

  
**New Albany Board of Zoning Appeals**  
**August 22, 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 Chair, 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: Chris Christian, Planner; Chelsea Nichols, Planner; Sierra Cratic-Smith, Planner; Josie Taylor, Clerk.

Moved by Mr. Jacob to approve the July 25, 2022 meeting minutes, seconded by Mr. Smith. Upon roll call: Mr. Jacob, yea; Mr. Smith, yea; Mr. Schell, yea; Ms. Samuels, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Mr. LaJeunesse swore all who would be speaking before the Board of Zoning Appeals (hereafter, "BZA") to tell the truth and nothing but the truth.

**VAR-88-2022 Variance**

**Variance to the pool fencing requirements of Codified Ordinance section 1173.02(e) 8323 Central College Road (PID: 222-002157).**

**Applicant: John and Suah Hwang**

Ms. Nichols presented the staff report.

Mr. LaJeunesse asked if the applicant wanted to provide any comments.

Dr. Hwang stated that an automatic pool cover provided enough safety per Ohio law he believed. Dr. Hwang mentioned the pool cover could handle up to two (2) thousand pounds in weight and at least that of an adult and child at the same time. Dr. Hwang noted that new hedges would not make it safer and that the stream on the property would need to be crossed, and he believed that anyone doing that could easily jump over a fence. Dr. Hwang noted they were building a barn to block the view on the east side to block the view of the property next door, which was also currently vacant.

Mr. LaJeunesse asked staff if the spirit of the Code requirements was for safety reasons.

Ms. Nichols stated yes, to prevent unimpeded access.

Mr. LaJeunesse asked if neighbors had been advised of the application and if there were young children who were neighbors to this property.

Ms. Nichols stated they had been notified and but it was not known if any children were in the neighbors' s homes.

Mr. LaJeunesse asked the applicant if he knew of any young children in the neighbors' properties.

Dr. Hwang stated yes one of them did, but the pool cover would be sufficient.

Mr. Schell asked the applicant what his hesitation was about erecting a fence.

Dr. Hwang stated he did not believe one was necessary.

Mr. Schell asked if this was due to aesthetics.

Dr. Hwang stated partly but that he selected this property for his own ease of accessibility to the property and he also believed the fence was unnecessary as the pool cover alone was perhaps even better than a fence.

Mr. LaJeunesse stated that assumed the pool cover was always closed.

Dr. Hwang stated true, but only he and his wife would have the code for it.

Mr. Smith asked if the pool was already installed.

Dr. Hwang stated yes.

Mr. Smith asked if the pool cover was already there.

Dr. Hwang stated yes.

Mr. Smith asked if staff knew what percentage of homes in the area permitted pools without fences.

Ms. Nichols stated they could look that up.

Dr. Hwang stated only five (5) cities in central Ohio required a fence if a pool cover was there he believed, including New Albany, Dublin, Westerville, and Grandview.

Mr. Smith asked if the agricultural zoning had any bearing on the requirements.

Ms. Nichols stated it did not.

Mr. Christian noted there had been discussions about changing the Code on this issue, but there had been no interest in altering the requirement for both a pool and a fence.

Ms. Samuels stated that prior approvals had layers of protection if a fence had not been present.

Ms. Nichols stated that similar requests had both a pool cover and natural or added barriers such as hedges, partial fencing, etc., placing multiple barriers on all sides.

Ms. Wiltrout asked whether that had been the case with the most recent approval on Lambton.

Ms. Nichols stated yes, and there were also cases in New Albany Farms due to the unique nature of those lots and four (4) other recent applications, similar to this one, had been required to add barriers.

Dr. Hwang asked if there was a requirement to place a fence around a pond built in New Albany.

Mr. Christian stated no.

Ms. Nichols stated no, this was for private swimming pools.

Dr. Hwang stated he thought the ponds were more unsafe. Dr. Hwang stated that if safety was the issue for the Code then the pool cover would be more than safe, adding that the neighbors where he was were far apart and there were only two (2) of them adjacent to him.

Ms. Samuels stated she was trying to gather the spirit of the intent with the fencing. Ms. Samuels asked if it was correct that when a pool cover was in place then the fencing requirement seemed to be more about fencing at the property line to prevent access rather than at the pool.

Ms. Nichols stated yes, the Code was to prevent unimpeded access to the property where the pool was located.

Ms. Samuels asked if the applicant had considered fencing at the property line, particularly as development could occur around him.

