

Board of Zoning Appeals

1 **Application #'s VA-21-07, VA-21-08, VA-21-09**

August 19, 2021

LEGAL NOTICE

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6 Notice is hereby given that the Orange Township Board of Zoning Appeals will hold a public hearing on
7 Thursday, August 19, 2021, beginning at 6:00 p.m. to consider the following application/s:

8
9 **Variance Application #VA-21-07 David J. Allen & Sara L. Allen (continued from 7/15/21 hearing),**

10 Seeking an area variance from Rezoning Case #13-0507 Woods at Weeping Rock to allow for a nine (9 ft.)
11 feet variance into the thirty-five (35 ft.) feet rear yard setback. Also requesting a variance from Orange
12 Township Resolution Section 21.05 c) to allow for the existing four (4 ft.) feet fence to remain. The subject
13 property is located at 6040 Weeping Rock Drive Lewis Center, OH 43035 and having parcel number 318-
14 220-15-013-000.

15
16 **Variance Application #VA-21-08 Anil Marini,**

17 Seeking an area variance from Rezoning Case #19680 Meadows at Lewis Center to allow for a three feet
18 (3 ft), seven inch (7 inch) variance into the thirty-five (35') feet rear-yard setback to construct a deck.. The
19 subject property is located at 5716 Joab St. Lewis Center, OH 43035 and having parcel number 318-210-
20 17-003-000.

21
22 **Variance Application #VA-21-09 Corey Kracht,**

23 Seeking an area variance from Rezoning Case #3314 Highland Hills at The Lakes to allow for a one foot,
24 ten inch (1' 10") variance, for approval of existing structure, the current house was built in 2002 according
25 to Genoa Township standards and does not meet Orange Township standards. The subject property is
26 located at 5796 Highland Hills Dr. Westerville, OH 43082 and having parcel number 318-140-06-012-
27 000.

28
29 The hearing will be held at the Orange Township Hall, 1680 East Orange Road, Lewis Center, Ohio,
30 43035.

31
32 The applications and plans are available for inspection for a period of at least 10 days prior to the hearing
33 at the Orange Township Zoning Office, 1680 East Orange Road, Lewis Center, Ohio, 43035. Zoning Office
34 hours are Monday through Friday, 8 a.m. to 4:30 p.m. except legal holidays.

35
36 Following this hearing the Board may have a meeting for general purposes to consider such business as
37 may properly come before it including, but not limited to, consideration and/or approval of minutes,
38 scheduling future hearing dates for this or other applications and like matters.

39
40 The person responsible for the publication of this notice is Jeff Beard, Orange Township Zoning
41 Department.

42
43 *Jerry Miller, Chairman*
44 *Jeff Beard, Orange Township Zoning Department*

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46
47 *Please publish one time, on or before Friday, August 6, 2021 in The Delaware Gazette*

48
49 Mr. Miller called the hearing to order at 6:00 p.m.

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51 Roll Call: Jerry Miller, Rick Oster, Aaron Shipley, Kelvin Trefz , Punitha Sundar

Board of Zoning Appeals

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Township Officials Also Present: Jeff Beard, Senior Zoning Officer
Brett Wiemken, Zoning Inspector

Mr. Miller administered the oath to those speaking: Anyone who intends to testify, please raise your right hand to be sworn. Do you solemnly swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, state I do. And when it's your turn to offer testimony, state your full name, address and affirm that you have been sworn in.

Variance Application #VA-21-09 Corey Kracht,

Seeking an area variance from Rezoning Case #3314 Highland Hills at The Lakes to allow for a one foot, ten inch (1'10") variance, for approval of existing structure, the current house was built in 2002 according to Genoa Township standards and does not meet Orange Township standards. The subject property is located at 5796 Highland Hills Dr. Westerville, OH 43082 and having parcel number 318-140-06-012-000.

