



New Albany Board of Zoning Appeals Agenda
October 24, 2022 7:00pm

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

I. Call To Order

II. Roll Call

III. Action of Minutes: September 26, 2022

IV. Additions or Corrections to Agenda

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

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

VII. Cases:

VAR-96-2022 Variance

Variance to the pool setback requirements of Codified Ordinance section 1173.02(c) at 3707 Head of Pond Road (PID: 222-001574-00).

Applicant: Mark Roehrenbeck

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

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

VIII. Other Business

IX. Poll members for comment

X. Adjournment



New Albany Board of Zoning Appeals
September 26, 2022 DRAFT Minutes

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

Those answering roll call:

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

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

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

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

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

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

VAR-95-2022 Variance

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

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

Ms. Nichols presented the staff report.

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

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

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

Ms. Nichols stated yes.

Mr. Schell asked if they had provided any comments.

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

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

Ms. Nichols affirmed there had not been any complaints.

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

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

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

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

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

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

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

Mr. LaJeunesse stated thank you.

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

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

VAR-96-2022 Variance

Variance to the pool setback requirements of Codified Ordinance section 1173.03(c) at 3707 Head of Pond Road

(PID: 222-001574-00). Applicant: Mark Roehrenbeck

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

VAR-112-2022 Variance

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

Applicant: MBJ Holdings LLC, c/o Aaron Underhill

Mr. Christian presented the staff report.

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

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

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

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

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

Mr. Underhill stated right.

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

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

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

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

Mr. Schell asked if the neighbors had any issues.

Mr. Christian stated no.

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

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

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

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

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

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

Mr. LaJeunesse stated thank you.

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

Mr. Christian stated yes.

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

Moved by Mr. Smith to approve variance VAR-112-2022, seconded by Mr. LaJeunesse. Upon roll call vote: Mr. Smith, yea; Mr. LaJeunesse, yea; Ms. Samuels, yea; Mr. Schell, yea; Mr. Jacob, yea. Yea, 5; Nay, 0; Abstain, 0. Motion carried by a 5-0 vote.

Other Business

Mr. LaJeunesse asked if there was any Other Business.

Mr. Christian stated not at this time.

Poll Members for Comment:

None.

Meeting adjourned at 7:22 p.m.

Submitted by Josie Taylor.

DRAFT



Board of Zoning Appeals Staff Report
September 26, 2022 Meeting

6500 NEW ALBANY ROAD E.
DISCOVER LOT SPLIT SETBACK VARIANCE

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

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

Staff report prepared by Chelsea Nichols, Planner.

I. REQUEST AND BACKGROUND

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

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

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

II. SITE DESCRIPTION & USE

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

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

III. ASSESSMENT

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

Criteria

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

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

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

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

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

IV. EVALUATION

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

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

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

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

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

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

V. RECOMMENDATION

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

VI. ACTION

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

Move to approve application VAR-95-2022.

Approximate Site Location:



Source: nearmap



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

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

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

Review based on: Application materials received on August 9, 2022 and on September 14, 2022.

Staff report prepared by Chelsea Nichols, Planner.

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

Based on the request, the following motion is appropriate:

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

Approximate Site Location:



Source: nearmap



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

**SITE D
LIMITATION TEXT SETBACK VARIANCE**

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

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

Staff report prepared by Chris Christian, Planner II.

VII. REQUEST AND BACKGROUND

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

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

II. SITE DESCRIPTION & USE

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

III. EVALUATION

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

Criteria

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

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

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

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

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

III. ASSESSMENT

Considerations and Basis for Decision

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

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

7. As part of the construction of a new commercial building on the property, the applicant requests a variance to reduce the required pavement and building setbacks from 50 to 25 feet along perimeter boundaries not adjacent to Worthington Road
8. It does not appear the variance is substantial. The variance does not modify the 50-foot pavement and building setback requirement along Worthington Road and the proposed variance only reduces the setback along property lines that are shared with adjacent commercially zoned and used properties. The Meta data center site is located directly south of the property, an AEP substation to the west and a new commercial building is currently under construction directly east of this site.
9. The variance preserves the spirit and intent of the GE zoning district and limitation texts as the setback requirement was established to minimize the impact on neighboring residential uses. Historically the PC and BZA have approved variances to reduce or eliminate more restrictive setback requirements established when residentially used properties are rezoned to commercial.
10. When the property was being annexed and rezoned via smaller, individual parcels, there were existing residentially neighboring this parcel. This created a temporary, “transitional” condition in which residentially used properties and commercially zoned properties were adjacent. However, since then the areas along the perimeter boundaries where the variance is being requested have been

annexed into the city and zoned to allow for commercial uses. Due to these changed conditions, it does not appear that the larger setback is needed.

