



# Planning Commission

Meeting Minutes

March 19, 2018

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 Vice-Chair David Wallace by at 7:02 p.m.

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

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

Moved by Mr. Schell, seconded by Mr. Wallace to approve the February 21, 2017 minutes. Upon roll call vote: Mr. Wallace, yea; Mr. Shockey, abstain; Mr. Schell, yea. Yea, 2; Nay, 0; Abstain, 1. Motion passed by a 2-0

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

Mr. Mayer stated that he would like to remove the small cell design guidelines from under other business. Staff is still working on the draft.

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

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

Moved by Mr. Shockey, seconded by Mr. Wallace to accept into the record the staff reports and related documents. Upon roll call vote: Mr. Wallace, yea Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0

### **VAR-01-2018 Variance**

**Variance to not require a yard light near the sidewalk at the front entry at 4 S. Ealy (PID: 222-004161).**

**Applicant: Sullivan Bruck Architects c/o Gary Bruck**

### **VAR-06-2018 Variance**

**Variance to not require a yard light near the sidewalk at the front entry at 16 Hays Town (PID: 222-004172), 17 Hays Town (PID: 222-004168), 165 Keswick Dr. (PID: 222-004436), ), 12 S. Ealy Crossing (PID: 222-004157), 157 Keswick Dr. (PID:222-004435), 117 Keswick Dr. (PID: 222-004430), 141 Keswick Dr. (PID: 222-004433), 173 Keswick Dr. (PID: 222-004437), 11 S. Ealy Crossing (PID:222-004147),125 Keswick Dr. (PID:222-004431), 109 Keswick Dr.**

(PID: 222-004429), 197 Keswick Dr. (PID: 222-004440), 133 Keswick Dr. (PID: 222-004432), 181 Keswick Dr. (PID: 222-004438), 101 Keswick Dr. (PID: 222-004428), 189 Keswick Dr. (PID: 222-004439), 7 S. Ealy Crossing (PID: 222-004143), 6 S. Ealy Crossing (PID: 222-004160), 5 S. Ealy Crossing (PID: 222-004150), 149 Keswick Dr. (PID: 222-004434), and 25 N. Ealy (PID: 222-004154).

**Applicant: The above property owners.**

Ms. Russell presented the staff reports for V-01-2018 and V-6-2018.

Mr. Wallace stated that he lives on Alpath Road was a notified neighbor and received a letter as a potential interested party. Given the nature of the variance, his proximity doesn't make any difference and doesn't make him inclined to have any bias or interest. Wanted to make the announcement to the group but plan to move forward with hearing and voting on the application.

Ms. Russell continued with the staff reports.

Mr. Shockey confirmed that the coach lamps are gas.

Audience members responded.

Ms. Russell clarified that the gas light are on the piers and the other lights on the house are electric.

Mr. Shockey asked if staff has visited at night and if we know if the lights are LED.

Mr. Mayer stated that staff never visited at night because the city doesn't have any requirements for minimum lighting levels.

Mr. Schell confirmed that the city doesn't have any illumination but the homeowners association could have unique standard for the lighting.

Mr. Mayer stated correct.

Mr. Shockey stated that the spirit and intent is to provide consistency and a certain level of safety for illumination of the sidewalk after dark.

Audience members responded.

Mr. Mayer stated that he believes that they are photo sensor.

Mr. Wallace advised the audience that this dialogue is between the board and staff right now because the microphone can't pick up the responses from the audience. We will provide time to allow everyone to speak. For purposes of a clean record if we can proceed in that manner.

Mr. Shockey asked if the gas lights on the pillars and the electric light on the home are on all night.

Mr. Mayer stated that he is not sure, we would need to ask each homeowner. My understanding that if it is an electric light then it should have a photo sensor.

Mr. Shockey asked if photocells would be required if this was for safety.

Mr. Mayer stated that he believes the gas lights are always on.

Mr. Schell asked where the light post would need to be located per the HOA rules.

Mr. Mayer stated that we did not reach out to the homeowners association but did provide them with the staff report and recommendations. The zoning text states it needs to be near the front of the home so there is some flexibility with the location because of the home designs. The homes in this subdivision are in a more urban environment. There are alternative means to the lighting being with the homes being so close to the sidewalk.

Mr. Shockey stated that he doesn't see a place for the light post to be located.

Mr. Mayer stated that there are no lot coverage requirements in this subdivision so many of the homes have a lot of hardscape.

Ms. Russell continued the staff report.

Mr. Wallace asked that staff focuses on the Ealy homes first. There are definite differences between the Keswick and Ealy homes.

Ms. Russell continued the staff report for 5 S Ealy Crossing.

Mr. Shockey asked what kind of light staff would recommend.

Mr. Mayer stated that we would like to allow for flexibility to the homeowners on their lighting solutions. Each home is a custom home and the way that columns are constructed could limit available options.

Mr. Shockey confirmed that staff recommendation is that this homeowner would require some kind of lighting.

Mr. Wallace asked if staff had a reason that we should hear from staff on all addresses prior to hearing from the applicants.

Ms. Russell stated that she styled the presentation to present each homes existing conditions.

Mr. Mayer stated that to be fair we wanted each home to be evaluated on its own merits and the board can choose how to hear the presentations.

#### Board Discussion

Mr. Wallace stated that we have two separate application, 1 individual application and 1 application with 22 homes. It seems to me that each individual is a separate variance. What is everyone asking for; no lights or use the lighting that exists?

Ms. Russell stated that the request for both application is to not install the minimum one light post at the sidewalk front entry.

Mr. Spalding asked if the homeowners have agreed to the conditions.

Ms. Russell stated that she did not receive any feedback on the staff report from the applicants.

Mr. Wallace stated that we should do them one at a time. Let's go back to 4 S. Ealy Crossing. Asked if any properties have engineering comments.

Mr. Ferris stated no engineering on any of these properties.

Mr. Gary Bruck, Sullivan Bruck Architects, stated that there is not a lot he can add to the staff report. We think that the two gas light suffice. But in reality, you have the two gas lights, two electric lights by the door, one around each corner and lights above each. This property has lots of light.

Mr. Wallace asked if they are in agreement with the staff recommendation of approval.

Mr. Bruck stated yes.

Mr. Shockey asked if the electric lights are on a photocell, LED lights, know light coverage.

Mr. Brooks stated he is not sure.

Mr. Shockey asked if there are safety questions. In granting a variance is the city accepting some level of culpability if there is an injury, kidnapping, etc. because there is not enough broadcast light on the sidewalks. We are not receiving a science for the light coverage. We have been told in the staff report that this was for safety as well as aesthetics. Do we have any role in determining that or is this stand alone.

Mr. Banchefsky stated that he understands the safety concern but don't see that being an issue in terms of liability to the city. We are just trying to resolve a situation that was brought to our attention. However you handle the variance I don't see it being a safety issue where there is liability for the city.

Mr. Shockey stated that the other option is to modify the zoning text so you don't have individual variances. It is just an adjustment to the text for practical reasons. Then each individual home could address the lighting through staff.

Mr. Banchefsky stated that process includes a re-zoning.

Mr. Mayer stated that a text modification is the same process as a re-zoning.

Mr. Spalding stated that the HOA may still have a requirement for the lights.

Mr. Mayer stated that is correct.

Mr. Wallace asked if there is a standard for the amount of light that needs to emit from a light post. If this was a safety issue then we should have scientific standard for sidewalk illumination.

Mr. Schell asked if anyone from the HOA was present.

Mr. Mayer stated no.

Mr. Wallace asked if we know why the HOA filed the complaint if it was for safety or consistency.

Mr. Mayer stated that we don't believe it was for safety, the lamp post is consistently used throughout the Country Club communities.

Mr. Schell asked if staff has heard from any neighbors.

Ms. Russell stated no.

Mr. Wallace asked for public comment for 4 S. Ealy Crossing. (no response) He asked if the applicant has tried to find a way to comply with the code.

Mr. Bruck stated that adding a light post was discussed but adding additional light to a house that is so close to the road would add to confusion of the architecture and not provide significant light to the sidewalk.

Mr. Mayer stated that staff worked with the city architect on each home. If added after the fact it could appear as an afterthought.

Mr. Wallace stated that we will vote on 4 S. Ealy Crossing once the rest of the addresses have been discussed. Asked staff if they had any additional information for 5 S. Ealy Crossing. Verified that this address currently has no lighting and staff recommends that lighting is added. Asked for the homeowner of 5 S. Ealy Crossing.

Ms. Russell stated that the homeowner is out of town.

Mr. Shockey asked who the applicant was for these 23 properties.

Ms. Russell stated that each homeowner is an applicant.

Mr. Shockey stated that the HOA is the complainant and they are not present.

Mr. Mayer stated correct.

Mr. Wallace asked staff to proceed with the next address.

Ms. Russell presented the staff report for 6 S. Ealy Crossing.

Mr. Wallace stated that the single light is a substitute for the post light.

Mr. Shockey asked if it was gas or electric.

