



Board of Zoning Appeals

Meeting Minutes

October 22, 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, Wilttrout at 7:00 p.m.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Absent
Ms. Andrea Wilttrout	Present
Mr. Kasey Kist	Present
Ms. Marlene Brisk (Council Representative)	Present

Staff members present: Stephen Mayer, Development Services Manager; Jackie Russell, Development Services Coordinator and Pam Hickok, Clerk.

Moved by Kist to approve the September 24, 2018 meeting minutes, as corrected; Seconded by Wilttrout. Upon roll call: Gallagher, abstain; Wilttrout, yea; Kist, yea. Yea, 2; Nay, 0; Abstain, 1. Motion passed by a 2-0 vote.

Ms. Wilttrout asked for any additions or corrections.

Ms. Russell stated none from staff.

Ms. Wilttrout 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 Wilttrout. Upon roll call: Gallagher, yea; Wilttrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

V-70-2018 Variance

Variance request to Pickett Place PUD Section 7(a) to permit a spa to not be enclosed by a fence at 13 Pickett Place (PID: 222-003128).

Applicant: Greenscapes c/o Marc Aubry

Ms. Jackie Russell presented the staff report.

Mr. Greg Fancher, 13 Pickett Place, stated that we are new to New Albany from California. We were really excited when we picked New Albany specifically we liked that it's very open, feel of the neighborhoods and fantastic schools. We looked for a lot with a large backyard. I was in a bad accident and we were looking for a place that allowed a spa to assist with the aches from the injuries. In California we didn't have back yards. We don't want to impose on our neighbors which is why we chose this lot with the large back yard.

Ms. Sharon Fancher, 13 Pickett Place, stated that we wanted to ensure that the the box in the corner is not the hot tub, that is the basketball court. There is an old fence on two sides of the property.

Ms. Wiltrout asked how tall the fence is.

Ms. Fancher stated about 3.5 feet. We have children of our own and safety is very important so we chose a hot tub with a locking cover. We were told that fences were not permitted by the realtor. We were not aware of the fence requirement.

Mr. Gallagher stated that the condition states that continuous and uninterrupted landscaping. Can you describe what that would look like?

Mr. Mayer stated that the landscaping with shrubs or boxwoods all arounds planted close together would prevent access uncontrolled access. In order to reach the pool/spa from the back yard you would need to install just a locking gate.

Mr. Kist asked if this was submitted for approval.

Mr. Marc Aubry, Greenscapes, stated that this was our full submission.

Mr. Kist asked if putting the continuous landscaping on this.

Mr. Mayer stated that it wouldn't meet staff condition. The landscaping would need to go from building to building surrounding the hot tub.

Ms. Wiltrout asked if when then are planted can they keep children out.

Mr. Mayer stated that it would need to prevent access at the time of installation.

Mr. Wiltrout asked if this condition has been successful anywhere else.

Mr. Mayer stated that this is fairly new and can't speak to the effectiveness. In the past this was used as a reason to approve a variance by other boards.

Ms. Brisk stated that she can speak to it because she was on BZA and PC at the time that some pool fence variances were heard. One of the big factors was that the spirit of the code is to be concerned about the safety of children having access and if people were willing to invest significantly and show a specific plan that had landscape that was dense from the start. It's not about the material that used but the purpose. If you have a 4 foot fence you can still see what's in the yard just need to make it less accessible for children to climb under or over.

Mr. Kist asked if this idea of screening landscaping is new to the applicant.

Mr. Aubry stated that we discussed the idea of screening. What is existing currently is the covered porch. The T-shaped patio and the deck for the spa is additional work.

Mr. Kist asked if you would like to install without the landscaping, as drawn.

Mr. Aubry stated yes, as drawn, is preferred. The spa is built in to the deck and not really visible from other properties. Unlike a pool, this is 12'x8' with the locking cover.

Ms. Wiltrout stated that I didn't see any landscaping for safety. What are your thoughts on enclosing it with that type of shrubbery?

Mr. Aubry stated that other than the goal of being able to look out on their large lot and keep the open view but it could be done in the design. This is the first time that I have dealt with a spa requiring a fence. When working with the supplier for the details we were wondering how many spas go in without permits.

Mr. Kist asked what by definition distinguishes this from a pool, other than 80sf.

