



1368 Research Park Dr
Beavercreek, Ohio

BEAVERCREEK BOARD OF ZONING APPEALS
Regular Meeting – January 8, 2020, 6:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
 - A. November 13, 2019
- V. PUBLIC HEARINGS
 - A. V-20-1, Tiffany Young, 3949 Gardenview Drive
- VI. ADJOURNMENT

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, November 13, 2019, 6:00 PM

PRESENT: Mr. Althoff, Mr. Bhatla, Mr. Duerr, Mr. Porter

ABSENT: Mr. Archibald

Vice Chairman Duerr called the meeting to order followed by roll call.

Mr. Bhatla MOVED to excuse Mr. Archibald from the meeting, seconded by Mr. Porter. Motion PASSED by majority voice vote.

REORGANIZATION

Chairman

Mr. Bhatla nominated Mr. Duerr for chairman, seconded by Mr. Porter. There were no other nominations, so Mr. Duerr was selected as chairman.

Vice Chairman

Mr. Duerr nominated Mr. Bhatla for vice chairman, seconded by Mr. Porter. There were no other nominations, so Mr. Bhatla was selected as vice chairman.

Mr. Bhatla MOVED approval of the agenda, seconded by Mr. Porter. Motion PASSED by majority voice vote.

Mr. Bhatla MOVED approval of the September 11, 2019 minutes, seconded by Mr. Porter. Motion PASSED by majority voice vote.

PUBLIC HEARING

CU-19-1, American Tower, 4040 Graham Drive

Clerk Gillaugh read the notice of public hearing on an application filed by Anthony Amine, 200 E. Big Beaver, Troy, MI 48083, requesting permission to construct a new wireless telecommunication tower and adjacent equipment building as required per Chapter 158.130 (B) of the City of Beaver Creek Zoning Code in an A-1 District. This is a replacement of the wireless telecommunication facility that was destroyed in the Memorial Day tornado. The property is located at the western end of Graham Drive further described as Book 1, Page 6, Parcel 9 on the Greene County Property Tax Atlas.

Anthony Amine on behalf of American Tower, the owner of the tower, said he was here tonight for the replacement of the 164-foot lattice tower that was located at 4040 Graham Drive that was destroyed in the Memorial Day tornado. Mr. Amine explained they did an investigation and have determined that the preference is to do a like for like swap that would use the existing foundation. He said the current Code requires new towers to be a monopole tower. Mr. Amine explained they had done their due diligence and presented the Board with some before and after photos. He said more importantly they did review with the construction manager from American Tower and one of the operations managers and stated the challenge is the two-tier foundation that exists currently that supported the lattice tower. He explained in order to rebuild that tower as a monopole the cost would exceed \$100,000. Mr. Amine said they did contact the

insurance company and they will only provide for a like for like replacement. He stated if the Board did not grant American Tower approval tonight they would be forced to pay for the new monopole tower out of pocket. Mr. Amine said if they would have to construct a monopole due to topography and elevation issues, they would most likely have to go outside the existing compound and clear additional trees. He explained if they would have to construct the monopole there would be a delay on the project. Mr. Amine explained two months ago at the previous hearing it was mentioned that other residents that have non-conforming structures have had those granted to go back as it was prior to the tornado, and they were asking for the same consideration tonight.

Mr. Burkett summarized the staff report dated November 6, 2019, which stated the applicant is requesting to construct a like for like new tower. He discussed the location of the property and the tower, the setbacks from the property lines, the proposal to use the existing foundation and utilities that extend to the ground equipment, an elevation drawing showing the 164-foot like for like lattice tower, and several additional photos. Staff recommended approval of the case with four conditions. Mr. Burkett also explained in the member's packets was a legal analysis from Steve McHugh, Law Director.

