



# Board of Zoning Appeals

## Meeting Minutes

February 25, 2019

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, Wiltrout at 7:01 p.m.

Ms. Brisk administered the oath of office for Kerri Mollard.

Ms. Brisk administered the oath of office for Shaun LaJeunesse.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present
Ms. Andrea Wiltrout	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Ms. Marlene Brisk (Council Representative)	Present

Staff members present: Stephen Mayer, Development Services Manager; Jackie Russell, Development Services Coordinator; Chris Christian, Planner; Mitch Banchevsky, City Attorney; and Pam Hickok, Clerk.

Moved by Smith to approve the October 22, 2018 meeting minutes, as corrected; Seconded by Gallagher. Upon roll call: Gallagher, yea; Wiltrout, yea; Smith, yea; LaJeunesse, yea; Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

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

Ms. Wiltrout invited the public to speak on non-agenda related items. (no response)

Moved by Wiltrout to accept the staff report and related documents into the record, Seconded by Gallagher. Upon roll call: Gallagher, yea; Wiltrout, yea; Smith, yea; LaJeunesse, yea; Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

### V-9-2018 Variance

Variance requests to C.O. 1165.06(a)(3) to allow an accessory structure to be 29 feet in height, in an area where the requirement is 10 feet; C.O. 1165.06(a)(2)(D) to allow an accessory structure to be located 33 feet away from the primary structure, in an area where the structure must be located 58 feet away from the primary structure; C.O. 1165(a)(1) to allow an accessory structure to have an area which is 6% of the lot, where the requirement is that the area of an accessory structure must be 5% or less of the lot, and to C.O. 1133.05 to encroach a rear yard setback by five feet.

**Applicant: F5Design c/o Todd Parker**

Ms. Jackie Russell presented the staff report.

Ms. McAdams stated that they have five young children and would like to keep the children nearby and active as they continue to grow. We have spoken to the neighbors and they are supportive of this project.

Ms. Wilttrout asked if they spoke to the direct neighbors.

Ms. McAdams stated that they were both excited. Both neighbors have kids and are accepting of this building. She then explained which neighbors she spoke with.

Ms. Wilttrout asked if the neighbor on SR 605 was notified.

Ms. Brisk asked if they were notified of the meeting.

Ms. Russell stated yes.

Ms. Brisk asked if we received any contact from them.

Ms. Russell stated no.

Mr. Smith asked who owns the property to the south that fronts Morse Road.

Mr. Mayer stated that the two properties on SR 605 belong to Dr. Marsh and his son, Mr. Marsh and are the rear property line to this property. The properties along Morse Road are mostly owned by The New Albany Company.

Mr. Smith asked if the zoning is residential.

Mr. Mayer stated that the Marsh properties are zoned agricultural.

Ms. Mollard asked about lot 29, it appears to be a vacant lot but on the visual the house appears next to it. I can't tell what the proximity is between the two homes.

Mr. Todd Parker stated that I used the site plan from when the house was built and at that time lot 29 was vacant. The side of the house aligns to the front of the McAdams house. Probably about 75-100 feet.

Ms. Mollard asked if there is a lot coverage requirement. Do we require a minimum amount of open space or grass?

Ms. Russell stated that this zoning does have lot coverage requirements however, it only applies to structures and not the patio or pool areas.

Ms. Wiltrout verified that they meet the lot coverage. She asked why it needs to be so tall.

Mr. Parker stated that we partially pulled from the barn on 605 and we need the height for basketball. Where this building is classified in the code makes a difference. The detached garage can be 25' but an accessory structure is 10' maximum.

Mr. Wiltrout asked if the city architect mentioned the height in his comments.

Ms. Russell stated that he stated that it was proportional scaled and massed.

Mr. Gallagher stated that it makes a nice gateway from the residential to agricultural.

Mr. Wiltrout asked how tall a barn can be.

Mr. Mayer stated that if it's zoned agricultural then the maximum height is 45'. Agricultural zoned properties are not considered residential.

Mr. Parker stated that the brick and siding will match the house.

Mr. Smith asked if will you be able to see if from SR 605.

Mr. Parker stated that he doesn't think so; there is an existing tree line that will remain.

Ms. Brisk asked if any of the trees were on the applicants' lot. When I looked at the numbers I was concerned but looking at it in the context of location it doesn't concern me as much. If this is voted yes tonight, specific reasons that make this lot different and acceptable should be stated as to why the positive vote.

Ms. Wiltrout stated that I see now the triangular shape of the lot and the use of the lot is makes this variance sufficient.

Mr. Gallagher stated that it is a unique aspect to the size of the lot, location, which would not be applicable in other areas.

Ms. Wiltrout stated that it fits with the neighboring properties.

