



Board of Zoning Appeals

Meeting Minutes

February 22, 2016

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W Main Street and was called to order by BZA Chair, Shull at 7:00 p.m.

Those answering roll call:

Mr. Matt Shull, Chair	Present
Mr. Jesse Thomas	Present
Ms. Julie Kriss	Present
Mr. Bill Steele	Present
Ms. Marlene Brisk	Absent
Mr. Mike Mott (Council Representative)	Absent

Staff members present: Adrienne Joly, Deputy Director; Stephen Mayer, Planner and Pam Hickok, Clerk

Mr. Shull led the Pledge of Allegiance to the Flag of the United States of America.

Moved by Steele to approve January 25, 2016 meeting minutes , Seconded by Kriss. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Mr. Shull swore to truth those wishing to speak before the Commission.

Mr. Shull invited the public to speak on non-agenda related items. Received no response.

Moved by Shull to accept the staff report and related documents into the record, Seconded by Thomas. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

V-03-2016 Variance

Variances to Codified Ordinance Chapter 1165 to the height and location requirements for a recreational structure at 7363 Milton Court (PID: 222-002675).

Applicant: Todd Parker

Mr. Stephen Mayer presented the staff report.

Mr. Shull asked if the size and scope is the same as the existing detached garage.

Mr. Todd Parker stated that the pair of masses mimics the detached garage and they are connected by a roofline.

Mr. Steele asked if it was an open breezeway.

Mr. Parker stated yes.

Mr. Shull asked if it slopes.

Mr. Parker stated that it may be slightly lower than the existing garage because the property slopes towards the creek. May be about one foot lower. Low retaining wall need at the rear because they can't re-grade due to the drainage easement restriction.

Mr. Shull asked if all of the trees will be removed.

Mr. Parker stated that about six trees will be removed. The ARC requires screening from the neighbors so we will be planting numerous trees.

Mr. Steele asked if any input from the neighbors.

Mr. Mayer stated that we received one email regarding concerns with grading and drainage. Received a phone call about the pool and the view corridor.

Mr. Steele asked if the drainage issue is related to the pool or the structure.

Mr. Mayer stated that it is the surface area being covered.

Mr. Shull asked which neighbor sent the email.

Mr. Mayer stated that he is not sure.

Mr. Parker stated that he believes it is the Purdy Court house with the pool, shown in the picture.

Mr. Steele asked what the distance will be from the property line to the northeast corner of pool. The email references 75 feet.

Mr. Parker stated that it will be about 50 feet.

Mr. Steele asked if the 75 feet a code reference.

Mr. Mayer stated that the neighbor would like it at about 75 feet. The closest distance to a neighbor is about 50 feet but the creek is further back.

Mr. Steele asked if anything requires a 75 foot setback.

Mr. Mayer stated we have a riparian corridor requirement that is 100 feet centered on the stream's centerline and there is a minimum setback of 25 feet on each side. This meets that requirement.

Mr. Thomas asked how he would respond to the specific statement that a structure prevent the underlying soil from absorbing the water, and the requisite re-grading would increase the slope of the yard in question water is a serious concern.

Mr. Parker stated that the engineering department will review the permit when submitted. This structure will have to mimic the requirements for the grading and we also use good common sense. We know the water runs towards the creek. We will manage storm water as the city requires.

Mr. Thomas asked when the engineering report is completed.

Mr. Mayer stated that the city has storm water requirements but this is a residential project that is exempt from submitting a separate engineering plan. The plan will be reviewed at the time of building permit submittal. Engineering staff will review to verify the positive drainage from the property and that no adverse effects on neighboring properties.

Ms. Joly stated that we have a large creek easement to provide the storm water. From the beginning of the subdivision, engineering is taking storm water management into account.

Mr. Steele asked if the drainage engineering is the same no matter whether this needed variances or not.

Ms. Joly stated that is correct. It has more to do with the surface coverage not the height.

Mr. Shull stated that from a symmetrical standpoint I understand why it is located there...

Mr. Steele stated that it keeps it from being pushed towards the creek.

Mr. Parker stated that behind the house has an outdoor fireplace and woods.

Mr. Shull read the staff recommendation into the record.

Mr. Steele asked if any neighbors on Milton called with concerns.

Mr. Mayer stated no.

Mr. Parker stated that this house is much further back on the lot due to the Columbia Gas easement.

Mr. Shull asked for audience comment. (Hearing none)

Mr. Thomas asked if any of the neighbor concerns change staff's recommendation.

Ms. Joly stated that it doesn't change the recommendation. A condition for engineering review could be added to emphasize the requirement not to have any adverse impacts to neighboring properties.

Moved by Shull to approve V-03-2016 subject to the condition that City engineering staff will review the permit to ensure there are no additional impact to neighbors as it relates water runoff to the stream, Seconded by Kriss. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

V-04-2016 Variance

Variations to Codified Ordinance Chapters 1131 and 1165 to eliminate the requirement that the property at 5055 Johnstown Road have frontage on a public street (PID: 222-004747).

Applicant: Timothy and Leslie Timmons c/o Underhill Yaross & Hodge

Mr. Mayer presented the staff report.

Mr. Steele asked if and when a future lot is developed; will the newly created lot need a variance or are will authorizes both parcels.

Mr. Mayer stated that you are authorizing both parcels. Per the zoning for this property they have the right to subdivide to create a second lot.

Mr. Shull stated that Planning Commission had a conversation about a right of way dedication and originally we wanted all three property owners to sign an agreement and at this time we have two signatures. Does that have any impact on the discussion today and the variance?

