



**New Albany Planning Commission
April 20, 2020 Meeting Minutes**

Planning Commission met in regular session in the Council Chambers at Village Hall, 99 W. Main Street and was called to order by Planning Commission Chair Mr. Neil Kirby at 7:03 p.m.

Those answering roll call:

Mr. Neil Kirby, Chair	Present
Mr. Brad Shockey	Present
Mr. David Wallace	Present
Mr. Hans Schell	Present
Ms. Andrea Wiltrout	Present
Mr. Sloan Spalding (council liason)	Present

(Mr. Kirby, Mr. Shockey, Mr. Wallace, Mr. Schell, Ms. Wiltrout, and Mr. Spalding present via GoToMeeting.com).

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; Mitch Banchevsky, City Attorney (via GoToMeeting.com); Ed Ferris, City Engineer (via GoToMeeting.com); and Josie Taylor, Clerk (via GoToMeeting.com).

Mr. Kirby provided corrections for the minutes. Moved by Mr. Wallace, seconded by Ms. Wiltrout to approve the March 16, 2020 meeting minutes, as corrected. Upon roll call: Mr. Wallace, yea; Ms. Wiltrout, yea; Mr. Schell, yea; Mr. Shockey, yea; Mr. Kirby, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Mr. Kirby asked if there were any additions or corrections to the agenda from staff.

Mr. Christian stated the applicant for VAR-112-2019 requested the application be tabled until the May, 2020 Planning Commission (hereafter, "PC") regular meeting.

Mr. Kirby swore to truth those present and wishing to speak before the PC.

Mr. Kirby requested that all participants attending the meeting through GoToMeeting.com who wished to speak to the PC please state their names and that they sworn to tell the truth.

The following persons stated they were sworn to tell the truth: Mr. Jason Coffee; Ms. Anne-Marie Warner; Mr. Mayer; Mr. Christian; Mr. Jim Ruffo; Ms. Samantha Ruffo; Ms. Peg Largent; Mr. Ferris.

Mr. Kirby asked Ms. Taylor to repeat the names of individuals who had identified themselves as having been sworn to tell the truth.

Ms. Taylor stated the names of those individuals she had heard.

Mr. Kirby asked that anyone who had sworn to the tell the truth but had not been named by Ms. Taylor identify themselves.

Mr. Darryl Menerey and Mr. Ed Ferris stated they swore to tell the truth.

Mr. Kirby asked for cell phones to be silenced and requested that if participant were not actively speaking they mute themselves and remember to un-mute themselves when ready to speak. Mr. Kirby noted there was also a chat window available if a participant was unable to speak and asked Mr. Christian to monitor the chat.

Mr. Christian stated staff would do that.

Mr. Kirby asked if members of the public wished to speak on any non-agenda items. (No response.)

VAR-112-2019

Variance Reconsideration

Reconsideration request for a variance to the Tidewater zoning text section VI(D)(6) to allow a patio to be installed within the platted preservation zone where the zoning code does not permit (PID: 222-003794).

Applicant: Muhammad Arif

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-112-2019, seconded by Mr. Schell. Upon roll call vote: Mr. Kirby, yea; Mr. Schell, yea; Ms. Wilttrout, yea; Mr. Wallace, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Moved by Mr. Kirby to table the hearing to reconsider VAR-112-2019 to the regularly scheduled May 2020 PC meeting, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea; Ms. Wilttrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

VAR-23-2020 Variance

Variance to the Saunton zoning text section 2.03(4)(b) to allow a spa to be constructed above ground where the zoning text requires spas to be installed in ground at 8241 Marwithe Court (PID: 222-00411-00).

Applicant: Brad Fuller

Mr. Christian presented the staff report.

Mr. Kirby asked if there were Engineering comments.

Mr. Ferris stated no.

Mr. Kirby asked to hear from the applicant.

Mr. Christian stated he did not think Mr. Fuller was at the meeting.

Mr. Kirby noted that Mr. Mike Crommes, of Capital City Pools, Inc., indicated via chat that he could hear the meeting audio but was unable to speak. Mr. Kirby asked if Mr. Crommes represented the applicant.

Mr. Christian stated Mr. Brad Fuller was the applicant for VAR-23-2020 and Mr. Crommes was the applicant for the next VAR-27-2020.

Ms. Wilttrout asked if Mr. Fuller was in attendance.

Mr. Christian stated it did not appear he was present.

Mr. Mayer stated the PC could elect to table the application if they had questions for the applicant. Mr. Mayer added that he and Mr. Christian could try to answer questions the PC might have if the PC felt comfortable taking action on this application without the applicant present.

Mr. Kirby asked if this was a pool according to the Code.

Mr. Mayer stated no, to be a pool it had to be at least 100 square feet and according to the applicant's information it was about eighty (80) square feet. Mr. Mayer stated it did not require additional fencing and other pool related requirements. Mr. Mayer stated it would be elevated and the applicant would provide a gate along a stairwell to get to the top of the deck area from the backyard as additional security.

Mr. Kirby stated the applicant's submission called it a pool.

Mr. Christian stated that when the zoning permit was denied the applicant later confirmed that it was less than 100 square feet with the manufacturer. Mr. Christian stated that clarification should have been included in the packet.

Mr. Kirby stated the original documentation showed it as 112 square feet.

Mr. Christian stated he could confirm the manufacturer's specs stated it was less than 100 square feet.

Mr. Kirby asked why the variance was needed.

Mr. Christian said the zoning text stated that all pools and spas must be in-ground.

Mr. Schell asked if the reason it could not go further underground was because some of the mechanicals would be underneath the unit.

Mr. Christian stated he believed the main reason was the expense.

Mr. Schell asked what if there was a figure on what that cost would be.

Mr. Christian stated the applicant would best answer that.

Mr. Schell stated he believed he had read it could not go further underground because of the mechanicals and asked if others had seen that.

Mr. Kirby stated he believed so.

Mr. Wallace stated he had seen that also.

Mr. Schell stated that needed to be clarified.

Mr. Kirby stated the handwritten portion of the application did say it was "not possible to bury a swim spa."

Mr. Schell asked if anyone was familiar enough with these to know if that was accurate.

Mr. Kirby stated that he assumed on claims made for the pool or spa it was up to the applicant or the applicant's representative to speak authoritatively.

Ms. Wilttrout stated that without the ability to question the applicant she would recommend tabling this.

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-23-2020, seconded by Ms. Wilttrout. Upon roll call vote: Mr. Kirby, yea; Ms. Wilttrout, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Moved by Ms. Wilttrout to table VAR-23-2020 to the next PC meeting, seconded by Mr. Kirby. Upon roll call vote: Ms. Wilttrout, yea; Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 -0 vote.

VAR-27-2020 Variance

Variance to the pool fencing requirements of Codified Ordinance section 1173.02(e) at 7010 Lambton Park Road (PID: 222-002598).

Applicant: Capital City Pools INC c/o Mike Crommesmme

Mr. Christian presented the staff report.

Mr. Wallace indicated he was joining the meeting via phone and could not see the presentation.

Mr. Christian and Mr. Mayer assisted Mr. Wallace in locating the visual presentation on his phone.

