The Westerville Board of Zoning Appeals met on Thursday, May 11, 2017 at 6:30 p.m. in City Council Chambers at 21 S. State Street. Members present were Aaron Glasgow, Steve Munger, Kelly Lockwood, Carol Mahaffey, Michael Mayhugh, Jordan Williams, and Matt Koppitch. Jeff Buehler and Jayme Maxwell represented Staff.

Chairman Koppitch opened the meeting.

CITY COUNCIL PRESENTATION – JOHN BOKROS

Vice Mayor John Bokros presented certificates of appreciation to Board members on behalf of City Council and the residents of the City of Westerville. He recognized the Board for their service.

MINUTES OF THE FEBRUARY 9, 2017 MEETING

Mr. Munger moved to approve the February 9, 2017 minutes as presented; Mr. Glasgow seconded the motion.

Yeas: Mr. Munger, Ms. Lockwood, Mr. Glasgow, Mr. Mayhugh, Mr. Williams, Ms. Mahaffey

Nays: None

Abs: Chairman Koppitch

Motion Passed: 6-0-1

BOARD OF BUILDING APPEALS: NONE

Chairman Koppitch read the procedures for the meeting and public hearing.

Ms. Maxwell swore in all those planning to testify before the Board.

PUBLIC HEARINGS

BZA 2017-03: APPLICATION FOR VARIANCE FROM THE VILLAGE AT CENTRAL COLLEGE (M/I HOMES) PLANNED DEVELOPMENT DISTRICT (PD) DEVELOPMENT STANDARDS (ORD. NO. 2014-18) TO ALLOW CONSTRUCTION OF A DECK WITH A REAR YARD SETBACK OF 10 FT (MINIMUM 20 FT); LOCATION: 1332 SPAGNOL LANE; APPLICANT: JASON BERWANGER.

Mr. Buehler gave the staff presentation closely following the written staff report. He detailed the site providing context and giving staff’s recommendation of disapproval.

Chairman Koppitch invited the applicant to the podium.

Jason Berwanger, applicant and homeowner was present. Mr. Berwanger highlighted the topography of the lot noting the very severe angle for his backyard. He also explained that an error by the builder showed the lot to be deeper than it actually is. The Berwangers want more backyard for their growing family. Mr. Berwanger presented a unique factor of his lot being the only yard and house that does not have an egress window or
walkout basement because the land slants away from the peak at our house. He stated that he did review the tree preservation zone and no trees would need to be removed. He added that there will not be a tree within five feet of the deck on either side. Mr. Berwanger stated that he understands ten feet is a large request but they back up to 100-year flood zone and this project will have no impact to other members of community. He shared that he met with adjacent neighbors and they all have no problem with the plan. Mr. Berwanger added that he did have a contractor do some specs attaching the deck to the home but it would take up a third of the yard which defeats the purpose.

Chairman Koppitch opened the public hearing and seeing no one wishing to speak, closed the public hearing.

Mr. Munger asked what year this development occurred. Mr. Buehler answered that it was approved through the 2013-2014 review cycles and would have been formally recorded within a year of that. Mr. Munger asked if there have been any changes to the zoning code since then that would have any impact on this development. Mr. Buehler stated that there have been no changes to code in that time.

Mr. Munger asked for clarification from the applicant on the statement that the house having neither an egress window nor a walkout basement affects the need to place the deck further away. Mr. Berwanger clarified that he was commenting on precedent explaining that the statement shows that our topography is unique. Mr. Munger restated for clarification that within the neighborhood, as the land slopes left or right the applicant’s property is caught between having an egress window and a walkout basement. Also this is the only lot that would not have to remove trees.

Mr. Munger asked how long the applicant has owned the property. Mr. Berwanger answered they have owned the property since December 2016. Mr. Munger stated that the dispute is between M/I and the applicant regarding what was shown and what was delivered. Mr. Berwanger said he has documentation on that if the Board is interested.

Chairman Koppitch asked if the principal structure sits differently on the lot than others. Mr. Buehler stated that generally the homes would have the same build line but staff does not have surveys or detailed measurement to back that up.

Chairman Koppitch stated that this is in essence a 50% variance and asked if the applicant looked at anything to lessen that impact like maybe pulling the deck back a little bit to lessen that impact. Mr. Berwanger said that he consulted with two different contractors and one requested we ask for a 15-foot variance and another suggested a narrower deck but then it was not usable. He added that they did do their homework but there were not a lot of options as it is a compact lot and the deck has to be far enough away from the existing stairway per permit requirements.

Chairman Koppitch said that this is difficult with this development being new and a planned district. He asked about one variance along Sunbury Road. Mr. Buehler explained that is not a strong comparison as that house sat very far back on a deep lot with extreme topography in the front yard.

Ms. Lockwood noted that M/I admitted their fault and asked if the applicant received any concession. Mr. Berwanger said they would get their down payment refunded. He noted that they had already sold their existing house and moved into an apartment and that they did employ a realtor and look at other places in Westerville but that location was prime because his wife works at Wilder Elementary School nearby.

