



**BOARD OF ZONING APPEALS
MEETING MINUTES
SEPTEMBER 7, 2023**

CALL TO ORDER/ROLL CALL

Chairman Jim Hrivnak called the Thursday, September 7, 2023 meeting of the Board of Zoning Appeals to order at 6:30 p.m. Board Members also present included Randy Duncan, Don DePalma, Ryan Brickner and Tyler Herrmann. Staff in attendance included Claudia Husak, Planning Manager; Elise Schellin, Senior Planner; and Elaine McCloskey, City Clerk.

APPROVAL OF MEETING MINUTES

August 3, 2023 Meeting Minutes
[08032023_BZA_Draft_Min.pdf](#)

MOTION: Board member DePalma moved to approve the minutes of August 3, 2023. Board Member Duncan seconded. Motion passed by consensus.

VOTE: Y – 5 N – 0 AB – 0

STAFF ITEMS - None

HEARING OF VISITORS

Chair Hrivnak opened the floor for visitors to address the Board for items not on the agenda. Hearing none, Chair Hrivnak closed public comment.

NEW CASES

VARIANCE REQUEST (2023-22V)

Applicant: Zackary Tharp
Location: 4822 Hunters Bend Court
Zoning: PR - Planned Residence District
Request: Review and approval of a variance to Code Section 1129.06(c)(4) to reduce the required rear yard setback in The Reserve at Scioto Glenn for an accessory structure from thirty feet to ten feet to allow a patio with a gazebo and seating wall.

1. Mbaga Patio Staff Report 9.07.23.pdf
2. Mbaga Combined Submission.pdf

Ms. Schellin presented the Staff Report and reviewed the seven (7) Standards the Board considers when reviewing a variance request. Staff found four (4) Standards were not met and therefore is recommending the Board of Zoning Appeals not approve the requested variance. Also, Ms. Schellin read into record an email received from Amanda Hawkins supporting the variance request. There was no public comment given.

Chairman Hrivnak asked for clarification on where the 30-foot setback line would be, as well as the 15-foot drainage easement. Further, he asked for clarification on auxiliary structures. Ms. Schellin reviewed the map indicating where the lines are located and said with the exception of the home all other items would be auxiliary structures.

Zachary Tharp, Tharpscales, applicant for the project at 4822 Hunters Bend Court, gave a presentation and took questions from the Board. He said he did not know a variance was needed until he applied for plumbing and electric permits. He takes 100% responsibility for the mistake.

Board Member Tyler Herrmann said the Staff Report indicates it is possible to fit all the elements the homeowner would like within the allowable space and asked Mr. Tharp if he agreed. Mr. Tharp stated the fire pit area needs at least 6 feet around for safety and seating. Also, there is a 2 to 3 inch overhang on the retaining walls, which intrudes into the space. He talked about comfortable space needed for the gazebo and outdoor kitchen. He feels the homeowner would need to eliminate a feature to fit within the allowable space.

Chairman Hrivnak asked why the patio was not extended to the east of the house, which would have provided enough room for all the elements. Mr. Tharp said the homeowner wanted to keep green space for other needs. Chairman Hrivnak said he is not suggesting they shift the whole patio, just reshape the patio.

Board Member DePalma asked since the patio is under construction currently, why a permit was not applied for initially? Mr. Tharp responded he did not know the City of Powell required a zoning permit.

Board Member Brickner asked if the gazebo is within the setback for the easement. Mr. Tharp said it is. Further, Board Member Brickner asked if the request is denied, would the kitchen and fire both need to be eliminated. Mr. Tharp responded they would.

Board Member Herrmann asked if the request is denied, is anything currently constructed going to need removed. Mr. Tharp said everything beyond the gazebo would need removed.

Chairman Hrivnak asked staff if the applicant had applied for the zoning permit and worked with staff on the shape, what design would have been recommended. Ms. Schellin explained the process they go through when receiving a zoning application they cannot approve. They reach out to the applicant and work with them to develop a better design.

Board Member DePalma asked Mr. Tharp who would cover the expense of tearing out what has been done to this point and Mr. Tharp responded he would.

Chairman Hrivnak asked staff if the Board's consideration should be done as if nothing has been constructed yet and Ms. Husak responded yes that is what is appropriate.

Board Member Herrmann asked staff if they are to view it as if nothing has been constructed, but with regard to standard 7 for substantial justice, is this doing the homeowner justice? Ms. Husak said she believes each Board Member has to interpret the standard in making their decision.

Board Member DePalma wanted to clarify with standard 2 whether the variance is substantial, the standard is referring to how substantially different the request is with regard to a variance regardless of the benefit to the homeowner.

Chairman Hrivnak feels it needs to be considered as if nothing has been constructed yet and the applicant applies for a variance. He feels it is substantial, as it substantially encroaches into the setback. He feels if it had been handled appropriately there might have been a variance request but it would have been for much less. Further, he feels it is unfortunate the builder did not know about the zoning code, but if he was a registered contractor with the City of Powell he would have known.

Board Member DePalma said he is torn because he believes the applicant made an honest mistake, however he doesn't believe the Board should consider the work done to this point. He said the fact that (4) of the (7) standards have not been met makes it difficult to justify approval.

Board Member Duncan is sympathetic to the applicant's predicament, however he is struggling to support it with the intent of the code and the magnitude of the variance. He too believes it was an honest mistake, but the Board has to do what is appropriate for the City based on code.

Board Member Brickner agrees it's difficult after the fact but feels standard number 2 and number 6 apply strongly to the case because it is a substantial change with most of the improvement occurring in the setback.

Board Member Herrmann said as he has mentioned he struggles with standard number 7. He is not sure he agrees with staff's comments that it could have been obviated some method other than a variance.

MOTION: Board Member Herrmann moved to approve the variance request to Code Section 1129.06(c)(4) to reduce the required rear yard setback in The Reserve at Scioto Glenn for an accessory structure from 30-feet to 10-feet to allow a patio with gazebo and seating wall. Board Member DePalma seconded.

Chair Hrivnak requested a roll call for passage: Don DePalma, no; Ryan Brickner, no; Tyler Herrmann, yes; Jim Hrivnak, no; and Randy Duncan, no. Motion denied.

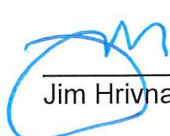

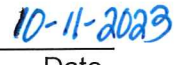
VOTE: Y – 1 N – 4 AB – 0

OTHER BUSINESS - None

ADJOURNMENT

Chairman Hrivnak moved to adjourn the meeting at 7:16 p.m. Board Member Duncan seconded. Motion passed by consensus.

MINUTES APPROVED: October 5, 2023

		
Jim Hrivnak, Chair	Pam Friend, Admin. Assistant	Date
		10-11-23