


New Albany Planning Commission
May 16, 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; David Moser, Interim City Attorney; and Josie Taylor, Clerk.

Moved by Mr. Larsen to approve the April 4, 2022 meeting minutes as amended per Mr. Larsen's comment regarding the added condition on CU-33-2022 that a sidewalk shall be located by the side entrance, seconded by Ms. Briggs. Upon roll call: Mr. Larsen, yea; Ms. Briggs, yea; Mr. Schell, yea; Mr. Wallace, abstain; Mr. Kirby, 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. Mayer 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-41-2022 Variance

Variance to Hawksmoor I-PUD zoning text section III(5)(a) to allow a swimming pool to be located in a side yard at 4 Hawksmoor Road (PID: 222-003482).

Applicant: Capital City Pools, Inc.

Mr. Mayer presented the staff report and noted that the previously requested letters from neighbors were in the PC members' packets.

Mr. Kirby asked if there was a landscaping commitment included with this application.

Mr. Mayer stated that where no conditions of approval for additional landscaping but the applicant was proposing to put seven (7) to eight (8) foot tall arbor vitae around the pool. Mr. Mayer added there were three (3) layers of arbor vitae from the street.

Mr. Kirby stated okay.

Mr. Larsen stated it was proposed but there was no condition that required it be done.

Mr. Kirby stated they could add that condition.

Mr. Larsen stated it should at least be required around the pool.

Mr. Kirby asked if the Applicant wanted to provide comments.

Mr. Mike Romas, Landscape Architect, Capital City Pools, stated letters from neighbors had been provided to the PC and noted that the owners, Mr. and Mrs. Andrew Rumpke were present.

Mr. Rumpke thanked the PC for hearing this matter again. Mr. Rumpke discussed the project and its landscaping. Mr. Rumpke said they had the support of their neighbors and noted the Home Owners Association had approved this project and he wanted to be sure this process was done correctly.

Mr. Kirby asked if the Applicant had any conflict with the proposed condition for landscaping to be subject to staff approval.

Mr. Rumpke stated no.

Mr. Schell indicated an area on the presentation and asked if there would be an additional row of arbor vitae in that location.

Mr. Rumpke stated yes.

Mr. Schell asked if those were currently there.

Mr. Rumpke stated that was a hew hedge.

Mr. Romas stated that was a hew and indicated that on the street there was a boxwood that would be lower in height. Mr. Romas stated that after that there would be a taller evergreen hedge, and then there would be another tall row of landscaping.

Mr. Schell asked if the pool would not be seen from the street.

Mr. Romas said no.

Mr. Rumpke stated correct.

Mr. Schell stated he appreciated the extra steps they were taking.

Mr. Larsen stated he appreciated the Applicant had obtained comments from all neighbors.

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

Moved by Mr. Kirby to accept the staff reports and related documents into the record, including the letters submitted by the neighbors about this application, for VAR-41-2022, seconded by Mr. Schell. Upon roll call: Mr. Kirby, yea; Mr. Schell, yea; Mr. Wallace, yea; Ms. Briggs, yea; Mr. Larsen, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Moved by Mr. Schell to approve VAR-41-2022 based on the findings in the staff report with the conditions listed in the staff report and the additional condition that landscaping be subject to staff approval, seconded by Ms. Briggs. Upon roll call: Mr. Schell, yea; Ms. Briggs, yea; Mr. Larsen, yea; Mr. Wallace, no; Mr. Kirby, yea. Yea, 4; Nay, 1; Abstain, 0. Motion passed by a 4-1 vote.

Mr. Wallace stated he voted no because he did not believe the variance met the requirements of the Duncan factors and he thought the property was usable as purchased and the property's limitations were well known. Mr. Wallace stated a precedent should not be set for these types of variances.

Mr. Kirby noted that having the full set of letters from the neighbors was very powerful. Mr. Kirby asked staff if the comments from neighbors stating this was a one-off request could be put into the record in case of future requests.

