


New Albany Planning Commission
May 2, 2022 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 7:00 p.m.

Those answering roll call:

Mr. Neil Kirby, Chair	Present
Mr. David Wallace	Present
Mr. Hans Schell	Present
Ms. Sarah Briggs	Present
Mr. Bruce Larsen	Present
Mr. Matt Shull (Council liaison)	Present

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; Benjamin Albrecht, Interim City Attorney; and Josie Taylor, Clerk.

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

Mr. Christian stated none from staff.

Mr. Kirby swore all who would be speaking before the Planning Commission (hereafter, "PC") this evening to tell the truth and nothing but the truth.

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

VAR-50-2022 Variances

Variations to C.O. 1165.04(a)(1) and C.O. 1165.04(a)(2)(E) to allow a pool house to be 1,110 sq.ft. in size and located approximately 15 feet from the rear lot line where code allows a maximum area of 800 sq. ft. based on the size of the lot and requires a 30-foot rear yard setback at 7230 Southfield Road (PID: 222-004784).

Applicant: Guzzo and Garner Custom Builders.

Mr. Christian presented the staff report.

Mr. Kirby asked Mr. Christian to review the second scenario in the presentation and where that option would place the rear yard on the property.

Mr. Christian described how combining the lots would have resulted in three frontage areas for the combined lot and where that would place the rear yard per Code.

Mr. Mayer explained how combining these lots would create a corner lot and how the Code then defined where the rear yard would be located across the area of least dimension.

Mr. Larsen asked if under that same logic the house to the left's front yard would not be on the roundabout and that would then have an accessory structure in the front yard as well.

Mr. Christian stated that the home being constructed did not have a detached accessory structure.

Mr. Larsen asked if when attached then it was no longer an accessory structure.

Mr. Christian stated correct.

Mr. Larsen asked if in that scenario the front yard would be on the roundabout.

Mr. Christian stated correct.

Mr. Larsen asked if that meant there would be two (2) frontages.

Mr. Christian stated correct.

Mr. Tom Rubey, New Albany Company, stated there were requirements regarding the front doors on the individual lots in the roundabout area.

Mr. Kirby asked if, roughly speaking, they faced the roundabout.

Mr. Rubey stated they had to face the roundabout.

Mr. Kirby asked if the original house here, as it was not on a corner lot, was not under that requirement when it had been built.

Mr. Rubey stated only those on the roundabout had that requirement.

Mr. Christian continued the presentation.

Mr. Kirby asked if the applicant wished to provide comments.

Mr. Daniel Snyder, property owner, 7230 Southfield Road, described the use of the lot and the purpose of the purchased lot.

Mr. Rubey stated Mr. Snyder had been working with the New Albany Company on this prior to the purchase of the lot. Mr. Rubey stated the plan was to landscape around the perimeter with trees and hedges so there would be something at the build to line. Mr. Rubey stated he was happy to answer any questions.

Mr. Kirby asked if the lot line movement was something done in the City of New Albany or in Franklin County.

Mr. Rubey stated the process began in the City and then moved to Franklin County.

Mr. Kirby asked if the City had approved this.

Mr. Christian stated yes.

Mr. Kirby asked if that meant the remainder of Lot 31, about one quarter of an acre, was not combined and could be sold separately.

Mr. Mayer stated yes, it could.

Mr. Kirby asked if it could be built on with a home facing the roundabout.

Mr. Mayer stated yes.

Mr. Kirby stated that would require a lot of variances on that lot.

Mr. Rubey stated that was not the result they wanted and noted they could commit not to build on that lot.

Mr. Kirby asked how that could be enforced.

Mr. Rubey stated he did not know.

Mr. Mayer stated they could work with the law director on how to enforce that going forward.

Mr. Kirby asked what the buildable footprint would be on the lot. Mr. Kirby stated it was not a lot of space to build on.

Mr. Snyder stated there would be several issues with that and described several setback issues and requirements they had reviewed with their architect, Mr. Brian Jones.

