



**New Albany Board of Zoning Appeals
February 24, 2020 Minutes**

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
Ms. Andrea Wiltrout	Present
Ms. Kerri Mollard	Absent
Mr. Shaun LaJeunesse	Absent
Ms. Marlene Brisk (council liaison)	Present

Staff members present: Steven Mayer, Development Services Manager; Chris Christian, Planner; and Josie Taylor, Clerk.

Ms. Wiltrout stated a correction to the October 28, 2019 meeting minutes.

Ms. Taylor stated she would make that change.

Moved by Mr. Smith to approve the October 28, 2019 meeting minutes, as corrected, seconded by Ms. Wiltrout. Upon roll call: Mr. Smith, yea; Ms. Wiltrout, 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 swore to truth those wishing to speak before the Board of Zoning Appeals.

Mr. Gallagher asked if there was anyone who wanted to discuss any items not on tonight's Agenda. (No response).

VAR-3-2020 Variance

Variance request to C.O. 1165.04(a)(1) to allow an existing non-conforming structure to be enlarged and exceed the 1,600square foot maximum area requirement at 12 New Albany Farms Road (PID: 222-000993).

Applicant: Alyssa Lowry

Mr. Christian presented the staff report.

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

Mr. Gallagher asked if the applicant wanted to speak.

Ms. Lowry stated she had nothing to add but was able to answer any questions.

Mr. Smith stated he had no questions.

Ms. Wiltrout stated she had no questions.

Mr. Gallagher stated the proportionality made sense.

Moved by Ms. Wiltrout to approve application VAR-3-2020, seconded by Mr. Smith. Upon roll call vote: Ms. Wiltrout, yea; Mr. Smith, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

VAR-4-2020 Variance

Variance requests to C.O. 1165.06(a)(2)(D) to allow an accessory structure to be located 28 feet from the primary structure, where city code requires the structure to be setback 58 feet from the primary structure; and C.O. 1165(a)(1) to allow an accessory structure to have an area which is 6.9% of the lot, where the city code permits a maximum of 5% at 7747 Sutton Place (PID: 222-002102).

Applicant: f5 Design c/o Todd Parker

Mr. Christian presented the staff report.

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

Mr. Gallagher asked if the applicant wished to speak.

Mr. Parker stated this was a simple filling-in and the footprint would not change.

Mr. Gallagher asked for any questions or comments.

Mr. Smith stated he had no questions.

Ms. Wiltrout stated she had no questions.

Ms. Brisk asked about ingress and egress onto the lawn.

Mr. Parker stated it was tied to the pool area that would have concrete on it.

Ms. Brisk stated you would walk right onto the concrete.

Mr. Parker stated yes.

Mr. Gallagher asked if the neighbors had been notified.

Mr. Parker stated yes.

Moved by Mr. Smith to approve application VAR-4-2020, seconded by Ms. Wiltrout. Upon roll call vote: Mr. Smith, yea; Ms. Wiltrout, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Other Business

Mr. Gallagher asked if staff had any other business.

Mr. Mayer stated none from staff.

Moved by Mr. Smith, seconded by Ms. Wiltrout, to adjourn the meeting. Upon roll call vote: Mr. Smith, yea; Ms. Wiltrout, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Meeting adjourned at 7:15 pm.

Submitted by Josie Taylor.



**Board of Zoning Appeals Staff Report
February 24, 2020 Meeting**

**ACCESSORY STRUCTURE VARIANCES
12 NEW ALBANY FARMS ROAD**

LOCATION: 12 New Albany Farms Road
APPLICANT: Alyssa Lowry
REQUEST: (A) A variance request to C.O. 1165.04(a)(1) to allow an existing non-conforming structure to be enlarged and exceed the 1,600 square foot maximum area requirement.
ZONING: R-1
APPLICATION: V-3-20
STRATEGIC PLAN: Rural Residential

Review based on: Application materials received January 24 and February 5, 2020
Staff Report Completed by Chris Christian, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow an existing structure to be enlarged and exceed the 1,600 square foot maximum area requirement.

The existing structure has an area of 3,050 square feet and was permitted in 2008 prior to the adoption of the current code requirement. Therefore it is an existing, non-conforming accessory structure. Because construction on the existing portion of the structure is complete and the permit is closed, the addition is reviewed under the current code requirements. The applicant is proposing to add an additional 1,360 square feet to the structure for a total area of 4,410 square feet.

C.O. 1165.04(a)(1) states that the maximum permitted area for a detached structure on a lot larger than 2 acres is 1,600 square feet therefore a variance is required. According to the Franklin County Auditor website, the lot is 15.04 acres in size.

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

A variance request to C.O. 1165.04(a)(1) to allow an existing structure to be enlarged and exceed the 1,600 square foot maximum area requirement.