Mr. Mayer stated that city code for swimming pool also addresses the depth must be 1.5'.

Mr. Aubry stated that the average spa depth is 24-30" of water.

Mr. Mayer stated that code stated that a pool is over 100sf and 18" depth.

Ms. Fancher stated that what about the kiddie pools that don't have any permits. It's hard when we do everything by code and we get dinged.

Mr. Kist stated that I feel like spas don't get regulated properly.

Ms. Brisk stated that this zoning text includes swimming pools and spas.

Ms. Fancher stated that the homeowners association (ARC) has approved the spa.

Mr. Mayer stated that this is similar that what we found with the swimming pool fences. The HOA has different rules than the city. We look at the same item in different ways for different regulations.

Ms. Fancher stated that is why we thought it would be approved. Hot tubs and spas are different by our definition for how things are done in California. The swimming pool and spa combo and the stand alone unit is a hot tub. So when it was approved by the HOA we thought we would be alright.

Ms. Wiltrout stated that city code doesn't address spas versus hot tubs.

Mr. Mayer stated correct.

Mr. Aubry stated that when Pam reviewed the plan she stated that everything was approved except that she needed the fence detail I was very surprised because I had never encountered it before for a spa/hot tub.

Mr. Mayer stated that when a spa needs to be inground and fenced. Since the spa is being designed the same as a swimming pool it has the same safety concerns.

Mr. Gallagher stated that safety is a concern for children and pets. I would be willing to accept staffs recommendation with the condition of the landscaping.

Mr. Kist stated that for intent purposes we are treating this as a pool. I think that we talk about substantial detriment and I think that some neighbors would consider a fence a detriment. Where is the existing fence located?

Mr. Aubry showed using the map.

Mr. Kist asked if the fence would meet the code.

Mr. Aubry stated that it's a steel farm fence on the west and south side. Yes if you look at the past history of what's been approved, some of the other approvals have the white horse fence.

Ms. Brisk stated that I don't think we have approved horse fencing, in fact I think we specifically disapproved the horse fence.

Mr. Mayer stated correct.

Mr. Aubry and Ms. Fancher showed on the map the location of the fence.

Ms. Brisk asked what type of metal fence.

Ms. Wiltrout stated that she described it as rickety. Do you have any pictures of the fencing?

Mr. Aubry stated that you would know the fence was there because of the plant growth around the fences.

Mr. Kist stated that the cases that were approved, the size of lot and access were the main factors. The lots that were approved were large lots, one was 12 acres. With the fence on two sides it cuts the access in half right now.

Ms. Fancher stated that they are partially fenced on the northeast because a property in front has a pool.

Ms. Brisk stated that having the pictures of the existing fences would be helpful. I'm clarify, knowing from the historic memory, I know that we have not approved horse fence as a barrier.

Mr. Aubry stated that a child could not climb through the farm fence.

Mr. Fancher asked if locking covers count for anything.

Ms. Fancher commented from the audience.

Ms. Brisk stated that if it had the combination of the landscaping or fencing

Ms. Wilttrout stated that it was a much larger lot. Even a Planning Commission meeting discussed the lack of evidence of pool cover safety because they are not always put back on.

Ms. Kist asked about the certified pool cover.

Mr. Mayer stated that in one instance, it was a test to show that the cover could hold the weight of an adult.

Mr. Kist asked if that is something that the homeowner completes.

Mr. Mayer stated that it was provided by the homeowner through the pool company.

Mr. Kist asked what they think of the proposed landscaping.

Mr. Fancher stated that it was an open back yard.

Mr. Kist asked if the standard is 48".

Ms. Fancher stated that it goes against how we perceived the use of the back yard.

Ms. Wilttrout asked if the fence is only around the pool or around the property.

Mr. Mayer stated that either one would meet the code, code states that it must enclose the pool.

Ms. Fancher stated that it would be cost prohibitive to fence the entire lot.

Mr. Aubry stated that the cost of the fence and we know someone who lives on the other side. There is probably a spa installed every week in New Albany.

Mr. Kist stated that we could accept the variance without the condition.

Mr. Gallagher would be considered a no vote because I would be concerned about the safety factor.

Mr. Kist asked about city liability if we approve it without a fence.

Mr. Mayer stated that he is not sure of the answer without consulting the city attorney.

Mr. Gallagher stated that liability has been cited in the past as a concern.