Mr. Matt Cash, 6 S. Ealy Crossing, stated that it is a gas light and doesn't turn off. We wanted to design our home to have an area that was private and our entrance is on the side of our home. We showed a light post in the motor court but it illuminated into the home and parking difficulty so we decided to add the light on the outside. We only have about three feet of ground between the sidewalk and wall. My career is to create user experiences, one of the unique things about Ealy Crossing is that we actually have the gas lights to create the atmosphere. With all the houses close to the street you have the illumination from the homes. I have no fear of abduction.

Mr. Shockey stated that he said but not what he meant, not expecting that to happen but you have school kids walking and it is dark during those hours.

Mr. Wallace stated that over the years the lighting needs may change as the trees grow. Confirmed that he agrees with the staff recommendation.

Ms. Russell presented the staff report for 7 S Ealy Crossing.

Mr. Brad Mullin, 7 S Ealy Crossing, stated that he agrees with the staff recommendation. Would like the board to consider two issues. We just moved in in December. We went through two architecture review committees to get approval and no comments were ever made about the light post. There are also homes that have existed for years without the light post and have never been approached in any fashion to try to get them to try to put in a light post. So if something exists for years and no action is taken I'm not sure that you can retroactively make them comply with an ordinance that is selectively applied to them without any due process.

Mr. Wallace stated that this is the due process.

Mr. Shockey stated that you received an occupancy permit that the building inspectors checked and at no time you were not told about the light post. We have heard this before when something happens such as the pool fences. Sometimes these things just happen.

Mr. Wallace stated that we are all charged as citizens to know the laws. This is why we have the variance process. Things happen and we hear over and over that the builder did not tell us and we are here to find the right thing, fair thing for the homeowner, neighbors and the city. This is the due process to explain to us why you should get it. As we go through each of these, if you have anything to say about another address please just raise your hand and we will allow you to speak.

Mr. Spalding stated that we don't have 50 staff members doing inspections or code enforcement. Generally each code issue is from a complaint from the community and that is how it came to our attention. As for 7 S. Ealy Crossing, it doesn't appear that there was ever a light post shown on the site plan.

Ms. Russell presented the staff report for 11 S. Ealy Crossing.

Mr. Wallace stated that the site plan showed a light post that was not installed.

Mr. David Arnold, 11 S. Ealy Crossing, stated that we moved in eight years ago and there was a place to put a light post but we were never told to put it in and received occupancy.

Mr. Wallace asked if he looked at installing the light post.

Mr. Arnold stated that the pictures do not show all of the lights. The two garage lights operate from dusk to dawn that light the driveway. The coach lights by the front door light the walkway.

Mr. Schell asked where the light post would be located.

Mr. Arnold showed on the map an approximate location for a light post.

Mr. Schell asked staff where the lighting should be located.

Mr. Mayer stated that we would be flexible.

Mr. Wallace asked if he is in agreement with the staff condition to install lighting.

Mr. Arnold stated that it won't be easy to install. If I install a light post, I don't know that it will provide light on the sidewalk.

Ms. Joyce Cantisano, 11 S. Ealy Crossing, stated that when we were building the house gas lights would have been an option. It's been eight years without anyone saying anything I guess we are opposed to it but if we have to then I guess we will.

Ms. Russell presented the staff report for 12 S. Ealy Crossing.

Mr. Jeff Angart, 12 S Ealy Crossing, (provided a PowerPoint presentation) thanked everyone for working through this with so many applicants. I'm a little confused for the use of lighting for the sidewalk. I thought the light at the sidewalk was for safety into the home. The light post is allowed to be electric or gas. It is no different than the gas lights on the pillars. Since I put all of this together I wanted to provide some information for the homeowners are not present tonight. The Wall home has three gas lights at the front entry not too far from the walkway. Ealy was always meant to be low level light area. The only street lights are located at the intersections. The ambience in our neighbor is unique and that is why we choose to be in this neighborhood.

Mr. Wallace asked if he was alright with staff recommendation.

Mr. Angart stated yes but I wanted to point out a few other things. I drove through five neighborhoods. In the marketing brochure for Keswick it shows no lights. This ambience has been used to sell New Albany to the outside community. There has never been an issue with safety. The lighting is to create the ambience and to light the walk to the front door. So I took the drive and found the following. Edge of Woods have motor courts without light posts in some homes. Alban Mews has no lighted posts from the sidewalk to the home. There are three light post in the common green space across the street. Some lighting on the home or garage and street lights on the corners.

Mr. Shockey asked if there are city street light in your neighborhood.

Mr. Angart stated only at the intersections.

Mr. Wallace asked if he was now speaking for the homes that have conditions.

Mr. Angart stated yes, continued with his presentation. Lambton on the left stated that there is not light, some street lights. Showed multiple pictures, SR 605, Ackerly Farms, Just showing the inconsistency. Our neighborhood has smaller lot lines and lot coverage.

Mr. Schell asked if Mr. Angart if he disagrees with staff.

Mr. Angart stated that they have lights on the house and he thinks that is enough.

Mr. Ken Hunter, 13 S. Ealy Crossing, stated that this is a general comment. I am probably the only compliant homeowner that is here tonight. Our biggest concern, is that he has two children that goes house to house and in the winter months it is dark at 5:30pm. We go on walks at night and need to take a lantern. It is a safety and security issue. It really dark and scary. My only request is that the solution gets more light into the neighborhood without damaging the aesthetics. Because it scares me when my kids walk at night. We have four gas lights and they don't compare to the light posts for the light output. There needs to be a solution that is good for the community and the homeowners.

Mr. Wallace asked if the gas lights that are present don't provide enough light for safe and easy walking in the neighborhood.

Mr. Hunter stated that if you compare the gas lights and light post. The light post provides a lot more light. I'm not saying that anything needs to be a light post. We get a lot of people walking in the neighborhood that don't live there because it is beautiful neighborhood.

Ms. Russell presented the staff report for 17 Hays Town.

Mr. Wallace noted that the homeowner is not present.

Ms. Russell presented the staff report for 25 N Ealy Crossing.

Mr. Wallace asked if this house has brick columns.

Ms. Russell stated that they have brick pillars by the driveway.

Mr. Wallace asked for the applicant.

Mr. Angart stated that the homeowner is on vacation.

Mr. Wallace stated that this house is the one that I don't know that I agree with staff recommendations for this house. There was a location for lights near the sidewalk. I don't know that this house meets the lighting requirements. I might recommend a condition for this house as well.

Ms. Russell presented the staff report for 16 Hays Town.

Mr. Wallace wanted to confirm that they would have gas lights similar to the other homes.

Mr. Kelly Brown, builder at 16 Hays Town, (provided additional information showing all of the lighting on this property). He stated that there is a combination of eight lamps



around the house; six gas lamps and 2 electric lights. We feel that is plenty of light and appreciate staff support.

Mr. Shockey confirmed that the columns will have gas lights and on all night.

Mr. Brown stated correct.

Mr. Spalding asked where is the light supposed to be; at the driveway or the entrance.

Ms. Russell stated that the zoning text states a minimum of one approved yard light at the near the sidewalk at the front entry and one wall mounted or ceiling hung porch light at the front door.

Mr. Shockey confirmed that is in the zoning text and that why we are here for the variance.

Mr. Wallace confirmed that completed the Ealy homes.

Ms. Russell stated that was correct and continued the staff reports with the Keswick Drive homes as a general discussion because they have a similar treatment.

Mr. Shockey verified that staff believes that all of the Keswick homes meet the intent because of the gas lamps.

Mr. Mayer stated correct at the end of the driveway.

Mr. Shockey stated that on Keswick Drive the sidewalks are illuminated because of the street lamps.

Mr. Mayer stated that there are street lights are only at the intersections.

Mr. Tim Trenary, 101 Keswick Drive, (provided additional information) showing the lights at his homes including the street light. It would be difficult to add a light to the left of his property because it is a shared driveway.

Mr. Wallace asked if he is in favor of the staff recommendation.

Mr. Trenary confirmed that he is in favor of staff recommendation.

Mr. Wallace asked for any other homeowners on Keswick Drive.

Mr. Gary Martz, 165 Keswick Drive, stated that he appreciates the commission and the staff recommendation. The zoning text is vague and broad. We were attracted to the neighborhood because of the low light levels. Even though we are on Keswick Drive when we look at our back door we see Ealy, so the lighting in Ealy is important as well. Disagrees with the previous gentleman, plenty of light in the neighborhood to walk around. I would urge to maintain the gas lighting in the extent that you can in both Keswick and Ealy and ties into the value of the neighborhood and homes.

Ms. Cantisano stated that Ken kids are not out walking out at night and he is always with his kids. We don't even see a lot of flashlights going past our house. We see a lot of people

walking and no one seems to have a problems walking in the dark. Ken has his opinion and the gas light is plenty. It's supposed to be a low light neighborhood, Ken has very bright lights on his house. In addition to the lights he discussed, he also has 5 lights on his house.

