



New Albany Board of Zoning Appeals
December 22, 2021 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, Mr. Gallagher, at 4:30 p.m.

Those answering roll call:

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

Staff members present: Steven Mayer, Development Services Coordinator; Chris Christian, Planner; Mitch Banchevsky, City Attorney.

Moved by Ms. Wiltrout to approve the November 22, 2021 meeting minutes, seconded by Mr. Gallagher. Upon roll call: Ms. Wiltrout, yea; Mr. Gallagher, yea Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Ms. Wiltrout asked if there were any additions or corrections to the Agenda.

Mr. Christian stated none from staff.

Ms. Wiltrout swore all who would be speaking before the Board of Zoning Appeals (hereafter, "BZA") 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).

Mr. Christian noted that the applicant for VAR-124-2021 had entered Village Hall just as the cases were to be heard.

Ms. Wiltrout stated they could begin with VAR-126-2021.

VAR-126-2021 Variance

Variance to allow a playground and a fence to be located within a platted buffer area at 7365 Milton Court(PID: 222-002043-00).

Applicant: Oakland Design Associates c/o Lori Francisco Botkins

Mr. Christian presented the staff report.

Ms. Wiltrout asked if the applicant would like to speak.

Ms. Michelle Singh, 7365 Milton Court, stated they were requesting the variance and noted they no longer wanted the playground but were requesting the fence. Ms. Singh stated that, due to the setback, the fence would cut their yard in half without the variance. Ms. Singh stated they would keep the fence as natural as possible and it would not be seen due to vegetation.

Ms. Wiltrout asked how large the pool was.

Ms. Singh stated it would not be in that thirty (30) foot setback area at all, only the fence would be in the setback area.

Ms. Wiltrout asked when the applicant had purchased the property.

Ms. Singh stated 2016.

Ms. Wiltrout asked if the applicant knew of the setback when the property was purchased.

Ms. Singh stated they had not known.

Ms. Wiltrout asked when they learned about it.

Ms. Singh stated it was when they started to consider this, around last summer.

Ms. Wiltrout asked if the current plan would work with a fifteen (15) foot setback.

Ms. Singh stated she thought so.

Ms. Wiltrout asked what were the conditions the applicant understood were on the lot when they started this project.

Ms. Singh stated they did not know about the setback.

Ms. Wiltrout asked how old the children were.

Ms. Singh state they were ten (10), seven (7), and one (1).

Ms. Mollard asked what was existing and what was proposed.

Ms. Singh stated the pool did not exist.

Ms. Mollard asked if the hot tub existed.

Ms. Singh stated no.

Ms. Mollard asked if the intent of the fence was to meet the pool fencing requirement.

Ms. Singh stated yes.

Ms. Mollard asked what had happened with the playground equipment.

Ms. Singh stated they had purchased it in 2017 and the Home Owners Association (HOA) had approved it. Ms. Singh stated they now believed it was best to take it down.

Ms. Mollard asked if the playground would be removed.

Ms. Singh stated it would be taken down.

Mr. LaJeunesse asked staff if the removal of the playground changed their position on the variance.

Mr. Mayer stated the fence and playground were two (2) different things, but certainly a factor the BZA could consider.

Mr. LaJeunesse asked about surrounding neighbors.

Ms. Wiltrout asked if there had been cases where fences had been allowed in the buffer zone for pools.

Mr. Mayer stated not that staff was aware of.

Mr. Gallagher stated it was his understanding that the buffer zone provided privacy. Mr. Gallagher stated that if such buffer zones were lost then people would begin to lose their enjoyment of their properties.

Mr. Mayer stated it was on private property and did not give access for others to use. Mr. Mayer stated he thought the visual intent for other neighbors was to have that natural space preserved.

Ms. Singh stated they would work to keep it as natural as possible.

Mr. Gallagher stated he had reviewed the area.

Ms. Wiltrout asked staff if other properties had this type of buffer zone and, if so, did any of them have fences or any fences in the buffer zone.

Mr. Christian stated the buffer zone was shared with other properties but did not know if they had fences in the buffer zone.

Mr. Mayer stated there were not any other encroachments they were aware of.

Ms. Wiltrout stated she was seeing if the variance was necessary for the applicant to enjoy the home.

Mr. Mayer stated the pizza-slice-shaped lot on this property did reduce the back yard space.

