

#### New Albany Board of Zoning Appeals Agenda

September 27, 2021 7:00pm

Members of the public must attend the meeting in-person to participate and provide comment at New Albany Village Hall at 99 West Main Street. The meeting will be streamed for viewing purposes only via Zoom Webinar. There is no public participation via the Zoom Webinar.

Join this meeting on your computer, tablet or smartphone.

https://us02web.zoom.us/j/87363868917
Or dial in using your phone: 646-558-8656
Access Code: 873-6386-8917

Information and directions for logging into this meeting can be found at www.newalbanyohio.org

- I. Call To Order
- II. Roll Call
- **III.** Action of Minutes: July 26, 2021
- IV. Additions or Corrections to Agenda

Swear in All Witnesses/Applicants/Staff whom plan to speak regarding an application on tonight's agenda. "Do you swear to tell the truth and nothing but the truth".

- V. Hearing of Visitors for Items Not on Tonight's Agenda
- VII. Cases:

#### VAR-96-2021 Variance

Variance to C.O. 1165.04(b)(3)(b) to allow a recreational structure to be located in a platted easement at 28 Pickett Place (PID: 222-002495)

Applicant: Landscape Design Solutions c/o Jacob Basnett

#### VAR-97-2021 Variance

Variance to Blacklick District Subarea D zoning text sections 1.05(1)(a) and 1.05(1)(b) to eliminate the mounding landscaping requirements along the State Route 161 Expressway.

Applicant: Al Neyer, LLC c/o Shad Sletto

#### VAR-98-2021 Variance

Variance to Beech Road West L-GE zoning text section IV(B)(2) to allow a 17 foot encroachment into the required pavement setback along Innovation Campus Way West.

Applicant: EMH&T c/o Katie Bauman

#### VAR-98-2021 Variance

Variance to allow a new commercial storage building to encroach 29 feet into a platted 50 foot rear yard setback at 5850 Zarley Street (PID: 222-000264-00).

**Applicant: Heninger Construction** 

- VIII. Other Business
  - Conditions of Approval—Discussion with the City Attorney
- IX. Poll members for comment
- X. Adjournment



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. Wiltrout, at 7:00 p.m.

Those answering roll call:

Ms. Andrea WiltroutPresentMr. Everett GallagherPresentMr. Kirk SmithPresentMs. Kerri MollardPresentMr. Shaun LaJeunesseAbsentMs. Marlene BriskPresent

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; and Josie Taylor, Clerk.

Moved by Mr. Gallagher to approve the June 28, 2021 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Gallagher, yea; Mr. Smith, yea; Ms. Mollard, yea; Ms. Wiltrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Ms. Wiltrout swore in those speaking before the Board of Zoning Appeals (hereafter, "BZA") this evening to tell the truth and nothing but the truth.

Ms. Wiltrout asked if anyone wanted to discuss items not on tonight's Agenda. (No response).

#### VAR-70-2021Variance

Variance to C.O. 1165.04(b)(3)(b) to allow a deck to be located in a platted easement at 7034 Dean Farm Road(PID: 222-002246)

Applicant: Suncraft Corporation, Inc c/o James Knox

Mr. Christian presented the staff report.

Ms. Wiltrout asked the applicant if they wanted to provide any comments.

Mr. James Knox, Suncraft Corporation, stated they were willing to comply with all recommendations and the waiver for any damage caused due to utility access.

Ms. Wiltrout stated there were two (2) conditions on the staff report for this application and they needed to comply with both. Mr. Wiltrout asked if the screening would comply with City Code.

Mr. Knox stated yes, they had skirting all around the deck and could also add additional screening if needed.

Mr. Gallagher asked if the property owners had anything further to add.

Mr. Kenneth Parker, owner of the property, said he had spoken to his neighbors. Mr. Parker said both were comfortable with the patio already there and this would not extend past that very much and there was little chance of changes in runoff.

Mr. Gallagher stated that item 6 in section 3, the hold harmless in the staff report, differed from what was discussed in the presentation. Mr. Gallagher asked if the indemnity for the City was to be in perpetuity or only prior to the building permit being issued.

Mr. Mayer stated prior to the permit submission the applicant would submit a draft version for review.

Mr. Gallagher asked if the time period the City was to be held harmless would be in perpetuity or only until the time of the permit.

Mr. Mayer stated it would be in perpetuity.

Mr. Gallagher asked what the City's process was if a neighbor found the variance affected them, what did they need to do.

Mr. Mayer stated that if any resident had a concern with drainage on their property they could call the Community Development Department and the zoning officer would go out to inspect. Mr. Mayer stated that following the documentation of that, they would determine if it was a City issue or an issue between two private parties.

Mr. Gallagher asked if a raised bed were placed in an easement, would it impact flow.

Mr. Mayer stated it could potentially but there were lots of variables and it depended on the easement.

Mr. Gallagher stated landscaping around the deck had been mentioned and wondered if that would disturb the normal flow.

Mr. Mayer stated that was why the hold harmless was there.

Mr. Gallagher asked if the language to protect the neighbors would be recorded with the deed.

Mr. Mayer stated that would be part of the hold harmless, but noted that with or without the hold harmless it was also in the Code.

Mr. Gallagher asked if it would be recorded on the deed for future buyers.

Mr. Mayer stated it was not typical, if the home were sold the City's Codified Ordinances would still apply, but it could be considered.

Mr. Gallagher stated he wanted a record for future owners.

Mr. Parker stated if the deck was removed then it would change again and it was not permanent.

Ms. Wiltrout stated if no deck then there was no easement issue, so a reference on the deed would have no negative effect.

Mr. Parker stated he just wondered how it would look to a future buyer.

Mr. Gallagher stated the provision would protect current and future neighbors.

Mr. Mayer stated that future buyers would see the easements and deck on a site plan and have notice to ask questions about them.

Mr. Gallagher stated it would be nice to make it explicitly clear.

Ms. Wiltrout asked if the site plan would show where the easement was in relation to the deck.

Mr. Mayer stated yes.

Ms. Wiltrout stated that if she saw that as a buyer she might think they had a variance but not think of the hold harmless requirement and she agreed with Mr. Gallagher to have that condition going forward.

Mr. Knox stated they had applied for the variance and there was an active permit process now.

Ms. Wiltrout stated she appreciated that.

Moved by Ms. Wiltrout to accept the staff report for VAR-70-2021 into the record, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yea; Mr. Smith, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Mr. Smith to approve application VAR-70-2021, with the following conditions:

- 1. The area underneath the deck must be screened in accordance with city code.
- 2. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.
- 3. The proper notation is made to the deed recording the hold harmless. seconded by Mr. Gallagher. Upon roll call vote: Mr. Smith, yea; Mr. Gallagher, yea; Ms. Mollard, yea; Ms. Wiltrout, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

#### **Other Business**

Ms. Wiltrout asked if there was any other business.

Mr. Mayer stated that as of July 1 there would no longer be virtual meetings and all board and commission members would need to be present at Village Hall as would any members of the public wishing to comment.

Ms. Wiltrout adjourned the meeting.

Meeting adjourned at 7:21 p.m.

Submitted by Josie Taylor.

#### **APPENDIX**



Board of Zoning Appeals Staff Report July 26, 2021 Meeting

# 7034 DEAN FARM ROAD EASEMENT VARIANCE

LOCATION: 7034 Dean Farm Road (PID: 222-002246)
APPLICANT: Suncraft Corporation Inc. c/o James Knox

REQUEST: Variance to C.O. 1165.04(b)(3)(b) to allow a deck to encroach a platted

easement by 6 feet

ZONING: New Albany Links C-PUD

STRATEGIC PLAN: Residential APPLICATION: VAR-70-2021

Review based on: Application materials received on June 29, 2021

Staff report prepared by Chris Christian, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1165.04(b)(3)(b) to allow a deck to encroach 6 feet into a platted easement.

#### II. SITE DESCRIPTION & USE

The 0.21 acre property is located in section 1 of the New Albany Links subdivision and contains a single family residential home that was built in 1999. The property is surrounded by single family residential homes and backs onto open space that is owned by the city.

#### 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 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.

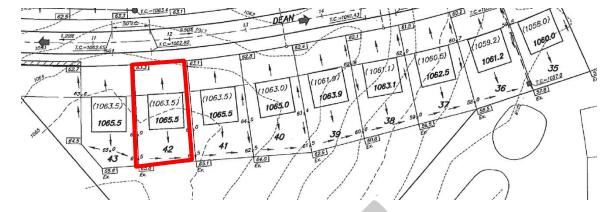
Plus, the following criteria as established in the zoning code (Section 1113.06):

- 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. 1165.04(b)(3)(b) to allow a deck to be located within a platted easement. The following should be considered in the Board's decision:

- 1. Codified Ordinance Section 1165.04(b)(3)(b) states that decks and other recreational amenities are not permitted to be located in an easement. According to the final plat for the subdivision, there is an existing 15-foot general utility easement that extends from the rear property line. According to the engineering plans for the subdivision, the easement provides a route for surface stormwater drainage for 9 properties along this section of the road.
- 2. The applicant is requesting a variance to allow a deck to encroach 6 feet into the easement. The deck has an area of 396 sq. ft. and half of that area will function as a screened in porch.
- 3. In October 2019, modifications to section 1165 of the city's Codified Ordinances were approved by City Council. The modifications included adding provisions that decks, patios and other recreational amenities are not permitted to be installed in easements. By adding this prohibition, a property owner can now request a variance. Prior to the adoption of these code modifications city code was silent on easements, and decks and similar at-grade encroachments into easements where regulated only by plat notes which typically state encroachments could only be approved by the city engineer. Plat notes provide no other mechanism for relief via a public process. The intent of this requirement is to protect property owners and to add an extra level of review for these types of encroachment requests.
- 4. Based on aerial imagery of the property, it appears that there is an existing patio at the rear of the home that encroaches into the easement. There are no records of a permit being issued for the patio. Since the existing patio was present prior to the code update, a variance for it is not required but it is considered existing, non-forming according to city code and cannot be made to be more non-conforming.
- 5. The variance request does not appear to be substantial. The city's engineering staff reviewed the application and confirmed that there are no public utilities installed in the easement. According to the approved engineering plans for the subdivision, this easement runs along the rear property line of 9 homes along this section of Dean Farm Road and provides stormwater drainage for the properties north into an inlet as shown in the picture below.



- O According to these plans, a portion of the stormwater (surface runoff) on neighboring lot 43 drains into this site which then drains into the next and so on until it reaches a stormwater inlet located on further north on the property lines between lots 36 and 35.
- O The applicant states that the deck will sit 3 feet above grade on posts in order to not negatively impact stormwater drainage. C.O. 1165.04 also requires the area under decks to be screened if they are more than 2 feet above grade to provide additional screening from offsite view. Staff recommends a condition of approval that the area underneath the deck be screened in accordance with city code.
- 6. The variance request appears to meet the spirit and intent of the zoning requirement which is to provide protection for property owners in the event that the city or a private utility provider must gain access to the easement. While the applicant proposes to install the deck within the easement, it will not be installed above any existing public utility lines. If a patio or another structure is installed in an easement and the city or another utility provider needs to access the easement, the deck or other structure may be taken down or partially removed in order to access utilities and the property owner is responsible for the expense of replacing or repairing the structure. Staff recommends a condition of approval that the homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.
- 7. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 8. Granting the variance would not adversely affect the delivery of government services. The city's engineering staff reviewed the application and determined that there are no public utilities installed in the easement area. Additionally, the hold harmless agreement will ensure that the city bears no responsibility for any damages to the deck if utilities need to be installed within the easement area in the future.

#### IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. While the applicant proposes to install a deck within a platted easement, there are no public utilities installed within it. The hold harmless agreement ensures that the applicant is aware that the city is not responsible for any damages to the deck in the event that the easement area has to be accessed in the future and further ensures that the spirit and intent of the requirement is being met and the delivery of government services will not be negatively impacted.

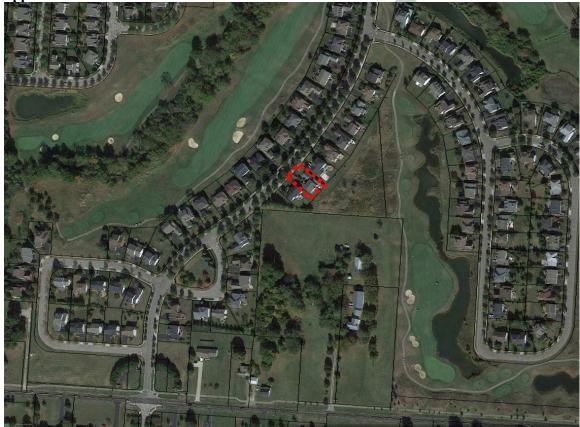
#### V. ACTION

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

# Move to approve application VAR-70-2021 with the following condition (conditions of approval may be added).

- 1. The area underneath the deck must be screened in accordance with city code.
- 2. The homeowner enter into a hold harmless agreement (or similar legal mechanism to be determined by the city engineer and/or attorney) specifying that the property owner, and not the city, is responsible for any damages to the deck in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit and any impacts to neighboring surface drainage must is the responsibility of the homeowner to address.

