



## Board of Zoning Appeals

### Meeting Minutes

January 23, 2017

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, Kriss at 7:01p.m.

Ms. Kriss led the Pledge of Allegiance to the Flag of the United States of America.

Those answering roll call:

Ms. Julie Kriss	Present
Mr. Jesse Thomas	Present
Ms. Alicia Miller	Absent
Mr. Mike Durik	Present
Mr. Everett Gallagher	Present
Ms. Marlene Brisk (Council Representative)	Present (arrived 7:10pm)

Staff members present: Adrienne Joly, Deputy, Director; Stephen Mayer, Planner; Mitch Banchevsky, City Law Director and Pam Hickok, Clerk.

Moved by Gallagher to approve the December 28, 2016 meeting minutes, Seconded by Thomas. Upon roll call: Thomas, yea; Kriss, abstain; Durik, yea; Gallagher, yea. Yea, 3; Nay, 0; Abstain, 1. Motion passed by a 3-0 vote.

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

Ms. Kriss asked for any changes to the agenda.

Mr. Mayer stated no changes to the agenda.

Ms. Kriss invited the public to speak on non-agenda related items. Received no response.

Moved by Thomas to accept the staff report and related documents into the record, Seconded by Durik. Upon roll call: Gallagher, yea; Miller, yea; Thomas, yea; Durik, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

#### **V-93-2016 Variance**

**Variance to Codified Ordinance Chapter 1165 to the paved terrace and pergola location and size requirements at 4561 Neiswander Square (PID: 222-001261).**

**Applicant: Shade Tree Cool Living LLC**

Mr. Stephen Mayer presented the staff report.

Mr. Thomas asked if the pergola is currently installed.

Mr. Mayer stated that it is already built. The city was notified that it was built without a permit. The applicant submitted a permit once it was already built and during review it was discovered that variances were required.

Mr. Thomas asked who the complaint was received from.

Mr. Mayer stated yes it was a neighbor.

Mr. Thomas asked how this came about.

Mr. Mayer stated that it was constructed and then a neighbor called and stated that it didn't have any permits. Our code enforcement officer inspected the property and verified that it was built without a permit. From then we worked with the installer to have a permit submitted.

Mr. Thomas asked what the neighbors' complaint was.

Ms. Hickok stated the concern was the location and how close it was to the property line and the fact that it was built without a permit.

Mr. Thomas stated that his other concern was the metal material. The picture looks much better than expected.

Mr. Durik asked about the roofing material.

Mr. Mayer stated that he is not sure what the roofing material is.

Mr. Colin LeVeque stated that he is the owner of Shadetree Cool Living. We are the manufacture of the product. The cover is a translucent Lexan panel.

Mr. Durik asked if it was an approved product.

Mr. Mayer stated that I don't think it is an approved product so the board can add that to the approval tonight.

Mr. Durik asked when the structure was installed.

Mr. LeVeque stated that is was installed in September.

Mr. Terry Carr stated installed in August.

Mr. Durik stated that it was early fall. When did the city receive a permit?

Mr. Mayer stated that we received the variance application in early December.

Ms. Joly stated that once we receive a complaint it takes some time.

Ms. Kriss asked if the variance was submitted with the permit application.

Ms. Joly explained the process, the permit was submitted, reviewed and denied. That would allow the applicant to determine whether they wanted to relocate the structure, remove the structure or request a variance to allow it to stay as built.

Mr. Gallagher asked if the neighbor suggest a solution.

Ms. Joly stated that the neighbor is in the audience.

Ms. Kriss swore in Mr. Carr

Mr. Terry Carr, 5945 Johnstown Road, stated that back in 1993 Ashton Grove was developed to the south of my house and we had an agreement that nothing was supposed to be built within 30 feet of my property. The house to the west was built closer than that 30 feet. I have a letter from Zoning Appeals that states they were sorry but it was too late.

Mr. Durik asked if it was a written agreement or verbal.

Mr. Carr stated that it was a restriction he asked what the current code states.

Mr. Mayer stated that it is a 30 foot setback.

Mr. Carr stated that I don't want to have one person put something in closer than they should and then have a bunch of things closer than they should be all along my driveway. It should have been denied in August.

Ms. Kriss asked if we heard from any other neighbors.

Mr. Mayer stated that we have not heard from any other neighbors.

Mr. Thomas verified Mr. Carr house location. He asked if his house is higher than the neighbors.