Ms. Mollard stated the fencing was primarily for the pool and not for the property and asked if the fencing could not just be around the pool.

Ms. Singh said that due to the lot it would be easier to not have the fence around the pool.

Ms. Wiltrout asked members of the public to speak if they wished.

Mr. Roy Gottlieb, 6294 Jason Court, stated the area should continue to be a buffer zone for the quiet and enjoyment of neighbors. Mr. Gottlieb stated areas like these were protected with deed and other restrictions and needed to be maintained. Mr. Gottlieb stated the thirty (30) foot buffer zone was for all, not just the owner and should not be intruded into.

Ms. Wiltrout stated the thirty (30) foot buffer zone was on the applicant's property.

Mr. Gottlieb stated yes, but there was a deed restriction.

Ms. Wiltrout asked Mr. Gottlieb to explain more about the interruption of his use and enjoyment due to the placement of the fence.

Mr. Gottlieb stated it would decrease the buffer zone deed restriction, which provided a visual barrier to others' properties and homes and protected privacy.

Ms. Mollard asked if the clearing of vegetation had recently occurred.

Mr. Gottlieb discussed incidents on certain lots where clearing had occurred.

Mr. LaJeunesse asked staff about any restoration plans.

Mr. Mayer stated the City zoning officer and forestry officer had visited the site to work with the owners to create a restoration plan. Mr. Mayer stated the City had approved the plan, which was expected to be planted in the spring and restore understory and trees over time.

Mr. Banchefsky stated this meeting was to discuss the variance, not the restoration. Mr. Banchefsky stated that if residents had an issue with the restoration they should follow the procedures for that matter.

Ms. Wiltrout stated thank you.

Mr. Frank Sudol, 6280 Jason Court, handed out a letter from neighbors to BZA members. Mr. Sudol discussed the letter, the site, and the buffer zone.

Ms. Wiltrout asked to focus the discussion on the variance.

Mr. Sudol stated there would be a play area.

Mr. LaJeunesse stated the applicant had withdrawn the playground equipment.

Ms. Mollard asked if even without the playground area the applicant wanted an area for the children to play.

Mr. Sudol stated yes and, as it was now, no children could play in that area.

Mr. John Reiner, Landscape Architect for Oakland Nursery, discussed the site and the design. Mr. Reiner noted the applicant's plan included restoration of the area to its natural vegetation.

Ms. Wiltrout stated thank you.

Ms. Mollard asked staff that, given fences were required for a pool due to safety concerns, how would the proposed fence around the property serve to protect children from falling into the pool.

Ms. Wiltrout noted the fence would prevent children from outside the applicant's lot from entering the pool area.

Ms. Brisk noted it would otherwise present an attractive nuisance to others.

Ms. Mollard asked if the fence proposed by the applicant would meet the fencing requirements.

Mr. Mayer stated there was not a specific location the fence had to be placed in, but it needed to surround the pool.

Ms. Mollard asked if this fence were installed, would it be acceptable fencing for a future pool.

Mr. Mayer stated it would need to connect up to the house, but if so, then yes.

Ms. Brisk noted Mr. Banchefsky had made a good point, and they should focus back on the variance request. Ms. Brisk added that, for the record, the applicant was withdrawing the request for the playground equipment.

Ms. Singh noted they were going to take it out, there would not be play equipment in the buffer zone.

Ms. Brisk stated the only thing left for the variance request this evening was the placement of the fence within the buffer zone.

Ms. Singh stated correct.

Ms. Brisk asked if the spirit of the buffer zone would be impacted by the installation of the fence and the applicants using that part of the lot as their own.

Mr. Gallagher stated he believed that if there was a fence blocking the natural view of the landscape it would alter that area, which had been designed to provide privacy for all owners.

Mr. LaJeunesse asked if staff could verify this had not been previously done.

Mr. Mayer stated not that they were not aware of any and they had not found prior requests for any.

Ms. Wiltrout stated she shared Mr. Gallagher's concerns and noted that the property could still be enjoyed and still honor the spirit of the zoning laws. Ms. Wiltrout stated she was concerned about this setting a precedent and she did not see any special conditions which would require this variance so that the applicant could enjoy the property.

Ms. Singh stated they had done a lot of work to the vegetation in that area and had improved it. Ms. Singh noted the fence would not interfere with that vegetation and would be covered by it so as not to interrupt anyone's view.

