



## Board of Zoning Appeals

### Meeting Minutes

February 26, 2018

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W Main Street and was called to order by BZA Chair, Kriss at 7:01 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
Mr. Kirk Smith	Absent
Ms. Andrea Wiltrout	Present
Mr. Kasey Kist	Present
Ms. Marlene Brisk (Council Representative)	Present

Staff members present: Stephen Mayer, Development Services Manager; Jackie Russell, Clerk; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Moved by Gallagher to approve the January 22, 2018 meeting minutes, as corrected; Seconded by Kist. Upon roll call: Kriss, yea; Gallagher, yea; Wiltrout, yea; Kist, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0 vote.

Ms. Kriss asked for any additions or corrections.

Ms. Russell stated none from staff.

Ms. Kriss swore to truth those wishing to speak before the Commission that included Anthony Carstens.

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

#### **V-04-2018 Variance**

**A variance to Codified Ordinance 1129.06(a) to the minimum lot size requirements, Codified Ordinance 1129.06(b) to allow a lot to have less than 200 feet of frontage on a public street, Codified Ordinance 1165.01(a) to permit improvements to a building on a lot with zero frontage on a public street and Codified Ordinance 1129.06(f) to reduce the minimum rear yard depth at 5 New Albany Farms Road (PID: 222-001837).**

**Applicant: Leap Year Investments Limited**

Ms. Jackie Russell presented the staff report.

Mr. Bo Brownlee, and Ashton DiDonato are both employees with Lifestyle Communities, which is part owned by Michael DeAscentis, who is the manager of Leap Year Investments. We were asked to help with processing this application. I think our application is self explanatory. We support the staff report with one exception which I will discuss. With respect to the condition on the last variance, which is the rear depth of 50 feet. We received the staff report within the last seven days and immediately called the owner of 5 New Albany Farms and explained that variance would not be needed if he would give another ten feet. He declined. While Jackie is right that there is a potential solution to avoid the variance by moving the property line ten feet; he is not inclined to move that line. My request is that you would grant all the variances and including the last variance request because I don't see another alternative other than getting the variance. I guess the last thing I would like to point out is some history of this property. This is the old Bobby Rahal parcel. My understanding is that before he sold this property he built this as a car barn storage. He moved out of town and Leap Year bought the property as an investment and put money into the home itself but over a three year period of time struggled to sell it. Repeatedly, possible buyers commented that they didn't desire to have the car barn as part of the property. When we struck a deal with the current owner of 5 New Albany Farms Road, our contract provided that we would endeavor to get a lot split so that he wouldn't own the parcel or have the burden of the car barn. I can tell you that the current owner supports the lot split, we want it, the New Albany Farms Association has consented to the split. The building has existed for some time, we are not changing the use and frankly the added benefit is now that we have struck a deal for access to come off of Morse Road and to no longer use the subdivision road to the north - I think it's a win-win for all parties with the access change.

Ms. Kriss asked how the property is currently used.

Mr. Brownlee stated that the new owners of 5 New Albany Farms Road are residing in the home. The car barn is not being used as a residence or a business. It is being used to store cars. In fact, we are prepared to file a deed restriction that would be recorded with the Franklin County Records office that would prohibit the car barn from being used for a residence or any other commercial purpose.

Ms. Kriss asked that if the variances are denied this evening; my understanding was that the purchase of the residence was contingent on the outcome of this variance. Is that correct?

Mr. Gallagher stated isn't there a 30-year lease?

Mr. Brownlee stated correct. It is not a contingency, the owner did close on the property. Title has transferred. We entered into a long term lease with the commitment that we would use commercially reasonable effort to see the lot split through. I can tell you that having a long term lease there is not desirable for the applicant or the owner.

Mr. Gallagher asked staff, in the evaluation section IV(a)(1)(c) which gives some of the items that we are to consider as a board. It states that outbuildings are permitted provided they contribute to the character of the lot. I am trying to understand what that meant and went to various dictionaries. I found all similar definitions of a building such as a shed, barn or garage on the same property but separate from a more important one such as a house. So when I read the plain text it sounds like to have an outbuilding you also need to have a main building. The phrase "the lot" so it tells me that if I split the lot I don't have a main building and an outbuilding. Interested in staffs thoughts.