Ms. Lockwood asked if the deck off of the house was considered. Mr. Berwanger stated that the end of the yard is not usable space and they did not want to take up usable yard with a deck.
Mr. Munger asked staff if this is approved, what would prevent a second deck from being constructed on the property. Mr. Buehler said that could be clarified in motion.

Chairman Koppitch asked about setbacks and what the relationship is between what is normal and the depth here. Mr. Buehler said the rear setback is 20’ which would be allowed in R-1. He added that the minimum lot depth in R-2 is 115 feet and R-1 is 125 feet. Mr. Munger said this is more similar to an Uptown lot.

Ms. Mahaffey noted that a neighbor has a deck built above ground and asked why the applicant couldn’t do that. Mr. Berwanger said that homeowner laid sod yesterday and their sod goes out essentially another 10’ because it was cleared and leveled so they are only losing 1/8th of their yard and there is still usable land from their walkout basement under the deck that could be sodded.

Mr. Munger said this is a difficult one because it is new. He noted the compelling piece is the specifics of the topography for this specific plot as it is pinched between high and low and pinched on the back as well. Mr. Munger stated that he would be uncomfortable with leaving the application so that it wouldn’t specify that the applicant would lose the right to build any other deck.

Chairman Koppitch noted that this is a planned development and he is not sure that this Board, given the confusion, has the purview to grant that relief. He thinks this is an analogy to an Uptown lot with some unique aspects.

Mr. Berwanger stated that he would be more than willing to agree to limit the property to one deck.

Mr. Munger stated that as new as the plot is, he sees the issue with the topography related to this site and the rules laid out for this site. He added that this one particular weird dip does undermine the logic in trying to set up the property for that rear experience.

Mr. Munger moved to approve BZA 2017-03 with the following condition:
1. This deck is the only permitted deck on the rear yard.

Mr. Glasgow seconded the motion.

Yeas: Mr. Munger, Mr. Glasgow, Mr. Williams

Nays: Ms. Lockwood, Mr. Mayhugh, Ms. Mahaffey, Chairman Koppitch

Motion Failed: 3-4

**BZA 2017-04: APPLICATION FOR VARIANCE FROM THE ASHBROOKE VILLAGE PLANNED NEIGHBORHOOD DISTRICT (PND) DEVELOPMENT STANDARDS TEXT (ORD. NO. 1993-54) TO ALLOW CONSTRUCTION OF A PATIO WITH A SIDE YARD SETBACK OF 0 FT (MINIMUM 5 FT); LOCATION: 214 MAPLEBROOKE DR; APPLICANT: JANIS MITCHELL.**

Mr. Buehler gave the staff presentation and recommendation for approval, closely following the written staff report.

Chairman Koppitch invited the applicant to the podium.
Todd Faris, Faris Planning, and Janis Mitchell, applicant and homeowner, were present.

Mr. Faris explained that this is a unique situation because this work happened quite some time ago. He explained that 23 years ago this house was built and at that time, the property owners believed the property line went beyond where it actually is. Since that time Ms. Mitchell has maintained that property believing that is her property. Mr. Faris stated that seven or eight years ago this patio was constructed on this ground. He noted that from a site standpoint, it is away from residents to the west and toward the tree-line. Mr. Faris added that at the time the patio was constructed, Ms. Mitchell did inquire with the City about a patio permit and was told permits were not issued at that time. He added that the patio does not intrude on neighbor’s properties and is well buffered.

Ms. Mitchell shared with the Board that she and her husband paid extra to be on the cul-de-sac. She noted that when the City came through in preparation for the bike path, they measured wrong and cleared right by her house. Around 1996, Ms. Mitchell stated that she actually worked with Parks and Recreation to put landscaping back in. She was still unaware, even at that time, that this is the City’s land. She stated that this is an awkward situation and it all started because there was an anonymous call regarding a tire in her yard used by her son for fitness. The call was saying to get rid of the trash out of the yard or she will be fined. Ms. Mitchell noted that the letter is now false because it wasn’t her yard. She was told when she bought the land that there was a swale and the swale broke right around lot #178 but water that flows from house number 178 flows down. She said she never filled in the swale. Ms. Mitchell asked the Board to imagine her whole world has been turned upside down. She raised a family on that land and no longer owns more than eight feet from her home. Ms. Mitchell stated that she had forgotten about the water but it is a strange situation she would like to resolve. Ms. Mitchell referenced a comment about bikers being hurt stating that bikers would have to fall 13 feet and she could tell exactly what trees they would have to fall through because she helped Parks and Recreation plan and plant them. She understands this is a predicament but at the same time, she has taken care of this land for 23 years and she is so sorry that her contractor did not get a permit but they could not follow directions for getting permits because permits weren’t required in 2010.

Chairman Koppitch opened the public hearing and seeing no one wishing to speak, closed the public hearing.

Chairman Koppitch referenced the legislative history and asked if a patio of this sort were to be built today, it would require a permit. Mr. Buehler answered in the affirmative adding that, since at least 2003 the City has required permits for patios and decks. Chairman Koppitch confirmed that even if there were no permit, they would have to meet standards. Mr. Buehler answered yes and explained that there was a time when patios and decks had different standards, but any builder would still have to do their due diligence and meet the applicable standards.