Mr. Kist stated that he would like to understand the liability to the city if we granted a variance and something happened.

Mr. Aubry asked how liability applies if it was put in without permits.

Mr. Kist stated that what is different is that we are granting you permission. It sounds like it wouldn't be approved without the condition of landscaping.

Ms. Fancher asked for an explanation of what the landscaping would look like.

Mr. Aubry stated that as shown on the plan that it is probably 36" with the bench on the south side due to grade change.

Mr. Kist asked if we are treating this as a pool. Most pools are ground level. Is the deck is at 48" and the access is restricted just by the deck height.

Mr. Mayer stated that stated that it has steps up to it but the board could look into that because it is different that other designs.

Mr. Kist asked if the design will look like these photos.

Mr. Aubry stated that we were trying to find a way to get the hot tub to incorporate into the deck. If the spa wasn't there it would just be a platform.

Ms. Wiltrout asked if the deck higher than the grade. What is the difference?

Mr. Aubry stated that the finished floor is about 24" above grade and they will walk out of the house onto the deck. Then steps up to the hot tub on three sides and a bench on one side.

Mr. Fancher commented from the audience about the steps.

Mr. Aubry stated that the grade at lawn to spa is 36" (south side).

Ms. Fancher stated that on the other two sides we wanted to have the open flow feel so we just have the steps down.

Mr. Aubry stated that the south side is flush with no access.

Ms. Fancher asked what type of landscaping would be required.

Mr. Kist stated that you wouldn't need it if the access is already restricted.

Ms. Wiltrout stated that she is having trouble picturing this spa.

Mr. Aubry stated that if you walk by it will look like a deck. What would be the minimum size of the plantings be at installation.

Mr. Mayer stated 36"-40" at installation. I think that is what has been approved for other pool variances.

Mr. Kist asked if the finish floor of the deck is 36".

Mr. Aubry stated that the house finish floor is 24" and the bench would be about 18" above. The idea is when the spa is not being used the steps could be used as a seat wall.

Mr. Kist stated that I can't figure out how to restrict access to the spa as it is designed.

Ms. Fancher asked if they installed a rot iron fence around the spa with a gate would they meet the rules.

Mr. Aubry showed an idea on the plan.

Ms. Fancher stated that I wouldn't need the variance, if we did that. I don't want shrubs that will block the views.

Ms. Brisk stated that at one time people didn't want the iron fences anymore and starting coming up with the landscape screening fence.

Mr. Mayer stated that the neighbor's pool fence does meet code. It's 48" for pools.

Mr. Fancher stated that it's not a pool.

Ms. Fancher stated that from the spirit of the rules it's a pool but it has a hard cover with lock. It will be closed as much as possible for financial reasons.

Mr. Kist stated that you have children.

Ms. Fancher stated that they are now teens. No one can see it. I thought we did everything up to code.

Mr. Kist stated that we could table this tonight and you can work with staff to see if you can figure out another design.

Ms. Fancher stated that covered porch that was built with the house. If you tabled this is that another month. We have been working on this since February since we put the bid on the house.

Mr. Kist stated that the earliest we would hear it is a month.

Ms. Brisk stated that if you meet the code then staff could approve it, if the variance is not needed.

Ms. Fancher asked how long for staff review.

Mr. Mayer stated that staff review is about a week.

Mr. Kist stated that I understand that this may not be what you want to hear tonight. I think you need to regroup and discuss. I think you understand our concerns and if you need to come back in a month.

Ms. Fancher stated that we can't make a lot of changes because of the ARC approval because we worked hard to get this approved.

Mr. Aubry stated that the ARC can't say no if the City requires it.

Ms. Fancher stated that we can table and work on a design.

Ms. Wilttrout stated that if you can come up with a plan that shows controlled access, a barrier.

Mr. Mayer stated that staff can meet with you to share ideas.

Mr. Kist stated that staff can't approve the landscape barrier.

Mr. Mayer stated that retaining wall can be approved by staff.

Mr. Aubry stated that if we have a 36" wall would only need a 12" fence on top the wall. Just trying to clarify what staff can approve and what the board would need to approve.

Ms. Fancher commented from audience.

Ms. Brisk stated that someone did try to propose a removable fence system and it didn't get approved.

Ms. Fancher stated that she thought about it in California.