Ms. Wiltrout stated that buffer zones were planned protections for land and it was important to keep those promises.

Moved by Mr. Gallagher to accept the staff report for VAR-126-2021 into the record, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Wiltrout, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Ms. Mollard to accept the neighbor's letter into the records, seconded by Ms. Wiltrout. Upon roll call vote: Ms. Mollard, yea; Ms. Wiltrout, yea; Mr. Gallagher, yea; Mr. LaJeunesse, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Ms. Wiltrout to approve variance VAR-126-2021 with the conditions listed in the staff report, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, no; Mr. Gallagher, no; Ms. Mollard, no; Mr. LaJeunesse, no. Yea, 0; Nay, 4; Abstain, 0. Motion failed by a 0-4 vote.

Ms. Wiltrout stated her vote was due to her previously stated comments.

Mr. Gallagher stated no for the reasons he had previously stated and noted that he agreed that a promise was a promise.

Ms. Mollard stated she agreed with those thoughts.

Mr. LaJeunesse stated he agreed.

VAR-124-2021 Variance

Variance to Harrison South L-GE zoning text section F(8) to eliminate the mounding and screening requirements adjacent to residentially owned properties along a portion of the Worthington Road frontage and the eastern boundary of a site generally located south of Worthington Road and west of Harrison Road (PIDs: 094-107463-00, 094-107064-00 and 094-107514-00).

Applicant: VTRE Development LLC c/o Pete Gray

Mr. Christian presented the staff report.

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

Mr. Pete Gray, VTRE Development, LLC, discussed the site and application.

Mr. LaJeunesse asked if the path still crossed over to Worthington Road.

Mr. Christian stated yes.

Mr. LaJeunesse stated it was being installed.

Mr. Gallagher asked about the mounding and grading.

Mr. Gray stated their parking lot would be six (6) to eight (8) feet below the grade so mounding would not be needed.

Mr. Gallagher noted someone driving by the road would see the building. Mr. Gallagher asked why not place the mounding at the road height.

Ms. Nagy, Civil Engineer, stated the purpose of mounding was to screen the parking lot and in this case it would be above the parking lot.

Mr. Mayer stated mounding would typically be measured at the property line and noted this property had unique constraints and sank down by eight (8) feet. Mr. Mayer noted traffic might be able to see into the parking lot but perhaps not the building.

Mr. Gallagher noted that on Smith's Mill Road the mounding and landscaping provided a screening for all buildings behind it, even if they were further set back.

Mr. Mayer stated that was the intent of the mounding and noted the extent of the landscaping provided here, staff believed, would provide that screening. Mr. Mayer said that any type of headlight screening would not be needed here as the headlights would not be at grade.

Ms. Wiltrout asked what the variance being sought was in this application.

Mr. Mayer stated the zoning text required six (6) feet of mounding and 75% opacity screening along, and on, that mounding. Mr. Mayer stated the applicant was asking for a variance to the mounding requirement along portions of Worthington Road, on the eastern edge of the property.

Ms. Wiltrout stated okay and asked if the six (6) feet would be in addition to the grading that was there now.

Mr. Mayer stated he believed that was correct.

Ms. Wiltrout asked if the property was then below grade.

Ms. Nagy stated it was along those two areas.

Mr. Mayer stated, yes, along select portions of the property.

Ms. Mollard asked how many stories the building would have.

Mr. Gray stated it would be one (1) story.

Mr. Gallagher stated it could probably be seen from certain areas.

Mr. Mayer stated the hardship was that as the property was eight (8) feet under, creating the mounding became a hardship as it would need to be a fourteen (14) foot mounding.

Ms. Mollard asked where that mounding would be required.

Mr. Christian illustrated where the mounding was required on the presentation screen and noted the mounding challenge was only on the north edge.

Ms. Nagy a member of the public stated her backyard looked over the area. Ms. Nagy stated that her office was at the back of her home and she could see all the headlights and activity going on during the construction. Ms. Nagy stated New Albany had worked with Jersey Township and made promises to residents and this promise was being broken and was affecting the neighborhood.

Mr. Gallagher asked if the mounding required was part of the promise.

Ms. Nagy stated yes.

Ms. Mollard asked if the stream corridor that was present on the lot helped at all.

Ms. Nagy stated it went downhill and her property was above the hill.

Ms. Mollard asked if the stream corridor then provided no screening from her perspective.