Mr. Mayer stated absolutely, all the letters would be part of the permanent record.

Mr. Romas asked staff to return to a prior slide with the lot layout and asked if the space between this lot and the next, if purchased, could the owner build a pool there.

Mr. Kirby stated they would have a problem.

Mr. Wallace stated this was one of the reasons he normally voted against variances, as they could have unintended consequences.

VAR-50-2022 Variances

Variances 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. Mayer presented the staff report.

Mr. Kirby asked if the Applicant wanted to provide additional comments.

Mr. Daniel Snyder, Applicant, stated the neighbor in who is currently in California had also sent a letter in support.

Mr. Mayer stated the letter was in the PC members' packets and had also been emailed to the PC members by staff.

Mr. Snyder stated he appreciated the PC's review of this application.

Mr. Larsen asked if there were letters from the owners of Lots 1 and 2 and were they in the packet as he had not seen them.

Mr. Mayer stated the letter from the neighbor in Lot 1 had been in the email to PC members and he had additional copies of it available at this time. Mr. Mayer stated the letter from the neighbor on Lot 2 was in the packet, at the end of the information, and additional copies of that letter were also available at this time.

Mr. Larsen asked which lot was Lot 1.

Mr. Mayer stated Lot 1 was the property at 7215 Ebrington Road and noted where in the packet it was located.

Mr. Larsen asked about the letter from the owners of Lot 2.

Mr. Mayer stated that was for house number 8413, where those owners were now.

Ms. Briggs asked if Lot 2 was the vacant lot.

Mr. Mayer stated that was correct and pointed out the lot on the presentation.

Mr. Kirby asked if the PC had letters from the neighbors on Lots 1, 2, 30 which was directly north, and also the lot due east of the Applicant's lot.

Mr. Mayer stated yes but there was no lot east, that was the golf course.

Ms. Briggs asked which was the lot for the Castleforte property at 3930 Ebrington Road.

Mr. Mayer stated that was Lot 28 and noted this was the lot to the north.

Mr. Snyder stated Lot 28's owner was moving in and had said he was fine with the view.

Mr. Mayer stated Lot 48 was the Deal property at 6988.

Mr. Kirby stated the original packet that had been reviewed showed a lot of landscaping on the lot and asked if that was a part of this plan.

Mr. Mayer stated that staff recommended that landscaping be installed between the accessory structure and the property to the north that would be consistent with past variances.

Mr. Wallace asked how that would compare with the image in the packet.

Mr. Tom Rubey, New Albany Company, stated the image in the packet was the one signed off on by the Architectural Review Committee.

Mr. Kirby asked if having an integrated landscape plan along the road frontage was a requirement that would not have a conflict.

Mr. Rubey stated correct.

Mr. Kirby asked if the plan was that the second lot would not have a dwelling built on it.

Mr. Rubey stated correct.

Mr. Kirby asked if a reasonable condition would be that no structure would be on that lot.

Mr. Schell asked if that would pass to any property owner in the future.

Ms. Briggs stated yes, in perpetuity.

Mr. Kirby asked if there was any objection to a requirement that the two lots always be under common ownership.

Mr. Snyder asked if this would combine the lots forever.

Mr. Kirby stated he believed a deed restriction would need to be put on both properties that they needed to be sold together and needed to be in common ownership.

Mr. Snyder stated he would be fine with that.

Mr. Larsen asked if the lot line movement had yet been submitted to the county.

Mr. Rubey stated no.

Mr. Larsen stated they could go either way then, with one (1) or two (2) lots.

Mr. Wallace asked if such a deed restriction on the two (2) lots requiring common ownership would be legally enforceable.

Mr. Moser stated yes.

Mr. Kirby asked if the PC could issue variances, for example, on which the owner would request that the lots be combined and on which the front of the lot would be the currently existing front.

Mr. Moser stated yes, and he believed there was some precedent for that and noted the approval would need to be very specific.

