

# MEETING MINUTES



## Board of Zoning Appeals

City Hall • 3800 Municipal Way • Hilliard, Ohio 43026  
and Live-Streaming on YouTube

Thursday, July 21, 2022 | 7:00 pm

### CALL TO ORDER

Vice President Epling called the Regular Meeting of Board of Zoning Appeals to order at 7:00 PM.

### PLEDGE OF ALLEGIANCE TO THE FLAG

Vice President Epling led the Board and attendees in the Pledge of Allegiance.

### ROLL CALL

Attendee Name:	Title:	Status:
President Matthew Piper	President	Absent
Vice President Aaron Epling	Vice President	Present
Steve Donato	Member	Present
James Martin	Member	Present
Greg St. Clair	Member	Present
Arthur Steele	Member	Absent
Bobby Stepp	Member	Present

**Staff Members Present:** Planning Director John Talentino; Planning Manager/Acting Clerk Carson Combs; Planning Intern Abby Thiel; MacKenzie Newberry, Frost Brown Todd, LLC., Council Representative Peggy Hale.

**Others Present:** Larry Kasper, 4267 Shire Cove Road, Hilliard, OH 43026 representing BZA-22-18; Vaughn Benson, Feinknopf Macioce Schappa Architects, 995 West 3<sup>rd</sup> Avenue, Columbus, OH 43212 representing BZA-22-21; Judy Vitale, 4138 Main Street, Hilliard, OH 43026 representing BZA-22-22; Derik Leary, Kimley-Horne, 7965 N. High Street, Suite 200, Columbus, OH 43235 representing BZA-22-24; Judy Opalek, 4867 Barbeau Lane representing BZA-22-26; Tony Tomm representing BZA-22-27; Tasha Jones, Fun Time Pools & Spa, 3812 April Lane, Columbus, OH 43227 representing BZA-22-27 and other unnamed persons in attendance.

### APPROVAL OF MEETING MINUTES – June 16, 2022

Mr. Stepp made a motion to approve the June 16, 2022, meeting minutes. The motion was seconded by Mr. St. Clair.

<b>Status:</b>	Approved (5-0)
<b>Ayes:</b>	Vice President Aaron Epling, Mr. Steve Donato, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

### CHANGES TO THE AGENDA (requests for postponements, withdrawals, or change in order of cases)

Mr. Talentino confirmed there were no changes to the agenda.

### OATH TO TELL THE TRUTH

Vice President Epling administered the Oath to Tell the Truth.

**CASE 1: BZA-22-18 – KASPER RESIDENCE – 4267 Shire Cove Road**

**PARCEL NUMBER:** 050-003139 (Shier Cove – Lot 72)

**APPLICANT:** Helen Kasper / Larry Kasper, 4267 Shire Cove Road, Hilliard, OH 43026

**REQUEST:** Review and approval of a variance from Hilliard Code Section 1121.02(d)(5) to permit a locking cover in lieu of a fence around a hot tub (private pool).

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site is located along Shire Cove Road approximately 325 feet north of the intersection with Shire Landing Road and 900 feet east of the intersection with Dublin Road. The 0.457-acre parcel is Lot #72 of the Shire Cove development located between Dublin Road and the Scioto River. The site and all surrounding properties within the subdivision are zoned R-R, Rural Residential District and were platted in 1973. This application is a variance request to install a locking cover for an existing hot tub in lieu of swimming pool fencing with self-closing and self-locking gate as required by Section 1121.02(d)(5) of the Code.

**CONSIDERATIONS:**

- Hilliard Code Section 1121.02(d)(5)(a) states that the immediate surroundings or yard around the pool shall be fenced and equipped with a self-latching gate with a self-closing lock to prevent uncontrolled access into any swimming pool.
- Since 2018, the Board of Zoning Appeals has received seven variance requests to replace required pool fencing with an automatic pool cover. **The Board has approved all seven requests.** [BZA-22-16 Calabrese Residence; BZA-22-7 Vawter Residence; BZA-21-35 Bandow Residence; BZA-21-6 Capron Residence; 20-0157AR Miglietti Residence; 20-0145AR Ruma Residence; 18-0093AR Tucker Residence]
- According to Section 1121.06(f) of the Zoning Code, a private swimming pool includes “...any pool, lake, pond or open tank not located within a completely enclosed building and containing or normally capable of containing water to a depth at any point greater than one and one-half feet.” An outdoor hot tub is considered as a pool by Code.
- Section 1121.06(f)(4) requires fencing around the pool (including hot tub or jacuzzi), in conformance with the fence provisions/requirements of Section 111.02(d). This is the second instance of a request for a variance to permit a locking cover for a hot tub in lieu of required swimming pool fencing.

**STAFF RECOMMENDATION:**

Staff finds that there can be beneficial use of the property without the variance and that the proposed variance to permit a pool without fencing is substantial. Staff finds that the property owner’s difficulty can be feasibly obviated through some method other than a variance. Based on these findings, consistent with the provisions of Hilliard Code Section 1106.04, staff respectfully recommends that the proposed variance be denied. In prior cases, the Board has approved requested variances with the following condition:

- 1) That the hot tub remains covered and locked when not in use.

[END OF REPORT | BZA-22-18]

[The board was provided with public testimony via email regarding this application.]

Mr. Combs noted that the case is a pending code enforcement action regarding property maintenance and that staff is working to bring the site into compliance. He noted that the report includes past cases regarding this particular variance type.

The applicant, Mr. Kasper, indicated he did not fully understand the staff recommendation and wanted clarification.

Mr. Combs noted that the existing fence is a code issue and must be either replaced or removed. He said the existing screen did not comply with the Code requirement to fully enclose and secure the hot tub.

Mr. Kasper noted that the deck and hot tub have been there since he purchased the property 30 years ago.

Mr. Combs explained “beneficial use” and noted that there are other methods that can be implemented by which the applicant can continue to have use of the hot tub such as installing a fence to meet Code requirements.

With no public testimony, Vice President Epling (seconded by Mr. Donato) made a motion to approve a variance to Hilliard Code Section 1121.02(d)(5) to permit a locking cover in lieu of a fence around a hot tub (private pool) with the condition that the hot tub remains covered and locked when not in use.

