

## **New Albany Board of Zoning Appeals**

March 27, 2023 Meeting Minutes

#### I. Call to order

The New Albany Board of Zoning Appeals met in regular session on March 27, 2023 at the New Albany Village Hall. Chair LaJeunesse called the meeting to order at 7:02 p.m. He recognized that Council Member Shull was at the meeting and would be serving as the council liaison.

The board welcomed Council Member Shull

#### II. Roll call

Those answering roll call:

Mr. LaJeunesse present
Mr. Jacob present
Ms. Samuels absent
Mr. Smith absent
Mr. Schell present
Council Member Shull present

Staff members present: Law Director Ben Albrecht; Planner II, Chris Christian; Deputy Clerk Christina Madriguera.

### III. Action on minutes February 27, 2023

Chair LaJeunesse asked if there were any changes or corrections to the minutes.

Board Member Jacob moved to approve the meeting minutes from the February 27, 2023 meeting. Chair LaJeunesse seconded the motion.

Upon roll call: Mr. Jacob, yes; Mr. LaJeunesse, yes; Mr. Schell, yes. Having 3 yes votes; 0 no votes; and 0 abstentions, the February 27, 2023 meeting minutes were approved as submitted.

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

There were no visitors for items not on the agenda.

Chair LaJeunesse administered the oath to applicant, Jim Knox of Suncraft.

#### V. Cases

#### VAR-32-2023 Variance

Variance to codified ordinance 1165.04(b)(3)(b) to allow an extension of a deck to encroach 6 feet into a drainage easement at 7034 Dean Farm Road (PID: 222-002246).

**Applicant: Suncraft Construction Company** 

Planner II Christian delivered the staff report.

He explained that the applicant requested a variance from Codified Ordinance 1165.04(b)(3)(b) to allow a deck expansion of an existing patio to encroach 6 feet into an easement with a width of 10 feet for a total encroachment area of 60 square feet. The rear lot is 75 +/- feet long. The subject property was granted a variance in July 2021 for the existing patio and approval of this variance

would permit additional encroachment into the easement. He noted that there are no public utilities installed in the easement and that the proposed deck, if the variance is approved, would sit 3 feet above grade on posts in order to avoid negatively impacting stormwater drainage. And further, that 9 feet of open space would remain to allow for stormwater drainage.

Planner II Christian stated that, just as it had in July 2021, staff recommended a condition that the homeowner enter into and record a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a pubic or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage is the responsibility of the homeowner to address.

Chair LaJeunesse asked if there were any questions.

Board Member Jacob asked what property backed up to the subject property.

Planner Christian answered that it was a reserve area owned by the city that buffers the golf course.

Chair LaJeunesse asked whether the neighbors were notified and whether there had been any responses.

Planner Christian responded yes, and that there have not been any responses.

Chair LaJeunesse invited Mr. Fox to offer any further remarks in support of the application.

Mr. Fox responded that Planner II Christian's presentation and the staff report were sufficient.

Board Member Schell noted that the approval of the existing variance predated current board membership and asked Planner II Christian if he knew why the existing deck was approved.

Planner Christian responded that he reviewed the prior minutes and the existing deck was approved because it did not impede drainage as it was an elevated deck, because it was not built over any utilities, and because of the hold harmless provision.

Council Member Shull asked Law Director Albrecht whether this was deemed substantial the first time around and whether that was one of the main reasons for the indemnification contract.

Planner Christian responded in the affirmative and stated that staff has done hold harmless agreements for similar variance requests.

Law Director Albrecht stated that in this type of situation it is appropriate, but it might not be appropriate and sufficient for all areas.

Council Member Shull recalled that the layout of this particular neighborhood with properties so close to the easement necessitated variance requests from many of the properties.

Chair LaJeunesse moved to accept the staff report and related documents into the record for VAR-32-2023. Board Member Schell seconded the motion.

Upon roll call: Mr. LaJeunesse, yes; Mr. Schell, yes; Mr. Jacob, yes. Having 3 yes votes; 0 no votes; and 0 abstentions, the staff reports and related documents were accepted into the record.

Board Member Jacob moved for approval for application VAR-32-2023 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval. Chair LaJeunesse seconded the motion.

Law Director Albrecht clarified that the motion included the condition in the staff report that the homeowner enter into a hold harmless agreement.

The board agreed.

Upon roll call: Mr. Jacob, yes; Mr. LaJeunesse, yes; Mr. Schell, yes. Having 3 yes votes; 0 no votes; and 0 abstentions, the application was approved with the condition listed in the staff report.