Dr. Hwang stated not necessarily, one part of his property had a bridge that needed to be crossed before gaining access, the east side was pretty heavily wooded, and the back 200 or 300 feet was all wooded which would be difficult to fence.

Ms. Samuels stated the natural, physical barriers to the property were on the south side but not on the east or west sides.

Dr. Hwang stated part of it was, the stream was partly on the north side but one would still need to cross the stream.

Mr. Jacob asked if there was any sensory lighting of any sort.

Dr. Hwang stated yes, there were four motion sensor cameras that would notify when someone was on the property.

Mr. LaJeunesse asked where on the property any additional measures would be placed, would that be around the pool.

Ms. Nichols stated the staff's recommendations in the report had envisioned some hedges on pool sides and fencing from the house toward where the trees started to the south and something to impede access on the sides.

Dr. Hwang stated straight down from the corner Ms. Nichols had mentioned was all wooded.

Mr. Christian stated the intent of the Code requirement was to stop someone, so that could be accomplished by a fence but also the intent could be accomplished in multiple ways.

Dr. Hwang stated that on the aerial photo the neighboring property did have the stream on it but the house there was on the other side of that property, so if toddler crossed that he would be impressed.

Ms. Wiltrout stated he did not own that property.

Dr. Hwang stated no, he did not own it.

Ms. Wiltrout stated that if a toddler lived there the toddler could go on his property and pool.

Dr. Hwang stated they could, but the pool cover would be there.

Ms. Wiltrout stated there was no natural boundary.

Dr. Hwang stated there was not, but there was a tree.

Ms. Wiltrout stated other than a tree which could be removed, there was no other boundary impeding access to this property.

Dr. Hwang stated yes, if one could go through the bushes and thorns.

Ms. Wiltrout stated that if the property were developed than those trees and bushes would be gone.

Dr. Hwang stated it was still there.

Ms. Wiltrout stated the prior cases with mounding and noted it had been a comprehensive view that looked at where fencing was and was not and discussed fencing, mounding, use of current horse fencing, and all in combination for that property.

Mr. Smith asked if staff required a specific height for any boxwood hedges.

Mr. Christian stated they would need to look at prior cases, but he believed they had been no less than forty (40) inches.

Ms. Wiltrout stated they had also spoken with an arborist about how closely to place the hedges and how quickly they would grow so that a child could not get through them.

Mr. Schell asked Ms. Wiltrout if in those cases they had allowed simply boxwoods.

Ms. Wiltrout stated she recalled that in the most recent case, from the prior year in May, there was fencing on about 75% of the area and also a creek. Ms. Wiltrout stated where there was not any fencing or creek they had allowed mounding and boxwoods.

Ms. Samuels stated it was not the present-day conditions but what could be in the future that would prevent access.

Dr. Hwang stated the pool cover was sufficient to prevent access to the pool, which he believed was the intent and the state believed a pool cover was sufficient.

Ms. Samuels asked staff if there was any record of why there had been no appetite to remove the fencing requirement if a pool cover was present.

Mr. Christian stated no, just no appetite to only rely on a pool cover as it was believed a second level of protection was needed to stop someone. Mr. Christian stated that considerations about whether a pool cover was in place, was it working properly on an ongoing basis, etc., so the preference was to have a secondary level of protection.

Ms. Samuels stated thank you, that was helpful.

Mr. Schell stated that if the standards were relaxed then a precedent would be created that would be hard to work with. Mr. Schell stated he understood the applicant's points on access to his property, but the BZA also needed to consider future cases.

Dr. Hwang stated he understood that, but at the end of the day he would be responsible and he never wanted anyone to drown in the pool.

Mr. LaJeunesse asked if this were approved, who would define the additional measures needed and their details.

Ms. Nichols stated the BZA could work on what the measures would look like and provide suggestions similar to those in the staff report, approve it with conditions, or it could be tabled.

Mr. LaJeunesse asked the applicant if he would be willing to work on natural barriers with the BZA if they went in that direction.

Dr. Hwang stated yes, but he was concerned about the east as it was partly wooded and needed work to take trees down and then grade it and the back was also wooded.

Ms. Samuels asked if the continuous property barrier did not need to be on the property line but could be within the property line at a certain distance from the pool.

Ms. Wiltrout stated that was up to the BZA.

Ms. Samuels asked how it had been done in the past.