Mr. Mullin stated that the zoning text architectural standards lights section 4 stated that gas lights shall be permitted on the light post.

Mr. Wallace asked if staff agrees with that statement.

Mr. Mayer stated that the section states that every unit needs an approved yard light and the last sentence states that gas light or electric lights are permitted.

Mr. Wallace confirmed that staff has not stated that the gas lights need removed.

Mr. Mayer stated no, staff likes the gas lights.

Mr. Spalding confirmed that staff is generally recommending that the variance is approved with current conditions except for three homes that should be approved with a condition of additional lighting, which includes 5 S Ealy Crossing, 11 S Ealy Crossing, 17 Hays Town.

Mr. Mayer stated that is correct.

Mr. Spalding that confirmed that Mr. Wallace also has some concerns with 25 N Ealy Crossing.

Mr. Wallace stated that he has his own opinion on 25 N. Ealy Crossing.

Mr. Spalding stated that staff recommended that the lighting at the front of the house was adequate but the driveway is way off to the side. The requirement is that the front walk is illuminated not the driveway.

Mr. Wallace stated that we don't know what it looks like at night.

Mr. Schell asked what is next to 25 N Ealy Crossing.

Mr. Wallace stated that it is a vacant lot.

Mr. Shockey stated that for the vacant lots we should adjust the variance or come up with a policy or direction for staff for future builders or homeowners come back to this board.

Mr. Spalding stated that in the past the commission has given staff some authority when passing a variance in future applications that meet these requirements, be careful how much authority you delegate.

Mr. Wallace stated that I don't think a new builder or homeowner could come and say that they don't know about this requirement.

Mr. Shockey stated that everyone except one person seems to enjoy the low light neighborhood and our law director states that we don't have a liability issue. Safety is a

practical matter. We have a lot of inconsistency in this neighborhood with lighting. I'm not sure that a post light with a LED bulb will lend to the inconsistency. We have a city code that talks about city lighting requirements and zoning text.

Mr. Mayer stated that the zoning text is what we are hearing tonight that each home must have minimum of one yard light.

Mr. Shockey stated that we have subdivision text.

Mr. Mayer stated that our subdivision regulations don't have any requirements for lighting for individual homes only street lamps installed as part of the infrastructure.

Mr. Shockey stated that ambience seems to ruling the day.

Mr. Wallace stated that some homes have the post lights. They seem to be throughout the subdivision. (using the subdivision map in the staff PowerPoint)

Mr. Brown stated that the site plan showed a light post at the front porch and would not illuminate the sidewalk.

Mr. Shockey asked if the text requires pole lights.

Mr. Mayer stated yes, that is staffs interpretation.

Mr. Brown stated that we chose to build in Ealy because of the ambience. On Keswick Drive across the street has a light pole in every doorway that are very close together. If you compare that to the larger neighborhoods where the homes are 50 yards apart it doesn't wash.

Ms. Russell showed the city street lights on the map.

Mr. Wallace explained that the Keswick condos have light post between each home. Some of these homes have gas light and light post. Both sides of the street have sidewalk. I'm not sure if every home has porch light on the other side of Keswick but many do.

Mr. Schell stated that everyone seems to be in favor of the gas lamps. We have three homes which is not and those could also put in gas lights if they would prefer.

Mr. Spalding stated that the gas lights would be the preference.

Mr. Wallace stated that it is weird to have this many variances on this application because of the number of addresses. I don't know what we would do from a compliance standpoint if the ones with conditions never come into compliance.

Mr. Spalding asked staff the three homes that are part of the conditions is there a reasonable timeframe for that to be accomplished.

Mr. Mayer stated no, we work with the resident and moving towards a resolution and addressing whatever the enforcement issue is we try to provide flexibility for that. I think that if condition are placed and an address that did not comply, the city would need to enforce the condition.

Mr. Wallace asked if the three addresses that are in the conditions received the staff report or were advised of the staff recommendation prior to the meeting.

Mr. Mayer stated we emailed the staff report to every email that was provided.

Mr. Shockey stated that the pillar lamps or pole lamps type of lighting, gas or electric.

(Discussion)

Mr. Wallace stated that Lambton is not a walking neighborhood. Every neighborhood is unique. The light post is to provide some continuity between the neighborhoods. Any concerns with granting a variance with conditions when some applicants are not here that will be receiving the condition.

Mr. Shockey stated that he is not concerned. If they have an issue they can always come back to the commission.

Mr. Wallace stated that he rarely approves variances but he heard that an attempt to comply was discussed. Pleased to hear that conversations were had and that staff was comfortable.

Mr. Wallace moved to approve V-1-18, seconded by Mr. Schell. Upon roll call vote: Mr. Wallace, yea Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0

Mr. Wallace moved to V-6-18 subject to the following conditions:

1. Staff recommends lighting be added to 5 S. Ealy to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.
2. Staff recommends lighting be added to 11 S. Ealy to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.
3. Staff recommends lighting be added to 17 Hays Town to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.
4. Lighting be added to 25 N. Ealy Crossing to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval, seconded by Mr. Shockey. Upon roll call vote: Mr. Wallace, yea Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0

#### **CU-05-2018 Conditional Use**

**Conditional use to allow general office uses at 5780 Zarley Street (PID: 222-000267).**

**Applicant: Ralph Fallon Builder c/o Ralph Fallon**

Mr. Wallace verified with staff that this application is to be tabled.

Ms. Russell stated yes.

Mr. Schell moved to table CU-05-2018 to next regularly scheduled meeting, seconded by Mr. Wallace. Upon roll call vote: Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0

**VAR-07-2018 Variance**

**Variance to C.O. 1165 to setback and locations requirements for a pergola and fireplace at 7096 Armscote End (PID: 222-004846)**

**Applicant: Ciminello's Inc. c/o Kevin Fallona**

Ms. Russell presented the staff report.

Mr. Ferris stated no engineering.

Ms. Lauren Persichetti, 5360 Aldie Mill Road, stated that they received letters of approval from both neighbors.

Mr. Wallace asked if the fireplace chimney height has been addressed.

Ms. Persichetti stated that was addressed prior to the last meeting and will be taller than the pergola by two feet.

Mr. Shockey stated that in my opinion you are building in the back yard not the side yard. It would be easy for anyone to think that your back yard is out the back door and it is a code definition that is causing this issue.

Ms. Persichetti stated that we would have been encroaching whether it was side or rear yard.

Mr. Shockey stated that it looks nice and commend you for going to both of your neighbors.

Mr. Schell stated that you needed to sit through two long meetings. That was large concern last meeting because it can cause a large riff between neighbors. Thank you.

Mr. Shockey moved to approve V-7-2018, as submitted, seconded by Mr. Wallace. Upon roll call vote: Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0

**VAR-13-2018 Variance**

**Variances to C.O. 1165.06(e)(2) and 1165.06(e)(3) to allow for a pergola to be 320 square feet in an area the code only allows 200 square feet, and for the pergola to be constructed out of metal instead of wood, brick, stone, or screen.**

**Applicant: Altimate Pergola c/o Gary Riddle**

Ms. Russell presented the staff report.

Mr. Wallace asked why there is a distinction between the materials for support structures and roof.

Mr. Mayer stated that pergolas falls under a broad open sided structure category that includes several types including siding and building materials and roofing materials. The columns of the pergola need to be wood or stone and the roof could be standing seam metal roof.

Mr. Spalding asked if neighbor notification was completed.

Mr. Mayer stated yes, everyone within 200 feet was notified.

Mr. Spalding asked if we received any neighbor complaints.

Mr. Mayer stated that he believes that we have a neighbor present tonight.

Audience member stated that he is a neighbor.

Mr. Wallace asked staff, per a note in the staff report, for details regarding the denial of Neiswander Square pergola.

Mr. Mayer stated that started as a code enforcement complaint of a pergola being constructed too close to the property without a permit. It came in as an ask for forgiveness and once staff investigated the pergola we found out that it required four or five variances. It did not approve the variance in relation to the size but also because of the number of variances required and that a neighbor who was concerned about the proximity to their property. There is no setback variance needed tonight.

Mr. Schell asked if the pergola was removed.

Mr. Mayer stated that code enforcement action was taken and the pergola was removed.

Mr. Wallace asked what the material variance was for in relation to the Neiswander pergola.

Mr. Mayer stated that it was a hollow plastic. The board did cite the quality of materials when looking at the pergola material itself when determining to deny the variance.

Mr. Shockey stated that tonight's variance includes materials.

Mr. Mayer stated that the other pergola was plastic this request is for metal and we have sample materials.

Mr. Gary Riddle representing the homeowners, Arcadia (manufacturer) and ALTS (installer/designer). This is an all custom product. It is made of extruded aluminum recycled and reclaimed. There are stamped engineering drawings. This is a national firm with our second year being in central Ohio. It blends technology, form and function into one form. As people continue to move indoor living outdoors this product provides the louvered movement. The louvers allow the roof to open and close. When closed it includes a gutter so you are provided sun, shade and shelter in one structure. To meet the standards of the HOA we went to Georgian architecture with the smooth round columns and Georgian caps and bases. We think that based on the design, scale and size

of the pergola and the deck area it fits nicely in the area which is 16x20 instead of the standard size pergola.