#### VII. Other business

#### 1. Annual Organizational Meeting

- Swear in new members
- o Elect Chairperson
- o Elect Vice-Chairperson
- o Elect Secretary
- o Establish date, time, and location for 2023 regular meetings

Chair LaJeunesse noted that only 3 of the 5 board members were present and raised the issue of tabling the organizational meeting until the next regularly scheduled meeting.

Law Director Albrecht indicated that tabling would be appropriate if that is what the board wanted to do.

Chair LaJeunesse opened the issue for discussion and reviewed the current positions on the board.

Board Member Jacob agreed that tabling was appropriate.

Board Member Schell agreed that tabling was appropriate.

Planner II Christian recommended tabling until the next regularly scheduled meeting and noted that pursuant to recent code updates, that boards and commissions had until July to conduct their organizational meetings.

Board Member Schell moved to table the organizational meeting until the next regularly scheduled meeting. Board Member Jacob seconded.

Upon roll call: Mr. Schell, yes; Mr. Jacob, yes; Mr. LaJeunesse, yes. Having 3 yes votes; 0 no votes; and 0 abstentions, the organizational meeting was tabled until the next regularly scheduled meeting.

#### VIII. Adjournment

Chair LaJeunesse moved to adjourn. Board Member Jacob seconded the motion.

Upon roll call: Mr. LaJeunesse, yes; Mr. Jacob, yes; Mr. Schell, yes. Having 3 yes votes; 0 no votes; and 0 abstentions, the meeting was adjourned at 7:15 p.m.

<sup>\*</sup>Attendance is defined as in-person presence during the hearing and consideration of applications without a conflict of interest before that commission/board at that meeting. Attendance of all current serving members of the commission/board is encouraged, and three (3) consecutive absences by any member or four (4) absences in any 12-month period shall be considered a forfeiture of the membership to the commission/board. The forfeiture would occur regardless of the reason for the absences. The applicable department designee would then notify the clerk of council so that they can inform council that a new appointment needs to be made.

Submitted by Christina Madriguera, Esq., Deputy Clerk.

Appendix VAR-32-2023 Staff Report Record of Action



## COMMUNITY CONNECTS US

## Board of Zoning Appeals Staff Report March 27, 2023 Meeting

# 7034 DEAN FARM ROAD EASEMENT VARIANCE

LOCATION: 7034 Dean Farm Road (PID: 222-002246)

APPLICANT: Suncraft Corporation Inc.

REQUEST: Variance to C.O. 1165.04(b)(3)(b) to allow a deck to encroach a platted

easement.

ZONING: New Albany Links C-PUD

STRATEGIC PLAN: Residential APPLICATION: VAR-32-2023

Review based on: Application materials received on February 13, 2023

Staff report prepared by Sierra Cratic-Smith, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1165.04(b)(3)(b) to allow an expansion of a deck to encroach 6 feet into a platted easement. The property has an existing deck with the same encroachment.

A similar request was approved in 2021 to allow a screened porch and deck within this easement. Given the substantial improvements, the application was approved by BZA with a condition of approval requiring the homeowner to enter into a hold harmless agreement (or other legal mechanism) specifying that the property owner, and not the city, is responsible for any damages to the screened porch or deck in the event that a public or private utility provider needs to access the easement area and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address. The condition includes that the agreement must be recorded with the deed.

#### II. SITE DESCRIPTION & USE

The 0.21-acre property is located in section 1 of the New Albany Links subdivision and contains a single-family residential home that was built in 1999. The property is surrounded by single family residential homes and backs onto open space that is owned by the city.

#### 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.

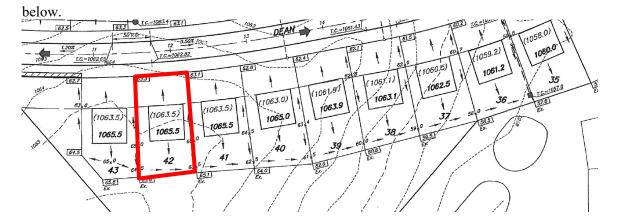
Plus, the following criteria as established in the zoning code (Section 1113.06):

- 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.

