

  
**New Albany Board of Zoning Appeals**  
**October 24, 2022 Minutes**

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Mr. LaJeunesse, at 7:00 p.m.

Those answering roll call:

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

Staff members present: Mr. Stephen Mayer, Development Services Manager; Chelsea Nichols, Planner; Josie Taylor, Clerk.

Moved by Mr. Jacob to approve the September 26, 2022 meeting minutes, seconded by Ms. Samuels. Upon roll call: Mr. Jacob, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. LaJeunesse, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Mr. LaJeunesse asked if there were any additions or corrections to the agenda.

Ms. Nichols said no.

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

**VAR-96-2022 Variance**

**Variance to the pool setback requirements of Codified Ordinance section 1173.02(c) at 3707 Head of Pond Road (PID: 222-001574-00).**

**Applicant: Mark Roehrenbeck**

Ms. Nichols presented the staff report.

Mr. LaJeunesse asked if the applicant wanted to provide any comments.

Mr. Mark Roehrenbeck, homeowner, thanked the BZA for their review. Mr. Roehrenbeck stated he had spoken with most neighbors and they were in favor of the pool. Mr. Roehrenbeck stated he could answer any questions.

Mrs. Alison Roehrenbeck, homeowner, stated their neighborhood was excited for this pool and, as there were many children there, safety was an issue for them and they wanted to keep the pool within sight of the house.

Mr. Schell asked if the neighbors who had been notified had provided any comments.

Ms. Nichols stated the most impacted neighbors had provided a letter of support and, although one called for more information, there were no other comments.

Mr. LaJeunesse asked if the fencing was to be further out or would it be more enclosed.

Mr. Roehrenbeck stated the fencing was now closer to the hedging to be sure it was out of the conservation area.

Mr. LaJeunesse asked if the fencing started at a location he showed on the presentation.

Mr. Roehrenbeck stated yes.

Mr. LaJeunesse asked what a space shown on the presentation was.

Mr. Roehrenbeck stated it was eleven (11) feet.

Mr. LaJeunesse asked why the applicants had not moved the pool three (3) feet, six (6) inches to the right to have a ten (10) foot setback.

Mr. Roehrenbeck asked three (3) feet from the house.

Mr. LaJeunesse stated they had eleven (11) feet of space between the pool and the house. Mr. LaJeunesse asked why they did not move the pool back three (3) feet, six (6) inches make the setback ten (10) feet.

Mr. Roehrenbeck stated that would then be about eight (8) feet from the house

Mr. LaJeunesse stated yes.

Mr. Roehrenbeck stated they considered it but it was a mix of functionality and safety and they wanted to have some seating there. Mr. Roehrenbeck indicated that eight (8) feet he believed would be the minimum for safety but then they would not have any functionality or room for chairs.

Mrs. Roehrenbeck stated it was a tight walkway and there would not be a lot of space for a walkway with kids coming and going.

Mr. Jacob stated that it did not appear that the pool patio would be within the ten (10) foot utility easement. Mr. Jacob stated that, however, it was not completely clear and staff had a condition that it be made clear. Mr. Jacob asked the applicants if they were okay with that conditions.

Mr. Roehrenbeck stated yes.

Mrs. Roehrenbeck stated there was a transformer in the middle of that and it would affect power to all of the street.

Mr. LaJeunesse asked if option 1 was really an option.

Mrs. Roehrenbeck stated not really.

Mr. Roehrenbeck stated they had tried that in an effort to avoid variances.

Mrs. Roehrenbeck stated they had tried, but also the slope of the land meant a retaining wall would be needed, they would have a very tight space, and the pool would be out of sight from the home.

Mr. LaJeunesse asked if this was a cost factor but could be done.

Mr. Roehrenbeck stated he did not believe it was just cost, AEP had said it would not be good for the neighbors.

Ms. Samuels stated they would be 6.6 feet from the neighbors' property line and then there would be greenery. Ms. Samuels asked how thick the hedge or greenery would be.

Mr. Roehrenbeck stated they were getting hedges about six (6) feet tall and they could control how wide they would be, but they intend for three (3) to 3.5 feet.

