



DRAFT

MEETING MINUTES

Board of Zoning Appeals

Thursday, August 25, 2022

CALL TO ORDER

Mr. Deschler, Chair, called the August 25, 2022, meeting of the City of Dublin Board of Zoning Appeals (BZA) to order at 6:33 p.m.

OATH OF OFFICE

Council Member Alluto administered the Oath of Office to the newest member of the Board of Zoning Appeals (BZA), Dan Garvin.

ROLL CALL

Board Members present: Mr. Deschler, Mr. Nigh, Mr. Clower, Mr. Murphy, and Mr. Gavin
Staff present: Ms. Noble, Ms. Mullinax, and Mr. Hounshell

ACCEPTANCE OF DOCUMENTS/APPROVAL OF MINUTES

Mr. Clower moved, Mr. Murphy seconded, to accept the documents into the record and approve the meeting minutes from June 23, 2022.

Vote: Mr. Nigh, yes; Mr. Deschler, yes; Mr. Murphy, yes; Mr. Clower, yes; and Mr. Gavin, abstain.
[Motion carried 4-0 with one abstension]

CASE PROCEDURES

The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA) and swore in Staff and any members of the public who planned to address the Board during the meeting.

CASE

1. Koester Residence at 6226 Pirthshire Street, 22-087V, Non-Use (Area) Variance

The Chair - This is an application for a Variance to allow a paver patio and connected wood posts to encroach up to 15 feet into a rear yard setback. The 0.19-acre site is zoned Planned Low Density Residential District - Sandy Corners, and is located northeast of the intersection of Pirthshire Street with Sandy Rings Lane.

Ms. Mullinax – She presented an aerial view of the 0.19-acre site within the Sandy Corners subdivision. The lot is rectangular in shape and contains the single-family home with an attached patio directly to the north. A swing set, trampoline, tree stand, and an established maple tree are within the rear yard. The request is based on the existing paver patio, wood beam structure, and raised fire pit, which are located in the farthest northwestern corner of the site. The lot contains two easements: a 10-foot private utility easement along the rear property line and a 5-foot easement along the left property line that services a main sanitary sewer. No encroachments are permitted within the side yard easement. The existing conditions in the rear

yard [two photographs] included pavers that do not contain mortar so they could easily be moved, and the wood beams and raised fire pit are also not permanently installed. While these features are still constructed within these areas today, the applicant has worked with Planning to understand what the development standards are for Sandy Corners. With that, the applicant still wanted to pursue the Variance & modified their original Variance request on the site plan to only encroach into the rear yard setback and not the side.

The required rear yard setback is 25 feet as stated in the Development Text for the Sandy Corners Subdivision. The property owner constructed the paver patio and associated site features without a Certificate of Zoning Plan Approval permit (CZPA), and is requesting a Variance to permit a 15-foot encroachment into the rear yard setback and allow these features to remain in the existing location. The paver patio and associated features were constructed within the side yard setback and easement, and in the rear yard setback. The applicant intends to remove any encroachments into the side yard setback and easement, as encroachments into this easement are non-negotiable. Planning will ensure that the applicant will remove the encroachments into the side yard easement/setback.

In the first set of Non-Use Variance review criteria, all criteria are required to be met. Staff found that the applicant does not meet the three required criteria as follows:

1. There are no Special Conditions or practical difficulties that would prevent the applicant from meeting the required development standards as they apply to all properties within the Sandy Corners Subdivision.
2. The Variance request is necessitated by the Applicant's Action to install the patio features without required permits and in an improper location.
3. If the encroachment for the Variance is granted, it would Impair the Intent and Purpose of the Requirement as the location of the patio and associated features would impact adjacent neighboring properties. Encroachments into setbacks defeats the purpose of providing adequate separation between properties, green space, and areas that provide access to utilities/drainage.

In the second set of Non-Use Variance review criteria, at least two of the four following criteria are required to be met. Staff found that the applicant is only meeting one of the criteria as follows:

1. Approving the Variance would grant the applicant Special Privileges to allow the encroachment. Staff has found other locations on the property where this patio can be relocated and still meet all development standards.
2. The request is not Recurrent in Nature to warrant a Code update. Allowing encroachments into rear yard setbacks defeats the purpose of setbacks. The paver patio and associated features are not permanent and are easily movable, therefore there is no reason these features cannot be moved to another location.
3. Staff finds that criteria 3 is met, which indicates if the location of the patio would not adversely affect the Delivery of Government Services.
4. An Other Method is Available as the paver patio and associated features can be relocated elsewhere on the property.



This application was reviewed against the Non-Use Variance Review Criteria and disapproval is recommended for the Non-Use (AREA) Variance to Zoning Code §153.074(B)(6)(a) to allow a patio, wood beam structure, and a raised fire pit to encroach into the required rear yard setback.

Questions for Staff

Mr. Nigh - He asked if Staff had heard from the neighbors that this would impact them in a negative way.
Ms. Mullinax – Yes, she heard from one neighbor.

Mr. Deschler – He asked if a Waiver would need to be requested to allow this paver patio and associated features to be allowed in the rear easement.

Ms. Mullinax – The patio and associated features are only encroaching into the rear yard setback, not within the rear yard easement,.

Ms. Noble – Any encroachment requests into easements would require approval from engineering staff.
Ms. Mullinax reached out to engineering regarding the side yard easement to which engineering would not approve.

Mr. Deschler – He inquired about the Certificate of Zoning Plan Approval.

Ms. Mullinax – The applicant would be required to apply for a CZPA that is Planning’s version of a permit to have this be permitted, if the Variance is approved this evening.

Mr. Deschler – He confirmed applying for a CZPA should have been completed before this project was installed.

Mr. Deschler – He asked if there have been any prior cases similar to this that the Board should consider.

Ms. Mullinax – Her answer was no.

Applicant Presentation

Jeremy Koester, property owner, 6226 Pirthshire Street – He said if he had known that paperwork and approvals were required, he would not have started to install this project like he did. He admitted his ignorance was not an excuse and should not affect this Board’s decision. He apologized for working outside of the City’s process.

Mr. Koester - To address the first three conditions, which all would have to be met, he selected the location for this installation due to the Special Conditions concluding there was no other space to fit this in on the property with existing landscape, a swing set, and a deck on the back of the house. The Applicant Action/Inaction he agreed with Ms. Mullinax that he did not acquire proper approval, first. But if he had applied for a CZPA, he would have had the same reasoning for where he would like these features located on the property, which would have resulted in the same response from the City. The Impairment to adjacent neighbors he did not understand how that was true. During the construction process, some dirt spilled over into a neighbor’s yard that he was not pleased with but the applicant explained his intent was to fix that by leveling, grading, and planting grass to return it to its original state. He intends to move the structure six feet from the property line.

Questions for the Applicant

Mr. Nigh – He explained through examples a clearer meaning of each of the first three criteria and again asked the applicant to explain how the criteria may be applied to his property to be met.



Mr. Koester – If he moved the other elements in his yard to make room for this project, they would be rendered unusable.

Mr. Clower – The paver patio is not permanent. He asked if there was any consideration given to remove or relocate the trampoline or the swing set to which Mr. Koester said he had not.

Mr. Garvin – He asked if any other neighbors objected to this project, as is.

Mr. Koester - No other neighbors voiced any complaint. One of the photographs submitted to show the project included several other neighbors enjoying the space representing their support.

Mr. Garvin – These are current neighbors and that could change. If these features were moved to the very edge of where it is permitted, there would not be room for additional landscaping for screening to provide more privacy but that is not a requirement.

Mr. Deschler – He asked if the vertical poles were set permanently.

Mr. Koester – The posts are cemented in about 30 inches deep, which he installed himself.

Board Discussion

The Board explored several alternative areas for the paver patio and associated features to be relocated to in the rear yard.

The Chair – He indicated that even if the applicant were able to meet the criteria in the first section, the criteria in the second set would not be met.

Mr. Koester – He recognized the discussions regarding other considerations for placement.

Public Comment

There had been no public comment received.

Board Discussion continued.

Mr. Deschler – He asked Staff if an applicant has ever been asked to remove a structure, if the Board has disapproved the request for a Variance.

Ms. Noble – Yes, and even more permanent structures than this one that have been reviewed by this Board. This also happens when there is a compliance issue through Code Enforcement.

The consensus of the Board through final comments was that there was no avenue to grant the Variance, given the language of the Code and were supportive of Staff's recommendation for disapproval.

Mr. Nigh moved, Mr. Clower seconded, to **disapprove** the Non-Use (Area) Variance to allow a paver patio and connected wood posts to encroach up to 15 feet into a rear yard setback. Each member voted yes to disapprove. If the proper motion would have been made to **approve** the Variance, the vote would have resulted in a 0 – 5 decision to disapprove the application, as each member would have voted no.

[Motion was disapproved 0-5]

COMMUNICATIONS

Tammy Noble announced on Wednesday, August 31, City Council is hosting a Joint Session with the Planning and Zoning Commission, the Architectural Review Board, and the Board of Zoning Appeals, with dinner included at the start. The meeting will be held in the Council Chambers from 6 to 8 pm. This will be an opportunity for City Council to share their identified objectives and for the Boards and Commission to have



a dialogue with Council on any types of issues experienced that could include process, Code regulations, and the significant inquiries for sustainability practices that the Code does not yet address, etc. The approved agenda for the meeting was distributed at this meeting.

Nichole Martin may have only presented to this Board once but had been very active in the others. She has left the City for a position in the private sector. Planning has two open positions currently so new hires will be coming on board.

The City just published a Request for Proposal (RFP) on the website for a Community Plan update.

Mr. Deschler adjourned the meeting at 7:30 p.m.

Jason Deschler, Chair
Board of Zoning Appeals

Administrative Assistant II, Recorder

