



**New Albany Board of Zoning Appeals Agenda**  
October 25, 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/83737034868>

Or dial in using your phone: 646-558-8656

Access Code: 837-3703-4868

Information and directions for logging into this meeting can be found at [www.newalbanyohio.org](http://www.newalbanyohio.org)

**I. Call To Order**

**II. Roll Call**

**III. Action of Minutes:** September 27, 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-100-2021 Variance**

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

**Applicant: Heninger Construction**

**VIII. Other Business**

**IX. Poll members for comment**

**X. Adjournment**



**New Albany Board of Zoning Appeals  
September 27, 2021 DRAFT Minutes**

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, Ms. Wiltrout, at 7:00 p.m.

Those answering roll call:

Ms. Andrea Wiltrout	Present
Mr. Everett Gallagher	Present
Mr. Kirk Smith	Present
Ms. Kerri Mollard	Present
Mr. Shaun LaJeunesse	Present
Ms. Marlene Brisk	Absent

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; Mitch Banchevsky, City Attorney (left 7:05 p.m.); and Josie Taylor, Clerk.

Moved by Mr. Gallagher to approve the July 26, 2021 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Gallagher, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 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).

Ms. Wiltrout indicated the Other Business would be presented first this evening.

### **Other Business**

Mr. Banchevsky discussed the conditions of approval in regard to variances and a potential reconsideration.

Ms. Wiltrout indicated there was a similar condition of approval for this evening's first variance application and asked if the Board of Zoning Appeals (hereafter, "BZA") should be aware of specific considerations in this review.

Mr. Banchevsky stated not that he was aware.

Mr. Mayer stated easements were a unique situation to be recorded because they allowed third parties such as utilities to have access.

Mr. Banchevsky stated that type of condition was only needed in cases where an encroachment existed.

Ms. Wiltrout stated thank you.

### **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**

Mr. Christian presented the staff report.

Ms. Wilttrout asked if the applicant had comments to provide.

Mr. Jacob Basnett, Landscape Design Solutions, discussed the project and existing easements on the property.

Mr. LaJeunesse asked if there had been an original appeal to have this home built on the easement.

Mr. Christian stated no, but noted the original plans were not available at this time.

Mr. Basnett stated the home site had a very odd easement on this lot.

Ms. Wilttrout asked if there was an image available of the entire lot with the easement shown in relation to the house and lot.

Mr. Christian stated he would pull such an image on the screen.

Ms. Wilttrout stated the lot was different and it could be difficult to see where the easement was in relation to the property. Ms. Wilttrout said she was concerned about granting such variances because easements are important.

Ms. Mollard asked the applicant if there were no utilities running in the easement as they were adjacent to the property.

Mr. Basnett stated yes, the utilities came up the side of the property.

Ms. Mollard stated that with no current utilities in there, the risk of an encroachment to tear up the patio would be ...

Mr. Basnett stated there was nothing there.

Ms. Mollard noted the current patio was built at grade and asked if the new patio would follow the same footprint.

Mr. Basnett stated no, they needed to pull it back in to stay outside of the flood plain.

Ms. Wilttrout stated it looked like 50% to 60% of the home had been built toward the back of the lot.

Mr. Gallagher asked staff if the BZA needed to consider the impact on the utilities, which may have provided consideration for the easement and now might face increased costs as a structure would be built on the easement.

Mr. Basnett stated the pavilion was designed so that only the roof structure would be overhanging the easement, there would be no footers or anything on the ground.

Mr. Mayer stated that when staff normally reviewed easement encroachments they looked at the circumstances and engineering also evaluated things such as subsurface and footers to determine their impact on the easement to a third party provider.

Mr. Gallagher asked if there were no concerns for the utility in this case.

Mr. Mayer stated not in this case.

Ms. Wilttrout stated that would be excellent point going forward and noted the owners should bear any additional costs.

Mr. Mayer stated that in the past these have been considered private party issues.

Mr. Gallagher stated that utilities often paid consideration for such easements and might not have notice of these changes. Mr. Gallagher said he believed the City had a duty to protect the utilities.

Mr. Mayer stated he agreed and that was part of the evaluation with the engineering staff.

Mr. Gallagher stated that should be added to staff's checklist.

Ms. Wilttrout stated this evening they would assume the easement and property owner had a private relationship outside the City's ability to affect.

Mr. Basnett asked if it was possible to adjust the easement so that it ran adjacent to the flood plain.

Mr. Gallagher stated that would be a negotiation between the home owner and the utilities.

Mr. Smith stated they needed to revisit easements in general.

Ms. Mollard stated the house itself had been built into the easement and asked staff if other houses in the same community also had this issue or was this unique to this house.

Mr. Mayer stated this easement had been established as part of the original platting process and Code allowed the home to stay where it was as it was considered existing nonconforming at this point.