Mr. Shull asked why the side lot line was where it was rather than closer to the road where it would remove any possibility to build.

Mr. Mayer stated that was so it would meet other Code requirements.

Mr. Kirby stated they could not touch the roundabout frontage or it would become a front yard.

Mr. Mayer stated exactly right. Mr. Mayer stated the lot met the minimum side yard requirements and this was the best layout for the homesite.

Mr. Schell asked if the applicant could elaborate on the landscaping plan.

Mr. Snyder stated they planned for a wall garden and where the roundabout was would be a green space.

Mr. Larsen asked what the other roundabout's looked like.

Mr. Rubey stated they had green hedges with brick piers and there were also two (2) other home sites with brick and evergreen trees.

Mr. Larsen stated there were homes there, which was the difference.

Mr. Rubey stated yes.

Mr. Schell asked if attached structures did not need to meet certain requirements.

Mr. Mayer stated yes.

Mr. Schell asked if a neighboring lot had been sold and asked if staff had heard from the owner.

Mr. Rubey stated Mr. Snyder had reached out to them but there had not been a response.

Mr. Snyder stated no response.

Mr. Schell asked where the tree line was and where it would go.

Mr. Snyder stated there would be screening around the pool house.

Mr. Schell asked if it was one (1) story.

Mr. Snyder stated one (1) story and would blend in.

Mr. Schell asked if it would have no connection to the house.

Mr. Snyder stated they preferred it did not.

Mr. Larsen stated that if it were attached the PC would not be hearing this.

Mr. Rubey stated that tactic was often used, but generally did not look well. Mr. Rubey stated here it would be silly.

Mr. Wallace stated the builders doing that were meeting the existing requirements.

Mr. Rubey stated yes.

Mr. Wallace asked if the problem here was that the owner decided to build a pool house on the property after building a pool on the property that did not fit.

Mr. Rubey stated no, that was not it. Mr. Rubey stated that resulted in a setback requirement for the accessory structure.

Mr. Wallace stated the pool house would not have fit on the original lot until the lot line had been changed.

Mr. Snyder stated that had not been his preference, but it had been recommended to him.

Mr. Wallace asked if it had been Mr. Snyder's decision to build the pool house.

Mr. Snyder stated yes.

Mr. Kirby asked who owned Lot 2 on the roundabout.

Mr. Rubey stated it had been sold to a builder to develop.

Mr. Kirby asked if it would face the roundabout.

Mr. Rubey stated yes.

Mr. Snyder stated the pool house would not be seen from the road.

Mr. Kirby stated there were a lot of criteria in granting variances and some of it was about how this would relate to the surroundings. Mr. Kirby stated one of the things considered by the PC was whether others had purchased the lots with knowledge of what would and would not happen based on their own zoning. Mr. Kirby said there was possibly a reasonable expectation that Lot 31 would have a home on it that faced the roundabout.

Mr. Rubey stated that was correct but it was not uncommon for buyers to purchase multiple lots.

Mr. Wallace asked if the lot line had been officially changed.

Mr. Mayer stated it had been submitted and approved by the City and had been submitted to Franklin County to be recorded and finalized.

Mr. Wallace asked what the process involved in the approval was.

Ms. Briggs asked if it was an automatic process.

Mr. Mayer stated the county mainly made sure it was legally recordable.

Mr. Wallace asked if once the City approved the lot line change then it would be a done deal.

Mr. Mayer stated yes.

Mr. Kirby stated unless the owner failed to file the papers.

Mr. Wallace asked how the zoning requirements would be affected after the lot line had been changed.

Mr. Mayer stated in this case they were affected via the variance request.

Mr. Wallace asked if once the lot line had been changed the requirements then just applied to a larger lot.

Mr. Mayer stated the setbacks would change based on how the lot lines were affected.

Mr. Wallace asked if once the lot line changed and was recorded, would the applicant have had to obtain a variance if the pool house was less than 1,110 feet and was also thirty (30) feet from the lot line.

