

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 Vice Chair, Mr. Smith, at 7:00 p.m.

Those answering roll call:

Mr. Shaun LaJeunesse
Mr. Kirk Smith
Present
Ms. Tiana Samuels
Absent
Mr. Abe Jacob
Present
Mr. Hans Schell
Present
Ms. Andrea Wiltrout (Council Rep)
Present

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

Ms. Taylor noted that the April 25, 2022 had been updated prior to the meeting to remove Mr. Gallagher's name from the top and replace it with Mr. LaJeunesse as the member who called the April 25, 2022 meeting to order.

Moved by Mr. Jacob to approve the April 25, 2022 meeting minutes as amended by Ms. Taylor's comments, seconded by Mr. Smith. Upon roll call: Mr. Jacob, yea; Mr. Smith, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

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

Mr. Smith swore all who would be speaking before the Board of Zoning Appeals (hereafter, "BZA") to tell the truth and nothing but the truth.

VAR-74-2022 Variances

Variance to allow a playground to be located within a platted buffer area at 7365 Milton Court (PID: 222-002043).

Applicant: Aman and Michelle Singh

Mr. Christian presented the staff report.

Mr. Albrecht discussed the implications of the Americans with Disabilities Act (hereafter, "ADA") and Fair Housing Act (hereafter, "FHA") on this variance request.

Mr. Smith asked if staff wanted to include an email provided by a neighbor into the report.

Mr. Christian stated yes and noted that a neighbor of the applicants', Mr. Frank Sudol, had emailed a letter to the City which had been distributed to BZA members and should be part of the record.

Mr. Smith asked if the applicant would be speaking about this application.

Ms. Singh stated she and her husband had been working to restore the area they had previously touched and would not be doing so again.

Mr. Schell asked if they would not be placing a fence in the area at this time.

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Mrs. Singh stated right.

Mr. Schell asked what the reason was for this.

Mrs. Singh stated they had previously planned to build a pool but that plan was now on hold.

Mr. Schell asked if the fence had then been for the pool.

Mrs. Singh stated yes, there was no need for the fence now.

Mr. Smith asked if they moved the playground to where the pool had been planned to be, would that resolve this issue.

Mr. Christian stated yes, if the playground were moved out of the buffer zone a variance would no longer be needed.

Mrs. Singh stated yes, the playground was partly into the buffer zone and had been installed with the permission of the home owners' association (hereafter, "HOA"). Mrs. Singh added that they could see their children while they were playing on the playground but the playground was not visible to neighbors or those on the street.

Mr. Smith asked if it was anchored down.

Mrs. Singh stated it had not been cemented in, but it would not be easy to move. Mrs. Singh provided photos of the playground to the BZA members and noted that she and her husband had worked with Mr. Sudol, who had emailed the City, on the installation of the landscaping to block his view of the playground at the time it had been installed.

Mr. Schell asked if the photos, with the foliage, were current.

Mrs. Singh stated yes.

Mr. Schell asked about the coverage the landscaping provided in the winter.

Mrs. Singh stated it was thinner, but still thick enough and there were mostly evergreens in the area.

Ms. Wiltrout pointed to an area on the presentation and asked what it was.

Mrs. Singh stated there were trees planted in the area and she believed they might be part of the remediation plan.

Mr. Christian stated that area reflected the approved remediation plan.

Mrs. Singh mentioned the types of trees and other foliage in the buffer zone.

Ms. Wiltrout asked if the the area in yellow was the buffer zone.

Mr. Christian stated yes.

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Ms. Wiltrout stated that avoiding a precedent would be possible if this were a unique lot and asked if the playground was necessary and why it needed to be where it was.

Mrs. Singh stated that other areas on the property would be open to other neighbors.

Ms. Wiltrout asked if they were on their patio would they also be able to see them playing.

Mrs. Singh stated yes, if they were outside.

Ms. Wiltrout asked how could they see their son better from the current location where the playground was located.

Mrs. Singh used the pointer to indicate the areas of her home on the presentation. Mrs. Singh stated that currently the playground location was viewable from the kitchen and living area of her home and trees and shrubs would block the view if the playground were placed in other locations.