Ms. Wilttrout stated this almost seemed to be an adverse possession law school exam question.

Mr. Mayer stated the house would be fine, but the owners could not build an addition into the easement.

Moved by Mr. Gallagher to accept the staff report for VAR-96-2021 into the record, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Ms. Wilttrout, yea; Mr. Smith, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Gallagher to approve application VAR-96-2021, with the following condition:

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 damage to the patio in the event a public or private utility provider needs to access the easement area prior to the issuance of the building permit and also in the future;

seconded by Ms. Wilttrout. Upon roll call vote: Mr. Gallagher, yea; Ms. Wilttrout, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

**VAR-98-2021 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**

Mr. Christian presented the staff report.

Ms. Wiltrout asked if the applicant had comments to provide.

Mr. John Bumgarner, SVP Neyer Properties, stated he was happy to answer any questions.

Ms. Wiltrout asked if the application was made to not disturb the screening that was already present on the site.

Mr. Bumgarner stated yes and noted they were not able to disturb the conservation easement.

Ms. Mollard asked if the area the applicant had to fill in was an active streambed.

Mr. Bumgarner said the stream had been rerouted and just a depression was left. Mr. Bumgarner stated they were working with the Army Corp of Engineers and Ohio Environment Protection Agency to obtain their recommendations.

Ms. Mollard stated the current landscaping appeared to be only grasses and asked staff if trees were required or if only vegetation was required.

Mr. Mayer stated Code said trees were required and noted there were existing trees along US-161 on this property. Mr. Mayer stated the way the location was graded meant that from US-161 there appeared to be mounding there.

Ms. Mollard stated thank you.

Moved by Ms. Wiltrout to accept the staff report for VAR-98-2021 into the record, seconded by Mr. Smith. Upon roll call vote: Ms. Wiltrout, yea; Mr. Smith, yea; Mr. Gallagher, abstain; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 1. Motion carried by a 4-0-1 vote.

Moved by Ms. Wiltrout to approve application VAR-98-2021, seconded by Mr. Smith. Upon roll call vote: Ms. Wiltrout, yea; Mr. Smith, yea; Mr. Gallagher, abstain; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 1. Motion carried by a 4-0-1 vote.

**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**

Mr. Christian presented the staff report.

Ms. Wiltrout asked if the applicant had comments to provide.

Mr. Kenneth Miranda, for the owner, discussed the project and the need for additional parking.

Mr. LaJeunesse asked where parking was currently located on the image of the property shown on the screen.

Mr. Christian showed the parking area on the screen.

Mr. Miranda stated there was also a little bit of parking available behind the building, near their shipping area.

Mr. LaJeunesse asked where the employees were parking at this time.

Mr. Miranda stated employees parked there, also had curb lane parking, and this is something they work to direct at times as accidents had occurred.

Ms. Mollard asked if the additional 51 spaces would be enough.

Mr. Miranda stated it would be better and would help. Mr. Miranda stated they would like more, but this would help with safety issues.

Ms. Wiltrout asked if the condition of approval requiring a thirty (30) inch hedgerow was okay.

Mr. Miranda stated absolutely.

Ms. Wiltrout stated the 25 foot setback requirement was to allow additional landscaping. Ms. Wiltrout asked if there were other areas of this business park that did not have the 25 foot setback.

Mr. Mayer stated there was no additional landscaping buffer along Innovation Campus Way West. Mr. Mayer stated the applicant was required to have street trees, horse rail fencing, and screening of the parking lot for car headlights. Mr. Mayer stated this could still be accommodated on this site and it matched the aesthetics of other sites there.

Ms. Wiltrout asked if all of those were being satisfied with the conditions on this variance.

Mr. Mayer stated correct.

Ms. Wiltrout stated the seventeen (17) foot encroachment was substantial but the reasons why this was needed were appropriate.

Mr. Mayer stated they considered whether this would be substantial to the public road and noted the applicant was not encroaching on Beech Road and was enhancing the landscaping.

Ms. Wiltrout stated she understood the detriment to surrounding areas would be low but noted she viewed substantial in terms of the regulations' requirements.

Mr. Smith asked why nothing could be done on the west of the building.

Mr. Miranda stated grading was an issue, but the larger issue was that both cars and trucks parking on the access road would make it difficult to see around that area when driving.

Mr. Gallagher asked staff if any of the hedges died, what were the requirements for them to be replaced.

Mr. Mayer stated it would be a Code enforcement issue at that time.

Moved by Mr. Smith to accept the staff report for VAR-98-2021 into the record, seconded by Ms. Wiltrout. Upon roll call vote: Mr. Smith, yea; Ms. Wiltrout, yea; Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 1. Motion carried by a 5-0 vote.