Mr. Kirby asked if there was any Engineering.

Mr. Ferris stated no.

Mr. Kirby asked for the applicant.

Ms. Anne-Marie Warner, the homeowner, indicated a pool cover had just been installed. Ms. Warner added that the Code compliant fence on the southwest side had been partially installed and would continue to be installed. Ms. Warner asked if it was possible to avoid further landscaping or mounding that might obstruct their views from the pool to the golf course. Ms. Warner stated that if it was a safety issue then they would put that in.

Mr. Kirby asked Ms. Warner to confirm she had been sworn to tell the truth and asked Mr. Crommes to confirm the same via chat.

Ms. Warner stated yes.

Mr. Crommes indicated via chat that he was sworn to tell the truth.

Mr. Kirby stated he applauded the Code complaint fencing that had been installed. Mr. Kirby stated he believed current New Albany Code required 48 inches.

Mr. Christian stated yes.

Ms. Warner stated hers was sixty (60) inches.

Mr. Kirby asked why there was not a Code compliant fence on the area of the site indicated by a yellow line in the presentation.

Ms. Warner stated they could put one there but that, aesthetically, it looked odd as the area sloped down. Ms. Warner added that the area indicated by the yellow line was the backyard and made putting a fence there unsightly as it split the backyard while the horse fencing was more in keeping with the golf course and community.

Mr. Kirby asked if the applicant was not in favor of the staff requested screening.

Ms. Warner stated they were hoping there was a way around that. Ms. Warner stated that screening would be around the pool itself, not around the golf course and she was not sure it was really needed. Ms. Warner asked if it was more to prevent access or was it just for aesthetics. Ms. Warner added that if it was for access they had the automatic pool barrier, the existing horse fence, the creek, and it was already elevated compared to the golf course so it would take quite a bit of effort to get there. Ms. Warner said if it was more of an aesthetic, that would not be seen from the golf course and there had not been any screening for the last fifteen (15) years and she was not sure it was required.

Mr. Mayer stated the City of New Albany private swimming pool Code required a wall or fence be designed and constructed so as effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Mr. Mayer noted that in previous applications the design of the horse fence was found not to effectively prevent a child from passing through or under. Mr. Mayer added that in order to prevent a child from getting to the pool where there has been horse fencing an additional layer or buffer of landscaping and/or mounding has been needed.

Ms. Warner stated she believed it was a barrier, not an aesthetic. Ms. Warner asked if the combination of the horse fence, the creek, the elevation from the golf course, and the automatic pool cover would still not meet the intent of the law. Ms. Warner asked what a three (3) foot hedge would add to that.

Mr. Kirby stated it had more to do with the ease of climbing rather than the height, adding that a thick hedge would be harder to climb.

Mr. Mayer added that the grade change along the golf course was unique to this location and could be considered by the PC to determine if there was effective means to prevent a child from crawling through or under a fence to the pool.

Ms. Warner stated the automatic pool cover was sufficient for the state of Ohio and it was only New Albany that had additional requirements. Ms. Warner asked if the automatic pool cover, the fence, the creek, and the grade were not enough of a barrier.

Mr. Kirby asked staff to bring up on the presentation the photo showing the horse fence from the golf course. Mr. Kirby stated that from the image the gradient did not seem to be a major barrier.

Mr. Wallace stated he thought the intent of the ordinance was to have the fence around the pool with a gate on it. Mr. Wallace noted they were seeing requests to not install a fence or to install a fence and other barriers not near the pool in an attempt to prevent access to the pool and that was when compliance with the ordinance became an issue. Mr. Wallace indicated that the Highgrove lots were a little different as the lots were smaller and the shrubbery around the pool created a

barrier that seemed to be sufficient to prevent a child's access to the pool. Mr. Wallace said that in past applications ASTM compliance did not have to do with safety but was a matter of operability and functionality. Mr. Wallace stated he had not seen any safety information included with this application.

Ms. Wiltrout asked what was the barrier to a child going from the path up the slope to the pool, other than the cover.

Ms. Warner stated that other than the cover there was a mound and the horse fence. Ms. Warner added that with the pool cover closed an adult could safely walk on it and for the state of Ohio an automatic pool cover was sufficient without a fence.

Mr. Kirby asked Mr. Crommes to type any comments he wished to the public at large and added that he would read them out loud for him.

Ms. Warner stated Mr. Crommes had typed a private message to her stating that an entire family of four (4) could stand on the pool cover when closed and that he believed the ASTM did address safety.

Ms. Wiltrout stated the pool cover may be a barrier able to protect a child from falling into the pool, but her issue was that the proposed plan, especially without extra landscaping barriers, did appear to meet the intent of the ordinance. Ms. Wiltrout added that she also did not see another barrier that would impede pool access in the photos provided.

Ms. Warner asked if a barrier was needed, would placing a three (3) foot barrier along the edge of the pool on the side that faced the golf course, rather than along the horse fence, be sufficient.

Mr. Kirby asked if staff had an overhead image of the site.

Ms. Warner asked where would be a great spot to put a 36 inch hedge in order to achieve compliance. Ms. Warner asked if they could put it along the edge of the pool rather than the edge of the fence and how far along the edge of the pool would they need to go.

Mr. Kirby stated his understanding from Highgrove was that a hedge would be thick and hard to get through and would need to somewhat tightly wrap completely around the pool and have gates in it that were actual gates.

Mr. Christian indicated that was also staff's recollection.

Mr. Kirby asked if that answer helped the applicant.

Ms. Warner stated yes and added that her question then was if they could meet the requirements by having a hedge along just the side of the pool facing the existing horse fence.

Mr. Shockey stated the Code required a fence and workarounds involving hedges had been done to limit access. Mr. Shockey stated a fence should be required whether there was a pool cover or not because covers could be fallible. Mr. Shockey asked how long this had been this way.

Mr. Christian stated this had been an open Code enforcement case since ...

Ms. Warner stated fifteen (15) years.

Mr. Shockey stated that because this has been ongoing and because this was a new resident, maybe Ms. Warner could work with her consultants and possibly return with something that was more definitive in terms of a rendering or landscape plan.

Mr. Kirby stated that if Ms. Warner wanted a vote this evening she could request one but, if she felt a redo of the plan would make it more likely to pass or be more amenable for her to live with, she could ask for another month.

Ms. Warner stated it would be preferable not to wait an additional month and asked if PC could look at the earlier submittal which did show a hedge around the pool and vote on that. Ms. Warner noted Mr. Crommes was a landscape architect.

Mr. Christian stated that had been submitted to staff after a preliminary review but soon after the applicant had stated the plan had not been what they wanted to do. Mr. Christian stated that was why that earlier plan had not been in the packets, but said staff could bring it up.

Mr. Kirby stated more PC members might prefer to see a perimeter fence or impenetrable barrier around the pool. Mr. Kirby added that the size of the perimeter was up to the applicant as long as it was hard to get through. Mr. Kirby said the applicant could wrap it around the pool or the property as long as it met Code requirements.

Mr. Wallace stated he believed it would be too difficult, with the online format, to evaluate an alternative plan that had not been in the packet, at least for him.