Mr. McHugh reviewed a memorandum dated November 8, 2019. He stated the City has looked at this scenario as a unique situation and clearly, the tower was knocked down by an act of God, a tornado. He referred to several sections of the Code, and explained why the Board of Zoning Appeals exists. Mr. McHugh felt there was a practical difficulty, excluding the insurance, because there was a pre-existing allowable tower at the time it was constructed that came down because of a storm that caused significant damage in the area. He believed the Board was going to have to determine if a practical difficulty exists, and if he understood correctly the applicant is going to use the existing base. Mr. McHugh said this was clearly not an application brought about by the applicant. He believed it is within the prerogative of the Board of Zoning Appeals to grant expectations, which is what the applicant is requesting.

In public input, Randy Bryan, 2423 Rollingview Drive, stated the pictures that were shown were somewhat unfair. He said the trees are going to take a long time to grow. Mr. Bryan said there are three houses in his neighbor that were knocked down, and when they rebuild they are going to have to follow the Codes that are in place now. He stated removing additional trees would not be a big issue if the tower would have to be relocated to a different area on the property because there were not a lot of trees left. Mr. Bryan explained the temporary towers have been up for quite a while now so he did not think time was an issue either. He stated they would just like to have a nicer looking tower, and there is going to be a tower going up so he questioned why not require what the Code states so at least they have something decent to look at instead of the lattice style tower. Mr. Bryan said they are just asking for a little beauty.

Monica Donohoo, 3971 La Bonne Street, showed several photos that she had taken of the area today. Ms. Donohoo questioned which tower the Board members would like to look at, and said she preferred the monopole style. She stated the houses in the neighborhood are being worked on and their neighborhood is going to look great, and said people are even making improvements. Ms. Donohoo explained she has been thinking of the resale value of her home, and stated the towers were not visible before but they will be now. She requested the monopole style be required. Ms. Donohoo

BEAVERCREEK BOARD OF ZONING APPEALS, 11/13/19

explained the tower is on 25 acres of undeveloped land, and said this will have an impact on the existing homes. She felt now was the time to make the upgrade and to be zoning compliant.

Bill Schieman, 3971 La Bonne Street, stated hardship is a legal term, and according to the letter the applicant provided they are not making a claim of any kind of hardship. He said this is a company that has 33 billion worth of assets, and in their 2018 Annual Report, it states they had 7.4 billion in revenue and an operating cost of 5.5 billion leaving them 1.9 billion in profit. Mr. Schieman stated they cannot claim hardship for putting a monopole in. He referred to Section 158.072 of the Zoning Code and said he read the opinion of Mr. McHugh and stated that in the final paragraph of the letter Mr. McHugh summarized it correctly when he said, "the Board can find". Mr. Schieman stated those are the important words "can find". He referenced the City Charter, and said a written memorandum from the law department can only be requested by City Council and/or the City Manager. Mr. Schieman explained he could not find any documentation that this written opinion was requested by Council or the City Manager. He stated this was in Title 3, Chapter 31, Section 31.18, and asked if he could have his questioned answered at the end of his comments.

Mr. Schieman explained aesthetics is a recognized consideration for cell towers, and said it is quoted in the Zoning Code twice. He stated there is an appeal process for the applicant if the BZA does not affirm the proposed resolution. Mr. Schieman said the applicant can go to Council and appeal, and that gives the Council certain powers to dig deeper into this issue. He said under Charter Title 3, 35.1502 and 35.1503 the City can then hire outside consultants or a third party consultant to determine the cost. Mr. Schieman reviewed the file that was publicly available for this case and there were no written estimates from the applicant as to the cost. He questioned if the \$100,000 is the most accurate figure that is available. Mr. Schieman stated there are additional remedies or fact finding that is open to the Council if the applicant should feel the need to appeal a decision. He said the previous person spoke about the 25 acres of undeveloped land, and if they don't upgrade this now the possible development in the future of that land would be faced with the lattice tower also. He stated now was the time to get it built to Code and a consideration for the people that already live in those two neighborhoods.

Roger Obergefell, 2336 S. Old Oaks Drive, stated the other neighborhoods are standing behind Gardenview subdivision in support of having the monopole instead of lattice style tower.

In written input, Jacob Lynch, 1416 Hanes Road, requested a monopole type tower be constructed.

