



Board of Zoning Appeals

Meeting Minutes

May 22, 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 7:00 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	Absent
Ms. Andrea Wilttrout	Present
Mr. Kasey Kist	Present
Ms. Marlene Brisk (Council Representative)	Present

Staff members present: Stephen Mayer, Planner; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Moved by Wilttrout to approve the March 27, 2017 meeting minutes, as corrected; Seconded by Kist. Upon roll call: Gallagher, yea; Kist, abstain; Wilttrout, yea. Yea, 2; Nay, 0; Abstain, 1. Motion passed by a 2-0 vote.

Mr. Gallagher asked for any changes to the agenda.

Mr. Mayer stated that staff was made aware that Dr. Bhatia would like to address the board tonight. We would request that we place him under Other Business.

Mr. Bhatia started speaking from the audience explaining his request.

Mr. Banchefsky stated we would hear it later.

Mr. Gallagher stated that he was added to the agenda under other business.

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

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

V-12-2017 Variance Reconsideration

Reconsideration of variances to the Innovation District Limitation Text subarea A pavement setback requirements at 9200 Smith's Mill Road North (PID: 095-111372-00.008).

Applicant: Corna-Kokosing

Mr. Mayer presented the staff report.

Mr. Kevin Lee, Bocchi Labs, presented a PowerPoint. Wanted to present the master plan, history of company and explain the production and business intent. In support of the master plan, we wanted to pave a fire road. Currently it is not passable in poor conditions. We are continuing conversations with the fire department to determine to correct specifications for the road. The roll up door on the east side of the building is valuable to our business to get large equipment inside the building. It is used infrequently and not designed for regular deliveries.

Mr. Kist asked if you would use pallet jacks or forklifts to offload. He asked if you would be pulling a large truck into the door.

Mr. Lee stated yes we would use forklifts. It would not be 53' trucks, that is what the dock doors are for.

Ms. Wiltrout stated that she doesn't understand what the side entrance help with what you don't have right now. How does it help having it on the side?

Mr. Lee stated that grade changes. All of the dock doors are raised height for a truck to back into and the other side of the building is the employee parking. That is the only place you would have the grade level. He continued that at the last meeting I didn't think it was pertinent to talk about the discussions we have had with the neighbors. I have met with them multiple times. I looked at some pictures from before we built and these neighbors used to look at woods. I understand the change the dilemma between the commercial and residential side. We have talked with neighbors and offered options for landscaping and brought in a landscape architect. We would like to continue working with the neighbors or just do that; just not sure if it will be accepted.

Mr. Gallagher asked how the offer was received

Mr. Lee stated that we talked positively but did not come to a conclusion. At the time we were talking about where to place the warehouse wall and discussed seeking an easement. I advised the owners not to build over the setback line.

Mr. Gallagher asked if they would still have the 50' and if the landscaping will be in that 50'.

Mr. Lee stated currently the warehouse is on the 50' setback line. The roadway is in the 50' setback. We don't have resistance to add landscaping in the 17' from the roadway to property line. We have left all of the trees that we were able to. Using the map he showed the trees that were left and which areas have been cleared on other properties that he doesn't have control over which also opened up the view for the neighbors.

Mr. Kist stated that I visited the site today and you can't see the house from your parking lot looking east. Then I went to Harrison and looked west and it was difficult to see your building.

Mr. Gallagher stated that what the neighbors were concerned because they wanted to add a pond or pool and they were concerned about privacy when the family is trying to enjoy their property.

Mr. Kist asked which was of more concern; the neighbor or the fire lane.

Mr. Mayer explained the history and that the applicant is considering using grass pavers from the east roll-up door to the northern portion and only pave from the south to the roll-up door. (Using the map discussed the fire lane location and distances to property lines)

Mr. Gallagher stated that it is important that the pavement is at least 50' from the residential property.

Ms. Brisk confirmed that the fire road would not need a variance.

Mr. Mayer stated that is correct, they have a current fire lane in that location.

Mr. Gallagher asked what variances are required.

Mr. Mayer stated the only variance would be for the paved road section.