Mr. Carr made comments from the audience about noise.

Mr. Gallagher asked if we have a code section that requires continued screening.

Ms. Joly stated that the board could have a condition of approval.

Mr. Durik asked why a permit was not received.

Mr. LeVeque stated that my staff went through ARC and was approved. A mistake was made in not getting a permit from New Albany.

Ms. Kriss asked if they do other work in New Albany.

Mr. LeVeque stated that we have other projects but many of the other products are just canopy system, not a structure.

Mr. Durik asked if we know if the ARC approval was received.

Ms. Joly stated that it is a best practice that the applicant is notified of other requirements. But we are not able to enforce their standards because we are two separate entities.

Ms. Brisk asked if the material was approved by ARC.

Mr. LeVeque stated that the look was approved.

Mr. Durik asked if he has a copy of the approval.

Ms. Priti Bahtia, 4561 Neiswander, stated that the patio and fence was already existing. We added the tree screening for privacy which is currently taller than the pergola. I don't understand the problem. If he is concerned that he can see the light shades from the top floor of my house, I see his lights, tv, and his debris in the backyard and the noise from the debris. He did complain about the noise with the wind. I don't know if this is a problem with what is existing or another problem that exists. We had approval. We had many people in and out of our backyard without notice. We had an issue with this but didn't say anything. I don't see what the problem is, there is enough privacy with the trees that are taller than the pergola. We had it built because we needed privacy from that backyard.

Mr. Thomas asked if the trees are evergreens.

Ms. Bahtia stated that in 7 years they have grown about 10 feet. They will continue to grow. We installed eight trees because we wanted privacy. We have always had the patio and we have kids. Why is the noise from the wind and structure a problem when the noise from the kids in the neighborhood is not?

Mr. Durik asked if the fence runs the entire length of the property line.

Mr. Mayer stated that it follows the property line. (shown on map)

Mr. Durik verified that the fence is along the entire property line.

Mr. Carr stated no, only about 2/3 of the property line.

Ms. Bahtia stated that we have fencing the entire property line, just not all white fencing. We also need to paint and fix the fence at his request. I don't know what the issue is here, whether it is the pergola or something else.

Mr. Durik asked for a copy of the letter that Mr. Carr referenced.

Mr. Carr provided the letter to the board and stated that promises were broken.

Mr. Durik asked if a problem exists with the patio.

Mr. Carr stated that the homeowner asks about the patio when installed and he didn't care. I asked the contractor on the Saturday they started work and they stated they had a permit.

Ms. Bahtia stated that they were asked to remove the playset. They were the only ones that were requested to remove a playset. The previous owner had that playset for about ten years prior to use moving in. The previous owners did not receive any notices. I drove around the neighborhood and about five playsets were visible from the roadway but only we were given a notice.

Ms. Kriss asked who the notice was from.

Ms. Bahtia stated that it was from the city. We removed the playset as requested.

Ms. Joly asked if the letter was from the homeowners association.

Ms. Bahtia stated that there was no letter, someone came and told us that was in a New Albany car.

Ms. Joly stated that she would need to look into that situation and asked Ms. Hickok.

Ms. Hickok stated that we don't have many regulations on playsets.

Ms. Bahtia stated that she was told that it was visible from the driveway and that is not allowed.

Ms. Joly stated that we would need to look into that. It's easy to confuse the city and the homeowners association.

Ms. Bahtia stated that we did remove the playset. With the way our house is situated there is nowhere else to build anything. We had a brick patio that was existing so we decided to put this up.

Ms. Kriss verified that the height was not an issue.

Mr. Mayer stated that it meets height requirements but not area, location and material.

Mr. Durik asked if they have the ARC approval available.

Mr. Banchefsky stated that we could get it but would question the relevancy.

Mr. Durik stated that he would like to understand if the ARC states on the permit that a city permit is required.

Ms. Joly stated that over the years we have tried to coordinate that many different ways and we have been told by legal that it can't be a factor in our decision because we have our own regulations that we need to enforce. We have to separate the two.

Mr. Gallagher stated that understanding the prospective. I'm not an expert in materials and having the ARC opinion would benefit me. I am very concerned with the letter that Mr. Carr shared with us regarding the 30 foot setback. I understand the patio but I am troubled with the pergola.

Ms. Joly asked to see the letters Mr. Carr provided.