Moved by Mr. LaJeunesse to approve application VAR-98-2021 with the conditions listed in the staff report, seconded by Ms. Mollard. Upon roll call vote: Mr. LaJeunesse, yea; Ms. Mollard, yea; Mr. Smith, yea; Mr. Gallagher, yea; Ms. Wiltrout, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

#### **VAR-100-2021 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**

Mr. Christian presented the staff report.

Ms. Wiltrout asked if the applicant had comments to provide.

Mr. Greg, Heninger, Heninger Construction, described the project.

Ms. Wiltrout asked if the applicant had the requested information regarding lot coverage.

Mr. Heninger stated he did not.

Ms. Wiltrout asked if the applicant could obtain that information at this time.

Mr. Heninger stated he would need to call the architect but could not at this time.

Mr. LaJeunesse asked staff why the zoning along US-161 was different from that on the other side of the property.

Mr. Mayer stated prior land use may have been residential causing the enhanced setback here, but now there was only commercial here.

Ms. Mollard asked if neighbors were notified in commercial applications and were there any issues.

Mr. Christian stated that in both residential and commercial zoning owners within 200 feet were notified. Mr. Christian stated they had not received comments from anyone.

Mr. Gallagher asked if there were any concerns regarding fire access.

Mr. Heninger stated he had spoken to the fire chief and he had not seen any problems with it.

Mr. Mayer stated the building Code required pavement within 300 feet of all sides of all buildings for fire access and noted this met building Code standards for fire access

Mr. Gallagher asked if it had sufficient width, etc,

Mr. Mayer stated yes.

Mr. Smith asked if the existing building today was a retail store and whether it was in compliance with existing parking lot requirements.

Mr. Mayer stated yes.

Mr. Smith asked if the new building was solely storage.

Mr. Mayer stated yes.

Ms. Wiltrout stated they were still increasing the lot coverage and asked if they could proceed without information on the lot coverage percentage.

Mr. Mayer stated the BZA could take action if they saw fit.

Ms. Wiltrout asked if the BZA could allow it subject to a 75% maximum lot coverage requirement.

Mr. Mayer stated they could approve it to that, but they believed it would not meet that requirement

Ms. Wiltrout asked if another variance would be needed.

Mr. Mayer stated yes.

Ms. Wiltrout stated that variance should be looked at alone.

Mr. Gallagher stated they would need to review that separately.

Mr. LaJeunesse asked why they did not put the storage building adjacent to the current building.

Mr. Heninger stated the type of construction of the current building made that difficult.

Mr. LaJeunesse asked if could be moved closer.

Mr. Heninger stated yes.

Ms. Wiltrout stated the fire department would not like that.

Mr. Heninger stated they had not.

Mr. LaJeunesse asked what the minimum requirements were for the fire department.

Mr. Heninger stated he would need to talk to the fire department.

Mr. Mayer stated he believed a typical drive aisle was about 22 or 24 feet but would need to check.

Ms. Wiltrout stated this could be tabled until the additional information regarding lot coverage is available.



Ms. Mollard stated specifics were needed.

Moved by Ms. Wilttrout to accept the staff report for VAR-100-2021 into the record, seconded by Mr. LaJeunesse. Upon roll call vote: Ms. Wilttrout, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea; Mr. Gallagher, yea; Mr. Smith, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Ms. Wilttrout to table application VAR-100-2021, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wilttrout, yea; Mr. Gallagher, yea; Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Ms. Wilttrout polled members for comment. (No response.)

Ms. Wilttrout adjourned the meeting.

Meeting adjourned at 8:23 p.m.

Submitted by Josie Taylor.

## APPENDIX



COMMUNITY CONNECTS US

Board of Zoning Appeals Staff Report  
September 27, 2021 Meeting

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### 28 PICKETT PLACE EASEMENT VARIANCE

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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 Pickett 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 were 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 is 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 find 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.

