



Planning Commission

Meeting Minutes

July 17, 2017

7:00 p.m.

New Albany Planning Commission met in regular session in the Council Chambers of Village Hall, 99 W Main Street and was called to order by Planning Commission Chair Neil Kirby by at 7:05 p.m.

Neil Kirby	Present
Brad Shockey	Present
David Wallace	Present
Kasey Kist	Absent
Hans Schell	Present
Sloan Spalding (council liaison)	Absent

Staff members present: Stephen Mayer, Planner; Jackie Russell, Clerk; Ed Ferris, City Engineer; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Moved by Mr. Wallace, seconded by Mr. Schell to approve June 19th minutes, as corrected. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, abstain; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 1. Motion passed by a 3-0

Mr. Kirby swore to truth those wishing to speak before the Commission.

Mr. Kirby asked for any changes or corrections to the agenda.

Ms. Russell stated none.

Mr. Kirby's invited the public to speak on non-agenda related items.

Moved by Mr. Wallace, seconded by Mr. Schell to accept into the record the staff reports and related documents. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

V-34-2017 Variance

Variance to the Straits Farm Zoning Text Section VI (A)(7) to allow a paver patio to encroach the 20 foot rear yard setback.(PID: 222-004616).

Applicant: John Gleason

Ms. Jackie Russell presented the staff report.

Mr. John Gleason, representing the applicant, stated that the current owner is MI Homes of Central Ohio and present tonight are the proposed homeowners. This is something we found out about on the same day as the application deadline for this meeting. All along MI had indicated to the proposed homeowners that they could build the patio that they wanted. I believe that, as our application indicates, we satisfy all of the requirements in the code for the granting of a variance. We understand staff wanting to add arborvitae and would like to work with staff once construction begins, which will not be until next spring. An application has been submitted to ARC for their approval. We will work with staff and ARC to satisfy any additional requirements for the arborvitae.

Mr. Kirby asked if the New Albany Company subdivided the lots and then sold to MI Homes.

Mr. Mayer stated correct.

Mr. Kirby asked if there are minimum square footage for this subdivision.

Mr. Mayer stated that we have a minimum city code square footage but they have pre-approved elevations for this subdivision, so they are not true custom homes.

Mr. Kirby asked the applicant if they're aware of a square footage minimum for these lots.

Mr. Gleason responded that he doesn't know.

Mr. Kirby stated that he was trying to determine if we were stuck with a requirement for a large house on a small lot and why is this a surprise. Will we see more of these?

Mr. Mayer stated that I don't think we will see any more of these. Only a few empty lots left. This property is different and unique in this subdivision because of the pinch point with the curve in the road.

Mr. Wallace stated that the problem is not the lot size but that the builder has decided to use track housing with pre-approved designs that don't fit on the lots. They didn't re-design the house instead they come here to ask for a variance. They could go back to the drawing board and design a smaller house. Have you talked to MI about that?

Mr. Gleason stated that we raised the issue with MI Homes and they basically, they put the homeowner in a difficult position which is one of the reasons we are here. That has been part of the deal the whole time and we were set to close and we've told them we may not close.

Mr. Wallace asked if they have closed yet.

Mr. Gleason stated no. The house is built, they are laying sod today. We are supposed to close on Thursday.

Mr. Wallace confirmed that they have not purchased the house yet and could still back out.

Mr. Gleason stated no, this is not a fight that I don't really want to

Mr. Shockey stated that he thinks this is a typical reason for a variance.

Mr. Schell asked if they have tried to re-design the patio area that would work.

Mr. Gleason stated that this design is the one that fits the home and provides the best use of it.

Mr. Shockey stated that it is a true hardship for the prospective homeowners. For them to cancel a closing and go back onto the market.

Mr. Wallace stated that they are not the homeowner yet. If we deny the variance and they back out of the deal then hopefully they don't have any adverse repercussions but we would still have a house with no patio in an area that patios are important.

Mr. Kirby asked if the lot behind this property part of the Ackerly Farm extension.

Mr. Mayer correct.

Mr. Kirby asked what the setbacks are for that section.

Mr. Mayer stated that he was not sure.

Mr. Wallace stated that your clients need to recognize that the squeeze will work both ways.

Mr. Gleason stated that we understand that and don't have a problem.

Mr. Wallace asked if that is the minimum square footage to create a usable space on the patio.

Mr. Gleason stated that according to the landscape architect yes, this is what is suggested.

Mr. Shockey stated that I would have a difficult time if this backed up to the existing homes on Ackerly Farms. This is a different situation.

Mr. Wallace stated that when a house is built they will have the view of what is existing.