Robin and Helen Horth, 2172 Grange Hall Road, insisted on a monopole type or a more modern design be built.

Mary Osciowski and Robert Bergseth, 2363 S. Old Oaks Drive, had no concerns with replacing the tower.

Samuel Bryan from Rollingview Drive, encouraged the Board to go with a monopole style tower.

There being no further public input, the public hearing was closed.

Mr. Bhatla stated his property was also damaged in the tornado, and he can now see far away where he was not able to before. He said this was a natural calamity that no one asked for, but it happened. Mr. Bhatla explained the tower was damaged and has to be replaced. He asked if a cost analysis has been done between rebuilding the lattice style versus a monopole. Mr. Amine explained an existing foundation for a lattice tower is in place, and in order for them to rebuild the lattice tower they would bring in the steel, attach it to the existing foundation, and it would go up. He said if they were required to construct a monopole, they would have to do a soil boring, a design, and a whole new construction. Mr. Amine stated the letter from American Tower was signed by a registered person and they have done a cost analysis and if they are required to put in a monopole it will cost in excess of \$100,000, which is why he was here this evening. He referred to the comment about American Tower being a billion dollar corporation, and said they are asking for the Board to grant them the same courtesy as the neighbors in this neighborhood are receiving.

Mr. Bhatla asked what the trend was and if they are building monopoles everywhere. Mr. Amine explained they are building both styles around the country. Mr. Bhatla stated there is a significant opposition from the neighborhood from the aesthetic point of view, and questioned if there was anything that could be done to please the neighbors. Mr. Amine explained they would do the best they can. He stated everyone is concerned about the aesthetics and removing trees to see a monopole, and questioned how that is aesthetically pleasing to people that have to drive by. Mr. Amine said they would be more than willing to plant some arborvitae trees, and stated they are here to be and want to be a good neighbor. Mr. Bhatla did not feel the cost differential between the lattice style tower versus a monopole would be that significant. Mr. Amine explained he needed to keep in mind the insurance will reimburse American Tower for the lattice style tower and if a monopole is required they will not.

Mr. Porter asked what exceptions have been done for other people who have had storm damage done to their properties. Mr. Burkett said Mr. McHugh gave a written opinion on those circumstances and explained the types of permits that are being granted. Mr. McHugh said this is not a hardship case this is practical difficulty, which is what the applicant is requesting here and what other owners have requested as well. Mr. McHugh explained if the structure was knocked down but the foundation still existed, the City would allow the structure to be rebuild in the same location instead of removing the old foundation and starting again. Mr. Burkett said the insurance company would cover to replace the structure, but not the foundation if the City required it to be brought into current Code requirements.

Mr. Duerr asked if the insurance would cover any tree damage on the property. Mr. Amine explained it only covers the existing structure. Mr. Duerr questioned if the insurance company would provide \$100,000 towards a monopole or if that is just \$100,000 towards the lattice tower. Mr. Amine said he did not have the price of replacing the existing tower as like, but the insurance will only cover the structure. Mr.

Duerr stated if the conditional use case was denied, he asked if the insurance company would give any money towards the cost of a monopole. Mr. Amine said no.

Mr. Bhatla made a comment about insurance. Mr. Amine explained if they are granted approval to move forward the insurance will cover the cost of the lattice style tower, but if they build a new monopole the insurance company would cover nothing. He stated the insurance company covers like for like towers only, and explained several reasons why the tower cost of a monopole is so high. Mr. Bhatla would like to see something done to make people happy or extra help from American Tower to accommodate the people's wishes. Mr. Amine said they are trying to be a good neighbor, and explained all they are asking for is the same treatment that the City has extended to others. Mr. Bhatla said if they would rebuild the way it was he questioned what would be different from an aesthetic point of view. Mr. Amine explained the biggest challenge is he cannot get the trees and natural vegetation back.

Mr. Porter asked if this was the only tower that was damaged. Mr. Amine said there was another tower nearby that was not damaged. He explained they did have another tower that was damaged in a different area and they are replacing the tower like for like.

