



New Albany Board of Zoning Appeals
August 25, 2025 Meeting Minutes - Approved

I. Call to order

The New Albany Board of Zoning Appeals held a regular meeting on Monday, August 25, 2025 in the New Albany Village Hall. Chair LaJeunesse called the meeting to order at 6:30 p.m. and asked to hear the roll.

II. Roll call

Those answering the roll:

Mr. LaJeunesse	present
Mr. Jacob	present
Ms. Samuels	present
Mr. Schell	present
Mr. Wood	present
Council Member Shull	present

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

Staff members present: Planning Manager Christian, Planner I Henderson, Planner I Sauter, Deputy Clerk Madriguera.

III. Action on minutes

Chair LaJeunesse asked whether there were any corrections to the July 28, 2025 meeting minutes.

Hearing none, Board Member Jacob moved to approve the July 28, 2025 meeting minutes. Board Member Samuels seconded the motion.

Upon roll call: Mr. Jacob yes; Ms. Samuels yes; Mr. Wood yes; Mr. LaJeunesse yes; Mr. Schell yes. Having five yes votes, the motion passed and the July 28, 2025 meeting minutes were approved as submitted.

IV. Additions or corrections to the agenda

Chair LaJeunesse asked whether there were any additions or corrections from staff.

Planner I Henderson answered none from staff.

Chair LaJeunesse administered the oath to all present who wished to address the board. Thereafter he introduced VAR-60-2025 and asked to hear from staff.

VI. Cases

VAR-60-2025 Pavement Setback Variance

Variance to Business and Commerce L-GE zoning text Section III(B)(2) and Section III(B)(5) to reduce the required pavement setbacks for a property generally located at the southwest corner of the Beech Road and Miller Road intersection (PID: 095-111870-00.001).

Applicant: Beech Axis LLC, c/o Aaron L. Underhill

Planner I Henderson delivered the staff report.

Chair LaJeunesse asked if there were questions from the board for staff. Hearing none, he invited the applicant to speak in support of the application.

Applicant and Counsel Aaron Underhill, 8000 Walton Parkway, spoke in support of the application. He stated that at this point he could not disclose the end user but the applicant is planning to improve the property with a speculative industrial warehouse and/or industrial warehouse, which is a permitted use. This building is rectangular which is prototypical and most efficient for the end user. He explained that due to an overhead electrical easement, which is positioned at an angle across the property, there is a six-acre area where buildings are not permitted, while parking and pavement is allowed within the easement. He pointed out the surrounding users including Amazon, Microsoft, and Smart Family Farm. In order to minimize the encroachment on the setback on Beech Road, the building has been pushed back. He explained why the variance was justified. The special conditions that exist here are the combination of the shape and size of the parcel and the existence of the angled overhead easement. Other property users in the area such as Amazon, Microsoft, and Smart Family Farm, are subject to the same setback requirements, however they own much larger amounts of acreage thus they have greater flexibility for building placement.

Board Member Wood moved to admit the staff reports and related documents into the record for VAR-60-2025. Board Member Schell seconded the motion.

Upon roll call: Mr. Wood yes, Mr. Schell yes, Ms. Samuels yes, Mr. LaJeunesse yes, Mr. Jacob yes. Having five yes votes, the motion passed and the documents were admitted into the record for VAR-60-2025.

Board Member Schell asked staff whether they had heard from neighbors, noting that the land was most recently owned by Amazon who is also a neighbor.

Planner I Henderson answered that staff has not received responses from the neighbors.

Board Member Jacob asked for the scope of the additional parking, whether the applicant can meet the underlying code standards, and confirmed that the applicant is agreeable to the conditions recommended in the staff report.

Mr. Underhill answered yes, the applicant agrees with the conditions and intends to meet the underlying standards.

Chair LaJeunesse confirmed that the site plan was a conceptual design and the issues that the board was asked to consider and vote upon.

Mr. Underhill responded that the pond will need to be redesigned. The landscaping and the pond are provided for in the code. The board was being asked to grant a reduction in the minimum pavement setback as measured from the centerline of Beech Road from 185 feet to 136 feet; and to grant a reduction in the rear yard setback from 25 feet to 15 feet.

Chair LaJeunesse asked staff whether there are precedents for these requests.

Planning Manager Christian answered yes, prior setbacks have been approved.

Chair LaJeunesse asked how many jobs this would create.

Applicant and representative of Beech Axis controlled by Panattoni Development Company, answered that they anticipate that there will be 179 jobs. He further explained that the requests and the orientation of the building was to provide adequate space for semi trucks to enter the property and to turn around.

Board Member Samuels asked if there was a stormwater basin to the left and confirmed that the applicant could meet remaining code requirements.

The applicant answered that there was not a storm basin to the left and confirmed that the remaining code requirements would be met.

Samuels explained that she voted yes because of existing precedent, the fact that the applicant could otherwise meet the remaining code provisions, and the electrical easement.