Ms. Samuels stated okay. Ms. Samuels noted the gate would be beyond that.

Mrs. Roehrenbeck stated yes.

Ms. Samuels asked if they were then thinking it would be about four (4) feet from the neighbors' property line, including the hedges.

Mr. Roehrenbeck stated yes.

Ms. Samuels stated she was trying to understand how far the movement on the applicants' property would be from the neighbors' property line.

Mr. Roehrenbeck stated they believed they would need to set the fence three (3) feet from the property line.

Ms. Samuels asked if people would then be walking six (6) feet from the neighbors' property line.

Mr. Roehrenbeck asked if Ms. Samuels could show that on the presentation screen for him.

Mr. LaJeunesse asked if Ms. Samuels was asking about the side he pointed to on the presentation screen.

Ms. Samuels stated yes and noted that in that space the movement on the applicants' property would be six (6) feet from the neighbor's property line.

Mr. Roehrenbeck stated it would be about 6.5 feet.

Mr. LaJeunesse asked 6.5 feet to what, to the fence or to the end of the patio.

Mr. Roehrenbeck stated 6.5 feet to the pool.

Mr. LaJeunesse asked if Code permitted planting on the property line.

Ms. Nichols stated yes and said that, unless the home owners association (hereafter, "HOA") had one, there was no setback for fences either. Ms. Nichols stated she believed the applicant planned to have the pool and patio 6.6 feet from the property line. Ms. Nichols stated the fence was three (3) feet from the property line, and then arbor vitae would be on the outside of the fence.

Mr. LaJeunesse asked if that would be on the property line.

Ms. Nichols stated yes, in the 3.6 feet that would be left over from the fence to the property line.

Ms. Samuels stated okay, thank you.

Mr. Roehrenbeck stated they would be happy to work with their neighbors on that.

Mr. LaJeunesse stated they were within Code, so that did not matter. Mr. LaJeunesse stated there was precedent for a ten (10) foot property line divergence. Mr. LaJeunesse asked if the applicant was willing to move the pool over to shrink the space and have that be ten (10) feet.

Mr. Roehrenbeck asked what the process would be.

Ms. Wiltrout stated the BZA could table this and Mr. and Mrs. Roehrenbeck could then return to obtain a vote when they were ready.

Mr. LaJeunesse asked what their time frame was.

Mrs. Roehrenbeck stated it was winter now. Mr. Roehrenbeck stated there would still be walking space, but it was not their ideal.

Mr. Schell noted that the BZA needed to be cautious in setting precedents when variances were reviewed.

Ms. Wiltrout stated that prior requests had been for five (5) feet or even two (2) feet and had been voted down.

Mrs. Roehrenbeck asked for a moment for she and Mr. Roehrenbeck to confer.

Mr. and Mrs. Roehrenbeck stated okay.

Mr. LaJeunesse asked if it was okay to vote or to table.

Ms. Wiltrout asked if the applicant would move the pool so that it was ten (10) feet from the property line.

Mr. Roehrenbeck stated they would move the pool so it would be ten (10) feet from the property line

Ms. Nichols stated the BZA could add a condition for the pool to be no closer than ten (10) feet from the property line.

Ms. Wiltrout stated no less than ten (10) feet.

Moved by Ms. Samuels to accept the staff report for VAR-96-2022 into the record, seconded by Mr. Jacob. Upon roll call vote: Ms. Samuels, yea; Mr. Jacob, yea; Mr. Schell, yea; Mr. LaJeunesse, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Ms. Samuels to approve variance VAR-96-2022, with the conditions listed in the staff report and the following additional condition:

Pool to be no more than ten (10) feet from the property line;

seconded by Mr. LaJeunesse. Upon roll call vote: Ms. Samuels, yea; Mr. LaJeunesse, yea; Mr. Schell, yea; Mr. Jacob, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

**Other Business**

Mr. LaJeunesse asked if there was any Other Business. (No response.)

**Poll Members for Comment:**

None.

