



## Planning Commission

### Meeting Minutes

July 18, 2016

7:00 p.m.

New Albany Planning Commission met in regular session in the Council Chambers of Village Hall, 99 W Main Street and was called to order by Planning Commission Chair Neil Kirby by at 7:04 p.m.

Neil Kirby	Present
Brad Shockey	Absent
David Wallace	Present
Marlene Brisk	Present
Bill Steele	Present
Sloan Spalding (council liaison)	Present

Staff members present: Adrienne Joly, Deputy Director; Stephen Mayer, Planner; Ed Ferris, City Engineer; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Mr. Steele moved to approve with corrections the June 20, 2016 meeting minutes, seconded by Mr. Brisk. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Ms. Brisk, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Mr. Kirby asked for any changes or corrections to the agenda.

Mr. Mayer stated that staff would like to add under other business an amendment to C-2 zoning district.

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

Mr. Kirby's invited the public to speak on non-agenda related items and received no response.

Mr. Wallace moved to accept the staff reports and related documents in to the record, seconded by Ms. Brisk. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

#### **CU-57-2016 Conditional Use**

**Conditional use for a residential model home located at 7467 New Albany Links Drive within the New Albany Links Subdivision, Section 13 Part 2 (PID: 222-004202). Applicant: Romanelli & Hughes**

Mr. Stephen Mayer presented the staff report.

Mr. Kirby asked for the applicant. (no response)

Mr. Kirby verified that no engineering comments for the model home.

Mr. Spalding asked how many lots are left to be sold.

Mr. Mayer stated he didn't know.

Audience member stated five.

Mr. Spalding asked why we need another two year extension if we only have five more lots to sell.

Mr. Mayer stated they requested this duration probably because that is what was approved previously. The Planning Commission can approve a lesser amount of time. Typically model homes are approved for 1-2 years. I'm not sure the rate they are selling the homes.

Mr. Steele asked if we could do two years or upon the closure of the last lot.

Mr. Mayer stated that the applicant stated in the narrative that the time frame was subject to change if they sell the model home.

Mr. Kirby asked if they already had an occupancy.

Mr. Mayer responded that the model home occupancy is different than a single family residence occupancy.

Mr. Brisk moved to approve CU-57-2016 based on the findings presented in the staff report subject to the following conditions, subject to staff approval.

1. The conditional use permit will become effective at the time the Certificate of Occupancy is granted.
2. The conditional use permit is permitted for two (2) years and that any extension in time is subject to review and approval by the Planning Commission.
3. The sign associated with this application is removed at the time that the permit expires, seconded by Mr. Steele. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

#### **CU-22-2014 Conditional Use Extension**

**Extension of a conditional use for a residential model home located at 7933 Straits Farm North within the New Albany Country Club section 27 – Straits Farm Subdivision (PID: 222-004569).**

**Applicant: M/I Homes of Central Ohio, LLC**

Mr. Mayer presented the staff report.

Mr. Kirby verified no engineering and asked for the applicant. (no response)

Mr. Wallace asked if they would come back to the Planning Commission for an extension if they do not sell out.

Mr. Brisk moved to approve an extension of CU-22-2014 based on the findings in the staff report with the following conditions, subject to staff approval.

1. The conditional use permit extension will become effective on July 18, 2016, the current date of expiration.
2. The conditional use permit is permitted for six months and that any extension in time is subject to review and approval by the Planning Commission.
3. The sign associated with this application is removed at the time that the permit expires, seconded by Mr. Kirby. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

#### **V-51-2016 Variance**

**Variance to Codified Ordinance Chapter 1173.02(e) to the fencing requirements for a private swimming pool at 10 Highgrove (PID: 222-004492).**

**Applicant: John A. Gleason**

Mr. Mayer presented the staff report.

Mr. Wallace asked what the compliance fence was and where was it located when approved.

Mr. Mayer stated that it was immediately surrounding the pool but the same style as installed on the side property lines.

Ms. Brisk asked if we have any pictures of where the fences meet.

Mr. Mayer showed some pictures and stated that both fences terminate into each other.

Ms. Brisk asked if the two fences are attached in any fashion.

Mr. Mayer stated that the posts are right next to each other, little to no gap.

Mr. Kirby verified no engineering and asked for the applicant to speak.

Mr. John Gleason, on behalf of property owners at 10 Highgrove and 11 Highgrove. We would like to ask to have both applications tabled to allow us time to consider the staff reports and other concerns raised at prior meetings. He would like to consider these applications together tonight and asked staff if they wanted to present 11 Highgrove and then he would present both applications.

Mr. Mayer presented the staff report for 11 Highgrove.

Mr. Wallace asked what the original approved plans showed.

Mr. Mayer stated that it was a code compliant fence that surrounded most of the property.

Mr. Gleason stated that the pictures show the five foot fence. What the pictures don't show is the large retention/detention pond that is not surrounded by a fence. We are asking for this to be tabled so we can address the landscaping issue. We believe that we can adequately address all concerns if given time to discuss the additional landscaping with ARC and city staff. We believe the requested variance is appropriate because there is fencing around the entire property. A portion of the fencing is the 3-rail horse fence we believe in looking at prior variances that have been granted where the location of the properties, including the controlled access on the golf course, the size of the properties and the limited number of homes in the area. I believe that the staff report indicates that it is very unlikely that there will be a lot of traffic in the area. We believe that those similarities make these applications similar to other variances that have been granted. Moreover I believe the variances are consistent with the intent of the ordinance that was recently passed in that they prevent a child from passing under or through such a barrier. I believe this was the intent that was born out of the statements made from various Council members at the May 17, 2016 Council meeting when the new ordinance was passed. In particular, Council believed that passing under or through was a bigger issue than climbing over. The pool cover does not give the same level of protection as the fencing which is why the pool cover is not required under code. We believe that the current fencing is sufficient under the code and keeps children from passing under or through. Given the issues raised by staff we have started discussions with New Albany ARC to find out what additional landscaping they would approve. I don't believe that mounding would be approved in this area. I would indicate that mounding was at one of the ones that was recently approved. That mounding is not on the golf course side.

Ms. Brisk confirmed that it's not between the golf course and the property; it's between Johnstown Road and the property.

Mr. Wallace stated that he can confirm that from the golf course you can see the pool area, lawn chairs and umbrella pretty clearly.

Mr. Kirby asked if the plan showed mounding on the golf course side.

Ms. Joly stated that staff will check the plans.

Mr. Gleason stated that the next item on the agenda is a pool that has been there since 2004-2005. Having seen the pool in the past with the horse fence and no other fence around it and that it had been there. There was never an

issue. So when it was built, we looked at it and we had the horse fence and the other fencing so it wasn't put in. My clients have had no issues. It goes to the intent of preventing children from going under or through and I believe the horse fence will satisfy that. We are willing to work with staff and ARC to install additional landscaping. Pool covers only work if they are used and continue to work. I believe that comments from this commission members and council members indicate that pool covers are not the answer. We believe that a pool cover is not necessary given the attributes of this property and additional landscaping. My clients are present for any questions. We understand the concerns and are willing to work.

Mr. Kirby asked if they could take a picture of where the horse fence meets the black iron fence for the next meeting.

Mr. Wallace stated that prior circumstances where code was not complied with or evaded does not create a precedent for a variance.

Mr. Steele stated that in prior variances properties have had significantly greater acreage and the other had a pool cover. I think the pool cover and the outer fence give additional safety factors that go above and beyond just the outer fence.

