



Board of Zoning Appeals

Meeting Minutes

May 29, 2019

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 Board of Zoning Appeals Chair, Mr. Gallagher, at 7:00 p.m.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present (Arrived 7:04 p.m.)
Ms. Andrea Wiltrout	Present
Ms. Kerri Mollard	Present
Mr. Shaun Lajeunesse	Absent
Ms. Marlene Brisk (council liaison)	Absent

Staff members present: Steven Mayer, Development Services Manager; Chris Christian, Planner; Mr. Mitch Banchevsky, City Attorney; and Josie Taylor, Clerk

Moved by Ms. Wiltrout to approve the March 25, 2019 meeting minutes, as corrected; seconded by Ms. Mollard. Upon roll call: Ms. Wiltrout, yea; Ms. Mollard, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote .

Mr. Gallagher asked for any corrections or additions to the agenda.

Mr. Christian stated none from staff.

Mr. Gallagher noted none from the Board of Zoning Appeals (hereafter, "BZA").

Moved by Ms. Wiltrout to accept the staff report and related documents into the record, seconded by Ms. Mollard. Upon roll call vote: Ms. Wiltrout, yea; Ms. Mollard, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Mr. Gallagher asked if any visitors wished to speak on a topic other than the variance. (Hearing none).

Mr. Gallagher swore to truth those wishing to speak before the BZA.

V-40-2019 Variance

Variance request to C.O. 1173.02 to allow a pool patio to be located 10 feet from the southern property line where the requirement is 15 feet (PID: 222-000932).

Applicant: Tim Snider

Mr. Christian presented the staff report.

Mr. Gallagher asked if the pool had moved in the diagram.

Mr. Christian replied it had not.

Ms. Wiltout asked where the retaining wall was located on the property.

Mr. Christian replied indicated where the retaining wall was located.

Ms. Wiltout asked if the variance was being requested for what was inside the retaining wall.

Mr. Christian replied that was correct.

Ms. Mollard asked if the slope shown on the plans was where the plantings were going to be put.

Mr. Christian replied yes.

Ms. Mollard stated that was the side of the property.

Mr. Christian replied yes.

Mr. Tim Snider, applicant and contractor for the project, stated screening for the pool was carefully considered. Mr. Snider stated the arborvitae trees in the plan are twelve (12) to fourteen (14) feet in height and the retaining wall in that area is six (6) to seven (7) feet, meaning the arborvitae at initial planting will provide about 7 feet of additional screening above the patio deck and will only grow from there and provide additional screening. Mr. Snider also noted that the plantings on the west property line, where there is a severe drop off to Rose Run Creek of approximately fifteen (15) or seventeen (17) feet, has existing large tree vegetation and undergrowth in that area that provides additional screening for the property to the west.

Ms. Mollard asked how close the neighbor to the east was.

Mr. Snider replied there was a neighbor across the street that would not be able to see the project.

Mr. Chris O'Shaughnessy, attorney for the owners of the property, the Doss family, stated the arborvitae would be planted along the property line and, at twelve (12) to fourteen (14) feet in height, for anyone to see the pool deck from the ground of the other property would require the pool deck to be much higher than it is today. Mr. O'Shaughnessy stated the contractor gave great care to that and the city has inspected this and all agree it should provide the shading required by New Albany. Mr. O'Shaughnessy asked the BZA to uphold the staff recommendation for approval of the variance.

Mr. Gallagher noted that the only question before the BZA this evening was the variance relative to the patio being extended to the retaining wall, noting the applicant had a valid permit to construct the pool and other items.

Mr. B.J. Doss, the homeowner, noted one of his concerns was that, as previously approved, the deck with the planting area would not provide a sufficient walking area for people to use that end of the deck and would create a safety issue.

Mr. Brian Zets, attorney for the neighboring Barger family on Goodheart Court, stated that the variance should not be approved because it failed to meet almost all of the Duncan factors in the New Albany Code. Mr. Zets stated the property was usable under the prior approval and the variance requested was substantial.

Ms. Wiltout asked how the variance was substantial if it was within the patio in general.

Mr. Zets stated that once the originally approved planter was removed, because of the slope of the property, there is no true screening. Mr. Zets provided photographs taken from the Barger's backyard looking toward the pool area on the Doss property and stated that the proposed twelve (12) foot tall arborvitae would not offer any screening if the deck was extended out the requested five (5) feet. Mr. Zets noted that the level of the neighbor's backyard, due to the slope, was essentially the same level as the pool deck.