Ms. Nagy said no, she was seeing everything going on with the construction.

Ms. Wiltrout asked staff if mounding could be built into the stream corridor.

Mr. Mayer stated no, the City's flood plain ordinance did not allow any commercial activity to occur within 100 yards.

Ms. Wiltrout asked if they needed to build mounding, then where would it go.

Mr. Mayer stated it would go in the green shaded area.

Ms. Mollard asked if the mounding were required, would it be to the east or west of the stream corridor.

Ms. Wiltrout stated it would need to bisect it.

Mr. LaJeunesse asked why mounding could not occur in the flood plain.

Mr. Mayer stated the flood plain had been approved by the stated and typically did not permit it.

Mr. Bob Farr, a resident in the area, stated the applicant knew what surrounded the property when they purchased it. Mr. Farr stated New Albany was jamming a lot of buildings into Jersey Township. Mr. Farr stated no one wanted to see it and the mounding should be required.

Ms. Mollard asked where Mr. Farr lived.

Mr. Farr showed where he lived on the presentation screen.

Ms. Michelle Farr, a resident in the area, stated the integrity of the natural setting should be maintained.

Ms. Wiltrout asked if there would be mounding, how much land would it take up along that side.

Ms. Nagy stated the slope was 3:1.

Ms. Wiltrout asked where that would be on this property.

Ms. Nagy stated it would depend on the grade, but they could lose parking in some areas as well as additional challenges.

Ms. Wiltrout asked if there was mounding to the south as well.

Ms. Nagy stated correct and discussed the mounding for the site.

Ms. Wiltrout asked if it would be possible for the BZA to have a set of plans that included the mounding to see what could be done.

Ms. Nagy stated it would not make a difference in the one corner.

Ms. Wiltrout stated she understood that, but they could see what was possible.

Mr. Gallagher stated mounding was a requirement here. Mr. Gallagher stated he heard what the neighbors were saying about a promise being a promise. Mr. Gallagher said he believed this would be a substantial change and he was a 'no' vote on this.

Mr. Farr asked about breaks in the mounding.

Ms. Nagy stated they could not go straight across.

Mr. Farr stated he was asking the BZA to be consistent.

Ms. Wiltrout stated she wanted to understand where the alternative placements would be for the mounding.

Ms. Mollard asked if the mounding all along the eastern border, indicated by Mr. Gallagher, was an undue hardship.

Mr. Gray asked if they did mounding would it just need to be six (6) feet.

Mr. Mayer stated that was the requirement.

Mr. Gray asked if that would require them to build that area up to grade.

Ms. Wiltrout stated it would be six feet above grade.

Mr. Mayer stated he did not think it was necessarily roadway grade, but it would be at least six feet along and within it.

Ms. Mollard asked if that would be fourteen (14) feet above.

Mr. Gray stated that their parking lot would be screened from most areas.

Mr. Mayer stated that it was typical for roadways to be built up above grade and then have view below that. Mr. Mayer stated they had never required that the mounding be at the roadway as it was usually raised, but noted it was typically along frontage and property lines. Mr. Mayer said they would need to work with the City Engineer to establish where the mounding would need to be.

Ms. Mollard stated that along the east the mounding would be along the front of the building, not related to the stream corridor.

Mr. Gray asked if the zoning spoke to the property line.

Mr. Mayer stated they were not looking strictly at property lines.

Mr. Gallagher asked if it would not just need to be mounded to screen.

Mr. Mayer stated he agreed, it was generally along and above the roadway, but that was not set in stone.

Mr. Gallagher stated that was what he had always envisioned was part of the Code, so people do not see what is within the mounding.

Ms. Mollard asked if it was possible for the applicant to return with a plan that would show mounding and what was possible.

Ms. Farr stated the applicant knew what the rules were before this meeting. Ms. Farr stated members of the public had already taken time out of their lives to come to this meeting and it did not seem fair.

Ms. Wiltrout stated the BZA was asking the applicant to provide a different plan to see if any compromise was possible.

Ms. Farr stated she appreciated the attempt to compromise, but Jersey was always compromising.

Mr. Farr stated the area dropped off sharply on this lot. Mr. Farr stated the applicant needed to screen and add trees and should be required to do that.

Mr. Gray stated they could take a look at some of these areas and come back.

Mr. Gallagher stated this should be on the record.

Ms. Wiltrout stated yes.

