

New Albany Planning Commission

Wednesday, January 17, 2024 Meeting Minutes - APPROVED

I. Call to order

The New Albany Planning Commission conducted a regular meeting on Wednesday, January 17, 2024 in the New Albany Village Hall. Chair Kirby called the meeting to order at 7:02 p.m. and asked to hear the roll.

II. Roll call

Those answering roll call:

Mr. Kirby, Chair	present
Mr. Wallace, Vice-Chair	present
Mr. Schell, Secretary	present
Ms. Briggs	present
Mr. Larsen	present
Council Member Wiltrout	present

Having all voting members present, the commission had a quorum to transact business.

Staff members present: Law Director Albrecht, Development Engineer Albright, Planner Cratic-Smith, Planning Manager Mayer, Deputy Clerk Madriguera.

III. Action on minutes: December 18, 2023.

Chair Kirby asked if there were any corrections to the minutes. Hearing none, he moved for approval of the December 18, 2023 meeting minutes. Commissioner Briggs seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Ms. Briggs yes, Mr. Wallace yes, Mr. Schell yes, Mr. Larsen yes. Having five yes votes, the December 18, 2023 meeting minutes were approved as submitted.

IV. Additions or corrections to agenda

Chair Kirby asked whether there were any additions or corrections to the agenda.

Planning Manager Mayer responded that there was one correction. The applicant for the first four applications had requested that the applications be tabled until the regular commission meeting scheduled for March 18, 2024, or sooner subject to staff approval. He explained that work was ongoing on the applications and they may be ready prior to the March 18th meeting, however the request was for March 18th in order to ensure readiness.

Chair Kirby administered the oath to all present who would be addressing the commission. He further reminded everyone to silence their cell phones.

V. Hearing of visitors for items not on tonight's agenda

Chair Kirby asked if there was anyone present who wished to address the commission for an item not on the agenda. Hearing none, he addressed the first four cases on the agenda.

VI. Cases:

FDP-87-2023, FPL-88-2023, FPL-91-2023, FPL-92-2023

Chair Kirby stated that, as mentioned by staff, the applicant in the first four cases on the agenda, the Courtyards at Haines Creek, had requested that the cases be laid upon the table until the Planning Commission's regular meeting on March 18, 2024 or sooner. He further confirmed with Planning Manager Mayer that the tabling of all four of the applications could be accomplished with one motion.

Commissioner Wallace moved to table FDP-87-2023, and the three associated plats, FPL-88-2023, FPL-91-2023, and FPL-92-2023 to the regular meeting on March 18th or sooner, subject to staff approval and in accordance with notification requirements. Commissioner Larsen seconded the motion.

Chair Kirby asked if there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Wallace yes, Mr. Larsen yes, Mr. Schell yes, Ms. Briggs yes, Mr. Kirby yes. Having five yes votes, the motion passed and FDP-87-2023, FPL-88-2023, FPL-91-2023, and FPL-92-2023 were laid upon the table until the March 18, 2024 regular meeting of the Planning Commission or sooner, subject to staff approval and in accordance with notification requirements.

Chair Kirby introduced VAR-89-2023 and asked to hear from staff.

VAR-89-2023 Variances

Variances to C.O. 1154.12(b)(3) to allow both outdoor storage and indoor storage of hazardous materials to encroach into the setback where code requires such material to be at least 200 feet from all property lines at 3195 Harrison Road (PID: 095-111732-00.000, 095-111564-00.000).

Applicant: Tuan Q. Luu with MDG Architecture Interiors on behalf of Rinchem Company LLC

Planning Manager Mayer noted that the application was heard at the prior meeting but tabled because the applicant was not present. Planning Manager Mayer delivered the staff report.

Commissioner Larsen asked what the building setback minimums were and what the setbacks for hazardous material were.

Planning Manager Mayer answered that the setback for any type of hazardous storage whether it be interior or exterior, and for buildings is 200-feet from the property line and he indicated it on the site plan.

Chair Kirby asked for comments from engineering.

Development Engineer Albright stated there were no comments from engineering.

Applicant Matt Jensen, Vice President of Rinchem's warehousing operations came to the lectern. Mr. Jensen apologized for not attending the commission meeting in December and explained that he thought that virtual attendance was sufficient. Mr. Jensen stated that Rinchem has been storing chemicals for 46 years and that they are the best and safest

company in the industry. It is shown from their safety and environmental records, compared to their competitors. He further explained that they support the manufacturing of semi-conductors by the safe storage and transportation of chemicals and that semi-conductors cannot be made without these chemicals. They are very confident about the safe storage of these chemicals, but transportation of the chemicals creates risk, which they minimize by locating closely to the semi-conductor manufacturing facility. When this property was selected it was the closest to the semi-conductor manufacturing facility.

Chair Kirby asked who owned the property to the north and to the east.

Planning Manager Mayer answered that he would look it up presently.

Mr. Jensen answered that he thought one of the owners was MBJ Holdings.

Commissioner Schell asked the applicant whether, when the land was purchased, they were aware of the setback requirement. He also asked whether other ways of organizing the layout of the property, more specifically whether there was an option where storage of the chemicals could be outside of the setback.

Mr. Jensen responded yes, they were aware of the setback requirement. When they purchased the property they initially thought that they could meet all of the setback requirements, but then learned that the drainage easement required space, and subsequently determined this organization was the best. He further explained that if Rinchem was just planning for the initial state and no potential expansion in New Albany, then the setbacks could be maintained. However, this organization contemplates long term plans as well as distance. They were trying to avoid having multiple locations in the city.

Commissioner Briggs confirmed that Rinchem's ultimate goal was to have a single facility.

Mr. Jensen agreed and stated this was phase one and they were unsure when the trigger point for phase two would be. It depended on how semiconductor manufacturing grows.

Council Member Wiltrout stated that one of the factors the commission is required to consider when reviewing an application for a variance is whether this property is unique, or whether the needs were unique, such that a variance is required. She asked Mr. Jensen what was unique about his situation.

Mr. Jensen replied that the ability to expand is critical. Other elements include how Rinchem builds facilities to optimize site circulation, iso container containment, how potential spillage and drainage is handled, and how chemicals are contained until they are transported. Regarding drainage and wastewater handling, he stated Rinchem always overbuilds and exceeds safety requirements to ensure they have sufficient containment for any type of spill.

Council Member Wiltrout thanked Mr. Jensen and stated that she had to believe that storage of chemicals was contemplated when the city established its TMD standards. She asked staff what the normal setbacks are for hazardous chemical storage.

Planning Manager Mayer responded that staff did not contemplated storage of chemicals until now, and TMD is the only land use category that allows for this type of hazardous use storage.

Council Member Wiltrout thanked staff and stated that she was glad Rinchem was here, and that New Albany is glad this industry is coming. She asked Mr. Jensen what other

options were considered and what was his vision for the present lot and whether the adjacent lot was considered.

Applicant Simone O'Halloran of MDG Architecture/Interiors explained that they focused on optimization of site in terms of truck circulation, and also Rinchem's operation when designing the layout of this site.

Commissioner Larsen asked whether they looked at an option where the chemicals are contained within the 200 feet.

Ms. O'Halloran responded yes, that was an initial consideration. They wanted to push everything as far away from the residences as possible, which is why it encroaches on the east, but wanted to be sure that there was sufficient room for trucks to circulate the site.

Commissioner Schell asked whether the applicants had investigated purchasing additional land.

Mr. Jensen responded that it was his understanding that additional land on the north and east sides is not available.

Planning Manager Mayer added that COI New Albany owned the property to the east, and MBJ Holdings owned the property to the north.

Commissioner Larsen stated that there must be a solution where outdoor storage of the hazardous waste stays within the setback and the building violates the setback.

Mr. Jensen responded that the four ISO containers will be 100% contained within a space and functionally, it is like a building. He added that Rinchem does not handle open air chemicals.

Commissioner Larsen continued that nothing is foolproof.

Mr. Jensen stated that this facility and the ISO containers would be built to a standard that is three times the standard required by law.

Commissioner Schell stated that he would be much more likely to vote for the building to encroach into the setback than for the chemicals to encroach into the setback.

Chair Kirby added that there is storage within the building as well and that counts.

Commissioner Schell remarked that the building is completely enclosed.

Chair Kirby added that the building is surrounded by a 10-foot concrete wall.

Mr. Jensen responded that he understood and stated that he wanted to emphasize that containment was the key to success with this facility; these are all packaged materials and there was constant training regarding handling spills.

Chair Kirby stated that in layman's terms this would be similar to beer delivery, the containers remained sealed at all times during delivery. He added that the facility looked great, the lot just looked too small.

Mr. Jensen replied that Chair Kirby's comparison to beer delivery was correct. He explained the location of the containers and how the containers moved through the facility. He further remarked that the drainage easement required space but there was nothing that could be done about that.

Commissioner Schell asked staff whether there had been any response from the property owners to the east or to the north.

Planning Manager Mayer responded that the property owners to the east and to the north have not responded, but staff has heard from the residential neighbors.

Chair Kirby recognized Aaron Underhill, Attorney for MBJ Holdings, the property to the north and asked whether Mr. Underhill was comfortable commenting on his client's view of the encroachment.

Mr. Underhill stated that he was present for another application and that he had not talked to his client about the subject property or the variance request so he did not know their view of the encroachment. Nonetheless, he remarked that he was reasonably confident that MBJ knew of the use when they sold the property to Rinchem. He further stated that he could make a phone call.

Chair Kirby continued that a statement of agreement or no objection from the owner of the property bordering the encroachment would be helpful. This case presented a spirit and intent problem with the *Duncan* criteria. It would be easier for the application to succeed if they knew whether the adjacent property owners agreed.

Commissioner Schell agreed. He stated that he applauded the applicant for getting this as far away from the residents as possible, but in accordance with Chair Kirby's observations, it would be helpful to hear from the adjacent property owners.

Commissioner Wallace asked the applicant to help the commission understand how this facility operates on a typical day.

Mr. Jensen explained that it is a logistics facility and one of the keys is consolidation. Rinchem facilitates consolidation of the materials and it facilitates transportation. Consolidation of the materials improves the impact on the environment. The property itself is organized for site circulation, the flow of the trucks and the containers through the facility. He further explained that if there is a spill it is contained on the loading dock. Because of the size and nature of the ISO containers, a gantry crane was required to pick them up and move them. He indicated the planned future phase of the warehouse facility.

Commissioner Wallace asked whether any hazardous materials were stored inside the warehouse.

Mr. Jensen replied yes, within the warehouse and the ISO containers. He explained that there are acids and bases, and none of the materials that are stored have carcinogens in them, so they would not introduce risk to the environment if they became airborne.

Commissioner Wallace observed that he was not sure whether there was much of a difference between 200 feet or 30 feet if the chemicals became airborne. He continued that the variance request was about as close to the property line as it could get. He continued that this request might be more palatable if there was a bit more distance from the property line - getting closer to the 200-foot setback.

Mr. Jensen replied that he understood the comment and explained that as the turns and access were tightened, the risk increased. The yard is designed to minimize risk.

Commissioner Wallace stated that he was not sure if the applicant planned to table this application tonight but the applicant's testimony about safety were not supported by

evidence in the record before the commission. It would be difficult for the commission to support this request which purports to rest on a safety record without evidence of that safety and the commission would like to see something.

Mr. Jensen responded that he appreciated the comment and that Rinchem's goal is to make everyone comfortable. He continued that he was happy to provide evidence of Rinchem's safety record. He hoping that the application would not be tabled tonight, but want everyone to be comfortable.