Mr. Kist stated that because this is a gray area and what defines a spa. If a spa has a locking cover that could be sufficient. We could probably find a lot that didn't meet code. How could we review that code section again?

Mr. Mayer stated that this board could request for staff to review the code. Staff would review, bring to Planning Commission and Council for review and approval. For this area this was written specifically for this section of the NACC. I'm sure there are examples that don't meet code but this is specific to this section of the Country Club.

Ms. Fancher asked if we are only doing this for Pickett Place.

Mr. Mayer stated that when this area came in for rezoning, the developer wrote the zoning text and it was approved by City Council.

Mr. Fancher stated that it isn't a safety issue because its not required everywhere in New Albany.

Ms. Fancher asked if this isn't citywide then it's not a safety issue unless you only care about the kids in Pickett Place.

Ms. Wilttrout stated that the zoning text standards are usually related to the size of the lots in the subdivision.

Ms. Fancher stated that our lot doesn't fit the standard Pickett Place. We have an acre lot in a community that has much smaller lots with zero lot lines. Maybe that is why NACC chose to waive this requirement because our lot is different than Pickett Place. That is part of our frustration because our lot is different than the surrounding lots. Maybe this is why the ARC chose to waive this restriction because our lot is different.

Mr. Mayer stated that this board and the Planning Commission has taken into account the lot specifications. The Duncan factors taking the factors of the lot should be considered by the board when reviewing a variance.

Ms. Fancher stated that a house on Lambton Park that has a wall that is not 48". Not everyone in Lambton Park has a large lot. It doesn't seem right.

Ms. Brisk stated that from my historic perspective, it was a big factor when variances have been approved. It's been about where the lot is situated, what kind of traffic, what kind of visibility, what is the size of the lot - that should be an exception.

Ms. Fancher stated that it is a corner lot and I can see the pool. No one can drive by my house and see that I have a hot tub.

Ms. Brisk asked for the lot size of this house versus the average lot size in Pickett Place.

Mr. Mayer stated that their lot is .9 acre and it is one of the larger lots in Pickett Place. I think the average is around .5 acre.

Ms. Fancher stated not even .5 acre.

Mr. Aubry stated that there lot is about 4x the average lot.

Mr. Kist stated that the last pool fence variance heard was on Lambton Park and it was denied because there was no permanent barrier. The one on Highgrove was approved with additional landscaping.

Mr. Mayer stated that all of those homes were adjacent to the New Albany golf course so accessibility is different than this lot.

Mr. Gallagher stated that he believes having the golf course reduces the access. Not many toddlers on the golf course.

Ms. Wiltrout stated that many members noted that the golf course provided a barrier.

Ms. Fancher stated that a friend stated that the best thing about living on the golf course is that she can let her grandkids play on the golf course. That may be a misconception to believe that kids aren't on the golf course.

Ms. Wiltrout stated that it is one of the factors but not dispositive. One factor alone is not enough to grant the variance.

Mr. Kist asked if we vote and approve with the condition and then decide that they need to do something different. They are not obligated to do what we approve.

Mr. Mayer stated that they could still decide to change design and meet code.

Ms. Fancher stated that I would like you to do that. But I do think you should take into account everything that we have stated and we are being penalized for following the process.

Mr. Kist stated that my concern is that the liability that we individually assume and the City assumes if we approve and the City Law Director is not available tonight.

Ms. Fancher stated that I don't think that the safety of my children and Pickett Place children is more important than all of New Albany children.

Mr. Fancher stated that the board is treating it as a swimming pool.

Mr. Mayer stated that when we evaluated the staff brought to the boards attention that it is required to be in ground and is similar to a pool.

Ms. Fancher stated that the code I saw listed the inches of water.

Mr. Kist stated that New Albany code lists that inches of water.

Ms. Fancher stated that she is confused.

Mr. Kist stated that the city codes for swimming pools doesn't refer specifically to spas. This is a body of water that is over 1.5' deep and there is potential for someone to drown. It is a code in New Albany. There is a minimum requirement.

Mr. Mayer stated that it is 1.5' deep and 100 sf.

Mr. Kist for lack of anything else in code that is the only standard we have.

Ms. Fancher asked if there was a spa.

Mr. Kist stated that the PUD text specifically calls out spas.