Board Member Shell Motion of approval for application VAR-60-2025 based on the findings in the staff report with the conditions listed in the staff report, subject to staff approval. Board Member Jacob seconded the motion.

Upon roll call: Mr. Schell yes, Mr. Jacob yes, Ms. Samuels yes. Ms. Samuels explained that she voted yes because of existing precedent, and the constraints imposed by the electrical easement. Mr. LaJeunesse yes, Mr. Jacob yes. Having five yes votes, the motion passed and VAR-60-2025 was granted.

The board thanked the applicant and wished him good luck.

Thereafter, Chair LaJeunesse introduced the next and final case and asked to hear the staff report.

VAR-61-2025 Hot Tub Variance

Variance to 1998 NACO C-PUD zoning text Section 3a.03(5)(b) to allow a hot tub to be constructed above ground and eliminate the fencing requirements at 7116 Tumblebrook Drive (PID: 222-002390).

Applicant: Joseph Erb

Planner I Sauter delivered the staff report.

Board Member Samuels asked why, if the base code does not require in-ground placement of hot tubs, is a request for a variance required.

Planner I Sauter responded that it is because of the zoning text overlay.

Board Member Jacob moved to accept the staff reports and related documents into the record for VAR-61-2025. Board member Wood seconded the motion.

Upon roll call: Mr. Jacob yes, Mr. Wood yes, Mr. LaJeunesse yes, Mr. Schell yes, Ms. Samuels yes. having five yes votes, the motion passed and the documents were admitted into the record for VAR-61-2025.

Council Member Shull remarked that this is the first time he has seen a variance for fence for a hot tub and asked why the provision for pools applied here.

Planning Manager Christian responded that in consultation with Law Director Albrecht, staff decided the code provision applies to all pools and hot tubs.

Council Member Shull stated that he would recommend a separate stand alone text for hot tubs.

Board Member Schell asked if the board has ever approved a hot tub.

Planner I Sauter responded that page 3 of the staff report listed one approval. The approval was conditioned on the installation of a fence. The rest of the requests that she had found were either tabled or denied.

Board Member Woods observed that the landscaping is off to the side and asked whether there was any discussion about moving it closer.

Planner I Sauter responded that there was no discussion.

Board Member Jacob asked staff what the code requires and how the request came before the board.

Planning Manager Christian explained that the applicant is requesting a variance from two regulations - the in-ground requirement, and the fencing requirement. He stated that candidates do not typically request permission before installing hot tubs. The 2020 variance was approved on the condition that a fence was installed.

Board Member Samuels asked what the spirit of the code is in the context of this application.

Planning Manager Christian responded that the above ground is separate from the fencing requirement. A variance from the above ground requirement is easier because there can be screening. A variance from the fencing requirement is more difficult. There has not been an approval of this type of request and this is a safety concern – there is usually a larger lot with a large stand of trees.

Chair LaJeunesse asked whether there had been any responses from the neighbors.

Planner I Sauter said there had been one call from a neighbor who was seeking general information.

Chair LaJeunesse asked whether staff was considering a code change.

Planning Manager Christian responded that there could be a code change to address hot tubs as suggested by Council Member Shull. But there would not be a change to remove the fencing requirement.

Council Member Shull thanked Planner I Sauter for doing a phenomenal job with the historical analysis. He noted that the provisions explicitly applied to pools. If the text of the code is changed, then the landscaping is key.

Board Member Schell stated that safety is by far the biggest factor in these cases. Granting a request on a bigger lot is a little bit different. Safety is the #1 factor.

Chair LaJeunesse asked the applicant if he had anything to add.

Applicant and property owner Joe Erb, 7116 Tumblebrook Dr., came to the lectern. He thanked Planner I Sauter and the board. He stated that he was here on his 43rd birthday. He called attention to the landscaping and explained that the photo did not do it justice. There are big trees and he has made sure the property is safe for his son and the other kids in the neighborhood. He noted that this neighborhood is split between Columbus and New Albany and if his home was on the Columbus side he would not need a variance. He further noted that there is a giant unfenced pond across the street. The lot where they live is screened and the tub is locked with a locked slide cover.

Chair LaJeunesse confirmed that the landscaping requirements are being met.

Board Member Samuels asked whether the above ground nature of the tub obviate the fencing requirement, noting the height of the hot tub and the height of the fencing.

Planning Manager Christian responded that that is one of the issues the board must decide.

Board Member Schell remarked that this approval would be a first, all pools have required fencing.

Chair LaJeunesse asked how tall the tub is.

Mr. Erb responded that it is at least three feet. It is tall and there is no chance a child could fall in; there is landscaping and a patio.

Council Member Shull confirmed that the cover is also locked.

Board Member Jacob asked the applicant whether neighbors have hot tubs.

Mr. Erb explained that as a NJ immigrant, he does not snitch. Nonetheless if one was to drive around his neighborhood they would see other hot tubs.

Board Member Schell remarked that he would like to see closer and tighter screening, if he had a say.

Mr. Erb responded that he is not opposed to installing more landscaping.