Mr. Shockey stated that the lot is wider so they may have a different orientation for the house. It was a big talking point for the existing homes on Ackerly Farm and if this was a home backing up to those it would be different. But this is a hardship here, regardless of why it happened.

Mr. Wallace stated that the problem here is that instead of MI realizing that they weren't going to meet the setbacks, they built the house and they made it someone else's problem.

Mr. Shockey stated that it is a good argument but not sure that it's in the best interest of the family.

Mr. Kirby asked if we have any input from the property owner on Ackerly Farm.

Mr. Gleason stated that we have not heard from anyone.

Mr. Kirby asked if they were notified of the meeting.

Mr. Mayer stated all property owners within 200 feet.

Mr. Schell asked if staff received any contact from properties on the west side.

Mr. Mayer stated no.

Ms. Shelly Gupta, 4530 Ackerly Farm Road, showed on the map where her house is located. Continued by stating that she has some concerns with the proposed variance. We built the home a few years ago and we were subject to a lot of rules and regulations, some of which we wanted to change and some of which I believe are minor compared to a 40% reduction in the lot edge. We complied with the rules and didn't make the changes. It can be frustrating at the time but overall it does contribute to the uniformity of the neighborhood which is why the rules are in place. They are not designed for each individual homeowner, they are designed for the entire neighborhood to help with property values. Part of the issue there are three homes in a row being built in succession. Yes, there is a slight angle to that but there is not a visual difference at the back yards. How can you set a precedent for this home and then not allow it to continue. Some of the other neighbors in Ackerly attend previous meeting. There really has not been any attempt to create privacy, which may have helped with these lots being so tight and abutting lots that are much larger. I think that would be one step but my biggest concern is I don't see how this would stop any other homeowner. There is one house that is almost complete, one starting framing and then an existing house with a patio that I don't think meets

setbacks. It would look awkward if you have four house with only one further back.

Mr. Shockey asked what the elevation of the patio.

Prospective property owner stated that it has steps down to the ground level patio with sitting wall because the land slopes.

Mr. Shockey stated that it is a sitting wall. We are proposing some screening. Sometimes setbacks depend on the structure being built. Visually there is more projection than a ground level patio. Each time a variance is heard, all variance requests are different. There are conditions that are unique that play into the decision as well as possible hardship. Maybe MI didn't pay enough attention at the beginning but I still say that to me this is a homeowner that needs a variance. Not precedent setting because of the uniqueness of the lot and the landscape plan versus a structure.

Mr. Gleason stated that this is not a structure and if you look at the pinch point this is the most unique lot in this subdivision. The mailing list of property owners included nine neighbors.

Mr. Kirby asked if the steps are down to the patio or to the yard.

Mr. Gleason stated that they are down to the patio in the center and then steps to the yard. The yard slopes away from the house significantly.

Mr. Schell asked if you re-designed the patio what would it look like. Do you take out the circular items? Not a reasonable option.

Mr. Kirby asked if the grade slopes to the west.

Mr. Gleason confirmed that the tree line is the low point but the trees stop two houses away from this one.

Mr. Kirby stated that you basically have a half wall because of the two feet above the patio and the slope of the yard.

Prospective property owner stated that is correct (provided pictures to board of existing conditions)

Mr. Kirby asked about the type of camera

Property owner responded that it was a camera with a wide angle lens.

Mr. Shockey stated that this appears to have two seating areas would you be willing to

Prospective property owner stated that they would be willing to compromise.

Mr. Gleason stated that if you reduce the size you will take it from a 4 person to a 2 person sitting area.

Mr. Shockey stated that if the group is having an issue with the patio - could you reduce the left circular area as a compromise.

Mr. Wallace asked what the circular area.

Mr. Gleason stated that it is a sitting area.

Mr. Kirby asked what materials.

Mr. Gleason stated that the pavers are Washington pavers and the verslock wall system.

Mr. Wallace asked if it the different design are the same level patio.

Mr. Gleason confirmed that it is just a flat sitting area.

Mr. Wallace asked why a patio with walls instead of a deck.

Prospective property owner stated that the deck design but we felt like the patio was a more appropriate design and reasonable request. The deck would have been elevated. We could put in a deck but it wouldn't look nice, we wanted to offer something more reasonable for us and the neighbors.

Mr. Wallace just wanted to know the thought process. With the deck you wouldn't lose the area for the steps therefore you may be able to make it smaller. There are pluses and minuses to both options.

Mr. Kirby thanked them for the pictures - they were helpful.

Ms. Property owner

Mr. Schell asked why a representative from MI isn't present.