<b>Status:</b>	Disapproved (2-3).
<b>Mover:</b>	Vice President Aaron Epling
<b>Seconded:</b>	Mr. Steve Donato
<b>Ayes:</b>	Vice President Aaron Epling, Mr. Steve Donato.
<b>Nays:</b>	Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

**CASE 2: BZA-22-21 – CHASE BANK – 4199 Parkway Lane**

**PARCEL NUMBER:** 050-003211

**APPLICANT:** Rachel Wolff, Mannik Smith Group, 1160 Dublin Road, Suite 100, Columbus, OH 43215; Vaughn Benson, FMS Architects, 995 W. 3rd Avenue, Columbus, OH 43212; Max Hartings, Equity, 4653 Trueman Boulevard, Suite 100, Hilliard, OH 43026; Jim Byun AIA, NCARB, J.P. Morgan Chase & Co., 10 S. Dearborn Street, 25th Floor, Chicago, IL 60603; Central Ohio Transit Authority, 1600 McKinley Avenue, Columbus, OH 43222.

**REQUEST:** Review and approval of variances to the Hilliard Zoning Code for a 0.89-acre bank:

- [1] Section 1111.03(a) to reduce the minimum required lot size from 1 acre to 0.89-acre;
- [2] Section 1121.02(b)(3) to reduce the rear yard setback from 6 feet to 0 feet for a shared parking lot;
- [3] Section 1125.04(g) to waive street tree requirements;
- [4] Section 1125.05(b) to reduce the required vehicular landscape buffer along Parkway Lane from 20 feet to 10 feet and along the southern property line from 10 feet to 0 feet and to waive required landscape plantings along the west property line;
- [5] Section 1127.02(g) to increase maximum parking from 20 to 31 spaces for a shared-use lot; and
- [6] Sections 1127.04(b)(3) and 1127.04(b)(4) to reduce the required width of an ATM drive thru lane and stacking from 14 feet to 8 feet.

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site consists of 1.805 acres located at the southwest corner of Cemetery Road and Parkway Lane between Parkway Lane and the CSX railroad. The property is Lot #1 of the Freeway Business Park platted in 1984. The

original parcel was 2.097 acres and over the years has been reduced by right-of-way acquisition to accommodate intersection, street and railroad improvements. The site is currently owned by the Central Ohio Transit Authority as a park-and-ride location along Cemetery Road and is zoned B-4 as part of the I-270 Corridor District. On July 14, 2022, the applicant requested approval of a lot split and level "B" site plan from the Planning and Zoning Commission. That request was approved 7-0. The proposed variances are necessary to carry out approvals granted by the Commission.

## CONSIDERATIONS:

- *Site Overview.* The site is zoned B-4, I-270 Corridor District and banks are a permitted use. To the east, across Parkway Lane, is the Sheetz convenience store and gas station zoned B-4. To the north across Cemetery Road are commercial properties within the First Industrial PUD that includes the Rusty Bucket. West of the site is the CSX Railroad line that links Columbus to Toledo. Sunbelt Rentals to the southeast is also zoned B-4. The COTA park-and-ride would be altered to accommodate the bank site and would share parking and access. The proposed bank includes a parking lot with center island and ATM lane along the railroad corridor.
- *Minimum Lot Size.* The proposed lot split would create a  $\pm 0.89$ -acre parcel for the bank and leave a residual parcel for COTA of  $\pm 0.915$ -acre, which requires a variance for minimum lot size. Right-of-way acquisitions for public improvements over the years have reduced the size of the original 2-acre parcel, which would have otherwise complied with the Code.
- *Building Setback Reduction.* Plans include a 3,410-square foot bank building that will be located close to Cemetery Road. The proposed location would require a building line reduction from 50 feet to 34 feet but meets the general intent of the Comprehensive Plan to establish a more architecturally-focused streetscape along Cemetery Road. Upon further review of the Code, Section 111.03(b) allows for a 50 percent reduction in the front setback if parking is not located forward of the building. The actual required setback is 25 feet and the proposed bank building complies with the requirement.
- *Rear Yard Setback.* Plans include a dumpster location along the proposed southern property line, as well as an ATM kiosk. General standards within the code require a six-foot setback and a reduction to the setback is necessary because of the shared parking lot configuration between the site and the remaining parent tract.
- *Street Trees.* Due to underground utilities along Parkway Lane and Cemetery Road, the proposed plans request a waiver from street tree requirements. Staff recommends that the street tree requirement be waived, but that equivalent caliper inches be provided elsewhere.
- *Landscape Requirements.* Visibility of the site from public rights-of-way are largely limited to the Parkway Lane frontage. The landscape buffer for parking along Parkway Lane will be planted to comply with Code, but is reduced from 20 feet to 10 feet due to site constraints. As a shared parking lot between the two created parcels, required landscape buffer and plantings are not provided along the proposed south property line. No landscaping is also proposed along the railroad frontage because the rail line is elevated above the site and includes existing vegetation that meets the purpose/intent of the Code.
- *Parking.* A total of 31 spaces are proposed for the bank site. A maximum number of 20 parking spaces is permitted per Section 1127 of the City Code, but the provided spaces can serve both the bank and adjacent park-and-ride location.
- *ATM Aisle Width.* The proposed ATM includes an 8-foot drive aisle and will require variances from the BZA for the reduced lane and stacking width.

## STAFF RECOMMENDATION:

Staff finds that the location of the proposed development includes a number of site constraints, including but not limited to topographic change, impacts of the adjacent rail line, the narrow configuration of the original property and multiple road/infrastructure improvements that have reduced the property size and altered the

developable area over time. Staff finds that the proposed development is generally consistent with the intent of the code and improves many elements of the site that are not currently in compliance with Code. Staff finds that the proposed development will not impact services or surrounding property owners nor negatively affect the character of the general area. Based on these findings, staff recommends approval of the proposed variances with the following six conditions (*as carried over from the Planning and Zoning Commission*):

- 1) That the necessary variance to reduce the minimum lot sizes below 1.0 acre be approved by the Board of Zoning Appeals;
- 2) That the legal description and exhibit for the lot split/deed transfer and any access easements meet the requirements of the City Engineer for format and content;
- 3) That the lot split/deed transfer be recorded and that evidence thereof is provided to staff;
- 4) That necessary variances relating to the site plan be obtained from the Board of Zoning Appeals prior to submitting for permits;
- 5) That required street tree caliper inches be planted on-site or within a public park space as determined by the City Forester; and
- 6) That the proposed development comply with all sign code provisions or return to the Planning and Zoning Commission for a sign variance package.

[END OF REPORT | BZA-22-21]

Mr. Stepp asked how many entrances there will be and how it coordinates with COTA. Mr. Combs noted that the existing curb cut would be used and that the southern portion of the parking lot would be unchanged and remain with COTA. The plan does not impact the bus turn-around.