Council Member Wiltrout stated that she would be interested in knowing whether Rinchem's other facilities had similar setbacks, and whether any were within 35-feet.

Mr. Jensen replied that most of their sites comply with local requirements, but he did not know off the top of his head whether any were within 35-feet.

Chair Kirby asked for other questions from the commission. Hearing none, he opened the public hearing.

Paul Weinberger, 106 Aruba Ave., Johnstown, approached the lectern. He stated that commented on this application at the December 18, 2023 Planning Commission hearing. At that hearing he provided a list of question (see Appendix). He asked whether those questions were provided to Rinchem.

The applicant nodded in assent.

Mr. Weinberger stated that he was concerned that very few of his questions were addressed by Rinchem tonight. He asked how the 200-foot setback was developed, what the purpose of the 200-foot setback was, and whether it considers the storage of chemicals.

Planning Manager Mayer explained that when researching and drafting this chapter of the code, staff surveyed what the commission and council had typically imposed upon more intense commercial uses, and determined that 200-feet was appropriate. He stated that setbacks in New Albany were larger. He continued that regarding the 200-foot setback for the TMD (technology manufacturing district), that it also included mounding and screening requirements that applied to all manufacturing facilities in New Albany.

Mr. Weinberger asked whether the transport of chemicals was considered, whether neighboring residential wells were considered, and also asked about the holding ponds, and whether there would be annual tests to detect containment.

Mr. Jensen responded that the focus was about containment within the facility. The warehouse and ISO yards have controls in place, as does the holding pond. The ISO yard is not roofed facility. Before anything is released into the holding pond, it is tested. It is tested again prior to being released into waste water.

Commissioner Wallace asked to describe the worst-case scenario, for example if the liquid in a container leaks from the container. What would the protocol be for containment, whether there was a succeeding basin to catch and clean liquids, and asked about the rain and the snow.

Mr. Jensen explained the protocols for handling and subsequent testing in the event of a spill or leak. Rinchem has contracted with an emergency response team – they have a 30-minute response time and they are trained specifically for spill clean-up. Prior to anything being released, it would be tested.

Mr. Weinberger asked if there was something in the holding pond to prevent leeching.

Mr. Jensen explained that the pond is lined with an impermeable material to prevent leeching.

Mr. Weinberger continued that one of his concerns was with the containers. Ohio has high winds, and in the event a container is dropped or came off of its base, it was unclear how far the chemicals could travel either through the air, the water, or on the land.

Chair Kirby asked whether the applicant had a Tornado F rating for the facility, and whether there was a category storm rating and protocol.

Mr. Jensen responded that he would provide it. He further stated that he had lived in Taiwan and when the weather was intense the containers were down-stacked to consider the stronger winds and that operations become minimized during inclement weather.

Mr. Weinberger stated that he understood about the facility, but was concerned about the containers that were outside. He explained that he is concerned about them being dropped and spilling, or picked up by high winds and spilling. He asked how will mitigation be validated before the fact. Rinchem was asked to provide all complaints and litigation proceedings but that information has not been provided. Rinchem was asked to provide a list and the MSDS for each chemical but that information has not been provided. He recalled that he was advised to test his water, but how does he know what to test for without knowing what is being stored. Without the safety record, the safety protocols cannot be measured. Further data needs to be provided regarding what the safe distance for storage is. It also remains clear what happens to these chemicals over time, their degradations rates. There are many sites around Intel that are still for sale. Why place a storage facility closer to residents than to Intel? Are Intel lives more valuable than the lives of the adjacent residents? Doesn't efficient operation allow for closer storage? Intel is good for everybody, except certain residents, but why can't Rinchem relocate to a lot closer to Intel?

Chair Kirby thanked Mr. Weinberger and stated that under current zoning, the applicant has the right to use their property in this way. This application sought a variance that would permit encroachment into the setback, had they had a smaller facility they would not need permission from this body.

Council Member Wiltrout commented that when the setback was established it was done with the understanding that handling these types of chemicals may be required.

Mr. Weinberger responded that the information was incomplete because it is not clear what chemicals will be there, there is no list.

Planning Manager Mayer responded that this was the largest setback in the city, because of the potential that comes with storing hazardous material.

Mr. Weinberger responded that the reality is that there is so much land. This lot is insufficient and he wondered how much is the company saving.

Chair Kirby stated that he suspected the application would be tabled and requested that Mr. Weinberger would continue with his list. He stated that if he recalled correctly, the applicant had stated under oath that the chemicals stored were not harmful. He further asked Mr. Weinberger if the clerk could make a copy of the list of questions and provide it to the applicant at tonight's meeting.

Mr. Weinberger responded of course, he suggested that he give his list to staff so Rinchem could have a copy. He submitted his questions to the deputy clerk.

Thereafter Deputy Clerk Madriguera copied the list and provided copies to the applicants. The list is included in the Appendix.

Mr. Weinberger continued that the question was whether this variance would put the future owners at risk.

Commissioner Schell responded that all concerned were worried about safety, but the commission's review was limited to the variance.

Chair Kirby added that that was why it was important to hear from the adjacent property owners.

Mr. Weinberger thanked the commission and stated he looked forward to the applicant's responses to his questions.

Scott Driscoll, 156 Bermuda Drive Johnstown, approached the lectern. Mr. Driscoll indicated the location of his property on the site map. He observed that Rinchem was attempting to push the chemicals away from his house, but he was concerned that reorganization would result in the chemicals being stored closer to his home. He stated that he had the same concerns as Mr. Weinberger.

Chair Kirby asked if there were other members of the public present. Hearing none, he advised the applicant that he had the right to proceed to a vote on the application. He further confirmed that the applicant would agree to the tabling of this application until the Planning Commission meeting on Wednesday, February 21, 2024.

Mr. Jensen stated that he wished to clarify for the record that the reason that Rinchem has not provided a list of lawsuits was because there were none. Rinchem has not been found at fault in environmental litigation. He further stated that he would provide information regarding the chemicals and the safety record.

Commissioner Wallace stated that the best way to proceed from here, rather than the commission hearing responses to each question, would be for Rinchem to meet with the residents and provide the responses and have needed discussions.

Mr. Jensen agreed.

Chair Kirby moved to accept the staff reports and related documents including the written testimony of Mr. Weinberger into the record for VAR-89-2023. Commissioner Schell seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Schell yes, Ms. Briggs yes, Mr. Larsen yes, Mr. Wallace yes. Having five yes votes, the motion passed and the staff reports and related documents including the written testimony of Mr. Weinberger were accepted into the record for VAR-89-2023.

Commissioner Schell moved to table VAR-89-2023 until the regular Planning Commission meeting on Wednesday, February 21, 2024. Commissioner Briggs seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Schell yes, Ms. Briggs yes, Mr. Larsen yes, Mr. Kirby yes, Mr. Wallace yes. Having five yes votes, VAR-89-2023 was laid upon the table until Wednesday, February 21, 2024.

Chair Kirby introduced the next case and asked to hear from staff.

VAR-104-2023 Variances

Variances to the Reserve at New Albany PUD text and plat to allow a home extension to encroach into the rear setback and conservation easement, and to allow a paver patio to encroach into a conservation easement at 7823 Calverton Square (PID: 222-001816). Applicant: The Columbus Architectural Studio on behalf of Thad and Susanne Perry

Planning Manager Mayer delivered the staff report. He explained the two separate variances. The first is a request to retain the existing patio, the second is to allow a cover to be constructed on the patio. He stated that the homeowners' association has approved the patio and that the commission should consider each variance on their own merits.

Chair Kirby asked if there were any comments from engineering.

Development Engineer Albright said there were no engineering comments.

Chair Kirby asked to hear from the applicant.

Applicant Brenda Parker, architect for the project, reminded the commission that the project does not seek to enlarge the footprint of the patio. She explained that the reason the existing patio encroached 4-feet into the conservation easement was due to the large chimney. Because the chimney took up a lot of space, more room was needed for furniture.

Joe Ciminello, Reserve at New Albany Architectural Review Board (ARB) member, spoke to the conservation area. He stated that about 10 years ago the city came out and staked the conservation area and it was known then that the patio encroached into the conservation area. He stated that these property owners have the support of the home owners' association (HOA) and arb. He further stated that the neighboring property owners support the application and that this application maintains the spirit and intent of the conservation area.

Commissioner Schell noted that Mr. Ciminello mentioned the architectural review board and asked whether the homeowners' association was separate or whether they were the same entity.

Mr. Ciminello responded that they are the same. For that reason, only architectural review board approval is required.

Applicants, Thad and Suzanne Perry, property owners. The Perry's stated that they bought the home in August 2023 moved in in September 2023. They explained that they love the outdoors and enjoy spending time in nature and did not intend to disturb the environment or their neighbors. They stated that did not know the process and had no knowledge of the prior owners' activities. The plot layout was not presented until after closing, so they were unaware of the conservation easement text. They further stated that they have no working knowledge of the records of the city but they knew through records and discussions with neighbors that the patio has been in place for 15 years. The Reserve

started in '94 and theirs is the third house. As professionals they were aware of data and filing deadlines. They continued that their hope was that, based on the permits and the drawings put forward, that the commission will approve this request. Having a cover on the patio will greatly reduce the insects. They continued that as they age, it takes longer for them to heal from insect bites. They added that it was their understanding that neighbors had submitted letters of support, and as Mr. Ciminello had stated, they now had the support of the hoa and arb. They thanked the commission for its consideration.

Chair Kirby thanked the applicants. He complimented Mr. Ciminello for drafting one the stronger conservation easements in New Albany, and remarked further that it was his understanding that the text prohibited mowing and removal of the understory. He requested that note F be read.

Planning Manager Mayer read note F, which provides:

Note "F" - Conservation Areas: No structure or building shall be placed upon, in or under areas designated "Conversation Area" [sic] hereon, nor shall any work be performed thereon which would alter the natural state of such areas or damage any of the trees or vegetation thereon provided, however (1) that there shall be such construction areas as may be required for the installation, operation and maintenance of utility and drainage facilities for the development as the developer may deem necessary for efficient development and (2) that within such areas in lots 10, 11, 18 and 19, such construction areas shall be replanted and revegetated with a minimum 30 - 2 inch to 4 inch hardwood trees. Such maintenance within said "Conservation Area" shall occur only in easement areas designated on this plat unless otherwise approved by the Village of New Albany Engineer. Areas disturbed by such maintenance shall be restored as nearly as practical to their original condition. Notwithstanding the foregoing, trees and/or vegetation which are dead or diseased may be removed therefrom.

Chair Kirby thanked Planning Manager Mayer and stated, that the dead trees could be removed but everything else must remain as wooded as possible.

Ms. Perry submitted a photo (see Appendix) in order to demonstrate how green the area is. She indicated the area of the lawn and explained that it is minimal. She further stated that they would love trees and would commit in writing to adding trees and that they cannot see their neighbors houses in the summer. She stated that she and her husband are outdoor people and the patio covering would improve our quality of life because we would be less bitten by bugs

Commissioner Schell thanked the Perrys for securing the approval of the neighbors and for asking Mr. Ciminello to appear in support of the application.

Chair Kirby asked for further questions from the commission. Hearing none, he asked if anyone from the public was present to comment on the application. Hearing none, he stated that the variance requests would be voted on separately. The existing patio would be VAR-104-2023A and the cover would be VAR-104-2023B.

Chair Kirby moved to admit the staff reports and related documents into the record for VAR-104-2023. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Wallace yes, Mr. Schell yes, Ms. Briggs yes, Mr. Larsen yes. Having five yes votes, the staff reports and related documents were admitted into the record.