Mr. Kirby asked Mr. Mayer how many of the variances they were now looking at would no longer be needed if they had one combined lot where the front was determined.

Mr. Mayer stated that if the lots were combined they would need a variance for the pool in the front yard.

Mr. Kirby asked if the lot the house was currently on was determined to be the frontage on the combined lots, then could the PC keep that frontage after the lots were combined.

Mr. Mayer stated that in that case the second lot would become the rear yard.

Mr. Kirby asked if the PC could provide a variance so the current front lot line would still remain the front lot line of the combined lots.

Mr. Mayer stated that type of variance could be done but noted that would create other issues with the Code. Mr. Mayer stated the PC could consider that, but noted that the Code determined the front yard based on lot dimensions, not on the house, but the PC could provide such a variance so that the house was in the front.

Mr. Kirby stated the side yard would get very large and remain a side yard and the rear yard would remain the rear yard. Mr. Kirby asked if they would be okay with the rear yard setback.

Mr. Mayer stated yes.

Mr. Kirby stated then they would only need one (1) variance on a combined lot which fixed where the front of the lot was located.

Mr. Larson asked if the rear yard had a thirty (30) foot setback requirement.

Mr. Mayer stated he did not know if a variance could be provided for an interpretation. Mr. Mayer stated the combined lot would have three (3) frontages and Code indicated that a corner lot would have the rear lot line at the back of the frontage of least dimension. Mr. Mayer noted that the lots in this case had very unique circumstances.

Mr. Shull stated it might be best to continue with the variances requested in the application as the combined lots would also require the same number of variances.

Mr. Mayer stated there would be two (2) variances if the lots were to be combined.

Mr. Shull stated there were then the two (2) options available.

Mr. Kirby stated the precedent might be easier to deal with but the complexity would remain.

Mr. Shull noted that while the second lot could not be built on, could the applicant return and ask for another accessory structure.

Mr. Kirby stated the applicant had said there would not be structures on the other lot.

Mr. Schell asked if the lot was sold would there be restrictions in place to prevent something else being built.

Mr. Wallace noted the City's counsel could respond to that.

Mr. Moser stated a deed restriction for common ownership and no building on the second, small lot could be a condition if the applicant was in agreement with it.

Mr. Wallace stated he believed the applicant was fine with that, but if the lots were sold they would need to have those conditions continue in perpetuity for future owners so nothing else could be built on the second lot.

Mr. Snyder stated he wanted to be sure he was not restricted in his use of the lot.

Mr. Kirby stated he had used the word 'structures' in his notes and asked if there were any conflicts with using that word in the condition. Mr. Kirby said he believed a structure required a building permit.

Mr. Mayer explained that based on Code requirements the PC would need to hear a variance so that an accessory structure could be built on a lot that did not have a primary structure on it.

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

Mr. Larsen asked if there was still a variance on the pool house if the lots were kept separate.

Mr. Mayer stated yes, if the lots were still separate.

Mr. Wallace stated this application had some difficult issues and there was not a really good solution. Mr. Wallace noted the two (2) issues were (a) that no structure could be built on the smaller lot and (2) that the accessory structures going on the main lot would be fully landscaped so that it was in line with, and supported, the character of the neighborhood.

Mr. Shull stated he believed the PC was considering putting in a landscaping condition for the area between the house and the structure. Mr. Shull asked Mr. Rubey if the rest of the landscaping shown in the packet was already required.

Mr. Kirby stated it might be required.

Mr. Rubey stated correct.

Mr. Shull said then the only thing that had not been required was some sort of landscaping between the structure and Lot 30.

Mr. Kirby stated that was staff's first condition and said he had, as a second condition, integrated landscaping on all road frontages, subject to staff approval.

Mr. Shull stated okay.

Mr. Wallace stated he would change that to integrated landscaping as approved by the Architectural Review Committee and as described in the architectural site plan, subject to staff approval.

