



New Albany Board of Zoning Appeals
February 27, 2023 Meeting Minutes

I. Call to order

The New Albany Board of Zoning Appeals met in regular session on February 27, 2023 at the New Albany Village Hall. Chair LaJeunesse called the meeting to order at 7:01 p.m.

II. Roll call

Those answering roll call:

Mr. LaJeunesse	present
Mr. Jacob	present
Ms. Samuels	present
Mr. Smith	present
Mr. Schell	present
Council Member Fellows	present

Staff members present: Planner Sierra Cratic-Smith; Planning Manager Steven Mayer; Law Director Ben Albrecht; Planner Chelsea Nichols; Deputy Clerk Christina Madriguera.

III. Action on minutes

Board Member Jacob moved to approve the minutes from the October 24, 2022 meeting. Board Member Samuels seconded the motion.

Upon roll call: Mr. Jacob, yes; Ms. Samuels, yes; Mr. LaJeunesse, yes; Mr. Smith, yes; Mr. Schell, yes. Having 5 yes votes; 0 abstentions; and 0 no votes, the October 24, 2022 minutes were approved as submitted.

IV. Additions or corrections to agenda

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

Staff answered that there were none from staff.

Chair LaJeunesse administered the following oath to all who planned to address the board on an application on tonight's agenda. "Do you swear to tell the truth and nothing but the truth."

V. Hearing of visitors for items not on tonight's agenda

Chair LaJeunesse asked whether there were any visitors present who wished to address the board.

There was no response.

VI. Cases

VAR-14-2023 Variance

Variance to codified ordinance 1175.04 (b) to allow the height of a fence to be 84" (7 feet) where code allows a maximum of 72" (6 feet) at 5114 Harlem Road (PID: 222-000833).

Applicant: Cedar & Stone Ohio and Kelly & Ryan Yeoman

Planning Manager Mayer explained the history behind this variance application which began as a zoning complaint. City staff received calls regarding construction of a

structure at this location and discovered that a permit application had not been filed. The city contacted the applicant, construction ceased, and a permit application was filed seeking permission to construct a fence. The city granted the permit. Construction resumed and was completed as permitted. Following completion, the city received additional calls stating that the structure was not compliant. Upon review and in consultation with counsel it was determined that the structure was a 84” fence. Under 1175.04(b) the height of a fence shall not exceed 72”. The city notified the applicant that they needed to apply for a variance because the 84” fence exceeded the maximum height allowed under code.

Planner Sierra Cratic-Smith delivered the staff report.

Chair LaJeunesse thanked Planner Cratic-Smith and asked if there were any questions from the board for staff. Hearing none, he invited the applicant to the lectern.

Jill Tangeman, counsel on behalf of the applicant Kelly & Ryan Yeoman, thanked the board. She introduced Corey Shoo of Cedar & Stone Ohio who was the architect and contractor for the fence.

Ms. Tangeman explained that the fence panel is all one continuous structure. She stated that it is important to note the grade change of the property, and that the neighbor’s screened-in porch sits significantly above the subject property. The goal of this construction was to provide privacy to both properties. Lowering the fence would not provide any privacy to either of the properties. She continued that this application meets the criteria for granting a variance from code.

Board Member Schell asked staff whether the city had received any complaints.

Planning Manager Mayer responded that the city had received several calls from a neighbor asking about the regulatory process and requirements for the construction of a pergola and fence.

Board Member Schell asked whether the neighbor still had issues with this construction.

Planning Manager Mayer explained that staff had notified the caller that the Board of Zoning Appeals would be conducting a hearing tonight, February 27th, on this application for variance. And further, that tonight’s hearing was their opportunity to be heard on this issue.

Chair LaJeunesse confirmed that there was no one in the audience, other than the applicant, her counsel, and the architect, who wished to address the board about this application.

Chair LaJeunesse asked whether the contractor was present because he was curious about the timeline.

Mr. Shoo of Cedar & Stone Ohio, explained that there were concurrent construction projects underway at the subject property and there was a misunderstanding regarding which contractor would apply for the permit for this structure. He thought the other contractor had secured the permit.

Chair LaJeunesse asked how long construction had been underway prior to discovering there was no permit.

Mr. Shoo answered there was probably about 1 week of construction prior to his discovery that a permit had not been issued.

Planning Manager Mayer confirmed that construction was in the very early stage and then stated that a permit was approved by city staff. And further that once the permit was issued, construction resumed and was completed as permitted.

