



BOARD ORDER

Board of Zoning Appeals

Thursday, October 26, 2017 | 6:30 pm

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

**1. Metcalf Residence – Rear Yard Setback
17-095V**

**9368 Nicholson Way
Non-Use (Area) Variance**

Proposal: To permit the installation of a patio to encroach 10 feet into the required rear yard setback for an existing single-family residential lot located within the Tartan Ridge Subdivision. The site is zoned PUD, Planned Unit Development (Tartan Ridge PUD, Subarea C).

Location: The site is located on the east side of Nicholson Way, approximately 150 feet north of the intersection with Enfield Court.

Request: Review and approval of a Non-Use (Area) Variance under the provisions of Code Section §153.231(H).

Applicant: Ross & Linda Metcalf, Property Owners.

Planning Contact: Michael Kettler, Planning Technician and Logan Stang, Planner I

Contact Information: (614) 410-4650, mkettler@dublin.oh.us; (614) 410-4652, lstantg@dublin.oh.us

Case Information: www.dublinohiousa.gov/bza/17-095

MOTION: Ms. Cooper moved, Mr. Goyal seconded, to table this non-use (area) variance at the request of the applicant.

VOTE: 5 – 0.

RESULT: The Non-Use (Area) Variance was tabled.

RECORDED VOTES:

James Zitesman	Yes
Rion Myers	Yes
Martha Cooper	Yes
Sarah Herbert	Yes
Satya Goyal	Yes

STAFF CERTIFICATION



Logan Stang
Planner I





MEETING MINUTES

Board of Zoning Appeals

Thursday, October 26, 2017

AGENDA

- | | |
|--|---|
| 1. Metcalf Residence – Rear Yard Setback
17-095V | 9368 Nicholson Way
Non-Use (Area) Variance (Tabled 5 - 0) |
| 2. PCD, Perimeter West, Subarea 1 – Memory Care Facility Use
17-104AA | 6700 Perimeter Drive
Administrative Appeal (Appeal Reversed 5 – 0) |

The Chair, Rion Myers, called the meeting to order at 6:28 p.m. Other Board members present were: Sarah Herbert, Martha Cooper, Satya Goyal, and Jamie Zitesman. City representatives were: Logan Stang, Claudia Husak, Thaddeus Boggs, Mike Kettler, and Flora Rogers.

Administrative Business

Motion and Vote

Mr. Zitesman moved, Mr. Goyal seconded, to accept the documents into the record. The vote was as follows: Ms. Herbert, yes; Ms. Cooper, yes; Mr. Myers, yes; Mr. Goyal, yes; and Mr. Zitesman, yes. (Approved 5 – 0)

Motion and Vote

Ms. Herbert moved, Mr. Goyal seconded, to approve the proposed 2018/2019 meeting dates. The vote was as follows: Mr. Zitesman, yes; Mr. Myers, yes; Ms. Cooper, yes; Mr. Goyal, yes; and Ms. Herbert, yes. (Approved 5 – 0)

Motion and Vote

Ms. Cooper moved, Mr. Goyal seconded, to approve the June 29, 2017, meeting minutes. The vote was as follows: Ms. Herbert, yes; Mr. Zitesman, yes; Mr. Myers, yes; Mr. Goyal, yes; and Ms. Cooper, yes. (Approved 5 – 0)

Motion and Vote

Ms. Cooper moved, Mr. Goyal seconded, to approve the July 27, 2017, meeting minutes. The vote was as follows: Mr. Myers, yes; Ms. Herbert, yes; Mr. Zitesman, abstain; Mr. Goyal, yes; and Ms. Cooper, yes. (Approved 4 – 0 – 1)

Communications

Logan Stang asked if everyone received their invitation to the One Drive folder. He said City Staff is in the process of switching between Drop Box and One Drive for meeting materials. He explained materials will be placed in both locations for the next couple of months and plan to use just One Drive next year.



The Chair swore in any witnesses planning to address the Board during this meeting.

**1. Metcalf Residence – Rear Yard Setback
17-095V**

**9368 Nicholson Way
Non-Use (Area) Variance**

The Chair, Rion Myers, said the following application is a request to permit the installation of a paver patio to encroach 10 feet into the required rear yard setback for an existing single-family residential lot located within the Tartan Ridge Subdivision. He said the site is zoned PUD, Planned Unit Development (Tartan Ridge PUD, Subarea C). He said the site is located on the east side of Nicholson Way, approximately 150 feet north of the intersection with Enfield Court. He said this is a request for a review and approval of a Non-Use (Area) Variance under the provisions of Code Section 153.231(H).

