



Board of Zoning Appeals

Meeting Minutes

May 23, 2016

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W Main Street and was called to order by BZA Vice-Chair, Thomas at 7:10p.m.

Mr. Thomas led the Pledge of Allegiance to the Flag of the United States of America.

Those answering roll call:

Ms. Julie Kriss	Absent
Mr. Jesse Thomas	Present
Ms. Alicia Miller	Present
Mr. Mike Durik	Present
Ms. Marlene Brisk	Absent
Mr. Mike Mott (Council Representative)	Absent

Staff members present: Adrienne Joly, Deputy Director; Stephen Mayer, Planner; Mitch Banchefsky, Law Director

Moved by Mr. Durik to approve the April 25, 2016 meeting minutes, Seconded by Ms. Miller. Upon roll call: Miller, yea; Thomas, yea; Durik, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Mr. Thomas stated that no audience members were present.

Moved by Mr. Durik to accept the staff report and related documents into the record, Seconded by Ms. Miller. Upon roll call: Miller, yea; Thomas, yea; Durik, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

V-27-2016 Variance

Variance from Codified Ordinance Chapter 1173.02 to the setback requirements found in the city's private swimming pool regulations to allow a setback less than fifteen (15) feet from the side and rear property lines at 7705 Ogden Woods Boulevard (PID: 222-004564).

Applicant: Miller Troyer Custom Homes

Mr. Stephen Mayer stated that the applicant requested that this application is withdrawn.

Mr. Durik moved to accept the applicant's request to withdraw application V-27-2016, Seconded by Ms. Miller. Upon roll call: Miller, yea; Thomas, yea; Durik, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Mr. Thomas to enter into executive session to discuss pending litigation, Seconded by Ms. Miller. Upon roll call: Miller, yea; Thomas, yea; Durik, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Ms. Miller to come out of executive session, Seconded by Mr. Durik. Upon roll call: Miller, yea; Thomas, yea; Durik, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Meeting adjourned at 7:37 pm.

APPENDIX



Board of Zoning Appeals Staff Report May 23, 2016 Meeting

7705 OGDEN WOODS BOULDEVARD SWIMMING POOL VARIANCE

LOCATION: 7705 Ogden Woods Boulevard (PID: 222-004564)
APPLICANT: Miller Troyer Custom Homes
REQUEST: Variance from Codified Ordinance Section 1173.02(b) to allow:
A. A pool to be located 10.5 feet from the side lot line and 9.5 feet from the rear lot line where code requires a minimum of 15 feet;
B. The pool's walks and paved areas to be located 6.5 feet from the side lot line and 6.5 feet from the rear lot line where code requires a minimum of 15 feet;
STRATEGIC PLAN: Village Center District
ZONING: I-PUD (New Albany Country Club Section 21 Subarea 2)
APPLICATION: V-27-2016

Review based on: Application materials received March 24, 2016.

Staff report prepared by Stephen Mayer, Community Development Planner.

I. REQUEST AND BACKGROUND

This Board of Zoning Appeals tabled this application at the request of the applicant on April 25, 2016. No new information has been submitted since the previous meeting.

The applicant requests a variance from Codified Ordinance Section 1173.02(b) to allow a swimming pool and its appurtenances including walks and paved areas, to be located less than fifteen (15) feet from side and rear lot lines.

II. SITE DESCRIPTION & USE

The parcel is generally located at the southeast corner of Keswick Drive and Ogden Woods Boulevard within the New Albany Country Club Section 21. This platted area of the New Albany Country Club consists of 5 lots. This section was resubdivided from seven (7) platted lots into five (5) lots in 2013. Within this 5 lot section, two homes are under construction, leaving 3 lots for sale.

This lot is currently undeveloped, but homes are built or under active construction on both sides of the subject parcel. This lot fronts onto a public street and backs onto a public alley. There are existing single family detached homes across the street along Ogden Woods Boulevard and single family residences to east at Keswick.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*

11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

III.EVALUATION

Considerations and Basis for Decision

- A. A pool to be located 10.5 feet from the side lot line and 9.5 feet from the rear lot line where code requires a minimum of 15 feet.**

The following should be considered in the Board's decision:

1. The applicant wishes to install a 20'x12' swimming pool in the rear and side yard of the house.
2. The PUD text is silent on swimming pools so the city's Codified Ordinances apply. The city's Codified Ordinance Section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line.
3. The applicants states a minimum five foot tall brick wall will enclose around the immediate vicinity of the pool and its walks as required by code. This wall is also intended to provide privacy and outdoor living space.
4. The lot is 0.20 acres with a proposed single family home that has a 3,212 square foot footprint. The lots and homes are a cluster development to provide smaller lots with larger green spaces and parks within the Village Center. The proposed home is located 11'9" from the northern side lot line and 17'8" from the rear lot line.
5. The lot backs onto a public alley. At the closest distance, the brick privacy wall is a little less than 6 feet away from the alley. The pool is approximately 2.5 feet away from the wall.
6. The New Albany Planning Commission heard a similar variance application at the Ackerly Park subdivision in the fall of 2015. Ackerly Park is a similar development containing large homes on smaller lots. At this meeting the Planning Commission members discussed neighbor input and the pool equipment. This applicant has not specified where the pool equipment will be located. Staff recommends a condition of approval requiring the pool equipment is within an enclosure and located within the brick walled area.
7. The applicant justifies the variance stating "the pool setback should not apply to these homes because of the limited space per the lot. The pool will reside within the brick walled courtyard which will abide by the current zoning guidelines for outdoor living space."
8. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
9. Granting the variance would not adversely affect the delivery of government services.