Moved by Gallagher to move to approve V-70-2018 subject to the following condition that continuous and uninterrupted landscaping which prevents uncontrolled access and a locking gate is installed around the spa decking area, Seconded by Wiltrout. Upon roll call: Gallagher, yea; Wiltrout, yea; Kist, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote.

Meeting adjourned at 8:16 pm.

Submitted by Pam Hickok

APPENDIX



Board of Zoning Appeals Staff Report October 15, 2018 Meeting

13 PICKETT PLACE SPA FENCE VARIANCE

LOCATION: 13 Pickett Place (PID: 222-003128)
APPLICANT: Greenscapes c/o Marc Aubry
REQUEST: Variance to the Pickett Place PUD Section 7(a) to permit a spa to not be enclosed by a fence in an area where spas are required to be enclosed by a fence
STRATEGIC PLAN: Neighborhood Residential
ZONING: I-PUD (Pickett Place I-PUD, Phase 2)
APPLICATION: V-70-2018

Review based on: Application materials received September 21, 2018.

Staff report prepared by Jackie Russell, Development Services Coordinator.

I. REQUEST AND BACKGROUND

The applicant requests a variance to the Pickett Place PUD Section 7(a) to permit a spa to not be enclosed by a fence where the zoning text requires all pools and spas to be enclosed by a fence.

The city law director has previously advised the Planning Commission for similar applications that they must evaluate this application exclusively based upon the provisions and criteria generally set forth in the City Zoning Code as relates to variances (Chapter 1113), and the specific provisions contained within city code.

II. SITE DESCRIPTION & USE

The site is 0.91 acres with a single family home. The lot is within the Pickett Place subdivision. The property is located in the southwest area of the subdivision and backs up to Harlem Road. The house is one of the larger lots within the subdivision. The neighboring properties all consist of residential homes.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The Property owners within 200 feet of the property in question have been notified.

Criteria

The standards for granting of a variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner a variance:

All of the factors should be considered and no single factor is dispositive. The key to whether a variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

IV. FACTS

Considerations and Basis for Decision

The following information in addition to application submittal information and meeting presentations and discussions should be considered in the Board of Zoning Appeals’ decision for the requested variance:

- The Pickett Place I-PUD text Section 7(a) requires, “All swimming pools/spas shall be located in the rear yard, within the building line of the site, completely enclosed by fencing and screened from adjoining properties.”
- Section 5(b) of the zoning text requires all spas and swimming pools to be in-ground construction.
- The city’s code for private swimming pools (C.O. 1173) defines a "private swimming pool" as any pool or open tank not located within a completely enclosed building and containing water to a depth, at any point greater than one and one-half (1.5) feet. No such swimming pool, exclusive of portable swimming pools with an area of less than

one hundred (100) square feet, shall be allowed in any Agricultural or Residential District unless the conditions and requirements contained in that section are complied with. While this spa is deeper than 1.5 feet, it is 80 square feet which is an area less than 100 square feet, therefore the specific code sections for a private swimming pool do not apply. The city does not have any specific code regulations for spas.

- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock. Although this code section technically does not apply, since the zoning text requires the spa to be in-ground construction, the spa has similar safety concerns as a pool since they're constructed in a similar manner. Therefore staff recommends the spa fence meet swimming pool fence requirements listed above.
- Since this request has many similarities to pool fencing, appendix A at the back of this staff report contains a history of pool fence variances.
- The city's code does not prescribe any particular style or type of fence other than saying such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- The spa is located at the rear of the home, between the house and other residences.
- The parcel contains large trees along most of the lot boundaries, but there does not appear to be any fencing around the property.
- The surrounding properties contain residential homes and several large trees.
- This parcel is one of the largest in the subdivision yet, the lots in general are not very big resulting with the spa being located closer to other residential properties and public roads, than other pools which received approval for fence variances. The spa is approximately 171 feet from Pickett Place, 75 feet from the southern property line, and 80 feet from the western property line along Harlem Road, 84 feet to the neighbor to the east, and 140 feet to the neighbor to the north.
- The applicant proposes to use a locking spa cover. Spa and pool covers are recognized by some building codes as an appropriate method to secure these items. However, the city has not adopted a code that allows the use of covers. The city's private swimming pool ordinance regulates the construction of private pools within the city and requires a 4-foot fence affixed with an operable gate and lock.
- No specifications on the spa cover have been submitted other than pre-delivery instructions page. This may be similar to a pool covers that the BZA approved in-lieu of a fence at 6958 and 7010 Lambton Park, as well as 10 and 14 New Albany Farms. Both boards took into other consideration other factors such as size of lot and proximity to neighbors. The boards in some cases required additional landscaping, such as shrubs, which would prevent uncontrolled access of child to the pool.
- The lot is larger than the majority of the parcels in the subdivision, but is average sized compared to others around the city. This lot is approximately 0.91 acres.
- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The spa

appears to be screened from the public right-of-way, and neighboring properties due to additional landscaping and the placing of the spa.

