



Commissioner John O'Grady • Commissioner Paula Brooks • Commissioner Marilyn Brown
President

Economic Development & Planning Department
James Schimmer, Director

Franklin County Board of Zoning Appeals

Franklin County Courthouse
Commissioner's Hearing Room – 26th Floor
Columbus, OH 43215

Monday, April 15, 2013
1:30 p.m.

1. Call roll for board members
2. Introduction of staff
3. Swearing in of witnesses
4. Approval of minutes from the March 18, 2013 meeting
5. Old Business:

A. VA-3786 – Anthony Hray

Applicant:	Bruce McCormick
Owner:	Urban Renewal Investments
Agent:	Fred Reister
Township:	Madison Township
Site:	4582 Katherine Road (PID #180-000775)
Acreage:	0.39-acres
Zoning:	Rural
Utilities:	Private Water and Wastewater
Request:	Requesting a variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback in an area zoned Rural.

B. VA-3788 – Anthony Hray

Applicant:	Agler Tire c/o Jamal Hemamou
Owner:	Farida Boa
Agent:	David Hodge, Esq.
Township:	Clinton Township
Site:	2925 Westerville Road (PID #130-000008)
Acreage:	.301-acres
Zoning:	Community Service (CS)
Utilities:	Private Water and Wastewater
Request:	Requesting a Variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a), 505.024(a) and 531.02 to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements in an area zoned Community Service (CS).

6. New Business:

C. VA-3789 – Anthony Hray – Requesting to withdraw

Applicant:	IForce
Owner:	Rylee, Ltd.
Agent:	David R. Darby, Esq.
Township:	Franklin Township
Site:	3571 West Broad Street (PID #140-000340)
Acreage:	0.38-acres
Zoning:	Neighborhood Commercial (NC) District
Utilities:	Public Water and Sewer
Request:	Requesting a Variance from Section 541.03(2(a)) of the Franklin County Zoning Resolution to legitimize wall signage that exceeds the allowable area in an area zoned Neighborhood Commercial (NC).

D. VA-3790 – Anthony Hray

Applicant/Owner:	Karryen Jones
Township:	Madison Township
Site:	3764 Noe Bixby Road (PID #180-002185)
Acreage:	0.46-acres
Zoning:	Restricted Urban Residential (R-8) District
Utilities:	Public Water and Sewer
Request:	Requesting a Variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line in an area zoned Restricted Urban Residential (R-8).

7. Adjournment of Meeting to May 20, 2013



Commissioner John O'Grady • **Commissioner** Paula Brooks • **Commissioner** Marilyn Brown
President

Economic Development & Planning Department
James Schimmer, Director

MINUTES OF THE FRANKLIN COUNTY BOARD OF ZONING APPEALS

Monday, March 18, 2013

The Franklin County Board of Zoning Appeals convened on the 26th floor, Franklin County Courthouse, 373 South High Street, Columbus, Ohio, 43215, on Monday, March 18, 2013.

Present were:

Gary Dever, Chairperson
Christopher Baer, Vice Chairperson
Tim Guyton
Nancy Hunter

Franklin County Economic Development and Planning Department members:

Lee Brown, Planning Administrator
Anthony Hray, Planner
Scott Ulrich, Planner

Vice Chairperson Baer opened the hearing, which was followed by the swearing in of all witnesses by Mr. Lee Brown.

The first order of business being approval of the minutes of the February 19, 2013, Franklin County Board of Zoning Appeals hearing. Ms. Hunter made a motion to approve the minutes. It was seconded by Mr. Guyton. The minutes were approved by a four-to-zero vote.

NEW BUSINESS:

The next order of business being Case No. VA-3787. The applicant is Ronald T. Durrer. The site is located at 4850 Reese Road. The township is Hamilton Township. It is 3.25 acres. The request is for a Variance from Section 531.054 to allow for the storage of more than one inoperable vehicle per dwelling unit in an area zoned Rural.

Mr. Scott Ulrich read and presented the case to the Franklin County Board of Zoning Appeals. Mr. Guyton made a motion to approve Case No. VA-3787. Mr. Baer seconded the motion. The motion was denied by a four-to-zero vote.

The next order of business being the approval of Findings of Fact regarding Case No. VA-3787. Mr. Guyton made a motion to accept Findings of Fact that the applicant failed to meet the requirements for granting a variance under Section 810.041 of the Franklin County Zoning Resolution. Mr. Dever seconded the motion. The motion was approved by a four-to-zero vote.

The next order of business being Case No. VA-3786. The applicant is requesting to table until the April 2013 meeting. Mr. Guyton made a motion to table Case No. VA-3786 until the April 15, 2013 hearing. It was seconded by Mr. Baer. The motion was approved by a four-to-zero vote.

The next order of business being Case No. VA-3788. The applicant is Agler Tire. The owner is Farida Boa. The applicant is requesting that the case be tabled until the April 15, 2013 hearing. Ms. Hunter made a motion to table the case. It was seconded by Mr. Baer. The motion was approved by a four-to-zero vote.

There being no further new business to come before the Board of Zoning Appeals, a motion was made by Mr. Baer to adjourn the hearing. It was seconded by Ms. Hunter.

And, thereupon, the hearing adjourned at 2:41 p.m.

Minutes of the March 18, 2013, Board of Zoning Appeals hearing were approved this 15th day of April 2013.

Signature



Commissioner John O'Grady • Commissioner Paula Brooks • Commissioner Marilyn Brown
 President

Economic Development & Planning Department
 James Schimmer, Director

STAFF REPORT

Board of Zoning Appeals
 April 15, 2013

Case VA-3786

Prepared by: Anthony Hray

Applicant:	Bruce McCormick
Owner:	Urban Renewal Investments
Agent:	Fred Reister
Township:	Madison Township
Site:	4852 Katherine Road (PID #180-000775)
Acreage:	0.39-acres
Zoning:	Rural District
Utilities:	Private Water and Wastewater
Request:	Requesting a variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback in an area zoned Rural.

Summary

The applicant is requesting a variance to legitimize the construction of an attached garage that fails to meet the required setback. Staff recommends **approval with conditions**.

Description of the Request

The applicant's request is to legitimize a 1,536 square-foot attached garage (pole style building) that was originally approved in 2008. Since that time, only the supporting structure of the building has been completed. Staff received a complaint regarding the building in 2012 and upon further investigation found that the building had not been constructed in its approved location.

The subject property is located in the Edgewater Park subdivision, which is made up of older, single-family homes. Much of the subdivision consists of smaller lots, generally less than a tenth of an acre in size; some of which have been combined to create larger lots, as is the case with the applicant's property. The site contains a 980 square-foot single-family home built in 1946. The site also contains a 524 square-foot carport, and three sheds, measuring 70, 96 and 130 square-feet in size, all with unknown dates of construction.

Surrounding Area

Direction	Zoning	Land Use
North	Rural	Single-Family Home
East	Rural	Single-Family Home
South	Rural	Single-Family Home
West	Rural	Single-Family Home

Comprehensive Plan

The Blacklick-Madison Area Plan (adopted in 2011) recommends this area for medium density residential land uses which allows for single-family and two-family homes.

The proposal does not conflict with this recommendation.

Staff Review

Variance from Section 504.011 – Required Setback:

- A structure or other use of land shall locate no closer to a street right-of-way than the established building line.
 - The established building line is 30 feet from the centerline of Katherine Road
 - The required setback is 15 feet from the street right-of-way
 - The building is setback only 23.1 feet from the centerline and 8.1 feet from the street right-of-way
 - A variance of 6.9 feet is required.

Franklin County Engineer

Katherine Drive is a residential street, servicing approximately a dozen homes, with a posted speed limit of 25 mph and minimal if any thru traffic. Staff from the traffic division has reviewed the request and presented no concerns with the setback of the building and the potential for causing any site distance issues or road hazards.

Staff Analysis – Section 810.41

- 1) *Special conditions and circumstances exist which are peculiar to the structure involved which are not applicable to other structures in the same zoning district;*
 - » The applicant's residence is served by an on-site well and septic system. According to health code requirements, proposed buildings must maintain a required setback from these systems to ensure they are not damaged or disturbed. According to the survey provided which details the location of these systems on the applicant's property, moving the building so that it would meet the required building setback would cause it to encroach within the required setback of ten (10) feet from the septic system.
- 2) *A literal interpretation of the provisions of this Zoning Resolution would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Zoning Resolution;*
 - » It is reasonable to point out that properties in the Rural zoning district are required to be a minimum of 2.5-acres in size. Considering the size of the applicant's property, the location of existing development and the on-site well and septic system, a literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties in the Rural district.
- 3) *The special circumstances and conditions of this request do not result from the action of the applicant;*
 - » The special circumstances and conditions of this request are not a result of the applicant.
- 4) *Granting the variance requested will not confer on the applicant special privileges that are denied by this Zoning Resolution to other lands or structures in the same Zoning District;*
 - » Granting the variance will not confer any special privileges to the applicant.

- 5) *Granting the variance will not adversely affect the safety of persons residing in the vicinity of the proposed development, be materially detrimental to the public welfare and be injurious to private property in the vicinity;*
» Granting the variance will not adversely affect any of the above.