Mr. Gleason stated that he agrees but I don't believe a pool cover is sufficient. Which is why we are looking at additional landscaping to have the next barrier.

Ms. Brisk stated that I think your misreading the intent of the code section. It says that wall or fence shall be of such design and construction as to effectively prevent a child from crawling or passing through the fence or barrier. It does not say that is the only purpose. You keep repeating it like the height is not relevant because your words were not concerned about someone going over it. Clearly we are also concerned about going over it because we have a required height listed. Be careful about over simplifying. I would strongly recommend that you reconsider your position on the pool cover. I think it has been a significant factor in the decisions that have been made. I would like to ask what the procedure is. It concerns me that we have homeowners that are in violation of our code and they are setting the timetable. If we continue today they get to continue status quo and for how long and under what circumstances. How does it work?

Mr. Banchefsky stated that we are looking for compliance. Code enforcement is done on a complaint basis. So as long as the applicant is pursuing this process I don't think the city will take any code enforcement action. The code enforcement action was started and put on hold when they started this process.

Ms. Brisk asked how we can keep some kind of time constraints on this.

Mr. Kirby stated that if it leaves our agenda then it would have code enforcement.

Ms. Joly stated that if you table it for one month and if we have no communication the board would be notified at that time.

Mr. Gleason stated that we are only asking for one month.

Mr. Kirby stated that until a month ago our code required a five foot fence and your fence still doesn't meet the new code. Be careful in your wording because on an as-built applied for basis you're a foot and a half too short.

Mr. Gleason stated that one of the issue that came up. A council member made a comment that you can't regulate height because they will climb over it if they want to.

Mr. Kirby stated that the horse fence is an easy fence to climb, it's like a ladder. The other fence they installed is a far more resistant than the horse fence. The fence design is important.

Mr. Wallace stated that he wasn't at the council meeting. It's a sliding scale, a teenager can probably scale an iron fence but a 3-4 year old can't. At some point the effectiveness of the fence is defeated by the size and ingenuity of the child. So that's why fences used to be five feet and now they are four feet because we followed other jurisdictions. I think I want to make sure that it is understood that as a commission we were waiting for some evidence from the prior applicant showing the safety of pool covers versus pool fences. We did not receive that information. As a result the pool cover alone was not sufficient.

Mr. Kirby stated that building safety states equivalent life safety. He stated that information from an uninterested party related to the safety of pool covers is what we were looking for.

Ms. Brisk stated that the discussions were about if we were willing to give up a fence completely or did we want a fence and pool cover.

Mr. James Dulick, 11 Highgrove, stated that the pond that is over to the left was extended towards the ninth tee to the west in the last six months. However the rest of the pond does not have any impediments.

Mr. Kirby asked staff if that pond has the safety shelf.

Ms. Joly stated that all of our ponds have a safety shelf.

Mr. Dulick stated that on the issue of pool cover, I can tell you that most people only close the pool cover in the winter and reopen in the spring. In the real world the pool covers are not used properly. With the pool that was installed it

would be impossible for me to have a pool cover. We have had the pool for 2 1/2 years and have not had any problems and have kids that live next door. I added the fourth rail to keep my dogs in my yard. I had no idea whether that house with the pool that I noticed when building in New Albany did or did not have a variance. We did add three sections of aluminum fence initially but it looked horrible. It was a fence within a fence. It looked redundant. It was hurting our view and the view from the golf course. I discussed it with a member of ARC and NACO, they did not have an issue with it.

Mr. Kirby asked if the horse fence is on your property.

Mr. Dulick stated that he thinks it part is and part is not. I paint the inside and outside and they come around and do the trim on it.

Mr. Kirby stated that we have had a NACO representative stated that it is owned and maintained by the homeowners association.

Mr. Dulick stated that in the three years I have lived there I haven't seen any maintenance done on it.

Mr. Kirby stated that we want the ownership and maintenance of fence to be the responsibility of the pool owner.

Ms. Brisk stated that once we make a decision you may maintain the fence but the next owner may not. We need to protect the community for the long term.

Mr. Dulick asked if the variance is approved can it be written that I can have maintenance responsibility financially, legally and liability for the fence.

Mr. Spalding asked how tall the horse fence is.

Mr. Gleason stated that it is 33" - 47" tall.

Ms. Joly stated that the topography is different on this property which accounts for the height variations.

Mr. Kirby moved to table variance V-51-2016 for one month to the next regularly scheduled meeting, seconded by Ms. Brisk. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

#### **V-52-2016 Variance**

**Variance to Codified Ordinance Chapter 1173.02(e) to the fencing requirements for a private swimming pool at 11 Highgrove (PID: 222-004493).**

**Applicant: John A. Gleason**

Mr. Kirby moved to table variance V-52-2016 for one month to the next regularly scheduled meeting, seconded by Mr. Steele. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

**V-55-2016 Variance**

**Variance to Codified Ordinance Chapter 1173.02(e) to the fencing requirements for a private swimming pool at 7010 Lambton Park (PID: 222-002598).**

**Applicant: Richard Langdale**

Ms. Joly stated that the emails sent to the applicant regarding this application were undeliverable. They knew the date because we had talked to them about it but it is possible that they did not receive our confirmation.

Mr. Kirby stated that we could table this application and mail them a letter.

Mr. Wallace stated that we could also vote on it as submitted.

Mr. Kirby asked for any public comment.

Mr. Banchefsky stated that he is not comfortable hearing the case without the applicant.

Mr. Wallace stated that they submitted an application, we attempted to contact them per the means that were provided and they didn't come to the hearing or follow-up on the application. I understand where you're coming from.

Mr. Kirby asked if phone calls were made.

Ms. Joly stated that we did not call them. We met with them and then the email came back undeliverable.

Ms. Brisk asked if the meeting date was discussed during the meeting with them.

Ms. Joly stated that it was. We will make phone calls.

Mr. Steele moved to table variance V-55-16 for one month to the next regularly scheduled meeting, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, no; Mr. Steele, yea. Yea, 3; Nay, 1; Abstain, 0. Motion passed by a 3-1 vote.

Mr. Spalding asked staff to confirm with V-55-2016 if that is an automatic pool cover.

Staff confirmed.



#### Codified Ordinance section 1147 update

Mr. Mayer presented the code change. Stated that the change is to add the permitted uses from the C-1 district to the C-2 district and to remove the off-premise signs. The purpose of the change is that we do want these uses in this district.

Mr. Kirby asked if this will cause any issues with the C-3 code.

Mr. Mayer stated that is our highest intensity use such as big box stores. We have very limited C-3 areas. I don't see an issue because they would still need to meet the setbacks.

Mr. Kirby asked if we would want the smallest C-1 use next to the largest C-3 use. Is it OK for them to be neighbors.

Ms. Joly stated that I think so. We have other factors such as setbacks, landscaping, parking

Mr. Kirby asked if they have the same setbacks.

Mr. Mayer stated that setbacks are different for the zoning districts.

Ms. Joly stated that the C-3 standards would prevail but the C-1 uses would be allowed.

Mr. Kirby moved to recommend to Council to approve to the modifications to chapter 1147, C-2 district, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Ms. Brisk, yea; Mr. Wallace, yea; Mr. Steele, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Mr. Wallace stated that the pool variance that was approved a few weeks ago. When we approved that variance it had various conditions. When does the fence need to be installed? It appears that the pool is being used but the fence is not installed based on what I could see. When does it need to be installed and when does it need to be inspected to verify that the conditions are being complied with.