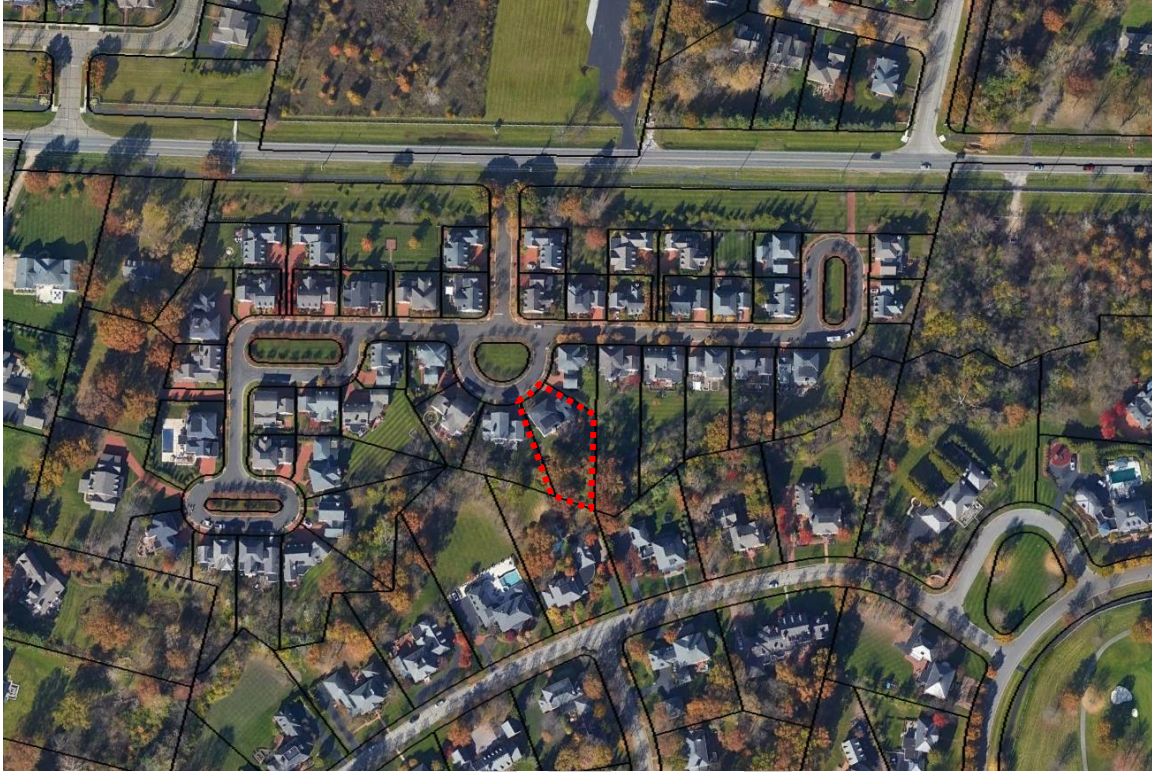
#### V. ACTION

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



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**AXIUM II  
PAVEMENT SETBACK VARIANCE**

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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.*

**V. 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.

**VI. 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.

**VII. 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.

- 13. Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*

14. *Whether the variance is substantial.*
15. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
16. *Whether the variance would adversely affect the delivery of government services.*
17. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
18. *Whether the problem can be solved by some manner other than the granting of a variance.*
19. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

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

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

### III. 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:

9. 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.
10. 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.
11. 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.
12. The road is not a primary corridor and therefore is less traveled, minimizing the visual impact of the encroachment.
13. 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.

14. 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-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.
15. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
16. Granting the variance would not adversely affect the delivery of government services.

#### VIII. 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



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**SMITH'S MILL ROAD SITE  
VARIANCES**

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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.*

**IX. 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.

**X. 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.

**XI. 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.

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

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

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

### **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:

17. 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.
18. 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.

19. 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.
20. 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.
21. 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).
22. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
23. Granting the variance would not adversely affect the delivery of government services.

## **XII. 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



COMMUNITY CONNECTS US  
Board of Zoning Appeals Staff Report  
September 27, 2021 Meeting

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**TROVE WAREHOUSE  
SETBACK VARIANCE**

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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.*

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**XIII. 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.

**XIV. 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).

**XV. 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.



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

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

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

### III. 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:

24. 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).
25. 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.
26. 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.
27. 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 provide proper separation and screening between dissimilar uses.



28. 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.
29. 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. .
30. 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.





31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
37. Granting the variance would not adversely affect the delivery of government services.

#### **XVI. RECOMMENDATION**

Staff recommends approval of the variance application should the Board of Zoning Appeals find 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.

### Approximate Site Location:



Source: Google Earth



Board of Zoning Appeals Staff Report  
October 25, 2021 Meeting

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**TROVE WAREHOUSE  
SETBACK & LOT COVERAGE VARIANCES**

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LOCATION: 5850 Zarley Street (PID: 222-000264-00).  
APPLICANT: Heninger Construction  
REQUEST: (A) Variance to allow a new commercial storage building to encroach 16 feet into a platted 50-foot rear yard building setback.  
(B) Variance to C.O. 1153.04(e) to allow a total lot coverage of 78% of the site where code allows a maximum of 75%.

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.*

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**I. REQUEST AND BACKGROUND**

The applicant requests the following variances as part of the construction of a new commercial storage building.

- (A) Variance to allow a new commercial storage building to encroach 16 feet into a platted 50-foot rear yard building setback.
- (B) Variance to C.O. 1153.04(e) to allow a total lot coverage of 78% of the site where code allows a maximum of 75%.