Ms. Wiltrout stated it had been on the property line or inside the property line, it was a way to enclose the structure or lot to prevent access.

Mr. Smith asked how long the pool had been operational.

Dr. Hwang stated one (1) month.

Mr. Smith asked if Dr. Hwang had needed to prove to his insurance company that the pool cover was operational.

Dr. Hwang stated no, he just had to meet certain requirements, which he had.

Mr. Smith asked staff if there was a process or mechanism in place for annual certifications of pool covers.

Ms. Nichols stated yes.

Mr. Christian stated they began this year.

Mr. LaJeunesse asked the applicant his children's ages.

Dr. Hwang stated ten (10) and seven (7).

Mr. LaJeunesse asked for the ages of the neighbors' children.

Dr. Hwang stated he thought they were ten (10) and seven (7) or eight (8).

Mr. LaJeunesse stated he struggled with the definition of what the natural barriers could be and he was also concerned with precedent.

Mr. Jacob asked which natural barriers the applicant was willing to entertain.

Mr. LaJeunesse asked staff how it typically worked if the BZA asked the applicant to return later.

Ms. Nichols stated that if tabled they could provide direction on what the BZA would find suitable and ask to return with a revised application.

Mr. Christian stated that tabling such applications would normally involve plans with more details.

Dr. Hwang stated he would prefer fencing over hedges due to the cost if that were required.

Mr. LaJeunesse stated New Albany required this in addition to pool covers and was a huge safety issue.

Mr. Schell stated they could fence closer to the pool rather than to the property line if they liked or screen the pool with edging if they liked.

Dr. Hwang asked if just hedges around the pool would work.

Mr. Schell stated there was no guarantee of approval.

Mr. LaJeunesse stated there was precedent for just hedges also depending on how close together and height.

Dr. Hwang asked how tall they would need to be.

Mr. Christian stated he guessed no less than 36 inches.

Mr. LaJeunesse stated the BZA would be happy to work with him to find the right solution.

Mr. Schell stated something had to be done.

Mr. LaJeunesse asked if the applicant wanted to table.

Ms. Nichols stated staff had recommended hedges and mounding or a non-Code compliant fence, so a couple of measures were looked for.

Mr. LaJeunesse asked if the BZA could change those recommendations.

Ms. Nichols stated yes.

Dr. Hwang stated hedges around the pool perimeter would be preferred but would need to meet with a landscaper.

Mr. LaJeunesse stated there was also the proximity of how closely planted they would need to be to create a barrier.

Ms. Wiltrout stated staff would also review and discuss as well as the BZA.

Dr. Hwang asked if his options were to fence or continue to discuss with staff and the BZA about other options and the requirements for those other options.

Ms. Nichols stated yes.

Mr. LaJeunesse stated that if a fence were put up this would go away.

Mr. Christian stated that even with a hedge it would still need a variance.

Moved by Mr. Smith to accept the staff report for VAR-88-2022 into the record, seconded by Ms. Samuels. Upon roll call vote: Mr. Smith, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. Jacob, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. LaJeunesse to table variance VAR-88-2022, seconded by Mr. Schell. Upon roll call vote: Mr. LaJeunesse, yea; Mr. Schell, yea; Mr. Jacob, yea; Ms. Samuels, yea; Mr. Smith, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

#### **VAR-89-2022 Variance**

**Variance to allow for the use of metal material for a pergola (recreational amenity) as required per code22 New Albany Farms Road (PID: 222-000986).**

**Applicant: Kevin Reiner Design, c/o Kris Cody**

Ms. Cratic-Smith presented the staff report.

Mr. LaJeunesse asked if the applicant wanted to provide any comments.

Ms. Kris Cady stated she would be happy to answer any questions.

Mr. Schell asked staff why steel was not an approved material.

Mr. Christian stated that the Code section was an inclusive one for all recreational amenities and for that reason did not provide a list of all types of materials that could be used.

Mr. Jacob asked if the pergola would be covered in greenery.

Ms. Cady stated wisteria would grow to cover the metal.

Mr. Jacob stated thank you.

Mr. LaJeunesse asked why steel had been chosen.

Ms. Cady stated she had not been aware of the Code and the pergola would last longer than wood.

Mr. LaJeunesse asked staff if there was a precedent for accepting something like this.

Ms. Cratic-Smith stated no, but provided an example the applicant had installed in Upper Arlington.

Mr. LaJeunesse asked if the pergola would be visible to neighbors.

