



City of Dublin

Land Use and
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City of Dublin Board of Zoning Appeals

Planning Report

Thursday, October 23, 2014

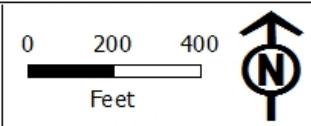
Sailors Residence-6765 Baronet Boulevard

Case Summary

Agenda Number	1
Case Number	14-100V
Location	6765 Baronet Boulevard South side of Baronet Boulevard approximately 480 feet east of Brenham Way.
Proposal	To construct a patio, pergola and outdoor grill that will be located 10 feet six inches into the rear yard setback.
Request	Non-use (area) variance to Sections 153.07(B) to permit a patio, pergola and outdoor grill that encroaches in the rear yard setback of a residential property zoned PUD, Planned Unit Development District. Requires review and approval by the Board of Zoning Appeals based on the review criteria of Zoning Code Section 153.231.
Applicants	Brandon Sailors, property owner.
Planners:	Tammy Noble-Flading, Senior Planner.
Planning Contact:	(614) 410-4649 or tflading@dublin.oh.us
Planning Recommendation	Disapproval of a Variance to the Rear Yard Setback. Based on Planning's analysis, the request does not meet the review criteria for a non-use (area) variance, and disapproval is recommended.



14-100V
Non-Use Variance
Sailors Residence
6765 Baronet Boulevard - Tartan Ridge



Facts	
Site Description	The approximately 11,800 square foot lot is on the south side of Baronet Boulevard approximately 480 feet east of Brenham Way. The site is currently under construction for a single-family home. The site is flat and rectangular with frontage on Baronet Boulevard, with the rear lot line abutting "Reserve Q," which is a 7.25 acre park. This reserve is a passive open space with an existing pond in the southern portion of the reserve.
Zoning	PUD, Planned Unit Development, Tartan Ridge subdivision.
Surrounding Zoning and Uses	The site is surrounded by residential development and a reserve area, zoned PUD, Planned Unit Development District, Tartan Ridge.
Proposal	The applicant is proposing to construct a 10.5 X 55 foot patio that will have a 12 x 12 foot pergola and grill area to the east portion of the patio. The patio will have a seating wall with accent lights and additional landscaping on the east and west side of the patio. The deck will encroach 10 feet, 6 inches into the rear yard setback.

Details	Rear Yard Setback
Process	Zoning Code Section 153.231(C)(3) 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, limiting conformance to the strict requirements of the Zoning Code. The Board shall make a finding that the required review standards have been appropriately satisfied (refer to the last page of this report for the full wording of the review standards).
Variance Request	<p>Section 153.07(B) requires that all construction be located outside the rear yard setback. The applicant is requesting to construct a paver patio with a seating wall, a pergola and a grill that will encroach 10 feet, 6 inches into a required 25-foot rear yard setback established by the Tartan Ridge development text.</p> <p>The applicant has designed the home that is being constructed on Lot #209 of the Tartan Ridge subdivision. The house has a front-loaded, three car garage that left the deepest portion of the house at six inches from the rear yard setback.</p>

Details	Rear Yard Setback
<p>Tartan Ridge Development Standards</p>	<p>Tartan Ridge has a diversity of housing types, lot sizes and setbacks that have been designed to create themed areas throughout various portions of the subdivision. The applicant’s lot is a Court Lot which has a rear yard setback that varies based on the location of the garage, and a range front building zone of a minimum of 13 feet and a maximum of 20 feet (in lieu of an established building setback).</p> <p>The varied rear yard setback allows residents to reduce their setback from 25 feet to 15 feet when the garage is located to the rear of the house. This standard is to encourage residential structures to place garages to the rear of the property. This allows the residential houses to be the primary focal point along the public roadways and minimize the view of accessory structures.</p> <p>The applicant has designed a front loaded garage situated 19 feet 6 inches from the front lot line that is approximately six inches from the back of the 13-20 foot required front build zone. This puts the house at the very nearly the greatest distance permitted from the front lot line. This forces the home to be located six inches from the rear yard setback line. These site design considerations have exacerbated the restricted rear yard space in which outdoor patios could be constructed.</p> <p>These development standards are specific to Tartan Ridge and are designed to create reduced lot widths that allow structures to be closer to each other. This creates the cluster home development pattern that is intended for this area. The required front build zone allows homes to be closer to the street to engage with activity along the sidewalks.</p>