Mr. Kirby stated they could show the plan and then determine if they could evaluate from the plan shown.

Mr. Christian stated the plan was on the screen and asked PC members if they could see it.

Mr. Kirby stated yes, adding it seemed to show the right idea. Mr. Kirby stated that if it connected to other barriers such as the new five (5) foot fence, if it wrapped around and then jumped over to the fence and continued around on the back side to the house, there would be a complete perimeter.

Ms. Warner stated that made sense and noted the manner in which another property on Lambton Park had designed its pool and landscaping.

Mr. Kirby said the Lambton Park variance was the oldest one, adding that there had been some evolution on the thought of what constituted a safe variance to the pool Code.

Mr. Wallace noted the variance vote for the other lot had not been unanimous.

Ms. Warner stated enough said, noting she would still prefer to put it up for a vote with the earlier plan that had been put up if they did a partial hedge around the pool with Code complaint fencing on the southwest side, the new horse fence connecting the house to the existing horse fence on the northeastern side, and see what the PC says.

Mr. Kirby asked the applicant if the proposal she wanted to be voted on this evening was the partial hedge with the new fence, the yellow fence, to be a 44 inch horse fence.

Ms. Warner stated yes.

Ms. Wiltrout asked staff if there was more information on the nature of the hedge surround and how it compared to prior applications that had used hedging.

Mr. Christian stated the Highgrove hedges were between thirty (30) and 36 inches tall and the applicant now showed was four (4) to six (6) feet tall on the western side of the property and a three (3) foot tall boxwood, which was the same installed at the Highgrove property.

Ms. Wiltrout asked if in the proposal the applicant was still going to build the sixty (60) inch aluminum fence where it had been going to be built before.

Ms. Warner stated yes and said it was already there though it did not yet connect to the horse fence, but was ready to do so.

Ms. Wiltrout asked what was going to be placed where the plan showed some steps with an arrow. Ms. Wiltrout asked if that was a gate to the pool.

Mr. Christian indicated Mr. Mayer was identifying that area in the presentation and it seemed to be steps down to the catch pool.

Ms. Wiltrout asked what a catch pool was.

Ms. Warner stated it was a kind of negative edge pool, the existing pool flowed down into the catch pool which would have water eighteen (18) inches deep.

Mr. Kirby stated Mr. Crommes had stated in the chat window "[i]f we install a continuous hedge around the pool, how does that not satisfy concerns?" Mr. Kirby said he wanted to cross check with the applicant on how contiguous the hedge would be.

Ms. Warner stated she would prefer not to have it be contiguous and to have it only on two (2) sides. Ms. Warner stated that otherwise they would propose to do exactly what 6985 Lambton Park did with landscaping along the white existing and new horse fence so they would not have anything stuck to the pool edges and the patio that connected to the pool would not be blocked.

Ms. Wiltrout asked the applicant if she was suggesting the hedging would be flush against the white fence for the whole property line or the property line that went by the golf course.

Ms. Warner stated they were hoping to just have it flush with the pool on only two (2) sides so it had a barrier for direct access from the golf course.

Ms. Wiltrout asked if the intent was to get the hedging on the side of the fence.

Mr. Kirby stated no, he understood the hedging was to be an inner-perimeter fence tied to the pool.

Ms. Warner stated yes.

Mr. Kirby asked Mr. Wallace if he had seen the plan with the hedge along two (2) sides of the pool edge.

Mr. Wallace yes, and said that from his perspective two (2) sides were not sufficient.

Ms. Warner stated to keep in mind that they still had the Code compliant fence on the larger side where the red line was previously and would have new horse fence that connected the house to the existing horse fence on the north side.

Mr. Wallace stated he understood but that he did not believe any of the plans, as submitted, met Code.

Mr. Kirby asked if any members of the public had questions or comments. (No response.)

Mr. Kirby stated Mr. Crommes had asked on chat "[e]ffectively, you are requesting two barriers? Plus the cover?"

Mr. Kirby stated the answer was one (1), but it needed to be effective and a hedge around two (2) sides did not meet that need as it was only partially compliant.

Ms. Warner stated the tricky part for her was that a horse fence did not comply and a 36 inch shrub would not comply either so would that have to be all around.

Mr. Kirby stated he believed the depth of the hedge added to its effectiveness without requiring it to be so high but noted that even that was a variance.

Mr. Schell noted he only had audio, not video to the meeting and could not see the prior plan that had been submitted.

Mr. Wallace stated that if they were voting this evening on the variance he wanted to be very clear on what was being voted on, adding that he would be in favor of tabling if they could not get clarity on what the applicant wanted the PC to vote on.

Mr. Kirby stated he was concerned that Mr. Schell could not see the new proposal, Mr. Wallace did not have an image he could fully review, and the applicant and PC appeared to disagree on what should be there, so he would entertain tabling so the applicant could resubmit it or the applicant could have a vote on the original as presented. Mr. Kirby asked the applicant what her preference would be if given the choice to have a vote on the original submission that was in the packet or tabling for next month.

Ms. Warner stated the initial application vote would be her preference unless that meant she would not be able to resubmit.

Mr. Kirby asked Mr. Banchevsky to respond to that question.

Mr. Banchevsky stated if the PC voted this evening that would be the vote. Mr. Banchevsky stated if the concern was that the votes would not be in the applicant's favor or the applicant wanted to modify, then he would suggest tabling and then returning to the PC.

Mr. Shockey stated he had seen in the past where PC had brought something back for reconsideration and asked what was required.

Mr. Banchevsky stated that would require a PC vote to bring it back and there would need to be some type of change, but noted that was not the preferred procedure.

Mr. Kirby stated that the motion to reconsider had to be made by those who had voted in the majority on the day of the original motion. Mr. Kirby added that if they did not move to reconsider there would not be any reconsideration.

Mr. Banchefsky stated yes, it was a risk to the applicant and it was an exceptional remedy.

Ms. Warner stated that in that case she would be happy to table it and asked if that would mean it would be presented in May or June.

Mr. Mayer stated they could work toward a May hearing date.

Mr. Kirby stated the applicant was not out of time for May if she did not delay.

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-27-2020 including the earlier applicant submission not in packet, seconded by Mr. Schell. Upon roll call vote: Mr. Kirby, yea; Mr. Schell, yea; Ms. Wiltrout, yea; Mr. Wallace, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Moved by Mr. Kirby to table VAR-27-2020 until the regularly scheduled PC meeting, seconded by Ms. Wiltrout. Upon roll call vote: Mr. Kirby, yea; Ms. Wiltrout, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Shockey, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 -0 vote.

TM-29-2020 Zoning Text Modification

Amendment to the Courtyards at New Albany PUD zoning text to allow artificial turf to be used in limited locations within the subdivision (PID: 222-001972).

Applicant: Epcon Communities c/o Joel Rhoades

Mr. Christian presented the staff report.

Mr. Kirby asked if there were any Engineering comments.

Mr. Ferris stated no.

Mr. Jason Coffee, with Epcon Communities, discussed the application and stated they were happy to answer questions.

Mr. Kirby asked Mr. Coffee to discuss some of the better aspects and problems solved, through the use of the turf, especially for the courtyards, adding that for the pool it was straightforward.

