



New Albany Board of Zoning Appeals
September 28, 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
Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Mr. Kasey Kist counsel liason (for Ms. Marlene Brisk)	Present

(Ms. Wilttrout, Mr. Gallagher, Mr. Smith, Ms. Mollard, Mr. LaJeunesse, and Mr. Kist 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. Gallagher to approve the August 24, 2020 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Gallagher, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Ms. Wilttrout, 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 none from staff.

Ms. Wilttrout swore Mr. James Roth and Mr. Rob Mitchell 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-70-2020 Variance

Variance to C.O. 1165.04(b)(3)(b) to allow a patio to be located in an easement at 7503 Ogden Woods Boulevard (PID: 222-001254-00).

Applicant: Rob Mitchell

Mr. Christian presented the staff report.

Ms. Wilttrout asked the applicant for any comments.

Mr. James Roth, the applicant, discussed the application and design of the structure.

Mr. Mitchell indicated the design was developed to protect sight lines.

Ms. Wilttrout asked staff if the easement on the property was due to a prior land division.

Mr. Christian stated yes.

Ms. Wilttrout asked what the easement had been intended for and what its present use was.

Mr. Christian stated the City Engineer had found the easement was for private utilities.

Ms. Wiltrout asked if any public utilities had any rights to be installed in that area.

Mr. Mayer stated the City had rights to install future infrastructure but there were no future plans for the City to do so at this time.

Ms. Wiltrout asked if the easement was only for the private and public utilities, whether it could be for any flood plains or other uses.

Mr. Mayer stated this was not a drainage easement and at this time it was just for any third party service providers.

Mr. Roth stated cable boxes were at the back of the lot where Mr. Christian was indicating on the presentation.

Mr. Kist asked staff if they could foresee any need to use the easement in the future.

Mr. Mayer stated the City did not but another third party provider might, hence, the recommendation to obtain the hold harmless agreement from the property owner.

Mr. Kist asked if, given the easement, the buildable area behind the house was seven (7) feet.

Mr. Christian stated correct.

Mr. Kist asked if the same conditions were on the north side of Ogden Woods.

Mr. Mayer stated he was not sure, but noted it was typical for easements to run along the back of properties.

Mr. Roth stated he believed the neighbors behind his lot had a ten (10) foot easement but he was not aware of what might exist on the north side.

Mr. Smith asked the applicant if he had any plans to alter the landscape or trees along the back line of the property.

Mr. Roth stated no.

Mr. Kist stated he did not have a problem with the application and appreciated the letters in support from neighbors, but noted this set a precedent for all neighbors.

Mr. Mayer stated that was a good point, but added that this lot might present a best case scenario because it was not in a floodplain, had no drainage issues, there were few utilities on it, and it contained no City infrastructure.

Ms. Wiltrout asked if, given the age of the community and the current utilities, whether other neighbors that might ask for the same thing would be in a similar situation.

Mr. Mayer stated neighbors likely faced similar situations but all cases were unique.

Mr. Roth stated there might be individuals who had already completed projects.

Ms. Wiltrout asked what the reasons were that led Mr. Roth to decide to build in the easement.

Mr. Roth stated the easement took up almost his entire backyard and he could not build without entering into the easement.

Ms. Wiltrout asked the applicant when he had purchased the property.

Mr. Roth stated June 2019.

Ms. Wiltrout asked the applicant if he had known about the easement at the time of purchase.

Mr. Roth stated he did but he had not known where the easement was located.

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

Ms. Wiltrout asked if any members had any further questions.

All members stated no.

Moved by Ms. Wiltrout to approve application VAR-70-2020 subject to the condition listed in the staff report, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yea; Ms. Mollard, yea; Mr. LaJeunesse, yea; Mr. Smith, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Ms. Wiltrout asked if there was any Other Business.

Mr. Christian stated none from staff.

Ms. Wiltrout asked for any further comments. (No response.)

Meeting adjourned at 7:27 p.m.

Submitted by Josie Taylor.

APPENDIX



COMMUNITY CONNECTS US

Board of Zoning Appeals Staff Report
September 28, 2020 Meeting

7503 OGDEN WOODS EASEMENT VARIANCE

LOCATION: 7503 Ogden Woods Boulevard (PID: 222-001254)
APPLICANT: Rob Mitchell
REQUEST: Variance to C.O. 1165.04(b)(3)(b) to allow a patio to be located in an
easement.
ZONING: R-4
STRATEGIC PLAN: Neighborhood Residential
APPLICATION: VAR-70-2020

Review based on: Application materials received on August 26 and September 17, 2020

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1165.04(b)(3)(b) to allow a patio to be installed in a platted easement.

II. SITE DESCRIPTION & USE

The .40 acre property is located in section 6 of the New Albany Country Club, zoned R-4 and contains a single family residential home that was built in 1993. The property is surrounded by single family residential homes.

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(b)(3)(b) to allow a patio to be located in an easement.

