


New Albany Planning Commission
January 20, 2021 Minutes

Planning Commission met in regular session in the Council Chambers at Village Hall, 99 W. Main Street and was called to order by Planning Commission Chair Mr. Neil Kirby at 7:02 p.m.

Those answering roll call:

Mr. Neil Kirby, Chair	Present
Mr. Brad Shockey	Present
Mr. David Wallace	Present
Mr. Hans Schell	Present
Ms. Andrea Wiltrout	Present
Mr. Matt Shull (council liaison)	Present

(Mr. Kirby, Mr. Wallace, Mr. Shockey, Mr. Schell, and Ms. Wiltrout present via GoToMeeting.com).

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner (via GoToMeeting.com); Mr. Jay Herskowitz for Mr. Ferris, City Engineer (via GoToMeeting.com); and Josie Taylor, Clerk (via GoToMeeting.com).

Moved by Mr. Wallace, seconded by Ms. Wiltrout to approve the December 21, 2020 meeting minutes. Mr. Wallace, yea; Ms. Wiltrout, yea; Mr. Kirby, yea; Mr. Shockey, abstain; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 1. Motion passed by a 4-0-1 vote.

Mr. Kirby asked if there were any additions or corrections to the Agenda.

Mr. Christian stated none from staff.

Mr. Kirby asked if there were any persons wishing to speak on items not on tonight's Agenda. (No response.)

VAR-91-2020 Variance

Variance to C.O. 1165.04(B)(2)(C) to allow a deck to be located closer than 10 feet from the rear property line at 7115 Longfield Court (PID: 222-004800).

Applicant: Thomas & Carmella Hagerman

Mr. Christian presented the staff report.

Mr. Kirby asked for Engineering comments.

Mr. Herskowitz stated there were no comments.

Mr. Schell asked staff if there was any plan by the City regarding future development of the five (5) acres of land the City owned behind the applicants' property.

Mr. Christian stated there were not. Mr. Christian stated the five (5) acres were dedicated and platted in a way that limited the property to be used as public open space and could not be developed for any other purpose.

Mr. Schell stated the notes made mention of two neighbors and asked if these neighbors had made any comments regarding the variance.

Mr. Christian stated he had not received anything from them.

Ms. Wiltrout asked if the adjoining lot had a drainage pond and asked if that were space that could be developed.

Mr. Mayer stated that was the publicly owned reserve area and part of a storm water basin that served the subdivision. Mr. Mayer stated this was meant to be passive space and it did not seem the City would do public development on this land in the future.

Mr. Kirby asked if that was the Sugar Run.

Mr. Mayer stated yes, that was correct.

Mr. Kirby stated that just like Rose Run was redeveloped that could occur here as well; it could be made accessible as a public park.

Mr. Mayer stated it could, there was public accessibility on the other side of the trees. Mr. Mayer stated the developer, as part of final development plan, committed to put a leisure trail on that side of Sugar Run, so the City had no plans to add additional leisure trails at this time.

Ms. Wiltrout asked if the triangle shaped space she was looking at was full of water.

Mr. Mayer stated that was correct.

Ms. Wiltrout stated there was a condition for fencing in the staff report and asked the applicants if they had any issues with that.

Mr. Thomas Hagerman, the applicant, asked if Ms. Wiltrout was speaking about the deck screening.

Ms. Wiltrout stated she was referring to deck screening, the area underneath the deck.

Mr. Hagerman stated yes, it was priced in.

Mr. Shockey stated it was a fair request and he did not have a problem with it. Mr. Shockey stated he noticed the drawings the Planning Commission members had were those referred to as mortgagee surveys. Mr. Shockey indicated that he suggested the applicant hire a surveying company to pin the corners of the deck so the deck company maintained the approved variance amount and did not further encroach.

Mr. Hagerman stated he understood.

Mr. Wallace asked if the applicant had any additional comments regarding the variance request.

Mr. Kirby stated, yes, please.

Mr. Hagerman stated he appreciated the consideration as they had no other option for any sort of outdoor leisure. Mr. Hagerman said it was a secluded yard and he believed the variance was a must for the property, would improve the value, and there would be no question on the upkeep.

