



Board of Zoning Appeals

Meeting Minutes

September 24, 2018

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 Chair, Wiltrout at 7:15 p.m.

Those answering roll call:

Mr. Everett Gallagher	Absent
Mr. Kirk Smith	Present
Ms. Andrea Wiltrout	Present
Mr. Kasey Kist	Present
Ms. Marlene Brisk (Council Representative)	Present

Staff members present: Jackie Russell, Clerk and Pam Hickok, Clerk.

Moved by Kist to approve the April 23, 2018 meeting minutes, as corrected; Seconded by Smith. Upon roll call: Smith, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Ms. Wiltrout asked for any additions or corrections.

Ms. Russell stated none from staff.

Ms. Wiltrout swore to truth those wishing to speak before the Commission.

Mr. Kist asked about the need to accept the staff reports into the record.

Mr. Mayer explained the discussions with Planning Commission and the City Attorney regarding the when we adopt the staff report. We have not incorporated that new policy into the others boards at this time.

Mr. Kist stated that it is not on the agenda.

Mr. Mayer stated that it should have been on the agenda and the board should accept the staff reports.

Moved by Kist to accept the staff report and related documents into the record, Seconded by Smith. Upon roll call: Smith, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

V-62-2018 Variance

A variance to the NACO 1998 PUD zoning text, Subarea 8b.01(5) to encroach the front yard setback requirement for a new single family home at 5739 Kitzmiller Rd.

Applicant: Chris McCann

Ms. Russell presented the staff report.

Mr. Dave Beatty, representing the property owner, stated that they want to build the house where the existing house is located to use the existing leach field. Having to move the house would impact the existing leach field and change the design of the house.

Mr. Kist asked what the Smiths Mill Road setback is.

Mr. Mayer stated that it doesn't apply because there is another parcel between the parcel and the Smith's Mill Road. The Smith's Mill Road setback is 50'.

Mr. Kist stated that since he is keeping the same footprint is this considered a new build or a remodel.

Mr. Mayer stated that if one or more walls are maintained then it could be considered a remodel. In talking to the developer, the entire structure is being demolished.

Mr. Beatty stated that we are unable to keep any of the walls due to damage over time.

Ms. Wiltrout asked if any other changes.

Mr. Beatty stated that the driveway will be extended.

Ms. Wiltrout asked if any other variances will be needed.

Ms. Russell stated we reviewed the entire project and no other variances would be needed.

Ms. Kist asked about the motion in the staff report states conditions but no conditions listed.

Ms. Russell stated no conditions.

Mr. Jim Vlock, 5761 Plainview Drive, asked what the property value will be when they are done.

Mr. Beatty stated that he is unsure at this time.

Mr. Vlock stated that he believes that this house will be higher than the rest of the community and is concerned about property taxes rising again.

Moved by Kist to approve V-62-2018, Seconded by Smith. Upon roll call: Smith, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Ms. Wiltrout asked for any board comments. (hearing none)

Meeting adjourned at 7:30 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report September 24, 2018 Meeting

5739 KITZMILLER ROAD SETBACK VARIANCE

LOCATION: 5739 Kitzmiller Road (PID: 222-002523)
APPLICANT: Chris McCann
REQUEST: Variance to NACO 1998 PUD zoning text, Subarea 8b.01(5) to allow a new single family home to be located 131 feet from the centerline of Kitzmiller Road.
ZONING: NACO 1998 PUD, Subarea 8b
STRATEGIC PLAN: Office Campus
APPLICATION: V-62-2018

Review based on: Application materials received August 24 and September 6, 2018.

Staff report prepared by Jackie Russell, Development Services Coordinator.

I. REQUEST AND BACKGROUND

The applicant proposes to construct a new single family home on site and is requesting the following variance:

- A. NACO PUD Subarea 8b.01(5) to allow a new structure to be located 131 feet from Kitzmiller Road, in an area where the minimum setback is 250 feet from the centerline.

II. SITE DESCRIPTION & USE

According to the Franklin County Auditor, the existing single family home on the site was constructed in 1972 and is 1,803 square feet in size. The lot is located within the NACO 1998 PUD Subarea 8b. This property is approximately 2.6 acres and is located at the intersection of Kitzmiller Road and Smith's Mill Road. Surrounding land uses include residential homes and office.

III. EVALUATION

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 Commission 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. RECOMMENDATION

Considerations and Basis for Decision

A. Variance to NACO 1998 PUD zoning text, Subarea 8b.01(5) to allow a new single family home to be encroach the 250 foot setback from Kitzmiller Road.

The following should be considered in the Commission’s decision:

1. NACO 1998 PUD zoning text, Subarea 8b.01(5) states that the minimum building setback is 250 feet from the centerline of Kitzmiller Road.
2. The applicant proposes to build a new single family home 131 feet from the centerline of Kitzmiller Road.
3. The proposed house appears to meet or exceed all other of the required setbacks, and other code requirements for development standards.
4. The variance appears to preserve the “spirit and intent” of the zoning requirement since the original intent of the zoning code was for a residential subdivision, instead of

one single home. The setback requirement derives from the New Albany Strategic Plan's recommended 250 foot roadway corridor setback along rural roads. The roadway corridor's intent is to buffer development along the roadways to maintain the rural character and pastoral aesthetics along New Albany's public streets.

However, since the home is matching or exceeding neighboring, existing single residential lots, it appears the intent of the zoning requirement is met since the rural characteristic of this section of Kitzmiller Road is being maintained.

5. This piece of property was a part of a larger subarea that was rezoned as a part of the NACO 1998 PUD. Since that time, all of the surrounding land that was once in the same subarea has been rezoned to allow for commercial uses. The other homes along Kitzmiller Road do not have the same setback requirement, since they have an R-1 or AG (Agricultural) zoning, which both only require a 50 foot setback.
6. The request does not seem to be substantial given that the surrounding homes are not setback at 250 feet from Kitzmiller Road. Additionally, the zoning text was written with an intent to govern an entire subdivision, not a single home. Varying the setback from the requirement will allow for the street to maintain the existing character. The intended character for the street is an R-1 zoning district which only requires a 50 foot setback. By approving the variance, the applicant will be able to locate the home in a place which appears more unified with the other homes on the street.
7. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The proposed house appears to be in the exact location as the existing home. Additionally, the neighboring homes are located between 130-170 feet away from Kitzmiller Road. Locating the house at 131 will not alter the character of this neighborhood within the city.
8. The applicant states that granting the variance for the house to be built in its existing location will allow them to use the existing lift station and leech field for their new septic tank.
9. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
10. It appears granting the variance will not adversely affect the delivery of government services.

In summary, the variance request does not appear to be substantial given the location of the neighboring homes and character of the street. Additionally, it appears that the spirit and intent of the zoning text requirement is being met because the text was established for a subdivision, instead of a single home. This piece of property was a part of a larger subarea that was rezoned as a part of the NACO 1998 PUD. Since that time, all of the surrounding land that was once in the same subarea has been rezoned to allow for commercial uses. The other homes along Kitzmiller Road do not have the same setback requirement, since they have an R-1 or AG (Agricultural) zoning, which both only require a 50 foot setback. Approving the variance will allow for a more unified location of the residential homes that are existing on Kitzmiller Road.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motions would be appropriate (conditions of approval may be added):

Move to approve application V-62-2018 with the following conditions, all subject to staff approval:

Approximate Site Location:



Source: Franklin County Auditor