

  
**New Albany Planning Commission**  
**August 17, 2020 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 7:05 p.m.

Those answering roll call:

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

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

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

Moved by Mr. Kirby, seconded by Mr. Wallace to approve the July 20, 2020 meeting minutes. Upon roll call: Mr. Kirby, yea; Mr. Wallace, yea; Mr. Schell, yea, Ms. Wiltrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4 - 0 vote.

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

Mr. Christian stated none from staff.

Mr. Kirby asked those present who wished to speak before the Planning Commission (hereafter, "PC") to state they swore to tell the truth and nothing but the truth prior to speaking.

Mr. Kirby asked if there were any persons wishing to speak on items not on tonight's Agenda. (No response.)

**FDP-51-2020 Final Development Plan**

**Final Development Plan application for a Duke and Dutchess gas station development generally located north of State Route 161, south of Smith's Mill Road and west of Beech Road (PID: 093-106512-00.006).**

**Applicant: EMH&T c/o Katie Miller**

**VAR-52-2020 Variances**

**Variances associated with a Duke and Dutchess gas station development generally located north of State Route 161, south of Smith's Mill Road and west of Beech Road (PID: 093-106512-00.006).**

**Applicant: EMH&T c/o Katie Miller**

Mr. Christian stated the Applicant requested that FDP-51-2020 and the associated VAR-52-2020 be tabled until the October 19, 2020 regularly scheduled PC meeting.

Moved by Mr. Wallace to table FDP-51-2020 and the associated VAR-52-2020 until the October 2020 regularly scheduled PC meeting, seconded by Mr. Schell. Upon roll call: Mr. Wallace, yea; Mr. Schell, yea; Ms. Wiltrout, yea; Mr. Kirby, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4 - 0 vote.

**ZC-56-2020 Zoning Change**

**Rezoning of 2.9 acres from Agricultural (AG) to Limited General Employment (L-GE) located at 2278 Beech Road for an area to be known as the “Beech Road East Zoning District” (PID: 037-112104-00.001).**

**Applicant: John & Marcia Lassel c/o Wesley W. Gilliland, Esq.**

Mr. Christian presented the application.

Mr. Kirby stated he believed there was no engineering on this.

Mr. Ferris stated that was correct.

Mr. Kirby asked staff if this was effectively saying the site should be just like the land on three sides that surround it.

Mr. Christian stated that was correct.

Mr. Kirby asked PC members for comment. (None.)

Mr. Kirby asked members of the public for any comments. (No response.)

Moved by Mr. Wallace to accept the staff reports and related documents into the record for ZC-56-2020, seconded by Ms. Wilttrout. Upon roll call vote: Mr. Wallace, yea; Ms. Wilttrout, yea; Mr. Kirby, yea; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4 - 0 vote.

Moved by Mr. Schell to approve ZC-56-2020, seconded by Mr. Wallace. Upon roll call vote: Mr. Schell, yea; Mr. Wallace, yea; Mr. Kirby, yea; Ms. Wilttrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4 - 0 vote.

**VAR-57-2020 Variance**

**Variance to C.O. 1173.02 to allow a pool patio to be located less than 15 feet from the side property line at 4540 Ackerly Farm Road (PID: 222-004370).**

**Applicant: Andrew Maletz**

Mr. Christian presented the application. Mr. Christian noted a neighboring resident had submitted an email letter to staff for the PC and asked that it be added to the record for this application.

Mr. Kirby stated he believed there was no engineering on this.

Mr. Ferris stated that was correct.

Mr. Kirby asked staff if the flagstones were not part of the pool and had a different setback requirement.

Mr. Mayer stated that was correct.

Mr. Kirby asked if any part of the Code would cover that or if that was part of some setback.

Mr. Mayer stated that would fall into the new accessory structures and asked Mr. Christian if he could provide the setback for paved areas.

Mr. Christian stated he believed that would fall under recreational amenities, which included patios and which allowed them, he believed, to be located five (5) feet from the property line.

Ms. Wiltrout asked how wide was the space between the black door and the pool shown in the presentation.

Mr. Andrew Maletz, applicant, stated the area between the garage and the edge of the pool itself was seven (7) feet one and a 1/2 inch.

Ms. Wiltrout asked if there had been any thought to moving the pool over a foot.