Mr. Gleason stated that MI said that it was a homeowner issue. I did get approval from them to file the application. I think if we don't close on this property I think the next homeowner will also be here for a variance.

Mr. Kirby asked Mr. Gleason what the orange strips on the picture are. Picture #4 has a stake - is that the 16' marker.

Mr. Gleason stated no, it is the utilities marker.

Mr. Wallace asked if the topography of the lot on Ackerly Farm have the same slope.

Mr. Gleason stated that he believes it is flatter.

Prospective property owner stated that it depends how they build. Our lot looked much flatter until the house was built.

Mr. Schell asked if the variance is not approved would you close on the house.

Mr. Kirby stated that you don't have to answer that.

Mr. Wallace asked if the additional landscaping covered.

Prospective property owner stated that the landscaping allowance would not include this screening.

Mr. Gleason stated that it is a discussion we still need to have with MI.

Mr. Wallace asked if we can condition the variance on who pays for the landscape.

Mr. Banchefsky stated no.

Mr. Kirby confirmed that you have MI permission to file this application but you are not representing MI.

Mr. Gleason stated correct, well I am representing the owner and proposed homeowner.

Mr. Kirby stated that you must represent MI because they are the current owner.

Mr. Shockey stated that we don't know what the contract says and I don't want to get into any of that. This is a variance request.

Mr. Kirby asked for any other questions and hearing none. He asked if the arborvitae is something you want or something you feel you need to have. If you and your neighbor have grass you land will appear larger. Given your choice which would you prefer the open view or the privacy with screening.

Mr. Gleason stated that the landscape architect did not show any landscaping. I think the option would be not to have it but it was a recommendation by staff.

Mr. Kirby asked if we can have the arborvitae installation based upon when the lot behind them is built upon or a time limit.

Mr. Banchefsky stated that yes if you can determine the trigger.

Mr. Kirby stated that within one year of occupancy of the neighbor.

Mr. Shockey stated that he thinks it's a bad idea.

Mr. Wallace stated that if we approve the variance as recommended by staff they are required to install the arborvitae. So do you want the option? We need to tie it to an event.

Mr. Gleason stated that he likes that option so the neighbor has some option. We still need NACO ARC approval for the patio.

Mr. Kirby stated that we could approve this and NACO ARC could say no.

Ms. Gupta stated that I would like a minimum of privacy screening because the issue is how close the patio is to the neighbor's property. That is the issue is how close the houses are. The arborvitae don't provide a lot of screening. It would be more of an issue without screening.

Mr. Wallace asked if we can approve a variance that may not be able to be executed.

Mr. Kirby stated that we were provided four pictures for the record that have been number on the backs.

Mr. Wallace stated that staff added a condition about the arborvitae screening. Are we going to change that?

Mr. Shockey stated that we can just take out arborvitae and required screening subject to staff approval.

Mr. Shockey moved to approve V-34-2017 subject to the following condition that all sides of the patio be screened with landscaping consistent with other homes in the Country Club Communities and subject to staff approval, seconded by Mr. Schell. Upon roll call vote: Mr. Kirby, no; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 1; Abstain, 0. Motion passed by a 3-1 vote.

Mr. Shockey stated that the application does not appear, which you will find in the summary of the staff report, to be substantial, can't be solved in some other manner due to the irregularities of the lot, the shape of the lot appears to deprive the homeowner of usable patio space and this is a special condition and the circumstance doesn't result from the action of the applicant or can't be solved in any other manner other than granting the variance.

Mr. Wallace stated that I disagree with Mr. Shockey, I think this could have been prevented by the current property owner. This is unique because the

structure has been built and it would be a tremendous cost to remove the structure to be in compliance. I agree that it can't be solved by a manner other than a variance. All factors considered as a whole and the unique character of the property, the prospective property owners are here and willing to compromise I will vote yes.

Mr. Kirby stated that he doesn't believe that it meets the Duncan criteria. The applicant is MI Homes and they built the house and did the grading. I don't think we were forced to have the grade point as high as it is, had they built the house lower. I would not have a problem with a flat patio but this will have a castle effect on the back side because of the grade. I have sympathy for the prospective homeowners but none for MI Homes.

With no further business, Mr. Kirby polled members for comment and hearing none, adjourned the meeting at 8:00 p.m.