Mr. Shockey verified that the columns are aluminum as well with a smooth finish. Do they have a foam core?

Mr. Riddle stated that correct it is a smooth finish. We will sleeve over the structure itself. He showed one of the sample beams to show the gutter.

Mr. Wallace asked if a pergola could be built in this area that would not require a variance. They could use wood to build a pergola in this area; nothing requires this to be made of aluminum.

Mr. Riddle stated that the louvers do need to be aluminum.

Mr. Wallace stated that is the unique feature to this designed product.

Mr. Riddle stated that some are built with cedar surround to give it a traditional look. Part of the appeal is that this is a zero maintenance product. This will stand up very nicely compared to a wood structure in 18-24 months.

Mr. Mark Foran, 7340 Waterston, stated that his home backs up to the view. I'm not concerned with the material. Within the packet is a very nice landscaping design plan. I'm not sure if the landscaping is required. If all of the trees along the eastern and southern edge would be nice to provide privacy to the other neighbors and fill in the empty space between the neighbors.

Mr. Wallace asked if screening is required.

Mr. Mayer stated no.

Mr. Wallace asked if screening is required for a patio.

Mr. Mayer stated no screening requirements.

Mr. Wallace stated that there is not screening requirement and I think you would need to speak to your neighbor about screening.

Mr. Foran stated that they are not immediately adjacent and don't share a property line. It's more of a visual concern from the second floor and back yard.

Mr. Wallace stated that code doesn't have any screening requirements.

Mr. Foran stated that everything in the packet about the landscaping is not a requirement. The owner could decide not to put anything in.

Mr. Shockey asked what landscaping he is talking about.

Mr. Foran stated that in the packet it mentions that the eastern edge of the property is lined with maple and spruces. I'm not sure that is correct.

Mr. Shockey asked if the existing patio and landscaping is there.

Mr. Foran stated that the patio was just built and I think it's a blank slate. You can see on the satellite image that the eastern edge and the eastern side of the southern edge there is no landscaping of any kind. Just so that you are aware, because I feel that it is a point that is made repeatedly in the packet, I think the large trees are along the western property line.

Mr. Shockey asked if the house is under construction.

Mr. Riddle stated that they have taken residence but were not able to install landscaping last fall due to the wet conditions.

Mr. Foran stated that if they did what is shown on the landscaping plan that would be great. If you are making a decision and anything about the east and south landscaping is influencing your decision I don't think the information is accurate. If the landscaping plan is influencing your decision then I would like to know if it would be a requirement of what is in there proposal.

Mr. Wallace asked if the landscaping shown on the plan is required to be installed or can it change.

Mr. Mayer stated that we do take it into consideration but it is not required. In the past, the commission has conditioned the landscaping for other variances.

Mr. Foran stated that my request is that I'm supportive of the variance with a condition that the landscaping plan is completed. If that is their intention they shouldn't mind since it is part of the story they presented.

Mr. Schell confirmed the landscape plan in the packet. The large 100' trees are along Johnstown Road.

Mr. Wallace asked if they can add the condition that includes the landscape plan as depicted in the submittal be installed.

Mr. Mayer stated yes.

Mr. Banchefsky stated that he is a little concerned since he is not sure how extensive the landscape plan is that they submitted but they did include it in the submission. If they have a concern they can come back to the board.

Mr. Schell stated that they could also decide not to build the pergola.

Mr. Wallace moved to approve V-12-2018 subject to the following condition and subject to staff approval:

1. Lighting within the pergola must not exceed seventy (70) foot-candles measured at a horizontal plane three (3) feet above the finished floor per code requirements.
2. Landscaping as depicted in the application materials be installed or a reasonable facsimile of that plan, seconded by Mr. Schell. Upon roll call vote: Mr. Wallace, yea Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0



Mr. Wallace stated that we would start the organizational meeting. We have no new members to swear in.

Mr. Shockey asked Mr. Wallace if he would be interested in being the chair and if he planned on staying on the board for a few more years.

Mr. Wallace stated that he does plan to be here.

Mr. Shockey stated that no disrespect to the previous chair and I wouldn't nominate if you are not interested.

Mr. Mayer stated that Mr. Kirby did let him know that he would still like to be chair.

Mr. Shockey nominated Mr. Wallace.

Mr. Shockey nominated Mr. Wallace as Chair. No second.

Mr. Wallace stated that Mr. Kirby is not present.

Mr. Shockey stated that there can be two nominees then it can be voted on.

Mr. Spalding asked if the organizational meeting is required to be held in March.

Mr. Mayer stated that code requires that we have the organizational meeting every March but I don't know

Mr. Banchevsky stated that you are having the meeting and if you wanted to continue the organizational until another time.

Mr. Wallace stated that I'm flattered and that Mr. Kirby is not here and we have another member who is not here tonight and so in fairness to everyone I think we should defer it. I appreciate the sentiment that maybe a change would be good then we should all vote on it.

Mr. Shockey stated that no judgement involved just that sometimes it good.

Moved by Wallace, seconded by Schell to table the organizational meeting until the next regularly scheduled meeting. Upon roll call vote: Mr. Wallace, yea Mr. Shockey, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0.

Mr. Wallace stated that the small cell facilities was delayed to another meeting.

Mr. Mayer believes that it will be at the next meeting. Staff is putting the final touches on it.

Mr. Shockey asked what small cell was.

Mr. Banchevsky stated that they are micro cell towers or antennas that could be installed on light poles that currently exist.

Mr. Mayer stated that there is state legislation pending that will have specific regulations that limit what we can have in design guidelines.

With no further business, Mr. Wallace polled members for comment and hearing none, adjourned the meeting at 9:27 p.m.

Submitted by Pam Hickok

# APPENDIX



## Planning Commission Staff Report March 19, 2018 Meeting

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### YARD LAMP VARIANCE NACC 22 - 4 S. EALY CROSSING

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LOCATION: 4 S. Ealy Crossing  
APPLICANT: Sullivan and Bruck Architects c/o Gary Bruck  
REQUEST: Variance to the Ealy Crossing Zoning Text to not require a yard light near the sidewalk at the front entry of the homes.  
ZONING: I-PUD (Ealy Crossing)  
APPLICATION: V-1-18  
STRATEGIC PLAN: Village Center

Review based on: Application materials received January 9, 2018.

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

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to the Ealy Crossing Zoning Text to not require a yard light near the sidewalk at the front entry of the home be installed. The application is a result of a zoning code violation complaint made by the Homeowner's Association. Staff has met with the City's Architect and evaluated the home on its own merits in relation to the zoning text's requirements.

#### 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 Commission’s decision:

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has two brick pillars at the intersection of the driveway and two lanterns on the front doorway.
- d. The driveway is orientated as an auto-court featuring lanterns on both sides of garages and on an exterior door/wall on the western wing.
- e. The existing lighting treatment meets the spirit and intent of the zoning text since light is provided along the sidewalk near the driveway and additionally at the exterior door near the sidewalk. The façade where the lamps are installed appear to be approximately 5 +/- feet from the sidewalk.
- f. The applicant states, “The literal interpretation [of the zoning text] would defeat the community’s unique look and not provide any added safety to the sidewalk area.”
- g. The applicant also states “The ordinance specifies the need for a yard light but does not specify it must be post mounted.” Staff interprets the “yard light” as the wood post lamp that is typical for all of the sections of the New Albany Country Club.
- h. The essential character of the area will not be substantially altered or suffer a severe detriment since lighting is provided effectively along the sidewalk area.
- i. The approval of the variance will not adversely affect the health and safety of persons residing or working in the vicinity.
  - i. The applicant states, “Because there are 2 lights along with nearby wall mounted lights, the public safety is well protected.
- j. The approval of the variance will not adversely affect the delivery of government services.

#### **IV. RECOMMENDATION**

The Strategic Plan provides residential strategies to encourage high quality design, and to create established neighborhoods that will continue to be invested in over time. All of these homes are custom homes in an urban environment and have exemplified innovative and high quality design, which appears to result in unique circumstances for the design and placement of lighting.

Staff interprets the front “yard light” as the wood post lamp that is typical for all of the sections of the New Albany Country Club. And whereas the typical sections of the New Albany Country Club include homes are large lot with larger setbacks from the street; Ealy Crossing allows homes to be built up to five feet from right-of-way where the sidewalk is located. Staff believes the spirit and intent of the zoning text is to provide additional illumination at the sidewalk, and even though this home doesn’t have the New Albany Country Club typical yard light near the sidewalk, it does have wall lights near the street that is in character with the unique, urban design of Ealy Crossing.