Mr. Maletz stated there had been, but, noted that if you looked at the rendering, there were two center columns as part of the porch that squared up with the center of the pool and the associated spa. Mr. Maletz stated it was important from a design perspective to maintain that symmetry about those two center columns.

Ms. Wiltrout asked if the necessity for this variance was due to a design element.

Mr. Maletz stated the necessity for this variance was really about squaring the edge of the pool to the associated edge of the patio deck.

Ms. Wiltrout asked how wide the pool was.

Mr. Maletz stated thirteen (13) feet.

Ms. Wiltrout asked how they had arrived at that width.

Mr. Maletz stated it had been based on the width of the spa located at the end of the pool. Mr. Maletz noted those were the minimum dimensions they could utilize for it to work.

Ms. Wiltrout asked if there was a half foot on each side of the wall.

Mr. Maletz stated correct.

Ms. Wiltrout stated she appreciated it was a small request, that the property had not yet been constructed, and the lot itself. Ms. Wiltrout asked why it could not be constructed how the Code required and asked if the applicant could provide any justification about the design that would be helpful.

Mr. Maletz stated they really had made every effort during the design to minimize this situation.

Ms. Wiltrout stated that had been helpful.

Mr. Schell stated he appreciated the screening with the fence and the arbor vitae and asked what Plan B would be if the variance was not approved.

Mr. Maletz stated he thought they would have to make a tough decision to cut the patio at an angle or to shift the whole pool over to the garage.

Mr. Schell asked if one could go from the garage right to the back patio.

Mr. Maletz stated that was correct.

Mr. Schell asked if there was a safety issue if the space from the black door was six (6) feet instead of seven (7) feet.

Mr. Maletz stated the door swung out so they wanted to maintain a 36 inch clear passage past the open extension of the of the door itself. Mr. Maletz stated they currently had an extra foot between the clear path of travel and the edge of the water.

Mr. Kirby asked if the double door was six (6) feet wide.

Mr. Maletz stated correct.

Mr. Schell asked if the door could be smaller.

Mr. Maletz stated it could but it had already been installed.

Mr. Schell stated okay.

Mr. Wallace asked how many cars the garage could hold.

Mr. Maletz stated it was a three (3) car garage.

Mr. Wallace asked what the space was that seemed to stand out from the garage.

Mr. Maletz stated if he was speaking about the side of the garage that was just a bumped out storage area.

Mr. Wallace stated that was not what he was referring to.

Mr. Kirby asked if Mr. Wallace was looking at the plans.

Mr. Wallace stated yes.

Mr. Kirby stated that on the plan, rather than the rendering in the presentation, he believed it showed where the garage doors went overhead.

Mr. Wallace stated that was what he thought.

Mr. Maletz stated yes, that was where the garage doors went overhead.

Mr. Wallace said there was a lot of area from the end of the garage door to the wall.

Mr. Kirby asked how deep the garage was.

Mr. Maletz stated the garage had an interior width of twenty (20) feet and eight (8) inches. Mr. Maletz stated was a very minimal but appropriate depth for a three (3) or two (2) car garage. Mr. Maletz said it was based on a standard that could be found across nearly all homes built or being built in the country club community.

Mr. Wallace asked if Mr. Maletz was stating this was a standard garage and that when a regular car entered it would go from the front and almost bump the back.

Mr. Maletz stated that was correct.

Mr. Kirby asked if a full sized pickup truck would fit in the garage.

Mr. Maletz stated it could probably be able to just get it in but it would be within inches.

Mr. Wallace asked if there were smaller pools available that were narrower, not as wide.

Mr. Maletz stated the pool width was based on the spa shown in the presentation and was based on the typical size and on the recommendation from the pool installer, Capital City Pools. Mr. Maletz said there was a width, on either side of the spa, for a three (3) foot clear area before stepping into the pool. Mr. Maletz stated that was the basis of the design.

Mr. Wallace stated he had asked if a smaller pool was available.

Mr. Maletz stated yes, this was a custom-built pool so any size could be available.

Mr. Wallace stated okay.

Mr. Kirby asked if they would wind up with narrower stairs and no longer have the three (3) foot width on either side.

Mr. Maletz stated yes.

Mr. Kirby stated he had seen the word "deck" in the text, and asked if this was strictly a patio.

Mr. Maletz stated that was correct, adding that it was a term typically used to describe the area around, and adjacent to, the pool.

Mr. Kirby asked if "deck" did not imply wood or raised structures here.

