



**New Albany Planning Commission
May 18, 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 7:09 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)	Absent

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

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

Moved by Ms. Wiltrout, seconded by Mr. Schell to approve the April 20, 2020 meeting minutes. Upon roll call: Ms. Wiltrout, yea; Mr. Schell, yea; 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.

Mr. Christian stated nothing from staff.

Mr. Kirby swore those present who wished to speak before the PC to tell the truth.

Mr. Kirby asked if there were any persons wishing to speak on items not on tonight's Agenda. (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

Mr. Christian presented the staff report. Mr. Christian stated the President of the Tidewater Homeowners' Association had submitted a petition/survey signed by various Tidewater residents which had been included in the packets for this evenings Planning Commission (hereafter, "PC") meeting.

Mr. Kirby stated he believed there was no Engineering on this application.

Mr. Ferris stated that was correct.

Mr. Muhammad Arif, the applicant, discussed his application.

Mr. Kirby asked if the President of the Tidewater Homeowner's Association (hereafter, Tidewater HOA") was present.

Ms. Samantha Rufo, President of the Tidewater HOA, stated she was on the call.

Mr. Kirby asked if the Change.org survey had been authorized by Tidewater HOA.

Ms. Rufo stated that was correct.

Mr. Kirby asked if there had been a meeting or motion authorizing the survey.

Ms. Rufo asked what Mr. Kirby was looking for, was it a Board motion.

Mr. Kirby stated yes, did the Board officially move to do this.

Ms. Rufo stated the Board was aware of it but it was not part of the official documentation because the meeting took place yesterday and this had been done prior to the meeting so they could have it available prior to the PC meeting.

Mr. Kirby asked if Ms. Rufo could explain about the authority used to kick this off in the Tidewater HOA's name.

Ms. Rufo stated there had been a lot of conversation in the neighborhood. Ms. Rufo stated there were many neighbors not present this evening who had gone to the Tidewater HOA regarding building and nuisance materials sitting out for at least one (1) year and they wanted a resolution. Ms. Rufo added that the Tidewater HOA was just following through with their bylaws. Ms. Rufo stated the bylaws asked for documentation prior to the building of any outside landscaping and it still had not received any documentation from the applicant.

Mr. Arif stated he had sent a letter to the Tidewater HOA when he got a letter from them to remove the materials from his backyard. Mr. Arif stated he had told them he had a stop work order from the City and, with the Covid-19 situation, he could not find anyone to move the materials. Mr. Arif stated he had told the Tidewater HOA that he would move the materials as soon as he heard from the City.

Ms. Rufo stated there had been numerous communications but to this date the Tidewater HOA had not received an application for modification so they were not familiar with the plans for the patio, materials, or anything else.

Mr. Arif stated he was confused, did he have to deal with the Tidewater HOA separately from the City. Mr. Arif stated he believed he was dealing with the City on this and the City would give him a yes or no on the issue. Mr. Arif stated he did not know he also needed to deal with the Tidewater HOA on that.

Mr. Kirby stated the documentation was the Tidewater HOA versus members putting a survey together.

Mr. Arif stated he had neighbors present who could discuss this matter.

Mr. Kirby stated he had asked his question to differentiate between the Tidewater HOA as a body and the members of the Tidewater HOA as a group in putting the survey together and such things.

Ms. Rufo stated there was an official piece of business that was separate from the petition, so she would put that more as a homeowner initiative because the Board had other enforcements taking place concurrently with the City's action.

Mr. Kirby asked Ms. Rufo if she had been sworn to tell the truth.

Ms. Rufo stated yes.

Mr. Schell asked Ms. Rufo if the photo she had provided with the materials was from the front of the house.

Ms. Rufo stated yes, that was from July 2019. Ms. Rufo stated there had been more than a dozen dump trucks that had come through on a weekend and that was an example of the material being moved to the back area.

Mr. Schell stated he had heard neighbors had concerns about a large amount of debris and waste put into the stream behind them and asked if that was accurate.

Ms. Rufo stated it was hard to say considering the amount of water they had coming through. Ms. Rufo stated there had been flooding issues, but she could not say definitively it was from Mr. Arif's construction, but there had been numerous trees and plantings removed due to the construction.

Mr. Shockey stated he thought it was important to note that the petition/survey provided was really a letter from a Board representative with a listing of neighbors but there was nothing in the form of a resolution, meeting minutes, or anything. Mr. Shockey stated he did not think he could make that a major part of his consideration.

Mr. Kirby asked if anyone from the public had questions or comments.

Mr. Adam Bainbridge, a neighbor of Mr. Arif's, stated he wanted to provide a neighbor's perspective. Mr. Bainbridge stated the Change.org petition's intent was sound; the neighborhood wanted a swift resolution. Mr. Bainbridge stated he did not think the intent was directly regarding the patio, saying it was more about the dirt, construction debris, material, and everything else. Mr. Bainbridge stated the patio was very nice, noting he was a professional engineer. Mr. Bainbridge stated the patio encroached ten (10) feet into a 130 foot preservation zone, a small encroachment. Mr. Bainbridge said the prior owner had a yard only so it was not obvious there was a preservation zone and Mr. Arif's intent had not been to do any harm. Mr. Bainbridge stated he supported getting permits, but at this point he did not know that tearing out this patio was in anyone's best interest. Mr. Bainbridge stated it would delay everyone and cost a fortune. Mr. Bainbridge said a resolution that would clean up the back, preserve the preserve, and make everything look good would satisfy a lot of the homeowners. Mr. Bainbridge stated the patio was not in the hundred (100) year flood plain nor in the blue boundary which would be a flooding hazard.

Mr. Adeel Khan, a neighbor of Mr. Arif's, stated he agreed with Mr. Bainbridge. Mr. Khan stated a lot of the neighbors have no problem with the patio, it added value to the house and neighborhood. Mr. Khan stated the best resolution would be to let Mr. Arif finish and let the

landscape be something all could agree on as the Tidewater HOA. Mr. Khan stated he did not think it interfered with the flooding or water issues.

Moved by Mr. Wallace to accept the staff reports and related documents into the record for the reconsideration of VAR-112-2019, 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.

Moved by Mr. Wallace to approve reconsideration VAR-112-2019 based on the findings in the staff report, with the conditions listed in the staff report, and subject to staff approval, seconded by Mr. Schell. Upon roll call vote: Mr. Wallace, no; Mr. Schell, no; Ms. Wiltrout, no; Mr. Shockey, no; Mr. Kirby, no. Yea, 0; Nay, 5; Abstain, 0. Motion failed by a 0 - 5 vote.

Mr. Kirby thanked the applicant for his creativity but noted the land exchange offered was not equivalent to the land the patio sat on as the land had been mowed and future owners would think of it as land to be mowed, not a natural landscape. Mr. Kirby stated he had considered the following Duncan and Zoning Code criteria items in his decision: 10, special circumstances do not result from the action of the applicant; 3, substantial detriment; 7, spirit and intent; and 11, special privilege.

Mr. Wallace stated he agreed with Mr. Kirby and also believed item 3 was implicated as the neighborhood was being substantially altered because the area should be conserved, should never have been disturbed. Mr. Wallace said if the applicant had followed the right procedures the patio would not have been built. Mr. Wallace stated this was unfortunate, but he had to vote no.

Ms. Wiltrout noted Duncan item 6, could the problem can be solved by some manner other than the granting of a variance, was why she had voted no. Ms. Wiltrout said the patio could be made smaller, it could be built outside the preservation zone, and she understood the complexities of construction design, but there could have been another workaround other than just staying with the plan.

Mr. Schell stated that beyond the Duncan factors, this was a situation where no permit had been pulled, an entire patio had been built, it was against Tidewater HOA procedures, and the precedent in approving something like this might provide other residents the right to do this in the future.

Mr. Shockey stated he agreed with all that had been said and added that it would be an encouragement for further encroachment into the natural area by landscaping the area per neighbor agreement.

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. Christian noted that the manufacturer's specifications were provided in the staff report and packets to show that the swim spa was under 100 square feet and the pool requirements of Code Chapter 1173 did not apply. Mr. Christian noted the zoning text did apply and it stated all spas and pools, regardless of size, had to be installed in-ground.

Mr. Kirby asked if there were Engineering comments.

Mr. Ferris stated no comments.

Mr. Kirby asked to hear from the applicant.

Mr. Fuller presented the application. Mr. Fuller stated that to bury the swim spa in the ground it would require a larger area than the spa to be dug, concrete to be poured all around, and then filled back in. Mr. Fuller said that would cost approximately \$5,000 with additional needed work adding more to the total price. Mr. Fuller noted that, due to the grading of the land, it would be more visually pleasing to build it with the deck as it would only extend above the deck for a bit.

Mr. Kirby asked Mr. Banchefsky if, to determine the area to differentiate between a pool or a spa, one calculated the surface area of the water.

Mr. Banchefsky asked staff to assist.

Mr. Mayer stated staff had historically computed it by the water surface area, not necessarily the structure.

Mr. Kirby stated the village was then good with that definition

Mr. Mayer stated correct.

Mr. Kirby stated the 97.5 square feet (6.6 feet x 15 feet) number was an inch too big, compared to the numbers they had been given, but if it was the surface area of the water than they were good.

Mr. Mayer stated if it did end up being a pool, Code requirements such as fencing and having automatically closing gates would kick into place.

Mr. Kirby stated that needed to be settled before the applicant had a chance to build.

Mr. Mayer stated that, based on the information staff had at this time, it was not considered a pool but they would review it again as part the permit/construction process.

Mr. Shockey asked Mr. Mayer if staff did an inspection during construction

Mr. Mayer stated the deck would be inspected.

Mr. Shockey stated staff would be able to measure the inside diameter of the spa to verify it was under 100 square feet and not a pool and would not be built larger than the application indicated. Mr. Shockey stated Mr. Fuller was on notice to avoid a variance request as it was very close.

Mr. Kirby stated that according to the dimensions on the sheet they were good.

Mr. Wallace stated the photo on the screen of the existing deck area indicated there was a fence around the deck and asked if there would be a fence around the actual spa.

Mr. Fuller stated the railing would go around the deck but would not extend around the spa, noting the spa was four (4) or five (5) feet off the ground.

Mr. Wallace asked if it was correct that the plans indicated there were steps down to the ground.

Mr. Fuller stated there were steps on the photo they were looking at that were part of the existing deck. Mr. Fuller also stated there were steps on the left side of the photo that would be removed for the new deck to be built.

Mr. Wallace asked if there would be a gate added at the top of the stairs.

Mr. Fuller said he hoped there would not be a need to install a gate if it was not a pool.

Mr. Wallace asked if there would be fencing around the portion that was a deck but not around the spa itself.

Mr. Fuller stated correct.

Mr. Wallace asked if there was no requirement in the Code that spas or hot tubs be fenced.

Mr. Mayer stated that was correct, but it was required to be screened.

Mr. Schell stated he appreciated Mr. Fuller providing the information on building the spa into the ground.

Mr. Shockey stated he thought the deck was going to be enlarged and extended out to build the spa within the deck and have everything fenced and not generally visible. Mr. Shockey said if that had been the case then his only comments would have been regarding the maintenance of the lattice work and the need for additional screening. Mr. Shockey stated he was a bit confused about the statement that a concrete pad would be built on which the spa would sit.