Mr. Mayer stated this would be tabled during this special BZA meeting and would then go to the regular BZA January meeting. Mr. Mayer stated that meeting would be held at 7:00 pm.

Ms. Brisk stated that if it was tabled the applicant would have the right to return, however, even if it was voted down tonight, the applicant could still re-file this application.

Moved by Ms. Wiltrout to accept the staff report for VAR-124-2021 into the record, seconded by Mr. Gallagher. Upon roll call vote: Ms. Wiltrout, yea; Mr. Gallagher, yea; Mr. LaJeunesse, yea; Ms. Mollard, yea. Yea, 4; Nay, 0; Abstain, 0. Motion carried by a 4-0 vote.

Moved by Ms. Wiltrout to table variance VAR-124-2021 until the next scheduled meeting for the applicant to return with a plan with additional mounding that reflected public comments made this evening, seconded by Mr. LaJeunesse. Upon roll call vote: Ms. Wiltrout, yea; Mr. LaJeunesse, yea; Ms. Mollard, no; Mr. Gallagher, no. Yea, 2; Nay, 2; Abstain, 0. Motion failed by a 2-2 vote.

Moved by Mr. Gallagher to approve variance VAR-124-2021, seconded by Ms. Mollard. Upon roll call vote: Mr. Gallagher, no; Ms. Mollard, no; Ms. Wiltrout, no; Mr. LaJeunesse, no. Yea, 0; Nay, 4; Abstain, 0. Motion failed by a 0-4 vote.

Other Business

Mr. Christian thanked all members of the BZA and reviewed the work completed by BZA members during 2021. Mr. Christian stated staff was working on simplifying and improving staff reports going forward and was also working to obtain only electronic submissions from applicants. Mr. Christian asked BZA members if they would prefer paper or electronic packets.

Ms. Wiltrout stated she preferred paper.

Mr. Gallagher stated he preferred paper.

Mr. Mayer stated they would still be able to print paper copies out. Mr. Mayer stated staff might send out a survey in the new year asking what members would find helpful to have on an electronic version.

Ms. Mollard noted some of the text on plans was very small and being able to zoom in on it would be good.

Mr. Christian stated this was Ms. Wiltrout's last BZA meeting as she was moving to City Council in January. Mr. Christian stated this would also be Mr. Banchefsky's final BZA meeting as he would be retiring. Mr. Christian thanked them both for their hard work.

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

Ms. Wiltrout adjourned the meeting.

Meeting adjourned at 6:18 p.m.

Submitted by Josie Taylor.

APPENDIX



Board of Zoning Appeals Staff Report December 20, 2021 Meeting

BRS-3 (CUPERTINO) MOUNDING VARIANCE

LOCATION: South of Worthington Road, east of Ganton Parkway, and west of Harrison Road SW. (PIDs: 094-107436-00, 094-107064-00, 094-107370, 094-107514-00).

APPLICANT: VTRE Development c/o Pete Gray

REQUEST: Variance to Harrison South Zoning District text section F(8) to eliminate the mounding requirements adjacent to residential properties along a portion of the Worthington Road frontage and the eastern boundaries of the development site.

ZONING: L-GE (Limited General Employment), Harrison South Zoning District

STRATEGIC PLAN: Employment Center District

APPLICATION: VAR-124-2021

Review based on: Application materials received November 22, 2021.

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to the Harrison South Zoning District text section F(8) to eliminate the mounding requirements adjacent to residential properties along a portion of the Worthington Road frontage and the eastern boundaries of the development site as part of the construction of a new commercial building.

II. SITE DESCRIPTION & USE

The site is located on 32+/- acres in Licking County and includes four parcels on the south side of Worthington Road, east of Ganton Parkway and west of Harrison Road. The neighboring uses and zoning districts include L-GE to the west and south and unincorporated residentially zoned properties to the east and north. The site was previously comprised of two residential properties and ancillary buildings.

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 services.

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 Harrison South Zoning District text section F(8) to eliminate the mounding landscaping requirements along Worthington Road and Harrison Road NW.