Mr. Beard presented the staff report and presentation. The applicant is asking for an area variance of 1'8" in the side yard setback. Surrounding areas are all zoned Single Family Residential District. There are 2 single family residences and they have Highland Hills Drive and a single family residence and behind them is a wooded area. The side yard requirement is 12'6" and this is shown at 10.7' from the side yard setback and they're requesting 1'8" variance from the side yard setback which is a 14% request. To give a little history of why this application is here, this property when built was originally approved through Genoa Township. Genoa Township's standards for side yard setbacks for this development was 10' for the side yard, so it was in compliance with Genoa Township when it was built. Since then the tax district for this property has become Orange Township tax district and not split, so based on legal counsel's review, they would have to follow the Orange Township setback which is 12'6". So based on that they would need a variance and legal counsel suggested that they go through the variance process to get the variance. Since this is already standing and already approved by Genoa, this would help alleviate any issues if the applicant and owner would sell the house, there are some possible issues with selling it and financing, title companies looking at the zoning stuff when you sell a house. So this is to clear things up, make things legal on the Orange Township side. A couple of residents who live nearby and when I explained it to them, they said they had no issues. Some of them didn't have a clue; the house right next to them is in Genoa Township and they didn't realize their house was Orange, so there definitely is some confusion there so this will just clear it up.

APPLICANT PRESENTATION/BOARD QUESTIONS AND COMMENTS

Corey Kracht, 5796 Highland Hills Drive, Westerville, Ohio and I affirm.

Mr. Miller: It seems like there's a whole lot of confusion but you're here on legal precedence.

Mr. Kracht; We bought the house about 8 years ago and we weren't aware of this issue until just recently but based on talking with Jeff, the recommendation was to fix this.

Mr. Miller: I can see some confusion. You've got a Westerville address, Genoa Township and Orange Township.

Mr. Oster: You're not adding anything to the property at this time. You're just looking to get the existing structure, patio and everything that's in place?

Mr. Kracht: Correct.

Board of Zoning Appeals

103
104 Mr. Oster: I think we have the due diligence to stick with what they did originally when the house was
105 built and approve.

106
107 **MOTION TO APPROVE VARIANCE APPLICATION #VA-21-09**
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109 Mr. Oster made a motion to approve Variance Application #VA-21-09, Corey Kracht, as outlined;
110 seconded by Mr. Shipley.

111
112 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
113 Motion carried

114
115 Hearing continued with Variance Application #VA-21-07
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117
118 Minutes prepared by Cindy Davis, Zoning Secretary
119

120 On September 16, 2021, Mr. Trefz made a motion to approve the minutes of the Orange Township Board
121 of Zoning Appeals for the meeting dated Augustn19, 2021, minutes for Variance Application #VA-21-09,
122 Corey Kracht, with the following corrections:

- 123
124
 - Correct the spelling of Mr. Wienken's name
 - Correct Mr. Wienken's title to Zoning Inspector
125
126

127 Seconded by Mr. Oster

128
129 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes
130 Motion carried

Board of Zoning Appeals

1 **Application #VA-21-07**

August 19, 2021

2
3 **Variance Application #VA-21-07 David J. Allen & Sara L. Allen (continued from 7/15/21 hearing),**

4 Seeking an area variance from Rezoning Case #13-0507 Woods at Weeping Rock to allow for a nine (9 ft.)
5 feet variance into the thirty-five (35 ft.) feet rear yard setback. Also requesting a variance from Orange
6 Township Resolution Section 21.05 c) to allow for the existing four (4 ft.) feet fence to remain. The subject
7 property is located at 6040 Weeping Rock Drive Lewis Center, OH 43035 and having parcel number 318-
8 220-15-013-000.

9
10 Mr. Beard presented the staff report and presentation. The applicant is seeking 2 variances, 1 to allow for
11 a 9' variance into the 35' rear yard setback and a variance to allow for the existing 4' fence to remain. To
12 the north is zoned Farm Residential District and North Road Park; south, east and west is Single Family
13 Residential District with all single family homes. We'll go over the setback variance request for the pool
14 first. Rear yard setback is 35'; the swimming pool will encroach 9' into the rear yard setback. This is
15 about a 25% request. One thing not in your packet were the letters of support. They were provided to you
16 at the table. We did not hear from any neighbors after sending out the notices. We do have some
17 neighbors that are in favor of it.

18
19 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENTS**

20
21 David Allen, 6040 Weeping Rock, Lewis Center, Ohio, and I affirm. We built the house about 5 years
22 ago. The kids were small at the time but they're getting older now. With the COVID lockdown we
23 haven't gone to pools and it got us thinking. We never really had any thought of having a pool, that's
24 clear from the patio we put in a couple of years ago. So to make room for the proposed pool, the patio is
25 going to have to get torn out so you can see this was kind of an afterthought, the pool. This was our first
26 time building a house and we had no idea what a setback was and when they built mine, we kind of went
27 past it, so what we're asking to do is be able to get a pool far enough away from the house but still saying
28 close enough in those guidelines without encroaching too much into that 35', so the 9' would essentially
29 be a 25% variance.