Analysis	Rear Yard Setback
<p><i>ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET</i></p>	
<p>(1) Special Conditions</p>	<p>Standard in Not Met</p> <p>The lot has a standard configuration that exceeds both the minimum width and minimum lot depth of the approved development text. As a result, the lot is larger than the lots to the east and west on Baronet Boulevard. The lot has no significant topography or natural feature and the orientation of the house and garage, located at the farthest portion of the required front yard build zone, are conditions that created the need for a variance.</p>

Analysis	Rear Yard Setback
(2) Applicant Action/Inaction	<p>Standard is Not Met The applicant has designed the site and is the current owner of the home which is being constructed. This siting and size of the home as selected by the applicant created the conditions that are prompting this request.</p>
(3) No Substantial Adverse Effect/ Hinder Intent of Regulation	<p>Standard is Not Met The Tartan Ridge development text is designed to create incentives for property owners to design sites with houses close to the public roadway system and be the primary focus of the lot. The applicant has chosen to design the site in a manner that forces the house closer to the rear of the site. The applicant is requesting relief for more construction that would only be granted to residents who design the site to maximize their ability to construct in the rear yard and therefore, negatively impacts the intent and purpose of the regulation.</p>
<i>AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET</i>	
<p>(1) Granting Special Privileges</p> <p>(2) Not Recurrent in Nature</p> <p>(3) Delivery of Governmental Services</p> <p>(4) No Other Method Available</p>	<p>The following standards have been reviewed with the finding that two standards are met.</p> <p>Standard is Not Met The applicant is requesting relief that, if granted, would allow residents to design their site to restrict their rear yard setback and expect relief from the City for their decision. If relief were granted, it would provide a special privilege to the applicant and grant relief that could have been prevented.</p> <p>Standard Met This type of request (requests for much larger outdoor spaces) is becoming more common but has not risen to the degree of "recurrent" where a Code revision is urgently needed. However, as a proactive method of addressing the issue, Planning is researching other potential means for siting decks and patios.</p> <p>Standard Met The request will not impact the delivery of governmental services.</p> <p>Standard Not Met Planning has discussed other options available to the applicant including placing the patio to the eastern portion of the rear yard where the house is recessed, allowing some area is which to build. That combined with the "open and uncovered" provision of the code would allow a patio to extend five feet into the rear yard. This narrow portion of the patio would provide a minimal amount of the space that would connect to the larger patio area, to the east. Both these areas combined would allow a patio and outdoor living space that is approximately 510 square feet based on Planning's calculations.</p>

Recommendation	Disapproval
Disapproval	Based on Planning's analysis, the request does not meet the required review criteria for a non-use (area) variance, therefore disapproval is recommended.

NON-USE (AREA) VARIANCES

Section 153.231(H)(1) Variance Procedures

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development requirements of this Code unreasonable and, therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the Board of Zoning Appeals shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

Non-Use (Area) Variances. Upon application, the Board of Zoning Appeals shall only approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this Report for the full wording of the review standards):

(a) That all of the following three findings are made:

- (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. Special conditions or circumstances may include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question.*
- (2) *That the variance is not necessitated because of any action or inaction of the applicant.*
- (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 or of this Chapter.*

(b) That at least two of the following four findings are made:

- (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.*
- (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.*
- (3) *The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).*
- (4) *The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.*

BOARD OF ZONING APPEALS

BOARD ORDER

OCTOBER 23, 2014

The Board of Zoning Appeals took the following action at this meeting:

**1. Tartan Ridge – Sailors Residence 6765 Baronet Boulevard
14-100V (Non-Use) Variance**

Proposal: This is a request for a variance from Section 153.071(B) to permit a patio, pergola, and outdoor grill area that will be located ten feet into the required rear yard setback for a site zoned PUD, Planned Unit Development within the Tartan Ridge subdivision. The site is located on the south side of Baronet Boulevard approximately 480 feet east of Brenham Way.

Request: Review and approval of a variance under the provisions of Zoning Code Section 153.231.

Applicant: Brandon Sailors, Owner.

Planning Contacts: Tammy Noble-Flading, Senior Planner

Contact Information: (614) 410-4649, tflading@dublin.oh.us

Motion: Brett Page made a motion, seconded by James Zitesman, to disapprove this variance to Zoning Code Section 153.071(B) to allow a patio, pergola, and outdoor grill area to encroach the required rear yard setback by 10 feet because it does not meet all the required variance standards and review criteria.

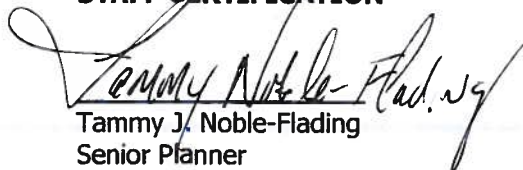
VOTE: 4 – 0.