Moved by Smith to approve V-9-19 , Seconded by Gallagher. Upon roll call: Gallagher, yea; Wiltrout, yea; Smith, yea; LaJeunesse, yea; Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

**V-10-2018 Variance**

Variances to C.O. 11169.17 (b)(1)(a) to allow a sign to be 8' 4" in width and to C.O. 1169.05 (a) to allow a sign to be installed in the public right-of-way.

**Applicant: Dan McWhorter, Transversal Investments XLII, LLC**

Mr. Chris Christian introduced himself and presented the staff report.

Ms. Wiltrout asked if we are trying to get rid of the 6' distance.

Mr. Christian stated that he would slide the sign in.

Ms. Wiltrout asked if it should be flush.

Mr. Mayer stated that don't know if it needs to be flush but it would certainly narrow the 6' to the horse fence.

Mr. Dan McWhorter stated that he is not sure of the measurements.

Mr. Christian continued with the staff report.

Mr. McWhorter stated he doesn't have much to add. I purchased the property last April. Signage is not great due to the wonderful trees that block the signage as the canopy grows.

Ms. Wiltrout asked if he reviewed the conditions of approval.

Mr. McWhorter stated yes, he has no issues with the conditions.

Mr. Gallagher stated that driver visibility is a concern. Asked if the hold harmless runs with the owner or the property.

Mr. Mayer stated that historically I think that it is transferable and runs with the property.

Mr. Gallagher stated that it is recorded.

Ms. Mollard stated that the dimensions of the sign seem appropriate but each tenant logo seems large.

Mr. Mayer stated that staff can work with applicant. We can control the sign but not the content. The BZA can add conditions of approval.

Mr. McWhorter stated that I was trying to get the logos large because the roadway is large and the sign is setback off the road.

Ms. Mollard stated that it seems a little out of scale and I think we just need to find the balance.

Ms. Wiltrout asked what would the process of review for the logo be.

Mr. Mayer stated that it is up to the BZA. You can add a condition that the size of the logos be reduced subject to staff approval. We can work with the applicant to find the right scale. You can use the existing sign as a template or any other guidance you would like to provide.

Ms. Wiltrout stated that the existing sign is too small but I share the concern.

Mr. McWhorter stated that we could make the sign larger to have more space around the tenant signs.

Ms. Wiltrout stated that it could be the mock up.

Ms. Mollard stated that we want to support the the business and this sign doesn't look New Albany. When you have too much on the sign it is difficult to read.

Mr. Mayer stated that we could increase the empty space between the tenants. I think the current sign has a grid pattern between the tenant spaces.

Ms. Brisk asked what would happen if this is approved tonight with the conditions in the staff report and the logos subject to staff approval. If the applicant doesn't like the reduction of the tenant signs that staff decides, does he then have to start the process over.

Mr. Mayer stated that code allows for the applicant to come back for reconsideration of the application.

Ms. Brisk asked if he could revise his request and ask for a larger sign.

Mr. LaJeunesse asked how many tenants are in there now.

Mr. McWhorter stated that currently there are six tenants with a possible one additional. I would reduce the size of the tenant signs on the bottom and add a third tenant on the bottom of the front sign and remove the address from the rear sign.

Mr. Mayer stated that he would need to review but it appears that the reconsideration but the board can narrow the scope and the applicant can request the scope of the reconsideration.

Ms. Wiltrout asked if he could request a larger sign.

Mr. Mayer stated that it would be a reconsideration of the current request. A new request would be a new application.

Ms. Brisk stated because that would require neighbor notifications.

Moved by Gallagher to approve V-10-19 subject to the following conditions:

1. The final location of the sign shall not impact drive visibility, subject to staff approval.
2. The sign does not extend past the horse fence along the private road.
3. The final sign location be approved by the city engineer to ensure that there is no impact to the drainage facilities or other utilities.
4. A hold harmless or letter is required, and shall be recorded, that specifies that the applicant is responsible for maintenance, ownership and liability concerning the sign, subject to the review and approval of the city's law director, and a right of way permit be submitted.
5. The applicant and staff work together on the scale of the tenant lettering, Seconded by Wiltrout. Upon roll call: Gallagher, yes; Wiltrout, yes; Smith, yes; LaJeunesse, yes; Mollard, yes. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

#### **Workshop to Codified Ordinances Section 1165 – General Development Standards.**

Mr. Mayer stated that staff has been reviewing possible changes to section 1165.

Ms. Russell provided the board with a Planning Commission memo.

Mr. Christian provided some history of variances from this code section and current code requirements.

Mr. Mayer stated that this is what Mr. Parker was talking about today. Each one of these is a distinct code requirement in relation to detached garage and storage buildings.

Mr. Christian continued.

Ms. Russell presented the proposed code changes.