Mr. Mayer stated no, the variance would not have been needed.

Mr. Wallace stated his concern was that this meant that approval by the City would then also mean that the PC could not change this unless a variance was required. Mr. Wallace stated it was problematic that the ability to change lot lines, which could change the character of the neighborhood, could be done without PC review.

Mr. Larsen stated this created an unbuildable lot and changed the character of the community and he agreed this was a problem.

Mr. Kirby stated this re-platted the corner.

Mr. Mayer stated lot line adjustments and re-platting did the same thing but there were different procedures for each.

Mr. Kirby asked for a definition of 'essential character.' Mr. Kirby stated this had taken a buildable lot and turned it into one that was no longer buildable.

Mr. Mayer stated it might have challenges but the lot was buildable with variances perhaps.

Mr. Kirby stated a lot of lots had covenants with minimum square footage requirements.

Mr. Rubey stated the objective was for it not to be buildable, for the record. Mr. Rubey stated they did not support a home there.

Mr. Kirby stated that was exactly his point, it reduced the lots in the community by one (1).

Mr. Rubey stated there was a distinction between when to replat and when to adjust a lot line.

Mr. Kirby asked if Lot 31 was a legal lot.

Mr. Mayer stated correct, it met minimum requirements for minimum frontage and area requirements. Mr. Mayer stated that because this was a PUD it had flexible requirements and was in a transitional area. Mr. Mayer stated this would be within character.

Mr. Kirby asked if this was not a PUD.

Mr. Mayer stated correct.

Mr. Kirby asked if the active zoning provided the preliminary plat or plan.

Mr. Mayer stated plan.

Mr. Kirby asked if that also gave them the lots.

Mr. Rubey stated lots were created with the preliminary and final plats.

Mr. Kirby asked if the first hearing set included the act of zoning and the preliminary plan.

Mr. Rubey stated those were often combined.

Mr. Wallace stated the second hearing was so the PC could tweak landscaping, entrances, etc. Mr. Wallace noted this was made moot in this case. Mr. Wallace asked what the screening and landscaping requirements were for accessory structures that did not require a variance.

Mr. Mayer stated there were no landscaping requirements for accessory structures here.

Mr. Wallace stated this created a second problem with the City's approval of the lot line change. Mr. Wallace stated this would have allowed an applicant to build an accessory structure on a very visible corner with no landscaping around it if a variance had not been needed.

Mr. Kirby stated he had less of a problem with that.

Mr. Kirby that the problem with the proposed landscaping for Lot 31 would make it look park-like and asked if there would be two entrances onto that lot.

Mr. Snyder stated there would only be one entrance.

Mr. Kirby asked if the vegetation on Ebrington Road would be continuous, without a break.

Mr. Snyder stated it would be continuous, without a break

Mr. Rubey stated it would be continuous, without a break.

Mr. Kirby stated okay, so the image he had was conceptual.

Mr. Schell asked if they had considered an 800 square foot pool house.

Mr. Snyder stated no, they believed they were in compliance.

Mr. Larsen asked if they had considered only purchasing the back corner of the lot and putting the pool house there as that would have allowed the other lot to be buildable.

Mr. Rubey stated that would not work.

Mr. Kirby stated that would not have been appropriate in this neighborhood.

Mr. Larsen stated his concern was that those who purchased lots in this area did so with the understanding that there was an intention that a house would be placed there.

Mr. Rubey stated the landscaping, architecture, and color palatte in the community would unify this and create an environment that was as good as, if not better, than what it would have otherwise been.

Mr. Wallace stated he believed if both lots had been purchased by a single owner prior to the house being built, that owner would likely have placed a single house on both lots which would have looked very different from this.

Ms. Briggs pointed out an area on the presentation and asked staff if that was where the back yard of a home was and who owned that property.

Mr. Snyder stated that was his neighbor's backyard.

Ms. Briggs stated that had been said to be under construction but when completed that would be their back yard.

Mr. Snyder stated that was correct.