Mr. Stephen Mayer stated that this is zoned L-AG, which has limitations on the AG zoning. The underlying zoning is agricultural and in the agricultural zoning district it allows for outbuildings to be constructed without a primary residence. Residential subdivision / districts requires the house to be built before any accessory buildings such as a shed or detached garage. In the agricultural district such as this one you can have an outbuilding for agricultural use without the single family residence on the lot. The intent of this restriction is to ensure they contribute to the character of the lot. That is from our strategic plan and the one before that says that single family lot design should respond to the character and topography of the land. Here this area is used as a break or entrance to New Albany with the rural character. The intent is that with the low density there could be agricultural buildings without single family homes and that's OK as long as its meeting that agrarian and rural character. I think that is the overall intent is to make sure that the character is appropriate for the area.

Mr. Gallagher asked if this is a departure from the strategic plan that the city has approved.

Mr. Mayer stated that he believes that it is meeting the intent of the strategic plan. I think that it does recommend one unit per ten acres if developed with residential use. Its not meeitng that but my interpretation is that the outbuilding is contributing to the character of the lot and general area. It looks like a barn, very well designed.

Mr. Gallagher stated that 1 b talks about single family lot, this would not be for family use.

Mr. Mayer stated correct, this would not be for single family use.

Mr. Gallagher stated then that is another departure from the strategic plan.

Mr. Banchefsky stated that normally you have to have a primary use to have an accessory use but the unique situation here is that it is agriculturally zoned. I would argue that the specific zoning triumphs the strategic plan in this particular case because typically a more specific regulation would control over general regulation.

Mr. Gallagher asked if agriculture have a meaning such as animals or barns.

Mr. Banchefsky stated yes.

Mr. Gallagher asked if then storing something other than agricultural items be a departure. What if I was storing chemicals such as printing ink; apparel or cars?

Mr. Banchefsky stated that he would need to look into it. You could store motorized farm equipment.

Mr. Mayer stated that what is unique here, and this is the only place that it is done, is that this is zoned L-AG. It allows for limited agrarian uses. The intent when the Rahals rezoned was so they could have a residential lot and the text allows for four (4) horses and a pony by putting restrictions on the agricultural uses. I think that for attributing to the character of the lot for the outbuilding, I think it meets it for the use because it has always been used for residential car storage. It is meeting the intent for the design aesthetic for the area by looking like a barn structure.

Mr. Gallagher asked if a developer came in today with this kind of a plot, with a houses and this carve out for storage, what staff would do for a recommendation for the plot.

Mr. Mayer stated that they would be here in front of this board. I think that we would be looking at the same things that we did for this case. We would be looking at the overall circumstances and area. This area is unique being the Farms. The Farms is a private community, gated community on a private road.

Mr. Gallagher stated that this has access to Morse Road which is a public road.

Mr. Mayer stated that is important to use, we want it to access to a public road. It is one of the things that we are looking at to determine the impact and the overall change to an area. One of the most important thing to staff was that it is not changing the character of the area and limited the number of curb cuts on Morse Road. Assuring that this would share the driveway down to Morse Road.

Mr. Gallagher stated that there are a lot of people in New Albany that have free standing garages. If someone came to do a lot split today for a lot in Fenway or a different subdivision?

Mr. Mayer stated that I think we would look at it differently for the reasons that these are large lots in a private gated community. It is definitely a different character and design intent than other subdivisions. The density is different.

Mr. Gallagher stated that he could run the same ratio analysis on my lot. I have a detached garage, I have access to South Goodrich. Where I'm going with this is I always want to be fair. When I read that in the next ten years with the driverless car technology, people will have fewer cars. There has been a lot of discussion in urban planning about how many of the garages may become obsolete as garages. I'm just trying to get an understanding what kind of precedent we would be setting.

Mr. Mayer stated that we always ask ourselves the same thing. So when asking ourselves what makes this different, we kept coming back to this is the Farms and the zoning is L-AG. The land use recommendations identifies this area is character is very important even more so than other areas in the city. Just the zoning itself sets it apart since it is L-AG. It is one of the first limitation texts we did in New Albany and the zoning itself is unique for New Albany.