Mr. Mayer explained that the sandbox area is a defined space that you can do whatever you want and it provides the maximum flexibility.

Ms. Wiltrout asked about height.

Ms. Russell stated that we have spent a lot of time with the major structure. The detached garages are 25' and is consistent with other communities although we are a little taller. We haven't really looked at the minor structure height.

Mr. Mayer stated that we will probably have a hybrid approach that based on the size of your lot and the type of structure (major or minor).

Mr. Gallagher stated that I would rather have a garage than a shed because it will be higher quality materials and would provide good screening.

Mr. Mayer explained the bell curve lot size. AG lots typically need to be at least five acres.

Ms. Brisk asked if it is a percentage for all districts or just the AG lots.

Ms. Wiltrout stated that tier 1 = 720sf and tier 2 = 1200sf and tier 3 is a percentage.

Ms. Russell stated that Dublin does that percentage. She explained the existing tier system for Dublin

Ms. Brisk stated that she likes the formula idea to provide flexibility.

Mr. Mayer stated the most cities base the size of the structure on the size of the house or lot. Staff recommendation is lot size is because we have large homes on medium size lots.

Ms. Mollard asked if this will reduce the number of variances.

Mr. Mayer stated that the goal is to reduce the number of variances but we will always have variances. I think that we will reduce the variances for area but still have them for setbacks.

Ms. Brisk stated that we have a requirement because we have lot coverage requirements.

Ms. Mollard stated that the applicant tonight had a lot of coverage.

Mr. Mayer stated that every district has lot coverage but it only includes structures. Patios, decks, driveways and pools don't count. Typically lot coverage is about 30%.

Ms. Brisk asked for the lot coverage for tonight's application.

Ms. Russell stated that tonight was an area variance not lot coverage. The lot coverage was 30% and meets code.

Mr. Mayer stated that detached garages are 25' and recreational buildings are 10'. Per our research we appear to allow taller structures.

Ms. Brisk stated that we do that on purpose because we want the scale correct.

Mr. Mayer stated that our standard is 1.5 stories minimum. Staff thinks that most important is that it appears shorter than the primary structure.

Ms. Wiltrout stated that can't we put that on the architect. If they are trying to make a cohesive plan then they should know the height.

Mr. Mayer stated that most cases they will hire an architect but the burden ultimately goes back to the homeowner.

Ms. Wiltrout stated the recreational structures 10' is not enough.

Mr. Mayer stated that detached garages and recreational buildings could have the same height and area standards. They have the same impact on neighbors.

Ms. Brisk stated that to keep the correct scale.

Mr. Mayer stated that hard to regulate is design. It's easier to have a euclidean code with setbacks and defined numbers. The HOA has more of a design focus. We can't use it for justification for a variance. Anything you think were missing or any other comments.

Mr. Gallagher stated that economic impact, if someone is making a substantial improvement that is a good thing. Wish that could be a factor in the analysis.

Mr. Mayer stated that we could ask the city attorney if that can be used. We will keep working on this. Planning Commission reviews and Council will approve code changes. We will bring it back when we have the direction.

Mr. LaJeuneese asked which communities you are looking at.

Ms. Russell stated that we looked any many municipalities including similar Ohio communities but also California and Texas. We used Dublin and Westerville because they both had similar styles of code as a proposal.

Mr. Mayer stated that if you have other recommendations please let us know.

Ms. Mollard stated Hudson, Chesterland and Shaker Heights.

Mr. LaJeunesse stated it is also important to look across the country.

Mr. Christian stated that we don't have any case for next month but we will have an organizational meeting.

Ms. Wiltrout stated that the meeting will fall during spring break.

Meeting adjourned at 8:20 pm.

Submitted by Pam Hickok



# APPENDIX



## Board of Zoning Appeals Staff Report February 25, 2019 Meeting

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### ACCESSORY STRUCTURE VARIANCES NACC 16A - 7747 SUTTON PLACE

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LOCATION: 7747 Sutton Place  
APPLICANT: 5F Design c/o Todd Parker  
REQUEST: (A) A variance request to C.O. 1165.06(a)(3) to allow a recreational structure to be 29 feet in height, where code allows a maximum height of 10 feet;  
(B) A variance request to C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 33 feet away from the primary structure, where code requires recreational structures must be located 58 feet away from the primary structure;  
(C) A variance request to C.O. 1165(a)(1) to allow a recreational structure to have an area which is 6.13% of the lot, where code requires the area of an accessory structure to be 5% or less of the lot; and  
(D) A variance request C.O. 1133.05 to be setback 25 feet from the rear lot line where code requires a minimum setback of 30 feet.