**Approximate Site Location:** 



Source: Google Earth



#### **Board of Zoning Appeals Staff Report September 27, 2021 Meeting**

#### 28 PICKETT PLACE EASEMENT VARIANCE

LOCATION: 28 Pickett Place (PID: 222-002495)

APPLICANT: Landscape Design Solutions c/o Jacob Basnett

REQUEST: Variance to C.O. 1165.04(b)(3)(b) to allow a patio to be located in an

easement.

ZONING: Pickett Place I-PUD Zoning District

STRATEGIC PLAN: Residential APPLICATION: VAR-96-2021

Review based on: Application materials received on August 27, 2021

Staff report prepared by Chris Christian, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to C.O. 1165.04(b)(3)(b) to allow a patio to be installed in a platted easement.

#### II. SITE DESCRIPTION & USE

The .39 acre property is located in the Picket Place subdivision, contains a single-family residential home that was built in 2000. The property is surrounded by single family residential homes.

#### 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 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. 1165.04(b)(3)(b) to allow a patio to be located in an easement.

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

- 1. Codified Ordinance Section 1165.04(b)(3)(b) states that patios and other recreational amenities are not permitted to be located in an easement. According to the final plat for the subdivision, there is an existing general easement located directly behind the home. General easements are used for public and private utilities. The applicant is requesting a variance to allow a 513 square foot patio with a pavilion to be installed in the easement. According to the submitted plan, the patio will contain a retaining wall and a pavilion.
- 2. There is an existing at-grade patio at the rear of the property that will be replaced with the current proposal. Based on a survey submitted by the applicant, it appears that this existing patio is located within the general utility easement as well as the 100 year floodplain on the site. The applicant proposes to bring the patio into conformance with floodplain regulations by installing a retaining in order to remove the existing patio out of the 100-year floodplain.
- 3. In October 2019, modifications to section 1165 of the city's Codified Ordinances were approved by City Council. The modifications included adding provisions to the city's codified ordinances that patios and other recreational amenities are not permitted to be installed in easements. By adding this prohibition, a property owner can now request a variance. Prior to the adoption of these code modifications city code was silent on easements, and patios and similar at-grade encroachments into easements where regulated only by plat notes which typically state encroachments could only be approved by the city engineer. Plat notes provide no other mechanism for relief via a public process. The intent of this requirement is to protect property owners and to add an extra level of review for these types of encroachment requests.
- 4. The variance request does not appear to be substantial. The city's engineering staff reviewed the application and confirmed that there are no public utilities installed in the easement.
- 5. The variance request appears to meet the spirit and intent of the zoning requirement which is to provide protection for property owners in the event that the city or a private utility provider must gain access to the utility. While the applicant proposes to install the patio within the easement, it will not be installed above any existing public utility lines. If

a patio or another structure is installed in an easement and the city or another utility provider needs to access the utility, the patio or other structure may be taken down or partially removed in order to access utilities and the property owner is responsible for the expense of replacing or repairing the patio/structure. Therefore, staff recommends a condition of approval requiring a hold harmless to be submitted and be recorded with the county specifying that the property owner, and not the city, is responsible for any damages to the patio in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit.

- 6. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 7. It appears that there are special conditions and/or circumstances that are peculiar to the property that justify the variance request. There is a large detention basin easement in the rear yard that is peculiar to this property and not the entire subdivision. Due to the detention basin, and the utility easement being outside of it, the majority of the backyard to encumbered in easements resulting in a smaller area to build a deck/patio than other homes in the subdivision.
- 8. Granting the variance would not adversely affect the delivery of government services. The city's engineering staff reviewed the application and determined that there are no public utilities installed in the easement area. Additionally, the hold harmless agreement will ensure that the city bears no responsibility for any damages to the patio if utilities need to be installed within the easement area in the future.

#### IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. While the applicant is proposing to install a patio within a platted easement, the patio will not be installed above any existing public utility lines within the easement area therefore the variance request is not substantial. The hold harmless agreement ensures that the applicant is aware that the city is not responsible for any damages to the patio in the event that the easement area has to be accessed in the future. The proposed patio and pavilion, do not restrict utilities from being installed within the easement below the patio in the future and they can still be accessed with relative ease compared to a permanent structure or building. Therefore, the spirit and intent of the requirement is being met and the delivery of government services will not be negatively impacted.

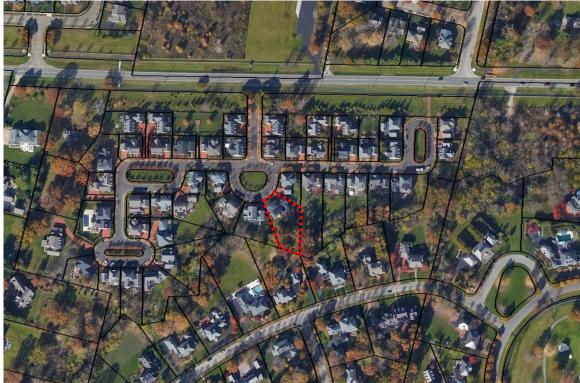
#### V. ACTION

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

# Move to approve application VAR-96-2021 with the following condition (conditions of approval may be added).

1. A hold harmless must be submitted and recorded with the county specifying that the property owner, and not the city, is responsible for any damages to the patio in the event that a public or private utility provider needs to access the easement area prior to the issuance of a building permit.

**Approximate Site Location:** 



Source: Google Earth

Permit #	VAR_910.
Board	
Mtg. Date	



#### **Community Development Planning Application**

	Site Address 28 Pickett Place New Albar	ny, Ohio 43054	1	- ;	
	Parcel Numbers 222-002495-00				
	Acres 0.39 acres	# of lots cr	eated		
	Choose Application Type		Circle	all Details that Apply	
ı.	□□Appeal □□Certificate of Appropriateness □□Conditional Use				
Project Information	□□Development Plan □□Plat	Preliminary Preliminary	Final Final	Comprehensive	Amendment
ıfor	□□Lot Changes □□Minor Commercial Subdivision	Combination	Split	Adjustment	
ect In	DDVacation Variance	Easement		Street	
Proj	□□Extension Request □□Zoning	Amendment (re	ezoning)	Text Modification	
	The utility easement that is existing has the	house alreasy built i	nto it and we		to build this outdoor
Managara Managara	patio into this space, it will not encompass to easement will be built, however we do want			****	ters are outside the
		nd Melinda Cline			
Section 2	Address: 28 Pickett Place	2054			
	City, State, Zip: New Albany, Ohio 43 Phone number: 540-239-9389	3034		Fax:	
	Email: mindymcline@gmail.com			rax.	
ets					
Contacts					
ē			s, Jacob Bas	nett Managing Partner	
	Address: 5151 Norwich Street City, State, Zip: Hilliard, Ohio 43026				
	Phone number: 614-504-7073			Fax:	
	Email: jbasnett@LDSOhio.com			ı ux.	
Signature	Site visits to the property by City of N The Owner/Applicant, as signed belowen the complex of t	w, hereby authorize officials to visit, p	es Village hotograph	of New Albany represe and post a notice on th	entatives, e property
Sig	Signature of Owner Signature of Applicant	JUNG	<u>2)                                    </u>	Date Date	
	Jac	NO O Warred	~		



8/26/2021

To: Zoning Compliance

#### **Narrative Statement for 28 Pickett Place**

The purpose for applying for this variance is due to the severity of the utility easement in proximity to the back of the home, that exists in its current location, as shown on the survey plot.

The home was built into this easement approximately 4' of the 5' easement. This would be the Southeast Corner of the residence.

Since the home was allowed to be built into this easement the current residence is asking for a variance to allow them to build a new patio, pavilion roof overhanging the easement, but no footers will be in this easement and a retaining wall in the easement. They inherited the current conditions of the property in how things have been constructed since the home was built.

The current residence is also working with the NAACHOA, they have submitted the plans for review and the only current issue the committee has was with the type of retaining wall that would be constructed. Working with Mark Reader at NAI Ohio Equities who spoke with the committee, they will allow this type of wall to be built over a brick wall that would require footers. A variance will be required with the NAACHOA to allow this type of wall to be built and we do have a verbal approval. There still needs to be a formal hearing to approve this type of wall along with the proper paperwork as well.

The Cline's respectively request this variance be approved, they were informed from Pam Hickok that the City of New Albany if approved would require a letter stating the City of New Albany would be held harmless with respect to the easement and any potential work. The Cline's will agree to hold the city harmless with respect to this easement.

We do not see how any utility work could be done in this easement due to the configuration of the house being in part of the easement. Another solution could be to move the easement farther away from the home as an alternative solution, or perhaps in conjunction with this variance.

We thank you for hearing our explanation and hope that the committee will approve the variance as requested, which is to build into the easement.

I respectively submit this letter of narrative on behalf of Brian and Melinda Cline.

Sincerely,

Jacob A. Basnett

**Managing Partner** 



8/26/2021

Residence's that lie within 200' of the address: 28 Pickett Place New Albany, Ohio 43054

- Lawrence Turton
- Michael Afaghi
- James Koon
- Daniele Rickert
- Darrell Williams
- Matthew Rosebaugh
- William Hoy
- Marian Leuby
- Amanda Gunn
- Eufemio Mario Ruiz
- Hyunah Yim
- Phillip Blalock
- Lorraine Kaufman
- Shea Burns
- Albert Pazarentzos
- Scott Gurwin
- Donald Barbour
- BMUC, LLC
- Aaron Showmaker

- 2 Pickett Place New Albany, Ohio 43054
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- 5 Wivelscombe New Albany, Ohio 43054
- 6 Wivelscombe New Albany, Ohio 43054

# ANDSCAPE

Franklin County Auditor - Michael Stinziano 222-002495-00

**Owner Name** 

**CLINE BRIAN** 

**CLINE MELINDA** 

Site Address

28 PICKETT PL

LegalDescriptions 28 PICKETT PLACE

PICKETT PLACE

**LOT 28** 

**Owner Address** 

121 HIGH ST #121-2

CHARLESTON MA 02129-3028

**Transfer Date Transfer Price**  08/11/2016 638,500.00

Instrument Type

SU

Prop. Class **Land Use** 

R - Residential

510 - ONE-FAMILY DWLG ON PLATTED LO

**Tax District** Sch. District 222 - PLAIN TWP-NEW ALBANY CORP 2508 - NEW ALBANY-PLAIN LSD

App Nbrhd 05102

Tax Lein

**CAUV Property** No

**Owner Occ. Credit** 

**Homestead Credit** 

2020: Yes 2021: Yes 2020: No 2021: No

Rental Registration

**Board of Revision** Zip Code

No 43054

No

**Annual Taxes** 

14,602.62

**Taxes Paid** 

15,265,33

**Taxable Value** 

**Calculated Acreage** 

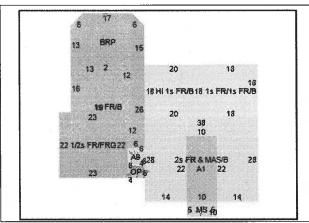
.39

Legal Acreage

.00

Current	Market	Value
---------	--------	-------

	Land	Improv	Total	Land	Improv	Total
Base	\$157,500	\$428,800	\$586,300	\$55,130	\$150,080	\$205,210
TIF	\$0	\$0	\$0	\$0	\$0	\$0
Exempt	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$157,500	\$428,800	\$586,300	\$55,130	\$150,080	\$205,210
CAHV	\$0					



# 222-002495 05/16/2017

#### **Building Data**

Year Built	2000	Full Baths	4
Finished Area	3841	Half Bath	1
Rooms	8	Heat/AC	2
Bedrms	4	Wood Fire	1/1
<b>Dining Rooms</b>	1	Stories	2

#### Sketch Legend

0 2s FR & MAS/B 844 Sq. Ft. 1 HI 1s FR/B - 12/32:HI ONE STORY FRAME/UNF BASEMENT 220 Sq. Ft.

2 HI 1s FR/B - 12/32:HI ONE STORY FRAME/UNF BASEMENT 360 Sq. Ft.

3 1s FR/1s FR/B - 10/10/32:ONE STORY FRAME/ONE STORY FRAME/UNF BASEMENT

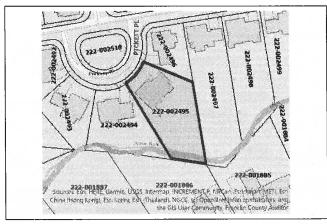
324 Sq. Ft.

4 1s FR/B - 10/32:ONE STORY FRAME/UNF BASEMENT 448 Sq. Ft. 5 1/2s FR/FRG - 11/15:1/2 STORY FRAME/FRAME GARAGE 506 Sq. Ft. 6 OP - 13:OPEN FRAME PORCH 24 Sq. Ft.

