



New Albany Board of Zoning Appeals
November 23, 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 7:03 p.m.

Those answering roll call:

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| Ms. Andrea Wilttrout | Present |
| Mr. Everett Gallagher | Present |
| Mr. Kirk Smith | Present |
| Ms. Kerri Mollard | Present |
| Mr. Shaun LaJeunesse | Present |
| Ms. Marlene Brisk | Absent |

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

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

Moved by Mr. Gallagher to approve the September 23, 2020 meeting minutes, seconded by Mr. LaJeunesse. Upon roll call: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Mr. Smith, yea; Ms. Wilttrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

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

Mr. Christian stated none from staff.

Ms. Wilttrout swore Mr. Todd Parker 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-84-2020 Variances

Variances to C.O. 1165.04 to allow a detached accessory structure to be greater than 1,600 square feet in size, to allow stone to be used as a building material for an accessory structure and to C.O. 1173.02(e) to eliminate pool fence requirement at 10 New Albany Farms (PID: 222-000979). Applicant: Todd Parker, f5 Design and Architecture Inc.

Mr. Christian presented the staff report.

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

Ms. Wilttrout asked Mr. Parker if he had any comments.

Mr. Todd Parker, the architect for the applicant, discussed the project and its design.

Ms. Wilttrout stated she understood the size of barn in light of the lot size, but asked why there was not a fence around the pool and what about the pool cover meant it provided the same protection that a fence would.

Mr. Parker stated the pool cover was automatic and would keep unwanted people or critters out of the pool. Mr. Parker stated there were other homes with pools in the community without a fence around the pool, providing a precedent for this. Mr. Parker said the features of the lot, such as its horse fence, its privacy from view, and its extensive landscaping and mounding meant the pool was not really visible outside the property.

Ms. Wiltrout asked how old the applicant's children were.

Mr. Parker indicated the applicant had a nineteen (19) year old daughter and an eight (8) year old son.

Ms. Wiltrout stated there was precedent both ways on the fence requirement and noted that recently a horse fence had been deemed not able to provide sufficient cover for a pool. Ms. Wiltrout asked how this pool cover operated.

Mr. Parker stated there was a key switch that could shut the pool in 35 to forty (40) seconds. Mr. Parker said that when the pool cover was in place an adult could walk on the pool cover, children could play on it, and that it would last a long time.

Ms. Wiltrout asked if the owner had to manually close the cover.

Mr. Parker stated it had to be manually closed by a key switch.

Mr. Gallagher asked if the City could develop a process and follow-up to ensure the annual certification of the pool cover was completed and that future owners were made aware of this responsibility.

Mr. LaJeunesse asked why the applicant would not put a fence around this pool.

Mr. Parker stated aesthetics, cost, and precedent that neighbors did not have a fence were the issues.

Mr. LaJeunesse asked if there were young children in the subdivision.

Mr. Parker stated he could not confirm how many children there were, but thought there were some in the community.

Mr. Gallagher noted there were also some ponds in the community.

Mr. Parker stated he agreed.

Ms. Wiltrout asked how deep the ponds were.

Mr. Parker stated there was one on the property that was twelve (12) feet deep at most but could not speak to the depth of others on the property.

Ms. Mollard asked if there was an elevation showing the accessory structure in relation to the house.

Mr. Parker held up his phone to show an image of the structure on the screen.

Ms. Wiltrout asked Mr. Banchefsky if it would be possible to move on each variance separately.

Mr. Banchefsky stated that would be preferred.

Moved by Mr. Gallagher to approve application VAR-84-2020, to allow an accessory structure to be 3,200 square feet in size where city code allows a maximum of 1,600 square feet, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Ms. Wiltrout, yea; Mr. Smith, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Gallagher to approve application VAR-84-2020 to allow stone to be used as a building material for an accessory structure, seconded by Mr. Smith. Upon roll call vote: Mr. Gallagher, yea; Mr. Smith, yea; Ms. Wiltrout, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Gallagher to approve application VAR-84-2020 to eliminate the pool fence requirement, subject to the condition that the homeowner provides an annual certification that the cover is still in good operating order, seconded by Mr. Smith. Upon roll call vote: Mr. Gallagher, yea; Mr. Smith, yea; Ms. Wiltrout, no; Mr. LaJeunesse, no; Ms. Mollard, yea. Yea, 3; Nay, 2; Abstain, 0. Motion carried by a 3-2 vote.

