



New Albany Board of Zoning Appeals Meeting Agenda
February 27, 2023 at 7:00pm

Members of the public must attend the meeting in-person to participate and provide comment at New Albany Village Hall at 99 West Main Street. The meeting will be streamed for viewing purposes only via the city's website at <https://newalbanyohio.org/answers/streaming-meetings/>

I. Call to order

II. Roll call

III. Action on minutes
October 24, 2022

IV. Additions or corrections to agenda
Administer oath to all witnesses/applicants/staff who plan to speak regarding an application on tonight's agenda. "Do you swear to tell the truth and nothing but the truth."

V. Hearing of visitors for items not on tonight's agenda

VI. Cases

VAR-14-2023 Variance

Variance to codified ordinance 1175.04 (b) to allow the height of a fence to be 84" (7 feet) where code allows a maximum of 72" (6 feet) at 5114 Harlem Road (PID: 222-000833).

Applicant: Cedar & Stone Ohio and Kelly & Ryan Yeoman

Motion of acceptance of staff reports and related documents into the record for - VAR-14-2023.

Motion of approval for application VAR-14-2023 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval.

VII. Other business

VIII. Poll members for comment

IX. Adjournment



New Albany Board of Zoning Appeals
October 24, 2022 DRAFT Minutes

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Mr. LaJeunesse, at 7:00 p.m.

Those answering roll call:

Mr. Shaun LaJeunesse	Present
Mr. Kirk Smith	Absent
Ms. Tiana Samuels	Present
Mr. Abe Jacob	Present
Mr. Hans Schell	Present
Ms. Andrea Wiltrout (Council Rep)	Present

Staff members present: Mr. Stephen Mayer, Development Services Manager; Chelsea Nichols, Planner; Josie Taylor, Clerk.

Moved by Mr. Jacob to approve the September 26, 2022 meeting minutes, seconded by Ms. Samuels. Upon roll call: Mr. Jacob, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. LaJeunesse, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Mr. LaJeunesse asked if there were any additions or corrections to the agenda.

Ms. Nichols said no.

Mr. LaJeunesse swore all who would be speaking before the Board of Zoning Appeals (hereafter, "BZA") to tell the truth and nothing but the truth.

VAR-96-2022 Variance

Variance to the pool setback requirements of Codified Ordinance section 1173.02(c) at 3707 Head of Pond Road (PID: 222-001574-00).

Applicant: Mark Roehrenbeck

Ms. Nichols presented the staff report.

Mr. LaJeunesse asked if the applicant wanted to provide any comments.

Mr. Mark Roehrenbeck, homeowner, thanked the BZA for their review. Mr. Roehrenbeck stated he had spoken with most neighbors and they were in favor of the pool. Mr. Roehrenbeck stated he could answer any questions.

Mrs. Alison Roehrenbeck, homeowner, stated their neighborhood was excited for this pool and, as there were many children there, safety was an issue for them and they wanted to keep the pool within sight of the house.

Mr. Schell asked if the neighbors who had been notified had provided any comments.

Ms. Nichols stated the most impacted neighbors had provided a letter of support and, although one called for more information, there were no other comments.

Mr. LaJeunesse asked if the fencing was to be further out or would it be more enclosed.

Mr. Roehrenbeck stated the fencing was now closer to the hedging to be sure it was out of the conservation area.

Mr. LaJeunesse asked if the fencing started at a location he showed on the presentation.

Mr. Roehrenbeck stated yes.

Mr. LaJeunesse asked what a space shown on the presentation was.

Mr. Roehrenbeck stated it was eleven (11) feet.

Mr. LaJeunesse asked why the applicants had not moved the pool three (3) feet, six (6) inches to the right to have a ten (10) foot setback.

Mr. Roehrenbeck asked three (3) feet from the house.

Mr. LaJeunesse stated they had eleven (11) feet of space between the pool and the house. Mr. LaJeunesse asked why they did not move the pool back three (3) feet, six (6) inches make the setback ten (10) feet.

Mr. Roehrenbeck stated that would then be about eight (8) feet from the house

Mr. LaJeunesse stated yes.

Mr. Roehrenbeck stated they considered it but it was a mix of functionality and safety and they wanted to have some seating there. Mr. Roehrenbeck indicated that eight (8) feet he believed would be the minimum for safety but then they would not have any functionality or room for chairs.

Mrs. Roehrenbeck stated it was a tight walkway and there would not be a lot of space for a walkway with kids coming and going.

Mr. Jacob stated that it did not appear that the pool patio would be within the ten (10) foot utility easement. Mr. Jacob stated that, however, it was not completely clear and staff had a condition that it be made clear. Mr. Jacob asked the applicants if they were okay with that conditions.

Mr. Roehrenbeck stated yes.

Mrs. Roehrenbeck stated there was a transformer in the middle of that and it would affect power to all of the street.

Mr. LaJeunesse asked if option 1 was really an option.

Mrs. Roehrenbeck stated not really.

Mr. Roehrenbeck stated they had tried that in an effort to avoid variances.

Mrs. Roehrenbeck stated they had tried, but also the slope of the land meant a retaining wall would be needed, they would have a very tight space, and the pool would be out of sight from the home.

Mr. LaJeunesse asked if this was a cost factor but could be done.

Mr. Roehrenbeck stated he did not believe it was just cost, AEP had said it would not be good for the neighbors.

Ms. Samuels stated they would be 6.6 feet from the neighbors' property line and then there would be greenery. Ms. Samuels asked how thick the hedge or greenery would be.

Mr. Roehrenbeck stated they were getting hedges about six (6) feet tall and they could control how wide they would be, but they intend for three (3) to 3.5 feet.