7 MS - 43:MASONRY STOOP 50 Sq. Ft.

8 BRP - 42:BRICK PATIO 433 Sq. Ft.

9 1s FR/1s FR/B - 10/10/32:ONE STORY FRAME/ONE STORY FRAME/UNF BASEMENT



Disclaimer: The information on this web site is prepared from the real property inventory maintained by the Franklin County Auditor's Office. Users of this data are notified that the primary information source should be consulted for verification of the information contained on this site. The county and vendors assume no legal responsibilities for the information contained on this site. Please notify the Franklin County Auditor's Real Estate Division of any discrepancies.

### **EXISTING CONDITIONS**

## Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio FAX:614-235-4559 614-235-8677

A Mortgage Location Survey prepared for and certified to: Require Title Services and/or Wells Fargo Home Mortgage

al Description: Situated in The State of Ohio, County of Franklin, City of New Albany Being Lot 28 Pickett Place, Plat Book 94, Page 4

licant: Cline

led Address: 28 Pickett Place, New Albany, Ohio

M.A. Flood Zone Designation: New Albany is a Non-participating Community, Federal Flood Insurance not Available

sarent Encroachments: 1) House in Eastment. Note: Dimension error of front lot line on pict. 301 15' O. Scale 1" = 30' Date: 07/11/2016 The undersigned hereby acknowledge receipt of a copy, of this document, which has been received and is exceptable to us. detention basin easilient 2 Sty. Bride 28 BAL & EASEMENT 56.36'=Plat 53.36 = Survey PICKETT PLACE 40'

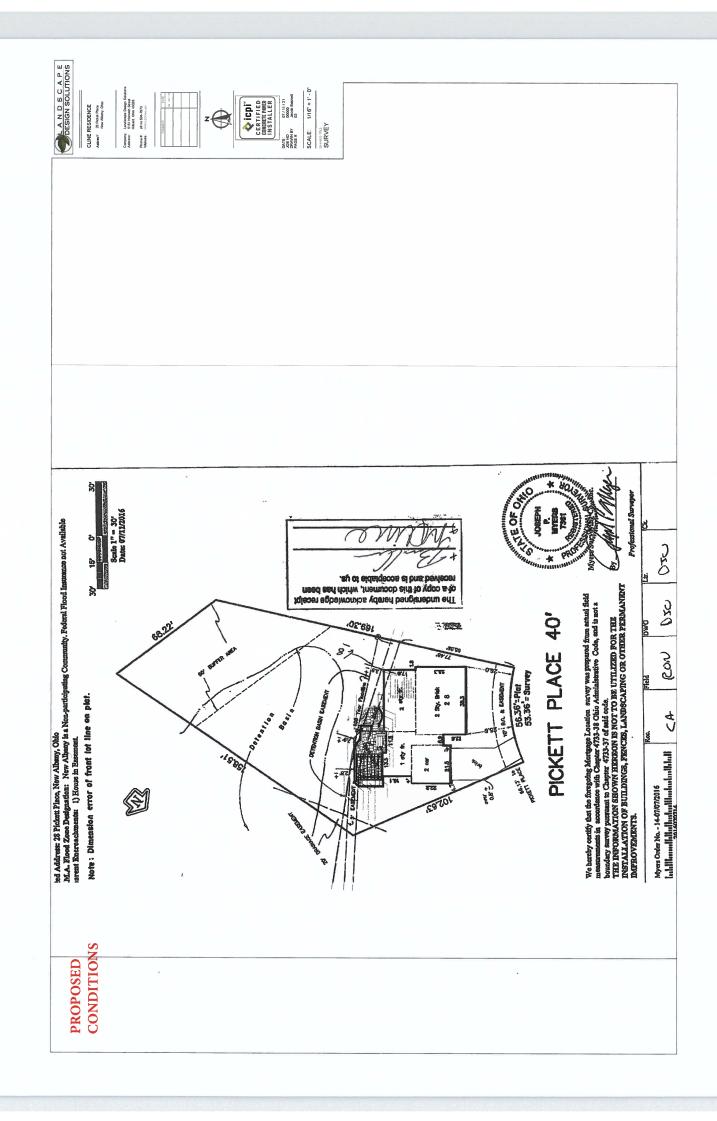
We hereby certify that the foregoing Mortgage Location survey was prepared from actual field measurements in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a

boundary survey pursuant to Chapter 4733-37 of said code. THE INFORMATION SHOWN HEREON IS NOT TO BE UTILIZED FOR THE INSTALLATION OF BUILDINGS, FENCES, LANDSCAPING OR OTHER PERMANENT IMPROVEMENTS.



Professional Surveyor

Myera Order No. - 14-07/07/2016 lealellurinellellullerden Heinelealealt in Hele 2015070714 050



# Myers Surveying Company, Inc.

2740 East Main Street, Columbus 43209 (Bexley), Ohio FAX:614-235-4559

A Mortgage Location Survey prepared for and certified to:

Rsquire Title Services and/or Wells Fargo Home Mortgage

al Description: Situated in The State of Ohio, County of Franklin, City of New Albany Being Lot 28 Pickett Place, Plat Book 94,

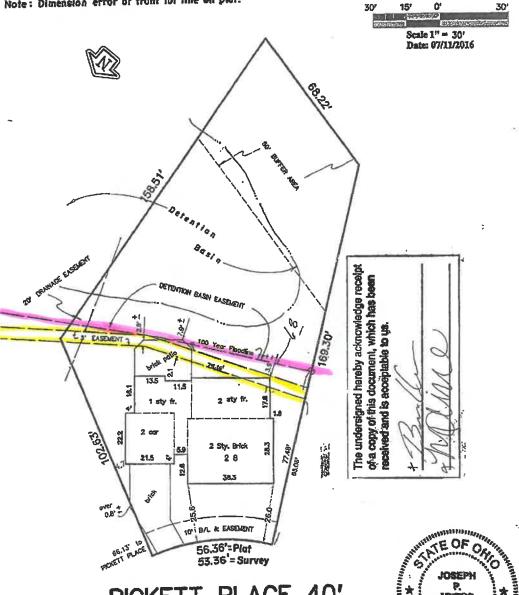
Page 4

dicant: Cline

ted Address: 28 Pickett Place, New Albany, Ohio

M.A. Flood Zone Designation: New Albany is a Non-participating Community. Federal Flood Insurance not Available parent Encroachments: 1) House in Eastment.

Note: Dimension error of front lot line on pict.



# PICKETT PLACE 40'

We hereby certify that the foregoing Mortgage Location survey was prepared from actual field measurements in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a boundary survey pursuant to Chapter 4733-37 of said code.

THE INFORMATION SHOWN HEREON IS NOT TO BE UTILIZED FOR THE installation of buildings, fences, landscaping or other permanent IMPROVEMENTS.



Professional Surveyor

nwg Myers Order No. - 14-07/07/2016 020 RON D50 [califlicant blinds should be be a should be be should CA

# **PROPOSED** CONDITIONS

ed Address: 28 Pickett Place, New Albany, Ohio M.A. Flood Zone Designation: New Albany is a Non-participating Community. Federal Flood Insurance not Available parent Encroachments: 1) House in Easement. Note: Dimension error of front lot line on plat. Scale 1" = 30' Date: 07/11/2016 - DETENTION BASIN EASEMENT C 3" EASEMENT Glengarry Hometown Serie Many Conn Oming officer is allowing

PICKETT PLACE 40'

56.36'=Plat 53.36'= Survey

10" B/L & EASEMENT

We hereby certify that the foregoing Mortgage Location survey was prepared from actual field measurements in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a boundary survey pursuant to Chapter 4733-37 of said code.
THE INFORMATION SHOWN BEREON IS NOT TO BE UTILIZED FOR THE

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O.8. 2

INSTALLATION OF BUILDINGS, FENCES, LANDSCAPING OR OTHER PERMANENT IMPROVEMENTS.

Professional Surveyor

Myers Order No. - 14-07/07/2016 

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020



**CLINE RESIDENCE** 

New Albany, Ohio

Company: Landscape Design Solutions Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073

COMMENT	DATE
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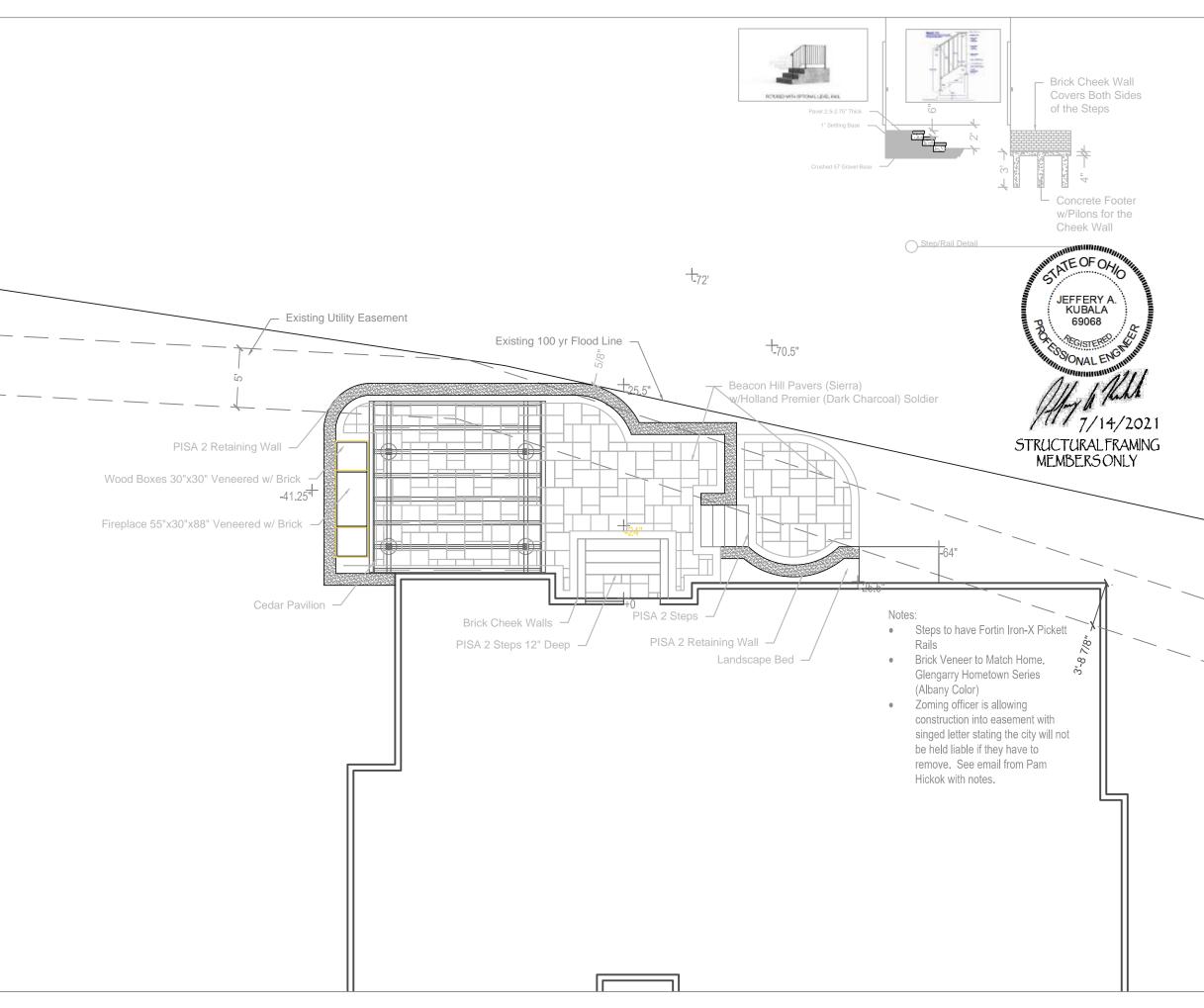




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#### CLINE RESIDENCE

Address: 28 Pickett Place

New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073

COMMENT DATE 00 / 00 / 10

Website: WWW.LDSOhio.com





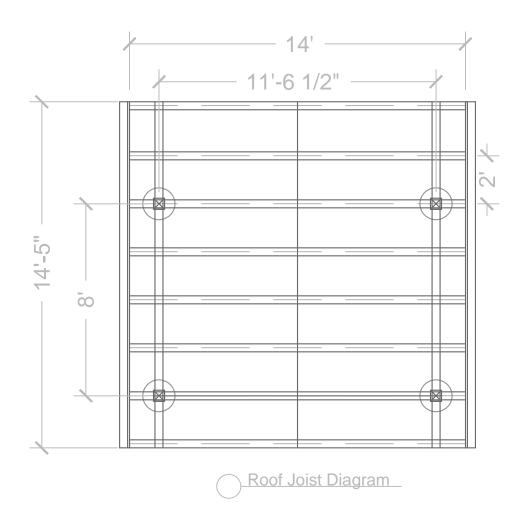


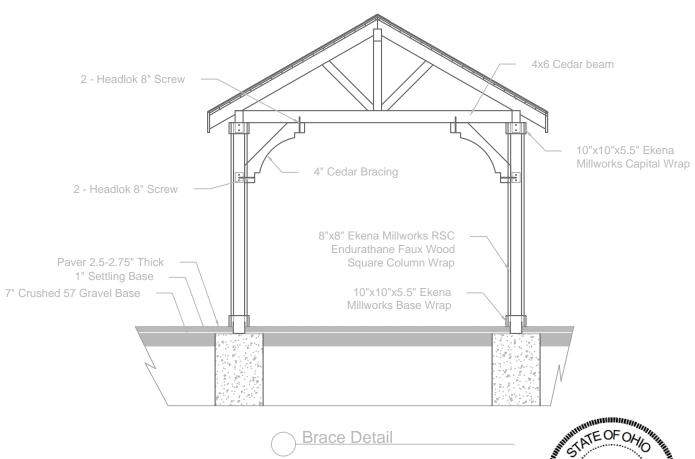
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Brace Detail