Mr. McHugh said a condition could be added to require landscaping.

Mr. Althoff asked about the procedure for making a condition to add trees. Mr. Burkett explained they would make a motion with an additional condition that landscaping shall be provided as approved by the Planning Department prior to the release of a zoning permit. Mr. McHugh stated it would be Condition E.

Mr. Bhatla and Mr. Burkett discussed the possibility of adding trees, and the height of the trees that would be planted if it was required.

Mr. Althoff MOVED to approve CU-19-1 with five conditions, adding Condition E:

- a. The approved plans for this application shall be those stamped "Received August 12, 2019, except as modified herein.
- b. The height of the pole shall be limited to 164 feet from adjacent grade.
- c. Prior to the installation of the tower and associated equipment, the applicant shall apply for and receive approval of a zoning permit from the Planning and Development Department.
- d. Should the use of the facility be discontinued (meaning the structure is not properly maintained, has been abandoned, become obsolete, has been unused or has ceased daily activities or operation for a period of 12 months) the applicants or its successors shall be responsible for its removal.
- e. The Planning Department shall review and approve the landscaping provided by the applicant prior to the release of a zoning permit.

Motion was seconded by Mr. Bhatla, and PASSED by a roll call vote of 3-1. (Duerr)

There was some discussion regarding the trees that were required to be planted.

V-19-5, Ryan Silcox, 3498 Harmeling Court

Clerk Gillaugh read the notice of public hearing on an application filed by Ryan Silcox, 3498 Harmeling Drive, Beavercreek, OH 45440, requesting a variance from Chapter 158.105(C) of the City of Beavercreek Zoning Code, requesting permission to construct a six-foot high fence that would encroach into the required front yard along South Fairfield Road. The property is located at the northwest corner of the intersection of Harmeling Drive and South Fairfield Road further described as Book 3, Page 22, Parcel 222 on the Greene County Auditor's Property Tax Atlas.

Ryan Silcox stated they are requesting a variance to construct a six-foot fence into the setback. He explained they live on a corner lot, and the main reason they want to put the fence up is that they have two small children and a dog. Mr. Silcox stated the four-foot fence does not give them the security and the privacy they are wanting. He discussed where the existing four-foot fence is currently, and where they are proposing the six-foot high fence. Mr. Silcox explained another reason they are asking for the variance is that there is a playground area and would currently be outside the allowable six-foot fence area. He stated the location of the proposed fence will not impede any of the sight lines of the cross traffic and will be even with the front of the neighbor's house. Mr. Silcox said the property across the street from them did get a variance approved several years ago, and the proposed fence will mirror theirs.

Ms. Pereira summarized the staff report dated November 8, 2019, which was requesting a variance for a six-foot high fence to be constructed in the required front yard. She discussed the location of the property, the type of fence that currently exists, an aerial photo showing where a six-foot fence would be permitted and where the applicant is proposing to locate the six-foot fence, the requirements of the Code, and the neighbor's fence that received the variance approval. Staff recommended denial of the case.

In public input, Ashley Silcox, 3498 Harmeling Drive, stated they would like to have as much area as they can for their children to play. She explained the reason the playground area is located there is because that is the flattest part of the yard.

There being no further public input, the public hearing was closed.

Mr. Althoff asked about the conditions on resolution. Ms. Pereira said there is not she misspoke since it is a recommendation of denial.

Mr. Bhatla referred to the aerial view and asked if a portion of the fence could be 6-foot high and another portion be 42-inches. Ms. Pereira explained where they could install a 42-inch fence and a 6-foot fence.

Mr. Porter asked if they have any hardship. Mr. Silcox said they just moved to this property and the property they owned before had a six-foot fence. He stated they did not have any hardships.