Chair LaJeunesse confirmed that a permit for the fence was approved by city staff.

Planning Manager Mayer answered, correct. The approval was an error that was discovered during the supplemental review. Following that discovery, city staff told the applicant to apply for a variance.

Board Member Samuels asked, for clarification, whether at the point the applicant was advised that a variance would be required that construction was complete.

Mr. Shoo answered, no, but only the door needed to be added and that was complete and in his shop.

Board Member Samuels asked whether the door was considered part of the fence.

Planning Manager Mayer stated that the door is considered part of the fence.

Board Member Samuels asked about the gradation of the property and asked whether the pergola was calculated into the fence height.

Planning Manager Mayer answered, no. A variance was not required for the pergola and that this pergola was within code requirements.

Board Member Samuels continued and asked whether a variance would be required if there was a pergola over the whole structure.

Planning Manager Mayer answered, no.

Ms. Tangeman added that if the variance is denied, remediation would be to extend the pergola over that section of fence.

Chair LaJeunesse asked the applicant contractor, Mr. Shoo, how much work he did in New Albany.

Mr. Shoo responded he did regular work in New Albany, Upper Arlington, and surrounding areas.

Chair LaJeunesse asked whether Mr. Shoo had noticed that the fence was contrary to code.

Mr. Shoo responded that he was working with the pool contractor and thought the pool contractor had secured the permit for the fence. He further stated that this was fully his job.

Ms. Tangeman stated that they did not consider this a fence, they considered it a paneling within a pergola. Their understanding was that because it was one continuous structure, it was not a fence.

Board Member Samuels then confirmed that the applicant's understanding was that this was a paneling for a pergola rather than a fence.

Ms. Tangeman answered, correct.

Chair LaJeunesse asked staff what kind of precedent there was in New Albany involving a situation like this.

Planning Manager Mayer answered that he had not found precedent for the granting of a variance for fencing height. However there was some precedent for height variances for accessory structures. He further stated that fence variances typically involved the location of the fence.

Ms. Tangeman stated, regarding the consideration of the variance factors, that the grade change of the land is unique.

Chair LaJeunesse stated that, unfortunately, the code does not take that into account.

Ms. Tangeman responded that when considering an application for a variance from the code, the unique properties of the land and the specific factors presented in the application must be considered.

Law Director Albrecht agreed and stated that variance applications are reviewed on a case by case basis pursuant to the variance criteria.

Board Member Samuels asked whether any similar variance applications had been denied.

Planning Manager Mayer said that none had been filed.

Chair LaJeunesse asked what the impact of the city's error should be.

Law Director Albrecht responded that generally speaking, the error does not alleviate a resident's obligation to comply with the zoning code.

Chair LaJeunesse asked to review the timeline again, and whether it was true that no construction took place after notice was given.

Ms. Yeoman confirmed the timeline, that the work stopped when they realized they did not have a permit, and that when the work resumed construction conformed with the permit that was issued.

Planner Cratic-Smith confirmed the timeline.

Chair LaJeunesse stated that it didn't make sense that the neighbors knew there was a code violation prior to the completion of the structure.

Ms. Yeoman answered that her husband told the neighbor that they were building a privacy structure.

Planning Manager Mayer stated that it is not unusual for neighbors to call the city when they see construction happening. Once the calls came in on this property, it was discovered that a permit had not been issued.

Board Member Jacob asked whether the call (from the neighbor) was a question or whether it was a complaint.

Planning Manager Mayer responded that it was a bit of both.

Ms. Yeoman explained that the footers and the posts had been installed.

Board Member Samuels asked whether, at the time the applicant received notice that they would have to apply for a variance, was construction complete as we see it today.

Ms. Yeoman answered, yes, with the exception of the barn door which was built and in Mr. Shoo's shop, construction was complete.

Board Member Smith made a motion to accept the staff reports and related documents into the record for VAR-14-2023. Board Member Schell seconded the motion.

Upon roll call: Mr. Smith, yes; Mr. Schell, yes; Ms. Samuels, yes; Mr. Jacob, yes; Mr. LaJeunesse, yes. Having 5 yes votes; 0 abstentions; and 0 no votes, the staff reports and related documents were accepted into the record.

Board Member Samuels asked the applicant whether she had any appetite to transition the fence to a compliant structure – to essentially add the pergola.

Ms. Yeoman explained that that this was phase I of their construction. Extending the pergola was under consideration but cost was a driver of their decision and they really needed the additional 12" for privacy.

