

BOARD OF ZONING APPEALS DIVISION II

July 14, 2026

Case Number: 2026-DV2-021
Address: 534 and 546 East 38th Street (approximate address)
Location: Washington Township, Council District #7
Zoning: D-9 (TOD)
Petitioner: Barry Pachciarz
Request: Variance of Development Standards of the Consolidated Zoning and Subdivision Ordinance to provide for the installation of a 60" tall fence in the front yard (maximum height of 48" permitted).
Current Land Use: Multi-Family Apartment building
Staff Recommendation: Staff recommends denial of this petition.
Staff Reviewer: Robert Uhlenhake, Senior Planner

PETITION HISTORY

This is the first hearing for this petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- ◇ As proposed, the requested 60" tall fence would be at grade on top of an elevated three-foot tall solid retaining wall.
- ◇ This would provide for an eight-foot tall security barrier from the sidewalk. The request for the 60-inch tall fence as proposed would not be supportable, as the use or value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner
- ◇ The site plan file-dated May 22, 2026, shows the proposed fence being located directly next to the sidewalk along the 38th Street frontage. There is an approximately three-foot change in elevation from the sidewalk to the area where the fence would be located, making an eight-foot tall barrier and creating an unwelcoming canyon affect for sidewalk pedestrians to walk next to.
- ◇ Development Standards of the Consolidated Zoning and Subdivision Ordinance permits a maximum height of 48 inches within the front yard for fences with an opacity of 30% or less, and six (6) feet in the rear yard. The purpose of the height limitation is to create an open appearance along public rights-of-way, prevent blocking views at intersections, limit the negative visual impacts on adjacent properties, and prevent a canyonized effect of the streetscape when multiple properties install overly tall fences adjacent or near the front public right of way.

- ◇ The height requirements are in place to limit bulk and keep the environment at a human-scale. This regulation limits the number of “walls” or abnormally tall structures that can be built to ensure neighborhood compatibility and to prevent unreasonable blockage of sunlight.
- ◇ There is no practical difficulty with the site, as the fence could be built in the front yard where proposed with a height of 48 inches, without the need for a Variance. No other residential properties have requested Variances for an increase in front yard fence heights along this portion of 38th street, and are able to comply with the Ordinance, as this property can.

GENERAL INFORMATION

Existing Zoning	D-9	
Existing Land Use	Multi-Family Dwelling	
Comprehensive Plan	Village Mixed-Use	
Surrounding Context	Zoning	Surrounding Context
North:	D-5	Single-Family Dwelling / Accessory Parking Lot
South:	C-1 / D-8	Commercial Office / Multi-Family Dwellings
East:	MU-1	Multi-Family dwellings
West:	C-3	Commercial retail
Thoroughfare Plan		
East 38 th Street	Primary Arterial	104-foot existing and proposed right-of-way.
Context Area	Compact area	
Floodway / Floodway Fringe	No	
Overlay	Transit Oriented Development	
Wellfield Protection Area	No	
Elevations	N/A	
Landscape Plan	N/A	
Site Plan	May 22, 2026	
Findings of Fact	May 22, 2026	

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- The Comprehensive Plan recommends Village Mixed Uses for the site.

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends the Village Mixed Use typology that creates neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. This typology is intended to strengthen existing, historically small-town centers as well as to promote new neighborhood centers. Businesses found in this typology serve adjacent neighborhoods, rather than the wider community. This typology is compact and walkable, with parking at the rear of buildings. Buildings are one to four stories in height and have entrances and large windows facing the street. Pedestrian-scale amenities such as lighting, landscaping, and

sidewalk furniture also contribute to a walkable environment in this typology. Uses may be mixed vertically in the same building or horizontally along a corridor. Public spaces in this typology are small and intimate, such as pocket parks and sidewalk cafes. This typology has a residential density of 6 to 25 dwelling units per acre.