Board Member Samuels asked about the fencing requirement.

Planning Manager Christian answered that code requires the fence to be 48 inches tall and all around the tub.

Chair LaJeunesse asked whether this was safety landscaping, and where it was installed.

Mr. Erb indicated the location of the landscaping

Board Member Samuels asked whether there is precedent for a pool cover being approved in lieu of fencing.

Planning Manager Christian answered yes.

After discussion, the board decided to vote on the two parts of the variance request, (A) and (B), separately.

Board Member Samuels moved to approve VAR-61-2025(A) based on the findings in the staff report with the conditions in the staff report and the additional condition that the landscaping is developed as proposed in this application. Board Member Wood seconded the motion.

Upon roll call: Ms. Samuels yes; Mr. Wood yes; Mr. Jacob yes; Mr. LaJeunesse yes; Mr. Schell yes. Having five yes votes, the motion passed and VAR-61-2025(A) was granted.

Board Member Samuels moved to approve VAR-61-2025(B) based on the findings in the staff report with the conditions in the staff report, subject to staff approval. Board Member Jacob seconded the motion.

Upon roll call: Ms. Samuels yes. Ms. Samuels explained that she voted yes because there is a locked pool cover. Mr. Jacob yes; Mr. Wood yes; Mr. LaJeunesse yes; Mr. Schell yes. Having five yes votes the motion passed and VAR-61-2025(B) was granted.

The board wished the applicant good luck and a happy birthday.

VII. Other business; Poll members for comment; Adjournment

Chair LaJeunesse asked if there was any other business before the board. Hearing none he polled the members for comment.

Hearing no comments and having completed the agenda, Board Member Jacob moved to adjourn the August 25, 2025 meeting of the New Albany Board of Zoning Appeals. Board Member Wood seconded the motion.

Upon roll call: Mr. Jacob yes; Mr. Wood yes; Mr. LaJeunesse yes; Ms. Samuels yes; Mr. Schell yes.
Having five yes votes the motion passed and the meeting was adjourned.

Submitted by: Deputy Clerk Madriguera, Esq.

Appendix

VAR-60-2025

Staff Report

Record of Action

VAR-61-2025

Staff Report

Record of Action



**Board of Zoning Appeals Staff Report
August 25, 2025 Meeting**

BEECH AXIS LLC SETBACK VARIANCES

LOCATION: Generally located at the southeast corner of Beech Road and Miller Road (PID: 095-111870-00.001).

APPLICANT: Beech Axis, LLC c/o Aaron L. Underhill

REQUEST: (A) Variance to zoning text section III(B)(2) to allow pavement to encroach 49 feet into the required 185-foot pavement and building setback along Beech Road.
(B) Variance to zoning text section III(B)(5) to allow pavement to encroach 10 feet into the required 25-foot pavement and building setback at the rear of the property.

ZONING: L-GE, Business and Commerce Zoning District

STRATEGIC PLAN: Employment Center

APPLICATION: VAR-60-2025

Review based on: Application materials received July 25, 2025

Staff report prepared by Jay Henderson, Planner

I. REQUEST AND BACKGROUND

The applicant requests the following variances for a proposed speculative industrial warehouse/distribution facility.

- (A) Variance to zoning text section III(B)(2) to allow pavement to encroach 49 feet into the required 185-foot pavement and building setback along Beech Road.
- (B) Variance to zoning text section III(B)(5) to allow pavement to encroach 10 feet into the required 25-foot pavement and building setback at the rear of the property.

II. SITE DESCRIPTION & USE

The 24.06-acre site is generally located at the southeast corner of Beech Road and Miller Road in Licking County. The property is located in the Business and Commerce L-GE zoning district, which was reviewed and approved by the Planning Commission on September 19, 2022 (ZC-102-2022) and adopted by City Council on October 18, 2022 (O-29-2022). The properties directly north, south, east, and west of the site are zoned to permit commercial uses.

III. ASSESSMENT

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 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.

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):