BEAVERCREEK BOARD OF ZONING APPEALS, 11/13/19

Mr. Duerr asked if there were any neighbors who had concerns. Mr. Silcox said everyone they had spoken to did not express any concerns. Mr. Duerr asked if they had a HOA. Mr. Silcox stated no. Mr. Duerr asked about the location of the playground. Mr. Silcox explained the old one was rotten, and they would like to have the new playground in same location because it is the flattest spot in the yard. Mr. Duerr said the corner lot does create a difficulty because there lot are two front yards. He stated they are also right next to a major throughway being South Fairfield Road.

Mr. Bhatla asked if the proposal he made for the 42-inch fence would be acceptable. Mr. Silcox explained he would like that portion to be six feet high because that will be where his children will be playing a lot of the time. He said a six-foot fence would help to prevent issues like balls being throw into the street and their dog would not be able to jump a six-foot high fence.

Mr. Duerr discussed several options, and asked if any of those sounded feasible. Mr. Silcox said they would be willing to plant trees down the property line if they were concerned about the aesthetics. He stated they do not want the fence to be an eyesore and want it for safety and privacy.

Mr. Bhatla MOVED to deny V-19-5. Motion was seconded by Mr. Althoff. Motion PASSED by a roll call vote of 3-1. (Duerr)

ADJOURNMENT

Mr. Althoff MOVED adjournment at 7:22 p.m., seconded by Mr. Porter. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk



Beavercreek PLANNING & DEVELOPMENT

1368 Research Park Drive, Beavercreek, Ohio, 45432

December 18, 2019

BOARD OF ZONING APPEALS STAFF REPORT

CASE: V 20-1

APPLICANT: Tiffany Young
3949 Gardenview Drive
Beavercreek OH 45431

NATURE OF REQUEST:

The applicant is requesting approval of a variance to allow a home addition to encroach into the required front yard by 3.75 feet.

FINDINGS:

1. The property under discussion is located at 3949 Gardenview Drive, within Section 1 of Grange View Acres.
2. The property has a zoning designation of R-1A, One Family Residential.
3. Section 158.031 (F)(1) of the City of Beavercreek Zoning Code which references the schedule of yard and lot requirements states that the minimum front yard setback for a home within a R-1A district be 40 feet.
4. The applicant is proposing to construct a 27.83-foot wide by 12-foot deep addition on to the front of the primary structure.
5. The addition would be located 36.25 feet from the front property line.

DISCUSSION:

As the applicant has explained in her justification for a variance, the May tornadoes significantly damaged her home, requiring that the existing addition at the rear of the house be completely replaced. The addition was not constructed to current building code standards and doing so with the new addition would render the walkout basement unlivable, as it would block not only the daylight windows, but also the point of ingress and egress. The only alternative the

applicant has, so as not to lose living area and the insurance money for the repair, is to place the addition on the front of the house instead. The applicant has worked with the city and her architect to request the smallest variance possible that will only project an additional 3.75 feet into the front yard. Many of the homes in the neighborhood were built prior to the incorporation of the city and prior to the front yard setback requirement and do not meet the 40 foot setback so this home will not stand out in the neighborhood. Staff finds that the variance request from §158.031 (F)(1) meets the requirements for approval per §158.172 (H)(5)(a) of the City of Beavercreek Zoning Code.

RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals find that:

1. The reasons set forth in the application are valid and do justify the granting of the requested variance, and
2. The eight items in §158.172 (H)(5)(a) have been fully satisfied.

Staff further recommends that the Board of Zoning Appeals adopt the attached resolution approving a variance from §158.105 (C).

**RESOLUTION
BOARD OF ZONING APPEALS
CASE NO. V-20-1**

WHEREAS, Tiffany Young, has made application for a variance from the strict application of the requirements of the City of Beavercreek Zoning Code for the property located at 3949 Gardenview Drive; and

WHEREAS, the applicant is requesting permission to construct an addition that would encroach 3.75 feet into the required 40- foot front yard setback in a R-1A zoning district; and

WHEREAS, a public hearing was held on January 8, 2020, at which time all persons were given opportunity to comment on the application; and

WHEREAS, the Board of Zoning Appeals finds that the reasons set forth in the application are valid and justify the granting of the variance; and

WHEREAS, the Board of Zoning Appeals finds that subparagraphs 1 through 8 of §158.172 (H)(5)(a) have been fully satisfied.