- Typically spas are exempt from fencing requirements since city code does not contain specific code requirements for them, and they do not meet the size and water depth requirements to meet the definition of a private swimming pool. Through several pool barrier variance applications city staff, the Board of Zoning Appeals and Planning Commission have had to weigh the importance of many factors in coming to decisions on the similar pool fence variance applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property, providing shrubs or other landscaping which prevent uncontrolled access, and the effectiveness of a pool cover in providing safety. In this case the spa is in-ground at the deck level, which is a similar design to pools. Therefore the spa appears to have the same safety concerns and staff recommends the board take into consideration the same pool fence factors when evaluating this application.

VII. RECOMMENDATION

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. Staff recommends the board evaluate if the property is comparable to recently approved pool fence applications. The location, size of the parcel, isolation of the property and access are factors that have been important in other past pool fence variances. However, this site does not contain all the elements that have been required of recently approved pool fence variances. The proposed spa is located within a subdivision that is close to other homes, and the property's size appears typical for subdivisions. While the site contains landscaping around the perimeter, it does not appear that the existing landscaping would prevent someone wandering on the property. It appears that additional landscaping could be installed around the spa decking area to accomplish this. Also fencing is not installed on neighboring properties to limit access from adjoining lots. The presence of the spa cover is an important factor to ensure safety. If additional measures, such as landscaping to prevent uncontrolled access along with a locking gate were included in the request, the application would be more closely aligned with other similar approved pool fence applications.

VIII. ACTION

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

Move to approve variance application V-70-2018 based on the findings in the staff report with the following condition(s) of approval:

1. Continuous and uninterrupted landscaping which prevents uncontrolled access and a locking gate is installed around the spa decking area.

Approximate Site Location:



Source: Franklin County Auditor

APPENDIX A

There have been several similar applications for pools heard by either the Board of Zoning Appeals or the Planning Commission since 2007. There are no

- The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5 acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason the BZA approved the variance while stating some homes may be too close to each other for a pool cover.
- The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
- The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
 - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
 - The pool area is fully enclosed by a house, fence, or wall.
 - The existing 54" and 44" horse fence counts towards the enclosure of the pool.
 - The new fence installed must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18th.
 - The pool cover is certified annually by the homeowner.
- The PC approved a variance to allow landscaping and pool netting in -lieu of a fence that meets code requirements on October 17, 2016 for 10 and 11 Highgrove. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property owners' stated they intend is to use the pool net when the pool is not in use with adult supervision, and having an annually certified pool net. Members voting

against the variance noted this is because the property would have a reasonable return without the variance, believes variance is substantial, essential character of neighborhood would not change, property owners were aware of the restrictions, original permit showed code complaint fence and was not installed per approved plan. Finally, the applicant did not prove pool netting is as safe as a fence. The conditions of approval are:

- Landscaping approved by ARC and staff to include original and tonight's submissions.
 - Commitment to install boxwoods or gates at all openings.
 - Pool netting or hard cover ASTM compliant installed at all times when not in use and not attended by a responsible adult.
 - Applicant maintains landscaping and new plantings.
 - The pool netting is certified annually by the homeowners for function.
 - Hard cover installed by 11/1/16 and not removed until in compliance.
 - The applicant provide a copy of the easement to permit homeowner to maintain the fence in the event the NACO does not
- The Planning Commission denied a variance at 7010 Lambton Park Rd. on November 21, 2016. The reasons for the denial were due to a lack of perimeter barrier around the pool, the cover not being an equivalent safety feature as required by code, the owner was aware of the restrictions when they purchased the lot, and that there is not as much significant landscaping. Additionally, the applicant did not propose to add any additional landscaping which would prevent uncontrolled access of a child to the pool.