There are numerous homes within Ealy Crossing that don’t have a yard light near the sidewalk but do provide lighting near sidewalk either from brick column columns or lighting on the building itself. Lamps on brick columns and structures are typical of the urban form and appear to meet the spirit and intent of the zoning requirement. By granting the variance it does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.” For these reasons staff is supportive of the variance for this home located at 4 S. Ealy Crossing.

#### **V. ACTION**

In accordance with C.O. 1113.06, “Within thirty (30) days after the public hearing, the Planning Commission 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 Planning Commission 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 Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:**

Move to approve variance request V-1-18.

General Site Location:



Source: Franklin County Auditor.



**Planning Commission Staff Report  
March 19, 2018 Meeting**

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**YARD LAMP VARIANCE  
NACC 22 - GROUP VARIANCE**

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LOCATION: 22 Properties in Ealy Crossing Subdivision and Keswick Drive.  
APPLICANT: The Property Owners  
REQUEST: Variance to the Ealy Crossing Zoning Text to not require a yard light near the sidewalk at the front entry of the homes.  
ZONING: Infill Planned United Development (I-PUD)  
APPLICATION: V-6-18  
STRATEGIC PLAN: Village Center

Review based on: Application materials received January 19, 2018 and March 8, 2018

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

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**II. REQUEST AND BACKGROUND**

The applicants at the below addresses request a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes. The addresses being considered are:

- i. 5 S. Ealy Crossing (page 3)
- ii. 6 S. Ealy Crossing (page 3 and 4)
- iii. 7 S. Ealy Crossing (page 4)
- iv. 11 S Ealy Crossing (page 4 and 5)
- v. 12 S. Ealy Crossing (page 5)
- vi. 17 Hays Town (page 5) and 6
- vii. 25 N. Ealy Crossing (page 6)
- viii. 101 Keswick Dr. (page 6 and 7)
- ix. 109 Keswick Dr. (page 7)
- x. 117 Keswick Dr. (page 8)
- xi. 125 Keswick Dr. (page 8 and 9)
- xii. 133 Keswick Dr. (page 9)
- xiii. 141 Keswick Dr. (page 9 and 10)
- xiv. 149 Keswick Dr. (page 10)
- xv. 157 Keswick Dr. (page 10 and 11)
- xvi. 165 Keswick Dr. (page 11)
- xvii. 173 Keswick Dr. (page 12)
- xviii. 181 Keswick Dr. (page 12 and 13)
- xix. 189 Keswick Dr. (page 13 and 14)
- xx. 197 Keswick Dr. (page 14)
- xxi. 16 Hays Town (page 14 and 15)

The application is a result of a zoning code violation complaint made by the Homeowner's Association. Staff has met with the City's Architect and evaluated each home on its own merits in relation to the zoning text's requirements.

## **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.

- 13. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
- 14. Whether the variance is substantial.*
- 15. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."*
- 16. Whether the variance would adversely affect the delivery of government services.*
- 17. Whether the property owner purchased the property with knowledge of the zoning restriction.*
- 18. Whether the problem can be solved by some manner other than the granting of a variance.*
- 19. 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*):

- 20. 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.*
- 21. 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.*
- 22. That the special conditions and circumstances do not result from the action of the applicant.*
- 23. 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.*
- 24. 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 Commission's decision:

#### **B. 5 S. Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the



front entry of the homes. Staff interprets the “front yard light” as the wood post lamp that is typical for all of the sections of the New Albany Country Club.

- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. The home at 5 S. Ealy Crossing does not have the code required front yard light or any lights at the base of the driveway near the sidewalk. However, the property does have two brick pillars located on either side of the sidewalk and driveway.
- d. The home does have two gas lights at the doorway under the porch.
- e. The doorway appears to be approximately 25 feet from the public sidewalk.
- f. The applicant did not provide a justification statement with their submittal.
- g. It appears that granting the variance could alter the essential character of the area since neighboring residents have additional lighting closer to the public sidewalk.
- h. It appears that granting the variance will not adversely affect the delivery of government services.
- i. It appears that the existing condition of the home does not meet the spirit and intent of the zoning text since the lighting provided does not illuminate the public sidewalk area.
- j. In order to meet the spirit and intent of the code by providing illumination at the sidewalk, staff recommends the variance be approved with a condition requiring lighting is added to either the home’s exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval. Providing one of these lighting design options will make the property consistent with neighboring structures in the Ealy Crossing subdivision.

**C. 6 S. Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. The home currently has a mounted gas light on an exterior brick wall at the gateway of the driveway and autocourt.
- d. The applicant also indicated they have a mounted gas porch light, and down cast lights on the garage to light the garage.
- e. The existing lights are less than 5 feet from the sidewalk.
- f. The variance does not appear to be substantial since the current lighting fixture meets the intent of the zoning text, as it provides a clear entrance location to the driveway/sidewalk.
- g. It appears the gas light located on the exterior brick wall meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk.
- h. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.
- i. This home has a unique condition since it was built to include the main entrance to face the side of the property.

**D. 7 S. Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the

- front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
  - c. The home currently has two mounted gas lights on either side of their front doorway entrance on the home itself and two mounted gas lights on columns immediately next to the sidewalk.
  - d. The applicant stated that they believe they have complied with the zoning text since the gas lights have been installed on top of the piers which are at the base of the entry stoop and the sidewalk.
  - e. The applicant has also stated that, "There is only 3 feet of grass where a post light could be installed, putting it within 7 feet of the existing brick piers with gas lights. This would be architecturally un-attractive, look incorrect, and would be redundant addition of lighting."
  - f. It appears the brick piers with gas light meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk.
  - g. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing lighting at a clear entrance location.
  - h. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**E. 11. S Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. The home currently has two gas lights on either side of the front doorway.
- d. The front doorway is approximately 25 +/- feet from the public sidewalk.
- e. The applicant stated there was no mention of the need to put a light post in the front yard prior to occupancy, which they received in August 2010.
  - i. Staff reviewed the site plan which shows a standard light post to be installed.
- f. It appears that granting the variance without additional lighting could alter the essential character of the area since neighboring residents have additional lighting closer to the public sidewalk.
- g. It appears that granting the variance will not adversely affect the delivery of government services.
- h. It appears that the existing condition of the home does not meet the spirit and intent of the zoning text since the lighting provide does not illuminate the public sidewalk area.
  - i. In order to meet the spirit and intent of the code by providing illumination at the sidewalk, staff recommends the variance be approved with a condition requiring lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval. Providing one of these lighting design options will make the property consistent with neighboring structures in the Ealy Crossing subdivision.

**F. 12 S. Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b)

to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.

- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has two brick pillars with gas lights at the sidewalk in front of the home and two brick pillars with gas lights on either side of the driveway.
- d. The home also has a gas porch light.
- e. The applicant has indicated the front façade of their home is approximately 10 feet from the sidewalk.
- f. The applicant states, "With the installed landscaping there is only 3 feet of grass where the post could be installed, putting it within 2 feet of the existing brick pier with gas light. This would look architecturally un-attractive, look incorrect, and would be a redundant addition of lighting. Moving the post light away from the entry would put it within 7 feet of the bedroom or office windows, which would be unacceptable for the homeowner."
- g. Staff believes the brick piers with gas light meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk.
- h. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing lighting at a clear entrance location.
- i. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

#### **G. 17 Hays Town**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has two lanterns on the front façade of the house.
  - i. The proposed site plan shows a light post to be installed.
- d. The applicant has indicated there is also gas lighting in the back.
- e. The portion of the front façade which has lanterns is approximately 15 feet away from the public sidewalk.
- f. It appears that granting the variance without additional lighting at the sidewalk could alter the essential character of the area since neighboring residents have additional lighting closer to the public sidewalk.
- g. It appears that granting the variance will not adversely affect the delivery of government services.
- h. It appears that the existing condition of the home does not meet the spirit and intent of the zoning text since the lighting provided does not illuminate the public sidewalk area.
- i. In order to meet the spirit and intent of the code by providing illumination at the sidewalk, staff recommends the variance be approved with a condition requiring lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval. Providing one of these lighting design options will make the property consistent with neighboring structures in the Ealy Crossing subdivision.