NOW therefore the Board of Zoning Appeals orders that:

A variance from the 40-foot front yard setback back requirement to allow for the construction of an addition 36.25 feet from the front property line in a one family residential zoning district be approved with the following conditions:

1. A residential zoning permit must be approved by the Planning and Development Department prior to the construction of the addition

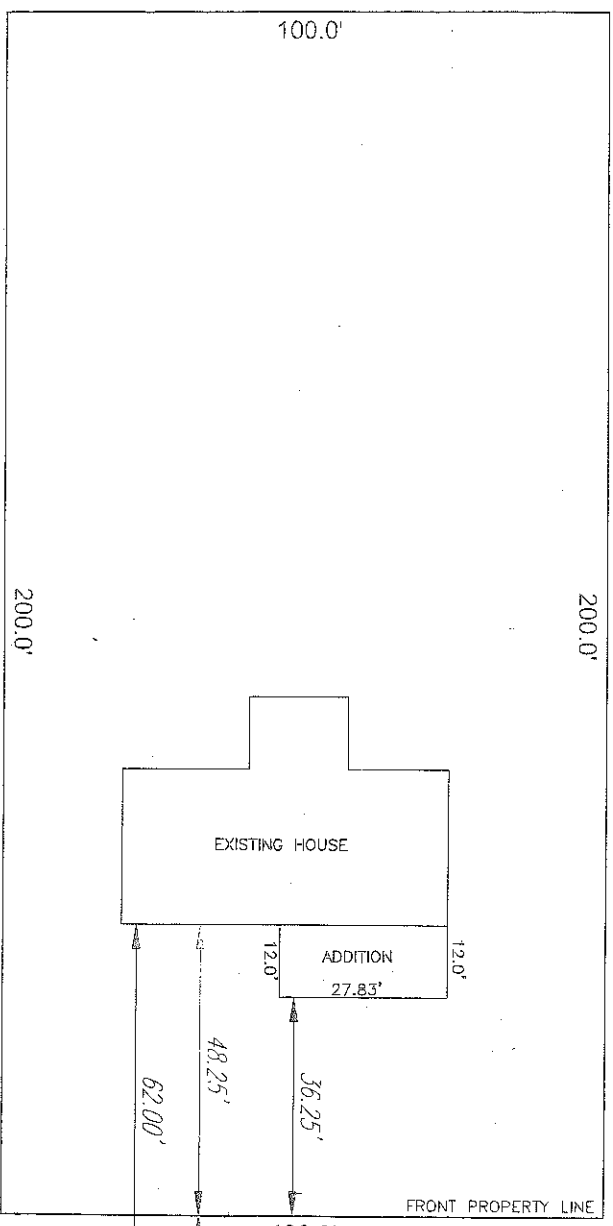
ACTION BY BOARD OF ZONING APPEALS

(Date)

Chairman

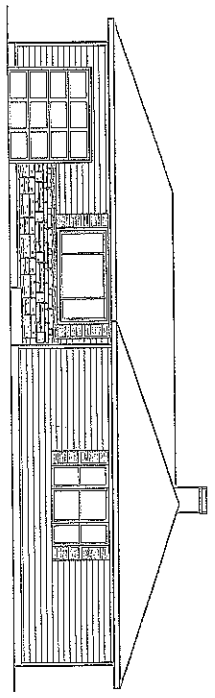


**BAUM
DESIGNS**
2837 S. AQUINAR RD.
KEETERING, OR 97120
(503) 971-9093



FRONT PROPERTY LINE
CURB LINE
CENTER OF R.O.W.
GARDENVIEW DR.