Mr. Stepp inquired about the trees along Cemetery, and Mr. Combs stated that some would be removed as indicated on the submitted tree survey and will be replaced per Code.

Mr. St. Clair asked if any of the variances would apply to COTA. Mr. Combs explained that the reduced lot size would also apply to the remaining portion of the parent tract controlled by COTA. Mr. Combs explained that COTA is the owner of the parent tract and that Chase would purchase the lot with shared access easement for the parking.

Mr. Martin asked about lighting, and Mr. Combs noted that lighting information will meet Code and is submitted in the plans. He noted that signage will also meet Code or require approval for a sign package variance from the Planning Commission.

Vaugh Benson representing the applicant noted that they are requesting the variance for the street trees and have updated the site plan to indicate replacement. [He provided copies to the Board and staff.]

Mr. Martin asked about landscaping on both sites; Mr. Benson indicated they are trying to meet the requirements of the Code as much as possible. Mr. Martin voiced concern about one half of the site having landscaping and the other not.

Mr. Talentino noted that if the Board was comfortable with the revisions provided by the applicant are different than what is in the packet and the submitted plan could serve as the approved plan.

Mr. St. Clair made a motion, seconded by Mr. Donato, to approve the requested variances to Section 1111.03(a), Section 1121.02(b)(3), Section 1125.04(g), Section 1125.05(b), Section 1127.02(g), Section 1127.04(b)(3) and Section 1127.04(b)(4) with the stipulation that ATM aisle be modified from 8 feet to 9 feet and the newly updated landscape plan provided by the applicant be accepted with 6 conditions:

- 1) That the necessary variance to reduce the minimum lot sizes below 1.0 acre be approved by the Board of Zoning Appeals;
- 2) That the legal description and exhibit for the lot split/deed transfer and any access easements meet the requirements of the City Engineer for format and content;
- 3) That the lot split/deed transfer be recorded and that evidence thereof is provided to staff;
- 4) That necessary variances relating to the site plan be obtained from the Board of Zoning Appeals prior to submitting for permits;
- 5) That required street tree caliper inches be planted on-site or within a public park space as determined by the City Forester; and
- 6) That the proposed development comply with all sign code provisions or return to the Planning and Zoning Commission for a sign variance package.

<b>Status:</b>	Approved with six conditions (5-0) modifying the ATM aisle width to 9 feet and accepting the revised landscape plan.
<b>Mover:</b>	Mr. Greg St. Clair
<b>Second:</b>	Mr. Steve Donato
<b>Ayes:</b>	Vice President Aaron Epling, Mr. Steve Donato, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

Ms. Hale inquired as to the timing for the proposed project; Mr. Benson indicated they hope to begin ground work by the end of the year.

**CASE 3: BZA-22-22 – WHIT’S FROZEN CUSTARD – 4138 Main Street**

**PARCEL NUMBER:** 050-000051

**APPLICANT:** Whit’s Frozen Custard, c/o Judy Vitale, 1177 Warren Road, Ostrander, OH 43061

**REQUEST:** Review and approval of variance to Hilliard Code Section 1127.04(b)(1) to permit gravel as a parking lot surface within the rear yard of a commercial building on 0.195-acre.

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site is 0.195-acre located on the southeastern side of Main Street in Old Hilliard. The site is zoned OH-MD, Old Hilliard Mixed Use District, which allows for a wide range of residential and commercial uses, including frozen custard shops. The building was constructed in 1940 and was previously used as a barber shop and residence. The building is approximately 1,060 square feet and includes one-way circulation around the building to a parking lot behind the primary structure. Whit’s received approval of an Old Hilliard District Plan in April of 2016; that approval included the approval of variances from the Board of Zoning Appeals (16-0052AC) to reduce the minimum maneuvering lane width from 14 feet to 10 feet around the building. The rear parking lot includes a dumpster enclosure and striped area with four total parking spaces. This request includes a variance to permit the use of approximately 1,150 square feet of gravel behind the existing paved lot for additional parking.

**CONSIDERATIONS:**

- The applicant is proposing to use a gravel area off the paved drive aisle to the rear of the property. No dimensioned plan has been provided to staff for evaluation. Code enforcement has restricted the use of the gravel area for parking. The original Old Hilliard District Plan approval by the Planning and Zoning Commission in April 2016 included a condition that the gravel area on the lot be paved. (#4 – That the

*vehicular use area is revised to maximize the number of parking spaces on the site, and is paved with all-weather paving and landscaped consistent with the provisions of the Code.)*

- Deterioration of the public street is a primary consideration for not permitting gravel as a parking lot surface within the Zoning Code. While variances have been granted in the past, those instances were for single-family applications where a significantly long paved driveway was located between the gravel area and the public street. In those instances, extremely low trip generation/usage would not result in disbursement of the gravel. Other examples such as utility substations also have been approved with long paved drives because of the very low trip rates and zoning limitations as public utilities.
- Section 1127.04(b)(1) of the Zoning Code requires a paved surface of concrete or asphalt. The Code does not permit gravel parking areas. The Planning and Zoning Commission may approve alternative pavement systems such as pavers, brick or other permeable hard surfaces based upon the durability and appearance of proposed materials for parking areas. The proposed gravel would not meet the general parameters for Planning Commission consideration.
- All parking areas must meet applicable requirements for stormwater management. No details have been submitted to the City Engineer for review.

### **STAFF RECOMMENDATION:**

Staff finds that the proposed variance to Section 1127.04(b)(1) for the purpose of expanding parking within a commercial business district is not appropriate and would set a negative precedent for other commercial properties throughout the city. Staff finds that there can be beneficial use of the property without the variance and that the proposal would be a substantial departure from the code for parking lot standards. The original approval for this use included the condition that the gravel area be paved and brought into compliance with Code. Conditions for the variance have been self-created and can be addressed through other means and paving the gravel area would provide for the efficient use of parking facilities that were expected with the original Commission approval. Staff finds that the proposed variance does not meet the spirit and intent of the Code and the provisions listed within Section 1106.04 of the Code and respectfully recommends that the variance request be denied.

[END OF REPORT | BZA-22-22]

Vice President Epling questioned whether gravel would end up in the public street. Mr. Combs noted recent cases and different instances where gravel was allowed but for much lower-trip generating uses.

Vice President Epling questioned what would happen to the site if the variance was denied, and Mr. Donato inquired if people were parking in the area currently.