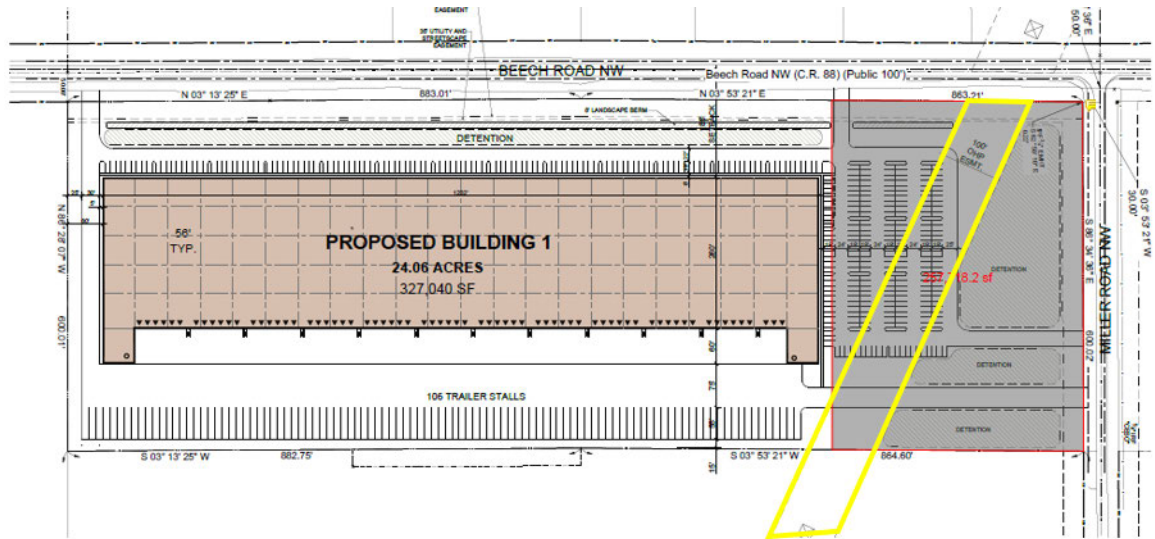
8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights 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

(A) Variance to zoning text section III(B)(2) to allow a building to encroach 49 feet into the required 185-foot building and pavement setback along Beech Road.

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

1. The applicant is requesting a variance to allow a portion of the parking and drive aisle for a proposed speculative warehouse building to encroach 49 feet into the required 185-foot building and pavement setback along Beech Road.
2. There are special conditions and circumstances of this property that do not apply to other properties in the same zoning district that provide justification for the variance request. The property is rectangular, with a portion of the property featuring a 100-foot overhead electrical easement (Shown in yellow below) that limits the buildable area for structures to approximately 5.91 acres.



Conceptual site plan

3. The variance can be seen as substantial; however, if the applicant/owner can meet the Beech Road North Landscape and Design Guidelines and C.O. 1171.08 Wet and Dry Stormwater Basins, the variance would be in keeping with requirements. There are no residentially zoned properties surrounding the site.
 - a. The applicant states that the pavement encroachment in this area is needed to accommodate private vehicular access and associated parking. The applicant provided that the setback variance along Beech Road would be reduced by 21% (139 feet).
 - b. The applicant has also stated that the setback along the east side of Beech Road south of Jug Street has a minimum pavement setback of 100 feet from the centerline, and the 139 feet being requested would exceed that requirement.
4. The variance preserves the “spirit and intent” of the zoning requirement. When this zoning district was adopted, the intent of providing larger setbacks along principal arterial roadways was to ensure that there was adequate space along the road to provide landscaping and establish the roadway character, and to provide architectural standards for proposed buildings. The applicant provided a conceptual site plan, and it appears that the roadway character will be preserved.
5. It does not appear that the essential character of the neighborhood will be altered if the variance is granted. While the pavement areas may be closer to the road, the proposed setback is still significant and the zoning text for this site contains the same requirements as other New Albany Business Park zoning texts. The proposed building will not encroach into the setback, which will keep the universal standard for properties in the zoning text. All surrounding properties are zoned for commercial use.
6. It does not appear that the variance would adversely affect the delivery of government services, affect the health and safety of people 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. The owner purchased the property as it is configured today in June 2025, which was a part of the Amazon Data Services campus.

(B) Variance to zoning text section III(B)(5) to allow a paved area to encroach 10 feet into the required 25-foot rear building & pavement setback.

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

1. The applicant is requesting a variance to allow pavement to be located approximately 15 feet from the eastern boundary of the site. The zoning text states that the minimum building and pavement along this property line is 25 feet unless it is adjacent to a property where residential uses are permitted.

2. The adjacent parcel to the west is owned by Amazon Data Services, which primarily consists of uses internal to the building and has a reduced amount of activity outside of the structure.
3. The property has special conditions and circumstances that do not apply to other properties in the same zoning district that provide justification for the variance request, being that the property is rectangular compared to the surrounding properties. The variance request does not appear to be substantial. Additional properties in the same zoning district have greater lot sizes, which can provide the owner flexibility to construct a facility with similar uses. Additionally, the board has previously approved similar requests for pavement and building setbacks of 25 feet.
4. It does not appear that the essential character of the neighborhood will be altered if the variance request is granted. While the applicant is encroaching on the required setback, the adjacent property is zoned for commercial use, and currently, there are no residentially zoned properties adjacent.
5. It does not appear that the variance would adversely affect the delivery of government services, affect the health and safety of people 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.
6. The variance request would allow the property owner to construct a permitted building within a zoning district that consists of larger sites zoned for similar uses.

V. HISTORY

There have been similar applications heard by the Board of Zoning Appeals since 2017.

