



New Albany Board of Zoning Appeals
September 25, 2023 meeting minutes - APPROVED

I. Call to order

The New Albany Board of Zoning Appeals held a regular meeting on Monday, September 25, 2023 in the New Albany Village Hall. Chair LaJeunesse called the meeting to order at 6:30 p.m.

II. Roll call

Prior to calling the roll, the clerk noted that Ms. Samuels had contacted her earlier that day to let her know that she was under the weather and would not be attending tonight's meeting. Ms. Samuels offered the attending board members her thanks and she looked forward to seeing them at the next meeting.

Those answering roll call:

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

Having four voting members present, the board had a quorum to transact business.

Staff members present: Planner Cratic-Smith, Planning Manager Mayer, Deputy Clerk Madriguera.

III. Action on minutes August 21, 2023

Chair LaJeunesse asked if there were any additions or corrections to the minutes from the August 21, 2023 meeting.

Hearing none, Board Member Jacob moved to approve the minutes from the August 21, 2023 meeting. Board Member Smith seconded the motion.

Upon roll call: Mr. Jacob yes; Mr. Smith yes; Mr. Schell yes; Mr. LaJeunesse yes. Having four yes votes, the August 21, 2023 meeting minutes were approved as submitted.

IV. Additions or corrections to agenda

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

Planning Manager Mayer answered that there were none from staff.

Chair LaJeunesse administered the oath to all present who would be addressing the board.

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

Chair LaJeunesse asked if there was anyone present who wished to address the board for an item not on the agenda. Hearing none, he called the first and only case on the agenda.

VI. Cases

VAR-82-2023 Variance

Variations to allow a building and paver patio to encroach approximately 4½ feet into a drainage easement (PID: 222-003172).

Applicant: The City of New Albany

Planner Cratic-Smith delivered the staff report.

Chair LaJuenesse asked whether the property owner had anything to add to Planner Cratic-Smith's report.

Property Owner David Jeffery Rowekamp 6880 Margarum Bend, replied that he thought Planner Cratic-Smith's presentation had covered everything.

Board Member Jacob asked whether Mr. Rowekamp had any objection to the hold harmless agreement condition as part of the approval process.

Mr. Rowekamp answered no. He suspected that he would have had a problem if he thought there would be problems in the future. However, he had spoken with Planning Manager Mayer and as a result of that conversation he felt comfortable.

Council Member Shull asked staff about the process of approval of the permit and whether this request for variance should have come before the BZA [prior to construction].

Planning Manager Mayer responded yes, it should have. The building plans were approved by staff erroneously. Typically this encroachment would have been caught during the permit approval process and prior to construction, but in this case the encroachment was not caught until after construction was complete.

Council Member Shull followed that the Links subdivision has existed for 23-24 years and when he sat on this board for 14 years it seemed like issues like this frequently arose. He stated he was hopeful that staff would catch these issues sooner in the process rather than later. Requests for variances are not uncommon and unfortunately the city missed this encroachment, but he was glad that the issue was being remedied today.

Planning Manager Mayer agreed and continued that staff was always seeking ways to improve the permitting process with the objective being to eliminate similar permitting errors in the future.

Board Member Jacob asked, to build on that point, whether there had been an examination to determine whether an amendment to process and/or the ordinance was warranted.

Planning Manager Mayer answered that staff is continuously evaluating variance requests for patterns, and also the usefulness and applicability of the code. At this point, staff did not believe a change to the code was needed as a result of this variance request.

Chair LaJeunesse observed that this variance request was more of a failure of process than a failure of the code and asked whether staff was putting quality assurance measures in place because this was the second instance this year involving a city sponsored variance in order to remediate consistent permitting errors.

Planning Manager Mayer answered yes. He acknowledged that this was the second such instance this year and further stated that staff was examining their permitting processes to be sure errors are caught prior to construction.

Chair LaJeunesse asked whether similar easements been approved in the Links.