Commissioner Briggs moved for approval of VAR-104-2023A, for retention of the existing patio, based on the findings and subject to any conditions in the staff report, subject to staff approval. Commissioner Schell seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Ms. Briggs yes, Mr. Schell yes, Mr. Wallace yes, Mr. Kirby yes, Mr. Larsen yes. Having five yes votes, the A section of VAR-104-2023 to permit retention of the existing patio was approved.

Chair Kirby explained that he voted yes because the Perrys did not install the existing patio. It was installed two owners ago which is a long way to fix someone else's mistake. He further found that the patio encroachment was not egregious.

Commissioners Wallace and Larsen concurred.

Commissioner Briggs moved for approval of VAR-104-2023 B for the screened porch to encroach into the conservation easement. Commissioner Schell seconded the motion.

Chair Kirby asked whether there was any discussion on the motion.

Commissioner Larsen commented that the existing fireplace pushed the existing encroachment even further into the conservation area.

Ms. Parker clarified that the it would not be pushed further into the conservation area; the existing grill would be replaced with a fireplace but the foot print would not be enlarged.

Chair Kirby asked to hear the roll.

Upon roll call: Ms. Briggs yes, Mr. Schell yes, Mr. Wallace no, Mr. Larsen no, Mr. Kirby no. Having two yes votes and three no votes, the motion to permit a build a screened in porch over the existing patio failed.

Chair Kirby explained that he voted no because, unlike the existing patio encroachment, this was within the current owner's control. The request did not meet the *Duncan* criteria. Although the porch does not intrude as much as the pavers, anything growing at the edge of the pavers will have a canopy impact to the porch.

Commissioner Wallace echoed Chair Kirby's findings and added that he did not want to set a precedent.

Commissioner Larsen agreed with Chair Kirby and Commissioner Wallace and further found that there was an alternate solution that could be reached that would meet all standards.

Chair Kirby agreed and stated that a flatter and narrower porch would still fit.

Mr. Ciminello commented that he understood the first vote but did not understand the logic of the second vote. Going vertical would not prevent trees from being planted. He continued that the [the Reserve's] Architectural Review Board reviewed this extensively and determined the porch was not an encroachment because there would not be natural trees there. He reiterated that this would be a metal roof without heating or cooling, and that it matches the architectural standards of the neighborhood.

Chair Kirby explained that it constitutes a new intrusion in the easement and it does not meet the intent of the text.

Planning Manager Mayer stated that unlike most variances, this PUD text provided for Council's review of the commission's decision on variances. The commission's recommendations would be considered by council.

Chair Kirby thanked staff and the applicants and encouraged them to make their case before council.

Chair Kirby called a recess at 8:50 p.m.

Chair Kirby called the meeting to order at 9:01 p.m. and asked to hear the staff report for ZC-125-2023.

ZC-125-2023 Rezoning

Rezoning 9.89+/- acres to allow for the continued use and operation of the existing garden center business and residential uses associated with Oakland Nursery LLC at 5211 and 5155 Johnstown Road (PID: 222-000297 and 220-001952). Applicant: Oakland Nursery LLC, c/o Aaron L. Underhill, Esq.

Planner Cratic-Smith delivered the staff report.

Chair Kirby asked to hear from engineering.

Development Engineer provided the engineering comments.

Chair Kirby asked to hear from the applicant.

Applicant Aaron Underhill, attorney representing Oakland Nursery explained that the home has been in the city for some time, but the retail operation is in Plain Township. He stated that when the owners approached him about adding parking, he suggested that they resolve the jurisdictional issue. To that end, the annexation will be effective soon. He stated that this zoning text has been drafted to maintain the beauty and fun of Oakland without letting it become a huge garden center. The home is used for employees who have traveled to work at Oakland and that Oakland has committed to screening for the neighbors. He concluded that he was happy to answer any questions.

Commissioner Schell asked whether the township supported the annexation, noting that they would lose the tax revenues.

Mr. Underhill responded that they did not contact him and that there is a long-standing annexation agreement. He speculated that they may not have liked it but considering the expense they were not going to fight it.

Commissioner Larsen noted that in the Strategic Plan this was residential and asked whether the Strategic Plan would need to be updated in order to reflect this.

Planning Manager Mayer responded that the Strategic Plan recommends future land uses when land is redeveloped but it is silent on annexation of existing business. If this property was redeveloped in the future, the Strategic Plan recommends it become residential.

Chair Kirby asked staff to point out the location Rocky Fork Creek.

Planning Manager Mayer indicated the location of the Rocky Fork Creek on the site plan and stated that it was on the backside of the property and under Thompson Road.

Chair Kirby stated that it was troubling that this was made in perpetuity and asked about the requirements for the riparian corridor.

Planning Manager Mayer responded that it was the typical 50 feet on each side of the creek from the centerline of the stream.

Chair Kirby observed that meant, for the applicant, that there would not be much room because of the riparian corridor.

Mr. Underhill responded that was exactly right and for that reason, he has advised Oakland to call him first if they want to make changes that would encroach into the riparian corridor.

Chair Kirby stated that he was fine with it as it is but it would be limiting. He wanted to be sure that the applicant was clear on that issue. He noted the existence of leisure trail on the north side of Thompson Road asked whether there was any thought to a trail on the south side of Thompson Road.

Planning Manager Mayer responded yes. Staff has asked for dedication on the south side. The parking has been situated to accommodate the setback and corridor treatment on Johnstown Road. The installation of trail would be required if and when improvements happen on that side of the property.

Chair Kirby confirmed that the trail on the north side would remain and asked Mr. Underhill whether he objected to the south side dedication.

Mr. Underhill responded no, they had no objection to the dedication but noted that it would reduce their usable space but were willing to comply with the setbacks.

Commissioner Wallace asked for staff's reaction to alleviating the tree requirements in the parking lots. He observed that the parking lot could look like a big asphalt area and asked about the addition of islands.

Planning Manager Mayer responded that staff considered that issue and concluded no islands would be reasonable at this site because there are landscaping materials that are for sale and present on the site.

Commissioner Wallace thanked Planning Manager Mayer and asked whether the parking in this area (around the house) would be for customers or for employees at the house.

Applicant Mark Riener for Oakland Nursery, responded that the parking would be mainly for employees except when it gets busy, during that time it would be for customers. He added that, regarding the parking lot and landscaped islands, Oakland needed a parking lot without islands in order to accommodate large delivery trucks. He explained that islands make the parking lot difficult to navigate for large trucks, and large trucks damage the islands. Commissioner Larsen asked about the ingress and egress of deliveries.

Mr. Reiner explained that the trucks come in on Thompson Rd. and exit on 62. He added that ingress for trucks from 62 was a nightmare.

Chair Kirby noted that there was a residential neighbor to the west and further south, and asked the applicant whether he would object to a removable sign indicating that area around the residence was employee parking only. This would reduce headlight spill on to the neighbor's property.

Mr. Reiner considered this and responded that he had no objection, provided the sign was removable during busy times.

Planning Manager Mayer added that installation of evergreens on that border and around the corner was a condition of approval.

Chair Kirby noted it was condition one and asked the applicant whether he had any objection to that condition.

Mr. Reiner responded that he had no objection. He added that Oakland has been dealing with the neighbors for 15 years and were willing to do whatever made them happy.

Chair Kirby noted there was agreement on Thompson Road that it keeps the original setback lines relative to right of way, even if the right of way moves. So, the setback lines would remain where they were even if the right of way moves.

Mr. Underhill responded that was right, essentially it was drafted that the existing conditions would remain even if the right of way moved. He wanted it to be considered legally conforming because if there was a casualty event he wanted to be able to replace what was there.

Chair Kirby stated ok, so we get both the right of way and we don't have to worry about the lanes moving and that was his third condition and the fourth was the employee parking signage.

Commissioner Larsen noted that the text said the house could store materials or be used as a residence.

Mr. Reiner clarified that there is a large nice barn to the north, there is a house that is a residence and it was his intent that the storage is limited to the barn.

Mr. Underhill stated that the text could clarify that there is no exterior storage.

Commissioner Wallace stated that Roman III E stated that storage on the residential property be restricted to the garage or the existing barn. The commission could add a condition referencing that text.

Mr. Underhill agreed to the condition.

Chair Kirby asked if there were any further questions or if anyone was present from the public who wished to comment on the application. Hearing none he moved to accept the staff reports and related documents into the record for ZC-125-2023. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Wallace yes, Mr. Schell yes, Ms. Briggs yes, Mr. Larsen yes. Having five yes votes the motion passed and the staff reports and related documents were admitted to the record for ZC-125-2023.

Chair Kirby moved for approval of application ZC-125-2023 based on the findings in the staff report with the conditions in the staff report, subject to staff approval, and with the following additional conditions:

3. right of way on Thompson Road for future leisure trail be dedicated maintaining existing setback lines;

4. movable signage for employee parking behind the house whenever possible; and

5. III E of the text, storage on the residential property shall be restricted to in the garage or the existing barn.

Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was any discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Wallace yes, Ms. Briggs yes, Mr. Larsen yes, Mr. Schell yes. Having five yes votes, the motion passed and ZC-125-2023 was approved.

The commission wished the applicants good luck.

Chair Kirby introduced VAR-126-2023 and asked to hear from staff.

VAR-126-2023 Variances

Variance to the C.O. 1171.07 to allow 76.45+/- square yard of artificial turfgrass in the rear yard at 7113 Armscote End (PID: 222-004851). Applicant: Marc Aubry, Greenscape Landscape Co.

Planner Cratic-Smith delivered the staff report.

Chair Kirby asked if there were comments from engineering.

Development Engineer Albright responded that there were not.

Chair Kirby asked staff whether installation of pavers would require a variance or whether the applicant could just pull a permit.

Planning Manager Mayer responded that they could pull a permit and install pavers.

Commissioner Wallace noted the property line and asked whether the rest of the grass was living.

Planning Manager Mayer answered yes, and indicated the location of the golf course. He also held up a sample of the product.

Chair Kirby asked whether the artificial turfgrass was permeable.

Applicant Marc Aubry of Greenscape Landscape Co., answered yes and noted the small holes in the product.

Commissioner Briggs asked staff whether this product was used at any other location in New Albany.

Planning Manager Mayer answered that the other area he knew of was the Courtyard at New Albany. He was not exactly sure whether it was used in other areas but it was possible that he was missing something. He mentioned that there are some putting greens, but those do not require permits because those were not the actual landscaping.

Council Member Wiltrout recalled discussions during consideration of the Courtyard at New Albany about allowing turfgrass in the yards. The discussions included maintenance and pet usage.

Chair Kirby agreed and recalled the same.

Mr. Aubry responded that he had not done work in New Albany, but he knew that there were Epcon communities that use it.

Commissioner Wallace asked if staff knew what other communities were doing and how they dealt with artificial turf issues. He noted that this application presented a small area for usage and asked how small was too big and when would usage of turfgrass become a big deal for New Albany.

Planning Manager Mayer responded that he was sure that Council Member Wiltrout's recollection was correct and that there was another location in New Albany that used this product. He continued that staff has not researched other communities but he knew turfgrass was growing in popularity for use outside residential homes. He noted that he had heard that it was easier to clean after dog usage.

Commissioner Wallace thanked Planning Manager Mayer and observed that it seemed that there were other benefits, for example if the living grass died, but wondered how the artificial turf would be monitored and enforced over time. He stated that this seemed to be a variance now that will lead to a code change.

Planning Manager Mayer responded that in this case staff would keep the variance request on file. He continued that items that break down or deterioration of the product over time are the city's mechanism for requiring replacement of the product. He also noted the existence of the property maintenance code and further that the city was subject to county storm water drainage standards and maintenance of a certain percentage of living plants.