Mr. Mayer stated that if we have the agreement we would still need this variance. We knew this variance would be needed when the annexation and rezoning occurred.

Mr. Shull asked if we need to consider this as part of this approval.

Mr. Mayer stated that when this was annexed and rezoned we thought that we could get a right of way agreement with all parties on one document. Since that time, a party has dropped out. We will still like to have a future right of way agreement for this lot. We will need to go lot by lot.

Mr. Steele asked if the owner has signed an agreement.

Ms. Joly stated that it is a condition but we understand that the owner agrees. This is a unique situation because this home was under construction and almost complete when Oxford started construction and was able to provide water and sewer to this house. We thought it was a great idea to annex the property so they could get access

to the central services. The variance will clean things up for them because currently they are a nonconforming lot.

Mr. Steele asked if any input from neighbors.

Mr. Mayer stated no.

Mr. Shull asked where the city boundary is located.

Mr. Mayer showed the city boundaries on the map.

Mr. Shull asked about the other condition the existing and future parcel needs 150 ft. on the private access drive.

Mr. Mayer stated that it will prevent any future variances after a lot split occurs.

Mr. Shull asked if we are within the 30 days.

Mr. Mayer stated yes.

Mr. Shull asked for any public comment. (Hearing none)

Moved by Steele to approve V-04-2016 subject to the following conditions:

1. The existing and future lot both have a minimum of 150 feet of frontage along the private access drive.
2. The applicant enter into a Future Right-of-Way Dedication Agreement with the city for the portion of the easement adjacent to their property, Seconded by Kriss. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

V-09-2016 Variance

Variance to Codified Ordinance Chapter 1153.04(f) to allow a service area to be located 25 feet from a district where residences are a permitted use for properties generally located west of Beech Road and north of Innovation Campus Way West (PID: 095-111504-00.001 and 095-111504-00.000).

Applicant: The New Albany Company

Mr. Mayer presented the staff report.

Mr. Steele asked if the variance is approved and they wanted to locate a residential facility on the property, what situation would we be in.

Mr. Mayer stated that I don't know that there would be any change. They will have the required screening to buffer the two uses.

Mr. Steele asked if we received input from the church.

Ms. Joly stated that church representatives are present tonight.

Mr. Aaron Underhill, Underhill Yaross, stated that we want to show that we will have minimal impact. We have worked with the church. (Provided a PowerPoint presentation) We will have a 4 foot berm with a 6 foot high privacy fence with evergreen trees on the berm that will meet or exceed the 75% opacity within five years. We have a 25 foot setback line for the service area. The building is 90 feet to that property line at the closest point. The anomaly is that we have residential uses permitted on a property that currently being used for institutional use. They have some plans for expansion.

Mr. Thomas asked what type of privacy fence.

Mr. Doug Urbrich, Vice President of CCL, continued with the PowerPoint and showed the fence and views from the church property. It will be a vinyl, off-white fence. The fence and berm will help with noise buffering. We manufacture labels and are not a 24 hour operation. No deliveries on the weekends.

Mr. Steele asked how you would describe the difference between 25ft and 50ft.

Mr. Urbrich stated that the noise will be absorbed by the trees. We have no process equipment on the roof.

Mr. Shull asked if you have any deliveries on the weekend.

Mr. Urbrich stated no.

Mr. Shull asked if a fence requirement exists.

Mr. Mayer stated no.

Mr. Steele asked what if the church builds out much closer to the property line. What if CCL sells to a new user and the new user has a louder use.

Ms. Joly stated that it would be reviewed through the Certificate of Occupancy and meeting the zoning code. The variance runs with the property.

Mr. Shull asked if the property to the west is in New Albany.

Ms. Joly stated that it is Jersey Township and it is held in a trust.

Mr. Thomas stated that it sounds like good dialogue between the applicant and the church. Does the church have any concerns?

Mr. Paul Garinger, Faith Full Fellowship, stated that we were presented the proposed variance and initially had concerns with getting appropriate screening. Discussion with city staff and the applicant and seeing the plans including the 4 foot berm and trees. With the conditions and screening in place we would like to welcome them to the neighborhood. He wanted to confirm that the tree height will be 6 foot trees at installation.

Mr. Underhill stated yes, that is the industry standard.

Mr. Garinger stated that no public plans but we when originally designed the church phase one was built. Phase 2 concept would expand towards the south property line.

Mr. Shull stated that it will be 6 foot trees on a 4 foot berm at installation with the 6 foot fence.

Mr. Garinger asked the height of building.

Audience member stated the rear of the building is 26 feet and the front is 32 feet.

Mr. Shull asked for any other comments. (Hearing none)

Moved by Steele to approve V-09-2016 with the following conditions:

1. Applicant install six foot wall (fence), four foot high berm, and minimum six foot high trees for screening.
2. The applicant get an easement from the New Albany Company for the property where they will wrap the wall and screening, and then the applicant must wrap the wall and screening, Seconded by Kriss. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Mr. Shull welcomed CCL to New Albany and thanked them for the due diligence and coming to the board with solutions.

Moved by Kriss to adjourn, Seconded by Thomas. Upon roll call: Shull, no; Thomas, yea; Kriss, yea; Steele, no. Yea, 2; Nay, 2; Abstain, 0. Motion failed by a 2-2 vote.

