

PLANNING REPORT

Board of Zoning Appeals

Thursday November 20, 2025

Hopkins Residence Pergola 25-103V

Case Summary

Address	9376 Nicholson Way Dublin, OH 43017
Proposal	Request for review and approval of a Non-Use (Area) Variance to allow a pergola to encroach 6 feet into the rear yard setback.
Request	Review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H).
Zoning	PUD: Planned Unit Development District, Tartan Ridge
Planning Recommendation	<u>Disapproval of the Non-Use (Area) Variance</u>
Next Steps	The Board of Zoning Appeals is the final reviewing body for this application. If approved by the BZA, the applicant may apply for building permits. If disapproved by the BZA, the applicant will need to meet the required setback.
Applicant	Thomas McCash; Attorney at Law
Case Manager	Tammy Noble, Senior Planner (614) 410-4649 tnoble@dublin.oh.us



Community Planning and Development



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Site Location Map

25-103V - Hopkins Residence Pergola



Site Features

- 1 Existing Pergola



1. Background

Project Request

This is a request for a Variance to allow a pergola to encroach six feet into a rear yard setback. The pergola was constructed without a permit and is located over an approved at-grade patio that meets all zoning requirements and is not being considered as part of this request.

Summary

The site contains a single-family, residential structure that was constructed in 2016. The site is approximately 0.17-acres in area and is zoned PUD, Planned Unit Development District, located within the Tartan Ridge subdivision. The intent of the subdivision was to combine the principles of a Suburban Conservation Design ideas with natural features and interconnected land uses. The subdivision was created to create a diverse mix of architectural design in a manner that preserves the natural features of the property. The development text was also created to encourage a unique, high quality design.

Site Characteristics

Natural Features

The site is developed with a single-family dwelling located at the center of the property. There is an existing patio to the rear of the house. An open space reserve is adjacent to the east of the property, where there is an additional 15-foot No Build Zone along the east property line. There are no significant trees or other natural features that would need to be considered as part of this application.

Surrounding Land Use and Development Character

North: PUD, Planned Unit Development District (Single-Family Residential)

East: PUD, Planned Unit Development District (Single-Family Residential)

South: PUD, Planned Unit Development District (Single-Family Residential)

West: PUD, Planned Unit Development District (Single-Family Residential)

Road, Pedestrian and Bike Network

The site has vehicular access on Nicholson Way to the west. There is a pedestrian sidewalk to the west of the home via Nicholson Way.

History

November 2021-Notice of Violation

In November 2021, the City Planning Division issued a notice to the applicants that their pergola was in violation of the City Code as it encroached into the rear yard setback and did not meet the Planning Division's interpretation of an "open and uncovered". This interpretation was based on the pergola was not "fully open and uncovered" and did not meet the intent of the code. This also meant that the pergola could not extend into the rear yard setback by 5 feet which is permitted for "open and uncovered". In response, the applicants applied for a variance to allow the pergola to encroach into the rear yard setback. After discussing the application with the agent, the application was modified to an Administrative Appeal.

February 2022-Administrative Appeal

The applicants filed an Administrative Appeal in February 2022. The Administrative Appeal alleged that the City's interpretation that the pergola did not meet the definition of "open and

uncovered” and therefore could encroach five feet into the rear yard setback. The Board heard a presentation by both staff and the applicant and affirmed staff’s determination. The decision resulted in the pergola being required to be located beyond the rear yard setback.

June 2024-Court of Common Pleas

The applicants filed a petition in the Court of Common Pleas challenging the City’s determination. In June 2024, the case was brought before the courts and they affirmed that competent evidence exists to support the conclusion reached by the City and BZA. The City has been working with the applicants to pursue compliance since that decision including involvement with Mayor’s Court.

Process

A *Non-Use (Area) Variance* is an application intended for properties where strict enforcement of the applicable development standard is unreasonable, and there is evidence of practical difficulty in meeting the requirement. Variance applications should be reviewed on a case-by-case basis and based on the merits of the subject property/structure. This type of application is reviewed and determined upon by the BZA, which is the final determining body. Criteria are split between 2 different categories: A and B. All criteria of Category A are required to be met, while 2 of the 4 criteria in Category B are required to be met.

Should a Variance be approved, the applicant would be required to submit a building permit application and receive approval prior to construction. Should a Variance be disapproved, the applicant would be required to meet the requirements of the zoning code or maintain the existing parking counts on the site.

3. Project

Summary

The applicant is now requesting a Variance to the Tartan Ridge Development Text Section (VIII)(D)(3)(d) to allow the existing pergola to remain with an encroachment into the required rear yard setback. The pergola is approximately 11 feet in depth, and encroaches into the required rear yard setback by six feet. The pergola was installed over an existing at-grade patio with its vertical supports placed one foot beyond the eastern edge of that patio. At-grade patios are permitted to encroach five feet into the rear yard setback based on the “open and uncovered” provisions of the Zoning Code. The existing patio meets that requirement.

The applicants’ site is located in Subarea C of the Tartan Ridge Subdivision. This subarea is located in the south-central portion of the development and is intended to cluster intermediately-sized lots around expansive open spaces. The lots have reduced setback requirements that are intended to create a compact, village-like atmosphere. The subdivision has specific lot types which dictates development standards for the lots. The applicants’ lot type is a Court Lot and requires a 25-foot rear yard setback.

