



## Board of Zoning Appeals

### Meeting Minutes

January 22, 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 Vice-Chair, 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:

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|--|---------|
| 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) | Present |

Staff members present: Stephen Mayer, Development Services Manager; Jackie Russell, Clerk and Pam Hickok, Clerk.

Moved by Wiltrout to approve the November 27, 2017 meeting minutes, as corrected; 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.

Mr. Gallagher asked for any additions or corrections.

Ms. Russell stated none from staff.

Mr. Gallagher swore to truth those wishing to speak before the Commission that included Anthony Carstens.

Moved by Wiltrout to accept the staff report and related documents into the record, 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.

#### **V-93-2017 Variance**

**An variance to Codified Ordinance Chapter 1133.05 to allow a carriage home to be built within the 30' rear yard setback and the 10' side yard setback at 3599 Drayton Hall South (PID: 222-001648).**

**Applicant: Keiser Design Group c/o Dan Keiser**

Ms. Russell presented to staff report.

Mr. Kist wanted to verify that neighbors were notified.

Ms. Russell stated that thirteen neighbors were notified.

Mr. Anthony Carstens, 3599 Drayton Hall South, stated that he spoke with his neighbor to the south and they did not have a problem with the variance. The one thing that we liked about that lot is that we don't have anyone behind us. We have tall norway spruces on the south side of our house and trees and brush and the power line easement to the north / west.

Mr. Kist verified the location of the proposed garage on the map.

Mr. Carstens showed it on the map and explained that it was at the end of the driveway.

Ms. Wiltrout asked what will the building be used for.

Mr. Carstens stated that it will have a two car garage for our teenage kids to use and we have aging parents that will be coming to live with us. He asked how the information is relayed to AEP.

Mr. Gallagher asked if AEP was notified of the variance request.

Ms. Russell stated that AEP was notified and the letter was mailed 10 days prior to the meeting.

Mr. Carstens stated that his biggest concern is that AEP will come back and say that the building is too close to the power lines. AEP has been cutting down any trees within 75 feet of the line.

Mr. Gallagher stated that we are granting a variance for your property which your building is located. He asked staff if this property has a right of way or easement for AEP on Mr. Carstens property.

Mr. Mayer stated that we are using the plat for reference which appears to be accurately shown on the site plan. The AEP easement line appears to run along the property line. We are not aware of any additional easements in the area.

Ms. Brisk recommended that if she were the owner she would do a title search of the property to verify any easements. That is not within our purview.

Mr. Carstens stated that they purchased the property in 1998 and built the house and I don't remember ever signing anything to add easements on the property.

Ms. Brisk stated that your construction company should be able to help you with that.

Mr. Gallagher asked for other questions.

Mr. Kist made a motion to approve V-93-2017 with the condition that the homeowner verifies that there are no additional easements regarding AEP. Seconded by Wiltrout.

Ms. Brisk stated that we should not add the condition. All we can say is that we alright with the variance and can't take a position with regard to any third parties.

Mr. Mayer stated that can't speak for any other utility company.

Ms. Brisk stated that all we can do is provide a variance from a specific ordinance but not speak about other issues with the property.

Mr. Mayer stated that we have contacts that we can provide to the homeowner.

Mr. Kist amended the motion to remove the condition and Ms. Wiltrout agreed to the amendment.

Moved by Kist to approve V-93-17, 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.

Meeting adjourned at 7:15 pm.

Submitted by Pam Hickok

## **APPENDIX**



**Board of Zoning Appeals Staff Report  
January 22, 2018 Meeting**

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**GARAGE ADDITION SETBACK VARIANCE  
NACC 11 - 3599 DRAYTON HALL SOUTH**

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LOCATION: 3599 Drayton Hall South  
APPLICANT: Kesier Design Group c/o Dan Keiser  
REQUEST: Variance to Codified Ordinance 1133.05 to reduce the required 30 foot rear yard building setback to 19 feet 2 inches and to reduce the required side yard building setback to 4 feet and 11 inches for the construction of an addition to a single family residence.  
ZONING: R-3  
APPLICATION: V-93-17  
STRATEGIC PLAN: Neighborhood Residential

Review based on: Application materials received December 21, 2017 and January 5, 2018

*Staff Report Completed by Jackie Russell, Development Services Coordinator.*

**I. REQUEST AND BACKGROUND**

The applicant is requesting a variance to Codified Ordinance 1133.05 to reduce the required 30 foot rear yard building setback to 19 feet 2 inches and to reduce the required side yard building setback to 4 feet and 11 inches for the construction of an addition of an attached two-car garage and carriage house to an existing single family residence.

The addition will be located to the rear of the existing structure, in the northwest corner of the property. The proposed structure will be two stories, and 24'-8" by 26'-8", which is approximately 879.7 square feet. According to the Franklin County Auditor, the existing home was built in 1999. The existing home is two-stories and 2,614 square feet.

**II. EVALUATION**

The application complies with 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***

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

1. The proposed addition is an attached garage and carriage home. The proposed building addition will have two garage doors facing the east property line and a man door to access the addition from the driveway. The proposed addition is also accessible through the existing garage. The rear and north side setbacks are the subject of this variance.
2. The garage addition will be accessed from an existing driveway on the property. It appears that this drive will not need to be extended to reach the new garage.
3. The variance does not appear to be substantial due to the size and location of the lot between the two reserves, causing minimal visual impact. There are no adjacent residences located in the northwest corner of the lot, where the proposed addition is located.
4. The proposed addition also only increases the lot coverage to 13%, in an area where the maximum lot coverage is 30%. According to C.O. 1105.02(dd)(2) lot coverage means the ratio of enclosed ground floor area of all buildings on a lot to the horizontally project area of the lot, expressed as a percentage.” According to the definition, pavement is not included.

5. The property appears to have special conditions and circumstances since it has open space immediately adjacent to it to the north and west. Reserve “A” located behind the home is owned and maintained by the New Albany Country Club and is currently being used for storm water detention. Reserve “B” located to the north of the home is a lot covered by a utility easement for an overhead electric line located on the site. The easement states that no improvements can occur on this property.
6. The two reserves are areas of passive open space and do not have residents actively using them.
7. It appears that the essential character of the area will not be substantially altered or suffer a substantial detriment by the approval of the variance since there is no neighboring residences will be impacted by the encroachment of the setbacks to the north and west. Additionally, the architecture is consistent with general area and appears to match the existing structure.
8. It appears that the variance will not adversely affect the delivery of government services, 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**

In summary, staff supports this variance request. Special conditions and circumstances exist which are peculiar to the land and structure involved. In the northwest corner of the lot, where the addition is going, there are no adjacent residences. The lot is surrounded on the rear and north property line two separate reserves which will not have any additional buildings that would be negatively affected by the approval of the variance. These two areas of open space are passive and do not appear they will have people actively using them. The character of the neighborhood would not be substantially altered as a result of the variance as well. The applicant is proposing to use like materials to match the existing house.

#### **V. ACTION**

In accordance with C.O. 1113.06, “Within thirty (30) days after the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance.” If the approval is with supplementary conditions, they should be in accordance with C.O. Section 1113.04. The decision and action on the application by the Board of Zoning Appeals is to be based on the code, application completeness, case standards established by the courts, and as applicable, consistency with village plans and studies.

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

Move to approve variance request V-93-17.

General Site Location:



Source: Franklin County Auditor