



## **Board of Zoning Appeals**

### **Meeting Minutes**

**September 25, 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 Member, Gallagher at 7:00 p.m.

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

Those answering roll call:

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

Staff members present: Stephen Mayer, Planner; Jackie Russell, Clerk and Pam Hickok, Clerk.

Moved by Kist to approve the August 28, 2017 meeting minutes, as corrected; Seconded by Wiltrout. Upon roll call: Gallagher, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Mr. Gallagher swore to truth those wishing to speak before the Commission that included Greg Miller, Mark Tornero and Jim Brown.

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

#### **V-53-2015 Variance**

**Variance requests to Codified Ordinance Chapter 1165.06(a)(3) to allow a recreational structure to exceed the height requirement by 3 feet and to Codified Ordinance Chapter 1165.06(e)(2) to allow a covered patio to exceed the area requirements at 5886 Johnstown Rd (PID: 222-001187).**

**Applicant: New Avenue Architects**

Ms. Russell presented the staff report.

Mr. Greg Miller, New Avenue Architects, stated that we walked the site today because we have not removed trees from the tennis court area at this time. The North/Northeast corner you can see some of the houses which are probably the closest homes to this property. This house was designed for the homeowner to host

their large family for family functions. The recreational structure height was only to match the roof pitch on the house. We don't want to use a flat roof.

Ms. Wiltrout asked why the the open sided structure 200 sf is not enough.

Mr. Miller stated that the homeowner wanted it larger so they have room for multiple tables. They have seven children with spouses and kids. The large family gathering areas are seen throughout the entire house.

Mr. Gallagher stated that the undisturbed south east back yard will still be about the size of a lot in the Fenway subdivision, which is pretty substantial.

Mr. Miller stated that this is a special lot due to the size.

Mr. Gallagher stated that in relation to the impact to the neighbors, this development is less than it might have been.

Mr. Kist asked if staff could explain the difference between the two structures that seem so similar.

Ms. Russell stated that our code lists multiple types of accessory structures which all have different development standards. An open sided structure the height can be 15' but the total area is limited. Storage and recreational buildings can't exceed 10' in height but don't have an area requirement.

Mr. Jim Brown, 4457 Middle Aspinwall, stated that he doesn't have a problem with the structures but wanted to know about landscape plans.

Mr. Miller stated that the landscape plan is still in the planning stages. I think they have plans to screen the tennis court.

Mr. Brown stated that if they are going to screen the tennis court then he has no issue.

Mr. Mark Tornero, 4481 Middle Aspinwall, stated that in the summer you can't see to Johnstown Road but once the leaves fall the screening is not there. Why the height limit and why does it need to be 13'.

Mr. Miller stated that the tennis court structure would need to be a flat roof if we wanted to keep it at the code requirements. We want it to match the house and other structure closely.

Mr. Gallagher stated that structures are typically hidden by the house, mounding or landscaping.

Mr. Mayer stated that we don't have any screening requirements. It only needs to be behind the house and meet the setbacks. We took into consideration the large

setbacks for this lot. The standards were probably determined based on the typical size lot in New Albany.

Mr. Kist asked what type of fence.

Mr. Miller stated that not sure the fence has been determined at this time. We recommend black.

Mr. Kist asked about fence codes.

Mr. Mayer stated that we will need to review that to our fencing requirements.

Mr. Kist stated that I'm assuming that your client will want to provide some screening.

Mr. Miller stated that I don't think that will be an issue.

Mr. Kist asked if staff would review a landscape plan.

Mr. Mayer stated that we will receive a landscape plan but I don't think we have any specific screening requirements for the accessory structures.

Mr. Kist stated that I didn't know if the 10' fence and the 25' setback line would trigger any kind of landscaping.

Ms. Hickok stated no, I don't think so.

Mr. Tornero urged the board to keep in mind the homeowners in the back. Encourage evergreen or year round screening since it seems to be a large event facility.

Moved by Wiltrout to approve V-53-2017, Seconded by Kist. Upon roll call: Gallagher, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Ms. Wiltrout asked the applicant to pass on the screening concerns to the homeowner.

Mr. Miller stated that he would.

Meeting adjourned at 7:21 pm.