Mr. Durik asked that the letter is entered into the record. He asked Mr. Carr is a solution existed other than tearing down the pergola.

Mr. Carr stated that if we allow this, then what about the guy behind me that builds something and I don't want everyone putting in something. It will look like crap.

Ms. Kriss asked if the board could move on the paver patio but not the pergola.

Mr. Mayer stated that this could be a partial approval and partial table.

Ms. Kriss asked if they are able to go into executive session.

Mr. Banchefsky asked for what purpose. There are specific reasons to enter into an executive session and I'm not seeing one.

Mr. Thomas stated that his concern if we approve parts and table parts is that we cause a larger problem.

Ms. Kriss asked Mr. Carr asked where the noise is coming from.

Mr. Carr stated the noise is coming from the sides of the structure.

Ms. Kriss asked if the homeowner if the sides are retractable. Would you be willing to retract the sides when not in use?

Ms. Bahtia stated yes. They would be willing to raise the sides. I would like to address a comment Mr. Carr said about it looking like crap. Is that the issue, that it doesn't look good? It is my property, my house and I was approved to put it there. You mind your property and I will mind mine.

Mr. Carr stated that it doesn't look good and it is in the 30' setback.

Ms. Brisk stated that we are not hear to determine if it looks good. We have a variance to deal with.

Mr. Banchefsky stated that the patio is noncompliant. We assume that it was installed when the house was built and we didn't have the level of review that we do now. The issue tonight is the pergola that it was built without a permit and it was determine that it didn't meet code for three reasons. The question is - Is a variance warranted?

Mr. Durik stated that the patio has been there a long time without complaints and granting that variance is to clean up something that has existed for quite some time. The pergola was built without a permit, not to a current code regarding setbacks and materials. We would go through a similar process if they had submitted the variance prior to building the pergola.

Ms. Kriss stated that we would have gone through the same process including notifying the neighbors.

Mr. Banchefsky stated that these are difficult issues.

Mr. Gallagher stated that this issue has come up in the past for Mr. Carr and he has taken action. The city has followed up him and he was given assurances. Had that process worked properly and given the history I would feel differently. I would approve the patio but not the pergola because of Mr. Carr's objection. If something could be worked out between Mr. Carr and the applicant that would be a great solution.

Ms. Kriss stated that we have in the past tabled applications to allow the parties to work on a solution. She asked the applicant and neighbor if this was an option.

Mr. Carr stated no the setbacks are where they are supposed to be.

Moved by Durik to approve variance for the existing paver patio and deny the variance requests for the pergola regarding materials, area and setbacks. Looking at the Duncan points 2 & 3. Substantial and character of neighborhood will be altered, built without a permit, Seconded by Gallagher.

Mr. Banchefsky requested that the board revised the motion and referred to the criteria listed in the staff report.

Moved by Durik to approve variance for the existing paver patio and deny the variance requests for the pergola regarding materials, area and setbacks. , Seconded by Gallagher. Mr. Durik stated that he would add to the motion looking at the Duncan factors two and three that the variance is substantial because it varies is three criteria, the character of neighborhood will be altered with respect to the adjoining properties and it was built without a permit. Mr. Gallagher seconded the revised motion.

Mr. LeVeque asked if we meet the criteria except for setback can we resubmit. Other areas of New Albany have closer setbacks that have pools etc. that seem not to be a detriment.

Ms. Kriss verified the process that if they submitted an application for building permit that was denied because the size would remain the same then it would come back to this board.

Ms. Joly stated that if you have a new proposal schedule a meeting for Monday morning to meet with our zoning officer.

Mr. LeVeque stated that he needs to know what detrimental to the neighborhood means if he is going to resubmit.

Ms. Joly stated that I think you need to look at something that meets code because I don't think this situation with the location will change. I would offer that we are looking to change this part of the code but right now they can't encroach within the 30' setback.

Mr. Durik stated that we can't comment on a possibility. It falls under several categories for variance which is why it is substantial.

Ms. Kriss stated that part of the issue is that the structure was installed without a permit and now we have multiple variances.

Mr. Banchefsky stated that the motions should be separated and stated in the affirmative.

