



New Albany Board of Zoning Appeals
April 25, 2022 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 Member, Mr. LaJeunesse, at 7:00 p.m.

Those answering roll call:

Mr. Shaun LaJeunesse	Present
Mr. Kirk Smith	Present
Ms. Tiana Samuels	Present
Mr. Abe Jacob	Present
Mr. Hans Schell	Present
Ms. Andrea Wiltrout (Council Rep)	Present

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

Ms. Wiltrout swore in new members Mr. Jacob and Ms. Samuels to the Board of Zoning Appeals (hereafter, "BZA").

Moved by Mr. Smith to approve the February 28, 2022 meeting minutes, seconded by Mr. Jacob. Upon roll call: Mr. Smith, yea; Mr. Jacob, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Mr. LaJeunesse asked if there were any additions or corrections to the Agenda.

Mr. Christian stated none from staff.

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

Mr. LaJeunesse swore all who would be speaking before the BZA to tell the truth and nothing but the truth.

VAR-44-2022 Variances

Variances to Blacklick District Subarea D zoning text section 1.02(2) to allow a building to be setback 60 feet from the northern property line where the text requires a 100-foot setback and to section 1.05(5) to eliminate the landscape screening requirements along the northern property line.

Applicant: Al Neyer RE, LLC

Mr. Christian presented the staff report.

Mr. LaJeunesse asked if the applicant wished to provide comments.

Mr. Chad Sletto introduced Mr. Joe Walker from EMH&T.

Mr. Walker discussed the site and its development.

Mr. LaJeunesse asked if Code required that the owners of abutting properties be notified of this development.

Mr. Christian stated yes, all those within 200 feet had been notified

Mr. Smith asked if the 200 foot range applied to both residential and commercial areas.

Mr. Christian stated yes.

Mr. Smith stated this appeared to be at about 100 feet from the Abercrombie & Fitch site.

Mr. Walker stated it was close to 100 feet.

Mr. Smith stated that meant they would then be about 40% closer to Abercrombie & Fitch.

Mr. Walker stated the setbacks were from the north property line and showed a printout of the site to the BZA members.

Mr. Smith stated thank you.

Mr. Schell asked who owned the land to the north of the site.

Mr. Christian stated it was being developed by Van Trust but he did not know the owner.

Mr. Schell asked if they had any issues.

Mr. Christian stated they had not presented any at this time.

Mr. Schell asked if they had been notified.

Mr. Walker stated he had not heard any objections from them.

Moved by Mr. Smith to accept the staff report for VAR-44-2022 into the record, seconded by Mr. Jacob. Upon roll call vote: Mr. Smith, yea; Mr. Jacob, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Smith to approve variance VAR-44-2022 with the conditions listed in the staff report, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. Jacob, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Other Business

Annual Organizational Meeting

Chairperson Nomination

Moved by Mr. LaJeunesse to nominate Mr. LaJeunesse as Chairperson, seconded by Mr. Smith. Upon roll call: Mr. LaJeunesse, yea; Mr. Smith, yea; Mr. Jacob, yea; Ms. Samuels, yea; Mr. Schell. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Vice-Chairperson Nomination

Moved by Mr. LaJeunesse to nominate Mr. Smith as Vice-Chairperson, seconded by Mr. Jacob. Upon roll call: Mr. LaJeunesse, yea; Mr. Jacob, yea; Mr. Smith, abstain; Ms. Samuels, yea; Mr. Schell, yea. Yea, 4; Nay, 0; Abstain, 1. Motion passed by a 4-0-1 vote.

Secretary Nomination

Moved by Mr. Schell to nominate Mr. Jacob as Secretary, seconded by Ms. Samuels. Upon roll call: Mr. Schell, yea; Ms. Samuels, yea; Mr. LaJeunesse, yea; Mr. Smith, yea; Mr. Jacob, abstain. Yea, 4; Nay, 0; Abstain, 1. Motion passed by a 4-0-1 vote.

Establish date, time, and location for 2020 regular meetings

Moved by Mr. LaJeunesse to continue to meet on the fourth (4th) Monday of each month at the City Council Chambers at Village Hall, seconded by Ms. Samuels. Upon roll call: Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Jacob, yea; Mr. Smith, yea; Mr. Schell, yea. Yea, 5; Nay, 0; Abstain, 0. Motion passed by a 5-0 vote.

Poll Members for Comment:

Mr. LaJeunesse welcomed Mr. Jacob and Ms. Samuels to the BZA and stated he looked forward to working with them.