- B. The pool's walks and paved areas to be located 5.56.5 feet from the side lot line and 106.5 feet from the rear lot line where code requires a minimum of 15 feet**

The following should be considered in the Board's decision:

1. The applicant requests a variance to allow the pool's walkway to encroach the required 15 foot setback.
2. The city's Codified Ordinance Section 1173.02(c) requires all such pool, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen feet to any property line.
3. A 2.5 foot wide brick walkway is approximately 6.5 feet from the neighboring northern side lot line and 6 feet from the rear lot line at their closest positions. The pool and lot lines are not parallel so the brick walk's distances vary.
4. The applicant justifies the variance stating "the pool setback should not apply to these homes because of the limited space per the lot. The pool will reside within the brick walled courtyard which will abide by the current zoning guidelines for outdoor living space."
5. The lot is 0.20 acres with a proposed single family home that has a 3,212 square foot footprint. The lots and homes are a cluster development to provide smaller lots with larger green spaces and parks within the Village Center. The proposed home is located 11'9" from the northern side lot line and 17'8" from the rear lot line.
6. The applicant is permitted by right to install the same brick patio with a brick wall if there was no pool permitted.
7. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
8. Granting the variance would not adversely affect the delivery of government services.

IV. RECOMMENDATION

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. The Board of Zoning Appeals should consider all the standards used for evaluating a variance to consider if the variance is providing a public benefit. This variance request for a private swimming pool located on a private, undeveloped lot does not appear to serve a public benefit.

There are some notable distinctions between this request and the pool variance request in Ackerly Park heard by the Planning Commission. Ackerly Park contains larger lots, sized between 0.30 and 0.40 acres, than this lot on Ogden Woods which is 0.2 acres. Also, the home in Ackerly Park was located on a loop road that served just the residences there, whereas this lot on Ogden Woods is located on a major through street for cars and pedestrians and has a public alley at the rear of the site.

The city's Planning Commission has cited safety concerns with the proximity to neighbors and publicly traveled roads/alleys when hearing variances related to pools. Another safety concern the Planning Commission has stated that the five foot wall height is not a visual barrier for most people. **Due to the urban nature of this lot and the general area staff recommends denial of the application.**

V. ACTION

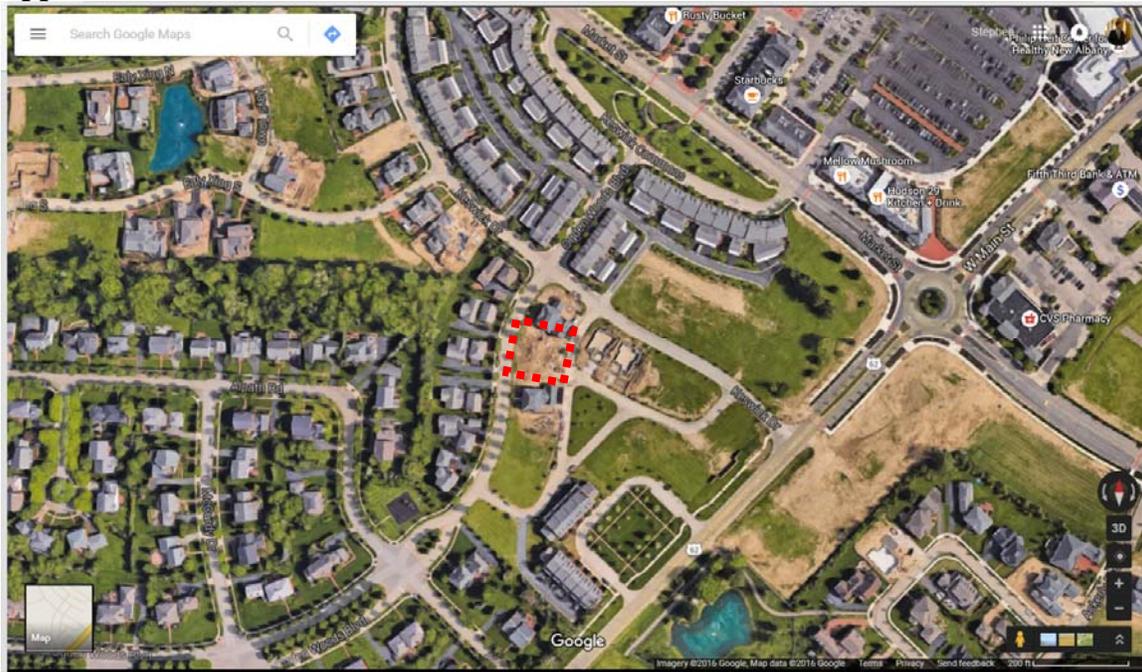
Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate:

A. To approve a variance to Codified Ordinance Section 1173.02(b) to allow a pool to be located 10.5 feet from the side lot line and 9.5 feet from the rear lot line with the following conditions of approval:

1. The swimming pool equipment is within an enclosure and located within the brick walled area.

B. To approve a variance to Codified Ordinance Section 1173.02(b) to allow the pool's walks and paved areas to be located 5.56.5 feet from the side lot line and 106.5 feet from the rear lot line

Approximate Site Location:



Source: Google Maps