Planning Manager Mayer explained that variances had been granted in the Links for pavers and decks that have encroached into setbacks. What was unique about the variance in this case was that it met all of the building and setback specifications but it just happened to be in the easement. As far as easements go, certainly the BZA and other boards have approved similar variances, noting that it was not in the major flood route – the major flood route in this case is located in the street.

Council Member Shull stated that he had noticed that on the site plan and also recalled that the similar easements had been approved during his time serving on boards and commissions. Further, he commended Mr. Rowekamp for doing everything right and he thanked him for working with the city so well. And, he stated that he believed the outcome would have been the same if Mr. Rowekamp had applied for the variance prior to construction.

Mr. Rowekamp thanked Council Member Shull for his comment and further remarked that city staff had made the process simple.

Chair LaJeunesse asked if there were any further questions.

Hearing none, Board Member Smith moved to accept the staff reports into the record for VAR-82-2023. Chair LaJeunesse seconded the motion.

Upon roll call: Mr. Smith yes; Mr. LaJeunesse yes; Mr. Jacob yes; Mr. Schell yes. Having four yes votes, the staff report for VAR-82-2023 was admitted to the record.

Board Member Smith moved for approval of VAR-82-2023 based on the findings in the staff report with the condition, the hold harmless agreement, as stated in the staff report. Chair LaJeunesse seconded the motion.

Upon roll call: Mr. Smith yes; Mr. LaJeunesse yes; Mr. Schell yes; Mr. Jacob yes. Having four votes in favor, VAR-82-2023 was approved subject to the stated listed in the staff report.

The board thanked Mr. Rowekamp and wished him good luck.

VII. Other business and poll members for comment

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

Planning Manager Mayer answered none from staff.

VIII. Poll members for comment

Chair LaJeunesse asked whether the members of the board had a comment.

IX. Adjournment

Hearing none, Board Member Smith moved to adjourn the September 25, 2023 New Albany Board of Zoning Appeals meeting. Board Member Jacob seconded the motion.

Upon roll call: Mr. Smith yes; Mr. Jacob yes; Mr. Schell yes; Mr. LaJeunesse yes. Having four yes votes, the meeting was adjourned at 6:46 p.m.

Submitted by: Christina Madriguera, Esq., Deputy Clerk

Appendix

VAR-82-2023

Staff Report

Record of Action



**Board of Zoning Appeals Staff Report
September 25, 2023 Meeting**

**6880 MARGARUM BEND
ENCROACHMENT VARIANCE**

LOCATION: 6880 Margarum Bend (PID: 222-003158)
APPLICANT: The city of New Albany
REQUEST: Variance to allow a building and paver patio to encroach a platted drainage easement.
ZONING: I-PUD (Planned Unit Development District)
STRATEGIC PLAN: Residential
APPLICATION: VAR-82-2023

Review based on: Application materials received on August 4, 2023.

Staff report prepared by Sierra Cratic-Smith, Planner

I. REQUEST AND BACKGROUND

This is a city sponsored variance request to allow a building and paver patio to encroach an estimated 4½ +/- feet into a drainage easement. Prior to this request, the property owner followed the appropriate submittal and permitting process. The city approved the permit and the property owner purchased and installed the porch in accordance with the approved application. A review conducted by the city several months after approving the property owner's permit identified a mistake in the approval process. The city contacted the property owner who agreed to work with the city to submit this variance application.

II. SITE DESCRIPTION & USE

The property measures at 0.24 acres in size and contains a single-family home. This property is located within the New Albany Links subdivision and is zoned residential I-PUD. The New Albany Links subdivision is located east of Bevelhymer Road and north of New Albany Road East.