Ms. Wiltout asked if the deck would have been screened if the variance is not granted.

Mr. Zets stated he presumed there would have been screening in the planting bed.

Ms. Wiltout asked what was in the planting bed.

Mr. Zets stated he did not think it had been listed in the original plan.

Ms. Mollard stated the planting bed could be geraniums.

Mr. Zets stated it was still substantial because now people would be five (5) feet closer to the property line and standing at a height that is even with the neighbor's backyard patio.

Mr. Zets stated the property owner had purchased the property with knowledge of the restriction and noted the variance was not required for the property owner to use the pool and pool deck. Mr. Zets stated the variance did not serve the spirit or intent of the zoning requirements because there would be no vertical visual separation due to the slope.

Ms. Wiltout stated that issue appeared to be a problem with the original plan, not the variance.

Mr. Zets stated that may be, but it still fails the Duncan factors on that matter. Mr. Zets noted that the plan was already granted but the BZA could place conditions on the granting of the variance that ensure added screening of that area of the pool deck once the planting bed has been removed.

Ms. Wilttrout asked what Mr. Zets would suggest.

Mr. Zets stated the Barger's suggest some additional trees be planted on the Barger property that would be able to provide screening that would be above the arborvitae height.

Mr. John Doone, landscape architect with Oakland Nursery, stated the biggest concern he had was the type of arborvitae being used. Mr. Doone stated the arborvitae indicated grow to be at most about twelve (12) feet high and grow very wide but do not have a dense structure. Mr. Doone noted this meant that in winter, if heavy snow falls on them, they break apart and do not look good after a couple of years. Mr. Doone stated that they would like to change those to emerald arborvitae which will not have that problem in the winter and grow to be about twelve (12) to fourteen (14) feet. Mr. Doone added that given the height of the retaining wall they would also like to see a second layer, five (5) or six (6) hornbeams, which can grow to thirty (30) feet tall, that would provide complete opacity between the properties.

Ms. Wilttrout asked Mr. Mayer if the landscaping plan was one the BZA could rule on or make conditions to this evening or if that was something that had already been decided.

Mr. Mayer replied the BZA could add additional landscaping requirements.

Ms. Wilttrout asked how those present felt about the proposed landscaping of the other types of trees.

Mr. Doone stated the proposed change to the emerald arborvitae and the addition of the hornbeams would provide more insulation and were not that much to put in.

Ms. Mollard asked about very large cypress, like the green giant cypress.

Mr. Doone agreed that was another option.

Ms. Mollard asked if the green giant was done on the Doss side, then would he also request the hornbeams on the Barger side.

Mr. Doone replied that if the Doss property had the larger arborvitae type they could do without the hornbeams.

Ms. Mollard noted the applicant had stated removing the planting bed was for safety reasons and to make the deck easier to navigate and asked the applicant to explain further about the thought process in the original plan that had the planter bed.

Mr. Doss replied that they can see now there is no passage to go in or out of the hot tub or to go around the entire pool deck and he is concerned this would cause people to trip or fall.

Ms. Mollard asked what was going to be in the planter bed originally.

Mr. Doss said he did not know.

Mr. Snider stated he did not know the species of plant.

Mr. Gallagher asked staff if they had any comment on what had been said this evening.

Mr. Mayer replied that he thought it came down to screening and landscaping. Just so the BZA knows the city does not have any screening requirements for pools and believed any requirements come from a homeowner's association so any additional landscaping shown in the staff report is to offset the setback to provide additional buffering but sounds like based on the neighbor's concerns that there is additional landscaping still desired.

Mr. Smith asked if it was correct that, based on the feedback this evening, there was no problem agreeing with the change in the trees and the screening.

Mr. Snider said that was correct although he would prefer to have the arborvitae than the hornbeam.

Mr. Gallagher asked if the hornbeam proposal was not favorable.

Ms. Mollard asked if the green giants instead of emerald arborvitae could be used.