#### IV. EVALUATION

Variance to C.O. 1165.04(b)(3)(b) to allow a deck to be located within a platted easement. The following should be considered in the Board's decision:

- 1. A similar request was approved in 2021 to allow a screened porch and deck within the easement. The prior request was to install the current screened porch and deck as accessory structures to the home. The existing deck and screened porch is 14 feet (depth) by 28 feet (width) for 396 square feet in total. It encroaches 6 feet into the easement for a total encroachment area of 148 square feet.
- 2. The applicant is requesting a variance to allow a deck expansion to encroach the same 6 feet (depth) into the easement with a total width of 10 feet for a total encroachment area of 60 square feet. The rear lot line is 75 +/- feet long and this variance means with the additional encroachment that 38 feet of deck and screened-in porch area would encroach into the easement.
- 3. Codified Ordinance Section 1165.04(b)(3)(b) states that decks and other recreational amenities are not permitted to be located in an easement. According to the final plat for the subdivision, there is an existing 15-footeasement that extends from the rear and side property lines. According to the engineering plans for the subdivision, the easement is for general utilities. In addition, it provides a route for surface stormwater drainage.
- 4. The variance request does not appear to be substantial. The city's engineering staff reviewed the application and confirmed that there are no public utilities installed in the easement. According to the approved engineering plans for the subdivision, this easement runs along the rear property line of 9 homes along this section of Dean Farm Road and provides stormwater drainage for the properties north into an inlet as shown in the picture



- According to these plans, a portion of the stormwater (surface runoff) on neighboring lot 43 drains into this site which then drains into the next and so on until it reaches a stormwater inlet located on further north on the property lines between lots 36 and 35.
- O The applicant states that the deck will sit 3 feet above grade on posts in order to not negatively impact stormwater drainage. C.O. 1165.04 also requires the area under decks to be screened if they are more than 2 feet above grade to provide additional screening from offsite view. The screening will match the existing as crossed skirting under the deck. The applicant proposes to use the same skirting as the existing deck. The deck utilizes Timbertech terrain skirting with 1.5" spaces. The spacing appears to accommodate surface runoff under the deck.
- 5. The variance request appears to meet the spirit and intent of the zoning requirement which is to provide protection for property owners in the event that the city or a private utility provider must gain access to the easement. While the applicant proposes to expand the deck within the easement, it will not be installed above any existing public utility lines. If a structure or other improvement is installed in an easement and the city or another utility provider needs to access the easement, those improvements may be taken down or partially removed in order to access utilities and the property owner is responsible for the expense of replacing or repairing the structure. Staff recommends a condition of approval that the homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.
- 6. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 7. Granting the variance would not adversely affect the delivery of government services. The city's engineering staff reviewed the application and determined that there are no public utilities installed in the easement area. Additionally, the hold harmless agreement will ensure that the city bears no responsibility for any damages to the deck if utilities need to be installed within the easement area in the future.

#### V. SUMMARY

The applicant proposes to extend the current deck within a platted easement by the same 6 foot encroachment with an additional span of 10 feet. There are no public utilities installed in the easement. In addition, there is still 9 feet of open space to allow for the conveyance of stormwater. The property contains the same factors and conditions as the original variance request and approval. The deck is being raised above the ground which allows for stormwater to flow offsite. And the hold harmless agreement ensures that the applicant is aware that the city is not responsible for any damages to the deck in the event that the easement area has to be accessed

in the future. However, the additional span of the deck, while 10 feet, results in additional improvements that could hinder access to buried private utilities.

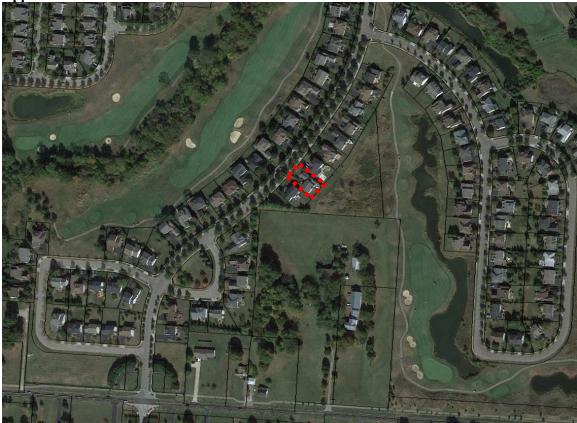
#### VI. ACTION

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-32-2023 with the following conditions (conditions of approval may be added).

1. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.





Source: Google Earth



# **Community Development Department**

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

Dear Suncraft Corporation Inc.,

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 30, 2023

The New Albany Board of Zoning Appeals took the following action on 03/27/2023.

#### Variance

**Location:** 7034 DEAN FARM RD **Applicant:** Suncraft Corporation Inc.,

**Application:** PLVARI20230032

Request: Variance to codified ordinance 1165.04(b)(3)(b) to allow an extension of a deck to

encroach 6 feet into a drainage easement at 7034 Dean Farm Road (PID: 222-002246).

**Motion:** Move to approve with conditions

**Commission Vote:** Motion Approved with Conditions, 3-0

**Result:** Variance, PLVARI20230032 was Approved with Conditions, by a vote of 3-0.

Recorded in the Official Journal this March 30, 2023

#### **Condition(s) of Approval:**

1. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith

Planner