Mr. Shull requested that the additional related documents are entered into the record

Moved by Kriss to adjourn, Seconded by Thomas. Upon roll call: Shull, yea; Thomas, yea; Kriss, yea; Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Meeting adjourned at 8:07 pm.

APPENDIX



Board of Zoning Appeals Staff Report February 22, 2016 Meeting

7363 MILTON COURT ACCESSORY STRUCTURE (POOL HOUSE) VARIANCES

LOCATION: 7363 Milton Court (PID: 222-002675)
APPLICANT: Todd Parker
REQUEST: A. Height: Variance to C.O. 1165.06(a)(3) to allow an accessory structure (pool house) to be 19'5" in height where code requires accessory structures shall not exceed ten feet (10') in height.
B. Location: Variance to C.O. 1165.06(a)(2)(D) which requires accessory structures shall maintain a proportional distance of two feet (2.0') for every foot in height (2:1) from the main building. The structure (pool house) is 19'5" feet in height, thereby requiring a 38'10" foot setback, but it is located 18 feet from the primary structure.
C. Location: Variance to C.O. 1165.06(a)(2)(A) to allow an accessory structure (pool house) to project beyond the front elevation of the primary structure.
ZONING: R-2 (Single-Family Residential Districts)
STRATEGIC PLAN: Neighborhood Residential District
APPLICATION: V-03-2016

Review based on: Application materials received January 22, 2016.

Staff Report completed by Stephen Mayer, Community Development Planner.

I. REQUEST AND BACKGROUND

The applicant has applied for three variances for a proposed pool house, which is regulated in city's codified ordinances under the accessory structure section, at 7363 Milton Court within the New Albany Country Club Section 15C.

The applicant is requesting three variances:

- A. Variance to C.O. 1165.06(a)(3) to allow an accessory structure (pool house) to be 19'5" in height where code requires accessory structures shall not exceed ten feet (10') in height.
- B. Variance to C.O. 1165.06(a)(2)(D) which requires accessory structures shall maintain a proportional distance of two feet (2.0') for every foot in height (2:1) from the main

building. The structure (pool house) is 19'5" feet in height, thereby requiring a 38'10" foot setback, but it is located 18 feet from the primary structure.

- C. Variance to C.O. 1165.06(a)(2)(A) to allow an accessory structure (pool house) to project beyond the front elevation of the primary structure.

II. SITE DESCRIPTION & USE

The property is located at the end of Milton Court within the New Albany Country Club section 15C. The property consists of two combined lots totaling 2.4 acres. The property has a single family residence and a detached garage that projects beyond the front elevation of the residence. According to the Franklin County Auditor the house 6,047 square feet. The surrounding uses are single family residences.

III. EVALUATION

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the "practical difficulties" standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*

11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

IV. RECOMMENDATION

Considerations and Basis for Decision

A. Variance to C.O. 1165.06(a)(3) to allow an accessory structure (pool house) to be 19'5" in height where code requires accessory structures shall not exceed ten feet (10') in height.

The following should be considered in the board's decision:

1. Codified Ordinance section 1165.06(a)(3) classifies an "accessory structure" as a subordinate structure detached from, but located on the same lot as the principal building/structure, which is incidental to the use of the principal building/structure. An accessory structure may include but is not limited to storage buildings, recreational structures, mechanical devices, detached garages, carports, decks and open-sided structures. Pool houses are considered a recreational structure.
2. The height regulation seems to be intended to achieve an appropriate scale between accessory structures, the lot that they sit on and the primary structure. Strict application of the regulation on lots of this size would not achieve a scale that is appropriate.
3. The applicant states the pool house has been designed as a simple Georgian structure and two of the main forms mimic the existing detached garage. Therefore, the pool house will have a same height as the detached garage so the two structures are symmetrical. The height variance is also needed to provide for an architecturally correct structure as required by the property's deed restrictions.
4. The parcel is over 2.4 acres and the existing residence and detached garage have large setbacks from Milton Court due a utility easement. The detached garage is located in front of the primary residence. The proposed pool house will have the same setback from Milton Court as the detached garage. Allowing the pool house to have the same height as the detached garage will result in an appropriate scale to the house and not appear as an "after-thought."
5. The request does not seem to be substantial given the large size of the lot and residence. While the height of the detached garage may sound large relative to the code maximum, it appears to be minor relative to the size of this lot and residence. Additionally, a shorter height would result in a structure that appears out of place and not coordinated with the rest of the structures.
6. The granting of the variance would not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands or structures in the same zoning district. Other properties in the area have received variances for similar requests.
7. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The pool house appears to be an appropriate scale given the size of the primary residence. Additionally, since the lot is fairly wooded and the structure will have large setbacks, it not appear the larger height of the garage will be noticeable from neighbors. This house has a larger setback than most properties in the area due a creek and utility easements that surround

the property. Based on approximate measurements from the Franklin County Auditor and the site plan provided by the applicant, it appears the pool will be at least 200 feet from all neighboring primary residences to the north. The applicant proposes to install evergreen trees to provide additional screening.

8. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
9. It appears granting the variance will not adversely affect the delivery of government services.

B. Variance to C.O. 1165.06(a)(2)(D) which requires accessory structures shall maintain a proportional distance of two feet (2.0') for every foot in height (2:1) from the main building. The structure (pool house) is 19'5" feet in height, thereby requiring a 38'10" foot setback, but it is located 18 feet from the primary structure.