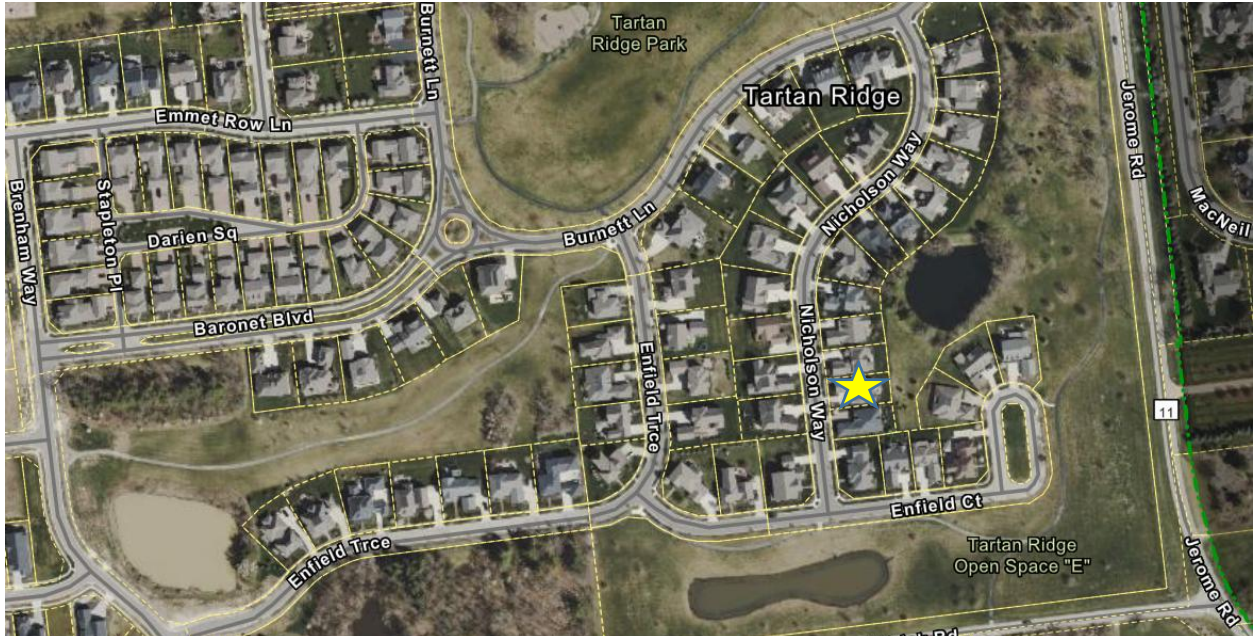
The applicants installed an aluminum pergola that is attached to the house. The pergola has columns to the rear that support the structure and a roof that is partially open with a retractable awning.



If the Board approves the Non-Use Area Variance to allow the pergola to encroach six feet into the rear yard setback, the applicants would be required to submit a building permit application. If the Board disapproves the request, the pergola would need to comply with the required rear yard setback. The patio meets Code and is permitted to remain as an outdoor amenity.

4. Plan Review

The applicants' site is similar in size, shape and design to most lots in the immediate vicinity. The subdivisions original design was for cluster-type lots that have smaller setbacks and reduced outdoor space than other more suburban-style subdivisions. The site does back up to open space which is also an intentional design of the subdivision. Most lots in the subdivision also have this feature including all the lots on the east side of Nicholson Way, a majority of the lots on Enfield Court, and all lots on Enfield Trce. These are all roads that are in the immediate area and apart of the Tartan Ridge Subdivision.



Non-Use (Area) Variance

All three criteria are required to be met:

Criteria A	Review
1. 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 whereby the literal enforcement of the requirements of this chapter would involve practical difficulties.	Criterion Not Met: The lot size, configuration and development standards are all similar to the surrounding lots. The subdivision was designed to have smaller lots with access to open space that is characteristic of a cluster style community.
2. That the variance is not necessitated because of any action or inaction of the applicant.	Criterion Not Met: The variance request is a result of an existing structure that was built without a permit by the applicant and encroaches into the required rear yard setback.
3. Granting the variance will not cause a substantial adverse effect to the property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied.	Criterion Not Met: All of the lots are smaller in size and have smaller areas for outdoor space. This is a design concept intentionally applied to the subdivision. Granting a variance would adversely impact the intent and general aesthetic of the community.

At least two criteria are required to be met:

Criteria B	Review
1. That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.	Criterion Not Met: The applicable development standards allow for small outdoor spaces that have setbacks associated with the type of unit in the subdivision. Allowing the applicants to deviate from this requirement would allow for a special privilege over other properties in the same community and zoning district.
2. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.	Criterion Met: The request is not recurrent in nature and does not require modifications to the Code.
3. The variance would not adversely affect the delivery of governmental services.	Criterion Met: This request would not impact the delivery of government services.

4. The practical difficulty could not be eliminated by some other method, even if the solution is less convenient or most costly to achieve.

Criterion Not Met:

The applicants are permitted the at-grade patio that is common throughout the subdivision. The applicant may be able to modify the existing structure to meet the setback or pursue other viable options.

Recommendation

Planning Recommendation: Disapproval of the Non-Use (Area) Variance