Logan Stang presented an aerial view of the site, and a close-up of the site showing the single-family home built to the outer extents of the site with a single-family residence adjacent on the north and south sides. He noted that to the rear of the home is an open space reserve that is owned by the City and maintained by the homeowners association that provides separation from the eastern residential properties.

Mr. Stang presented the proposed site plan and explained Tartan Ridge, Subarea C, requires a rear yard setback of 25 feet. He said the home was constructed at 26 feet, within the rear yard setback, which is a 15-foot, No-Build Zone that runs along the entire width of the property. He said the Zoning Code allows for an at-grade patio to encroach five feet into the rear yard setback that would allow the applicant to install a six-foot-deep patio from the edge of the house. He stated the applicant is requesting a variance to install an 11-foot-deep by 17-foot-wide patio up to the no-build zone, which requires a variance of ten feet into the 25-foot rear yard setback.

Mr. Stang restated the site is located adjacent to an open space reserve, which serves as a special condition for this property. He added the applicants are the original homeowners and were a part of the design process resulting in this condition being created by the design and construction of this home. Due to the separation of adjacent single-family lots on the opposite side of the open space reserve, he noted the requested setback would not impact surrounding development. Additionally, he said the conditions of the site are unique but the applicant has alternative methods that enables them to construct a patio space that would be 6 feet deep by however wide they choose. He said the Board would be granting the applicant a special privilege with the approval of this variance. The Variance itself is not recurrent in nature nor would it impact the delivery of governmental services, he said. Therefore, he concluded the applicant has a method available that would meet all of the Code provisions both in the Zoning Code and in the Development Text.

Jaimie Zitesman referred back to the overview of the entire area. He said he visited the development today, he saw another house being built. Mr. Stang said the aerials he provided are a little older. Mr. Zitesman said the area appeared even more closed in.

Sarah Herbert asked if the neighboring property owners built out to the extent this home is. Mr. Stang said he thought they were to the sides and the front but not quite built out to the rear but he would have to examine each and every lot. He noted that what is unique to Tartan Ridge is that front yard setback, which is a build to zone so there is a minimum and maximum that the house can be placed. He said depending on the design of the garage, the home itself, and where the footprint is placed defines how built out it is.

Mr. Zitesman found there were many different designs and ways of doing the garage that affected whether the house was oriented more to the front of the lot whereas this house is back a little further. He asked the age of the house. Mr. Stang answered the permits were approved in 2015 and was finished in 2016. Mr. Zitesman asked who the builder was. Mr. Stang answered P&D Builders.

Mr. Zitesman asked if there have been any other applications in the line for a similar situation. Mr. Stang reported Planning has not received any inquiries as of late but he knows some of the homes are in the middle of construction and ownership has not been transferred to the property owners yet. Mr. Zitesman said this does not appear to be a unique situation; a lot of the homes are built this way. Mr. Stang said within Tartan Ridge there are smaller lots that allow for larger-size homes creating a much more dense development than are found in other parts of the City.

Mr. Myers invited the homeowner or the public to comment.

Linda Metcalf, 9368 Nicholson Way, said she is one of the owners. She reported her and her husband started the design of their home with P&D Builders in April of 2015. She said they did not break ground until November 2015. She said there were issues between the HOA and the builder disagreeing.

Ms. Metcalf said they have lived in Muirfield for 33 years. When they retired in 2012, they moved to Tennessee for a brief time before moving back to Dublin to be close to family and friends. She said they spent one year looking for a ranch and something that would accommodate seniors. She said they put a deposit on one lot to find it was sold so they took the one next to it and that is when all the trouble started. She said three neighbors have also had numerous issues with this builder. She said they take care of the common areas with money out of their pocket because the builder and the HOA will not do anything. She said they built two homes in Muirfield and never had issues; this development had numerous issues but they could not get their deposit back. Due to a family crisis, they were not able to go over the plans from out of state and trusted the builder, which was a big mistake.

Ms. Metcalf said they are not requesting a wall, or an outdoor kitchen, they are simply asking for a patio. She said they have stacks of blueprints marked approved and revised without any signatures. She asked how the Board would not allow a patio for a \$500,000 plus home. She said engineers from the City have been called out to her property multiple times because of excess water from the lot next door. P&D said it would go away once they put sod down. She said three weeks ago they ended up having to put a drain in.