Moved by Mr. Jacob to adjourn the meeting, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Jacob, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Meeting adjourned at 7:25 p.m.

Submitted by Josie Taylor.



**Board of Zoning Appeals Staff Report  
October 24, 2022 Meeting**

---

**3707 HEAD OF POND DRIVE  
SWIMMING POOL SETBACK VARIANCE**

---

**LOCATION:** 3707 Head of Pond Drive (PID: 222-001574-00)  
**APPLICANT:** Mark Roehrenbeck  
**REQUEST:** Variance to the pool setback requirements of Codified Ordinance section 1173.02(c)  
**STRATEGIC PLAN:** Neighborhood Residential  
**ZONING:** R-3, Medium-Density Single-Family Residential District  
**APPLICATION:** VAR-96-2022

Review based on: Application materials received on October 7 and 12, 2022.

---

*Staff report prepared by Chelsea Nichols, Planner.*

**I. REQUEST AND BACKGROUND**

The applicant requests a variance from Codified Ordinance section 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the northeastern side yard property line where city code requires a 15-foot setback to any property line.

The applicant proposes to remove the existing patio and replace it with the new swimming pool and associated pool patio. The applicant's narrative states that the majority of their backyard is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, and any of the pool's associated items such as a required fence, are not be permitted to be located within this area. There is also a 10-foot wide utility easement that runs diagonally through the middle of the backyard. Both of these lot conditions have resulted in the proposed location of the new swimming pool and pool patio.

**II. SITE DESCRIPTION & USE**

The parcel is located in section 11 of the New Albany country club and is surrounded by other residential uses. On either side of the lot are single-family homes; both along Head of Pond Drive. To the rear of the lot is a parcel also zoned residential, along Jason Court.

The home is located on a 0.71-acre lot and was built in 1997. The home has a 3,052 square foot building footprint, according to the Franklin County auditor website.

**III. ASSESSMENT**

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

***Criteria***

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

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

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

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

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

### III. EVALUATION

**Variance to C.O. 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the side yard property line where city code requires a 15-foot setback to any property line.**

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

1. The city Codified Ordinance section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line. Based on the proposed location of the swimming pool and pool patio, they would both be as close as 6.6 feet from the side yard property line, which does not meet code requirements, therefore the applicant is requesting a variance.
2. The required minimum building and pavement side yard setback for the existing house and the existing patio is 10 feet. The existing house and the existing patio are both 11.5 feet away from the side yard property line. The section of the zoning code regarding swimming pools requires a greater setback of 15’ as pools are seen as a more intensive use.
3. The majority of the rear yard is designated as a conservation area. The application includes two options for where the pool could be located on the property outside of the conservation area. The applicant is proposing option two as their preferred option.
4. The applicant provided a written statement from AEP, stating that option one shown in the application materials would be in the direct path of the pad mount transformer, primary wire,

- secondary connections, and the homeowner's own service to their house. The letter goes on to state that the amount of time and effort to install a pool in this location would be very extensive and time consuming. Multiple homes would be without power for a length of time and would all have to be scheduled at the same time. There would also be expensive open trenching, conduit, and service cable installation. In addition, there would need to be a new easement, including the removal and installation of the pad mount transformer. The AEP letter believes option two shown in the application is easier to complete as the construction would be outside of the easement area and no work would be required by AEP. Due to this information, and given the proximity of the 10' utility easement from the rear of the existing home/attached garage, the applicant is locating the pool beside the garage as opposed to behind the garage as a result of these special conditions and circumstances which are peculiar to this lot.
5. As proposed, it does not appear as though the pool patio would be within the 10' utility easement as shown on the survey, however, it is not completely clear. The patio for the pool is not permitted within the 10' easement. Should the Board approve this application, staff recommends a condition of approval be that the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it is not located within the easement.
  6. In option two of the application materials, which is the preferred option by the homeowner and proposed for this variance request; the pool is 11' away from the primary structure/the attached garage, resulting in it being as close as 6.6' from the side yard property line. One alternative option would be to shrink the patio between the garage and the pool so that the pool could be in-line with the corner of the house. This would still put the pool and the patio within the side yard setback, but it would be a smaller encroachment of 3.5 feet (as opposed to 8.4 feet) and would be the same setback as the existing patio. Staff discussed this option with the applicant and the homeowner did explore this alternative. However, the applicant has determined a retaining wall would be required, due to the grade and slope from the rear of the home, not leaving space for a walking path around that side of the pool.
  7. The applicant is proposing a 54" black aluminum fence that will completely surround the pool area on all sides. The fence will be set 3 feet off the property line along the side yard. The pool fence will also include the installation of 6' tall hedge plantings that will enclose the fence. These hedged plantings are depicted in the renderings supplied by the applicant in the Board's packet.
  8. Along the outside of the fence and 6' tall hedge plants, between the fence and the side yard property line, the applicant proposes to install twenty-one 10-foot-tall emerald arborvitae with the intent of completely visually screening the pool.
  9. This variance does not appear to be substantial. The "spirit and intent" of the zoning requirement is preserved as it is to ensure appropriate separation of uses. The proposed fence and landscaping will provide adequate screening and separation.
  10. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping and the proposed fence is taller than what code requires (54" vs 48").
  11. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
  12. Granting the variance would not adversely affect the delivery of government services.