Meeting adjourned at 7:19 p.m.

Submitted by Josie Taylor.

APPENDIX



Board of Zoning Appeals Staff Report April 25, 2022 Meeting

NEW ALBANY COMMERCE II VARIANCES

LOCATION: South of Innovation Campus Way West, north of Smith’s Mill Road, east of the A&F distribution center and west of AEP (PID: 222-004472).

APPLICANT: Al. Neyer RE, LLC

REQUEST: (A) Variance to zoning text section 1.02(2) to allow a building to be setback 60 feet from the northern property line where the text requires a 100-foot setback.
(B) Variance to zoning text section 1.05(5) to eliminate the landscape screening requirements along the northern property line.

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

STRATEGIC PLAN: Employment Center District

APPLICATION: VAR-44-2022

Review based on: Application materials received on March 18, 2022.

Staff report prepared by Chris Christian, Planner.

I. REQUEST AND BACKGROUND

The applicant requests the following variances to the Blacklick District Subarea D zoning text as part of the construction of a new commercial building.

- (A) Variance to zoning text section 1.02(2) to allow a building to be setback 60 feet from the northern property line where the text requires a 100-foot setback.
- (B) Variance to zoning text section 1.05(5) to eliminate the landscape screening requirements along the northern property line.

II. SITE DESCRIPTION & USE

The site is located on 25.85+/- acres on the north side of Smith’s Mill Road, south of Innovation Campus Way West and immediately east of the Abercrombie and Fitch distribution center. This property is directly across the street from the Lower.com office campus. The site is currently undeveloped.

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

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

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

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

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

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

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

III. EVALUATION

(A) Variance to zoning text section 1.02(2) to allow a building to be setback 60 feet from the northern property line where the text requires a 100-foot setback.

(B) Variance to zoning text section 1.05(5) to eliminate the landscape screening requirements along the northern property line.

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

1. Sections 1.02(2) and 1.05(5) of the Blacklick District Subarea D zoning text requires a 50-foot pavement and 100-foot building setback from the northern property line of the site. Additionally, existing trees within the setback area are required to be maintained and 100 percent opacity screening along the northern property line is required.
2. The applicant proposes to develop a new commercial building on the site with a 60-foot building setback from the northern property line. Additionally, the applicant does not propose to maintain all trees within the northern property line setback area nor enhance those trees to achieve 100 opacity screening therefore variances are required.

3. The variance request does not appear to be substantial. When the property was zoned in 1999 there was a residentially zoned property directly north of this site. Because of this residential property a larger setback and screening requirements are required. This larger setback and enhanced screening requirements were put in place in order to provide a sufficient buffer between properties which have dissimilar uses. Since then, the northern property has been rezoned to allow for similar commercial development. The site to the north is actively being developed therefore the larger setback and screening requirements are no longer necessary for this site.
4. There are special circumstances that are peculiar to this land that are not applicable to other lands within the same General Employment (GE) zoning district that do not result from direct action of the applicant. The base General Employment (GE) rear yard setback requirements are 25 feet for any structure or service area. As stated, the property to the north is zoned Limited General Employment (L-GE) and the setbacks along this same property line are 25 feet, in accordance with the base city code requirements. If the variance requests are granted, the applicant will still exceed the base zoning code requirements for setbacks as well as on site tree preservation. While the applicant proposes to remove some trees in order to accommodate the new building, there will be some preserved and the applicant will also add some additional new trees in this area.
5. There is not another manner in which the presented problems can be solved without granting the variance requests. In more recent Limited General Employment (L-GE) zoning texts, the Planning Commission and City Council have included language that allows for reduced setbacks and screening requirements if an adjacent property is no longer zoned and/or used for residential purposes. These provisions are absent from this text therefore the only form of relief the applicant may pursue is a variance request.
6. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
7. Granting the variance would not adversely affect the delivery of government services.

IV. **RECOMMENDATION**

Staff recommends approval of the variance application should the Board of Zoning Appeals find that the application has sufficient basis for approval. Since 1999 when this site was rezoned, the surrounding land uses have changed from residential to commercial. Therefore the larger setback and screening requirements along perimeter boundaries that are intended to provide a buffer between dissimilar uses are no longer necessary as the site is completely surrounded by commercially zoned and used properties. Additionally, while the applicant will not meet the zoning text requirements they will still exceed the base General Employment (GE) city code requirements and the standards found in surrounding zoning texts.

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-44-2022 (conditions of approval may be added).

Approximate Site Location:



Source: Google Earth