11. It appears there are special circumstances within these zoning districts that are not applicable to other lands. The Limited General Employment (L-GE) zoning district functions as an overlay with additional, more restrictive requirements than the standard General Employment (GE) zoning district requirements found in the city's Codified Ordinance Chapter 1153. The "base" General Employment zoning district only requires a minimum 25-foot setback for buildings and service areas along the property lines where the variance is being requested. If this property was zoned under the traditional General Employment (GE) classification rather than with the limited overlay, this variance would not be needed.
12. The essential character of the surrounding area will not be altered by granting the variance request. This variance request does not eliminate the architectural, screening, and landscaping requirements for this property and the reduced setback requirement only applies to adjacent commercial properties.
13. It does not appear that the variance would adversely affect the delivery of government services, affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

IV. RECOMMENDATION

Staff recommends approval of the requested variance should the Board of Zoning Appeals find that the application has sufficient basis for approval. It does not appear that the essential character of the surrounding area will be altered if the variance is granted as the property is surrounded by commercial development along the perimeter boundaries where the variance is requested. When the site was zoned in 2009, properties adjacent to this site were zoned to allow for residential uses. In these conditions, larger setbacks are provided in order to provide visual and physical separation between dissimilar uses. Due to these changed conditions, the larger setback is no longer necessary therefore the variance request is not substantial and meets the spirit and intent of the requirement.

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

V. ACTION

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

Move to approve application VAR-112-2022.

Approximate Site Location:



Source: NearMap

DRAFT



**Board of Zoning Appeals Staff Report
October 24, 2022 Meeting**

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

LOCATION: 3070 Head of Pond Drive (PID: 222-001574-00)
APPLICANT: Mark Roehrenbeck
REQUEST: Variance to the pool setback requirements of Codified Ordinance section 1173.02(c)
STRATEGIC PLAN: Neighborhood Residential
ZONING: R-3, Medium-Density Single-Family Residential District
APPLICATION: VAR-96-2022

Review based on: Application materials received on October 7 and 12, 2022.

Staff report prepared by Chelsea Nichols, Planner.

I. REQUEST AND BACKGROUND

The applicant requests a variance from Codified Ordinance section 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the northeastern side yard property line where city code requires a 15-foot setback to any property line.

The applicant proposes to remove the existing patio and replace it with the new swimming pool and associated pool patio. The applicant's narrative states that the majority of their backyard is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, and any of the pool's associated items such as a required fence, are not be permitted to be located within this area. There is also a 10-foot wide utility easement that runs diagonally through the middle of the backyard. Both of these lot conditions have resulted in the proposed location of the new swimming pool and pool patio.

II. SITE DESCRIPTION & USE

The parcel is located in section 11 of the New Albany country club and is surrounded by other residential uses. On either side of the lot are single-family homes; both along Head of Pond Drive. To the rear of the lot is a parcel also zoned residential, along Jason Court.

The home is located on a 0.71-acre lot and was built in 1997. The home has a 3,052 square foot building footprint, according to the Franklin County auditor website.

III. ASSESSMENT

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

Criteria

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

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

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

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

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

III. EVALUATION

Variance to C.O. 1173.02(c) to allow a swimming pool and the associated pool patio to be located 6.6 feet from the side yard property line where city code requires a 15-foot setback to any property line.

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

1. The city Codified Ordinance section 1173.02(c) requires pools, including any walks, paved areas, equipment, and appurtenances thereto, shall not be closer than fifteen (15) feet to any property line. Based on the proposed location of the swimming pool and pool patio, they would both be as close as 6.6 feet from the side yard property line, which does not meet code requirements, therefore the applicant is requesting a variance.
2. The required minimum building and pavement side yard setback for the existing house and the existing patio is 10 feet. The existing house and the existing patio are both 11.5 feet away from the side yard property line. The section of the zoning code regarding swimming pools requires a greater setback of 15’ as pools are seen as a more intensive use.
3. The majority of the rear yard is designated as a conservation area. The application includes two options for where the pool could be located on the property outside of the conservation area. The applicant is proposing option two as their preferred option.
4. The applicant provided a written statement from AEP, stating that option one shown in the application materials would be in the direct path of the pad mount transformer,

