



New Albany Board of Zoning Appeals
August 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, Ms. Wilttrout, at 7:01 p.m.

Those answering roll call:

Ms. Andrea Wilttrout	Present (arrived 7:02 p.m.)
Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Ms. Marlene Brisk (council liaison)	Present

(Ms. Wilttrout, Mr. Gallagher, Mr. Smith, Ms. Mollard, Mr. LaJeunesse, and Ms. Brisk present via GoToMeeting.com).

Staff members present: Steven Mayer, Development Services Coordinator (via GoToMeeting.com); Chris Christian, Planner; and Josie Taylor, Clerk (via GoToMeeting.com).

Moved by Mr. Smith to approve the May 27, 2020 meeting minutes, seconded by Ms. Wilttrout. Upon roll call: Mr. Smith, yea; Ms. Wilttrout, yea; Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Ms. Wilttrout asked for any corrections or additions to the Agenda.

Mr. Christian stated application VAR-60-2020 should be removed from the Agenda as it should be heard by the Planning Commission, not the Board of Zoning Appeals (hereafter, "BZA").

Ms. Gallagher swore those present who wished to speak before the BZA to tell the truth and nothing but the truth.

Ms. Wilttrout asked if anyone wanted to discuss any items not on tonight's Agenda. (No Response).

VAR-58-2020 Variances

Variance to C.O. 1165.04(a)(1) to allow a detached garage to be 1,200 square feet in size where city code allows a maximum of 800 square feet at 7514 Phelps Close (PID: 222-001528 & 222-01529).

Applicant: Kyle Albert

Mr. Christian presented the staff report.

Ms. Wilttrout asked for the applicant to speak.

Mr. Kyle Albert, the applicant, stated the garage was to scale with the house and lot and said he was seeking a variance for the design and later construction of the garage.

Mr. Gallagher asked whether all neighbors within 200 feet had been notified and if any of them had made any comments or had any questions.

Mr. Christian stated neighbors within 200 feet had been notified and no concerns had been stated.

Mr. Albert stated he had spoken to the neighbors and no concerns had been stated to him.

Ms. Wiltrout asked if the applicant was familiar with, and amenable to, the condition in the staff report.

Mr. Albert's stated yes and said he had no objection.

Mr. LaJeunesse asked the applicant what the impact would be to make the building conform to code.

Mr. Albert replied the garage would need to be reduced by 400 square feet and that would be space that was nice to have from a design perspective and for use.

Moved by Ms. Wiltrout to accept the staff report into the record, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yes; Ms. Mollard, yea; Mr. Smith, yea; Mr. LaJeunesse, abstain. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Smith to approve application VAR-58-2020 with the condition in the staff report, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Mr. Smith, yea; Ms. Wiltrout, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

VAR-59-2020 Variance

Variance to C.O. 1171.04(a) to eliminate the requirement to install new street trees as part of the construction of a new home at 6000 Kitzmiller Road (PID: 222-001959).

Applicant: Bradley Glumac.

Mr. Christian presented the staff report.

Ms. Wiltrout asked for the applicant to speak

Mr. Bradley Glumac, the applicant, stated there was little space to place trees on the lot. Mr. Glumac stated any new trees would be covered up by existing trees and there was a septic well being placed in the yard which also reduced the availability of space. Mr. Glumac added there was no need for street trees on the lot.

Ms. Wiltrout asked where the requirement for the four trees came from.

Mr. Christian stated Code.

Ms. Wiltrout asked if these trees were typically planted on the street front.

Mr. Mayer stated they were generally planted on the street front.

Ms. Wiltrout asked if that was under similar circumstances as this lot.

Mr. Mayer stated yes and added that there was flexibility here due to the rural character.

Ms. Wiltrout asked how much space there was on the lot and how big were the street trees typically.

Mr. Mayer stated that staff and the applicant would need to work together to respond to that.
Mr. Mayer noted the trees were approximately 3 feet and they could work with the applicant

Ms. Wiltrout asked how much open space was available on the lot for all the trees and asked how large the tank for the septic system would be.

Mr. Glumac said he would have to refer to Ms. LaRussa.

Ms. Wiltrout swore Ms. LaRussa in to tell the truth and nothing but the truth.