#### **H. 25 N. Ealy Crossing**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has three hanging gas porch lights and landscape lighting on the staircase.
- d. The front façade of the home is located six feet from the public sidewalk. The three hanging gas porch lights are located within the front porch, and the landscape lighting illuminates the sidewalk and stairs leading to the porch. .
- e. The applicant states, "The installation of a street light would be architecturally un-attractive, look incorrect, and would be a redundant addition of lighting."
- f. Staff believes the stair lighting and porch gas light meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the proximity of the home/entryway to the public right-of-way.
- g. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

#### **I. 101 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light.
- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and an auto-court.
- f. The applicant states, "The variance is not substantial – that is, granting the variance will not have a major impact on the neighbor and the variance will preserve the ambiance of the neighborhood. Requiring a lamppost will destroy the gas light ambiance on the west side of Keswick Drive, is duplicative lighting and will look unpleasant."
- g. The applicant also states, "We purchased our home without knowledge of the lamp post requirement."
- h. This home is a corner lot where a large street lamp is located less than 20 feet from the property line. The street lamp provides additional lighting of the sidewalk in front of the home.
- i. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- j. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- k. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**J. 109 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light.
- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and an auto-court.
- f. The applicant states, "The gas light on the top of the pier near the sidewalk at the end of the fence, in our opinion, complies with the stated requirement."
- g. The applicant also states, "In addition, based on unsolicited comments of people who live in the community, the gas lights on Keswick Drive add a very welcoming atmosphere to the downtown neighborhood. The gas lights on the front entry combined with the gas lights near the sidewalk provide that atmosphere along all the blocks up to Ogden Woods."
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**K. 117 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has two brick piers on either side of the driveway with gas lamps, which is located along the side of the home on Ealy Crossing N.
- d. The home also has a front gas porch light.
- e. The home is a corner lot and is orientated in such a way that a front door is located on Keswick Drive with a sidewalk leading to the public sidewalk, and a driveway in the back located on Ealy Crossing N.
- f. There is a street lamp located across the street which helps to illuminate the public sidewalk in front of the home.
- g. The applicant states, "The variance is not substantial – that is, granting the variance will not have a major impact on the neighbor and the variance will preserve the ambiance of the neighborhood. Requiring a lamppost will destroy the gas light ambiance on the west side of Keswick Drive, is duplicative lighting and will look unpleasant."
- h. The applicant also states, "We purchased our home without knowledge of the lamp post requirement." "On the west side of Keswick Drive, the gas lighting give the homes a consistent look. Moreover, because of the differing home designs and

lots, the lamp locations cannot be consistent along the West Side of Keswick Drive.”

- i. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- j. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- k. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**L. 125 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home front has two brick piers on either side of the entry into their auto-court with gas lamps next to the sidewalk.
- d. The home also has a gas porch light and downcast lighting next to the garage doors.
- e. The home is orientated in such a way that it fronts onto Keswick Drive, but receives access to the front door/garage area off of Ealy Crossing N. through an auto-court.
- f. This home is a corner lot where a large street lamp is located approximately 15 feet from the property line. The street lamp provides additional lighting of the sidewalk in front of the home.
- g. The applicant states, “The current lighting package is more than sufficient to light the property safely, enhance the environment, and provide adequate security presence. Adding additional lighting at this point in time would be unnecessary, unwarranted, and overkill.”
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**M. 133 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has two brick pillars with gas lanterns on either side of the driveway near the public sidewalk.
- d. The home also has a porch light.

- e. It appears the brick pillars with lanterns at the intersection of the driveway and public sidewalk provides appropriate lighting of the area and marks an entry location.
- f. The applicant states, “Our front stoop is within 10 feet of the fence which runs along the sidewalk. ...We already have sufficient lighting without causing light to enter homeowner’s bedroom which would be unacceptable.”
- g. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- h. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- i. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**N. 141 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has two brick pillars with gas lanterns on either side of the driveway near the public sidewalk.
- d. The home also has a porch light.
- e. The applicant states, “The lighting fixtures were designed for soft palette of illumination in this community.”
- f. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- g. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- h. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**O. 149 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light and downcast lighting on the garage.
- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and an auto-court.
- f. The applicant states, “The variance is not substantial, i.e. granting the variance would not have a major change on the neighbor. The variance would preserve the ambiance of the neighborhood. Requiring a lamp post for the homes that do not

have them on Keswick Drive would destroy the low gas light ambiance on the West side of Keswick Drive and create a permanent “Christmas Tree Effect”.

- g. The applicant also states, “I purchased my home without knowledge of the lamp post requirement... Note the site plan for Lot #42, which is included as a part of this application, provides “Coordinate Lamp Post Location.” I was not aware of this note. No one called it to our attention, and the lamp post was not constructed.”
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since it provides light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**P. 157 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light and downcast lighting on the garage.
- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and an auto-court.
- f. The applicant states, “The variance is not substantial, i.e. granting the variance would not have a major change on the neighbor. The variance would preserve the ambiance of the neighborhood. Requiring a lamp post for the homes that do not have them on Keswick Drive would destroy the low gas light ambiance on the West side of Keswick Drive and create a permanent “Christmas Tree Effect”.
- g. The applicant also states, “We purchased our home without knowledge of the lamp post requirement... Note the site plan for Lot #43, which is included as a part of this application, provides “Coordinate Lamp Post Location.” We were not aware of this note. No one called it to our attention, and the lamp post was not constructed.”
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**Q. 165 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.



- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has two brick pillars with gas lanterns on either side of the driveway near the public sidewalk.
- d. The home also has a porch light.
- e. It appears the gas lights on the brick pillars located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- f. The applicant states, "The variance is not substantial, i.e. granting the variance would not have a major change on the neighbor. The variance would preserve the ambiance of the neighborhood. Requiring a lamp post for the homes that do not have them on Keswick Drive would destroy the low gas light ambiance on the West side of Keswick Drive and create a permanent "Christmas Tree Effect" "The applicant states the current ambience is a factor that makes this neighborhood attractive and removing the ambience will reduce the values of their homes."
- g. The applicant also states, "We purchased our home without knowledge of the lamp post requirement... Note the site plan for Lot #44, which is included as a part of this application, provides "Coordinate Lamp Post Location." We were not aware of this note. No one called it to our attention, and the lamp post was not constructed."
- h. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- i. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**R. 173 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home has two brick piers with gas lamps on either side of the driveway, which is located on the side of the home on Ealy Crossing S. The neighbor's driveway also contains a brick column with a gas lamp that is located close to the front entry of this home.
- d. The home also has a gas porch light.
- e. The home is a corner lot and is orientated in such a way that a front door is located on Keswick Drive with a sidewalk leading to the public sidewalk, and a driveway in the back located on Ealy Crossing S.
- f. This home is a corner lot where a large street lamp is located less than 15 feet from the property line. The street lamp provides additional lighting of the sidewalk in front of the home.
- g. The applicant states, "All of the houses of Ealy Crossing Subdivision that are fronted on Keswick Drive have gas lights on piers on either side of the driveways in lieu of light posts, there is a consistent pattern of gas lights along the street, and there are a total of 21 gas lights next to the sidewalks not including the gas lights on the porches."
- h. The applicant also states, "The Ealy Crossing houses were specifically designed

with the gas lights to create a certain ambiance.”

- i. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- j. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- k. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**S. 181 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has two brick piers with gas lamps on either side of the driveway, which is located in the rear on Ealy Crossing N.
- d. The home also has two gas porch lights.
- e. The home is a corner lot and is orientated in such a way that a front door is located on Keswick Drive with a sidewalk leading to the public sidewalk, and a driveway in the back located on Ealy Crossing N.
- f. There is a street lamp located across the street which helps to illuminate the public sidewalk in front of the home.
- g. The applicant states, “The requested variance preserves the “spirit and intent” of the neighborhood’s ambiance. Substantial justice would be done by the granting of the variance. The requested variance would not result in adjoining properties suffering a substantial detriment. In fact, our request for a variance is being submitted jointly with our neighbors.”
- h. The applicant also states, “We purchased our newly constructed home without knowledge of the lamp post requirement.”
- i. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- j. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- k. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**T. 189 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with a gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light and downcast lighting on the garage.

- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and auto-court.
- f. The applicant states, “The variance is not substantial, i.e. granting the variance would not have a major change on the neighbor. The variance would preserve the ambiance of the neighborhood. Requiring a lamp post for the homes that do not have them on Keswick Drive would destroy the low gas light ambiance on the West side of Keswick Drive and create a permanent “Christmas Tree Effect”.”
- g. The applicant also states, “We purchased our home without knowledge of the lamp post requirement... We note the site plan for our lot (lot #47), provides “Coordinate Lamp Post Location.” We were not aware of this note. No one called it to our attention, and the lamp post was not constructed.”
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meets the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

**U. 197 Keswick Dr.**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post’s location is required so there is general consistency between homes.
- c. Currently the home has a brick pier with gas lantern at the base of the driveway, near the public sidewalk.
- d. The home also has a gas porch light and downcast lighting on the garage.
- e. The home is orientated in such a way that those arriving at the property enter the home through the driveway and auto-court.
- f. The applicant states, “The variance is not substantial, i.e. granting the variance would not have a major change on the neighbor. The variance would preserve the ambiance of the neighborhood. Requiring a lamp post for the homes that do not have them on Keswick Drive would destroy the low gas light ambiance on the West side of Keswick Drive and create a permanent “Christmas Tree Effect. Our lots are not big enough to justify a 2<sup>nd</sup> light so close to the gas one”.”
- g. The applicant also states, “We purchased our home without knowledge of the lamp post requirement and did not build out home from the ground up. We do note that the site plan for our lot (Lot #48) provides “coordinate lamp post location” but, Duffy never provided that post and we were unaware of the note. No one called it to our attention and the lamppost was not constructed.”
- h. It appears the gas light on the brick pillar located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- i. The variance does not appear substantial since the current design meets the intent of the zoning text, by providing a consistent lamp design and location along Keswick Drive.
- j. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors

and people residing in the same neighborhood.

