

Shaffer Residence
6813 Sagestone Drive
Non-use (Area) Variance (21-099V)

To the Board of Zoning Appeals,

We are respectfully requesting the review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H).

Specifically, we are requesting to install a pergola over the same footprint of an existing patio that was approved by the City of Dublin in 2008. This request was denied on May 18, 2021, on the basis that "The rear setback is 25% of the lot depth, $0.25 \times 130 = 32.5$ feet. Encroachments are not permitted into the required rear setback."

As background, when we closed on the purchase of our property in 2007, the Site Plan that was attached to our purchase contract showed a 12' rear easement and a concurrent 20' No Build Zone ("NBZ"). The site plan for our neighborhood (Bishop's Run) was also included and showed a 25' NBZ. There was no representation of an additional 25% rear setback requirement. Before closing we asked the builder if we could add a covered area or 3 seasons room to the back of our property after closing and were told that as long as it didn't encroach on the 25' NBZ, we were fine.

Our house sits back from the rear lot line by 37.5', meaning that once you take the 25' NBZ into account, we had the understanding that we have a depth of 12.5' in which to add on to the back of our home.

In 2008, we decided to start the addition on the back by adding a patio, with the plan of covering it later. At that time, when we applied to the City of Dublin we were told that we didn't need to contend with the 25' No Build Zone but instead a more restrictive 32.5' rear setback, therefore only allowing a patio that was 5' deep. This was the first time we were informed of such setback. We asked the City of Dublin to reconsider, and they then approved our patio at a depth of 10', meaning it encroached on the 32.5' setback by 5'.

We are now requesting a pergola using the same depth as the existing approved patio of 10', which again is a 5' encroachment on the setback. We are requesting the variance on the following grounds:

- We were represented by the builder of our property and accompanying closing purchase documents that at most we had to contend with a 25' no build zone, therefore giving us 12.5' depth to add to the rear of our home.
- We are asking for a structure that only covers what has already been approved (no additional coverage is being requested).
- Our request for variance meets the requirements of Zoning Code Section 153.231(H) as set forth below.

153.231 (H)(2)(a)(1) Special conditions and circumstances exist which are peculiar to our 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.

- The developer that developed our neighborhood imposed a staggered front building line so that all homes are not built directly in a line but instead the fronts are staggered. This was done for visual appeal. What this means is that some properties in our neighborhood can position their homes/structures as little as 30' from the front of the property line whereas other properties must position their homes 35' back from the front property line. Those properties with the more conservative 35' setback must position their houses further back on the property to meet the setback and therefore have less useable backyard space. Our land was imposed with the greater 35' front set back, meaning we have 5' less useable backyard space than others in our neighborhood.
- Additionally, despite having a 35' front building line, the builder built our home 37' from the front property line, thereby depriving our property of an additional 2' of useable land in the backyard.
- Our home has a side load garage. Because of the nature in which side load garages work in relation to the driveway, homes with side load garages must set back further from the street than homes with front load garages. Whereas most of the properties in our neighborhood have front load garages, we have a side load garage, which requires additional front space and consequently less useable backyard space.
- Due to the design of our home, alternative structures that could be used to shade our patio cannot be used on our property (see support statement under Section 153.231 (H)(2)(b)(4) below).
- Our home is situated such that the rear of the home faces directly due south. As a result, the backyard and patio receive no shade until very late in the day. On days when there is any sun it feels 10-15 degrees warmer than the actual temperature, meaning that even in temperatures as low as the 70s, it is too hot for us to use and enjoy our patio. This condition is unique to rear south facing homes because other positioning of the house on the property would allow for shade to the backyard/patio by the house itself.
- Overall, it is the combination of these conditions applicable to our property alone that makes our property peculiar such that literal enforcement of the requirements of the applicable chapter would involve practical difficulties.

153.231 (H)(2)(a)(2) The variance is not necessitated because of any action or inaction of the applicant.

- We did not take any action to create the need to allow us to use and enjoy our backyard. The developer of our neighborhood created the various setback requirements, and the builder determined the positioning of the house on the property.
- We likewise did not fail to take any action that would have changed the setback or our ability to use and enjoy our backyard.

153.231 (H)(2)(a)(3) 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.

- The pergola being proposed will only extend as far as the patio, meaning it will also be 10' deep. By installing a pergola that is the same depth as the approved patio, we are not using any more backyard space than is already being used.
- The rear of our property does not back up to another property. Behind our property is a common space with trees, on the other side of which is a walking path and then a road. The evergreen trees in the walking path provide coverage for privacy from the walking path and our property.
- The neighbors on either side of our property have structures and/or trees that block their view of our patio and therefore adding a structure to the existing footprint will also not be viewable by them.
- To the extent the pergola is visible by anyone, it is a high-quality structure with visual appeal. It therefore will not cause a substantial adverse effect to property or improvements in the vicinity and, if anything, will improve the look of the backyard space.

153.231(H)(2)(b)(1) A literal interpretation of the provisions of the Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.

- A literal interpretation of the provisions of the Zoning Code restricting us to a depth of 5' for our pergola deprives us of the right to have a covered area in our backyard (which, as previously explained, thereby deprives us of the ability to enjoy/use our back yard).
- We currently have a very narrow patio which barely allows for the depth of a patio table and chairs. We are not seeking to expand that space but instead put a pergola over it to allow for shade in the exact same footprint of our patio.
- Many of our neighbors enjoy a covered portion in the backyard, either in the form of a roof over their patio, a pergola or a 3 seasons room. We are therefore asking for something currently being enjoyed by others in our neighborhood. A literal enforcement of the Zoning Code would deprive us of the rights being enjoyed by our neighbors.

153.231 (H)(2)(b)(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.

- There are 5 separate conditions as outlined in the first section above that, collectively, create such a specific set of conditions that make them unique to our property, thereby not so general or recurrent in nature to make the formulation of a general regulation for those conditions reasonably practicable.

Although only 2 provisions of 153.231(H)(2)(b) must be met to meet the requirements for variance under this Section, we have included the following supporting statements under subsections (b)(3) and (4) below.

153.231 (H)(2)(b)(3) The variance would not adversely affect the delivery of governmental services (e.g. water, sewer, garbage)

- The proposed pergola is in the rear of the home and will not adversely affect the delivery of water, sewer, garbage and/or the delivery of other governmental services.

153.231 (H)(2)(b)(4) The practical difficulty cannot be eliminated by some other method, even if the solution is less convenient or more costly to achieve.

- We have previously considered other options to create a useable space by pursuing options to cover our patio. However, based on the design of the home it was not feasible. The exterior wall of the rear of our home (i.e. the wall abutting the patio) is covered in windows and there is less than 6" of space between each row of windows. Therefore, anything that must be attached to the wall to cover the patio must not be any greater than 6" high.
- We have considered both a roof over the patio and a rollaway awning solution. Both structures require a clear unobstructed wall space (24" and 11" high respectively) in which to attach the structure. However, considering our maximum height of unobstructed wall space is only 6", neither such option would work.
- On the other hand, the pergola for which we are seeking a variance does meet the limitations of the design of our home. The portion of the pergola being attached to the home is only 6" high, therefore conforming to the design of our home.

For the reasons outlined herein, we are respectfully requesting a variance. We appreciate your consideration.

Sincerely,

Chris and Jody Shaffer