Mr. Kirby stated his third condition was that the smaller lot would have no structures as a deed restriction on it and the fourth condition was a deed restriction on both lots requiring common ownership.

Mr. Wallace said yes.

Moved by Mr. Kirby to accept the staff reports and related documents, particularly the letters of support from the neighbors, into the record, for VAR-50-2022, seconded by Mr. Larsen. Upon roll call: Mr. Kirby, yea; Mr. Larsen, yea; Ms. Briggs, 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 approve VAR-50-2022 with the condition of joint ownership of the lots as a deed restriction, no structures on the smaller lots, and a landscaping requirement

Mr. Wallace asked if he could make a friendly amendment to Mr. Larsen's motion.

Mr. Larsen stated yes.

Mr. Wallace stated that there would be the following conditions, including the first condition from the staff report:

1. Landscaping must be added along the rear property line where setback encroachment is proposed, subject to staff approval;
2. That there be integrated landscaping as approved by the Architectural Review Committee and described in the architectural site plan included in the staff report materials, as subject to staff approval;
3. A deed restriction that no primary or other structure will be on the remaining smaller lot;
4. A deed restriction that the two lots be required to have and maintain common ownership.

Mr. Rubey asked for clarification on whether they could distinguish between a building and a structure on the lot to be sure nothing that required a building permit or had a footer could be put there.

Mr. Kirby stated he believed the word structure would do that.

Mr. Brian Kent Jones, architect, stated there was a concern that brick piers or other landscaping accoutrements, such as a pergola, could be a structure but could not be a building.

Mr. Kirby stated that if it fell under the integrated landscaping plan then he was okay with it.

Mr. Mayer stated the words building and structure had two different meanings per Code.

Mr. Kirby stated his understanding had been that things that required footers, aside from landscaping, would be prohibited, so no pergolas would be allowed but piers would be okay. Mr. Kirby asked Mr. Larsen and Ms. Briggs if that was what they meant in those conditions.

Mr. Larsen stated he would be okay with a single pergola. Mr. Larsen asked if they changed it to buildings would that permit gazebos.

Mr. Mayer stated if no building was permitted then that would mean a primary structure could not be on the lot. Mr. Mayer said that would then require a variance from the PC before any structures could be on that lot.

Mr. Kirby asked if having the deed restricted to no buildings on the lot then meant that unless the lots were rezoned from residential no accessory structures could be put on the lot.

Mr. Mayer stated that would require either re-zoning or a variance.

Mr. Wallace asked for clarification of the two terms structure and building.

Mr. Mayer stated he believed a building was defined as an enclosed, four-sided structure with a roof over it. Mr. Mayer stated a building was a structure but a structure was not a building.

Mr. Wallace stated he got it. Mr. Wallace asked if this could be addressed by amending the third condition to say something to effect of 'no primary or other structure otherwise deed restricted on the smaller lot, other than structures associated with landscaping.'

Mr. Mayer stated staff's recommendation would be to say no building that was deed restricted and then the structures could be handled as a variance.

Moved by Mr. Larsen to approve VAR-50-2022 with the conditions in the staff report and the following additional conditions:

1. As set forth in the staff report, landscaping must be added along the rear property line where setback encroachment is proposed, subject to staff approval;
 2. That there be integrated landscaping as approved by the Architectural Review Committee and described in the architectural site plan included in the staff report materials, as subject to staff approval;
 3. A deed restriction that no primary or other building will be on the remaining smaller lot;
 4. A deed restriction that the two lots be required to have and maintain common ownership.
- seconded by Ms. Briggs. Upon roll call: Mr. Larsen, yea; Ms. Briggs, yea; Mr. Schell, yea; Mr. Wallace, abstain, yea; Mr. Kirby, abstain. Yea, 3; Nay, 0; Abstain, 2. Motion passed by a 3-0-2 vote.

Mr. Wallace stated he abstained as he did not want to be on record with either an approval or denial on this.

Mr. Kirby stated he abstained for the same reason as he also believed this was resolved as best it could.