Mr. Lee stated that they are not sure what is there currently in regards to the fire road. To go one step further, we also desire to build one of a parking lots sooner rather than later.

Mr. Mayer stated that no variances would be needed for the temporary parking lot. Code allows for temporary parking for up to three years. The applicant has removed the parking on the south property line that was on the last application.

Mr. Kist stated that he is trying to determine the hardship. How far is the design for this building?

Mr. Lee stated the design is done and in final permitting.

Mr. Kist stated that I understand the grading, if you shifted the dock doors down and add the roll-up door as the last bay door.

Mr. Lee stated that we looked at different options but it was very complicated because of the grade difference. It's about a 4' difference and would be a hazard without a wall and bordered off for safety concerns with the drop-off.

Mr. Kist asked what happens if we don't approve this.

Mr. Lee stated that we don't really have a plan B. From the owners' point of view, we want to building out to maximize the space for the parcels they obtained to satisfy the demand requirements for our customer. If we received a no, we would have to sacrifice the back dock doors and figure it out.

Ms. Brisk stated that it sounds like you would agree to some opacity and screening requirements.

Mr. Lee stated yes. I understand the motivation of the neighbor. Put there what we can fit there even without the request by the neighbor because maybe it's the right thing to do. New Albany requirements are only a few trees that are not mature.

Mr. Mayer stated that typically when the applicant's submits a landscape plan the city landscape architect reviews and offers comments. We could have comments from the city landscape architect confirming going above and beyond the base code.

Mr. Gallagher stated that would be helpful to have.

Mr. Lee stated that if you approve another meeting I will be talking to the neighbors again about the landscaping to see if we can come to an agreement.

Ms. Brisk asked when they were planning on starting construction.

Mr. Lee stated that it's under construction. The fire lane and landscaping would be one of the last things we would do, maybe completion in September.

Ms. Wiltrout stated that we have time to make a decision. Asked how many times will the door be used?

Mr. Lee stated that it's been used maybe five times but it's essential.

Mr. Kist asked the size of the door.

Mr. Lee stated that it's the width of about 1/2 - 1/3 of this room.

Ms. Wiltrout asked who owns the commercial property.

Mr. Mayer stated that it's a holding company.

Ms. Brisk asked what tonight is for. Tonight is just to decide whether we will hear this case again. We can't vote on whether to approve the case because we need to provide neighbor notifications.

Mr. Banchefsky stated that the vote tonight decides if you will reconsider this application.

Mr. Gallagher stated that I think we have enough new information and changes. This looks more thoroughly done and complete.

Moved by Gallagher to reconsider V-12-2017 and would like to hear from the city landscape architect and neighbors, Seconded by Wiltrout. Upon roll call: Gallagher, yea; Kist, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Moved by Gallagher to table until regular June meeting, Seconded by Wiltrout. Upon roll call: Gallagher, yea; Kist, yea; Wiltrout, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Other Business

Mr. Banchefsky presented the procedural history for this case. This variance was heard by BZA in January. I now realize that two of the members tonight were not part of the board at that time. It's pretty much the same thing you did for Bocchi where you would vote on a recommendation to reconsider but there is a hoop to jump through first. In January, the applicant, Shadetree Living, was hired by Dr. Bhatia to install a pergola and in addition, there was a pre-existing patio and both violated the setback provisions. The patio variance was approved and the pergola was not. The pergola had other issues including the materials and a neighbor that came and spoke passionately that this was not following the rules. Had a history that went back years to the subdivisions development and commitments that were made by the city during that process. Staff sent a record of action which we do for all cases to notify formally the result of the case. This record of action notice was not as clear as I would like it to be. After discussions with Dr. Bhatia, we rescinded the record of action notice and subsequent violation notices to allow Dr. Bhatia to restart the timeframe for appeal, which is to Common Pleas Court. We had no discussion of a reconsideration. In order to do that we need to look at the rules for board and commissions. The first rule is that the reconsideration must be done within two meetings from the time of the original decision, which was January 23rd. We have had at least two meetings since that time. This board has the ability to waive that provision. He asked board if anyone had any questions before we continue.