The following should be considered in the board's decision:

1. Codified Ordinance Section 1165.06(a)(2)(D) requires the location of recreational structures shall maintain a proportional distance of two feet (2.0') for every foot in height (2:1) from the main building. The accessory structure is 19'5" feet tall, therefore a minimum setback of 38'10" feet from the main building is required.
2. The accessory structure is proposed to be located approximately 18 feet from a single story sun room attached to the main building (residence), and 26'4" feet from the two-story portion of the primary structure.
3. The applicant requests this variance be approved to allow the pool house to be symmetrical with the house and detached garage. The city's Design Guidelines and Requirements (DGRs) require homes be a traditional American architectural style. This pool house is proposed to be Georgian style (same as the primary residence). The DGRs state Georgian style requires formal symmetry and gable or hip rooflines. Therefore, the variance request is in conformance with the city's DGRs.
4. The request does not seem to be substantial since the variance is to a setback from the homeowner's own residence.
5. The granting of the variance would not confer on the applicant any special privilege that is denied by the zoning ordinance to other lands or structures in the same zoning district. Other properties in the area have received variances for similar requests.
6. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The pool house appears to be an appropriate scale given the size of the primary residence and is appropriately designed to complement the house.
7. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
8. It appears granting the variance will not adversely affect the delivery of government services.

C. Variance to C.O. 1165.06(a)(2)(A) to allow an accessory structure (pool house) to project beyond the front elevation of the primary structure.

The following should be considered in the board's decision:

1. The property has an existing detached garage that projects beyond the front elevation of the primary structure. The applicant proposes to locate the pool house the same distance (projection) as the detached garage from the primary structure.

2. The applicant states due to the nature of the design of the principle structure location and the existing detached garage, the location of the house has been situated such that it is symmetrically placed to match the existing detached garage. The applicant requests this variance to provide for an architecturally correct structure and location.
3. The request does not seem to be substantial since the pool house would match the setback of another detached structure on the property.
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment.” The pool house appears to be an appropriate scale given the size of the primary residence and is appropriately designed to complement the house.
5. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
6. It appears granting the variance will not adversely affect the delivery of government services.

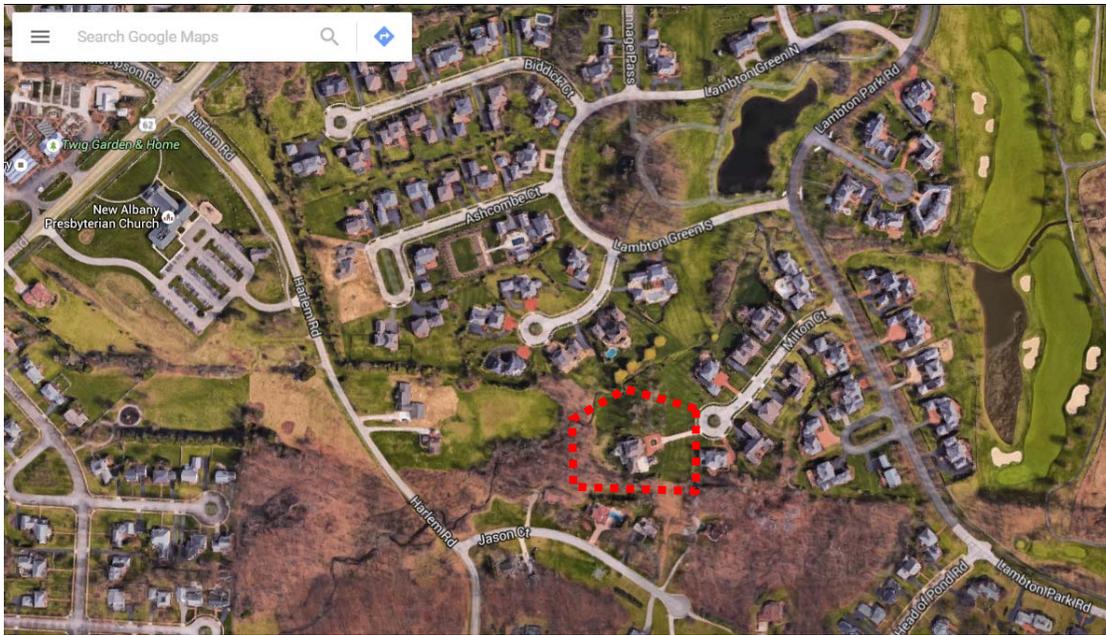
Staff recommends approval of the requested variances should the Board of Zoning Appeals find that the application has sufficient basis for approval. In summary, all the variance requests do not appear to be substantial given the size of the primary residence and location of the pool house in relation to the detached garage. The accessory structure is appropriately designed to complement the primary structure. This accessory structure is used to “frame” the driveway and provide additional privacy for the homeowners in the side yard. Allowing the pool house to have the same height as the detached garage, and be located symmetrically with the house and detached garage will result in an appropriate scale to the house and not appear as an “after-thought.” It does not appear that granting the variances will adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application V-03-2016.

Approximate Site Location:



Source: Google Maps



**Board of Zoning Appeals Staff Report
February 22, 2016 Meeting**

**5055 JOHNSTOWN ROAD
VARIANCE**

LOCATION: 5055 Johnstown Road. (PID: 222-004747)
APPLICANT: Timothy & Leslie Timmons c/o Underhill Yaross LLC
REQUEST: A. Lot Width: Variance to Codified Ordinance Chapter 1131.05(b) to allow a lot to have zero (0) feet of frontage on a publically dedicated and improved street or highway where code requires 150 feet.
B. Lot Frontage: Variance to Chapter 1165.01(a) to allow a building to be constructed on a lot that does not front on a publically dedicated and improved street or thoroughfare within the Municipality.
ZONING: "L-R-1" Limited Residential Estate District
STRATEGIC PLAN: N/A (not categorized)
APPLICATION: V-04-2016

Review based on application materials received January 22, 2016.