Other Business

Mr. Kirby asked if there was any Other Business.

Mr. Mayer stated no.

Poll Members for Comment

Mr. Wallace stated he hoped the Applicant appreciated the work and was sure it would be nice.

Mr. Kirby thanked legal counsel.

Mr. Schell stated it had been a good job meeting the needs here.

Mr. Shull stated it was an outstanding job.

Mr. Mayer noted it was a complex case.

Mr. Kirby adjourned the meeting at 7:57 p.m.

Submitted by Josie Taylor.

APPENDIX



Planning Commission Staff Report May 16, 2022 Meeting

4 HAWKSMOOR DRIVE POOL LOCATION VARIANCE

LOCATION: 4 Hawksmoor Drive (PID: 222-003432).
APPLICANT: Capital City Pools, Inc.
REQUEST: (A) Variance to Hawksmoor zoning text section II(5)(a) to allow a swimming pool to be located in a side yard at 4 Hawksmoor Drive.
ZONING: Hawksmoor I-PUD Zoning District
STRATEGIC PLAN: Residential
APPLICATION: VAR-41-2022

Review based on: Application materials received March 17, 2022.

Staff report prepared by Chris Christian, Planner

I. REQUEST AND BACKGROUND

This application was reviewed and tabled by the Planning Commission during their April 18th meeting in order to give the applicant time to gather letters of support from neighboring property owners. Letters collected to date are included in the meeting packet.

The applicant requests a variance to Hawksmoor zoning text section II(5)(a) to allow a swimming pool to be located in a side yard at 4 Hawksmoor Drive.

II. SITE DESCRIPTION & USE

The property is .73 acres in size contains a newly built single-family home and is located in the Hawksmoor subdivision. The original platted lots 4 & 5 were combined by the property owner into this single lot in 2020.

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) Variance to Hawksmoor zoning text section II(5)(a) to allow a swimming pool to be located in a side yard at 4 Hawksmoor Drive.

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

1. The Hawksmoor zoning text states “all swimming pools/spas shall be located in the rear yard within the building line of sight and shall be completely enclosed by fencing and screened from adjoining properties.”
2. The applicant proposes to install a swimming pool in the side yard, therefore a variance is required.
3. The proposed pool is to be located in the side yard, setback further from the public street than the principle structure within a code compliant fence. Additionally, the applicant proposes to install a 7-8 foot tall evergreen landscape hedge around the entire pool area to provide screening. In addition to this screening, there is an existing 7 foot tall evergreen landscape hedge that runs along the site frontage nearest to the pool, providing more screening on top of what is proposed.
4. It does not appear that the essential character of the neighborhood would be altered if the variance request is granted. The applicant states that they will install arborvitae around the proposed pool area to provide screening for adjacent properties.
5. The variance meets the spirit and intent of the zoning text requirement which is to ensure that swimming pools/spas are screened from adjacent properties and public rights-of-way. While the applicant proposes to locate the swimming pool in a side yard, they are providing substantial landscape screening from adjacent properties and public rights-of-way thereby meeting the intent of the zoning text requirement.
6. The variance does not appear to be substantial. All other code requirements including setbacks

from adjacent properties and pool fencing are being met. In addition, the base city code requirements for pools do not state that pools cannot be located in a side yard therefore the applicant is still meeting the base pool location zoning requirements found in city code.

