



Board of Zoning Appeals

Meeting Minutes

May 30, 2018

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W Main Street and was called to order by BZA Chair, Wilttrout at 7:01 p.m.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Absent
Ms. Andrea Wilttrout	Present
Mr. Kasey Kist	Present
Ms. Sarah Briggs	Present
Ms. Marlene Brisk (Council Representative)	Absent

Staff members present: Jackie Russell, Clerk and Pam Hickok, Clerk.

Moved by Gallagher to approve the April 23, 2018 meeting minutes, as corrected; Seconded by Wilttrout. Upon roll call: Gallagher, yea; Wilttrout, yea; Kist, yea; Briggs, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Ms. Wilttrout asked for any additions or corrections.

Ms. Russell stated none from staff.

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

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

V-29-2018 Variance

A variance to Codified Ordinance 1129.06(d) to the minimum side yard width to be 12 feet, where 20 feet is required at 6554 Evans Rd (PID: 222-002175).

Applicant: Ryan Avery

Ms. Jackie Russell presented the staff report.

Mr. Ryan Avery stated that they want to add the garage to cover the larger vehicles. The unusual situation that we have is our geothermal well.

Mr. Kist asked for the location of the geothermal wells.

Mr. Avery showed the location on the map.

Mr. Kist asked if the applicant if he asked the neighbors to the south and east if they had any issues.

Mr. Avery stated that they had no issues.

Mr. Kist confirmed on the map which houses had detached structures. Do we know the distance between a structures (shown on the map) to the property line?

Ms. Russell stated that per google maps is about 50' and about the other one is about 160' to the driveway.

Mr. Kist asked in an AG district has a pavement setback requirement. He asked the applicant if the driveway is existing.

Mr. Avery stated no changes to the driveway.

Ms. Russell stated that no pavement setbacks exist in code.

Mr. Gallagher stated that he will abstain because he works for A&F that is within 200' of the property.

Moved by Kist to move to approve V-29-2018, Seconded by Briggs. Upon roll call: Briggs, yea; Gallagher, abstain; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 1. Motion passed by a 3-0 vote.

V-34-2018 Variance

A variance to Codified Ordinance 1165.06(e) (2) to allow a pergola to be 320 square feet in an area where the maximum area allowed is 182 +/- square feet and Codified Ordinance 1165.06(e) (3) to allow a pergola to be constructed with vinyl in an area where wood, brick, stone, screen or any combination thereof must be used at 7269 Talanth Place (PID: 222-003046).

Applicant: Ross & Lindsay Maltz

Ms. Russell presented the staff report.

Mr. Ross Maltz, 7269 Talanth Place, stated that he also has HOA approval on the structure. The roof are shades that open and close. This is custom made and the interior is aluminum and covered in vinyl. The deck is a composite and having a wood structure on the composite deck would look weird and create a lot of maintenance.

Mr. Gallagher stated that he appreciates that the applicant got all of the neighbor's approval.

Mr. Kist asked if the roof was fabric. Are there other structures that have fabric?

Ms. Russell asked if the fabric is under or above the structure.

Mr. Maltz stated that it is attached to each side and has a wind release mechanism and is just pulled open and closed.

Mr. Kist stated that he believes this is more of a canopy or awning than a pergola. Does that change what we are looking at?

Mr. Maltz provided information to the board.

Ms. Hickok stated that a pergola falls into a category in code that is open side structures so either way it would be the same code section.

Ms. Wiltrout asked if the Links text discuss a fabric on this kind of structure.

Ms. Russell stated that the Links text is silent so it would fall to city code 1165. City code doesn't say fabric.

Mr. Kist stated that the fabric is retractable and temporary.

Ms. Russell stated that the beams are the structure.

Mr. Maltz stated that the fabric is removed during the winter.

Ms. Briggs asked if the railing along the deck are existing.

Mr. Maltz stated that it is existing and the posts are existing.

Mr. Kist stated that the material is alright. If we are going to allow a deck to be a certain size. We are talking about scale and symmetry, it makes sense that the code should match the over structure, if we are going to allow them.

Ms. Russell stated that we have been reviewing the open sided structure code but with the work load we haven't been able to get it in front of the boards for review. We will continue to work of this code section.

Mr. Kist stated that it would look odd if we didn't allow it to cover the entire deck.

Moved by Gallagher to approve V-34-2018, Seconded by Wilttrout. Upon roll call: Briggs, yea; Gallagher, yea; Wilttrout, yea; Kist, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Ms. Wilttrout asked for any board comments. (hearing none)

Meeting adjourned at 7:24 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report May 30, 2018 Meeting

7269 TALANTH PLACE PERGOLA VARIANCE

LOCATION: 7269 Talanth Place (PID: 222-003046)
APPLICANT: Ross & Lindsay Maltz
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 182 square feet.;
B. 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: Comprehensive Planned Unit Development (C-PUD)
STRATEGIC PLAN: Rural Residential District
APPLICATION: V-34-2018

Review based on: Application materials received April 24, 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(e)(2) to allow a pergola to be 320 square feet in area where code permits a maximum of 182 square feet.;
- B. 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 and the Board of Zoning Appeals did not approve the case. The Planning Commission heard a case with the same variances March of 2018, and approved the variances. The

II. SITE DESCRIPTION & USE

The site has a single family home constructed on it in 2010 according to the Franklin County Auditor and is within the section 10 of the New Albany Links Subdivision. The lot is .25 acres in area, which is consistent with other surrounding properties in this section of the Links. The neighboring properties have single-family homes constructed on the sites. The proposed pergola is going to be installed over an existing deck.

