



New Albany Board of Zoning Appeals Agenda
September 26, 2022 7:00pm

Members of the public must attend the meeting in-person to participate and provide comment at New Albany Village Hall at 99 West Main Street. The meeting will be streamed for viewing purposes only via the city website at <https://newalbanyohio.org/answers/streaming-meetings/>

I. Call To Order

II. Roll Call

III. Action of Minutes: August 22, 2022

IV. Additions or Corrections to Agenda

Swear in all witnesses/applicants/staff whom plan to speak regarding an application on tonight's agenda. "Do you swear to tell the truth and nothing but the truth".

V. Hearing of Visitors for Items Not on Tonight's Agenda

VII. Cases:

VAR-95-2022 Variance

Variance to the pavement setback requirements of Codified Ordinance section 1144.04(d) at 6500 New Albany Road East (PID: 222-002194-00).

Applicant: Discover Properties LLC c/o Garrett Humes, Esq.

Motion of Acceptance of staff reports and related documents into the record for - VAR-95-2022.

Motion of approval for application VAR-95-2022 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval.

VAR-96-2022 Variance

Variance to the pool setback requirements of Codified Ordinance section 1173.03(c) at 3707 Head of Pond Road (PID: 222-001574-00).

Applicant: Mark Roehrenbeck

Motion of Acceptance of staff reports and related documents into the record for - VAR-96-2022.

Motion of approval for application VAR-96-2022 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval.

VAR-112-2022 Variance

Variance to the requirements of the development standards in Business Park East Subarea 1(d)(2)(d) to reduce the minimum pavement and building setback requirements from 50 feet to 25 feet at 13411 Worthington Road (PID: 094-106596-00.001 and -094-106740-00.00).

Applicant: MBJ Holdings LLC, c/o Aaron Underhill

*Motion of Acceptance of staff reports and related documents into the record for -
VAR-112-2022.*

*Motion of approval for application VAR-112-2022 based on the findings in the staff report with
the conditions listed in the staff report, subject to staff approval.*

VIII. Other Business

IX. Poll members for comment

X. Adjournment



**New Albany Board of Zoning Appeals
August 22, 2022 DRAFT Minutes**

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W. Main Street and was called to order by Board of Zoning Appeals Chair, 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

8323 CENTRAL COLLEGE ROAD POOL FENCE VARIANCE

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

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 18th.
 - 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 install 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**

**22 NEW ALBANY FARMS
PERGOLA MATERIAL VARIANCE**

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

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



**Board of Zoning Appeals Staff Report
September 26, 2022 Meeting**

**6500 NEW ALBANY ROAD E.
DISCOVER LOT SPLIT SETBACK VARIANCE**

LOCATION: 6500 New Albany Road E. (PID: 222-002194-00)
APPLICANT: Discover Properties LLC c/o attorney Garrett Humes, Esq.
REQUEST: Variance to the pavement setback requirements of Codified Ordinance section 1144.04(d)
STRATEGIC PLAN: Mixed Employment Center
ZONING: Office Campus District (OCD).
APPLICATION: VAR-95-2022

Review based on: Application materials received on August 11, 2022.

Staff report prepared by Chelsea Nichols, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to the pavement setback requirements of C.O. Section 1144.04(d) which states the minimum side yard setback for pavement shall be at least 15 feet. The variance request is the result of a lot split within the development that will change the lot lines of the two existing lots within the development. In order for the lot split/lot line adjustment to occur, a variance is necessary since the parking lot pavement for the southern lot will be as close as 6 feet, encroaching 9 feet into the side yard setback.

The site in question was developed as the Discover campus and consists of two parcels. The northern parcel contains a data center. The southern parcel consists of the office/call center and has a private drive that is shared and serves both parcels. Discover properties currently owns both lots and occupies both of the buildings within the development. The applicant wishes to execute a lot split that would adjust the property line that runs east to west between the two lots. Discover intends to sell the parcel to the south, retain ownership of the lot to the north, and incorporate private drive into the northern parcel in order to maintain access to the public roadway.

This variance request allows the property owner to move the shared drive from the southern property with the office to the northern parcel with the data center. Once the lot line adjustment is complete, and the private drive is incorporated into the northern lot, portions of the parking lot on the southern property will be located less than the required 15 feet away from the new property line.

II. SITE DESCRIPTION & USE

The overall 51.75 +/- acre development site is located east and south of New Albany Road East, west of New Albany Condit Road, and north of Central College Road in Franklin County. The site is zoned Office Campus District (OCD). The site contains a private drive that separates the two existing lots.

Surrounding uses to the west include other offices that are also zoned Office Campus District (OCD). To the north, there are vacant properties zoned General Employment (GE) and Infill Planned Unit Development (IPUD). All adjacent properties to the east are residential; some zoned Agriculture (AG) and some zoned Infill Planned Unit Development (IPUD).

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.*

IV. EVALUATION

Variance to the pavement setback requirements of Codified Ordinance section 1144.04(d).

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

1. As part of the lot split application, to adjust the lines between two lots within one development, the applicant requests a variance to allow for the parking lot pavement to sit as close as 6 feet away from the side yard property line when code requires at least 15 feet.
2. It does not appear the variance is substantial. The applicant meets the 15-foot pavement setback requirement for the majority of the length of the property line that runs along the

private drive. The northern parcel line is approximately 1,422 linear feet; meeting the required setback for approximately 991 linear feet and not meeting the setback for approximately 431 linear feet. The proposed variance would only reduce the setback for a portion of the property line where it starts to curve near the curb cut for access into the site, and then continuing east towards the public road.

3. The variance preserves the spirit and intent of the OCD zoning district and the essential character of the surrounding area will not be altered by granting the variance request. The variance is partially due to existing conditions as the site is already developed. The variance would not result in any other changes or activate any new requirements.
4. It does not appear the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.” The site in question is an existing built condition. The variance and lot lines only exist on paper and will not change the built condition. This is desirable to continue to allow the Discover campus to have a cohesive development pattern between sites.
5. There are 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. The lot to the north does not have any curb cuts other than those on this shared drive. City staff is supportive of shared drives and reducing the number of curb cuts on public streets. The property to the south has direct curb cuts on the three main streets without the use of the shared drive running between the parcels, whereas the only public street access for the lot to the north is via this private drive. The lot line adjustment will ensure that the data center’s access to the private drive is sustained and ensure no additional curb cuts are necessary.
6. It does not appear that the variance would adversely affect the delivery of government services, 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.

In summary, staff supports this variance request for the existing parking lot pavement to be located within the side yard setback once the lot split and lot line adjustment are complete. The variance is not substantial in nature as only a relatively small section of the pavement along the private drive will encroach into the setback.