1. The BZA approved a variance at 9200 Smith's Mill Road in 2017 to allow the pavement setback to be 5 feet along the eastern property line, where the code requires a minimum of 50 feet. The application was approved with conditions that enhanced landscaping should be installed to provide extra screening between properties. The surrounding area consisted of commercial uses.
2. In 2020, the BZA approved a variance at 8982 Innovation Campus Way to allow a paved walkway to encroach the required 25-foot pavement setback along Innovation Campus Way. The variance was approved with the condition that the paved area at the office entrance must be connected into the proposed walkway. The surrounding parcels consist of commercially zoned properties.
3. The BZA approved a variance in 2021 at 8400 Smith's Mill Road to allow a building to be located 40 feet into the 100-foot required building setback along the rear and side property lines. All surrounding properties were commercially zoned.
4. In 2022, the BZA approved a variance at 13411 Worthington Road NW to reduce the minimum pavement and building setback from 50 feet to 25 feet. The reduced setback was stated to only be on three sides and not along Worthington Road.

VI. SUMMARY

The applicant/owner did not create the narrow configuration through a lot split. To make the best use of the property, the applicant is requesting variances for the pavement and building setbacks. A 100-foot overhead utility easement limits the use of the northernmost portion of the site for building placement, further constraining their desired building design. The purpose of the building and pavement setback along Beech Road is to provide adequate space for enhanced landscaping, which offers visual screening and helps establish the roadway's character. The applicant has confirmed with staff that stormwater management and landscaping requirements will be met. Additionally, there are no residential-zoned properties surrounding the site that could have an impact.

VII. ACTION

Should the Board of Zoning Appeals find that the application has sufficient basis for approval, the following motions would be appropriate (The Board of Zoning Appeals can make one motion for all variances or separate motions for each variance request):

Move to approve application VAR-60-2025 with conditions (additional conditions of approval may be added).

1. The Beech Road North Landscape and Design Guidelines are met.
2. Zoning Code section 1171.08 Wet and Dry Stormwater Basins are met.

Approximate Site Location:



Source: NearMap



Community Development Department

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

Dear Beech Axis 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.



Community Development Department

Decision and Record of Action

Tuesday, August 26, 2025

The New Albany Board of Zoning Appeals took the following action on 08/25/2025 .

Variance

Location: PID: 095-111870-00.001

Applicant: Beech Axis LLC c/o Aaron Underhill, Esq.,

Application: PLVARI20250060

Request: Variance to Business and Commerce L-GE zoning text Section III(B)(2) and Section III(B)(5) to reduce the required pavement setbacks for a property generally located at the southwest corner of the Beech Road and Miller Road intersection (PID: 095-111870-00.001).

Motion: To approve

Commission Vote: Motion Approval with Conditions, 5-0

Result: Variance, PLVARI20250060 was Approval with Conditions, by a vote of 5-0.

Recorded in the Official Journal this August 26, 2025

Condition(s) of Approval:

1. The Beech Road North Landscape and Design Guidelines are met.
2. Zoning Code section 1171.08 Wet and Dry Stormwater Basins are met.

Staff Certification:

Jay Henderson
Planner



**Board of Zoning Appeals Staff Report
August 25, 2025 Meeting**

**7116 TUMBLEBROOK DRIVE
HOT TUB VARIANCE**

LOCATION: 7116 Tumblebrook Drive (PID: 222-002390)
APPLICANT: Joseph Erb
REQUEST: (A) Variance to C-PUD zoning text Section 3a.03(5)(b) to allow a hot tub to be above ground.
(B) Variance to C-PUD zoning text Section 3a.03(5)(a) to allow a hot tub to be screened by landscaping in lieu of fencing.
ZONING: Village Homes District C-PUD (Planned Unit Development District)
STRATEGIC PLAN: Residential
APPLICATION: VAR-61-2025

Review based on application materials received July 25, 2025, and updated August 6, 2025.

Staff report prepared by Lauren Sauter, Planner.

I. REQUEST AND BACKGROUND

The applicant is requesting the following variances for a hot tub:

- (A) Variance to Village Homes District zoning text Section 3a.03(5)(b) to allow a hot tub to be constructed above ground.
- (B) Variance to Village Homes District zoning text Section 3a.03(5)(a) to allow a hot tub to be screened by landscaping in lieu of fencing.

The proposed above-ground hot tub is approximately 57.51 square feet (7 feet and 7 inches in both length and width) and 3 feet and 1.5 inches in height. It is proposed to be located in the rear yard of the property.

II. SITE DESCRIPTION & USE

The 0.23-acre property is located in Hampsted Village (Section 10) at the western boundary of New Albany. The area is zoned for residential Comprehensive Planned Unit Development (C-PUD) and is surrounded by similar residential uses and an agricultural (AG) district to the west. The site includes a single-family home, an existing patio, a 20-foot easement along the rear property line, and a 12-foot easement along the western property line.