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

1. Harrison South zoning text section F(8) states that for perimeter boundaries within the zoning district that abut properties where residential uses are permitted, that are not owned by the developer, a minimum 6 foot tall mound is required to be installed along the property line. In addition to mounding, a landscape buffer is required to be installed on the mound that achieves 75% opacity screening and a total height of 10 feet within 5 years of planting.
2. The applicant is meeting or commits to meet the landscaping requirements and is requesting a variance to only the mounding. As part of the construction of a new commercial building, the applicant requests a variance to the mounding requirements where they are required along a portion of the Worthington Road frontage and along the eastern boundary of the development site. Exhibit A demonstrates where the applicant requests a variance.
3. In their justification statement, the applicant states that they are seeking the variance along Worthington Road due to the significant grade change along this frontage. The proposed parking lot and building pad will sit approximately 6-8 feet below the centerline elevation of the road once constructed. The applicant states that they intend to use this grade change in lieu

- of mounding and install trees within the setback area to provide screening for residentially zoned properties along this frontage.
4. Additionally, there is a stream, with a corresponding 100-year flood plain, in the northeastern area of the site. The applicant seeks a variance to providing the screening requirements in this area due to this site constraint and will utilize this area to provide a greater setback from adjacent residential uses in addition to new and existing trees to provide screening.
 5. The city landscape architect has reviewed the proposed landscape plan for the project provided comments, see Exhibit B. Staff recommends a condition of approval that the city landscape architect comments be met. The city landscape architect recommends that additional plantings be added along both the Worthington Road frontage and the eastern boundary of the site in order to achieve 75% opacity and reach a total planting height of 10 feet within five years of planting. These plantings will be installed in addition to street trees.
 6. It appears that there are special conditions and circumstances peculiar to the land that justify the variance request. There is a significant grade change from the centerline elevation of Worthington Road to the finished elevation of the parking lot and building pad. The parking and building sit 6-8 feet lower than the road. putting a constraint on the buildable area of the site and thereby limits the applicant's ability to install 6-foot-tall mounding in this area. There is also a stream, with a corresponding 100-year flood plain, that runs along the northeastern property area of the site which also limits the buildable area of the site and where the applicant is able to install a 6-foot-tall mound. These special conditions and circumstances do not appear to be a result of any action of the applicant.
 7. It appears that the spirit and intent of the zoning text requirement will still be met if the variance is granted which is to provide visual separation between this commercially zoned property and adjacent residential properties. Factors contributing to providing visual separation/screening from adjacent residentially zoned properties are:
 - The 75% opacity screening will be provided along all boundaries where residences are located both of these site boundaries.
 - The parking lot and building pad is 6-8feet below Worthington Road and the building across the street which provides a similar level of visual screening along this frontage as would a new mound.
 - The applicant is preserving the stream corridor area and existing trees along the eastern side of the site. Additional landscaping is proposed to be added to ensure there is 75% opacity screening throughout the entire parcel boundary.
 - There are large setbacks (330-390 feet) from adjacent residential uses to the east.
 8. Granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

IV. RECOMMENDATION

Staff recommends approval of the variance application should the Board of Zoning Appeals finds that the application has sufficient basis for approval. The intent of the screening requirements found in the zoning text is to provide visual separation/screening between commercial and residential properties. The significant change in grade along the Worthington Road frontage and the stream corridor and corresponding floodway along the eastern portion of the site limit the applicant's ability to provide screening as originally contemplated in the zoning text. With these unique site constraints in mind and the city landscape architect conditions of approval, the applicant is able to provide an alternative screening plan that meets the spirit and intent of the zoning requirements.