Ms. Wiltrout asked if there were additional reasons, other than landscaping, why the playground could not be located in another part of the property.

Mr. Singh stated the current view of the playground was the easiest possible due to the way the house was laid out.

Ms. Wiltrout asked if other views were obstructed by shrubs and trees.

Mrs. Singh stated shrubs, trees, and the house itself and its layout.

Mr. Schell asked if the pool shown on the presentation was no longer being planned.

Mrs. Singh stated they were not currently planning one. Mrs. Singh mentioned their prior request had been for a fence around the perimeter of the yard.

Mr. Smith reviewed the two (2) conditions in the staff report for this application and asked if the applicant was okay with them.

Mrs. Singh stated she had no problems with those conditions and would follow them.

Mr. Smith asked how many feet there were from the playground to where the pool would be and why the playground could not be moved to that area.

Mrs. Singh stated it would be a lot of effort to move the playground. Mrs. Singh stated it was about seven (7) feet into the buffer zone, perhaps, but it would need to be disassembled to be moved. Mrs. Singh stated they had planted about \$14,000 of trees to block Mr. Sudol's view and he had said he was fine with the view, but did not want a precedent established.

Mr. Smith asked if others had any questions or comments. (No response).

Mr. Smith noted that Mr. Sudol's email had asked that several conditions be added if this variance were approved. Mr. Smith asked Mrs. Singh if she had seen the email and the conditions requested.

Mrs. Singh stated yes.

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Mr. Smith stated there were six (6) conditions.

Mrs. Singh stated she believed the conditions were in line with the remediation already being worked on.

Mr. Smith stated okay.

Mr. Jacob stated he appreciated the work done by the applicants in working with the City and their neighbor and the good faith shown. Mr. Jacob stated the fifth condition in Mr. Sudol's email stood out to him, that of returning the area to its pre-development state upon removal of the playground. Mr. Jacob asked who would be responsible for doing that, the next owner or the applicant.

Mrs. Singh stated they would commit to removing it and would let those moving in know the playground did not come with the house.

Mr. Jacob stated thank you.

Ms. Wiltrout asked if that condition could be enforced, would it be added to the deed or would it be caveat emptor.

Mr. Albrecht stated it could be put in the deed.

Mr. Schell asked the applicant if they had obtained an estimate on what it would cost to move the playground.

Mrs. Singh said no.

Mr. Schell asked if the playground were moved just fifteen (15) feet would that impact her son.

Mrs. Singh stated he would get used to it eventually, but it would be an issue due to expectations and the need for consistency.

Mr. Schell asked if that would be one of the issues with moving the playground.

Mrs. Singh stated it was more due to safety issues as her son had an issue with taking off and it could be dangerous if they were not able to watch and supervise. Mrs. Singh noted her son still had elopement events.

Mr. Schell asked if the placement was then more important than the cost of tearing it down.

Mrs. Singh stated yes and while they could get estimates, this was in a good place where they were able to sit and watch the playground.

Mr. Smith asked if the applicant had mentioned she also had a two (2) year old.

Mrs. Singh stated yes.

Mr. Smith stated that the playground could then be in use for twelve (12) or fourteen (14) years until the youngest child aged out.

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Mrs. Singh stated yes, but in terms of Mr. Sudol 's view, the trees would also be getting bigger.

Mr. Jacob stated that in discussing the application he agreed with the staff's conditions but was also inclined to agree with Mr. Sudol 's fourth and fifth conditions from the email, those about no expansion to the playground and that if there were new owners the area should be returned to its natural state.

Mr. Schell asked the applicant about these conditions.

Mrs. Singh stated they would not expand it in any way and would commit to taking it down if they left.

Mr. Smith stated Mr. Sudol's third condition indicated that if the variance was due to an ADA accommodation then the playground would be removed once the child was no longer a full time resident. Mr. Smith stated that as there was a younger child who should also be allowed to enjoy the playground he did not support that. Mr. Smith stated he was in support of Mr. Sudol's fourth and fifth conditions. Mr. Smith noted there was also a condition about no use of fertilizer, weed killers, or pesticides in the area as well as one saying mowing would not occur, which he did not understand why mowing would not be wanted.