Mr. Wallace stated he was not normally not in favor of variances due to concerns with setting precedents, but added that he was in favor in this case. Mr. Wallace stated he was in favor because the prior plotting and approval by the Planning Commission prevented any work around to the location of the house and put the homeowner in a bind. Mr. Wallace stated that made this a unique situation. Mr. Wallace stated the property was also adjacent to basically parkland and there would not be any intrusion into a neighboring property. Mr. Wallace stated the unique nature of this property was why he would be in favor of this variance.

Mr. Kirby stated he had some questions on the drawing shown on the presentation with the professional surveyor's stamp and asked that it be brought up on the screen.

Mr. Mayer brought that image up on the screen.

Mr. Kirby asked if it was 4.4 feet from the south edge of the deck to the parallel southern lot line.

Mr. Hagerman stated yes.

Mr. Kirby stated that the lot line bent part way along the run of the deck and got closer to the deck than 4.4 feet. Mr. Kirby asked if that was correct.

Mr. Hagerman stated yes, according to the image on screen it did. Mr. Hagerman stated that if he was looking out his back door he did not see that bend. Mr. Hagerman stated the fence went straight across to the other property and he was not sure that drawing was accurate.

Mr. Kirby stated it came from a professional surveyor, so he was very interested in this.

Mr. and Mrs. Hagerman stated the curve was farther down from the house.

Mr. Hagerman stated it did not bend right behind their back door.

Ms. Wiltrout asked if the deck, as shown in the image on screen, had been drawn in the wrong spot.

Mr. Hagerman stated the deck was in the right spot, but if you looked outside his back door, the fence went straight down and then started to curve right around where one could see the 20 69 20 57 number.

Mr. Kirby noted he could not see the numbers very well and asked if it was where it stated north 20 57 west.

Mr. Hagerman stated yes.

Mr. Kirby noted this was minutes and seconds, not measurements. Mr. Kirby noted the house was then ten (10) feet from the other lot line off the back corner of the house.

Mr. Hagerman stated yes, ten (10) feet.

Mr. Kirby stated the deck was then closer than 4.4 feet to the lot line if the diagram was correct.

Mr. Hagerman stated he saw it on the diagram.

Mr. Kirby stated it was possible the fence did not follow the lot line.

Mr. Schell asked who had installed the fence, was it present before the applicant purchased the property.

Mr. Hagerman stated yes.

Mr. Kirby stated it sounded as if the fence did not have a strong bearing to the lot line; the fence did not match the image on screen.

Mr. Hagerman stated it did not because, according to the image, he would be looking out his back door and see the curve and the fence. Mr. Hagerman stated that was not the way it appeared.

Mr. Kirby asked if the image matched what the deck contractor was proposing to build.

Mr. Hagerman stated yes.

Mr. Kirby asked if Engineering could weigh in on this. Mr. Kirby asked if it looked like the southwest corner of the deck was closer to the bent lot line than the 4.4 feet shown.

Mr. Herskowitz stated he would recommend that, as the applicant had agreed to have a professional surveyor go to the property, this image could be resubmitted and have the fence properly located. Mr. Herskowitz stated they could then adjust the 4.4 feet, as necessary, with a more accurate picture of the property.

Mr. Kirby stated that if the Planning Commission stated the variance was 4.4 feet to the lot line, as requested in the variance, and the image was accurate, then the deck needed to be smaller or shifted to the east.

Mr. Shockey stated the 4.4 feet could also be adjusted to be correct.

Mr. Kirby stated right, and depending on how small that actual number was, would reflect on any precedent being set.

Mr. Hagerman stated they would just shift it.

Ms. Carmella Hagerman, applicant, stated the contractor had just drawn it and it could be shifted to meet the four (4) feet.

Mr. Shockey asked if the applicant was saying he could shift the deck to the left.

Mr. Hagerman stated yes, they would shift it to make sure that the front of the deck was no closer than 4.4 feet.

Mr. Kirby stated they had about five feet they could shift it before the door hit the corner of the deck.

Mr. Hagerman stated correct.

Mr. Kirby asked if the applicant had built or purchased the house.

Mr. Hagerman stated it had been a spec home and he had purchased it.

Mr. Kirby asked if the applicant was the first, non-builder owner.

Mr. Hagerman stated that was correct.

Mr. Kirby asked staff what the setback was for a patio as opposed to a deck.