Mr. Combs noted that Code Enforcement has to the site to prohibit parking in the unapproved areas. He noted that the applicant could request approval from the Commission for a parking expansion and reconfigure the lot to provide more parking if desired.

Judy Vitale said that the building was built in 1940 and that they have paved up to the point at which the remainder was required as greenspace. She requested that the gravel could be used for employee parking. She indicated that with a new business across the street there is no parking available.

Vice President Epling asked if she ever saw gravel on her parking lot. Ms. Vitale said no that the lot drains to the rear.

Mr. St. Clair asked how the gravel came to be on the lot.



Mr. Stepp asked if there were limits placed on the parking and whether there have been complaints from neighbors. Ms. Vitale confirmed that there was a limit to the parking area and that they had extended beyond that point. She said there were no complaints other than a need for additional parking.

Mr. St. Clair noted that this case could set a precedent for other businesses throughout the district.

Mr. Martin asked if extra gravel had been added to the site; Ms. Vitale said not that she could recall.

Mr. Talentino interjected that there are concerns with stormwater management. The approved parking lot included greenspace to accommodate storm water infiltration. Other options are possible if the stormwater is addressed. Mr. Talentino noted that all parking must be provided on an approved surface.

Ms. Hale asked if removing the greenspace would require an additional variance; Mr. Talentino noted that other Code sections could be impacted such as double-stacking of parking and required landscape buffers [no plan was provided to fully determine code compliance].

Mr. Martin asked if additional landscaping would be possible; Ms. Vitale indicated that additional plantings could be possible.

With no public testimony, Vice President Epling, seconded by Mr. Donato, made a motion to approve a variance to Hilliard Code Section 1127.04(b)(1) to permit gravel as a parking lot surface within the rear yard of a commercial building on 0.195-acre.

<b>Status:</b>	Disapproved (2-3).
<b>Mover:</b>	Vice President Aaron Epling
<b>Seconded:</b>	Mr. Steve Donato
<b>Ayes:</b>	Vice Chair Aaron Epling, Mr. Bobby Stepp.
<b>Nays:</b>	Mr. Steve Donato, Mr. James Martin, Mr. Greg St. Clair.

**CASE 4: BZA-22-23 – GEE RESIDENCE – 4380 Jennydawn Place**  
**PARCEL NUMBER:** 050-007352 (Darby Glen Section 3, Phase 1 – Lot 216)  
**APPLICANT:** Meghan Gee, 4380 Jennydawn Place, Hilliard, OH 43026.  
**REQUEST:** Review and approval of variances to Hilliard Code Section 1121.02(d)(1)(I) to permit a six-foot privacy fence along a secondary front lot line in lieu of a required 4-foot decorative aluminum fence and Section 1121.02(d)(1)(G) to permit more than one fence type per property line.

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site is located at the northeast corner of Jennydawn Place and Crandon Street. The 0.224-acre parcel is Lot 216 within the Darby Glen subdivision, north of Scioto Darby Road between the CSX rail line and the Norfolk Southern retired railroad. The site and surrounding properties are zoned PUD, Planned Unit Development District and were platted in 1994. This application is for variances that would permit a combination of 6-foot privacy fence and 4-foot decorative aluminum fencing along a secondary front lot line (Crandon Street).



## CONSIDERATIONS:

- The Zoning Code previously limited fences to only the rear yard and side yard on all residential lots citywide. On corner lots privacy fences could not be forward of the building line on a secondary street frontage.
- The Code just changed to provide more flexibility for properties with two frontages on corners. Ordinance 21-33 to modify fence provisions of the Zoning Code became effective on December 8, 2021, and allowed fences on the second frontage of corner lots to encroach up to half the distance from the building line if an aluminum/wrought iron style fence is used that does not exceed 48 inches in height.
- The side of the property along Crandon Street includes a 25-foot building line, which would allow a decorative fence to be located 12.5 feet from the property line. The proposed section of 4-foot tall metal fencing would comply with Code.
- Proposed 6-foot privacy fencing along Crandon Street does not comply with Code and may not be forward of the 25-foot building line. The change in fence material from metal to wood privacy fence along a single property line also does not comply with Code requirements.
- On April 20, 2022, the applicant submitted a fence permit (F-22-62) and was informed that privacy fences could not be forward of the platted building line. The applicant indicated that she would install the decorative aluminum fence but did not obtain a permit.
- Since that time, privacy fence along the east property line (side) and the decorative metal fence at the southwest corner of the house were installed and was halted by Code Enforcement after complaints were received.
- The lot also includes a 30-foot wide stormwater easement along the rear of the property that would require fence review and approval from the City Engineer. Installation of the unapproved fence within the easement may restrict stormwater flow and may require modification or reconstruction.

## STAFF RECOMMENDATION:

Staff finds that recent changes to the Code to permit 4-foot tall **decorative** fencing forward of the building line have significantly increased the available area for fencing on corner lots. The recent change to the Code is intended to strike a balance between a desire to provide more flexibility for corner lot owners while considering the intent of City policy to limit the visual obstruction of fences in front yards. Staff finds that the proposed variance could be addressed by simply extending the decorative fencing along the full length of the Crandon Street frontage or by utilizing a 6-foot privacy fencing along the platted building line that would also be consistent with Code. Staff finds that the proposed variance would be substantial and there are other options that would provide additional space while maintaining the integrity of the newly adopted Code. Staff finds that the proposed variance does not demonstrate a practical difficulty and that fence application should be modified to meet Code for approval. Staff respectfully recommends disapproval of the requested variance.

[END OF REPORT | BZA-22-23]

Mr. Stepp asked whether the applicant could put privacy fence along the entire side. Mr. Combs noted that would meet Code. He explained that some of the fencing was installed without the approved permit and could impact the stormwater easement. Mr. Combs clarified the location of the proposed variance.

Mr. Talentino also noted that the section along the rear property forward of building line would be part of the variance.

Mr. Combs and Mr. Talentino clarified for the Board where privacy fences could be located on the lot. Mr. Talentino also explained that the Board could make any motion with any conditions that it sees fit.

No applicant was present and there was no public comment. Vice President Epling pointed out that public testimony was provided via email to the Board as part of their deliberation.

The Board discussed the recent Code changes and what might be incorporated into a motion. The Board also discussed the potential to make multiple motions.

Mr. Stepp, seconded by Mr. St. Clair, made a motion to approve variances to Hilliard Code Section 1121.02(d)(1)(I) to permit a six-foot privacy fence along a secondary front lot line in lieu of a required 4-foot decorative aluminum fence and Section 1121.02(d)(1)(G) to permit more than one fence type per property line.