Mr. Fuller stated the screening on the photo was a vinyl, plastic that had been installed when he had built the deck about six (6) years ago and it had held up well. Mr. Fuller stated there were lilac bushes there but he would be happy to add more landscaping. Mr. Fuller stated the idea was to add a concrete pad at the end of this deck on which the spa would sit.

Mr. Shockey asked if the spa would be a fiberglass or acrylic structure.

Mr. Fuller stated yes.

Mr. Shockey asked how that was screened.

Mr. Fuller stated the south side, seen on the photo, was screened by mature trees from the neighbor and from the neighbor on the west side it would be screened by the same lattice in the photo.

Mr. Shockey asked Mr. Mayer if the variance request was only so the spa did not have to be put in the ground.

Mr. Mayer stated that was correct.

Mr. Shockey asked if that was the only variance required.

Mr. Mayer stated that was correct.

Mr. Shockey asked if hot tubs needed to be put into the ground.

Mr. Mayer stated it was a specific requirement as part of the zoning text for this subdivision that they be buried.

Mr. Shockey stated he did not see being in favor of the variance, as presented now, because he did not see this as different from a hot tub structure with some sort of collar that was somewhat to very exposed. Mr. Shockey stated that as it would be outside of the deck he thought it would be very visible. Mr. Shockey said he would have been in favor of building the spa within the deck so that only a slight berm might be visible and then adding some landscaping.

Mr. Kirby asked if, at three (3) or four (4) feet off ground, the entire perimeter had to have a fence to keep people from walking off the edge.

Mr. Mayer stated that was something the building inspectors would evaluate as part of the permit submittal and review. Mr. Mayer stated he was not sure if there was a zoning requirement for it, but there might be a building requirement and would be reviewed as part of the permit.

Mr. Kirby asked if they were just building a deck, would not the entire perimeter require a rail of about three (3) feet.

Mr. Mayer stated he believed so.

Mr. Kirby asked if what was being proposal was different from having a perimeter railing.

Mr. Mayer stated it would ultimately be up to the interpretation of the building staff, the building inspectors, and Code officials.

Mr. Kirby stated if the spa were, or appeared to be, wholly contained inside the deck, then the appearance problems would go away. Mr. Kirby stated then a gate could be put at the top and a perimeter fence would be in place.

Mr. Shockey stated that would be right, if the deck were built around the spa all those issues would go away.

Mr. Kirby asked the applicant if he would object to enlarging the deck a little so it encompassed the spa.

Mr. Fuller stated his concern would be that to do that they would need to move the spa even further out and that would make the deck more of an "L" shape and he thought a rectangular shape would be more pleasing. Mr. Fuller said that from the south side the neighbors had large trees so they would not see the spa and to the east all that would be seen was lattice on the bottom and the railing along the side of the deck. Mr. Fuller said that even though it would not be contained in the deck it would look very similar to the rest of the deck from everywhere except a view from above.

Mr. Kirby stated one of the driving forces behind all variances was what precedent was being set. Mr. Kirby said the core question was whether an in-deck spa was the equivalent of an in-ground pool. Mr. Kirby stated that if it was, then the spa should be subordinate to the deck (smaller than

and contained by the deck), and barely noticeable, much like an in-ground pool. Mr. Kirby asked the applicant if, other than expense, building the deck around the spa harmed him in any way such as blocking a window or a part of the house.

Mr. Fuller stated that if his ground were level and he put an above-ground swim spa on it that would stick out. Mr. Fuller said that because the land was not level and the deck was pretty elevated, the idea was that having it above ground would be much more visually pleasing. Mr. Fuller stated he could look into extending the fence all around it as he would be building it himself.

Mr. Kirby stated his guidance was that there was either too much pool or not enough deck.

Mr. Fuller stated he understood.

Mr. Kirby asked if turning it sideways could solve the problem.

Mr. Fuller stated he had considered that but due to the chimney there would not be an area to walk and it did not fit very well.

Mr. Kirby stated the application was on the cusp of a variance that could or could not be approved based on that criteria.

Mr. Shockey asked if there were deed restrictions in this subdivision that did not allow above ground spas.

Mr. Mayer stated it was not a deed restriction, it was part of the subdivision's specific zoning text.

Mr. Shockey stated then no one could legally put in an above ground spa.

Mr. Mayer stated that was correct.

Mr. Shockey stated that any variance given by the PC was a variance to the zoning text. Mr. Shockey stated the work around, if the PC were to grant the variance, would be if it were not visible as an above ground spa because it was within the confines of the deck itself. Mr. Shockey said a variance without that condition would be wrong.

Ms. Wiltrout stated she agreed with Mr. Shockey and Mr. Kirby's concerns regarding the spa not being part of the full deck. Ms. Wiltrout said the only way she would consider a variance would be if it were within the deck.

Mr. Wallace stated that in addition to the idea that the swim spa be inside the deck and almost invisible, because the swim spa's size was almost that of a small pool, he would consider a variance only if there was a fence all around the spa and a gate at the top of the stairs along with additional landscaping. Mr. Wallace asked if the applicant would agree to a condition that would incorporate all of those ideas for the approval of this variance.

Mr. Kirby asked if the applicant if he could accept the conditions that the spa was internal and subordinate to the deck; had a fence all around it and was mostly invisible; had a gate at the top of the stairs; and had screening and landscaping at the bottom of the lattice.

Mr. Fuller stated he would be willing to put the spa inside the deck with fencing all around it, but he would prefer not to have a gate at the top of the steps unless it was over 100 square feet and absolutely necessary.

Mr. Kirby stated Mr. Fuller had the alternative to ask for a vote as presented.

Mr. Fuller stated he thought that would be a poor choice and he would be happy to revise it if the PC thought it would be a path to potential approval to put the spa inside the deck with fencing all around and screening with lattice and landscaping.

Mr. Kirby asked staff if this was clear in terms of precedents and other things.

Mr. Christian stated yes.

Mr. Kirby asked if staff concurred that this set the precedent they wanted to set if approved.

Mr. Mayer stated yes.

Mr. Shockey asked if there was a question about deck size per the Code.

Mr. Mayer stated no, he did not believe so.

Mr. Kirby stated if there was then it would be the applicant's problem, having a variance he could not squeeze into if the limits were hit, getting the details right was important.

Mr. Wallace stated that when the applicant agreed to the conditions he had agreed to the spa fencing and landscaping but he did not seem to be in favor of putting a gate in.

Mr. Shockey asked why the applicant did not want a gate.

Mr. Fuller stated that adding the gate, for a pool it had to be a four (4) foot tall gate, taller than the existing railing and would not look very good. Mr. Fuller said it was a deck and felt one should be able to run on and off the deck without opening a gate every time. Mr. Fuller said that the fact that the spa was far enough away from the gate meant it did not serve much of a benefit while adding inconvenience.

Mr. Shockey asked if the guardrail was 36 or 42 inches.

Mr. Fuller stated he believed it was 42 inches but he would have to double check.

Mr. Shockey asked what if it was a 42 inch gate.

Mr. Kirby stated a matching gate.

Mr. Fuller stated that would solve the appearance problem but it would still require the gate be opened and closed each time they went up and down the stairs.

Mr. Shockey stated the applicant could always hold it open when in use and shut it when not in use.

Mr. Fuller stated he understood, but then why have the gate.

Mr. Shockey stated for the time periods you are not out on the deck using it so it would not be easily accessed by anyone else.

Mr. Kirby stated children in particular.

Mr. Fuller stated he understood that but this was not a pool and wondered if this were in-ground would that still be required.

Mr. Kirby asked for additional comments or questions from the public. (No response.)

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. Wallace, yea; Mr. Shockey, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Moved by Mr. Wallace to approve VAR-23-2020 based on the findings in the staff report and subject to the following conditions:

1. The spa be encompassed inside the deck, subject to staff approval;
2. Fencing or railing will be installed around the deck area;
3. A gate matching the fencing or railing will be installed;
4. Additional landscaping to the lattice area will be installed, subject to staff approval;

seconded by Mr. Shockey.

Mr. Kirby asked Mr. Wallace and Mr. Shockey for permission to add additional language to further clarify the conditions.

Mr. Kirby asked Mr. Banchefsky if they did not state the deck had to be bigger than the pool were they allowed to build it smaller.

Mr. Banchefsky stated a new drawing would be needed to show how it would be built and that could be subject to staff approval. Mr. Banchefsky stated he thought that would accomplish what he believed Mr. Kirby was after, that the deck was larger than the spa.

Mr. Kirby asked if Mr. Wallace and Mr. Shockey were okay with adding "subject to staff approval" to condition (1).

Mr. Wallace and Mr. Shockey stated yes.

Upon roll call vote: Mr. Wallace, yea; Mr. Shockey, yea; Ms. Wilttrout, yea; Mr. Schell, yea; Mr. Kirby, 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 Crommes

Mr. Christian presented the staff report and discussed applicant's updated application.

Mr. Kirby asked if there was any Engineering.

Mr. Ferris stated no comments.

Mr. Kirby asked for the applicant.

Mr. Mike Crommes, of Capital City Pools, Inc., stated he was a licensed landscape architect and stated they had added Winter Gem boxwood hedges behind the existing horse fence along the golf course. Mr. Crommes stated the north side of the property had the sixty (60) inch high steel or metal fencing. Mr. Crommes said existing vegetation on the east side, with the creek bordering the property, had a substantial natural barrier and they requested no fencing on the east side to allow the natural buffer to suffice. Mr. Crommes stated if that was not something the PC would agree to, the fallback was to repeat sixty (60) inch high metal fence there as well.

Mr. Kirby stated PC members might request fencing on the east side. Mr. Kirby asked if the applicant would be willing to have a condition of approval that an easement to maintain the golf course's fence, should the golf course be slow in doing so, be granted to the applicant so she could maintain the fence. Mr. Kirby stated they had seen various chunks of horse fence in the submittal and noted that the bottom rail was not always parallel to the ground and at times had gaps at the posts. Mr. Kirby asked about a potential condition that the gap between the bottom rail and the ground not be taller than the regular gap between the rails to ensure it was a difficult fence to crawl under.

Ms. Anne-Marie Warner, the homeowner, stated she would love to have an easement, saying they had been desperate to make improvements along that fence since they had moved in.

Mr. Kirby stated the PC could not grant it, but could ask the applicant to ask for it.

Ms. Warner stated she would ask for it.

Mr. Kirby asked if the applicant had a problem with ensuring the bottom rail stayed close to the ground.

Ms. Warner stated she would make sure. Ms. Warner noted they were adding the dense boxwood hedge to the horse fence line to assist with safety and security.

Ms. Wiltrout asked staff if the boxwood hedges proposed along the golf course yellow fence line were enough for landscape protection so that they would not need to rely on the fence being there. Ms. Wiltrout asked if it was enough to keep a child out of the pool.

Mr. Mayer stated this had been approved for, he believed, another Highgrove home. Mr. Mayer said the boxwood was a very dense plant material typically used for screening.

Ms. Wiltrout asked if one could walk through it when fully grown in.

Mr. Mayer stated he could not say, but it would seem to be difficult to pass through if fully grown without any gaps between the plantings.