V. RECOMMENDATION

Staff recommends approval of the requested variance should the Board of Zoning Appeals find that the application has sufficient basis for approval. It does not appear that the essential character of the surrounding area will be altered if the variance is granted. The variance preserves the spirit and intent of the OCD zoning district as the variance is due to existing conditions. The site is already developed and the variance would not result in any other changes or activate any new requirements. The variance allows for the development to continue its cohesive design between sites and ensure the data center has public street access, via the private drive, if the properties should have different owners.

VI. 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-95-2022.

Approximate Site Location:



Source: nearmap

Permit #
Board Mtg.
Date



Community Development Planning Application



Site Address 6500 New Albany Road E., New Albany, Ohio 43054				
Parcel Numbers 222-002194-00				
Acres – currently containing 51.75		# of lots created – 1		
Choose Application Type		Circle all Details that Apply		
<input type="checkbox"/> Appeal				
<input type="checkbox"/> Certificate of Appropriateness				
<input type="checkbox"/> Conditional Use				
<input type="checkbox"/> Development Plan		Preliminary	Final	Comprehensive
<input type="checkbox"/> Plat		Preliminary	Final	Amendment
<input type="checkbox"/> Lot Changes		Combination	Split	Adjustment
<input type="checkbox"/> Minor Commercial Subdivision				
<input type="checkbox"/> Vacation		Easement		Street
<input checked="" type="checkbox"/> Variance				
<input type="checkbox"/> Extension Request				
<input type="checkbox"/> Zoning		Amendment (rezoning)		Text Modification
Description of Request: See narrative description attached to this application as Exhibit A, current legal description attached as Exhibit B, drawing of the proposed new lot boundaries attached as Exhibit C, and drawing depicting the setback encroachment locations attached as Exhibit D				
Property Owner's Name: Discover Properties LLC				
Address: 2500 Lake Cook Rd.				
City, State, Zip: Riverwoods, IL 60015				
Phone number: 312-550-6882			Fax:	
Email: John.haas@discover.com				
Applicant's Name: Discover Properties LLC c/o attorney Garrett Humes, Esq.				
Address: 65 E. State Street, Suite 1100				
City, State, Zip: Columbus, Ohio 43215				
Phone number: 614-229-0032			Fax: 614-229-0033	
Email: ghumes@ulmer.com				
Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.				
Signature of Owner				Date: 8/10/22
Signature of Applicant				Date: 8/10/22

Exhibit A
(Narrative Statement)

General Description and Background –

Discover Properties LLC (“Owner”) currently owns two adjacent parcels of land located within the OCD Office Campus District. Owner intends to sell the parcel identified as Franklin County Permanent Parcel Number 222-002194-00 (“Southern Parcel”). As part of the sale, Owner intends to retain ownership of the private road currently located within the Southern Parcel and incorporate the private road into the parcel identified as Franklin County Permanent Parcel Number 222-002056-00 (“Northern Parcel”). Owner intends to retain the private roadway as part of the Northern Parcel to maintain access to the public roadway. When the private road is incorporated into the Northern Parcel, portions of the parking lot on the Southern Parcel will be located less than 15 feet away from the new property line.

Use –

The current use of both the Northern Parcel and Southern Parcel will remain unchanged after the variance is granted and the sale of the Southern Parcel is completed.

Nature of Variance –

Owner is submitting this variance request seeking relief from the requirements of New Albany Zoning Code Section 1144.04(d) which requires a minimum side yard setback of “Fifteen (15) feet to any paved area and thirty (30) feet to any structure.”

Reasons the Variance is Justified Pursuant to the New Albany Zoning Code –

This variance request should be granted for the following reasons:

(a) Granting the variance request will have no effect on the adjacent land use. Specifically, the Northern Parcel is the parcel of land directly affected by setback encroachment. Owner, as the owner of the Northern Parcel supports the variance request and does not foresee any negative effects or impact arising from the Board’s decision to grant the variance request.

(b) Granting the variance request does not require any modification of the existing topography.

(c) Granting the variance request will change or have any effect on the existing traffic patterns on the public roadways or the private road that will become part of the Northern Parcel.

(d) Granting the variance request will not affect or require any change to the zoning of the adjacent properties.

(e) The application is being submitted using the form proscribed by the City of New Albany and the City of New Albany Zoning Code.

(f) Granting the variance request will have no negative effect on public health, safety, or general welfare.

(g) Granting the variance request will have no negative effect on the local school district.

Adjacent Landowners –

New Albany Portfolio II LLC
101 W. Big Beaver Rd., Ste 200
Troy, Michigan 48084
(PPN 222-003106-00)

Lancaster Pine Village Ltd.
222 E. 11th Ave.
Columbus, Ohio 43201
(PPN 222-003105-00)

Medical Center of New Albany LLC
170 N. Sunbury Rd.
Westerville, Ohio 43081
(PPN 222-003104-00)

Exchangeright Net-Leased Portfolio 50 DST
1055 E. Colorado Blvd., Ste 310
Pasadena, California 91106
(PPN 010-274854-00)

Huntington National Bank 7 Easton Oval
Columbus, Ohio 43219
(PPN 010-259223-00)

Terraza 7 LLC
11995 El Camino Real
San Diego, California 92130
(PPN 010-272111-00)

Nona Master Development LLC
4016 Townsfair Way, Suite 201
Columbus, Ohio 43219
(PPN 222-000670-00 and 222-000676-00)

The New Albany Company
P.O. Box 490
New Albany, Ohio 43054
(PPN 222-000673-00, 222-000688-00, 222-000668-00, and 222-000669-00)

New Albany Co LP
8000 Walton Pkwy., Ste 120
New Albany, Ohio 43054
(PPN 222-000549-00 and 222-000654-00)

The New Albany Co LLC –
P.O. Box 490
New Albany, Ohio 43054
(PPN 222-000314-00 and 222-002055-00)

TFTFP LLC
1991 Thistlewood Ct.
Columbus, Ohio 43235
(PPN 222-001983-00)

Jennifer S. Haag
1303 Poppy Hills Dr.
Blacklick, Ohio 43004
(PPN 222-002003-00 and 222-001993-00)

Gregory Nidiffer
7020 New Albany Condit Rd.
New Albany, Ohio 43054
(PPN 222-001992-00)

City of New Albany
99 West Main St.
New Albany, Ohio 43054
(PPN 222-005054-00 and 222-005057-00)

Epcon New Albany LLC
500 Stonehenge Pkwy.
Dublin, Ohio 43017
(PPN 222-005148-00 and 222-005147-00)

Exhibit B – Current Legal Description of Southern Parcel

Situated in the State of Ohio, County of Franklin, Village of New Albany, Lot 15, Section 8, Quarter Township 2, Township 2, Range 16, United States Military Lands and being 51.742 acres of land out of that tract as conveyed to Novus Services, Inc. by deed of record in Instrument Number 199707290057688, all references refer to the records of the Recorder's Office, Franklin County, Ohio and being more particularly bounded and described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 5113 at the centerline intersection of Central College Road with New Albany Condit Road (State Route 605);

Thence North $3^{\circ}31'16''$ East, with the centerline of said New Albany Condit Road, a distance of 125.94 feet to a point;

Thence North $86^{\circ}24'42''$ West, across the right-of-way of said New Albany Condit Road, a distance of 40.00 feet to an iron pin set in the westerly right-of-way of said New Albany Condit Road, the TRUE POINT OF BEGINNING;

Thence South $3^{\circ}31'16''$ West, with said westerly right-of-way line, a distance of 25.46 feet to an iron pin set at the point of curvature of a curve to the right in the northerly right-of-way line of said Central College Road;

Thence with said northerly right-of-way line the following courses and distances:

With the arc of said curve to the right (Delta = $90^{\circ}20'04''$, Radius = 50.00 feet) a chord bearing and distance of South $48^{\circ}41'18''$ West, 70.92 feet to the point of tangency;

North $86^{\circ}08'40''$ West, a distance of 1259.27 feet to the point of curvature of a curve to the right;

Thence with the arc of said curve to the right (Delta = $90^{\circ}06'47''$, Radius = 50.00 feet), a chord bearing and distance of North $41^{\circ}05'16''$ West, 70.78 feet to an iron pin set at the point of tangency in the easterly right-of-way line of New Albany Road East;

Thence North $3^{\circ}58'07''$ East, with said easterly right-of-way line, a distance of 1225.00 feet to an iron pin set at the point of curvature of a curve to the right;

Thence continuing with said easterly right-of-way line, with the arc of said curve to the right (Delta = $20^{\circ}36'30''$, Radius = 1250.00 feet) a chord bearing and distance of North $14^{\circ}16'22''$ East, 447.18 feet to an iron pin set;

Thence across said Grantor's tract the following courses and distances:

With the arc of a curve to the left (Delta = $101^{\circ}59'01''$, Radius = 40.00 feet), a chord bearing and distance of South $26^{\circ}24'53''$ East, 62.16 feet to an iron pin set at a point of compound curvature with the arc of a curve to the left (Delta = $24^{\circ}06'34''$, Radius = 205.00 feet), a chord bearing and distance of South $89^{\circ}27'41''$ East, 85.63 feet to an iron pin set at the point of tangency;

North $78^{\circ}29'02''$ East, a distance of 104.99 feet to an iron pin set;

North $84^{\circ}05'13''$ East, a distance of 171.01 feet to an iron pin set at the point of curvature of a curve to the right;

With the arc of said curve to the right (Delta = $30^{\circ}19'34''$, Radius = 983.00 feet), a chord bearing and distance of South $80^{\circ}45'00''$ East, 514.24 feet to an iron pin set at the point of tangency;

South $65^{\circ}35'13''$ East, a distance of 20.16 feet to an iron pin set at the point of curvature of a curve to the right;

With the arc of said curve to the right (Delta = $14^{\circ}20'18''$, Radius = 533.00 feet), a chord bearing and distance of South $58^{\circ}25'04''$ East, 133.04 feet to an iron pin set at the point of tangency;

South $51^{\circ}14'55''$ East, a distance of 122.59 feet to an iron pin set at the point of curvature of a curve to the left;

With the arc of said curve to the left ($\Delta = 35^{\circ}00'00''$, Radius = 167.00 feet), a chord bearing and distance of South $68^{\circ}44'55''$ East, a distance of 100.44 feet to an iron pin set at the point of tangency;

South $86^{\circ}14'55''$ East, a distance of 11.51 feet to an iron pin set at the point of curvature of a curve to the left;

With the arc of said curve to the left ($\Delta = 90^{\circ}00'22''$, Radius = 30.00 feet), a chord bearing and distance of North $48^{\circ}44'54''$ East, 42.43 feet to an iron pin set in said westerly right-of-way line of New Albany Condit Road (State Route 605);

Thence South $3^{\circ}44'43''$ West, with said westerly right-of-way line, a distance of 1459.87 feet to the TRUE POINT OF BEGINNING and containing 51.742 acres of land, more or less.

The basis of bearing for this description is South $3^{\circ}35'05''$ West for the centerline of New Albany Condit Road (State Route 605) as the same is shown on the plat entitled "New Albany Road East Central College Road Dedication and Easements" of record in Plat Book 86, Pages 78 and 79.

Exhibit C – Drawing of Proposed New Lot Boundaries

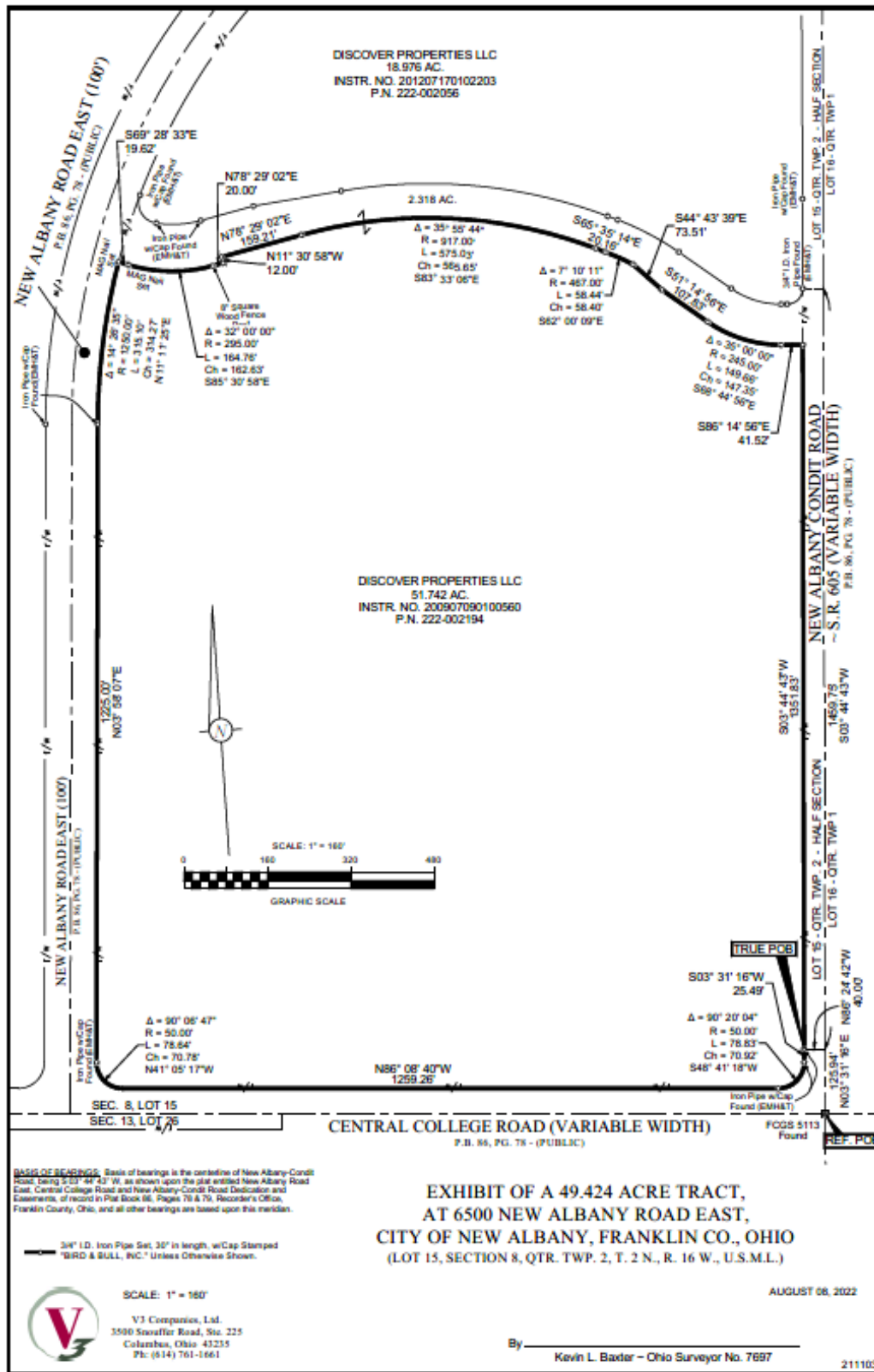
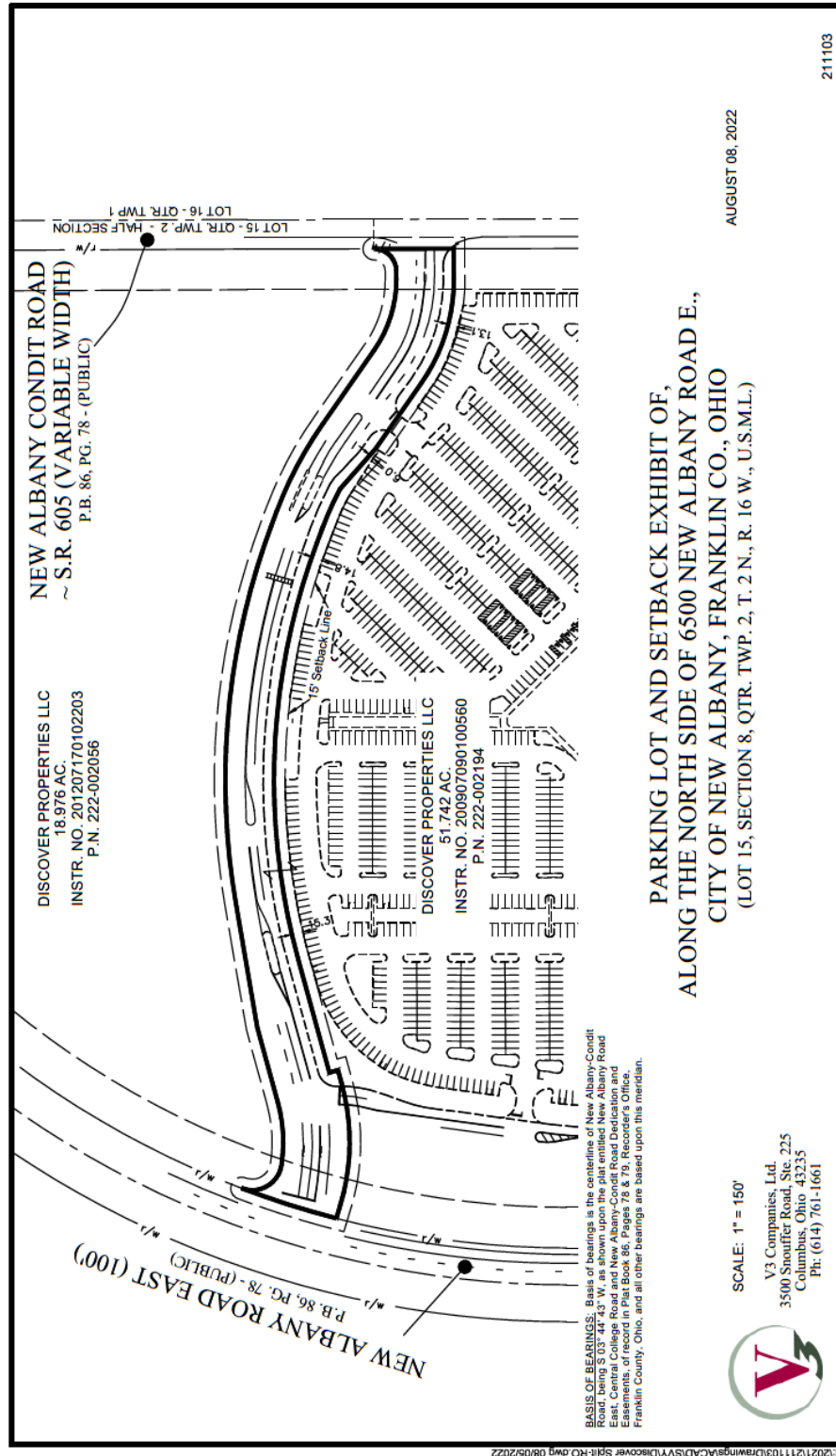
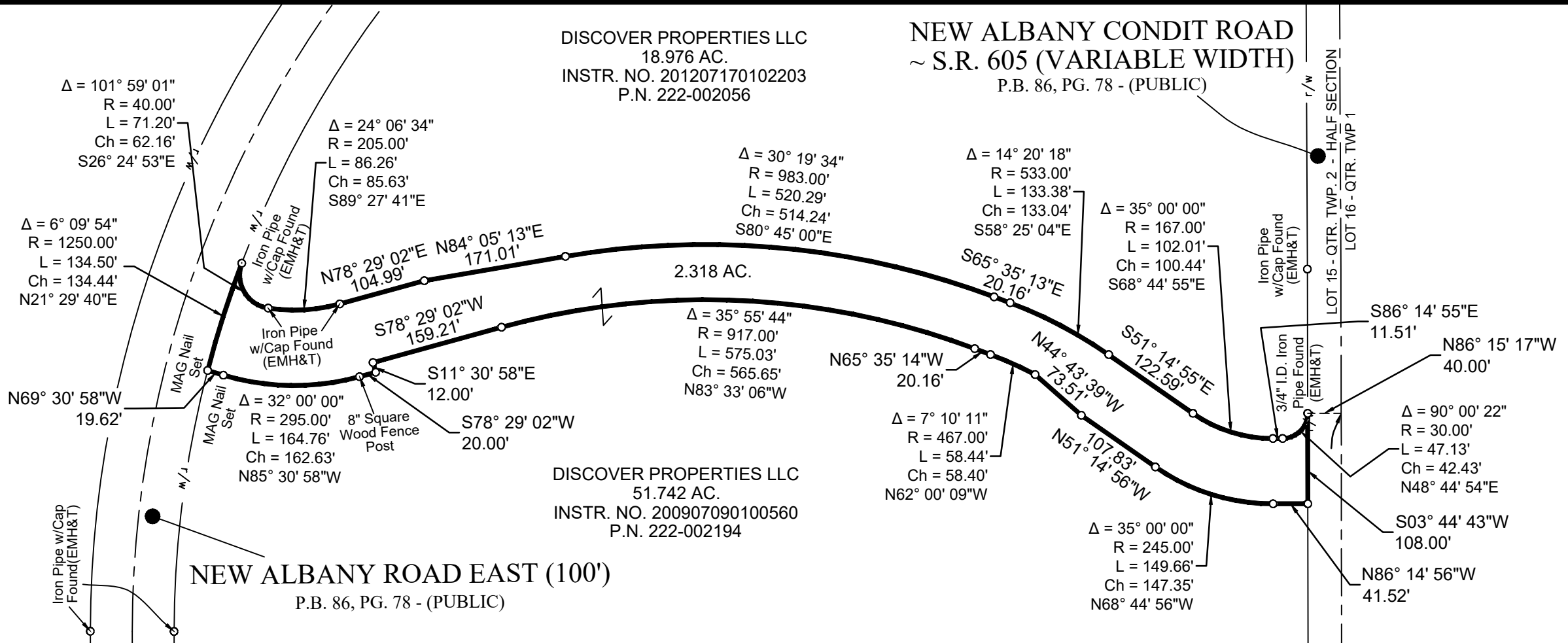


Exhibit D – Drawing Depicting Setback Encroachment



N:\2021\1211103\Drawings\ACAD\SVY\Discover Split-RO.dwg 08/05/2022



BASIS OF BEARINGS: Basis of bearings is the centerline of New Albany-Condit Road, being $S 03^\circ 44' 43'' W$, as shown upon the plat entitled New Albany Road East, Central College Road and New Albany-Condit Road Dedication and Easements, of record in Plat Book 86, Pages 78 & 79, Recorder's Office, Franklin County, Ohio, and all other bearings are based upon this meridian.

**EXHIBIT OF A 2.318 ACRE TRACT,
ALONG THE NORTH SIDE OF 6500 NEW ALBANY ROAD E.,
CITY OF NEW ALBANY, FRANKLIN CO., OHIO
(LOT 15, SECTION 8, QTR. TWP. 2, T. 2 N., R. 16 W., U.S.M.L.)**

$N 03^\circ 31' 16'' E$ a distance of 125.94 feet and $N 03^\circ 44' 43'' E$ a distance of 1,459.75 feet from FCGS Mon. No. 5113 found at the centerline intersection of New Albany Condit Road and Central College Road.

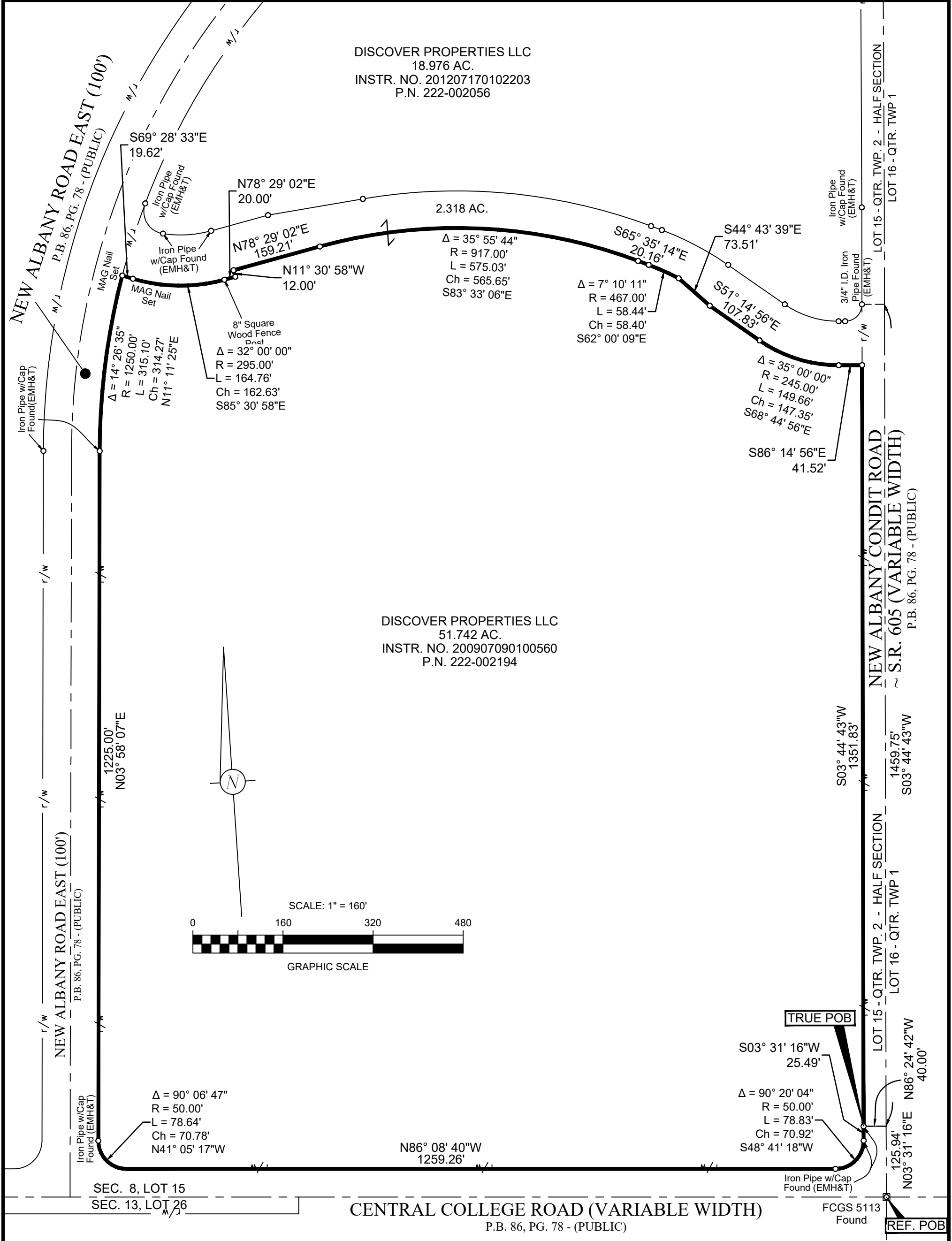


SCALE: 1" = 150'
V3 Companies, Ltd.
3500 Snouffer Road, Ste. 225
Columbus, Ohio 43235
Ph: (614) 761-1661

By _____
Kevin L. Baxter ~ Ohio Surveyor No. 7697

DECEMBER 15, 2021

211103



N: \2021\211103\Drawings\ACAD\SVY\VP03.1\Discover New Split.dwg 08/06/2022



**Board of Zoning Appeals Staff Report
September 26, 2022 Meeting**

**3070 HEAD OF POND DRIVE
SWIMMING POOL SETBACK VARIANCE**

LOCATION: 3070 Head of Pond Drive (PID: 222-001574-00)
APPLICANT: Mark Roehrenbeck
REQUEST: Variance to the pool setback requirements of Codified Ordinance section 1173.03(c) at 3707 Head of Pond Road
STRATEGIC PLAN: Neighborhood Residential
ZONING: Medium-Density Single-Family Residential District
APPLICATION: VAR-96-2022

Review based on: Application materials received on August 9, 2022 and on September 14, 2022.
Staff report prepared by Chelsea Nichols, Planner.

The applicant requests that their application be tabled to the October 24, 2022 Board of Zoning Appeals meeting. They are currently working on making changes to their plan and request extra time to finalize their revised proposal.

Based on the request, the following motion is appropriate:

Move to table application VAR-96-2022 to the October 24, 2022 Board of Zoning Appeals meeting.

Approximate Site Location:



Source: nearmap



**Board of Zoning Appeals Staff Report
September 26, 2022 Meeting**

**SITE D
LIMITATION TEXT SETBACK VARIANCE**

LOCATION: 13411 Worthington Road (PIDs: 094-106596-00.001 and 094-106740-00.000).
APPLICANT: MBJ Holdings LLC c/o Aaron Underhill, Esq.
REQUEST: (A) Variance to Business Park East Subarea L-GE zoning text section 1(d)(2)(d) to reduce the minimum pavement and building setback requirements from 50 feet to 25 feet along all perimeter boundaries, not adjacent to Worthington Road.
ZONING: Limited General Employment (L-GE)
STRATEGIC PLAN: Employment Center
APPLICATION: VAR-112-2022

Review based on: Application materials received August 26, 2022.

Staff report prepared by Chris Christian, Planner II.

I. REQUEST AND BACKGROUND

The applicant requests the following variance related to the construction of a new commercial building.

(A) Variance to Business Park East Subarea L-GE zoning text section 1(d)(2)(d) to reduce the minimum pavement and building setback requirements from 50 feet to 25 feet along all perimeter boundaries, not adjacent to Worthington Road.

II. SITE DESCRIPTION & USE

The overall 14.4 +/- acre development site is generally located east of Ganton Parkway and immediately south of Worthington Road in Licking County. The site is zoned L-GE, is currently being used with a concrete batch plant that is in the process of being relocated. Some of the surrounding uses include Meta's data center campus to the south, an AEP electric substation to the west, a new commercial building to the east and unincorporated commercial and residential development to the north.

III. EVALUATION

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

BZA 22 0926 Site D Setback Variance VAR-112-2022

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. ASSESSMENT

Considerations and Basis for Decision

(A) Variance to Business Park East Subarea L-GE zoning text section 1(d)(2)(d) to reduce the minimum pavement and building setback requirements from 50 feet to 25 feet along all perimeter boundaries, not adjacent to Worthington Road.

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

1. As part of the construction of a new commercial building on the property, the applicant requests a variance to reduce the required pavement and building setbacks from 50 to 25 feet along perimeter boundaries not adjacent to Worthington Road
2. It does not appear the variance is substantial. The variance does not modify the 50-foot pavement and building setback requirement along Worthington Road and the proposed variance only reduces the setback along property lines that are shared with adjacent commercially zoned and used properties. The Meta data center site is located directly south of the property, an AEP substation to the west and a new commercial building is currently under construction directly east of this site.
3. The variance preserves the spirit and intent of the GE zoning district and limitation texts as the setback requirement was established to minimize the impact on neighboring residential uses. Historically the PC and BZA have approved variances to reduce or eliminate more restrictive setback requirements established when residentially used properties are rezoned to commercial.

4. When the property was being annexed and rezoned via smaller, individual parcels, there were existing residentially neighboring this parcel. This created a temporary, “transitional” condition in which residentially used properties and commercially zoned properties were adjacent. However, since then the areas along the perimeter boundaries where the variance is being requested have been annexed into the city and zoned to allow for commercial uses. Due to these changed conditions, it does not appear that the larger setback is needed.
5. It appears there are special circumstances within these zoning districts that are not applicable to other lands. The Limited General Employment (L-GE) zoning district functions as an overlay with additional, more restrictive requirements than the standard General Employment (GE) zoning district requirements found in the city’s Codified Ordinance Chapter 1153. The “base” General Employment zoning district only requires a minimum 25-foot setback for buildings and service areas along the property lines where the variance is being requested. If this property was zoned under the traditional General Employment (GE) classification rather than with the limited overlay, this variance would not be needed.
6. The essential character of the surrounding area will not be altered by granting the variance request. This variance request does not eliminate the architectural, screening, and landscaping requirements for this property and the reduced setback requirement only applies to adjacent commercial properties.
7. It does not appear that the variance would adversely affect the delivery of government services, 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 requested variance should the Board of Zoning Appeals find that the application has sufficient basis for approval. It does not appear that the essential character of the surrounding area will be altered if the variance is granted as the property is surrounded by commercial development along the perimeter boundaries where the variance is requested. When the site was zoned in 2009, properties adjacent to this site were zoned to allow for residential uses. In these conditions, larger setbacks are provided in order to provide visual and physical separation between dissimilar uses. Due to these changed conditions, the larger setback is no longer necessary therefore the variance request is not substantial and meets the spirit and intent of the requirement.

The zoning requirements for the Licking County portion of the New Albany business park have evolved since its beginnings in 2009. Recent limitation texts allow for the elimination of setbacks where commercial properties abut one another.

V. ACTION

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

Move to approve application VAR-112-2022.

Approximate Site Location:



Source: NearMap

Permit # _____
Board _____
Mtg. Date _____



Community Development Planning Application

Project Information	Site Address <u>0 and 13411 Worthington Road, New Albany, OH 43054</u>																																																												
	Parcel Numbers <u>094-106596-00.001 and 094-106740-00.000</u>																																																												
	Acres <u>14.386 +/- Acres</u> # of lots created _____																																																												
	<table border="1"><thead><tr><th>Choose Application Type</th><th colspan="4">Circle all Details that Apply</th></tr></thead><tbody><tr><td><input type="checkbox"/> Appeal</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Certificate of Appropriateness</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Conditional Use</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Development Plan</td><td>Preliminary</td><td>Final</td><td>Comprehensive</td><td>Amendment</td></tr><tr><td><input type="checkbox"/> Plat</td><td>Preliminary</td><td>Final</td><td></td><td></td></tr><tr><td><input type="checkbox"/> Lot Changes</td><td>Combination</td><td>Split</td><td>Adjustment</td><td></td></tr><tr><td><input type="checkbox"/> Minor Commercial Subdivision</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Vacation</td><td>Easement</td><td></td><td>Street</td><td></td></tr><tr><td><input checked="" type="checkbox"/> Variance</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Extension Request</td><td></td><td></td><td></td><td></td></tr><tr><td><input type="checkbox"/> Zoning</td><td>Amendment (rezoning)</td><td></td><td>Text Modification</td><td></td></tr></tbody></table>	Choose Application Type	Circle all Details that Apply				<input type="checkbox"/> Appeal					<input type="checkbox"/> Certificate of Appropriateness					<input type="checkbox"/> Conditional Use					<input type="checkbox"/> Development Plan	Preliminary	Final	Comprehensive	Amendment	<input type="checkbox"/> Plat	Preliminary	Final			<input type="checkbox"/> Lot Changes	Combination	Split	Adjustment		<input type="checkbox"/> Minor Commercial Subdivision					<input type="checkbox"/> Vacation	Easement		Street		<input checked="" type="checkbox"/> Variance					<input type="checkbox"/> Extension Request					<input type="checkbox"/> Zoning	Amendment (rezoning)		Text Modification	
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	Description of Request: <u>Request for a variance to reduce the minimum pavement and building setback requirements from perimeter boundaries of the site, which are not adjacent to public right-of-way, from 50 feet to 25 feet.</u>																																																												
Contacts	Property Owner's Name: <u>MBJ Holdings LLC, c/o Aaron L. Underhill, Esq.</u>																																																												
	Address: <u>8000 Walton Parkway, Suite 260</u>																																																												
	City, State, Zip: <u>New Albany, OH 43054</u>																																																												
	Phone number: <u>614.335.9320</u> Fax: <u>614.335.9329</u>																																																												
	Email: <u>aaron@uhlfirm.com</u>																																																												
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	Email: <u>aaron@uhlfirm.com</u>																																																												
Signature	Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.																																																												
	<table><tr><td>Signature of Owner</td><td>By: <u></u></td><td>Date: <u>8-24-2027</u></td></tr><tr><td>Signature of Applicant</td><td>By: <u></u></td><td>Date: <u>8-24-2027</u></td></tr></table> <p><small>Aaron L. Underhill, Attorney for Applicant</small></p>	Signature of Owner	By: <u></u>	Date: <u>8-24-2027</u>	Signature of Applicant	By: <u></u>	Date: <u>8-24-2027</u>																																																						
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APPLICANT:

MBJ Holdings
8000 Walton Parkway, Suite 120
New Albany, OH 43054

PROPERTY OWNER:

MBJ Holdings
8000 Walton Parkway, Suite 120
New Albany, OH 43054

ATTORNEY:

Aaron L. Underhill
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, OH 43054

SURROUNDING PROPERTY OWNERS:

Phyllis and James Foor, Trustees
13410 Worthington Road
New Albany, OH 43054

Rebecca Burns
13600 Lucille Lynd Road
New Albany, OH 43054

COI New Albany 445 LLC
4900 Main Street, Suite 400
Kansas City, MO 64112

AEP Ohio Transmission
Company, Inc.
1 Riverside Plaza
Columbus, OH 43215

Licking Rural Electrification, Inc.
11339 Mt. Vernon Road
Utica, OH 43080

Premier Storage of New Albany LLC
500 Amity Road, Suite 5B 60
Conway, AR 72032

Variance Application Supporting Statement – 14.386+/- acres

August 26, 2022

Variance Request

This variance request is to reduce the minimum pavement setback requirements along perimeter boundaries of the subject site which are not adjacent to public right-of-way, from 50 feet to 25 feet. The subject property consists of 14.386+/- acres located to the south of and adjacent to Worthington Road and generally east of Ganton Parkway in New Albany, Ohio, known as Licking County Auditor's Parcel Numbers 094-106740-00.000 and 094-106596-00.001 (the "Property").

A preliminary plan for development of the site accompanies this statement. A warehousing and distribution center consisting of approximately 234,100 square feet is planned to be constructed on the Property beginning late this year or early next. It is to be located to the west of a parcel with a similar building that is currently under construction. The Property is located to the north of the Facebook data center site.

Applicable Zoning Standards

The Property is located within Subarea 1 of the Business Park East Zoning District pursuant to a zoning application that was approved in 2013. This subarea is zoned in the L-GE, Limited General Employment classification. The zoning limitation text for this subarea provides for a minimum required pavement and building setback of 50 feet from perimeter boundaries of Subarea 1 that do not front on a public street. The applicant seeks a variance to reduce the minimum pavement setback from these boundaries, not adjacent to Worthington Road, from 50 feet to 25 feet.

Analysis of Variance Factors

The City's Codified Ordinances (the "Code") provides the factors to be considered by the Board of Zoning Appeals when reviewing a variance application. Section 1113.06 provides that the Board of Zoning Appeals shall approve a variance if all of the findings are made which are detailed in subsections (a) through (e) thereof (detailed below). Additionally, in *Duncan v. Middlefield* (1986), 23 Ohio St.3d 83, the Ohio Supreme Court provided factors that must be weighed in addition to that required by local code. It should be noted that the case provides for a weighing of factors. Not all of them must be met and no single factor controls. The test is described as being a determination of the existence of a "practical difficulty."

Codified Ordinance Factors

The factors that are to be considered by the BZA when reviewing a variance request pursuant to Code Sections 1113.06(a)-(e) are in bold below, with each being followed by an analysis of that factor in the context of this particular variance request.

(a) 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.

The setback standard that is in question applies to boundaries of a zoning subarea rather than to the boundaries of individual sites within that subarea. Code Sections 1153.04(c) and (d) provide that, in the GE, General Employment zoning district, the minimum side yard and minimum rear yard requirement is 25 feet. Furthermore, Code Section 1153.04(f) provides for a minimum side yard and rear yard setback of 50 feet in the GE district adjacent to property where residences are a permitted use. If the site were to be zoned GE, rather than subject to the provisions of the limitation text, the required building and pavement setback along the western, eastern and southern property lines would be 25 feet as the adjacent sites are zoned to allow for the development and operation of non-residential uses, also having the L-GE zoning classification.

The currently applicable minimum pavement setback of 50 feet as applied to the eastern and southern boundaries of the Property were put into place at a time when Subarea 1 of the Business Park East Zoning District abutted properties to the east and south that were not annexed into the City nor zoned for uses that were compatible with those permitted in Subarea 1. Now that those adjacent properties are incorporated within New Albany and zoned with the same classification as the Property, it is more appropriate to apply the standard 25-foot pavement setback that applies in the GE district.

(b) 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.

Most, if not all, of the zoning limitation texts in the Business Park provide for a minimum pavement setback of 25 feet from side and rear boundary lines where adjacent parcels have compatible zoning classifications that do not allow residential uses. In this case, the Property's western, eastern and southern boundaries abut parcels with compatible zonings that do not permit residential uses. Therefore, it is positioned in much the same manner as if those adjacent parcels and this Property were within the same zoning district.

(c) That the special conditions and circumstances do not result from the action of the applicant.

The special conditions and circumstances driving the need for this variance were not caused by the applicant. Rather, they result from the fact that parcels in the area were annexed and zoned at separate times, thus not allowing all of the acreage in the area to be comprehensively zoned at once. Had it been possible to zone the adjacent parcels to the east and south at the same time as the Property, then it is highly likely that a 25-foot minimum pavement (and building) setback would have been applied the Property.

(d) 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.

As noted above, the grant of this variance will result in placing the Property in a similar (but no better) position than other similarly-zoned properties throughout the Business Park.

(e) 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.

This variance will not change the types of uses that can be operated on the Property nor will it alter the effect that permitted uses and development would have on the health and safety of persons working or residing in the vicinity. Adjacent properties with similar or compatible uses as are allowed on the Property have a minimum 25-foot setback for pavement and buildings. This variance will result in a 50-foot building setback and a 25-foot minimum setback from the western, eastern and southern boundary lines of the Property, which is more restrictive than similarly situated sites.

Duncan v. Middlefield Factors

The factors to be considered and weighed in determining whether a property owner seeking an area variance has encountered practical difficulties in the use of its property include, according to the Ohio Supreme Court in *Duncan v. Middlefield*, those which are bolded below (analysis of this variance is provided after each). Again, the case provides for a weighing of factors. Not all of them must be met and no single factor controls.

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

There can be beneficial use of the property without the variance. It may also yield a reasonable return without one. However, this development will enhance the economic return to the City and the developer by not arbitrarily placing this site at a disadvantage as to the dimensions within which development may occur.

(2) Whether the variance is substantial;

Given that the underlying GE zoning regulations provide for a standard 25-foot minimum pavement setback requirement from side and rear lot lines which do not abut properties where residential uses are permitted, this variance is not substantial. It merely seeks to place the Property on equal footing with adjacent tracts.

(3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

See earlier responses.

(1) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

This variance will have no such adverse effects.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

The Property was zoned by this applicant with knowledge of the restriction. However, as explained earlier this statement, the evolution of annexations and zonings in the area since that time have changed required and preferred setback needs.

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

No other method short of a full rezoning the Property can obviate the need for the variance.

(7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

The spirit and intent of the underlying zoning requirement will be observed and substantial justice will be done by granting the variance. Again, given the development of parcels adjacent to the Property, the proposed setback is appropriate. This variance will serve substantial justice by positioning the parcel with the same pavement setback requirement as applies to properties throughout the City's GE and L-GE zoning districts.

14.386 ACRES

Situated in the State of Ohio, County of Licking, City of New Albany, lying in Section 17, Township 2, Range 15, United States Military District, being part of that 55.397 acre tract conveyed to MJB Holding, LLC by deed of record in Instrument Number 201904180007159 (all references refer to the records of the Recorder's Office, Licking County, Ohio) being more particularly described as follows:

Beginning, for reference, in the centerline of Lucille Lynd Road SW, at the common corner of Sections 14, 15, 16, and 17 of said Township 2;

Thence South $86^{\circ} 45' 34''$ East, with the line common to Sections 14 and 17, a distance of 916.11 feet to a magnetic nail set at the corner common to that 21.601 acre tract conveyed to Board of Commissioners of Licking County, Ohio by deed of record in Instrument Number 200510280034302, and that 6 acre tract conveyed to MJB Holdings, LLC by deed of record in Instrument Number 201905220009862;

Thence South $03^{\circ} 02' 51''$ West, with the line common to said 21.601 and 6 acre tracts, a distance of 85.35 feet to an iron pin set in the southerly right-of-way line of Worthington Road SW at the southeasterly corner of said 21.601 acre tract;

Thence South $81^{\circ} 57' 38''$ West, with said southerly right-of-way line, the southerly line of said 21.601 acre tract, a distance of 5.84 feet to an iron pin set, the TRUE POINT OF BEGINNING;

Thence South $02^{\circ} 55' 57''$ West, across said 55.397 acre tract, a distance of 1217.15 feet to a point in a northerly line of that 48.517 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201911010024065;

Thence with the lines common to said 55.397 and 48.517 acre tracts, the following courses and distances:

North $86^{\circ} 52' 04''$ West, a distance of 508.41 feet to a 5/8 inch rebar capped "CENTRAL SURVEYING";

North $03^{\circ} 07' 56''$ East, a distance of 260.00 feet to a 5/8 inch rebar capped "CENTRAL SURVEYING";

North $86^{\circ} 52' 04''$ West, a distance of 75.00 feet to a 5/8 inch rebar capped "CENTRAL SURVEYING";

North $03^{\circ} 07' 56''$ East, a distance of 664.89 feet to an iron pin set in said southerly right-of-way line, the southerly line of said 21.601 acre tract, at a corner common to said 55.397 acre tract and that 48.517 acre tract conveyed to AEP Ohio Transmission Company, Inc. by deed of record in Instrument Number 201911010024065;

Thence with said southerly right-of-way line, the southerly line of said 21.601 acre tract, the following courses and distances

North $52^{\circ} 29' 17''$ East, a distance of 45.11 feet to a 5/8 inch rebar found;

North $55^{\circ} 48' 03''$ East, a distance of 268.77 feet to a 5/8 inch rebar w/ aluminum cap "ODOT" found;

North $68^{\circ} 21' 17''$ East, a distance of 143.73 feet to a bent 3/4 inch rebar found; and

North $81^{\circ} 57' 38''$ East, a distance of 204.61 feet to the TRUE POINT OF BEGINNING, containing 14.386 acres, more or less, of which 12.250 acres lies within Auditor's Parcel Number 094-106740-00.000, and 2.136 acres lies within Auditor's Parcel Number 094-106596-00.001.

14.386 ACRES

-2-

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

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone, NAD 83 (1986). The portion of the north line of Section 17, having a bearing of South 86° 45' 34" East is designated as the "basis of bearings" for this survey.

This description was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey

PRE-APPROVAL	
LICKING COUNTY ENGINEER	
<input checked="checked" type="checkbox"/> APPROVED	<input type="checkbox"/> CONDITIONAL
APPROVED BY:	<i>JMM</i>
DATE:	9/9/21

JMM djf
14_386 ac 20210850-VS-BNDY-01.docx

EVANS, MECHWART, HAMBLETON & TILTON, INC.

Joshua M. Meyer
Joshua M. Meyer
Professional Surveyor No. 8485