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

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

2008-DV2-009; 604 East 38th Street (east of site), requests a Variance of Development Standards to provide for an eight-foot tall, solid wall within the required ten-foot front yard along Park Avenue and Broadway Street, **granted**.

97-Z-135/97-CV-13; 502 East 38th Street (west of site), requests the rezone 0.5909 acre from D-5 and D-9 to the D-10 classification to provide for attached multi-family residential uses which may include 19 townhomes, **approved**. Requested a Variance of Development Standards to provide for the construction of three attached multi-family residential buildings with a front setback of 15 feet from Central Avenue (minimum 40 feet setback required), a side setback of 10 feet along the north property line (minimum 20 feet required), a distance between buildings as close as 16 feet (minimum 20 feet required), resulting in the distance between buildings to be less than the sum of the required minimum depths of adjoining yards (not permitted), parking along, and zero feet from, an alley along the east property line (parking not permitted in the required perimeter yard), parking along, and five feet from, the north property line (parking not permitted in the required perimeter yard), a livability space ratio of 0.6541 (minimum 0.660 required) and, a major livability space ratio of 0.00 (minimum 0.110 required), **granted**.

95-UV3-80; 519 East 38th Street (west of site), requests a variance of use and development standards of the Commercial Zoning Ordinance, to provide for a record store in an existing building, **granted**.



Department of Metropolitan Development
Division of Planning
Current Planning

95-SE2-14; 525 East 38th Street and 3757 North Ruckle Street (west of site), requests a Special Exception of the Dwelling Districts Zoning Ordinance to provide for a religious use, **granted**.

90-UV1-117; 519 East 38th Street (west of site), requests a variance of use to permit a convenience store with carry out food items in an existing building, **granted**.

86-UV3-114; 502 East 38th Street (west of site), requests a variance of use of the Dwelling Districts Zoning Ordinance and the Sign Regulations, to provide the use of a portion of the existing apartment building for office and retail use, with wall signs and additional parking, **granted**.