Chair Kirby stated that the city has existing limits on pavers in the back and front yards. This presents an alternative to pavers that looks better.

Planning Manager Mayer responded that he was not sure if this was the same as pavers in terms of setbacks and lot coverage amounts. These would examined on a case by case basis.

Chair Kirby continued that the commission would like to be consistent with variance applications.

Commissioner Wallace noted that when the commission approved the application for Epcon, the commission was making the rules. A request for a variance was asking to change the rules, and this request did not meet the requirements, as established in *Duncan*, for such a change. He further observed that the property owner could install pavers.

Planning Manager Mayer responded yes, the Epcon application was a zoning text modification because it was across everyone's backyard but this application met a lot of the same rules as Epcon.

Chair Kirby stated it was a good idea but it did not meet *Duncan*. He asked to hear from the applicant.

Mr. Aubry explained that his client has gone through a lot and the city has put a lot of work into reviewing this issue. He stated that his company had taken over this job from someone else and the zoning inspector has visited the property many times. He stated that the zoning code language is ambiguous because it specifically prohibits artificial plants but it is silent about artificial grass. He noted that the proposed area is removed from the property so the it could have been characterized as a putting green.

Commissioner Larsen asked whether it was visible from the golf course and whether there were plantings and screening around it.

Commissioner Briggs asked what kind of fence was there.

Mr. Aubry responded that the golf course was lower than this area, and further that there were plantings all around it. The pool fence met the code requirement of four feet. He continued that the product looked like natural grass, that unlike natural grass, this product would not wither with pool water. There was planting on the outside of the fence.

Commissioner Schell asked why not use natural grass.

Mr. Aubry explained that whole area was raised up, it was gravel filled and as a result it was difficult to water. He added that the pool water would damage the grass, and was not connected to any natural grass. The plants did not require as much water as plants.

Commissioner Wallace asked why not install pavers.

Applicant and property owner Mr. Carmen thanked the commission for their consideration. He answered that he did not want to hardscape that area and explained that he has two small children and a third child that he and his wife are expecting to be born in ten weeks. He continued that this was their forever home. He noted the layout of the property which includes a drainage easement and a steep drop-off. He stated that as a result, there is not much outside area for play. Ebrington is one of the few communities that does not have green space. He continued that with three children under the age of four he wanted to have a soft spot for them to play, but it would be difficult to cultivate natural grass on this area. He continued that his property was not visible to anyone and that this would be a great benefit to his family. He thanked the commission again and thanked city staff.

Chair Kirby asked for further questions from the commission and asked whether there was anyone present who wished to speak on the application.

Hearing none, Chair Kirby moved for acceptance of the staff reports and related documents into the record for VAR-126-2023. Commissioner Wallace seconded the motion.

Chair Kirby asked whether there was discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Wallace yes, Mr. Larsen yes, Mr. Schell yes, Ms. Briggs yes. Having five yes votes, the motion passed and the documents were admitted into the record.

Chair Kirby moved for approval of VAR-126-2023 based on the findings in the staff report. He noted there were no conditions listed in the staff report, but the turfgrass should be restricted to the amount of area shown in the staff report. Commissioner Larsen seconded the motion.

Chair Kirby asked whether there was discussion on the motion. Hearing none, he asked to hear the roll.

Upon roll call: Mr. Kirby yes, Mr. Larsen yes, Mr. Wallace no, Mr. Schell yes, Ms. Briggs yes. Having four yes votes and one no vote, the motion passed.

Commissioner Wallace explained that he voted no because he did not think this application met the *Duncan* factors. The property can be used without this variance.

Chair Kirby explained that he voted yes because this was a minimal area, it was in the backyard, that it could have been covered with pavers, and real grass would die due to the nature and slope of this property.

Commissioner Larsen agreed with Chair Kirby and noted that the visibility of the turfgrass was almost none.

Mr. Aubry offered additional remarks supporting his view that this is preferable to pavers, or a putting green, and that it should be considered as such or in the same way a playground would be considered.

The commission wished the applicant good luck.

Mr. Carmen thanked the commission for their consideration and for their approval.

VII. Other business

Chair Kirby asked if there was any other business to come before the commission.

Planning Manager Mayer answered there was not.

VIII. Poll members for comment

Chair Kirby polled the members for comment.

The members wished all present a happy new year.

IX. Adjournment

Chair Kirby adjourned the January 17, 2024 meeting of the New Albany Planning Commission at 10:00 p.m.

Submitted by Deputy Clerk Madriguera, Esq.

Appendix FDP-87-2023, FPL-88-2023, FPL-91-2023, FPL-92-2023 Tabling Memo Records of Action VAR-89-2023 Staff Report 24 0117 PC Minutes – Approved Testimony of Mr. Weinberger Record of Action VAR-104-2023 Staff Report Ms. Perry's photo of the property Record of Action ZC-125-2023 Staff Report Record of Action VAR-126-2023 Staff Report Record of Action



Planning Commission Staff Report January 17, 2023 Meeting

COURTYARDS AT HAINES CREEK SUBDIVISION FINAL DEVELOPMENT PLAN & PRELIMINARY PLATS

LOCATION:	Generally located at the northwest corner of the intersection at Central College Road and Jug Street Rd NW (PIDs: 222-005156, 222-005157, 222-005158, 222-005159).
APPLICANT:	EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.
REQUEST:	Final Development Plan & Preliminary Plats
ZONING:	Courtyards at Haines Creek I-PUD Zoning District
STRATEGIC PLAN:	Residential District
APPLICATION:	FDP-87-2023 (and all three associated Plats FPL-88-2023, FPL-91-2023, and FPL-92-2023)

Staff report completed by Chelsea Nichols, Planner.

I. REQUEST

The applicant requests that the Courtyards at Haines Creek final development plan and all associated plat applications be tabled to the February 21, 2024 Planning Commission meeting. The applicant indicates they are currently working on making changes to their plans and request extra time to finalize their revised proposal.

II. ACTION

Move to table final development plan application **FDP-87-2023**, and all three associated plats **FPL-88-2023**, **FPL-91-2023**, and **FPL-92-2023**, to the Wednesday, February 21, 2024 regular planning commission meeting.

Approximate Site Location:



Source: ArcGIS



RE: City of New Albany Board and Commission Record of Action

Dear Aaron Underhill,

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Tuesday, January 18, 2024

The New Albany Planning Commission took the following action on 1/17/2024 .

Final Development Plan

Location: Central College Rd

Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.

Application: FDP-87-2023

Request: Final development plan review and approval of 151 lot, age-restricted residential housing development on 63.5+/- acres for the subdivision known as the Courtyards at Haines Creek located at 8390 and 8306 Central College Road in Franklin County.

Motion: To table FDP-87-2023 until the March 18, 2024 regular meeting, or sooner.

Commission Vote: Motion Table, 5-0

Result: FDP-87-2023 was Tabled to the March 18, 2024 regular meeting, or sooner, by a vote of 5-0.

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval:

N/A

Staff Certification:

Chelsea Nichols

Chelsea Nichols Planner



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Thank you.



Decision and Record of Action

Tuesday, January 18, 2024

The New Albany Planning Commission took the following action on 1/17/2024.

Final Development Plan

Location: Central College Road

Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.

Application: FPL-88-2023

Request: Preliminary and final plat for phase one of Courtyards at Haines Creek located at 8390 and 8306 Central College Road in Franklin County. Motion: To table FPL-88-2023 to the March 18, 2024 regular meeting, or sooner.

Commission Vote: Motion Table, 5-0

Result: FPL-88-2023 was Tabled to the March 18, 2024 regular meeting, or sooner, by a vote of 5-0.

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval:

N/A

Staff Certification:

Chelsea Nichols

Chelsea Nichols Planner



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Thank you.



Decision and Record of Action

Tuesday, January 18, 2024

The New Albany Planning Commission took the following action on 1/17/2024.

Final Development Plan

Location: Central College Road

Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.

Application: FPL-91-2023

Request: Preliminary and final plat for phase two of Courtyards at Haines Creek located at 8390 and 8306 Central College Road in Franklin County. Motion: To table FPL-91-2023 to the March 18, 2024 regular meeting, or sooner.

Commission Vote: Motion Table, 5-0

Result: FPL-91-2023 was Tabled to the March 18, 2024 regular meeting, or sooner, by a vote of 5-0.

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval:

N/A

Staff Certification:

Chelsea Nichols

Chelsea Nichols Planner



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Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Tuesday, January 18, 2024

The New Albany Planning Commission took the following action on 1/17/2024.

Final Development Plan

Location: Central College Road

Applicant: EC New Vision Ohio LLC, c/o Aaron L. Underhill, Esq.

Application: FPL-92-2023

Request: Preliminary and final plat for phase three of Courtyards at Haines Creek located at 8390 and 8306 Central College Road in Franklin County. Motion: To table FPL-92-2023 to the March 18, 2024 regular meeting, or sooner.

Commission Vote: Motion Table, 5-0

Result: FPL-92-2023 was Tabled to the March 18, 2024 regular meeting, or sooner, by a vote of 5-0.

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval:

N/A

Staff Certification:

Chelsea Nichols

Chelsea Nichols Planner



RINCHEM HAZARDOUS MATERIAL SETBACK VARIANCE

LOCATION: APPLICANT:	3195 Harrison Road (PID: 095-111732-00.000, 095-111564-00.000) Tuan Q. Luu with MDG Architecture Interiors on behalf of Rinchem Company LLC
REQUEST:	Variances to C.O. 1154.12(b)(3) to allow both outdoor storage and indoor storage of hazardous materials to encroach into the setback where code requires such material to be at least 200 feet from all property lines
ZONING:	Technology Manufacturing District (TMD)
STRATEGIC PLAN: APPLICATION:	Employment Center VAR-89-2023

Review based on: Application materials received on September 15, October 20 and November 1, 2023.

Staff report prepared by Chelsea Nichols, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow the storage of hazardous material to be setback less than the required 200 feet minimum for the current and future phases of the development. The current phase (phase one) includes the indoor storage of hazardous material setback 88' from the eastern property line and outdoor storage setback 35' from the northern property line and 30' feet from the eastern property line.

The Planning Commission reviewed and tabled this application at the November 2023 meeting due to the applicant not being present at the meeting. The applicant's proposal, requested variance, and the associated materials are unchanged.

The proposed project would support chemical storage and distribution for Intel's semiconductor manufacturing campus in New Albany.

ISO tank containers comply with the International Standard Organization (ISO) standards. They are suitable for transporting both hazardous and non-hazardous bulk liquids. ISO containers are made with stainless steel and housed inside a protective layer.

II. SITE DESCRIPTION & USE

The 29.8-acre property is located on the north side of Harrison Road NW; which is generally west of the intersection at Harrison Road NW and Clover Valley Road NW, within Licking County. The property is surrounded by vacant TMD zoned land to the north, south and east. The site is also adjacent to vacant L-GE zoned property to the southwest and residential properties to the west.

III. ASSESSMENT

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

Criteria

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

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

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

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

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

III. EVALUATION

Variances to C.O. 1154.12(b)(3) to allow both outdoor storage and indoor storage of hazardous materials to encroach into the setback where code requires such material to be at least 200 feet from all property lines.