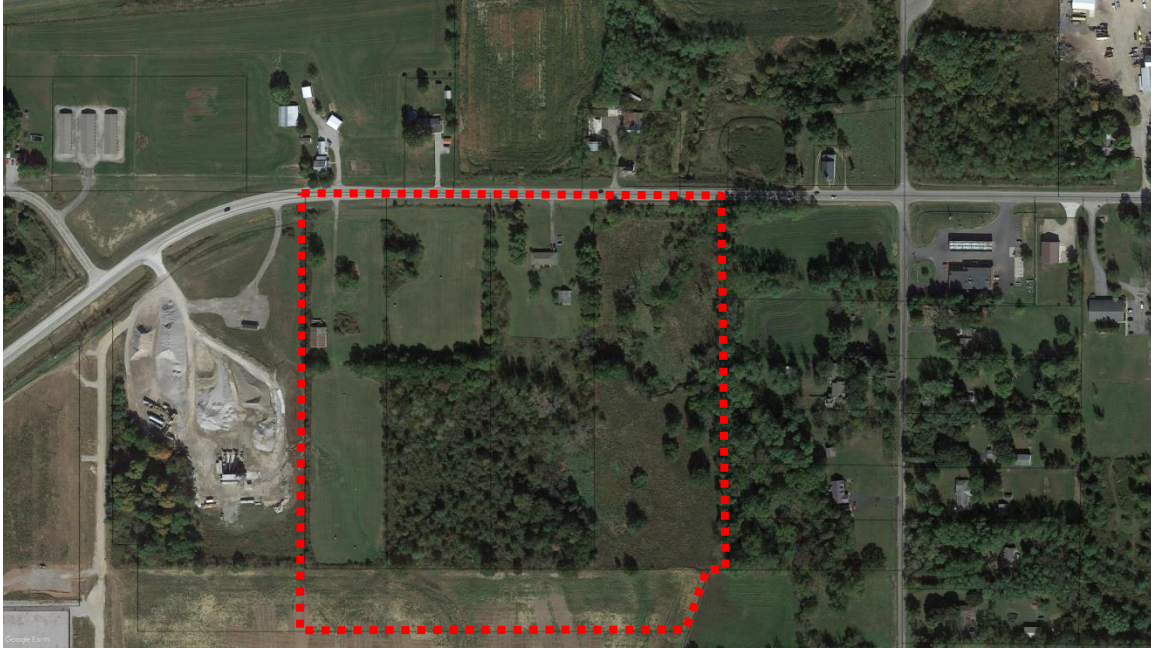
V. ACTION

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-124-2021 with the following condition of approval (conditions of approval may be added).

1. The city landscape architect comments must be addressed.

Approximate Site Location:



Source: Google Earth



**7365 MILTON COURT
BUFFER ZONE VARIANCE**

LOCATION: 7365 Milton Court (PID: 222-002043).
 APPLICANT: Oakland Design Associates c/o Lori Francisco Botkins
 REQUEST: (A) Variance to allow a playground and a fence to be located within a platted buffer area.
 ZONING: R-2
 STRATEGIC PLAN: Residential
 APPLICATION: VAR-126-2021

Review based on: Application materials received November 22, 2021.

Staff report prepared by Chris Christian, Planner.

V. REQUEST AND BACKGROUND

The applicant requests a variance to allow a fence and a playground to be located within a platted buffer zone where no work is permitted to occur that would alter the natural state of the area.

VI. SITE DESCRIPTION & USE

The .52-acre property is located within section 15 of the New Albany Country Club community, contains a single-family residential home and is surrounded by residentially zoned and used properties.

In response to a code complaint, staff investigated and found that the buffer zone on the property had been altered. It appears that trees and undergrowth were removed and replaced with turf grass. The city zoning officer and forester have approved a restoration plan with the property owner to restore the trees and undergrowth for the area that was altered by the current property owner.

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

(A) Variance to allow a playground and a fence to be located within a platted buffer area.

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

9. As part of the construction of a new pool, the applicant proposes to install a new fence within a platted buffer area. Additionally, the applicant proposes to allow an existing playground to remain in the same buffer area.
10. There is a platted buffer area that extends 30 feet into the property beginning at the rear lot line. The playground will sit approximately 13+/- feet from the rear property line and the fence will be located approximately 5+/- feet away.
11. The plat states that no structure or building shall be located in a buffer zone nor shall any work be performed within the buffer zone that would alter the natural state of the zone. The plat does allow for maintenance within easements located within the buffer zone and the removal of dead and diseased trees and/or vegetation.
12. There are special conditions and circumstances of this property that justify the variance request. The property is located on a cul-de-sac so the width of the front of the lot is smaller than a lot that is not located on a cul-de-sac. The width of the front of the property is 160+/- feet and widens to approximately 390 feet at the rear. Cul-de-sac lots are typically wider at the rear of the property to account for the bend in the road. This shape necessitates the home be built further from the street yard in order to provide adequate space to construct a home while meeting other setback requirements. This constraint, in addition to the 30-foot buffer zone in the rear yard creates unique conditions and circumstances with smaller rear yards that limit where fences and playgrounds are able to be located on this property. Homes that are located on rectangular shaped lots, do not have these same design challenges which allows for the home to be located closer to the street, thereby creating larger rear yards for recreational amenities that can meet the setback requirement.
13. It does not appear that the spirit and intent of the requirement will be met if the variance is approved. The intent of the buffer is to allow that area to remain in its natural state and be undisturbed. While not required by city code, this buffer zone provides screening for adjacent properties in the vicinity and preserves existing natural features of the site. While the applicant