RESULT: This Variance application was disapproved.

RECORDED VOTES:

Patrick Todoran	Absent
Brett Page	Yes
Brian Gunnoe	Yes
James Zitesman	Yes
Rion Myers	Yes

STAFF CERTIFICATION


Tammy J. Noble-Flading
Senior Planner



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BOARD OF ZONING APPEALS

MEETING MINUTES

OCTOBER 23, 2014

AGENDA

- 1. Tartan Ridge – Sailors Residence** **6765 Baronet Boulevard**
14-100V **(Non-Use) Variance**
(Disapproved 4 – 0)

Chair Brett Page called the meeting to order at 6:53 p.m. due to technical issues with the projector and the computer used for presentations. Other Board members present were Rion Myers, Brian Gunnoe, and James Zitesman. Patrick Todoran was absent. City representatives present were Tammy Noble-Flading, Devayani Puranik, and Flora Rogers.

Motion and Vote

Mr. Page moved, Mr. Zitesman seconded, to accept the documents into the record. The vote was as follows: Mr. Gunnoe, yes; Mr. Myers, yes; Mr. Zitesman, yes; and Mr. Page, yes. (Approved 4 – 0)

Motion and Vote

Mr. Zitesman moved, Mr. Gunnoe seconded, to approve the May 22, 2014 meeting minutes. The vote was as follows: Mr. Page, yes; and Mr. Myers, yes; Mr. Gunnoe, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

Motion and Vote

Mr. Myers moved, Mr. Zitesman seconded, to approve the June 26, 2014 meeting minutes. The vote was as follows: Mr. Page, yes; Mr. Gunnoe, yes; Mr. Zitesman, yes; and Mr. Myers, yes. (Approved 4 – 0)

Motion and Vote

Mr. Zitesman indicated he will not be present for the February 2015 meeting.

Mr. Zitesman moved, Mr. Myers seconded, to approve the 2015 – 2016 meeting dates. The vote was as follows: Mr. Gunnoe, yes; Mr. Page, yes; Mr. Myers, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

Communications

Tammy Noble-Flading said that Mr. Todoran is recovering from a medical issue and is expected to return in November. She said a package was sent to his home to wish him a well recovery and anticipate that he will return next month.

Mr. Zitesman thanked her for sending the package.

Mr. Page thanked her for the update.

Administrative Business

Mr. Page swore in those who intended to address the Board in regards to the application on this Agenda.

Mr. Page said typically the presentation is done with the overhead, however the presentation will be viewed on I-pads with hardcopies distributed to the audience due to the technical issues with the presentation equipment.

NEW CASE:

1. Tartan Ridge – Sailors Residence 14-100V

6765 Baronet Boulevard (Non-Use) Variance

Tammy Noble-Flading said this is a request for a variance from Section 153.071(B) to permit a paver patio, pergola, and outdoor grill area that will be located ten feet into the required rear yard setback for a site zoned PUD, Planned Unit Development within the Tartan Ridge subdivision. The site is located on the south side of Baronet Boulevard approximately 480 feet east of Brenham Way.

Ms. Noble-Flading said the subdivision is currently under construction. She stated that the applicant's site directly abuts a 7-acre reserve that is located to the south and is dedicated for greenspace. She stated that the reserve includes a pond and a walking path running east to west. She said the applicant's site is under construction with a driveway leading into a 3-car garage that opens up to the residential structure. She said the purpose of this application is a paver patio which will extend into the required setback by 10.5 feet. She said that patio will have a pergola on the southern portion of the patio with a masonry grill area all of which encroaches into the rear yard setback.

Ms. Noble-Flading said Tartan Ridge is a more recent residential community with a development text that is complex to create areas within the subdivision that have different themes. She said the applicant site is located in an area of Tartan Ridge that has components of a cluster type development that have smaller lots that minimal side and rear yard setback and have "build to" line instead of a front setback.

Ms. Noble-Flading noted that the presentation equipment is now working and she moved to the podium to present the balance of this review.