Thaddeus Boggs said he has been informed that staff has not received copies of the documents that the Board was just handed. He said he would object to consideration of the testimony to the extent that it does not address the Variance criteria as to the particular item requested.

Ms. Metcalf asked if the question is why they did not put their patio in earlier. She said with the water issues, they had to add a lot of mulch right up to their house so water would not come from the property into their house. She said they lived with that for eight months and then when the new neighbors moved in, they thought a drain would be put it but that owner wanted to wait. She indicated several neighbors are having problems with the site as the ground is caving in. She said because of the personal crisis they were going through, they did not read the fine print and they were not informed until later that they could not have a patio.

Mr. Boggs suggested to the Chair that no further testimony be admitted unless it is pertinent to the Variance criteria that is listed in the Code.

Mr. Zitesman indicated everyone on the Board appreciates what the applicant is going through but their requirement and their job here is to evaluate the cases on the standards and that is what they need to focus on. He added the Board is sympathetic to her situation.

Ross Metcalf, owner, said they have been married for 55 years. He said he has a stack of prints received through the building process where they had an 11 by 13 foot patio and they changed it to 11 by 15 foot patio and can demonstrate that. He indicated they even paid extra money to have the shape of the patio changed.

Mr. Myers stated the Board is not allowed to review documents that have not been presented to the City. He said the documents the applicant is trying to show the Board need to be submitted to the City.

Mr. Zitesman added the information that would be gleaned from the documents is not relevant. He reiterated that the Board needs to look at criteria and address that. He said the criteria the applicant needs to convince the Board is different is #2 in the sense that the applicant is the original owner, did the construction, were involved in the design. He explained that the Board is tasked with evaluating whether the evaluation by the City, that the Planning Division is consistent with the facts they hear and whether the Board is convinced to change a determination that the City has set forth. He said the problem is the applicant is the original owner, in control of the project from the beginning, and whether it was through the builder or whether the applicant knew what was going on or not, that is the issue we are dealing with and that is what the applicant has to overcome.

Martha Cooper said there is an option that if the applicant has additional information that was not previously presented to City Staff, the applicant could withdraw the application and resubmit it. Mr. Stang said the option for the applicant would be to table the application this evening and provide any additional details going forward to have the Board review this at a later date.

Mr. Boggs said the issue is the documentary evidence that was put forward tonight was not submitted to staff in a manner that it could be included as part of the record for purposes of tonight's Variance hearing. He said it is not incumbent upon staff to make an applicant's case for them as it is incumbent upon the applicant to make the case. He confirmed that the applicant is permitted to request this Variance application be tabled.

Mr. Metcalf said the point he was trying to make was that he has all these plans that show the patio was on the plans and that every time a change was made, it was noted on the plans; that is what they are trying to establish.

Mr. Stang said staff can speak to some of the revisions. He reported they reviewed the building permit that was provided and the initial submittal was made in late September 2015. He added the Review Services Team reviewed the proposal, provided a disapproval for that building permit in early October and on that they noted the patio that was shown was encroaching too far into that setback and would not meet Code so it had to be revised. He said the builder revised the patio to the six-foot depth and submitted that in late October, and that was the permit that was ultimately approved by the City of Dublin's Building Standards division. Mr. Stang said that as the Metcalfs' eluded to earlier, they began these designs in April but the City of Dublin did not get involved until mid to late September, when the building permit was actually filed.

Ms. Herbert said an 11-foot patio was seen on the plans by staff submitted by the builder, to which staff answered affirmatively. Mr. Stang confirmed that plan was rejected. She asked the applicant if he saw that disapproval and confirmed the applicant had no documentation from the builder that shows the disapproval and that the final plans included a six-foot patio.

Mr. Metcalf indicated he had a book that contains everything that was changed on the house.

Mr. Zitesman asked if the builder provided a copy of the approved plans from the City of Dublin to the applicant. Mr. Metcalf answered they were not dated or signed. Mr. Zitesman asked if the applicant received notification of the initial rejection of the initial plans as stated by Mr. Stang. Mr. Metcalf answered they did not. Mr. Zitesman said that is an issue between the applicant and the builder.

Ms. Herbert asked if the applicant has seen any approved anything that had a six-foot patio. Mr. Metcalf said he had a question on the last set of plans that a six-foot patio was on there. He confirmed he only received verbal communication as he was not in town.