- primary wire, secondary connections, and the homeowner's own service to their house. The letter goes on to state that the amount of time and effort to install a pool in this location would be very extensive and time consuming. Multiple homes would be without power for a length of time and would all have to be scheduled at the same time. There would also be expensive open trenching, conduit, and service cable installation. In addition, there would need to be a new easement, including the removal and installation of the pad mount transformer. The AEP letter believes option two shown in the application is easier to complete as the construction would be outside of the easement area and no work would be required by AEP. Due to this information, and given the proximity of the 10' utility easement from the rear of the existing home/attached garage, the applicant is locating the pool beside the garage as opposed to behind the garage as a result of these special conditions and circumstances which are peculiar to this lot.
5. As proposed, it does not appear as though the pool patio would be within the 10' utility easement as shown on the survey, however, it is not completely clear. The patio for the pool is not permitted within the 10' easement. Should the Board approve this application, staff recommends a condition of approval be that the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it is not located within the easement.
 6. In option two of the application materials, which is the preferred option by the homeowner and proposed for this variance request; the pool is 11' away from the primary structure/the attached garage, resulting in it being as close as 6.6' from the side yard property line. One alternative option would be to shrink the patio between the garage and the pool so that the pool could be in-line with the corner of the house. This would still put the pool and the patio within the side yard setback, but it would be a smaller encroachment of 3.5 feet (as opposed to 8.4 feet) and would be the same setback as the existing patio. Staff discussed this option with the applicant and the homeowner did explore this alternative. However, the applicant has determined a retaining wall would be required, due to the grade and slope from the rear of the home, not leaving space for a walking path around that side of the pool.
 7. The applicant is proposing a 54" black aluminum fence that will completely surround the pool area on all sides. The fence will be set 3 feet off the property line along the side yard. The pool fence will also include the installation of 6' tall hedge plantings that will enclose the fence. These hedged plantings are depicted in the renderings supplied by the applicant in the Board's packet.
 8. Along the outside of the fence and 6' tall hedge plants, between the fence and the side yard property line, the applicant proposes to install twenty-one 10-foot-tall emerald arborvitae with the intent of completely visually screening the pool.
 9. This variance does not appear to be substantial. The "spirit and intent" of the zoning requirement is preserved as it is to ensure appropriate separation of uses. The proposed fence and landscaping will provide adequate screening and separation.
 10. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping and the proposed fence is taller than what code requires (54" vs 48").
 11. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
 12. Granting the variance would not adversely affect the delivery of government services.

IV. HISTORY

There have been similar applications heard by either the Board of Zoning Appeals (BZA) or the Planning Commission since 2015.

- In 2015, an application for 7825 Ackerly Loop had been withdrawn by the applicant after two hearings by the Planning Commission for a pool to be located 9 feet from the side lot line and 13.5 feet from the rear lot line where code requires 15 feet.

- In 2016, an application for 7705 Ogden Woods Blvd was withdrawn after one hearing by BZA. The request was to allow a pool patio to be located as close as 5 feet from the side yard lot line and as close as 5' 8" from the rear lot line when the code requires 15 feet.
- In 2019, an application for 4661 Goodheart Court was approved by BZA to allow a pool patio to be located 10 feet from the southern property line where the requirement is 15 feet. One condition of approval was issued stating that emerald arborvitae or green giants must be planted along the southern property line. The board noted for the record that the BZA reviewed the Duncan factors and they did not see this as a significant request, the variance did not adversely impact the value of the neighborhood overall, it is an improvement with the additional trees, and the variance does preserve the spirit and intent of the zoning requirements.
- In 2020, the Planning Commission denied the request for 4540 Ackerly Farm Road to allow a swimming pool patio to be located 13.5 feet from the southern property line where city code requires a minimum of 15-foot setback. The commission believed the application did not meet the Duncan factors, they believed there was still beneficial use to the property without the variance, they noted many other lots also have curving lot lines, and that the design could be revised to remain in compliance with the character of the area and zoning code.
- In January of this year (2022), a variance application for 7150 Longfield Court was requested to allow a swimming pool to be located closer than 15 feet from the property line. However, it was withdrawn before it was heard by either the Planning Commission or Board of Zoning Appeals.

V. SUMMARY

The majority of the backyard of this lot is designated as a conservation area. This conservation area is shown on the subdivision plat and the property survey provided by the applicant. A swimming pool, or any of the pool's associated items such as a required fence, is not permitted within this area. This coupled with the information provided by AEP, and given the proximity of the 10' utility easement from the rear of the existing home/garage, locating the pool beside the garage, as opposed to behind the garage in the rear yard, is the result of special conditions and circumstances which are peculiar to this lot. While there appears to be an alternate location for the pool by shrinking the patio area between the garage and the pool, it would require reducing the patio and moving the pool further to the west, closer to the primary structure which would result in eliminating enough room for a walkway.

The spirit and intent of the code requirement is to maintain separation between uses. While the swimming pool and associated pool patio are proposed to be located 6.6 feet away from the property line, encroaching 8.5 feet into the required setback, the pool is adequately screened from adjacent properties given that they are providing a buffer of vertical landscaping. In addition, the proposed fence is taller than what code requires (54" vs 48"). Therefore, the separation appears to meet the intent of the code requirement and is a unique feature of this request as it appears to go above what is required in city code.