Ms. Wiltrout stated a good case had not been made for a fence not to be required, did not believe the certification procedures were adequately in place, and did not believe sufficient evidence had been shown that the pool cover would satisfy the safety elements of a working fence.

Mr. Gallagher stated he would like to hear from staff about following-up on the certification and how to make that more robust and how to ensure future owners were aware of it.

Mr. LaJeunesse asked why make this a requirement.

Mr. Gallagher stated it was not a requirement but he was interested in hearing from staff about what would be done in the future.

Mr. Mayer stated they planned to look into this in 2021.

Mr. Banchefsky stated zoning requirements put property owners on constructive notice of these requirements.

Mr. Gallagher asked if that was on the record.

Mr. Banchefsky stated in theory, yes.

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 7:35 p.m.

Submitted by Josie Taylor.



**Board of Zoning Appeals Staff Report
November 23, 2020 Meeting**

**10 NEW ALBANY FARMS
VARIANCES**

LOCATION: 10 New Albany Farms (PID: 222-000979)
APPLICANT: Todd Parker, f5 Design/Architecture, Inc.
REQUEST: (A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 3,200 square feet in size where city code allows a maximum of 1,600 square feet.
(B) Variance to C.O. 1165.04(a)(4) to allow stone to be used as a building material for an accessory structure.
(C) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.
ZONING: R-1
STRATEGIC PLAN: Rural Residential
APPLICATION: VAR-84-2020

Review based on: Application materials received on October 23 and November 8, 2020

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests the following variance related to the addition of an accessory structure and a pool on the property.

- (A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 3,200 square feet in size where city code allows a maximum of 1,600 square feet.
- (B) Variance to C.O. 1165.04(a)(4) to allow stone to be used as a building material for an accessory structure.
- (C) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.

The Board of Zoning Appeals previously approved a variance (VAR-13-2015) for an accessory structure on the property to have an area of 2,560 square feet however the accessory structure has not been constructed. Since the applicant is increasing the size of the proposed structure, a new variance is required.

II. SITE DESCRIPTION & USE

This 7.81 acre property is located in the center of the New Albany Farms subdivision, west of New Albany Farms Road and east of Reynoldsburg-New Albany Road. It is zoned R-1 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

(A) Variance to C.O. 1165.04(a)(1) to allow an accessory structure to be 3,200 square feet in size where city code allows a maximum of 1,600 square feet.

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

1. The applicant proposes to construct a 3,200 square foot accessory structure 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 greater than 1 acre is 1,600 square feet therefore a variance is required.
2. The Board of Zoning Appeals previously approved a variance (VAR-13-2015) for an accessory structure on the property to have an area of 2,560 square feet however the accessory structure has not been constructed. Since the applicant is increasing the size of the proposed structure, a new variance is required.
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. The code requirement sets 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 7.81 acres in size, making it one of the largest residential lots in the city. The accessory structure appears to be appropriately scaled considering the size of the lot.
4. 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.
 5. 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 lots and primary dwellings in New Albany therefore this structure will not alter the character of the neighborhood.
 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.

(B) Variance to C.O. 1165.04(a)(4) to allow stone to be used as a building material for an accessory structure.

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

1. The applicant proposes to construct a 3,200 square foot accessory structure near the western property line of the lot. The primary building material will be hardie board with a metal ceiling however the applicant proposes to use a stone water table/base to match that of the primary residence on the property.
2. C.O. 1165.04(a)(4) states all finished surfaces, other than the roof, must be complimentary to the primary structure and be wood, brick, composite siding or any other combination thereof. Therefore, a variance is required to allow stone to be used.
3. The variance request meets the spirit and intent of the requirement which is to ensure that detached structures are built using the same materials that are used on a primary structure. The applicant is meeting this intent as the use of stone on the accessory structure is designed to match how the same material is used on the primary home. The application of stone in this case is appropriate.
4. The variance does not appear to be substantial. The use of stone in this case is limited to just the water table and is not being used as a primary building material for the entire structure.
5. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment” as the use of this material is limited and will not alter the architectural character of the primary home on the property or that of the subdivision.
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.

(C) Variance to C.O. 1173.02(e) to eliminate the pool fence requirement.