<b>Status:</b>	Disapproved (1-4).
<b>Mover:</b>	Mr. Bobby Stepp
<b>Seconded:</b>	Mr. Greg St. Clair
<b>Ayes:</b>	Vice President Aaron Epling.
<b>Nays:</b>	Mr. Steve Donato, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp.

**CASE 5: BZA-22-24 – AMAZON DATA CENTER – 4120 Scioto Darby Road**

**PARCEL NUMBERS:** 050-003336, 050-002806, 050-003210, 050-0002427, 050-002299 & 050-002301

**APPLICANT:** Amazon Data Services, Inc., 410 Terry Avenue North, Seattle, WA 98108; c/o Isabella Culliton, Kimley-Horn, 7965 North High Street, Columbus, OH 43235.

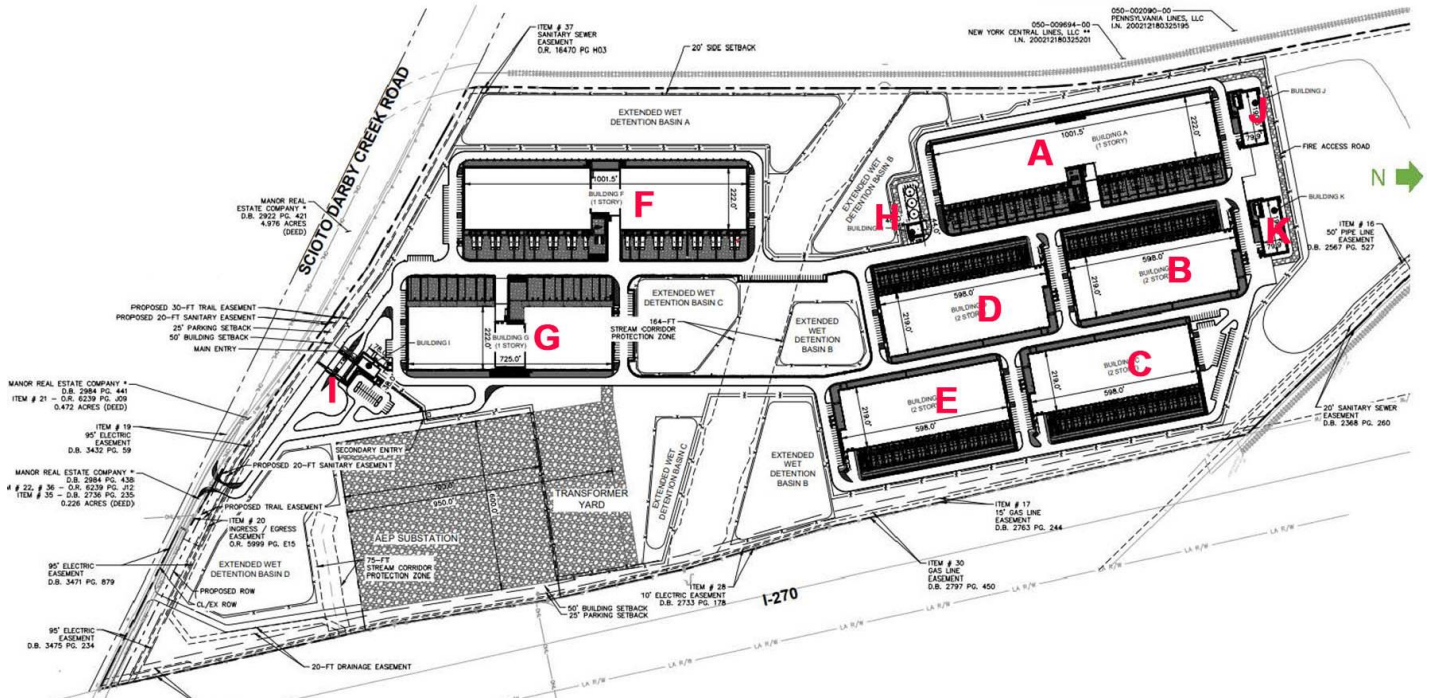
**REQUEST:** Review and approval of variances to the Hilliard Zoning Code for a 152.13-acre data center complex:

- [1] Section 1113.03(b) to increase the maximum building height from 45 feet to 63 feet for Buildings B, C, D and E;
- [2] Section 1121.02(d)(1)(G) to permit more than one fence type along a single property line;
- [3] Section 1121.02(d)(3) to permit the placement of security fencing forward of the primary structure/building line;
- [4] Section 1121.02(d)(4)(A) to increase the maximum permitted fence height from 7 feet to 8 feet;
- [5] Section 1125.04(i) to reduce the required number of replacement tree inches;
- [6] Section 1125.05(b) to waive the required 10-foot vehicular use area landscaping along non-residential uses;
- [7] Section 1125.05(c)(3) to increase the maximum landscape island separation of 100 feet; and
- [8] Section 1127.02(g) to increase the maximum allowed parking.

[Ms. Thiel gave the staff report.]

**BACKGROUND:**

This is a request to obtain variances to construct a proposed Amazon data center complex. The site consists of six parcels totaling 152.13 acres located north of Scioto Darby Creek Road and west of I-270. The site is bounded by the CSX railroad to the north and the Conrail railroad to the west. On October 27, 2014, the site was zoned to M-1, Restricted Industrial District (Ordinance 14-29). On November 12, 2020, data centers were added as a permitted use within the M-1 zoning district (Ordinance 20-36) by City Council. On August 12, 2021, the Planning and Zoning Commission approved a similar plan for an Amazon data center site located between Cosgray and Leppert Roads that was zoned PUD, Planned Unit Development District. The applicant is requesting variances to modify Zoning Code requirements for fencing, parking, and landscaping based upon the unique conditions of the proposed site.