Submitted by Pam Hickok

# APPENDIX



## Board of Zoning Appeals Staff Report September 25, 2017 Meeting

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### EAST OF ASHTON- 5886 JOHNSTOWN RD ACCESSORY STRUCTURE VARIANCES

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**LOCATION:** 5886 Johnstown Rd. (PID: 222-004877)  
**APPLICANT:** New Avenue Architects  
**REQUEST:** Variance  
**ZONING:** R-4 Suburban Single-Family Residential District  
**STRATEGIC PLAN:** Neighborhood Residential District  
**APPLICATION:** V-53-2017

Review based on: Application materials received August 25, September 8 and 11, 2017.

*Staff Report completed by Jackie Russell, Community Development Clerk.*

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

The applicant requests two variances for two proposed accessory structures at 5886 Johnstown Rd within the East of Ashton area.

The variances requested are as follows:

- A. Variance to allow an open sided structures to be 324 square feet in area where code permits a maximum area of 200 square feet
- B. Variance to C.O. 1165.06(a)(3) to allow a recreational building to be 13 feet in height where code allows a maximum of ten feet.

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

The property is located at 5886 Johnstown Road within the area known as East of Ashton. The house is located on a 4.3 acre lot. Originally seven lots were located in this area. A lot line adjustment was approved by the city to create three estate lots. The area is known as East of Ashton. This property is the first lot of three new lots on Johnstown Road. The neighboring properties are currently empty lots.

According to the building permit submittal the house is 13,154 square feet. The surrounding uses include single family residential and.

#### **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.*

## **IV. RECOMMENDATION**

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

#### **A. Variance to C.O. 1165.06(e)(2) to allow an open sided structures to be 324 square feet in area where code permits a maximum area of 200 square feet.**

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

1. The property is straight zoned R-4, therefore the city’s codified ordinances apply and are enforced.
2. The open-sided structures section of the codified ordinances requires that, “the area of

an open-sided structure may not exceed four percent of the unimproved required rear yard or two hundred square feet whichever is less”.

3. This home is on a 4.3 acre lot. The single family home, the primary structure, is 13,154 square feet according to the building permit.
4. The applicant proposes the area of the structure to be 324 square feet.
5. 4% of the unimproved rear yard is approximately 897 square feet, therefore the maximum size allowed is two hundred square feet.
6. The applicant states that the structure is designed based on the homeowners intended use, furniture, and seating requirements.
7. The request does not seem to be substantial since it is located on a large lot, and the primary structure is large; it is evident that this open side structure will be an ancillary use to the home, and does not appear to be oversized based on the size of the home and lot.
8. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment.” The home is setback 386 feet from Johnstown Rd. and the lot is highly wooded so it appears the structure will not be easily visible to neighboring lots or Johnstown Road.
9. The accessory structure appears to be an appropriate scale given the size of the primary residence and is appropriately designed to complement the house. It is appropriately designed with consistent materials used on the primary structure.
10. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
11. It appears granting the variance will not adversely affect the delivery of government services.

**B. Variance to C.O. 1165.06(a)(3) to allow a recreational building to be thirteen feet in height where code allows a maximum of ten feet.**

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

1. The property is straight zoned R-4, therefore the city’s codified ordinances apply and are enforced.
2. Codified Ordinance Section 1165.06(a)(3) requires that the height of recreational structures shall not exceed ten feet in height. The applicant proposes this accessory structure to be 13 feet tall.
3. The applicant states that the 13 feet height is necessary to utilize the same roof pitch as the home. The roof pitch also allows the architectural style to be maintained between the home and this structure.
4. This home is on a 4.3 acre lot. The single family home, the primary structure, is 13,154 square feet according to the building permit.
5. Both the recreational structure and the open-sided structure are 13 feet tall. However, the open-sided structure is permitted to be a maximum of 15 feet in height. The variance requests allows the structures to have consistent design and heights.
6. The request does not seem to be substantial since the lot is large and wooded so visibility will be limited to neighboring properties and does not appear to be oversized based on the size of the home and lot.
7. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment.” The accessory

structure appears to be an appropriate scale given the size of the primary residence and it is appropriately designed to complement the house. It is also appropriately designed to be the same height as the other accessory structure.

8. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
9. It appears granting the variance will not adversely affect the delivery of government services.

Staff recommends approval of the requested variances should the Board of Zoning Appeals find that the application has sufficient basis for approval. In summary, all the variance requests do not appear to be substantial given the size of the primary residence, the distance from Johnstown Road and the wooded nature of the lot. The accessory structures are appropriately designed to complement the primary structure and do not appear to be oversized based on the size of the home and lot. It does not appear that granting the variances will 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.

## **V. ACTION**

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

**Move to approve application V-53-2017.**

Approximate Site Location:



Source: Franklin County Auditors