feet required) for an existing single-family residence, **approved**.

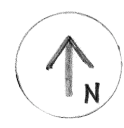
EXHIBITS





ter meter
 tric meter
 s meter
 unit
 n Sewer
 l box

Property Line



Scale 1" = 10'

Property Line

Property Line



Petition Number _____

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:

This is our first house we built the garage where the shed was built, we didn't know that we have to built 5 ft from the fence ,from the back of the fence is 4,6' ft and from the side is 2ft .I am only attempting to have a garage to store items on my property .I am not building a structure on my property that is injurious to the public health, Safety,morals or general welfare of the community.The garage structure will not be utilized for any other than for storage as we currently do not have a garage on our property.The garage will not be utilized for additional living or commercial space.

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 detached garage will not infringe on either of my neighbors' property lines .In addition,my neighbors will not be affected in a substantially adverse manner.The garage will not block any views in which they previously had and will not cause any nuisance that will interfere with the comfortable enjoyment of their life or property.

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

We currently do not have a garage space to store our vehicles (during winter season), lawn equipment, tools,bicycles and additional appliances (deep freezer/refrigerator). Our property currently only contains our house and driveway with no space to store the items previously mentioned.

DECISION

IT IS THEREFORE the decision of this body that this VARIANCE petition is APPROVED.

Adopted this _____ day of _____, 20 ____