Mr. Crommes stated the boxwood would be close to four (4) feet at maturity.

Ms. Wiltrout asked if they had been historically used for landscaping in these situations.

Mr. Kirby stated Highgrove.

Ms. Wiltrout asked why the east fence was to be a horse fence rather than the metal fence.

Mr. Kirby stated he thought it was the other way around.

Ms. Warner stated it had been their first option for the proposal to have no fencing along that yellow line shown on the presentation as the creek, bank, steep gradient, and automatic pool cover would be four barriers and sufficient. Ms. Warner said if the PC did not feel that was sufficient, the other option was to put another sixty (60) inch Code compliant fence just as they had running along the red line.

Ms. Wiltrout asked to confirm that, on the east side, if the PC did require a fence then that would be a Code compliant metal fence on either side of the pool.

Ms. Warner stated yes, that was their backup and they had already purchased the fencing material.

Ms. Wiltrout asked the applicant how deep the creek was.

Ms. Warner stated six (6) inches at the lowest to three (3) feet at its highest, depending on how much rain. Ms. Warner said the width also varied, at a minimum it was eight (8) feet wide to twenty (20) to 25 feet wide at most.

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

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-27-2020, 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.

Mr. Wallace asked what was being voted on as Mr. Crommes had mentioned a main position and a fallback position.

Mr. Kirby stated that would be done in the conditions. Mr. Kirby discussed his proposed conditions.

Mr. Wallace stated he believed the second condition, to seek an easement to maintain the fence if possible, should be written so that if the easement were not obtained then the variance would not be approved.

Mr. Banchevsky noted the PC could not require the applicant to obtain an easement from an adjoining property owner as a condition of a variance. Mr. Banchevsky stated that was not reasonable because the applicant did not have the power of eminent domain and the adjacent property owner could decline.

Mr. Kirby asked if the PC could require the applicant seek such an easement and demonstrate good faith in doing so.

Mr. Banchevsky stated yes.

Mr. Christian noted another condition of approval in the staff report and the condition that required the pool cover to be certified annually.

Mr. Kirby stated yes, the two (2) conditions in the staff report.

Mr. Wallace stated the new conditions should be 3, 4, and 5.

Mr. Kirby stated yes.

Ms. Wiltrout asked if there was a method that could assess good faith on the part of the applicant.

Mr. Banchefsky stated staff could look at an exchange of correspondence with the adjoining landowner to satisfy that requirement. Mr. Banchefsky stated the golf course owner, the New Albany Country Club, could be more amenable to granting a license instead of an easement.

Ms. Wiltrout asked if a license would run with the deed.

Mr. Banchefsky stated yes, it could be filed and recorded.

Moved by Mr. Kirby to approve VAR-27-2020 based on the findings in the staff report, with the two (2) conditions listed in the staff report and the following additional three (3) conditions:

3. The lower rail on any horse fence applicant is allowed to maintain cannot be higher off the ground than the nominal gap between the rails;
4. Applicant will seek an easement or license to allow the applicant to maintain the golf course horse fence if the golf course does not maintain it;
5. A sixty (60) inch Code compliant fence will be installed on the east side;

seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, no; Ms. Wiltrout, yea; Mr. Schell, yea; Mr. Shockey, yea. Yea, 4; Nay, 1; Abstain, 0. Motion passed by a 4 -1 - 0 vote.

Mr. Wallace stated he did not believe the Duncan factors had been met. Mr. Wallace stated he believed the property could yield a reasonable return and be beneficial to the owner without this variance and it was a substantial variance. Mr. Wallace stated he thought there had not been a showing that the alternative fencing arrangement proposed by the applicant was as safe or safer than the type of fence that would typically be required by the Code. Mr. Wallace said he believed the health and safety Duncan factors had not been met.

CU-35-2020 Conditional Use

Conditional use application to allow a restaurant drive-thru to be developed as part of the Turkey Hill Expansion final development plan located at the corner of Smith's Mill Road and US-62(PIDs: 222-000347 & 222-004736).

Applicant: EG America

Mr. Christian presented the staff report for applications CU-35-2020, FDP-34-2020, and VAR-36-2020 concurrently.

Mr. Kirby asked if there were any Engineering comments.

Mr. Ferris stated Engineering recommended that the applicant add signature blocks in accordance with §1159.07(3)(V) to the first sheet of the final development plan. Mr. Ferris stated this was also noted on the memorandum's attached Exhibit A.

Mr. Kirby asked for the applicant.

Mr. Chris Rinehart, attorney for EG America and Turkey Hill, discussed the applications. Mr. Rinehart stated EG America and Turkey Hill were fine with all conditions except for the one about the conditional use being voided if the restaurant use did not occur. Mr. Rinehart stated he believed that use, if approved, would be good for a year under New Albany's ordinances and then, if not actually used, would be void. Mr. Rinehart stated they should know within a year who that tenant would be and, as the signage would need to be addressed anyway by that tenant, the conditional use could be addressed.

Mr. Kirby asked if staff was good with the one (1) year limit.

Mr. Mayer asked if that would be one (1) year to get a tenant and otherwise it would become void.

Mr. Rinehart stated yes, if different than a restaurant he believed it qualified under the existing Code, so if they needed a conditional use for something other than a restaurant they would return to request that.

Mr. Mayer stated that would be good.

Mr. Kirby asked about the sign variance, asking what the second tenant would use if all the signage were given to IHOP.

Mr. Christian stated he believed the zoning text allowed signage on a per tenant basis, not just for the building.

Mr. Mayer stated staff evaluated it on the frontage of just one tenant not the entire building.

Mr. Kirby stated okay and asked if they had enough frontage to hit the maximum.

Mr. Mayer stated yes.

Mr. Kirby asked if the other tenant had enough frontage to meet the maximum.

Mr. Christian stated he did not believe so. Mr. Christian added, for clarification, the zoning text allowed one (1) wall mounted sign per retail tenant on each elevation of the building, front or sides, along a private or public road.

Mr. Kirby stated if they thought they might need a variance for the second tenant they should talk about it now.

Mr. Rinehart stated if they did they would file a new application and, if there were any other additional considerations to be taken into effect, they would do that. Mr. Rinehart asked staff if they recalled what the originally proposed sign's square footage had been for the other tenant who had since departed.

Mr. Christian stated, from what he recalled, the signs proposed for that side of the building did meet the text requirements.

Mr. Rinehart stated the size requirement for that second tenant, for signage purposes, was intended to be a lot smaller than IHOP. Mr. Rinehart stated he believed the intent was to have the

IHOP sign, on that corner, be larger to have that architectural feature similar to other structures in the area.

Mr. Kirby stated the surface area of the IHOP sign, if one put a bounding box around the text, was small.

Mr. Christian stated correct.

Mr. Kirby asked if the PC could place reasonable conditions on the content if they were asking for a variance.

Mr. Banchevsky asked if he wanted to place restrictions on the content of the sign.

Mr. Kirby said in exchange for granting the variance.

Mr. Banchevsky asked how so, saying that generally content could not be controlled.

Mr. Kirby stated he understood, hence why he asked. Mr. Kirby stated the sign before the PC had a lot of background making it appear much smaller than it was, making it an easy variance to grant. Mr. Kirby stated that, as requested, it was 95 square feet which could be put in using any color the Code allowed in its entirety, making it a very different face than the PC was now looking at and he would like it to stay the way it was shown.

Mr. Banchevsky stated the PC could limit the variance to the sign being shown. Mr. Banchevsky stated that if the applicant then wanted to fill in that sign with a lot more paint they would need to return and seek a revision.

Mr. Rinehart stated they would be willing to commit to the sign as presented.

Mr. Kirby asked how often they conducted intellectual property/trademark changes.

Mr. Rinehart stated that would be by brand partner and they had signed off on what was being presented this evening. Mr. Rinehart stated they knew that once they had committed to something, they would need a new approval if they changed it.

Mr. Kirby stated he was looking for unintended consequences and things down the road, as well.

Mr. Rinehart stated he understood.

Mr. Kirby asked staff if the new proposed sidewalk layout would allow one to walk from the IHOP, car wash, or Turkey Hill building(s) to other places without leaving the sidewalks. Mr. Kirby asked if there was connectivity between everything.

Mr. Mayer stated that by switching the sidewalk from this side of Woodcrest Way to the other side, then yes, that would accomplish sidewalk connectivity to the Greater Trust Corp. commercial subdivision.

Mr. Kirby stated especially with the access of MKSK on US-62 added to the ones shown.

Mr. Mayer stated yes, those would be additional connection points to the larger development.

Mr. Kirby stated he did not know if it mattered, but on page five (5) of the staff report for FDP-34-2020, item five (5) had no text.

Mr. Rinehart stated item seven (7) also.

Mr. Kirby asked if the connectivity being discussed was accomplished through crosswalks when crossing the street.

Mr. Christian stated correct.

Mr. Schell stated there was a new car wash proposed and asked Mr. Rinehart if there was an existing car wash on the Turkey Hill site.

Mr. Rinehart stated that was correct.

Mr. Schell asked what the intent was.

Mr. Rinehart stated he thought the intent was to combine the lots and have one (1) lot in the future. Mr. Rinehart stated he thought they wanted to shift the car wash so it was kind of in the middle and added to better circulation on both sides of the development. Mr. Rinehart stated he thought the intent in changing the entrance and exit points for the car wash was to encourage car wash traffic to go to the back of the site where it would have less traffic impact than it did now.

Mr. Schell asked if ultimately there would only be one car wash.

Mr. Rinehart stated that was correct.

Mr. Schell asked if the absolute worst case scenario had been considered, one where there were 25 cars deep on the site, could the site accommodate that.

Mr. Mayer stated that from lessons learned from previous applications, this site provided multiple means of exiting from both the new car wash and the drive-thru or restaurant tenant. Mr. Mayer stated they believed this addressed those concerns.

Mr. Shockey asked if staff could put the site plan without the landscaping on the screen and use the mouse to show the exit plans Mr. Mayer had referred to. Mr. Shockey asked if for the car wash one would enter on US-62 through the drive lane on the east side of the parking lot.

Mr. Christian stated one could turn right from US-62 and then go through the site to get to the line for the car wash. Mr. Christian stated one could also come in from the private road to get in line.

Mr. Shockey stated that if they came in either way they could stack up. Mr. Shockey asked how long a line of cars could stack up.

Mr. Rinehart stated he thought the applicant had capacity for at least eight (8) to ten (10) cars.

Mr. Shockey asked if this line were stacked as Mr. Rinehart said, or even further, they would probably end up blocking the in/out area at the back of the lot and could also stack inside the drive lanes in the parking area. Mr. Shockey asked if that was something the applicant could foresee ever happening.

Mr. Rinehart stated that in his experience with Turkey Hill car washes he had not seen them have more than ten (10) cars in a line, but he could not swear it had never occurred. Mr. Rinehart stated they tried, based on their experience and staff assistance, to plan for the worst case scenario to accommodate for that concern.

Mr. Shockey stated he understood that, but asked if they did have that kind of stacking where would additional cars go.

Mr. Rinehart stated experience told him someone would not park in the middle of a driveway. Mr. Rinehart stated he believed the design of the parking lot would include directional paint and other things as a guide.

