



Board of Zoning Appeals

Meeting Minutes

March 27, 2017

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 Member, Gallagher at 7:02 p.m.

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

Those answering roll call:

Ms. Julie Kriss	Absent
Mr. Everett Gallagher	Present
Ms. Alicia Miller	Present
Ms. Andrea Wiltrout	Present
Mr. Kasey Kist	Absent
Ms. Marlene Brisk (Council Representative)	Absent

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

Mr. Gallagher asked for any changes to the agenda.

Mr. Mayer stated that we would like to move the organizational meeting.

Moved by Gallagher to elect Kriss as Chairperson, Seconded by Miller. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Wiltrout to elect Gallagher as Vice Chairperson, Seconded by Miller. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Gallagher to elect Wiltrout as Secretary, Seconded by Miller. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Gallagher to establish the 4th Monday of each month at 7:00pm, Seconded by Miller. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Miller to approve the February 27, 2017 meeting minutes, Seconded by Gallagher. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yes. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

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

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

Moved by Wiltrout to accept the staff report and related documents into the record V-04-2017, Seconded by Miller. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

V-12-2017 Variance

Variances to Codified Ordinance Chapter 1165 and Innovation District Limitation Text subarea A to the pavement setbacks, and landscaping requirements at 9200 Smith's Mill Road North (PID: 095-111372-00.008).

Applicant: Corna-Kokosing

Mr. Stephen Mayer stated that the applicant has withdrawn variance request C and provided the board with an updated site plan. He continued by presenting the staff report.

Mr. Matt Ference representing Corna and Kevin Lee representing Bocchi. Corna is the design builder for the proposed expansion. We have been working with Bocchi over the last few months.

Mr. Kevin Lee stated that the roadway on the east side will lead to a roll up door for limited use for equipment. Regular deliveries will not be using that east side door. The aim for the north south drive was to pave that for continuity of access. We have an existing dirt path with a gravel base for emergency fire purposes. From an access point of view it is not good for emergency vehicles. It doesn't change the use, it is only improving the existing dirt road. Our intention is to continue employee parking on the north side. No commercial vehicles to access the north side parking. We want to maintain the south parking to help with the expansion and the commercial trucks. We do not intend to have any north south side driving take place.

Ms. Miller asked if commercial truck can't make the turn how could a fire truck.

Mr. Lee stated that a fire truck can make the turn but a 53' trailer could not.

Mr. Ference stated that the radius will not be changing.

Mr. Lee stated that we are just paving.

Mr. Tim Porter, 2299 Harrison Road, stated that he lives in the yellow part on the map. I don't agree with the 50' setback next to residential. The landscaping is not 75% opacity. The temporary road is already in the setback that doesn't disturb me. If they pave the road it will disturb me. If that happens on the back side and my south side my property is done.

Ms. Porter spoke from the audience. Refused to come to microphone.

Ms. Karen Colter, 2401 Harrison Road, stated that she doesn't think a variance should be allowed because it is residential. The rules were set already and they shouldn't get exceptions when you have residential next to it. They are people that live around the site. It's different now.

Mr. Jim Endsley, 12228 Jug Street and Jersey Township trustee, stated that the neighbors asked me to come tonight. My concern is where you have commercial next to residential you need screening. 50' is not enough room to accommodate adequate screening of the buildings that tall (showed pictures to the board on iPad). Showed a picture of A&F from Tidewater as a good example of screening. Picture from Mr. Porter's property to Bocchi. He wants a pond in the back yard but it would be too close to the commercial. The commercial has changed Mr. Porter's ability to use his land. We asked for 100' of setback for building and pavement. The New Albany Company agreed to do that. This business may have adequate room to expand to the south but not to the east unless they purchased Mr. Porter's property. I would ask that you reject this variance.

Mr. Wiltrout asked for them to explain the reduced use of property.

Mr. Endsley stated that some employees stand out back during breaks. If Mr. Porter install the pond as planned the employees will be able to watch him, his wife and kids as they are in the backyard. They are losing the valuable use of their property.

Ms. Joly asked Mr. Endsley to email the pictures to the clerk to add them to the record.

Ms. Wiltrout stated that access for emergency vehicles seems to be available. Why do they need to have access on the far east side? What is not being served right now?

Mr. Lee stated that the goal is to have flexibility and access to the rear of the building. Currently we have enough access to the existing building because of the empty space to the east. When the addition is built we want to have 360 degree access to the building. We have enough space for operational needs in the north and south parking areas. This connection is not designed for an operational needs.