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

1. The applicant is proposing to construct a 1,360 square foot addition onto an existing structure that is 3,050 square feet. C.O. 1165.04(a)(1) states that the maximum permitted area for a detached structure on a lot larger than 2 acres is 1,600 square feet therefore a variance is required. The existing structure was built in 2008, prior to the adoption of the current code requirement. A variance was approved to allow the existing structure to 32 feet tall where code permitted a maximum height of 10 feet (V-8-2008).
2. The variance request meets the spirit and intent of the requirement which is to ensure that detached structures are properly scaled in relation to the size of the lot. Additionally, the code requirement was intended to set benchmark maximum area requirements for all lots with the understanding that there would be instances, such as this one where a variance would be required for larger lots with more development space. 95% of the lots within New Albany are two acres or less and only 5% are greater than 2 acres. The current code allows for an additional 400 square feet of space for every acre, starting at a maximum of 800 for lots less than 1 acre. According to the Franklin County Auditor the lot is 15.04 acres in size, making it one of the largest residential lots in the city. The garage appears to be appropriately scaled considering the size of the lot.
3. The variance does not appear to be substantial. While the structure is larger than what is permitted

by code, the structure takes up less than 1% of the total lot area. Additionally, all of the structures on site have a total lot coverage of only 2.66%.

4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment.” The property is located within the New Albany Farms subdivision which is made up of the largest residentially used properties in New Albany therefore this structure will not alter the character of the neighborhood. Additionally, the structure will maintain a 350 foot setback from the nearest residential structure which is what the current setback is today without the addition.
5. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

IV. RECOMMENDATION

Staff supports the variance request. Even though the proposed addition to this existing structure is larger than what is permitted by code, the structure is appropriately scaled considering this size of the lot. With the addition, the structure takes up less than 1% of the total lot area and only 2.66% if all the existing structures are taken into account. The new code requirement was created with the understanding that there would be instances, such as this one, where variances would be needed for larger lots with more development space. Additionally, the structure will not change the essential character of the neighborhood as it will maintain a 350 foot setback from the nearest residential structure which is what the current setback is today. The property is located within the New Albany Farms subdivision which is made up of the largest residentially used properties in New Albany where these larger detached structures are appropriate.

V. ACTION

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

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

Move to approve variance request V-3-20 (conditions of approval may be added)

General Site Location:



Source: Franklin County Auditor



**Board of Zoning Appeals Staff Report
February 24, 2020 Meeting**

**ACCESSORY STRUCTURE VARIANCES
NACC 16A - 7747 SUTTON PLACE**

LOCATION: 7747 Sutton Place
APPLICANT: 5F Design c/o Todd Parker
REQUEST: (A) A variance request to C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 28 feet away from the primary structure, where code requires this recreational structure to be located 58 feet away from the primary structure;
(B) A variance request to C.O. 1165(a)(1) to allow a recreational structure to have an area which is 6.9% of the lot, where city code permits a maximum of 5%.
ZONING: R-3
APPLICATION: V-4-20
STRATEGIC PLAN: Neighborhood Residential

Review based on: Application materials received January 24, 2020

Staff Report Completed by Chris Christian, Planner

II. REQUEST AND BACKGROUND

On February 25, 2019 the Board of Zoning Appeals approved four variances for a new field house to be constructed at 7747 Sutton Place. The applicant has modified the approved 2019 plans to enclose a covered porch area thereby adds 104 square feet to the structure. Due to this change, the applicant is exceeding what was previously approved by the BZA including permitted lot coverage and distance between a recreational structure and a primary structure. The applicant is requesting new variances due to these changes.

- (A) C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 28 feet away from the primary structure, where code requires this recreational structure to be located 58 feet away from the primary structure. The Board of Zoning Appeals previously approved a 33 foot setback.
- (B) C.O. 1165(a)(1) to allow a recreational structure to have an area which is 6.9% of the lot, where city code permits a maximum of 5%. The Board of Zoning Appeals previously approved 6.13% lot coverage.

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. This variance request to a previous version of the Chapter 1165 city code section which was in effect at the time that this project was permitted.

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

- A. A variance request to C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 28 feet away from the primary structure, where code requires this recreational structure to be located 58 feet away from the primary structure.**

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

6. On February 25, 2019, the Board of Zoning Appeals approved a variance to allow the recreational structure to be setback 33 feet from the primary residence.
7. The applicant is proposing to enclose a covered porch which will add an additional 104 square feet to the recreational structure. Since it is now enclosed, the distance between the recreational structure and the primary structure is now 28 feet.
8. C.O. 1165.06(a)(2)(D) states that, “an accessory structure shall maintain a proportional distance of two (2) feet for every foot in height (2:1) from the main building.
9. Since the accessory structure is 29 +/- feet tall, the proposed distance from the primary structure must be 58 +/- feet in order to meet code requirements.

