



New Albany Board of Zoning Appeals  
July 26, 2021 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	Absent
Ms. Marlene Brisk	Present

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; and Josie Taylor, Clerk.

Moved by Mr. Gallagher to approve the June 28, 2021 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Gallagher, yea; Mr. Smith, yea; Ms. Mollard, yea; Ms. Wilttrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 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. Wilttrout asked if anyone wanted to discuss items not on tonight's Agenda. (No response).

**VAR-70-2021 Variance**

**Variance to C.O. 1165.04(b)(3)(b) to allow a deck to be located in a platted easement at 7034 Dean Farm Road(PID: 222-002246)**

**Applicant: Suncraft Corporation, Inc c/o James Knox**

Mr. Christian presented the staff report.

Ms. Wilttrout asked the applicant if they wanted to provide any comments.

Mr. James Knox, Suncraft Corporation, stated they were willing to comply with all recommendations and the waiver for any damage caused due to utility access.

Ms. Wilttrout stated there were two (2) conditions on the staff report for this application and they needed to comply with both. Mr. Wilttrout asked if the screening would comply with City Code.

Mr. Knox stated yes, they had skirting all around the deck and could also add additional screening if needed.

Mr. Gallagher asked if the property owners had anything further to add.

Mr. Kenneth Parker, owner of the property, said he had spoken to his neighbors. Mr. Parker said both were comfortable with the patio already there and this would not extend past that very much and there was little chance of changes in runoff.

Mr. Gallagher stated that item 6 in section 3, the hold harmless in the staff report, differed from what was discussed in the presentation. Mr. Gallagher asked if the indemnity for the City was to be in perpetuity or only prior to the building permit being issued.

Mr. Mayer stated prior to the permit submission the applicant would submit a draft version for review.

Mr. Gallagher asked if the time period the City was to be held harmless would be in perpetuity or only until the time of the permit.

Mr. Mayer stated it would be in perpetuity.

Mr. Gallagher asked what the City's process was if a neighbor found the variance affected them, what did they need to do.

Mr. Mayer stated that if any resident had a concern with drainage on their property they could call the Community Development Department and the zoning officer would go out to inspect. Mr. Mayer stated that following the documentation of that, they would determine if it was a City issue or an issue between two private parties.

Mr. Gallagher asked if a raised bed were placed in an easement, would it impact flow.

Mr. Mayer stated it could potentially but there were lots of variables and it depended on the easement.

Mr. Gallagher stated landscaping around the deck had been mentioned and wondered if that would disturb the normal flow.

Mr. Mayer stated that was why the hold harmless was there.

Mr. Gallagher asked if the language to protect the neighbors would be recorded with the deed.

Mr. Mayer stated that would be part of the hold harmless, but noted that with or without the hold harmless it was also in the Code.

Mr. Gallagher asked if it would be recorded on the deed for future buyers.

Mr. Mayer stated it was not typical, if the home were sold the City's Codified Ordinances would still apply, but it could be considered.

Mr. Gallagher stated he wanted a record for future owners.

Mr. Parker stated if the deck was removed then it would change again and it was not permanent.

Ms. Wiltrout stated if no deck then there was no easement issue, so a reference on the deed would have no negative effect.

Mr. Parker stated he just wondered how it would look to a future buyer.

Mr. Gallagher stated the provision would protect current and future neighbors.

Mr. Mayer stated that future buyers would see the easements and deck on a site plan and have notice to ask questions about them.

Mr. Gallagher stated it would be nice to make it explicitly clear.

Ms. Wiltrout asked if the site plan would show where the easement was in relation to the deck.

Mr. Mayer stated yes.

Ms. Wiltrout stated that if she saw that as a buyer she might think they had a variance but not think of the hold harmless requirement and she agreed with Mr. Gallagher to have that condition going forward.

Mr. Knox stated they had applied for the variance and there was an active permit process now.

Ms. Wiltrout stated she appreciated that.

Moved by Ms. Wiltrout to accept the staff report for VAR-70-2021 into the record, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yea; Mr. Smith, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Mr. Smith to approve application VAR-70-2021, with the following conditions:

1. The area underneath the deck must be screened in accordance with city code.
2. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must be the responsibility of the homeowner to address.
3. The proper notation is made to the deed recording the hold harmless.

seconded by Mr. Gallagher. Upon roll call vote: Mr. Smith, yea; Mr. Gallagher, yea; Ms. Mollard, yea; Ms. Wiltrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

### **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 as would any members of the public wishing to comment.

Ms. Wiltrout adjourned the meeting.