Mr. Rubey noted there was a view corridor on that lot.

Ms. Briggs stated thank you. Ms. Briggs pointed out an area on the presentation and asked if there was a fence there now and would it be extended to the new lot line.

Mr. Rubey stated the plan was to have a pool fence and landscaping around the perimeter of the pool, not following the lot line.

Ms. Briggs stated okay.

Mr. Wallace asked if the fence would be inside the lot.

Mr. Rubey stated it would be inside the lot landscaping.

Mr. Schell said he struggled with this as it was all over 300 square feet.

Mr. Wallace stated it was about the ability to designate the landscaping so it would not look awful.

Mr. Schell stated what he meant was that if the pool house had been no more than 800 square feet there would not have been an issue.

Mr. Wallace stated yes, but then they would also have had no say in the landscaping.

Mr. Kirby stated that risk would always be present with a visible side yard.

Mr. Wallace agreed, but stated he believed there were not many of those.

Mr. Snyder asked about landscaping approval and the Architectural Review Committee.

Mr. Kirby stated they were not under the PC's purview. Mr. Kirby stated there were about three different levels involved in approvals in the Country Club area. Mr. Kirby stated a note indicated only one neighbor would be affected by the variance and that neighbor had signed off on the location. Mr. Kirby asked what had been signed off.

Mr. Rubey stated they had reached out to the neighbor but the neighbor had not communicated back.

Mr. Kirby asked that this correction be noted in the 'To Whom it May Concern' letter.

Mr. Rubey stated they had done their due diligence but had not heard from the property owner.

Mr. Wallace stated it should also be noted that the house was owned by the developer.

Mr. Snyder stated the builder had told him that.

Mr. Schell pointed out two (2) properties in the presentation and asked about their owners' views on this application.

Mr. Snyder stated he knew the one (1) moving into one of the properties and said he purchased knowing what Mr. Snyder was planning for his lots.

Mr. Schell stated it would be hard to answer to those neighbors about this application without hearing their views.

Mr. Rubey stated they had notified the neighbors as required.

Mr. Larsen asked which neighbors had been notified.

Mr. Christian stated all neighbors within 200 feet of the property lines had been notified.

Mr. Kirby asked if both lots had been included.

Mr. Christian stated Lot 31 had been included.

Mr. Larsen asked if that included Lot 2 and another lot he pointed out in the presentation.

Mr. Christian stated all of those were on his list of owners who had been notified.

Mr. Kirby stated that if had only been based on the original lot that would have been smaller than the new lot.

Mr. Larsen stated it should have included anyone within 200 feet of Lot 31 as the lot line change was still in process.

Mr. Mayer stated the 200 foot amount included both lots.

Mr. Shull asked if it was the essential character issue under Duncan that was creating a concern.

Mr. Kirby stated yes, but also items 8, 10, and 11 in the zoning code criteria.

Mr. Shull asked if the green space, as it was in character here, had any effect.

Mr. Kirby asked if the PC could put a condition on a property that was not under review.

Mr. Albrecht stated the parties could work together on Lot 31 and put a condition or deed restriction in place going forward.

Mr. Kirby asked if that was because they had the same owner.

Mr. Albrecht stated yes.

Mr. Shull stated that was what he had been getting at.

Mr. Kirby stated the essential character of the neighborhood would be considered, but noted the neighbors also had a say in that. Mr. Kirby said he really wanted to hear from the owners of Lots 1 and 2 about this. Mr. Kirby asked if the applicant wished to table or have a vote tonight.

Mr. Snyder asked if a vote was conducted and the vote was no, what would then happen.

Mr. Kirby stated it was a hard process to redo a vote.

Mr. Albrecht stated a new process would need to begin if the vote was no but if it was tabled then they could just return.

Mr. Snyder asked what was difficult about the new process with a no.

Mr. Kirby stated he would need to go to court.

Mr. Snyder asked if he could still use the lot.

Mr. Kirby stated yes.