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.*

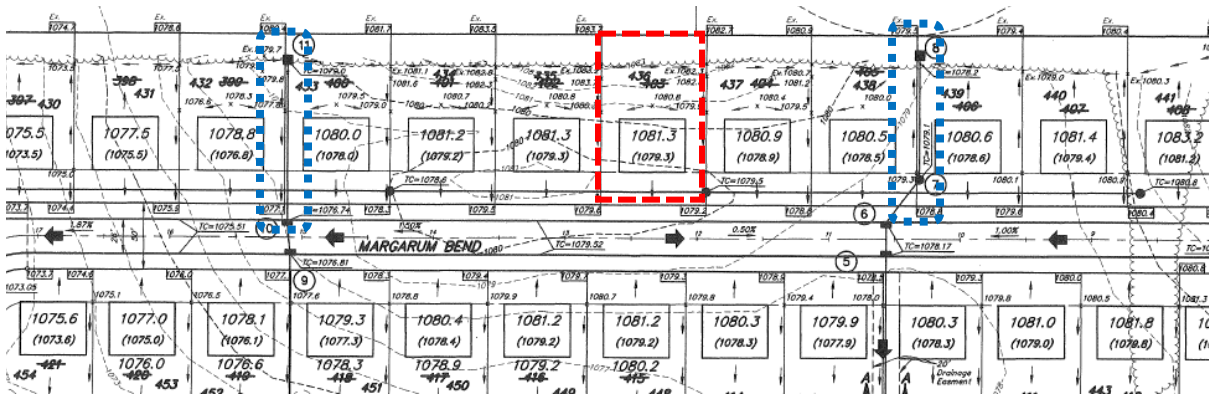
IV. EVALUATION

The applicant requests a variance to allow a building and paver patio to encroach 4 ½ +/- feet into a platted drainage easement.

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

1. The applicant requests a variance to allow a home building addition and paver patio to encroach 4 ½ +/- feet into a drainage easement recorded on the New Albany Links plat. The plat note states no building shall be constructed in any area over which easements are hereby reserved and codified ordinance 1165.04(b)(3) restricts patios from being constructed within easements.
2. The building and paver patio are fully constructed. The variance request is to allow the building and patio to remain in its existing form and location. The rear elevation of the main body of the home is 40 +/- feet from the rear property line. The drainage easement extends 28 feet from the rear proper line towards the house thereby leaving 12 feet of buildable space in the back yard.
 - a. The building is an addition to the home that is 256 square feet in area (size). It extends 16 +/- feet from the back of the home and is about 16 +/- feet wide.
 - b. The paver patio extends 16 +/- feet from the back of the home and is about 36 +/- feet wide
3. This variance would not hinder the delivery of government services. The city engineering staff reviewed the application and confirmed that there are no public utilities installed in the easement.
4. According to the approved engineering plans for the subdivision, this easement runs along the rear property line of 12 homes along this section of Margarum Bend and provides stormwater drainage for the properties north.

- The variance request does not appear to be substantial. The applicant's property (lot 436) sits at the highest grade of the easement which prevents stormwater from pooling in the rear yard. Since the property is at the highest grade it does not obstruct the conveyance of water from neighboring properties.
- The easement is not a major flood route. The easement is used to convey stormwater into an inlet as shown in the picture below. According to these plans, the stormwater (surface runoff) drains along a portion of the rear and to the front of the home into the street. There are no impacts of water to their neighbors.
- The variance preserves the "spirit and intent" of the zoning requirement and it appears "substantial justice" would be done by granting the variance. The 28 foot wide drainage easement is oversized based on the approved engineering plans for the subdivision. The engineering plans for the stormwater collection and conveyance shows it is designed to be within a 10 foot easement off of the rear property line.



□ Subject Property
 □ Location of stormwater water inlets and pipes

- This variance will not hinder the delivery of government services. There is 23 +/- feet of room for access to the underground utilities. 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 be the responsibility of the homeowner to address.
- It does not appear the essential character of the neighborhood will be altered because there are other neighbors with recreational amenities such as decks and patios partially constructed within the easement. Each property has the same 28-foot-wide drainage easement located in the rear yard and the encroachments of the existing patios and playsets into the easement varies from 5 feet to 3 feet. Therefore, the proposed encroachment is similar to the existing encroachments and does not change the characteristics of the neighborhood.
- It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.