Moved by Kriss to approve V-93-2016 (C) to allow a paved terrace to be setback approximately 14 feet, 3 inches from the rear lot line where code requires a minimum setback of 20 feet, Seconded by Gallagher. Upon roll call: Thomas, yea; Kriss, yea; Durik, yea; Gallagher, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Moved by Kriss to approve V-93-2016 (A) to allow a pergola to be 252 square feet in area where code permits a maximum of 200 square feet, (B) to allow a pergola to be setback approximately 14 feet, 3 inches from the rear lot line where code requires a minimum setback of 30 feet & (D) to allow a pergola to be constructed of metal where code only permits wood, brick, stone, screen or any combination thereof, Seconded by Gallagher. Upon roll call: Thomas, no; Kriss, no; Durik, no; Gallagher, no. Yea, 0; Nay, 4; Abstain, 0. Motion fails by a 4-0 vote.

Meeting adjourned at 7:57 pm.

Submitted by Pam Hickok



# APPENDIX



## Board of Zoning Appeals Staff Report January 23, 2017 Meeting

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### 4561 NEISWANDER SQUARE PERGOLA VARIANCE

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LOCATION: 4561 Neiswander Square (PID: 222-001261)  
APPLICANT: Shade Tree Cool Living, LLC  
REQUEST: A. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be 252 square feet in area where code permits a maximum of 200 square feet.;  
B. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 30 feet.  
C. Variance to Codified Ordinance Chapter 1165.04(c) to allow a paved terrace to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 20 feet.  
D. Variance to Codified Ordinance Chapter 1165.04(e)(3) to allow a pergola to constructed of metal where code only permits wood, brick, stone, screen or any combination thereof.  
ZONING: R-4 (Single-Family Residential District)  
STRATEGIC PLAN: Neighborhood Residential District  
APPLICATION: V-93-2016

Review based on: Application materials received December 7, 2016 and January 9, 2017.

*Staff report prepared by Stephen Mayer, Community Development Planner.*

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#### **I. REQUEST AND BACKGROUND**

The applicant requests the following variances for a pergola and paved terrace in the rear yard of a single family residence:

- A. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be 252 square feet in area where code permits a maximum of 200 square feet.;
- B. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 30 feet.
- C. Variance to Codified Ordinance Chapter 1165.04(c) to allow a paved terrace to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 20 feet.

- D. Variance to Codified Ordinance Chapter 1165.04(e)(3) to allow a pergola to constructed of metal where code only permits wood, brick, stone, screen or any combination thereof.

The applicant installed a pergola on an existing brick paver in the rear yard of this property prior to being issued a permit for construction. Staff, during its review of the application, determined multiple variance for the pergola are required to be permitted as built. Staff also realized during their review of this permit the existing brick paver patio does not meet the required setback requirements. Staff recommended an additional variance be requested to correct the patio's existing, non-conformity.

## **II. SITE DESCRIPTION & USE**

The site is currently has a single family home constructed on it in 1996 according to the Franklin County Auditor and is within the section 6 of the New Albany Country Club. The lot is 0.50 acres in area, which is larger than most surrounding properties in this section of the Country Club because the homeowner purchased and combined a portion of the neighboring lot. The neighboring properties have single-family homes constructed on the sites.

## **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 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. RECOMMENDATION**

#### ***Considerations and Basis for Decision***

#### **A. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be 252 square feet in area where code permits a maximum of 200 square feet.**

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

1. Codified Ordinance Chapter 1165.08(e)(2) states the area of an open-sided structure may not exceed four percent (4%) of the unimproved required rear yard or 200 square feet whichever is less.
2. Staff estimates the required rear yard is approximately 7,500 square feet. Four percent (4%) of this space totals 300 square feet, so the 200 square feet total applies.
3. The applicant states the pergola was placed over an existing brick patio. Because of the orientation and configuration of the house and patio, this was the only viable place to put the pergola. Any other location would be difficult based on cost and relocation of egress from the house.
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The pergola is not visible from the street and the rear property line is heavily landscaped by a solid wood fence and tall arborvitae plantings, both of which are located on top a small mound.
5. The request does not seem to be substantial given the homeowner has had the brick patio in the rear, which has been used for active outdoor space, for some time. The pergola allows for additional privacy between this homeowner and the lot behind them.
6. The pergola is 10 feet in height. The existing arborvitae screening on the mound along the rear property line appears to be as tall, or taller, than the pergola.
7. Staff can see the brick paver patio existing at least as early as 2004 through historical Google Earth aerial views.
8. It appears there are 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. The lot has a very small backyard due to the shape of the lot. This lot unique because it is much wider than it is deep. These special conditions and circumstances do not result from the action of the applicant.
9. The applicant is permitted by right to install a swimming pool at almost same distance (15 feet) from the rear property line. Moreover, a detached garage or carport only has to be setback 10 feet from an adjoining lot lines, and a deck only has to be 5 feet from side or

rear property line. It does not appear a pergola is more impactful to surrounding residences than these items.