Chair LaJeunesse asked the applicant whether she had spoken with her neighbor.

Ms. Yeoman responded that the call/complaint was anonymous and she was not certain which neighbor(s) called. She stated that her husband had mentioned in passing to a neighbor that they were going to install a privacy structure and she reiterated that the footers and posts had been installed when the calls were made. She explained that she and her husband only been in the house for a year, that they had had limited and cordial communications with neighbors, but nothing on this issue.

Chair LaJeunesse asked what was on the other side of the pool.

Ms. Yeoman stated that there was pergola on the other side of the of the pool.

Board Member Schell asked the applicant whether there was a reason why they did not extend the pergola all the way to the house.

Ms. Yeoman stated that this was where she and her husband were starting and that she envisioned future development.

Chair LaJeunesse asked Mr. Shoo whether he had considered what work would be required to extend the pergola over the non-compliant fence.

Mr. Shoo explained the work and complexity involved with extending the pergola over the fence, which included a sliding barn-style door.

Ms. Tangeman added that the other side of the property did not have the same special circumstance as this area and extension of the pergola on this side would be of great expense. She further stated that if her client had known this was a non-compliant fence, they would have reconsidered the design. By the time they discovered that what was permitted was contrary to code, the structure had been built.

Board Member Smith made a motion for approval of application VAR-14-2023 based on the findings in the staff report with the conditions listed in the staff report, and subject to staff approval. Board Member Schell seconded the motion.

Upon roll call:

Mr. Smith, yes.

Mr. Schell, yes, and he further stated that he did not like these types of variance applications, especially not getting a permit for construction and then asserting lack of knowledge of the code. That cannot happen again. But was voting yes for the following reasons: because the violation was not discovered until after the city had mistakenly granted the permit; the neighbor did not appear at the hearing; and because the applicant indicated they would install landscaping to improve the appearance.

Ms. Samuels, yes, and she further stated that granting this application sets a troubling precedent but this was challenging application. The city and board work in a spirit of partnership but are bound to uphold the rules as they are. If this is brought up in the future she hopes that the robustness of the process and not just the gradation of the property is taken into consideration.

Mr. Jacob, yes, and he further stated that he seconded the comments added by Board Member Schell and Board Member Samuels. He stated that he had thought he would vote no on the application, but after the robust discussion he had changed his vote to yes.

Mr. LaJeunesse, yes, and he further stated that this case appeared to be a classic case of asking for forgiveness. Contractors know, or are responsible for knowing the code. There is no precedent for a 7ft fence. This construction is contrary to the code in New Albany and we are bound to uphold its integrity. However, he

was voting yes because the city mistakenly granted the permit. He further stated that it was his hope that this issue would not appear before the board again.

Having 5 yes votes; 0 abstentions; and 0 no votes, the application for variance was approved.

The applicant thanked the board.

VII. Other business

Chair LaJeunesse asked if there was other business before the board.

Board Member Jacob asked staff when the annual organizational meeting would take place.

Planning Manager Mayer responded that it would occur at the March meeting.

Board Member Smith alerted the board that the March meeting was scheduled to take place on March 27th, which was also the first day of spring break for New Albany schools.

Council Member Fellows thanked the board members for their great work on a difficult application. He stated that he recognized and appreciated how dedicated the board was to the letter and the spirit of the code.

Having no further business before the board and hearing no further comments, Chair LaJeunesse asked for a motion to adjourn.

Board Member Smith moved to adjourn. Board Member Jacob seconded the motion.

Upon roll call: Mr. Smith, yes; Mr. Jacob, yes; Mr. LaJeunesse, yes; Ms. Samuels, yes; Mr. Schell, yes. Having 5 yes votes; 0 abstentions; and 0 no votes, the meeting was adjourned at 7:48 p.m.

Submitted by Christina Madriguera, Esq., Deputy Clerk.

Appendix

Staff report for VAR-14-2023

Record of action for VAR-14-2023



**Board of Zoning Appeals Staff Report
February 27, 2023 Meeting**

**5114 HARLEM ROAD
FENCE HEIGHT VARIANCE**

LOCATION: 5114 Harlem Road (PID: 222-000833-00)
APPLICANT: Ryan & Kelly Yeoman
REQUEST: Variance to the residential fence height requirement
ZONING: R-2 (Single Family Residential District)
STRATEGIC PLAN: Residential
APPLICATION: VAR-14-2023

Review based on: Application materials received on January 27, 2023.