Ms. Noble-Flading said the "build to" line requires the structure to be located close to the road to create an interactive visual connection between the roadway, pedestrians, and the residential components of the subdivision. She said the lot is required to have a minimum of 13 feet, with a maximum of 20 feet, for the location of the primary structure. She stated the applicant has design the site so that the edge of the garage is located on the 20 foot line. She said another development standard for the subdivision that is unique is the rear yard setback. She stated that the rear yard setback varies based on the location of the garage, specifically whether it is

located to the front or rear of the primary structure. She said if they locate the garage to the front or side of the property the rear yard setback is 25 feet. She said that if the garage is located to the rear of the primary structure, the rear yard setback is reduced to 15 feet. She said the purpose of the different rear yard setback is to encourage garages to the rear of the properties which allows the focal point of the site to be the primary structure opposed to the garage.

Ms. Noble-Flading said with this site, the applicant has chosen a garage that is located to the front of the house and therefore has the larger setback of 25 feet. She said that this design choice does not fully maximized the benefits of the reduced setback and creates some of the factors that result in the variance request.

Ms. Noble-Flading presented the analysis contained in the Planning Report and stated that the request does not meet the review criteria stipulated by Code. She stated that Planning is therefore, recommending disapproval of the application.

Mr. Gunnoe asked for a dimension of the setbacks of the southern portion of the property.

Ms. Noble-Flading said it is approximately 10 feet. She added that open and uncovered patios are permitted to encroach an additional 5 feet into the setback which would allow a total width of 15 feet.

Brandon Sailors, 6765 Baronet Boulevard, thanked the Board for their review and Ms. Noble-Flading for being extremely helpful throughout the process. He said this situation was not brought to their attention until approximately four weeks ago and they are so far into the construction process that it is difficult to move things at this point. He said they do not view some of the things the same way as staff has laid them out. He said ignorance is no excuse but as first time home builders they were not advised by the builder or the Edwards Company of any of the setback limitations. He said they have been working on this proposal for about 18 months and is a long time to be involved in discussions and not have any conversations about setbacks.

Mr. Sailors said that Coppertree is his builder and is the predominant builder in Tartan Ridge. He said the process is customized starting with a sketch and they were unaware of the setback requirements making it very difficult for a first time homeowner to know the setbacks especially with Edwards Company owning the property and reviews and approves every plan.

Mr. Zitesman asked when they started on the project why they did not ask where the buildable area was on the site.

Mr. Sailors said he had never heard the term setbacks before the addition was denied.

Mr. Sailors said the plot plan states a rear yard setback as a minimum at 15 feet and a maximum of 25 feet. He said there is nothing saying do not construct in a certain portion of the site. He said the materials that were provided to them at closing and throughout the design process indicated that there is not permitted construction in the rear of the home.

Mr. Myers said the applicant is referring to a survey which does not reflect development standards required by the municipality.

Mr. Page said Mr. Sailors is saying that the builder was not aware of development standards, including setbacks, for a residential lot.

Mr. Sailors said he didn't want to speak for them, but it was not communicated to him.

Mr. Page asked if the builder asked the City for this information.

Ms. Noble-Flading said if they are unaware of the setbacks, she has offered to work with them to understand these requirements so that this does not impact any other potential home buyers.

Mr. Gunnoe said the Board is required to review requested based on the criteria. He said that what occurs between a homeowner and the builder is outside their consideration. He said when you work with a builder they are going to obtain building permits. He said that if the applicant proposed the patio, it should have been included on the permit.

Mr. Sailors said there was no deliberate attempt to push everything back to be non-compliant with the requirements. He said that he believes the special condition of the site is the greenspace (reserve) located to the rear of the property. He said there is approximately 100 feet between the property lines and he is only asking for 5 feet which will not impede upon the neighbor sightlines or encroach in anyone's back yard. He said 5 feet that would be permitted by Code, at its closest point, is very narrow and would not permit furniture or maneuverability. He said on the western side of the house has a covered porch where they plan to place a table where they could see the pond. He said there is also a chimney on the back that is a two way fireplace, so this was designed very explicitly so they could take advantage of the fireplace and they have ample space behind the home that they thought they could take full advantage of.

Mr. Sailors said the plot plan says 15/25 feet and if they knew they would have considered it to be 15 feet versus the 25 feet that they didn't understand the variability. He said there is a tremendous amount of space behind them that they will not encroach in anyone's sightlines.

Mr. Sailors said the street design was with no parking allowed.

Mr. Sailors said the house was specifically designed to take advantage of the greenspace and view of the pond and due to that they will have a very restricted in their ability to enjoy the greenspace to the rear of the property.

Mr. Zitesman asked how many feet from the fireplace is the required setback.

Mr. Sailors said there is six inches available with an additional 5 feet allowed if it is opened and uncovered according to staff.

Mr. Zitesman said the 5 feet allowed is a basic paver patio without walls and pergolas and fireplaces.