Ms. Wiltrout stated that she would like to understand the timeline. When was the second record of action sent?

Mr. Banchefsky stated that the best thing to do was to resend the original record of action because the appeal rights were not clear.

Dr. Bhatia stated May 4th.

Ms. Hickok stated beginning of May.

Ms. Brisk asked that historically our notices would not advise of a right of reconsideration listed.

Mr. Banchefsky stated that is correct and in my experience in other municipalities that language regarding reconsideration is not included in a record of action for a denial. I think it would be fair to allow Dr. Bhatia a chance to explain his position but without waiving the two meeting rule there is no purpose in moving forward because there won't be a reconsideration.

Dr. Bhatia stated that I will only speak on waiving the two week rule. The notice that I received was not very good regarding my rights to appeal. I did call and had several conversations during that time in between notices asking for administrative notification, not for legal advice. I asked if there are any other methods of having this decision reconsidered. I sent a letter on May 15th to the board requesting reconsideration to the decision. The response I received was a certified letter saying that city code does not provide for any such appeal. Which I believe is incorrect because I come to find out that Ordinance 159.06 does allow for reconsideration. Which I tried to get clarification of that, I was told that they can't provide legal advice. I'm not asking for legal advice. As a constituent, if I'm asking the source for an administrative direction, I should have been given the correct information to go check chapter 159. All I kept being told, both verbally and in every notice, is that your only recourse in the Court of Common Pleas. To me that is not clearly outlining what the options are. I understand, if it's not standard practice to put it on the notice but I called and asked. The only way I found out was by looking at the agenda for today. When I looked and saw that they the same thing happen I called and asked why I wasn't advised that such an ordinance exists. I get the same answer, can't give legal advice. This is not legal advice, is an administrative question. I would have preferred that nothing was said because telling me that the only recourse is the Common Pleas is misleading directly. That's my plea and first request of the waiving of the two meeting rule because during that time the meetings passed. We can talk about the reconsideration itself when you are ready.

Mr. Gallagher thanked Dr. Bhatia for sharing his thoughts and asked if new information is available.

Dr. Bhatia stated yes; new information and information that was considered that should not have been because it doesn't apply to my situation now. I think that what I have to present is significant and is deserving of reconsideration under the 1113.06 section and the factors that allow for certain variances under certain unavoidable conditions which I do have.

Mr. Banchefsky stated that to clarify what you're stating is the decision made by this board was wrong under the variance procedures.

Dr. Bhatia stated that I'm asking for it to be reconsidered.

Mr. Banchefsky stated that what you just said was that the variance criteria weren't met by the board. That is an appeal and not what we are discussing here, we are discussing a reconsideration where there is new evidence not that the board did something wrong.

Dr. Bhatia stated that there is new evidence and evidence

Mr. Banchefsky stated that you said should not have been presented.

Dr. Bhatia stated correct which at that time was apparently thought to be related to my situation but apparently it's not, which we discovered later at our meeting.

Mr. Banchefsky stated that it was not raised at the BZA meeting on the 23rd of January.

Dr. Bhatia stated that it was raised and incorrectly considered to be associated with my property.

Mr. Banchefsky stated that fact that in your view incorrectly considered was not raised as an objection at the BZA meeting.

Dr. Bhatia stated that it was not raised because we were not allowed the time to review the evidence that was presented and make a decision. What I'm talking about is a letter that was just presented out of the blue by the neighbor that apparently, some handwritten agreement that they had in 1993 and this was used and given to the board to look at and later on that was not applicable to my property. So then it should not have been discussed. At that point, I was not here my wife was, they were not given a copy of the letter to look at or even effectively raise an objection. How do you raise an objection when something is just thrown out to the board at the last minute?

Mr. Banchefsky stated that you can, there is a procedure to do that, obviously you were not aware of that but again the focus tonight should this board grant a reconsideration of this application, not an appeal as to what happened at the last.

Dr. Bhatia stated yes.