Staff report completed by Stephen Mayer, Community Development Planner.

II. REQUEST AND BACKGROUND

The applicant requests variances to allow the creation of a new single family lot along a private access road on the west side of Johnstown Road. These variances are necessary in order to allow the property to be subdivided into two lots in the future.

The applicant is requesting two variances:

- A. Lot Width: Variance to Codified Ordinance Chapter 1131.05(b) to allow a lot to have zero (0) feet of frontage on a publically dedicated and improved street or highway where code requires 150 feet.
- B. Lot Frontage: Variance to Chapter 1165.01(a) to allow a building to be constructed on a lot that does not front on a publically dedicated and improved street or thoroughfare within the Municipality.

II. SITE DESCRIPTION & USE

The site is located along a private access road on the west side of Johnstown Road and is immediately north of New Albany Country Club Section 29 (Oxford) and west of the Temple Beth Shalom. According to the Franklin County Auditor the site is currently a single parcel

approximately 5.28 acres in size. This parcel contains a new single-family residence built in 2013.

The property has one single-family residence on the property. The site was annexed to the city and rezoned to Limited Residential Estate District (L-R-1) by the Planning Commission on January 21, 2015 via ZC-110-2014. The property is currently one lot and the limitation text allows the parcel to be split for a total, maximum of two single-family lots. The property is not categorized with a future land use in the city's 2014 Strategic Plan, but is adjacent to the Neighborhood Residential future land use category.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the "practical difficulties" standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

- 13. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
- 14. Whether the variance is substantial.*
- 15. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."*
- 16. Whether the variance would adversely affect the delivery of government services.*
- 17. Whether the property owner purchased the property with knowledge of the zoning restriction.*
- 18. Whether the problem can be solved by some manner other than the granting of a variance.*
- 19. Whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

- 20. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
- 21. That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
- 22. That the special conditions and circumstances do not result from the action of the applicant.*
- 23. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*

24. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

IV. EVALUATION

Considerations and Basis for Decision

A. Variance to Codified Ordinance Chapter 1131.05(b) to allow a lot to have zero (0) feet of frontage on a publically dedicated and improved street or highway where code requires 150 feet.

B. Variance to Chapter 1165.01(a) to allow a building to be constructed on a lot that does not front on a publically dedicated and improved street or thoroughfare within the Municipality.

The following information should be considered in the Board's decision:

- At the January 21, 2015 Planning Commission meeting, the board approved the rezoning of this property subject to the condition that the Future Right-of-Way Dedication Agreement is fully signed and executed. Noting for the record that a variance will need to be obtained prior to any development on the property to bring it into conformance.
- When the Planning Commission approved the rezoning of this property, it was known that this variance request would be required. At this meeting, the Planning Commission and city staff were aware of the following facts:
 - a. The city was working with this property owner and others along this private access drive to create a Future Right-of-Way Dedication Agreement that would allow the city to convert the private drive to a public road at some point in the future.
 - b. It was known the road would remain a private drive after the annexation and rezoning, but this agreement will allow the city to acquire right-of-way to make the private drive a public street when it is determined necessary.
 - c. At the time of the rezoning, a new primary residence was under construction and it was known the structure would be an existing non-conforming lot since it would not be on publically dedicated right-of-way. Knowing non-conforming situations can create uncertainty for property owners when they propose to do work that requires a building/zoning permit. In order to minimize possible delays when the owners propose to split the lot or do any work that requires a permit (ex. accessory structures, pools, etc.), staff recommended at the Planning Commission meeting the applicant seek a variance to the code's frontage requirements.
- So, city staff always knew a variance would be required because of the special situation where this house was existing lot of record in Plain Township with an access easement dating back from 1878 that allowed access to the lot from some other means than public streets. Therefore, it does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment" by approving the variance application.

- Since the Planning Commission meeting, one of the necessary parties in Future Right-of-Way Dedication Agreement has uncommitted and the agreement has not been signed, thereby creating special conditions and circumstances that do not result from the action of the applicant and create additional need for this variance application. Even if a commitment can't be reached for the entire easement, the city requests that the applicant to enter into the same agreement for the portion of the easement along their property.
- This scenario was addressed at the time of the rezoning by the Planning Commission. The meeting minutes record that the zoning would still be in place, but the applicant would have to go to the Board of Zoning Appeals for a variance to the lot frontage requirements. The minutes state:

Mr. Kirby stated that what we are doing is letting the applicant know that they can't do anything until a variance is obtained.

Mr. Wallace stated that the applicant needs to understand that they can be rezoned but they can't proceed with their plans.