V. ACTION

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

Move to approve application VAR-96-2022 with the following condition:

1. That the pool patio be revised to clearly show on the plot plan, at the time of the building permit application, that it will not be located within the 10' utility easement.

Approximate Site Location:



Source: nearmap



Community Development Planning Application

Project Information	Site Address <u>3707 Head of Pond Rd.</u>										
	Parcel Numbers <u>222-001574-00</u>										
	Acres _____ # of lots created <u>N/A</u>										
Contacts	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Property Owner's Name:</td> <td><u>Mark Roehrenbeck</u></td> </tr> <tr> <td>Address:</td> <td><u>3707 Head of Pond Rd.</u></td> </tr> <tr> <td>City, State, Zip:</td> <td><u>New Albany, OH 43054</u></td> </tr> <tr> <td>Phone number:</td> <td><u>347-907-2383</u> Fax: _____</td> </tr> <tr> <td>Email:</td> <td><u>mjroehrenbeck@gmail.com</u></td> </tr> </table>	Property Owner's Name:	<u>Mark Roehrenbeck</u>	Address:	<u>3707 Head of Pond Rd.</u>	City, State, Zip:	<u>New Albany, OH 43054</u>	Phone number:	<u>347-907-2383</u> Fax: _____	Email:	<u>mjroehrenbeck@gmail.com</u>
	Property Owner's Name:	<u>Mark Roehrenbeck</u>									
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Applicant's Name:	<u>Mark Roehrenbeck</u>										
Address:	<u>3707 Head of Pond Rd.</u>										
City, State, Zip:	<u>New Albany, OH 43054</u>										
Phone number:	<u>347-907-2383</u> Fax: _____										
Email:	<u>mjroehrenbeck@gmail.com</u>										
Signature	<p>Site visits to the property by City of New Albany representatives are essential to process this application. The Owner/Applicant, as signed below, hereby authorizes Village of New Albany representatives, employees and appointed and elected officials to visit, photograph and post a notice on the property described in this application. I certify that the information here within and attached to this application is true, correct and complete.</p>										
	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Signature of Owner</td> <td style="text-align: center;"><u>mark roehrenbeck</u></td> <td style="width: 20%;">Date:</td> <td style="text-align: center;"><u>10/12/22</u></td> </tr> <tr> <td>Signature of Applicant</td> <td style="text-align: center;"><u>mark roehrenbeck</u></td> <td>Date:</td> <td style="text-align: center;"><u>10/12/22</u></td> </tr> </table>	Signature of Owner	<u>mark roehrenbeck</u>	Date:	<u>10/12/22</u>	Signature of Applicant	<u>mark roehrenbeck</u>	Date:	<u>10/12/22</u>		
Signature of Owner	<u>mark roehrenbeck</u>	Date:	<u>10/12/22</u>								
Signature of Applicant	<u>mark roehrenbeck</u>	Date:	<u>10/12/22</u>								

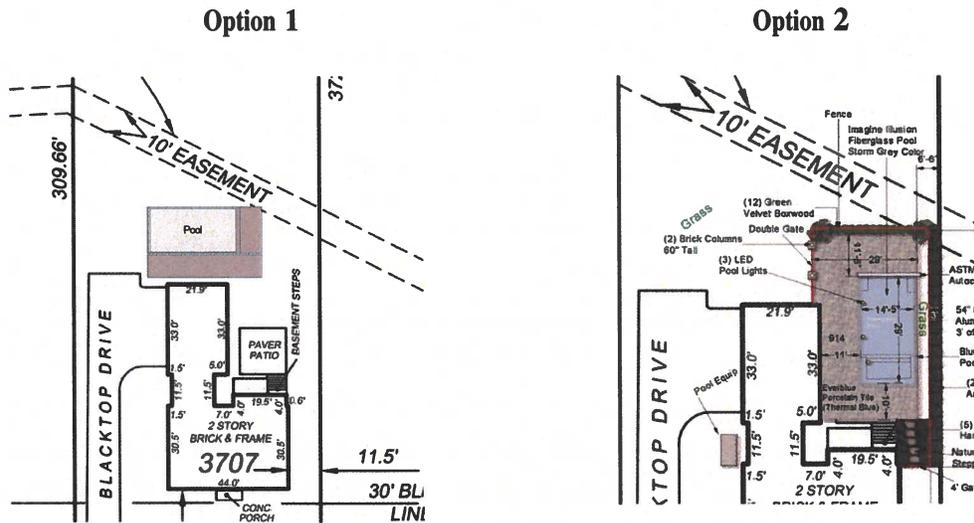
Dear Members of the Board,

We live at 3707 Head of Pond Rd on a 0.71-acre lot, and we are requesting a variance to allow a swimming pool and patio to be located 7 feet from the northeastern property line. Per code section 1173.03(c), Private Swimming Pools, including any walks, paved area, equipment, and appurtenances thereto, shall not be located in any front yard, nor than fifteen (15) feet to any property line.