#### **V. 16 Hays Town**

- a. The applicant requests a variance to the Ealy Crossing Zoning Text Section VI (b) to not require a minimum of one approved yard light near the sidewalk at the front entry of the homes.
- b. The spirit and intent of the zoning text requirement appears to be to illuminate the sidewalk. The light post's location is required so there is general consistency between homes.
- c. Currently the home is under construction. The design is proposed to feature an auto-court which will have two brick pillars on either side with lighting on them at the sidewalk.
- d. The home is also proposed to have downcast lighting on the garage, and lighting on the front façade.
- e. The applicant states, "The buildable width of our lot is approximately 60' and the majority is consumed by the brick piers (with gas lanterns), courtyard style driveway and front of the garage. Inserting a seventh light disturbs the ambiance the NACC ARC and Ealy Crossing are trying to create."
- f. The applicant also states, "We contend that we have complied in providing "approved yard light" with the installation of our 4 gas lanterns and nearby installed NA street lamps, there is no aesthetically appropriate location for the lamppost and the close proximity of the homes, most with gas lantern topped brick piers, provides more than enough light for the neighborhood."
- g. It appears the gas lights on the brick pillars located at the driveway, near the sidewalk, meet the spirit and intent of the zoning text since they provide light at the home entry and at the public sidewalk due to the design of Keswick Drive.
- h. The variance is not substantial since the current design meets the intent of the zoning text, by providing lighting at a clear entrance location.
- i. It appears that granting the variance will not adversely affect the delivery of government services and will not adversely affect the health and safety of visitors and people residing in the same neighborhood.

#### **IV. RECOMMENDATION**

The Strategic Plan provides residential strategies to encourage high quality design, and to create established neighborhoods that will continue to be invested in over time. All of these homes are custom homes in an urban environment and have exemplified innovative and high quality design, which appears to result in unique circumstances for the design and placement of lighting.

Staff interprets the front "yard light" as the wood post lamp that is typical for all of the sections of the New Albany Country Club. And whereas typical sections of the New Albany Country Club include homes on large lots with larger setbacks from the street; Ealy Crossing allows homes to be built up to five feet from right-of-way where the sidewalk is located. Staff believes the spirit and intent of the zoning text is to provide additional illumination at the sidewalk, and even though these homes don't have the New Albany Country Club typical yard light near the sidewalk, they do or can provide attractive alternatives that is in character with the unique, urban design of Ealy Crossing.

The ambiance of the Ealy Crossing and Keswick Mews is important to the residents in the area to

continue to display a distinct character in New Albany. Providing additional lighting via the traditional yard lamps in addition to lighting provided at the sidewalk already may not be desirable.

All of the homes fronting onto Keswick Drive appear to meet the intent of the code requirements by providing lamps atop of brick columns at the end of the driveway near the public sidewalk. Additionally, since every home along Keswick has provided this same lighting, it is done in a consistent design approach. For these reasons staff is supportive of the variance for these homes located at: 101 Keswick Dr. (page 6), 109 Keswick Dr. (page 6 and 7), 117 Keswick Dr. (page 8), 125 Keswick Dr. (page 8), 133 Keswick Dr. (page 8 and 9), 141 Keswick Dr. (page 9), 149 Keswick Dr. (page 9 and 10), 157 Keswick Dr. (page 10), 165 Keswick Dr. (page 10 and 11), 173 Keswick Dr. (page 11), 181 Keswick Dr.(page 11 and 12), 189 Keswick Dr. (page 12), and 197 Keswick Dr. (page 13).

There are numerous homes within Ealy Crossing that do not have a yard light near the sidewalk but do provide lighting near the sidewalk either from brick columns or light fixtures on the building themselves. Lamps on brick columns and structures are typical of urban environments and appear to meet the spirit and intent of the zoning requirement. By granting the variance it does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.” For these reasons staff is supportive of the variance for these homes located at 5 S. Ealy Crossing (page 3), 6 S. Ealy Crossing (page 3 and 4), 7 S. Ealy Crossing (page 4), 11 S Ealy Crossing (page 4 and 5), 12 S. Ealy Crossing (page 5), 17 Hays Town (page 5), 25 N. Ealy Crossing (page 6), and 16 Hays Town (page 14 and 15).

The remainder of the homes at 5 S. Ealy Crossing, 17 Hays Town, and 11 S. Ealy Crossing do not appear to have any lighting at the sidewalk. In order to meet the spirit and intent of the code to provide illumination at the sidewalk, staff recommends the variance be approved with a condition requiring lighting is added to either the homes’ exterior wall closest to the street, on the brick columns at the end of the driveway or sidewalk, or a typical standalone lamp post is installed on site. Providing one of these lighting design options will make the property consistent with neighboring structures in the Ealy Crossing subdivision. It does not appear granting the variance to allow lamps on the building structures near the sidewalk and brick columns to meet the code requirements is substantial.

Staff recommends approval of the application with conditions that the homes that do not meet this spirit and intent of the code requirement install a form of lighting, subject to staff approval, to meet the zoning text’s intent.

## **V. ACTION**

In accordance with C.O. 1113.06, “Within thirty (30) days after the public hearing, the Planning Commission 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 Planning Commission 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 Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:**

Move to approve variance request V-6-18, with the conditions listed below.

1. Staff recommends lighting be added to 5 S. Ealy to meet the spirit of the zoning

text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.

2. Staff recommends lighting be added to 11 S. Ealy to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.
  
3. Staff recommends lighting be added to 17 Hays Town to meet the spirit of the zoning text, lighting is added to either the home's exterior wall closest to the street, on the brick columns at the end of the driveway, or a typical standalone lamp post is installed on site, subject to staff approval.

General Site Location:



Source: Google Maps



**Planning Commission Staff Report  
March 19, 2018 Meeting**

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**5780 ZARLEY STREET  
GENERAL OFFICE CONDITIONAL USE**

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LOCATION: 5780 Zarley Street (PID: 222-000267)  
APPLICANT: Ralph Fallon Builders  
REQUEST: Conditional Use for future office use  
ZONING: LI [Limited Industrial District]  
STRATEGIC PLAN: Office  
APPLICATION: CU-05-2018

Review based on: Application materials received January 10, 2018.

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The applicant requests the application be tabled by the Planning Commission on March 19<sup>th</sup> until the April 16, 2018 meeting while they amend their application.

**Staff recommends to table the application until the April 16<sup>th</sup> meeting.**



**Planning Commission Staff Report  
March 19, 2018 Meeting**

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**7096 ARMSCOTE END  
PERGOLA VARIANCE**

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LOCATION: 7096 Armscote End (PID: 222-004846)  
APPLICANT: Lauren Persichetti c/o Ciminello's Inc.  
REQUEST: A. Variance to Codified Ordinance Chapter 1165.06(a)(2)(B) to allow a pergola to be placed less than ten (10) feet from another accessory structure;  
B. Variance to Codified Ordinance Chapter 1165.06(e)(4) to allow a pergola to be located within a side yard area.  
ZONING: R-4 (Single-Family Residential District)  
STRATEGIC PLAN: Neighborhood Residential District  
APPLICATION: V-7-2018

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Review based on: Application materials received January 18, 2018 February 5 and March 2, 2018.

*Staff report prepared by Jackie Russell, Development Services Coordinator.*

**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(a)(2)(B) to allow a pergola to be placed less than ten (10) feet from another accessory structure;
- B. Variance to Codified Ordinance Chapter 1165.06(e)(4) to allow a pergola to be located in a side yard.

The applicant plans to install a pergola and a fireplace on a brick paver in the side yard of this property.

The application was tabled at the February 21, 2018 meeting by the commission to allow time for the proposed homeowner to contact the neighbors, particularly lot 59, in regards to the pergola. The applicant has provided a copy of a letter signed by the neighbors at lot 59 indicating they are supportive of the pergola being located in the side yard.

**II. SITE DESCRIPTION & USE**

The site has a single family home, constructed in 2017 according to the Franklin County Auditor, and is within the section 28, part 2 of the New Albany Country Club. The lot is 0.36 acres and is a corner 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.

25. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
26. *Whether the variance is substantial.*
27. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
28. *Whether the variance would adversely affect the delivery of government services.*
29. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
30. *Whether the problem can be solved by some manner other than the granting of a variance.*
31. *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*):

32. *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.*
33. *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.*
34. *That the special conditions and circumstances do not result from the action of the applicant.*
35. *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.*
36. *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 1165.04(a)(2)(B) to allow a pergola to be placed less than ten (10) feet from another accessory structure.**

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

1. Codified Ordinance Chapter 1165.04(a)(24) states an accessory structure shall be located at least ten (10) feet from any other accessory structure situated on the same lot.
2. The applicant is proposing to build a fireplace at the northeast side of the pergola. The pergola and the fireplace are zero feet apart. The plans appear to show the pergola is being partially built over the base of the fireplace.
3. It does not appear granting the variance will preserve the spirit and intent of the code

requirement because it doesn't appear the applicant is over developing the lot by adding the two structures in close proximity. The applicant is creating a specific outdoor living space in one area of their lot with the proximate location of the pergola and fireplace, which ultimately reduces the amount of the space that is being developed on the lot. The remainder of the lot is proposed to be used for landscape screening and open space.