10. It appears 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.
11. It appears granting the variance will not adversely affect the delivery of government services.
12. According to the Franklin County Auditor the house is 3,341 square feet in size and is 2.5 stories in height. Even though the applicant is requesting an additional 50 square feet of area, it is still small compared to the home. The home has 1,708 square foot building footprint. 252 square feet is only 14.7% of the building's footprint which is a small amount and results in appropriate scale to the home.
13. The size regulation seems to be intended to achieve an appropriate scale between pergolas (and other open sided structures), the lot that they sit on, and the primary structure. Strict application of the regulation on lots of this size would not achieve a scale that is appropriate.

**B. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 30 feet.**

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

1. Codified Ordinance Chapter 1165.08(e)(4) requires all open-sided structures shall be located in the rear yard buildable area. This area is defined as the interior lot area bounded by the rear yard setback line and side yard setback lines. The property's rear yard setback is 30 feet for buildings. Therefore the pergola can be no closer than 30 to the rear lot line per the code requirements.
2. The home is constructed 30 feet from the rear lot line thereby no allowing any additional buildable area. The pergola's location ranges between 14 feet, 3 inches and 16 feet, 5 inches from the rear lot line.
3. The applicant states the pergola was placed over an existing brick patio. Because of the orientation and configuration of the house and patio, this was the only viable place to put the pergola. Any other location would be difficult based on cost and relocation of egress from the house.
4. It appears there are 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. The lot has a very small backyard due to the shape of the lot. This lot unique because it is much wider than it is deep. These special conditions and circumstances do not result from the action of the applicant.
5. The applicant is permitted by right to install a swimming pool at almost same distance (15 feet) from the rear property line. Moreover, a detached garage or carport only has to be setback 10 feet from an adjoining lot lines, and a deck only has to be 5 feet from side or rear property line. It does not appear a pergola is more impactful to surrounding residences than these items.
6. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The pergola is not visible from the street and the rear property line is heavily landscaped by a solid wood fence and

tall arborvitae plantings, both of which are located on top a small mound.

7. The request does not seem to be substantial given the homeowner has had the brick patio in the rear, which has been used for active outdoor space, for some time. The pergola allows for additional privacy between this homeowner and the lot behind them.
8. The pergola is 10 feet in height. The existing arborvitae screening on the mound along the rear property line appears to be as tall, or taller, than the pergola.
9. It appears 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.
10. It appears granting the variance will not adversely affect the delivery of government services.

**C. Variance to Codified Ordinance Chapter 1165.04(c) to allow a paved terrace to be setback approximately 14 feet, 3 inches from the rear lot line where codes requires a minimum setback of 20 feet.**

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

1. Codified Ordinance Chapter 1165.04(c) states in a residential district, an open, uncovered porch or paved terrace may project into a required rear yard, if a minimum distance of 20 feet is maintained to any rear lot line.
2. The application shows the paved terrace is located almost exactly where the pergola is located. The pergola's location ranges between 14 feet, 3 inches and 16 feet, 5 inches from the rear lot line.
5. Staff realized during the review of the pergola permit the existing brick paver patio does not meet the required setback requirements. Staff recommended an additional variance be requested to correct the patio's existing, non-conformity. Staff can see the brick paver patio existing at least as early as 2004 through historical Google Earth aerial views.
6. It appears there are 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. The lot has a very small backyard due to the shape of the lot. This lot unique because it is much wider than it is deep. These special conditions and circumstances do not result from the action of the applicant.
7. The applicant is permitted by right to install a swimming pool at almost same distance (15 feet) from the rear property line. Moreover, a detached garage or carport only has to be setback 10 feet from an adjoining lot lines, and a deck only has to be 5 feet from side or rear property line. It does not appear a paver patio is more impactful to surrounding residences than these items.
8. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The paver patio is not visible from the street and the rear property line is heavily landscaped by a solid wood fence and tall arborvitae plantings, both of which are located on top a small mound.
9. It appears 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.
10. It appears granting the variance will not adversely affect the delivery of government services.