There are peculiarities of our property that limit the use of our backyard, including:

- The majority of our backyard is designated as a "conservation area,"
- There's a 10-foot wide easement that runs diagonally through the middle of our backyard. AEP uses the easement to transmit electricity to our neighbors, and
- Our property lot is unusually narrow. For reference, our house and existing patio are 11 feet away from the adjoining property

We have contemplated two positions/layouts for the pool and patio.



In both Option 1 and 2, we proposed a smaller pool of 30x15 feet versus the more common-sized pool of 40x20 feet. We believe 30x15-foot is the smallest size functionally for a family with kids.

Option 1 posed many challenges that made it not feasible. First, according to AEP, the pool's construction would be in the direct path of the pad mount transformer, primary wire, secondary connections, and our house. The amount of time and effort to do this would be very extensive and time-consuming. Multiple homes would be without power for a long time and would all have to be scheduled simultaneously. There would be extensive open trenching and conduit and service cable installation along with the new easements and the removal and installation of the pad mount transformer. We considered pushing the pool even closer to our home, along the garage, but a retaining wall would be required due to the grade/slope on the rear of the home not

leaving space for a walking path to the rear of the home. To access the back of the house from the driveway side, we would be required to walk around the pool.

In Option 2, we propose locating the pool within the L-shape space of our backyard in the location as our existing patio. According to AEP, Option 2 would be much easier to complete since there would not be extensive digging in or near the easement area. The patio will be close to the easement, but it does not require deep excavation that the pool would, and if for some reason, AEP would need to dig in the future, there wouldn't be any damage to the pool structure. Furthermore, Option 2 will provide additional safety because the pool will be visible from the house's interior, given our windows' location. This is obviously important to us with small children in our home and neighborhood.

Regarding the property value of our neighbors, we believe it will be net positive for them. Today, our neighbors have no privacy while using their backyard. By installing a fence and 10+ ft hedge between our properties, we believe our neighbors will benefit from the project. We intend to install fully hedged plants, with no visibility between the plants, from InstantHedge.com. The plants will be 6 feet tall at the time of installation. To limit the encroachment on the neighbor's property, we did not include a patio deck on the northeastern side of the pool, between the pool and the property line. This area, between the pool and the adjoining neighbor, will have the 10+ ft tall hedges and turf grass or other landscaping, including ornamental grasses. Lastly, the pool and surrounding area will not be visible from the street due to the landscaping.

We intend to take extraordinary measures to:

1. Ensure, if not improve, the aesthetic integrity of the neighborhood.
2. Ensure the safety of our children and the children in the community.
3. Provide value, both aesthetically and functionally, to our adjoining neighbors.

Lastly, we have received support from our neighbor that would be most impacted. We are close friends, and they have indicated that they are fully supportive and excited about the prospect of enjoying the pool.

Kind regards,

Mark and Alison Roehrenbeck

Email from AEP:

3707 Head of Pond Rd. New Albany, OH 



Corey C Mellott <ccmellott@aep.com>
to me ▾

Hey Mark,

This is email is an outline of the work plan and its length with brief detail about the work to be done.

The first proposed outline of the pool and deck would be in the direct path of the pad mount transformer, primary wire, secondary connections, and you own service to your home. The amount of time and effort to do this would be very extensive and time consuming. Multi homes would be without power for a length of time and would all have to be scheduled at the same time. There would be extensive open trenching and conduit and service cable installation along with the new easements and the removal and new installation of the pad mount transformer.

The Second proposed outline of the pool and deck would be much easier to complete. Your construction would be outside of the easement area and no work would be required.

If there is any more additional information you would like please let me know and I'll see what I can do. Thanks for coming out and explaining the details yesterday.