Staff report prepared by Sierra Cratic-Smith, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow the height of a fence to be 84” (7 feet) where code allows a maximum of 72” (6 feet) at 5114 Harlem Road. Codified ordinance 1175.04 (b) requires “a fence or wall not exceeding seventy-two (72) inches in height may be erected in any area of the lot behind the building setback line.”

The fence was initially constructed without a permit. In response to a code complaint, the city staff coordinated with the contractor to ensure an application was submitted. The fence and an associated pergola were reviewed and permitted for construction by city staff. However, upon inspection of the built environment and plans, it was revealed that the fence did not meet code requirements.

II. SITE DESCRIPTION & USE

The property measures at one acre in size and contains a single-family home. The lot is located outside the New Albany Country Club and zoned under the R-2 district. The surrounding properties are on all sides are residentially zoned and used. The home has several amenities on the lot such as a black, metal fence, pool, pergola and patio.

III. ASSESMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. In accordance with C.O. 1113.05(b), all property owners within 200 feet of the subject property in question have been notified of the request via mail.

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.*

IV. EVALUATION

A variance to codified ordinance section 1175.04(b) to allow a fence to allow the height of a fence to be 84” (7 feet) where code allows a maximum of 72” (6 feet) at 5114 Harlem Road.

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

1. The applicant proposes to allow a fence to remain at the height of 7 feet (84 inches) where code allows a maximum of 6 feet (72 inches). City codified ordinance 1175.04 (b), “a fence or wall not exceeding seventy-two inches in height may be erected in any area of the lot behind the building setback line.”
2. The fence is designed to function as a privacy wall that appears as a continuous extension of the pergola. The privacy wall is the same length as an existing, open-sided patio in the rear of the property.
3. This variance request does not appear to be substantial since the fence does not surround the entire backyard. The distance of the fence is very short in length as compared to the entire backyard area. For context, the fence is about 20 +/- feet in length. Whereas the side yard that is about 152 +/- feet on the southern property line, 108 +/- feet on the east (rear) property line, and 132 +/- feet on the north (side) property line.
4. It appears there are special conditions that exist which are peculiar to the land and structure involved considering the change in topography. The rear yard lowers in grade at almost three feet as seen in the elevations submitted. Therefore, the pool and patio are tiered in design to correlate with the sloped topography. This can be seen as there is a bi-level patio

- in the rear parallel to the pool. The pergola and fence are designed to extend along the different tiered pool and patio elevations to keep consistency in height.
5. It does not appear the essential character of the neighborhood would be substantially altered with this additional fence height since it is consistent with the wall height of the pergola. The top of fence is designed to continuously extend alongside the pergola wall height, even though the rear of the yard slopes down as it extends out from the house. Although this project is a wall as defined by city code, it is designed to be an extension of an open-sided structure both in both height and material.
 6. The variance will not adversely affect the delivery of government services, 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. SUMMARY

This variance is to allow the height of the fence at 7 feet (84 inches) tall in accordance to code which requires a maximum height of 6 feet (72 inches). Although the height of the fence is taller than what it permitted, this allows the fence to accomplish its design goal of appearing as one continuous wall and an extension of the pergola. The variance does not appear substantial given the short length of fencing and since it is only utilized between the house and pergola the fence does not appear out of proportion to those structures.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for disapproval, finding the following motion is appropriate.

Move to approve application VAR-14-2023 based on the findings in the staff report (conditions of approval may be added)

Approximate Site Location:



Source: NearMap



Community Development Department

RE: City of New Albany Board and Commission Record of Action

Dear Ryan and Kelly Yeoman,

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Community Development Department

Decision and Record of Action

Thursday, March 02, 2023

The New Albany Board of Zoning Appeals took the following action on 02/27/2023 .

Variance

Location: 5114 HARLEM RD

Applicant: Ryan & Kelly Yeoman

Application: PLVARI20230014

Request: Variance to allow the height of a fence to be 84” (7 feet) where code allows a maximum of 72” (6 feet) at 5114 Harlem Road. Codified ordinance 1175.04 (b) requires “a fence or wall not exceeding seventy-two (72) inches in height may be erected in any area of the lot behind the building setback line.”

Motion: To approve VAR20230014

Commission Vote: Motion Approved, 5-0

Result: Variance, PLVARI20230014 was Approved, by a vote of 5-0.

Recorded in the Official Journal this February 27, 2023

Condition(s) of Approval: N/A

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith
Planner