Mr. Coffee stated it would be very similar for the courtyards. Mr. Coffee stated that area would be mulch now, and residents, particularly those with pets, preferred a lower maintenance green area.

Mr. Schell asked about the life of the turf and its potential fading.

Mr. Darryl Menerey stated it had a 25 year useful lifespan, was recyclable, and would have some fading but it was hardly noticeable.

Mr. Kirby asked Mr. Menerey and Mr. Coffee to affirm they had both been sworn to tell the truth.

Mr. Menerey stated yes.

Mr. Coffee stated yes.

Mr. Schell stated those were his only questions.

Ms. Wiltrout asked for confirmation that, for the courtyards, this would be an available option for homeowners.

Mr. Coffee stated yes this would be an upgrade option and added that the standard was mulch. Mr. Coffee noted that no natural grass was offered.

Ms. Wiltrout asked if a home were sold and purchased by a new owner, could the turf be changed to mulch.

Mr. Coffee stated it could be ripped out for mulch.

Mr. Menerey stated the interior courtyards were maintained by the homeowners, not the condo association.

Mr. Wallace asked if where the photos showed a green color they were illustrating the turf.

Mr. Coffee stated that was correct.

Mr. Wallace asked if a site plan showing the layout of all the homes where the turf might be installed was available.

Mr. Coffee stated it was a buyer driven option and not on every home.

Mr. Wallace stated he understood, but wondered if there was an overhead image of the development and where the turf might go.

Mr. Coffee referred to two pictures on the presentation at the lower left of the screen.

Mr. Menerey stated it would depend on how many homeowners would select the turf option.

Mr. Coffee stated at this point they anticipated less than twenty percent (20%) and maybe thirty percent (30%) at most.

Mr. Wallace asked about a condition that the artificial turf be subject to staff approval.

Mr. Christian stated yes.

Mr. Coffee stated okay and asked if they had reviewed the samples sent.

Mr. Christian stated staff had been shown samples and thought they were pretty good noting that the one used for the pool was a little thinner while that proposed for the courtyards was a little thicker.

Mr. Kirby stated thank you.

Mr. Schell asked if any other New Albany development used turf.

Mr. Christian stated yes, the Architectural Review Board had approved the use of turf in the new amphitheater.

Mr. Schell stated thank you.

Moved by Mr. Kirby to accept the staff reports and related documents into the record for TM-29-2020, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Ms. Wiltrout, yea; Mr. Shockey, yea; Mr. Schell, yea;. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Mr. Kirby asked if there were any further comments on this application. (No response.)

Moved by Mr. Wallace to approve TM-29-2020 based on the findings in the staff report, with the condition listed in the staff report amended to read that the artificial turf material and location are subject to staff approval, seconded by Mr. Kirby. Upon roll call vote: Mr. Wallace, yea; Mr. Kirby, yea; Mr. Shockey, yea; Mr. Schell, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 -0 vote.

Other Business

New Albany Strategic Plan Update

Mr. Mayer presented an update on the Strategic Plan, noting they were seeking to finalize the process in July to City Council.

Ms. Wiltrout stated it was impressive how much had been completed during this Covid-19 time.

Poll Members for Comment

Mr. Kirby asked members for their comments.

Mr. Wallace indicated he thought this had gone well and thanked those who had helped make it a successful meeting.

Mr. Shockey stated he agreed.

Ms. Wiltrout stated she hoped they could soon meet in person.

Mr. Shell thanked everyone for a good job.

Mr. Kirby adjourned the meeting at 9:04 p.m.

Submitted by Josie Taylor.

APPENDIX



Planning Commission Staff Report April 20, 2020 Meeting

9230 PAMPLIN WAY PRESERVATION ZONE VARIANCE RECONSIDERATION

LOCATION: 9230 Pamplin Way (PID: 222-003794-00)
APPLICANT: Muhammad Arif
REQUEST: Variance Reconsideration
ZONING: Tidewater I-PUD
STRATEGIC PLAN: Rural Residential
APPLICATION: VAR-112-2019

Review based on: Application materials received December 18, 2019 and February 27, 2020.

Staff report completed by Chris Christian, Planner

I. REQUEST AND BACKGROUND

On January 22, 2020, the Planning Commission denied the variance request. On March 16, 2020, the Planning Commission voted to reconsider the variance application based on new information provided by the applicant.

This hearing is for the variance reconsideration request to allow a patio to be built within a preservation zone located at 9230 Pamplin Way in the Tidewater subdivision. The applicant's new information and proposal is to dedicate new and additional land on their property as preservation zone in order to offset the encroachment. The applicant's submittal can be found in a separate letter provided attached to this staff report.

II. SITE DESCRIPTION & USE

The site is located at 9230 Pamplin Way in the Tidewater subdivision, east of US-62 and north of Central College Road in Franklin County. According to the Franklin County Auditor website, there is currently a 4,451 square foot single family home developed on the .53 acre property. The site backs onto an unnamed tributary to the Blacklick Creek.

III. ASSESMENT

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 Commission 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. RECOMMENDATION

Considerations and Basis for Decision

A. Variance to Tidewater zoning text section VI(D)(6) to allow a patio to be installed within the preservation zone where the zoning code does not permit any structure to be built, no grading or clearing.

The following should be considered in the Commission’s decision:

Background:

1. Tidewater zoning text section VI(D)(6) states no structure or building shall be placed upon, in or under the area designated “Preservation Area” hereon, nor shall any work including but not limited to grading and clearing be performed thereon which would alter the natural state or topography of such area or damage any of the trees or vegetation thereon including but not limited to planting and mowing of turf grasses, provided that the use of hand tools for the removal of debris and dead woody vegetation shall be permitted.
2. The applicant requests a variance to allow a patio to be installed within a platted preservation zone at 9230 Pamplin Way located in the Tidewater subdivision. The patio was constructed without obtaining a permit and city staff was notified by the subdivision homeowners association that work was being completed in the preservation zone in October 2019.
3. A significant portion of this property is located within the platted preservation zone which contains a tributary to the Blacklick creek and a corresponding 100 year floodplain. This lot has a depth of 232 feet and the preservation zone extends approximately 130 feet from the rear lot line into the property. City staff visited the site and determined that the patio was encroaching into the platted preservation

4. This preservation zone also serves as a floodway for the Tidewater subdivision and an area located outside the subdivision and is not supportive of the variance request. City staff determined that the patio is not installed within the 100 year flood plain therefore no other variances are needed.
5. The applicant states that they were not aware of the preservation zone when they purchased the home and they constructed the patio as a safety measure to allow their children to play outside. The applicant states that there are snakes in the backyard which raises some safety concerns.
6. On January 22, 2020, the Planning Commission denied the variance request for the following reasons:
 - a. The reasons listed in the staff report as described above.
 - b. If the homeowner followed the proper permitting procedures with the HOA and the city, the variance could have been avoided.
 - c. The application failed to meet the Duncan factors.
7. On March 16, 2020, the Planning Commission voted to allow a reconsideration of the variance request based on new information provided by the applicant.