Mr. Maletz stated no, not on this property, there were no wood or raised structures.

Mr. Kirby asked what the length of the shortest side of the red triangle shown in the presentation was.

Mr. Maletz stated it was one (1) foot, four (4) and a half he believed, adding that he could check on that.

Mr. Kirby noted the variance stated thirteen point five, (13.5) instead of fifteen (15) and that was a foot and a half, which would be enough to cover his one (1) foot, four (4).

Mr. Maletz stated yes.

Mr. Kirby asked if the flagstones next to the concrete deck did not count as part of the pool pavement.

Mr. Christian stated they did not.

Mr. Kirby asked if they had come up with the encroachment limit on the flagstones.

Mr. Christian stated he believed they would be considered a recreational amenity and those were allowed to be within five (5) feet of the property line.

Mr. Mayer agreed.

Mr. Kirby asked if the flagstones grew and the deck shrank on that side they would not be present.

Mr. Maletz stated the answer to that would be correct.

Mr. Kirby asked for questions and comments from the public, particularly any neighbors present.

Ms. Shelley Gupta stated she and her husband owned the home immediately to the south which bordered along the primary side of this house. Ms. Gupta stated she was concerned because she had two (2) small children that did not swim. Ms. Gupta stated she wanted to confirm that the fencing was completely closed, without a gate that could accidentally remain open and that there would be arbor vitae, as shown in the presentation, covering the fence so the pool was not visible and did not have an open path to it.

Mr. Maletz stated the fence began in the lower left hand corner, up against the home, and wrapped all the way around and returned back into the garage. Mr. Maletz stated on the other side it was screened completely, from the three arbor vitae shown on the left hand side, along the rear property line and then turning in around the pool equipment and patio. Mr. Maletz stated there was a gate in the fence in the area where the pool equipment was, but at this point there were no other gates shown.

Ms. Gupta stated thank you. Ms. Gupta asked about drainage issues, saying she had not had any issues but was concerned about the impact the concrete, pavers, pool, variance, and other plumbing or grading would have on drainage into her lot.

Mr. Maletz stated that during construction there was a temporary line running to the rear of the property line, but it did not run along the common property line, and would be piped out to the street when construction was completed. Mr. Maletz stated only one gutter line would be brought back to the rear catch basin and everything else would be directed toward the front of the property. Mr. Maletz stated they were running any additional runoff to the rear of the property line. Mr. Maletz noted a French drain had been added to the rear of the property line two (2) or three (3) years ago based on the relative height of the properties in Straits Farm and those on Ackerly Farm Road. Mr. Maletz said the City had been very clear that they could not alter any of the grade from the edge of the fence line to the rear property line.

Ms. Gupta stated thank you. Ms. Gupta asked if the concrete patio would affect the grade of the lot as it headed to the back of the lot.

Mr. Maletz stated that, in his opinion, it would not.

Ms. Gupta stated okay, thank you.

Mr. Kirby asked if Ms. Gupta had an opinion on the variance, as the neighbor who lived next to it.

Ms. Gupta stated that this was a design element, not something critical to the material of the house and she did not understand why this could not have been planned in advance and it could have been avoided.

Mr. Kirby stated thank you and asked if any other members of the public wished to speak or had any questions.

Ms. Sandra Knoesel stated her property was immediately behind the applicant's property on Ackerly Farm Road and that she swore to tell the truth and nothing but the truth. Ms. Knoesel stated she supported Ms. Gupta's comments regarding drainage concerns. Ms. Knoesel noted she had moved to New Albany because of the planning in the community. Ms. Knoesel said she believed this variance was a nice to have, not a need to have, and she was concerned about making an exception for it.

Mr. Schell asked to revisit Mr. Kirby's question about increasing the size of the flagstones and decreasing the concrete. Mr. Schell said that seemed, to him, to be a fairly simple answer and asked if he was missing something.

Mr. Maletz stated no, adding that was what they had done, or at least had done as much as they thought was reasonable for purposes of reasonable safety and an appropriate area around the pool.

Mr. Schell stated thank you.

Mr. Kirby stated the PC appreciated his asking before building. Mr. Kirby asked how wide was the gap between the concrete that was in the setback and the pool.

Mr. Maletz stated it was four (4) feet, six (6) inches.

Mr. Kirby stated that at three (3) feet they would not be here.

Mr. Maletz stated correct.

Mr. Kirby asked PC members and the public for any additional comments. (No response.)