PLOT PLAN
Scale: 1" = 20'



PROPOSED FRONT ELEVATION
Scale: 1/8" = 1'-0"

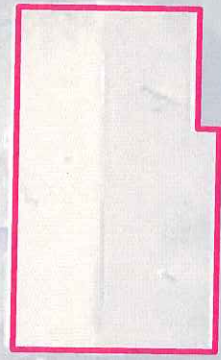
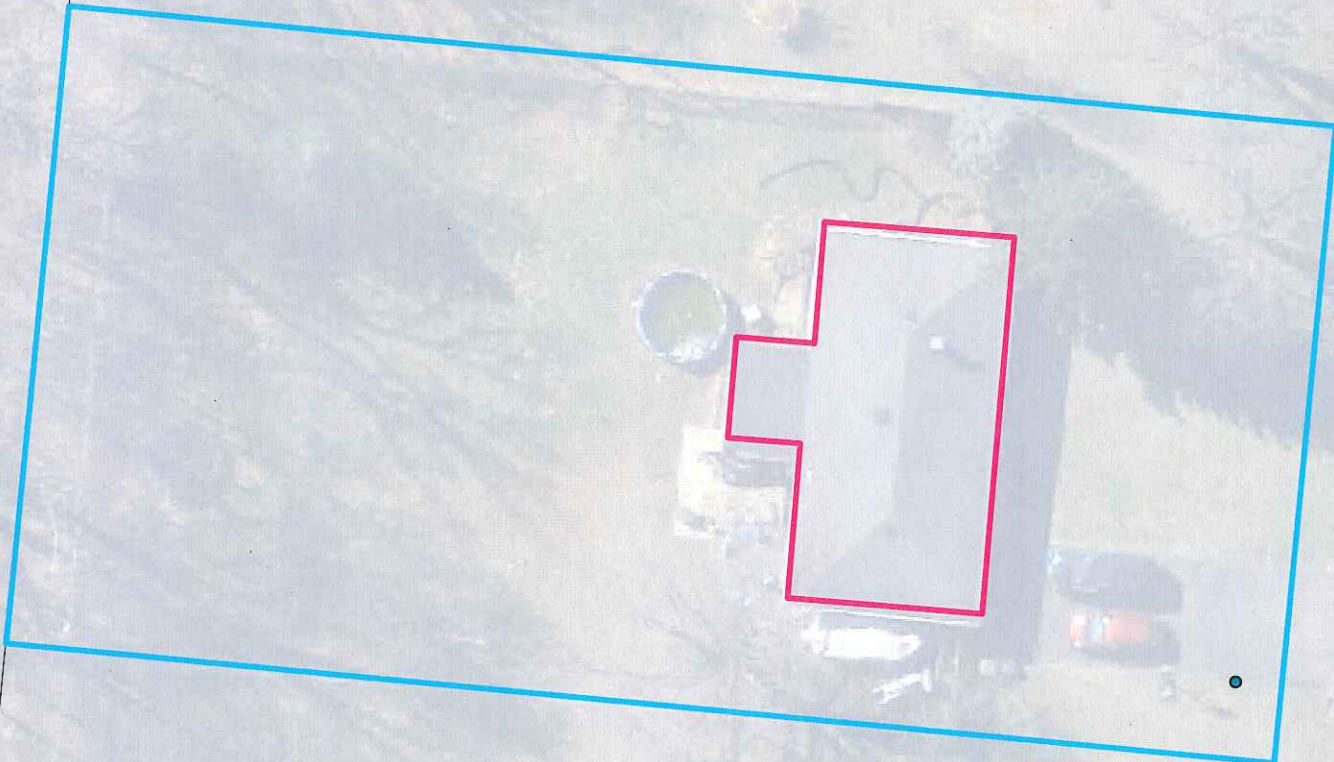
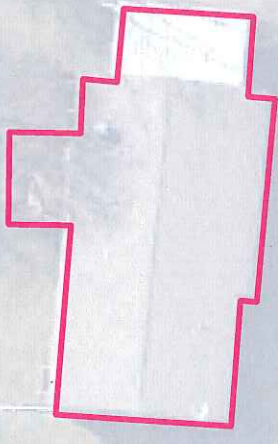


GRAPHIC SCALE IN FEET

| | | | |
|--------------|-----------|--------|--------------|
| Project Name | PLOT PLAN | Date | 10/25/18 |
| Client Name | MILLER | Scale | 1/8" = 1'-0" |
| Project No. | ELB | Author | |
| Sheet No. | | Check | |

ADDRESS: 3949 GARDENVIEW DRIVE
PARCEL ID: B42000100110004900

GARDENVIEW



1 inch = 30 feet

A. There exist conditions and/or circumstances relating to the property that would create practical difficulties for the property owner if strict conformance to the requirements of the Zoning Code were required.