Mr. Gallagher stated that to do something I think we should understand what the new information would be that we didn't have.

Ms. Wiltrout that should would like to know also.

Mr. Kist asked if we should vote of the waiving on the two week rule first.

Mr. Banchefsky stated that you have administrative flexibility; in the pure legal sense yes. If you weren't going to waive the two meeting rule then there is no sense in going forward but if you want to hear the rational that is appropriate also.

Ms. Wiltrout stated that she would like to hear a snippet.

Mr. Gallagher stated that I would like to understand, I don't want to rehear everything without knowing there is new information. We spent a lot of time reviewing the case. Procedures were not properly followed when the pergola was built, not getting a permit, and I think that the board tried to be helpful on the patio and was willing to do that and the pergola had great objections and didn't meet the requirements. For me was there something else we didn't hear in that meeting.

Dr. Bhatia stated yes I believe so. You did not hear the historical perspective of what's happened surrounding Mr. Carr's property and how it affect the properties around them. I read the minutes and there were certain factors that were not mentioned. In the interest of time, I'm willing to do it but I can try my best but it won't be brief.

Ms. Wiltrout stated that that the new information is historical factors with respect to your neighbors property and not the permit itself?

Dr. Bhatia stated that it leads to that because it indicate several patterns of inconsistencies. The patio was in violation and has been there since 2004 and was existing when I purchased the property in 2010. The neighbor had no complaints then and neither did the city. Nothing was done about this. The patio continued to stand.

Mr. Gallagher stated that was part of the record of the first meeting.

Mr. Banchefsky stated that you should limit your comments to new information.

Dr. Bhatia stated that I was answering her question. It's looking at the pattern of what has been done with the property. There is a house that was built within a 10' setback and this was not discussed appropriately. Mr. Carr's property was supposed to have a 30' setback according to the verbal agreement but the house on his west border is only 10' away. That house still stands and is in violation of the 30' setback which is not a problem apparently with the city. My patio was not an issue but now adding the covering on the patio for extra privacy and suddenly the neighbor has problem and everyone has a problem. So I think it's the pattern of seeing how things have been done previously and then suddenly I am being treated very differently. I think it warrants a chance to explain the details.

Ms. Wiltrout thanked the applicant. I don't see anything in that.

Dr. Bhatia stated that in chapter 1113 which I met all of the requirements which was agreed with in the staff report by Steve Mayer. At that meeting in January the planners report was to approve all of the variances and yet the board voted unfavorably. Why, because the neighbor came out and presented a handwritten letter from 1993, some agreement he had with a Councilman, which is not on record anywhere. In this handwritten letter, apparently this councilman promised him a 30'

setback around his property as a verbal promise. They broke that promise and built 10' on the west side of the property anyway and he just sent an apology letter saying I'm sorry but we'll try to keep it in the future. Then this neighbor produces this letter at the January 23rd meeting which directly was spread to the board members and which influenced the decision. In spite of the planners report that all of the variances, no doubt that the builder made a mistake and did not get the permit. They thought the ARC approval was the only permit. That is a mistake that we are admitting. When the neighbor presented the letter, Mr. Mayer report that the variances were minor was overlooked. The board still voted against the recommendation. Why. To me it looks like the letter had an undue influence on the decision. On April 21st when I met with Pam and Mr. Banchefsky I was advised that the letter didn't apply to my property anymore because the zoning coordinates of the 30' setback applies now. But yet the letter was allowed and was allowed to influence the decision. Apart from not being clear in the appeal mechanism, which is why on May 4th I was sent another record of action. To me that timeframe should restart on May 4th so in a sense asking for a waiver of the two meeting requirement doesn't apply because the two meetings should start as of May 4th.

Mr. Kist stated that I don't think we have an issue granting that, I just don't think there is any new evidence to consider once that is granted.

Mr. Bhatia stated that if you want to hear all but I'm trying to keep it brief.

Ms. Wiltrout stated it sounds like you have some information that you wish was considered or wasn't considered but I am looking at the decision factors and none of what you're saying meets those factors.