The following should be considered in the board's decision:

- 1. The city's Technology Manufacturing District (TMD) acknowledges that due to the nature of the permitted uses in the TMD, hazardous waste and materials storage and processing is anticipated. When such storage and/or processing are desired the following code requirements apply (chapter 1154.12(b)):
 - a. The nature of the storage and processing shall be described in a detailed written statement that shall be submitted as part of an application for a Planning and Design Permit. This statement also shall provide details regarding the safety measures and protocols that are proposed to prevent the migration of any hazardous materials outside of designated containment areas and procedures that

will be implemented upon the occurrence of an event that does or has the potential to damage the environment, persons, or property. This information shall be provided so that relevant City departments and public safety providers will have notice of the presence of these storage and processing operations.

- The applicant states the phase one ISO yard containing hazardous materials is proposed 30' from the east property line and 35' from the north property line, screened by a 10' CMU wall at those property lines. An 8' tall chain link fence meets the CMU wall at both ends, wrapping the rest of the project area for phase one, ensuring the entirety of the development is screened.
- The ISO yard is separated into six individual, fully contained spill containment basins with sensors. The ISO yard does not meet the hazardous storage setback of 200' from the north or east property lines, but provides screening and protection in-lieu of separation.
- b. All such storage and/or processing shall comply in all respects with state and federal law and regulations, and shall not be undertaken until such time as all necessary state and federal permits are received and copies of the same are provided to the City.
 - The materials being stored are received in multiple containers approved by the US Department of Transportation.
 - The interior storage of hazardous materials is to be compliant with the current local, state and federal building and fire codes. This project will utilize H-3 occupancy for the flammable storage area and H-4 for the corrosive storage material. The construction type for the building is IA, the exterior walls will be 3-hour rated. The building will be fully equipped with building and in-rack sprinkler system compliant with current fire code and per NFPA13.
- c. <u>No such storage and/or processing shall occur within the greater of (A) two</u> <u>hundred (200) feet of any perimeter boundary of a parcel that is not under</u> <u>common ownership and (B) an otherwise applicable minimum building setback.</u> <u>The applicant proposes the following setbacks:</u>
 - Northern proposed setback for the outdoor storage: 35 feet [does not meet code, variance requested]
 - Eastern proposed setback for the outdoor storage: 30 feet [does not meet code, variance requested]
 - Eastern proposed setback for the building containing indoor storage: 88 feet [does not meet code, variance requested]
 - Southern proposed setback for building containing indoor storage: 235+/feet [meets code]
 - Western proposed setback for building (phase two) containing indoor storage: 593+/- feet [meets code]
 - Western proposed setback for outdoor storage (phase two): 397+/- feet [meets code]
- d. If such storage or processing is undertaken outside of a structure, then all exterior areas where these activities are occurring shall be surrounded by a masonry wall that is at least ten (10) feet in height, but only if they are wholly or partially visible in whole or in part from a public street right-of-way. Building facades may be used to meet this requirement. Any gates or doors shall include enhanced security features to ensure that unauthorized individuals cannot gain access to the area.
 - The applicant proposes to surround the outdoor storage a 10' CMU wall at those property lines.
- 2. The variance request may be substantial. The large setbacks are due to the potentially significant impact on life, property, and the environment. The Planning Commission should take into consideration the safety precautions the company is installing onsite and the distances to neighboring properties. The adjacent properties include residential to the

west, and undeveloped properties to the north, east, and south that is also zoned TMD. Setback requirements are met to the west and south. The setback requirements are not met to the north and east.

- 3. The "spirit and intent" of the zoning requirement is to create separation between the hazardous material stored on-site and neighboring uses. The applicant proposes to construct a 10-foot-tall concrete masonry wall around the portions of the site where the setback encroachment is proposed in order to create a physical and visual separation.
- 4. There does not appear to be special conditions or circumstances that exist which are peculiar to the land or structure involved which are not also applicable to other lands or structures in the same zoning district.
- 5. It appears that the problem could be solved in some other manner other than the granting of a variance request. There are undeveloped properties to the north and east where additional land may be purchased and phases could be altered to initially store the hazardous material 200 feet away from the property lines.
- 6. The Planning Commission should consider if granting the variances will 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.
- 7. Granting the variance would not adversely affect the delivery of government services.

IV. RECOMMENDATION

The TMD zoning code contemplates and permits hazardous material to be stored outside within this portion of the business park. Due to the potential hazards of chemical storage, the codified ordinances require a minimum 200-foot setback from property lines regardless of the neighboring use. The large setback is intended to reduce the risks and protect neighboring properties from adverse health effects and physical hazards such as spills that can harm people and property.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

Move to approve application VAR-89-2023 (conditions of approval may be added).



Approximate Site Location:

New Albany PC Mr. Weinberger's puestions 1/17/24

Ouestions:

- 1) Is the 200' setback applied to all businesses in the Technology Manufacturing District?
- 2) What is the purpose of the 200" setback?
- 3) Does the setback take into account chemical safety?
- 4) Was there a study or investigation done for the distance each chemical and/or particles can travel in the air (tornado/high winds), by water seepage or soil spread?

 Ine an (communication)

 5)

 What is Rinechem doing to ensure our wells are not being communication?

 Will Rinechem conduct annual tests to ensure there is no contamination?

 Will Rinechem conduct annual tests to ensure there is no contamination?
 - 5) What is Rinechem doing to ensure our wells are not being contaminated?

 - 8) Will variances be locked in or can other variances be requested?
 - \checkmark 9) Please provide the Material Safety Data Sheet for all chemicals to be stored.
 - 10) Without a variance how many acres would it have been necessary to purchase in order to achieve
 - Rinchem's objectives stated in the documents provided:
 - a) to not cause a disorder to necessary site circulation,
 - b) to not cause inefficient truck movement and site operations,
 - c) for materials to be out of view,
 - d) allow sufficient shielding to the public from hazardous material storage, and
 - e) protect the other Technology Manufacturing District companies' personnel?
 - 11. Why was sufficient property not purchased to avoid the need for a variance? How much money did the purchase of a smaller parcel save Rinchem Company?
 - 12. Other than the wall and fence mentioned in the documents provided, what shielding materials/barriers will be used to keep the warehouse and ISO yard as out of view of the residential neighborhood?
 - 13. Can Rinchem Company can build a smaller building and have a smaller yard while increasing operating efficiencies and improving configurations to avoid the need for a variance.
 - 14. There are undeveloped properties to the north and east where additional land may be purchased and phases could be altered to initially store the hazardous material 200 feet away from the property lines. Can Rinchem Company move their location to where they can meet the setback requirements, do their civic and social responsibility to protect residential housing and people in the Technology Manufacturing District to ensure the public interest is served (Factors considered).
 - 15. Has Rinchem evaluated and determined how having a chemical storage facility next to a residential housing development will affect the values of the existing homes?
 - 16. Rinchem Company is requested to provide all environmental litigation, findings, court rulings, complaints (this includes but is not limited to civil, legal and otherwise) worldwide against Rinchem Company. Specifically noting where Rinchem Company is purported to be at fault. Without this the detriment to the public welfare (Factors considered) cannot be determined.
 - 17. To further determine any detriment to the public welfare, it is requested that Rinchem Company provide a list of all chemicals it anticipates storing at the New Albany, Ohio location.
 - 18. Why is a chemical storage facility closer to a residential development than to the manufacturer for which it is storing chemicals?
 - 19. Why would the chemical storage facility not be next to Intel?
 - 20. Having the chemical storage facility closer to a residential development than to the manufacturer puts the residents at greater risk than Intel personnel. Are the lives of Intel personnel more valuable than the residents who have lived here for more than twenty years?
 - 21. Is saving a few hundred thousand dollars worth the risk to health and lives of people?

Rinchem LLC – Summary Version

It appears that Rinchem Company anticipated applying for a variance when they bought the land so they could purchase a smaller parcel and save money. They have several locations all over the world, as such, they should be experts at selecting sites and planning for their operations.

Without a variance how many acres would it have been necessary to purchase in order to achieve Rinchem's objectives stated in the documents provided:

- 1. to not cause a disorder to necessary site circulation,
- 2. to not cause inefficient truck movement and site operations,
- 3. for materials to be out of view,
- 4. allow sufficient shielding to the public from hazardous material storage, and
- 5. protect the other Technology Manufacturing District companies' personnel?

Why was sufficient property not purchased to avoid the need for a variance? How much money did the purchase of a smaller parcel save Rinchem Company?

Other than the wall and fence mentioned in the documents provided, what shielding materials/barriers will be used to keep the warehouse and ISO yard as out of view of the residential neighborhood?

Public interest (Factors considered) is not served if the variance is granted because it may adversely affect the safety of persons residing or working in the vicinity of the proposed development due to situating chemicals closer to people and facilities outside of Rinchem Company. Since chemicals will be closer to people outside of Rinchem Company it may be materially detrimental to the public welfare (Factors considered), or injurious (Factors considered) to private property in the vicinity.

Rinchem Company states "substantial justice would be done to the property-owner:" This is not a valid argument by Rinchem Company. It is reasonable to expect that Rinchem Company should have had knowledge of the zoning restriction and set back requirements (Factors considered). This variance issue was created by Rinchem Company and New Albany Company, with thousands of acres available, they chose a location next to residential housing and purchasing an undersized parcel to save money. The special conditions and circumstances are a result from the action of the applicant (factors to consider).

The problem can be solved by some manner other than the granting of a variance (Factors considered). Rinchem Company can build a smaller building and have a smaller yard while increasing operating efficiencies and improving configurations to avoid the need for a variance. This will allow a reasonable return and a beneficial use of the property without the variance (Factors considered). This will also allow the essential character of the neighborhood not to be substantially altered (Factors considered).

As stated in the PC 23 1120 Rinchem Hazardous Storage Setback Variance V-89-2023, section III. EVALUATION, 5: "It appears that the problem could be solved in some other manner other than the granting of a variance request. There are undeveloped properties to the north and east where additional land may be purchased and phases could be altered to initially store the hazardous material 200 feet away from the property lines."

The proposed use and variance will not preserve the "spirit and intent" of the zoning requirement (Factors considered) because having a chemical storage facility next to a residential development creates substantial unnecessary risks to the community (Factors considered). A "substantial justice" is not done (Factors considered), in fact a substantial injustice is created by allowing the variance and by Rinchem Company trying to save money at the expense of the residential community and workers in the Technology Manufacturing District.

Stating "will not diminish the values of surrounding properties," is an incomplete statement by Rinchem Company. They have no mention of how having a chemical storage facility next to a residential housing development will affect the values of the existing homes.

Granting a variance from 200' to 88' and 35' is substantial (Factors considered). The interest of the public (Factors considered) is best served when chemicals are as far away as possible from people.

Rinchem Company is requested to provide all environmental litigation, findings, court rulings, complaints (this includes but is not limited to civil, legal and otherwise) worldwide against Rinchem Company. Specifically noting where Rinchem Company is purported to be at fault. Without this the detriment to the public welfare (Factors considered) cannot be determined. To further determine any detriment to the public welfare, it is requested that Rinchem Company provide a list of all chemicals it anticipates storing at the New Albany, Ohio location.

The problem can be solved by some manner other than the granting of a variance (Factors considered). Rinchem Company should consider moving their location to where they can meet the setback requirements, do their civic and social responsibility to protect residential housing and people in the Technology Manufacturing District to ensure the public interest is served (Factors considered).

In Chandler AZ the chemical storage facility is approximately one mile from residential housing and 3.5 miles approximately from Intel. In New Albany Ohio the chemical storage facility is approximately 400' to 800' or approximately a tenth of a mile from residential housing and approximately 2 miles from Intel.

Studies have been shown that the chemicals used in the manufacturing process carry many health hazards. Some chemicals are known carcinogens, cause reproductive problems, etc. How many cancer cases, reproductive problems and deaths have to occur before proper action is taken?