Ms. Cooper inquired about the two new houses going into those two lots. She asked about the depth of the open space. Mr. Metcalf answered 50 feet in depth of the common ground.

Sridhar Kesani, 9360 Nicholson Way, said they started the building process and had constant issues with P&D Builders, sharing plans, and specifically communication just like the applicant. He said the neighbors are very nice and he has no issues with them.

Sai Morali, 6774 Enfield Court, said he also had minor issues with P&D Builders. He said he has no objection with what the applicant is requesting.

Ajay Vallakati, 6766 Enfield Court, reported he moved in the neighborhood, June of 2016, and the neighbors have been great. He indicated he did not think the applicant would be encroaching on the neighbor's property. He added they maintain the surrounding area very well. He said if the City is looking at how a Dublin resident should keep up their property and a lawn maintained, the Metcalf's are a prime example. He said he has no problem with the patio requested. He concluded the Metcalf's are great neighbors.

The Chair closed the public portion and opened the discussion up to the Board.

Ms. Herbert restated there are three mandatory criteria that must be met and the second one is where the hang up is with city staff and probably several members of this Board. She indicated there is a lot more information that needs to be submitted for consideration as to whether or not this was the fault of the applicant in terms of their action or inaction. She indicated that was the real issue for her. She concluded she would welcome more information that could illuminate this issue at a future meeting.

Mr. Zitesman said from his perspective, the applicants chose their builder, lot, community, and house. He indicated it is unfortunate if they did not do the appropriate diligence into the requirements of the restrictions. He said they had problems with their builder but that is not the Board's situation. He said he does not know how the City and specifically this Board, can be responsible for correcting them. He indicated there may be other avenues for the applicant to address with their builder. He said it sounds like the builder received the proper documentation from the City as to what was accepted and what was rejected. He said the Board does not have the plans nor should they and people are free to make their choices.

Ms. Herbert said the Board does not have the site plans – the record from the City.

Mr. Zitesman said he did not think the Board needs them as the issue here is what they have seen before and what they will see again, and the question is if the Board is going to be consistent, if this is something the City needs to change. If this is the Code, he said, and the Board is tasked with seeing if the Code should be enforced, whether there is a reason to vary from the Code. He emphasized that was the Board's only position here. To help the Board make that determination, he said, they review objective criteria. He said the applicant has a compelling story and it upsets him to hear what is going on with builders but the Board has heard this before. He said if the Board grants the variance and ignores the objective criteria in this case because of their story but it is not our business to be involved with the communication between the homeowner and the builder. He restated the City rejected the applicant's original plan. Now whether the builder told them it was rejected or not is an issue between the builder and the applicant. According to the testimony by Mr. Stang, he reported the City approved the plan that was in compliance and now the owners are saying that was approved, that is what they built, that is what they bought, but that is not what they want. He suggested that if the Board grants this Variance, there is going to be many more that come in with the same request by the looks of the community. He said if the general Code is changed for that PUD - that is a broader question. He restated, the Board is to determine tonight if the objective criteria has been met or not met.

Ms. Herbert said she understands that there is objective criteria and she is looking at the applicant's original plan, the distances associated with that home and the rear yard setback were well established on the approved site plan, therefore, the condition resulted from the applicant's own actions. She reiterated the Board does not have the site plan and they are talking about the applicant's actions versus the builder's actions.

Mr. Myers asked if the builder is an agent of the owner, an extension of the owner. Ms. Herbert said if the builder is being honest with the applicant or not, the Board was not provided with that information for the record.

Ms. Herbert said they have approved these patios on previous owners and that is pretty much all she has done since she has been on the Board. She said when someone buys a property and they are not the original owners, all of this information is submitted as part of the record and yet they have approved the applicant action/inaction on people that have in their closing documentation all of the same information. Therefore, she restated there is more information that could be submitted.

Mr. Myers asked if there has ever been a circumstance in a situation like this if the applicant had proof that they had no knowledge of final approved plans would that change the perspective on reviewing cases like this.

Mr. Stang said, to his knowledge, the City has not received a circumstance like that. He said the challenging part is the way the Code Section reads "it is the applicant's action or inaction" so the applicants who are filing it, if they were involved in some way, shape, or form, either through the builders or what have you, they are in some way responsible for the outcome that came to be and that is the issue. Although the builders did not provide them with all the information, the City cannot possibly enforce the communication between a builder and a property owner.

Mr. Zitesman said this case is distinguishable from the other cases where it has been approved because it was not an original owner of the property.