Ms. Joly stated that they submitted for a fence permit. The zoning officer reviewed the permit and it was denied because it was the wrong style fence.

Mr. Kirby asked when they need to resubmit by.

Ms. Joly stated that it is up to the contractor.

Mr. Kirby stated that can we stated they have 30 days because they are not in compliance with the zoning.

Ms. Hickok stated that it was on her to do list to follow up if not resubmitted.

Mr. Kirby asked if they have an occupancy certificate.

Ms. Hickok stated that they were working on a conditional occupancy but was not sure if it was approved.

Mr. Wallace stated that when we approve the variances we don't have a set timeframe. The reason for granting that variance with conditions was for safety purposes but we have a circumstance where the safety is compromised. We have the same circumstance with the pool variances tabled tonight.

Ms. Joly stated that the pools are complicated because they don't have an occupancy and they can come at very different times in construction process.

Ms. Brisk stated that we need to start thinking about the process. At what point do we designate the time frame. If we continue with the variances what kind of oversight should we have?

Ms. Joly stated that it is a real concern when we are looking at the operability and maintenance of equipment.

Ms. Brisk stated that we didn't put a height requirement on the mounds. Maybe the next guys doesn't want to put more dirt in there.

Ms. Joly stated that we are complaint based code enforcement. The test we use is if we are making progress on a solution. If things are not progressing then we take the steps with court filings. They are few and far between for us, we usually get compliance before that. But things like pool compliance is a hard thing to take to court.

Mr. Banchefsky stated that the code enforcement staff is all in this room tonight, it not a large staff.

With no further business, Mr. Kirby polled members for comment and hearing none, adjourned the meeting at 8:12 p.m.

## APPENDIX



### Planning Commission Staff Report July 18, 2016 Meeting

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#### ROMANELLI & HUGHES – MODEL HOME CONDITIONAL USE

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LOCATION: 7467 New Albany Links Drive (222-004202)  
APPLICANT: Romanelli & Hughes  
REQUEST: Conditional Use for a Residential Model Home  
ZONING: C-PUD (Comprehensive Planned Unit Development –  
New Albany Links)  
STRATEGIC PLAN: Town Residential District  
APPLICATION: CU-57-2016

Review based on: Application materials received May 6, 2014 and June 17, 2016.

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#### I. REQUEST & BACKGROUND

The applicant is seeking conditional use approval for a residential model home to be located at 7467 New Albany Links Drive (Lot 493) within the New Albany Links Section 13 Part 1. The home will serve a model home for Romanelli & Hughes for the New Albany Links Subdivision. The Planning Commission approved a conditional use to allow this site to operate as model home on May 19, 2014 and the conditional use expired on June 18, 2016. The applicant has submitted a new application to allow the model home operation to continue. The applicant is requesting to operate the model home the same as they have for the previous two years. The requested duration of this conditional use is two (2) years.

This area is zoned C-PUD and the residential uses are coincident with those in our code, making this requested use a conditional use in the district.

#### II. LOCATION

The New Albany Links Subdivision Section 13 Part 1 is located east of Bevelhymer Road, south of Walnut Street, and north of the New Albany Links Section 10. Section 13, Part 1 includes 19 single family lots and can be accessed off of Walnut Street or New Albany Road East. The model home's location is on the west side of New Albany Links Drive, and is the fifth lot south of Walnut Street.

### III. EVALUATION

#### General Standards for Conditional Uses (C.O. 1115.03)

The Planning Commission shall not approve a conditional use unless it shall in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location shall meet all of the following requirements:

- (a) The proposed use will be harmonious with and in accordance with the general objectives, or with any specific objective or purpose of the Zoning Ordinance.*
- (b) The proposed use will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.*
- (c) The use will not be hazardous to existing or future neighboring uses.*
- (d) The area will be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.*
- (e) The proposed use will not be detrimental to the economic welfare of the community.*
- (f) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.*
- (g) Vehicular approaches to the property shall be so designated as not to create interference with traffic on surrounding public streets or roads.*

Residential model homes. Per Code, these are newly constructed homes or temporary structures placed in a newly constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home may be staffed and furnished. (C.O. 1165.11)

The criteria and the applicability of this application are detailed below (Section 1165.11(a)):

- 1. Appropriate location within the community.*  
The proposed model home will be located on Lot 493 on the west side of New Albany Links Drive. The proposed location appears to be appropriate and is easily accessible not only by roads, but also by sidewalks and nearby trails. The location of this model home is on the subdivision's primary road.
- 2. It is integrated in the existing community with customary exterior residential lighting.*  
The home will utilize house light fixtures consistent with the style and architectural features present the other homes planned and under construction within the New Albany Links Subdivision and in accordance with city code.
- 3. The use is approved with limited duration.*  
The applicant has stated that they would like to utilize the conditional use for two (2) years. The proposed duration is consistent with other model homes the community.
- 4. One sign is permitted.*  
Applicant proposes one ground sign (see details below).
- 5. Shall not be used as a general real estate brokerage office.*

The applicant has stated that the model home will not be used as a general real estate brokerage office.

The Planning Commission is also to consider the following (1165.11 (b)):

1. *Hours of operation*

The applicant has indicated that the model home will operate Friday – Tuesday, from 12:00pm (noon) to 5:00pm. It will be closed on Wednesday and Thursday, but special appointments may be scheduled during the closed days. These operating hours are generally consistent with the operating hours of other approved model homes.

2. *Number of employees and maximum number of employees at the site at one time.*

The applicant has stated that there will be one permanent salesperson staffing the house during its hours of operation.

3. *Provisions for parking for employees and customers*

The applicant has indicated that parking for employee and customers will be made available on the driveway. If there is a need for additional parking, on-street parking will be utilized.

4. *Size, lighting, content and location of signage*

C.O. Section 1169.10(e) of the sign code permits one (1) sign not to exceed two feet by three feet in dimension or six square feet in area. No sign shall extend more than four feet above grade. Signage shall not be illuminated nor shall it be nearer than ten feet to any street right-of-way. The applicant is proposing the following sign:

1. Dual-post ground sign to read “Romanelli & Hughes Custom Home Builders – Model Home”.

a. Size: 2’ x 3” (6 square feet) [meets code].

b. Height: 3’ 10” feet [meets code].

c. Location: The proposed sign is located at the front of the property, perpendicular to New Albany Links Drive, and is 10 feet from the street right of way [meets code].

d. The sign will not be illuminated [meets code].

5. *Landscaping and screening*

The proposed landscaping appears to be consistent with neighboring residences and appropriate for the location.

#### **IV. RECOMMENDATION**

The overall proposal is generally consistent with the code requirements for model home conditional uses. The operational aspects of the proposed model home are consistent with successfully operating model homes in other New Albany neighborhoods and has been in operation for two years without any complaints from neighbors. Staff recommends approval provided that the Planning Commission finds the proposal meets sufficient basis for approval.