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

1. Codified Ordinance Section 1165.04(b)(3)(b) states that patios and other recreational amenities are not permitted to be located in an easement. According to the final plat for the subdivision, there is an existing 20 foot general easement that extends from the rear property line. General easements are used for public and private utilities. The applicant is requesting a variance to allow a 546 square foot patio to be installed in the easement.
2. The patio will take up 14% of the total easement and extends 10 feet into it. According to the submitted plan, the patio will contain a free standing bench, a gas fire pit and a sitting area.
3. In October 2019, modifications to section 1165 of the city’s Codified Ordinances were approved by City Council. The modifications included adding provisions to the city’s codifies ordinances that patios and other recreational amenities are not permitted to be installed in easements. By adding this prohibition, a property owner can now request a variance. Prior to the adoption of these code modifications city code was silent on easements, and patios and similar at-grade encroachments into easements where regulated only by plat notes which typically state encroachments could only be approved by the city engineer. Plat notes provide no other mechanism for relief via a public process. The intent of this requirement is to protect property owners and to add an extra level of review for these types of encroachment requests.
4. The variance request does not appear to be substantial. The city’s engineering staff reviewed the application and confirmed that there are no public utilities installed in the easement. There are private utilities installed in the easement at the rear of the property and one electric utility line that runs from the back of the property to the home.
 - The applicant had the Ohio Utilities Protection Service (OUPS) come to the property and spray all of the utilities on the site. The applicant provided photo documentation that shows where the electric line runs to the home to provide service.
 - Based on this information, it appears that the patio may be installed above a portion of this electric line however it will be outside of the easement area so it would only affect the property owner themselves and is permitted to be constructed there. The patio will

not be installed above any existing utility lines within the easement area. Additionally, the patio is meeting all other code requirements.

5. The variance request appears to meet the spirit and intent of the zoning requirement which is to provide protection for property owners in the event that the city or a private utility provider must gain access to the utility. While the applicant proposes to install the patio within the easement, it will not be installed above any existing utility lines. If a patio or another structure is installed in an easement and the city or another utility provider needs to access the utility, the patio or other structure may be taken down or partially removed in order to access utilities and the property owner is responsible for the expense of replacing or repairing the patio/structure. Therefore staff recommends a condition of approval requiring a hold harmless to be submitted specifying that the property owner, and not the city, is responsible for any damages to the patio in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit.
6. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
7. Granting the variance would not adversely affect the delivery of government services. The city's engineering staff reviewed the application and determined that there are no public utilities installed in the easement area. Additionally, the hold harmless agreement will ensure that the city bears no responsibility for any damages to the patio if utilities need to be installed within the easement area in the future.

IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. While the applicant is proposing to install a patio within a platted easement, the patio will not be installed above any existing utility lines within the easement area therefore the variance request is not substantial. The hold harmless agreement ensures that the applicant is aware that the city is not responsible for any damages to the patio in the event that the easement area has to be accessed in the future. Additionally, since it is a patio, it appears if there utilities installed below the patio in the future they can still accessed with relative ease compared to a permanent structure or building. Therefore the spirit and intent of the requirement is being met and the delivery of government services will not be negatively impacted.

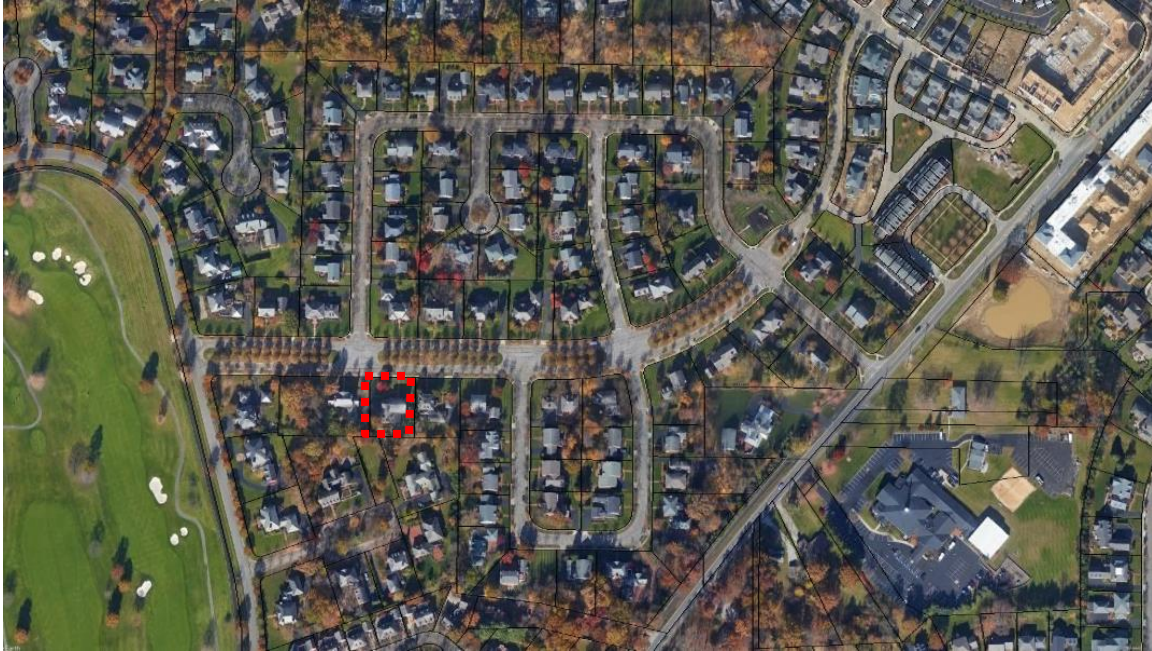
V. ACTION

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 VAR-70-2020 with the following condition (conditions of approval may be added).

1. A hold harmless must be submitted specifying that the property owner, and not the city, is responsible for any damages to the patio in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit.

Approximate Site Location:



Source: Google Earth