Mr. Shockey stated that was good enough if Mr. Rinehart thought it was unlikely to occur. Mr. Shockey stated he had not seen that many in the existing car wash, so perhaps Mr. Rinehart was right. Mr. Shockey asked about the same scenario on the proposed drive-thru restaurant. Mr. Shockey noted that some drive-thru restaurants had a larger following than others and Mr. Rinehart did not have a commitment from a specific tenant at this time.

Mr. Rinehart stated he believed it was designed to accommodate what they thought would be a large crowd that would attempt to go through the drive-thru and they also offered indoor service to try to drive some traffic away from the drive-thru.

Mr. Shockey asked if, based on Mr. Rinehart's experience with Turkey Hill and EG America, they felt this was very adequate for a very popular drive-thru type restaurant.

Mr. Rinehart stated the intent with the tenant the site had been involved with, a very well recognized brand, had been to accommodate what they believed would be a worst case scenario for the drive-thru.

Mr. Shockey stated the PC was looking at stacking and at reducing, by variance, a rear yard setback by nine (9) feet to allow for drive-thru activity for the car wash while maintaining a twenty (20) foot setback on the left portion of this proposed building. Mr. Shockey asked staff if they could consider a pro and con for reducing that rear setback to match the setback on the east lot that could allow for additional stacking.

Mr. Mayer stated it was a good question. Mr. Mayer stated it looked like there could be room there, from the spacing and size of the lot, to accommodate a second, parallel drive-thru if deemed necessary in the future.

Mr. Shockey stated he just wanted to bring that up as a possibility.

Mr. Mayer stated staff and the applicant had evaluated several site layouts and had determined this was the best from a functionality standpoint.

Mr. Kirby asked if anyone from the public had a question or comment. (No response.)

Moved by Mr. Kirby to accept the staff reports and related documents into the record for CU-35-2020, 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 approve CU-35-2020 based on the findings in the staff report, with the conditions listed in the staff report, with condition 1 amended to read that the conditional use permit will be valid for one (1) year unless it was not being used, seconded by Mr. Schell. Upon roll call vote: Ms. Wilttrout, yea; Mr. Schell, yea; Mr. Wallace, yea; Mr. Shockey, yea; Mr. Kirby, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 -0 vote.

FDP-34-2020 Final Development Plan

Final development plan application for the Turkey Hill Expansion development located at the corner of Smith's Mill Road and US-62 (PIDs: 222-000347 & 222-004736).

Applicant: EG America

Moved by Mr. Kirby to accept the staff reports and related documents into the record for FDP-34-2020, seconded by Mr. Wallace. Upon roll call vote: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Shockey, yea; Ms. Wilttrout, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 - 0 vote.

Moved by Mr. Schell to approve FDP-34-2020 based on the findings in the staff report, with the condition listed in the staff report, seconded by Mr. Kirby. Upon roll call vote: Mr. Schell, yea; Mr. Kirby, yea; Mr. Shockey, yea; Mr. Wallace, yea; Ms. Wilttrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5 -0 vote.

VAR-36-2020 Turkey Hill Expansion Variances

Variances associated with the Turkey Hill Expansion development located at the corner of Smith's Mill Road and US-62 (PIDs: 222-000347 & 222-004736).

Applicant: EG America

Moved by Mr. Kirby to accept the staff reports and related documents into the record for VAR-36-2020, 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 approve the three (3) variances enclosed in VAR-36-2020 based on the findings in the staff report, seconded by Mr. Kirby. Upon roll call vote: Ms. Wilttrout, yea; Mr. Kirby, yea; Mr. Shockey, yea; Mr. Schell, yea; Mr. Wallace, 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.

Mr. Schell stated he appreciated all the hard work New Albany was doing.

Mr. Mayer thanked Ms. Wilttrout and Mr. Schell for serving on the Steering Committee.

Poll Members for Comment

Mr. Kirby stated the Roberto property they had done their first swimming pool variance on had a hole in the fence large enough to drive a truck through and they had paved it with gravel to make driving easier. Mr. Kirby stated this reduced his confidence in these large, fenced areas for the pool fence and they might point to that as an indication that pool variances may not work.

Mr. Wallace stated that was why he voted against them.

Mr. Shockey stated the fence should be around the pool, not the property. Mr. Shockey stated he did not understand why there was so much resistance.

Mr. Wallace stated the reason there was resistance was because variances had been approved and they opened the door for these kinds of problems.

Mr. Shockey stated he agreed but he still did not know why people resisted it so much, why did they not want a fence.

Mr. Mayer stated staff was asked about this fairly often. Mr. Mayer stated staff was learning from the Roberto fence situation.

Mr. Kirby asked staff if they knew when that fence came down.

Mr. Mayor stated he did not know but it had been down for a while. Mr. Mayer stated staff would need to improve on that.

Mr. Kirby asked if they could be called and asked to keep the pool closed.

Mr. Mayer stated staff would reach out to the contractor to see if some kind of temporary fencing could be put in to ensure the boundary around the pool was maintained.

Mr. Kirby adjourned the meeting at 10:22 p.m.

Submitted by Josie Taylor.

APPENDIX



Planning Commission Staff Report May 18, 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

This application was tabled at the April 20th Planning Commission at the applicant's request. No new information has been submitted for review.

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

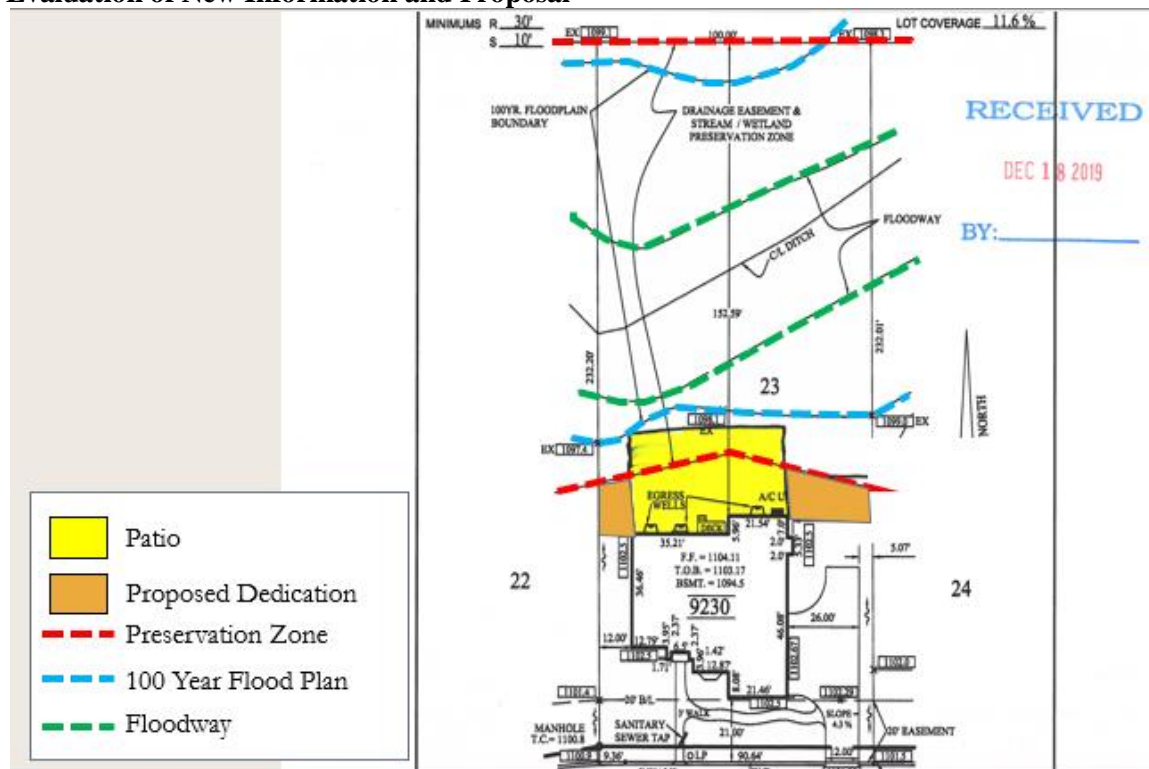
A. Variance to Tidewater zoning text section VI(D)(6) to allow a patio to be installed within the preservation zone where the zoning code does not permit any structure to be built, no grading or clearing.

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 zone by 10 feet.
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.



2. The variance request is substantial and does not meet the spirit and intent of the zoning text which is to keep the preservation area undisturbed by requiring it to remain in its natural state. There is a stream located within the preservation zone and one of the recommendations of the 2014 New Albany Strategic Plan is to establish and preserve setbacks along stream corridors in order to protect water 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
May 18, 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

This application was tabled at the April 18th Planning Commission meeting due to the applicant not being present at the meeting. Staff forwarded the Planning Commission's questions to the applicant, but no new information has been submitted for review. At the last meeting the Planning Commission meeting, the board noticed and commented on conflicting information that was included in the packet. The submitted application material states that the swimspa has an area of 112.5 square feet. After the staff report was published, the applicant submitted manufacturer specs for the swimspa that show the area being 97.5 square feet. Because the swimspa is less than 100 square feet, the pool fencing requirements of C.O. 1173.02 do not apply however the in ground construction requirement of the zoning text still applies.

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

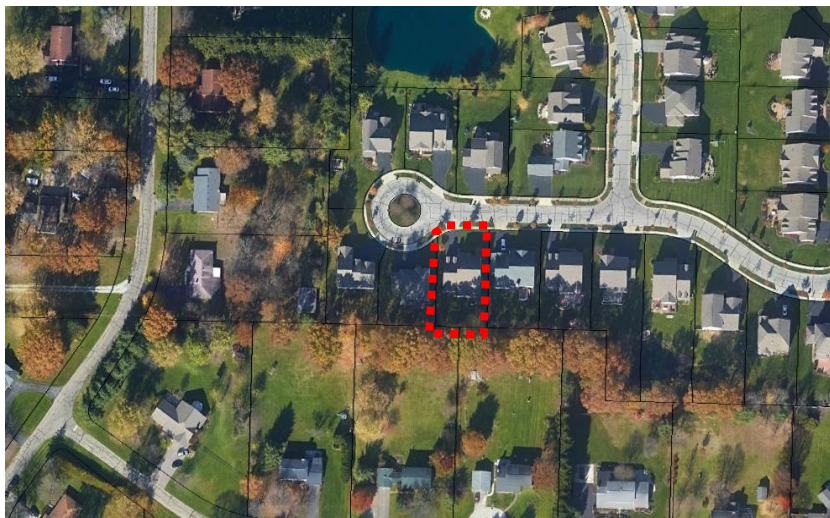
Staff recommends approval of the requested variance should the Planning Commission find that the application has sufficient basis for approval. The applicant proposes to build the spa in a way where it will appear as part of the deck rather than it being a standalone spa, built above ground in the backyard. 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
May 18, 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, April 2, and May 2, 2020

Staff report prepared by Chris Christian, Planner

I. REQUEST AND BACKGROUND

This application was heard and tabled at the April 20, 2020, Planning Commission meeting. During the meeting the Planning Commission comment on the lack of a controlled barrier between the pool at this property and the golf course along the northeast property line. To address the Planning Commission's concerns the applicant has revised the proposed landscaping to include a continuous 3-4 foot tall landscape hedge along portions of the golf course property line where landscaping does not currently exist. This new proposal is included in the meeting packet. The new landscaping proposal's evaluation is underlined below.