30
31 Mr. Beard: In their application was the conditional approval from their HOA for this plan.

32
33 Mr. Miller: It appears by the site plan that you provided that there's a 30' drainage easement to the rear.

34
35 Mr. Oster: Is that something we should be concerned with, Jeff?

36
37 Mr. Beard: That would be up to Delaware County to look at; Zoning has no control over an easement.

38
39 Mr. Trefz: There's a retaining wall around the pool; does that have a foundation?

40
41 Mr. Allen: No, it will not have any footers around it. It's going to be about 12", 18" high, so it's just kind
42 of holding some of the dirt back.

43
44 Mr. Trefz: And there's no concrete foundation in the patio going around the pool?

45
46 Mr. Allen: Just poured concrete.

47
48 Mr. Oster: With the 9', you're going to be 4' into the drainage easement too with everything once it's
49 done, the wall, concrete?

50
51 Mr. Allen: Yes.

Board of Zoning Appeals

52 Mr. Shipley: Jeff, how much room is between the 35' setback and the drainage easement?

53

54 Mr. Beard: It should be 5'.

55

56 Mr. Shipley: And you're 4' into the drainage easement.

57

58 Mr. Allen: On the right hand side in the northwest corner on my property line there's a drainage basin and
59 the whole backyard slopes to the right hand corner into that basin.

60

61 Mr. Trefz: And the size of the pool is 14' x 30'?

62

63 Mr. Allen: Yes.

64

65 Mr. Trefz: Since you're 9' into the easement, what determined the depth of that pool, that 14'?

66

67 Mr. Allen: We could have gone bigger and I didn't want to get too far into the easement, so we're trying
68 to maximize.

69

70 Mr. Trefz: Could you have gone less is my question. Could you have gone 12'?

71

72 Mr. Allen: No, the only one they had was 14' or 16' width.

73

74 Mr. Trefz: That's the style of the pool, correct?

75

76 Mr. Allen: Yes, it's going to be a fiberglass pool so it's not going to be a pour in, you get what you want.
77 It would be either 14' x 30' or 16' x 30', so we're going with the smaller of that to stay out of the setback
78 as much as possible.

79

80 Ms. Sundar: I have the same question about you going into the drainage easement.

81

82 Mr. Oster: Have you checked with the water and sewage people on what they thought of that?

83

84 Mr. Allen: No, this is all kind of new to me, like with the 35' that I wasn't aware of.

85

86 Mr. Oster: That drainage easement is not just for your home.

87

88 Mr. Trefz: Behind your fence there appears to be a playset.

89

90 Mr. Allen: That's my neighbor's to the west of me.

91

92 Mr. Oster: So the drainage thing is in your yard and goes into the ground and it's over in the corner?

93

94 Mr. Allen: Yes.

95

96 Mr. Oster: You can tell where everything slopes in there.

97

98 Mr. Allen: Our property line is actually about 1-1/2' on the other side, but I didn't want to put the fence in
99 so it wouldn't go right over top of the drainage in case they ever had to access it so I moved the fence in,
100 so the drainage appears to be in my neighbor's yard but it's not; we share that with my neighbor. It goes
101 right down the property line.

102

Board of Zoning Appeals

103 Mr. Shipley: So that's the drain that drains the back yards of all those houses?
104

105 Mr. Allen: Yes, everything kind of slopes to the back.
106

107 Mr. Oster: I'm kind of familiar with that because I had a friend in Worthington Hills that had an issue
108 with drainage back by his fence and every winter it shoved the fence and posts out of the ground. I know
109 that can be an issue with water drainage but is that something we can ask him to check with them to get
110 their approval to go into their easement?
111

112 Mr. Beard: You could put that on as a condition. From a zoning side we've been told by legal counsel that
113 we cannot stop somebody from going into an easement, but since they're asking for a variance, that could
114 be a condition you put on it.
115

116 Mr. Trefz: That is one of the criteria we can use too, does it affect government services.
117

118 Mr. Shipley The issue is too that it could have an ill effect on other properties.
119

120 Mr. Allen: I'm more than happy to run it down and see what the outcome is. What we don't want to do is
121 put a pool in and cause flooding issues.
122

