

City of Springboro  
320 West Central Avenue, Springboro, Ohio 45066

Planning Commission Work Session  
Wednesday, July 11, 2018, 6:00 p.m.

**I. Call to Order**

Chairperson Becky Iverson called the Springboro Planning Commission Work Session to order at 6:00 p.m. at the Springboro Municipal Building, Council Chambers, 320 West Central Avenue, Springboro, Ohio.

Present: Becky Iverson, Stephen Harding, Chris Pearson, Becky Hartle, Jack Hanson, Robert Dimmitt, John Sillies

Staff: Dan Boron, Planning Consultant; Elmer Dudas, Development Director; Chad Dixon, City Engineer; Amy Brown, Planning Commission Secretary

**II. Agenda Items**

**A. Variance**

**455 Springs Boulevard, The Springs PUD, Planned Unit Development, variance from rear yard setback requirements**

**Background Information & Staff Comments**

This agenda item is a variance request to allow the construction of two decks in a required rear yard at 455 Springs Boulevard in The Springs PUD, Planned Unit Development, and is based on an application filed by the property owners, Michael and Paula Schmitz. The decks would be attached to the rear elevation of the home and would be located on either side of an existing deck already in the same area of the property. The decks would be situated less than 5 feet from the rear property line in the case of the northwest corner of the proposed north deck, more than 5 feet in the case of the south deck (note: the rear elevation and rear property line are not parallel, leading to the discrepancy in setbacks from north to south). The rear yard setback for this property is 10 feet and is established by the record plan for The Springs, Section One.

The Planning and Zoning Code provides relief from the strict interpretation of the code in Planned Unit Developments such as The Springs from the Planning Commission. Variances from the strict interpretation of the code for conventionally-zone properties (R-2, HBD, O-R for example) from the Board of Zoning Appeals.

The subject property is located near the entrance to The Springs PUD and is among the 18 homes originally built by Coffman Development as part of the PUD. Other homes on the Springs Boulevard side of the subject property were built in the same timeframe. Land behind the subject property are located on Winding Creek Drive. A home immediately behind the subject property is under construction as of this writing. Another lot to the southwest is currently undeveloped.

The City is in receipt of documentation from The Springs (at Settlers Walk) Design Review Board indicating approval of the proposed construction. The City of Springboro has notified the neighboring property owners immediately abutting the subject property of the variance request.

In addition to the 10-foot rear yard setback, the rear yard is overlaid with three easements: a utility, drainage, and landscaping easement. The latter is concurrent to the original developer's proposal for a babbling brook artificial stream along the rear property lines on homes fronting Springs Boulevard and Winding Creek. While the creek has been removed, the easement still exists.

Typically City staff does not object to variance requests however City staff does not support this variance request in light of the utility and drainage easements on this portion of the property. These easements are intended to provide for the welfare of the property, subdivision, and community in general.

Formal action on this variance request may occur as soon as the July 25th Planning Commission meeting pending authorization by the Planning Commission at the July 11th work session.

**Discussion:**

Michael and Paula Schmitz, homeowners of 455 Springs Boulevard, were present tonight to answer questions and discuss the proposal.

Ms. Iverson asked Mr. Boron to summarize the variance request.

Mr. Boron referred to an aerial view of the property from 2013 included in the meeting materials. He said there are 2 sites behind the property, and one of them is at the foundation stage of building. He said there is development happening in this community, and gave background information about how the development originally began, with Coffman Development beginning the project, and now Fischer Homes is currently developing the homes.

The members discussed the previous development.

Mr. Boron said that this area has gone through a lot of change. He said an artificial stream originally went through the rear of the property, and that creek was actually in private property. He said easements were along both sides of the property, including a landscaping easement that paralleled the edge of the property. He said there have been restrictions on how the homes need to match the ones that are in this area since 2011, when Fischer Homes took over the project.

Ms. Iverson asked the applicants if they had any questions.

Mr. Schmitz said this is his first time going through this, and he is listening and following lead of the Planning Commission.

Mr. Boron said the reason why the applicant is coming to Planning Commission is that Planning Commission looks at variance requests within Planned Unit Developments, and the Board of Zoning Appeals looks at variance requests within conventional development.

Mr. Harding asked if there was an HOA there.

Mr. Schmitz said, yes.

Mrs. Schmitz added that they did apply and get approval from their HOA.