Meeting adjourned at 7:21 p.m.

Submitted by Josie Taylor.

## APPENDIX



COMMUNITY CONNECTS US

Board of Zoning Appeals Staff Report  
July 26, 2021 Meeting

---

### 7034 DEAN FARM ROAD EASEMENT VARIANCE

---

LOCATION: 7034 Dean Farm Road (PID: 222-002246)  
APPLICANT: Suncraft Corporation Inc. c/o James Knox  
REQUEST: Variance to C.O. 1165.04(b)(3)(b) to allow a deck to encroach a platted easement by 6 feet  
ZONING: New Albany Links C-PUD  
STRATEGIC PLAN: Residential  
APPLICATION: VAR-70-2021

Review based on: Application materials received on June 29, 2021

*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 deck to encroach 6 feet into a platted easement.

#### II. SITE DESCRIPTION & USE

The 0.21 acre property is located in section 1 of the New Albany Links subdivision and contains a single family residential home that was built in 1999. The property is surrounded by single family residential homes and backs onto open space that is owned by the city.

#### 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*):

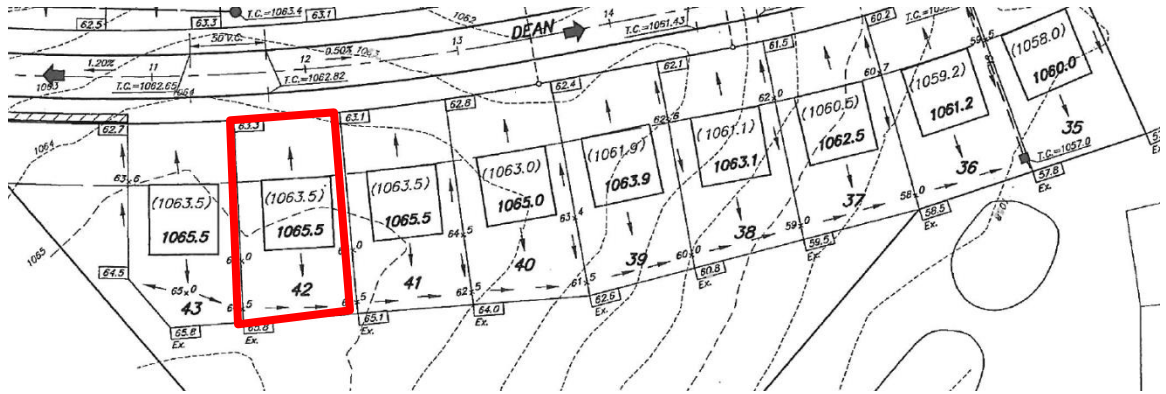
8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights 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 deck to be located within a platted easement.**

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

1. Codified Ordinance Section 1165.04(b)(3)(b) states that decks 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 15-foot general utility easement that extends from the rear property line. According to the engineering plans for the subdivision, the easement provides a route for surface stormwater drainage for 9 properties along this section of the road.
2. The applicant is requesting a variance to allow a deck to encroach 6 feet into the easement. The deck has an area of 396 sq. ft. and half of that area will function as a screened in porch.
3. In October 2019, modifications to section 1165 of the city’s Codified Ordinances were approved by City Council. The modifications included adding provisions that decks, 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 decks and similar at-grade encroachments into easements were 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. Based on aerial imagery of the property, it appears that there is an existing patio at the rear of the home that encroaches into the easement. There are no records of a permit being issued for the patio. Since the existing patio was present prior to the code update, a variance for it is not required but it is considered existing, non-forming according to city code and cannot be made to be more non-conforming.
5. 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. According to the approved engineering plans for the subdivision, this easement runs along the rear property line of 9 homes along this section of Dean Farm Road and provides stormwater drainage for the properties north into an inlet as shown in the picture below.