COREY C MELLOTT | TECHNICIAN ASSC
CCMELLOTT@AEP.COM | D:614.313.5478
700 MORRISON ROAD, GAHANNA, OH 48230

HOY LAND SURVEYING
 1767 McCorkle Blvd #1767
 Westerville, Ohio 43086
 Phone: 614-679-1186



JOB NUMBER #: 4164 - 2019 S DATE OF DRAWING 8-26-19

CERTIFIED TO STEWART TITLE AGENCY

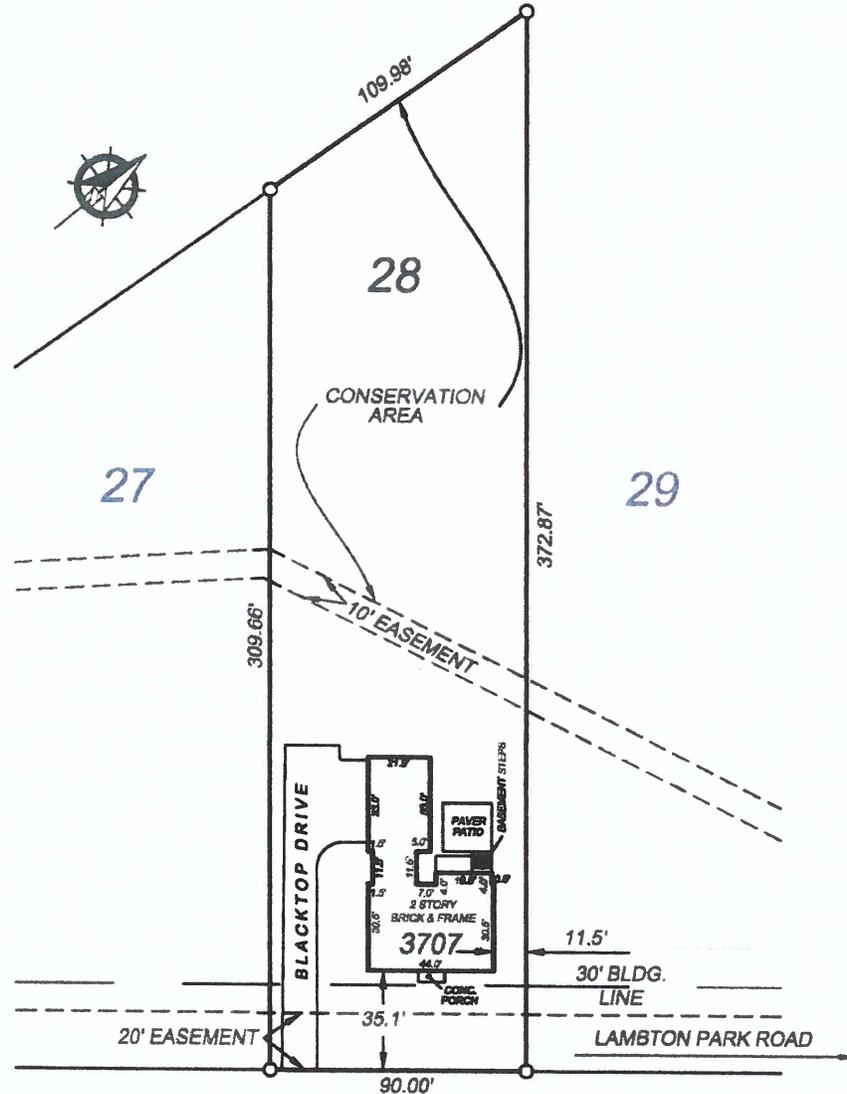
LENDER AMERICAN EAGLE MORTGAGE

BUYER ROEHRENBECK

LEGAL DESC. LOT 28 ~ THE NEW ALBANY COUNTRY CLUB SECTION 11 P.B. 82 PG. 72 - 76

CITY/TWP. NEW ALBANY COUNTY FRANKLIN DRN. SJH CK. SS DRAWING SCALE 1" = 50'

FEMA INFORMATION: FLOOD ZONE X MAP PANEL INFO 39049C 0212K MAP DATE 6-17-08



HEAD OF POND ROAD 60'

ENCROACHMENT INFORMATION
NONE NOTED

I / WE HAVE RECEIVED A COPY OF THIS SURVEY
 AND FIND THE CONDITIONS ACCEPTABLE.