Mr. Boron said that what occurs in the PUD is the setbacks are established within each unit of the development by the general plan, and then the record plan for each individual section. He said that a landscaping easement overlays the property as well as two other easements on the property, first a drainage easement, and also a utility easement. He added that Building Department records show that there was an approval for the plot plan, and it is also clearly marked "no deck permitted".

Mr. Dimmitt asked if there were utilities buried there.

Mr. Dudas said there were none buried there.

Mr. Schmitz said that he called OUPS, and they told him there were none. He said that one storm sewer drain runs behind the house, and from the back of the deck, the storm sewer is 13 ½ feet off the back of the deck.

Mrs. Schmitz added that they weren't looking to add any additional feet off the back of the deck, they were looking to add width across the back of the house.

Mr. Pearson said that one of the decks is going to be very close to the property line, and confirmed that the applicant was planning two decks, one on either side of the existing deck.

Mrs. Schmitz said that the deck would not extend beyond the home.

Mr. Pearson confirmed that it would maintain the setback.

Mr. Boron said, yes, but a variance is still needed. He said anything on the back of the house would need a variance because of the way the lot was originally laid out because the existing deck is already in the setback. He added that the applicants are not the original owners of the property. It is not their fault that the existing deck was constructed.

Mr. Schmitz said they would like to add to the existing deck on each side, and keep the same distance off the back of the house. He said that the side they really would like would be covered, and the HOA has requirements that a roof extension match the house.

Mr. Dimmitt asked if it was the builder who is building behind the property approve the proposal.

Mr. Schmitz said that he has not talked to Fischer Homes, but he submitted a list of homeowners within 300 foot radius with his application.

Mr. Boron said that we notified every property owner directly abutting the property as a courtesy, and there has been no response.

Ms. Iverson asked if there is a variance to allow the deck to go over more on the sides.

Mr. Schmitz said that the HOA will not let them go past the side of the house.

Mr. Boron said that everything in the rear is in the easements, including the existing structure. He said that laying the setbacks aside, there are three easements in the backyard. He said there is a landscaping easement for the old creek, and that easement was there to protect the man-made creek from any kind of encroachment from private property. He said the drainage easement is uniform in this whole area for all of the properties at the rear to allow for the drainage of the property, and it protects not only the applicant, but all the neighbors. He added that the concern would be creating any kind of obstruction that would dam up the drainage in the area. He said that there is also a utility easement.

Mr. Schmitz said he cleans and maintains the area around the big storm sewer drain, especially after a big rain. He said this drain sits 13 ½ feet off the back of the deck. He added that the backyard is a big hill, and the current deck is elevated.

Mr. Dudas added that the utility easements are for everyone, gas, electric, cable, every utility.

Mr. Boron said that this area is served by underground utilities, and at a future date, they would have the right to go in and remove the deck.

Mr. Schmitz said that currently all of their utilities run through the front yards, and he assumes that the houses they are building behind him, their utilities would be from their front yards also.

Mrs. Schmitz asked what the chance would be of them bringing back the creek.

Mr. Boron said that the landscape easement could be removed, or vacated, and that would have to be issued by the developer. He said he didn't anticipate anyone going back to re-establish it, and Fischer Homes probably wasn't aware of the other two easements, let alone the setback requirements, when they approved the new decks. He said that the one that is more significant is the drainage easement, and staff put some pretty strong language in the comments of the concern about that. He said that ultimately the variance decision is up to the members of the Commission, and it has to be under the understanding that the City or another party can go back in and have to remove a structure if there is any necessity.

Mr. Dudas said the City would never permit a structure to be built in a drainage easement, especially a permanent structure, the City would not allow that.

Mr. Dimmitt said that since the deck is already there and it's elevated, how much more risk would it be to expand it laterally.

Mr. Dudas said the City would not allow it. He added that the original structure was built without permits, and it would not be allowed it to be extended.

Mr. Boron said that regardless of what Planning Commission elects to do on the variance from the setback which is another matter entirely, those easements are there and they could be exercised.

Mr. Dimmitt said that the likelihood of exercising the utility easement would probably never happen, but if the City has never allowed this, he is not sure a precedence should be set.

Mr. Boron said the precedent would be set for all of the other lots up and down the area.

Mr. Hanson asked if this house could have a poured concrete patio in the back of it.

Mr. Boron, yes, but it would be in the easement, and could be subject to removal.

Ms. Iverson said if there were no further questions or comments, the next step would be to come for final review.