Due to the tornado(s) on Memorial day of this year we sustained substantial damage to our home and property. During the tornado our rear addition was lifted and put back down breaking the stilts that originally held it off the ground. Due to new county building code when replacing this addition it can not be placed on stilts and must have a full foundation. This full foundation would block our daylight windows in our walkout basement which is why I assume the original owner of the house built the addition on stilts. Our basement is where our oldest has his bedroom so for safety concerns, we can not block these window. In case of an emergency these windows provide a immediate exist to the outside. We would like to move the addition to the front of the house where it can be on a full foundation without blocking any of our basement windows.

B. The variance to be granted is the minimum variance possible and other alternatives for resolving the conflict between the applicant's plan and the requirements of the Zoning Code are impractical or infeasible.

We have reviewed with architects, insurance and contractors to try to come up with another way to avoid asking for a variance. Unfortunately due to the insurance claim if a addition is not rebuilt onto the house the insurance will not pay us for that part of the claim. Insurance will allow us to move the addition to the front of the house.

C. The granting of the variance will be in harmony with the general spirit, intent and purpose of this Zoning Code.

I believe so. Without this addition our house will not be large enough for our family. The only reason we are rebuilding this addition is due to the tornado.

D. The granting of the variance will not be injurious to surrounding properties and the general neighborhood or be otherwise detrimental to the public welfare.

There are several other properties in the neighborhood that are much closer to the road than what we plan to be. We in no way be blocking any easements moving closer toward either of our side neighbors. Further more our house will still be set back 48.75 feet from the road.

E. The granting of the variance will not result in a deleterious change in the character of the community.

Due to this tornado myself and many neighbors will be upgrading our exterior of the house. I plan to maintain the same ranch style look has always been in our neighborhood.

F. The granting of the variance will not infringe upon the rights and quiet enjoyment of adjacent property owners and will not diminish property values, endanger the public safety, or create a public nuisance. \

No it will not endanger the public safety or create a nuisance. If anything it will help with property values due the the increased value of a updated exterior.

G. The granting of the variance is for a compelling reason and not simply because the applicant's plans conflict with Zoning Code requirements when reasonable alternatives are available.

As stated prior I can not find any other reasonable alternatives.

H. The granting of the variance is not solely for economic benefit to the applicant.

We will not have any financial gain from this variance. The only economic benefit to us is being able to receive the insurance money to rebuild the space that we once had.

**CITY OF BEAVERCREEK
APPLICATION FOR VARIANCE**

Date Dec 11, 2019 Application No. V-20-1

Variance Address 3949 Gardenview Dr, Beaver Creek OH 45311
Name of Applicant Tiffany Young (IPSEN)
Applicant's Mailing Address 191 Gilbert Ave Fairborn OH 45324
Applicant's Phone Number 937-238-2919
Applicant's Email Address tyoung3949@yahoo.com
Name of Contractor Sp General Contractor
Contractor's Address _____
Contractor's Phone Number _____

1. Location Description:

Subdivision Name _____ Section No. _____
Lot No. _____ Zoning District _____ Parcel ID B42000__00__00__00

2. Nature of Variance Request: move addition to front of house due to damage during tornado

In addition, all items listed in the "Special Instructions to Applicant" must be submitted in order for this application to be processed.

I certify that the information contained in this application and its supplements are true and correct.



Applicant's Signature

FOR OFFICIAL USE ONLY

Date Filed 12/11/19 Fee Paid N/A Received by SCP