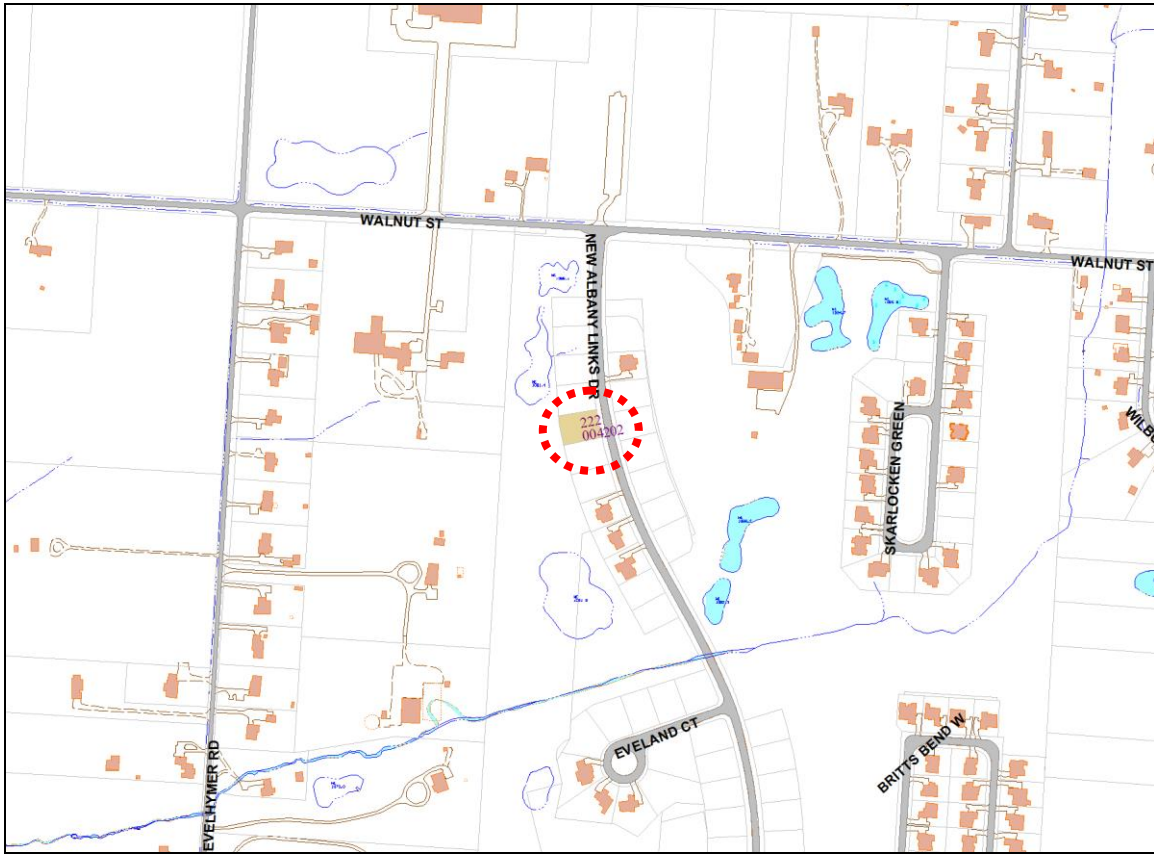
#### **V. ACTION**

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

**Move to approve application CU-57-2016 based on the findings in the staff report with the following conditions, subject to staff approval:**

- 1) The Conditional Use Permit will become effective at the time the Certificate of Occupancy is granted.
- 2) The Conditional Use Permit is permitted for two (2) years and that any extension in time is subject to review and approval by the Planning Commission.
- 3) The sign associated with this application is removed at the time that the permit expires.

**Approximate Site Location:**



Source: Franklin County Auditor



## Planning Commission Staff Report July 18, 2016 Meeting

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### NACC 27 – STRAITS FARM MODEL HOME CONDITIONAL USE EXTENSION

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LOCATION: 7933 Straits Farm North (222-004569)  
APPLICANT: M/I Homes of Central Ohio, LLC  
REQUEST: Extension of a Conditional Use for a Residential Model Home  
ZONING: I-PUD (NACC 28 – Straits Farm)  
STRATEGIC PLAN: Neighborhood Residential District  
APPLICATION: CU-22-2014

Review based on: Application materials received March 25; April 4, 2014; and June 30, 2016.

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## **VI. REQUEST & BACKGROUND**

The applicant is seeking conditional use approval extension for a residential model home to be located at 7933 Straits Farm North within the Straits Farm subdivision (New Albany Country Club Section 27). The unit serves as the model home and sales office for M/I Homes of Central Ohio, LLC for homes within this subdivision. This is the only model home at the subdivision.

The conditional use was originally approved by the Planning Commission on April 21, 2014 and will expire on July 18, 2016. The requested duration of this conditional use extension is six months. The applicant states the model home will continue to operate as it has been for the past two years.

This area is zoned I-PUD and the residential uses are coincident with those in our code, making this requested use a conditional use in the district.

## **VII. LOCATION**

The model home is located at the first corner of the subdivision after entering from Reynoldsburg-New Albany Road along Straits Link. The subdivision has 51 lots and is located west of Reynoldsburg New Albany Road (State Route 605), south of the Maplewood Cemetery, east of the Ackerly Park subdivision, and north of the Reserve subdivision in Franklin County.

## **VIII. EVALUATION**

### General Standards for Conditional Uses (C.O. 1115.03)

The Planning Commission shall not approve a conditional use unless it shall in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location shall meet all of the following requirements:

- (h) The proposed use will be harmonious with and in accordance with the general objectives, or with any specific objective or purpose of the Zoning Ordinance.*
- (i) The proposed use will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.*
- (j) The use will not be hazardous to existing or future neighboring uses.*
- (k) The area will be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.*
- (l) The proposed use will not be detrimental to the economic welfare of the community.*
- (m) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.*
- (n) Vehicular approaches to the property shall be so designated as not to create interference with traffic on surrounding public streets or roads.*



Residential model homes. Per Code, these are newly constructed homes or temporary structures placed in a newly constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home may be staffed and furnished. (C.O. 1165.11)

The criteria and the applicability of this application are detailed below (Section 1165.11(a)):

1. *Appropriate location within the community.*  
The model home is located on Lot 4 at the first corner of the subdivision after entering from Reynoldsburg-New Albany Road along Straits Link. The proposed location appears to be appropriate and is easily accessible not only by roads, but also by sidewalks and nearby trails. The location of this model home is on the subdivision's primary road: Straits Link.
2. *It is integrated in the existing community with customary exterior residential lighting.*  
The home utilizes house light fixtures consistent with the style and architectural features present the other homes planned and under construction within the subdivision. The applicant has indicated there will be landscape lighting and will be on a timer to go off by 8:00pm during winter hours.
3. *The use is approved with limited duration.*  
The applicant has stated that they would like to utilize the conditional use for six months
4. *One sign is permitted.*  
Applicant is has one ground sign (see details below).
5. *Shall not be used as a general real estate brokerage office.*  
The applicant has stated that the model home will not be used as a general real estate brokerage office.