- The “R-1” Single Family Residential District has following development standards:

Standard	Required	Existing Lot	Comments
Min. lot size	40,000 ft ²	229,997 ft ²	N/A
Min. lot width	150 ft	415 +/- feet	N/A
Min. Front Yard	50 feet	*Applies at time of development of the site	
Min Side Yard	20 feet	*Applies at time of development of the site	
Min Rear Yard	50 feet	*Applies at time of development of the site	
Max Building Height	45 feet	*Applies at time of development of the site	
Max lot coverage %	None.	*Applies at time of development of the site	

- When the single family home lot is split from this parent parcel it will have to meet all the standards listed in the table above. The split is considered a subdivision within the city's code requirements and therefore will have to be platted. Staff recommends a condition of approval, as a means of clarity, requiring the existing and future lot both have a minimum of 150 feet of frontage along the private access drive.
- Before this land can be divided, staff will review the final layout against the requirements for the R-1 zoning district and subdivision regulations. The Planning Commission and City Council will evaluate the plat when the property is subdivided into three lots.
- The property owner may have purchased the property with the knowledge of the zoning restriction; however, the proposed variance was anticipated as being in the case that the access road was not publically dedicated and now there are circumstances outside of the applicant's control that will not allow the road to publically dedicated now or in the future.

- The variance preserves the “spirit and intent” of the zoning requirement since this existing lot and future lot will have frontage on a road, but it is just not a publically dedicated street.
- It does not appear that the variance would adversely affect the delivery of government services, affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

In summary, staff supports these requested variances. The request does not appear to be substantial and it appears that approving the variances will not substantially alter the essential character of the neighborhood or result in adjoining properties suffering a “substantial detriment.” Since the Planning Commission meeting when the rezoning approved the creation of a second lot, one of the necessary parties in Future Right-of-Way Dedication Agreement has uncommitted and the agreement has not been signed, thereby creating special conditions and circumstances that do not result from the action of the applicant and create additional need for this variance application. Another special circumstance is the easement from 1878 which has allowed the lot to exist since that date without public street frontage. Staff wants a Future Right-of-Way Dedication Agreement in case future development occurs to the west and access is needed for traffic and public safety reasons.

V. ACTION

In accordance with C.O. 1113.06, “Within thirty (30) days after the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance.” If the approval is with supplementary conditions, they should be in accordance with C.O. Section 1113.04. The decision and action on the application by the Board of Zoning Appeals is to be based on the code, application completeness, case standards established by the courts, and as applicable, consistency with city plans and studies.

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate:

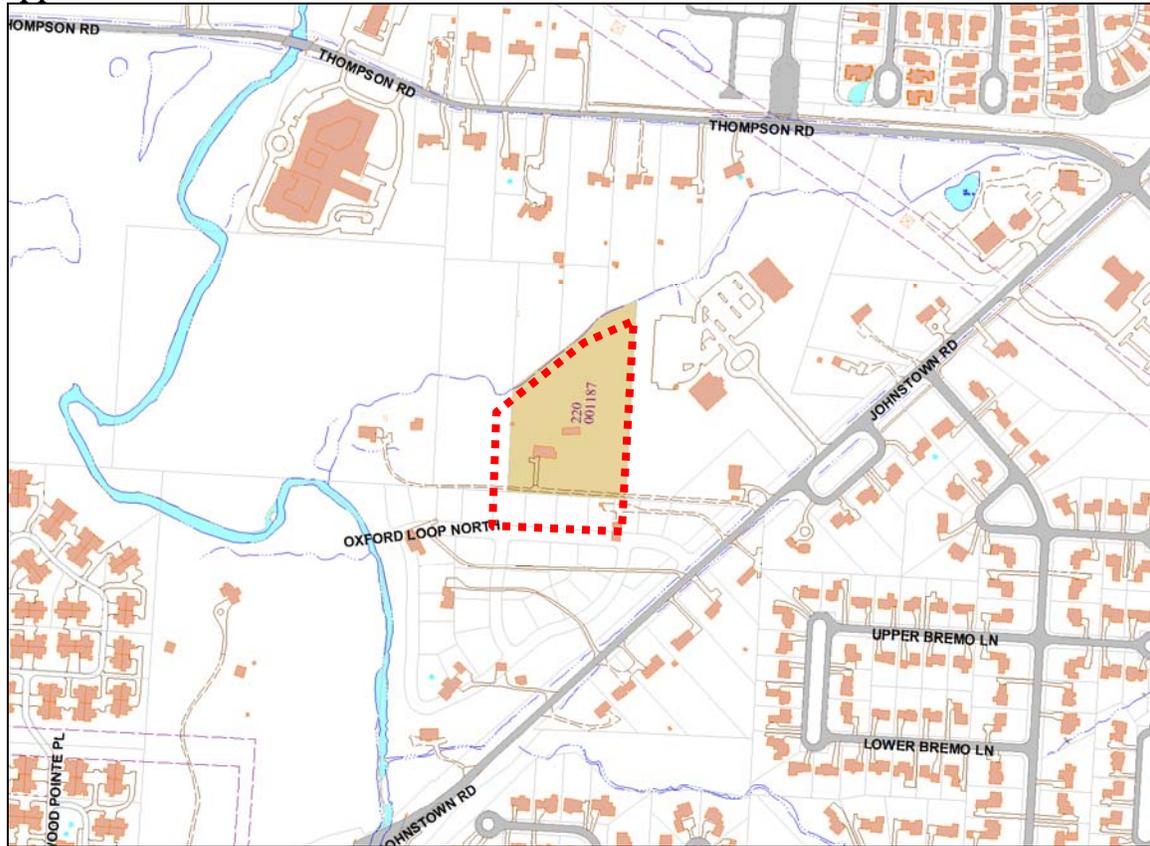
To approve the variances within application V-04-2016:

- A. Codified Ordinance Chapter 1129.06(b) to allow the proposed lot to have zero (0) feet of frontage on a dedicated and improved street where code requires 200 feet.**
- B. Chapter 1165.01(a) to allow a building to be constructed on the proposed lot that does not front on a publically dedicated and improved street or thoroughfare within the Municipality,**

With all of the variances subject to the following conditions:

1. The existing and future lot both have a minimum of 150 feet of frontage along the private access drive.
2. The applicant enter into a Future Right-of-Way Dedication Agreement with the city for the portion of the easement adjacent to their property.