123 Mr. Miller: It's not just the flooding; its chlorine and everything else that could potentially flow into it.
124

125 Ms. Sundar: Could you get a different style that is smaller?
126

127 Mr. Allen: I guess we didn't consider it. We've already incurred so much cost to get the pool in, we're
128 trying to get something that makes sense, that's a good size for everybody and we don't think we're
129 asking too much yet we want to maximize what we're spending.
130

131 Mr. Oster: Is that a school behind you?
132

133 Mr. Allen: Directly behind me is no build. Off to the right is North Orange Park with soccer fields and
134 directly behind my house is just brush that has never been cleared out and looks like it never will.
135

136 Mr. Oster: There's a path that accesses in there from your next door neighbor?
137

138 Mr. Allen: But they stop because now you're getting into school property.
139

140 Ms. Sundar: I understand your situation but tomorrow if someone comes in with the same variance, we
141 may be in a position to say no on the same street, same background.
142

143 Mr. Miller: You're right; anything we do does set a precedence.
144

145 Ms. Sundar: Because it's a drainage easement. If it was just nothing, I wouldn't be concerned at all.
146

147 Mr. Shipley: We have an option as Jeff mentioned to set a condition if nothing else.
148

149 Mr. Trefz: But also the setback at 25%.
150

151 Mr. Miller: I realize we should not provide suggestions to an applicant, but have you considered, based on
152 our comments, to talk to Delaware County before we make a decision?
153

Board of Zoning Appeals

154 Mr. Allen: This is my first time going through the process, so I'd be more than happy to. I'm not trying to
155 impact my neighbors; that's the last thing I want to do.

156

157 Mr. Miller: If that's the case that you would like to contact Delaware County.

158

159 Mr. Oster: Is it Delaware County Soil and Water?

160

161 Mr. Shipley: Yes.

162

163 Mr. Miller: What you may want to do is request a continuance for this.

164

165 Mr. Shipley: Where are you in the process of your pool?

166

167 Mr. Allen: I can't sign a contract until I have this. We have drawings, we've already contacted several
168 companies, we're ready to go; I was just not signing on the dotted line until we have this because at the
169 time of signing I have to put a percentage down, so I'm there, I've done the leg work to this point.

170

171 Mr. Oster: I say we move forward with whatever we feel if we don't think 9' is too egregious into our
172 setback and just put in a condition that he should consult Delaware Soil and Water before he possibly
173 wastes any money.

174

175 Mr. Shipley: That is what I was getting at. We would like something from Delaware County Soil and
176 Water and that's going to be the stopping point if we made that condition, that would allow him to move
177 forward sooner than to wait for next month's meeting if he would get that information. And your HOA
178 gave you conditional approval.

179

180 Mr. Allen: Yes, based upon you guys.

181

182 Mr. Trefz: It's 13% on the drainage, so that's just 13% on the drainage easement.

183

184 Mr. Shipley: And 25% overall.

185

186 Mr. Beard: More than 25% would be considered substantial. You could ask for a continuance if you want
187 because maybe Soil & Water would say they're okay but not that far into it, so he has to redesign. So you
188 can continue it if you want to see proof or you could put a condition on it that he has to provide evidence
189 to the Zoning Department before we issue a permit.

190

191 Mr. Oster: Either way, we're still looking at 9' into our easement.

192

193 Mr. Shipley: That's 25%.

194

195 Mr. Oster: And 25% has always been substantial.

196

MOTION TO APPROVE VARIANCE APPLICATION #VA-21-07

197

198
199 Mr. Miller made a motion to approve Variance Application #VA-21-07, David J. Allen & Sara I. Allen,
200 for the variance request for the setback depending upon Delaware County Soil and Water's review and
201 approval; seconded by Mr. Oster.

202

203 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes.

204

Motion carried.

Board of Zoning Appeals

205 Mr. Allen: So do you want to hear back from me because I'm not doing anything if they say no.

206

207 Mr. Miller: It's part of the condition.

208

209 Mr. Oster: Just send it to Jeff.

210

211 Mr. Shipley: They're going to need plans and make it very clear what you plan to do and how far into the
212 drainage easement and they'll have to sign off on it in some form or fashion.

213

214 Mr. Beard; Variance request #2 is for the fence height. The applicant is requesting a 4' high fence as the
215 fence was constructed in the past. This is a 20% request for the variance, allowing the current fence to
216 remain.

217

218 Mr. Allen: There are 3 properties that all have the same fence and that was put in well before the idea of
219 putting a pool in so I know there's the 5' versus the 4'.