III. ASSESSMENT

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

Criteria

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

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

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

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

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

Zoning Text

The property is located within Subarea A, Village Homes West, of the 1998 NACO C-PUD entitled “Village Homes District Plan.” Section 3a.03(5) provides the following regulations for “Swimming Pools/Spas:”

1. *All swimming pools/spas shall be located in the rear yard, within the building line of the site, completely enclosed by fencing and screened from adjoining properties.*
2. *All swimming pools/spas shall be in-ground construction. The swimming pool/spa equipment shall be within the enclosure and completely screened from adjoining properties.*
3. *Spas may be constructed as part of the house. Spas may be permitted, provided they are completely screened from adjoining properties by fencing or landscaping.*

Any regulations set in the C-PUD that conflict with the New Albany codified ordinances will supersede the codified ordinances. Any other pertinent regulations in the codified ordinances apply in addition to those of the C-PUD.

IV. EVALUATION

The proposed hot tub will require variances to two sections of the Village Homes District zoning text. The hot tub is in compliance with all other applicable sections and chapters of the C-PUD zoning text and the Planning and Zoning Code of the New Albany Code of Ordinances.

(A) Variance to Village Homes District zoning text Section 3a.03(5)(b) to allow a hot tub to be constructed above ground.

The following information should be considered in the Board's decision:

1. The Village Homes District zoning text Section 3a.03(5)(b) requires all swimming pools and spas to be in-ground construction. The swimming pool/spa equipment shall be within the enclosure and completely screened from adjoining properties.
2. The applicant proposes a 57.51-square-foot above-ground hot tub. The applicant states that the hot tub will be completely screened from adjoining properties and it is thus in compliance with the rest of Section 3a.03(5)(b).
3. Existing landscaping largely screens the rear yard from neighboring properties. Additional landscaping is proposed primarily along the rear and eastern property lines.
4. The applicant states that the hot tub will sit on a concrete pad that has been constructed under the pavers to allow a more fluid look with the patio and to protect the property.
5. Per C.O. 1173.02(c), the setback for pools and spas from any lot line is 15 feet. The hot tub is proposed to be just over 34 feet away from the rear lot line and just over 18 feet away from the eastern side lot line.
6. The essential character of the neighborhood would not be altered if the variance request is granted. The existing and proposed landscaping around the rear yard provides screening so that any visual impacts are contained within the site.
7. The variance preserves the spirit and intent of the zoning requirement, which is to minimize the visual impact of pools and spas and their equipment on adjacent properties and the public right-of-way. The hot tub is located just behind the primary building and will be screened by existing and proposed landscaping from adjacent properties and any public right-of-way. Additionally, the hot tub is proposed to be constructed in a manner that allows "a more fluid look with the patio," thus improving the visual cohesion and reducing the visual impact of the hot tub on the paved terrace.
8. The variance could be substantial due to the lack of precedence of related variances being heard or voted on by the Board of Zoning Appeals or Planning Commission. However, if this property was zoned as residential (no PUD), an above-ground hot tub would be permitted. Since the PUD text imposes stricter regulations, a variance is required.
9. Two variances proposing above-ground hot tubs have been heard since 2017:
 - a. In May of 2020, the Planning Commission approved, with conditions, a variance request to the Saunton zoning text to allow a 97.5-square-foot swim spa to be constructed above ground (VAR-23-2020). The conditions of approval were:
 - i. The spa be encompassed inside the deck, subject to staff approval;
 - ii. Fencing or railing be installed around the deck area;
 - iii. A gate matching the fencing or railing be installed; and
 - iv. Additional landscaping will be installed, subject to staff approval.
 - b. In December of 2021, the Planning Commission tabled a variance request to the Nottingham Trace zoning text to allow a spa to be constructed above ground (VAR-120-2021). Voting members requested the applicant determine whether he could refund the above-ground spa in favor of an in-ground spa and tabled the application to provide him time to do so. The application was withdrawn.
10. Granting the variance would not adversely affect the delivery of government services.
11. Granting the variance would not adversely affect the health and safety of people residing or working in the vicinity of the proposed hot tub.

(B) Variance to Village Homes District zoning text Section 3a.03(5)(a) to allow a hot tub to be screened by landscaping in lieu of fencing.

The following information should be considered in the Board's decision:

1. The Village Homes District zoning text Section 3a.03(5)(a) requires all swimming pools and spas to be located in the rear yard, within the building line of the site, completely enclosed by fencing and screened from adjoining properties.
2. The applicant proposes utilizing existing and proposed landscaping as screening in lieu of a fence that completely encloses the spa. The hot tub will be located in the rear yard, located within the building line of the site, and screened from adjoining properties, and is thus in compliance with the rest of Section 3a.03(5)(a).
3. Existing landscaping largely screens the rear yard from neighboring properties. Additional landscaping is proposed primarily along the rear and eastern property lines.
4. There is no existing or proposed fence on the property.
5. There is no existing or proposed swimming pool on the property.
6. The essential character of the neighborhood would not be altered if the variance request is granted. The existing and proposed landscaping around the rear yard provides screening so that any visual impacts are contained within the site.
7. It is uncertain whether the variance preserves the spirit and intent of the zoning requirement. Fence regulations for pools and spas are typically intended for safety and controlled access. Landscape screening will not effectively prevent entry into the yard from adjacent properties; however, if variance A is approved by the Board, an above-ground hot tub may mitigate some of the safety concerns of an in-ground swimming pool or spa. Additionally, the applicant states the hot tub will be covered at all times while not in use.
8. The variance could be substantial in that only one variance has been requested since 2017 or prior to allow a spa to be constructed without required fencing. Further, the Planning Commission and Board of Zoning Appeals have historically taken careful consideration of special circumstances and the Duncan factors in coming to a decision for variances to pool fence requirements.
9. Granting the variance would not adversely affect the delivery of government services.
10. Granting the variance could adversely affect the health and safety of people residing or working in the vicinity of the proposed hot tub.