MINIMUMS R $\frac{30'}{10'}$ LOT COVERAGE 11.6%

100YR. FLOODPLAIN BOUNDARY

DRAINAGE BASEMENT & STREAM / WETLAND PRESERVATION ZONE

CL. DITCH

FLOODWAY

23

22

24

FOREST WELLS

A/C U

9230

P.F. = 1104.11

T.O.B. = 1103.17

B.S.M.T. = 1094.5

MANHOLE T.C. = 1100.8

SANITARY SEWER TAP

D.I.P.

SLOPE = 4.3%

20' BASEMENT

RECEIVED DEC 18 2019

BY:

- Page 15 of 31

quality. The dedication of new and additional land as preservation zone does not appear to serve the same environmental purpose therefore it does not meet the spirit and intent of the preservation zone. The boundary line of the preservation zone was established at the time of a final plat in order to maintain the riparian corridor of a stream with a significant drainage area of 150 acres. The proposed dedication does not follow these boundary lines of the preservation zone therefore it would not serve the same intended purpose.

3. The essential character of the neighborhood would be altered by granting the variance request. The additional and new land that the applicant is proposing to dedicate as preservation area would not be permitted to be mown per the zoning text. If the variance is granted, it would cause an inconsistent landscape treatment between this home and the rest of the subdivision which is not desirable.
4. It does not appear that there are special conditions and circumstances which are peculiar to the land that justify the variance request. There are multiple homes within this subdivision that back onto preservation areas. There is approximately 20 feet from the back of the home to the preservation area to build a patio

Staff is not supportive of the variance request. The intent of the zoning text is to allow the preservation area to remain and re-establish the in its natural state. In order to accomplish this the text restricts structures, grading, and clearing from occurring in this area. The 2014 New Albany Strategic Plan states that setbacks should be established along stream and riparian corridors. This preservation zone was established for this subdivision in order to maintain the riparian corridor of a stream with a significant drainage area of 150 acres.

The dedication of additional, new land as preservation area does not appear to serve the same environmental purpose as described above. The essential character of the neighborhood may be altered by granting the variance request because it would result in an irregular landscape treatment between this home and neighbors due to the different extension of mowed versus non-mowed areas. Additionally, it does not appear that there are any special conditions or circumstances that are peculiar to the land that justify the variance request. There are multiple homes within the subdivision that back on to preservation zones and there appears to be adequate space for the property owner to build a patio that does not encroach into the preservation zone.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application V-112-2019 based on the findings in the staff report. Conditions of approval may be added.

Approximate Site Location:



Source: Google Maps



**Planning Commission Staff Report
April 20, 2020 Meeting**

**8241 MARWITHE COURT
SPA VARIANCE**

LOCATION: 8241 Marwithe Court (PIDs: 222-00411-00).
APPLICANT: Brad Fuller
REQUEST: Variance to the Saunton zoning text section 2.03(4)(b) to allow a spa to be constructed above ground where the zoning text requires spas to be installed in ground
ZONING: I-PUD New Albany Business Park—Oak Grove Extension, subarea 2 (Saunton Subdivision)
STRATEGIC PLAN: Town Residential District
APPLICATION: V-23-2020

Review based on: Application materials received March 1 and April 2, 2020.

Staff report prepared by Chris Christian, Planner

II. REQUEST AND BACKGROUND

The applicant has applied for a variance for a spa at 8241 Marwithe Court.

The variance request is as follows:

- (A) Variance to the Saunton zoning text section 2.03(4)(b) to allow a spa to be constructed above ground where the zoning text requires spas to be in ground construction.

IV. SITE DESCRIPTION & USE

The property is located at 8241 Marwithe Court within the Saunton subdivision. The lot is .24 acres and developed with a 3,442 square foot single family home.

V. EVALUATION

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.

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 the Saunton zoning text section 2.03(4)(b) to allow a spa to be constructed above ground where the zoning text requires spas to be installed in ground.

The following should be considered in the Commission’s decision:

1. The applicant proposes to install a spa above ground where the zoning text requires all spas to be installed in ground.
2. There is an existing deck built in the rear of the home. The applicant proposes to expand the existing deck along the back of home and install the spa along back (south side) of the new deck expansion.
3. It does not appear that the essential character of the neighborhood would be altered if the variance request is granted since the spa will be screened from adjoining properties and integrated into the decking. While the applicant is proposing to install the spa above ground, the spa will be appropriately screened from adjoining properties with the lattice screening material and existing landscaping. There is lattice screening the underside of the existing deck and the applicant proposes to wrap the spa and the extended deck area with the same lattice.
4. The variance request appears to meet the spirit and intent of the zoning text requirement since the top of the spa will be general flush with the top of the decking floor. Approximately one foot of the spa will extend above the eastern portion of the new deck. The applicant is proposing to screen this by extending the lattice screening by one foot above the deck in this location. Additionally, there is an existing stand of trees along the southern property line that provides appropriate screening in this location.
5. The variance does not appear to be substantial. The applicant is essentially building the spa as part of the deck and will use the same screening material that is required for the deck to screen the one

foot of the spa that extends above the deck. Visually, with this treatment, the spa will appear to be part of the deck from the neighboring properties on the east and west.

6. It does not appear that the variance would adversely affect the delivery of government services, affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

VI. RECOMMENDATION

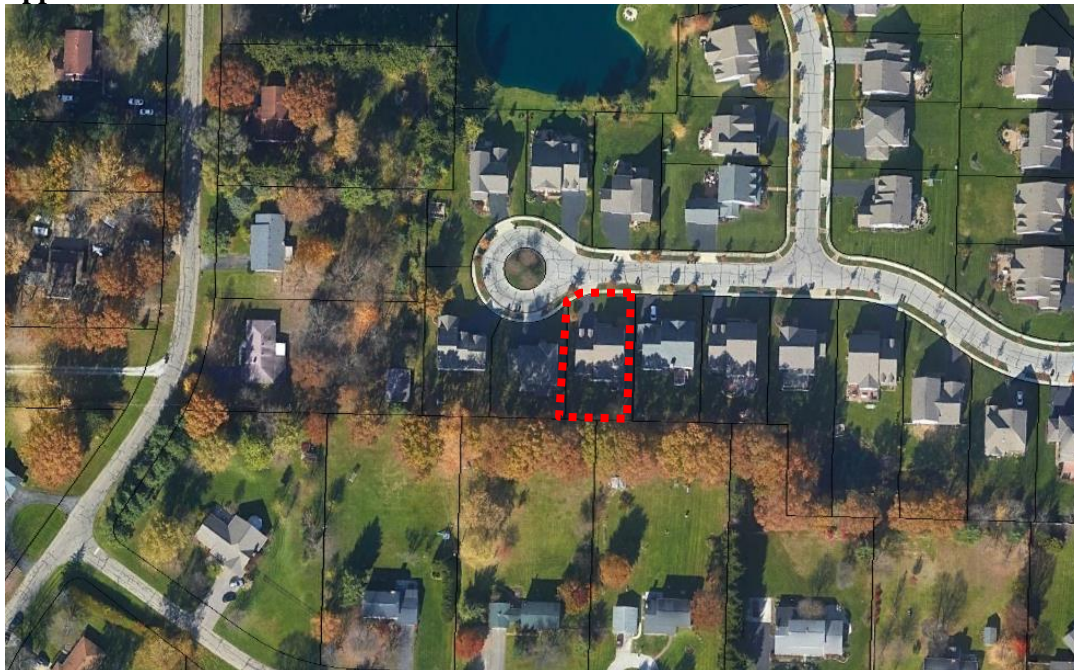
Staff recommends approval of the requested variance should the Planning Commission find that the application has sufficient basis for approval. The applicant proposes to build the spa in a way where it will appear as part of the deck rather than it being a standalone spa, built above ground in the backyard. The spa appears to be appropriately screened using the existing deck and screening on the eastern side of the property. The spa will extend above the new deck by one foot on the western side of the property which will be screened with the lattice material that is used to screen the rest of the deck. There is an existing stand of trees along the southern property line that will provide appropriate screening in this location.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate.