- Why is a chemical storage facility closer to a residential development than to the manufacturer for which it is storing chemicals?
- This puts the residents at greater risk than Intel personnel.
- Why would the chemical storage facility not be next to Intel?
- Are the lives of Intel personnel more valuable than the residents who have lived here for more than twenty years?
- Is saving a few hundred thousand dollars worth the risk to health and lives of people?



RE: City of New Albany Board and Commission Record of Action

Dear MDG Architecture,

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Tuesday, January 18, 2024

The New Albany Planning Commission took the following action on 1/17/2024.

Variance

Location: 3195 Harrison Road Applicant: MDG Architecture

Application: PLVARI20230089
 Request: Variance to allow the storage of hazardous material to be setback less than the required 200 feet minimum for the current and future phases of the development.
 Motion: To table

Commission Vote: Application tabled to the February 21, 2024 meeting

Result: Variance, PLVARI20230089 was tabled, by a vote of 5-0. Recorded in the Official Journal

this Tuesday, January 18, 2023.

Condition(s) of Approval: N/A

Staff Certification: Chelsea Nichols

Chelsea Nichols Planner



7823 CALVERTON SQUARE CONSERVATION AREA VARIANCE

LOCATION: APPLICANT: REQUEST:	 7823 Calverton Square (PID: 222-001816) The Columbus Architectural Studio c/o Thad and Susanne Perry (A) Variance to the subdivision plat to allow an open paver patio to encroach a platted conservation area by 9 feet (B) Variance to the Reserve at New Albany PUD section 26.04.01 and the subdivision plat to allow a screened porch home addition to encroach into the minimum rear yard setback and a platted conservation area by 4 feet
ZONING:	Reserve at New Albany I-PUD
STRATEGIC PLAN:	Residential
APPLICATION:	VAR-104-2023

Review based on: Application materials received on December 15, 2023.

Staff report prepared by Stephen Mayer, Planning Manager.

I. REQUEST AND BACKGROUND

The applicant requests two variances. The first is to allow an existing paver patio to remain that is partially located within the conservation area. And the second request is to allow the construction of a home addition to encroach within the building setback and conservation area in the rear yard. The home addition is a screened-in porch located over the existing paver patio. During the city staff initial review of the application, it was discovered the paver patio is encroaching into a conservation area. The city staff couldn't locate any historically issued variances or permits for the paver patio so the applicant has added a request to allow it to remain as constructed.

At their November 21, 2023 meeting, the Planning Commission tabled this application to allow the applicant to submit the proposal to their subdivision HOA prior to the Planning Commission taking final action on the variances. The applicant has submitted a written approval from the homeowner's association for the paver patio and building addition. The city staff has received several emails from neighbors in support of the variances. There are no changes to the plans since the last meeting.

Section 18 of the Reserve at New Albany PUD text states that variances may be requested of the Planning Commission but must be approved by the city council. <u>Accordingly, the Planning Commission is review and make a recommendation to city council regarding the variance requests.</u>

II. SITE DESCRIPTION & USE

The 0.4-acre property is located in the Reserve at New Albany subdivision and contains a single-family residential home that was built in 1997. The property is surrounded by single family residential homes on all sides of the property.

III. ASSESSMENT

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

Criteria

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

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

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

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

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

III. EVALUATION

(A) <u>Variance to the subdivision plat to allow an open paver patio to encroach a platted</u> <u>conservation area by 9 feet</u>

The following should be considered in the board's decision:

1. The applicant is requesting a variance to allow an open paver patio to encroach 9 feet into a conservation area located on the back of the property. There is a 30 foot conservation area which prohibits any structure or building from being constructed within it and is established by a subdivision plat note.

NOTE "F" - CONSERVATION AREAS: No structure or building shall be placed upon, in or under areas designated "Conversation Area" hereon, nor shall any work be performed thereon which would alter the natural state of such areas or damage any of the trees or vegetation thereon provided, however, 1) that there shall be such construction areas as may be required for the installation, operation and maintenance of utility and drainage facilities for the development as the developer may deem necessary for efficient development and 2) that within such areas in lots 10, 11, 18 and 19, such construction areas shall be replanted and re-vegetated with a minimum 30 - 2 inch to 4 Inch hardwood trees. Such maintenance within said "Conservation Area" shall occur only in easement areas designated on this plat unless otherwise approved by the Village of New Albany Engineer. Areas disturbed by such maintenance shall be restored as nearly as practical to their original condition. Not withstanding the foregoing, trees and/or vagetation which are dead or diseased may be removed therefrom.

- 2. The codified ordinance section 1105.02(bbb) defines a structure as "anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground, including, among other things, walls, buildings, and patios. 'Structure' does not include fences."
- 3. That the special conditions and circumstances do not result from the action of the applicant. There is currently a paver patio constructed within the conservation easement. Based on aerial imagery, it appears the patio was constructed sometime between 1997 and 2000. The city staff could not locate any permits or variances associated with the paver patio. Therefore, a variance is required to allow the paver patio to remain within the conservation easement. The current property owners and applicant, Thad and Susanne Perry, purchased the property in 2023.
- 4. The variance does not appear to be substantial. This is a long-standing existing condition. The patio encroachment is very minor compared to the overall conservation area on the lot. The conservation area is 6,737 square feet, equating to 38.7% of the overall lot area. The area of the paver patio encroaching to the conservation easement is 279 square feet. The 279 square feet encroachment area is 4.1% of the conservation area on the lot.
- 5. The variance request appears to meet the spirit and intent of the zoning requirement. The Reserve at New Albany PUD text allows for open porches and patios to encroach into the required yard if a minimum distance of 20 feet is maintained to any rear lot line. The existing patio meets this requirement. Additionally, allowing the patio to remain will not alter or negatively impact any of the existing trees within the conservation area.
- 6. 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.
- 7. Granting the variance would not adversely affect the delivery of government services. There are no easements or public utilities located within the rear of the property.
- (B) Variance to the Reserve at New Albany PUD section 26.04.01 and the subdivision plat to allow a screened-in porch (home addition) to encroach into the minimum rear yard setback and a platted conservation area by 4 feet The following should be considered in the board's decision:
- 1. There are two zoning regulatory restrictions located within the rear of the property:
 - The first is a minimum 30 foot rear yard building setback. This is the standard building setback applicable to the entire residential subdivision.
 - The second is a 30 foot conservation area which prohibits any structure or building from being constructed within it established by a subdivision plat note. The conservation area is located on the rear of lots within the western half of the

subdivision.

- 2. The applicant is requesting a variance to allow a screened-in porch to encroach into both the minimum rear yard building setback and a platted conservation area by 4 feet. The screened in porch is considered a home addition since it is attached to the primary home.
- 3. The variance request does not appear to be substantial. The property is 0.4 acres (17,424 square feet). The conservation area is 6,737 square feet, equating to 38.7% of the overall lot area. The screened in porch is 457 square feet in size and 124 square feet of it is encroaching into the building setback and conservation areas. The 124 square feet encroachment area is 1.8% of the conservation area on the lot.
- 4. It appears the problem can be solved by some manner other than the granting of a variance. The existing house is located 3.5 feet from the rear yard setback line and conservation area so there is buildable space behind the home. The applicant could reduce the size of the screened in porch by 4 feet, and utilize the 3.5 feet of buildable space, and not need a variance.
- 5. There doesn't appear to be special conditions and circumstances that 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. Section 25.06 states "conservation areas will be designated in the rear of lots six (6) through thirteen (13) and sixteen (16) through twenty-four (24) in order to conserve the existing trees. The care of these areas will fall to each owner of a lot containing a conservation area. The subject property is lot 21 so the properties on both sides of it have the same conservation area.
- 6. 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.
- 7. Granting the variance would not adversely affect the delivery of government services. There are no easements or public utilities located within the rear of the property.

IV. SUMMARY

The applicant is requesting two variances with this application and the board should consider each on their own merits. The first is to allow an existing condition that they inherited from a previous owner to remain. The second variance is for a building addition on a portion of the existing paver patio space.

The existing paver patio within the backyard is an existing condition requiring a variance since there is no evidence of it being permitted. The patio area is surrounded by landscaping and allowing it to remain will not alter the spirit and intent of the conservation area which is to preserve trees.

The addition of the screened in porch is located on the existing paver patio that is partially located within a conservation easement. Therefore, allowing the home addition will not negatively any trees or other natural vegetation within the conservation area. The home addition is also encroaching into the required rear yard building setback but it does not appear to be substantial.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for recommending approval, the following motions are appropriate:

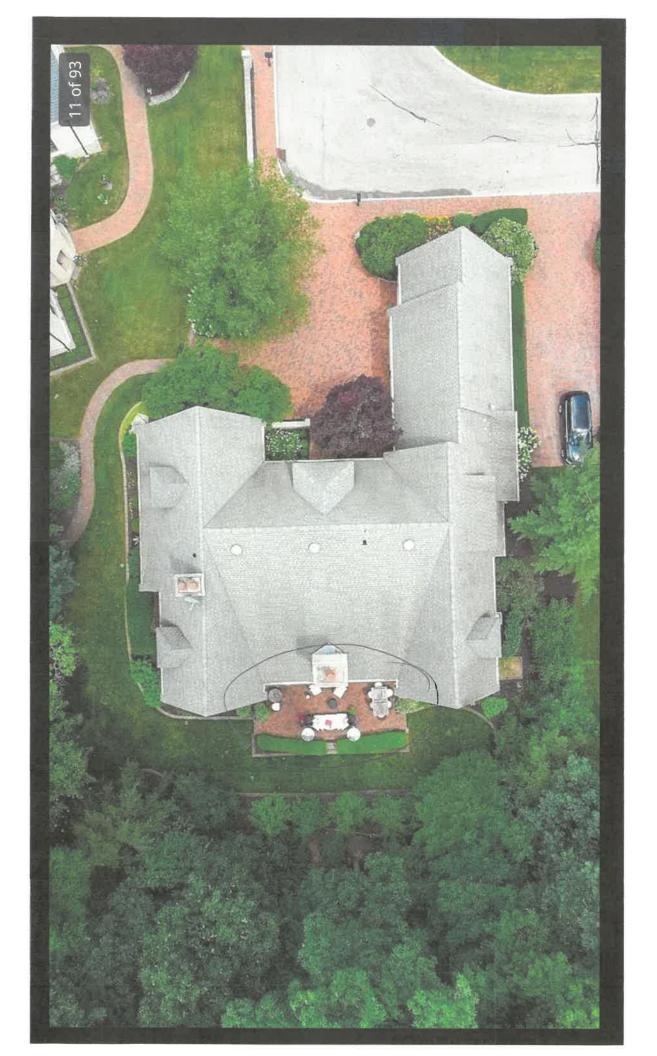
Move to recommend approval of application VAR-104-2023 variance A to allow the existing open paver patio to encroach a platted conservation area by 9 feet (conditions of approval may be added).

Move to recommend approval of application VAR-104-2023 variance B to allow a screened porch home addition to encroach into the minimum rear yard setback and a platted conservation area by 4 feet (conditions of approval may be added).

Approximate Site Location:



Source: NearMap





RE: City of New Albany Board and Commission Record of Action

Dear The Columbus Architectural Studio,

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Thursday, January 18, 2024

The New Albany Planning Commission took the following action on 01/18/2024.