V. HISTORY

There have been numerous variance requests for pools to be permitted without required fencing that have been heard by the Board of Zoning Appeals or the Planning Commission since 2007:

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

- *April 18, 2016 – Approved – Planning Commission – Variance to allow a pool cover in-lieu of a fence that meets code requirements for 6958 Lambton Park Road.*

Members voting in favor of the variance noted that, with conditions of approval, the variance preserves the spirit and intent of the zoning ordinance and that there are special circumstances, including substantial screening, limited access due to the private golf course, an existing horse fence, a large property size, a lack of neighbors and having an annually certified pool cover. Members voting against the variance noted this is because there is not a condition requiring code-compliant fencing along Johnstown Road and noted a lack of evidence that pool covers have the same safety record as fences, and this is substantial because it affects the health and safety in the community. The conditions of approval were:

- An automatic safety pool cover installed that is ASTM compliant as and if amended.
- The pool area is fully enclosed by a house, fence, or wall.
- The existing 54-inch and 44-inch horse fence counts towards the enclosure of the pool.
- The new fence, installed along the east side of the property adjacent to the neighboring lot that permits single-family residential, must meet the new proposed pool code requirements that the Planning Commission recommended approval of on April 18th.
- The pool cover is certified annually by the homeowner.

- *October 17, 2016 – Approved – Planning Commission – Variance to allow landscaping and pool netting in-lieu of a fence that meets code requirements on for 10 and 11 Highgrove.*

Members voting in favor of the variances noted that, with conditions of approval, the variance preserves the spirit and intent of the zoning ordinance and the pool appears to have limited access due to the private golf course, substantial screening (including a hedgerow to be installed around all sides of the pool), a horse fence, the property owners' intent to use the pool net when the pool is not in use with adult supervision, and having an annually certified pool net. Members voting against the variance noted the property would have a reasonable return without the variance, the variance appears substantial, the essential character of neighborhood would not change, property owners were aware of the restrictions, the original permit showed code-complaint fence, and it was not installed per approved plan. Finally, the applicant did not prove pool netting is as safe as a fence. The conditions of approval are:

- Landscaping approved by ARC and staff to include original and tonight's submissions.
- Commitment to install boxwoods or gates at all openings.
- Pool netting or hard cover ASTM compliant installed at all times when not in use and not attended by a responsible adult.
- Applicant maintains landscaping and new plantings.
- The pool netting is certified annually by the homeowners for function.
- Hard cover installed by 11/1/16 and not removed until in compliance.
- The applicant provides a copy of the easement to permit homeowner to maintain the fence in the event the NACO does not.

- *May 18, 2020 – Approved – Planning Commission – Variance to allow a pool cover for a residence in-lieu of a fence that meets code requirements for 7010 Lambton Park Road.*

The applicant proposed to install a 44-inch-high horse fence along the eastern property line which, in addition to a creek and heavily wooded area, provided an appropriate barrier to access that aligned with similar factors for other approved pool fence variances. The presence of a pool cover is also an important factor to ensure safety. In addition, the applicant proposed to install a continuous, uninterrupted 3-to-4-foot-tall evergreen landscape hedge along the golf course property line where landscaping does not already exist. Staff believed that this additional landscaping served as an appropriate barrier to prevent uncontrolled access to the pool. With these additional landscaping barriers, the

variance preserved the spirit and intent of the zoning ordinance. The conditions of approval are:

- Applicant maintains landscaping and new plantings.
 - The pool cover is certified annually by the homeowner.
- *2022 – Tabled – Board of Zoning Appeals – Variance to allow a pool cover for a residence on 6.5 acres in lieu of a fence at 8323 Central College Road.*
The basis of the table was the applicant working with staff to figure out alternative measures to provide unimpeded access. The application was withdrawn by the applicant following the hearing.
- *July 21, 2025 – Denied – Planning Commission – Variance to allow a pool cover in-lieu of a fence at 21 S Ealy Crossing.*
The applicant proposed a pool cover on a 160-square-foot pool in addition to a gate to block access from the driveway and additional screening along the side yards. The 0.75-acre lot includes a 100-foot tree preservation zone encompassing the rear of the property. Voting members cited safety concerns due to uncontrolled access, especially due to the comparably smaller size of the lot and its location in the Village Center.