Ms. Herbert said we could say it is the applicant's inaction to read the closing documents. Mr. Zitesman said that has not been part of the arguments. Ms. Herbert said in her opinion that would be a comparable situation.

Sat Goyal suggested the applicant reconsider, collect the paper, and resubmit. He reported he has lived in this city the last 30 years and Dublin is positively for the people, from all different cultures, and are willing to help. He indicated that if the applicant resubmits, the City may reconsider their decision.

Ms. Cooper said she was in agreement, like she mentioned earlier, that the applicant request that this be tabled so additional information, including the historic plans, can be provided to the City.

The Chair said the applicant would need to come forward if they wish to table this. Mr. Boggs confirmed the applicant needs to state if they want this tabled or for the Board to vote this evening.

The applicant requested to table this for now and hopefully he can obtain the information both he and the Board need. The Chair said the applicant would need to provide some objective proof that all they received was an approval of the plans they wanted.

Motion and Vote

Ms. Cooper moved, Mr. Goyal seconded, to table this non-use (area) Variance at the request of the applicant. The vote was as follows: Mr. Myers, yes; Mr. Zitesman, yes; Ms. Herbert, yes; Mr. Goyal, yes; and Ms. Cooper, yes. (Tabled 5 – 0)

Under the advisement of the Assistant to the Law Director, The Chair stated the materials submitted to the Board have not been physically submitted to the City of Dublin and the information will be removed from and not included in the record of the minutes.

**2. PCD, Perimeter West, Subarea 1 – Memory Care Facility Use
17-104AA 6700 Perimeter Drive
Administrative Appeal**

The Chair, Rion Myers, said the following application is a request for an appeal of a determination made by the Division of Planning that a memory care facility is not permitted within Subarea 1 of the Perimeter West Planned Commerce District as hospital. He said the site is located north of the intersection of Perimeter Drive and Hospital Drive. He said this is a request for a review and approval of an Administrative Appeal under the provisions of Zoning Code Section 153.231(J).

Claudia Husak explained an Administrative Appeal is one of the processes within the purview of the Board of Zoning Appeals that allows an applicant to come before the Board to determine whether or not the Planning Department staff has made a decision in accordance with the Zoning Code. She clarified, the question is whether or not the Planning Staff has made the right decision that a memory care facility is not a permitted use in the definitions of a hospital, within the City's Zoning Code.

Ms. Husak presented an aerial view of the site in question that is currently vacant, located within the Perimeter West Planned Commerce District. She also pointed out the broader planned district that encompasses the area just mentioned. She explained that this planned district has a list of uses that are permitted within the district and one of the references within the development text that is unique to this particular area is that the uses within the Suburban Office District in Zoning Code is permitted within the district.

Ms. Husak reported that in 2016, there was an informal application that went forward to the Planning and Zoning Commission (PZC) for a facility seemingly similar to what is in question here this evening. At that time, she said, Planning made a determination that the definition of hospital would encompass an elderly care facility but there is not a definition of an elderly care facility in the Zoning Code and therefore, that specific use is not permitted in any of our standard districts outside of the Bridge Street District, which is something that was just added in 2014. Many, if not all, of the facilities within the City are institutional in nature or residential in nature for the elderly and are within planned districts that specifically state elderly care facilities, Alzheimer care facilities, memory care facilities, which are all a permitted use within the district. She gave an example of the facility across Post Road to the north that is within a district that was specifically created for those types of facilities as well as the most recent one that is on Emerald Parkway. Figuring out where these uses fit, she said, most of the time, there is a planned district available that has that use outlined. In this particular instance, she said, the City has looked again as the applicant came to the City with a development proposal for this site and with the understanding of what clientele the use is intended to serve. She reported staff again reviewed the definition of hospital, which she presented:

Hospital: "Any facility in which in-patients are provided diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care for a continuous period longer than 24 hours, or a medical facility operated by a health maintenance organization."

Ms. Husak said ultimately, staff decided that a memory care facility as a residential facility for the elderly is not, in effect, fitting within this definition. She reported staff informed the applicant and stated that while from a planning perspective, staff is not against the use on that site but the appropriate process would be a rezoning application to add the use to the district. With that information, she noted, the applicant has decided to come before this Board and requests that the Board reverses the decision that Planning has made. She noted that in the Planning Report, staff has provided their analysis and records as well as the memorandum sent to the applicants stating staff's decision. She said it is staff's