- is encroaching into this buffer zone, they are remediating landscape that they previously removed to reestablish the screening for adjacent property owners.
14. Approving the variance request is substantial and may be precedent setting for future, similar variance applications. While the fence and playground are minimally invasive improvements, locating them in this buffer zone will alter the natural state of the area.
 15. It does appear that the issue can be solved in another manner other than granting the variance request. The fence could be relocated to be directly adjacent to the proposed pool on the site. However, the property owners desire to fence in the easement area to create a space for their young children to play. Additionally, it appears that there is sufficient space on the site for the playground to be located outside of the buffer area in the backyard. For these reasons, it appears that there can also be a beneficial use of the property without the variance.
 16. 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.
 17. Granting the variance will not adversely affect the delivery of government services.

VIII. RECOMMENDATION

Staff is not supportive of the variance request. There are conditions and circumstances that are unique to this property which reduce the amount of space in the rear yard to place improvements such as the playground and fence. However, the intent of this buffer zone area is for it to remain undisturbed in order to preserve existing natural features that provide screening for adjacent properties. While the applicant only proposes to install a fence and a playground in this area, it appears that the request can be solved in another manner as there is sufficient room on the site to relocate these improvements outside of the buffer area. Approving this variance may set a precedent for future, similar cases.

If the variance request is approved, staff recommends a condition of approval that all other areas within the buffer zone be undisturbed and allowed to grow and reestablish the zone as it has existed historically.

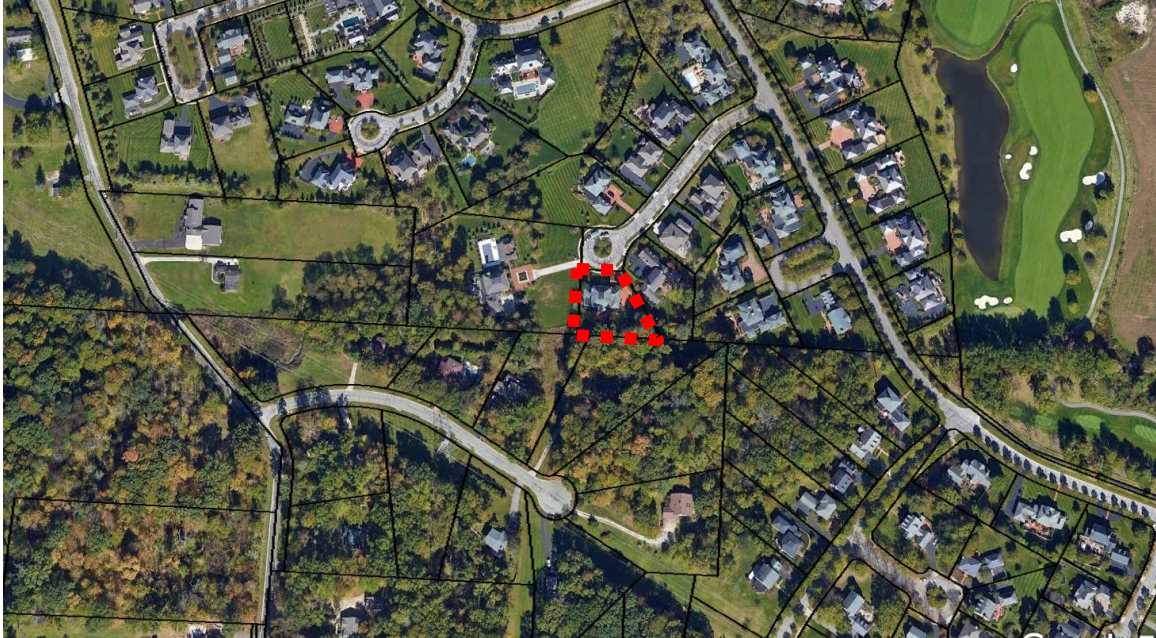
V. ACTION

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-126-2021 (conditions of approval may be added).

2. All other areas within the buffer zone must remain undisturbed and allowed to grow overtime to reestablish the zone as it has existed historically.

Approximate Site Location:



Source: Google Earth