

  
**New Albany Board of Zoning Appeals**  
**May 27, 2020 Minutes**

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Ms. Wilttrout, at 7:01 p.m.

Those answering roll call:

Ms. Andrea Wilttrout	Present
Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Ms. Marlene Brisk (council liaison)	Present

(Ms. Wilttrout, Mr. Gallagher, Mr. Smith, Ms. Mollard, Mr. LaJeunesse, and Ms. Brisk present via GoToMeeting.com).

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner (via GoToMeeting.com); Mitch Banchefsky, City Attorney (via GoToMeeting.com; left at 7:08 p.m.); and Josie Taylor, Clerk (via GoToMeeting.com).

Moved by Mr. Gallagher to approve the April 27, 2020 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Gallagher, yea; Mr. Smith, yea; Ms. Wilttrout, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Ms. Wilttrout asked for any corrections or additions to the Agenda.

Mr. Christian stated none from staff.

Ms. Wilttrout swore those present who wished to speak before the Board of Zoning Appeals (hereafter, "BZA") to tell the truth and nothing but the truth.

Ms. Wilttrout asked if there was anyone who wanted to discuss any items not on tonight's Agenda.

Mr. Banchefsky said he would like to speak. Mr. Banchefsky asked if anyone had any questions regarding the April 27, 2020 BZA meeting or how it had been conducted. (No Response).

Mr. Banchefsky stated that was the way the process was designed to work. Mr. Banchefsky noted that in this way the record could stand on its own.

Ms. Wilttrout asked what the next steps on this item would be.

Mr. Banchefsky stated the parties had thirty (30) days to appeal the decision to the Franklin County Court of Common Pleas (hereafter, "Court"). Mr. Banchefsky stated that if an appeal were filed the City would need to provide a record of action to the Court.

Ms. Mollard asked if parties were ever given set time limits.

Mr. Banchefsky stated time limits could be given, the rules provided for that, but they were usually waived. Mr. Banchefsky noted the risk was that parties could argue they were not permitted to fully provide their evidence.

Ms. Wiltrout stated that may have been hard to do in this case.

Mr. Banchefsky stated it was a full and fair hearing.

Ms. Brisk stated she agreed. Ms. Brisk asked Mr. Banchefsky what the deadline was for an appeal to be filed.

Mr. Banchefsky stated thirty (30) days from the date that staff sent out the record of action.

Ms. Brisk asked when that had gone out.

Mr. Christian stated it had been sent out a few days after the meeting.

#### **VAR-24-2020 Variances**

**Variance to the Hawksmoor zoning text section III (1) to allow a detached garage to be installed within the platted preservation zone and to C.O. 1165.04(a)(2)(b) to allow the detached garage encroach the 10 foot setback from the primary residence where city code requires a minimum 10 foot setback at 8 Hawksmoor Drive (PID:222-004645-00).**

**Applicant: Scott Griffin**

Ms. Wiltrout stated there was a note to table this application and asked if the staff report would be presented.

Mr. Christian stated no. Mr. Christian said the applicant needed to reassess the application.

Moved by Mr. Gallagher to table VAR-24-2020 to the July regularly scheduled meeting unless the applicant is prepared to come before the BZA sooner, seconded by Ms. Wiltrout. Upon roll call vote: Mr. Gallagher, yea; Ms. Wiltrout, yea; Mr. Smith, yea; Ms. Mollard, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 1. Motion passed by a 5-0 vote.

#### **VAR-39-2020 Variances**

**Variances to the County Line, Winding Hollow, Beech Road South Phase 2 Expansion and Beech Road South Phase 3 Expansion Limited General Employment (L-GE) zoning districts to allow buildings to exceed the 65 foot building height limitation required in each zoning text for a portion of a property generally located west of Beech Road and south of State Route 161 (PID: 094-106404-00.000).**

**Applicant: MBJ Holdings LLC c/o Aaron Underhill, Esq**

Mr. Mayer presented the staff report.

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

Mr. Gallagher asked Mr. Mayer if the nearest property to the west, at 2,700 feet, was residential, not commercial.

Mr. Mayer stated correct.

Mr. Gallagher stated thank you.

Mr. Aaron Underhill, of Underhill & Hodge, LLC, for the applicant, discussed the application. Mr. Underhill stated Mr. Rubey was also online to assist.

Mr. Gallagher asked what the small grey box on the on-screen presentation represented.

Mr. Mayer pointed out the item on the screen.

Mr. Underhill stated the property had been acquired over time and the grey box illustrated a different zoning district.

Mr. Gallagher stated thank you.

Ms. Wiltrout asked if there would not be a height restriction if it were zoned general employment.

Mr. Underhill stated correct.

Ms. Wiltrout asked why this whole area was not being rezoned as general employment.

Mr. Underhill stated this was more expedient and cost effective and, as they were only asking to revert to the underlying Code, a variance seemed appropriate.

