



Board of Zoning Appeals
July 10, 2023 - 6:00 PM
233 South Main Street, Monroe, Ohio

Call to Order

- Roll Call

Approval of Minutes

- May 15, 2023 meeting minutes

Old Business

- None

New Business

- *Public Hearing*
Consideration of a variance application by applicant Terence Frank regarding an expansion to a legally nonconforming use

Adjournment



**Board of Zoning Appeals
Minutes May 15, 2023 –
6:00pm**

The Board of Zoning Appeals of the City of Monroe met in regular session at 6:00 pm on May 15, 2023. The meeting was held in the Council Chambers located at 233 South Main Street.

Call to Order

Mr. Walters called the meeting to order at 6:00 p.m.

Roll Call

Members present: Casey Walters, Joshua Mason, Mike Morris, Matt Romito.

Members absent: Lorenzo Adam

Staff members present: Tom Smith, Director of Development; Jameson Cole, Planner and Michelle Layman, Planning and Zoning Specialist.

Approval of Minutes

Mr. Walters requested a motion to approve the minutes from the October 24, 2022, and the January 31, 2023 Board of Zoning Appeals meetings.

Mr. Romito moved to approve the minutes from the October 24, 2022, and the January 31, 2023, Board of Zoning Appeals meetings. Seconded by Mr. Morris.

Voice vote; motion carried.

Old Business

None.

New Business

Public Hearing: Case No. 2023-1- Consideration of a variance application from Marshall Construction Company regarding construction of a fence around the trucking docks.

Having been sworn, Mr. Cole gave the following presentation:

Background:

- Darin Satterwhite on behalf of Marshall Construction Company, has applied for variance regarding a chain link fence in the rear of the property surrounding truck docks.
- The property owned by Gateway Tire is 22.2 acres and is zoned L-1 Light Industrial.
- The applicant wishes to use a non-permitted galvanized chain link fence including the installation of barbed wire atop.
- The non permitted galvanized chain link fence with barbed wire has been installed.
- The non permitted galvanized fence with barbed wire has been installed in opposition to the approved site plan. The Planning Commission approved the site plan on May 17, 2022.
- Gateway Tire was issued a notice of violation for the non-permitted galvanized chain link fence with barbed wire on April, 20, 2023.

Variance Purpose:

- A variance from the requirements of this code may be granted by the BZA when the BZA determines that such a variance will not be contrary to the public interest and that, due to special conditions, practical difficulty or unnecessary hardship exist that prevent strict application of this code.

Variance Request:

- To allow the use of galvanized steel for the chain link fence in place of the plastic black coating and placing barb wire on top of the fence.
- Section 1204.05(A)(e) outlines this requirement as the following:
 - The use of barbed wire, razor wire, spikes, nails, electrical or similar type fences shall be prohibited. Barbed wire and electrical fences are permitted in the Agricultural districts except along lot lines adjacent to residential zones.
 - Chain link fencing is prohibited in the front yard in residential zoning districts or in the front yard of residential lots. Chain link type fences may be used in the rear yard of business and industrial zoning districts provided they are plastic coated and are black in color or as otherwise approved by the Code Enforcement Officer.

Review Criteria:

The following factors shall be considered and weighed by BZA to determine practical difficulty. Staff's findings are listed after each criterion:

- **Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures, or conditions.**

This property is similar to other L-1 Light Industrial properties in this area in terms of lot size and size of area. It is dissimilar to other industrial properties in the immediate area in that it is surrounded on all sides by commercial zoned property. The property is located near but not directly adjacent to the H-1 heavy industrial properties of Park North.

- **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.**

The property may yield a reasonable return and be of beneficial use without the requested variance Gateway Tire warehousing and distribution.

The applicant states the purpose is to protect the companies good while matching its existing look.

- **Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures.**

The variance requested is substantial because all existing warehouses and distribution centers in Park North and throughout the City are not permitted to have barbed wire unless built pre-2013 zoning code update.