Mr. Christian stated that would be five (5) feet.

Mr. Kirby stated that with a little bit of care on the corner, a patio in the same area would not need a variance.

Mr. Hagerman stated the property had a severe slope which would make a patio too costly.

Mr. Kirby asked if they had a slope across the back of the house.

Mr. Hagerman stated it went straight down and, although he would prefer a patio, it was just price prohibitive for a small patio.

Mr. Kirby asked if the builder had promised a deck.

Mr. Hagerman stated no.

Mr. Kirby stated there was a line that curved at the front yard that looked like a build to line and asked if that was the front yard setback line.

Mr. Mayer pointed out the line on the image on screen and stated that was correct, it was a 25 foot setback line.

Mr. Kirby asked if someone could find the number for the actual setback.

Mr. Herskowitz stated it was either thirty (30) or 38.

Mr. Kirby stated the actual was thirty (30) feet something and the build line was 25 feet, so the applicant lost five (5) feet in the front yard due to the narrowing of the lot. Mr. Kirby asked if the encroachment shown was then five (5) feet and change.

Mr. Mayer stated he believed that was right, it was about five (5) feet and change for the encroachment.

Mr. Kirby stated he was first checking to see if there were alternatives that did not require a variance, if the Duncan criteria were met, and how this property was unique for potential future applicants.

Mr. Shockey asked if the variance could not be adjusted from 4.4 feet to four (4) feet, which would give the applicant some latitude to move the deck to the left without being so inch conscious. Mr. Shockey noted that if a surveyor were then to stake out the deck corners that would also provide the applicant more latitude if, in fact, the lot line was closer to four (4) feet.

Mr. Kirby asked if that sounded reasonable to the applicant, if he could do this if he was required to carry a four (4) foot gap between the actual lot line and the deck.

Mr. Hagerman stated yes, that was fine.

Mr. Kirby asked if any members of the public, or others had any comments or questions. (No response.)

Ms Wilttrout stated she shared Mr. Wallace's and Mr. Kirby's belief that this was a unique property.

Mr. Schell stated he was not a fan of variances but these unique circumstances supported the variance.

Mr. Shockey stated he was comfortable with the variance but suggested that when a motion is made that the 4.4 feet be changed to four (4) feet.

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-91-2020, seconded by Ms. Wilttrout. Upon roll call vote: Mr. Kirby, yea; Ms. Wilttrout, yea; Mr. Wallace, yea; Mr. Schell, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Mr. Schell to approve application VAR-91-2020 with the modification made that there be at least a four (4) foot clearance between the deck and the lot line, based on the findings in the staff report, with the conditions listed in the staff report, subject to staff approval, seconded by Ms. Wilttrout. Upon roll call: Mr. Schell, yea; Ms. Wilttrout, yea; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Kirby, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Other Business

Mr. Kirby asked if there was any Other Business.

Mr. Christian stated none from staff.

Poll Members for Comment

Mr. Kirby asked for members' comments.

Members stated they had no comments.

Mr. Kirby adjourned the meeting at 7:40 p.m.

Submitted by Josie Taylor.

APPENDIX



Planning Commission Staff Report January 20, 2021 Meeting

7115 LONGFIELD COURT DECK SETBACK VARIANCE

LOCATION: 7115 Longfield Court (PID: 222-004800-00)
APPLICANT: Thomas & Carmella Hagerman
REQUEST: (A) Variance to C.O. 1165.04(b)(3)(c) to allow a deck to be located 4 feet away from the rear property line where city code requires a 10 foot setback.
ZONING: Millbrook Farm (I-PUD)
STRATEGIC PLAN: Town Residential
APPLICATION: VAR-91-2020

Review based on: Application materials received on December 17 and 28, 2020

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

On December 21, 2020, the Planning Commission tabled this application at the applicant's request.

The applicant requests the following variance as part of the construction of a new 160 square foot deck.

(A) Variance to C.O. 1165.04(b)(3)(c) to allow a deck to be located 4 feet away from the rear property line where city code requires a 10 foot setback.

II. SITE DESCRIPTION & USE

The property was rezoned in 2014 as part of the rezoning for the Millbrook subdivision. The .21 acre property currently contains a single family home. The surrounding properties are zoned Infill Planned Unit Development (I-PUD) and contain residential uses. The Upper Clarenton subdivision is located west of the property. This site backs onto a 5.11 acre property that is dedicated as public open space as part of the Millbrook Farm Subdivision and contains a stormwater basin.