#### CLINE RESIDENCE

Address: 28 Pickett Place

New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street

Hilliard, Ohio 43026

Phone #: (614) 504-7073 Website: <u>WWW.LDSOhio.com</u>

COMMENT	DATE
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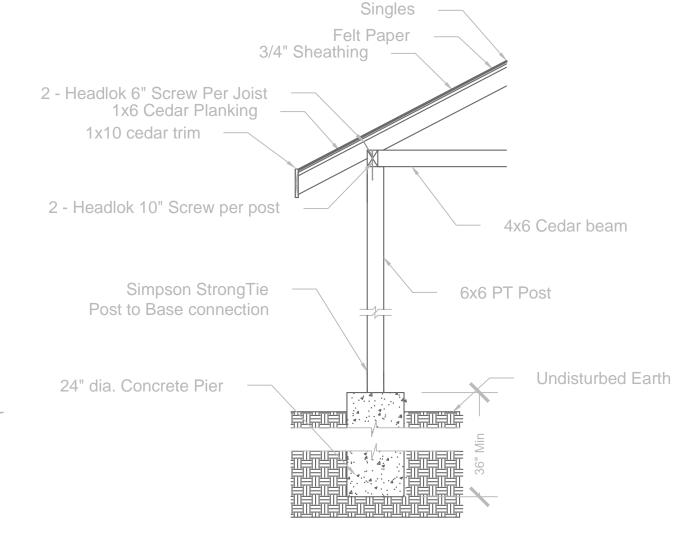
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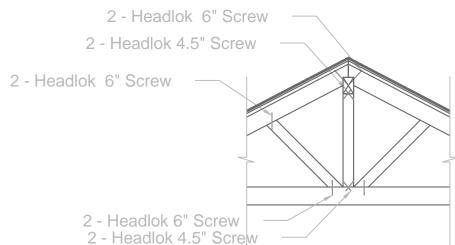
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Jacob Basnett 02

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Roof Peak Detail

Post and Connection Detail





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Address: 28 Pickett Place New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073 Website: WWW.LDSOhio.com

COMMENT	DATE
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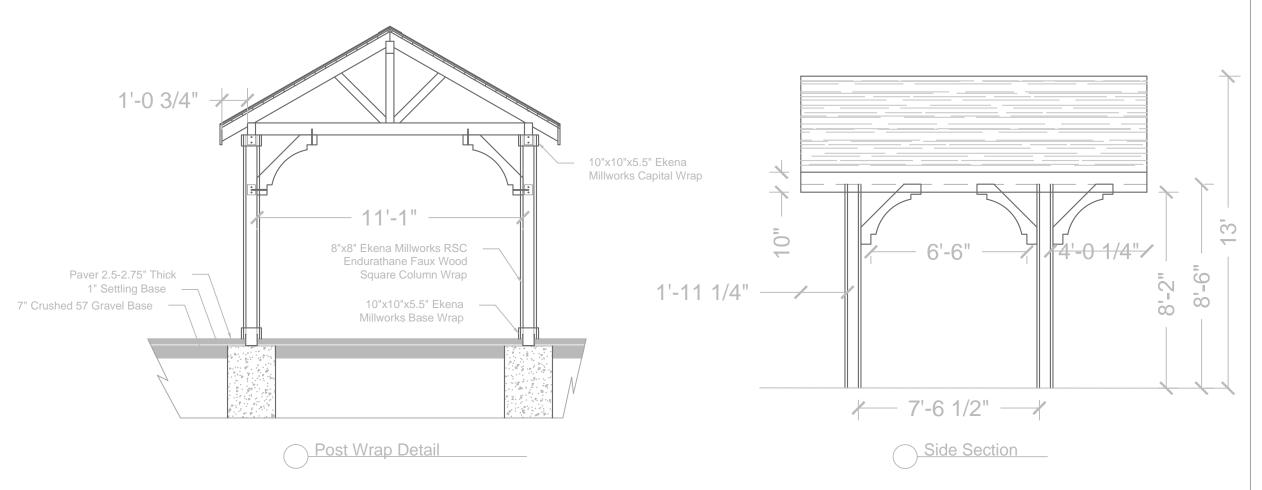
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Address: 28 Pickett Place

New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073
Website: <a href="https://www.ldosonbox.com">www.ldosonbox.com</a>

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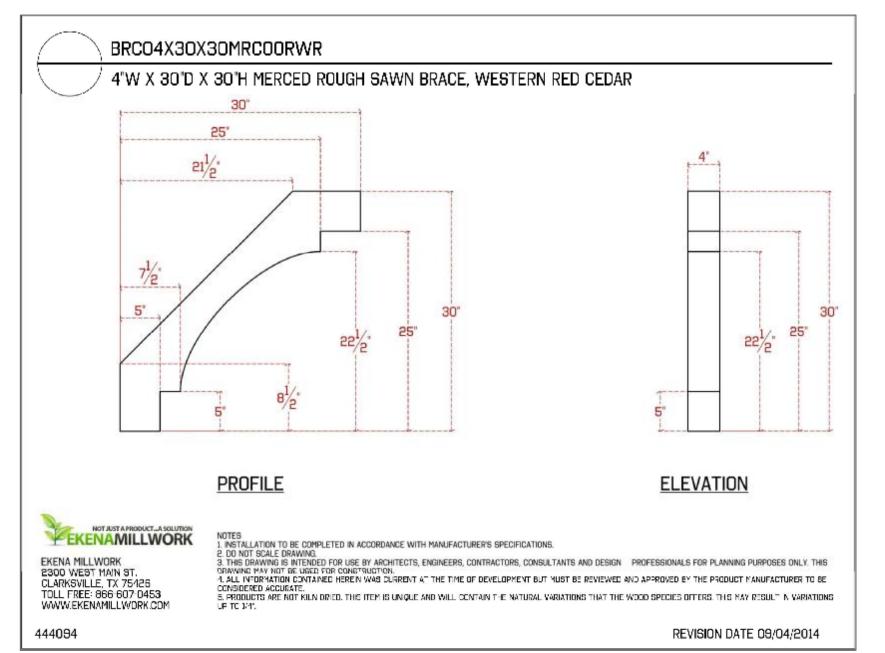
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#### CLINE RESIDENCE

Address: 28 Pickett Place New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073

Website: WWW.LDSOhio.com

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#### CLINE RESIDENCE

Address: 28 Pickett Place New Albany, Ohio

Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073 Website: <u>www.LDSOhio.com</u>

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BARRIOT PRODUCTION OF THE

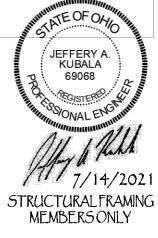
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#### CLINE RESIDENCE

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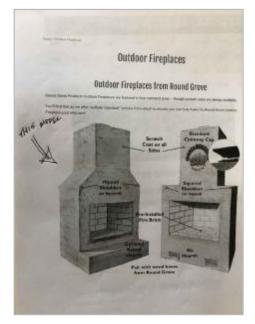
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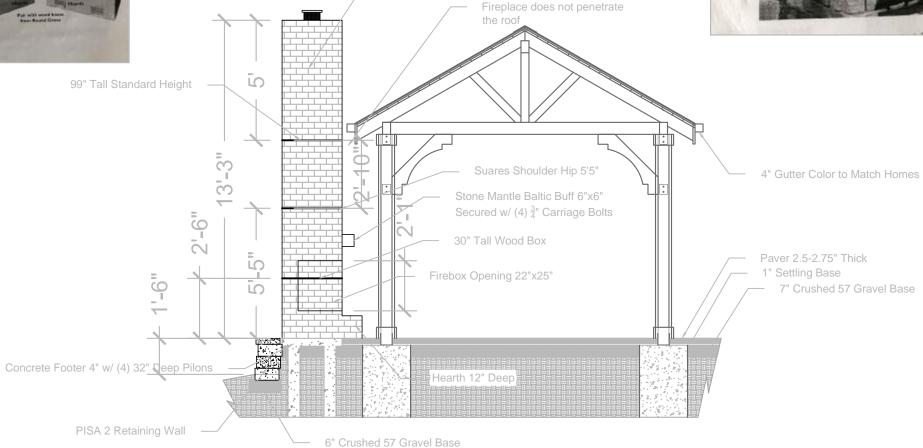
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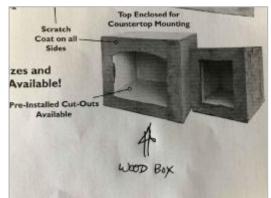
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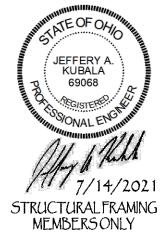




Chimney Extension 5' Tall and is 30"x30"



Mezzo 55"x30"x99" Fireplace/Footer Detail





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Company: Landscape Design Solutions

Address: 5151 Norwich Street Hilliard, Ohio 43026

Phone #: (614) 504-7073 Website: <u>www.lpsohio.com</u>

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#### **Board of Zoning Appeals Staff Report September 27, 2021 Meeting**

#### SMITH'S MILL ROAD SITE VARIANCES

LOCATION: South of Smith's Mill Road, north of State Route 161, east of A&F

distribution center and west of Thirty-One Gifts (PID: 222-001951).

APPLICANT: Al. Neyer, LLC

REQUEST:

Variance to Blacklick District Subarea D zoning text sections 1.05(1)(a) and 1.05(1)(b) to eliminate the mounding landscaping requirements

along the State Route 161 Expressway.

ZONING: L-GE (Limited General Employment), Blacklick District Subarea D

Zoning Text

STRATEGIC PLAN: Employment Center District

APPLICATION: PDP-94-2021

Review based on: Application materials received August 30 and September 8, 2021.

Staff report prepared by Chris Christian, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to Blacklick District Subarea D zoning text sections 1.05(1)(a) and 1.05(1)(b) to eliminate the mounding landscaping requirements along the State Route 161 Expressway as part of the construction of a new commercial building.

#### II. SITE DESCRIPTION & USE

The site is located on 41.295+/- acres on the south side of Smith's Mill Road, north of the 161 New Albany Expressway, immediately east of the Abercrombie and Fitch distribution center. This property is directly across the street from the A&F DC-1 Fleet Parking Lot. The site is currently undeveloped.

This parcel consists of existing wooded areas and tree lines along the east and south property lines, and a small stream runs along these areas. The subject property was previously delineated as part of a larger effort by EMH&T and was found to contain a wetland and an intermittent stream. The New Albany Company (NACO) obtained a permit that allowed the wetland to be filled and the stream to be rerouted along the eastern and southern property boundaries. NACO built the rerouted stream and then sold the property to A&F. The rerouted stream lies within an Environmental Covenant held by the Ohio EPA. A&F was responsible for filling the wetland and 'original' stream. These natural elements are all to be preserved.

This parcel is zoned L-GE, Limited General Employment. Permitted uses within this L-GE district includes manufacturing and production, warehouse and distribution, research and production, general office activities, personal service, retail product sales and service.

#### 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 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 Blacklick District Subarea D zoning text sections 1.05(1)(a) and 1.05(1)(b) to eliminate the mounding landscaping requirements along the State Route 161 Expressway. The following should be considered in the Board's decision:

1. Section 1.05(1)(a) and (b) of the Blacklick District Subarea D zoning text requires that screening and mounding to a height of 8 feet and 100% opacity shall be achieved along the 161 New Albany Expressway. Additionally, the Zoning Text requires a mixture of ten deciduous and evergreen trees planted per 100 linear feet. The property has an existing vegetated conservation easement that the developer is proposes to utilize to provide the required screening and landscaping and requests a variance to these requirements.

- 2. It appears that there are special circumstances that exist that are peculiar to the property that justifies the variance request. This parcel consists of existing wooded areas and tree lines along the east (Bob Evans site) and south property (State Route 161) lines, and a small stream runs along these areas. The subject property was previously delineated as part of a larger effort by EMH&T and was found to contain a wetland and an intermittent stream. The New Albany Company (NACO) obtained a permit that allowed the wetland to be filled and the stream to be rerouted along the eastern and southern property (State Route 161) boundaries. NACO built the rerouted stream and then sold the property to A&F. The rerouted stream lies within a 130-foot Environmental Covenant held by the Ohio EPA. A&F was responsible for filling the wetland and 'original' stream. These natural elements are all to be preserved. As stated, these areas contain existing mature landscaping and the applicant is not able to add any mounding or additional landscaping to the environmental protect therefore granting the variance appears to be reasonable in this case.
- 3. The variance request appears to meet the spirit and intent of the zoning requirement and does not appear to be substantial as the existing landscaping along State Route 161 provides substantial screening of the property from the expressway thereby meeting the intent of the requirement.
- 4. The city landscape architect has reviewed the proposal and comments there is sufficient landscaping within the environmental covenant area to sufficiently screen and buffer the site from State Route 161. The city landscape architect does not recommend any additional landscaping be added to this area or along the side of the site that is adjacent to State Route 161.
- 5. Granting the variance request will not alter the character of the immediate area as the existing site conditions along State Route 161 would remain. The Board of Zoning Appeals granted the same variance request for the Bob Evans office campus site located directly east of this property (V-15-2011).
- 6. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 7. Granting the variance would not adversely affect the delivery of government services.

#### IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. While the applicant is not meeting the landscape and mounding requirements along State Route 161, an environmental covenant exists along this frontage which restricts additional earth disturbance and plantings which is special circumstance that justifies the variance request. Additionally, the granting the variance request does not appear to be substantial nor will it alter the character of the immediate area as the existing conditions of the property will remain and the same variance was granted by the BZA for the adjacent Bob Evans site. The existing, well established landscape screening along the State Route 161 frontage of the site appears to meet the spirit and intent of the zoning text requirement.

#### V. ACTION

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

Move to approve application VAR-96-2021 (conditions of approval may be added).

**Approximate Site Location:** 



Source: Google Earth

Permit #	
Board	
Mtg. Date	



#### **Community Development Planning Application**

	1					
	Site Address Smiths Mill Road Parcel Numbers 222-001951-00 Acres 41.295 # of lots created 1					
2.50						
	Acres	# of lots cre	ated			
	Choose Application Type	OUR DESIGNATION OF THE PERSON	Circle a	ll Details that Apply		
Project Information	□□Appeal □□Certificate of Appropriateness □□Conditional Use □□Development Plan □□Plat □□Lot Changes □□Minor Commercial Subdivision □□Vacation  □□Variance □□Extension Request □□Zoning	Preliminary Preliminary Combination Easement Amendment (rez	Final Final Split	Comprehensive Adjustment Street Text Modification	Amendment	
がは、大学のよ	Description of Request: Varianc attached		in accor	dance with upda	ted letter as	
	Property Owner's Name: Aberc	rombie & Fitcl	h Manaç	gement CO		
	Address: 6301 Fitch Path City, State, Zip: New Albany, O	bio 42054				
				Fax:		
10	Email:			T ux.		
cts	-					
Contacts	A1:	or IIC/Sha	d Clotto			
ည	Address: Al Never II C	(Shad Sletto)	u Sietto			
	Applicant's Name: Al Neyer, LLC (Shad Sletto) Address: Al Neyer, LLC (Shad Sletto) City, State, Zip: 302 W. 3rd Street, Suite 800, Cincinnati, Ohio 45202					
	Phone number: 513-527-1846 Fax:					
	Email:ssletto@neyer.com					
Signature	Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.					
	Signature of Owner			Dat	e: 🧓 🐰	
198	0.1 11	1 Moth		Dat		

99 West Main Street • P.O. Box 188 • New Albany, Ohio 43054 • Phone 614.939.2254 • Fax 614.939.2234

Appeal Certificate of Appr	ropriateness		250.00
r r		two family residential	100.00
		esidential or commercial	300.00
	ARB - Signage		75.00
Conditional Use			600.00
Development Plan	- Preliminary PUD	or Comprehensive	
•	Planning fee	First 10 acres	750.00
		Each additional 5 acres or part thereof	50.00 / each
	Engineering fee	1-25 lots	155.00 / each
		Minimum fee	1000.00
	Engineering fee	26 - 50  lots	3875.00
		Each additional lot over 26	75.00 / each
	Engineering fee	Over 51 lots	5750.00
		Each additional lot over 51	50.00 / each
Development Plan	– Final PUD		
	Planning fee	First 10 acres	650.00
		Each additional 5 acres or part thereof	50.00
	Engineering fee	1-25 lots	
		(minimum fee \$1,000.00)	155.00 / each
	Engineering fee	26 – 50 lots	3875.00
		Each additional lot over 26	75.00 / each
	Engineering fee	Over 51 lots	5750.00
T 1 . T1		Each additional lot over 51	50.00 / each
Development Plan			300.00
_	/ Text Amendment		600.00
Plat – Road Prelim	•		250.00
	Planning fee	no lote on side of stood	350.00
	Engineering fee	no lots on either side of street lots on one side of street	1.00 / LF .50 / LF
		Minimum fee	1,000.00
Plat – Road Final		Minimum ree	
r iat – Road Fillai	Planning fee		350.00
	Engineering fee	no lots on either side of street	1.00 / LF
	Lingineering rec	lots on one side of street	.50 / LF
		Minimum fee	1,000.00
Plat – Subdivision	Preliminary	*************	
	Planning		650.00
		Plus each lot	50.00 / each
	Engineering fee	1-25 lots	
		(minimum fee \$1,000.00)	155.00 / each
	Engineering fee	26 – 50 lots	3875.00
	- <del>-</del>	Each lot over 26	75.00 / each
	Engineering fee	Over 51 lots	5750.00
	· -	Each lot over 51	50.00 / each
Per 8/31/21 4	email from Mr.	Stephen Mayer	
		ee and \$2,050 preliminary devel	nnment nlan
		anning and \$1,000 in engineering	
application is		anning and \$1,000 in engineering ade out to the city of New Alban	

99 West Main Street • P.O. Box 188 • New Albany, Ohio 43054 • Phone 614.939.2254 • Fax 614.939.2234

-						
	Plat - Subdivision F	inal				
		Planning		650.00		
391			Plus each lot	15.00 / each		
	•	Engineering fee	1-25 lots		82	
			(minimum fee \$1,000.00)	155.00 /each		
40		Engineering fee	26-50 lots	3875.00		
靈			Each lot over 26	75.00 / each	,	
		Engineering fee	Over 51 lots	5750.00		
뾜			Each lot over 51	50.00 / each		
(3)	Lot Changes			200.00		
	Minor Commercial S	Subdivision		200.00		
ш	Vacation (Street or I	Easement)		1200.00		
8	Variance					
	Non-single family, commercial, subdivision, multiple properties			600.00		
	Single Fam	Single Family residence		250.00		
8	In conjunction with Certification of Appropriateness Extension Request		ion of Appropriateness	100.00		
				0.00		
20	- ·					
27	Zoning					
		Rezoning - First 10		700.00		
			Each additional 5 acres or part thereof	50.00 / each	8	
			Fork Blacklick Accord	250.00		
		Text Modification		600.00	-	
	Easement Encroachment			800.00		
3						

99 West Main Street • P.O. Box 188 • New Albany, Ohio 43054 • Phone 614.939.2254 • Fax 614.939.2234



September 10, 2021

Mr. Stephen Mayer Planning Manager, New Albany 99 W Main St. New Albany, OH 43054

Subject: Smith's Mill Road, New Albany Site - Variance Request for Mounding and Landscaping

Dear Mr. Mayer,

On behalf of Al. Neyer RE, LLC, the applicant, we are seeking three (3) zoning variances in connection with the intended development of the vacant, 41-acre parcel #222-001951-00, located on Smith's Mill Road in New Albany, Ohio. The subject property is outlined in red on Exhibit A attached hereto, below.

The applicant is seeking variance relief from certain mounding and landscaping requirements contained within the Blacklick District Subarea D Zoning Regulations dated June 7, 1999. The specific variance requests are as follows:

1. <u>Section 1.05(1)(a)</u>: This text requires screening and mounding to a height of 8 feet and 100% opacity within the New Albany Expressway setback area.

Applicant is requesting that this requirement be waived due to the existing environmental covenant/preservation easement (copy enclosed) affecting the New Albany Expressway setback area, which prohibits disturbance of the covenant area. The existing mounding and tree cover provides significant screening without additional mounding/planting.

2. <u>Section 1.05(1)(b)</u>: This text requires a mixture of 10 deciduous and evergreen trees be planted per 100 linear feet within the New Albany Expressway setback area, and specifies certain other requirements for the type and quantity of trees planted.

Applicant is requesting that this requirement be waived, in light of the aforementioned environmental covenant/preservation easement and existing, significant tree cover within the New Albany Expressway setback area.

#### Site Background

The existing site is bounded by a stream on the eastern and southern boundaries of the site. This stream is protected with a restrictive environmental covenant easement in favor of the Ohio Environmental Protection Agency (see enclosed record instrument no. 201512230179738).

#### **Engineer's Recommendations**

Please reference our landscape site plan, enclosed. Our intent is to maintain tree canopies adjacent to the covenant along the eastern and southern boundaries of the site to maintain the buffer zone that exists today. Along our western boundary, we will provide plantings in accordance with New Albany requirements. Along the northern boundary, we are recommending installing a 4 to 6 foot mound along the frontage of our site for headlight screening and to act as a transition zone between adjacent developments. The mound will be formed to match the natural landscape as reviewed with your office in the preliminary development plan reviews.

5500 New Albany Road, Columbus, OH 43054 • Phone 614.775.4500 • Fax 614.775.4800

Coumbus • Charlottemht.com

City of New Albany Smith's Mill Road, New Albany Site – Variance Request for Mounding and Landscaping Rev 02

The applicant is currently under contract for the purchase of this property from Abercrombie and Fitch Management Co. (A&F).

September 10, 2021

Please review this request. If you have any questions, please contact me at 614-775-4615.

Respectfully submitted,

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Travis Jay Eifert, P.E.

Partner

Enclosures: Environmental Covenant of Record (Instrument No. 201512230179738)

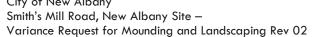
Site Landscape Plan

emht.com | Page 2 of 6

City of New Albany Smith's Mill Road, New Albany Site – Variance Request for Mounding and Landscaping Rev 02 September 10, 2021 City of New Albany

# Exhibit A





Picture 1 – At right of way of Smith's Mill /Site looking southwest from Smith's Mill Road

September 10, 2021



Picture 2 – At western middle of site looking north towards Smith's Mill Rd



City of New Albany Smith's Mill Road, New Albany Site — Variance Request for Mounding and Landscaping Rev 02 September 10, 2021

September 10, 2021

City of New Albany Smith's Mill Road, New Albany Site — Variance Request for Mounding and Landscaping Rev 02





Picture 4 – At western corner of Smith's Mill Rd/Site looking east



Picture 5 – Taken from Google Street view at Midpoint of site from SR 161 looking north





Blacklick Districts Limitation Text Subarea D: L-GE 1.05.1 — Buffering, Landscaping, Open Space and/or Screening Commitments: a) Screening requirement along SR 161 achieved with existing vegetation. b) Planting requirement achieved with existing

1.05.2 - Landscape Material Minimums: b) 8% Interior parking lot landscape
Parking Area: ±95,800 SF x .08 = ±7664 SF
±7755 SF provided

c) 1 tree per 5,000 S.F. of ground coverage and a total tree planting equal to 25" caliper plus 1/2" caliper for every 4,000 S.F. over 50,000 S.F. in

±1,000,100 S.F. Total Ground Coverage  $\pm 1,000,100 / 5000 = 200$  Trees  $\pm 1,000,100 - 50,000 = \pm 950,100$ 

 $\pm 950,100 / 4000 \times .5" = 119" + 25" = 144"$ 

Up to 55 existing trees within the East Stream Preservation Easement may be counted toward the remainder of this requirement at the discretion of City staff. The quantity of existing trees shall be inventoried by the Developer prior to construction for City review. If existing trees are insufficient, as determined by the City, then new 2.5" caliper trees will be planted on site.

1.05.4 - Street Trees: Proposed street trees shall be spaced at ±30' O.C. to appear evenly spaced and to avoid existing utilities and light poles.

1.06.2 — Service Area Dumpsters: The Developer has not selected a location for the dumpster at this time. The final location of the dumpster will be coordinated with the prospective tenant. The Developer will conform to the City of New Albany landscape screening requirements for dumpster enclosures per the Limitation Text, Blacklick District, Subarea D, 1.06.2.

JOB NO.

**PRELIMINARY** 

NOT TO BE USED FOR

PLAN SET DATE

9/3/2021

CONSTRUCTION

6/6

TRANSFER NOT NECESSARY

DEC 2 3 2015

CLARENCE E. MINGO II

AUDITOR

FRANKLIN COUNTY, OHIO

201512230179738
Pgs: 11 \$104.00 T20150093809
12/23/2015 12:14PM BXVORYS, SATER
Terry J. Brown
Franklin County Recorder

CONVEYANCE TAX
EXEMPT

CLARENCE E. MINGO II
FRANKLIN SQUINTY AUDITOR

To be recorded with Deed Records - O.R.C. § 317.08

#### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("O.R.C.") §§ 5301.80 to 5301.92 by the property owner, Abercrombie & Fitch Management Co., a Delaware limited liability company (the "Owner" and "Holder") having an address of 6301 Fitch Path, New Albany, Ohio 43054 and the Ohio Environmental Protection Agency (the "Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property (the "Covenant Area") to the activity and use limitations set forth herein.