**D. Variance to Codified Ordinance Chapter 1165.06(e)(3) to allow a pergola to be constructed of plastic and metal where code only permits wood, brick, stone, screen or any combination thereof.**

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

1. Codified Ordinance Chapter 1165.06(e)(3) requires an open-sided structure's roof surfaces shall be metal, seal-tab asphalt shingles, clay tile, slate, or wood shingles. All other finished surfaces shall be wood, brick, stone, screen, or any combination thereof.
2. The pergola is constructed of a semi-clear plastic roof and aluminum metal posts and beams.
3. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The pergola is not visible from the street and the rear property line is heavily landscaped by a solid wood fence and tall arborvitae plantings, both of which are located on top a small mound.
4. It appears 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.
5. It appears granting the variance will not adversely affect the delivery of government services.

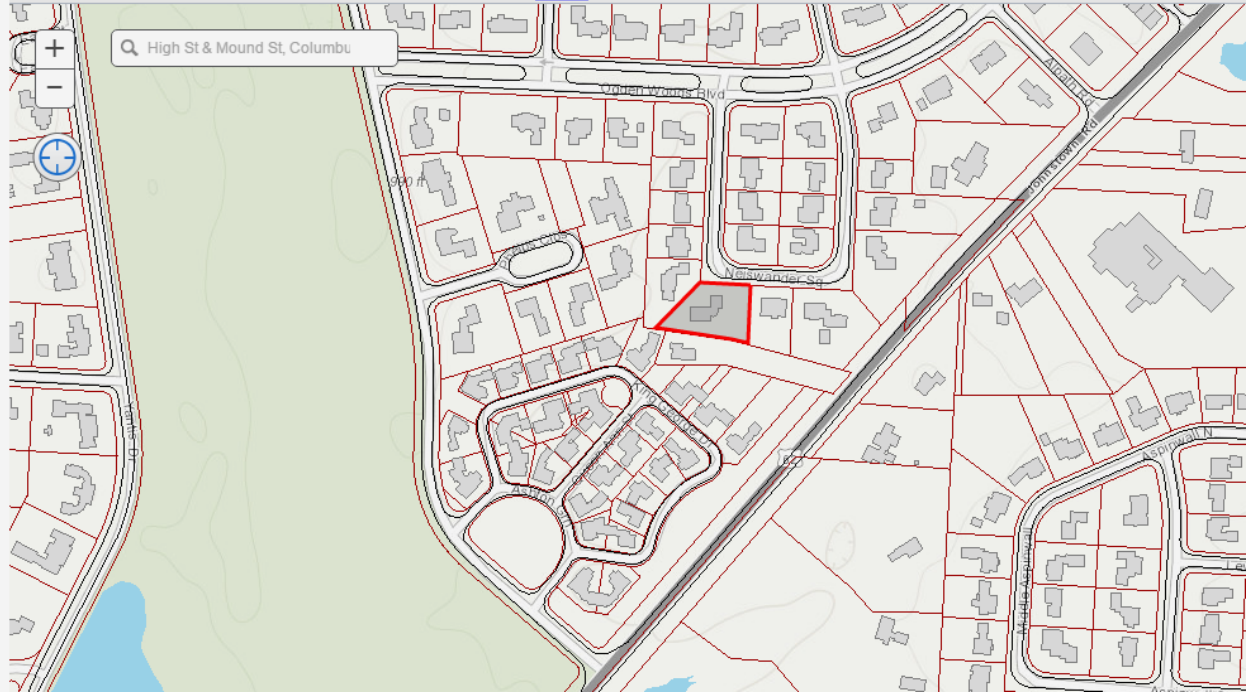
In summary, the variance requests do not appear to be substantial given the homeowner has had the brick patio in the rear, which has been used for active outdoor space, for some time. The pergola allows for additional privacy between this homeowner and the lot behind them. Therefore it seems reasonable that by adding a pergola there is no change to how the area is being used. The pergola itself appears to be very well screened from neighbors and is not visible from the public street. The lot has a very small backyard due to the shape of the lot. This lot unique because it is much wider than it is deep. These special conditions and circumstances do not result from the action of the applicant.

**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-93-2016 based on the findings in the staff report.**

**Approximate Site Location:**



Source: Franklin County Auditor