

**NEW
ALBANY**

**New Albany Board of Zoning Appeals
June 28, 2021 DRAFT 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 7:00 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
Ms. Marlene Brisk (Council Rep.)	Present

(Mr. Smith, Ms. Mollard, Mr. LaJeunesse, and Ms. Brisk present via Zoom.com).

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

Moved by Mr. Gallagher to approve the May 24, 2021 meeting minutes, seconded by Ms. Wilttrout. Upon roll call: Mr. Gallagher, yea; Ms. Wilttrout, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Ms. Wilttrout swore in those speaking before the Board of Zoning Appeals (hereafter, "BZA") this evening to tell the truth and nothing but the truth.

Ms. Alison Reis swore to tell the truth and nothing but the truth.

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

VAR-51-2021 Variance

Variance to C.O. 1165.04(b)(3)(c) to allow a deck to be located 6 feet from the side property line where code requires a minimum 10 foot setback.

Applicant: Archadeck of Columbus, c/o Keith Moelle

Mr. Christian presented the staff report.

Ms. Wilttrout asked the applicant to provide comments on the application.

Ms. Alison Reis, owner of the property, discussed the application and reasons for the request.

Mr. Gallagher asked if Ms. Reis if she had obtained letters from all surrounding neighbors.

Ms. Reis stated they had obtained approval from all of the surrounding neighbors.

Mr. Smith asked staff to discuss the screening in the conditions and what it would look like.

Mr. Christian stated that if a deck was more than two (2) feet above grade then the exposed deck area needs to be screened.

Ms. Mollard stated the illustration showed wood screening.

Mr. Christian stated it did look like that.

Ms. Mollard asked the applicant if the intent was to use wood as screening.

Ms. Reis stated it was the intent.

Ms. Mollard asked if any additional landscaping would be put in.

Ms. Reis stated no.

Mr. LaJeunesse asked if Code requirements would differ if this had been a patio.

Mr. Christian stated that if this had been an at grade patio then there would only have needed to be a five (5) foot setback from the side property line.

Ms. Wiltrout asked if the home was within the setback.

Mr. Christian stated yes, the home was only required to be setback five (5) feet from the side property line.

Ms. Wiltrout asked how large the requested variance on this was.

Mr. Christian stated it would be four (4) feet closer but it was in line with the home.

Moved by Mr. Gallagher to accept the staff report for VAR-51-2021 into the record, seconded by Mr. Smith. Upon roll call vote: Mr. Gallagher, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. LaJeunesse to approve application VAR-51-2021, seconded by Ms. Mollard. Upon roll call vote: Mr. LaJeunesse, yea; Ms. Mollard, yea; Mr. Smith, yea; Mr. Gallagher, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

VAR-52-2021 Variances

Variances to C.O. 1165.04 to allow a detached accessory structure to be larger than 1,600 square feet, taller than code allows and to be constructed of metal at 5840 Kitzmiller Road (222-001963-00).

Applicant: Kyle Homan

Mr. Christian stated the applicant had withdrawn the application.

Other Business

Ms. Wiltrout asked if there was any other business.

Mr. Mayer stated that as of July 1 there would no longer be virtual meetings and all board and commission members would need to be present at Village Hall.

Ms. Wiltrout adjourned the meeting.

Meeting adjourned at 7:13 p.m.

Submitted by Josie Taylor.

APPENDIX



Board of Zoning Appeals Staff Report June 28, 2021 Meeting

5693 JERSEY DRIVE DECK SETBACK VARIANCE

LOCATION: 5693 Jersey Drive (PID: 222-003078-00)
APPLICANT: Archadeck of Columbus, c/o Keith Moeller
REQUEST: (A) Variance to C.O. 1165.04(b)(3)(c) to allow a deck to be located 6 feet away from the side property line where city code requires a 10-foot setback.
ZONING: New Albany Links C-PUD
STRATEGIC PLAN: Residential
APPLICATION: VAR-51-2021

Review based on: Application materials received on May 24, 2021

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to construct a new 280 square foot deck with an 8-foot-tall freestanding pergola. The variance is to C.O. 1165.04(b)(3)(c) to allow a deck to be located 6 feet away from the side property line where city code requires a minimum 10-foot setback.

II. SITE DESCRIPTION & USE

The 0.15 acre property is located within the New Albany Link subdivision and contains a single family home. The surrounding properties are located within the same subdivision and contain residential uses.

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 6 feet away from the side 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 280 square foot deck, attached to the rear of the home. A 8 foot tall freestanding pergola is on top of the deck. The deck is setback approximately 6 feet from the side property line. C.O. 1165.04(b)(3)(c) states that recreational amenities, which includes decks (covered or uncovered), 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 6 feet away from the side property line. The required side yard setback for the home is 5 feet. The applicant’s intent is to have the deck located at their back door and in line with the side elevation of the home so the deck is the same distance as the home to the property line.
3. The variance does not appear to be substantial and meets the spirit and intent of the code requirement. The intent of the code requirement is to ensure a physical separation between recreational structures, such as a deck, and other residentially used properties. The applicant is meeting this intent by matching the setback of the home which is 6 feet from this side property line.
4. It appears there are special conditions and circumstances that exist which are peculiar to the structure involved. The home’s back door is located three feet from the corner of house. This results in a portion of the door being 9 feet from the side property line so in this case the side yard setback is greater than the distance to the door. If the applicant were to follow the side yard requirements, the deck couldn’t expand the entire length of the doorway which is not desirable from a design or functional standpoint.
5. It appears that the essential character of the neighborhood will not be substantially altered if the variance is granted. The property is surrounded by residentially zoned and used properties, some of which also contain similar recreational structures that are built this close to their property lines. Additionally, the applicant has obtained a letter of support from the adjacent property owner where the encroachment is proposed and the letter is included in the application packet.

6. 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 6 feet between the deck and the side property line as well as the 17 feet from the rear property line appears to be enough space to install landscaping if another building material such as lattice is not used to meet this code requirement.
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 matches the setback of the current home. The essential character of the immediate area will not be impacted as other code requirements, such as screening will have to be met and adjacent properties also have similar recreational structures located on them that are this close to the side property lines.

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 VAR-51-2021 with the following condition:

1. The area 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



**Board of Zoning Appeals Memo
June 28, 2021 Meeting**

**5840 KITZMILLER ROAD
ACCESSORY STRUCTURE VARIANCES**

LOCATION: 5840 Kitzmiller Road (PID: 222-001963)
APPLICANT: Kyle Homan
REQUEST: Variances
STRATEGIC PLAN: Residential
ZONING: Agricultural (AG)
APPLICATION: VAR-52-2021

Staff memo prepared by Chris Christian, Planner

After the June 28th Board of Zoning Appeals agenda was published, the applicant requested to withdraw the application. No further action is needed from the board regarding this case.