Ms. Wiltrout stated she believed that would be in the natural buffer zone area.

Mrs. Singh stated the area had once had debris and poison ivy and they had cleared it out, but they were now remediating that area and had added natural grass and believed that was what Mr. Sudol was referring to and stated they would not.

Mr. Smith stated okay.

Moved by Mr. Smith to accept the staff report for VAR-74-2022 into the record including the email from Mr. Sudol, seconded by Mr. Jacob. Upon roll call vote: Mr. Smith, yea; Mr. Jacob, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Moved by Mr. Jacob to approve variance VAR-74-2022 with the following:

- 1) All other areas within the buffer zone must remain undisturbed and allowed to grow over time to reestablish the zone as it has existed historically;
- 2) The playground equipment must be removed if the current property owners or their family members no longer reside at the property and the removal shall occur prior to the current property owners or their family members no longer residing at the property;
- 3) The variance is only for the current playground on the property and no additional equipment would be permitted;

seconded by Mr. Smith. Upon roll call vote: Mr. Jacob, yea; Mr. Smith, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Other Business

Mr. Mayer introduced Ms. Chelsea Nichols as a new Planner for the City and noted she would also be helping out with the Boards and Commissions.

Mr. Smith welcomed Ms. Nichols.

Poll Members for Comment:

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None.

Moved by Mr. Smith to adjourn the meeting, seconded by Mr. Jacob. Upon roll call vote: Mr. Smith, yea; Mr. Jacob, yea; Mr. Schell, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Meeting adjourned at 7:23 p.m.

Submitted by Josie Taylor.

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APPENDIX



Board of Zoning Appeals Staff Report July 25, 2022 Meeting

7365 MILTON COURT BUFFER ZONE VARIANCE

LOCATION: 7365 Milton Court (PID: 222-002043).

APPLICANT: Aman & Michelle Singh

REQUEST: (A) Variance to allow a playground to be located within a platted buffer area.

ZONING: R-2

STRATEGIC PLAN: Residential APPLICATION: VAR-74-2022

Review based on: Application materials received on June 20, 2022.

Staff report prepared by Chris Christian, Planner II.

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow an existing playground to remain located within a platted buffer zone where no work is permitted to occur that would alter the natural state of the area.

On December 20, 2021, the Board of Zoning Appeals denied the same variance request to allow the same playground and a fence to be located in the platted buffer area. During the meeting, the property owner removed the request to have the playground remain in the buffer zone and asked the board to only consider the fence location as part of the variance request. In their denial for the fence, the BZA stated that approving the variance request would not preserve the spirit and intent of the buffer zone requirement which was put in place at the time of rezoning. The board agreed that the property could still be enjoyed without granting the variance request and did not note of any special conditions or circumstances that would justify granting the request.

The applicant has provided new information as justification for granting the variance request to allow the existing playground to remain in the buffer zone. This new information is <u>underlined</u> and included in the evaluation section of the staff report along with the original considerations from the staff report issued for the December 20, 2021, Board of Zoning Appeals meeting.

II. SITE DESCRIPTION & USE

The .52-acre property is located within section 15 of the New Albany Country Club community, contains a single-family residential home and is surrounded by residentially zoned and used properties.

In response to a code complaint, staff investigated and found that the buffer zone on the property had been altered It appears that trees and undergrowth were removed and replaced with turf grass. The city zoning officer and forester have approved a restoration plan with the property owner to restore the trees and undergrowth for the area that was altered by the current property owner.

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III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of Duncan v. Village of Middlefield, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the "practical difficulties" standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

- 1. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.
- 2. Whether the variance is substantial.
- 3. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."
- 4. Whether the variance would adversely affect the delivery of government services.
- 5. Whether the property owner purchased the property with knowledge of the zoning restriction.
- 6. Whether the problem can be solved by some manner other than the granting of a variance.
- 7. Whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.

Plus, the following criteria as established in the zoning code (Section 1113.06):

- 8. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.
- 9. That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.
- 10. That the special conditions and circumstances do not result from the action of the applicant.
- 11. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.
- 12. That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

III. EVALUATION

(A) Variance to allow a playground to be located within a platted buffer area.