Moved by Mr. Kirby to accept the staff reports and related documents into the record, including the email from the neighbor, for VAR-57-2020, seconded by Ms. Wiltrout. Upon roll call vote: Mr. Kirby, yea; Ms. Wiltrout, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4 - 0 vote.

Moved by Ms. Wiltrout to approve VAR-57-2020, seconded by Mr. Wallace. Upon roll call vote: Ms. Wiltrout, no; Mr. Wallace, no; Mr. Kirby, no; Mr. Schell, no. Yea, 0; Nay, 4; Abstain, 0. Motion denied by a 0 - 4 vote.

Ms. Wiltrout stated she denied the application because the Duncan Factors had not been met. Ms. Wiltrout noted she believed there was still beneficial use to the property without the variance and the design could be tweaked a little to remain in compliance with the character of the area and the zoning code.

Mr. Wallace stated that he denied the application for the same reasons as Ms. Wiltrout.

Mr. Kirby stated he denied the application because there were many other properties with curving lot lines and this did not sufficiently meet the Duncan criteria.

Mr. Schell stated he denied the application because there were some fairly simple solutions in this case to avoid needing a variance.

**Other Business**

Mr. Kirby asked if there was any Other Business.

Mr. Christian stated none from staff.

**Poll Members for Comment**

Mr. Kirby requested comments from members. (No comments).

Mr. Kirby adjourned the meeting at 7:56 p.m.

Submitted by Josie Taylor.



## APPENDIX



### Planning Commission Tabling Memo August 17, 2020

---

#### DUKE AND DUCHESS FINAL DEVELOPMENT PLAN AND VARIANCES

---

LOCATION: Generally located north of State Route 161, south of Smith's Mill Road and west of Beech Road.

APPLICANT: EMH&T c/o Katie Miller

REQUEST: Final Development Plan and Variances

ZONING: I-PUD (Beech Crossing)

APPLICATIONS: FDP-51-2020 and VAR-52-2020

STRATEGIC PLAN: Retail/Office Mix

---

*Tabling Memo completed by Chris Christian, Planner*

The applicant requests that these applications be tabled until the October 19, 2020 Planning Commission meeting.

Based on this request, staff recommends the following motion.

Move to table application FDP-51-2020 and associated variance application VAR-52-2020 until the October 19, 2020 Planning Commission meeting.

  
**NEW  
ALBANY**  
**COMMUNITY CONNECTS US**  
**Planning Commission Staff Report**  
**August 17, 2020 Meeting**

---

**2278 BEECH ROAD  
ZONING AMENDMENT**

---

LOCATION: 2278 Beech Road (PID: 037-112104-00.001)  
APPLICANT: John G. Lassel & Maria Lassel c/o Wesley W. Gilliland, Esq.  
REQUEST: Zoning Amendment  
ZONING: AG Agricultural to L-GE Limited General Employment  
STRATEGIC PLAN: Office District  
APPLICATION: ZC-56-2020

Review based on: Application materials received July 17, 2020.

*Staff report completed by Chris Christian, Planner.*

---

**I. REQUEST AND BACKGROUND**

The applicant requests review and recommendation to rezone 2.9+/- acres. The applicant proposes to create a new limitation text in the Licking County portion of the New Albany Business Park. The site is the last un-annexed and un-zoned property on the east side of Beech Road within the Personal Care and Beauty Campus. This area will be known as the Beech Road East Zoning District, and will be zoned Limited General Employment (L-GE). The proposed limitation text meets the intent of the Strategic Plan's Office District land use category by providing compatible general employment uses permitted in the surrounding area.

This new text contains the same list of permitted, conditional, and prohibited uses as Business Park East Innovation District Subareas, known as the Personal Care and Beauty Campus, where companies such as Anomatic, Accel, Axium, and Veepak are located. Other development standards of the text are almost identical to the surrounding L-GE zoning districts.

**II. SITE DESCRIPTION & USE**

The overall site consists of one parcel and it is located within Licking County. The site is located on the east side of Beech Road directly north of Innovation Campus Way. The site is located within the Personal Care and Beauty campus and is surrounded by the gray water ponds along the east, north and southern property lines. The annexation petition was filed on July 16, 2020 and is scheduled for its first reading at New Albany City Council on September 15, 2020, and second reading on October 6, 2020. C.O. 1111.02 allows a change in zoning to be initiated by motion of Council, or by motion of the Planning Commission. The immediate neighboring zoning districts include the Beech Road West, Innovation Expansion District and Innovation District Subarea A L-GE zoning districts to the north and east, the Faith Life Church and Beech Crossing I-PUD zoning districts to the west and unincorporated residential located directly across the street from this site. The site currently contains an accessory structure and undeveloped land.