Mr. Bhatia asked which factors.

Ms. Wiltrout stated the factors set forth from the Duncan case that discuss whether or not to grant a specific variance. So I would say that I do not think we need another.

Mr. Gallagher asked if we need to take affirmative action and vote.

Mr. Banchefsky stated this is not a formal application and came up very quickly but I think that you should take action on the two meeting rule and if that's approved then we can look at whether the variance factors would support a reconsideration. If it's not approved then we would be done.

Ms. Wiltrout stated that I don't think the two meeting rule should be waived. I feel like after January 23rd meeting there was ample time to bring this forward. In fact by May 4th the clock was expired.

Dr. Bhatia stated that during this time he was in consistent contact, asking how to do this. I was always told, even 4 days ago, that the only means was the board of Common Pleas. To me that if providing misleading information.

Ms. Brisk stated that you brought something with you that you had in writing that you sent to us.

Dr. Bhatia provided the letter sent on May 15th saying that I received the letter advising of the action taken by the zoning board on January 23rd and I would like to request for this decision to be reconsidered. That's my exact language.

Mr. Banchefsky stated that staff responded to that letter, which is why it was not distributed to the board.

Ms. Brisk clarified that staff responded to this letter?

Mr. Banchefsky stated correct.

Dr. Bhatia stated that the response, I also have here, states that the city code does not provide for such appeal before the zoning appeals.

Ms. Brisk stated that the letter request is for reconsidered for appeal.

Mr. Banchefsky stated that the purpose of the letter was to address the appeal process which is what we had been talking about.

Ms. Brisk stated that when you say your letter says to be reconsidered your letter says to be reconsidered for appeal.

Dr. Bhatia stated that asking for reconsideration of the decision, I think my intent is very well understood. If you're going to hold a non-attorney to such semantics, I believe that is highly unfair.

Ms. Wiltout asked when you first started reaching out to determine your appeal process.

Dr. Bhatia stated that I would say early February, a few weeks after the decision.

Ms. Brisk stated that this letter is dated May 15th.

Dr. Bhatia that right, that's what I'm saying, all this time was lost in discussion and I kept getting the same answer, is that you need to go to the court of Common Pleas and when I met Mitch and Pam on April 21st following which on May 4th another letter was sent clarifying the January 23rd decision. So what I'm saying is that letter itself is proof that they are reversing the timeclock to January 23rd allowing me the two meeting allowance from May 4th when they sent me that. That is an admittance that some mistakes made that caused me to lose time so the two meeting allowance should be given to me. I believe that letter itself grants me that. I'm not even sure if it should be voted upon. What is the purpose of the clarification letter sent on May 4th?

Mr. Banchefsky stated that the purpose was to clarify your appeal rights.

Dr. Bhatia stated that it says that it rescinds all previous notices and basically advises you of the record of action on January 23rd.

Mr. Kist asked procedurally what the correct motion is.

Mr. Banchefsky stated that it would be a motion to waive the two meeting rule.

Ms. Wiltrout asked what would be next.

Mr. Banchefsky stated that if that motion is approved, then you have already heard what Dr. Bhatia's discussion on what his new evidence would consist of to some degree, if you feel that is sufficient to warrant a reconsideration then we would approve that and we would ask that you table it, like the previous case, so we could provide full notice to the adjacent property owners.

Moved by Kist to waive the two meeting rule in New Albany Codified Ordinance 159.06(C), Seconded by Wiltrout. Upon roll call: Gallagher, no; Kist, yea; Wiltrout, yea. Yea, 2; Nay, 1; Abstain, 0. Motion passed by a 2-1 vote.

Mr. Banchefsky stated that now we would need to vote as to the reconsideration.

Ms. Wiltrout moved to deny to request for reconsideration on the grounds that the two grounds for reconsideration have not been met.

Mr. Banchefsky asked that the motion be made in the affirmative and then vote accordingly.

Dr. Bhatia asked if they can have discussion before the motion or is it after the motion.

Mr. Kist and Ms. Wiltrout stated that they feel they had the discussion.