Ms. Brisk asked what happened with the New Albany Farms association. You reference in the memo that they have approved this but the only document provided was some kind of settlement of a lawsuit.

Mr. Brownlee stated that he has a letter signed that he can share with the board. The first step in this process was to approach the association. The initial request was denied and a lawsuit ensued. We entered into discovery and ultimately settled it. One of the things that came out of the settlement was that the association consented to the lot split.

Mr. Mayer stated that the chair can accept the document.

Ms. Kriss stated that document would be helpful if we can accept it as an exhibit.

Mr. Mayer stated that staff will need the document for the record at the conclusion of the meeting.

Mr. Kist stated that the scope and quantity of the variances are fairly significant and I would like to understand the hardship. You references the difficulty in selling the property and cite the barn as one of the reasons why potential buyers were not interested. What is the square footage of this house?

Mr. Brownlee stated that he doesn't know.

Mr. Kist stated that in my reasoning that someone pursuing a house this size would have need for a barn to store cars.

Mr. Brownlee stated that he was not involved in the marketing of the house. I can only imagine that they wouldn't want the responsibility of separate building that could be used for something other than what it was intended for.

Ms. Wiltrout asked if there was a reason they couldn't just take the barn down.

Mr. Brownlee stated that he is not sure if that was ever explored.

Mr. Kist stated that is one solution. Right now the house has two access points. I think having a second access to Morse Road is a valuable selling point. That will be lost when the lot split occurs.

Ms. DiDonato stated that the owner of 5 New Albany Farms does not have access to Morse Road through an easement. That driveway is owned by a different property owner.

Mr. Brownlee confirmed that the only access to the house is through New Albany Farms Road. The drive to the south to Morse Road is the car barn. There appears to be physical access but not legal access.

Mr. Kist confirmed that the owner of this property currently can't use the and if the lot split occurs the owner of the house still can't use the driveway to Morse Road but the owner of the barn property would have an easement through the property.

Mr. Brownlee stated that currently it is a license agreement but it would become a permanent easement if we were to obtain the lot split.

Mr. Banchefsky stated that per the auditor's website the house is 13,200 square feet of above grade finished property.

Ms. Brisk stated that the letter referenced some exhibits that are not attached. I'm assuming that the survey that we are reviewing matches the homeowners association referenced approved site plan. Do we know that what we have been asked to approve is the same. Do you have the attached survey and legal description?

Ms. DiDonato stated that what was in the application matches. We only enhanced the survey by adding measurement onto the survey.

Ms. Brisk asked if the applicant is using the barn for storage.

Mr. Brownlee stated yes.

Ms. Brisk asked if the intention for the applicant to continue to use the barn.

Mr. Brownlee stated yes.

Ms. Wiltrout asked where the applicant lives.

Mr. Brownlee stated that the property manager for the applicant lives in Hawkmoor.

Ms. Brisk asked if neighbor's correspondence was received.

Mr. Mayer stated no correspondence was received.

Mr. Gallagher asked about fire access.

Mr. Mayer stated that the fire department has openers for the gates at the Farms entrances and not sure about the Morse Road entrance. A fire truck could traverse

the existing driveway to access the barn. We can verify proper access with the fire department if a condition were to be added.

Ms. Wiltrout asked if this type of variance often accepted. These tiny carve outs against the big lots. My concern is the value of this lot is very low compared. What has happened in the past with these type of lots?

Mr. Mayer stated that we have never had a request like this before. The closest thing was for two properties south of this property and north of Morse Road (shown on map) A parcel was divided to allow for a lot to be developed. Portions of the property are in New Albany and some in Columbus therefore the lots can't be combined. The BZA approved the lot split with conditions that access only come from Morse Road and that the properties would sell together so that access would remain. I'm not familiar with any other similar applications.

Ms. Wiltrout asked if staff can speak to the value that would be placed on a .5 acre lot with a car barn for selling down the road.

Mr. Gallagher stated that is part of my concern is what happens in 50 years. I know that living here for 25 years we were always challenged to think about what happens in 50 years. I ponder that someone uses it for a car barn. What about the upkeep.