## CONSIDERATIONS:

- The data center complex is zoned M-1, Restricted Industrial District and is a permitted use. It is immediately bounded to the west by the Conrail railroad and reserves between the railroad and Darby Glen subdivision. To the north the site is bounded by the CSX railroad and additional M-1-zoned industrial properties. South of the site is Scioto Darby Creek Road and its overpass as well as a large railroad switching area and heavy industrial properties within the City of Columbus. I-270 borders the site along the east and is elevated above the site.
- The proposed site plan shows seven data center buildings that are oriented east-west, an AEP substation and transformer yard in the southeast corner of the site. A security building is located to the immediate west of the AEP substation, and three smaller support buildings are proposed in the northwest corner of the site. Access to the data center will be a 30-foot-wide drive from Scioto Darby Creek Road located 750 feet west of the eastern property line. Access to the AEP substation will have a separate 20-foot-wide access from Scioto Darby Creek Road approximately 350 feet west of the eastern property line.
- **Building Height.** Section 1113.03(b) of the Zoning Code limits maximum building height for M-1 Districts to 45 feet. Four of the data center buildings (Buildings B, C, D, and E) are two-story buildings proposed to be 62'-7" in height. The applicant requests a variance to increase maximum building height to 63 feet and those buildings will be sited along the elevated interstate to maximize distance from residential areas and to minimize the visual impact of those particular buildings.
- **Security Fencing.** The zoning code allows fencing in an industrial district to a maximum height of seven feet. Additionally, the code limits fence types to one per property line and non-decorative fencing to be located behind the primary structure. The site plan proposes a double row of fences around the perimeter of the data center complex for security. Interior fencing will be an 8-foot-tall black, vinyl-coated chain link and exterior fencing running parallel outside the chain link will be an 8-foot-tall decorative mesh. This fence configuration is consistent with the data center on Cosgray Road.
- **Tree Replacement.** Tree surveys and replacement plans are currently being completed. Section 1127.04(i) of the Zoning Code requires a tree survey and preservation plan to determine the required number of replacement trees.

- *Parking Lot Islands.* Section 1125.05(c)(3) of the Zoning Code limits unbroken rows of parking to a maximum of one hundred feet in length. Parking for the site is primarily single row parking located alongside the data center buildings. Many of these parking rows exceed one hundred feet in length. Given the size of the buildings and overall site plan, the provision of these extended rows adjacent to the building are intended to reduce pavement with greater efficiency and to serve the functionality of the individual buildings instead of creating centralized large parking lots. Islands will be provided on the ends so that the rows can also serve to accommodate temporary use for equipment and trucks.
- *Maximum Allowed Parking.* According to Section 1127.02(g) of the Zoning Code, no more than 10% of the minimum required number of parking spaces may be exceeded. The site plan proposes 489 new parking spaces for 202,114 square feet of net usable floor area. The maximum allowed parking per Code for this site is 287 spaces. Due to the nature of the facility, Amazon requires a minimum level of parking at each individual building and the plans address operational needs for the facility.
- *Landscaping.* Section 1125.05(b) of the Zoning Code requires a 10-foot wide perimeter landscape buffer for vehicular use areas adjacent to a non-residential use or zoning district that includes a minimum of 2 trees and 30 shrubs per 100 linear feet. I-270 along the site is elevated and any screening material per code would not achieve the desired outcome.
- *Street Trees.* Because the right-of-way along Scioto Darby Road is outside the city's jurisdiction, placement of street trees will be coordinated with the City Forester.

### **STAFF RECOMMENDATION:**

Staff finds that the proposed use on this industrial property is consistent with the intent of the Zoning Code. The site is uniquely bounded by railroads, overpasses, rail switching areas, industrial uses and an interstate which all provide a significant level of existing vegetative screening. The proposed layout of the development has been sensitively designed to minimize and transition the scale of architecture to the closest residential areas to the west. Staff finds that the proposed variances are relatively minimal and apply to this unique land use type, which has specific operational and safety/security requirements. Based on these findings, staff recommends approval of the proposed variances with the following seven conditions:

- 1) That all necessary variances be obtained from the Board of Zoning Appeals;\*
- 2) That the 30-foot trail easement be indicated on plans to the satisfaction of staff;\*
- 3) That a tree survey is provided and that tree replacement meet the requirements of the Code;
- 4) That approval for access points along Scioto Darby Creek be obtained from the City of Columbus and evidence of such be provided to staff;\*
- 5) That required street trees be installed subject to the approval of the City Forester;\*
- 6) That all parking spaces within the Storm Corridor Protection Zone be removed to the satisfaction of the City Engineer;\* and
- 7) That construction within the SCPZ, including but not limited to culverts and utilities, minimize impacts to the satisfaction of the City Engineer.\*

*\*conditions as approved by the Planning and Zoning Commission on July 14, 2022*

[END OF REPORT | BZA-22-24]

During the presentation Mr. Talentino clarified the proposed building heights for the Board. He noted that the Planning Commission had concern about the view of the buildings from I-270 and looking onto rooftops. He explained that rooftops will not be seen on the 2-story buildings and the view will be similar to the data center at Hayden Run Road. The larger buildings will also screen the one-story buildings to the west.

Mr. Talentino also clarified that the fencing will be identical to that approved for the Cosgray Road data center. He said the design is different than the Hayden Run Road location due to increased security design. He explained that the Cosgray Road site was a PUD that did not require variances.

Mr. Talentino noted that the tree survey is not complete. He said that Amazon is proposing 318 replacement trees (954 caliper inches) that is a fair number to meet the intent of the Code while not overplanting the site and impacting tree health. He gave BMW as an example and that staff wishes to receive a finished tree survey and that 954 caliper inches is a fair number to replace. He clarified for Mr. Martin that fencing around the site will include two separate fences that are consistent around the site.

Mr. Talentino explained that the parking is configured for these buildings to provide landscaping at the corners of the buildings and the parking is designed to meet the needs of Amazon for activity at each individual building. He noted that the parking onsite would not be visible.

Mr. Derik Leary, representing the applicant, clarified that there is a significant amount of existing trees along the perimeter of the site that create a natural 30 foot buffer. He said that additional plantings will be added as part of the tree replacement requirements. He said that high-pressure gas along I-270 is also located along I-270 that complicates construction.

Mr. St. Clair asked about the lake and Mr. Leary noted that two-thirds of the borrow pit will be filled as an unregulated water body. Mr. Leary clarified for Mr. Martin that the security fencing will be placed inside of the existing vegetation around the perimeter. He explained that the tree survey is still underway because of the complexity of the site.

Mr. Leary did not know employment levels, but explained that Amazon requires minimum parking levels for each building.