ZONING: R-3  
APPLICATION: V-9-19  
STRATEGIC PLAN: Neighborhood Residential

Review based on: Application materials received January 25, 2019 and February 7, 2019

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*Staff Report Completed by Jackie Russell, Development Services Coordinator.*

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

The applicant requests the following variances to construct a recreational structure to containing a basketball court in the rear of the property:

- (A) C.O. 1165.06(a)(3) to allow a recreational structure to be 29 feet in height, where code allows a maximum height of 10 feet;
- (B) C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 33 feet away from the primary structure, where code requires recreational structures must be located 58 feet away from the primary structure;

- (C) C.O. 1165(a)(1) to allow a recreational structure to have an area which is 6.13% of the lot, where code requires the area of a recreational structures must be 5% or less of the lot; and
- (D) C.O. 1133.05 to be setback 25 feet from the rear lot line where code requires a minimum setback of 30 feet.

The proposed recreational structure will be located at the southeast corner of the lot, behind the existing primary. The structure is two stories in design, and approximately 1,417 +/- square feet. According to the Franklin County Auditor, the existing home was built in 2006. The existing home is two-stories and 5,058 square feet, located on a 0.53 acre site.

## II. EVALUATION

The application complies with 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.*

### **III.EVALUATION**

#### ***Considerations and Basis for Decision***

#### **A. A variance request to C.O. 1165.06(a)(3) to allow a recreational structure to be 29 feet in height, where code allows a maximum height of 10 feet.**

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

1. Codified Ordinance section 1165.06(a)(3) classifies an "accessory structure" as a subordinate structure detached from, but located on the same lot as the principal building/structure, which is incidental to the use of the principal building/structure. An accessory structure may include but is not limited to storage buildings, recreational structures, mechanical devices, detached garages, carports, decks and open-sided structures.
2. The applicant is proposing to build a detached recreational structure that is approximately 1,417+/- square feet in area, and 29 +/- feet tall, to the top of the roof line. The proposed recreational structure will be accessed from the existing patio and proposed pool area via sidewalks.
3. C.O. 1165.05 states that, "height regulations specified in the various zoning districts shall not apply to chimneys, tanks, cupolas, domes, spires, or similar attached provided that the height of all structures and buildings, including those mentioned above, shall not constitute a hazard to safe landing and take-off or aircraft from an established airport." Therefore, the proposed cupola is not included in the height measurement or variance.
4. C.O. 1165(a)(3) states that accessory structures shall not be higher than 10 feet. The height regulation seems to be intended to achieve an appropriate scale between accessory structures and the primary structure.
5. The existing, primary structure is approximately 35+/- feet to the roof of the structure, therefore the variance does not appear to be substantial since the proposed recreational structure will be shorter than the primary structure. Since the proposed recreational structure is located in the rear of the lot it appears that the larger height of the recreational structure it may not be as noticeable from Sutton Place.
6. The applicant states that they are requesting the variance for height because, "The size and scale of the structure are dictated by a design that would be more in kind with agrarian structures in New Albany." Additionally the applicant indicates they are requesting the variance to provide an architecturally correct structure.
7. It appears that the essential character of the area will not be substantially altered or suffer a substantial detriment by the approval of the variance since no neighboring residences will be impacted by the increased height. The closest neighbor is located to the north. The proposed recreational structure will be approximately 77+/- feet from the primary structure of the neighbor. Additionally, the property to the west has a garage located between both lots which provides screening and buffering from the proposed structure.. The closest neighbor to the south of the property, where the recreational structure is proposed to be located, is 350 feet away. The increased height will not appear as tall to that property since it is located a significant distance away. Additionally, the increase in height will not substantially alter the essential character of the area since the proposed structure is on a lot that is at the edge of a subdivision, an edge of the road, and at the

edge and within the agrarian area of the community.

8. It appears that the variance will preserve the spirit and intent of the zoning requirement by allowing a good design to be completed. The city architect reviewed the proposed plans and stated, "Given the location and its surrounding the barn design is an appropriate solution. Additionally, the architectural proportion and massing is very well done." The city architect also commented that since the home is located at the end of the subdivision, at the end of the road, and at the edge of the city the proposed design is appropriate.
9. Below is a list of applications that have requested the same variance, for a similar type of structure. Please note detached garages are not included in this list since they have different height and area requirements than recreational structures. Historically the BZA and PC have approved height and area variance for similar sized detached garages on larger lots of record.