This application was tabled by the BZA at their September 27, 2021 meeting in order for the applicant to determine the new lot coverage amount with the proposed improvements. Since then, the applicant has revised the application in the following ways:

- The proposed encroachment into the rear yard has been reduced from 29 feet to 16 feet.
  - The new building was moved closer to the existing structure and some paved areas were eliminated.
- The previous variance request to encroach into the screen planting area has been withdrawn.
- A variance to allow a larger lot coverage percentage has been requested.

**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

#### **(A) Variance to allow a new commercial storage building to encroach 16 feet into a platted 50-foot rear yard building setback.**

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

1. The Board of Zoning Appeals tabled this application at their September 27, 2021, meeting in order for the applicant to determine the proposed new lot coverage for the site. Since then, the applicant has significantly reduced the proposed setback encroachment from 29 feet to 16 feet into the required 50 rear yard platted setback.



2. 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).
3. 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.
4. The applicant proposes to construct a new 3,750 sq. ft. commercial storage building located 34 feet from the rear property line therefore, a variance to the building setback requirement 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.
5. 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 provide proper separation and screening between dissimilar uses.



6. 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.
7. 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. While the applicant proposes to encroach within the platted setback, it meets the base setback requirement of the code for this zoning district. The proposed structure will still be located 150+/- feet away from the nearest building on the adjacent property where the encroachment is 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 maintains this screening area.
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.

**(B) Variance to C.O. 1153.04(e) to allow a total lot coverage of 78% of the site where code allows a maximum of 75%.**

1. The Board of Zoning Appeals tabled this application at their September 27, 2021, meeting in order for the applicant to determine the proposed new lot coverage for the site. C.O. 1153.04(e) states that the maximum lot coverage, including structures and paved areas, shall not exceed 75% and that the remainder of the site shall be landscaped with natural vegetation. With the proposed improvements, the lot coverage for the site will be

- 78% therefore a variance is required.
2. The variance does not appear to be substantial. While the applicant proposes to exceed the maximum lot coverage requirements, it is only by 3% which is not substantial and will not be noticeable compared to other sites in the immediate area.
  3. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment” if the variance is granted. The applicant does propose to exceed the lot coverage requirements for the site however, a large majority of the commercial zoning districts in the immediate vicinity have a maximum lot coverage of 80% including the Canini Trust Corp and the zoning district that Sheetz is located in. If the variance is approved, the applicant will be meeting this established standard in the area which will not alter its essential character.
  4. 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 larger lot coverage, the proposal maintains this screening area.
  5. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
  6. 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.

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. Additionally, the proposed lot coverage amount for the site is not out of character with the maximum lot coverage permitted for other commercially zoned properties in the immediate area. 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.

**Approximate Site Location:**





Source: Google Earth



Permit # \_\_\_\_\_  
Board \_\_\_\_\_  
Mtg. Date \_\_\_\_\_



## Community Development Planning Application

Project Information	Site Address <u>5850 Zarley Street, New Albany, Ohio 43054</u>																																																												
	Parcel Numbers <u>222-000264-00</u>																																																												
	Acres <u>1 acre</u> # of lots created <u>N/A</u>																																																												
	<table border="1"><thead><tr><th>Choose Application Type</th><th colspan="4">Circle all Details that Apply</th></tr></thead><tbody><tr><td><input type="checkbox"/> Appeal</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Certificate of Appropriateness</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Conditional Use</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Development Plan</td><td>Preliminary</td><td>Final</td><td>Comprehensive</td><td>Amendment</td></tr><tr><td><input type="checkbox"/> Plat</td><td>Preliminary</td><td>Final</td><td></td><td></td></tr><tr><td><input type="checkbox"/> Lot Changes</td><td>Combination</td><td>Split</td><td>Adjustment</td><td></td></tr><tr><td><input type="checkbox"/> Minor Commercial Subdivision</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Vacation</td><td>Easement</td><td></td><td>Street</td><td></td></tr><tr><td><input checked="" type="checkbox"/> Variance</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Extension Request</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Zoning</td><td>Amendment (rezoning)</td><td></td><td>Text Modification</td><td></td></tr></tbody></table>	Choose Application Type	Circle all Details that Apply				<input type="checkbox"/> Appeal					<input type="checkbox"/> Certificate of Appropriateness					<input type="checkbox"/> Conditional Use					<input type="checkbox"/> Development Plan	Preliminary	Final	Comprehensive	Amendment	<input type="checkbox"/> Plat	Preliminary	Final			<input type="checkbox"/> Lot Changes	Combination	Split	Adjustment		<input type="checkbox"/> Minor Commercial Subdivision					<input type="checkbox"/> Vacation	Easement		Street		<input checked="" type="checkbox"/> Variance					<input type="checkbox"/> Extension Request					<input type="checkbox"/> Zoning	Amendment (rezoning)		Text Modification	
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	Description of Request: <u>The property owner of 5850 Zarley Street is requesting a rear setback variance from the required 50' setback to 15' rear setback to allow for construction of new metal building to be used for storage.</u>																																																												
Contacts	Property Owner's Name: <u>Unicorn Opportunities, LLC</u>																																																												
	Address: <u>3988 Fenwick Road</u>																																																												
	City, State, Zip: <u>Columbus, Ohio 43220</u>																																																												
	Phone number: <u>614-207-3697</u> Fax: _____																																																												
	Email: <u>Bbarker@gmail.com</u>																																																												
	Applicant's Name: <u>Heninger Construction</u>																																																												
	Address: <u>2894 Sunbury Road</u>																																																												
	City, State, Zip: <u>Galena, Ohio 43021</u>																																																												
	Phone number: <u>614-306-5890 614-306-3890</u> Fax: _____																																																												
	Email: <u>Heningerd@sbcglobal.net</u>																																																												
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 <u><i>Brad Barker</i></u> Date: <u>09-03-2021</u> Signature of Applicant <u><i>John A. Heninger</i></u> Date: <u>09-03-2021</u>																																																												