WHEREAS, on October 31, 2006, the Ohio Environmental Protection Agency issued a Section 401 Certification (Ohio EPA ID No. 062653) and on November 17, 2006 the U.S. Army Corps of Engineers issued a Section 404 Permit (Permit Number UN TRIB BLACKLICK CREEK-200200751) to the applicant authorizing the relocation of 3,130 linear feet of intermittent stream channel on a 41.295± acre development site (the "Site") located in New Albany, Franklin County, Ohio (more particularly described on Exhibit A hereto):

WHEREAS, the Section 401 Certification and Section 404 Permit requires the relocated stream channel to be protected in perpetuity by an environmental covenant. The location of the protected area is identified on Exhibit B hereto (the "Covenant Area"). This Environmental Covenant establishes the land use restrictions applicable to the Covenant Area.

WHEREAS, the Owner is the owner in fee of the Site and Covenant Area and acquired title thereto pursuant to a Deed of Record as Instrument No. 200612150248879 in the Office of the Recorder of Franklin County, Ohio; and

WHEREAS, the Owner proposes to fulfill the obligation to ensure the Covenant Area is protected in perpetuity by this Environmental Covenant.

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Now therefore, the Owner and the Ohio EPA agree to the following:

- 1. <u>Environmental Covenant</u>. This instrument is an environmental covenant developed and executed pursuant to O.R.C. §§ 5301.80 to 5301.92.
- Covenant Area. This Environmental Covenant concerns the Covenant Area located in New Albany, Franklin County, Ohio and more particularly described in Exhibit B attached hereto and hereby incorporated by reference herein (the "Covenant Area"). The Covenant Area includes 3,270 feet of relocated stream channel.
  - The Owner is the fee simple owner of the Covenant Area.
  - The Owner is the holder of this Environmental Covenant.
- Activity and Use Limitations. As part of the conditions set forth in the Section 401 Certification and Section 404 Permit issued to the Owner, the Owner hereby imposes and agrees to comply with the following activity and use limitations:
  - a. <u>Division</u>: Any division or subdivision of the Covenant Area is prohibited;
  - <u>Commercial Activities</u>: Commercial development or industrial activity on the Covenant Area is prohibited;
  - c. <u>Construction</u>: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than activities authorized under the maintenance and monitoring requirements;
  - d. <u>Cutting Vegetation</u>: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, unless necessary to minimize the establishment of invasive species in accordance with authorized maintenance and monitoring requirements;
  - <u>Dumping</u>: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
  - f. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area unless

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#### otherwise authorized.

- 6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to O.R.C. § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
- 7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to O.R.C. § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of the Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.
- 8. Rights of Access. The Owner hereby grants to the Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.
- 9. <u>Compliance Reporting.</u> The Owner and any Transferee shall submit to Ohio EPA on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.
- 10. <u>Notice upon Conveyance</u>. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE FRANKLIN COUNTY RECORDER ON \_\_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_, PAGE \_\_\_\_\_,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

<u>Division</u>: Any division or subdivision of the Covenant Area is prohibited;

 Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

- c. <u>Construction</u>: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than activities authorized under the maintenance and monitoring requirements;
- d. <u>Cutting Vegetation</u>: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, unless necessary to minimize the establishment of invasive species in accordance with authorized maintenance and monitoring requirements;
- <u>Dumping</u>: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
- f. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area unless otherwise authorized.

The Owner shall notify the Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. The Owner's notice shall include the name, address and telephone number of the transferee.

- 11. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:
  - a. that the Owner is the sole owner of the Covenant Area;
    - that the Owner holds fee simple title to the Covenant Area;
- that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
  - d. that this Environmental Covenant will not materially violate or

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contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party of by which the Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a transferee, the Holder, and the Ohio EPA, pursuant to O.R.C. § 5301.90 and other applicable law. "Amendment" means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect the Owner's obligations pursuant to the 401 Certification.

Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Franklin County Recorder's Office, and shall provide a true copy of the recorded instrument to the Ohio EPA.

- 13. <u>Severability</u>. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
- 15. <u>Recordation</u>. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Franklin County Recorder's Office.
- 16. <u>Effective Date</u>. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the Franklin County Recorder.
- 17. <u>Distribution of Environmental Covenant</u>. The Owner shall distribute a fileand date-stamped copy of the recorded Environmental Covenant to the Ohio EPA.
- 18. <u>Notice</u>. Unless otherwise notified in writing by or on behalf of the current owner or the Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Division of Surface Water Ohio EPA P.O. Box 1049 Columbus, Ohio 43216-1049

Section 401 Certification Unit

Abercrombie & Fitch Management Co. ATTN: Director of Real Estate (Important Legal Notice) 6301 Fitch Path New Albany, Ohio 43054

19. <u>Counterparts.</u> This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representative of the Owner represents and certifies that it is authorized to execute this Environmental Covenant.

[Remainder of this page intentionally blank]

5

6

IT IS SO AGREED										
	7	F	E	D	C	۸	SO	10	IT	

OWNER/HOLDER:

ABERCROMBIE & FITCH MANAGEMENT CO.

Print name: 1DAN Its: fr. MANAGET of Hora

State of	0410	)
County of _	FRANKLIN	)

Before me, a notary public, in and for said county and state, personally appeared bancompton, a duly authorized representative of ATF Monto, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of ATF Monto.

Notary Public

Mary C. Toomey Notary Public, State of Ohio My Commission Expires 05-21-2017

OHIO ENVIRONMENTAL PROTECTION AGENCY

State of Ohio County of Franklin

Before me, a notary public, in and for said county and state, personally appeared Craig Butler, the Director of the Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 23ED day of DECEMBER, 2015.



This Document Prepared By: Kristin L. Watt Vorys, Sater, Seymour and Pease LLP 52 E. Gay St. Columbus, Ohio 43215

William T. Fischbein Ohio EPA, Legal 50 West Town Street, Suite 700 Columbus, Ohio 43215

CHARMA DIANE CASTEEL
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES

12/10/2015 23377834

#### EXHIBIT "A"

41.295 ACRES

Situated in the State of Ohio, County of Franklin, Village of New Albany, United States Military Lands and being part of the original 105.659 acre tract conveyed to The New Albary Company by deed of record in Official Record 13430F03, Official Record 13430F06, Official Record 13430F09, Official Record 13430F12 and Instrument Number 199811120289607 and a portion of the vacated Smiths Mill Road right-of-way of record in Ordinance Number 0-32-2002 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and described

Beginning, for reference, at a railroad spike found at the intersection of the centerline of Dublin-Granville Road (State Route 161) with the northerly terminus of the centerline of Babbitt Road being at the common corner of the 8.124 acre tract conveyed to the State of Ohio by deed of record in Official Record 26218G15 and the 14.450 acre tract conveyed to the State of Ohio by deed of record in Official Record 25998B13, and being in the line common to Farm

thence North 04° 05' 01" East, a distance of 286.56 feet, with the line common to said 8.124 and 14.450 acre tracts, to an iron pin found at the common corner of said 8.124 and 14.450 acre tracts, the 45.102 acre tract conveyed to Abercrombie & Fitch Stores, Inc. by deeds of record in Instrument Number 199908090202338 and a remainder of said original 105.659 acre tract, the TRUE POINT OF BEGINNING;

thence North 04° 03' 46" East, a distance of 1336.75 feet, with the line common to said 45.102 and original 105.659 are tracts to an iron pin set in the southerly right-of-way line of Smith's Mill Road, of record in Plat Book 95, Page 91-94;

thence South 86° 23' 10" East, a distance of 1351.19 feet, with said southerly right-ofway line and a northerly line of said original 105.659 acre tract, to an iron pin set;

thence South 03° 53' 01" West, a distance of 1324.35 feet, across said original 105.659 acre tract, to an iron pin set in the northerly line of the 1.234 acre tract conveyed to the State of
Ohio by deed of record in Instrument Number 200510280227581;

thence North 86° 20' 26" West, a distance of 869.70 feet, with the line common to said 1.234 and original 105.659 acre tracts, to an iron pin set in the northwesterly corner of said 1.234 acre tract:

thence South 03° 39' 33" West, a distance of 16.87 feet, with a line common to said 1.234 and 105.659 acre tracts, to an iron pin set in the northerly line of said 14.450 acre tract;

thence North 85° 56' 13" West, a distance of 485.73 feet, with the line common to said 14.450 and original 105.659 acre tracts, to the TRUE POINT OF REGINNING and containing 41.295 acres of land, more or less. DESCRIPTION VERIFIED

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside DRAC RINGLE PEFS.

diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMST.

BY.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous rec

The bearings in the above description are based on the Chio State Plane Coordinate System — South Zone as per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments Frank 76 and Frank 176, with a bearing of North 86° 23' 10" West, for the centerline of Smith's Mill Road Extension, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

amo M Lear & 6/28/00

PEARSALL James M. Pearsall 7840

JAMES

VRINGLE PET

DATE 12/13/04

STREAM PRESERVATION EASEMENT

Situated in the State of Ohio, County of Franklin, Village of New Albany, located in Lot 7, Quarter Township 4, Township 2, Range 16, United States Military Lands, being on, over, and across that 41,295 acre tract as conveyed to Ambercrombie & Fitch Management Co. by deed of record in Instrument Number 200612150248379 (all references refer to the records of the Recorder's Office, Franklin County, Ohio), and being described as follows:

BEGINNING at the southeasterly comer of said 41.295 acre tract, at the northeasterly comer of that tract educated to State of Ohio by deed of record in Instrument Number 200510280227581, being on the northerly right-of-way of State Route 161;

thence with said portherly right-of-way line, the following courses and distances:

North 86° 20' 26" West, a distance of 869.70 feet to a point;

South 03° 39' 33" West, a distance of 16.87 feet to a point;

North 85° 56' 13" West, a distance of 485.73 feet to the southwesterly comer of said 41.295 acre tract;

thence North  $04^{\circ}$  03'  $46^{\circ}$  East, with the westerly line of said 41.295 acre tract, a distance of 130.01 feet to a point

thence across said 41.295 acre tract, the following courses an distances:

South 85° 56' 13" East, a distance of 1249.96 feet to a point;

North 03° 53' 04" East, a distance of 1216.52 feet to a point on the southerly right-of-way line of Smith's Mil Road of record in Plat Book 95, Pages 91 thru 94;

thence South 86 23' 10" East, with said northerly right-of-way line, a distance of 105,00 feet to the northeasterly pomer of said 41,295 acre tract;

thence South 03 53' 01" West, with the easterly line of said 41.295 acre tract, a distance of 1324.35, see tw the POINT OF DEGINNING and containing 6.580 acres of land, more or less.

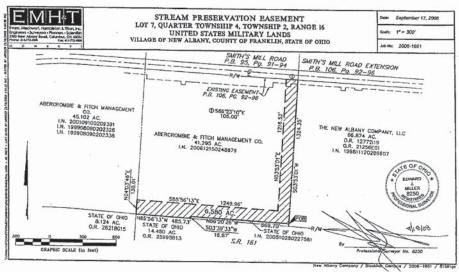
MECHWART, HAMBLETON, & TILTON, INC. 80/41/10

Edward J. Miller Registered Surveyor No. 8250

8250

EX

B



SUTH'S MILL ROAD  F.E. 93, 79, 91-94  SMITH'S MILL ROAD EXTENSION  P.E. 106, PQ. 92-96  DS85*25*107E  OS. 106, PQ. 92-96  DS85*25*107E  OS. 21225E01  IN. 2006 2150248879  DS85*25*107E  OS. 21225E01  IN. 1988 1170288677  SS55*36*13*E  1249.96*  SS55*36*13*E		
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TREAM PRESERVATION EASEMENT  QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16  UNITED STATES MILITARY LANDS  OF NEW ALBANY, COUNTY OF PERANKLIN, STATE OF OHIO  SMITH'S MILL ROAD  F.B. 95, F9, 91-94  SMITH'S MILL ROAD  F.B. 95, F9, 91-94  SMITH'S MILL ROAD  F.B. 106, F0, 29-96  DSSETSTATES  OR SEASON  DSSETSTATES  OR SITH'S MILL ROAD  F.B. 95, F9, 91-94  SMITH'S MILL ROAD  F.B. 95, F9, 91-94  SMITH'S MILL ROAD  F.B. 106, F0, 29-96  DSSETSTATES  OR STATES  OR SMITH'S MILL ROAD  F.B. 106, F0, 29-96  DSSETSTATES  OR STATES		
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#### **COMMUNITY CONNECTS US**

### **Board of Zoning Appeals Staff Report September 27, 2021 Meeting**

#### AXIUM II PAVEMENT SETBACK VARIANCE

LOCATION: 8640 Innovation Campus Way West (PID: 222-112122).

APPLICANT: EMH&T c/o Katie Bauman

REQUEST:

Variance to Beech Road West L-GE zoning text section IV(B)(2) to allow a 17-foot encroachment into the required pavement setback along

Innovation Campus Way West.

ZONING: Beech Road West L-GE Zoning District

STRATEGIC PLAN: Employment Center District

APPLICATION: VAR-98-2021

Review based on: Application materials received August 25, 2021.