<u>Address</u>	<u>Proposed Height</u>	<u>Lot Size</u>	<u>House Size</u>	<u>Proposed Area</u>	<u>Outcome</u>
7228 Greensward Dr	19 feet	0.65 Acres	6,829 sq. ft.	1,040 sq. ft.	Approved
7117 Lambton Park Rd	28 feet and 2 inches	1.37 Acres	7,136 sq. ft.	576 sq. ft.	Approved
7363 Milton Court	19 feet and 5 inches	2.4 Acres	6,048 sq. ft.	N/A	Approved
12 New Albany Farms Rd	32 feet	15 Acres	11,492 sq. ft.	N/A	Approved
7963 Lambton Park Rd.	22 feet	0.94 Acres	7,004 sq. ft.	576 sq. ft.	Approved
5886 Johnstown Rd.	13 feet	4.3 Acres	8,056 sq. ft.	324 sq. ft.	Approved
6057 Johnstown Rd.	27 feet and 8 inches	1.41 Acres	4,047 sq. ft.	1,566 sq. ft.	Approved
5014 Kitzmiller	25 feet	14.58	N/A	N/A	Approved
6958 Lambton Park	N/A	6.5 Acres	11,561 sq. ft.	9,100 sq. ft.	Approved

10. It appears that the variance will not adversely affect the delivery of government services, 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.

**B. A variance request to C.O. 1165.06(a)(2)(D) to allow a recreational structure to be located 33 feet away from the primary structure, in an area where the recreational structure must be located 58 feet away from the primary structure.**

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

1. C.O. 1165.06(a)(2)(D) states that, "an accessory structure shall maintain a proportional distance of two (2) feet for every foot in height (2:1) from the main building.
2. Since the accessory structure is 29 +/- feet tall, the proposed distance from the primary structure must be 58 +/- feet in order to meet code requirements.
3. The request does not seem to be substantial since the variance is to a setback from the

homeowner's own residence. Additionally, the lot is oddly shaped which does not give many options to place the structure in a different location.

4. The property appears to have special conditions and circumstances since it is oddly shaped, and not a typical rectangular or square lot. The triangle shape at the southeast corner, limits the amount of area where the proposed structure can be located on the lot since the lot narrows as it approaches the street.
5. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The recreational structure appears to be designed to complement the agrarian characteristics within this area of the community.
6. It appears that the variance will not adversely affect the delivery of government services, 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.

**C. A variance request to C.O. 1165(a)(1) to allow an recreational structure to have an area which is 6.13% of the lot, where the code requires the area of recreational structures must be 5% or less of the lot.**

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

1. Codified Ordinance Section 1165.06(a)(1) states a detached recreational structure shall not:
  - A. Occupy more than twenty-five percent (25%) of a required rear yard, plus forty percent (40%) of any non-required rear yard; Or
    - i. The required rear yard is 30 feet. 6,428.7 feet is 25% of the required rear yard. There is no additional non-required rear yard space within the proposal. 25% of the required rear yard is 1,607.18 square feet.
    - ii. The detached structure is not exceeding this size requirement.
  - B. Provided that in no instance shall the storage building or recreational structure exceed the ground floor area of the main building;
    - i. The ground floor area of the house is 2,334 square feet according to the Franklin County Auditor and the entire home is 5,058 square feet. The proposed structure does not exceed the floor area.
  - C. Or five percent (5%) of the total lot, whichever is less
    - i. The lot is 0.53 acres (23,086.8 square feet) according to the Franklin County Auditor. Five percent (5%) of this total lot area is 1,154.34 square feet.
    - ii. The proposed structure is 6.13% of the lot, and exceeds this area requirement.
2. The request does not seem to be substantial given that the recreational structure appears to be ancillary relative to the primary residence. The structure is located on the side and rear of lot which is approximately 350 feet away from residences along Reynoldsburg-New Albany Road. Additionally, there appears to be existing landscaping around the perimeter of the lot which helps screen the structure from the public right-of-way. A portion of the proposed recreational structure is also screened from Sutton Place by the primary structure due to the proposed location.
3. The variance appears to preserve the "spirit and intent" of the zoning requirement since the recreational structure is appropriately located on the site in relation to the house, as well as having an appropriate and well-designed exterior which matches the agrarian feel

of this area of the City. Although the proposed recreational structure has a larger area than allowed, the applicant has designed the accessory building to be made with a secondary material and shorter than the primary two-story home. Therefore, the recreational structure is well designed and scaled to appear as an accessory structure and is appropriate for its surroundings. This proposed structure would not be an appropriate structure for a typical home within the country club, however in relation to its location on the edge of the community, the proposed structure is appropriate.

4. It appears that the essential character of the area will not be substantially altered or suffer a substantial detriment by the approval of the variance since there is no neighboring residences that will be impacted where the setback encroachments are proposed to the north and west. Additionally, the architecture is consistent with general area and appears to match the existing structure. The proposed structure will not substantially alter the character of the area since it is located on the edge of the country club and borders a rural, undeveloped, lot with only neighbors on two sides of the lot.
5. The applicant states, "The proposed area is less than the area of the main house first floor footprint, and an additional 1.8% does not seem to be a substantial variance request."
6. The city architect reviewed the drawings and indicated the scale and massing of the proposed recreational structure is very well done.
7. Below is a list of applications (same as above) that have requested the same variance, for a similar type of structure. Please note detached garages are not included in this list since they have different height and area requirements than recreational structures. Historically the BZA and PC have approved height and area variance for similar sized detached garages on larger lots of record.

