

## CASE 20-120V – WHALEN RESIDENCE

### Summary

Review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H) to allow a variance to the front yard tree requirement for a newly constructed single-family dwelling.

### Site Location

South of Old Finglas Court, approximately 225-foot east of the intersection with Wing Livery Road.

### Zoning

PUD, Planned Unit Development – Earlington-Brandon

### Property Owner

DAGRIF Properties II LLC

### Applicant/Representative

Matthew Whalen, Resident

### Applicable Land Use Regulations

Zoning Code Section 153.133 and 153.231(H)

### Case Manager

Zachary C. Hounshell, Planner I  
(614) 410-4652  
[zhounshell@dublin.oh.us](mailto:zhounshell@dublin.oh.us)

### Next Steps

The Board of Zoning Appeals (BZA) is the final reviewing body for this application. Upon approval from the BZA, the applicant may obtain Occupancy of the residence from the Building Standards department. If denied, the applicant will need to plant the required trees to obtain permanent occupancy of the building.

### Zoning Map



## 1. Context Map



 <p>City of Dublin</p>	<p>20-120V Variance Whalen Residence 5559 Old Finglas Court</p>	<p>0 95 190 Feet</p>	
---	---	--------------------------	---

## 2. Overview

### Background

The property at 5559 Old Finglas Court is located on Lot 140 within the Earlington Village neighborhood, which was accepted by City Council in 1986. Earlington Village is located within Subarea A2 of the Earlington-Brandon Planned Unit Development. Lot 140 was vacant until developed in 2019 with a single-family home. This application is to assist in obtaining permanent occupancy of the building.

### Site Characteristics

#### *Natural Features*

No natural features are present on the site.

#### *Surrounding Land Use and Development Character*

North: PUD, Planned Unit Development District (Earlington Village)

East: PUD, Planned Unit Development District (Asherton)

South: PUD, Planned Unit Development District (Earlington Village)

West: PUD, Planned Unit Development District (Earlington Village)

#### *Road, Pedestrian and Bike Network*

The site has frontage on Old Finglas Court (North) and Sells Mill Drive (South). There is pedestrian access on Old Finglas Court.

#### *Utilities*

The site is serviced by public utilities. There is an electrical easement for existing power lines running from north to south along the east property line of the site.

### Proposal

The applicant is requesting review and approval of a Variance to Zoning Code Section 153.133(D)(2)(b) *Site Planting Requirements* to alleviate the requirement to plant one large tree and one medium tree in the front yard of their lot.

#### *Proposal*

The applicant is requesting that the requirement to plant one large tree and one medium tree in the front yard of their lot be eliminated. This requirement of Zoning Code Section 153.133(D)(2)(b) was accepted with Ordinance 40-07 in 2007, along with the Residential Appearance Standards. The intent of this section was to enhance the architectural character and aesthetic of residential neighborhoods, and to enhance the beauty of the city. The section requires that a minimum number of trees be planted on single-family lots based on the lot width and front building setback of the lot. The trees that would be located on the lots would also have to meet a minimum 3-foot setback from the side property lines.

Based on the dimensions of 5559 Old Finglas Court, the site would fall between the '60-90.9 feet' lot width category, and the '20 feet or more' front building setback category. This requires the newly developed site to plant one large tree and one medium tree. A large tree is defined in the zoning code as "Any tree species which normally attains a full-grown height equal to or greater than 50 feet." A medium tree is defined in the zoning code as "Any tree species which normally attains a full-grown height of between 30 and 50 feet."

### Applicant Statement

The applicant has provided a statement addressing the requested variance. The applicant has stated that there are existing hardships on the site that would make it difficult to plant the required trees. Along the east portion of the property is an electrical easement for overhead power lines that run along the east property line. The 50-foot wide easement covers a majority of the eastern half of the site, as shown in Figure 1. The applicant has stated that there are also three separate underground drains leading from the house that could be damaged by a medium or large tree root system.

The applicant has also stated that because this subdivision was built prior to the requirement of the front yard tree requirement, no other house on Old Finglas Court or within Earlington Village are meeting this requirement.