Move to approve application V-23-2020 based on the findings in the staff report (conditions of approval may be added).

Approximate Site Location:



Source: Google Maps



**Planning Commission Staff Report
April 20, 2020 Meeting**

**7010 LAMBTON PARK
POOL FENCE VARIANCE**

LOCATION: 7010 Lambton Park (PID: 222-002598)
APPLICANT: Capital City Pools Inc. c/o Mike Crommes
REQUEST: Variance to Codified Ordinance Chapter 1173.02(e) to the fencing requirements for a private swimming pool
STRATEGIC PLAN: Rural Estate Residential District
ZONING: C-PUD (1998 NACO C-PUD, Subarea 1b: Edgemont)
APPLICATION: V-27-2020

Review based on: Application materials received on March 20 and April 2, 2020

Staff report prepared by Chris Christian, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance from C.O. Section 1173.02(e) Private Swimming Pools relating to the requirement 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.

On November 21, 2016, the Planning Commission denied a variance request for this property to the same code requirement. Since then, the property has been sold to a new owner and a new, revised variance request has been submitted.

The city law director has previously advised that the Planning Commission 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 Section 1173.02(e) regarding private swimming pool fences.

Per the PUD zoning text variances shall be heard by the Planning Commission.

II. SITE DESCRIPTION & USE

The site is 7.414 acres with a single family home. The lot is within the New Albany Country Club. The property is located near the northeast corner of Waterston and Lambton Park Road. The house is one of

three large lots along the north side of Lambton Park Road. The neighboring properties consist of the golf course to the north and east, and single-family homes constructed to the south and west.

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.

- 25. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
- 26. Whether the variance is substantial.*
- 27. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
- 28. Whether the variance would adversely affect the delivery of government services.*
- 29. Whether the property owner purchased the property with knowledge of the zoning restriction.*
- 30. Whether the problem can be solved by some manner other than the granting of a variance.*
- 31. 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*):

- 32. 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.*
- 33. 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.*
- 34. That the special conditions and circumstances do not result from the action of the applicant.*
- 35. 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.*
- 36. 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 Planning Commission’s decision for the requested variance:

1. This pool’s fence was originally brought to the attention of staff during the variance hearing of another pool fence variance application at 6958 Lambton Park Road.
2. The city’s permit tracking software shows a pool permit was issued in 2006. However, due to the city’s records retention policy the plans have since been destroyed.

3. 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.
4. The city's pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction is to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
5. The pool is located at the rear of the home, between the house and the New Albany Country Club golf course.
6. The property to the west is currently vacant and contains several large tree masses.
7. This parcel is one of the largest in the Country Club subdivision resulting in the pool being located greater distances from other residential properties and public roads. The pool is approximately 495 feet from Lambton Park Road, 85 feet from the western property line, and 61 feet from the eastern property line bordering the golf course.
8. The lot is larger than the majority of the parcels in and around the New Albany Country Club subdivision. This lot is approximately 7.4 acres while the vast majority of the lot sizes in the Country Club subdivision are under one acre.
9. The parcel has a 44" high 3-rail horse fence along the rear property line separating the house and golf course.
10. On November 21, 2016, the Planning Commission denied a similar variance request for this property to the same code requirement. Since then, the property was sold to a new property owner and a new variance request has been submitted.
11. The application that was denied by the Planning Commission in 2016 did not include any additional fencing or landscaping around the property and was not consistent with similar variances that have been approved by the Planning Commission for other properties including 6958 Lambton Park as well as 10 & 11 Highgrove. At the meeting, the previous homeowner requested that the Planning Commission make a motion for the variance request without requiring any changes to property as listed in staff report's recommended conditions of approval as they were not in agreement with them. The previous conditions of approval were as follows:
 - Continuous and uninterrupted mounding and/or landscaping are installed along the golf course property line and/or immediately surrounding the pool area that will prevent access.
 - Code compliant fencing is installed along the western side property line to tie into the horse fence.
 - The pool cover is certified annually by the homeowner.
12. There are several differences between this variance request and the variance request that was denied by the Planning Commission in 2016.
 - This variance request does include a 60 inch high black, steel fence along the western portion of the property which meets code requirements and satisfies one of staff's recommended conditions of approval from the 2016 variance request.
 - The applicant also proposes to install a 44" high 3 rail horse fence on the eastern portion of the property with a 48" tall locking gate that connects to the house. While the additional fencing along the eastern property line does not meet code requirements, it appears that there are special circumstances that are peculiar to this property that justify the variance request. This property line abuts the golf course and there are a substantial amount of trees and a creek that serves as an appropriate barrier to access with the addition of the fence.
13. There is a 6 to 7 foot grade change between this property and the gold course property line that was not considered in the original variance request. While this may provide some screening of the

pool and does contribute to limiting access to the pool area, there is a portion of the golf course property line that does not contain landscaping. In order to prevent access and be more consistent with previously approved variance requests, staff recommends a condition of approval that continuous and uninterrupted landscaping are installed along the golf course property line and/or immediately surrounding the pool area that will prevent access.

14. The applicant proposes to continue to use an automatic pool safety cover. This may be similar to a pool cover the BZA approved in-lieu of a fence at 6958 Lambton Park, and 10 and 14 New Albany Farms. Pool covers are recognized by some building codes as an appropriate method to secure a pool. 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.
15. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a "substantial detriment". The pool is screened from the public right-of-way. The pool has been constructed for approximately 10 years. There are some tree masses to the east and west but it is unclear how much of them are on the applicant's property.

V. HISTORY

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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 variances 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.

VI. EVALUATION

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 applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property and the effectiveness of a pool cover in providing safety.

The variances within the New Albany Farms subdivision were approved because the BZA stated the gated community with private streets, the large size of the properties and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a powered automatic safety cover.

Another application on Lambton Park shared some, but not all, of the property characteristics with the previously approved variances. Due to the property’s location along public streets, the Planning Commission paid special attention to characteristics of the property that have the effect of limiting public access. Additional information related to the technical standards and operational concerns of pool covers was also presented. The variance was approved by a 3-1 vote with several conditions of approval. Some of the factors that were discussed with the motion included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- Substantial mounding, landscaping, horse fence and the property’s size impede public access, and
- The applicant proposed an ASTM compliant pool cover which the homeowner agreed to certify annually.

