



Board of Zoning Appeals

Meeting Minutes

July 24, 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, Kriss at 7:04 p.m.

Ms. Kriss led the Pledge of Allegiance to the Flag of the United States of America.

Those answering roll call:

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

Staff members present: Stephen Mayer, Planner; Jackie Russell, Clerk and Pam Hickok, Clerk.

Moved by Gallagher to approve the May 22, 2017 meeting minutes, as corrected; Seconded by Kist. Upon roll call: Kriss, yea; Gallagher, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Ms. Kriss asked for any changes to the agenda.

Mr. Mayer stated none.

Ms. Kriss swore to truth those wishing to speak before the Commission.

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

V-12-2017 Variance Reconsideration

Reconsideration of a variance 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. Stephen Mayer presented the staff report.

Mr. Kist asked if the proposed landscaping is on the commercial property.

Mr. Mayer stated that it is all on the applicant's property.

Mr. Gallagher asked what the setback would be for a new zoning with commercial on the other side.

Mr. Mayer stated that it would be 25' for building and 0' pavement setback.

Mr. Kist asked about the grass paver system and if anyone has talked to the fire department about the success of them. If we are going to the trouble of creating fire lanes I want to make sure they're usable in all conditions.

Mr. Mayer stated from past experience, the fire department reviews building plans and if they haven't looked at it yet they will be shortly. We have used this system in many locations although we have never needed to use it.

Mr. Gallagher asked if a variance be required if the zoning was completed when this east neighboring property was commercial.

Mr. Mayer stated no. The property to the east has rights to put a building 25' from the applicant's property and the pavement can be against the property line.

Mr. Kevin Lee, Bocchi, stated that he will not repeat all the discussions that have occurred. The reason we pulled back the first request on the north south road, the major factor there was it is an approved fire lane but not an effective fire lane at certain times of the year. We investigated the construction process and the existing fire lane probably has more dirt on it than necessary. We are going to conform to the standard that was set forward, that will satisfy our need to have the ability for the emergency vehicles to get around the entire structure. That is why we pulled it off. We just wanted to protection, if needed. In the spirit of what we heard at the last meeting and our goal is living with our neighbors, be mindful of the neighbors needs but also understand what we need as a business. He referred to the master plan for the business and explained the future parking. The one thing that the neighbor said that is important and correct is that we are overloaded on the northeast corner and that parking will help relieve that which will help with privacy issue. We want to do everything in our power to help with the landscaping. We need the rear drive for the grade level roll up door that is necessary for equipment or unusual deliveries. We have truck doors for the everyday deliveries. We need the ability to off load a truck with a forklift or even drive the truck into the building. Since I have been with the plant, just over a year, we have used that door a handful of times. The dock doors on the south side are raised. The door was existing prior to the expansion and was accessed by a dirt path. We have talked with the neighbors to provide a level of landscaping and off-loading that northeast corner as much as possible.

Mr. Kist asked what is to prevent the employees from using the fire lane on a regular basis.

Mr. Lee stated that it would be against plant policy; prior to construction we had put a chain across that. We don't want a navigation path around the plant. If we need to barricade that, we will.

Mr. Kist asked about lighting. I don't want the level of lighting to increase for the abutting neighbors.

Mr. Lee stated that we don't plan on any. We don't use the door at night. The only lighting on the east side that we will have is the required lighting by code.

Mr. Tim Porter, 2299 Harrison Road, stated that he met with Kevin Lee a few times and appreciates the work. My problem is that 50' is nothing. Imagine a 30' building 50' from your property line. He asked Steve, 0 and 25, that's throughout the beauty campus? I've been in meetings that I've heard 50 and 100 commercial to commercial.

Mr. Mayer stated that's from residential to commercial is where we see the larger setbacks above the base zoning for the general employment district.

Mr. Porter restated that its 0 and 25 all throughout the beauty campus commercial to commercial.

Mr. Mayer stated that he can't speak to the entire area, but that's the typical for the general employment district requirements for the base zoning. All of these are limitation texts which can add more restrictive standards. So what is typical is the larger setbacks are put on commercial properties that abut residential properties. Sometimes there are commercial that abut commercial and they could have larger setbacks so I can't speak for the whole area but that how the zoning has evolved over time in the business park.

Mr. Porter asked how he would get the setback increased to 100'

Mr. Mayer stated that unfortunately at this time the zoning has been set and it runs with the land. When the land was rezoned in 2010 or 2011 it was

Mr. Porter stated that sometimes we just need to re-assess a situation. South of me 50' and 100' is devastating. Kevin is doing what he can. How do you run out of room?

Mr. Lee responded from audience.

Mr. Porter stated that they were out of room years ago when the master plan was done with the first building. We need to stop the variances.