HENINGER CONSTRUCTION  
2894 SUNBURY ROAD  
GALENA, OHIO 43021

9-03-2021

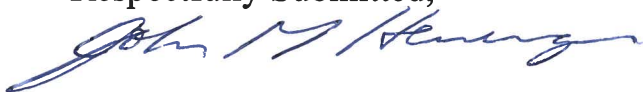
614-306-3890

To: New Albany Board of Zoning Appeals  
99 West Main Street  
New Albany, Ohio 43054

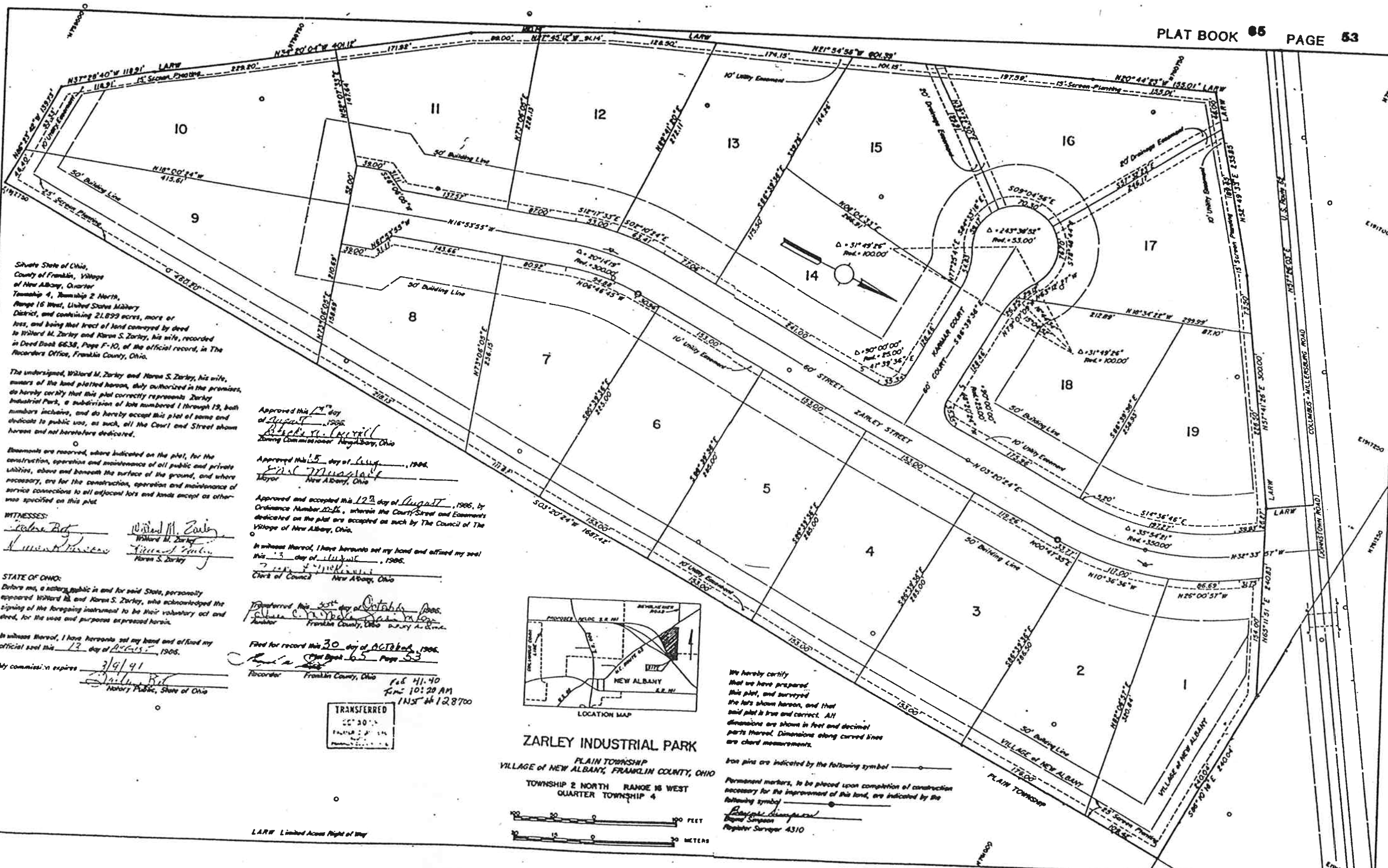
Re: Variance Request Application  
5850 Zarley Street  
New Albany, Ohio 43054