The Planning Commission is also to consider the following (1165.11 (b)):

1. *Hours of operation*  
The applicant has indicated that the model home will operate every day, from 11:00am to 6:00pm. These operating hours are generally consistent with the operating hours of other approved model homes.
2. *Number of employees and maximum number of employees at the site at one time.*  
The applicant has stated that there will be no more than 3 employees staffing the house during its hours of operation. There will be two home consultants and one sales associate.
3. *Provisions for parking for employees and customers*  
Parking for employee and customers is provided on the driveway. If there is a need for additional parking, on-street parking can be utilized.
4. *Size, lighting, content and location of signage*  
The site has one ground sign installed that meets code requirements. C.O. Section 1169.10(e) of the sign code permits one (1) sign not to exceed two feet by three feet in dimension or six square feet in area. No sign shall extend more than four feet above grade. Signage shall not be illuminated nor shall it be nearer than ten feet to any street right-of-way. The applicant has the following sign:

2. Dual-post ground sign to read “Showcase Collection” with the applicant’s name and contact number.
  - e. Size: 2’ x 3” (6 square feet) [meets code].
  - f. Height: 4’ 0” feet [meets code].
  - g. Location: The sign will be facing the corner where Straits Link and Straits Farm North intersect, and is 13 feet from the street right of way [meets code].
  - h. The sign will not be illuminated [meets code].
5. *Landscaping and screening*

The landscaping appears to be appropriate for the area.

## **IX. RECOMMENDATION**

The overall proposal is generally consistent with the code requirements for model home conditional uses. The operational aspects of the proposed model home are consistent with successfully operating model homes in other New Albany neighborhoods and it has been successfully operating for the past two years. Staff is not aware of any complaints associated with the operation of the model home from neighbors. Staff recommends approval provided that the Planning Commission finds the proposal meets sufficient basis for approval.

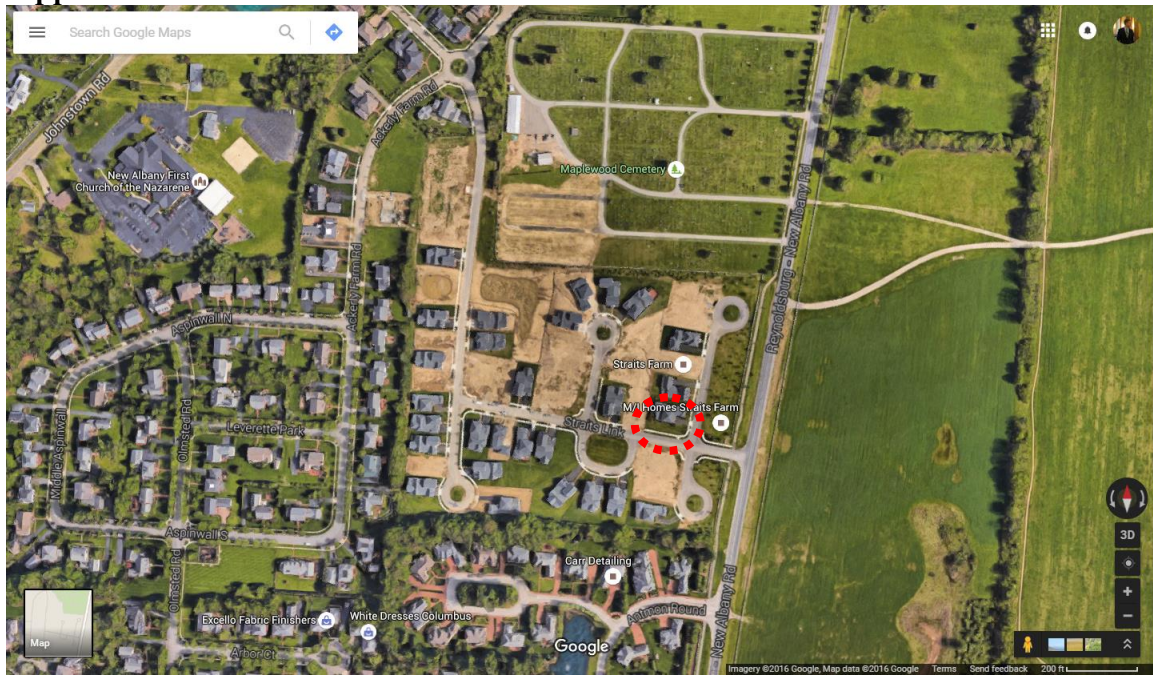
## **X. ACTION**

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

**Move to approve an extension of application CU-22-2014 based on the findings in the staff report with the following condition(s) of approval, subject to staff approval:**

- 4) The Conditional Use Permit extension will become effective on July 18, 2016, the current date of expiration.
- 5) The Conditional Use Permit is permitted for six months and that any extension in time is subject to review and approval by the Planning Commission.
- 6) The sign associated with this application is removed at the time that the permit expires.

## Approximate Site Location



Source: Franklin County Auditor



## Planning Commission Staff Report July 18, 2016 Meeting

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### 10 HIGHGROVE

## POOL FENCE VARIANCE

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**LOCATION:** 10 Highgrove (PID: 222-004492)  
**APPLICANT:** John A. Gleason  
**REQUEST:** Variance to Codified Ordinance Chapter 1173.02(e) to the  
fencing requirements for a private swimming pool  
**STRATEGIC PLAN:** Neighborhood Residential District  
**ZONING:** C-PUD (West Nine 2 PUD Subarea C)  
**APPLICATION:** V-51-2016

Review based on: Application materials received June 15, 2016.

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*Staff report prepared by Stephen Mayer, Community Development Planner.*

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### **I. REQUEST AND BACKGROUND**

The applicant requests a variance from C.O. Section 1173.02(e) Private Swimming Pools relating to the requirement that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

The city law director has previously advised that the Planning Commission must evaluate this application exclusively based upon the provisions and criteria generally set forth in the City Zoning Code as relates to variances (Chapter 1113), and the specific provisions contained within Section 1173.02(e) regarding private swimming pool fences.

The applicant submitted and received a permit to install the pool in 2014 (REM20141240).

Per the PUD zoning text variances shall be heard by the Planning Commission.

### **II. SITE DESCRIPTION & USE**

The site is 1.21 acres with a single family home. The lot is within the New Albany Country Club. The property is located at the end of the Highgrove, an elliptical one-way boulevard-type street. There are currently six homes under construction or built. The neighboring properties consist of the golf course to the north and east, and single-family homes constructed to the south and west.

### **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 standards for granting of a 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 a variance:

All of the factors should be considered and no single factor is dispositive. The key to whether a 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. FACTS**

#### ***Considerations and Basis for Decision***

**The following information in addition to application submittal information and meeting presentations and discussions should be considered in the Planning Commission’s decision for the requested variance:**

- This pool's fence was brought to the attention of staff during the variance hearing of another pool fence variance application at 6958 Lambton Park Road.
- The applicant submitted and received a permit to install the pool in 2014 (REM20141240). The pool permit showed a five foot tall aluminum fence immediately surrounding the pool's paved area.
- The pool is located at the rear of the home, between the house and the New Albany Country Club golf course.
- The lot is 1.21 acres in size.
- The applicant states they are requesting a variance to allow a fence that effectively prevents a child from crawling or otherwise passing through or under such fence to be between 35 and 42 inches in height. The fencing between 35 and 42 inches in height is a horse fence.
- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.
- The city's pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The applicant's materials assert that the horse fence meets the intent of the zoning code of preventing a child from crawling or passing through or under such fence because of the landscaping that is installed on the house side of the horse fence.
- The property currently has five foot tall aluminum fencing running from the house, down the sides of the property, and terminates at the horse fencing at the rear property line. The entire rear property line has a 3-rail horse fence that is approximately 32" at its lowest height.
- The rear property line contains six to seven foot tall arborvitae running the entire length of the rear property line between the aluminum fencing.
- The pool is approximately 80 feet from Highgrove, 190 feet from the western property line, and 140 feet from the eastern property line, and 33 feet from the rear property line bordering the golf course.
- The applicant states the variance is being sought so that the property owner does not have to have a fence within a fence, which would detract from the aesthetics both looking out toward the country club and from the country club.