The same request for homes at 10 and 11 Highgrove were approved and contain the same circumstances as listed above. Some other factors that were considered with the motion to approve the variance included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- A hedgerow was installed around all sides of the pool to impede access, horse fence and the property being located on a cul-de-sac impede public access, and

- The applicant proposed an ASTM compliant pool net which the homeowners agreed to certify annually and install when the pool is not in use.

This property contains similarities with the homes at 6 and 14 New Albany Farms, 10 and 11 Highgrove, and the home at 6958 Lambton Park in terms of limited proximity and access. This lot is unique from other homes in the New Albany Country Club due to size and number of neighbors. The parcel is one of the largest in the New Albany Country Club and is essentially triangle-shaped with golf course on two sides and an undeveloped lot on the third side. A creek also separates the parcel from the golf course on the east side. The applicant proposes to install a code compliant fence that neighbors the undeveloped residential lot to the west and a 44 inch high horse fence along the eastern side of the property that will tie into the existing horse fence along the golf course property line. Both of these were not included in the 2016 variance request. The home and pool are completely screened from Lambton Park Road. Staff believes these are factors related to this parcel that help to prevent uncontrolled access and therefore not adversely affect the public safety of those residing or working in the vicinity similar to 6958 Lambton Park.

One difference from 6958 Lambton Park is that the pool at 6958 was located right in the middle of the property creating large setbacks on all four sides of the pool, however, this pool at 7010 is located closer to the golf course and contains less screening along a portion of golf course property line. While there are clear sight lines between this property and the golf course property, there is a 6 to 7 foot grade change at the property line which contributes to screening and limiting access however, it does not prevent access. In order to be more consistent with the previously approved variance requests, staff recommends that continuous and uninterrupted landscaping installed along the golf course property line and/or immediately surrounding the pool area that will prevent access.

VII. RECOMMENDATION

Staff is supportive of the variance request with the condition that continuous landscaping be installed along the golf course property line and/or immediately surrounding the pool area that will prevent access. The location along a private golf course, size of the parcel and isolation of the property satisfies the proximity and access factors that have been important in other past variances. The golf course property line does have a 6 to 7 foot grade change between the properties which appears to provide screening, however, it does not prevent uncontrolled access. The applicant proposes a code compliant fence that will prohibit access from the western portion of the property which was not included in the 2016 variance request. The applicant proposes to install a 44 inch high horse fence along the eastern property line which, in addition to a creek and being a heavily wooded area, appears to provide an appropriate barrier to access that matches similar factors for other approved pool fence variances. The presence of a pool cover is also an important factor to ensure safety. With the addition of the code compliant fence and landscaping along the golf course property line, the conditions are consistent with similar variance requests that have been approved by the Planning Commission.

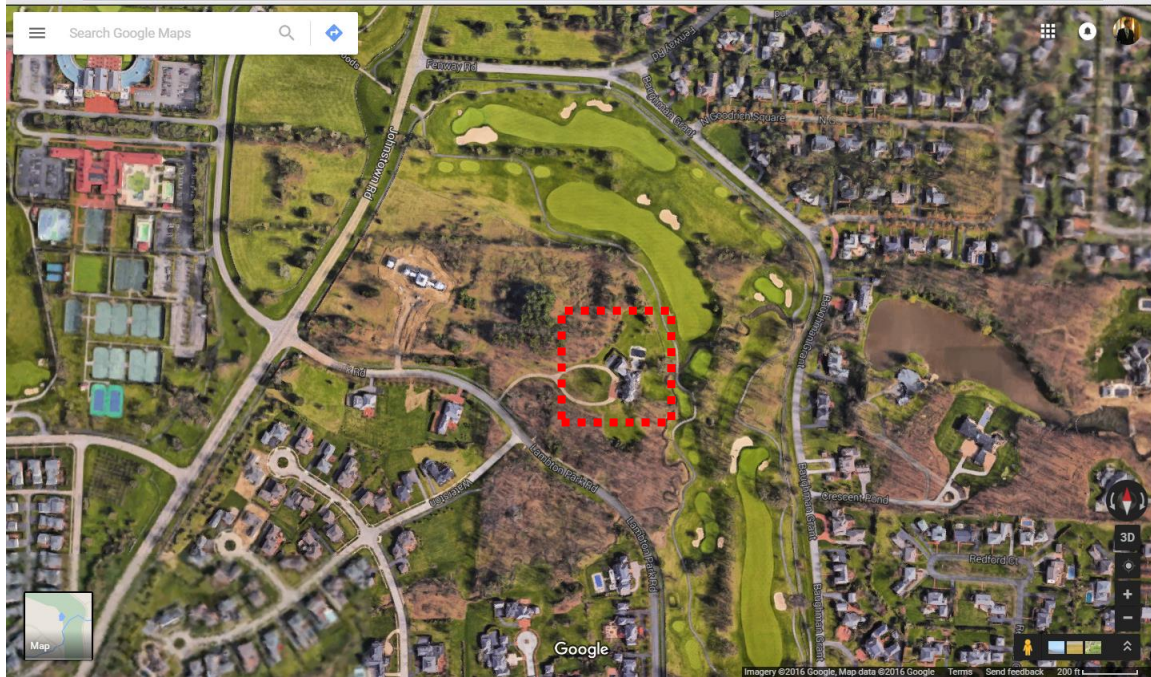
VIII. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve variance application V-27-2020 based on the findings in the staff report with the following condition(s) of approval:

1. Continuous and uninterrupted mounding and/or landscaping are installed along the golf course property line and/or immediately surrounding the pool area that will prevent access.
2. The pool cover is certified annually by the homeowner.

Approximate Site Location:





**Planning Commission Staff Report
April 20, 2020 Meeting**

**COURTYARDS AT NEW ALBANY
ARTIFICIAL TURF ZONING TEXT AMENDMENT**

LOCATION: Courtyards at New Albany subdivision at 7100 New Albany Condit Road
APPLICANT: Epcon Communities c/o Joel Rhoades
REQUEST: PUD Text Amendment
ZONING: I-PUD Infill Planned Unit Development (Yerke West PUD Text)
STRATEGIC PLAN: Office District
APPLICATION: TM-29-2020

Review based on: Application materials received March 27, 2020.

Staff report completed by Chris Christian, Planner.

III. REQUEST AND BACKGROUND

The applicant requests a modification to the zoning text for the Courtyards at New Albany subdivision to allow the limited use of artificial turf within the fenced in pool area at the community clubhouse and within the fenced in courtyards of individual homes.

The current text is silent on prohibited landscape materials therefore C.O. 1171.07 applies which states that artificial plants are prohibited.

IV. SITE DESCRIPTION & USE

The Courtyards at New Albany subdivision contains 105 age-restricted lots. The subdivision is approximately 35.0+/- acres. The subdivision is currently in the public infrastructure improvement process. There are currently 41 homes under construction in the subdivision.

The final development plan was approved on June 18, 2018. The plat for phase 1 of this development was approved by the Planning Commission on June 18, 2018 and the second and final plat for this subdivision was approved by the Planning Commission on September 16, 2019.