### Public Comment

Planning Staff has received public feedback for this application. The public comment was in favor of the variance application.

## 3. Criteria Analysis

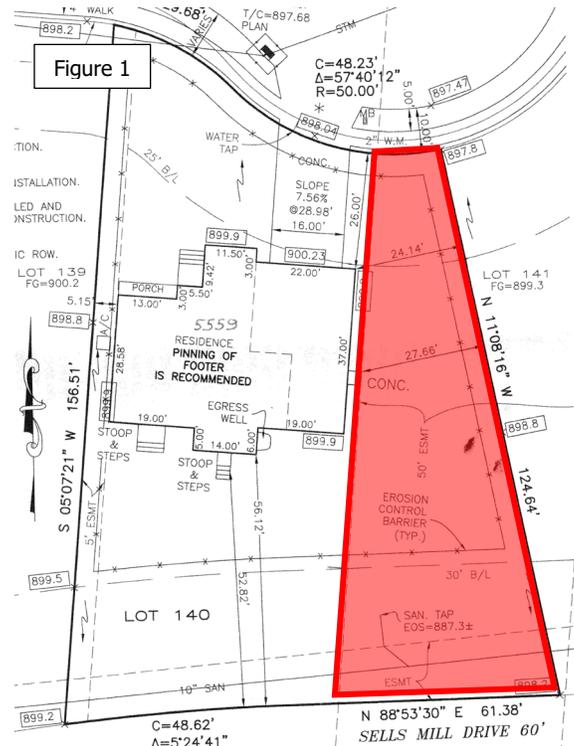
Zoning Code Section 153.231(H)(2) allows the Board of Zoning Appeals to approve requests for non-use (area) variances only in cases where the Board finds there is evidence of a practical difficulty present on the property, and that the findings required in Zoning Code Section 153.231(H) have been satisfied.

### A. Non-Use (Area) Variance Analysis [153.231(H)(2)] All three of the following criteria must be met:

#### 1) Special Conditions

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.

Criteria Not Met. Although the site has a large electrical easement along the eastern half of the site, Staff determined there is room to locate the medium and large tree on the site. Dublin Staff have determined that it is possible to locate the trees so that they are not within the easement or potentially damaging to any drainage on site.



**2) Applicant Action/Inaction**

That the Variance is not necessitated because of any action or inaction of the applicant.  
Criteria Not Met. Although the electrical easement condition was present at the time of the applicant acquiring the property, the applicant has made the request for a deviation from the Zoning Code that is required for all new residential homes build after 2007 and despite advice from Staff as to appropriate locations for the required trees.

**3) No Substantial Adverse Effect**

Granting the Variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this chapter.

Criteria Met. Should the applicant not plant the two front yard trees, it would not have an adverse effect on the surrounding properties.

**B. Non-Use (Area) Variance Analysis [153.231(H)(2)]**

**At least two of the following four criteria must be met:**

**1) Special Privileges**

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.

Criteria Not Met. This requirement is necessary for all new residential projects within the City of Dublin as of 2007. Although many of the homes within this particular neighborhood were not required to adhere to this standards as they were built prior to the Code change, most houses voluntarily planted trees in their front yard.

**2) Recurrent in Nature**

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.

Criteria Met. Since the adoption of the Site Planting Requirements in 2007, numerous new residential developments have been approved throughout Dublin, which all must adhere to this requirement. Due to the limitations on the site and the nature of the request, Planning would not consider this request recurrent in nature.

**3) Delivery of Government Services**

The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).

Criteria Met. This request will not affect the delivery of governmental services.

**4) Other Method Available**

The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.

Criteria Not Met. The other method the applicant could take would be to meet the zoning requirements and plant the required trees on the lot.

#### 4. Recommendation

Planning Staff recommends **disapproval** of the Variance to Zoning Code Section 153.133(D)(2)(b) to alleviate the resident of the requirement to plant one large tree and one medium tree in the front yard of their lot.