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

- 1. The applicant proposes to allow an existing playground to remain in the same buffer area.
- 2. There is a platted buffer area that extends 30 feet into the property beginning at the rear lot line. The playground sits approximately 13+/- feet from the rear property line.
- 3. The plat states that no structure or building shall be located in a buffer zone nor shall any work be performed within the buffer zone that would alter the natural state of the zone. The plat does allow for maintenance within easements located within the buffer zone and the removal of dead and diseased trees and/or vegetation.
- 4. The applicant has provided new information as part of the justification for the variance request which was not included in the original application in late 2021. The applicant states that their 10-year-old son has an Autism Spectrum Disorder and Expressive Speech Delay diagnoses, has a tendency for elopement and is unable to respond to questions when asked. The applicant

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- states that allowing the playground to remain in its current location allows them to monitor their son at all times, ensure his safety and ensure that he has not eloped (left the yard without permission.
- 5. The city law director reviewed this new information and provides the following comments. As a general principle, the American Disabilities Act (ADA) requires a public entity to make reasonable modifications in its policies, practices and procedures when necessary to avoid discrimination on the basis of a disability. A modification is not necessary when it would fundamentally alter the nature of the service, program or activity. For this reason, the ADA requirements are a consideration for this variance request.
- 6. Additionally, the city law director states that the Fair Housing Act (FHA) prohibits discrimination of services or facilities in connection with a dwelling. Per the FHA, discrimination includes refusal to make reasonable accommodation in rules, polices, practices, or services when such accommodations may be necessary to afford a person equal opportunity to enjoy a dwelling. Based on these requirements, a variance may be necessary to allow an individual with a disability the opportunity to enjoy their dwelling.
- 7. Based on this new information and the city law director opinion, staff is supportive of the variance request for this property with a condition of approval that the playground equipment must be removed if the current property owners or their family members no longer reside at the property.

Original considerations from the staff report issued December 20, 2021:

- 8. There are special conditions and circumstances of this property that justify the variance request. The property is located on a cul-de-sac so the width of the front of the lot is smaller than a lot that is not located on a cul-de-sac. The width of the front of the property is 160+/- feet and widens to approximately 390 feet at the rear. Cul-de-sac lots are typically wider at the rear of the property to account for the bend in the road. This shape necessitates the home be built further from the street yard in order to provide adequate space to construct a home while meeting other setback requirements. This constraint, in addition to the 30-foot buffer zone in the rear yard creates unique conditions and circumstances with smaller rear yards that limit where playgrounds are able to be located on this property. Homes that are located on rectangular shaped lots, do not have these same design challenges which allows for the home to be located closer to the street, thereby creating larger rear yards for recreational amenities that can meet the setback requirement.
- 9. It does not appear that the spirit and intent of the requirement will be met if the variance is approved. The intent of the buffer is to allow that area to remain in its natural state and be undisturbed. While not required by city code, this buffer zone provides screening for adjacent properties in the vicinity and preserves existing natural features of the site. While the applicant is encroaching into this buffer zone, they are remediating landscaping that was previously removed to reestablish the screening for adjacent property owners.
- 10. Approving the variance request may be substantial. While the playground are minimally invasive improvements, locating them in this buffer zone will alter the natural state of the area.
- 11. It does appear that the issue can be solved in another manner other than granting the variance request. It appears that there is sufficient space on the site for the playground to be located outside of the buffer area in the backyard. For these reasons, it appears that there can also be a beneficial use of the property without the variance.
- 12. 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.
- 13. Granting the variance will not adversely affect the delivery of government services.

IV. RECOMMENDATION

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The city staff is supportive of the variance request based on the new information submitted by the applicant and the opinion of the law director.

If the variance request is approved, staff recommends a two condition of approvals:

- 1. All other areas within the buffer zone be undisturbed and allowed to grow and reestablish the zone as it has existed historically.
- 2. The playground equipment must be removed if the current property owners or their family members no longer reside at the property.

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-74-2022 (conditions of approval may be added).

- 1. All other areas within the buffer zone must remain undisturbed and allowed to grow overtime to reestablish the zone as it has existed historically.
- 2. The playground equipment must be removed if the current property owners or their family members no longer reside at the property.



Source: Google Earth

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