With no public comment, Vice President Epling, seconded by Mr. St. Clair, made a motion to approve variances to the Hilliard Zoning Code for a 152.13-acre data center complex including Section 1113.03(b); Section 1121.02(d)(1)(G); Section 1121.02(d)(3); Section 1121.02(d)(4)(A); Section 1125.04(i); Section 1125.05(b); Section 1125.05(c)(3) and Section 1127.02(g) with the following seven conditions:

- 1) That all necessary variances be obtained from the Board of Zoning Appeals;
- 2) That the 30-foot trail easement be indicated on plans to the satisfaction of staff;
- 3) That a tree survey is provided and that 954 caliper inches of replacement trees be provided;
- 4) That approval for access points along Scioto Darby Creek be obtained from the City of Columbus and evidence of such be provided to staff;
- 5) That required street trees be installed subject to the approval of the City Forester;
- 6) That all parking spaces within the Storm Corridor Protection Zone be removed to the satisfaction of the City Engineer; and
- 7) That construction within the SCPZ, including but not limited to culverts and utilities, minimize impacts to the satisfaction of the City Engineer.

<b>Status:</b>	Approved with seven conditions (5-0).
<b>Mover:</b>	Vice President Aaron Epling
<b>Seconded:</b>	Mr. Greg St. Clair
<b>Ayes:</b>	Mr. Steve Donato, Vice President Aaron Epling, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

**CASE 6: BZA-22-25 – AGEAN HOT TUBS & BATHROOMS – 4421 Cemetery Road**

**PARCEL NUMBER:** 050-002292

**APPLICANT:** Chris Fosnaugh, Agean Hot Tubs & Bathrooms, 4421 Cemetery Road, Hilliard, OH 43026; Buckeye Lane, LLC. 9756 Princeton Glendale Road, Cincinnati, OH 45246.

**REQUEST:** Review and approval of a temporary use under the provisions of Section 1106.02 to permit an annual tent sale.

**UPDATE:**

Since the time that the agenda was published for this meeting, the applicant has worked with staff to arrive at an administrative solution. The case has been withdrawn by the applicant and no review is needed by the Board.

[END OF REPORT | BZA-22-25]

**CASE 7: BZA-22-26 – OPALEK RESIDENCE – 4867 Barbeau Lane**

**PARCEL NUMBER:** 050-010417 (Estates at Hoffman Farms Section 2 Phase 4 – Lot 153)

**APPLICANT:** David Opalek, 4867 Barbeau Lane, Hilliard, OH 43026

**REQUEST:** Review and approval of a variance from Hilliard Code Section 1121.02(d)(5) to permit a locking cover in lieu of a fence around a jacuzzi (private pool) and from Section 1121.06(f)(2) to reduce the required rear setback from 10 feet to 8.5 feet.

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site is located along Barbeau Lane approximately 175 feet northwest of Nadine Park Drive. The 0.456-acre parcel is Lot #153 of the Hoffman Farms subdivision located on the west side of Cosgray Road south of Homestead Park. The site and all surrounding properties within the subdivision are zoned PUD, Planned Unit Development District. This application is a variance request to install a locking cover for jacuzzi in lieu of swimming pool fencing with self-closing and self-locking gate as required by Section 1121.02(d)(5) of the Code. A variance is also requested to reduce the required rear setback from 10 feet to 8.5 feet for a portion of the patio and pavilion associated with the jacuzzi.

**CONSIDERATIONS:**

- Hilliard Code Section 1121.02(d)(5)(a) states that the immediate surroundings or yard around the pool shall be fenced and equipped with a self-latching gate with a self-closing lock to prevent uncontrolled access into any swimming pool.
- Since 2018, the Board of Zoning Appeals has received seven variance requests to replace required pool fencing with an automatic pool cover. **The Board has approved all seven requests.** [BZA-22-16 Calabrese Residence; BZA-22-7 Vawter Residence; BZA-21-35 Bandow Residence; BZA-21-6 Capron Residence; 20-0157AR Miglietti Residence; 20-0145AR Ruma Residence; 18-0093AR Tucker Residence]
- According to Section 1121.06(f) of the Zoning Code, a private swimming pool includes “...any pool, lake, pond or open tank not located within a completely enclosed building and containing or normally capable of containing water to a depth at any point greater than one and one-half feet.” An outdoor hot tub is considered as a pool by Code.



- Section 1121.06(f)(4) requires fencing around the pool, in conformance with the fence provisions/requirements of Section 111.02(d). This is the third instance of a request for a variance to permit a locking cover for a hot tub/jacuzzi in lieu of required swimming pool fencing.
- Because the Zoning Code defines a hot tub or jacuzzi as a private pool, the Code requires a minimum 10-foot rear setback for all pavement associated with the “pool.” If the at-grade patio were requested without the jacuzzi, the patio could be placed within 3 feet of the rear property line and the covered pavilion within 6 feet to meet Code requirements.

## STAFF RECOMMENDATION:

### *Jacuzzi Cover*

Staff finds that there can be beneficial use of the property without the pool cover variance and that the proposed variance to permit a pool (jacuzzi) without fencing is substantial. Staff finds that the property owner’s difficulty can be feasibly obviated through some method other than a variance. Based on these findings, consistent with the provisions of Hilliard Code Section 1106.04, staff respectfully recommends that the proposed fence variance be denied. In prior cases, the Board has approved requested variances with the following condition:

- 1) That the jacuzzi remains covered and locked when not in use.

### *Rear Setback*

Staff finds that the proposed rear yard setback variance meets the general intent and spirit of the Code and will be minimal, impacting a small portion of the proposed patio. Because the jacuzzi tub is considered by the Zoning Code as a pool, a 10-foot rear yard setback is required. Without the jacuzzi the Code would allow the patio within 3 feet of the property line and the proposed pavilion within 6 feet of the rear property line. Staff believes that the encroachment of one corner of the proposed improvements will not inherently impact the surrounding neighborhood and recommends approval of the setback variance with three conditions:

- 1) That the rear setback reduction to 8.5 feet be permitted only for the improvements as indicated on the proposed plans;
- 2) That a certificate of zoning compliance be obtained prior to construction; and
- 3) That a building permit and any necessary electrical permits be obtained for the proposed pergola and improvements prior to construction.

[END OF REPORT | BZA-22-26]

Vice President Epling noted as a point of order that the Board had just voted down a request earlier in the meeting for a hot tub / jacuzzi. Mr. St. Clair noted that a hot tub that is in-ground could be easily walked into and wanted clarification if the proposed jacuzzi was above-ground. Mr. Combs brought up the image from Case #1 to verify that the hot tub was flush with the deck.

Judy Barbeau, property owner, noted the jacuzzi will be above-ground and provided an image. She asked for clarification of the staff report.

Vice President Epling and Mr. St. Clair clarified that the staff report recommends disapproval, but the Board makes the final decision.