Mr. Jim Endsley, Jersey Township Trustee & resides at 12228 Jug Street, stated that he was here a few months back and explained to the board that there used to be a fence line with trees that were 25-30' tall that divided the Bocchi property from Mr. Porter's property. Mr. Porter stated that he heard in a meeting that the trees would never be removed. Those trees were removed and they are now replacing those trees

with 6' trees. There is no way that will shield the building that they built. I spent some time on the zoning board before I was a trustee. If I remember correctly, to grant a variance there needs to be unique circumstances to a property. In addition, those unique conditions can't be made by the owner. In this situation, they knew the size of the property, knew the setbacks, want to put in a road for the fire department. I understand all of that but they made the building too large. When we left here last time, we thought that Mr. Porter had got something since the variance wasn't granted. We didn't know that they could still build the building with the grass pavers. I would hope that you would uphold the original decision not to grant the variance for the building or paved area. They had decided to build this building the exact way they proposed it and ask for three variances. They didn't change anything. I would ask that the variance is not approved.

Mr. Gallagher stated that he remembers the discussion that would have included a lot of traffic closer to the residential piece. This will limit the traffic to the zone as shown. I hear the pavement is 174' from the residential, which is above and beyond the standard. I also understand that if this was brand new build they would not need a variance. I recognize that land uses around you change through time that can have an impact on your land. For me this is different than what we heard before. The current standard would allow this and therefore I believe it would meet the test for the Duncan standards because it is now the city's current standards.

Mr. Kist stated that he wasn't present at the first meeting but was for the reconsideration. I do feel that it has significantly changed from the original meeting. Asked Mr. Mayer for landscaping detail.

Mr. Mayer stated that the design intent was to create hedgerows between sites. When we said hedgerow we mean traditional tree line between farm properties. We have a master landscape plan that includes a landscaping material menu that they can choose from to provide flexibility for the property owners and allow for a more natural look. They are providing mixture of evergreens & deciduous trees (using map to show plants) to provide more privacy screening.

Mr. Kist asked if any discussion has occurred regarding adding landscaping to Mr. Porter's property.

Mr. Lee stated that we have had that discussion and provided options. The Porters have some great large trees so we have had some discusses about where we would add more screening. This gives maximum screening, we can't screen the entire building. We were trying to screen the asphalt road and do as much as we can for long term growth to grow tall and shield the building.

Ms. Karen Colter, 2401 Harrison Road, and asked if the Porter's ever want to sell their property down the road, how this effects the new owner. They can't sell that 25' of the setback that is on the Porter's property.

Mr. Mayer stated that the setback is not onto the Porter's property. The setback is how close to the shared property line. This request is for how close the road will be to the property line. It impacts you or the Porter's by how close it is to your property.

Ms. Kriss stated that Mr. Porter's property will remain their property. This variance will not allow them to cross over the property line.

Ms. Colter asked why do we need a variance if it's all legal and above board.

Ms. Kriss stated that the New Albany code provides a setback from the property lines and this plan from Bocchi is needs to get closer to the property line that what code allows.

Ms. Colter stated that it's a detriment to the Porter's property because the building is properly set.

Mr. Kist stated that the only thing we are looking at is the blue driveway piece. The building meets the setbacks requirements.

Mr. Gallagher stated that we are only looking at this purple (blue) piece that is 174' from the Porter's property which is more than any standard that we have today.

Mr. Kist stated that the building meets the setback requirement.

Ms. Kriss asked about the height of the landscaping at 48"

Mr. Mayer stated that is typical but slightly exceeding. It is typically 2'-3' upon installation. Code does allow time for landscaping to grow.

Ms. Colter asked a question from the audience.

Ms. Kriss stated that she doesn't have access to a timeline.

Mr. Mayer stated that when the building is complete they need to have inspections prior to occupying the building. Part of that is life safety - making sure the fire alarms work and part of that includes an inspection to make sure they meet all of the zoning requirements - landscaping. Some building will get temporary occupancy and put up an escrow amount which is not released until the items are complete.

Moved by Gallagher to approve V-12-2017 subject to the following conditions:

1. The additional, enhanced landscaping to provide extra screening to the east residential neighbors is required to be installed, subject to staff approval.

2. A double row of Viburnum rhytidophyllum with 48" min. height at installation where possible is installed. Provide random tree spacing, 30'-0" o.c. max - 20'-0" min. within viburnum plantings. Provide an additional 4 tree species to the Acer nigrum selection.

Subject to staff approval., Seconded by Kriss. Upon roll call: Kriss, yea; Gallagher, Yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Mr. Gallagher stated that he doesn't believe that the variance is substantial under the Duncan factors for a number of reasons including the fact that under the city's current zoning and with the changes in the land to the east we would be meeting the current standards of the city, therefore the variance is not substantial.