Ms. Krista Larussa, of Arcaro & LaRussa, stated the mounding required 150 linear feet of space. Ms. LaRussa noted there was a floodplain at the back of the lot and no trees could be within at least 20 ft of the tank.

Ms. Wiltrout asked how long the lot's sides were.

Ms. LaRussa provided the dimensions for the lot.

Ms. Wiltrout asked what was on the southeastern most corner of the lot.

Ms. LaRussa stated it was empty but it was part of the floodplain.

Ms. Wiltrout asked if trees could be in a floodplain.

Mr. Mayer stated Engineering would need to review it but he believed trees could be in the floodplain.

Mr. Gallagher asked if it would be possible to have a condition in place where, if the front trees died, there was a requirement to replace them with new trees.

Mr. Mayer stated yes.

Mr. Gallagher asked if it might be appropriate also, if the trees were not put on the property, could the applicant donate the four trees to the City of New Albany.

Mr. Mayer stated it could be, adding that was up to the applicant.

Mr. Glumac stated he did not have a problem with that.

Mr. Gallagher asked staff if there would be a need to notify the neighbors within 200 feet of that.

Mr. Christian stated yes.

Mr. LaJeunesse asked if the trees were not needed to preserve the character, why force the trees to be planted when there were already plenty of trees on the lot as a buffer.

Mr. Mayer stated the Code had no flexibility for existing conditions.

Mr. LaJeunesse stated thank you.

Ms. Wiltrout asked if the variance was for trees on the front of the lot or for a total number of trees on the lot.

Mr. Mayer stated the Code spoke to the front of the lot.

Ms. Wiltrout asked how many trees were in the front of the lot at this time.

Mr. Glumac stated there were four (4) mature evergreens at the front and all along the driveway.

Ms. Mollard asked about the driveway seen to be running across the lot on the image in the presentation.

Mr. Glumac stated that was a former driveway.

Ms. Mollard asked if he would be adding a new driveway.

Mr. Glumac stated correct.

Ms. Mollard asked if construction trucks would be able to fit on the lot due to the dense trees.

Mr. Glumac stated three (3) trees where the house will be built would need to come down, but none along the road as those were set far back enough.

Ms. Mollard asked if the barn would be torn down or not.

Mr. Glumac stated it would remain.

Mr. Gallagher asked if the conditions for the street trees and the donation of the trees would be acceptable to Mr. Glumac.

Mr. Glumac stated yes but he would have to see it.

Ms. Wiltrout asked what details about the donation Mr. Glumac would like to have.

Mr. Glumac stated the size and cost of the trees.

Mr. Mayer stated he did not know about cost at this time, but the size would be about 36 inches or so, no larger.

Moved by Ms. Wiltrout to accept the staff report into the record, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yes; Ms. Mollard, yea; Mr. Smith, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 1. Motion carried by a 5-0 vote.

Moved by Mr. Gallagher to approve application VAR-59-2020 with the following conditions:

1. Applicant will replace any trees currently at the front of the lot if the die; and
2. If the four (4) trees cannot be planted on the lot the applicant will donate the trees to the City of New Albany, as the City of New Albany sees fit;

seconded by Ms. Wiltrout. Upon roll call vote: Mr. Gallagher, yea; Ms. Wiltrout, yea; Mr. LaJeunesse, yea; Mr. Smith, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Ms. Wiltrout asked if there was any Other Business to discuss.

Mr. Christian stated no.
Meeting adjourned at 7:44 p.m.
Submitted by Josie Taylor.



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

**7514 PHELPS CLOSE
ACCESSORY STRUCTURE AREA VARIANCE**

LOCATION: 7514 Phelps Close (PIDs: 222-001528 & 222-01529)
APPLICANT: Kyle Albert
REQUEST: Variance to C.O. 1165.04(a)(1) to allow a detached garage to be 1,200 square feet in size where city code allows a maximum of 800 square feet.
ZONING: R-3
STRATEGIC PLAN: Neighborhood Residential
APPLICATION: VAR-58-2020

Review based on: Application materials received on July 27 and August 5, 2020

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1165.04(a)(1) to allow a detached garage to be 1,200 square feet in size where city code allows a maximum of 800 square feet.