**III. PLAN REVIEW**

Planning Commission's review authority of the zoning amendment application is found under C.O. Chapters 1107.02 and 1159.09. Upon review of the proposed amendment to the zoning map, the

Commission is to make recommendation to City Council. Staff's review is based on city plans and studies, proposed zoning text, and the codified ordinances. Primary concerns and issues have been indicated below, with needed action or recommended action in underlined text.

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

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

#### **A. New Albany Strategic Plan**

The 2014 New Albany Strategic Plan lists the following development standards for the Office District:

1. Office buildings should not exceed five stories in height.
2. The design of office buildings should include four-sided architecture in order to address multiple frontages when present
3. On-Street parking is discouraged.
4. Primary parking should be located behind buildings and not between the primary street and the buildings.
5. Parking areas should be screened from view.
6. Loading areas should be designed so they are not visible from the public right-of-way, or adjacent properties.
7. Sidewalks/leisure trails should be placed along both sides of all public road frontage and setback 10 feet from the street.
8. Common open spaces or green are encouraged and should be framed by buildings to create a "campus like" environment.
9. Appropriate screening should be installed as a buffer between the office district and adjacent residential. If mounding is necessary to achieve this the "reverse slope" type with a gradual slope side toward the right-of-way is preferred.
10. Street trees should be provided at no greater a distance than 40 feet on center.
11. Individual uses should be limited in size, acreage, and maximum lot coverage.
12. No freeway/pole signs are allowed.
13. Heavy landscaping is necessary to buffer these uses from adjacent residential areas.
14. A 200 foot buffer should be provided along State Route 161.
15. Structures must use high quality building materials and incorporate detailed, four sided architecture.
16. When double fronting sites exist, office buildings should address both frontages.
17. Plan office buildings within the context of the area, not just the site, including building heights within development parcels.
18. Sites with multiple buildings should be well organized and clustered if possible.
19. All office developments should employ shared parking or be designed to accommodate it.
20. All office developments should plan for regional stormwater management.
21. Office developments should provide connections to the regional trail system.
22. Green building and site design practices are encouraged.
23. Innovative an iconic architecture is encouraged for office buildings.

### ***B. Use, Site and Layout***

1. The immediate neighboring zoning districts include the Beech Road West, Innovation Expansion District and Innovation District Subarea A L-GE zoning districts to the north, west and east, the Faith Life Church and Beech Crossing I-PUD zoning districts to the west and unincorporated residential located directly across the street from this site .
2. The applicant has used the same development standards from the nearby Harrison East Expansion and Beech Road West zoning texts to create this zoning text.
3. This district has the same list of permitted, conditional, and prohibited uses as Beech Road West, Innovation Expansion District and Innovation District Subarea A zoning districts. The site is located within the Personal Care and Beauty Campus where companies such as Anomatic, Accel, Axiom, and Veepak are located and is surrounded by the graywater ponds along the north, east and southern property lines.
4. The proposed zoning text is a limitation text. A limitation text can only establish more restrictive requirements than the zoning code.
5. The limitation text allows for general office activities, warehouse & distribution, and research & production uses. Personal service and retail product sales and services are only allowed as accessory uses to a permitted use in this subarea.
6. Conditional uses include car fleet and truck fleet parking, and manufacturing and production.
7. Prohibited uses include industrial product sales and services, mini-warehouses, off-premises signs, vehicle services, radio/television broadcast facilities, and sexually oriented business.
8. The text establishes a 50 foot building and pavement setback from the edge of right-of-way for Beech Road which matches the surrounding zoning districts.
9. The text contains the same provision for elimination of setbacks for building and pavement when this zoning district and any adjacent parcel located outside of this zoning district come under common ownership, are zoned to allow compatible non-residential uses, and are combined into a single parcel.
10. Due to the proximity of this site to the State Route 161 interchange and its location adjacent to commercially zoned and used land in the existing Licking County business park to the east and west, the site appears to be most appropriate for commercial development.