Variance

Location: 7823 CALVERTON SQ Applicant: The Columbus Architectural Studio

Application: VAR-2023-0104

Request	: (A) Va	riance to the subdivision plat to allow an open paver patio to			
encroach a platted conservation area by 9 feet.					
	(B) Variance to the Reserve at New Albany PUD section 26.04.01 and				
the subdivision plat to allow a screened porch home addition to encroach					
into the minimum rear yard setback and a platted conservation area by 4					
	feet.				
Motion	: To reco	ommend approval for Variances (A) and (B) to city council.			
Commission Vote:		(A) Motion to recommend approval of Variance (A) to the subdivision plat to allow			
		an open paver patio to encroach a platted conservation area by 9 feet (vote) passed			
		5-0.			
		(B) Motion to recommend approval of Variance (B) to the Reserve at New Albany			
		PUD section 26.04.01 and the subdivision plat to allow a screened porch home			
		addition to encroach into the minimum rear yard setback and a platted			
		conservation area by 4 feet failed 2-3.			
Result:	Applica	tion VAR-2023-0104 Variance (A) motion to recommend approval passed by a			
	vote of a	5-0, and VAR-2023-0104 Variance (B) motion to recommend approval failed by a			
	vote of 2	2-3.			

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval: N/A.

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith Planner



Planning Commission Staff Report January 17, 2024 Meeting

OAKLAND NURSERY ZONING DISTRICT REZONING

LOCATION:	5211 and 5155 Johnstown Road (PID: 222-000297 and 220-001952)
REQUEST:	Re-Zoning
ZONING:	From R-2 (Low Density Single Family Residential District) & AG
	(Agriculture District) to I-PUD Planned Unit Development
STRATEGIC PLAN:	Parks & Green Space / Residential
APPLICATION:	ZC-125-2023
APPLICANT:	Ohio LLC, c/o Aaron Underhill, Esq.

Review based on: Application materials received December 15, 2023.

Staff report completed by Sierra Cratic-Smith, Planner

I. REQUEST AND BACKGROUND

The applicant requests a review for the rezoning of 9.88+/- acres. The request proposes to create a new zoning text for an area known as the "Oakland Nursery Zoning District" by zoning the area to Infill Planned Unit Development (I-PUD) from R-2 (Low Density Single Family Residential District) & AG (Agriculture District).

The rezoning proposes to allow for the continued operation of the existing garden center business and allows accessory uses such as product storage, employee parking, and housing seasonal staff in a neighboring residential home the business has purchased. Since the site is already substantially developed the applicant proposes to include the review of a parking lot expansion in conjunction with and as part of this rezoning application. The applicant proposes development standards that allow for the continued use and development pattern of the existing commercial business.

II. SITE DESCRIPTION & USE

Both sites are currently located along Johnstown Road/ US State Route 62. The site is located at the southwest corner of Johnstown Road and Thompson Road. The primary property is developed with a garden center on 8.407 acres of land and the residential property, adjacent to the garden center, stands on 1.485 acres of land.

The properties are adjacent to township residential and religious uses to the west. There are also religious uses and residential across the street along Johnstown Road and a residential subdivision across the street along Thompson Road.

III. PLAN REVIEW

The Planning Commission's review authority of the zoning amendment application is found under C.O. Chapters 1107.02. Upon review of the proposed amendment to the zoning map, the Commission is to make recommendation to city council. The staff's review is based on city plans and studies, proposed zoning text, and the codified ordinances. Primary concerns and issues have been indicated below, with needed action or recommended action in <u>underlined text</u>.

<u>Per Codified Ordinance Chapter 1111.06 in deciding on the change, the Planning Commission</u> <u>shall consider, among other things, the following elements of the case:</u>

- (a) Adjacent land use.
- (b) The relationship of topography to the use intended or to its implications.
- (c) Access, traffic flow.
- (d) Adjacent zoning.
- (e) The correctness of the application for the type of change requested.
- (f) The relationship of the use requested to the public health, safety, or general welfare.
- (g) The relationship of the area requested to the area to be used.
- (h) The impact of the proposed use on the local school district(s).

<u>Per Codified Ordinance Chapter 1159.08</u> the basis for approval of a preliminary development plan in an I-PUD shall be:

- (a) That the proposed development is consistent in all respects with the purpose, intent and applicable standards of the Zoning Code;
- (b) That the proposed development is in general conformity with the Strategic Plan or portion thereof as it may apply;
- (c) That the proposed development advances the general welfare of the Municipality;
- (d) That the benefits, improved arrangement and design of the proposed development justify the deviation from standard development requirements included in the Zoning Ordinance;
- (e) Various types of land or building proposed in the project;
- (f) Where applicable, the relationship of buildings and structures to each other and to such other facilities as are appropriate with regard to land area; proposed density of dwelling units may not violate any contractual agreement contained in any utility contract then in effect;
- (g) Traffic and circulation systems within the proposed project as well as its appropriateness to existing facilities in the surrounding area;
- (h) Building heights of all structures with regard to their visual impact on adjacent facilities;
- (i) Front, side and rear yard definitions and uses where they occur at the development periphery;
- (j) Gross commercial building area;
- (k) Area ratios and designation of the land surfaces to which they apply;
- (l) Spaces between buildings and open areas;
- (m) Width of streets in the project;
- (n) Setbacks from streets;
- (o) Off-street parking and loading standards;
- (p) The order in which development will likely proceed in complex, multi-use, multi-phase developments;
- (q) The potential impact of the proposed plan on the student population of the local school district(s);
- (r) The Ohio Environmental Protection Agency's 401 permit, and/or isolated wetland permit (if required);
- (s) The U.S. Army Corps of Engineers 404 permit, or nationwide permit (if required).

A. Engage New Albany Strategic Plan

The 2020 Engage New Albany strategic plan designates the area as the Residential future land use category. However, given the proposed rezoning, staff has evaluated this proposal against the Retail standards. The strategic plan lists the following development standards for the Retail land use category:

- 1. Parking areas should promote pedestrians by including walkways and landscaping to enhance visual aspects of the development.
- 2. Combined curb cuts and cross-access easements are encouraged.
- 3. Curb cuts on primary streets should be minimized and well-organized connections should be created within and between all retail establishments.

- 4. Combined curb cuts and cross-access easements between parking areas are preferred between individual buildings.
- 5. Retail building entrances should connect with pedestrian network and promote connectivity through the site.
- 6. Integrate outdoor spaces for food related businesses.

B. Use, Site and Layout

- 1. The site is located within the Engage New Albany strategic plan's residential future land use district but contains a long-standing garden center business. The rezoning proposes to allow the continued operation of the existing garden center and allow for accessory uses such as product storage, employee parking, and housing seasonal staff in an adjacent residential home that the business has purchased.
- 2. The proposed zoning text permits the following uses:
 - a) Lawn & garden centers.
 - b) Greenhouses.
 - c) Retail sales of plants, trees, bushes, shrubbery and similar living organisms.
 - d) Retail sales of lawn and garden supplies and equipment, interior and exterior home décor, and related goods.
 - e) One single family home as an accessory use to any permitted use, restricted to housing for employees of the owner or operator of the permitted use. Interior storage of supplies, materials, and goods associated with another permitted use shall be permitted with the home, but exterior storage of such items shall be prohibited.
 - f) Exterior storage of plants, trees, bushes, shrubbery and other similar living organisms available for sale.
 - g) Outdoor displays of goods for sale.
 - h) Accessory structures for the storage of inventory, supplies, and equipment.
 - i) Temporary outdoor festivals and events intended to draw customers to the primary uses on the site.
 - j) Farmer's markets, when operating in conjunction with and during the hours of operation of another permitted use.
- 3. The proposed zoning text includes limitations on special event uses. The following limitations shall apply:
 - a) Temporary outdoor festivals and farmer's markets will operate in conjunction with and during the hours of operation of another permitted use.
 - b) Temporary signage shall only be permitted during October and December for the calendar year and will be reviewed administratively by city staff.
- 4. The zoning text establishes the following setbacks listed in the table below. Minimum setback requirements are being provided to apply to any new construction or development within this zoning district

SETBACKS	
Johnstown Road	The minimum setback from the right-of-way
	shall be 25 feet for pavement and 50 feet for
	buildings.
Thompson Road	The minimum setback from the right-of-way
	shall be 25 feet for pavement and 75 feet for
	buildings.
Southern & Western Boundaries	The minimum setback from the western
	perimeter boundary line of this zoning
	district shall be 25 feet for pavement and 60
	feet for buildings.
Internal Boundaries	Setbacks along all internal property
	boundaries between adjoining parcels within
	this zoning district shall be zero for all
	buildings and pavement.

5. The site contains an existing channelized tributary to the Rocky Fork Creek. In order to match the existing development pattern the zoning text contains a provision that allows for existing structures, storage areas, and improved areas (including but not limited to paved, unpaved, and gravel areas) to be exempt from any required setbacks of the Codified Ordinances from streams or creeks or relating to riparian corridors. However, any new construction or modifications to existing improvements shall be required to comply with the city riparian corridor requirements.

C. Access, Loading, Parking

- 1. The single-family home shall provide for vehicular parking within a two-car garage and may provide for parking of at least two additional cars in the driveway just for employees.
- 2. The garden center business currently has two curb cuts: one on Johnstown Road and one on Thompson Road. The residential building contains its own curb cut on Johnstown Road. There are no additional curb cuts proposed or contemplated in the zoning text. Additional curb cuts will be evaluated with future development proposals.
- 3. The residential driveway shall be permitted to serve only the existing home on the site and access to other uses or improvements on the site from this driveway is prohibited.
- 4. The zoning text exempts the parking lot expansion from providing the typical parking lot islands and trees. This is consistent with the existing parking lot pattern. However, the spirit and intent of the landscaping code requirement appear to be met due to the nature of the business and the significant amount of landscaping on the site. However, it is required to provide the typical shrubs for headlight screening from the surrounding properties.
- 5. This application includes the review of a parking lot expansion in conjunction with and as part of this rezoning application since the site is already substantially developed. The parking lot expansion is on the residential home's property and is located beside and behind the home. There is an addition of 78 parking spaces for a total of 118 spaces.
 - a. The parking lot expansion appears to be appropriately designed and located since it is behind the residential home and matches the current pavement setback that exists today along Johnstown Road.
 - b. The code requires one parking space per 200 square feet of gross floor area for retail uses. According to the Franklin County Auditor, the garden center contains a total 12,357 +\- feet of retail space resulting in a minimum of 81 parking spaces being required. With the addition of 78 parking spaces, there area total of 118 spaces, which exceeds the minimum requirement of 81 spaces.
 - c. The parking lot spaces and drive aisles meet all of the dimensional requirements found in the city parking code.
 - d. There is no parking lot lighting proposed to be added.
 - e. The applicant has submitted a truck turning study indicating that deliveries and emergency vehicles can navigate the site. The parking lot expansion is designed around this turning study to ensure there are no changes to the navigability of the site.
- 6. There is already an existing leisure trail along Johnstown Road so no additional trail is required as part of this parking lot expansion.

D. Architectural Standards

- 1. The proposed rezoning text is silent on architectural standards; therefore, the city's Design Guidelines & Requirements apply to this zoning district.
- 2. The zoning text requires that no individual building or structure in this zoning district shall exceed 8,000 square feet of gross floor area.

E. Parkland, Buffering, Landscaping, Open Space, Screening

1. The zoning text includes a landscaping and buffer requirement along the portion of the boundary of this zoning district that is shared with the residential property. (PID 220-001797) This includes the western property line and the area extending from the

southernmost point of that shared boundary line on the west to the right-of-way of Johnstown Road on the east.