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6958 Lambton Park	N/A	6.5 Acres	11,561 sq. ft.	9,100 sq. ft.	Approved

8. It appears that the variance will not adversely affect the delivery of government services, 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.

**D. A variance request to C.O. 1133.05 to be setback 25 feet from the rear lot line where code requires a minimum setback of 30 feet.**

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

1. C.O. 1133.05 requires a rear yard setback of 30 feet within the R-3 zoning district.
2. The variance does not appear to be substantial since the encroachment is a minimal at five feet. There are no adjacent residences or structures located to the south of the lot, where the proposed addition is located. The land to the south is zoned agriculture and the lot is screened by existing trees to the south.
3. The property appears to have special conditions and circumstances since the shape of the lot is not a traditional square or rectangle, instead it features a shape with a corner in the area that the structure is being proposed to be located. When factoring the triangular shape at the rear of the property, the developable space is limited.
4. It appears that the essential character of the area will not be substantially altered or suffer a substantial detriment by the approval of the variance since there is no neighboring residences will be impacted by the encroachment of the setbacks to the south.
5. The City Architect indicated within his review that he is supportive of all variances to locate it as far into the corner of the lot as possible.
6. The applicant states, "they are asking for the structure to be permitted to be 25' from the rear property line... to maintain clearance from the home, garage, and to provide area for the pool due to the abstract shape of the lot." The applicant also states, "Detached garages are permitted to be within 10 feet of the rear yard, and this structure is more in line with the size of detached garages within the community."
7. It appears that the variance will not adversely affect the delivery of government services, 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. RECOMMENDATION**

In summary, staff supports these variance requests. There are no adjacent residences to the south of the lot, where the new structure is proposed to be located. Additionally, the closest neighbor to the south is 350 feet away. Even though this is a smaller lot than other lots which have received similar variances, since the proposed structure is located at the end of a subdivision, at the end of the road, and adjacent to an agrarian area of the community, it will not change the essential character of the area. Therefore, the character of the neighborhood would not be substantially altered as a result of the variance. The city architect reviewed the drawings and stated that the proposed barn design is appropriate for the area.