Submitted by Pam Hickok

APPENDIX



Planning Commission Staff Report July 17, 2017 Meeting

7843 STRAITS LANE – PATIO SETBACK VARIANCE

LOCATION: 7843 Straits Lane (PID: 222-004616)
APPLICANT: John A. Gleason, c/o Donald H. and Barbara A. Siegfried
REQUEST: Variance to Codified Ordinance 1165.02(c) to allow a patio to be located approximately 12 feet from the property line where code requires a 20 foot rear yard setback
ZONING: I-PUD New Albany Straits Farm Zoning Text
STRATEGIC PLAN: Village Center Mixed Use
APPLICATION: V-34-2017

Review based on: Application materials received June 16 and 30, 2017

Staff report prepared by Jackie Russell, Community Development Clerk.

I. REQUEST AND BACKGROUND

The applicant is requesting a variance to allow a paver patio encroach the rear yard setback by approximately twelve (12) feet on the right and nine (9) feet on the left. According to the Straits Farm Zoning Text the minimum rear yard building setback for lots along the west property line of the subdivision shall be twenty (20) feet. Due to the irregular shape of the lot, the rear yard setback is diagonal on this property so the patio encroaches at various distances.

II. SITE DESCRIPTION & USE

The site currently has a single family home being constructed on it. The adjacent properties are all zoned for residential. This site is located within Section 27 of the New Albany Country Club. The Straits Farm subdivision was rezoned and a final development plan for the site was approved in July 2013. Planning Commission placed a condition of approval to change the rear yard setback to 20 feet along the subdivision's west property line at their March 18th, 2013 meeting when the rezoning was approved due to the concerns from adjacent, existing residents along Ackerly Farms Road. The developer met with neighboring residents and it was determined a tree preservation zone would be added between a portion of the two subdivisions where existing residences back onto this subdivision. Council approved the addition of the tree preservation zone on the west property lines in their July 2nd, 2013

meeting. However, although this lot is along the western edge of the subdivision it does not include the tree preservation zone since there were no existing trees and neighbors to buffer at that time.

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

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

1. The zoning text states that rear yard setback for this property is 20 feet. However, in the March 18, 2013 minutes (during the rezoning) discussion occurred which indicates the intent of this setback is to include patios.
2. The house is approximately 23.5 feet from the rear lot line. The applicant is proposing to encroach the 20 foot rear setback by a maximum of 12 feet with a paver patio. However, due to the shape of the rear lot and patio, the encroachment distance varies.
3. The typical rear yard setback for patios C.O. 1165.04(c) is a minimum distance of 20 feet to any rear lot line.
4. The location of this lot is at a "pinch point," causing the dimensions of the lot and setback to be angled, creating an irregularly shaped lot. This is a special condition and circumstance that does not result from the action of the applicant. The front and rear lot lines are straighter on the other properties throughout the subdivision and therefore can accommodate rear yard patios.
5. No residents live in the lots directly behind this property.
6. It does not appear the problem can be solved by some manner other than the granting of a variance. The home is being built, but could not have been reoriented to accommodate the patio.
 - a. The minimum front yard setback is 15 feet from the right-of-way. The home is currently built at 16 feet from the right-of-way.
 - b. The zoning text requires houses to be located orthogonally with respect to roadways. Due to this requirement the home was required to be oriented as shown in the site plan in order to meet code requirements and be consistent with the neighboring homes. It does appear that a variance would still be required even if the home was angled different.
7. Staff recommends a condition of approval requiring all sides of the patio be screened with arborvitae landscaping consistent with other homes in the Country Club communities. This landscaping and patio appear to maintain the essential character of the neighborhood and would not substantially alter or cause the adjoining properties to suffer a substantial detriment, if the application were to be approved.
8. It appears that the variance preserves the spirit and intent of the zoning requirement and substantial justice would be done by granting the variance. If the lot had a typical, non-angled rear property line, the vast majority of the patio would fit within the 20 foot setback area, and only approximately two feet of the patio would encroach the setback line.
9. It does not appear granting this variance will adversely affect the health and safety of persons in the vicinity of the proposed patio.
10. It does not appear that the variance would adversely affect the delivery of government services, if the application is approved.

In summary, the variance request does not appear to be substantial cannot be solved in some other manner due to the irregular of the lot. The location of this lot is at a “pinch point,” causing the dimensions of the lot and setback to be angled, creating an irregularly shaped lot. The shape of the lot appears to deprive the homeowner of usable patio space. This is a special condition and circumstance that does not result from the action of the applicant. It also does not appear the problem can be solved by some manner other than the granting of a variance. The additional screening as recommended by staff will help ensure the character of the general area is preserved.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motions would be appropriate:

Move to approve application V-34-17 to allow the paver patio to encroach the rear yard, subject to the following conditions:

1. All sides of the patio be screened with arborvitae landscaping consistent with other homes in the Country Club communities subject to staff approval.



Source: Franklin County Auditors