Mr. Wallace stated he would just not be able to build the pool house.

Mr. Snyder stated unless it was smaller.

Mr. Albrecht stated he could use the lot and there were different options available.

Mr. Snyder asked if the questions here were about the character of the neighborhood and the size of the pool house.

Mr. Kirby stated that once they were past the essential character of the neighborhood issue, if the two (2) lots were effectively one (1), then it would be easier to deal with the square footage. Mr. Kirby stated there was also the issue of setbacks on the yard due to side and back yards abutting.

Mr. Mayer stated correct.

Mr. Kirby stated if this had been Mr. Snyder's side yard then he would not have needed a fifteen (15) foot variance.

Mr. Mayer stated right.

Mr. Kirby stated the neighbor most influenced by this had his side yard there.

Mr. Rubey asked what would stop Mr. Snyder from combining the lots and building the pool house and it would be a non-conforming existing condition.

Mr. Kirby stated he wondered why that had not been asked in the first place.

Mr. Mayer stated the Code did not permit something to be made non-conforming. Mr. Mayer noted corner lots could be difficult.

Mr. Rubey stated that if the lots were combined then the front, side, and rear yards changed and, if the requirements were met, then why could Mr. Snyder not build on that.

Mr. Mayer stated a variance would still be needed for what would become the side and rear yards due to the setbacks involved.

Mr. Rubey asked if the PC would be more amenable to that.

Mr. Kirby stated yes, he thought they might prefer that variance over this one as it would get rid of an unbuildable lot. Mr. Kirby noted the applicant should nail down his three most important neighbors regarding the landscaping and lot lines.

Mr. Mayer stated that would put the accessory structure in the front yard.

Mr. Kirby stated if one owned an island then there would be no back yard.

Mr. Mayer stated true, but past interpretation would give this multiple front yards and add variances.

Mr. Snyder stated he had been working on this since October and the design was from those who developed the community. Mr. Snyder stated he thought the only issue involved was the size variance and all neighbors were sent letters and none responded nor chose to appear tonight.

Mr. Kirby stated he was not adverse to Mr. Snyder enjoying his lot or pool but the PC was looking for the right way to do this.

Mr. Wallace stated the fact that the property could be used without a variance was his issue. Mr. Wallace stated this was only here due to the size of the pool house and the owner was aware of the size prior to his purchase.

Mr. Snyder stated that when he purchased the lot the New Albany Company contacted him regarding the importance of the lot and the pool house design was done in proportion to achieve the best look.

Mr. Wallace asked if both lots had been purchased at the same time.

Mr. Snyder stated no.

Mr. Wallace asked if the lot with the house on it had been purchased first.

Mr. Snyder stated yes.

Ms. Schell stated both precedent and consistency were important and the PC needed to be careful in granting variances.

Mr. Snyder stated this was very confusing and the property was unique.

Mr. Kirby stated all properties were unique according to their owners.

Mr. Shull asked if having something from neighbors okaying this would clear up the Duncan factors.

Mr. Snyder asked what the neighbors needed to be in agreement with.

Mr. Schell stated Mr. Snyder's design for the lots.

Mr. Snyder asked what would happen if they were not.

Mr. Wallace that the point Mr. Shull had was that if the neighbors in the cul-de-sac wrote a letter or came to the PC and stated they were in favor of the variance that could go a long way in getting an approval.

Mr. Kirby stated yes.

Mr. Snyder asked if the approval could be done pending that.

Mr. Kirby stated no, it was along the line of whether the neighbors would prefer to see the green space on the lot versus the house that would have been placed there instead.

Mr. Snyder stated the variance was not the greenery though. Mr. Snyder asked what would occur if he made the pool house 800 square feet or connected it to the house.

Mr. Kirby stated then the PC was done, but he would still need to work with the New Albany Company and the Architectural Review Committee.

Mr. Snyder made a comment.

Mr. Wallace asked Mr. Snyder to repeat the comment.

Mr. Snyder stated he had no questions.