Mr. Rubey stated staff had made clear to the applicant that this variance would not provide relief from general development or zoning standards.

Mr. Mayer stated this was similar to variance requests applied to multiple sub areas of zoning text, it was not a unique request.

Ms. Wiltrout asked if the red lined area on the screen was the area the applicant wanted to change.

Mr. Underhill stated correct.

Ms. Wiltrout asked if there was a height restriction in the rest of the area.

Mr. Underhill stated there were height restrictions throughout the colored areas shown on the screen, with the exception of the south, where they could go to 85 feet.

Ms. Wiltrout asked if they could not go over 65 feet in the green area on the screen.

Mr. Underhill stated that was correct at the moment.

Ms. Wiltrout asked why this application was only for this sliver of property when it had not yet been sold.

Mr. Underhill stated market demands indicated this was needed and this area had minimal impact on residential property.

Ms. Wiltrout stated her concern was that this was no longer a residential area and she encouraged a rezoning.

Mr. Rubey stated he hoped they would return for a more comprehensive rezoning.

Ms. Wiltrout stated that made sense.

Mr. LaJeunesse asked if the BZA was being asked to eliminate any height restriction or if it would be capped at eighty (80) feet.

Mr. Underhill stated the applicant was asking to remove it period. Mr. Underhill said other things would probably dictate a height limit, such as fire department needs, etc.

Mr. LaJeunesse stated he got it.

Mr. Smith asked if it was advisable not to put a limit on height.

Mr. Underhill stated he did not have a problem with that and could limit it to 100 feet, if that could be supported. Mr. Underhill stated that if they saw a future need for a more comprehensive re-zoning they could address it.

Mr. Rubey stated that general development standards provided tools that would ultimately restrict the height of buildings developed on this site. Mr. Rubey stated things such as lot coverage, parking ratios, setbacks, etc., would limit height.

Mr. Mayer stated that was right.

Ms. Wiltrout stated the general employment zone did not have a height restriction and this had not been a problem.

Mr. Underhill stated that was right, this had not been an issue to date.

Moved by Mr. Gallagher to approve application VAR-39-2020, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Mr. Smith, yea; Ms. Wiltrout, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Ms. Wiltrout asked if there were any further business.

Mr. Mayer stated none from staff.

Moved by Ms. Wiltrout, seconded by Mr. Gallagher, to adjourn the meeting.

Meeting adjourned at 7:40 p.m.

Submitted by Josie Taylor.

## APPENDIX



### Board of Zoning Appeals Staff Report May 27, 2020 Meeting

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#### LIMITATION TEXT HEIGHT VARIANCE

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LOCATION: A portion of property generally located west of Beech Road and south of State Route 161 (PID: 094-106404-00.000)

APPLICANT: MBJ Holdings LLC c/o Aaron Underhill, Esq.

REQUEST: (A) Variance to the County Line, Winding Hollow, Beech Interchange, Beech Road South Phase 2 Expansion and Beech Road South Phase 3 Expansion Limited General Employment (L-GE) zoning districts to eliminate the 65 foot building height limitation requirement.

ZONING: Limited General Employment (L-GE)

STRATEGIC PLAN: Office District

APPLICATION: V-39-2020

Review based on: Application materials received April 24 and May 9, 2020.

*Staff report prepared by Chris Christian, Planner*

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

The applicant requests a variance to eliminate the 65 foot building height limitation requirement for a portion of property generally located west of Beech Road and south of State Route 161. The property consists of five (5) different zoning districts. Each district corresponded to a unique parcel but they have since been combined into a single parcel. Since zoning “runs” with the land this one variance application applies to all five (5) zoning districts’ limitation texts.

#### **II. SITE DESCRIPTION & USE**

The site is generally located in Licking County, south of State Route 161 and west of Beech Road across the street from the Facebook development site. The site is 151.1 acres and is currently undeveloped. The site is located within five (5) zoning districts, all zoned Limited General Employment (L-GE).

#### **III. 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.

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

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

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

### **III. ASSESSMENT**

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

**(A) Variance the County Line, Winding Hollow, Beech Interchange, Beech Road South Phase 2 Expansion and Beech Road South Phase 3 Expansion Limited General Employment (L-GE) zoning districts to eliminate the 65 foot building height limitation requirement in each zoning text.**