Chairman Koppitch confirmed that it is standard operating procedure for other departments to inform the appropriate Staff if they encounter something that may seem questionable or need resolution. Mr. Buehler answered in the affirmative.

Chairman Koppitch asked if Faris is the designer or builder. Mr. Faris stated that he was not.

Chairman Koppitch asked when the bike path went through. Ms. Mitchell said 2 or 3 years after she moved in. It used to be railroad tracks.

Mr. Buehler noted that when the plat was developed it was known that the bike path would be installed. The platted connection to the bike path is evidence of this.
Ms. Lockwood asked if the railroad held the easement until the City obtained it. Mr. Buehler answered that he assumed it was fee simple and the City would have owned it.

Chairman Koppitch asked about the water. Mr. Buehler noted that the owner has been in contact with the City Engineer and can take action on that independent of this variance. Ms. Mitchell said the City Engineer asked to look at her property but cannot do anything about standing water because that is between neighbors. Ms. Mitchell indicated that the answer from the City of Westerville was to just fill it in with topsoil but when she asked the surveyor, he said it will not solve the problem.

Chairman Koppitch asked about the standard procedures for installation or maintenance of the bike path noting that he sees two issues: how the City didn’t know that the applicant was using this land for so long or that the patio was on the land. Ms. Mitchell said they are through there every week.

Mr. Munger said the meeting is straying off topic with issues related to water.

Mr. Munger referenced case number 2011-01 which is a case regarding a flag lot off of Africa or West. He went on explaining that in that case, there was an existing non-conforming deck where the applicant needed a variance to replace deck in place. He asked what work is being performed to need a new variance and why this wasn’t considered to be grandfathered. Mr. Buehler explained that a lot or structure becomes grandfathered when it is conforming but standards change causing it to become non-conforming. He said this is not non-conforming because it was never conforming; it is illegal non-conforming. Mr. Munger asked if any work is planned. Mr. Buehler stated that there is not; however, the required approvals were never obtained.

Chairman Koppitch confirmed with Staff that there is nothing specific about this lot making it impossible to build this patio somewhere else on the lot. Mr. Buehler stated that he didn’t see anything. Mr. Glasgow asked if the applicant agreed with that. Ms. Mitchell said her neighbor is not happy with her and this area is quiet and provides solitude away from the neighbor. She added that this was where the builder suggested that’s where it would go. Mr. Glasgow asked if the applicant had considered moving the patio. Ms. Mitchell said no, it would be cost prohibitive to move it.

Ms. Lockwood said the Board’s charge is the five-foot encroachment and asked if there is another matter with the City as this is into their land. Mr. Buehler said the portion on City property would require a special right of way permit. He added that it will be submitted to staff and circulated through departments and get up to the City Manager’s Office ultimately. Ms. Lockwood asked if this wasn’t a case of getting the “cart before the horse”. Mr. Buehler explained that staff structured it this way (variance before special ROW permit) so as to avoid the Board feeling pressured to vote a certain way based on the outcome of the special ROW permit.

Mr. Mayhugh asked if the applicant received a survey showing where that lot line was in relation to that house when the house was built. Ms. Mitchell said she does not recall. Mr. Mayhugh asked if, when the patio was designed, it was based off of a survey. Ms. Mitchell said no. Mr. Mayhugh asked where the applicant believed the property line to be in relation to the patio. Ms. Mitchell said she believed the property line was at the ditch, so maybe nine feet from the edge of the patio.

Mr. Munger said he uses the bike path six times a week and has never noticed this and had no idea this existed adding that it is incredibly dense with honeysuckle or not. Ms. Lockwood agreed but just north of this they took everything out.

Chairman Koppitch stated that the Board is required to consider this as if it had not been built and it is a setback of 100%. Chairman Koppitch stated that he finds this to be a very difficult case personally and he really...
empathizes with the applicant but, as the Board is charged to do this as a new build, with nothing unique on the lot a 100% setback is very difficult.

Mr. Williams moved to approve BZA 2017-03; Ms. Lockwood seconded the motion.

Yeas: Mr. Munger

Nays: Ms. Lockwood, Mr. Williams Mr. Glasgow, Ms. Mahaffey, Mr. Mayhugh, Chairman Koppitch

Motion Failed: 1-6

**MISCELLANEOUS**

Mr. Munger stated he has been moved to Planning Commission and that he will miss his colleagues and learned a lot. He noted that Mr. Koppitch now has seniority. Chairman Koppitch stated that this is our loss; he appreciates Mr. Munger’s diligence and this is Planning Commission’s gain.

Mr. Buehler said Council will make an appointment for Mr. Munger’s replacement at their June meeting which may not provide enough time for the next meeting to please let Staff know if anyone is unable to attend.

Mr. Buehler updated the Board stating Mr. Gold will not make his June deadline and a couple variances will likely come next month.

When there was nothing further to discuss, Chairman Koppitch adjourned the meeting at approximately 7:52 pm.

Matt Koppitch, Chairman

Jeff Buehler, Secretary