220

221 Mr. Oster: It's pretty much been in our opinion, and I notice in your document you are including a cover.

222

223 Mr. Allen: Yes, it's a safety cover.

224

225 Mr. Oster: If you do that, you're absolutely fine.

226

227 **MOTION TO APPROVE VARIANCE APPLICATION #VA-21-07**

228

229 Mr. Oster made a motion to approve Variance Application #VA-21-07, David J. Allen & Sara I. Allen,
230 for the variance request for the fence height, to allow the fence to be 4'; seconded by Ms. Sundar.

231

232 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Ms. Sundar-yes, Mr. Trefz-yes
233 Motion carried

234

235 Hearing continued with Variance Application #VA-21-08

236

237 Minutes prepared by Cindy Davis, Zoning Secretary

238

239 On September 16, 2021, Mr. Shipley made a motion to approve the August 19, 2021 minutes of the Orange
240 Township Board of Zoning Appeals for Variance Application #VA-21-07, David J. Allen & Sara L. Allen,
241 with the following corrections:

242

- 243 • Line 21: address should be changed to 6040 Weeping Rock.
- 244 • Line 41 should read: "No, it will not have footers around it".
- 245 • Line 52 should read: "...and the drainage easement?"

246

247

248 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar – yes
249 Motion carried

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Board of Zoning Appeals

1 **Application #VA-21-08**

August 19, 2021

2
3 **Variance Application #VA-21-08 Anil Marini,**

4 Seeking an area variance from Rezoning Case #19680 Meadows at Lewis Center to allow for a three feet
5 (3 ft), seven inch (7 inch) variance into the thirty-five (35') feet rear-yard setback to construct a deck.. The
6 subject property is located at 5716 Joab St. Lewis Center, OH 43035 and having parcel number 318-210-
7 17-003-000.

8 .
9 Mr. Wiemken presented the staff report and presentation. The applicant is requesting to allow a 3'7"
10 variance into the 35' rear yard setback to construct a deck. This would be a 10.2% request. The
11 surrounding area is all zoned Single Family Planned Residential District which consists of single family
12 residences and open space to the west which is owned by the HOA. There's a hill located to the west of
13 the property. There's a correct to the staff report wherein it states swimming pool and that should be deck.

14
15 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENTS**

16
17 Anil Marini, 5716 Joab Street, Lewis Center, Ohio, and I affirm. I want to build a 16' x 18' deck off the
18 back of my house and it would encroach 3'-7" in the setback on this.

19
20 Mr. Trefz: What determined the dimensions of your deck?

21
22 Mr. Marini: My previous house had the same dimensions with an open fire pit space, so we went with what
23 we had then with the 16' by 18' dimensions.

24
25 Mr. Miller: Is there an HOA at your location?

26
27 Mr. Marini: Yes.

28
29 Mr. Miller: Have you already requested approval?

30
31 Mr. Marini: Last night I sent them a sketch and request. I did not know the process, so I just started with
32 this so I got an email saying if I wanted to do an extension I would have to go through this process.

33
34 Mr. Oster: Usually everyone starts with the HOA first because it's cheaper then they come here.

35
36 Mr. Marini: Now I know the process. I did not know the variance process.

37
38 **MOTION TO APPROVE VARIANCE APPLICATION #VA-21-08**

39 =

40 Mr. Miller made a motion to approve Variance Application #VA-21-08, Anil Marini; seconded by Mr.
41 Oster.

42
43 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Ms. Sundar-yes, Mr. Trefz-yes
44 Motion carried

45
46 Mr. Beard: Just for the Board's knowledge, we had minutes on the agenda but they were not completed in
47 time so they will be moved to the next meeting.

48
49 Hearing adjourned at 6:45 p.m.

50
51 Minutes prepared by Cindy Davis, Zoning Secretary

Board of Zoning Appeals

52

53 On September 16, 2021, Mr. Shipley made a motion to approve the August 19, 2021 minutes of the Orange
54 Township Board of Zoning Appeals for Variance Application #VA-21-08, Anil Marini, with the following
55 corrections:

56

57 • Line 9: Correct the spelling of Mr. Wiemken's name

58 • Line 18 should read: "would be encroaching 3'-7"

59 • Line 22 should read: "My previous house had the same dimensions with an open fire pit space, so we went with
60 what we had then with the 16' by 18' dimensions."

61

62

63 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar – yes

64 Motion carried