Mr. Brownlee stated that he can't speak to the value but what I can tell you is the tell logical buyers would be the owner of 5 New Albany Farms or the property to the south. What's interesting is that the car barn relates more to the property to the south.

Mr. Mayer stated that when looking to the future, deed restriction give staff a level of comfort because it will transfer with the property and will remain in place.

Ms. Wiltrout asked what kind of upkeep is required.

Mr. Banchefsky stated that the city has a property maintenance code. So if the exterior starts to look anything like what was alluded to in southern Ohio, the city would handle it. I would assume that would never happen because the association would quickly respond.

Mr. Mayer stated that the variance to allow for improvements was staff recommendation was for maintenance purposes.

Mr. Gallagher asked what the city standards are for storing hazardous type product.

Mr. Mayer stated that something like that would need to be done in a commercial or industrial zoning district. In parts of our business campus allows for storage and creation of some chemicals that are flammable and they need special permissions for the storage of those items.

Mr. Gallagher asked in a car storage barn could you store large quantities of oil or gasoline.

Mr. Mayer stated that he is not sure. Nothing in the zoning code.

Mr. Banchefsky stated that it would be in the state fire code.

Mr. Mayer stated that it would be part of the building code or state fire marshal codes.

Mr. Gallagher asked how broad the definition of storage is.

Mr. Mayer stated that it is a residential use area, so we should look at this like a normal detached garage as far as building and zoning codes in relation to storage.

Mr. Gallagher stated that staff wouldn't let me separate my garage from my property.

Mr. Mayer stated that every variance is weighted on its own merits. The unique thing that we keep going back to is that this is the Farms. Certainly staff view this request is others areas differently because of the character and development patterns.

Mr. Brownlee stated that in reality the barn is quite a distance from the main house and this is the condition we found it in. It is an attractive structure and we are not looking to build something new or change the use. We have entered into a long term lease and we just want to clean up title. I don't think we are changing any facts.

Ms. Wiltrout asked if you can think of any burden this could place on neighboring properties.

Mr. Mayer stated that we thought about that. It is not changing the western property where the existing neighbor is located. That neighbor was notified of this request. The only impact is to the main house. It doesn't seem that it will change the character. It is a line on a paper. In this particular circumstance, given the distance from the property we don't see anything.

Ms. Kriss asked for confirmation that this car barn will not be used for special events.

Mr. Brownlee stated that we agreed to never use for residential purposes, commercial purposes and that we would not hold any events to show cars that exceed fifty people.

Moved by Kriss to to approve the variances within application V-04-2018:

- A. Chapter 1129.06(a) to allow the proposed lot to be .56 +/- acres where code requires a minimum of 5 acres.
- B. Codified Ordinance Chapter 1129.06(b) to allow the proposed lot to have zero (0) feet of frontage on a dedicated and improved street where code requires 200 feet.



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

D. Codified Ordinance 1129.06(f) to reduce the minimum rear yard depth to 39.8 feet where 50 feet is required.

With all variances subject to the following conditions:

1. Copies of recorded deed restrictions are provided to city staff.

2. The applicant provide an executed copy of the driveway easement when made available following the approved lot split.

3. Access is limited to only the existing access drive to Morse Road. No vehicular access to New Albany Farms Road is permitted, Seconded by Kist. Upon roll call: Kriss, yea; Gallagher, no; Wiltrout, no; Kist, no. Yea, 1; Nay, 3; Abstain, 0. Motion failed by a 1-3 vote.

Meeting adjourned at 7:51 pm.

Submitted by Pam Hickok

# APPENDIX



## Board of Zoning Appeals Staff Report February 26, 2018 Meeting

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### FIVE NEW ALBANY FARMS LOT SPLIT VARIANCES

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LOCATION: North of Morse Road and East of Reynoldsburg-New Albany Road  
(PID: 222-001842)

APPLICANT: Leap Year Investments Limited

REQUEST: **A.** A variance to Codified Ordinance 1129.06(a) to the minimum lot size requirements,  
**B.** Codified Ordinance 1129.06(b) to allow a lot to have less than 200 feet of frontage on a public street,  
**C.** Codified Ordinance 1165.01(a) to permit improvements to a building on a lot with zero frontage on a public street  
**D.** Codified Ordinance 1129.06(f) to reduce the minimum rear yard depth to 39.8 feet where 50 feet is required PID: 222-001842).