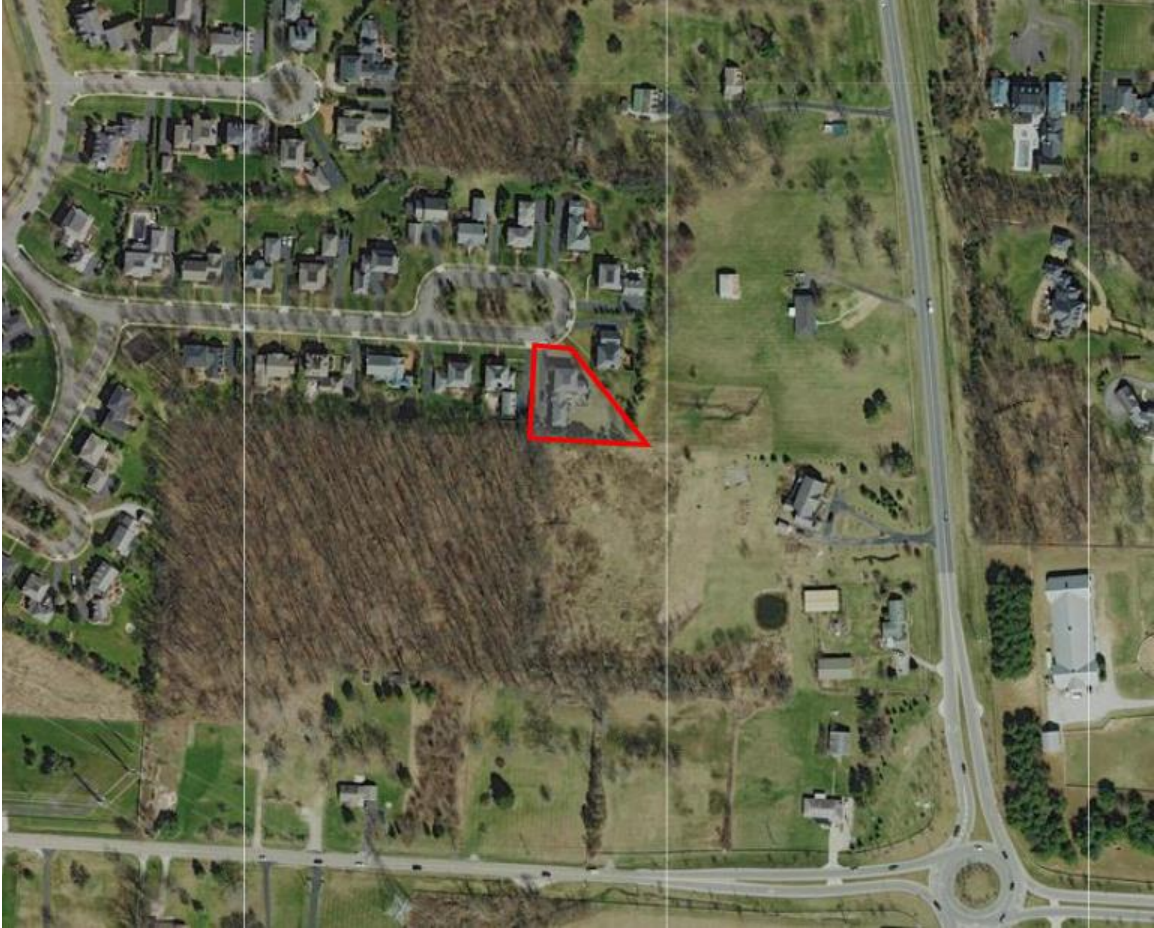
**V. ACTION**

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 village 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 variance request V-9-19.

General Site Location:



*Source: Franklin County Auditor*





**Board of Zoning Appeals Staff Report  
February 25, 2019 Meeting**

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**SHOPS AT WALTON PARKWAY  
SIGN VARIANCES**

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LOCATION: 9685-9765 Johnstown Road (PID: 222-003581)  
APPLICANT: Dan McWhorter, Transversal Investments XLLI, LLC  
REQUEST: (A) Variance to C.O. 1169.17 (b)(1)(b) to allow a dual post sign to be 8'4" in width where the city sign code allows a maximum of 7.5 feet.  
(B) Variance to C.O. 1169.05 to allow the sign to be placed within the city right-of-way where the city sign code prohibits private signage in the right-of-way.  
STRATEGIC PLAN: Retail Commercial  
ZONING: Infill Planned Unit Development (I-PUD) Oak Grove Extension  
APPLICATION: V-10-2019

Review based on: Application materials received on January 28, February 6 and February 11, 2019.

*Staff Report prepared by Chris Christian, Planner.*

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**II. REQUEST AND BACKGROUND**

There are currently two ground signs on the property that the applicant is proposing to replace. The existing signs are both along the Johnstown Road side of the property. One of the proposed signs will remain along Johnstown Road at the curb cut that serves the site and the other is to be located at the entrance to the rear parking lot. The variances requested pertain only to the proposed ground sign along Johnstown Road.

**Variations Requested:**

(A) Variance to C.O. 1169.17 (b)(1)(b) to allow a dual post sign to be 8'4" in width where the city sign code allows a maximum of 7.5 feet.

(B) Variance to C.O. 1169.05 to allow the sign to be placed within the city right-of-way where the city sign code prohibits private signage in the right-of-way.

In 2005, the Board of Zoning Appeals approved a variance request (V-7-05) at this location to allow two ground signs to be located on the property totaling 60 square feet. City staff evaluated this application based on this previous variance approval, the criteria found in the city sign code and the New Albany Business Park—Oak Grove Extension zoning text.

**III. SITE DESCRIPTION & USE**

The property is zoned I-PUD (Infill Planned Unit Development) under the New Albany Business Park—Oak Grove Extension text.

The building on the site is used as a multi-tenant space. This site is accessed via a private road that connects to Johnstown Road on the south and Walton Parkway on the north. Currently, there are two signs located on this property. One that installed in line with the fence along Johnstown Road and another at the entrance to the building's front parking lot.

### III. EVALUATION

The application complies with 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.**

13. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
14. *Whether the variance is substantial.*
15. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
16. *Whether the variance would adversely affect the delivery of government services.*
17. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
18. *Whether the problem can be solved by some manner other than the granting of a variance.*
19. *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*):

20. *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.*
21. *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.*
22. *That the special conditions and circumstances do not result from the action of the applicant.*
23. *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.*
24. *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.*

### **III. RECOMMENDATION**

#### ***Considerations and Basis for Decision***

#### **(A) Variance to C.O. 1169.17 (b)(1)(b) to allow a dual post sign to be 8'4" in width where the city sign code allows a maximum of 7.5 feet.**