Staff report prepared by Chris Christian, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to Beech Road West L-GE zoning text section IV(B)(2) to allow a 17 foot encroachment into the required pavement setback along Innovation Campus to Way West to allow for the construction of 51 parking spaces on the site.

#### II. SITE DESCRIPTION & USE

The 7.89 acre site is located in the Licking County business park and contains a 117,000+/- sq.ft. commercial building with 74 existing parking spaces.

#### 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 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 Beech Road West L-GE zoning text section IV(B)(2) to allow a 17-foot encroachment into the required pavement setback along Innovation Campus Way West. The following should be considered in the Board's decision:

- 1. The Beech Road West L-GE zoning text section IV(B)(2) states that there is a minimum 25-foot pavement setback from Innovation Campus Way West. In order to add additional parking spaces on the site, the applicant requests a variance to allow a 17-foot encroachment into the required setback.
- 2. The variance does not appear to be substantial in this case. The applicant states their business operations have increased on the site which necessitated the need for additional staff and parking spaces. Currently, there are 74 parking spaces on the site and the applicant would like to add 51 more to account for their business and staff growth. Axium is one of the largest employers in the New Albany Business Park and the increased parking demands are a result of growth the company is experiencing.
- 3. It does not appear the problem can be solved by some manner other than the granting of a variance. Staff reviewed the site prior to an official submission in order to explore the best option while minimizing the impact of a variance request. The property has a residential neighbor to the north, a primary road corridor to the east (Beech Road) and a shared access drive along their western property line making the proposed encroachment along Innovation Campus Way West the best solution. There is some space between the access drive on the west side of the site and the building however, the applicant states that there is a significant grade change and limited spacing that would make adding additional parking spaces in this location expensive and they may not meet the minimum dimensional requirements in city code.
- 4. The road is not a primary corridor and therefore is less traveled, minimizing the visual impact of the encroachment.
- 5. It does not appear the essential character of the neighborhood would be substantially

altered or adjoining properties suffer a "substantial detriment." While the applicant is not meeting the required setback along this roadway, the public streetscape will not be impacted (leisure trail, tree lawn and horse fence). Additionally, the required 25-foot pavement setback is usually reserved to allow for additional landscape planting between the private site improvements and public roads. The zoning text for this property does not contain these types of landscape requirements therefore there is no landscaping that will be impacted or will have to be removed to allow for the installation of additional parking spaces.

- 6. The city landscape architect reviewed the application and states that there is enough room between the back of the proposed parking spaces and the horse fence to install the required 30-inch landscape hedge required by code to provide headlight screening. Typically, these landscape hedges are 24 inches in height at the time of installation and given 5 years to grow to full height. In order to offset the visual impact of the proposed encroachment, staff recommends a condition of approval that all parking lot landscaping requirements found in C.O. 1171 must still be met on the site, that a fully grown 30-inchtall landscape hedge be installed as part of the construction and that additional trees be installed at the site corner along Beech Road and Innovation Campus Way West.
- 7. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 8. Granting the variance would not adversely affect the delivery of government services.

#### IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. The city understands and is sensitive to the growing needs of existing businesses in the community however, an important success story in the park is how well the community has done to maintain a consistent streetscape along all of our business corridors. City staff is supportive of the variance request in this case due to the fact that the proposed encroachment is along Innovation Campus Way West which is not a primary road corridor and with the condition that the applicant provide a more mature landscape hedge on day one of construction, must meet all of the requirements of C.O. 1171 and provide additional trees on the site at the corner of Beech Road and Innovation Campus Way West in order to offset the visual impact of the encroachment.

#### V. ACTION

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

Move to approve application VAR-98-2021 with the following condition (conditions of approval may be added).

1. All parking lot landscaping requirements found in C.O. 1171 must still be met on the site, that a fully grown 30-inch-tall landscape hedge be installed as part of the construction and that additional trees be installed at the site corner along Beech Road and Innovation Campus Way West.

**Approximate Site Location:** 



Source: Google Earth



# Community Development Department Planning Application

Case #	MAR.98.2021
Board	
Mtg. Date	

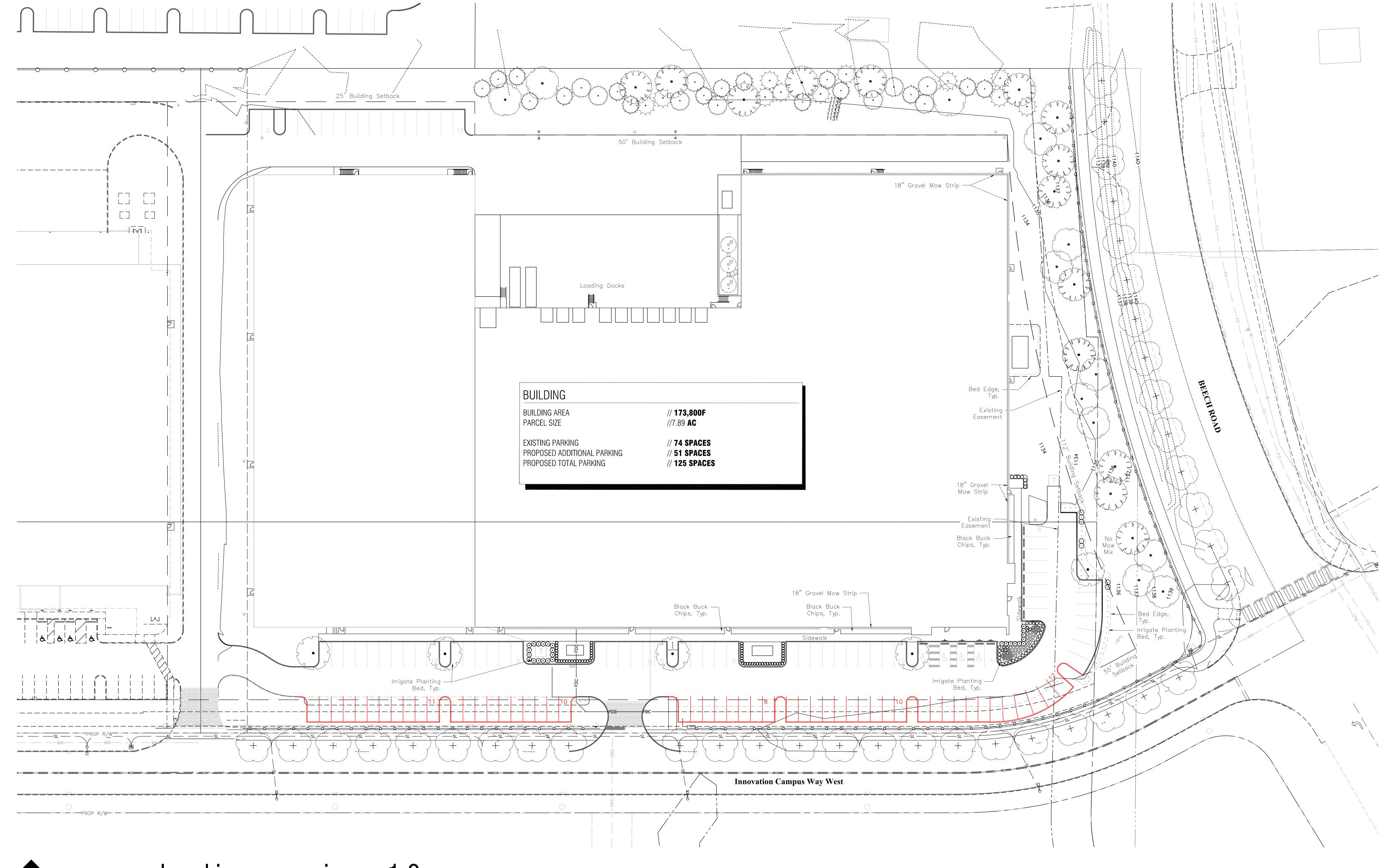
	Site Address 8640 Innovation Campus Way W							
	Parcel Numbers <u>095-112122</u>							
	Acres # of lots created							
а	Choose Application Type  ☐ Appeal ☐ Certificate of Appropriateness		Circle all	Details that Apply				
Project Information	☐ Conditional Use ☐ Development Plan ☐ Plat ☐ Lot Changes	Preliminary Preliminary Combination	Final	Comprehensive Adjustment	Amendment			
oject In	☐ Minor Commercial Subdivision☐ Vacation☐ Variance☐ Extension Request☐	Easement		Street				
Pr	☐ Zoning	Amendment (1	ezoning)	Text Modification				
	Variance requested for encroachment of parking setback on the south  Description of Request:property line							
	Property Owner's Name: _PJP Holdings LLC							
	Address: 9005 Smith's Mill Rd							
	City, State, Zip: New Albany, Oh Phone number: 614-706-5955	io 43054		Fax:				
its	Email: kmiranda@axiumplas							
Contacts	Applicant's Name: EMH&T (Katie Bauman)							
	Address: 5500 New Alba City, State, Zip: Columbus, Ohio							
	Phone number: 614-775-4340			Fax:				
	Email: kbauman@emht.com							
Signature	Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.							
Sign	Signature of Owner Signature of Applicant			Date	e: <u>8/25/2021</u>			

#### **Axium Beech Parking Variance**

#### Variance 1

Enchroaching 17' into the pavement setback along the south side of the property, adjacent to Innovation Campus Way West.

Request variance to allow employee parking to have a 8' pavement setback instead of 25' pavement setback. Additional parking is needed on this site due to increased staff at this building. Additional parking is not permitted on the north side of the property due to being adjacent to residential property. With such a tight site, additional parking on the south side of the road inbetween the existing parking lot and Innovation Campus Way West seems to be the best option. An additional 56 spaces can be gained in this location. Currently the site has 74.











## **Board of Zoning Appeals Staff Report September 27, 2021 Meeting**

# TROVE WAREHOUSE SETBACK VARIANCE

LOCATION: 5850 Zarley Street (PID: 222-000264-00).

APPLICANT: Heninger Construction

REQUEST:

Variance to allow a new commercial storage building to encroach 29 feet into a platted 50-foot rear yard building setback and 10 feet into a 25 foot

screen planting area at 5850 Zarley Street.

ZONING: Limited Industrial

STRATEGIC PLAN: Employment Center District

APPLICATION: VAR-100-2021

Review based on: Application materials received September 3, 2021.

Staff report prepared by Chris Christian, Planner.

#### I. REQUEST AND BACKGROUND

The applicant requests a variance to allow a new commercial storage building to encroach 29 feet into a platted 50-foot rear yard building setback and 10 feet into a 25 foot landscape buffer area at 5850 Zarley Street.

#### II. SITE DESCRIPTION & USE

The 1 acre site is located in the Zarley Industrial Park in Franklin County and contains a 8,000+/sq.ft. commercial building that was built in 1987. On September 16, 2013, the Planning Commission approved a conditional use to allow a retail store to be located at the site (CU-166-13).

#### 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 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 allow a new commercial storage building to encroach 29 feet into a platted 50-foot rear yard building setback and 10 feet into a 25 foot screen planting area at 5850 Zarley Street.

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

- 1. The property is located in the Zarley Industrial Park in Franklin County. The site currently contains an 8,000 sq. ft. commercial building as well as paved and gravel parking areas. On October 28, 2013, the BZA approved variances for the site to allow the existing gravel driveway to remain and to allow the building to encroach 4.5 feet into the required side yard (V-194-2013). The building is occupied by Trove Warehouse which is permitted as a conditional use by the Planning Commission on September 16, 2013 (CU-166-13).
- 2. The industrial park was platted in 1986 and the plat includes required setbacks for the properties. The plat states that there is a 50-foot rear yard building setback for this site. Additionally, within this 50-foot building setback, there is a 25-foot screen planting area requirement.
- 3. The applicant proposes to construct a new 3,750 sq. ft. commercial storage building located 21 feet from the rear property line and new paved area located 15 feet away therefore, a variance to these requirements is required. Currently, the existing gravel parking lot is located 30 feet away from the required rear property line and the existing building is located approximately 115+/- feet away, meeting the plat setback requirements.
- 4. The setbacks on the plat match the current zoning district standards for adjacent residential properties. C.O 1153.04(f) states that in no case shall there be any structure,

service, parking area in any LI (Limited Industrial) district located less than 50 feet from where residences are a permitted use. The plat was recorded in 1986 and based on aerial imagery from 1995 (shown below), it appears that the land at the rear yard of this property was likely zoned to allow residential uses which explains the larger setback being included on the plat. These setbacks and additional landscaping are required to



- 5. The variance does not appear to be substantial in this case. Since the time the zarley plat was recorded, the neighboring property was rezoned in 1999 as part of the Trust Corp Mixed Use zoning district that permits commercial zoning. The property is developed and used as the Smith's Mill Office Park (2019 aerial below). Therefore, the 50-foot building setback no longer appears necessary given the current uses.
- 6. The base LI district requires for any structure or service area within the LI or GE Districts, the required rear yard shall not be less than twenty-five (25) feet from any interior lot line. The applicant is encroaching into the district's base building and service area setback. While the applicant proposes to encroach within the district's base building and service area, setbacks, it preserves the spirit and intent of the base zoning requirement to provide proper separation. The proposed structure will still be located 150+/- feet away from the nearest building on the adjacent property where the encroachment is proposed.
- 7. The city codified ordinances require that structures and paved areas within the LI District shall have a maximum lot coverage of seventy-five percent (75%) of the lot. The applicant has not provided this information to city staff. Staff recommends the Board of Zoning Appeals confirm with the applicant the total lot coverage as proposed.