Approximate Site Location:



Source: Franklin County Auditor



**Board of Zoning Appeals Staff Report
February 22, 2016 Meeting**

**BEECH ROAD WEST – CCL LABEL & MBJ HOLDINGS
SETBACK VARIANCE**

LOCATION: Properties generally located west of Beech Road and north of Innovation Campus Way West (PID: 095-111504-00.001 and 095-111504-00.000).

APPLICANT: The New Albany Company

REQUEST: Variance to Codified Ordinance Chapter 1153.04(f) to allow a service area to be located 25 feet from a district where residences are a permitted use where code requires a minimum of 50 feet.

ZONING: Beech Road West Zoning District

STRATEGIC PLAN: Office District

APPLICATION: V-09-2016

Review based on: Application materials received February 11, 2016.

Staff Report completed by Stephen Mayer, Community Development Planner.

III. REQUEST AND BACKGROUND

The applicant requests a variance I for the CCL Label site which is generally located west of Beech Road and north of Innovation Campus Way West. The variance also includes a portion of the site to the east to provide for design flexibility.

The applicant is requesting the following variance:

- A. Variance to Codified Ordinance Chapter 1153.04(f) to allow a service area to be located 25 feet from a district where residences are a permitted use where code requires a minimum of 50 feet.

IV. SITE DESCRIPTION & USE

The New Albany City Council passed an ordinance to annex this site on April 21, 2015. The annexation became effective on May 22, 2015. The site is located within Licking County, north of state route 161, west of Beech Road. The neighboring uses and zoning districts include L-GE, Planned Unit Development (PUD) and unincorporated agricultural/residential. The site is undeveloped. The CCL Label parcel and neighboring MBJ Holdings parcel total 15.7 acres.

V. EVALUATION

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

25. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
26. *Whether the variance is substantial.*
27. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
28. *Whether the variance would adversely affect the delivery of government services.*
29. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
30. *Whether the problem can be solved by some manner other than the granting of a variance.*
31. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

32. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
33. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
34. *That the special conditions and circumstances do not result from the action of the applicant.*
35. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
36. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

IV. RECOMMENDATION

Considerations and Basis for Decision

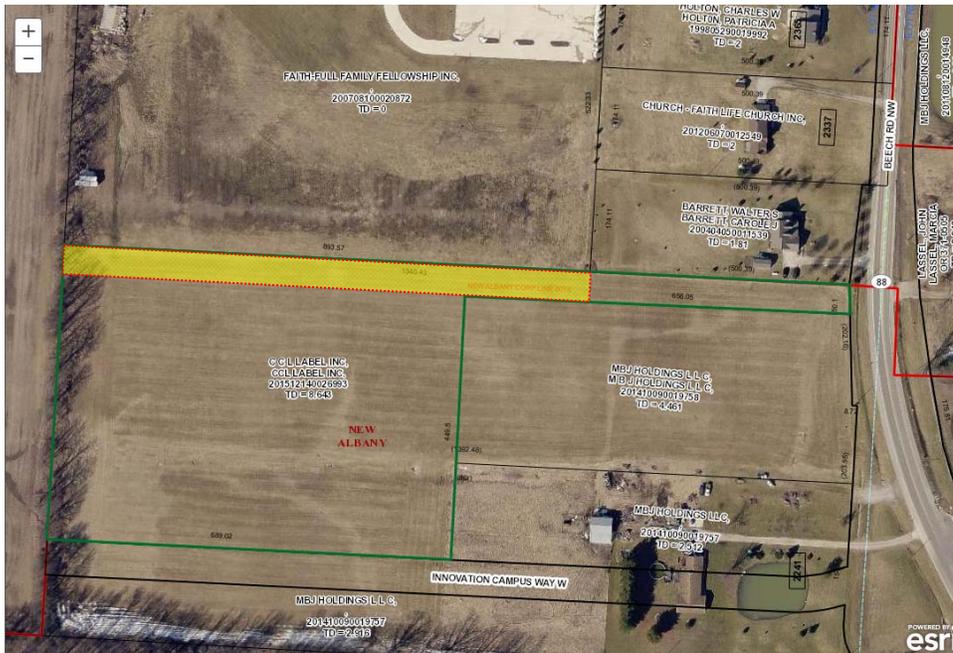
B. Variance to Codified Ordinance Chapter 1153.04(f) to allow a service area to be located 25 feet from a district where residences are a permitted use where code requires a minimum of 50 feet.

The following should be considered in the board’s decision:

10. CCL Label proposes to locate a service area to be setback 25 feet from a portion of its

northern property line.

11. The applicant's narrative explains they seek a variance to allow CCL Label, Inc. to reduce the minimum setback required for a service area on a property that abuts a zoning district where residential uses are a permitted use from 50 feet to 25 feet. The variance applies to those portions of the northern property line of the subject property that constitute the shared boundary line with the property owned by the Faith Full Family Fellowship, inc.
12. This variance request does not apply to those portions of the northern boundary line of the subject properties that share a boundary with the property owned by Walter and Carol Barrett, which contains a residence.