ZONING: L-AG [Limited Agricultural] – Rahal Limitation Text

STRATEGIC PLAN: Rural Estate District

APPLICATION: V-04-2018

Review based on: Application materials received January 24, 2018.

*Staff report prepared by Jackie Russell, Development Services Coordinator.*

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

The applicant is requesting variances to allow a new lot be created at the former Rahal property located north of Morse Road and east of Reynoldsburg-New Albany Road. As proposed, the current property owner would split the existing 8.0 acre lot to create a .561 acre lot containing an existing car barn and a new 7.439 acre lot with the primary structure.

The applicant is requesting four variances to allow the creation of the .561 acre lot.

The applicant is requesting four variances:

- A. Lot Size: Variance to Chapter 1129.06(a) to allow a lot to be .561 +/- acres where code requires a minimum of 5 acres.

- B. Lot Width: Variance to Codified Ordinance Chapter 1129.06(b) to allow a lot to have zero (0) feet of frontage on a dedicated and improved street where code requires 200 feet.
- C. Lot Frontage: Variance to Chapter 1165.01(a) to permit improvements to a building on a lot with zero frontage on a public street.
- D. Rear Yard: Variance to Chapter 1129.06(f) to reduce the minimum rear yard depth to 39.8 feet, where the required depth is 50 feet.

**II. SITE DESCRIPTION & USE**

The site is located on one of three parcels that were part of the Rahal Estate. This site contains the Rahal car barn which is approximately 2,194 +/- square feet in area. The site has a private access road going through the property that connects the proposed barn parcel to Morse Road.

The parcel is zoned L-AG (Limited Agricultural) under the Rahal Limitation Text. The zoning text allows all residential uses as found in the R-2 zoning district and a horse stable with four or less horses and one pony.

**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 Chapter 1129.06(a) to allow a lot to be 0.561 +/- acres where code requires a minimum of 5 acres.**

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

- The 2014 New Albany Strategic Plan lists the following relevant development standards for the Rural Estate Residential District:
  - a. Each parcel within the district shall be entitled to 1 unit per 10 acres gross development. If a density transfer is utilized, the resulting density may not exceed 1 du/acre gross density.
  - b. Single family lot design should respond to the character and topography of the land and combined development should have a uniform theme or character that is expressed through the arrangement of lots.
  - c. Out-buildings are permitted provided they contribute to the character of the lot.
- The Rural Estate Residential District is vital for maintaining the rural character "edges" of New Albany as expansion continues according to the 2014 New Albany Strategic Plan.
- The New Albany Farms subdivision, Balfour Green, and two other lots are all zoned R-1 which requires a minimum lot size of 40,000 sq. ft. The lots zoned under the Rahal Limitation Text allow the R-2 uses and limited AG uses, but must meet the minimum AG zoning lot size of 5 acres because of its underlying zoning. The New Albany Strategic Plan recommends 1 unit per 10 acres of gross development.
- The lot split would result in a new parcel with an existing barn structure. The applicant has committed that the new parcel will not be redeveloped and has provided the following proposed deed restrictions which will require the following:
  - a. No single-family home shall be constructed on the Leap Year Parcel.
  - b. The Leap Year Parcel shall not be used for any business purposes.
  - c. The Leap Year Parcel shall not be used for the purpose of hosting any public exhibition of automobiles where there are more than twenty cars being exhibited and more than fifty persons in attendance.
- The New Albany Farms plat was recorded on July 17, 1991. The plat contains 19 lots with the average lot size being 6.92 acres. The Balfour Green subdivision is located to the east along the south side of New Albany Farms Road, bordering Kitzmiller Road.