- 8. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a "substantial detriment." While the applicant is not meeting the required setback along the rear property line, the proposed structure will maintain significant separation between this site and the buildings located on the adjacent site, an adequate landscape buffer area is still maintained along the rear property line and the applicant proposes to bring the site more in to conformance with city code as they are paving the existing gravel parking lot.
- 9. The Zarley Park plat establishes a screen planting area around the entire industrial park that is intended to provide a landscape buffer to adjacent properties outside of the park. The screen planting area ranges from 15 feet in width to 25 feet in width. Even with the encroachment the proposal is consistent with other screen planting areas since it is matching the 15 feet established in other areas of the industrial park.
- 10. The intent of the screen planting area is so there is a buffer space to provide 75% opacity screening. The 75% opacity screening was installed when the conditional use application was approved. Staff recommends a condition of approval requiring landscaping that is removed as part of construction along the rear property line must be replaced in order to ensure the amount of landscaping and screening is still being provided.
- 11. There is no additional parking required or proposed. The city parking code requires two parking spaces for each three employees during work shift having greatest number of employees, plus one for each vehicle maintained on the premises for warehouse and distribution uses. The applicant states that the proposed structure will be used entirely for storage and will not generate any new employees therefore no additional parking spaces are required to be installed on the site.
- 12. Framing drawings of the proposed structure were provided and it appears that the new structure is appropriately scaled as secondary in relation to the existing building as it will be 3 feet shorter.
- 13. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
- 14. Granting the variance would not adversely affect the delivery of government services.

#### IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. While the applicant is not meeting the required rear yard, setback established on the 1986 plat, the development context in the area has changed significantly since the site was first developed negating the need for the 50 foot building setback. While the applicant is proposing to encroach within the screen planting area, the spirit

and intent of the zoning regulations are met since the property can still provide the 75% opacity screening as originally envisioned to encircle the park. The 15-foot setback is matching other perimeter areas of the industrial park where 15 feet of screening area is required so it is compatible with the surrounding properties.

Overall, the requests do not appear to be substantial. The retail business proposes to construct a storage facility. The business is located within the city's only limited industrial zoned district. Many other existing businesses have storage facilities incorporated into their site. Given the zoning districts permitted and conditional uses it does not appear to be out of character with a industrial park development pattern. The Engage New Albany strategic plan recommends improving the industrial park's streetscape so it provides the same amenities (street trees, sidewalks, etc) as the surrounding business park. The proposed variances will not negatively affect these recommended improvements or make the site feel more at odds with the immediate surroundings.

#### V. ACTION

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

Move to approve application VAR-100-2021 with the following condition (conditions of approval may be added).

1. Any landscaping that is removed as part of construction along the rear property line must be replaced.



Source: Google Earth

Permit #	
Board	
Mtg. Date	



# **Community Development Planning Application**

	Site Address 5850 Za	arley Street, New All	bany, Ohio 43054				
	Parcel Numbers 222-000264-00						
	Acres 1 acre		# of lots cr	eated N/A	1		
	Choose Application	Type		Circle	all Details that App	lv	
Project Information	□ □ Appeal □ □ Certificate of App □ □ Conditional Use □ □ Development Plan □ □ Plat □ □ Lot Changes □ □ Minor Commercia □ □ Vacation □ □ Variance □ □ Extension Reques □ □ Zoning	oropriateness n al Subdivision st	Preliminary Preliminary Combination Easement Amendment (re	Final Final Split ezoning)	Comprehensive Adjustment Street Text Modificatio	Amendment	
	Description of Requerequired 50' setback to 1				<u>_</u>	tback variance from the or storage.	
拉旗	Property Owner's Na	ame: Unicorn	Opportunities, LLC				
	Address: 3988 Fenwick Road						
	City, State, Zip:	Columbi	us, Ohio 43220				
		14-207-3697	н		Fax:		
Fmail:							
Contacts	_	2894 St			Fax:		
Signature	Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.						
	Signature of Owner Signature of Applica	ant B	ad Barker	nie		Date: 09-03-2021 Date: 09-03-2021	

# HENINGER CONSTRUCTION 2894 SUNBURY ROAD GALENA, OHIO 43021

614-306-3890

To: New Albany Board of Zoning Appeals

99 West Main Street

New Albany, Ohio 43054

Re: Variance Request Application

5850 Zarley Street

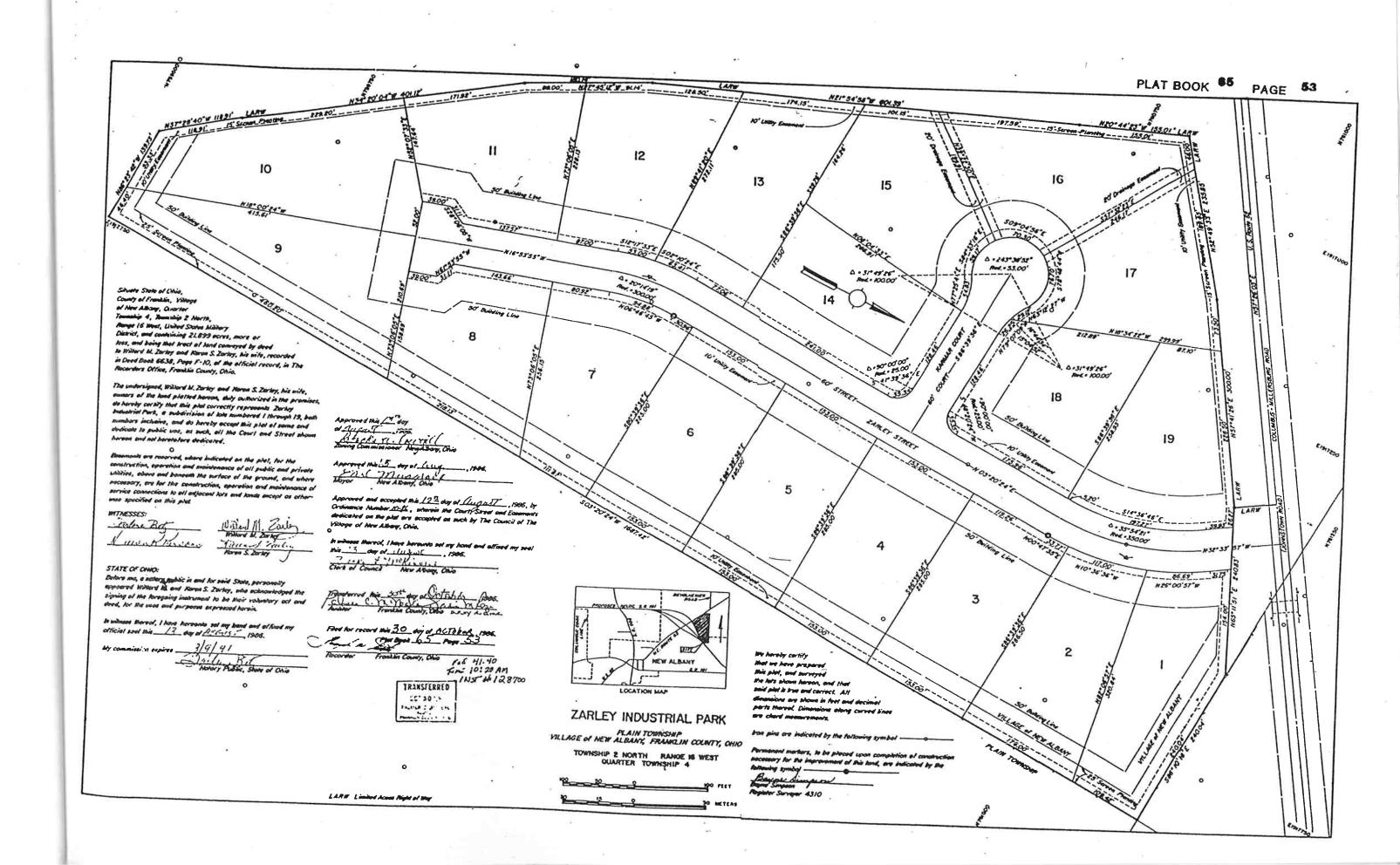
New Albany, Ohio 43054

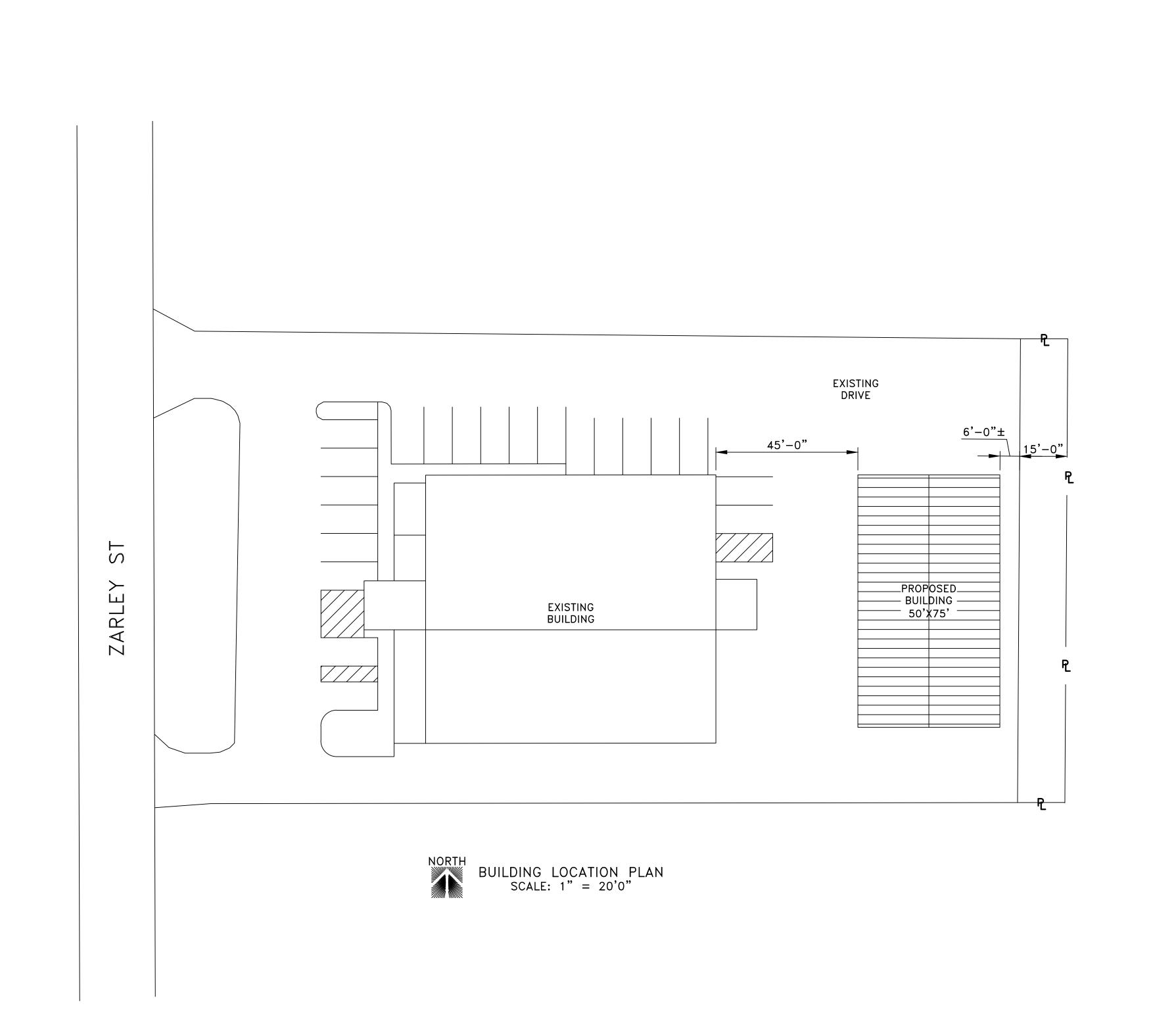
Unicorn Opportunities, LLC would like to request a variance to the rear setback line for property located at 5850 Zarley Street, New Albany, Ohio 43054. The current zoning requirement is for a 50' rear setback, and we are requesting a variance to change the rear setback to 15'. This variance is requested to allow for the construction of a new metal building to be located at the rear of property as shown on the preliminary site plan. The property owner is in need of additional storage space, and does not feel this change would negatively impact any of the adjoining properties as they are commercial properties as well.

Respectfully Submitted,

Heninger Construction

John G. Heninger





OLDEN U I L D I N G

8-23-21 DRAWN BY:

STEPHANIE HILLER

JOB NO. 2727P

SHEET