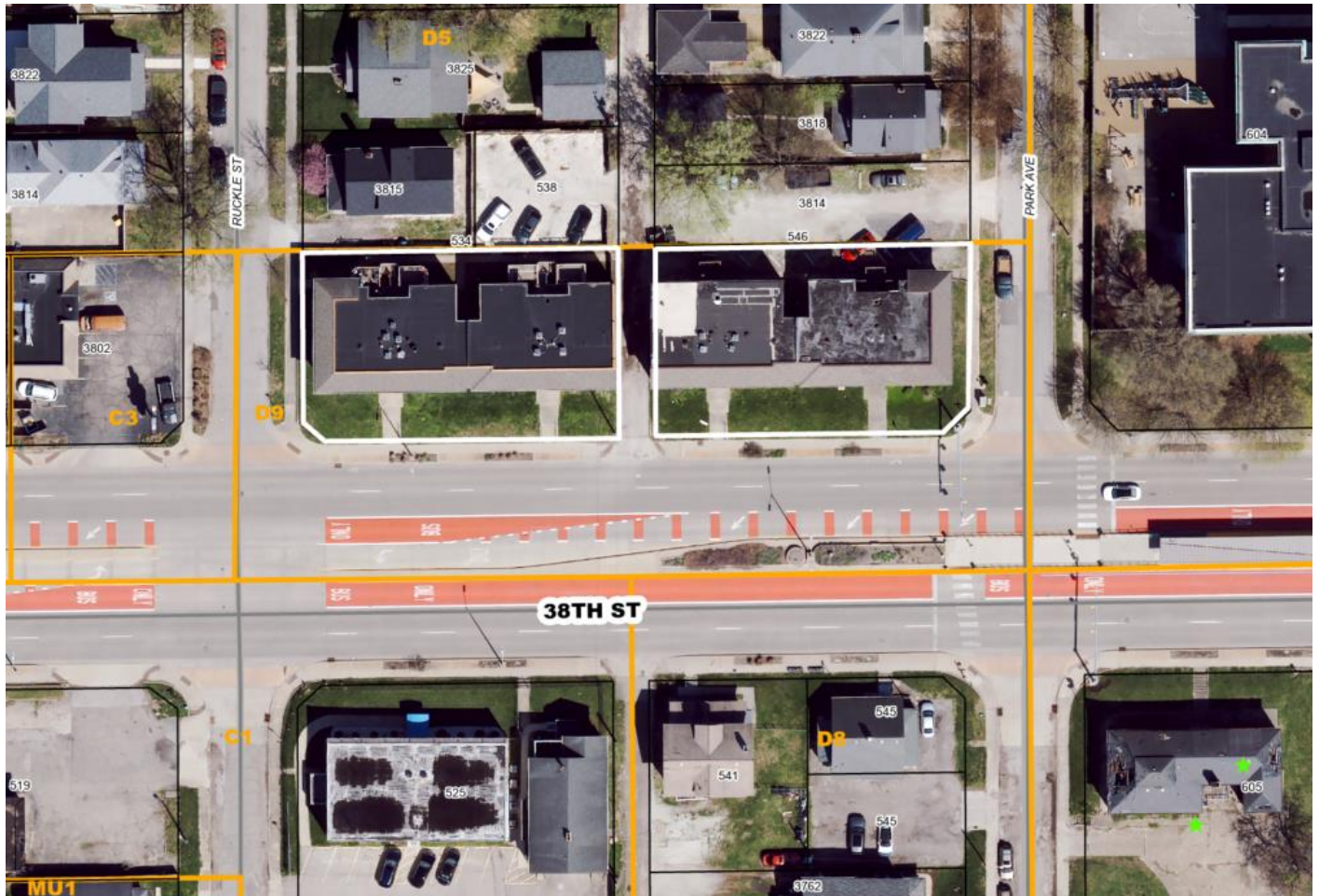
84-UV2-65; 501 East 38th Street, requests a variance of use to permit a carry out pizza restaurant within 100 feet of a dwelling district, **granted**.

84-UV2-31; 501 East 38th Street, requests a variance of use to provide for the conversion of a vacant service station to a convenience store with car wash and gasoline pumps, **dismissed**.