Mr. Kirby stated it would be good to hear from the owners of lots 1, 2, and 30 as they were the most directly affected, particularly for the landscaping.

Mr. Mayer stated yes.

Mr. Rubey stated yes.

Mr. Kirby stated the applicant could, for example, offer it as an alternative to the neighbors as to having a house there or the greenery and ask which they would prefer and if the owner on Lot 30 would be fine with only a fifteen (15) foot setback.

Mr. Schell stated he believed it should not be too difficult to ask the neighbors about this.

Mr. Snyder stated he could send neighbors all of his the plans.

Mr. Schell stated they would likely be thrilled and then they could have a short conversation and obtain a written approval that would make it more comfortable for the PC.

Mr. Wallace stated not for him, but for others it might.

Mr. Albrecht stated Mr. Snyder could leave the lot vacant now, so he did not want to mislead Mr. Snyder about what he wanted to present as the lot could just be left without anything on it.

Mr. Snyder stated he could also just build a house there.

Mr. Wallace asked if the applicant would want this to be tabled.

Mr. Larsen asked if the notifications for the lots under construction were sent to the developer.

Mr. Christian stated he would need to check.

Mr. Kirby asked if these lots were being specifically built for an owner or were they spec homes.

Mr. Mayer stated the notifications were sent to the property owner of record at the time the letters were sent out.

Mr. Larsen stated that was probably the developer.

Mr. Snyder asked if he should submit the plans to the owner.

Mr. Schell stated the owner at this time.

Mr. Larsen stated the long term owner would be preferable.

Mr. Wallace stated if the developer or builder said okay then that was fine but if the owner whom the builder was building for also said it was okay that was even better.

Mr. Snyder asked if the lot line move was still okay.

Mr. Kirby stated that was up to him to file.

Mr. Snyder asked if would be better to move the lot line and have the neighbors approve it and then just get a variance.

Mr. Kirby stated he could not make that determination.

Mr. Rubey stated they could see if the City had recorded it and, if not, then leave it as it was now.

Mr. Snyder asked how the voting would work, as he felt his neighbors would approve it. Mr. Snyder asked if he would then need to return to the PC.

Mr. Kirby stated he could get a vote or he could choose to table.

Mr. Mayer stated they would need about two (2) weeks to properly notify neighbors but they could just do that so they could meet again about this in two (2) weeks' time.

Mr. Kirby asked how much time Mr. Snyder would prefer to table this for.

Mr. Snyder stated he preferred two (2) weeks.

Mr. Kirby stated then he would return for a vote.

Mr. Schell stated the return would likely be quick.

Mr. Shull stated it could be a confusing process but the Duncan factors and other criteria, particularly that regarding essential character, did involve the neighbors.

Moved by Mr. Kirby to accept the staff reports and related documents into the record, as corrected, for VAR-50-2022, seconded by Ms. Briggs. Upon roll call: Mr. Kirby, yea; Ms. Briggs, yea; Mr. Larsen, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Mr. Larsen to table VAR-50-2022 for two (2) weeks, until the next scheduled meeting on May 16, 2022, seconded by Mr. Schell. Upon roll call: Mr. Larsen, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Kirby, yea; Ms. Briggs, 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 no.

Poll Members for Comment

Mr. Wallace asked if there was a mechanism in place for getting an advisory opinion from the PC before lot lines were changed.

Mr. Mayer stated an informal review meeting might be possible in similar situations in the future.

Mr. Kirby stated this was a de facto replating.

Mr. Larsen stated he agreed and it changed neighbors' expectations.

Ms. Briggs asked if a developer got a mailing would the owner even know.

Mr. Albrecht stated sending a notification to the owner of record satisfied the requirement.

Mr. Larsen asked if more could be asked than what was required.

Mr. Albrecht stated that became a slippery slope as well as with an informal opinion.

Mr. Wallace asked what the thought process involved in a lot line change was.

Mr. Mayer stated that in this case it seemed to be which option resulted in the least of all evils.