C.O. 1165.04(a)(1) states that the maximum permitted area for a detached structure on a lot less than 1 acre is 800 square feet therefore a variance is required. Lots between 1 and 2 acres are permitted to construct accessory structures up to 1,200 square feet in area.

II. SITE DESCRIPTION & USE

The .956 acre property is located in section 8 of the New Albany Country Club, is zoned R-3 and contains a single family home. The surrounding properties are residentially zoned and used.

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. 1165.04(a)(1) to allow a detached garage to be 1,200 square feet in size where city code allows a maximum of 800 square feet.

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

1. The applicant proposes to construct a 1,200 square foot garage near the western property line of the lot. C.O. 1165.04(a)(1) states that the maximum permitted area for a detached structure on a lot less than 1 acre is 800 square feet therefore a variance is required.
2. The variance does not appear to be substantial. The property is .956 acres in size, which is just .044 acres smaller than an acre. For lots greater than 1 acre in size, a detached accessory building is permitted to have an area of 1,200 square feet. If the property was .044 acres larger, then the applicant would be permitted to construct the building as proposed.
3. 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. While the structure is larger than what is permitted by code, the proposed structure takes up only 2.9% of the total lot area. If the lot were just .044 acres larger in size, the proposed structure would take up 2.75% of the total lot area. The 0.15% difference is minimal and therefore not substantial and the proposed structure is properly scaled in relation to the size of the lot.
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 larger than the typical size of a New Albany Country Club lot because it consists of one and a half lots. Therefore this larger accessory structure appears to be appropriately sized and positioned based on the area of the lot.
5. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
6. 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 is supportive of the variance request. Even though the proposed structure is larger than what is permitted by code, the lot is just .044 acres less than 1 acre. If the lot was .044 acres larger, a structure of this size would be permitted. Given the minimal difference between the tiers of accessory structures areas, it is unlikely the difference in size will be noticeable. Additionally, the proposed structure takes up only 2.9% of the total lot area which meets the intent of the requirement to ensure that detached accessory structures are properly scaled in relation to the rest of the lot. It does not appear that the essential character of the neighborhood would be substantially altered due to the granting of the variance request.