Recommendation

Staff recommendation is that the BZA approve a variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback with the following conditions:

1. The applicant must apply for and receive a new Certificate of Zoning Compliance from the Franklin County Economic Development and Planning Department.
2. The applicant must renew and/or obtain all required permits and inspections from the Franklin County Building Department.
3. The applicant must provide a signed affidavit to the Franklin County Economic Development and Planning Department attesting that no commercial vehicles will be stored anywhere on-site, including inside the attached garage.
4. The applicant must obtain a permit for the second access point from the appropriate entity.
5. The applicant must complete the garage and receive an occupancy permit within six (6) months from the date of approval (April 15, 2013).
6. The applicant must remove all three sheds from the property immediately following completion of the building.

Resolution

For your convenience, the following is a proposed resolution:

(a) **Proposed Resolution for Request:**

_____ moves to approve the variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback as outlined in the request above for the applicant identified in Case No. VA-3786 with the conditions in staff's recommendation.

Seconded by: _____

Voting:

Findings of Fact

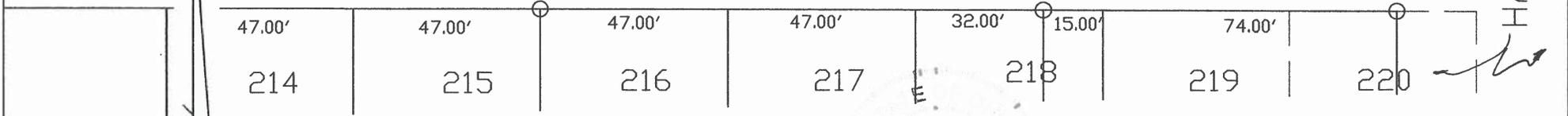
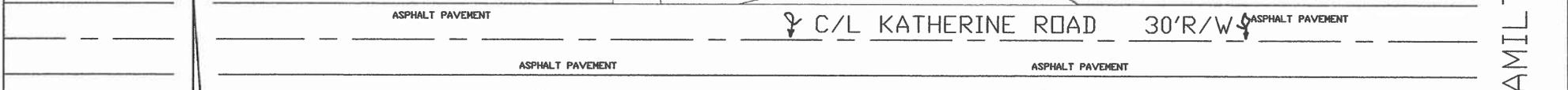
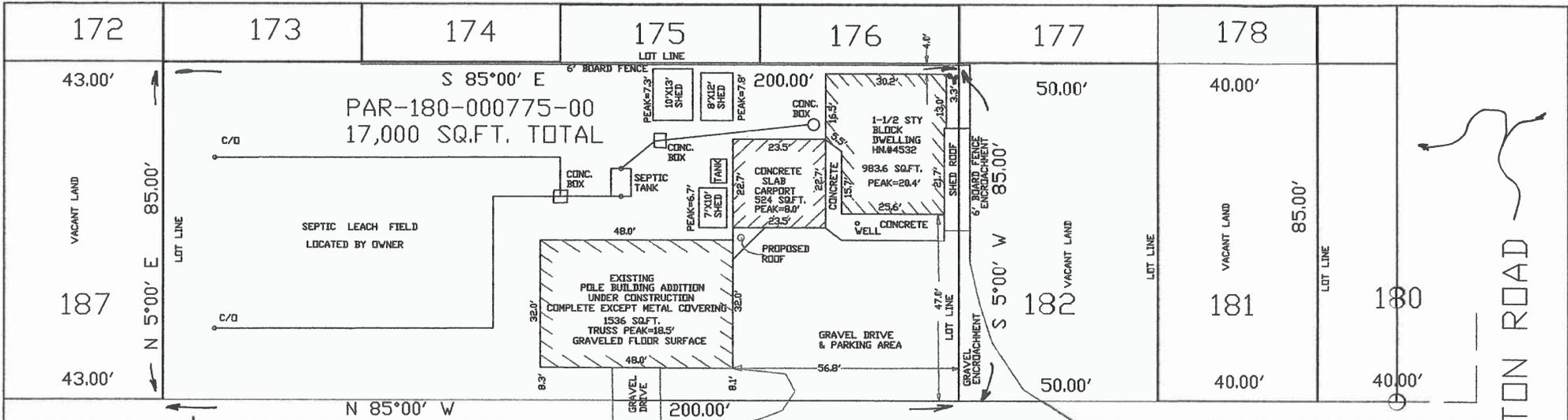
For your convenience, the following are proposed findings of fact:

If the resolution fails for lack of support, the following are proposed findings of fact for adoption by the BZA:

_____ moves that the basis for denying the applicant's request for the variance as outlined in the request above for Case No. VA-3786 results from applicant's failure to satisfy the criteria for granting a variance under Section 810.041.

Seconded by: _____

Voting:



Louis Haines
 354 Kessler Street
 Groveport, Ohio 43125
 Phone 837-2181



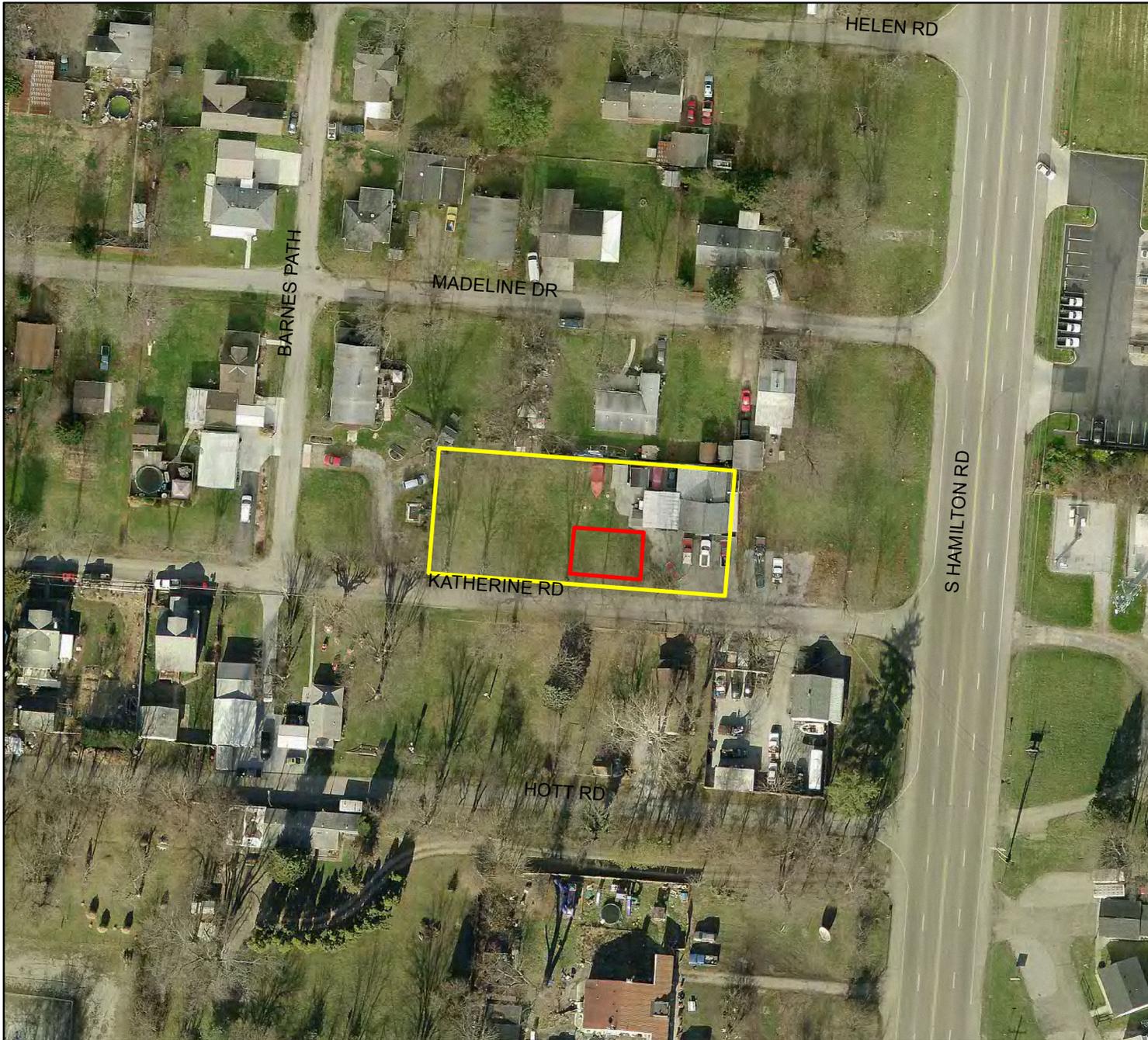
LOCATION & SITE DRAWING
 OF PARCEL #180-000775-00, IN THE
 EDGEWATER PARK PARCELS SOUTH,
 MADISON TWP., FRANKLIN CO., OHIO
 FOR
 URBAN RENEWAL INVESTMENTS, LTD.

"FLOOD CERTIFICATION"
 THIS PROPERTY APPEARS IN
 ZONE "X" ON FIRM PANEL
 39049C0342L, JUNE 16, 2011.
 0.2% ANNUAL CHANCE FLOOD.