4. The pergola and fireplace appear to be well designed and function well with site.
5. The applicant has provided a copy of a letter signed by the neighbors at lot 59 indicating they are supportive of the pergola being located in the side yard.
6. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The variance does not appear to negatively affect neighboring properties. The pergola and fireplace are screened by large trees and are located approximately 22 +/- feet from the northeast property line and approximately 60 +/- feet from the northwest property line.
7. Both neighboring lots have existing homes located on them.
8. The request does not seem to be substantial given that the addition of the pergola and fireplace are located within the area that the homeowners use as active outdoor space.
9. The pergola allows for additional detailing of their outdoor space and creates a living space with the proximity of the fireplace.
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.

**B. Variance to Codified Ordinance Chapter 1165.06(e)(4) to allow a pergola to be located in a side yard.**

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

1. Codified Ordinance Chapter 1165.064(e)(4) requires an open-sided structure be built in the rear yard buildable area. This area is defined as the interior lot area bounded by the rear yard setback line and a side yard setback line on each side of the house, which is parallel to the side property line and turns at a 90-degree angle to intersect the corner of the house closest to the side yard being considered.
2. According to C.O. 1105.02(dd) "Rear lot line" means that lot line which is opposite and furthest removed from the front lot line. In the case of a corner lot, the rear lot line is opposite and furthest removed from the front lot line of least dimension.
3. The lot is a corner lot. The applicant requests permission to install the pergola and fireplace in the space they actively use as their rear yard.
4. According to C.O. 1105 the pergola is being installed in the side yard. The rear lot line and side lot lines are determined solely by the dimensions of the lot itself and not by the orientation of the home. In this case, the home's rear elevation, and the lot line that the city code defines as the rear lot line do not align.
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 setback from the neighbors approximately 22 +/- feet from the northeast property line and approximately 60 +/- feet from the northwest property line. The required setback for the pergola if it was located in the rear yard would be thirty feet, but code allows for patios to be 20 feet into the rear yard. The pergola will not be very visible from Hanby's Loop since trees are located between the living space and the street. The pergola will also not be visible from Armscote End since the front door is located on Armscote End and the primary structure separates the pergola from the street view.
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 setbacks from the neighboring properties and the available screening. The applicant planned to install the fireplace and pergola in the location they actively use as a backyard since the front door faces Armscote End. Due to the definition of rear-lot line, the location of the pergola is in the side yard even though it is where the rear of the house is located. The request seems reasonable since the applicant intended on placing the pergola in the location which is normally used for outdoor living space. By locating the pergola and fireplace less than the required ten feet the applicant can enjoy both the fireplace and pergola at the same time. The pergola and fireplace appear to be well screened from neighbors and is not visible from the public street. The applicant has provided a copy of a signed letter from their neighbors at lot 59, indicating that the neighbor is fine with the pergola placement. Staff is supportive of this application.

**V. ACTION**

Should the Planning Commission 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-07-2018 based on the findings in the staff report.**

**Approximate Site Location:**



Source: Franklin County Auditor



**Planning Commission Staff Report  
March 19, 2018 Meeting**

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**6917 LAMBTON PARK PERGOLA VARIANCE**

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LOCATION: 6917 Lambton Park (PID: 222-003472)  
APPLICANT: Altimate Pergola c/o Gary Riddle  
REQUEST: A. Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be 320 square feet in area where code permits a maximum of 200 square 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: Infill Planned Unit Development (I-PUD)  
STRATEGIC PLAN: Neighborhood Residential District  
APPLICATION: V-12-2018

Review based on: Application materials received February 14, 2018.

*Staff report prepared by Jackie Russell, Development Services Coordinator.*

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**IV. REQUEST AND BACKGROUND**

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

- C. 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.;
- 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 Board of Zoning Appeals heard a case with the same variances in January of 2016. The Board of Zoning Appeals did not approve the case.

**V. SITE DESCRIPTION & USE**

The site is currently has a single family home constructed on it in 2016 according to the Franklin County Auditor and is within the section 17 of the New Albany Country Club. The lot is 1.19 acres in area, which is slightly larger than most surrounding properties in this section of the Country Club because it is corner lot. The neighboring properties have single-family homes constructed on the sites. The proposed pergola is going to be installed over an existing deck. The pergola is proposed to include a fan and interior lights.

**VI. 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.

- 37. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
- 38. Whether the variance is substantial.*
- 39. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
- 40. Whether the variance would adversely affect the delivery of government services.*
- 41. Whether the property owner purchased the property with knowledge of the zoning restriction.*
- 42. Whether the problem can be solved by some manner other than the granting of a variance.*
- 43. 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*):

- 44. 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.*
- 45. 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.*
- 46. That the special conditions and circumstances do not result from the action of the applicant.*
- 47. 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.*
- 48. 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 320 square feet in area where code permits a maximum of 200 square feet.**

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

12. 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.
13. Staff estimates the required rear yard is approximately 14,500 square feet. Four percent (4%) of this space totals 580 square feet, so the 200 square feet total applies.
14. The applicant states the pergola is proposed to be placed over a newly installed deck/patio.
15. 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. Both the rear property line and east property line are landscaped with Maple and Spruce trees. The home itself screens the pergola from Johnstown Rd.

16. The request does not seem to be substantial given the homeowner has a deck already in the rear, which meets the proper setbacks and has been used for active outdoor space. The applicant says that the home owner seeks the pergola to allow for shade and shelter for outdoor activities like dining, entertaining and relaxing.
17. The pergola is 10 feet in height, which meets the code requirement.
18. 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.
19. It appears granting the variance will not adversely affect the delivery of government services.
20. According to the Franklin County Auditor the house is 6,588 square feet in size and is two stories in height. Even though the applicant is requesting an additional 120 square feet of area, it is still small compared to the home. The home has a 4,748 square foot building footprint. 320 square feet is only 14.84% of the building's footprint which is a small amount and results in appropriate scale to the home.
21. Staff conducted research on other pergola and open sided structure variances for size. See the results in the table below:

<u>Unimproved Rear Lot</u>	<u>Proposed Size</u>	<u>Location</u>	<u>Outcome</u>
72,000 sq. ft.	480	Farms	Approved with Conditions
7,500 sq. ft.	252	Neiswander Square	Denied
2,803 sq. ft.	325*	Ealy*	Approved*
14,500 sq. ft.	320	Lambton Park	Pending Vote

\* Not a pergola, different type of open-sided structure (same size requirements)

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.

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

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

5. 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.
6. The pergola is proposed to be constructed of powder white extruded aluminum and aluminum louvered roof. According to code the roof does not need a variance, but the support beams do need a variance.
7. 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. Both the rear property line and east property line are landscaped with Maple and Spruce trees. The home itself screens the pergola from Johnstown Rd.
8. The applicant states that the specific reasons for variance approval are:
  - a. Functionality and appearance – the high end product is made of extruded aluminum and the design has been checked off the home builder and the New Albany Country Club HOA has approved the design and specs.
  - b. Superior Building Material, Design and Installation- installed to withstand 85 mile per hour winds.
  - c. This proposed structure has detailed building plans and is all quality with a lifetime installation warranty.

- d. The community of New Albany and its homeowners deserve to have a product that can tastefully enable its residents to enjoy some indoor living outdoors. This state of the art product by Arcadia (a national firm) is innovative and focuses its efforts on quality and superior performance.
9. On January 17, 2017 the Board of Zoning Appeals reviewed and denied a similar request from a homeowner wishing to construct a pergola out of a semi-clear plastic roof and aluminum metal posts and beams. The Board of Zoning Appeals cited that when looking at the Duncan factors two and three the variance is substantial because the character of the neighborhood would be altered with respect to the adjoining properties and it required several variances which makes it substantial. The applicant also requested variances to setbacks for the pergola.
  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. It does appear however that granting the variance will give the homeowner a special privilege since metal is not an acceptable material in the area. Other homeowners in the area have pergolas, none of which are made of metal.

In summary, the variance requests do not appear to be substantial given the homeowner currently has a brick patio/deck in the rear, which has been used for active outdoor space. Therefore it seems reasonable that by adding a pergola there is no change to how the area is being used and therefore the essential character of the area will not be altered. The pergola itself appears to be well screened from neighbors due to landscape screening and is not visible from the public street due to the location behind the home.

**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-12-2018 based on the findings in the staff report.**

1. Lighting within the pergola must not exceed seventy (70) foot-candles measured at a horizontal plane three (3) feet above the finished floor per code requirements.

**Approximate Site Location:**



Source: Franklin County Auditor