### **C. Access, Loading, Parking**

1. The zoning text permits one curb cut along Beech Road by right. Additional curb cuts may be approved if supported and justified by a traffic analysis that is reviewed and approved by the city engineer.
2. Parking will be provided per code requirements (Chapter 1167) and will be evaluated at the time of development of the site.
3. The text requires an internal pedestrian circulation system to be created so that a pedestrian using a public sidewalk or leisure trail along a public street can access the adjacent building through their parking lots with markings, crosswalks, etc.

### **D. Architectural Standards**

1. The proposed rezoning seeks to implement many of the same or improved standards and limitations set forth in the New Albany Architectural Design Guidelines and Requirements (Chapter 1157).
2. The same architectural requirements as surrounding business park zoning districts.
3. The City's Design Guidelines and Requirements do not provide architectural standards for warehouse and distribution type facilities. Due to the inherent size and nature of these facilities careful attention must be paid to their design to ensure they are appropriately integrated into the rest of the business park. This zoning text contains specific design requirements for uses not governed by the DGRs, which will ensure the quality design of these buildings.
4. The proposed text contains a requirement for complete, four-sided screening of all roof-mounted equipment for sight and sound.

5. The proposed text requires all accessory structures, generators, storage tanks, trash receptacles or any other similar improvement to be located behind the front façade of the primary building(s).

**D. Parkland, Buffering, Landscaping, Open Space, Screening**

1. Maximum lot coverage for this subarea is 75%. This matches the surrounding zoning districts.
2. The proposed zoning text contains the same tree preservation language as the neighboring approved Business Park West zoning text.
3. The text requires the landscape treatment along Beech Road that exceeds the standards found in surrounding zoning texts. This landscape buffer may include a mound and requires the installation of 10 deciduous trees per every 100 feet of frontage. The surrounding zoning texts only require a minimum of one tree for every 100 feet of frontage.
4. For perimeter boundaries that abut residentially owned and used properties, the text requires that the landscape treatment within the pavement setback be enhanced to provide an opacity of 75% within five years of planting with a total planting height of 10 feet. This requirement is similar to other zoning texts within Licking County but not required in the zoning texts in the immediate surrounding area. Residential properties exist west of this site, across Beech Road. The text states that even if there is a road separating the properties, the screening requirements still apply.
5. Street trees will be located an average of 1 tree for every 30 feet of road frontage along Beech Road. The trees may be grouped or regularly spaced to create a more natural appearance.
6. Minimum tree sizes and heights for on-site trees match the standards in the surrounding business districts.

**E. Lighting & Signage**

1. *All signage shall conform to the standards set forth in Codified Ordinance Section 1169.*
2. The zoning text requires that a detailed photometric plan, showing zero candle foot light intensity at the property lines be submitted prior to the issuance of an engineering or building permit.
3. *All lighting shall be cut-off type fixtures and down cast to minimize light spilling beyond the boundaries of the site. The maximum height is 30 feet.*
4. *The zoning text requires landscape lighting details to be included in the landscape plan which is subject to review and approval by the City Landscape Architect.*

**IV. ENGINEER'S COMMENTS**

The City Engineer has reviewed the referenced plan in accordance with the engineering related requirements of Code Section 1159.07(b)(3) and provided no comments.

**V. RECOMMENDATION**

***Basis for Approval:***

The proposed rezoning is consistent with the principles of commercial development in the Strategic Plan and the existing business park in Licking County. The site is located within the Personal Care and Beauty Campus but is unique as it is surrounded by the graywater ponds immediately to the north, east and south resulting it geographically being more separated from the other businesses. Due to these conditions, it is important to ensure that the same standards provided in the surrounding zoning texts are applied so this site feels like it is part of the overall campus.

The text provides additional landscaping requirements along Beech Road to provide appropriate screening from nearby residentially owned and used properties, above and beyond what is required in zoning texts within the immediate area. The city recently provided additional landscaping to the greywater ponds at the request of nearby residential property owners and the landscaping provisions

of this text are consistent with that additional treatment. Additional restrictions and commitments have been provided that are above what the base zoning code would require.

1. The rezoning will result in a more comprehensive planned redevelopment of the area and will ensure compatibility between uses (1111.06(a)).
2. The L-GE rezoning application is an appropriate application for the request (1111.06(e)).
3. The overall effect of the development advances and benefits the general welfare of the community (1111.06(f)).
4. The proposed rezoning will allow for the development of businesses that will generate revenue for the school district while eliminating residential units having a positive impact on the school district (1111.06(h)).