Mr. Talentino further explained that until such time as the Code is changed, staff is not comfortable with waiving this particular requirement. He said that the Board has the ability to look at the individual case and its merits and to

Mr. Martin asked why not a fence around the area; Ms. Opalek noted that the HOA does not like fencing except for around pools, but she does not consider a hot tub to be a pool.



With no comment from the public, Vice President Epling, seconded by Mr. Stepp, made a motion to approve variances to the Hilliard Zoning Code Section 1121.02(d)(5) to permit a locking cover in lieu of a fence around a jacuzzi (private pool) and from Section 1121.06(f)(2) to reduce the required rear setback from 10 feet to 8.5 feet with the following four conditions: *[the original motion was modified to include conditions #2-4 and was also seconded by Mr. Stepp]*

- 1) That the jacuzzi remains covered and locked when not in use;
- 2) That the rear setback reduction to 8.5 feet be permitted only for the improvements as indicated on the proposed plans;
- 3) That a certificate of zoning compliance be obtained prior to construction; and
- 4) That a building permit and any necessary electrical permits be obtained for the proposed pergola and improvements prior to construction.

<b>Status:</b>	Approved with four conditions (5-0).
<b>Mover:</b>	Vice President Aaron Epling
<b>Seconded:</b>	Mr. Bobby Stepp
<b>Ayes:</b>	Mr. Steve Donato, Vice President Aaron Epling, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

**CASE 8: BZA-22-27 – TOMM RESIDENCE – 3394 Woodland Drive**

**PARCEL NUMBER:** 053-000086 (Heritage Preserve Section 1 Phase 2 – Lot 43)

**APPLICANT:** Cynthia Tomm, 3394 Woodland Drive, Hilliard, OH 43026; Tasha Jones, Fun Time Pools and Spa, 3812 April Lane, Columbus, OH 43227

**REQUEST:** Review and approval of a variance from Hilliard Code Section 1121.02(d)(5) to permit a pool with an automatic cover in lieu of a fence around the pool.

[Mr. Combs gave the staff report.]

**BACKGROUND:**

The site is located along Woodland Drive approximately 850 feet west of Blue Heron Drive. The 0.286-acre parcel is Lot #43 of the Heritage Preserve subdivision located west of Audubon Avenue in the center of the development. The site and all surrounding properties within the subdivision are zoned PUD, Planned Unit Development District. This particular lot backs onto the central woodland reserve and is adjacent to the pedestrian connector and street green/pocket park on Woodland Drive. While the property current includes an existing fence, this application is a variance request for a retractable locking cover in lieu of the required swimming pool fencing with self-closing and self-locking gate as required by Section 1121.02(d)(5) of the Code.

**CONSIDERATIONS:**

- Hilliard Code Section 1121.02(d)(5)(a) states that the immediate surroundings or yard around the pool shall be fenced and equipped with a self-latching gate with a self-closing lock to prevent uncontrolled access into any swimming pool.
- Since 2018, the Board of Zoning Appeals has received seven variance requests to replace required pool fencing with an automatic pool cover. **The Board has approved all seven requests.** [BZA-22-16 Calabrese Residence; BZA-22-7 Vawter Residence; BZA-21-35 Bandow Residence; BZA-21-6 Capron Residence; 20-0157AR Miglietti Residence; 20-0145AR Ruma Residence; 18-0093AR Tucker Residence]
- According to Section 1121.06(f) of the Zoning Code, a private swimming pool includes “...any pool, lake, pond or open tank not located within a completely enclosed building and containing or normally capable

of containing water to a depth at any point greater than one and one-half feet.” An outdoor hot tub is considered as a pool by Code.

- Section 1121.06(f)(4) requires fencing around the pool, in conformance with the fence provisions/requirements of Section 111.02(d).

### STAFF RECOMMENDATION:

Staff finds that there can be beneficial use of the property without the variance and that the proposed variance to permit a pool without fencing is substantial. Staff finds that the property owner’s difficulty can be feasibly obviated through some method other than a variance. Based on these findings, consistent with the provisions of Hilliard Code Section 1106.04, staff respectfully recommends that the proposed variance be denied. In prior cases, the Board has approved requested variances with the following condition:

- 1) That the pool cover be maintained in good working order and be extended and locked over the pool when the pool is not in use.

[END OF REPORT | BZA-22-27]

Mr. St. Clair asked if the installed cover was consistent with other approvals; Mr. Talentino said yes.

Mr. Stepp asked about the existing fence; Mr. Combs said indication is that the fence was installed without a permit by the previous owner. He said that the zoning certificate and electrical permit were approved for the pool, but the fence permit is outstanding.

Tasha Jones, representing the applicant, said she was unaware that a fence had been installed prior to her submitting for the fence permit. She said the pool cover is certified and can hold significant weight. She verified that the fence will remain, but there was no permit.

Mr. Combs indicated that there is an open fence permit. He said that constructing a pool requires a zoning certificate and a fence permit and those are needed to obtain the electrical permit to begin construction. He said that the zoning inspector noticed the fence issue. The fence information did not include the gate and lock information.

Tony Tomm, property owner, state that the fence was installed by May Fencing prior to purchasing the property. He said the two gates are padlocked and the pool cover is guaranteed for up to 2,000 pounds. The previous owner and fence company is not returning inquiries.

With no public comment Mr. St. Clair, seconded by Mr. Donato, made a motion to approve a variance to Hilliard Zoning Code Section 1121.02(d)(5) to permit a locking cover in lieu of a fence around a pool with the following condition:

- 1) That the pool cover be maintained in good working order and be extended and locked over the pool when the pool is not in use.

<b>Status:</b>	Approved with one condition (5-0).
<b>Mover:</b>	Mr. Greg St. Clair
<b>Secunder:</b>	Mr. Steve Donato
<b>Ayes:</b>	Mr. Steve Donato, Vice President Aaron Epling, Mr. James Martin, Mr. Greg St. Clair, Mr. Bobby Stepp

### PRESIDENT’S COMMUNICATION

Mr. Combs noted that there are tentatively two cases on the agenda for August. Vice President Epling asked the Board if anyone wished to make a motion regarding Case #1. [no one responded]. In concluding the meeting,

Ms. Hale informed the Board that discussion is underway regarding the pool cover issue due to the number of requests that are being made.

**ADJOURNMENT – 8:45 PM**

Vice President Aaron Epling motioned to adjourn and gaveled the meeting at 8:45 p.m.

**CERTIFICATION:**



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Carson Combs, Planning Manager/Acting Clerk  
August 19, 2022

[END OF MINUTES | JULY 21, 2022]