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.

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 in 2016. 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. 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. 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.
2. 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.
3. The pool is located at the rear of the home, between the house and the New Albany Country Club golf course.
4. The property to the west is currently vacant and contains several large tree masses.
5. 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.
6. 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.
7. The parcel has a 44" high 3-rail horse fence along the rear property line separating the house and golf course.
8. A previous variance application for this property that was denied by the Planning Commission in 2016 did not include any additional fencing or landscaping around the property. Due to the lack of fencing and landscaping the Planning Commission found it did not meet the standards for granting of a variance and was not consistent with similar variances that have been approved 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.
9. 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 south portion of the property with a 48" tall locking gate that connects to the house. While the additional fencing along the southern 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. The applicant has submitted additional pictures that illustrate how the existing landscaping and grading provide a buffer from the golf course. Additionally, there are no residential neighbors on the southern side of the property. The property's size and lack of neighbors appear to create special circumstances on this side of the property.

10. At the April 20, 2020, Planning Commission meeting the board commented there is a lack of uninterrupted barrier between the pool and the golf course property that would serve to prevent uncontrolled access. To address the PC's comments the applicant revised the landscape plan to include a continuous and uninterrupted 3-4 foot tall evergreen landscape hedge, immediately behind the horse fence, along the portions of the golf course property line that where substantial landscaping does not exist. This additional landscaping appears to preserve the spirit and intent of the zoning ordinance by providing uninterrupted barrier to prevent uncontrolled access and is consistent with similar approved requests at the Highgrove subdivision.
11. 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.
12. 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. It appears 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 however, it does not prevent uncontrolled access. At the April 20, 2020, Planning Commission meeting the board commented that due to the gradual slope of grade change, it does not appear to prevent uncontrolled access from the between the pool and this property line. The applicant revised the variance request to include a continuous and uninterrupted 3-4 foot tall evergreen landscape hedge along the portions of the golf course property line where substantial landscaping does not exist. It appears this additional landscaping will provide an uninterrupted barrier to prevent uncontrolled access. This meets the intent of staff's recommended condition of approval placed on the 2016 variance request and appears to make this variance request consistent with similar previously approved requests.

VII. RECOMMENDATION

Staff recommends approval of the requested variance should the Planning Commission find that the application has sufficient basis for approval. The location along a private golf course and size of the parcel addresses proximity and access factors that have been important in other past variances since it creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Additionally, the applicant proposes a code compliant fence that will prohibit access from the western portion of the property where an undeveloped residential lot exists.

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. The applicant proposes to install a continuous, uninterrupted 3-4 foot tall evergreen landscape hedge along the golf course property line where landscaping does not already exist. Staff believes that this additional landscaping serves as an appropriate barrier to prevent uncontrolled, access to the pool. With these additional landscaping barriers the variance appears to preserve the spirit and intent of the zoning ordinance.

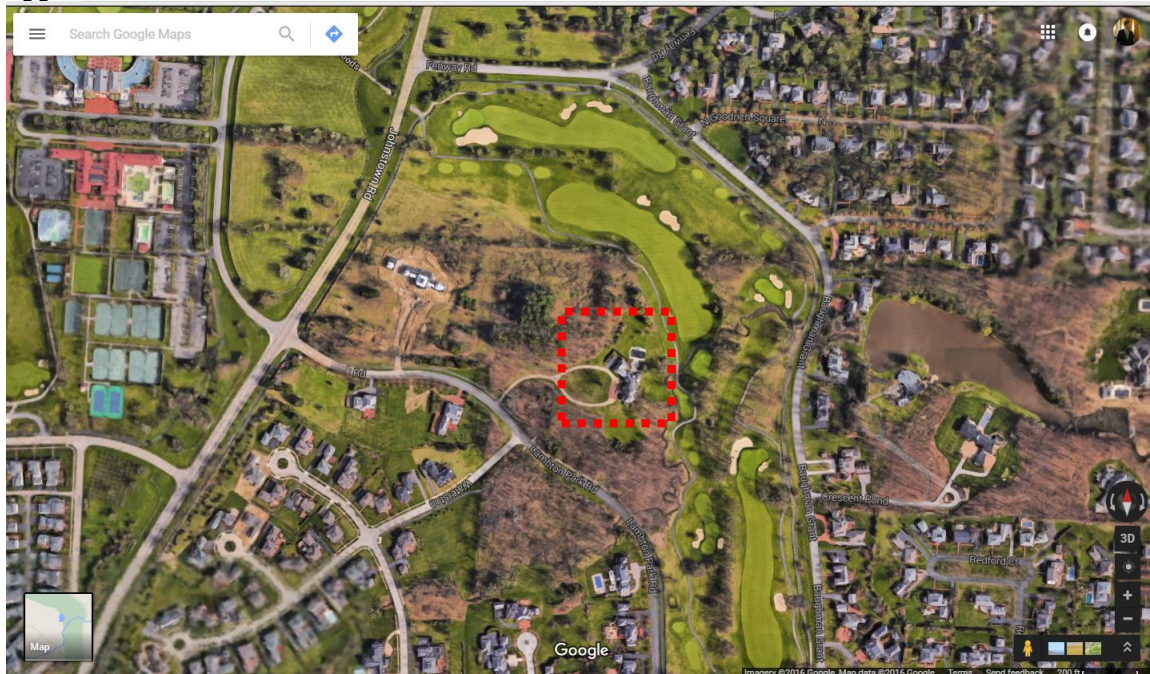
VIII. ACTION

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. Applicant maintains landscaping and new plantings.
2. The pool cover is certified annually by the homeowner.

Approximate Site Location:





**Planning Commission Staff Report
May 18, 2020 Meeting**

**TURKEY HILL EXPANSION
CONDITIONAL USE**

LOCATION: Located at the northeast corner of US-62 Smith's Mill Road
(PIDs: 222-004736 & 222-000347)
APPLICANT: EG America
REQUEST: Conditional Use
ZONING: Infill Planned Unit Development (I-PUD): Canini Trust Corp, subarea 8a
STRATEGIC PLAN: Retail Commercial
APPLICATION: CU-35-2020

Review based on: Application materials received April 17 and May 1, 2020

Staff report prepared by Chris Christian, Planner

III. REQUEST AND BACKGROUND

The applicant requests approval of a conditional use to allow a drive-through to be developed as part of restaurant use. The Canini Trust Corp (I-PUD) zoning text allows the C-2 General Business (Commercial) District which permits restaurant uses. Drive-through facilities associated with a permitted use are conditional uses. There is no known tenant for the restaurant with a drive through.

This request is in conjunction with a final development plan and associated variances for a multi-tenant restaurant building and carwash.

IV. SITE DESCRIPTION & USE

The site is located on the northeast corner of Smith's Mill Road and US-62 within the Canini Trust Corp site. The site is 2.842 acres and is currently undeveloped. The applicant states that this property will be combined with the existing Turkey Hill site which will result in a total lot size of 5.01 acres.

V. EVALUATION

The general standards for Conditional Uses are contained in Codified Ordinance Section 1115.03. The Planning Commission shall not approve a conditional use unless it shall in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location meets all of the following requirements:

- (a) *The proposed use will be harmonious with and in accordance with the general objectives, or with any specific objective or purpose of the Zoning Ordinance.*

Uses:

- The site is approximately 2.842 acres and will contain a 7,270 square foot multi-tenant commercial building and a separate building containing an automatic car wash. Access to the

site is proposed to be from the existing US-62 curb cut shared with the Turkey Hill. As part of this development the applicant will extend Woodcrest Way to Smith's Mill Road. A curb cut along Woodcrest Way is also proposed to provide direct access to Smith's Mill Road

- The new commercial building will have two tenant spaces, one of which will be occupied by IHOP. No drive-through is proposed for the IHOP portion of the building. One drive-through is proposed for the other tenant space.
- The 2014 New Albany Strategic Plan identifies this area as Retail Commercial. The proposed use appears to be appropriate based on its proximity to State Route 161, the New Albany Business Park and the surrounding uses. The site is located within the Canini Trust Corp which envisions this type of use.
- It does not appear that the proposed use will alter the character of the surrounding area. This area is zoned to allow restaurant users and there is an existing restaurant with a drive through facility close to this site. Additionally, the Planning Commission recently approved the Sheetz development which included a drive-through facility and will be located across the street from this proposed development. This subarea of the Canini Trust Corp also contains a gas station and the Dairy Queen restaurant with a drive-through.

Architecture:

- The commercial building is well designed using high quality building materials with strong cornice lines along all sides of the building and incorporates large, appropriately designed windows along the primary facades of the building.
- The drive through window is located on the northeast side of the building and is appropriately designed using the same building materials that are used on other elevations of the building.
- The overall height of the building is 20 feet and 8 inches, which meets the 45 foot maximum height allowed by the zoning text.
- All of the mechanical equipment is located on the roof of the building and will be fully screened from the public right-of-ways as well as private roads.

Parking & Circulation:

- C.O. 1167.05(d)(4) states that there shall be at least one parking space provided for each 75 square feet of gross floor area, plus additional stacking spaces in the drive-through lane equal to 25 percent of the required number of parking spaces.
 1. The entire building for both tenants is 7,270 square feet in size therefore 97 parking spaces are required. The applicant is meeting this requirement by providing 97 spaces.
 2. The tenant space with the drive-through facility is 2,567 square feet and 25 percent of the required parking spaces for the drive-through is 9 stacking spaces. The applicant is meeting this requirement by providing 9 stacking spaces.
- Zoning text section 8a.02(3) states that bicycle racks shall be provided within the overall subarea and the applicant is providing four bicycle parking spaces.
- The building is surrounded by a parking lot and an internal drive aisle. Customers can enter and exit the site from US-62 from an existing curb cut for the Turkey Hill site and from Smith's Mill Road via an extension of the private road within the Canini Trust Corp site. The proposed drive-through lane appears to appropriately positioned on the site so that the drive-through traffic does not interfere with traffic circulation on the rest of the site and will not cause traffic to back up onto public roads.

Signage:

- Because there is no known user for this tenant space, there is no proposed signage associated with the drive-through. Staff recommends a condition of approval that signage locations be

shown on the final development plan and that all signage be subject to staff approval. Showing sign locations but not final designs on the development plan is consistent with other approved final development plans and allows more flexibility should signage needs change in the future (if signage is shown on the FDP, Planning Commission approval of a revised FDP is required to relocate signage).

- The applicant is proposing signage for the other tenant space to be occupied by IHOP. This sign package will be evaluated under a separate staff report (FDP-34-2020).

Landscaping:

- A landscape plan has been submitted with the final development plan application for this site. The City Landscape Architect's comments can be found in the final development plan staff report.

(b) The proposed use will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.

- The entire lot is approximately 2.842 acres and once it is combined with the existing Turkey Hill parcel, the total site will be 5.01 acres in size.
- The proposed use is harmonious with the existing and intended character for the general vicinity and will not change the essential character of the area.
 1. The proposed use is appropriate due to its proximity to the State Route 161 interchange and the New Albany Business Park.
 2. This site is located within the Canini Trust Corp which envisions this type of use. There is an existing restaurant with a drive-through facility that is developed in another subarea of this zoning district. Additionally, the Planning Commission recently approved a final development plan for Sheetz which included a restaurant drive-through facility and will be located right across the street from this proposed development.