I HEREBY CERTIFY THE PLAT SHOWN HEREON
 IS CORRECT AS SURVEYED BY US.
 DATE: January 11, 2013
 SIGNED: [Signature]

Frankli

BRUCE McCORMICK
 4532 KATHERINE

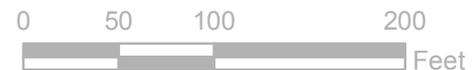
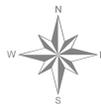
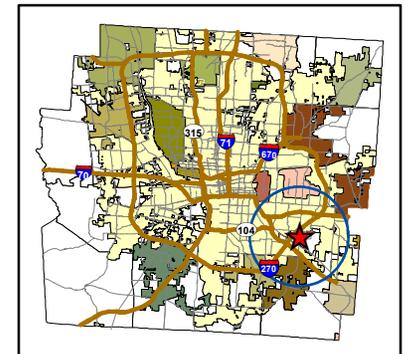


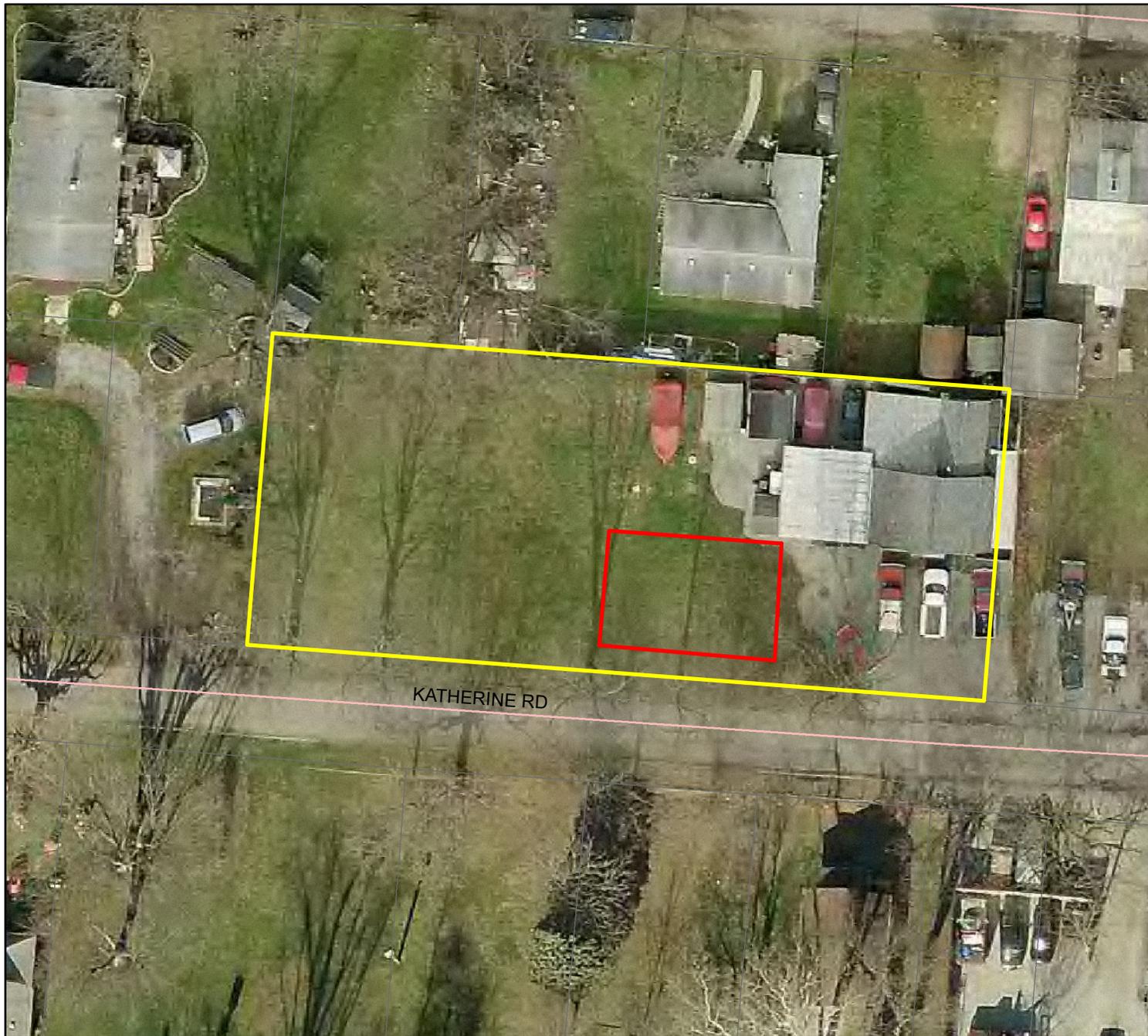
VA-3786

Requesting a variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback in an area zoned Rural.

0.39-acres
Madison Township

-  4532 Katherine Road
-  Attached Garage
-  Parcels
-  Streets



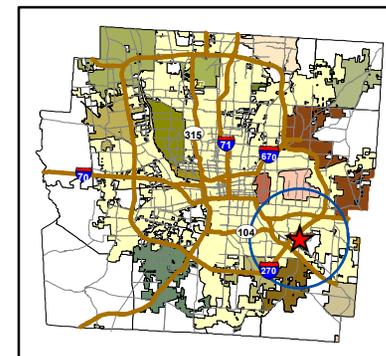


VA-3786

Requesting a variance from Section 504.011 of the Franklin County Zoning Resolution to legitimize the extension of the principal building that fails to meet the required building setback in an area zoned Rural.

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Madison Township

-  4532 Katherine Road
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President

Economic Development & Planning Department
James Schimmer, Director

STAFF REPORT

Board of Zoning Appeals
April 15, 2013

Case VA-3788

Prepared by: Anthony Hray

Applicant:	Agler Tire c/o Jamal Hemamou
Owner:	Farida Boa
Agent:	David Hodge, Esq.
Township:	Clinton Township
Site:	2925 Westerville Road (PID #130-000008)
Acreage:	0.301-acres
Zoning:	Community Service (CS) District
Utilities:	Private Water and Wastewater
Request:	Requesting a Variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a), 505.024(a) and 531.02 to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements in an area zoned Community Service (CS).

Summary

The applicant is requesting variances to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements. The request fails to satisfy the criteria necessary for granting a variance and is not consistent with recommendations of the Clinton-Mifflin Land Use Plan. Staff recommends denial.

Description of the Request

The applicant's property is located on the west side of Westerville Road (State Route 3), just north of Agler Road. The property contains a 3,432 square foot commercial building constructed in 1930 according records of the Franklin County Auditor. The site has been the subject of numerous zoning violation actions dating back to 2003. The site was most recently cited in 2010 for establishing the current used tire store prior to applying for and obtaining a Certificate of Zoning Compliance. The violation has persisted since that time with additional violations being created which include the installation of an illegal, six (6) foot chain-link, barbed wire fence, use of a dumpster in an unapproved location and without screening, and the use of a semi-trailer for tire storage. Since no action was taken to correct the violations, the case was referred to the Franklin County Prosecutor's office and subsequently a written and agreed entry for permanent injunctive relief was accepted by the Franklin County Environmental Court. As a condition of this entry, the applicant agreed to apply for variances related to structures, storage, fences or other accoutrements on the site by April 15, 2013.

The existing use of the site as a used tire store – OMB SIC code 753, is permitted under the Community Service (CS) District. However, under Section 110.033 of the Franklin County Zoning Resolution, a conforming use may be changed only in such a manner as will comply with the permitted use regulations and the development standards of the zoning district in which the conforming use is located. It is also important to note that the site falls within the Smart Growth Overlay (SGO) area. The requirements of the SGO do not apply to this particular request, however, any future development or substantial redevelopment of the site shall be subject to all applicable SGO regulations.

Surrounding Area

Direction	Zoning	Land Use
North	Community Service (CS)	Fence Company
South	Community Service (CS)	Auto Repair
East	Community Service (CS)	Auto Sales Vacant Commercial Building
West	Not Available – City of Columbus	Railroad Right-of-Way

Comprehensive Plan

The Clinton-Mifflin Land Use Plan, adopted by the Franklin County Board of Commissioners in January of 2009, recommends the applicant’s property for industrial and office land uses. Acceptable uses include office, industrial, storage and warehousing. The plan makes general recommendations for the entire planning area as well as individual recommendations for specific focus areas. Recommendations for the Westerville Road focus area include encouraging the formation of a multi-agency task force geared towards code enforcement and cleanup. The plan recognizes the on-going enforcement problem that exists in this area and suggests a more comprehensive policing effort to increase code compliance.

On a more general scale, the plan encourages commercial areas to maintain neat, well kept, orderly development which will help to establish and increase an area’s economic strength. Landscapes should not be dominated by paving and parking lots, unattractive buildings/structures, blank walls and oversized signs. Efforts should be made to improve blighted and distressed properties.

The request is not consistent with recommendations of the Clinton-Mifflin Land Use Plan.