Ms. Hartle said that they need to let the applicant know where we're going here, they can't just come back in two weeks.

Ms. Iverson said it sounds like from what we are summarizing, there is a good chance it would not be approved.

There was discussion and consensus among members that it would not be approved.

Mr. Pearson said that the applicant is already on the edge with what you have, and he would hate to set a precedent.

Mr. Schmitz asked if that was the purpose of applying for a variance.

Mr. Boron said, yes, but encroaching on three easements, even laying one aside, the two others could eventually be exercised, and result in the removal of a deck or a portion of it.

Mr. Pearson said that even allowing the variance doesn't prohibit someone exercising the easement.

Mrs. Schmitz that it would be highly unlikely a builder or anyone would want to put fiber optics back in the ditch, and there have been zero drainage problems since 2004, when they moved in.

Ms. Iverson said that is also considering there weren't as many houses there, and the amount of houses that could be built in The Springs, the drainage could be worsened.

Mr. Schmitz said that those lots are on flat level ground, and they are elevated, and all the drainage is running on those lots.

Mr. Pearson said that swale is protecting them from your runoff too, and if something happens that water gets blocked by your structure, it is going to go to them.

Ms. Iverson asked if the applicant was permitted to do a buffer of some sort, like a dirt mound to raise up and level the yard for landscaping purposes.

Mrs. Schmitz said there was not enough room in the backyard for them to build something like that.

Mr. Boron said that the original intent was that Coffman Development was going to maintain everywhere outside the perimeter of the home. He said it would have been a landownership type development where everyone would pay a membership fee, and they were putting homes relatively close because of that.

Mr. Sillies confirmed that the City has never allowed a structure to be built in any easement area, so as far as precedent for a PUD, if someone came in the future, and references this property as precedence, that is not a valid argument relative to their decision.

Mr. Boron said that each case is to be reviewed on its own merits.

Ms. Iverson said that the members are clear in the supposition of what could happen, and asked if there was anything else that needed to be clarified. She asked if there would be any other option for the applicant.

Mr. Schmitz said it sounds like the Commission is not going to approve or set precedence allowing a structure going into the utility easement, or further into the easement. He asked if it were possible to build a deck there, and just not attach it to the house.

Mr. Boron said the applicant might be able to build a patio, but not a deck. He added that the existing deck cannot be used as a consideration because it already is a non-conforming deck, and can't be used as a basis to further the mistake.

Mr. Dimmitt asked what the difference is between a patio and unattached deck.

Mr. Dudas said that one is a structure and one is not.

Mr. Schmitz confirmed that they can't build a deck, but they can build a patio.

Mr. Dudas said the patio needs to be at grade, and it can't be built up.

Mr. Schmitz said they would like to put a hot tub there, and putting a patio here will require some dirt removal. He asked if a patio would require a permit or approval.

Mr. Dudas said that patios don't require a permit, just an electric permit for the hot tub.

Mr. Boron said to check with building department to get a permit for the electric.

Mr. Sillies asked who controls the easements, could they be re-evaluated, and asked who would do that.

Mr. Boron said the drainage easement is the City's, and everyone has rights to the utility easement.

Mr. Dudas said the HOA could re-evaluate the landscape easement. He said that it is the responsibility of the homeowner to maintain the drainage easements. He added that all utilities would have a say in the utility easement, and would involve multiple entities.

Ms. Iverson said that she appreciated everyone's input in trying to get something to work for the applicant.

**B. Variance**  
**185 Bailey Lane, The Fairways PUD-R, Planned Unit Development-Residential, variance from rear yard setback requirements**

**Background Information**

This agenda item is a variance request to allow the construction of a patio covering and pergola in a required rear yard at 185 Bailey Lane in The Fairways PUD-R, Planned Unit Development-Residential, and is based on an application filed by Spurling Construction on behalf of the property owner Troy Riegle. The patio cover and pergola are proposed to be

attached to the home and would project 14 feet to the south towards the rear property line. Together the two structures would be as close as 27.5 feet to the rear property line. The rear yard setback for this property is 35 feet and is established by the record plan for The Fairways, Section One. The variance request is to allow the 7.5-foot projection into the rear yard.

The Planning and Zoning Code provides relief from the strict interpretation of the code in Planned Unit Developments such as The Fairway from the Planning Commission. Variances from the strict interpretation of the code for conventionally-zone properties (R-2, HBD, O-R for example) from the Board of Zoning Appeals.