VI. SUMMARY

The applicant proposes a hot tub that is constructed above ground and uses landscaping to screen the rear yard in lieu of fencing requirements. Adding landscaping to that which already exists on the lot will screen the hot tub from outside of the property, preserving the character of the neighborhood and reducing the spa's visual impact. While landscaping achieves visual screening, it may not satisfy safety standards intended by the fencing requirement, though granting variance A to allow the hot tub to be above ground may reduce some safety risks.

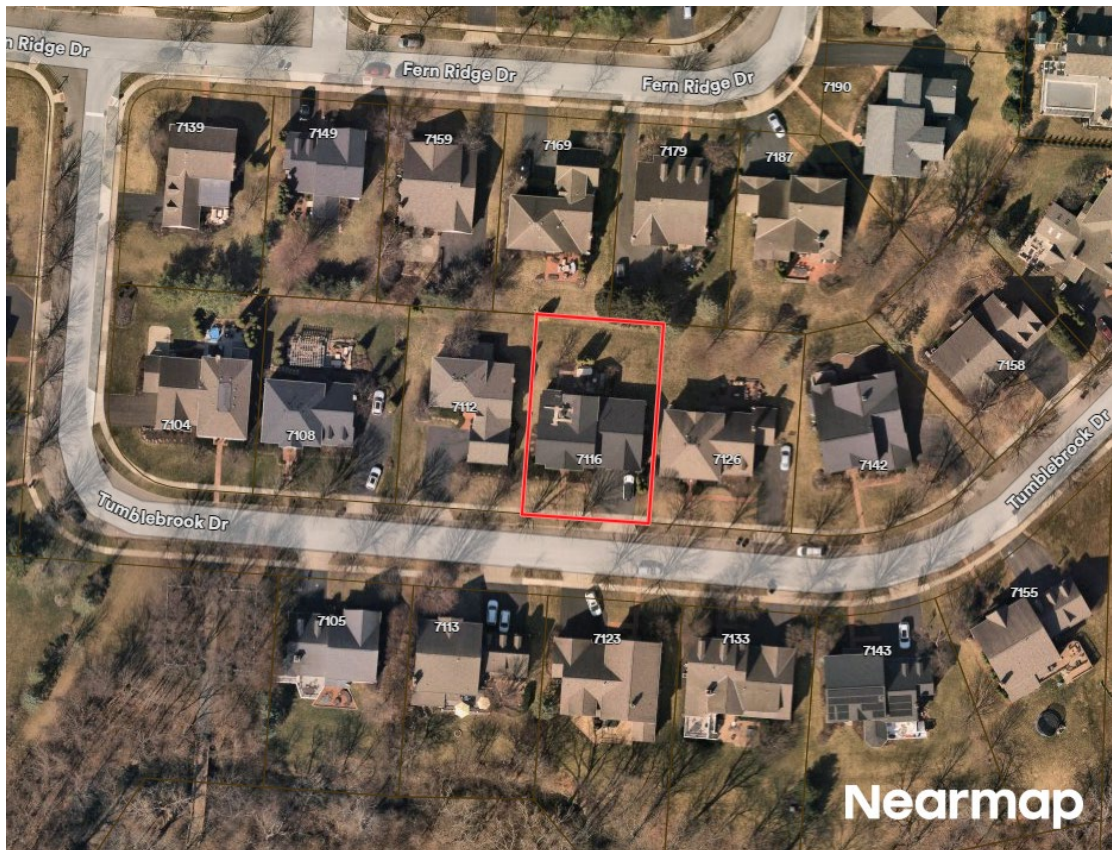
While there is little precedence for fencing variances to hot tubs, the Board of Zoning Appeals and the Planning Commission have heard numerous variances of a similar nature for swimming pools. The Board and Commission have historically reviewed these on a case-by-case basis and often consider factors such as the proximity of the property to other residences, public accessibility to the property, and the effectiveness of a cover in providing safety. The spa that was approved to be above ground in 2020 by the Planning Commission was larger than the proposed hot tub but was conditioned to have a fence and gate that fully enclosed it.

VIII. ACTION

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

Move to approve variance application VAR-61-2025 based on the findings in the staff report.

Approximate Site Location:



Source: NearMap



Community Development Department

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

Dear Joseph Erb,

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.



Community Development Department

Decision and Record of Action

Tuesday, August 26, 2025

The New Albany Board of Zoning Appeals took the following action on 08/25/2025.

Variance

Location: 7116 TUMBLEBROOK DR

Applicant: Joseph Erb

Application: PLVARI20250061

Request: Variance to 1998 NACO C-PUD zoning text Section 3a.03(5) to allow a hot tub to be constructed above ground and eliminate the fencing requirements at 7116 Tumblebrook Drive (PID: 222-002390).

Motion: To approve

Commission Vote: Motion Approved with Conditions, 5-0

Result: Variance PLVARI20250061 was Approved with Conditions by a vote of 5-0.

Recorded in the Official Journal this August 26, 2025.

Condition(s) of Approval:

- The landscaping is developed as proposed by the applicant.

Staff Certification:

Lauren Sauter

Lauren Sauter
Planner