## **V. HISTORY**

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

- The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.

- The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason the BZA approved the variance while stating some homes may be too close to each other for a pool cover.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
- The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
  - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
  - The pool area is fully enclosed by a house, fence, or wall.
  - The existing 54" and 44" horse fence counts towards the enclosure of the pool.
  - The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18<sup>th</sup>.
  - The pool cover is certified annually by the homeowner.

## **VI.EVALUATION**

Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The variances within the New Albany Farms subdivision were approved because the BZA stated the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a power safety cover.

The latest application on Lambton Park shared some, but not all, of the property characteristics with the previously approved variances. Due to the property's location along public streets, the Planning Commission paid special attention to characteristics of the property that have the effect of limiting public access. Additional information related to the technical standards and operational concerns of pool covers was also presented. The variance was approved by a 3-1 vote with several conditions of approval. Some of the factors that were discussed with the motion included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- Substantial mounding, landscaping, horse fence and the property's size impede public access, and
- The applicant proposed an ASTM compliant pool cover which the homeowner agreed to certify annually.

This property appears to have limited access due to the private golf course similar to the Lambton Park property. While the Lambton Park property only had one neighbor because it is a corner lot, this property has neighbors on each side. It is located on the end of a looped, public street with a limited number of homes. Due to this configuration, it is unlikely to receive a substantial amount of outside or through traffic.

The property is wide and narrow, resulting in the pool being approximately 33 feet from the rear (golf course) property line. The property is not notably or significantly larger than most homes in the country club. The applicant does not propose to install a pool cover, which has been a requirement of every application approved that allows a variance from the zoning code's standard.

The subject property contains a horse fence that separates it from the golf course as the Lambton Park property did. While the property does have landscaping, it does not appear to be substantial enough to prevent unattended access. It also includes 5-foot ornamental fencing that is code compliant along the side property lines that effectively prevent access from the neighbors onto the property.

## **VII. RECOMMENDATION**

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. This allows for the consideration of the complex issues that are inherent in every variance application. Although the property is comparable to recently approved applications, as submitted staff cannot support the request as it does not appear to meet the same set of criteria as other similar applications which have been approved. The existing 5-foot code compliant fencing along the side property lines, the location along a private golf course and the limited number of homes on the looped street somewhat satisfy the proximity and access factors that have been important in other past



variances. However, the golf course property line does not contain the amount of mounding or landscaping that would prevent access. It appears that mounding could be installed along a portion of the rear property line. A combination of mounding and supplemental landscaping could be an effective method to prevent access if it is uninterrupted and continuous behind the horse fence. The absence of a pool cover is a notable distinction from other similar approved variances and has been seen as an important factor to ensure safety. If additional measures, such as landscaping and a pool cover, were included in the request, the application would be more closely aligned with other similar applications.

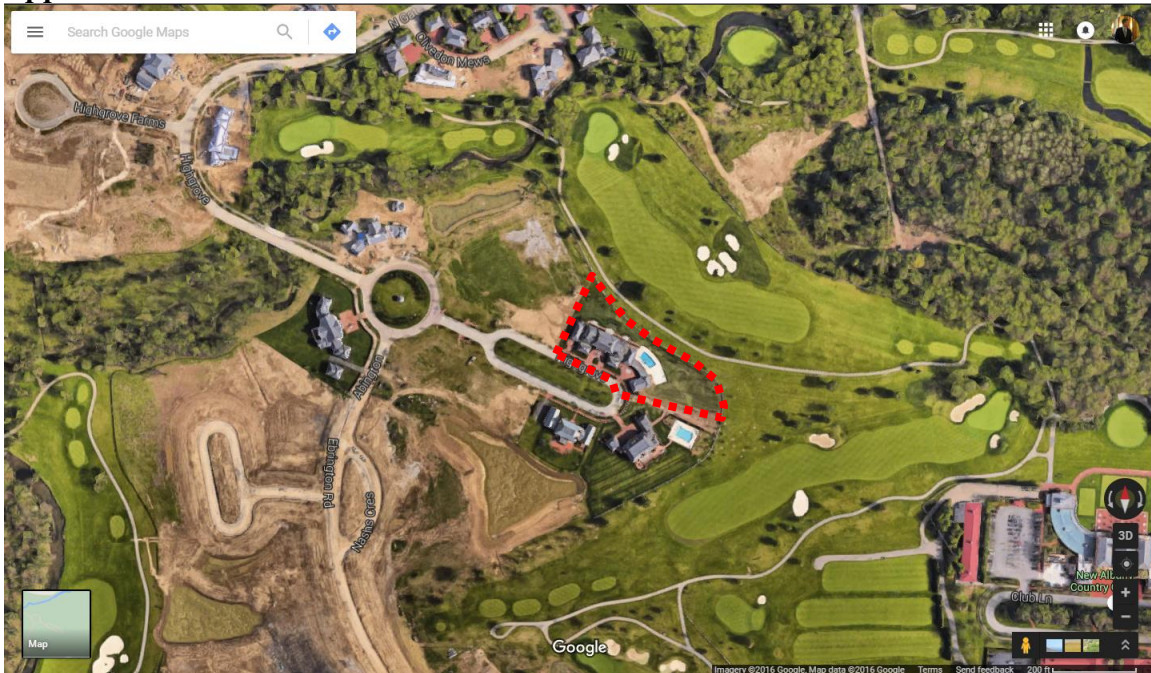
## VIII. ACTION

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

Move to approve variance application V-51-2016 based on the findings in the staff report with the following condition(s) of approval:

1. An automatic safety pool cover is installed that is ASTM compliant as and if amended.
2. The pool area is fully enclosed by a house, fence or wall.
3. Continuous and uninterrupted mounding and/or landscaping is installed along the golf course property line that will prevent access.
4. The pool cover is certified annually by the homeowner.
5. The existing horse fence counts towards the enclosure of the pool.

### Approximate Site Location:



Source: Google Maps



**Planning Commission Staff Report  
July 18, 2016 Meeting**

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**11 HIGHGROVE  
POOL FENCE VARIANCE**

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**LOCATION:** 11 Highgrove (PID: 222-004493)  
**APPLICANT:** John A. Gleason  
**REQUEST:** Variance to Codified Ordinance Chapter 1173.02(e) to the  
fencing requirements for a private swimming pool  
**STRATEGIC PLAN:** Neighborhood Residential District  
**ZONING:** C-PUD (West Nine 2 PUD Subarea C)  
**APPLICATION:** V-52-2016

Review based on: Application materials received June 15, 2016.

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*Staff report prepared by Stephen Mayer, Community Development Planner.*

#### **IV. REQUEST AND BACKGROUND**

The applicant requests a variance from C.O. Section 1173.02(e) Private Swimming Pools relating to the requirement that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

The city law director has previously advised that the Planning Commission must evaluate this application exclusively based upon the provisions and criteria generally set forth in the City Zoning Code as relates to variances (Chapter 1113), and the specific provisions contained within Section 1173.02(e) regarding private swimming pool fences.

The applicant submitted and received a permit to install the pool in 2014 (REM20141240).

Per the PUD zoning text variances shall be heard by the Planning Commission.