The subject property is located on the south side of Bailey Lane on a block that is fully developed. The rear side of the property abuts the City of Springboro's Heatherwoode Golf Course hole #4 fairway.

The City has no documentation to date of the approval of the proposed structures from The Fairways HOA. The City has notified the neighboring property owners immediately abutting the subject property of the variance request.

There is no evidence of any easements or other covenants and restrictions that would prohibit construction of the two structures.

Formal action on the major revision request may occur as soon as the July 25th Planning Commission meeting pending authorization by the Planning Commission at the July 11th work session.

### **Staff Comments**

City staff identified the following comments for this agenda item at this time:

1. Provide documentation from The Fairways HOA, if applicable, on the approval of the proposed patio covering and pergola.  
The Clearcreek Fire District has no comments at this time.

### **Discussion:**

David Spurling, general contractor, was present tonight representing homeowner Troy Riegler in this discussion.

Ms. Iverson asked Mr. Boron to summarize the variance request.

Mr. Boron said there are no easements, and that the property line and fence line not necessarily matching, and the intention is to cover this area coming off the rear of the house.

Mr. Spurling said that the pergola would cover the largest part of the patio, and the smaller covering would be an actual roof covering at the side where the patio door is. He said they tried to keep as small a footprint as they could, and still fall within the parameters of rain runoff for a good roof structure.

Mr. Boron said there is a 35 foot setback from the rear of the property, and what is being requested is extending into the setback by 7 ½ feet.

Mr. Pearson said that currently, the edge of the house is right at the setback.

Mr. Spurling said, almost, but not quite. He said there is actually a 14 foot patio, but there is a little bumpout, and you can see the roof structure where the patio door is, which kicks it out 2 feet. He said the actual section of concrete from this door to the edge is only 12 feet, even though it goes 14 feet up to the foundation itself. He said the area gets direct sun all the time.

Mr. Dimmitt asked if the HOA had been approached.

Mr. Spurling said that he talked to the homeowner about that. He said the homeowner didn't even know there was an HOA there, and he has never contributed to it, and they never asked him to.

Ms. Iverson said that it might be part of his taxes.

Mr. Spurling agreed that it might be, but they were not aware of the HOA until he was sent the information packet.

Mr. Boron said the comment was only because each subdivision has a design review board, and if you can provide information, that would be great. He added that the neighboring property owners were notified by letter regarding the request. He said this request is only 7 ½ feet of a 35 foot setback, with no easements in this area.

Ms. Iverson said this request seems straightforward, and asked if anyone had any other questions or comments.

Mr. Dimmitt asked if the Commission needs to hear from the HOA.

Mr. Boron asked Mr. Spurling to secure that information.

Mr. Spurling said that he would pursue that, and would make sure to find out something before the next meeting.

Mr. Boron said that it would just be a question of whether they have a design review board or not, and someone is maintaining quite a bit of common area over there. He added that it would be on the agenda for formal approval on July 25 at Planning Commission's pleasure.

### **III. Guest Comments**

Ms. Iverson asked if any guests would like to speak, please come up to the front, and state their name and address for the record.

There was no response.

### **V. Planning Commission and Staff Comments**

Mr. Boron said that there will be a meeting of the Board of Zoning Appeals which will take place next Wednesday, and would be their first meeting since 2010. He said they will be looking at a variance for an item that Planning Commission saw in the spring, which is a variance from the front yard setback requirements in the R-2 district. He said the request is from Springboro United Church of Christ to build a building closer than what is allowed in the R-2. He said they would like a variance to allow the building



to encroach as close as 6 feet from the front yard requirements. He said that item could be on the agenda for the meeting at the end of the month if it goes favorably.

Mr. Boron said that Hardy Diagnostics, who were here in June for the work session, will be back with the full submittal at the end of the month. He added that the variance for the property on Bailey Lane will also be on the agenda.

Mr. Sillies said that he would not be present for the July 25th meeting.

Ms. Iverson reminded everyone that the Planning Commission work session in August will be on the 15th, if needed.

#### VI. Adjournment

Ms. Iverson adjourned the Wednesday, July 11, 2018 Planning Commission Work Session at 6:58 p.m.



---

Becky Iverson, Planning Commission Chairperson



---

Dan Boron, Planning Consultant



---

Amy Brown, Planning Commission Secretary