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EXHIBITS

Location Map

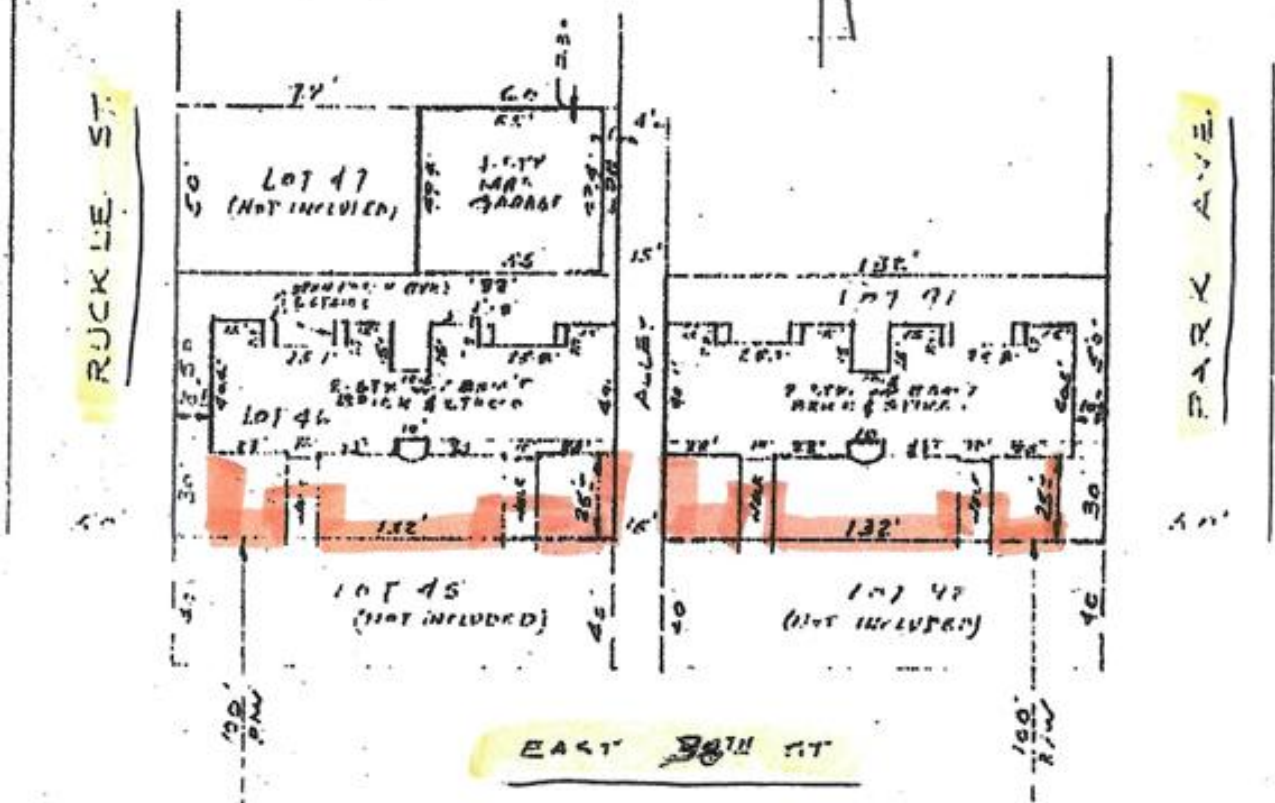


Site Plan

* Fence is marked in orange.
Fence scale
is shown on attached
photo.



SURVEY FOR MORTGAGE
 PURPOSE
 NOT TO BE USED TO
 ESTABLISH PROPERTY LINES



Findings of Fact

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:

Since the subject property is located along 38th Street across from a red and purple line bus stop, it has a high rate of vehicular traffic and pedestrians walking along this major corridor. The retaining wall and gated fencing area around the front of the buildings, will serve as a foundational piece of the security plan for our residents. It is a metal, picket style fence that does not impact visibility, but provides for a deterrent for those not residing the property to keep them out of the front yard preventing access to the front doors of the property. A taller fence in the front yard is imperative for people who would live on a busy thoroughfare like 38th Street in our community.

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 are several properties located along 38th Street and other high traffic streets in the Meridian Kessler area that already have similar fences greater than 48" in height, installed for the same reasons outlined above. Neighbors are not affected, and in fact, we have support of members of the neighborhood association for not only the proposed fencing option, but for the overall renovation/remodel project as it was a burn damaged property and previously owned by a slum lord. We have made significant improvements, which helps property values of all of our neighbors. Additionally, we are partnering with Coburn Place, our neighbor directly to the east on 38th, and are in the process of placing two of their clients in our building.

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

Per the attached photos, the current fencing is 48" above the finished grade of the retaining wall. Reducing the height in any way would be a detriment to the security we have committed to our residents, and would be an obstacle to anyone who would consider living in the community in the future. We already made a considerable investment in the current fencing option, and it would be a significant, non-budgeted cost to reduce the height of the fence, as proposed by the strict application of the zoning ordinance. We have already purchased the same size fence sections for the adjoining property we would like to install the same option there as well, for the aforementioned reasons.

Photographs



Subject site, 546 East 38th Street with existing non-compliant fencing. Looking northwest.



Subject site, 534 East 38th Street, proposed fencing. Looking northeast.



Subject site, 546 East 38th Street, close-up of existing proposed fence height on top of retaining wall, looking east.



Subject site, 546 East 38th Street with existing proposed fence height on top of retaining wall, looking east.