The extent of the applicable variance area is highlighted in yellow.

13. The applicant states the variance is necessary in order to provide maneuverability within the service areas on the rear of the building.
14. Codified Ordinance Chapter 1153.04(f) states "In no case shall any structure, service area or parking area in any GE District be located less than 50 feet from any district where residences are a permitted use." The applicant notes in their narrative that access drives are permitted even within the minimum setback areas, so additional pavement associated with the service area is not providing any additional impact on the adjacent properties to the north since traffic is permitted to use that area already. The variance is being extended eastward onto MBJ Holdings' site to provide for design flexibility.
15. The applicant states the landscaping/buffering commitments made at the Planning Commission meeting will be provided. This landscaping includes:
 - a. C.O. Chapter 1171.05(c) requires commercial, industrial, office and institutional uses which abut districts where residences are a permitted use, a buffer zone with a minimum width of 25 feet should be created. Such screening within the buffer zone shall consist of natural vegetation planted no closer than three (3) feet to any property line. Natural vegetation shall have an opaqueness of seventy-five percent (75%)

- during full foliage and shall be a variety which will attain ten (10) feet in height within five (5) years of planting.
- b. Chapter 1171.05(a) for commercial, industrial, office, institutional and multiple-family uses, all areas used for service, loading and unloading activities shall be screened on those portions of the lot which abut districts where residences are a permitted use. Screening shall consist of walls, landscaped earthen mounds, fences, natural vegetation or an acceptable combination of these elements, provided that screening must be at least seven (7) feet in height. Natural vegetation screening shall have a minimum opaqueness of seventy-five percent (75%) during full foliage. The use of year-round vegetation, such as pines or evergreens, is encouraged. Vegetation shall be planted no closer than three (3) feet to any property line.
16. The property to the north is unique since is used for a religious purpose, and its zoning allows residence and commercial uses. The site is zoned RR (rural residential) with a MUOD (mixed use office district) overlay in Jersey Township. According to the township's resolution book, MUOD permits office and manufacturing uses similar to the Beech Road West zoning district that it neighbors in New Albany. Property owners must apply to Jersey Township in order to enact the overlay.
 17. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment" since the same landscaping enhancements to buffer the neighboring properties will be installed.
 18. The applicant comments and the city is aware the church has plans to expand its building and parking lot in the future which would likely result in the church's parking lot abutting the CCL Label property.
 19. The variance appears to preserve the "spirit and intent" of the zoning requirement. The intent of the regulation is to provide additional buffering between general employment and residential and possible future residential use areas, by linking the setback requirement to the zoning of the property. Since CCL's neighboring property is adjacent to a church with plans to expand in the future, it does not appear residential uses will be next to where the 25 foot setback is proposed.
 20. It appears that granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.
 21. It appears granting the variance will not adversely affect the delivery of government services.

Staff recommends approval of the requested variances should the Board of Zoning Appeals find that the application has sufficient basis for approval. In summary, the variance request does not appear to alter the essential character of the neighborhood or adjoining properties suffer a "substantial detriment" since the same landscaping enhancements to buffer the neighboring properties will be installed. Moreover, CCL Label is adjacent to a unique property because its zoning could permit both residential and commercial uses, while containing a religious use. The intent of the regulation is to provide additional buffering between general employment and residential and possible future residential uses, by linking the setback requirement to the zoning of the property. Since CCL's neighboring property is adjacent to a church, it does not appear residential uses will be next to where the 25 foot setback is proposed. Lastly, it does not appear that granting the variances will adversely

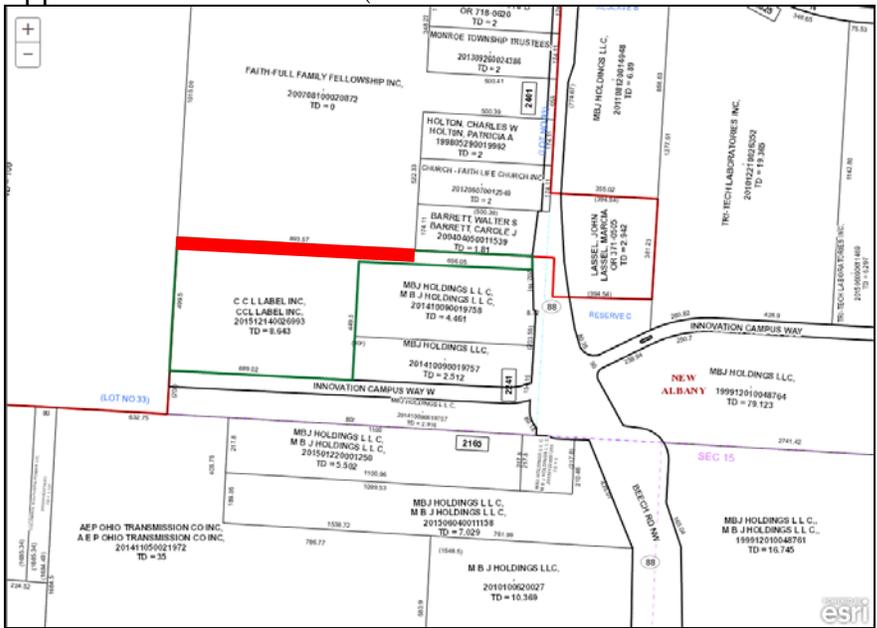
affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

V. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application V-09-2016.

Approximate Site Location (Setback Variance Location Shown in Red):



Source: Licking County Auditor