Mr. Gallagher stated that this is for the pergola variance discussed at the January 23rd meeting and is application V-93-2016.

Moved by Wiltrout to approve the request for reconsideration of variance V-93-2016, Seconded by Kist. Upon roll call: Gallagher, no; Kist, no; Wiltrout, no. Yea, 0; Nay, 3; Abstain, 0. Motion failed by a 0-3 vote.

Dr. Bhatia stated that he believes after a motion and second there needs to be discussion after that.

Mr. Banchefsky stated that the board feels like they had the discussion.

Mr. Kist stated the we had our discussion.

Dr. Bhatia stated that when I was told earlier I wasn't told that the decision to reconsider was going to be made now so I was asked to give a brief information. Now if the decision to reconsider at all is going to be made now I would like to opportunity to present all of the information which I was going to.

Mr. Gallagher stated that I feel like when we asked for you to present the new evidence there was no new evidence and that would have been.

Dr. Bhatia stated that the new evidence is also based upon the Duncan factors as well that were considered and the decision, who decides whether the Duncan factors apply or not. Because according to the city planner's report I met all the considerations of 1113.06. There is some overlap between those requirements and the Duncan. How can it be that I met that and not Duncan, those two overlap.

Mr. Banchefsky stated that he has to object. The board has had a motion and it's been voted upon and at that point there is no more testimony or discussion. The matter is done.

Ms. Wiltrout stated I agree.

Mr. Gallagher stated that we are done, thank you.

Dr. Bhatia stated that I don't believe that proper procedure was followed. After a motion and second there needs to be discussion. Where the person in question in allowed to present their information. As you let the gentleman before present the slide information and you let him go until he was done. You did not cut him short. You told me before that you just wanted a brief explanation in order to decide the two week rule or not. That was a discussion for that and there is a separate discussion for this motion. Which is the reconsideration and I should be allowed to present information just like the gentleman before me was allowed to do the same. I want that on the record. The question that you asked me before was only to give you information to decide the two week waiver. I have not presented anything for the reconsideration. So what is this vote being based on?

Mr. Gallagher stated that I think that is your prerogative for whatever you want to do in the future but I think we have concluded this matter. At this time I would like to ask for any other business.

Mr. Mayer stated none from staff.

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

Meeting adjourned at 8:12 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report May 22, 2017 Meeting

BOCCHI LABS EXPANSION SETBACK VARIANCE RECONSIDERATION

LOCATION: 9200 Smith's Mill Road North (PID: 095-111372-00.008)
APPLICANT: Corna-Kokosing
REQUEST: Variances Innovation District Limitation Text subarea A to the
pavement setback 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 April 28, 2017.

Staff report prepared by Stephen Mayer, Community Development Planner.

I. REQUEST AND BACKGROUND

The applicant requests a reconsideration of the following variances for a proposed building expansion that were denied by the Board of Zoning Appeals on March 27, 2017:

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

Per Codified Ordinance 159.06(c) - Reconsideration of Commission/Board Action - The Board may reconsider any action it has taken upon its own motion for good cause shown. Any action denying or disapproving an application, other than one involving an incomplete application, may be reconsidered no later than the second regular meeting after the original action from which reconsideration is being requested was taken, only if the applicant or its designee clearly demonstrates one of the following:

1. Circumstances affecting the subject property or item under consideration have substantially changed; or
2. New information is available that could not with reasonable diligence have been presented at a previous hearing.

The applicant requests the board take the following action:

1. Motion to reconsider variance application V-12-2017 pursuant to Codified Ordinance 159.
2. If the motion passes, to then table the reconsideration to a specific date

At tonight's meeting the applicant requests informal dialog to collect feedback on the board's expectations for the reconsideration request. The applicant requests the BZA motion to reconsider and table the request so they may have extra time to prepare and return at a future meeting to formally present materials. This appears to be reasonable and staff is supportive of the request.

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 proposes to construct a 75,000 square foot building expansion to the east.

III. ASSESSMENT

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.*

Approximate Site Location:



Source: City of New Albany GIS