Balfour Green contains 2 lots with an average lot size of 7.23 acres. There are six other lots between these two subdivisions, four (4) of which are zoned under the Rahal Limitation Text. The average lot size for all 27 parcels in this area is 6.449954 acres. **See appendix A & B for map and calculation table.**

- If the proposed lot split is executed the average lot size for all 28 parcels in this area will be 6.41175 acres. The result is an overall average decrease of 0.038204 acres.
- The site was rezoned L-AG (limited agricultural district) in 2002. The limitation text allows residential uses as found in the R-2 zoning district and the care of a maximum of four horses. The lot is also subject to the provisions of Chapter 1129 of the zoning code (the underlying zoning) and other provisions found in the limitation text.
- According to the Franklin County Auditor the existing parcel proposed to be split is 8.01 acres in area.
- The lot split would result in the creation of a 7.439 acre lot containing an existing home and a new .561 acre lot containing an existing car barn.
- The applicant has submitted a justification statement which states the property owner of this 8.01 acre currently leases the barn to the applicant to allow use of the barn separately. The applicant has provided a copy of the thirty (30 year) lease for the use of the barn. A condition of the sale for the 5 New Albany Farms property, was for the applicant to pursue a lot split to allow the current use of the barn to occur on its own property.
- It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- It appears that granting the variance will not adversely affect the delivery of government services.
- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment” by approving the parcel. The current use of the barn structure will not change as it has been used as a private garage for storage of vehicles for the past several years.

The 2014 New Albany Strategic Plan designates this area as being within the Rural Estate District. The Rural Estate District purpose is to maintain the rural character “edges” of New Albany as expansion continues. The strategic plan states the Farms development, with a density of approximately one dwelling unit per acre is an example of a development with large estate lots. The strategic plan recommends these single family lots should be no less than 10 acres in order to provide significant open space and a rural character. The Board of Zoning Appeals should consider the impact of splitting and creating a lot without frontage on the surrounding area’s rural aesthetic.

It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment” by approving the lot split because the use of the barn will not change despite the creation of its own separate lot. The applicant has provided deed restrictions to ensure the lot will not be redeveloped for a single family home to help maintain the character of the neighborhood.

**B. Variance to Codified Ordinance Chapter 1129.06(b) to allow a lot to have less than 200 feet of frontage on a public street.**

**C. Variance to Chapter 1165.01(a) to permit improvements on a lot that with zero frontage on a public street.**

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

- Per Codified Ordinance Chapter 1129.06(b) each lot in the Agricultural District must have a minimum of 200 feet of frontage on a dedicated, improved street or highway.
- Per Codified Ordinance Chapter 1165.01(a) states No building, structure, or improvement shall be constructed or altered unless its lot fronts on a publicly dedicated and improved street or thoroughfare within the Municipality. The Variance to C.O. chapter 1165.01(a) allows the owner/applicant to alter the existing structure in the future. Alterations may include maintenance, expansions, or other internal or external improvements.
- The proposed lot split will result in a 0.561 acre lot that will not have any frontage on a dedicated, improved street or highway.
- The site has a private access road going through a southern property that connects the proposed lot to Morse Road. The applicant has indicated this private access road will be the primary form of access for the car barn following the lot split. The city encourages shared drives and a few curb cuts as possible on public roads as possible. In order to ensure a second driveway is not constructed for these properties, staff recommends a condition of approval that access is limited to the existing driveway that connects to Morse Road.
- The applicant has provided a copy of the current driveway lease agreement that has been put in place for the life of the lease agreement for the barn.
- Additionally the applicant has provided a copy of a proposed driveway easement that would be executed upon the lot split. Staff recommends a condition of approval that requires the applicant to provide an execute copy of the easement when made available following the approved lot split.
- The variance request does not appear to alter the essential character of the neighborhood since access is being provided from the current private access road.
- It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- It appears that granting the variance will not adversely affect the delivery of government services.

The request does not appear to substantially alter the essential character of the neighborhood or result in adjoining properties suffering a "substantial detriment" Since access is currently provided from the private access road to the south of the property. It appears that granting the variance will not adversely affect the health and safety of residents in the vicinity and it appears it will not adversely affect the delivery of government services.