Mr. Sailors said they are trying to be reasonable. He said the pergola and the grilling island are something they are willing to take a look at and if it is truly the recommendation of the Board.

Mr. Sailors said that his future neighbor was present because he will be facing similar setback issues. He stated that there is no parking along the boulevard in front of their homes which requires property owners to accommodate parking on-site. He stated that this was a decision of the City and no fault of their own.

Mr. Page said the neighborhood is designed with the concept of neighbors living out front on their porches, creating activity in the community, and having walkable space. He said the focus of his home and the next neighbor is a narrow view of the neighborhood. He said where his building placement is in the back of the neighborhood it is out of character from what the neighborhood is designed to do. He asked if they considered what the rest of the neighborhood looked like when designing the site.

Mr. Sailors said they fell in love with this neighborhood through the parade of homes and they loved the consistent hedges and front yards. He said the later phases of the neighborhood don't have the same look and feel. He said they chose this area of the subdivision to enjoy the back yard and greenspace behind the lot.

Mr. Page asked if there were any further questions of the applicant. [There were none.]

Mr. Sailors said he appreciates their consideration.

Mr. Zitesman said the fact that the neighbor is here is an example of how granting variances creates an expectation within the neighborhood. He said he is concerned about the statement that the applicant would like to maximize the rear of the home, yet placed the home in rear of the lot.

Mr. Page said that most of the requests the Board hears is from applicants who did not design the sites themselves. He said this application is different and that the property owners planned the site so that the home is located to the rear of the site. He stated that he did not believe this was not a reason to allow a variance and not meet Code.

Mr. Zitesman said they are not authorized by Code to allow variances for this situation where a builder has unaware of setback requirements and proceeded with the project without any indication of what is permitted for a neighborhood.

Mr. Gunnoe said their decisions affect all of Dublin. He said staff could analysis whether builders are designing sites without disclosing the required setbacks requirements and requiring homeowners to worry about the patios at the end of the project. He said there are options for this property owner to construct on the east side of the lot. He said the way they positioned the building they have put themselves in this position and he would not be supportive of a variance.

Ms. Noble-Flading said they are working with developers when they are platting the subdivisions to look at outdoor space and designing sites that anticipate these types of amenities at the early stages of a project.

Mr. Gunnoe said the challenge is how information is communicated between a developer and the agent selling the property.

Mr. Sailor said there is a letter in the application from the builder and the Edwards Company who developed Tartan Ridge both in support in the design of the site. He said he has lived in Dublin since 1998 and loves it. He said they have spent a long time building their dream home and their decision will impact that.

Mr. Page asked if they talked to the builder about remediation.

Mr. Sailors said they are set to close on November 20th and expected the building permit to be approved and landscaping to be done by September. He stated that it is very frustrating to know they have over a 100 feet in the back yard and they are asking for an additional 5 feet.

Mr. Gunnoe said they are asking for something that sets a precedent within the community.

Mr. Sailors said he would appreciate his neighbors investing in their back yards and increasing property values for the City of Dublin.

Mr. Zitesman said all three standards have to be met according to Code.

Mr. Sailors asked how he can be accountable for something that was never disclosed to them.

Mr. Gunnoe said it was a matter between him and the builder.

Mr. Zitesman said they relied on their builder and it was their responsibility and the builders to help property owners design their site. He said the essential criteria of developing any site is where the building setbacks are. He said he is distressed about this situation and the actions of the builder. He said it is their responsibility to determine where the setback lines are on a lot and whether or not a design will meet those setbacks.

Mr. Sailors said he read the Code and has tried to be upfront about what they are trying to do. He also questioned what criteria need to be met.

Mr. Page said Section 153.231 Variance Code state that all of the three criteria is subarea A need to be met and at least two of the criteria is subarea B need to be met. He said he appreciates that they reviewed the Code because it does provide this information. He said the Board takes every case seriously and there are no cases that are minor, they are all very important.

Motion and Vote

Mr. Page made the motion, seconded by Mr. Zitesman, to disapprove this variance to Zoning Code Section 153.071(B) to allow a paver patio, pergola, and outdoor grill area within the rear yard setback because it does not meet all the required variance standards and review criteria

for a non-use area variance. The vote was as follows: Mr. Gunnoe, yes; Mr. Myers, yes; Mr. Zitesman, yes; and Mr. Page, yes. (Disapproved 4 – 0.)

Mr. Page said the next meeting is scheduled for November 20, 2014, and adjourned the meeting at 8:03 p.m.

As approved by the Board of Zoning Appeals on February 26, 2015.