Ms. Cady stated it would be hidden and not visible.

Ms. Samuels asked if the neighbors had been notified and if there had been any feedback.

Ms. Cratic-Smith stated they had been notified and there had not been any comments.

Moved by Mr. Smith to accept the staff report for VAR-89-2022 into the record, seconded by Ms. Samuels. Upon roll call vote: Mr. Smith, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. Jacob, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Smith to approve variance VAR-89-2022, 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**

Mr. Christian introduced Ms. Sierra Cratic-Smith as a new Planner for the City and noted she would also be helping out with the Boards and Commissions.

### **Poll Members for Comment:**

None.

Meeting adjourned at 7:56 p.m.

Submitted by Josie Taylor.



## APPENDIX



### Board of Zoning Appeals Staff Report August 22, 2022 Meeting

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#### 8323 CENTRAL COLLEGE ROAD POOL FENCE VARIANCE

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**LOCATION:** 8323 Central College Road (PID: 222-002157)  
**APPLICANT:** John and Suah Hwang  
**REQUEST:** Variance to Codified Ordinance Chapter 1173.02(e) to the fencing requirements for a private swimming pool  
**STRATEGIC PLAN:** Employment Center  
**ZONING:** Agricultural District (AG)  
**APPLICATION:** VAR-88-2022

Review based on: Application materials received on July 24, 2022 and August 1, 2022

*Staff report prepared by Chelsea Nichols, Planner*

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#### I. REQUEST AND BACKGROUND

The applicant requests a variance from C.O. Section 1173.02(e) for the requirement that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

The city law director has previously advised that the Planning Commission (PC) must evaluate this application exclusively based upon the provisions and criteria generally set forth in the City Zoning Code as relates to variances (Chapter 1113), and the specific provisions contained within Section 1173.02(e) regarding private swimming pool fences. This same direction would be applied to the Board of Zoning Appeals (BZA) review.

#### II. SITE DESCRIPTION & USE

The site is 6.5 acres with a single-family home. The property is located on the south side of Central College Road; east of the Evans Road and Central College intersection, and west of the county line where Central College Road curves into Jug Street. The property is located six lots west of the Franklin County/Licking County line. The property is surrounded by Agriculturally zoned properties that are or could be used for residential land uses. The large neighboring property directly to the north is the undeveloped site owned by the Homewood Corporation. The neighboring properties directly to the south and west are developed large, single-family residential lots. The neighboring property directly to the east is an undeveloped lot that permits single-family residential.

#### 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 standards for granting of a 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 a variance:

All of the factors should be considered and no single factor is dispositive. The key to whether a 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.*

## **IV. FACTS**

### ***Considerations and Basis for Decision***

**The following information, in addition to application submittal information, meeting presentations and discussions should be considered in the Board of Zoning Appeals decision for the requested variance:**

- Codified Ordinance Section 1173.02(e) requires that any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall be of such design and construction as to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier. Such wall or fence shall not be less than forty-eight (48) inches in height, maintained in good condition by the property owner, and affixed with an operable gate and lock.

- The city’s pool and fence code does not prescribe any particular style or type of fence other than saying such design and construction is to effectively prevent a child from crawling or otherwise passing through or under such fence or barrier.
- This lot is approximately 6.5 acres. The pool is located at the rear of the home. The front of the house is over 300 feet away from the northern, front property line.
- The northern portion of the property contains a stream. The applicant has stated the stream is 8 feet deep. This same stream also serves as a natural barrier between this property and the neighboring properties to the west as the stream continues onto those neighboring properties. The pool is 94’ feet from the western side yard property line.
- The property to the east is currently vacant and is mostly wooded. The pool is approximately 123’ 9” from the eastern side yard property line.
- The pool is approximately 493 feet from the rear yard property line.
- The applicant proposes to use an ASTM automatic pool safety cover. This may be similar to a pool cover the BZA approved in-lieu of a fence at 6958 Lambton Park, 10 New Albany Farms and 14 New Albany Farms. Pool covers are recognized by building code as an appropriate method to secure a pool. However, the city of New Albany has not adopted a zoning code that allows the use of covers in-lieu of a fence. The city’s private swimming pool ordinance regulates the construction of private pools within the city and requires a 4-foot fence affixed with an operable gate and lock.
- The property owner does not have plans to install any landscaping around the pool or any additional landscaping on the property. The applicant states they believe there are sufficient safety measures in place with the proposed ASTM automatic safety pool cover, the fact that the lot is 6.5 acres, there is only one entrance to the property from the front bridge over the stream, and with the natural barriers from neighboring properties (trees and 8-foot-deep stream). The applicant provided directional pictures as part of their application materials and they were included in the board’s packet.
- It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a “substantial detriment”. The pool is screened from the public right-of-way to the north by the house. The 8-foot-deep stream serves as a natural barrier between this property and the neighboring properties to the west. The southernmost portion of the rear yard is made of mostly tree masses. The majority of the eastern neighboring property is mostly wooded, but it is worth noting that the neighboring lot to the east is buildable and could potentially be developed in the future.