**D. Codified Ordinance 1129.06(f) to reduce the minimum rear yard depth to 39.8 feet where 50 feet is required.**

- Per codified Ordinance 1129.06(f) the minimum rear yard depth in the Agricultural District is 50 feet.
- The proposed lot split would create a 0.561 acre lot that would have a rear yard depth of 39.8 feet.
- The proposed lot split appears to meet the following minimum lot requirements:
  - Front Yard Depth: 50 feet minimum, 59.1 feet proposed.
  - Sum of Side Yard Widths: 40 foot minimum, 83.9 feet proposed.
  - Side Yard Width: 20 foot minimum, 50.6' feet on the west and 33.3' feet on the east proposed.
- It appears the problem can be solved by some manner other than the granting of a variance and the circumstances do result from the action of the applicant. Staff believes the problem created by variance can be solved if the rear property line (proposed north property line) is extended 10.2' to make the distance 50 feet. Staff recommends the Board of Zoning Appeals verify with the applicant and consider moving the rear property line to avoid the need for the variance.
- It appears that granting the variance does not change the character of area since the proposed lot will not cause changes to the physical area because lot line exists on paper and will be visually impactful at the site itself.
- It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.

While granting the variance will not adversely affect the health and safety of residents in the vicinity nor will it affect the delivery of government services, it does appear the variance may be avoided by extending the rear lot line, the proposed northern lot line, 10.2' to create a rear yard with a 50 foot depth. It does not appear that granting the variance will change the character of the area since the proposed lot will not cause physical changes to the area itself, since the lot line location cannot be perceived on the site. Even though the lot line will only exist on paper, it does appear that the problem can be solved by some manner other than the granting of the variance and the circumstances do result from the action of the application.

## **V. ACTION**

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

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

**To approve the variances within application V-04-2018:**

- A. Chapter 1129.06(a) to allow the proposed lot to be 3.9 +/- acres where code requires a minimum of 5 acres.**

- B. Codified Ordinance Chapter 1129.06(b) to allow the proposed lot to have zero (0) feet of frontage on a dedicated and improved street where code requires 200 feet.**
- C. Chapter 1165.01(a) to allow a building to be constructed on the proposed lot that does not front on a publically dedicated and improved street or thoroughfare within the Municipality.**
- D. Codified Ordinance 1129.06(f) to reduce the minimum rear yard depth to 39.8 feet where 50 feet is required.**

**With all variances subject to the following conditions:**

- 1. Copies of recorded deed restrictions are provided to city staff.
- 2. The applicant provide an executed copy of the driveway easement when made available following the approved lot split.
- 3. Access is limited to only the existing access drive to Morse Road. No vehicular access to New Albany Farms Road is permitted.



Source: Bing Maps



Appendix A

Existing				AFTER PROPOSED LOT SPLIT			
NA Farms (R-1)		Rahal Prop. (L-AG)		NA Farms (R-1)		Rahal Prop. (L-AG)	
<u>Lot</u>	<u>Size</u>	<u>Lot</u>	<u>Size</u>	<u>Lot</u>	<u>Size</u>	<u>Lot</u>	<u>Size</u>
1	7.818	1	3.6	1	7.818	1	3.6
2	4.453	2	8	2	4.453	2	7.439
3	3.174	3	5	3	3.174	3	5
		4	3.9			4	3.9
4	3	AVG	5.125	4	3	5	.561
5	3			5	3	AVG	4.1
6	2.905			6	2.905		
7	9.069	<b>Balfour Green (R-1)</b>		7	9.069	<b>Balfour Green (R-1)</b>	
8	7.268	<u>Lot</u>	<u>Size</u>	8	7.268	<u>Lot</u>	<u>Size</u>
9	7.231	1	6.635	9	7.231	1	6.635
10	7.256	2	7.83	10	7.256	2	7.83
11	10.947	AVG	7.2325	11	10.947	AVG	7.2325
12	8.589			12	8.589		
13	6.966			13	6.966		
14	4.184	<b>OTHER (R-1)</b>		14	4.184	<b>OTHER (R-1)</b>	
15	6.891	1	2.84	15	6.891	1	2.84
16	19.891	2	10.2	16	19.891	2	10.2
17	1.565			17	1.565		
18	15.059	<b>OVERALL AVERAGE</b>		18	15.059	<b>OVERALL AVERAGE</b>	
19	2.258	6.449954	acres	19	2.258	6.41175	acres
AVG	6.922316			AVG	6.922316		

**LOT PROPOSED TO BE SPLIT**

AG requires a minimum lot size of 5 acres

The Strategic Plan recommends 1 unit per 10 gross acres of development

Appendix B