(c) The use will not be hazardous to existing or future neighboring uses.

- The use does not appear it will be hazardous to the existing or future neighboring uses. It appears that this an appropriate location for drive-through facility.

(d) The area will be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

- Sewer and water service are available in this location.
- The applicant proposes to extend the existing private road, Woodcrest Way, along the southern property line and connect into Smith's Mill Road.
- There is a planned city project for roadway improvements along US-62. These improvements include extending the leisure trail from the Windsor subdivision under the State Route 161 overpass all the way to the Smith's Mill Road and US-62 intersection which will encourage multi-modal transportation at this site.
- The proposed commercial development will produce no new students for the school district.

(e) The proposed use will not be detrimental to the economic welfare of the community.

- The proposed use will likely economic welfare in the city due to creation of jobs which generate income taxes.

(f) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

- It does not appear the site will involve operation that will be detrimental to adjacent uses. This area of the city is auto-oriented and is in close proximity to the State Route 161. US-62 is currently heavily traveled therefore it is reasonable to assume that this development will be frequently visited and serve as an important asset to those in the surrounding area.

(g) Vehicular approaches to the property shall be so designated as not to create interference with traffic on surrounding public streets or roads.

- The site is proposed to be accessed via the existing Turkey Hill curb cut along US-62 as well as a new curb cut on the private road that will exist on the southern side of the site.
- The building is surrounded by the parking lot and internal drive aisle. The proposed drive through lane appears to be properly positioned on the site so that the drive through traffic does not interfere with the traffic circulation on the rest of the site and will not cause traffic to back up onto public roads. Additionally, the applicant proposes to install marked crossings in the drive through lane to ensure that pedestrians can walk through this area safely.

VI. RECOMMENDATION

The overall proposal is consistent with the code requirements for conditional uses. The proposed use is appropriate for the site based on the current zoning and the 2014 City of New Albany Strategic Plan. Retail has historically been approached in a thoughtful and prescribed way that promotes a planned amount of land being dedicated to this use. Due to the close proximity of this site to State Route 161 and this portion of the business park, the drive-through is an appropriate use in this location. This application of retail is appropriate and is strategically located to provide auto oriented services/retail uses due to its proximity to the interchange and to serve this end of the business park. The proposed use will not change the character of the US-62 corridor as there is an existing restaurant with a drive-through facility within the Canini Trust Corp site and the Sheetz drive-through development located across the street. The drive-through lane is in an appropriate location as it is oriented away from public roads and it will not interfere with traffic circulation on the rest of the site. While the use appears to be appropriate, there are several variances requested as part of this project. Therefore staff recommends a condition of approval that the approval of the final development plan and variances be a condition of approval. Additionally, staff recommends a condition of approval that the conditional use permit will become void if type of use, other than a restaurant, occupies this tenant space.

Staff recommends approval provided that the Planning Commission finds the proposal meets sufficient basis for approval.

VII. ACTION

The Commission shall approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved with supplementary conditions, the Planning Commission shall direct staff to issue a zoning permit listing the specific conditions listed by the Planning Commission for approval.

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

Move to approve application CU-35-2020 with the following conditions:

- 1) The conditional use permit will become void if or a different kind of business, other than a restaurant, occupies this tenant space.
- 2) Sign locations must be shown on the final development plan and final sign design is subject to staff approval.

- 3) The Final Development Plan and associated variance applications (FDP-34-2020 and V-36-2020) for are approved by the Planning Commission.

Approximate Site Location:



Source: Google Earth



**Planning Commission Staff Report
May 18, 2020 Meeting**

**TURKEY HILL EXPANSION
FINAL DEVELOPMENT PLAN**

LOCATION: Located at the northeast corner of US-62 Smith's Mill Road
(PIDs: 222-004736 & 222-000347)
APPLICANT: EG America
REQUEST: Final Development Plan
ZONING: Infill Planned Unit Development (I-PUD): Canini Trust Corp, subarea 8a
STRATEGIC PLAN: Retail Commercial
APPLICATION: FDP-34-2020

Review based on: Application materials received April 17, May 1 and May 7, 2020

Staff report prepared by Chris Christian, Planner

VIII. REQUEST AND BACKGROUND

The applicant requests review and approval of a final development plan for a proposed two tenant commercial building and automatic car wash on 2.842 acres. The final development plan area also includes an extension of an existing private road, Woodcrest Way, on the southern portion of the site that will connect into Smith's Mill Road. The site is located within Subarea 8a of the Canini-Trust Corp I-PUD zoning district.

The zoning text allows Office buildings and the permitted uses contained in the Codified Ordinances of the Village of New Albany, OCD Office Campus District, Section 1144.02 and C-2, Commercial District, Section 1147.02, and the conditional uses contained in Section 1147.02, which includes restaurants with drive-thru facilities. The applicant has applied for a conditional use to be heard by the Planning Commission at tonight's meeting under case CU-35-2020.

The applicant is also applying for several variances related to this final development plan under application V-36-2020. Information and evaluation of the variance requests are under a separate staff report.

IX. SITE DESCRIPTION & USE

The site is located on the northeast corner of Smith's Mill Road and US-62 within the Canini Trust Corp site. The site is 2.842 acres and is currently undeveloped. The applicant states that this property will be combined with the existing Turkey Hill site which will result in a total lot size of 5.01 acres.

III. EVALUATION

Staff's review is based on New Albany plans and studies, zoning text, zoning regulations. Primary concerns and issues have been indicated below, with needed action or recommended action in underlined text. Planning Commission's review authority is found under Chapter 1159.

The Commission should consider, at a minimum, the following (per Section 1159.08):

- 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/Rocky Fork-Blacklick Accord 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 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).*

It is also important to evaluate the PUD portion based on the purpose and intent. Per Section 1159.02, PUD's are intended to:

- a. *Ensure that future growth and development occurs in general accordance with the Strategic Plan;*
- b. *Minimize adverse impacts of development on the environment by preserving native vegetation, wetlands and protected animal species to the greatest extent possible*
- c. *Increase and promote the use of pedestrian paths, bicycle routes and other non-vehicular modes of transportation;*
- d. *Result in a desirable environment with more amenities than would be possible through the strict application of the minimum commitment to standards of a standard zoning district;*
- e. *Provide for an efficient use of land, and public resources, resulting in co-location of harmonious uses to share facilities and services and a logical network of utilities and streets, thereby lowering public and private development costs;*
- f. *Foster the safe, efficient and economic use of land, transportation, public facilities and services;*
- g. *Encourage concentrated land use patterns which decrease the length of automobile travel, encourage public transportation, allow trip consolidation and encourage pedestrian circulation between land uses;*

- h. Enhance the appearance of the land through preservation of natural features, the provision of underground utilities, where possible, and the provision of recreation areas and open space in excess of existing standards;*
- i. Avoid the inappropriate development of lands and provide for adequate drainage and reduction of flood damage;*
- j. Ensure a more rational and compatible relationship between residential and non-residential uses for the mutual benefit of all;*
- k. Provide an environment of stable character compatible with surrounding areas; and*
- l. Provide for innovations in land development, especially for affordable housing and infill development.*

New Albany Strategic Plan Recommendations

The 2014 New Albany Strategic Plan lists the following development standards for the Neighborhood Retail future land use category:

- 1. Retail buildings should have footprints no larger than 80,000 square feet, individual users should be no greater than 60,000 square feet.
- 2. Parking areas should promote pedestrians by including walkways and landscaping to enhance visual aspects of the development.
- 3. When parking vastly exceeds minimum standards, it should be permeable or somehow mitigate its impact.
- 4. Combined curb cuts and cross access easements are encouraged.
- 5. Structures must use high quality building materials and incorporate detailed, four sided architecture.
- 6. Curb cuts on primary streets should be minimized and well organized connections should be created within and between all retail establishments. Combined curb cuts and cross access easements between parking are preferred between individual buildings.
- 7. Entrances to sites should respect existing road character and not disrupt the Green Corridors strategy objectives.
- 8. Walkways at least 8 feet in width should run the length of the building.
- 9. Green building and site design practices are encouraged.
- 10. Large retail building entrances should connect with pedestrian network and promote connectivity through the site.

■ Use, Site and Layout

- 1. The applicant proposes to develop a two tenant commercial building and an automatic car wash as part of the final development plan application. One of the tenant spaces will be occupied by IHOP. The other tenant space is designed for a restaurant with a drive through facility and currently there is no known user for this space. The Canini Trust Corp zoning text permits restaurant and car wash uses within this subarea. Restaurants with drive-thru facilities are a conditional use and the applicant has applied for this conditional use to be heard by the Planning Commission at tonight's meeting under case CU-35-2020.
- 2. The proposed uses are appropriate given the proximity of this site to State Route 161 and the surrounding commercial development surrounding this site. Some of the surrounding uses include Home2Suites, the Turkey Hill gas station, convenience store and car wash as well as Dairy Queen which also has a drive-thru facility. Additionally, the Planning Commission recently approved a final development plan for Sheetz which will be located just across US-62 from this site.
- 3. Part of this final development plan submittal is an extension of an internal private road that runs along the southern portion of this property and will connect into Smith's Mill Road. The existing portion of this road was reviewed and approved with the final development plan for the Turkey Hill gas station and convenience store where this future extension was envisioned. The proposed road design is consistent with what was approved at that time.

4. The applicant states that the existing car wash on the Turkey Hill site will be demolished and replaced with green space. The proposed car wash will straddle this property line and the Turkey Hill property. Staff recommends a condition of approval that the two lots be combined.
5. The car wash entrance will be located on the south side of the site and cars will exit the wash and be able to utilize proposed vacuum spaces or exit the site either onto US-62 or by using the proposed curb cut along the private road.
6. The Canini Trust Corp zoning text requires that the total lot coverage, which includes areas of pavement and building, to not exceed 80% and the applicant is meeting this requirement with 62% total lot coverage.
7. The zoning text requires the following setbacks:

Road	Requirement	Proposed
US-62	50 foot building and pavement setback	Commercial Building: 50 foot pavement 121 foot building Car Wash: 50 foot pavement 112 foot building
Smith's Mill Road	50 foot building and pavement setback	Commercial Building: 55 foot pavement 112 foot building Car Wash: 55 foot pavement 400+ foot building
Private Road	20 foot building and pavement	Commercial Building: <u>9 foot pavement [variance requested]</u> 84 foot building Car Wash: <u>9 foot pavement [variance requested]</u> 67 foot building

8. Stormwater retention for the site will be handled by an existing detention basin located off site.
9. The city's urban design and landscape architect consultant, MKSK, reviewed the proposal and recommends that the proposed elevation of the building be adjusted to 1060.0. The proposed elevation adjusts the building so that it is approximately at the same grade as Johnstown Road. This treatment maintains the character of this corridor established by the Turkey Hill site as well as contributes to ensuring that the site is more ADA accessible. Consistent grading between the street ensures that the building does not feel too high or sunken into the site as compared to the streetscape. This is especially important at this site since the 2014 Strategic Plan identifies this intersection as a gateway into the community. Staff recommends a condition of approval the plan is updated to address this comment, subject to staff approval.