Staff Review

Variance from Section 332.042(c) – 20 percent landscaped open space required:

- At least 20 percent (20%) of a lot must be landscaped open space
 - o The applicant’s site plan indicates that the site currently maintains 8 percent (1,048 square feet) open space
 - The applicant has therefore requested a variance to relieve them of providing the additional 12 percent (1,573 square feet) required

Variance from Section 332.045 – Front Green Belt:

- A landscaped area at least 15 feet in width shall be provided between the existing street right-of-way line, or the right-of-way line as depicted on the Franklin County Thoroughfare Plan, current edition, whichever is greater and any structure or paved area. This greenbelt supersedes any parking encroachment or building setback as provided under Section 504 of the Franklin County Zoning Resolution.
 - Currently the site does not provide a front green belt; this area is currently paved
 - Based on the proposed right-of-way line as depicted on the 2020 Franklin County Thoroughfare Plan, the applicant would be required to provide a 30 foot wide front greenbelt
 - The applicant has requested relief from this requirement to not provide any portion of the front green belt

Variance from Section 501.012 – Fence Height:

- No fence or wall between a street and a principal structure shall be more than three and one half (3.5) feet in height
 - The applicant has installed a six foot chain-link fence between the street and the principal structure
 - The applicant is requesting relief from this requirement to allow the fence to remain

Variance from Section 501.024 – Fence Materials:

- Chain link fences shall not be permitted between a street and a principal structure
 - The applicant has installed a six foot chain-link fence between the street and the principal structure
 - The applicant is requesting relief from this requirement to allow the fence to remain

Variance from Section 501.013 – Barbed Wire Fences:

- Barbed wire fences are prohibited unless otherwise permitted by Section 971.03 of the Ohio Revised Code (Agricultural Use)
 - The applicant has installed barbed wire atop the six foot chain-link fence
 - The applicant is requesting relief from this requirement to allow the barbed wire to remain

Variance from Section 502.021(4) – Yards Required Open:

- Temporary structures, such as tents or similar enclosures, shall not be erected as a permanent enclosure or utilized in conjunction with a permanent use.
 - The applicant is currently utilizing a semi-trailer (temporary structure) for storage in association with a permanent use (used tire store)
 - The applicant is requesting relief from this requirement to allow the semi-trailer to remain on the site and be used in association with the used tire store

Variance from Section 504.012 – Parking Setback:

- Open parking or loading spaces shall be permitted to extend towards the street right-of-way from the established building line a distance equal to forty percent (40%) of the required setback distance
 - In this particular case, open parking is permitted to extend towards the street a distance of 48 feet (120 feet x 0.40) from the established building line (120 feet from centerline of Westerville Road)
 - The applicant is requesting relief from this requirement to allow vehicle parking and the semi-trailer to encroach 36 feet within the required parking setback

Variance from Section 505.022(a) – Dumpster Location and Height:

- Dumpsters shall be located to the side or rear of the building served
 - An existing trash dumpster is located in front of the building served
 - The applicant is requesting relief to allow the dumpster to remain in this location

Variance from Section 505.024(a) – Dumpster Screening and Maintenance:

- Dumpsters shall be screened on all sides with a durable, weather-resistant material that complies with Section 501.024 – Fence Materials, or a combination of such fencing materials and vegetation
 - An existing trash dumpster is not screened
 - The applicant is requesting relief to allow the dumpster to remain without the required screening

Variance from Section 531.02 – Minimum Number of Parking Spaces Required:

- A minimum number of off-street parking spaces shall be provided based on the proposed use in accordance with the schedule of parking spaces
 - The automotive use requires two (2) parking spaces per service bay
 - The site maintains one service bay; two (2) parking spaces are needed
 - The retail use of the building requires one (1) space per 250 square feet of gross floor area
 - 1,050 square feet of gross floor area is used for retail purposes requiring five (5) spaces
 - Based on the above calculations the applicant is required to provide a total of seven (7) parking spaces
 - Only six (6) parking spaces will be provided; relief from providing the additional one (1) space is required

The Ohio Department of Transportation (ODOT)

The site currently has a continuous curb cut along Westerville Road (State Route 3) which is a four lane roadway with an existing right-of-way width of 60 feet and a speed limit of 35 miles per hour. The Franklin County 2020 Thoroughfare Plan classifies Westerville Road as a major arterial roadway with a proposed right-of-way width of 120 feet. This section of the road is maintained by ODOT who supports a more defined access point to the site. Their recommendation is that the access point to the site be located as far north from the intersection of Agler Road as possible. Additionally, ODOT will not permit parking of vehicles or equipment within the public right-of-way.

Franklin County Public Health (FCPH)

The FCPH Water Quality Program, who oversees and monitors the proper treatment and disposal of all on-site wastewater for household and small flow (semi-public) sewage treatment systems, has conducted an inspection of the applicant's wastewater treatment system and found that the system is operating in accordance with their regulations.

The site was also inspected by FCPH on February 25, 2013 to investigate a public health nuisance complaint and was subsequently cited for an accumulation of solid waste, materials and debris on the exterior of the property including but not limited to; tires, litter, can/bottles, plastics, scrap wood, used oil, automotive fluids, Styrofoam, car batteries, and five gallon buckets, and an accumulation of dog feces. The applicant was given one month to correct the violations and as of the date of this report, FCPH has performed a re-inspection of the site and found that the above mentioned violations have been satisfactorily corrected.

Staff Analysis – Section 810.41

- 1) *Special conditions and circumstances do not exist which are peculiar to the structure or property involved and are not applicable to other structures in the same zoning district;*
 - » The applicant argues that based on the size of the site, 0.301-acres, the site is undevelopable under the requirements of the Community Service (CS) District. However, staff's analysis of the site has concluded that installation of the required green belt and minimum landscaped open space are feasible, while still being able to comply with the applicable general development standards under Section 500 also included in the applicant's request.

- 2) *A literal interpretation of the provisions of this Zoning Resolution would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Zoning Resolution;*
 - » The applicant would not be deprived of rights enjoyed by other properties in the same zoning district. Under Section 110.033 of the Franklin County Zoning Resolution, a conforming use may be expanded, modified or changed only in such a manner as will comply with the permitted use regulations and with the development standards of the Zoning District in which the conforming use is located. This Section is applied uniformly to all properties in which a change of use occurs. Therefore, the applicant is not being subjected to provisions of the zoning resolution which are not applied to other properties in the same zoning district.
- 3) *The special circumstances and conditions of this request do result from the action of the applicant;*
 - » The special circumstances and conditions of this request are a result of the illegal change in use and modifications made to the property by the applicant.
- 4) *Granting the variance requested will confer on the applicant special privileges that are denied by this Zoning Resolution to other lands or structures in the same Zoning District;*
 - » Granting the variance will allow the applicant to conduct a conforming use on a lot that otherwise does not meet the development standards of the Community Service (CS) District as required under Section 110.033 of the Franklin County Zoning Resolution.
- 5) *Granting the variance will not adversely affect the safety of persons residing in the vicinity of the proposed development, be materially detrimental to the public welfare and be injurious to private property in the vicinity;*
 - » Granting the variances will adversely impact the public welfare and private property in the vicinity by allowing a distressed and blighted property to continue operating without meeting the development standards required under the Community Service (CS) District and the general development standards under Section 500.

Recommendation

Staff recommendation is that the BZA ***deny*** a Variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a) and 505.024(a) to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location and dumpster screening requirements based on the following:

1. The request fails to satisfy the criteria required for granting a variance under Section 810.041 of the Franklin County Zoning Resolution.
2. The request is not consistent with recommendations of the Clinton-Mifflin Land Use Plan.

Resolution

For your convenience, the following is a proposed resolution:

(a) **Proposed Resolution for Request:**

_____ moves to approve the variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a), 505.024(a) and 531.02 to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements as outlined in the request above for the applicant identified in Case No. VA-3788.

Seconded by: _____

Voting:

Findings of Fact

For your convenience, the following are proposed findings of fact:

If the resolution fails for lack of support, the following are proposed findings of fact for adoption by the BZA:

_____ moves that the basis for denying the applicant’s request for the variances as outlined in the request above for Case No. VA-3788 results from applicant’s failure to satisfy the criteria for granting a variance under Section 810.041.

Seconded by: _____

Voting:

RECEIVED

MAR 22 2013

Application Supplement

Practical Difficulty Statement

2925 Westerville Road

Franklin County Planning Department
Franklin County, OH

VA-3788

Preliminarily, the applicant takes exception to several issues related to Franklin County's Zoning Variance application. First, the application form states that it is incumbent upon an application to meet all of the variance requirements of Section 810.04 of the FCZR. This is contrary to case law precedent regarding the necessary burden for a variance applicant. The seminal case on this issue is Duncan v. Middlefield, (1986), 23 Ohio St.3d 83, which states that "no single factor controls" of the seven practical difficulty factors. In addition, Sections 810.04 and 810.041 of the FCZA only provide 5 factors to be met, yet Franklin County's Variance Application form provides 12. In accordance with the Ohio Supreme Court's holding in the Duncan case, the applicant's required burden is to demonstrate that the totality of the circumstances, in application of the factors, warrant the grant of the variance, and an applicant is not required to demonstrate that it meets them all. To the extent that either the Variance Application, or the FCZR, provide as much the applicant submits that it is contrary to law.