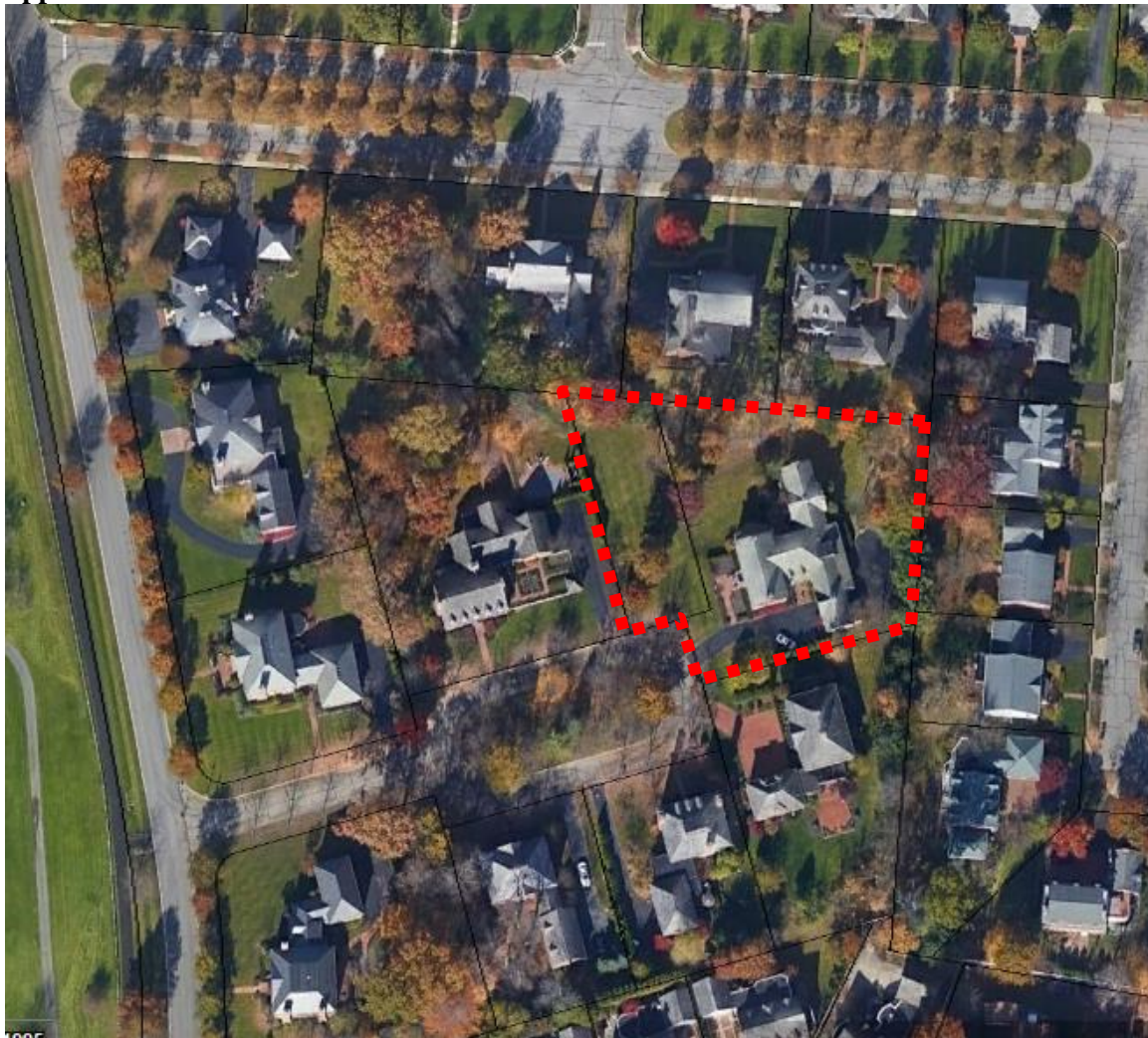
V. ACTION

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-58-2020 with the following condition.

1. A lot combination application must be submitted prior to the issuance of a building permit.

Approximate Site Location:



Source: Google Earth



**6000 KITZMILLER ROAD
STREET TREE VARIANCE**

LOCATION: 6000 Kitzmiller Road (PID: 222-001959)
 APPLICANT: Bradley Glumac
 REQUEST: Variance to C.O. 1171.04(a) to eliminate the requirement to install new street trees as part of the construction of a new home.
 ZONING: R-2
 STRATEGIC PLAN: Rural Residential
 APPLICATION: VAR-59-2020

Review based on: Application materials received on July 10, 2020

Staff report prepared by Chris Christian, Planner.

V. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1171.04(a) to eliminate the requirement to install new street trees as part of the construction of a new home.

VI. SITE DESCRIPTION & USE

The 1.58 acre property is zoned R-2 and currently does not contain a residential home. There is an existing accessory building located at the rear of the property that was constructed in 2005. The surrounding properties along Kitzmiller Road are zoned Agricultural (AG) and R-2 and contain residential uses. The properties along the east side of Kitzmiller Road back onto the Abercrombie & Fitch site.

VII. 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.

- 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

Variance to C.O. 1171.04(a) to eliminate the requirement to install new street trees as part of the construction of a new home.

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

7. The city’s Codified Ordinance Section 1171.04(a) requires deciduous canopy trees to be installed along roadways as part of new development no less than twenty-four feet and no more than thirty-six feet on center unless otherwise approved by the city architect. Historically, the city has enforced the required number of trees to be planted at an average rate of one tree for every 30 feet of lot frontage.
8. The 2014 New Albany Strategic Plan identifies Kitzmiller Road as a rural road and recommends that street trees be installed along it in order to achieve the desired road character. Another residential development strategy found in the plan is to preserve and contribute to the pastoral character of the community and to capitalize and protect natural features on sites.
9. The applicant is in the preliminary stages of building a new home at 6000 Kitzmiller Road. The property has approximately 114+/- feet of frontage on Kitzmiller Road therefore 4 street trees are required to be installed. There is an existing, large stand of evergreen and other trees installed along the frontage of the property that the applicant would like to preserve as part of the project. If the required street trees were to be planted in a traditional manner, it would require the existing trees to be removed.
10. This problem can be solved in another way other than granting the variance. Staff is supportive of and encourages the existing tree stand to be preserved as part of the construction of the home however it appears that there is adequate room on the rest of the site to plant the required trees. In order to capitalize, protect and contribute to the pastoral character of the community, the city has permitted existing trees to be preserved and plant the required street trees in another location on the site. Staff recommends the homeowner plant the four trees at various locations on the property. This can be accomplished in numerous ways, the applicant could install the trees in the front yard, along the side yard or even in the rear of the lot. Approving the variance request could set a precedent for future, similar requests.
11. As stated, there is an existing, large stand of trees installed along the frontage of the property that the applicant would like to preserve as part of this project. In order to maintain the existing tree row, the new street trees would have to be installed behind the existing trees which would obscure them from view.

12. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
13. Granting the variance would not adversely affect the delivery of government services.

VIII. RECOMMENDATION

While there is an existing tree stand along the frontage of the property, it appears this problem can be solved in another way other than granting the variance request. Typically, street trees along rural roads are planted randomly in order to achieve the desired streetscape which is not possible in this case. In order to capitalize, protect and contribute to the pastoral character of the community, the city has permitted existing trees to be preserved and instead planted in other locations on the site.

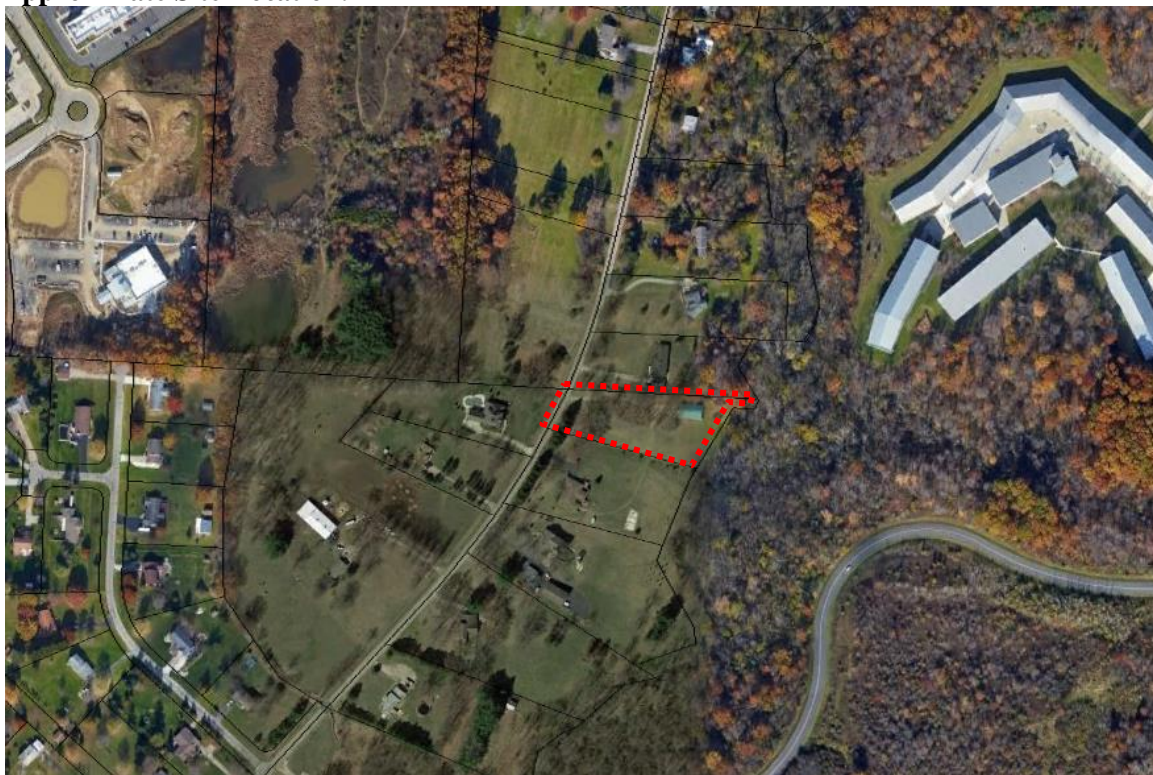
For these reasons staff is not supportive of the variance request and recommends the four number of trees be installed at various locations on the property. The locations can be at the homeowner's discretion. It appears there are open areas on the south and east sides of the property where trees could be accommodated on-site.

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-59-2020.

Approximate Site Location:



Source: Google Earth