BUYER / OWNER

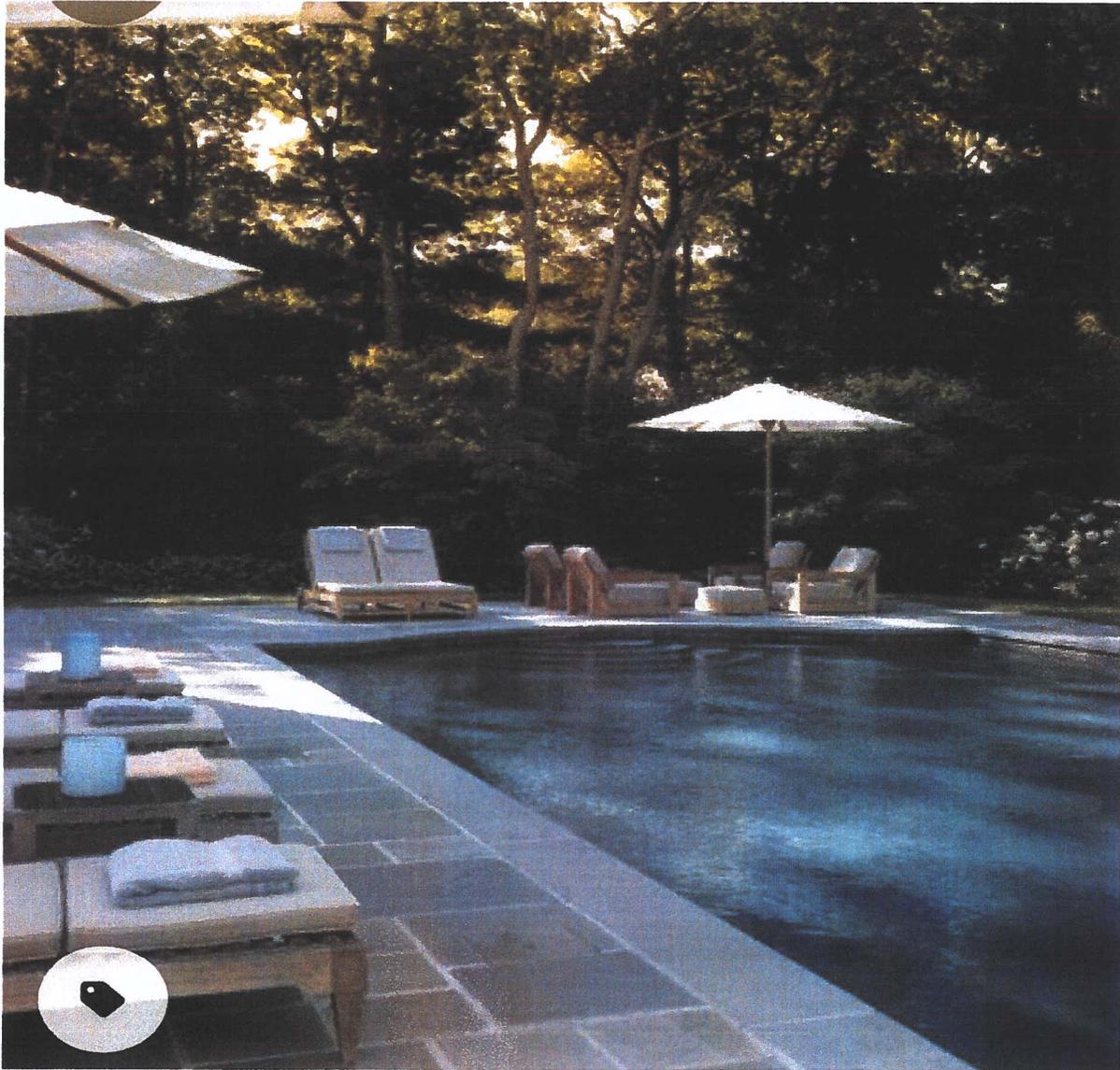
BUYER / OWNER

We hereby certify that the foregoing MORTGAGE LOCATION SURVEY was prepared in accordance with Chapter 4733-38, Ohio Administrative Code, and is not a Boundary Survey pursuant to Chapter 4733-37, Ohio Administrative Code. This plat is prepared for mortgage loan and title purposes only and is not to be construed as having been prepared for the owner and is not to be used to erect fences or other structures. Easements shown on this plat were taken from the subdivision plat of record. Additional easements affecting this property may exist.

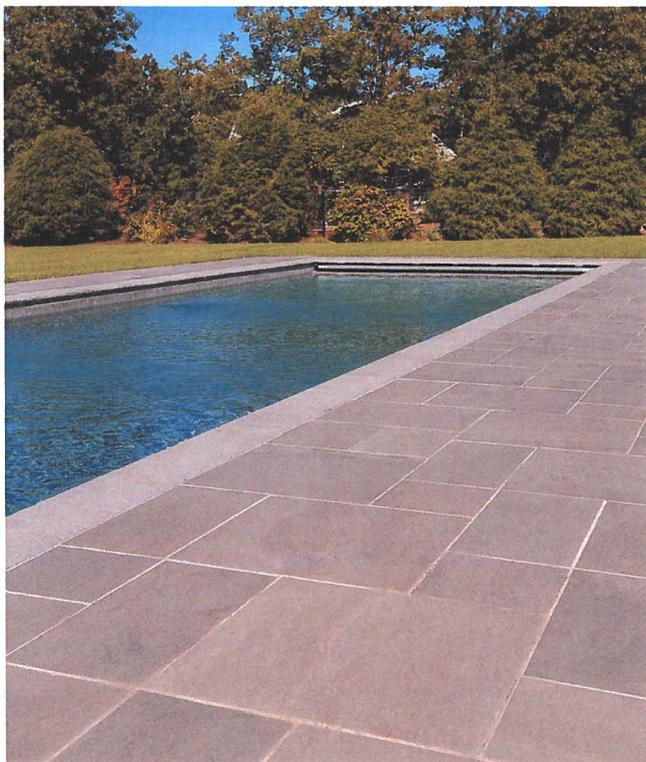
By Steven J. Hoy



Similar layout, materials and colors of the pool and stone proposed.