III. NEW ALBANY STRATEGIC PLAN

The majority of the site is located in the 2014 New Albany Strategic Plan's Office Campus future land use district. However given the proposed use, staff has evaluated this proposal against the Town Residential District standards. The 2014 New Albany Strategic Plan lists the following development standards for the Town Residential District:

- Houses should front onto public open spaces and not back onto public parks or roads.
- Houses should be a minimum of 1.5 stories in appearance and a maximum of three stories.
- Rear and side-loaded garages are encouraged. When a garage faces the street, the front facade of the garage must be set back from the front facade of the house.

- The maximum width of a garage door facing the street is ten feet.
- Open space should be sited to protect and enhance existing natural features and environmentally sensitive habitats
- Neighborhood open spaces and parks should be located within 1,200 feet of all houses. They should vary in size and be easily accessible to pedestrians.
- Streets should have five-foot wide sidewalks on both sides of the street, other than in locations approved for eight-foot leisure trails.
- Leisure trail connections must be established throughout.
- Deciduous street trees should be planted 30 feet on center.
- Primary roads should be designed according to its designated corridor typology
- Sidewalks should be located on all internal subdivision streets and leisure trails located along all external roadway frontages with connections from sidewalks to the leisure trails.
- Cul-de-sacs are discouraged in all developments and a multiplicity of connections should be made.

IV. ASSESSMENT

Review is based on the city's Strategic Plan, existing zoning text, and planning, subdivision and zoning regulations, including the design standards. Primary concerns and issues have been indicated below, with needed action or recommended action in underlined text.

Per Codified Ordinance Chapter 1159.08 the basis for approval of an I-PUD shall be:

- a. *That the proposed development is consistent in all respects with the purpose, intent and applicable standards of the Zoning Code;*
- b. *That the proposed development is in general conformity with the Strategic Plan or portion thereof as it may apply;*
- c. *That the proposed development advances the general welfare of the Municipality;*
- d. *That the benefits, improved arrangement and design of the proposed development justify the deviation from standard development requirements included in the Zoning Ordinance;*
- e. *Various types of land or building proposed in the project;*
- f. *Where applicable, the relationship of buildings and structures to each other and to such other facilities as are appropriate with regard to land area; proposed density of dwelling units may not violate any contractual agreement contained in any utility contract then in effect;*
- g. *Traffic and circulation systems within the proposed project as well as its appropriateness to existing facilities in the surrounding area;*
- h. *Building heights of all structures with regard to their visual impact on adjacent facilities;*
- i. *Front, side and rear yard definitions and uses where they occur at the development periphery;*
- j. *Gross commercial building area;*
- k. *Area ratios and designation of the land surfaces to which they apply;*
- l. *Spaces between buildings and open areas;*
- m. *Width of streets in the project;*
- n. *Setbacks from streets;*
- o. *Off-street parking and loading standards;*
- p. *The order in which development will likely proceed in complex, multi-use, multi- phase developments;*
- q. *The potential impact of the proposed plan on the student population of the local school district(s);*
- r. *The Ohio Environmental Protection Agency's 401 permit, and/or isolated wetland permit (if required);*
- s. *The U.S. Army Corps of Engineers 404 permit, or nationwide permit (if required).*

Per Codified Ordinance Chapter 1111.06 in deciding on the change, the Planning Commission shall consider, among other things, the following elements of the case:

- (a) Adjacent land use.*
- (b) The relationship of topography to the use intended or to its implications.*
- (c) Access, traffic flow.*
- (d) Adjacent zoning.*
- (e) The correctness of the application for the type of change requested.*
- (f) The relationship of the use requested to the public health, safety, or general welfare.*
- (g) The relationship of the area requested to the area to be used.*
- (h) The impact of the proposed use on the local school district(s).*

V. EVALUATION

1. The applicant requests a modification to Yerke West text section VIII(G) to allow artificial turf to be used within the fenced in pool area adjacent to the clubhouse and within the fenced in courtyards of individual homes.
2. The zoning text is silent on prohibited landscape materials therefore C.O. 1171.07 applies which prohibits the use of artificial plant materials. The applicant requests incorporating the artificial turf into the PUD text in order to permit its installation only within the fenced pool area adjacent to the clubhouse and within fenced courtyards of individual homes. A sample of this material can be found attached to this staff report. Staff recommends a condition of approval that the artificial turf material be subject to staff approval.
3. The applicant proposes to allow the artificial turf in-lieu of natural grass to just the courtyard area at the election of the homeowner. At the time of the final development plan, the applicant provided multiple courtyard options that can be selected by each individual homeowner when building their home. The description of these options can be found attached to this staff report. According to the final development plan, the typical courtyard design is secluded and includes patio space, landscape beds and a very small section of grass area. Therefore it appears that if this material is selected, it will be very limited in use. It also appears that these courtyards areas will be appropriately screened from public areas. The typical courtyard is built in between homes with a large fence on the back side of the courtyard. If a courtyard is built along public street rights of way or parkland, a 48" tall aluminum fence is installed along the edge of the courtyard as well as trees and a boxwood hedgerow to provide screening.
4. The Courtyards at New Albany subdivision is an age restricted facility. One service provided by the subdivision's HOA is lawn maintenance for each individual lot. The applicant state variance contributes to the easy and low maintenance lifestyle that attracts residents to this subdivision.
5. The applicant desires to reduce and substitute some of the concrete area around the pool for artificial turf. The applicant states that the use of artificial turf in this location is preferable as compared to using real grass because cutting natural grass will result in undesirable noise pollution around the pool area and result in higher maintenance needs to clean grass clippings from the pool.
6. It appears the artificial turf will be substantially screened in order to limit its visibility from public rights of way and the adjacent public open space. The pool area has a 100+/- foot setback from the nearest public roads. The landscaping approved at the time of the final development plan includes evergreen and ornamental trees to be installed around the pool area. A copy of the approved landscape plan is attached to the staff report.

VI. RECOMMENDATION

Basis for Approval:

While one of hallmarks of New Albany is authentic and quality material use for construction, staff recommends approval of the text modification given the limited visibility, scope and use of the artificial turf. The text limits the use of artificial turf within the private courtyards on each residential lot as well as the fenced-in community pool area. The private courtyards make up a small portion of each lot. The

courtyards are designed to provide seclusion for the resident so the visibility of this artificial material will be limited from public rights of way and other neighboring properties. The typical courtyard is built in between homes with a large fence on the back side of the courtyard. If a courtyard is built along a public right of way or parkland it will be appropriately screened. Plus, each homeowner has the ability to choose whether to use natural grass or the artificial turf will be installed within their courtyard area so artificial turf is still the exception, not the default condition. The community pool area is appropriately screened with landscaping and is setback 100+/- feet from the nearest public road thereby ensuring that visibility of this material will be substantially limited from public rights of way and the adjacent public open space.

VII. ACTION

Suggested Motion for TM-29-2020:

Move to approve development text modification application TM-29-2020 with the following conditions (conditions of approval may be added):

1. The artificial turf material is subject to staff approval.

Approximate site location:



Source: Google Maps