7. It does not appear that this problem may be solved in another manner other than granting the variance request. The existing house was built in 2007. The lots within the Hawksmoor subdivision are small and in order to meet the setback and landscaping requirements the property owner used the neighboring lot that they purchased in 2020 to accommodate additional recreational amenities for their enjoyment.
8. 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

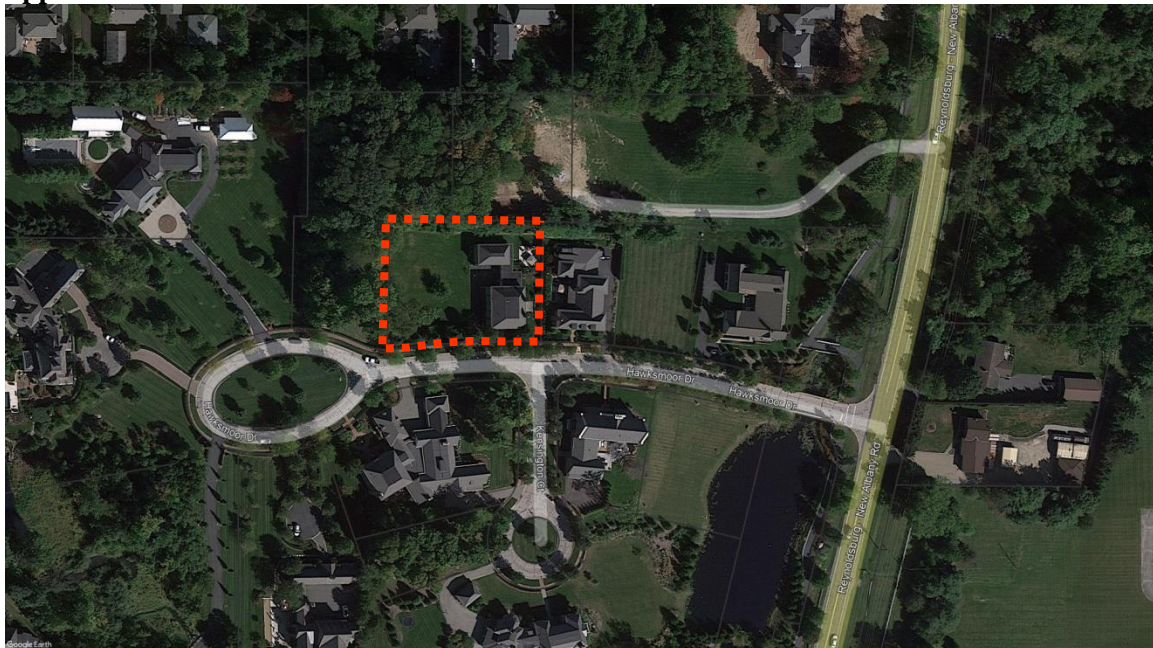
Staff recommends approval of the requested variance should the Planning Commission find that the application has sufficient basis for approval. While the applicant proposes to install a swimming pool in a side yard, they are proposing to install a 7-8-foot evergreen hedge around the perimeter of the entire pool area which meets the intent of the zoning requirement to screen these areas from adjacent properties and public rights-of-way. Additionally, there is an existing 7-foot-tall evergreen shrub row along the entire front of the lot, providing three layers of screening to ensure that the intent of the code requirement is substantially met. The proposed pool will be enclosed by a code compliant fence and is meeting all other code requirements.

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-41-2022 based on the findings in the staff report (conditions of approval may be added).

Approximate Site Location:



Source: Google Earth



**Planning Commission Staff Report
May 16, 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

II. REQUEST AND BACKGROUND

This application was reviewed and tabled by the Planning Commission during their May 2nd meeting in order to give the applicant time to gather letters of support from neighboring property owners. Letters collected to date are included in the meeting packet.

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.

V. 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.

VI. 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.

13. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
14. *Whether the variance is substantial.*
15. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
16. *Whether the variance would adversely affect the delivery of government services.*
17. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
18. *Whether the problem can be solved by some manner other than the granting of a variance.*
19. *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*):

20. *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.*
21. *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.*
22. *That the special conditions and circumstances do not result from the action of the applicant.*
23. *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.*
24. *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:

9. 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.
10. C.O. 1165.04(a)(1) permits different sizes of accessory structures based on the size of the lot they are located on.
 - o 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.
11. 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.
 12. 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.
 13. 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.
 14. 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.
 15. 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.

16. 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.
17. 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.

VII. 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