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,

A handwritten signature in blue ink, appearing to read "John G. Heninger", is written over the typed name.

Heninger Construction  
John G. Heninger



Shute State of Ohio,  
County of Franklin, Village  
of New Albany, Quarter  
Township 4, Range 16 West, United States Military  
District, and containing 21.899 acres, more or  
less, and being that tract of land conveyed by deed  
to Willard M. Zarley and Karen S. Zarley, his wife, recorded  
in Deed Book 6638, Page F-10, of the official record, in The  
Recorder's Office, Franklin County, Ohio.

The undersigned, Willard M. Zarley and Karen S. Zarley, his wife,  
owners of the land plotted herein, duly authorized in the premises,  
do hereby certify that this plat correctly represents Zarley  
Industrial Park, a subdivision of lots numbered 1 through 19, both  
numbers inclusive, and do hereby accept this plat of same and  
dedicate to public use, as such, all the Court and Street shown  
hereon and not heretofore dedicated.

Easements are reserved, where indicated on the plat, for the  
construction, operation and maintenance of all public and private  
utilities, above and beneath the surface of the ground, and where  
necessary, are for the construction, operation and maintenance of  
service connections to all adjacent lots and lands except as other-  
wise specified on this plat.

WITNESSES:  
Valerie B. B.  
Willard M. Zarley  
Karen S. Zarley

STATE OF OHIO:  
Before me, a Notary Public in and for said State, personally  
appeared Willard M. and Karen S. Zarley, who acknowledged the  
signing of the foregoing instrument to be their voluntary act and  
deed, for the uses and purposes expressed herein.

In witness whereof, I have hereunto set my hand and affixed my  
official seal this 12 day of August, 1906.  
My commission expires 3/4/11  
Valerie B. B.  
Notary Public, State of Ohio

Approved this 14<sup>th</sup> day of August, 1906,  
Blackburn Taylor  
Mayor, New Albany, Ohio

Approved this 15<sup>th</sup> day of August, 1906,  
John W. Thompson  
Mayor, New Albany, Ohio

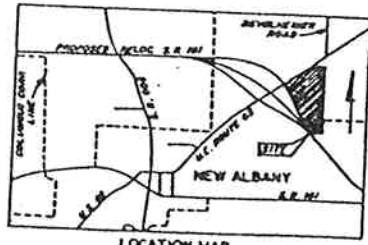
Approved and accepted this 12<sup>th</sup> day of August, 1906, by  
Ordinance Number 226, wherein the Court Street and Easements  
dedicated on the plat are accepted as such by The Council of The  
Village of New Albany, Ohio.

In witness whereof, I have hereunto set my hand and affixed my seal  
this 13 day of August, 1906.  
John W. Thompson  
Mayor, New Albany, Ohio

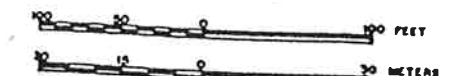
Transferred this 30<sup>th</sup> day of October, 1906,  
John W. Thompson  
Recorder, Franklin County, Ohio

Filed for record this 30 day of October, 1906,  
John W. Thompson  
Recorder, Franklin County, Ohio

TRANSFERRED  
CO. 30  
FEB 10 1907



ZARLEY INDUSTRIAL PARK  
PLAIN TOWNSHIP  
VILLAGE OF NEW ALBANY, FRANKLIN COUNTY, OHIO  
TOWNSHIP 2 NORTH RANGE 16 WEST  
QUARTER TOWNSHIP 4



We hereby certify  
that we have prepared  
this plat, and surveyed  
the lots shown herein, and that  
said plat is true and correct. All  
dimensions are shown in feet and decimal  
parts thereof. Dimensions along curved lines  
are chord measurements.