## V. HISTORY

There have been several similar applications heard by either the Board of Zoning Appeals or the Planning Commission since 2007.

1. The BZA denied a variance to allow a pool cover for a residence on 15.6 acres in Illmington in 2007. The BZA cited safety and liability concerns as reasons for denying the variance request.
2. The BZA denied a variance to allow a pool cover in 2010 for a home on a 0.5-acre parcel in Fenway. The BZA cited safety and liability concerns as reasons for denying the variance request.
3. The BZA approved a variance to allow a pool cover in-lieu of a fence on May 28, 2014 for 14 New Albany Farms Road. The BZA stated the size of the property (19.9 acres), proximity to other parcels and limited access due to private streets creates special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. The parcel at 14 New Albany Farms is one of the largest in the gated Farms subdivision resulting in the pool being located a much greater distance from the parcel lines and roads. For this reason, the BZA approved the variance while stating some homes may be too close to each other for only a pool cover alone.
4. The BZA approved a variance to allow a pool cover in-lieu of a fence on September 22, 2014 for 6 New Albany Farms Road. The BZA stated this lot having heavy woods on three sides of the property results in a general isolation from neighbors and being within the Farms community

- which is gated and has private streets creates special conditions and circumstances which are peculiar to the land.
5. The PC approved a variance to allow a pool cover in-lieu of a fence that meets code requirements on April 18, 2016 for 6958 Lambton Park Road. Members voting in favor of the variance noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening, horse fence, the property's size and lack of neighbors create special circumstances, and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code compliant fencing along Johnstown Road and lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval are:
    - An automatic safety pool cover is installed that is ASTM compliant as and if amended.
    - The pool area is fully enclosed by a house, fence, or wall.
    - The existing 54" and 44" horse fence counts towards the enclosure of the pool.
    - The new fence, installed along the east side of the property adjacent to the neighboring lot that permits single-family residential, must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18<sup>th</sup>.
    - The pool cover is certified annually by the homeowner.
  - The PC approved a variance to allow landscaping and pool netting in –lieu of a fence that meets code requirements on October 17, 2016 for 10 and 11 Highgrove. Members voting in favor of the variances noted that with conditions of approval the variance preserves the spirit and intent of the zoning ordinance, appears to have limited access due to the private golf course, substantial screening including a hedgerow to be installed around all sides of the pool, horse fence, the property owners stated the intent is to use the pool net when the pool is not in use with adult supervision, and having an annually certified pool net. Members voting against the variance noted this is because the property would have a reasonable return without the variance, believes variance is substantial, essential character of neighborhood would not change, property owners were aware of the restrictions, original permit showed code complaint fence and was not installed per approved plan. Finally, the applicant did not prove pool netting is as safe as a fence. The conditions of approval are:
    - Landscaping approved by ARC and staff to include original and tonight's submissions.
    - Commitment to install boxwoods or gates at all openings.
    - Pool netting or hard cover ASTM compliant installed at all times when not in use and not attended by a responsible adult.
    - Applicant maintains landscaping and new plantings.
    - The pool netting is certified annually by the homeowners for function.
    - Hard cover installed by 11/1/16 and not removed until in compliance.
    - The applicant provides a copy of the easement to permit homeowner to maintain the fence in the event the NACO does not.
  6. The PC approved a variance to allow a pool cover for a residence in-lieu of a fence that meets code requirements on May 18, 2020 for 7010 Lambton Park. The applicant proposed to install a 44-inch-high horse fence along the eastern property line which, in addition to a creek and being a heavily wooded area, provided an appropriate barrier to access that matched similar factors for other approved pool fence variances. The presence of a pool cover is also an important factor to ensure safety. In addition, the applicant proposed to install a continuous, uninterrupted 3-4-foot-tall evergreen landscape hedge along the golf course property line where landscaping does not already exist. Staff believed that this additional landscaping served as an appropriate barrier to prevent uncontrolled, access to the pool. With these additional landscaping barriers, the variance preserved the spirit and intent of the zoning ordinance. The conditions of approval are:
    - Applicant maintains landscaping and new plantings.
    - The pool cover is certified annually by the homeowner.