#### **V. SITE DESCRIPTION & USE**

The site is 1.17 acres with a single family home. The lot is within the New Albany Country Club. The property is located at the end of the Highgrove, an elliptical one-way boulevard-type street. There are currently six homes under construction or built. The neighboring properties consist of the golf course to the south and east, and single-family homes constructed to the north and west.

#### **VI. 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 standards for granting of a 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 a variance:

All of the factors should be considered and no single factor is dispositive. The key to whether a 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. FACTS**

##### ***Considerations and Basis for Decision***

**The following information in addition to application submittal information and meeting presentations and discussions should be considered in the Planning Commission’s decision for the requested variance:**

- This pool’s fence was brought to the attention of staff during the variance hearing of another pool fence variance application at 6958 Lambton Park Road.
- The applicant submitted and received a permit to install the pool in 2013 (REM20130900). The pool permit showed a five foot tall aluminum fence immediately surrounding the pool’s paved area.
- The pool is located at the rear of the home, between the house and the New Albany Country Club golf course.
- The lot is 1.17 acres in size.
- The applicant states they are requesting a variance to allow a fence that effectively prevents a child from crawling or otherwise passing through or under such fence to be between 35 and 42 inches in height. The fencing between 35 and 42 inches in height is a horse fence.

- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.
- The city's pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The applicant's materials assert that the horse fence meets the intent of the zoning code of preventing a child from crawling or passing through or under such fence because a fourth bottom rail has been added to the bottom of the fence.
- The property currently has five foot tall aluminum fencing running from the house, down the sides of the property, and terminates at the horse fencing at the rear property line. The entire rear property line has a 3-rail horse fence that is 32" at its lowest height.
- There is no mounding or landscaping installed along the rear property line where golf course is located.
- The pool is approximately 132 feet from Highgrove, 22 feet from the northern property line, and 38 feet from the horse fence bordering the golf course to the east.
- The applicant states the variance is being sought so that the property owner does not have to have a fence within a fence, which would detract from the aesthetics both looking out toward the country club and from the country club.

## **V. HISTORY**

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

- The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason the BZA approved the variance while stating some homes may be too close to each other for a pool cover.

- The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
- The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
  - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
  - The pool area is fully enclosed by a house, fence, or wall.
  - The existing 54" and 44" horse fence counts towards the enclosure of the pool.
  - The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18<sup>th</sup>.
  - The pool cover is certified annually by the homeowner.

## **VI.EVALUATION**

Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The variances within the New Albany Farms subdivision were approved because the BZA stated the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a power safety cover.

The latest application on Lambton Park shared some, but not all, of the property characteristics with the previously approved variances. Due to the property's location along public streets, the Planning Commission paid special attention to characteristics of the property that have the effect of limiting public access. Additional information related to the technical standards and operational concerns of pool covers was also presented. The variance was approved by a 3-1 vote with several conditions of approval. Some of the factors that were discussed with the motion included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- Substantial mounding, landscaping, horse fence and the property's size impede public access, and
- The applicant proposed an ASTM compliant pool cover which the homeowner agreed to certify annually.

This property appears to have limited access due to the private golf course similar to the Lambton Park property. While the Lambton Park property only had one neighbor because it is a corner lot, this property has neighbors on each side. It is located on the end of a looped, public street with a limited number of homes. Due to this configuration, it is unlikely to receive a substantial amount of outside or through traffic.

The pool is approximately 38 feet from the rear (golf course) property line. The property is not notably or significantly larger than most homes in the country club. The applicant does not propose to install a pool cover, which has been a requirement of every application approved that allows a variance from the zoning code's standard.

The subject property contains a horse fence that separates it from the golf course as the Lambton Park property did. The property does not have landscaping or mounding to prevent unattended access. It also includes 5-foot ornamental fencing that is code compliant along the side property lines that effectively prevent access from the neighbors onto the property.

#### **VIII. RECOMMENDATION**

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. This allows for the consideration of the complex issues that are inherent in every variance application. Although the property is comparable to recently approved applications, as submitted staff cannot support the request as it does not appear to meet the same set of criteria as other similar applications which have been approved. The existing 5-foot code compliant fencing along the side property lines, the location along a private golf course and the limited number of homes on the looped street somewhat satisfy the proximity and access factors that have been important in other past variances. However, the golf course property line does not contain any mounding or landscaping that would prevent access. It appears that mounding could be installed along a portion of the rear property line. A combination of mounding and landscaping could be an effective method to prevent access if it is uninterrupted and continuous behind the horse fence. The absence of a pool cover is a notable distinction from other similar approved variances and has been seen as an important factor to ensure safety. If additional measures, such as landscaping and a pool cover, were included in the request, the application would be more closely aligned with other similar applications.

#### **VIII. ACTION**

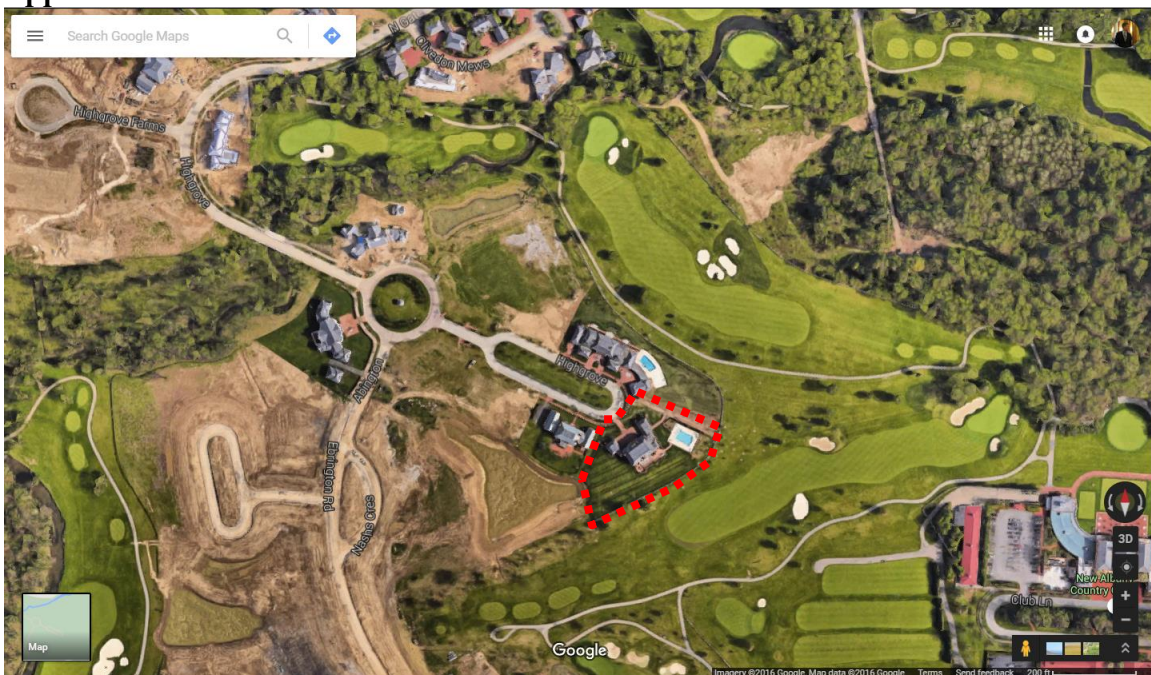
**Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:**



Move to approve variance application V-52-2016 based on the findings in the staff report with the following condition(s) of approval:

6. An automatic safety pool cover is installed that is ASTM compliant as and if amended.
7. The pool area is fully enclosed by a house, fence or wall.
8. Continuous and uninterrupted mounding and/or landscaping is installed along the golf course property line that will prevent access.
9. The pool cover is certified annually by the homeowner.
10. The existing horse fence counts towards the enclosure of the pool.