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(b)(3)(c) to allow a deck to be located 4 feet from the rear property line where city code requires a 10 foot setback.

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

1. The applicant proposes to construct a 160 square foot deck, attached to the rear of the home that will be setback approximately 4 feet from the rear property line. C.O. 1165.04(b)(3)(c) states that recreational amenities, including decks, shall be setback at least 10 feet from any rear or side property line therefore a variance is required.
2. According to a survey provided by the applicant, the home is located approximately 14 feet away from the rear property line. The required rear yard setback for the home is also 10 feet. The deck extends 10 feet from the back of house resulting in four feet of deck meeting code requirements and 6 feet encroaching into the required rear yard setback.
3. There are special conditions and circumstances of this property that justify the variance request. The property is located on a cul-de-sac so the width of the front of the lot is smaller than a lot that is not located on a cul-de-sac. The width of the front of the property is 53 feet and widens to approximately 120 feet at the rear. Cul-de-sac lots are typically wider at the rear of the property to account for the bend in the road. This shape necessitates the home be built further from the street yard in order to provide adequate space to construct a home while meeting other setback requirements. The combination of this lot’s shape and size resulted in the home being located approximately 14 feet from the rear property line. Homes in the Millbrook Farms subdivision that are located on larger and rectangular shaped lots, do not have these same design challenges which allows for the home to be located closer to the street, thereby creating larger rear yards for recreational amenities that can meet the setback requirement.

4. It appears that the essential character of the neighborhood will not be substantially altered if the variance is granted. There are residentially used properties to the east and west of the site and the home backs onto a 5.11 acre property that is used for open space to the south. C.O. 1165.04(b)(3)(c) also requires a 10 foot side yard setback for decks. The proposed deck is centrally located on the rear elevation of the home and will be located approximately 48+/- from the property to the east and 50+/- feet from the property to the west. These larger setbacks ensure that there will be adequate visual and physical separation between residentially used properties even as the deck is located closer to the rear property line, adjacent to property used as open space.
5. C.O. 1165.04 also requires the area under decks to be screened if they are more than 2 feet above grade to provide additional screening from offsite view. Staff recommends a condition of approval that the area underneath the deck be screened if it is more than 2 feet above grade. The remaining 4 feet between the deck and the rear property line appears to be enough space to install screening to meet this code requirement.
6. The variance does not appear to be substantial and meets the spirit and intent of the code requirement. While the applicant proposes a smaller setback than what is permitted by code, the property backs onto a large 5.11 acre property that is dedicated public open space rather than another residential property. This property is owned by the city and is predominately used as a stormwater basin. There are no adjacent active amenities such as leisure trail within the general vicinity. The intent of the code requirement is to ensure a physical separation between recreational structures, such as a deck, and residentially used properties. The applicant is meeting this intent as the proposed encroachment is adjacent to a property that is owned by the city and used for passive open space.
7. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
8. Granting the variance would not adversely affect the delivery of government services.

IV. RECOMMENDATION

Staff recommends approval of the variance request with conditions. The intent of the setback requirement is to ensure a physical separation between recreational structures, such as a deck, and other residentially used properties. The request meets the spirit and intent of this requirement and does not appear to be substantial as the proposed encroachment is adjacent to a property that is owned by the city and used as passive open space. The essential character of the immediate area will not be impacted as other code requirements, such as screening will have to be met.

There are unique conditions and circumstances of the property that justify the variance request. The property is the smallest lot in the Millbrook Farms subdivision and it is located on a cul-de-sac resulting in the lot having a narrower lot frontage and wider towards the rear. Due to these combined conditions (size and shape), this lot has a smaller back yard than a typical home/lot, making it difficult to construct a recreational amenity while meeting the setback requirements for these types of structures. Moreover, the subdivision has preapproved home designs that were included as part of the rezoning and final development plan so there is not an opportunity to design a home around the dimensions of a unique lot such as this one.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

Move to approve application V-91-2020 with the following condition.

1. The deck underneath the deck must be screened if it is more than 2 feet above grade, subject to staff approval.

Approximate Site Location:



Source: Google Earth