Ms. Miller asked who lived on the property first.

Mr. Lee stated that residential was existing first but not sure who the owners were.

Ms. Miller stated that the commercial user knew of the neighboring residential and that some restrictions would apply prior to building.

Mr. Gallagher asked if the zoning was in place prior to the purchase by Bocchi.

Mr. Mayer stated yes.

Mr. Gallagher stated that they buyer of the commercial property purchased with the zoning limitations in place.

Mr. Mayer stated that the limitations were already in place.

Ms. Miller stated that the other criteria is if the use the property will continue to provide a reasonable return. You will be able to continue to use the property. You have access on both corners. The next criteria - is it substantial. I would say yes to use the buffer and doesn't follow the spirit of the code.

Audience member stated that the building is not built yet so change the building.

Ms. Miller stated that there is still time for you to change the design. I'm not a landscape expert but I would agree that the conditions regarding landscaping screening would help. I don't think screening would fix the problem.

Mr. Gallagher stated that he agrees with staff. Following the Duncan rules I don't think we can approve this. The standards were put into place to protect. I think it is important to help businesses grow but we still need to protect the neighbors as well.

Ms. Wiltrout stated that she agrees with the staff report. The delivery of government services are currently adequate I do believe that it is a substantial variance.

Moved by Gallagher to approve V-12-2017 variance request A, Seconded by Wiltrout. Upon roll call: Gallagher, nay; Miller, nay; Wiltrout, nay. Yea, 0; Nay, 3; Abstain, 0. Motion failed by a 0-3 vote.

Moved by Gallagher to approve V-12-2017 variance request B, Seconded by Wiltrout. Upon roll call: Gallagher, nay; Miller, nay; Wiltrout, nay. Yea, 0; Nay, 3; Abstain, 0. Motion failed by a 0-3 vote.

Moved by Gallagher to accept the applicant's withdrawal of V-12-2017 variance request C, Seconded by Wiltrout. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Mr. Ference asked why the commercial section was denied. We did not talk much about the commercial section.

Ms. Miller stated that she would like to see a solution that addresses the entire area.

Mr. Gallagher stated that I have the same concern.

Ms. Wiltrout stated that utility of the commercial section seems invalid without the residential section.

Mr. Ference stated that our plan is the building to the 50' setback and the true fire lane stone around the back. Do we need to do the additional landscaping since none of the variances were approved?

Ms. Joly stated that we will work with you on the code requirements.

Mr. Lee stated that the city's recommendation was to allow the commercial access and you voted against that. You understand the owner's goal of access to the door.

Ms. Miller stated that we need a better solution.

Moved by Miller to adjourn, Seconded by Wiltrout. Upon roll call: Gallagher, yea; Miller, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Meeting adjourned at 7:42 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report March 27, 2017 Meeting

BOCCHI LABS EXPANSION SETBACK & GRAVEL VARIANCE

LOCATION: 9200 Smith's Mill Road North (PID: 095-111372-00.008)
APPLICANT: Corna-Kokosing
REQUEST: Variances to Codified Ordinance Chapter 1165 and Innovation District
Limitation Text subarea A to the pavement, and landscaping
requirements
ZONING: L-GE [Limited General Employment] – Innovation District Limitation
Text Subarea A
STRATEGIC PLAN: Office District
APPLICATION: V-12-2017

Review based on application materials received February 27 and March 8, 2017.

Staff report prepared by Stephen Mayer, Community Development Planner.

I. REQUEST AND BACKGROUND

The applicant requests the following variances for a proposed building expansion:

- A. Variance to Innovation District Limitation Text subarea A(D)(2)(d) to allow the pavement to be setback 17 feet from the eastern property line (residential use) where code requires a minimum setback of 50 feet.
- B. Variance to Innovation District Limitation Text subarea A(D)(2)(d) to allow the pavement to be setback 5 feet from the eastern property line (commercial use) where code requires a minimum setback of 50 feet.
- C. Variance to Codified Ordinance section 1153.04(e) to allow a five foot wide gravel drain at the east side of the site where code requires all areas besides structures and paved areas to be landscaped in natural vegetation.

Per C.O section 1113.05 property owners within 200 feet of the property in question have been notified.

II. SITE DESCRIPTION & USE

The site is located within Licking County, north of state route 161, east of Beech Road within the portion of the business park known as the Personal Care and Beauty Campus. The neighboring uses include General Employment to the west and south, and residential to the north and east.