#### **IV. HISTORY**

There have been similar applications heard by either the Board of Zoning Appeals (BZA) or the Planning Commission since 2015.

- In 2015, an application for 7825 Ackerly Loop had been withdrawn by the applicant after two hearings by the Planning Commission for a pool to be located 9 feet from the side lot line and 13.5 feet from the rear lot line where code requires 15 feet.
- In 2016, an application for 7705 Ogden Woods Blvd was withdrawn after one hearing by BZA. The request was to allow a pool patio to be located as close as 5 feet from the



side yard lot line and as close as 5' 8" from the rear lot line when the code requires 15 feet.

- In 2019, an application for 4661 Goodheart Court was approved by BZA to allow a pool patio to be located 10 feet from the southern property line where the requirement is 15 feet. One condition of approval was issued stating that emerald arborvitae or green giants must be planted along the southern property line. The board noted for the record that the BZA reviewed the Duncan factors and they did not see this as a significant request, the variance did not adversely impact the value of the neighborhood overall, it is an improvement with the additional trees, and the variance does preserve the spirit and intent of the zoning requirements.
- In 2020, the Planning Commission denied the request for 4540 Ackerly Farm Road to allow a swimming pool patio to be located 13.5 feet from the southern property line where city code requires a minimum of 15-foot setback. The commission believed the application did not meet the Duncan factors, they believed there was still beneficial use to the property without the variance, they noted many other lots also have curving lot lines, and that the design could be revised to remain in compliance with the character of the area and zoning code.
- In January of this year (2022), a variance application for 7150 Longfield Court was requested to allow a swimming pool to be located closer than 15 feet from the property line. However, it was withdrawn before it was heard by either the Planning Commission or Board of Zoning Appeals.

## V. SUMMARY

The majority of the backyard of this lot is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, or any of the pool's associated items such as a required fence, is not permitted within this area. This coupled with the information provided by AEP, and given the proximity of the 10' utility easement from the rear of the existing home/garage, locating the pool beside the garage, as opposed to behind the garage in the rear yard, is the result of special conditions and circumstances which are peculiar to this lot. While there appears to be an alternate location for the pool by shrinking the patio area between the garage and the pool, it would require reducing the patio and moving the pool further to the west, closer to the primary structure which would result in eliminating enough room for a walkway.

The spirit and intent of the code requirement is to maintain separation between uses. While the swimming pool and associated pool patio are proposed to be located 6.6 feet away from the property line, encroaching 8.5 feet into the required setback, the pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping. In addition, the proposed fence is taller than what code requires (54" vs 48"). Therefore, the separation appears to meet the intent of the code requirement and is a unique feature of this request as it appears to go above what is required in city code.

## 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-96-2022 with the following condition:**

1. That the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it will not be located within the 10' utility easement.

**Approximate Site Location:**



Source: nearmap