- a. Within the pavement setbacks of this area, the text requires plantings that achieve an opaqueness of seventy-five percent (75%) during full foliage and attain ten (10) feet in height within five (5) years of planting.
- b. As part of the parking lot expansion, the applicant has provided a landscape plan that includes 15 Green Giant trees along the portion of the western property line where there is no existing landscaping. The applicant indicates that the remainder of the boundary line contains existing landscaping that meets this code requirement.
- 2. Along all other perimeter boundary lines of this zoning district which are shared with parcels outside of this Zoning District, based on the existence of mature trees and vegetation near those lines either within the zoning district or on adjacent parcels, significant buffering exists and therefore Codified Ordinances Section 1171.05(c) does not apply.
- 3. The applicant is installing 5 new street trees along Johnstown Road where the parking lot expansion is located.
- 4. The landscape also proposed shrubs along the driveway of the residential home with other landscaping treatments in the front yard in order to keep the residential character of the home.
- 5. The landscape plan includes shrubs along Johnstown Road where the parking lot expansion is located to provide for headlight screening.
- 6. The city landscape architect has reviewed and approved the proposed landscaping plan. The city landscape architect recommends that additional shrubs be provided along the southern terminus (behind the residential home) of the parking lot drive aisle to provide for additional headlight screening. Staff recommends a condition of approval that this landscaping be added (condition #1).

F. Lighting & Signage

- 1. No lighting will be added to the new addition of the parking lot.
- 2. The proposed zoning text states the existing signage within the zoning district shall remain. However, temporary ground signs such as vertical banners and streamers shall be permitted for one consecutive 14-day period in both October and December of each calendar year as part of special business events.
- 3. All new signage shall comply to the requirements of the Codified Ordinances unless otherwise approved by the Planning Commission as part of the final development plan.

D. Other Considerations

- 1. The proposed zoning text states that any modifications or additions to improve the site within the zoning district in accordance with the Revised Parking Plan and the Revised Landscape Plan does not require a final development plan and shall be reviewed administratively by city staff. All other future expansions require a final development plan to be reviewed and approved by the Planning Commission.
- 2. All new utilities in this zoning district shall be installed underground.

IV. ENGINEER'S COMMENTS

The City Engineer, E.P. Ferris reviewed the proposed rezoning application and provided the following comments. <u>Staff recommends a condition of approval that the comments of the city engineer are addressed and incorporated into the zoning text as appropriate, subject to staff approval (condition #2).</u>

- 1) Add flood routing, contour and spot elevation data to the revised site plan showing that all drainage associated with the proposed additional parking will be directed toward the existing basin and away from adjoining parcels.
- 2) Provide a revised SW Report showing that the existing basin meets all water quantity and quality control requirements outlined in Code Section 1181 Stormwater Management and Runoff Control.

3) Where not already provided please provide legal descriptions and exhibits that dedicate 40' of r/w or easements as measured from the Thompson Road centerline and 45' of r/w as measured from the Johnstown Road centerline along all parcel frontages. Along Thompson Road provide an additional 10 feet of right-of-way and a 10-foot streetscape and utility easement in order to meet the strategic plan recommendations. These dedications are consistent with the Strategic Plan and previous r/w dedications for projects located in this area.

IV. SUMMARY

The rezoning application allows for the continued operation of the existing garden center business and ensures it is consistent with the spirit and intent of the city codified ordinances and strategic plan standards. Oakland Nursery is an established, long-standing business within the community and this rezoning supports its continued growth by expanding the parking lot and allowing for accessory uses such as product storage, employee parking, and housing seasonal staff in an adjacent residential home purchased by the business owner. Although the use of residential home is changing to commercial, the exterior of the home will be preserved to keep the residential character of the Johnstown Road corridor.

V. ACTION Suggested Motion for ZC-125-2023:

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate (conditions may be added):

Move to approve application ZC-125-2023 based on the findings in the staff report subject to the following conditions.

- 1. Additional shrubs be provided along the southern terminus (behind the residential home) of the parking lot drive aisle to provide for additional headlight screening, subject to staff approval.
- 2. The comments of the city engineer shall be addressed and incorporated into the zoning text as appropriate, subject to staff approval.

Approximate Site Location:



Source: Near Map



RE: City of New Albany Board and Commission Record of Action

Dear Ohio LLC, c/o Aaron Underhill Esq.

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Monday, January 22, 2024

The New Albany Planning Commission took the following action on 01/17/2024 .

Rezoning

Location: 5155 JOHNSTOWN RD Applicant: Ohio LLC, c/o Aaron Underhill Esq.

Application: ZC-2023-0125

- **Request:** To create a new zoning text for an area known as the "Oakland Nursery Zoning District" by zoning the area to Infill Planned Unit Development (I-PUD) from R-2 (Low Density Single Family Residential District) & AG (Agriculture District).
- **Motion:** Move to approve application ZC-125-2023 based on the findings in the staff report subject to conditions.

Commission Vote: Motion Approved with Conditions, 5-0.

Result: Rezoning, ZV-2023-0125 was Approved with Conditions, by a vote of 5-0.

Recorded in the Official Journal this January 18, 2024.

Condition(s) of Approval:

- 1. Additional shrubs be provided along the southern terminus (behind the residential home) of the parking lot drive aisle to provide for additional headlight screening, subject to staff approval.
- 2. The comments of the city engineer shall be addressed and incorporated into the zoning text as appropriate, subject to staff approval.
- 3. Insert into the zoning text, movable signage indicating Employee Parking Only behind the house whenever possible.
- 4. That storage on the residential property as discussed in Section III E be restricted to inside the garage or the existing barn.
- 5. The dedication of right of way on Thompson Road, maintaining the setbacks.

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith Planner



Planning Commission Staff Report January 17, 2024 Meeting

7113 ARMSCOTE END ARTIFICIAL LANDSCAPE VARIANCE

LOCATION:	7113 Armscote End (PID: 222-004851-00)	
APPLICANT:	Alison & Jesse Carmen	
REQUEST:	Variance to City Codified Ordinance Chapter 1171.07 to allow for artificial turfgrass.	
ZONING:	Comprehensive Planned Unit Development: West Nine 2 Subarea C	
STRATEGIC PLAN:	Residential	
APPLICATION:	VAR-126-2023	

Review based on: Application materials received on December 15, 2023.

Staff report prepared by Sierra Cratic-Smith, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance to allow the limited use of artificial turfgrass, about 76.4+/square yards, within a fenced in pool area at 7113 Armscote End (PID: 222-004851). The current text is silent on prohibited landscape materials therefore C.O. 1171.07 applies which states artificial plants are prohibited and that all landscape materials shall be living plants for the landscaping material requirements for planting such as grass and ground cover, trees, and shrubs and hedges. The applicant requests a variance to allow for artificial turf around a pool instead of natural grass.

II. SITE DESCRIPTION & USE

The property is 0.74 acres in size and contains a single-family home. The lot is located in the New Albany Country Club Ebrington (West Nine) subdivision. 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.

PC 24 0117 7113 Armscote End Artificial Landscaping VAR-126-2023

- 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 allow the limited use of artificial turfgrass, about 76.4+/- square yards, within a fenced in pool area.

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

- 1. The city landscaping chapter 1171.07 states artificial plants are prohibited and that all landscape materials shall be living plants for the landscaping material requirements for planting such as grass and ground cover, trees, and shrubs and hedges. The applicant requests a variance to allow for artificial turf around a pool instead of natural grass.
- 2. This variance does not appear to be substantial because of the limited size of the request. The 76.4+/- square yards is a minor portion of the lot. The parcel is about 3,605+/- square yards. This equates to about 2% of the entire lot.
- 3. It does not appear the essential character of the neighborhood would be substantially altered if the variance is approved. The site has a significant change in grade that results in a tiered patio design. As a result, the artificial turf is separated from the ground and is raised above the natural landscape so it's at the same grade as the pool. The artificial turf is located just in the immediate proximity of the pool. The applicant states that natural grass would wither and decay from the pool water and pet use; however, the artificial turfgrass will sustain under these harsh conditions.
- 4. In addition, there are a significant number of shrubs, installed around the pool and artificial turf and screen its view from offsite properties. The limited use and screening appear to result in zero or very limited view from properties. The artificial turf is in the rear yard where it is adjacent to the golf course and not other residential properties.

- 5. This variance preserves the spirit and intent of the zoning requirement because the artificial turf appears visibly the same and is used the same way as natural turf grass. The applicant has provided a sample showing its aesthetic quality.
- 6. This variance does not negatively impact the delivery of government services.
- 7. This problem can be solved by some manner other than the granting of the variance. It appears that installing natural landscape could be installed.
- 8. The city staff could not find any other variances approved for residential turf grass historically. However, artificial turfgrass is permitted for amenities such as putting greens in residential areas. And the zoning at the Courtyards at New Albany subdivision allows for artificial turf grass around the community pool in a similar layout as this request.
- 9. This variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed project.

IV. SUMMARY

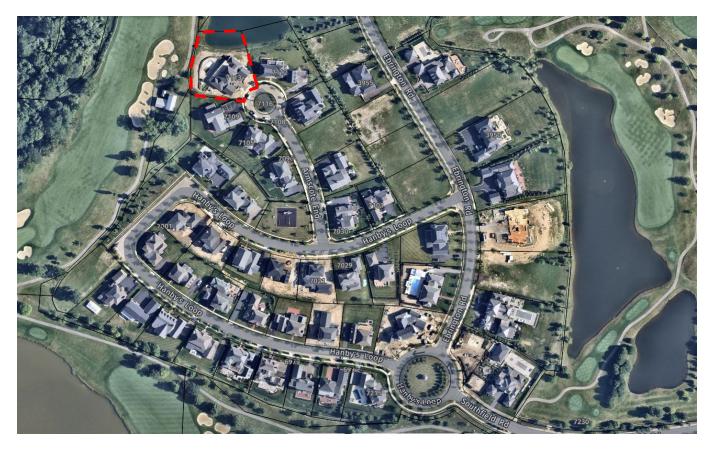
To summarize, the variance does not appear to be substantial considering the small area of artificial turfgrass requested when compared to the overall property and the significant amount of screening surrounding the artificial turf. The applicant requests the variance in order to provide more greenscape to the property instead of paving the area. They state that since it is such a small size and difficult to access, that the artificial turf is necessary to provide an alternative to hardscape.

V. ACTION

Should the Planning Commission find that the application has sufficient basis for disapproval, finding the following motion is appropriate.

Move to approve application VAR-126-2023 based on the findings in the staff report (conditions of approval may be added)

Approximate Site Location:



Source: NearMap



RE: City of New Albany Board and Commission Record of Action

Dear Greenscapes Landscape Co. Inc.,

Attached is the Record of Action for your recent application that was heard by one of the City of New Albany Boards and Commissions. Please retain this document for your records.

This Record of Action does not constitute a permit or license to construct, demolish, occupy or make alterations to any land area or building. A building and/or zoning permit is required before any work can be performed. For more information on the permitting process, please contact the Community Development Department.

Additionally, if the Record of Action lists conditions of approval these conditions must be met prior to issuance of any zoning or building permits.

Please contact our office at (614) 939-2254 with any questions.

Thank you.



Decision and Record of Action

Thursday, January 18, 2024

The New Albany Planning Commission took the following action on 01/17/2024.

Variance

Location: 7113 Armscote End, Unit:63 Applicant: Greenscapes Landscape Co. Inc.,

Application: PLVARI20230126Request: To allow 76.45 square yards of artificial turf in the rear yard.Motion: To approve

Commission Vote: Motion Approved, 4, 1

Result: Variance, PLVARI20230126 was Approved, by a vote of 4, 1.

Recorded in the Official Journal this January 18, 2024

Condition(s) of Approval: N/A

Staff Certification:

Sierra Cratic-Smith

Sierra Cratic-Smith Planner