Materials:



3D renderings:



January 25, 2022

Mark & Alison Roehrenbeck
3707 Head of Pond Rd
New Albany OH 43054

RE: 3707 Head of Pond Rd
ARCHITECTURAL REVIEW SUBMISSION

Submission Approval

Dear Homeowner,

I am pleased to inform you that the New Albany Country Club Community Association Architectural Review Committee has approved your submission for the listed project item(s):

Pool (Addition - Concept)

The approval is contingent upon compliance with the specifications set forth in the approved application. If your change or addition requires a county, city or state permit, it is the responsibility of the homeowner to obtain this before starting construction.

Please retain this letter in your files. If you have any questions regarding this matter, please contact us at 614-939-8600 or via email at bcross@ohioequities.com.

Sincerely,



Brandy Cross
Architectural Review Liaison
On Behalf Of New Albany Country Club Community Association

Version Date:	8/10/2021 11/24/2022
Project Address:	3707 Head of Pond New Albany, OH
Section No.:	11
Lot No.:	28

INSTRUCTIONS AND INFORMATION

- This form must be complete and cannot be piecemealed in separate submissions. It must be all inclusive.
- Changes in exterior materials shall be subject to specific ARC approval and are to be resubmitted via revision of this form highlighting the changed product(s) in yellow.
- Please insert N/A for any line items that are not applicable to this project.
- Please take notice of any required (in red) additional documentation noted for each section below. The ARC reserves the right to request additional product information and samples at any time.
- Any questions should be directed to the ARC (arc@naccchoa.org).

DECK – Sample May Be Requested –	
Decking Material:	NA
Stain / Paint Color:	
Railing/Post Material:	
Stain / Paint Color:	
Baluster Material:	
Stain / Paint Color:	
Skirting Material:	
Stain / Paint Color:	
PATIO – Sample May Be Requested –	
Primary Material:	Bluestone Everblue Porcelain Tile
Size:	3 Size Pattern
Color:	Blue/Grey
Accent Material:	N/A
Size:	
Color:	
Mortar Color:	
WALLS – Sample May Be Requested –	
Primary Material:	NA
Size:	
Color:	
Accent Material:	
Size:	
Color:	
Mortar Color:	

Cap Material:	
WALKWAY(S) – Sample May Be Requested	
Primary Material:	Natural Limestone Flagstone
Size:	approximately 24" x 24"
Color:	Grey
Accent Material:	N/A
Size:	
Color:	
Mortar Color:	
FENCE –	
Material:	Aluminum
Style:	Typical Pool Fence
Color:	Black
Primary Height:	54"
PERGOLA – Sample May Be Requested – Elevation Drawing(s) Required	
Material:	NA
Stain / Paint Color:	
LIGHTING –	
Front Door / Porch:	NA
Garage Doors:	
Other Exterior Doors:	
Rear Patio/Deck:	
Other Notes:	
OTHER – Spec Sheet, Pictures and/or Sample May Be Requested	
	ASTM Certified Autocover with Aluminum Lid

The ARC reserves the right to request additional product information and samples at any time. Substitutions or changes to building materials are required to be submitted in writing and shall be subject to specific ARC approval. Any questions should be directed to the ARC. arc@naccchoa.org

Matthew and Lauren Smith
3719 Head of Pond Rd.
New Albany, OH 43054

October 12, 2022

Community Development Department
99 West Main Street
New Albany, OH 43054

Re: Proposed Swimming Pool for 3707 Head of Pond Rd.

To Whom it May Concern,

It is our understanding that our neighbors, Mark and Alison Roehrenbeck, located at 3707 Head of Pond Road wish to install a swimming pool near the property line bordering our property. We are writing to inform you we are supportive of the pool being installed. We are confident that the design quality and build quality will not diminish the aesthetic of either yard and will meet the high standards the city and community upholds. Additionally, we are confident that appropriate precautions will be taken by us and our neighbors to keep our children safe.

If you wish to discuss the matter, please feel free to contact us at matts_189@msn.com or 440-567-2658.

Sincerely,

A handwritten signature in cursive script, appearing to read "Matthew and Lauren Smith". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Matthew and Lauren Smith