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

11. C.O. 1169.17 (b)(1)(b) states that the maximum sign board width permitted for a dual post sign is 7.5'.
12. The applicant proposed to install a new horizontally oriented dual post ground sign with a sign board with of 8'4".
13. The proposed sign meets other city sign code and zoning requirements including height, materials and maximum number of colors requirements.
14. The variance appears to preserve the "spirit and intent" of the city sign code. The sign is well designed and is proposed to be installed in an appropriate general location at the curb cut but that serves this site. The design of the sign is sensitive to its surrounding environment as it is generally consistent with the design of other signs in this area. The Canini Trust Corp Sign Recommendations allow the width of multi-tenant signs to be a maximum of 8' 10". This width of this sign is smaller than 8' 10" and appears to be appropriate for this multi-tenant building.
15. The request does not appear to be substantial. The applicant is proposing to remove both signs that are along Johnstown Road and replace them with this single sign on this road frontage which assists in maintaining the rural aesthetic in this area by removing excess signage along main roads.
16. It does not appear that the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment." The proposed sign will sit approximately 41 feet +/- off of Johnstown Road and it does not appear that the sign will limit the visibility for drivers along this road. Staff recommends a condition of approval that the final location of the sign shall not impact driver visibility, subject to staff approval. Additionally, it does not appear that the proposed sign will create competition with neighboring signs in this area.
17. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
18. It appears that granting the variance will not adversely affect the delivery of government services.

#### **(B) Variance to C.O. 1169.05 to allow the sign to be placed within the city right-of-way where the city sign code prohibits private signage in the right-of-way.**

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

1. C.O. 1169.05 (a) states that signs may not be installed in any public easement, right-of-way, or no build zone, except publically owned signs, such as traffic control signs and directional signs.
2. The applicant is proposing to install a dual post ground sign inside the right-of-way approximately 20 feet +/- off of the property line. As proposed, the sign is three feet away from the leisure trail but extends past the horse fence along the private road. The city sign code states that signs and their location should be considered in relationship to their surrounding environment. Slightly shifting the sign so that it does not extend past the limits of the horse fence appears to be more appropriate to ensure that the sign does

not feel out of place. Staff recommends a condition of approval that the sign does not extend past the horse fence along the private road.

3. This variance request does not appear to be substantial. The proposed sign location is generally consistent with other sign locations in the area. It would not be obvious that the sign would be placed in the right-of-way unless you were looking at the lot lines on paper.
4. There appear to be special conditions and circumstances which are peculiar to the land. The lot is oddly shaped due to the presence of a basin that serves the stormwater runoff from the road which limits where a sign could be installed at this location.
5. The variance request appears to preserve the “spirit and intent” of the city sign code. The sign is a multitenant sign for businesses that are all located on a single property within a single strip center. Additionally, the sign is appropriately located given the pattern of the horse fence thus the sign will not feel out of place once slightly moved per staff's comments above.
6. The stormwater basin consists of a large storm drainage in the general proximity of where the sign is to be located. Staff recommends a condition of approval requiring final sign location be approved by the city engineer to ensure there is no impact to the drainage facilities or other utilities.
7. The city's sign code prohibits private signs in the city's right-of-way since this ground is subject to utility burial for private and public infrastructure. Therefore this sign could be removed any utility company and would be required to be reinstalled. Therefore if the BZA supports this variance and agrees to allow the applicant to have this signs be inside the right-of-way staff recommends a condition of approval requiring a hold harmless, or letter that specifies that the applicant is responsible for maintenance, ownership and liability concerning the sign, subject to the review and approval of the city's law director, and a right-of-way permit be submitted.

In summary, staff recommends approval of the requested variances should the Board of Zoning Appeals find that the application has sufficient basis for approval. The signs are created with sensitivity to their surrounding environment and are consistent with other signs found within this area. The intent of the city sign code is to ensure that signs are properly scaled and it appears that this sign is appropriately scaled for this site. Typically the city is not supportive of installing signs within the right-of-way. However, given to the odd shape of the lot due to the city's stormwater basin, signage at this location is forced to be pushed back from the curb cut where it normally could be located. The proposed location of the sign appears to be appropriate and will not feel out of place once it is slightly moved inside the horse fence on the private drive. Additionally, with the hold harmless agreement or letter, the city will not be held liable for the sign even if it is in the right-of-way. The final location of the sign should be approved by the city engineer to ensure that there is no impact to drainage facilities or other utilities.

#### **IV. ACTION**

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motions would be appropriate (conditions may be added):

**Move to approve application V-10-2019 with the following conditions:**

1. The final location of the sign shall not impact driver visibility, subject to staff approval.
2. The sign does not extend past the horse fence along the private road.

3. The final sign location be approved by the city engineer to ensure that there is no impact to the drainage facilities or other utilities.
4. A hold harmless or letter is required that specifies that the applicant is responsible for maintenance, ownership and liability concerning the sign, subject to the review and approval of the city's law director, and a right-of-way permit be submitted.

Approximate Site Location:



Source: Google Earth