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

Site Specific Considerations:

- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to

prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

- The city's pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction is to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The pool is located at the rear of the home, between the house and New Albany Condit Road.
- There is an existing 44" high horse fence along the parcel frontage on New Albany Condit Road and existing mounding between the home and the road. Additionally, horse fence runs along a portion of the northern property line and it appears that there is substantial landscaping along the property line as well. The eastern property line contains 44" tall horse fence with one opening for the driveway along the road. There is an existing horse fence that runs along a portion of the southern property line. Where horse fence does not exist along this property line, there is a large pond as well as substantial landscaping and mounding. The height and design of horse fence is not designed to prevent uncontrolled access.
- This parcel is one of the largest in the entire city at 7.81 acres resulting in the pool being located greater distances from other residential properties and public roads. The pool is approximately 260 feet from New Albany Condit Road, 276 feet from the southern property line, and 181 feet from the northern property line. Additionally, the property is located in the New Albany Farms subdivision which is a gated community. All of these factors contribute to limiting the ability to gain access to the pool.
- The applicant proposes to use an ASTM certified automatic pool safety cover. This may be similar to a pool cover the BZA approved for the same variance request at 6 and 14 New Albany Farms. Pool covers are recognized by some building codes as an appropriate method to secure a pool. However the city has not adopted a code that allows the use of covers. The city's private swimming pool ordinance regulates the construction of private pools within the city and requires a 4-foot fence affixed with an operable gate and lock.
- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment". The pool is adequately screened and substantially setback from the public right-of-way.

History:

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

1. The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
2. The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
3. The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason the BZA approved the variance while stating some homes may be too close to each other for a pool cover.
4. The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms

community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.

5. The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
 - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
 - The pool area is fully enclosed by a house, fence, or wall.
 - The existing 54" and 44" horse fence counts towards the enclosure of the pool.
 - The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18th.
 - The pool cover is certified annually by the homeowner.
6. The PC approved a variance to allow landscaping and pool netting in –lieu of a fence that meets code requirements on October 17, 2016 for 10 and 11 Highgrove. Members voting in favor of the variances noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property owners' stated they intend is to use the pool net when the pool is not in use with adult supervision, and having an annually certified pool net. Members voting against the variance noted this is because the property would have a reasonable return without the variance, believes variance is substantial, essential character of neighborhood would not change, property owners were aware of the restrictions, original permit showed code complaint fence and was not installed per approved plan. Finally, the applicant did not prove pool netting is as safe as a fence. The conditions of approval are:
 - Landscaping approved by ARC and staff to include original and tonight's submissions.
 - Commitment to install boxwoods or gates at all openings.
 - Pool netting or hard cover ASTM compliant installed at all times when not in use and not attended by a responsible adult.
 - Applicant maintains landscaping and new plantings.
 - The pool netting is certified annually by the homeowners for function.
 - Hard cover installed by 11/1/16 and not removed until in compliance.

Analysis

Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The other variances within the New Albany Farms subdivision were approved because the BZA determined the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a powered automatic safety cover.

This property contains similarities with the homes at 6 and 14 New Albany Farms in terms of limited proximity and access.

The parcel is one of the largest in the city at 7.81 acres. The pool is centrally located behind the home and is substantially setback from all property lines which contribute to limiting access to the pool. Additionally, the property is located in a gated community which substantially limits access to the pool from the general public. There is substantial landscaping and mounding providing an adequate barrier to the pool from neighboring properties and areas outside of the gated community. It appears these are factors related to this parcel that help to prevent uncontrolled access and therefore not adversely affect the public safety of those residing or working in the vicinity similar to 6 and 14 New Albany Farms.

IV. RECOMMENDATION

Staff is supportive of the variance requests for the proposed accessory structure. Even though the accessory structure is larger than what is permitted by code, it is appropriately scaled in relation to the lot as it makes up less than 1% of the total lot area. The use of stone in this case is appropriate as it is limited in use and it designed to mimic the use of the same material on the primary home and will not alter the character of the neighborhood.

Staff is also supportive of the pool fence variance request. The property shares the same characteristics with 6 and 14 New Albany Farms where the same variance was granted by the BZA in the past. The large size of the property in addition to being located in a gated community address proximity and access factors that have been important in other past variances since it creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors and public roads.

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-84-2020 with the following condition.

1. The pool cover is installed and certified annually by the homeowner.

Approximate Site Location:



Source: Google Earth