Mr. O'Shaughnessy replied this was a new concept and stated they would prefer to ask the landscape architect. Mr. O'Shaughnessy noted this plan had been out in public for weeks and this is the first they are hearing about the issue of any problems. Mr. O'Shaughnessy stated the applicant will do what is necessary to screen the deck and added that the applicant felt the plan already approved did that. Mr. O'Shaughnessy mentioned the applicant will add two (2) more feet with this other type of tree if that resolves the issue. Mr. O'Shaughnessy noted that to go on the Barger property and plant trees is unnecessary.

Mr. Gallagher asked staff if any other neighbors had commented.

Mr. Christian noted staff heard from the neighbor directly across Rose Run Creek on Harlem Road with questions about drainage and if the pool was going to affect any runoff into Rose Run Creek. Mr. Christian stated staff had heard one question from the New Albany Company about the project in general.

Mr. Gallagher asked if the New Albany Company had property in the 200 foot zone near the homeowner which led them to raise the question.

Mr. Christian replied he was not sure.

Mr. Gallagher asked if the drainage was not impacting what the BZA had in front of it this evening.

Mr. Christian stated that was correct.

Mrs. Doss, homeowner, stated their concerns were for a safe environment for their children to swim and play. Mrs. Doss stated the space was never intended that people would be hanging around the very far edge or corner of the property. Mrs. Doss noted a lanai was being built that will be a gathering space where barbecues could be held and that it is near the house and completely private. Mrs. Doss added the fire pit was right up against her bedroom and was not intended to be out away from the property or to cause any conflict with the neighbors. Mrs. Doss said there is existing arborvitae on the Barger's property now which would give continued screening. Mrs. Doss said the adjustment was made for safety reasons and for their family and the screening was a courtesy to the neighbors because currently there is no screening on her side of the street and neighbors can see down into each other's yards.

Mr. Gallagher stated he was concerned about safety and said that three feet around a pool would be a concern and allowing more deck space makes sense. Mr. Gallagher stated what was going to be in the planter area was low plantings which would not have solved any noise or screening type issues. Mr. Gallagher noted that from his perspective making the change did not seem to be significant and would improve a safety issue.

Ms. Wiltout stated she agreed and thought the proposed change was not significant and the problems that had been identified with the plan relate to the screening, which Mr. Mayer indicated was not required, and believes the variance is not substantial.

Ms. Wiltout stated she agreed and the problems identified with the plan related to screening which Mr. Mayer stated was not required.

Ms. Mollard stated she agreed and that the proposal of planting a row of trees on the neighbor's property did not offer a permanent solution. Ms. Mollard stated that requiring larger arborvitae like a green giant that grows fast and is very large seems reasonable given there was no requirement for screening.

Mr. Gallagher stated had the applicant not asked for this request the twelve (12) foot arborvitae would be used and now that the homeowner is willing to accept a taller tree, a better tree, which may work out better for the Barger family, this is an improvement over where things would be if the variance were not granted.

Mr. Gallagher noted for the record that the BZA reviewed the Duncan factors and that he did not see this as a significant item, it did not adversely impact the value of the neighborhood overall and is an improvement particularly with the additional trees. Mr. Gallagher stated safety was an important factor here because a limited amount of space could cause people injury around the pool.

Ms. Wiltout stated she agreed and also noted the variance does preserve the spirit and intent of the zoning requirements.

Ms. Mollard stated she agreed.

Moved by Ms. Wiltout to approve V-40-2019 with the condition that the trees be the emerald or green giant variety, seconded by Mr. Smith. Upon roll call vote: Ms. Wiltout, yea; Mr. Smith, yea; Mr. Gallagher, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Meeting adjourned at 7:39 pm.

Submitted by Josie Taylor.

APPENDIX



Board of Zoning Appeals Staff Report May 29, 2019 Meeting

4661 GOODHEART COURT SWIMMING POOL PATIO SETBACK VARIANCE

LOCATION: 4661 Goodheart Court (PID: 222-004564)
APPLICANT: Tim Snider
REQUEST: Variance to C.O. 1173.02(c) to allow a pool patio to be located 10 feet from the southern property line where city code requires a 15 foot setback to any property line
STRATEGIC PLAN: Neighborhood Residential
ZONING: R-3
APPLICATION: V-40-2019

Review based on: Application materials received April 29, 2019.

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance from Codified Ordinance Section 1173.02(c) to allow a swimming pool patio to be located 10 feet from the southern property line where city code requires a 15 foot setback to any property line.