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

## **VI. ACTION**

### **Suggested Motion for ZC-56-2020:**

To recommend approval to Council of Zoning Change application ZC-56-2020.

### **Approximate Site Location:**





**4540 ACKERLY FARM ROAD  
SWIMMING POOL PATIO SETBACK VARIANCE**

**LOCATION:** 4540 Ackerly Farm Road (PID: 222-004370-00)  
**APPLICANT:** Maletz Architecture c/o Andrew Maletz and Michael Talmon  
**REQUEST:** Variance to C.O. 1173.02(c) to allow a pool patio to be located 13.5 feet from the southern property line where city code requires a 15 foot setback.  
**STRATEGIC PLAN:** Neighborhood Residential  
**ZONING:** I-PUD Ackerly Park (Subarea A)  
**APPLICATION:** V-57-2020

Review based on: Application materials received on July 24 and August 6, 2020

*Staff report prepared by Chris Christian, Planner.*

**II. REQUEST AND BACKGROUND**

The applicant requests a variance from Codified Ordinance Section 1173.02(c) to allow a swimming pool patio to be located 13.5 feet from the southern property line where city code requires a minimum 15 foot setback.

**III. SITE DESCRIPTION & USE**

The .31 acre parcel is located in the Ackerly Park subdivision of the New Albany Country Club. A new residential home and swimming pool are currently under construction on the property. This parcel is surrounded by other single family residences.

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

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

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*

5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

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

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

### III. EVALUATION

#### **Variance to C.O. 1173.02(c) to allow a pool patio to be located 13.5 feet from the southern property line where city code requires a 15 foot setback.**

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

1. The city’s Codified Ordinance Section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line. The applicant proposes a 1.5 foot encroachment into the 15 foot setback requirement along the southern property line. The applicant is meeting all other private swimming pool requirements found in C.O. 1173.
2. The pool patio is 715.3 square feet in size and approximately 16.3 square feet of the patio is encroaching into the required 15 foot setback which is 2.3% of the overall patio area. The pool is approximately 20 feet away from the southern property line.
3. The applicant submitted a building permit for the pool patio that does not show an encroachment but this corner of the patio is cut off which the homeowner finds undesirable so a variance is being requested.
4. This variance does not appear to be substantial as the proposed encroachment is minimal. The applicant proposes a minimal, at-grade encroachment into the required setback. As proposed, a small sliver of the patio is encroaching into the required setback along the southern property line and the encroachment does not run along the entire property line.
5. The “spirit and intent” of the zoning requirement is preserved as it is to ensure appropriate separation of uses. Screening of the pool and its appurtenances is not required by city code but the applicant proposes to install arborvitae screening, in addition to the required fence. A landscape plan has been provided showing a continuous line of arborvitae on all sides of the pool but details of the material’s height has not been submitted for staff review. Staff recommends the Planning Commission verify the plant height with the applicant.
6. It appears that there are special conditions and circumstances that are peculiar to this property that justify the variance request. Ackerly Farm Road bends and the frontage of this lot follows the bend in the road. Because of this condition, the width of the lot narrows from approximately 114 +/- feet at the front down to approximately 82 +/- feet at the rear. If the rear lot width was the same or similar to the front lot width, it does not appear that the variance would be needed since there would be additional rear yard area.
7. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment given the limited



encroachment of the patio. Additionally, the pool is adequately screened from adjacent properties.

8. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
9. Granting the variance would not adversely affect the delivery of government services.

#### **V. RECOMMENDATION**

Staff recommends approval of the variance request should the Planning Commission find the application has sufficient basis of approval. This variance request does not appear to be substantial.

The spirit and intent of the code requirement is to maintain separation between uses. While the pool patio is located 1.5 feet closer than what is permitted by city code, the applicant proposes a minimal, at-grade encroachment into the required setback and proposes to install arborvitae screening, in addition to a fence, around the entire pool area which will provide adequate screening from neighboring properties and meet the intent of the code requirement. Additionally, it appears that are special conditions and circumstances that are peculiar to this property that justify the variance request. The front of the lot is wider than the rear of the property. If the rear lot width was similar to the front, it does not appear that the variance would be needed since there would be additional rear yard area.

#### **V. ACTION**

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

**Move to approve application V-57-2020.**

**Approximate Site Location:**



Source: Google Earth