**Approximate Site Location:**



Source: Google Maps





**Planning Commission Staff Report  
July 18, 2016 Meeting**

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**7010 LAMBTON PARK  
POOL FENCE VARIANCE**

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**LOCATION:** 7010 Lambton Park (PID: 222-002598)  
**APPLICANT:** Rich & Paige Langdale  
**REQUEST:** Variance to Codified Ordinance Chapter 1173.02(e) to the  
fencing requirements for a private swimming pool  
**STRATEGIC PLAN:** Rural Estate Residential District  
**ZONING:** C-PUD (1998 NACO C-PUD, Subarea 1b: Edgemont)  
**APPLICATION:** V-55-2016

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

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*Staff report prepared by Stephen Mayer, Community Development Planner.*

**VII. REQUEST AND BACKGROUND**

The applicant requests a variance from C.O. Section 1173.02(e) Private Swimming Pools relating to the requirement that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

The city law director has previously advised that the Planning Commission must evaluate this application exclusively based upon the provisions and criteria generally set forth in the City Zoning Code as relates to variances (Chapter 1113), and the specific provisions contained within Section 1173.02(e) regarding private swimming pool fences.

Per the PUD zoning text variances shall be heard by the Planning Commission.

### **VIII. SITE DESCRIPTION & USE**

The site is 7.414 acres with a single family home. The lot is within the New Albany Country Club. The property is located near the northeast corner of Waterston and Lambton Park Road. The house is one of three large lots along the north side of Lambton Park Road. The neighboring properties consist of the golf course to the north and east, and single-family homes constructed to the south and west.

### **IX. 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 standards for granting of a 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 a variance:

All of the factors should be considered and no single factor is dispositive. The key to whether a 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. FACTS**

##### ***Considerations and Basis for Decision***

**The following information in addition to application submittal information and meeting presentations and discussions should be considered in the Planning Commission's decision for the requested variance:**

- This pool's fence was brought to the attention of staff during the variance hearing of another pool fence variance application at 6958 Lambton Park Road.
- The city's permit tracking software shows a pool permit was issued in 2006. However, due to the city's records retention policy the plans have since been destroyed.
- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.
- The city's pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The pool is located at the rear of the home, between the house and the New Albany Country Club golf course.
- The parcel has a 44" high 3-rail horse fence along the rear property line separating the house and golf course. There does not appear to be any other fencing around the property.
- The property to the west is currently vacant and contains several large tree masses.
- This parcel is one of the largest in the Country Club subdivision resulting in the pool being located greater distances from other residential properties and public roads. The pool is approximately 495 feet from Lambton Park Road, 85 feet from the western property line, and 61 feet from the eastern property line bordering the golf course.
- The applicant proposes to continue to use an automatic pool safety cover. No specifications on the pool cover have been submitted other than a picture

showing a person standing on the pool cover. This may be similar to a pool cover the BZA approved in-lieu of a fence at 6958 Lambton Park, and 10 and 14 New Albany Farms. Pool covers are recognized by some building codes as an appropriate method to secure a pool. However the city has not adopted a code that allows the use of covers. The city's private swimming pool ordinance regulates the construction of private pools within the city and requires a 4-foot fence affixed with an operable gate and lock.

- The lot is larger than the majority of the parcels in and around the New Albany Country Club subdivision. This lot is approximately 7.4 acres while the vast majority of the lot sizes in the Country Club subdivision are under one acre.
- The applicant's narrative states the pool was properly inspected and approved. Staff's records does not indicate such
- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The pool appears to be screened from the public right-of-way, but does clear sight lines to the golf course. The pool has been constructed for approximately 10 years. There are some tree masses to the west but it is unclear how much of them are on the applicant's property.

## **V. HISTORY**

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

- The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason the BZA approved the variance while stating some homes may be too close to each other for a pool cover.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
- The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have

limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:

- An automatic safety pool cover is installed that is ASTM compliant as and if amended.
- The pool area is fully enclosed by a house, fence, or wall.
- The existing 54" and 44" horse fence counts towards the enclosure of the pool.
- The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18<sup>th</sup>.
- The pool cover is certified annually by the homeowner.

## **VI.EVALUATION**

Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The variances within the New Albany Farms subdivision were approved because the BZA stated the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a power safety cover.

The latest application on Lambton Park shared some, but not all, of the property characteristics with the previously approved variances. Due to the property's location along public streets, the Planning Commission paid special attention to characteristics of the property that have the effect of limiting public access. Additional information related to the technical standards and operational concerns of pool covers was also presented. The variance was approved by a 3-1 vote with several conditions of approval. Some of the factors that were discussed with the motion included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- Substantial mounding, landscaping, horse fence and the property's size impede public access, and
- The applicant proposed an ASTM compliant pool cover which the homeowner agreed to certify annually.

Although this property is not located within the Farms community there are similarities between this property and the homes at 6 and 14 New Albany Farms, and the home at 6958 Lambton Park in terms of limited proximity and access. This lot is unique from

other homes in the New Albany Country Club due to size and number of neighbors. The parcel is one of the largest in the New Albany Country Club and is essentially triangle-shaped with golf course on two sides and an undeveloped lot on the third side. A creek also separates the parcel from the golf course on the east side. While there are clear sight lines from the pool to the golf course, the majority of the pool and home is screened with a substantial amount of large trees. The home and pool appear to be completely screened from Lambton Park Road. Staff believes these are factors related to this parcel that help to prevent uncontrolled access and therefore not adversely affect the public safety of those residing or working in the vicinity similar to 6958 Lambton Park. One difference from 6958 Lambton Park is that the pool at 6958 was located right in the middle of the property creating large setbacks on all four sides of the pool, however, this pool at 7010 is located closer to the golf course and contains less screening. Additionally, 6958 is required to install a fence that meets code requirements where there isn't existing horse fence (the side property lines). This property contains fencing only along the golf course.

## **IX. RECOMMENDATION**

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. Although the property is comparable to recently approved applications, staff cannot support the request as submitted. The location along a private golf course, size of the parcel and isolation of the property satisfy the proximity and access factors that have been important in other past variances. However, it doesn't contain all the elements that have been required of recently approved variances. The golf course property line does not contain an amount of mounding or landscaping to prevent access. It appears that mounding and/or landscaping could be installed along a portion of the rear property line to accomplish this. Also fencing to limit access from neighboring lots does not exist. Due to the unique configuration of the lot, a potential neighbor on only one side and the substantial woods on the property, it seems as fencing could only be installed on the west property line to secure access. The presence of a pool cover is an important factor to ensure safety. If additional measures, such as landscaping and a side property line fence, were included in the request, the application would be more closely aligned with other similar applications.

## **VIII. ACTION**

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

Move to approve variance application V-55-2016 based on the findings in the staff report with the following condition(s) of approval:

11. Continuous and uninterrupted mounding and/or landscaping are installed along the golf course property line that will prevent access.
12. Code compliant fencing is installed along the western side property line to tie into the horse fence.
13. The pool cover is certified annually by the homeowner.

## Approximate Site Location:

