



New Albany Board of Zoning Appeals
September 26, 2022 Minutes

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

Those answering roll call:

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

Staff members present: Mr. Stephen Mayer, Development Services Manager; Chris Christian, Planner; Chelsea Nichols, Planner; Josie Taylor, Clerk.

Moved by Mr. Jacob to approve the August 22, 2022 meeting minutes, seconded by Ms. Samuels. Upon roll call: Mr. Jacob, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. Smith, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

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

Ms. Nichols said the applicant for the second item on the Agenda, VAR-96-2022, requested to have the application tabled.

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-95-2022 Variance

Variance to the pavement set back 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.

Ms. Nichols presented the staff report.

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

Mr. Garrett Humes, counsel for Discover Properties, LLC, stated the applicant was not requesting a huge change and he would be happy to answer any questions.

Mr. Schell asked if the adjacent landowners had been notified.

Ms. Nichols stated yes.

Mr. Schell asked if they had provided any comments.

Ms. Nichols stated some owners had called to ask for additional details, but concluded this application did not affect their property.

Mr. Schell asked if there had then been no complaints.

Ms. Nichols affirmed there had not been any complaints.

Mr. Smith asked if the applicant had entered into an agreement on the southern parcel at this time.

Mr. Garrett stated the applicant had entered into a purchase agreement and one of the contingencies in the agreement was the approval of this zoning variance.

Mr. Smith asked if the purchaser was aware of this.

Mr. Garrett stated yes and noted they were all on the same page.

Mr. LaJeunesse asked staff if there was any business park precedent for this.

Ms. Nichols stated she was not sure of the lot lines and perhaps Mr. Mayer may have more information.

Mr. Mayer stated yes and noted a location in the business park where this had occurred.

Mr. LaJeunesse stated thank you.

Moved by Mr. LaJeunesse to accept the staff report for VAR-95-2022 into the record, seconded by Mr. Schell. Upon roll call vote: Mr. LaJeunesse, yea; Mr. Schell, yea; Mr. Jacob, yea; Mr. Smith, yea; Ms. Samuels, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Smith to approve variance VAR-95-2022, seconded by Mr. Jacob. Upon roll call vote: Mr. Smith, yea; Mr. Jacob, yea; Mr. Schell, yea; Ms. Samuels, yea; Mr. LaJeunesse, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

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

Moved by Mr. LaJeunesse to table variance VAR-96-2022 until the regularly scheduled October 24, 2022 meeting, seconded by Mr. Schell. Upon roll call vote: Mr. LaJeunesse, yea; Mr. Schell, yea; Mr. Jacob, yea; Mr. Smith, yea; Ms. Samuels, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

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

Mr. Christian presented the staff report.

Mr. LaJeunesse asked if the applicant would like to provide comments.

Mr. Aaron Underhill, Underhill & Hodge for the applicant, discussed the changes in the area and the reasons for the variance.

Mr. Schell asked if the parcel on the right side did not have the same limitations on it.

Mr. Underhill stated right, that was done due to commercial zoning.

Ms. Wiltrout asked if this had been zoned commercial then the setback would have been 25 feet but because it was zoned LGE it was fifty (50) feet.

Mr. Underhill stated right.

Ms. Wiltrout asked if this should be further considered, could a situation arise where a building would be zoned LGE and they would not want to shorten the setback.

Mr. Christian stated that in each rezoning staff looked at the existing conditions surrounding it and they tried to be sensitive to those neighbors. Mr. Christian stated that some newer texts did account for changing conditions, but the text here had not included that.

Ms. Wiltrout stated that if these were residential neighbors then fifty (50) feet would not be enough.

Mr. Underhill stated they looked at existing conditions and, where similar existing conditions surrounded a parcel, it made sense to have the same conditions on that parcel.

Mr. Schell asked if the neighbors had any issues.

Mr. Christian stated no.

Mr. LaJeunesse asked if the other side of the street had been zoned commercial.

Mr. Christian stated it was a little split, one property was zoned to permit residential uses which had the screening required by the Code and the other was zoned to allow commercial uses.

Ms. Samuels asked if the variance was only on three sides.

Mr. Christian stated yes, it would not be on the Worthington Road portion.

Mr. LaJeunesse asked if there was precedent on doing this.

Mr. Christian stated yes, the BZA and Planning Commission had reduced setbacks in similar situations.

Mr. LaJeunesse stated thank you.

Mr. Jacob asked if, at this point, this zoning would bring almost complete uniformity for the parcels here.

Mr. Christian stated yes.

Moved by Mr. Smith to accept the staff report for VAR-112-2022 into the record, seconded by Mr. Jacob. Upon roll call vote: Mr. Smith, yea; Mr. Jacob, yea; Mr. Schell, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Moved by Mr. Smith to approve variance VAR-112-2022, 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. LaJeunesse asked if there was any Other Business.

Mr. Christian stated not at this time.

Poll Members for Comment:

None.

Meeting adjourned at 7:22 p.m.

Submitted by Josie Taylor.



**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



**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.

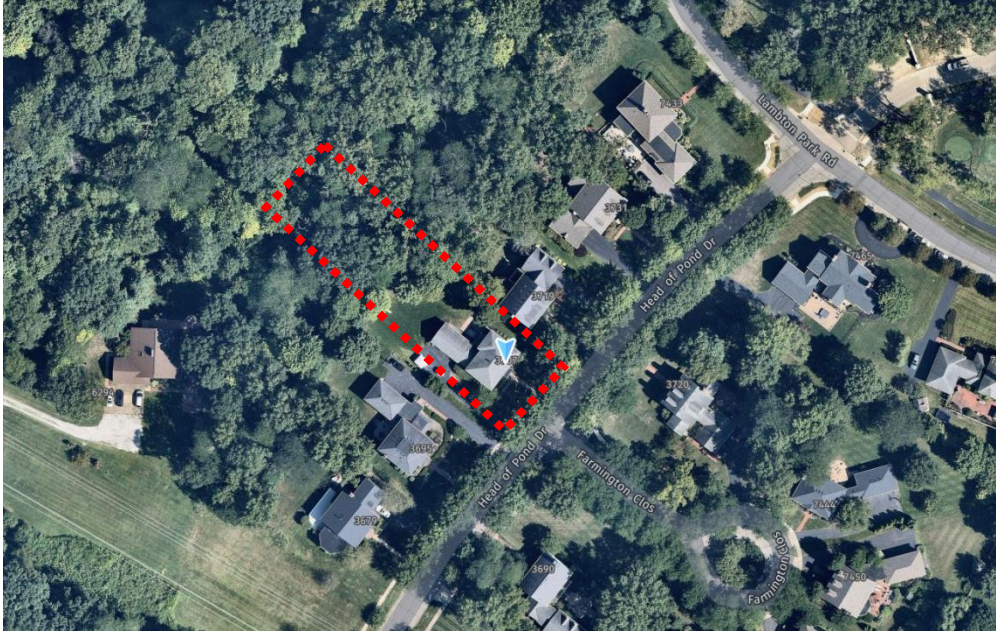
Staff report prepared by Chelsea Nichols, Planner.

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.

VII. 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 whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

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

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

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

III. 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:

7. 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
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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