## **VI. EVALUATION**

Through several pool barrier variance applications; city staff, the Board of Zoning Appeals, and the Planning Commission have had to weigh the importance of many factors in coming to decisions on the applications. Some of the factors stated on the record are proximity of the property to other residences, public accessibility to the property, and the effectiveness of a pool cover in providing safety.

The variances within the New Albany Farms subdivision were approved because the BZA stated the gated community with private streets, the large size of the properties, and proximity to other parcels create special conditions and circumstances which are peculiar to the land that results in a general isolation from neighbors. Both applications included the installation of a powered automatic safety cover.

The application at 6958 Lambton Park shared some, but not all, of the property characteristics with the previously approved variances. Due to the property's location along public streets, the Planning Commission paid special attention to characteristics of the property that have the effect of limiting public access. Additional information related to the technical standards and operational concerns of pool covers was also presented. The variance was approved by a 3-1 vote with several conditions of approval. Some of the factors that were discussed with the motion included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- Substantial mounding, landscaping, horse fence and the property's size impede public access, and
- The applicant proposed an ASTM compliant pool cover which the homeowner agreed to certify annually.

The same request for the homes at 10 and 11 Highgrove were approved and contain the same circumstances as listed above. Some other factors that were considered with the motion to approve the variance included:

- The property appears to have limited access due to the private golf course and lack of a rear neighbor,
- A hedgerow was installed around all sides of the pool to impede access, horse fence and the property being located on a cul-de-sac impede public access, and
- The applicant proposed an ASTM compliant pool net which the homeowners agreed to certify annually and install when the pool is not in use.

The application at 7010 Lambton Park was approved because the Planning Commission believed the pool cover was important to ensure safety, but also that the additional landscaping was an equally important factor that served as an appropriate barrier to prevent uncontrolled, access to the pool where an existing horse fence is located. Some other factors that were considered with the motion to approve the variance included:

- A creek running along a side property line was determined to be an insufficient barrier and the owner is required to install a continuous code compliant fence.
- Along the other side property line where a heavily wooded, undeveloped lot is located the owner is required to install a continuous code compliant fence due to its proximity to the pool.
- The property appears to have limited access due to the private golf course and lack of a rear neighbor. The owner is required to install a continuous, uninterrupted 3-4-foot-tall evergreen landscape hedge along the golf course property line where landscaping does not already exist.

## **VII. RECOMMENDATION**

The purpose of a variance hearing is to evaluate specific factors related to an applicant's request. Although the property is comparable to recently approved applications, staff cannot support the request

as submitted. The distance from the pool to the property lines, along with the natural barriers including existing trees to the south and the stream to the west, are certainly considerations. However, it doesn't contain all the elements that have been required of recently approved variances.

While the applicant is proposing to install a safety pool cover and points out existing natural barriers, the natural barriers are located on neighboring lots. The wooded lot immediately to the east is a buildable lot that could be built on in the future. Should that lot be developed in the future, the trees on that neighboring property could potentially be removed and an unimpeded access to the site would be created. As for the lot to the west, the stream is an existing natural barrier but it is located on the neighboring property and not on the property in question. The only portion of the stream on this property is located in the front yard to the north.

Historically, the Board of Zoning Appeal and Planning Commission have only approved these types of variance requests when additional plantings and/or barriers are in place on the subject parcel. In reviewing the history of other requests, it is clear the other properties with an approved variance have had some existing natural features or improvements that were supplemented with additional barriers. Where none of these items existed, a code-compliant fence was required to be installed. With the exception of the property line to the south, the property lines on this site do not contain mounding or landscaping to prevent access. In addition, the area immediately surrounding the pool does not contain the boxwood hedges that were proposed and included as part of the approval for the Highgrove variances. Horse fencing to limit access from neighboring lots also does not exist, similar to other approved variances at the other properties mentioned above.