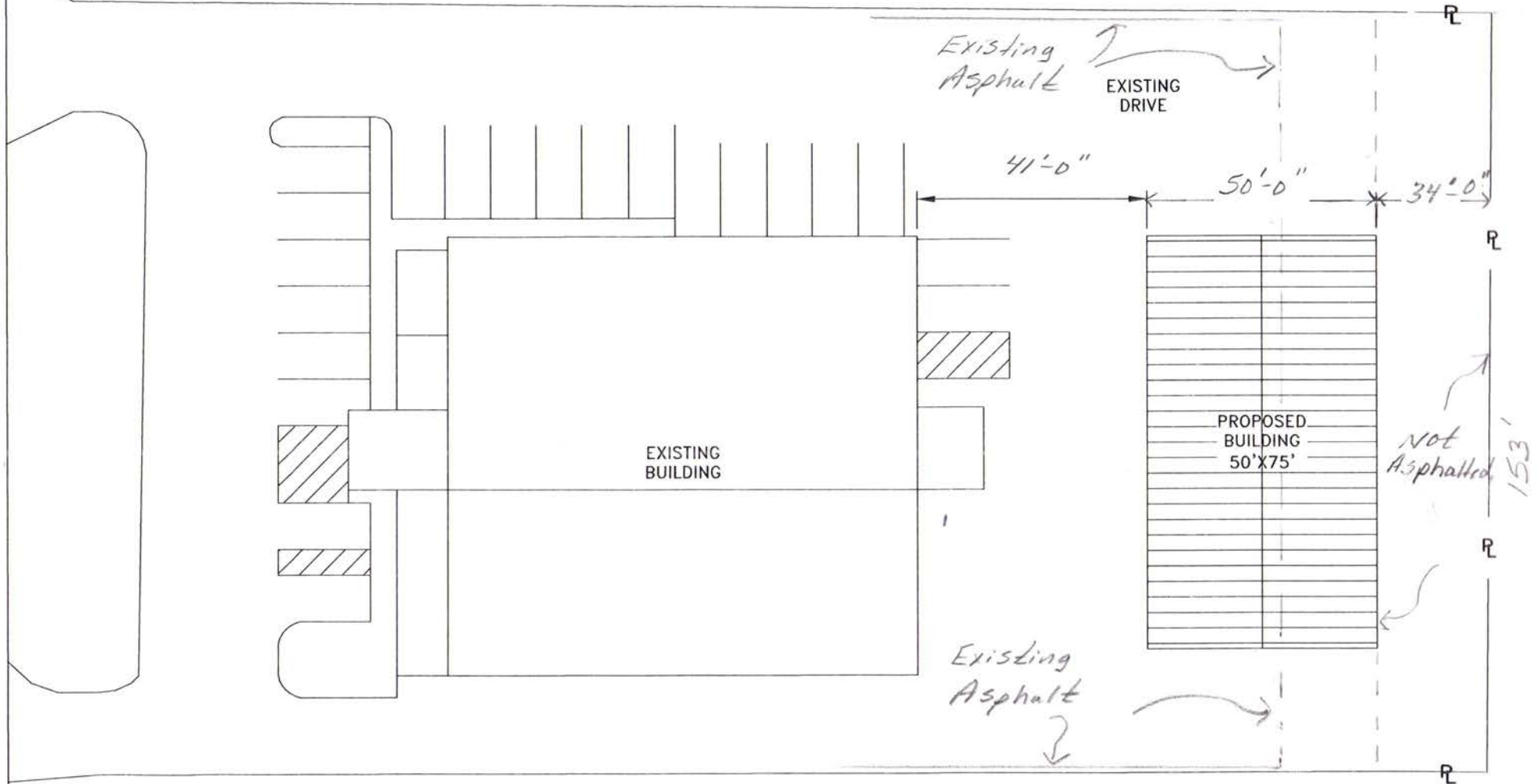
Iron pins are indicated by the following symbol:

Permanent markers, to be placed upon completion of construction  
necessary for the improvement of this land, are indicated by the  
following symbol:

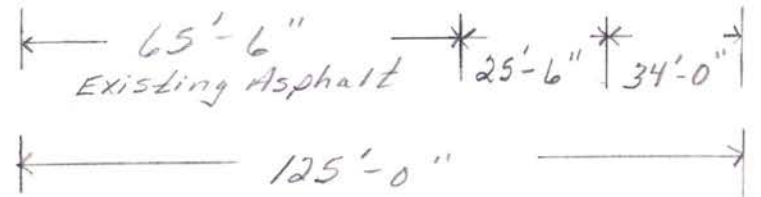
James Simpson  
Registered Surveyor 4310

5850 Zarley St.

285'



BUILDING LOCATION PLAN  
SCALE: 1" = 20'0"





Trove