▪ **Access, Loading, Parking**
Parking

1. Per Codified Ordinance 1167.05(d)(4) requires a minimum of one parking space for every 75 square feet of restaurant floor area space. The building is 7,270 square feet in size therefore 97 parking spaces are required and the applicant is meeting this requirement by providing 97 spaces. Additionally, the city parking code requires a minimum number of stacking spaces in the drive

thru lane must be provided. The required number of drive-thru stacking spaces must equal 25% of the total required parking spaces for the drive-through tenant space. Based on this calculation 9 stacking spaces must be provided and the applicant is meeting this requirement by providing 9 stacking spaces.

2. In addition to the minimum number of required parking spaces, the applicant is providing 6 spaces intended to be used for car wash customers and will include vacuums.
3. Zoning text section 8a.02(3) requires bicycle racks be provided within the subarea and the applicant is meeting this requirement by providing 4 bicycle parking spaces on the site in front of the building at the US-62 entrance.

Circulation

1. The site will be accessed from an existing right-in, right out only curb cut off Johnstown Road for the Turkey Hill site, and a curb cut off the proposed private road extension. The proposed private road extension will connect into Smith's Mill Road.
2. The drive-through appears to be appropriately positioned on the site where it does not interfere with traffic on the rest of the site and will not cause traffic to back up onto public roads.
3. The building is surrounded by the parking lot, a drive-thru lane and internal drive aisles.
4. There is an existing leisure trail along Johnstown Road and Smith's Mill Road. The applicant proposes to provide a pedestrian connection to the leisure trail along Smith's Mill Road as well as a sidewalk that connects the parking lot to the building. MKSK reviewed the proposal and recommends the developer add a pedestrian entrance into site from Johnstown Road and add a crosswalk within parking lot to facilitate a safe pedestrian crossing. See attached MKSK memo for diagram of suggested location. Staff recommends a condition of approval the plan is updated to address this comment, subject to staff approval.
- 5.
6. Per the approved final development plan for the Canini Trust Corp's Woodcrest Way private road network, the applicant is not required to install a sidewalk along the proposed private road. The applicant is proposing a sidewalk along section of the site that terminates at the Turkey Hill dumpster. Staff recommends a condition of approval requiring this section of sidewalk be removed and relocated to the proposed Woodcrest Way sidewalk to the other side of the street to connect to the existing sidewalk. The current proposed location does not connect to other walkways to assist with pedestrian circulation.

7.

■ Architectural Standards

1. Zoning text section 8a.03(1) states that building shall be designed with the same caliber of finish on all elevations of the building(s). The design of the proposed car wash and two-tenant commercial building incorporates high quality building materials and have strong cornice lines on all sides of the building. Additionally, the design of these buildings is complementary to the design of the Turkey Hill convenience store building which is adjacent to this site.
2. The overall height of the commercial building is 20 feet and eight inches and the height of the carwash is 17 feet, which meets the 45 foot maximum height allowed by the zoning text.
3. As mentioned, the buildings features four sided architecture to provide visual interest to all sides of the building. The buildings will be brick veneer with EIFS and cast stone used for accents over the windows and the roof line. The buildings use a variety of techniques to break up the overall mass of the building and provide visual interest to the façade including the use of architectural features as well as breaking up the elevations in a way that makes the tenant spaces more easily identifiable.
4. The applicant has applied for a variance to Section 6(A)(12) of the City's Design Guidelines and Requirements, which requires that buildings have operable and active front doors along all public and private roads. This request is evaluated in the staff report for the associated variance application (V-36-2020).

5. Zoning Text 8a.03(3)(b) states flat roofs are permitted but must incorporate strong cornice lines. The commercial building has a flat roof and car wash has a sloped roof and both buildings incorporate strong cornice lines.
 6. Zoning Text 8a.03(3)(c) requires true divided light or simulated divided light windows with exterior muntins where appropriate to the building style. The proposed windows appear to be appropriately designed and scaled for this retail use. The windows have both large glass areas consistent with the retail use, but integrate divided light window panes to relate these structures with the neighboring structures.
 7. The city architect reviewed is supportive of the proposed designs stating that the use of different massing elements is appropriate to break up the elevations of the buildings and that the use of strong cornice lines and brick veneer is appropriate given the buildings location.
 8. All of the mechanical equipment is located on the roof of the building and appears to be fully screened from view of the public right-of-ways. Staff recommends a condition of approval that all rooftop equipment must be screened from public rights of way, subject to staff approval.
- ***Parkland, Buffering, Landscaping, Open Space, Screening***
 1. Codified Ordinance 1171.06(a)(3) requires one tree per 10 parking spaces. The applicant is providing 97 parking spaces thereby requiring 10 trees and the applicant is meeting this requirement by providing 10 trees.
 2. Codified Ordinance 1171.05(e)(3) requires a minimum of one tree for every 5,000 square feet of ground coverage and a total planting equal to twenty-five (25) inches plus one-half inch in tree trunk size for every 4,000 square feet over 50,000 square feet in ground coverage. The site has a total ground coverage area of 64,780 square feet which results in the requirements of having to provide 13 trees and a tree planting totaling 27.0 inches. The applicant is only providing 6 trees and staff recommends a condition of approval that 7 additional trees are planted on the site.
 3. The zoning text section 8a.04(5) requires that there be a minimum of eight (8) deciduous or ornamental trees per 100 lineal feet planted throughout the setback areas along US-62 and Smith's Mill Road. The proposed site has approximately 371 feet of frontage along US-62, requiring 30 trees to be installed and the site has 235 feet of frontage along Smith's Mill Road, requiring 19 trees to be installed and the applicant is meeting these requirements by providing 30 trees along US-62 and 19 trees along Smith's Mill Road.
 4. Zoning text section 8a.04(2) requires that street trees must be planted along Smith's Mill Road and US-62 at a rate of one tree for every 30 feet. There are 8 existing street trees along Smith's Mill Road which meet this requirement and 11 existing trees along US-62 where a minimum of 14 street trees are required. The applicant proposes to add 3 street trees along US-62 to meet this requirement.
 5. The zoning text requires a minimum of 8% interior parking lot landscaping on the site. The applicant is meeting and exceeding this requirement by providing 13% interior parking landscaping on the site.
 6. Per zoning text 8a.04(4)(a) parking lots shall be screened from rights-of-way within a minimum 36 inch high evergreen landscape hedge or wall. The landscape plan shows a 36" shrub to screen the parking lot from Smith's Mill Road, US-62 as well as the private road.
 7. Zoning text section 8a.05(3) requires that trash receptacles and exterior storage areas be fully screened from public roads. The applicant is meeting this requirement by providing a brick trash container enclosure with wood slat doors behind the building along the private road.
 8. The City Landscape Architect has reviewed the referenced plan in accordance with the landscaping requirements found in the New Albany Codified Ordinances and zoning text and provides the following comments. Staff recommends all the City Landscape Architect's comments are met, subject to staff approval.
 1. Specify and confirm color of composite planks on the dumpster enclosure doors.
 2. Specify and confirm species to match existing street trees along Woodcrest Way. Trees to be installed at minimum 3" caliper.

3. Set back street trees to allow Buxus planting in a continuous line to match existing planting along Woodcrest Way. See attached diagram.
4. Continue Buxus planting along site to maintain character of Woodcrest Way. See attached diagram.
5. Plant random massings of a mix of native understory plant material with large deciduous shade trees at the corner of Smith's Mill Road and Johnstown Road to screen existing utility enclosures and provide an aesthetic presence at this prominent corner in New Albany. The proposed random massings of trees along Smith's Mill Road and Johnstown Road should blend together at the corner creating a "naturalized" space between the site and the street.
6. Confirm that Buxus 'Green Velvet' meets the 36" minimum height for parking screen at installation.
7. Select new tree species to replace Oxydendrum arboreum. Oak, Maple or Elm species are an acceptable alternative.

■ **Lighting & Signage**

1. The applicant has submitted a photometric plan which shows no lighting extending past the property boundary lines.
2. The applicant proposes a standard gooseneck light fixture to be used within the parking area. Hollbrook light fixtures are used on surrounding sites in the immediate area and they are painted black. In order to ensure that lighting is consistent with the surrounding area, staff recommends that the same Hollbrook standard light fixture, used on neighboring sites in this subarea, be used on this site and that the poles must be painted black.
3. As part of the final development plan, the applicant has submitted a sign plan for the known user of one of the tenant spaces, the car wash as well as a ground sign along US-62. There are two variances to allow this signage to be installed and those variances are identified below. These variances are evaluated in a separate staff report.

IHOP Wall Signs

Zoning text section 8a.06(3)(i) permits one wall mounted sign per retail tenant on each elevation of the building that fronts or sides on a public or private road. One square foot of sign face is permitted per each lineal foot of the building, not to exceed 80 square feet in size. The applicant proposes to install two identical wall signs for the IHOP tenant space, one on the Smith's Mill Road elevation and one on the US-62 building elevation with the following dimensions:

- a. Area: 95 square feet [does not meet code. Variance requested]
- b. Lettering height: less than 24 inches [meets code]
- c. Location: one on the Smith's Mill Road elevation and one on the US-62 elevation above the tenant space [meets code]
- d. Lighting: downcast gooseneck [meets code]
- e. Relief: Not provided. Staff recommends a condition of approval that the proposed signs have a minimum of 1 inch relief.
- f. Color: red, white and blue (total of three) [meets code]
- g. Materials: Aluminum letters applied on a wooden backer affixed to the building [meets code]

- Both of the signs will feature the company logo and read "IHOP"

Ground Mounted Sign

The zoning text states that all ground mounted signage shall be consistent with the specifications found in the 2013 Trust Corp Signage Recommendations Plan and the proposed monument sign

has met these standards. Because IHOP is the only known user at this time, one sign space will be intentionally left blank.

- a. Area: 35.33 square feet [meets code]
 - b. Location: One perpendicular to Johnstown Road [meets code]
 - c. Lighting: 8 external ground spot lights (four on each side) [meets code].
 - d. Relief: 12 inches [meets code]
 - e. Colors: Red, white and blue (total of 3) [meets code].
 - f. Materials: Brick with a precast cap [meets code]
- The sign will feature the company logo and the address of the business.
 - The city landscape architect has reviewed the location of the sign and recommends it be moved monument along Johnstown Road closer to the entrance drive. See attached diagram. Staff recommends a condition of approval the plan is updated to address this comment, subject to staff approval.
 - The applicant proposes to install eight ground lights to illuminate this sign and while this is permitted in the zoning text, existing monument signs along this corridor only use one light per side to provide illumination. In order to be more consistent with the surrounding area, staff recommends a condition of approval that only one ground light, per side, is used to illuminate the sign.

Car Wash Wall Signs

Zoning text section 8a.06(3)(i) permits one wall mounted sign per retail tenant on each elevation of the building that fronts or sides on a public or private road. One square foot of sign face is permitted per each lineal foot of the building, not to exceed 80 square feet in size. The applicant proposes to install two identical wall signs for the gas station, one on the US-62 elevation and one on the private road elevation with the following dimensions:

- a. Area: 20 square feet [meets code]
- b. Lettering height: less than 24 inches [meets code]
- c. Location: one on the US-62 elevation and one on the private road elevation [meets code]
- d. Lighting: downcast gooseneck [meets code]
- e. Relief: Not provided. Staff recommends a condition of approval that the proposed signs have a minimum of 1 inch relief.
- f. Color: green and two shades of blue (total of three) [meets code]
- g. Materials: Not provided. Staff recommends a condition of approval that the car wash sign must meet city sign code requirements.