- According to these plans, a portion of the stormwater (surface runoff) on neighboring lot 43 drains into this site which then drains into the next and so on until it reaches a stormwater inlet located on further north on the property lines between lots 36 and 35.
  - The applicant states that the deck will sit 3 feet above grade on posts in order to not negatively impact stormwater drainage. 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 in accordance with city code.
6. 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 easement. While the applicant proposes to install the deck within the easement, it will not be installed above any existing public utility lines. If a patio or another structure is installed in an easement and the city or another utility provider needs to access the easement, the deck 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 structure. Staff recommends a condition of approval that the homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must be the responsibility of the homeowner to address.
  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. 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 deck 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 find that the application has sufficient basis for approval. While the applicant proposes to install a deck within a platted easement, there are no public utilities installed within it. The hold harmless agreement ensures that the applicant is aware that the city is not responsible for any damages to the deck in the event that the easement area has to be accessed in the future and further ensures that the spirit and intent of the requirement is being met and the delivery of government services will not be negatively impacted.

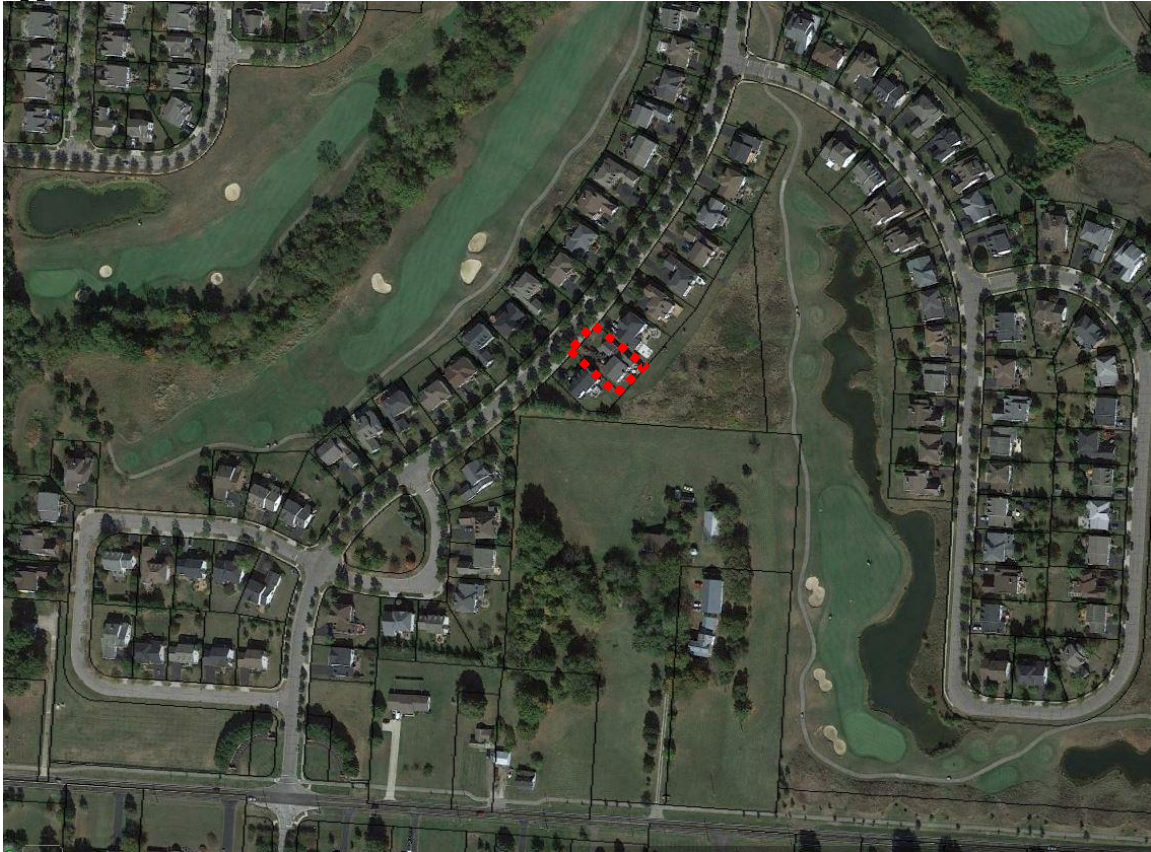
#### V. ACTION

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-70-2021 with the following condition (conditions of approval may be added).**

1. The area underneath the deck must be screened in accordance with city code.
2. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must be the responsibility of the homeowner to address.

**Approximate Site Location:**



Source: Google Earth