Mr. Wallace stated he understood.

Mr. Mayer stated that based on their reviews they realized there would be variances regardless.

Mr. Wallace stated it seemed that the lot line change created the problem here.

Mr. Mayer stated the owner had been advised of this and the application met the Code requirements.

Mr. Schell asked if the applicant had thought it was a done deal.

Mr. Mayer stated they tell applicants they cannot promise anything.

Mr. Kirby adjourned the meeting at 8:40 p.m.

Submitted by Josie Taylor.

APPENDIX



COMMUNITY CONNECTS US

Planning Commission Staff Report
May 2, 2022 Meeting

7230 SOUTHFIELD DRIVE ACCESSORY STRUCTURE VARIANCES

LOCATION: 7230 Southfield Drive (PID: 222-004784).
APPLICANT: Guzzo & Garner Custom Builders
(A) Variance to CO 1165.04(a)(1) to allow an accessory structure to be 1,110 sq. ft. in size where code allows a maximum area of 800 sq. ft. based on the size of the lot.
(B) Variance to CO 1165.04(a)(2)(E) to allow an accessory structure to be located 15+/- feet from the rear property line where the code requires a 30-foot setback.
ZONING: West Nine I-PUD Zoning District
STRATEGIC PLAN: Residential
APPLICATION: VAR-50-2022

Review based on: Application materials received on April 21, 2022

Staff report prepared by Chris Christian, Planner

I. REQUEST AND BACKGROUND

The applicant requests the following variances associated with the construction of a new accessory structure on the property.

- (A) CO 1165.04(a)(1) to allow an accessory structure to be 1,110 sq. ft. in size where code allows a maximum area of 800 sq. ft. based on the size of the lot.
- (B) CO 1165.04(a)(2)(E) to allow an accessory structure to be located 15+/- feet from the rear property line where the code requires a 30-foot setback.

II. SITE DESCRIPTION & USE

The property is .50 acres in size and contains a single-family home as well as a swimming pool. The lot is located in the Ebrington subdivision. The applicant also owns the adjacent property to the west and has completed a lot line adjustment application which differs from how the lot lines are shown on the Franklin County Auditor's website at the time of writing this staff report. The new property lines are reflected correctly in the packet materials.

III. EVALUATION

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. RECOMMENDATION

Considerations and Basis for Decision

(A) CO 1165.04(a)(1) to allow an accessory structure to be 1,110- sq. ft. in size where code allows a maximum area of 800 sq. ft. based on the size of the lot.

(B) CO 1165.04(a)(2)(E) to allow an accessory structure to be located 15+/- feet from the rear property line where the code requires a 30-foot setback.

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

1. Lots 31 and 32 in the Ebrington subdivision are under the common ownership. There is an existing house and swimming pool on lot 32. The applicant submitted a permit application to construct the subject accessory structure on lot 31. During the permit review process, staff identified the code deviations and a lot line adjustment application was completed. The applicant is requesting the variances in order to align the accessory structure with the existing pool on the property.
2. C.O. 1165.04(a)(1) permits different sizes of accessory structures based on the size of the lot they are located on.
 - The current code allows for an additional 400 square feet of space for every acre, starting at a maximum of 800 sq. ft. for lots less than one acre.
 - Lot 32 is .754 acres in size. In sum the two adjacent properties, under common ownership,