- Both of the signs will feature the company logo and read “EG Group Auto”

4. The applicant proposes to install a 10.5 square foot car wash menu board sign, located at the entrance of the carwash on the south side of the site which is permitted per C.O. 1169.11(c). This sign is meeting all code requirements. Staff recommends a condition of approval that any new car wash signage be subject to staff review and approval.

IV. ENGINEER’S COMMENTS

The City Engineer has reviewed the application and provided the following comments. These comments can also be found in a separate memo attached to this staff report. Staff recommends a condition of approval that the comments of the city engineer are addressed, subject to staff approval.

1. Please refer to Exhibit A. Provide a cover sheet with a signature block and note blocks in accordance with this exhibit and C.O. 1159.07(3)(v).

V. RECOMMENDATION

Staff recommends approval of the final development plan provided that the Planning Commission finds the proposal meets sufficient basis for approval. The proposal is meeting many of the goals of the 2014 New Albany Strategic Plan such as providing pedestrian access along roadways and into the site and utilizing high quality building materials by incorporating four-sided architecture. There is an established character along US-62 both in terms of site design as well as architecture. The proposed building design complements the architecture both within the Canini Trust Corp as well as surrounding sites. The old Key Bank building utilizes an appropriate and prominent architectural feature, establishing a presence at the corner of US-62 and Smith's Mill Road. The proposed IHOP structure follows suit by establishing an architectural presence close to the corner which creates a gateway along this corridor. The proposed car wash is an improvement compared to the existing car wash on the Turkey Hill site as the entry and exit traffic is reversed which moves most of the vehicular traffic as well as signage back into the site, away from public roads. Maintaining the established finish floor elevation here is another crucial element to preserving the established character along this corridor as well as ensuring that the site is ADA accessible. While this site is in an auto-oriented area of the city, the applicant proposes to install several sidewalks that provide pedestrian connections from the parking lot to the building as well as to the public leisure trail system. Overall, the proposed development is in an appropriate location given the context of the surrounding area and will serve as an amenity for the New Albany Business Park. The development plan is generally consistent with the purpose, intent and the standards of the zoning code and the applicable I-PUD zoning text.

V. ACTION

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

Move to approve final development plan application **FDP-34-2020**, subject to the following conditions:

1. This lot and the existing Turkey Hill property must be combined.
2. The FFE of the commercial building must be 1060.0.
3. The proposed sidewalk along the private drive is relocated to the other side of the private road and connected to the existing sidewalk at the Home2Suites site.
4. 6 trees must be added on the interior of the site.
5. All rooftop mechanical equipment must be fully screened from public rights-of-way.
6. The City Landscape Architect's comments must be addressed, subject to staff approval.
7. The standard Holbrook parking lot light fixture must be used and be painted black.
8. The IHOP and carwash wall signs must have a minimum of 1 inch relief.
9. The material used for the carwash signs must meet the requirements of the city sign code.
10. Future car wash signage is subject to staff approval.
11. One ground mounted light, per side, is permitted to provide illumination of the monument sign.
12. The City Engineer's comments must be addressed, subject to staff approval.

Approximate Site Location:



Source: Google Earth



**Planning Commission Staff Report
May 18, 2020 Meeting**

**TURKEY HILL EXPANSION
VARIANCES**

LOCATION: Located at the northeast corner of US-62 Smith's Mill Road
(PIDs: 222-004736 & 222-000347)

APPLICANT: EG America

REQUEST:

- (A) Variance the Canini PUD zoning text section 8a.01(4) to allow the paved parking area to be approximately 9 feet from the edge of pavement along a private road where the code requires a minimum setback of 20 feet.
- (B) Waiver to Codified Ordinance Section 1157.01 (Design Guidelines and Requirements Section 6(A)(12)) to eliminate the requirement that buildings have operable and active front doors along all public and private roads.
- (C) Variance to the Canini PUD zoning text section 8a.06(3)(i) to allow two wall signs to be 95 square feet in size where the zoning text allows a maximum area of 80 square feet based on the lineal frontage of the building.

ZONING: Infill Planned Unit Development (I-PUD): Canini Trust Corp, subarea 8a

STRATEGIC PLAN: Retail Commercial

APPLICATION: V-36-2020

Review based on: Application materials received April 17 and May 1, 2020

Staff report prepared by Chris Christian, Planner

X. REQUEST AND BACKGROUND

The applicant requests variances in conjunction with the final development plan for a

The applicant requests the following variances:

- (B) Variance the Canini PUD zoning text section 8a.01(4) to allow the paved parking area to be approximately 9 feet from the edge of pavement along a private road where the code requires a minimum setback of 20 feet.
- (C) Waiver to Codified Ordinance Section 1157.01 (Design Guidelines and Requirements Section 6(A)(12) to eliminate the requirement that buildings have operable and active front doors along all public and private roads.
- (D) Variance to the Canini PUD zoning text section 8a.06(3)(i) to allow two wall signs to be 95 square feet in size where the zoning text allows a maximum area of 80 square feet based on the lineal frontage of the building.

VII. SITE DESCRIPTION & USE

The site is located on the northeast corner of Smith's Mill Road and US-62 within the Canini Trust Corp site. The site is 2.842 acres and is currently undeveloped. The applicant states that this property will be combined with the existing Turkey Hill site which will result in a total lot size of 5.01 acres.

VIII. 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.

- 37. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
- 38. Whether the variance is substantial.*
- 39. Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment."*
- 40. Whether the variance would adversely affect the delivery of government services.*
- 41. Whether the property owner purchased the property with knowledge of the zoning restriction.*
- 42. Whether the problem can be solved by some manner other than the granting of a variance.*
- 43. 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*):

- 44. 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.*
- 45. 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.*
- 46. That the special conditions and circumstances do not result from the action of the applicant.*
- 47. 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.*
- 48. 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 the Canini PUD zoning text section 8a.01(4) to allow the paved parking area to be approximately 9 feet from the edge of pavement along a private road where the code requires a minimum setback of 20 feet.

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

7. The requested variance will reduce the required minimum pavement setback adjacent to the private road (Woodcrest Way) on the south side of the property from 20 feet to 9 feet.
8. This road serves as a private access drive to other properties within the Canini Trust Corp.
9. The variance request does not appear to be substantial. The appropriate streetscape improvements is still accomplished with the smaller setback. The applicant is installing street trees and shrubs to provide screening of the parking lot. There is a 5 foot wide sidewalk proposed on the other side of the Woodcrest Way extension. The variance request meets the spirit and intent of the zoning text. The Planning Commission previously approved a final development plan for Woodcrest Way which established the desired streetscape for the area. The applicant is providing the approved streetscape at this site which includes just street trees.
10. The proposed variance appears to be appropriate for this private road. The applicant has demonstrated that the reduced setback still allows for installation of appropriate landscape to create the streetscape and prevent this road from appearing to be a parking lot drive aisle. Greater setbacks are located adjacent to the public roads within this development, which is appropriate.
11. It does not appear that the essential character of the neighborhood would be altered if the variance request is granted. The Planning Commission approved a variance request for Turkey Hill to allow an 8 foot pavement setback. The applicant proposes to match the Turkey Hill streetscape treatment at this site.
12. 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.

(B) Waiver to Codified Ordinance Section 1157.01 (Design Guidelines and Requirements Section 6(A)(12)) to eliminate the requirement that buildings have operable and active front doors along all public and private roads.

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

8. The applicant is requesting a variance to eliminate the requirement that buildings have operable and active front doors along all public and private roads.
9. As proposed, the commercial building will have two operable entrances along US-62. The rear of the building, adjacent to the private road will have service doors.
10. As required by the zoning text, the building is designed with the same caliber of finish on all sides of the building using the same building materials.
11. The design and function of restaurants with a drive-through in general make it difficult to locate active and operable doors along multiple roadways.
12. The variance does not appear to be substantial. The same variance has been granted for other buildings within the Canini Trust Corp development. The intent of this requirement is to ensure that buildings maintain a presence on the street which is crucial in pedestrian oriented development. This site and the overall Canini Trust Corp development is auto-oriented by design therefore it does not appear that maintaining a strong presence on the street is as important in this development scenario. While there isn't an active and operable door on the Smith's Mill Road elevation, the applicant is providing a strong, easily identifiable architectural feature at the corner of this building which makes the entrance to the building easily identifiable. All sides of the building are designed with the same caliber of finish using the same building materials so the Smith's Mill Road elevation not appear as a "lesser" side of the building. Additionally, the applicant is providing pedestrian connections to the leisure trail along Smith's Mill Road and provides safe pedestrian crossings throughout the site.

13. It does not appear that the essential character of the neighborhood will be altered if the variance request is granted. As stated, this same variance request has been granted for other developments within the Canini Trust Corp.
14. 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.

(C) Variance to the Canini PUD zoning text section 8a.06(3)(i) to allow to wall signs to be 95 square feet in size where the zoning text allows a maximum area of 80 square feet based on the lineal frontage of the building.

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

1. The applicant requests to allow two identical, IHOP wall signs to be 95 square feet in size where the zoning text allows a maximum area of 80 square feet based on the lineal frontage of the building. The building has approximately 70 feet of frontage on Smith's Mill Road and 110 feet on US-62.
2. The applicant proposes to install one of the signs on the US-62 elevation and one on the Smith's Mill Road elevation.
3. The city sign code (C.O. 1169.08) states sign area shall include the face of all the display areas of the sign and the area of the letters, numbers or emblems mounted on a building wall or wall extension shall be computed by enclosing such letters, numbers or emblems with an imaginary rectangle around the letters, numbers or emblems, and determining the area. The 95 square feet in size includes the colored "bands" around the "IHOP" lettering. If the colored bands are not included in the area calculation the sign size is approximately 18 square feet. Therefore the request does not appear to be substantial.
4. The variance appears to meet the spirit and intent of the zoning text which is to ensure that wall signs are appropriately scaled in relation to the building on which they are located. The proposed wall signs are appropriately integrated into a prominent architectural feature of the building which will make these signs feel more like a part of overall building design. The city architect has reviewed the proposed signage for the building and is supportive of the request.
5. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment" by approving this variance. While the sign is larger than permitted, the design is unobtrusive. Additionally, there are no overly bright or jarring colors.
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.

IX. RECOMMENDATION

Staff recommends approval of the requested variances should the Planning Commission find that the application has sufficient basis for approval. Two of the requested variances are similar to other variances that have been approved by the Planning Commission for other developments within the Canini Trust Corp which have established the desired pattern of development for the area. Even though the applicant is requesting a variance to allow two wall signs to be greater than the permitted size, the signs are designed appropriately as they are integrated into the overall design of the building that they are located on.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motions would be appropriate (The Planning Commission can make one motion for all variances or separate motions for each variance request):

Move to approve application V-36-2020.

Approximate Site Location:



Source: Google Maps