IV. SUMMARY

This variance request is not substantial. There are no public utilities in the easement so the encroachment does not impact city services. In addition, the improvements do not hinder the conveyance of stormwater that distributes along the rear or sides of the property. The easement is oversized in comparison to the easement design included on the engineering plans.

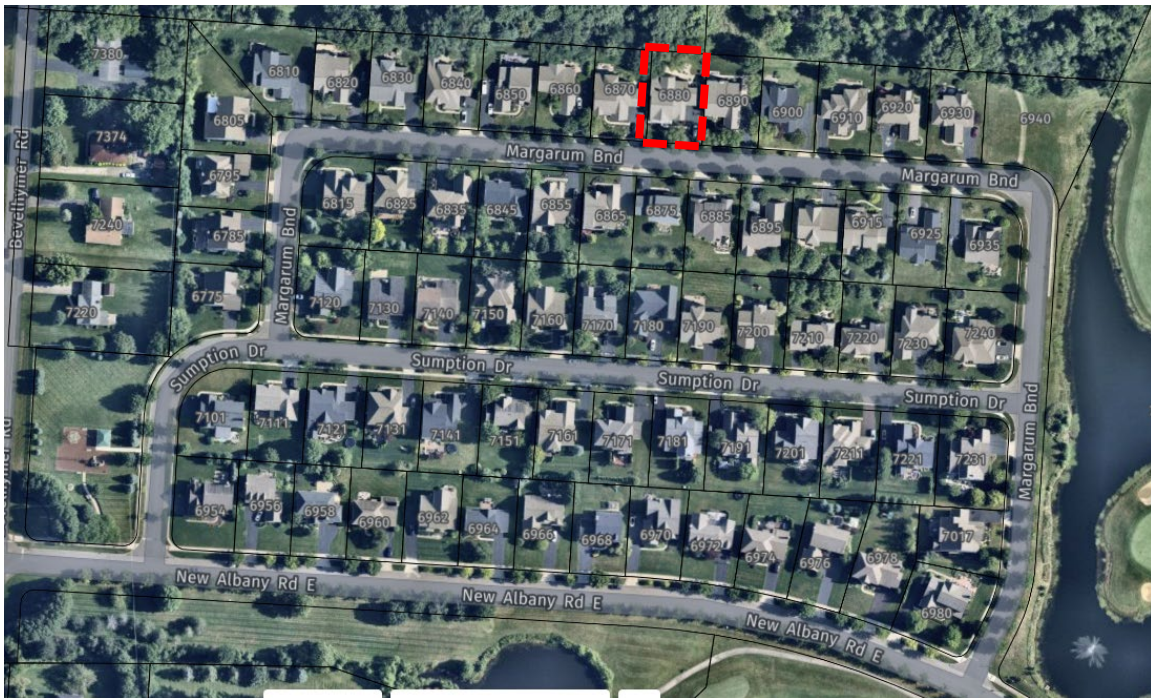
V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, finding the following motion is appropriate.

Move to approve application VAR-82-2023 based on the findings in the staff report (conditions of approval may be added).

1. The homeowner enters 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 building or patio 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 be the responsibility of the homeowner to address.

Approximate Site Location:



Source: NearMap



Community Development Department

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

Dear David J Rowekamp

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

Tuesday, September 26, 2023

The New Albany Planning Commission took the following action on 09/25/2023 .

Variance

Location: 6880 MARGARUM BEND

Applicant: City of New Albany

Application: PLVARI20230082

Request: To allow a screened porch and paver patio to encroach 4 ½ +/- feet into a drainage easement according to the New Albany Links Plat Note.

Motion: To approve

Commission Vote: Motion Approval with Conditions, 4,0

Result: Variance, PLVARI20230082 was Approval with Conditions, by a vote of 4,0.

Recorded in the Official Journal this September 26, 2023

Condition(s) of Approval:

1. The homeowner enter into a hold harmless agreement specifying that the property owner, and not the city, is responsible for any damages to the building or patio in the event that a private utility provider needs to access the easement area.

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith
Planner