In September 2018 a permit was issued to construct the pool and pool patio. The original approved plans showed the pool patio setback 15 feet from the side (southern) property line. A brick retaining wall with a fence on top of the wall is located 10 feet from the side (southern) property line which is permitted by city code. Therefore, as originally permitted, there is a five foot wide space between the edge of the patio and the brick fence filled in with landscaping.

There is a three foot wide paved area between the edge of a portion of the pool and the landscaping. The applicant is proposing to extend the patio by 5 feet to the edge of the brick retaining wall and fence and remove the previously approved landscape bed.

II. SITE DESCRIPTION & USE

The parcel is located in section 1 of the New Albany Country Club known as Bottomly Crescent. This parcel is surrounded by other residential uses both along Goodheart Court as well as single family homes along Harlem Drive.

The home is located on a 0.74 acre lot and was built in 1994. The home has a 3,270 square foot building footprint, according to the Franklin County Auditor website.

III. ASSESSMENT

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.EVALUATION

Variance to C.O. 1173.02(c) to allow a pool patio to be located 10 feet from the southern property line where city code requires a 15 foot setback to any property line.

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

1. The city’s Codified Ordinance Section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line. By extending the pool patio by 5 feet, the patio will be located 10 feet from the southern property line which does not meet code requirements, therefore the applicant is requesting a variance.

2. The applicant obtained a building permit for this project in September 2018. At that time the pool patio was meeting code requirements. A fence has been installed 10 feet from the southern property line, around the pool, which meets code requirements. The fence is installed on top of a retaining wall which is permitted by city code section 1175.04(b).
3. The applicant is approved to install a landscape bed between the edge of the patio and the edge of fence. The applicant is currently proposing to remove the landscape bed and extend the patio to the edge of the approved fence to address safety concerns.
4. The applicant wishes to extend a previously approved pool patio into the required setback by 5 feet in order to allow for a wider path around the pool. The homeowner states they have concerns about safe navigation around the swimming pool. Currently, there is 3 feet between the edge of the patio and the edge of one portion of the swimming pool.
5. The pool is approximately 18 feet away from the southern property line.
6. This variance does not appear to be substantial as there is a previously approved brick fence that is located 10 feet away from the southern property line and is 45 feet away from the closest neighboring home. This fence varies in height due to the change in grade which will provide adequate screening for the patio. The proposed patio extension will not add any additional encroachment to the southern property line more than 10 feet due to this previously approved brick fence. Additionally, the pool patio is only taking up 41 feet of the southern width of this property which is not a significant amount as the total width along this boundary is 269 +/- feet.
7. The “spirit and intent” of the zoning requirement is preserved as it is to ensure appropriate separation of uses. As stated, the applicant has received approval to install a fence on top of a brick retaining wall around the pool, 10 feet from the southern property line, which is permitted by city code. This fence and retaining wall will provide adequate screening and separation. The retaining wall varies in height due to the change in grade but is 8’ at its maximum height. The code requirement seeks to ensure horizontal separation between uses. While the patio is 10 feet from the property line, the retaining wall adds vertical separation between this area and other uses. Additionally, the received approval to install ten 12-14 foot tall arborvitae along the southern edge of the property which will provide adequate screening.
8. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The pool is adequately screened from adjacent properties.
9. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
10. Granting the variance would not adversely affect the delivery of government services.

IV. RECOMMENDATION

Staff recommends approval of the variance request should the Board of Zoning Appeals find the application has sufficient basis of approval. This variance request does not appear to be substantial.

The spirit and intent of the code requirement is to maintain separation between uses. While the pool patio is located 10 feet away from the property line, the retaining wall provides additional vertical separation which appears to meet the intent of the code requirement and is a unique feature of this request as it appears to go above what is required in city code.

While the patio is proposed to be located closer to the southern property line, the closest home is 45 +/- feet away from the retaining wall. This portion of the neighboring property's home is the garage, meaning that the actual living space of the home is even further away from the pool patio. Additionally, the brick retaining wall, fence and the extensive planting plan will provide adequate screening for the patio. It appears that the patio will be fully screened from the adjacent neighbor to the south of this property.

V. ACTION

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

Move to approve application V-40-2019.

Approximate Site Location:



Source: Google Maps