Meeting adjourned at 7:45 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report July 24, 2017 Meeting

BOCCHI LABS EXPANSION SETBACK VARIANCE RECONSIDERATION

LOCATION: 9200 Smith's Mill Road North (PID: 095-111372-00.008)
APPLICANT: Corna-Kokosing
REQUEST: Variance to Codified Ordinance Chapter 1165 and 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 Reconsideration

Review based on application materials received June 9, 2017.

Staff report prepared by Jackie Russell, Community Development Clerk.

I. REQUEST AND BACKGROUND

On March 27, 2017 the Board of Zoning Appeals denied three variances for this site. The requests were to (1) the pavement setback requirements along a residential property, (2) the setback requirements along a commercial property, and (3) the landscaping requirements. On May 22nd the board approved a motion to reconsider the application and immediately tabled the reconsideration until June 26th so neighbors could be notified. Revised and additional information for the variance reconsideration has been submitted and is evaluated in this staff report.

The applicant requests a reconsideration for the following variance for a proposed building expansion:

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.

This application was scheduled for the June Meeting. However, the June meeting was canceled and no action was taken on this variance request. 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

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 former variances requested a full paved drive around the building. The current request proposes to install an asphalt paved drive within the pavement setback only along a portion of the neighboring commercial property to the east.
- The applicant states the loading door was placed at the farthest point south to maximize its distance from residential neighbors, which is +/- 174 feet, and that the door is extremely infrequently used. This door the only grade access for equipment, it is essential to the business. The applicant believes that the traffic and disruption caused to the east neighbors is not noticeable to anyone.
- The unpaved, grass fire lane (currently exists) will remain.
- 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.
- The former variances requested a full drive around the building. The current request would provide a heavy duty asphalt paved drive to loading door which was placed at the farthest point south to minimize the residential impact, which is approximately +/- 174 feet. The applicant states that the door is extremely infrequently used. This door the only grade access for equipment, it is essential to the business. The applicant believes that the traffic and disruption caused to the east neighbors is not noticeable to anyone. The grass fire lane will remain slightly beyond the paved asphalt to the edge of the property.
- The applicant is proposing to encroach the pavement setback along the eastern property line adjacent to a commercially zoned, undeveloped property by 45 feet and locate a paved drive aisle 5 feet from a commercially zoned property.

- The city’s Personal Care and Beauty Campus Landscape Standards book recommends “hedgerows” consisting of native trees shall be planted between properties. The applicant has provided additional enhanced landscaping to provide extra screening to the east residential neighbors. The proposed plan shows additional landscape screening provided by 24 Spruce trees between the adjacent residential properties and this commercial property. The proposed plan also calls for the maintaining of healthy trees with additional shrubs added between properties with the same use. Staff recommends a condition of approval requiring the additional, enhanced landscaping to provide extra screening to the east residential neighbors is required to be installed, subject to staff approval.
- The City Landscape Architect has reviewed the landscape plan and comments:
 - a. The landscaping adjacent to the residential property meets the zoning requirements that vegetation shall have an opaqueness of seventy-five percent (75%) during full foliage and shall be a variety which will attain ten (10) feet in height within five (5) years of planting.
 - b. The proposed screening of Black Maples with Viburnum appears to align with the aesthetic intent of the surrounding landscape character with a few considerations to improve the screening capacity and aesthetic.
 - c. Provide a double row of Viburnum rhytidophyllum with 48” min. height at installation where possible. Provide random tree spacing, 30’-0” o.c. max - 20’-0” min. within viburnum plantings. Provide an additional 4 tree species to the Acer nigrum selection. Staff recommends a condition of approval requiring the landscape plan be modified to address the city Landscape architect’s comment, 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.

In summary, staff is supportive of this variance. The variance does not appear to be substantial given the fact that this property and the neighboring parcel where the setback encroachment occurs are consistent and compatible commercial zonings. The applicant has significantly scaled back the extent to which they request to install a paved drive thereby the reducing the overall area of the setback encroachment and increasing its distance to residential properties. The intent of the regulation is to provide buffering between residential and commercial, and the proposed pavement in the setback is +/- 174 feet from

the nearest residential property. Where this property abuts the neighboring residential property, there are no encroachments into the setback and the proposed landscape plan shows the applicant maintaining all healthy trees in this setback area and is supplementing the screening with additional trees and shrubs. Lastly, 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 when the commercial area to the east was still residentially used.

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:

Move to approve a 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 based on the findings in the staff report, subject to the following conditions:

1. The additional, enhanced landscaping to provide extra screening to the east residential neighbors is required to be installed, subject to staff approval.
2. A double row of *Viburnum rhytidophyllum* with 48” min. height at installation where possible is installed. Provide random tree spacing, 30’-0” o.c. max - 20’-0” min. within viburnum plantings. Provide an additional 4 tree species to the *Acer nigrum* selection. Subject to staff approval.

Approximate Site Location:



Source: City of New Albany GIS