Zoning controls land use and development standards on private property. It is legally acknowledged that placing appropriate zoning designations and regulations to fit every individual parcel of property in advance, and not encountering problems when zoning regulations are applied to specific sites, is not possible. This is why there is a legislative process through which the zoning designation of property may be changed to another more appropriate classification, and also why there is an administrative process through which variances from the strict development standard requirements of the underlying zoning classification are relaxed or deemed inapplicable. The FCZR grants the power to the BZA to grant variances from the strict requirements of the FCZR. Variances reconcile the conflicts between governmental regulations and the unique circumstances of each individual property. The Ohio Supreme Court, in determining the applicable standard for cases involving variances, has stated, "[t]he standard for granting a variance which relates solely to area requirements should be a *lesser standard* than that applied to variances which relate to use. An applicant for an area variance need not establish unnecessary hardship; it is sufficient that the applicant show practical difficulties." Kisil v. Sandusky, (1984), 12 Ohio St.3d 30.

The Ohio Supreme Court set forth the standards for granting variances in Duncan and held the *spirit* rather than the *strict letter* of the zoning ordinance should be observed so that *substantial justice is done*. It can safely be said that a property owner encounters 'practical difficulties' **whenever an area zoning requirement unreasonably deprives him of a permitted use of his property**. The key to this standard is whether the zoning requirement, as applied to the property owner in question, is **reasonable**. Here, given the fact that this property is an existing nonconforming lot in the CS, Community Services district, it cannot possibly meet the development standards requirements of the Zoning Resolution therefore strict application of all development standards regulations to this property are not reasonable, and would further render the property incapable of use. In fact, of the .301 acre that comprises the site, the development standards of the CS district render .263 acres undevelopable, which comprises 87.3% of the site.

VA-3788

The applicant requests variances to not provide the required number of parking spaces, to not line the front of the property with a greenbelt, to be able to install a chain-link fence across the property's frontage, to use a trailer on the property to store tires, to locate the dumpster as indicated on the site plan in front of the building, and to not comply with the parking setback. These variances are reasonable and appropriate given the fact that this property is undevelopable with strict application of the development standards in the CS district to the site.

These variances are further reasonable and appropriate given the development pattern of the area and the existing nature of development of surrounding properties.

1. *Are there special conditions or circumstances applying to the property involved that do not generally apply to other properties in the same zoning district.*

Yes, strict application of the development standard regulations renders the property undevelopable. Of the .301 acres, only .038 may be developed. This lot was zoned in the CS district, but it is not developable in the CS district.

2. *That a literal interpretation of the requirements of the Zoning Resolution would deprive the applicant of rights commonly enjoyed by other properties in the same Zoning District under the terms of the Zoning Resolution.*

A literal interpretation, and application, of the requirements of the Zoning Resolution to this property make is useless and undevelopable.

3. *That the special conditions and circumstances, listed under question #1, do not result from any actions of the applicant.*

This property was zoned in the CS district by neither the property, nor the applicant. The zoning and configuration of the property is by governmental action and predates either their ownership or use of the property.

4. *That approving the variance requested will not grant the applicant any special privilege that is denied by this Zoning Resolution to other lands or structures in the same Zoning District.*

It will not, grant of the requested variances will simply allow the property to be used by a permitted use in the CS district. Should the variances fail to be granted it would unreasonably deprive the applicant of a permitted use of his property contrary to case law precedent as to when the grant of variances is required.

5. *Would granting the variance 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?*

No. The grant of the variances will allow the business on the property to continue, and will allow it to continue on a property that is consistent with the development pattern of the neighborhood and all of the surrounding properties. (See attached neighborhood photographs.)

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MAR 22 2013

6. *Can there be any beneficial use of the property without the variance.*

VA - 3788

No. As discussed above, 87.3% of the property is undevelopable if the development standards are strictly applied to the property. Just .038 of the .301 acre property could be developed.

7. *How substantial is the variance?*

Given the fact that this property is developed, and has developed in a manner consistent with the neighborhood and surrounding properties, the variances are not substantial. (See attached photographs.)

8. *Would the essential character of the neighborhood be substantially altered or would the adjoining properties suffer substantial harm as a result of the variance?*

No. The essential character of the neighborhood would not be *substantially* altered. Nor would adjoining properties suffer *any* detriment. In fact, the neighborhood would be substantially altered if the property were forced to develop in strict compliance with the development standards. (See attached photographs.)

9. *How would the variance adversely affect the delivery of governmental services?*

The variance will have no impact on the delivery of governmental services.

10. *Did the applicant purchase the property with knowledge of the zoning restrictions?*

No.

11. *Could the applicant's predicament feasibly be obviated through some method other than a variance?*

No. But for the grant of the variance, or a finding for the applicant on its appeal, his use of the property must cease. And, not just his use must cease. All use of the property must cease. It is undevelopable under the existing regulations.

12. *Would the spirit and intent behind the zoning requirements be observed and would substantial justice be done by granting the variance.*

Yes. Without the grant of variances this property cannot be used at all, by anyone. The spirit and intent of any zoning is to allow property to be used without harm to a neighborhood or surrounding property owners. This property can continue to function as it currently is with no harm to anyone whatsoever.

Having demonstrated that the applicant's variance request meets the Duncan standards as enunciated by the Ohio Supreme Court in Duncan v. Middlefield as well as the standards of FCZR, the applicant's variance request must be granted.

The applicant respectfully requests the grant to its variance request to allow it to continue to operate its property.

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MAR 22 2013

Respectfully submitted,

Jamal Hemamou

By: David Hrdy

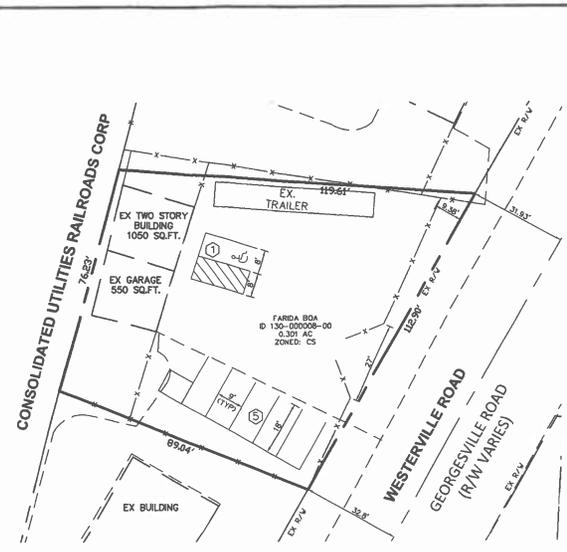
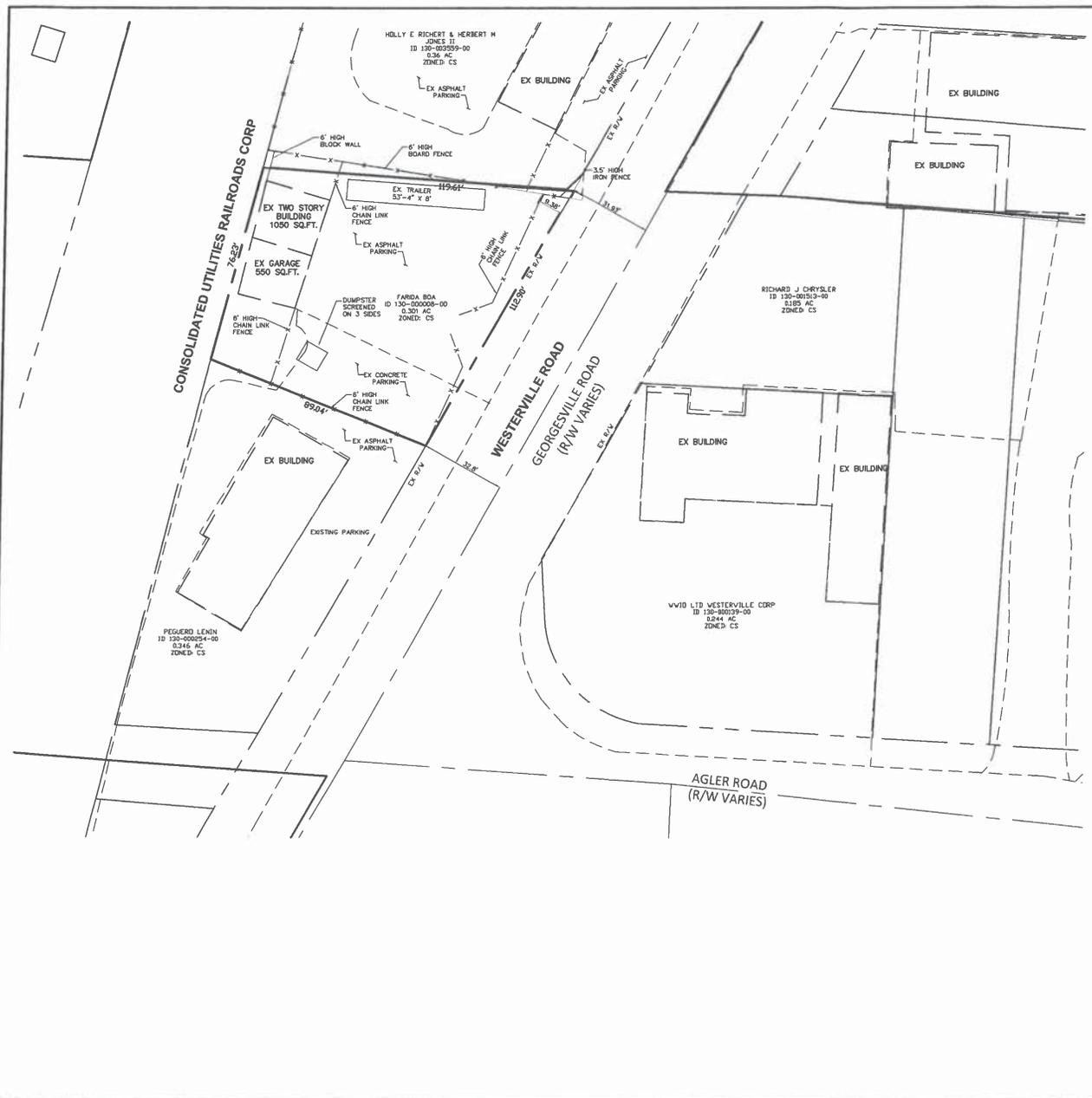
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MAR 22 2013

Franklin County Planning Department
Franklin County, Ohio

VA - 3793

Z:\11-000-472\eng\2012 Westerville Road.dwg L09p11 Mar 12, 2013 - 2:19:23pm lnormy



SITE INFORMATION

PROPOSED: AUTOMOBILE TIRE SALES
 ADDRESS: 2825 WESTERVILLE ROAD
 PARCEL #: 130-000008-00
 ACREAGE: 0.301 ACRES
 13,111.56 SF

SITE STATISTICS

SITE ZONING: CS

TOTAL SITE AREA: 0.301 ACRES
 TOTAL BUILDING AREA: 1,050 SF
 (NOT INCLUDING GRAVE)

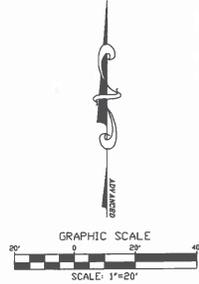
VEHICULAR PARKING REQUIRED:
 RETAIL AREA (1,050 SF): 5 SPACES
 (1 SPACE / 250 SF)
 SERVICE BAY (1) 2 SPACES / SERVICE BAY)
 TOTAL PARKING REQUIRED: 7 SPACES
 TOTAL PARKING PROVIDED: 6 SPACES
 ADA PARKING REQUIRED: 1 SPACE
 (1 ADA SPACE / 25 VEHICULAR SPACES)

LOT COVERAGE:
 MAXIMUM LOT COVERAGE: 80%
 LOT COVERAGE (12,061.4 SF): 92%

④ = PARKING

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 MAR 22 2013

Franklin County Planning Department
 Franklin County, Ohio



PLAN PREPARED BY:

 ADVANCED CIVIL DESIGN
 105 Riverchase Blvd
 Columbus, Ohio 43220
 PH: 614.428.7790
 FAX: 614.428.7755

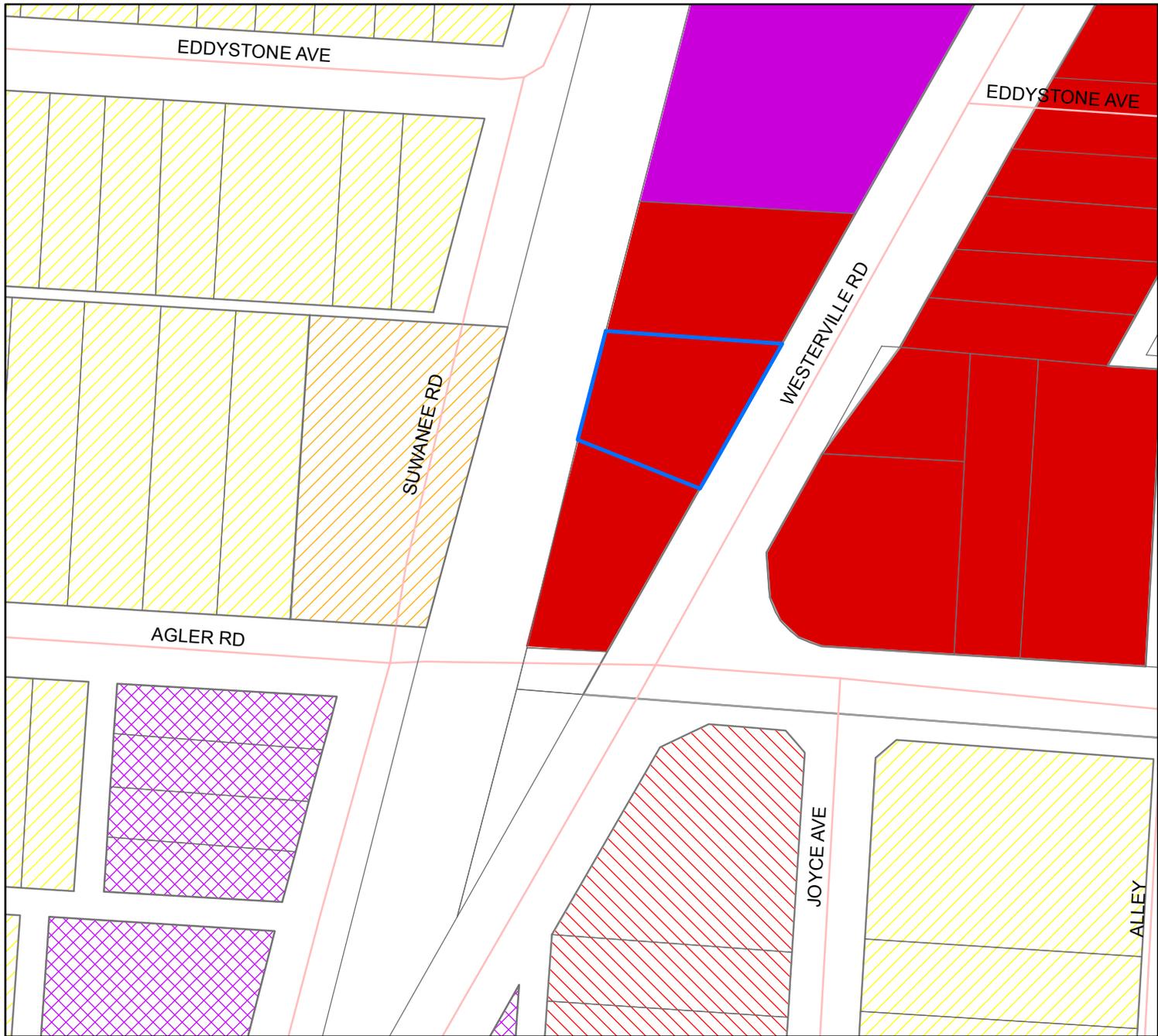
CITY OF COLUMBIA, FRANKLIN COUNTY, OHIO
AGLER ROAD TIRES INC.
 FOR
AGLER ROAD TIRES INC.

Date: 03/12/2013
 Scale: 1" = 20'

Drawn By: OLN
 Checked By: TWB

Project Number:
 11-0001-472

Drawing Number:
 1/1



VA-3788

Requesting a Variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a), 505.024(a) and 531.02 to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements in an area zoned Community Service (CS).

.301-acres
Clinton Township

2925 Westerville Road

Parcels

Streets

County Zoning

Rural

Community Service

Limited Industrial

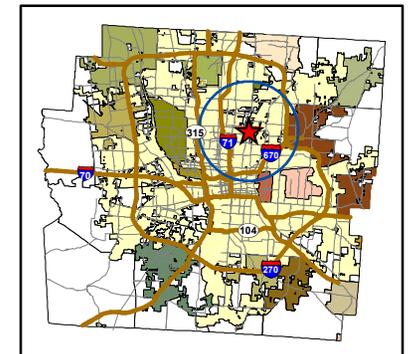
Columbus Zoning

Residential

Multi-family

Commercial

Manufacturing



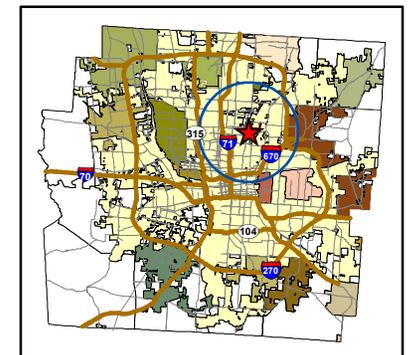


VA-3788

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.301-acres
Clinton Township

- 2925 Westerville Road
- Parcels
- Streets
- Corporate Boundaries**
- Columbus



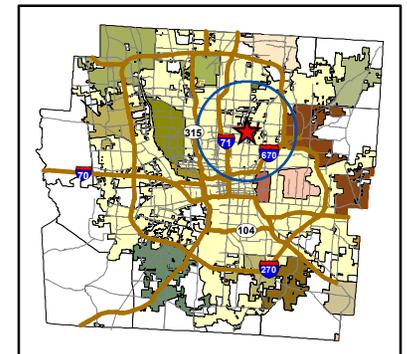


VA-3788

Requesting a Variance from Sections 332.042(c), 332.045, 501.012, 501.024, 501.013, 502.021(4), 504.012, 505.022(a), 505.024(a) and 531.02 to allow the use of a temporary structure in association with a used tire store that fails to meet the minimum landscaped open space, front green belt, fence height, fence material, dumpster location, dumpster screening, and parking space requirements in an area zoned Community Service (CS).

.301-acres
Clinton Township

-  2925 Westerville Road
-  Parcels
-  Streets
- Corporate Boundaries**
-  Columbus



Hray, David A.

From: David Darby <ddarby@koopermangillespie.com>
Sent: Monday, April 08, 2013 11:44 AM
To: Hray, David A.
Subject: RE: IFORCE Sign Variance Request (VA-3789) - 3571 W. Broad Street - Franklin Township

Good Morning,

This email shall serve as written confirmation that IForce/Rylee Ltd. is hereby withdrawing its application for a variance concerning the permissible signage area on the subject real property. It has been brought to our attention that the speed limit along West Broad Street (45 mph) equates to a mass factor of 3, instead of 2 as indicated on our application for variance. Accordingly, the square footage of the existing signage is within graphics code standards, and no variance is required at this time.

Thank you for your time and assistance in this matter. Please let me know the most appropriate way to refund/apply the permit application fees.

David R. Darby, Esq.
Kooperman Gillespie, Ltd.
383 N. Front Street, Lower Level
Columbus, Ohio 43215
Phone: (614) 344-4806
Fax: (614) 344-4801

ddarby@koopermangillespie.com

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From: Hray, David A. [<mailto:dahray@franklincountyohio.gov>]
Sent: Monday, April 08, 2013 11:16 AM
To: David Darby
Subject: FW: IFORCE Sign Variance Request (VA-3789) - 3571 W. Broad Street - Franklin Township

Good Morning David-

Just making sure that you received my email sent late on Friday afternoon concerning the variance application. If possible please shoot me an email before noon so that I can include your formal withdrawal of the application to the members of the Board of Zoning Appeals.

Thanks again,

D. Anthony Hray
Planner

**Franklin County
Economic Development & Planning Department**

Lazarus Building
150 South Front Street, FSL Suite 10
Columbus, Ohio 43215-7104
Tel: 614-525-4684
Fax: 614-525-7155
www.franklincountyohio.gov/edp

From: Hray, David A.
Sent: Friday, April 05, 2013 4:19 PM
To: 'ddarby@koopermangillespie.com'
Subject: IFORCE Sign Variance Request (VA-3789) - 3571 W. Broad Street - Franklin Township

David-

Per our phone conversation this afternoon, we respectfully request that you withdraw variance application VA-3789, filed March 8, 2013, to legitimize wall signage that exceeded the allowable area permitted. Upon further review of the application, it was determined that the mass factor initially used to calculate the allowable sign area was incorrect based on the speed limit of W. Broad Street. Our research indicated that this section of W. Broad St. has a posted speed limit of 45 mph. Therefore, based on this information and that of the corresponding Table of Elements under Section 541 of the Franklin County Zoning Resolution, the combined area of the existing wall signage falls under the maximum allowable sign area for this particular building.

If at all possible, please reply to this email before Monday, April 7th at noon with your official request to withdraw this application so that we may provide this to the Board of Zoning Appeals members. In the meantime, I will look into the fees paid thus far and where we stand on any outstanding applications to date.

Thank you for your cooperation in this matter.

Sincerely,

D. Anthony Hray
Planner

**Franklin County
Economic Development & Planning Department**

Lazarus Building
150 South Front Street, FSL Suite 10
Columbus, Ohio 43215-7104
Tel: 614-525-4684
Fax: 614-525-7155
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Commissioner John O'Grady • Commissioner Paula Brooks • Commissioner Marilyn Brown
President

Economic Development & Planning Department
James Schimmer, Director

STAFF REPORT

Board of Zoning Appeals
April 15, 2013

Case VA-3790

Prepared by: Anthony Hray

Applicant/Owner:	Karryen Jones
Township:	Madison Township
Site:	3764 Noe Bixby (PID #180-002185)
Acreage:	0.46-acres
Zoning:	Restricted Urban Residential District (R-8) District
Utilities:	Public Water and Sewer
Request:	Requesting a Variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line in an area zoned Restricted Urban Residential (R-8).

Summary

The applicant is requesting a variance to legitimize the construction of a residential driveway (parking pad) that violates the required setback. The request fails to satisfy the criteria necessary for granting a variance. Staff recommends denial.

Description of the Request

The applicant's property is located on the east side of Noe Bixby Road, approximately one-quarter (1/4) mile north of Winchester Pike. The site is part of the Blacklick Estates Section 1 subdivision, which was platted in 1962. The site contains a 1,225 square foot single-family home with an attached two-car garage constructed in 1965 according to records of the Franklin County Auditor. The applicant purchased the property in 2008, at which time the site had an existing paved, asphalt driveway and turn around. Sometime between 2010 and 2011 the applicant enlarged the paved turn around and constructed a concrete parking pad, 12 feet wide by 26 feet long, between the attached garage and the southern property line without a Certificate of Zoning Compliance. Staff received a complaint in 2012 concerning the concrete parking pad and the expanded paved turn around. Based on staff's investigation, it was determined that both the parking pad and paved turn around violate the required setback from the property line. It is important to note however, that the applicant's request is related to the concrete parking pad only.

Surrounding Area

Direction	Zoning	Land Use
North	Restricted Urban Residential (R-8)	Single-Family Home
South	Restricted Urban Residential (R-8)	Single-Family Home
East	Restricted Urban Residential (R-8)	Single-Family Home
West	Restricted Urban Residential (R-8)	Single-Family Home

Comprehensive Plan

The Blacklick-Madison Area Plan, adopted by the Franklin County Board of Commissioners in November of 2011, recommends the applicant's property for medium density residential development which allows for single-family and two-family homes.

The request is consistent with the land use recommendation of the Blacklick-Madison Area Plan.

Staff Review

Variance from Section 502.021(3) – Yards Required Open:

- Driveways shall be permitted in required residential yards, but shall be three (3) feet or more from any property line
 - Based on staff's review of aerial imagery and plans submitted by the applicant, the parking pad maintains a 0.5-0.0 foot setback from the property line

Staff Analysis – Section 810.41

- 1) *Special conditions and circumstances do not exist which are peculiar to the structure or property involved and are not applicable to other structures and property in the same zoning district;*
 - » The applicant has not provided evidence of any special conditions or circumstances which apply directly to her property that would otherwise not apply to others in the Restricted Urban Residential (R-8) District.
- 2) *A literal interpretation of the provisions of this Zoning Resolution would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Zoning Resolution;*
 - » The required setback for residential driveways is applicable to all properties within the R-8 zoning district as well as properties in all other residential zoning districts. Prior to the expansion of the driveway and the construction of the parking pad, the applicant's property already contained a two-car attached garage and paved drive with turn around.
- 3) *The special circumstances and conditions of this request do result from the action of the applicant;*
 - » The special circumstances and conditions of this request are a result of the illegal changes made to the property by the applicant.
- 4) *Granting the variance requested will confer on the applicant special privileges that are denied by this Zoning Resolution to other lands or structures in the same Zoning District;*
 - » Granting the variance will extend special privilege to the applicant since the required setback is applied to all residential zoning districts. Allowing the reduced setback will create a precedent seeing as no hardship or special conditions apply to the applicant's property.

- 5) *Granting the variance will not adversely affect the safety of persons residing in the vicinity of the proposed development, however it may be materially detrimental to the public welfare and be injurious to private property in the vicinity;*
- » Granting the variance may be injurious to private property by allowing a driveway/parking pad to encroach within the required setback. Granting a variance of this nature after the fact is providing the applicant with a special privilege that is not afforded to other properties in the vicinity that have developed in compliance with the zoning regulations.

Recommendation

Staff recommendation is that the BZA **deny** a Variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line based on the following:

1. The applicant has failed to satisfy the criteria required to grant a variance under Section 810.041 of the Franklin County Zoning Resolution.

Resolution

For your convenience, the following is a proposed resolution:

(a) **Proposed Resolution for Request:**

_____ moves to approve the variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line as outlined in the request above for the applicant identified in Case No. VA-3790.

Seconded by: _____

Voting:

Findings of Fact

For your convenience, the following are proposed findings of fact:

If the resolution fails for lack of support, the following are proposed findings of fact for adoption by the BZA:

_____ moves that the basis for denying the applicant's request for the variances as outlined in the request above for Case No. VA-3790 results from applicant's failure to satisfy the criteria for granting a variance under Section 810.041.

Seconded by: _____

Voting:

BAUER, DAVIDSON & MERCHANT, INC.

CONSULTING ENGINEERS

255 GREEN MEADOWS DRIVE SOUTH SUITE B P.O. BOX 152 POWELL, OHIO 43065

LOT SURVEY MAP

LOT NOS. 328, 327 and PART OF 326

PLATBOOK 34

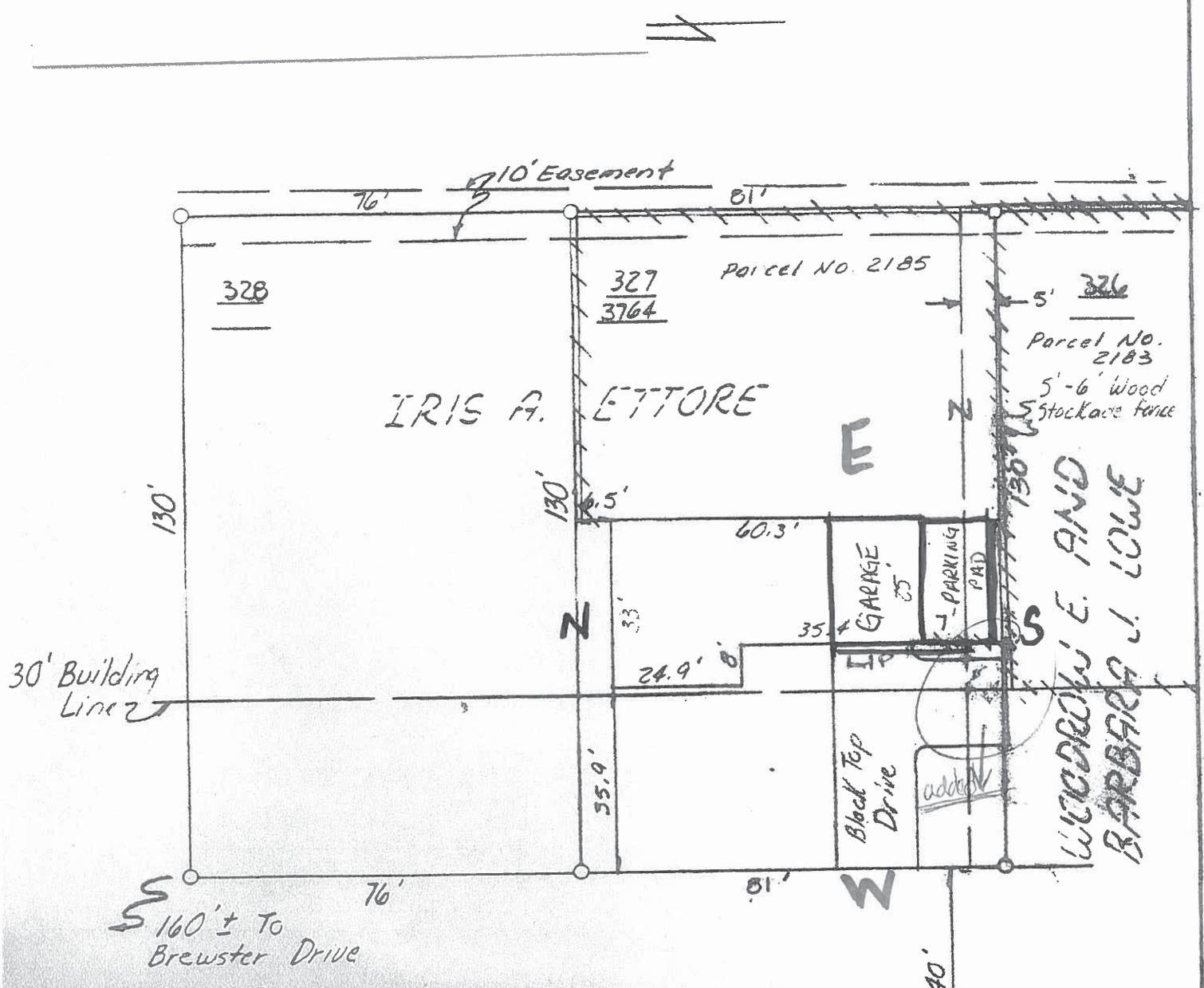
PAGE 68

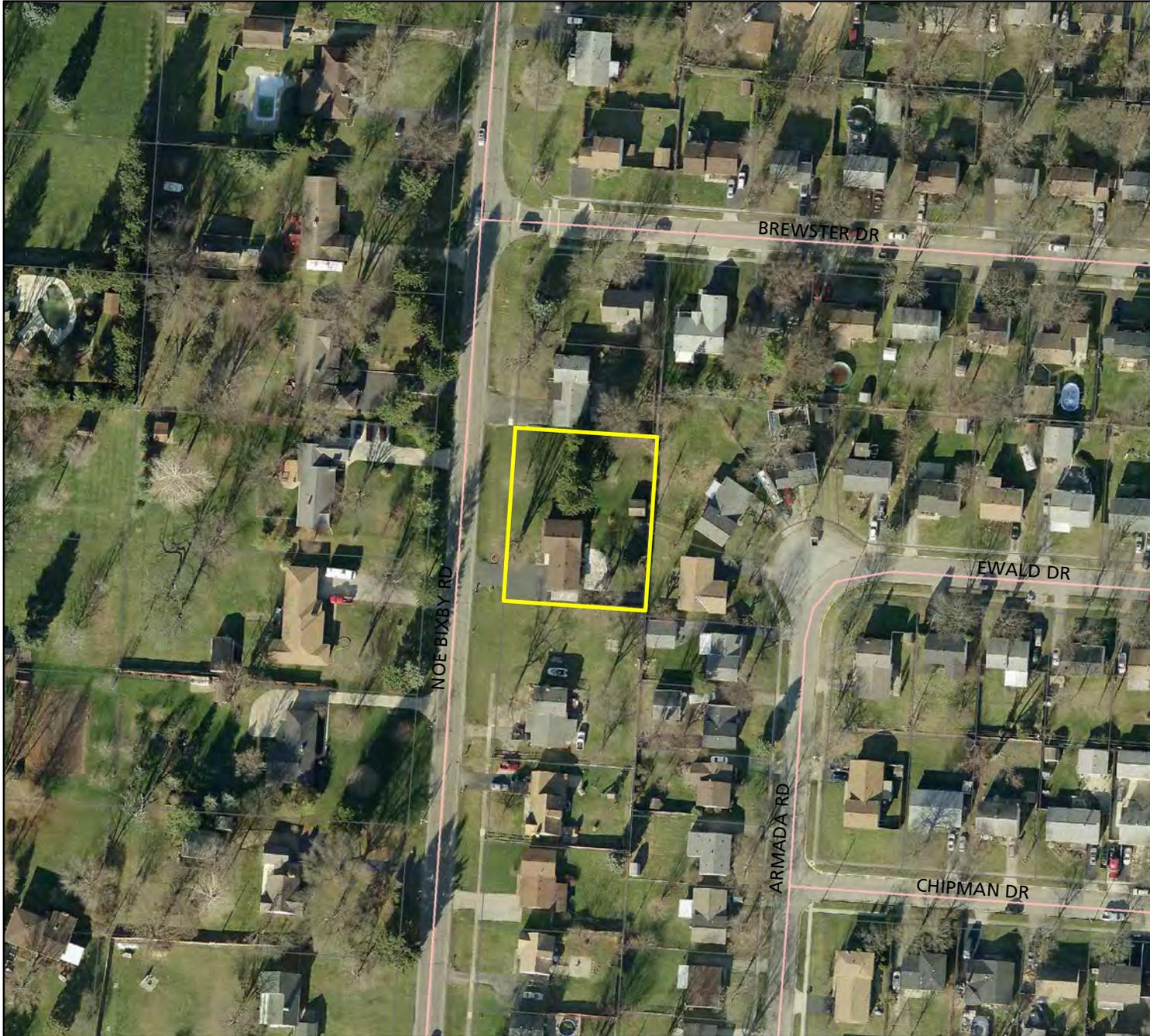
BLACKLICK ESTATES NO. 1

MADISON TOWNSHIP

FRANKLIN COUNTY, OHIO

Scale 1" = 30'



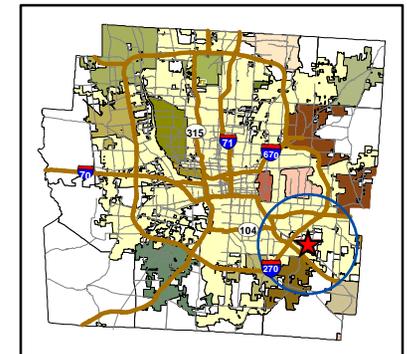


VA-3790

Requesting a Variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line in an area zoned Restricted Urban Residential (R-8).

0.46-acres
Madison Township

-  3764 Noe Bixby Road
-  Parcels
-  Streets





VA-3790

Requesting a Variance from Section 502.021(3) of the Franklin County Zoning Resolution to legitimize the construction of a residential driveway (parking pad) that does not meet the minimum three (3) foot setback requirement from a property line in an area zoned Restricted Urban Residential (R-8).

0.46-acres
Madison Township

-  3764 Noe Bixby Road
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