The example variance request that was approved at 6958 Lambton was also 6.5 acres in size and shares some similarities with the lot in question. The neighboring property to the east was undeveloped and wooded at that time. However, staff and the Planning Commission recognized the lot permitted single-family and knew it could be developed in the future, which required the applicant to installed a code compliant fence along the eastern property line. Along the other side property line, the lot consisted of mounding and backed up to both the golf course and horse fence. Along the property line next to Johnstown Road, the property included a brick wall and horse fence.

The city staff recommends additional improvements be provided to create an uninterrupted barrier to prevent uncontrolled access. If additional measures, such as:

- (1) a continuous landscape hedge, and
  - (2) mounding or a non-code compliant fence (e.g. horse fence used in other approved variances)
- were included in the request along all sides of the pool, the application would be more closely aligned with other similar approved applications.

## **VIII. ACTION**

**Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motion would be appropriate:**

Move to approve variance application VAR-88-2022 based on the findings in the staff report with the following condition(s) of approval:

1. Additional measures, such as:
  - (a) continuous landscape hedge, and
  - (b) mound or non-code compliant fence (e.g. horse fence used in other approved variances)are included along all sides of the pool to create an uninterrupted barrier to prevent uncontrolled access.
1. The pool cover is required and must be certified annually by the homeowner.

**Approximate Site Location:**





**Board of Zoning Appeals Staff Report  
August 22, 2022 Meeting**

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**22 NEW ALBANY FARMS  
PERGOLA MATERIAL VARIANCE**

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LOCATION: 22 New Albany Farms (PID: 222-000986).  
APPLICANT: Kevin Reiner Design, Donovan Richard  
REQUEST: (A) Variance to C.O. 1165.04 B(1) to allow metal to be used as a material for two pergolas where city code only permits, brick, stone, composite siding, screen, or any combination thereof to be used.  
ZONING: R-1  
STRATEGIC PLAN: Residential  
APPLICATION: VAR-89-2022

Review based on: Application materials received on July 28, 2022

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*Staff report prepared by Sierra Cratic-Smith, Planner*

**I. REQUEST AND BACKGROUND**

The applicant requests the following variance:

(A) Variance to C.O. 1165.04 B(1) to allow metal to be used as a material for two pergolas where city code only permits, brick, stone, composite siding, screen, or any combination thereof to be used.

**II. SITE DESCRIPTION & USE**

The property is 7.31 acres in size and contains a single-family home. The lot is located in Franklin County in the New Albany Farms subdivision. There are several recreational amenities on the lot including a pool, patio, and tennis court. The surrounding properties are located within the same subdivision and contain residential uses.

**III. ASSESMENT**

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. In accordance with C.O. 1113.05(b), all property owners within 200 feet of the subject property in question have been notified of the request via mail.

*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.*

#### **IV. EVALUATION**

##### **(A) Variance to C.O. 1165.04 B(1) to allow metal to be used as a material for two pergolas where city code only permits, brick, stone, composite siding, screen, or any combination thereof to be used.**

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

1. The applicant proposes to construct two metal pergolas made of galvanized steel on top of an existing patio within the rear yard of the property. The city code requires all recreational amenities’ materials be brick, stone, composite siding, and screen. Therefore, a variance is required to allow metal to be used as a primary material in this case.
2. The property has special conditions and circumstances considering it is a 7.31-acre property that is located in the gated New Albany Farms subdivision. The subdivision consists of lots on large lots on private streets resulting in limited access to the homes.
3. The variance request does not appear to be substantial. The property contains a large, single family home as well as several recreational amenities including a pool, patio and tennis court. The pergolas will be located at the rear of the property which is screened on three sides of the home.
4. The pergolas will be screened with foliage such as wisteria which impedes any visual of the metal. Wisteria is a heavy, long vine with foliage that will cover the pergola pillars so although the pergolas are a metal finish material, visually it will appear like a landscaping feature. In addition, metal is preferred to hold the wisteria, which is considered a very dense and bulky planting, resulting in a heavier weight of the flora.
5. The variance will not adversely affect the delivery of government services, 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 requested variance should the find that the application has sufficient basis for approval. This project is located at the rear of the property is located within a gated community with private streets and roadways. In addition, the pergolas will feature a more natural landscape appearance when flora is applied. The final design intent is to create a naturalized landscaping feature in the backyard where the wisteria covers the majority of the metal pergolas.

**V. ACTION**

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, finding the following motion is appropriate.

**Move to approve application VAR-89-2022 based on the findings in the staff report (conditions of approval may be added)**

**Approximate Site Location:**



Source: NearMap