The site is 11.5 acres and contains a 125,500 square foot manufacturing facility constructed in 2014. The applicant is proposing a 75,000 square foot building expansion to the east.

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.

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. EVALUATION

Considerations and Basis for Decision

A. Variance to Innovation District Limitation Text subarea A(D)(2)(d) to allow the pavement to be setback 17 feet from the eastern property line (residential use) where code requires a minimum setback of 50 feet.

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

- The site is zoned L-GE (Limited-General Employment) under the Innovation District Limitation Text. The limitation text requires a 50 foot building and pavement setback from any the perimeter boundary of the Innovation District. Bocchi's northern and eastern property lines are along the perimeter boundary of this district.
- The text establishes setbacks that are more stringent than the minimum GE (General Employment) district's along the perimeter of the district's boundary to provide an additional buffer between the commercial uses within the district and the residential uses outside the district.
- The General Employment District's minimum setback requires that no structure, service area, or parking area is located less than 50 feet from any district where residences are a permitted use. This limitation text has placed an additional restriction by requiring no building or pavement shall be located less than 50 feet from the perimeter boundaries of the subarea. In 2010 the perimeter boundaries coincided with where residences are a permitted use.
- Approximately 200 feet of the property's eastern lot line is adjacent to a residential use. The applicant is proposing to encroach the pavement setback along the eastern property line by 33 feet and locate a paved drive aisle 17 feet from a property where residences are a permitted use.
- The City Landscaping Code (C.O. Chapter 1171) recommends for commercial uses which abut districts where residences are a permitted use, a buffer zone with a minimum width of twenty-five (25) feet *should* be created. However, it does require that 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. Staff recommends the Board of Zoning Appeals consider requiring additional landscaping to provide more screening than the minimum code requirements, subject to staff approval.
- The applicant has submitted a landscape proposing a variety of evergreen trees to be planted along the section of their eastern property line where it abuts the residential use. Staff recommends a condition of approval that the landscape plan is subject to the approval of the City Landscape Architect to ensure the screening requirement is met.
- The applicant states this drive aisle allows the owner to have a paved drive connecting the parking areas north and south of the building. No trucks will be permitted to use this area.

- The variance may be substantial and does not appear to preserve the “spirit and intent” of the zoning requirement since the likely objective of the requirement is to provide an larger no-build, buffer zone between commercial and residential uses.
- The essential character of the neighborhood may be substantially altered since the entire Innovation District establishes larger setbacks where commercially and residentially zoned properties abut.
- It does not appear that the variance would adversely affect the delivery of government services.

B. Variance to Innovation District Limitation Text subarea A(D)(2)(d) to allow the pavement to be setback 5 feet from the eastern property line (commercial use) where code requires a minimum setback of 50 feet.

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

- The site is zoned L-GE (Limited-General Employment) under the Innovation District Limitation Text. The limitation text requires a 50 foot building and pavement setback from any the perimeter boundary of the Innovation District. Bocchi’s northern and eastern property lines are along the perimeter boundary of this district.
- The text establishes setbacks that are more stringent than the minimum GE (General Employment) district’s along the perimeter of the district’s boundary to provide an additional buffer between the commercial uses within the district and the residential uses outside the district.
- This limitation text has placed an additional restriction by requiring no building or pavement shall be located less than 50 feet from the perimeter boundaries of the subarea.
- In 2010 the perimeter boundaries coincided with where residences are a permitted use. However, since that time, property to the east of the Bocchi site has been annexed and rezoned to allow for the same commercial uses in 2014.
- Approximately 560 feet of the property’s eastern lot line is adjacent to a commercially zoned, undeveloped property. The applicant is proposing to encroach the pavement setback along the eastern property line by 45 feet and locate a paved drive aisle 5 feet from a commercially zoned property.
- The applicant states this drive aisle allows the owner to have a paved drive connecting the parking areas north and south of the building. No trucks will be permitted to use this area.
- The city’s Personal Care and Beauty Campus Landscape Standards book recommends “hedgerows” consisting of native trees shall be planted between properties. The property currently has this hedgerow planted along its property lines. The landscape plan states the existing hedgerow trees will be removed from this section of the property line and relocated to other parts of the property. Staff recommends a condition of approval requiring a hedgerow is planted along the entire eastern property line, subject to staff approval.
- The variance does not appear to be substantial and preserves the “spirit and intent” of the zoning requirement since the likely objective of the requirement is to buffer between commercial and residential uses. However, in this case, this portion of the neighboring property permits the same uses. These two properties are consistent and compatible in nature. Additionally, the proposed drive aisle would be permitted to be located in this area if not for the additional restrictions placed on the property by the limitation text.

- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment” since this same development pattern is utilized in other areas of the Personal Care and Beauty Campus where two properties with the same zoning are adjacent to one another.
- 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.
- Just to the west of this drive the applicant is proposing additional offsite parking on the neighboring southern property. City parking code section 1167.03(g)(2)(A) requires parking and loading spaces in the GE district to be provided on the same lot as the principle use which they serve. Staff recommends a condition of approval requiring the property owner to relocate the southern property line to ensure all parking is completely on the same property as the principle use.
- Additionally, the applicant has verbally communicated to city staff the proposed additional parking at the southeast corner of the building may be utilized on a temporary basis. Staff recommends the temporary parking is permitted for a period of time not to exceed three (3) years from the date of the final zoning inspection.

C. Variance to Codified Ordinance section 1153.04(e) to allow a five foot wide gravel drain at the east side of the site where code requires all other areas besides structures and paved areas to be landscaped in natural vegetation.

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

- Per Codified Ordinance Section (General Employment District) 1153.04(e) the maximum lot coverage for buildings and paved areas within the General Employment district shall be 75%. The remainder of the site shall be landscaped in natural vegetation.
- The applicant proposes a five foot wide gravel drain at the east side of the site. The applicant explains this will help pick up off site drainage, reduce the amount of dirt on the paved drive, and greatly increase the life and quality of the pavement. The lot coverage is 64%.
- Landscaping in natural vegetation includes removing all the gravel and seeding the property with turf grass. Trees and shrubs may be added. The intent of the code is likely to ensure an aesthetically pleasing environment in the city’s industrial and general employment districts.
- The city’s Personal Care and Beauty Campus Landscape Standards book recommends “hedgerows” consisting of native trees shall be planted between properties. The property currently has this hedgerow planted along its property lines. The landscape plan states the existing hedgerow trees will be removed from this section of the property line and relocated to other parts of the property.
- The essential character of the neighborhood may be substantially altered since this gravel drain is not utilized in other areas of the Personal Care and Beauty Campus. The existing sites within the Personal Care and Beauty Campus utilize swales with landscaping to manage stormwater.
- The variance does not appear to preserve the “spirit and intent” of the zoning requirement since the likely objective of the requirement is to enhance the site through natural vegetation.

- It does not appear 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.
- It does not appear that granting the variance would adversely affect the delivery of government services.

In summary, staff is supportive of variance B, but does not support variances A and C. Variance B does not appear to be substantial given the fact that this property and the neighboring parcel are consistent and compatible in nature. The intent of the regulation is to provide buffering between residential and commercial. However, since variance A is along an area where residential uses are permitted, staff is not supportive of the variance since it does not appear to preserve the “spirit and intent” of the zoning requirement. Lastly, the rest of the Personal Care and Beauty Park utilizes swales with natural vegetation and there does not appear 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.

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:

A. Move to approve variance request A to Innovation District Limitation Text subarea A(D)(2)(d) to allow pavement to be setback 17 feet from the eastern property line (residential use) where code requires a minimum setback of 50 feet based on the findings in the staff report, subject to the following conditions:

1. The landscape plan is subject to the approval of the City Landscape Architect to ensure the screening requirement is met.
2. Additional landscaping to provide more screening than the minimum code requirements is provided, subject to staff approval.

B. Move to approve variance request B to Innovation District Limitation Text subarea A(D)(2)(d) to allow the pavement to be setback 5 feet from the eastern property line (commercial use) where code requires a minimum setback of 50 feet based on the findings in the staff report, subject to the following conditions:

1. The property owner to required relocate the southern property line to ensure all parking is completely on the same property as the principle use per City parking code section 1167.03(g)(2)(A).

2. The temporary parking at the loading docks is permitted for a period of time not to exceed three (3) years from the date of the final zoning inspection.
3. A hedgerow is located along the entire eastern property line, subject to staff approval.

C. Move to approve variance C to Codified Ordinance section 1153.04(e) to allow a five foot wide gravel drain at the east side of the site where code requires all other areas besides structures and paved areas to be landscaped in natural vegetation based on the findings in the staff report.

Approximate Site Location:



Source: City of New Albany GIS