Ms. Samuels stated okay. Ms. Samuels noted the gate would be beyond that.

Mrs. Roehrenbeck stated yes.

Ms. Samuels asked if they were then thinking it would be about four (4) feet from the neighbors' property line, including the hedges.

Mr. Roehrenbeck stated yes.

Ms. Samuels stated she was trying to understand how far the movement on the applicants' property would be from the neighbors' property line.

Mr. Roehrenbeck stated they believed they would need to set the fence three (3) feet from the property line.

Ms. Samuels asked if people would then be walking six (6) feet from the neighbors' property line.

Mr. Roehrenbeck asked if Ms. Samuels could show that on the presentation screen for him.

Mr. LaJeunesse asked if Ms. Samuels was asking about the side he pointed to on the presentation screen.

Ms. Samuels stated yes and noted that in that space the movement on the applicants' property would be six (6) feet from the neighbor's property line.

Mr. Roehrenbeck stated it would be about 6.5 feet.

Mr. LaJeunesse asked 6.5 feet to what, to the fence or to the end of the patio.

Mr. Roehrenbeck stated 6.5 feet to the pool.

Mr. LaJeunesse asked if Code permitted planting on the property line.

Ms. Nichols stated yes and said that, unless the home owners association (hereafter, "HOA") had one, there was no setback for fences either. Ms. Nichols stated she believed the applicant planned to have the pool and patio 6.6 feet from the property line. Ms. Nichols stated the fence was three (3) feet from the property line, and then arbor vitae would be on the outside of the fence.

Mr. LaJeunesse asked if that would be on the property line.

Ms. Nichols stated yes, in the 3.6 feet that would be left over from the fence to the property line.

Ms. Samuels stated okay, thank you.

Mr. Roehrenbeck stated they would be happy to work with their neighbors on that.

Mr. LaJeunesse stated they were within Code, so that did not matter. Mr. LaJeunesse stated there was precedent for a ten (10) foot property line divergence. Mr. LaJeunesse asked if the applicant was willing to move the pool over to shrink the space and have that be ten (10) feet.

Mr. Roehrenbeck asked what the process would be.

Ms. Wiltrout stated the BZA could table this and Mr. and Mrs. Roehrenbeck could then return to obtain a vote when they were ready.

Mr. LaJeunesse asked what their time frame was.

Mrs. Roehrenbeck stated it was winter now. Mr. Roehrenbeck stated there would still be walking space, but it was not their ideal.

Mr. Schell noted that the BZA needed to be cautious in setting precedents when variances were reviewed.

Ms. Wiltrout stated that prior requests had been for five (5) feet or even two (2) feet and had been voted down.

Mrs. Roehrenbeck asked for a moment for she and Mr. Roehrenbeck to confer.

Mr. and Mrs. Roehrenbeck stated okay.

Mr. LaJeunesse asked if it was okay to vote or to table.

Ms. Wiltrout asked if the applicant would move the pool so that it was ten (10) feet from the property line.

Mr. Roehrenbeck stated they would move the pool so it would be ten (10) feet from the property line

Ms. Nichols stated the BZA could add a condition for the pool to be no closer than ten (10) feet from the property line.

Ms. Wiltrout stated no less than ten (10) feet.

Moved by Ms. Samuels to accept the staff report for VAR-96-2022 into the record, seconded by Mr. Jacob. Upon roll call vote: Ms. Samuels, yea; Mr. Jacob, yea; Mr. Schell, yea; Mr. LaJeunesse, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Ms. Samuels to approve variance VAR-96-2022, with the conditions listed in the staff report and the following additional condition:

Pool to be no more than ten (10) feet from the property line;

seconded by Mr. LaJeunesse. Upon roll call vote: Ms. Samuels, yea; Mr. LaJeunesse, yea; Mr. Schell, yea; Mr. Jacob, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Other Business

Mr. LaJeunesse asked if there was any Other Business. (No response.)

Poll Members for Comment:

None.

Moved by Mr. Jacob to adjourn the meeting, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Jacob, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Meeting adjourned at 7:25 p.m.

Submitted by Josie Taylor.



Board of Zoning Appeals Staff Report
October 24, 2022 Meeting

3707 HEAD OF POND DRIVE
SWIMMING POOL SETBACK VARIANCE

LOCATION: 3707 Head of Pond Drive (PID: 222-001574-00)
APPLICANT: Mark Roehrenbeck
REQUEST: Variance to the pool setback requirements of Codified Ordinance section 1173.02(c)
STRATEGIC PLAN: Neighborhood Residential
ZONING: R-3, Medium-Density Single-Family Residential District
APPLICATION: VAR-96-2022

Review based on: Application materials received on October 7 and 12, 2022.

Staff report prepared by Chelsea Nichols, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance from Codified Ordinance section 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the northeastern side yard property line where city code requires a 15-foot setback to any property line.

The applicant proposes to remove the existing patio and replace it with the new swimming pool and associated pool patio. The applicant’s narrative states that the majority of their backyard is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, and any of the pool’s associated items such as a required fence, are not be permitted to be located within this area. There is also a 10-foot wide utility easement that runs diagonally through the middle of the backyard. Both of these lot conditions have resulted in the proposed location of the new swimming pool and pool patio.

II. SITE DESCRIPTION & USE

The parcel is located in section 11 of the New Albany country club and is surrounded by other residential uses. On either side of the lot are single-family homes; both along Head of Pond Drive. To the rear of the lot is a parcel also zoned residential, along Jason Court.

The home is located on a 0.71-acre lot and was built in 1997. The home has a 3,052 square foot building footprint, according to the Franklin County auditor website.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *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.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

III. EVALUATION

Variance to C.O. 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the side yard property line where city code requires a 15-foot setback to any property line.

The following should be considered in the Board’s decision:

1. The city Codified Ordinance section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line. Based on the proposed location of the swimming pool and pool patio, they would both be as close as 6.6 feet from the side yard property line, which does not meet code requirements, therefore the applicant is requesting a variance.
2. The required minimum building and pavement side yard setback for the existing house and the existing patio is 10 feet. The existing house and the existing patio are both 11.5 feet away from the side yard property line. The section of the zoning code regarding swimming pools requires a greater setback of 15’ as pools are seen as a more intensive use.
3. The majority of the rear yard is designated as a conservation area. The application includes two options for where the pool could be located on the property outside of the conservation area. The applicant is proposing option two as their preferred option.
4. The applicant provided a written statement from AEP, stating that option one shown in the application materials would be in the direct path of the pad mount transformer, primary wire,

secondary connections, and the homeowner's own service to their house. The letter goes on to state that the amount of time and effort to install a pool in this location would be very extensive and time consuming. Multiple homes would be without power for a length of time and would all have to be scheduled at the same time. There would also be expensive open trenching, conduit, and service cable installation. In addition, there would need to be a new easement, including the removal and installation of the pad mount transformer. The AEP letter believes option two shown in the application is easier to complete as the construction would be outside of the easement area and no work would be required by AEP. Due to this information, and given the proximity of the 10' utility easement from the rear of the existing home/attached garage, the applicant is locating the pool beside the garage as opposed to behind the garage as a result of these special conditions and circumstances which are peculiar to this lot.

5. As proposed, it does not appear as though the pool patio would be within the 10' utility easement as shown on the survey, however, it is not completely clear. The patio for the pool is not permitted within the 10' easement. Should the Board approve this application, staff recommends a condition of approval be that the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it is not located within the easement.
6. In option two of the application materials, which is the preferred option by the homeowner and proposed for this variance request; the pool is 11' away from the primary structure/the attached garage, resulting in it being as close as 6.6' from the side yard property line. One alternative option would be to shrink the patio between the garage and the pool so that the pool could be in-line with the corner of the house. This would still put the pool and the patio within the side yard setback, but it would be a smaller encroachment of 3.5 feet (as opposed to 8.4 feet) and would be the same setback as the existing patio. Staff discussed this option with the applicant and the homeowner did explore this alternative. However, the applicant has determined a retaining wall would be required, due to the grade and slope from the rear of the home, not leaving space for a walking path around that side of the pool.
7. The applicant is proposing a 54" black aluminum fence that will completely surround the pool area on all sides. The fence will be set 3 feet off the property line along the side yard. The pool fence will also include the installation of 6' tall hedge plantings that will enclose the fence. These hedged plantings are depicted in the renderings supplied by the applicant in the Board's packet.
8. Along the outside of the fence and 6' tall hedge plants, between the fence and the side yard property line, the applicant proposes to install twenty-one 10-foot-tall emerald arborvitae with the intent of completely visually screening the pool.
9. This variance does not appear to be substantial. The "spirit and intent" of the zoning requirement is preserved as it is to ensure appropriate separation of uses. The proposed fence and landscaping will provide adequate screening and separation.
10. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping and the proposed fence is taller than what code requires (54" vs 48").
11. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
12. Granting the variance would not adversely affect the delivery of government services.

IV. HISTORY

There have been similar applications heard by either the Board of Zoning Appeals (BZA) or the Planning Commission since 2015.

- In 2015, an application for 7825 Ackerly Loop had been withdrawn by the applicant after two hearings by the Planning Commission for a pool to be located 9 feet from the side lot line and 13.5 feet from the rear lot line where code requires 15 feet.
- In 2016, an application for 7705 Ogden Woods Blvd was withdrawn after one hearing by BZA. The request was to allow a pool patio to be located as close as 5 feet from the

side yard lot line and as close was 5' 8" from the rear lot line when the code requires 15 feet.

- In 2019, an application for 4661 Goodheart Court was approved by BZA to allow a pool patio to be located 10 feet from the southern property line where the requirement is 15 feet. One condition of approval was issued stating that emerald arborvitae or green giants must be planted along the southern property line. The board noted for the record that the BZA reviewed the Duncan factors and they did not see this as a significant request, the variance did not adversely impact the value of the neighborhood overall, it is an improvement with the additional trees, and the variance does preserve the spirit and intent of the zoning requirements.
- In 2020, the Planning Commission denied the request for 4540 Ackerly Farm Road to allow a swimming pool patio to be located 13.5 feet from the southern property line where city code requires a minimum of 15-foot setback. The commission believed the application did not meet the Duncan factors, they believed there was still beneficial use to the property without the variance, they noted many other lots also have curving lot lines, and that the design could be revised to remain in compliance with the character of the area and zoning code.
- In January of this year (2022), a variance application for 7150 Longfield Court was requested to allow a swimming pool to be located closer than 15 feet from the property line. However, it was withdrawn before it was heard by either the Planning Commission or Board of Zoning Appeals.

V. SUMMARY

The majority of the backyard of this lot is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, or any of the pool's associated items such as a required fence, is not permitted within this area. This coupled with the information provided by AEP, and given the proximity of the 10' utility easement from the rear of the existing home/garage, locating the pool beside the garage, as opposed to behind the garage in the rear yard, is the result of special conditions and circumstances which are peculiar to this lot. While there appears to be an alternate location for the pool by shrinking the patio area between the garage and the pool, it would require reducing the patio and moving the pool further to the west, closer to the primary structure which would result in eliminating enough room for a walkway.

The spirit and intent of the code requirement is to maintain separation between uses. While the swimming pool and associated pool patio are proposed to be located 6.6 feet away from the property line, encroaching 8.5 feet into the required setback, the pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping. In addition, the proposed fence is taller than what code requires (54" vs 48"). Therefore, the separation appears to meet the intent of the code requirement and is a unique feature of this request as it appears to go above what is required in city code.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

Move to approve application VAR-96-2022 with the following condition:

1. That the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it will not be located within the 10' utility easement.

Approximate Site Location:



Source: nearmap



**Board of Zoning Appeals Staff Report
February 27, 2023 Meeting**

**5114 HARLEM ROAD
FENCE HEIGHT VARIANCE**

LOCATION: 5114 Harlem Road (PID: 222-000833-00)
APPLICANT: Ryan & Kelly Yeoman
REQUEST: Variance to the residential fence height requirement
ZONING: R-2 (Single Family Residential District)
STRATEGIC PLAN: Residential
APPLICATION: VAR-14-2023

Review based on: Application materials received on January 27, 2023.

Staff report prepared by Sierra Cratic-Smith, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow the height of a fence to be 84” (7 feet) where code allows a maximum of 72” (6 feet) at 5114 Harlem Road. Codified ordinance 1175.04 (b) requires “a fence or wall not exceeding seventy-two (72) inches in height may be erected in any area of the lot behind the building setback line.”

The fence was initially constructed without a permit. In response to a code complaint, the city staff coordinated with the contractor to ensure an application was submitted. The fence and an associated pergola were reviewed and permitted for construction by city staff. However, upon inspection of the built environment and plans, it was revealed that the fence did not meet code requirements.

II. SITE DESCRIPTION & USE

The property measures at one acre in size and contains a single-family home. The lot is located outside the New Albany Country Club and zoned under the R-2 district. The surrounding properties are on all sides are residentially zoned and used. The home has several amenities on the lot such as a black, metal fence, pool, pergola and patio.

III. ASSESMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. In accordance with C.O. 1113.05(b), all property owners within 200 feet of the subject property in question have been notified of the request via mail.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is

whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *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.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

IV. EVALUATION

A variance to codified ordinance section 1175.04(b) to allow a fence to allow the height of a fence to be 84” (7 feet) where code allows a maximum of 72” (6 feet) at 5114 Harlem Road.

The following should be considered in the board’s decision:

1. The applicant proposes to allow a fence to remain at the height of 7 feet (84 inches) where code allows a maximum of 6 feet (72 inches). City codified ordinance 1175.04 (b), “a fence or wall not exceeding seventy-two inches in height may be erected in any area of the lot behind the building setback line.”
2. The fence is designed to function as a privacy wall that appears as a continuous extension of the pergola. The privacy wall is the same length as an existing, open-sided patio in the rear of the property.
3. This variance request does not appear to be substantial since the fence does not surround the entire backyard. The distance of the fence is very short in length as compared to the entire backyard area. For context, the fence is about 20 +/- feet in length. Whereas the side yard that is about 152 +/- feet on the southern property line, 108 +/- feet on the east (rear) property line, and 132 +/- feet on the north (side) property line.
4. It appears there are special conditions that exist which are peculiar to the land and structure involved considering the change in topography. The rear yard lowers in grade at almost three feet as seen in the elevations submitted. Therefore, the pool and patio are tiered in design to correlate with the sloped topography. This can be seen as there is a bi-level patio

- in the rear parallel to the pool. The pergola and fence are designed to extend along the different tiered pool and patio elevations to keep consistency in height.
5. It does not appear the essential character of the neighborhood would be substantially altered with this additional fence height since it is consistent with the wall height of the pergola. The top of fence is designed to continuously extend alongside the pergola wall height, even though the rear of the yard slopes down as it extends out from the house. Although this project is a wall as defined by city code, it is designed to be an extension of an open-sided structure both in both height and material.
 6. The variance will not adversely affect the delivery of government services, the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

IV. SUMMARY

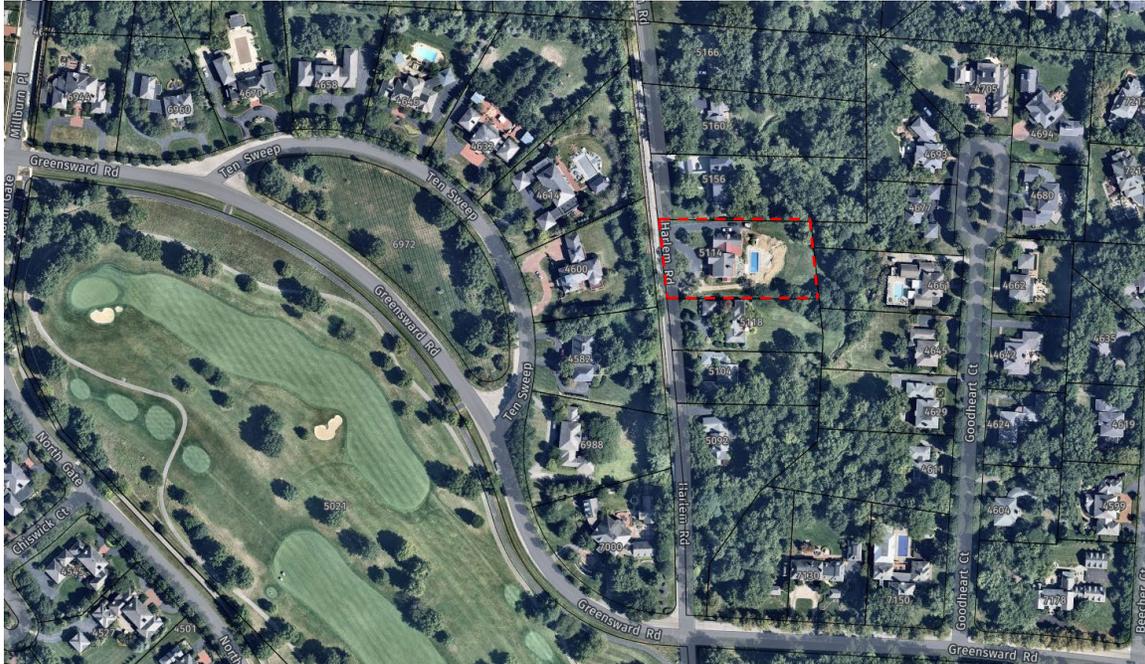
This variance is to allow the height of the fence at 7 feet (84 inches) tall in accordance to code which requires a maximum height of 6 feet (72 inches). Although the height of the fence is taller than what it permitted, this allows the fence to accomplish its design goal of appearing as one continuous wall and an extension of the pergola. The variance does not appear substantial given the short length of fencing and since it is only utilized between the house and pergola the fence does not appear out of proportion to those structures.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for disapproval, finding the following motion is appropriate.

Move to approve application VAR-14-2023 based on the findings in the staff report (conditions of approval may be added)

Approximate Site Location:



Source: NearMap



Community Development Planning Application

Site Address 5114 Harlem Rd
 Parcel Numbers 222-000833
 Acres 1.01 # of lots created 1

Project Information

Choose Application Type	Circle all Details that Apply			
<input type="checkbox"/> Appeal				
<input type="checkbox"/> Certificate of Appropriateness				
<input type="checkbox"/> Conditional Use				
<input type="checkbox"/> Development Plan	Preliminary	Final	Comprehensive	Amendment
<input type="checkbox"/> Plat	Preliminary	Final		
<input type="checkbox"/> Lot Changes	Combination	Split	Adjustment	
<input type="checkbox"/> Minor Commercial Subdivision				
<input type="checkbox"/> Vacation	Easement		Street	
<input checked="" type="checkbox"/> Variance				
<input type="checkbox"/> Extension Request				
<input type="checkbox"/> Zoning	Amendment (rezoning)		Text Modification	

Description of Request: Allow the fence/privacy wall to exceed the maximum height of 72"

Contacts

Property Owner's Name: Ryan & Kelly Yeoman
 Address: 5114 Harlem Rd. New Albany, OH 43054
 City, State, Zip: New Albany, OH 43054
 Phone number: 614-306-2902 Fax: n/a
 Email: ryanyeoman@gmail.com

Applicant's Name: Corey Schou / Cedar & Stone
 Address: 4174 Anson Dr.
 City, State, Zip: Hilliard, OH 43026
 Phone number: 614-264-5654 Fax: n/a
 Email: cschou@cedarandstone.com

Signature

Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.

Signature of Owner: Ryan Yeoman Date: 1/25/23
 Signature of Applicant: [Signature] Date: 1/26/23

- a) Ryan & Kelly Yeoman. 5114 Harlem Road, New Albany, Ohio 43054
- b) HARLEM RD. 1. ACRE. R16 T2 1/4T3
- c) n/a
- d) n/a
- e) Narrative Statement
 - 1) Variance is sought to provide privacy to the existing back patio and pool area. The open sided structure "pergola" and screen panels, continue 23.25 LF beyond the pergola roof footprint. The screen panels beyond the roof footprint were approved in the permit application and at the final inspection. The approval of screen panels was since revoked and classified as a "fence or wall".
 - 2) Chapter 1175 – Fences and Hedges
 - 1175.04 – Height and Location - (b) A fence or wall not exceeding seventy-two (72) inches in height may be erected in any area of the lot behind the building setback line.
 - The continued pergola screen panels match the pergola screen panels in dimension, species, finish, architecture, and elevation. The section under question is currently eighty-four (84) inches, or seven (7) feet tall. The additional height in this area is required to maintain privacy to the upper patio area. The property to the south has screened in porch with a higher viewpoint of the patio and pool area. As the screen panels are constructed, if persons are standing, line of site from upper patio to the neighbor's viewpoint is 58' from the screen panels, which covers 100% of the 695 SF of usable patio space. If the panels had to be lowered to the 72" height restriction the line of site from the upper patio area to the neighbor's viewpoint would be 16.5', which only covers 39% of the patios useable space.
 - 3) Maintaining the current height of the screen panels will meet the definition 1175.01 DEFINITION. "Fence" or "Wall" ... for the purpose of confinement, screening, partitioning, or decoration. If the screen panels must be lowered to the 72" height restriction, they would not line up with the pergola screen panels. It would have to be lowered below 72" to line up to the pergola screen panels and would provide less privacy, which would defeat the sole purpose of screening.
 - 4) There is a sliding door to enclose the gap in the screen panels. This door was engineered to suspend from its supports (sliding barn door hardware). It is too heavy to hang from hinges, nor is it designed to do so. This door requires a significant header above the opening (2"x8" Oak) for the rails to attach to. If the panels were to be lowered, this door and its hardware are unsuitable for the application.
- f) Plot plan
 - 1) See Plot
 - 2) Southern neighbor has a higher viewpoint to the area in which we need privacy.
 - 3) See Permit.
 - 4) Privacy and shade
 - 5) n/a
 - 6) R2

Submitted by: Corey Schoo, Owner of Cedar & Stone, LLC. 614-264-5654.
cschoo@cedarandstoneohio.com.

Variance Application

Supplemental Narrative Statement

Address: 5114 Harlem Road
Owner / Applicant: Ryan and Kelly Yeoman
Counsel for Applicant: Jill S. Tangeman, Esq.
Vorys, Sater, Seymour and Pease

The Applicant hereby submits the following supplemental narrative statement in support of its request for a variance to install a portion of an Open Sided Structure that exceeds seventy-two inches in height.

By way of background, the Applicant submitted an application for a construction permit to install an “Open Sided Structure” as defined in Section 1165.01(i) of the New Albany Codified Ordinances (the “Zoning Code”). The Open Sided Structure (the “OSS”) consists of a pergola and slatted screen panels on the south and north sides of the structure. The OSS has been designed to provide privacy to the Applicant’s patio and pool. The construction permit was issued and installation of the OSS continued.

After construction was almost complete, the Applicant received notice that the permit was issued in error because the inspector that issued the permit misinterpreted the Zoning Code. Specifically, the Applicant was told that part of the OSS should have been deemed a “wall” as defined in the Section 1175.01 of the Zoning Code which cannot exceed 72 inches in height. The part of the OSS at issue is 84 inches in height. Upon receiving notice from New Albany, the Applicant filed the variance application now before the Board of Zoning Appeals.

The Applicant asserts first that the part of the Open Sided Structure at issue is not a “wall” as defined in Section 1175.01. The part of the OSS at issue is part of and attached to the pergola that has been constructed and serves as a single screen panel to enclose the Applicant’s patio and pool. Per the definition of “Open Sided Structure” set forth in Section 1165.01(i) of the Zoning Code, an OSS may include “*screen panels which may be used to enclose the open spaces*”. Because the part of the OSS at issue is attached to the pergola and is being used to enclose open spaces, it should not be deemed a “wall” but instead should be considered part of the OSS and should not be subject to the 72-inch height limitation.

To the extent, however, that the portion of the OSS at issue is deemed a “wall”, the Applicant submits that a variance to allow this portion of the OSS to exceed the 72-inch height limitation is warranted and that the Board of Zoning Appeals should grant the requested variance in accordance with the factors for approval set forth in Section 1113.06 of the Zoning Code as follows:

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.

The subject property is part of a residential subdivision. The subdivision lot to the south of the subject property has a sloped backyard with a screened in porch that sits several feet above the Applicant's ground-level pool and patio. As a result of this difference in elevation between the two properties, a 72-inch wall does not provide meaningful privacy. The Zoning Code allows residential property owners the right to install privacy walls and, if there was no significant grade change between the properties, a 72-inch wall would likely provide the desired screening. However, because of the difference in elevation between the two properties, there are special conditions on the Applicant's lot that are not applicable to lots in other residential subdivisions that warrant the granting of the variance.

2. That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.

As mentioned above, the Zoning Code grants the owners of single-family homes the right to install fences or walls for privacy. However, in this case, a 72-inch wall does not actually provide the Applicant with privacy. If the Applicant is limited to installing a 72-inch wall, the Applicant is deprived of the rights other single-family homeowners are granted under the Zoning Code.

3. That the special conditions and circumstances do not result from the action of the applicant.

The Applicant was not responsible for the grading on its lot or on the neighboring lot, nor was it responsible for the construction of the neighbor's screened in porch that sits several feet above the Applicant's ground-level pool and patio. The Applicant's patio was constructed at the existing grade of Applicant's lot. To that end, the Applicant did not cause the special conditions that warrant allowing construction of a privacy wall higher than 72 inches.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.

Because of the difference in elevation between the Applicant's property and the property to the south, the granting of the variance only gives the Applicant the ability to construct a wall that actually provides privacy, which is a right granted to all single-family homeowners. The Applicant will not be receiving any special privilege that is not otherwise afforded to owners of subdivision lots.

5. That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

As previously mentioned, construction on the OSS was almost complete by the time the Applicant received notice that the permit was revoked. Given that the structure was almost complete and has now been in place for almost two months without issue, the OSS as it exists does not adversely affect the health and safety of persons residing in the area. The OSS has been constructed with quality materials and has been designed to blend with the architecture of Applicant's home and the surrounding neighborhood. Its purpose is to provide privacy to Applicant's patio and pool, thereby ensuring that neighboring properties are not negatively impacted by Applicant's outdoor activities. To that end, the OSS as constructed is certainly not detrimental to the public welfare or injurious to private property. Instead, the OSS is beneficial to the welfare of Applicant and neighboring residents.

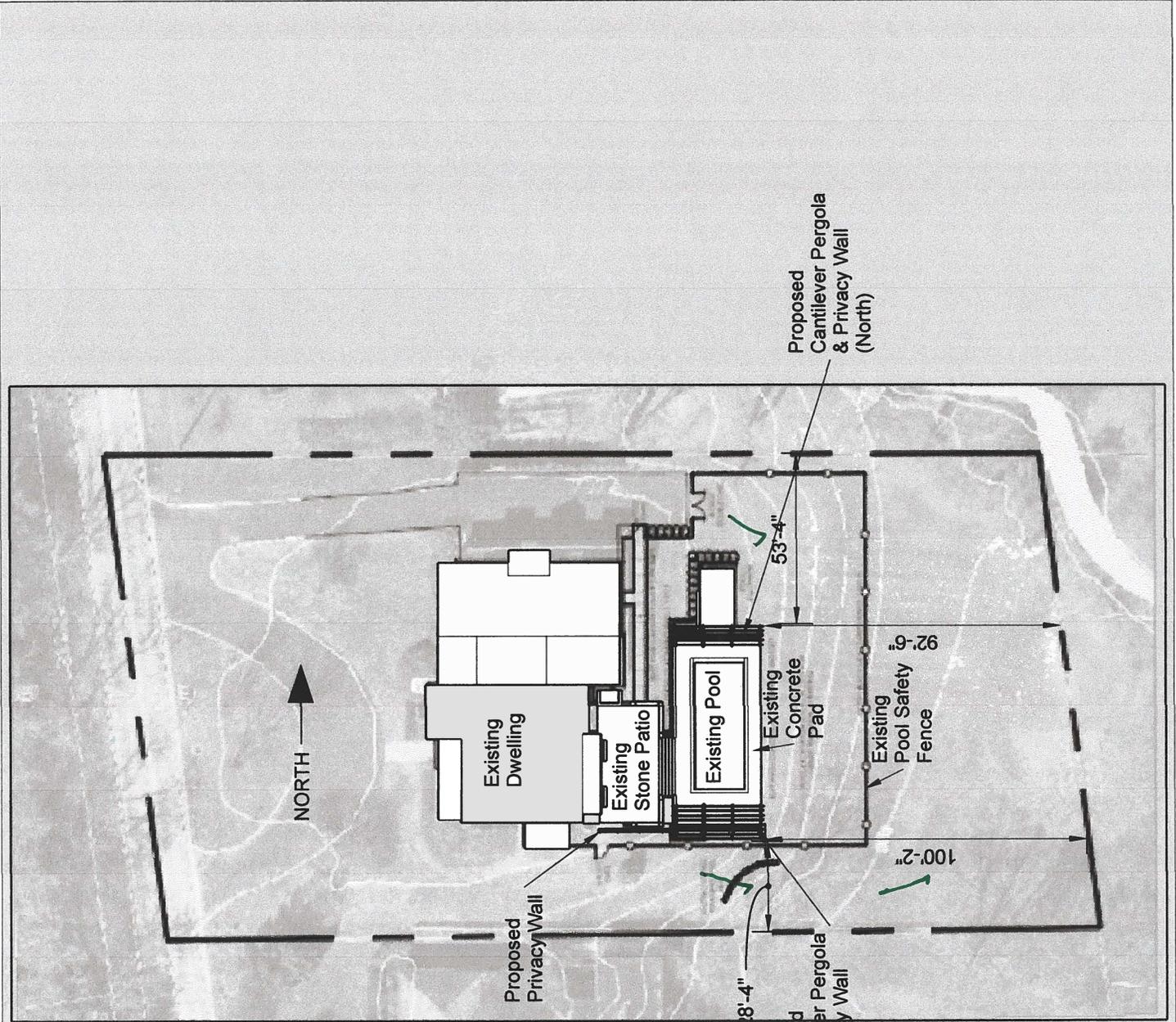


CLIENT
 Ryan Yeoman
 5114 Harlem Road
 New Albany, OH 43054
CEGAR & STONE, LLC
 4174 Anson Drive
 Hilliard, Ohio 43026
 614-264-5654

PROJECT
 Yeoman
 Cantilever
 Pergola
 & Wall
ISSUE
 12/19/22
DRAWN BY
 Corey Schoo

Plot

A-05



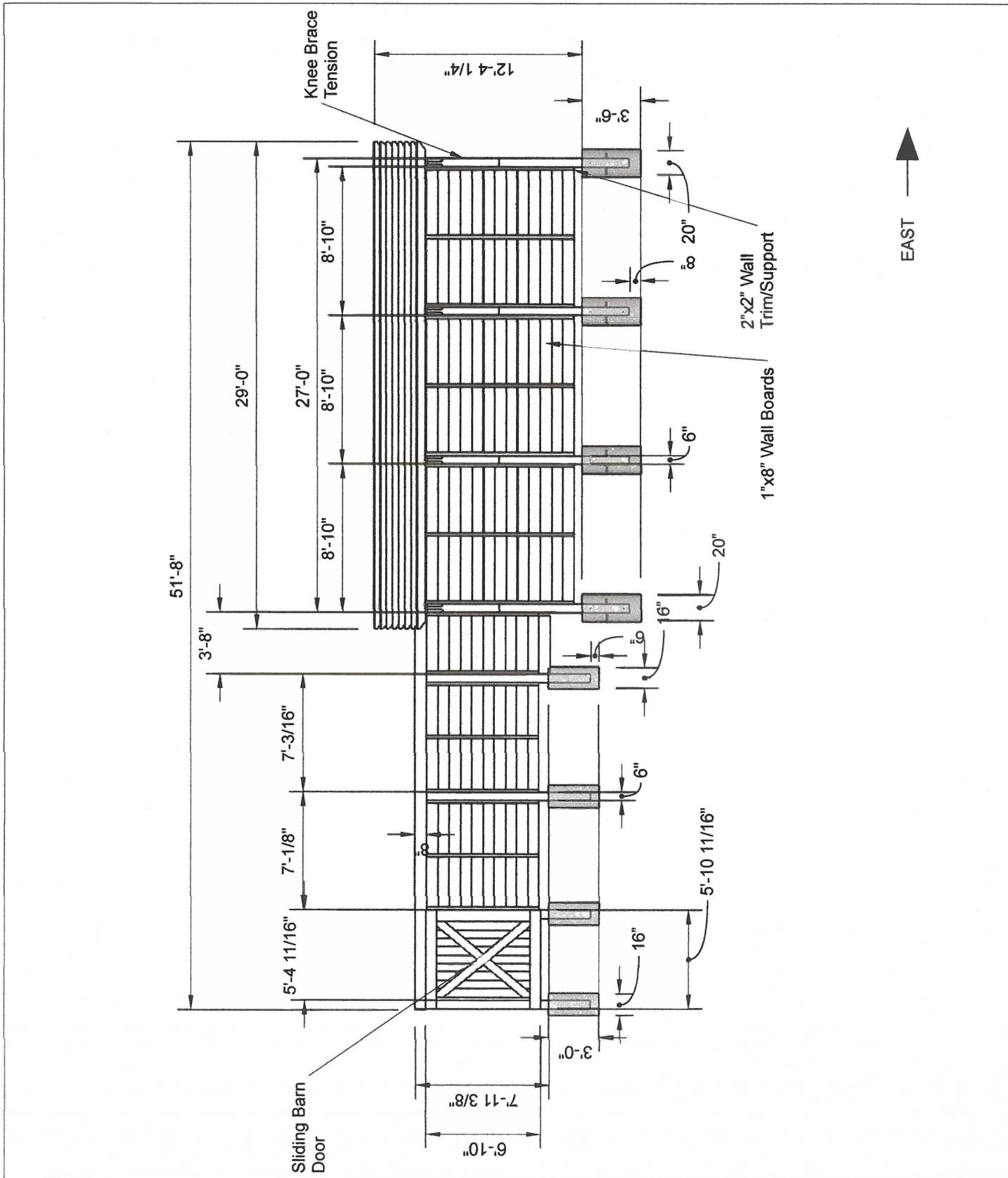
[Signature]
ZONING APPROVED
 12-20-22

Elevation
Side View

ISSUE
12/19/22
DRAWN BY
Corey Schou

PROJECT
Yeoman
Cantilever
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Pergola

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RYAN YEOMAN
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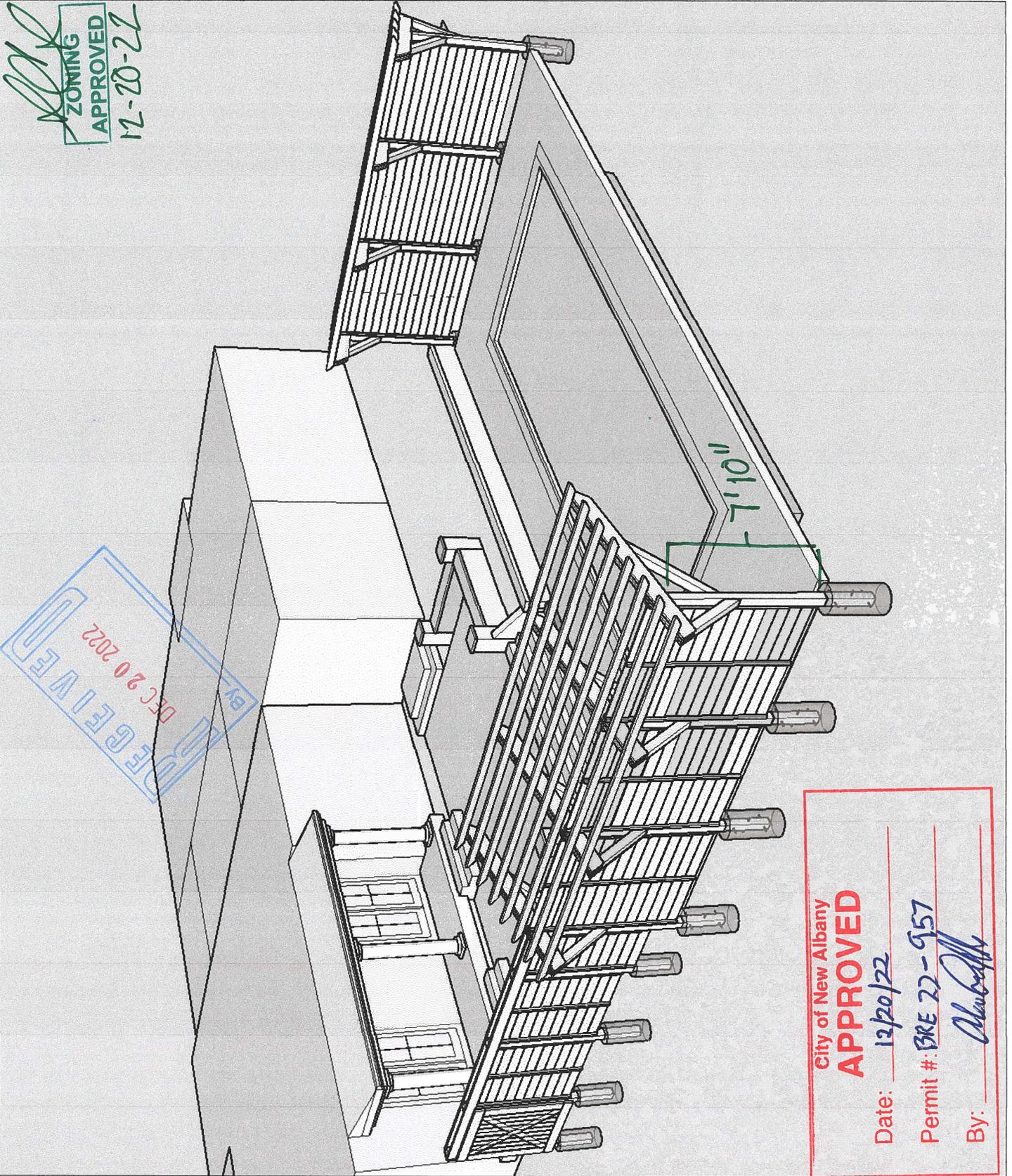
PROJECT
 Yeoman
 Cantilever
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 & Wall

ISSUE
 12/19/22

DRAWN BY
 Corey Schoo

Cover Page

A-01



[Signature]
 ZONING
 APPROVED
 12-20-22

APPROVED
 DEC 20 2022
 BY: _____

City of New Albany
APPROVED
 Date: 12/20/22
 Permit #: BRE 22-957
 By: *[Signature]*

NEED TO VERIFY Footing size + depth, already poured.