- are a total of 1 acre in size. If the two lots were combined, a variance would not be required.
- However, the properties cannot be combined because it would create other non-conformities on the lot. Because of that, in order to construct a 1,110 sq. ft. accessory structure, a variance is required.
3. C.O. 1165.04(a)(2)(e) states that accessory structures must be setback 30 feet from a rear property line and the applicant requests a variance to allow this structure to be located 15 feet away.
 4. There are special circumstances and conditions which are peculiar to the land that justify the variance requests given the ownership and location of lots 31 and 32 in relation to the roundabout. The property owner seeks to construct an accessory structure next to the pool either on one or both properties but a variance is needed due to the technical definitions of rear and side yards.
 5. The accessory structure cannot be located on its own lot per C.O. 1131.02 as an accessory structure cannot exist without a primary structure. For this reason, a lot line combination or adjustment is required. However, both options result in a variance(s) being required. For these reasons, it does not appear that the problem may be solved in another manner other than granting a variance request.
 - i. If the lots are combined:
 1. Due to the lot location on a roundabout, it would have three frontages.
 - a. The proposed accessory structure would be located in a front yard.
 - b. The new combined lot would have a new rear yard as defined by city code, making the current side lot line a rear lot line. As stated, there is an existing home on the lot and it would be encroaching into the required rear yard setback.
 2. A variance to C.O. 1165.04(a)(2)(A) to allow an accessory structure to be located in the front yard would be necessary.
 3. A variance to the zoning text would be necessary to allow an existing home to be located in the 30-foot rear yard setback.
 - ii. The lot line is adjusted (current scenario):
 1. The lot that the accessory structure is located on is only .754 acres in size therefore a 800 sq. ft. accessory structure is permitted to be developed
 2. As defined by city code, the rear lot line remains as currently identified and the proposed accessory structure is located within the rear yard setback.
 3. A variance to CO 1165.04(a)(1) is needed to allow the accessory structure to be 1,110 sq. ft. in size to be developed.
 4. A variance to C.O. 1165.04(a)(2)(E) is needed to allow the accessory structure to be located 15 feet from the rear property line.
 - iii. In order to avoid creating non-conformities with the existing home and pool and encourage good design, the applicant submitted a lot line adjustment application rather than a lot line combination as recommended by city staff.
 6. It does not appear that the essential character of the neighborhood would be altered if the variance is granted. The rear lot line of lot 32 runs along the side lot line of lot 30. There is an existing accessory structure on lot 30 that is located only 10 feet away from this same property line, which is closer than what is being proposed for the subject property. In order to provide screening and buffer lot 30, staff recommends that landscaping be added along the rear lot line where the encroachment into the setback is proposed, subject to staff approval.
 7. While the applicant needs variances to construct the desired accessory structure, the plan accomplishes good design which is a hallmark of residential development in New Albany and will not alter the character of the surrounding area. City code regulations, nor zoning texts, can contemplate every development scenario that may occur within a subdivision and a literal interpretation of these provisions deprives the applicant of rights commonly enjoyed by other

residentially zoned and used properties in the city.

8. The Ebrington subdivision contains large and small lots where large estate homes as well as cluster development is desired. These two lots are smaller, cluster lots therefore having larger structures located closer to property lines is more appropriate as it is consistent with the desired development pattern for this section of Ebrington. There are very limited instances where this type of development scenario may occur however the applicant has taken these unique site characteristics into account as part of development of the accessory structure to maintain the character of the Ebrington subdivision. Additionally, the proposed site layout achieves an appropriate design as it aligns with the existing pool on the site and it is located an appropriate distance from the primary structure.
9. It does not appear that the variance would adversely affect the delivery of government services, 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.

IV. RECOMMENDATION

Staff recommends approval of the requested variance should the Planning Commission find that the application has sufficient basis for approval. While variances are proposed, a variance(s) will always be necessary to build a detached accessory structure at this site due to a literal interpretation of the zoning code, the common ownership and location of lots 31 and 32 in relation to the roundabout and the definition of side, rear and front yards found in city code. Taking all of these items into consideration, the applicant followed a permitting path as recommended by city staff that preserves the essential character of the Ebrington subdivision and maintains good design which is a hallmark of all residential development in New Albany. Plus, additional landscaping will provide a buffer for the neighboring property owner where the setback encroachment is proposed.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate.

Move to approve application VAR-50-2022 based on the findings in the staff report with the following condition of approval (conditions of approval may be added).

1. Landscaping must be added along the rear property line where setback encroachment is proposed, subject to staff approval.

Approximate Site Location:



Source: NearMap