III. EVALUATION

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

III. RECOMMENDATION

Considerations and Basis for Decision

- A. **Variance to Codified Ordinance Chapter 1165.06(e)(2) to allow a pergola to be 320 square feet in area where code permits a maximum of 182 square feet.**

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

1. Codified Ordinance Chapter 1165.08(e)(2) states the area of an open-sided structure may

not exceed four percent (4%) of the unimproved required rear yard or 200 square feet whichever is less.

2. Staff estimates the required rear yard is approximately 4,550 +/- square feet. Four percent (4%) of this space totals 182 square feet, which is less than the 200 square feet.
3. The applicant states the pergola is proposed to be place over a newly installed deck.
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.” The pergola is not visible from the street. The home itself screens the pergola from Talanth Place.
5. The request does not seem to be substantial given the homeowner has a deck already in the rear, which meets the proper setbacks has been used for active outdoor space. The applicant says they are seeking the pergola because “their backyard receives direct sunlight in the afternoon and late evening, which makes it uncomfortable to sit outside without shade.”
6. The pergola is 10 feet in height. Codified Ordinance 1165.06(e)(6) requires if the open-sided structure is built on a mound, deck, or other elevated surface the height of this elevated surface at its highest point above grade shall be added to the height of the structure to determine the overall height of the open-sided structure measured. The deck at its highest point is 34”, thus making the total height of the pergola 12’-8”, which meets the code requirement.
7. The applicant has provided signatures from the neighbors surrounding the property indicating that they are supportive of the variances for the pergola.
8. It does not appear by granting the variance the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.” There are numerous other neighboring homes that contain patio and pergolas. It does not appear that allowing a larger patio will change the essential character or cause the properties to suffer a substantial detriment.
9. According to the Franklin County Auditor the house is 2,769 square feet in size and is two stories in height. Even though the applicant is requesting an additional 138 square feet of area, it is still small compared to the home. The home has a 2,362 square foot building footprint. 320 square feet is only 13.55% of the building’s footprint which is a small amount and results in appropriate scale to the home.
10. 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
7,500 sq. ft.	252	Neiswander Square	Denied
2,803 sq. ft.	325*	Ealy*	Approved*
14,500 sq. ft.	320	Lambton Park	Approved
4,550 sq. ft	320	Links	Pending Vote

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

11. 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. The pergola appears to be appropriately designed and sized for this lot, and strict application of the regulation on lots of this size would not achieve a scale that is appropriate.
12. It does not appear 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.

13. It does not appear granting the variance would adversely affect the delivery of government services.

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

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

1. Codified Ordinance Chapter 1165.06(e)(3) requires an open-sided structure's roof surfaces shall be metal, seal-tab asphalt shingles, clay tile, slate, or wood shingles. All other finished surfaces shall be wood, brick, stone, screen, or any combination thereof.
3. The pergola is proposed to be constructed of white vinyl exterior, reinforced with aluminum. The applicant stated that, "the pergola will also have retractable shades overhead and vertically to provide relief from the direct sun."
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." The pergola is not visible from the street. The home itself screens the pergola from Talanth Place and from one of their neighbors.
5. The applicant states:
 - a. The pergola will be built into the deck.
 - b. The pergola is very unique when compared to the typical pergolas purchased in retail stores because those are not reinforced with aluminum.
 - c. The posts of the pergola look identical to the white Trex railing around the perimeter of the deck.
6. The applicant has provided signatures from the neighbors surrounding the property indicating that they are supportive of the variances for the pergola.
7. On January 17, 2017 the Board of Zoning Appeals reviewed and denied a request from a homeowner wishing to construct a pergola made 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.
8. In this case the New Albany Links Zoning Text allows the home's exterior material to be vinyl siding. Therefore it does not appear having a vinyl pergola will substantially affect the surrounding area and therefore is not substantial. The vinyl material is consistent with what is permitted and used on homes in the subdivision.
9. It appears that granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.
10. It appears granting the variance will not adversely affect the delivery of government services.

IV. Recommendation

In summary, staff recommends approval of both variances. The variance requests do not
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appear to be substantial given the homeowner currently has a 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. Although the pergola is larger than permitted, it appears to be appropriately sized and positioned in relation to the primary residence. . Additionally, the vinyl material does not appear to be substantial and would not alter the character of the subdivision since vinyl material is a permitted material to be used on homes.

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-34-2018 based on the findings in the staff report.

Approximate Site Location:



Source: Franklin County Auditor