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

1. The requested variance will eliminate the maximum 65 foot building height limitation on a portion of a parcel. The variance applies to the entire Beech Road South Phase 2 Expansion and Beech Road South Phase 3 Expansion zoning districts, and a portion of the County Line, Winding Hollow, Beech Interchange zoning districts.
2. The limitation text permits general office activities, warehouse & distribution, off-premises signs, research & production, and data center uses. Personal service and retail product sales and services are only allowed as accessory uses to a permitted use in this subarea.
3. Conditional uses include car fleet and truck fleet parking, and manufacturing and production.
4. Prohibited uses include industrial product sales and services, mini-warehouses, vehicle services, radio/television broadcast facilities, and sexually oriented business.
5. The essential character of the surrounding area will not be altered by granting the variance request. This variance request does not eliminate the architectural, screening, and landscaping requirements for this property.
6. It does not appear the variance is substantial. The site is located within the center of the Licking County Business Park south of State Route 161. The site is surrounded by property zoned for

commercial uses. The Facebook site is located directly across the street along Beech Road, the Google development is located to the south and AEP owns property to the north and west of this site. The closest property that is not zoned for commercial uses is approximately 1, 200 +/- feet away from this property. In fact, there are only two residential homes located along Beech Road and the applicant states that they are in contract to purchase one of these homes and the other property is currently listed for sale. When taking these facts into consideration, the closest residential structure to this property is located 2,700 +/- feet away along Babbitt Road.

7. When the property was being annexed and rezoned via smaller, individual parcels, there were existing residentially neighboring this parcel. This created a temporary, “transitional” condition in which residentially used properties and commercially zoned properties were adjacent. However, since then the immediate vicinity has been annexed and rezoned to commercial uses.
8. The variance preserves the spirit and intent of the GE zoning district and limitation texts because the height and setback requirement were established to provide design restrictions to minimize the impact of neighboring residential uses. Historically the PC and BZA have approved variances to reduce or eliminate more restrictive setback requirements established when residentially used property existed adjacent to the businesses park in the Personal Care and Beauty Campus and were rezoned to commercial. Similarly, this portion of the business park is entirely zoned for commercial and there are no residential “transitional” properties immediately adjacent or in the vicinity so the height restriction does not appear to be necessary.
9. The applicant states that the increase for building height is necessary to attract development with unique building needs such as distribution facilities and data centers. Additionally, the applicant states that as technological advances and market trends have evolved taller buildings are more commonplace and necessary to meet the needs of these types of uses. The height limitation results in a suburban model of development that limits creativity in terms of design and architecture.
10. It appears there are special circumstances within these zoning districts that are not applicable to other lands. The Limited General Employment (L-GE) zoning district functions as an overlay with additional, more restrictive requirements than the standard General Employment (GE) zoning district requirements found in the city’s Codified Ordinance Chapter 1153. The “base” General Employment zoning district does not establish a maximum height requirement for the permitted uses within this zoning district. If this property was zoned under the traditional General Employment (GE) classification rather than with the limited overlay, this variance would not be needed.
11. The variance also does not appear to be substantial since the base General Employment District (GE) zoning classification does not establish a maximum height requirement for the permitted uses in this zoning district. Removing the height restriction ensures that the city is able to stay competitive by adapting to new technology and innovation within these sectors which will ensure the continued growth of the business park.
12. Additionally, there are provisions within other surrounding zoning texts that allow buildings to be taller than the standard 65 feet. Other portions of the County Line zoning district allows buildings to exceed the 65 foot building height requirement with approval of the Planning Commission and the Beech Crossing zoning district, located north of State Route 161 permits a maximum building height of 80 feet for medical uses.
13. 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. Since a permit is submitted to the city the applicable fire department in conjunction with the city’s chief building official completes a review of the development and is made aware of a building’s height at that time.

#### **IV. RECOMMENDATION**

Staff recommends approval of the requested variance should the Board of Zoning Appeals find that the application has sufficient basis for approval. This site is located within the Licking County Business Park and is completely surrounded by commercially zoned property. This height requirement does not exist in the city's standard General Employment District (GE) so the applicant seeks to restore what is a vested right in the city's codified ordinances. It does not appear that the essential character of the surrounding area will be altered if the variance is granted as the property is surrounded by commercial development with large scale data center campuses being built directly to the east and south of this site. Additionally, the variance request preserves the spirit and intent of the requirement which is to ensure proper visual separation between commercial and residential uses as the closest residential structure is located 2,700 +/- feet away.

The variance is needed in order to market the property for the all of the permitted uses including data center and distribution centers that are envisioned for this site. These industries have evolved as technology has advanced which requires the need for taller buildings. These uses are crucial as they contribute to the overall fiscal health of the New Albany economy. Eliminating the height restriction will ensure the city's business park remains competitive in the local and global market.

The zoning requirements for the Licking County portion of the New Albany business park has evolved since its beginnings in 2009. Recent limitation texts have begun to allow for building heights up to 80 feet where larger than typical setbacks can be achieved along adjacent, residentially used properties. In this case there are no adjacent residential properties so the height restriction appears unnecessary. Additionally, the zoning texts allow for the elimination of setbacks where commercial properties abut one another. Staff believes a similar exemption to allow for height restrictions to be eliminated under the same circumstances as this site should be considered for future rezonings to eliminate the need for variances.

## **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-39-2020.**

**Approximate Site Location:**



Source: Google Earth