10. The request does not seem to be substantial since the variance is to a setback from the homeowner's own residence. Additionally, the Board of Zoning Appeals previously approved a variance to allow this same structure to be setback 33 feet from the primary structure. The applicant is proposing to enclose a covered porch which results in the structure being located 28 feet from the primary structure which is 5 feet closer than what was originally approved.
 11. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The recreational structure was originally approved with a covered porch, the applicant is simply closing it in. The recreational structure appears to be designed to complement the agrarian characteristics within this area of the community.
 12. The property appears to have special conditions and circumstances since it is oddly shaped, and not a typical rectangular or square lot. The triangle shape at the southeast corner, limits the amount of area where the proposed structure can be located on the lot since the lot narrows as it approaches the street.
 13. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.
- a. A variance request to C.O. 1165(a)(1) to allow a recreational structure to have an area which is 6.9% of the lot, where city code permits a maximum of 5%.**

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

1. On February 25, 2019, the Board of Zoning Appeals approved a variance to allow the recreational structure to be 6.13% of the total lot area.
2. The applicant is proposing to enclose a covered porch which will add an additional 104 square feet to the recreational structure. Since it is now enclosed, the total area of the recreational structure is now 1,611 square feet which is 6.9% of the total lot area.
3. Codified Ordinance Section 1165.06(a)(1) states a detached recreational structure shall not:
 - A. Occupy more than twenty-five percent (25%) of a required rear yard, plus forty percent (40%) of any non-required rear yard; Or
 - i. The required rear yard is 30 feet. 6,428.7 feet is 25% of the required rear yard. There is no additional non-required rear yard space within the proposal. 25% of the required rear yard is 1,607.18 square feet.
 - ii. With the additional 104 square feet the recreational structure is exceeding this size requirement by approximately 4 square feet.
 - B. Provided that in no instance shall the storage building or recreational structure exceed the ground floor area of the main building;
 - i. The ground floor area of the house is 2,334 square feet according to the Franklin County Auditor and the entire home is 5,058 square feet. The proposed structure does not exceed the floor area.
 - C. Or five percent (5%) of the total lot, whichever is less
 - i. The lot is 0.53 acres (23,086.8 square feet) according to the Franklin County Auditor. Five percent (5%) of this total lot area is 1,154.34 square feet.
 - ii. The proposed structure is 6.9% of the lot, and exceeds this area requirement.
4. The request does not seem to be substantial given that the recreational structure still appears to be ancillary relative to the primary residence and the additional 104 feet of enclosed space is along an elevation that faces the primary structure. So the structure is not being built closer to neighbors or public streets. The structure is located on the side and rear of lot which is approximately 350 feet away from residences along Reynoldsburg- New Albany Road. Additionally, the Board of Zoning Appeals previously approved a variance to allow the recreational structure to occupy 6.13% (1,507 s.f.) of the lot, the applicant is proposing to add 104 square feet of enclosed space which equates to

- 6.9% of the lot which is not significant.
5. The variance appears to preserve the “spirit and intent” of the zoning requirement since the recreational structure is appropriately located on the site in relation to the house, as well as having an appropriate and well-designed exterior which matches the agrarian feel of this area of the City. Although the proposed recreational structure has a larger area than allowed, the applicant has designed the accessory building to be made with a secondary material and shorter than the primary two-story home. Therefore, the recreational structure is well designed and scaled to appear as an accessory structure and is appropriate for its surroundings. This proposed structure would not be an appropriate structure for a typical home within the country club, however in relation to its location on the edge of the community, the proposed structure is appropriate.
 6. It appears that the essential character of the area will not be substantially altered or suffer a substantial detriment by the approval of the variance since the proposed structure will not substantially alter the character of the area since it is located on the edge of the country club and borders a rural, undeveloped, lot with only neighbors on two sides of the lot.
 7. Below is a list of applications that have requested the same variance, for a similar type of structure. Please note detached garages are not included in this list since they have different height and area requirements than recreational structures. Historically the BZA and PC have approved height and area variance for similar sized detached garages on larger lots of record.

<u>Address</u>	<u>Proposed Height</u>	<u>Lot Size</u>	<u>House Size</u>	<u>Proposed Area</u>	<u>Outcome</u>
7228 Greensward Dr	19 feet	0.65 Acres	6,829 sq. ft.	1,040 sq. ft.	Approved
6057 Johnstown Rd.	27 feet and 8 inches	1.41 Acres	4,047 sq. ft.	1,566 sq. ft.	Approved
6958 Lambton Park	N/A	6.5 Acres	11,561 sq. ft.	9,100 sq. ft.	Approved

8. It appears that the variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

IV. RECOMMENDATION

In summary, staff supports these variance requests. The request is to allow an enlargement of a previously approved variance. When the variance was first approved, the accessory structure did not meet one of the three area regulations (five percent of the total lot). With the additional 104 square feet of enclosed space the accessory structure does not meet two of the three area regulations (five percent of the total lot and twenty-five percent of a required rear yard). However, the two variance requests do not appear substantial since it is covered porch space and the enclosed area does not result in the structure being constructed closer to neighbors or public streets. Even though this is a smaller lot than other lots which have received similar variances, since the proposed structure is located at the end of a subdivision, at the end of the road, and adjacent to an agrarian area of the community, it will not change the essential character of the area. Therefore, the character of the neighborhood would not be substantially altered as a result of the variance. The city architect reviewed the drawings and stated that the proposed barn design is appropriate for the area.

V. ACTION

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

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

Move to approve variance request V-4-20 (conditions of approval may be added).

General Site Location:



Source: Franklin County Auditor