- **Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.**

The property is not directly adjacent to but is near to Park North where there are similar uses but is H-1 Heavy industrial. All newer buildings that have put up fencing around the truck docks have been black plastic coated with no barbed wire as required by code subsections 1204.05 (A)(4)(e)(vi)(viii).

The applicant has stated the structure will not be visible from the street due to its location towards the rear of the site.

- **Whether the variance would adversely affect the delivery of governmental services such as water, sewer, and refuse pickup.**

The variance would not adversely affect the delivery of governmental services.

- **Whether special conditions or circumstances exist as a result of actions of the owner.**

The requested variance is due to the new building addition and the applicant stating that it is to protect and secure the truck docks.

- **Whether the property owner's predicament can feasibly be removed through some method other than a variance.**

The applicant could put up the fence with plastic black coating in the same position and not put barbed wire on top.

- **Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance.**

The spirit and intent behind requiring black coated chain link fencing is to push for better quality materials while understanding that chain link is a practical security fencing for larger sites such as warehousing and distribution.

The spirit and intent behind prohibiting barbed wire is that it is an unnecessary hazard for most uses throughout the City and those uses that are permitted to have it are in conformance to the code and its accompanying zoning district.

- **Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.**

The granting of this variance would provide this applicant the ability to change the type of fencing the City has required of all the newer warehouses within Park North, as well as throughout the remainder of the city . In addition the City has not allowed any of the newer warehouses with similar uses to that of Gateway Tire to place barbed wire on top of their fences.

Department Comments:

- Public Works/Engineering: No comment.



- Police Department: No comment.
- Fire Department: No comment.

Public Comments:

- None.

Staff Recommendation:

- As a reminder, a variance from the requirements of this Code may be granted by the Board of Zoning Appeals when the Board determines that such a variance will not be contrary to the public interest and that, due to special conditions, practical difficulty or unnecessary hardship exist that prevent strict application of this Code.
- Staff's review and recommendation are based on Code interpretations as well as the potential for precedents that could affect overall enforcement of City standards and regulations. The BZA's approval, denial, or modification is not required to be based on all the above criteria being met. No single factor listed above may control and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Please note as detailed in the picture above, a non-permitted galvanized chain link fence with barbed wire has already been installed prior to this application, is in opposition to the approved site plan, and is currently in violation of City code.

Staff does not make a recommendation regarding a variance request. Notwithstanding, the City of Monroe Development Department, in accordance with the criteria for a Use Variance under code section 1203.08(4)(c), does not recognize any special conditions, practical difficulty, or unnecessary hardship pertaining to the applicants request. Moreover, code section 1204.05(A)(4)(e)(vi) expressly calls attention to the use of barbed wire being a prohibited material use in the L-1 zone, and that chain link fences may only be used in the rear yard if they are black coated as specified in subsections 1204.05(A)(4)(e)(viii). Furthermore, the property does not demonstrate any characteristics unique in comparison to other L-1 zoned lots in this area that would qualify for the requested variance to the code.

Mr. Morris moved to accept the documents submitted for the record. Seconded by Mr. Mason. Voice vote. Motion carried.

Deliberative session by board

Mr. Morris asked if the code was changed after the applicant got approval to build the first section of the fence. Mr. Cole stated no.

Mr. Morris stated the variance is asking for them to match the new fencing with the existing fencing. Mr. Cole stated this is correct but noted that the existing fencing did not have barbed wire. That was added to the original fencing when the new section of fencing was installed.

Mr. Morris asked when the barbed wire was installed. Mr. Cole stated it has been added recently.

Mr. Morris asked if the applicant had given a reason why they installed the barbed wire. Mr. Cole



stated it was to protect their goods and trucking docks.

Mr. Smith reiterated the fact that the new fencing installed, with barbed wire, was not approved and that the approved fencing was black plastic coated fencing.

Mr. Morris asked if there were any complaints about the fencing. Mr. Cole stated no.

Mr. Walters asked if barbed wire was permitted anywhere in the city. Mr. Cole stated it is permitted in Agricultural unless it is near or adjacent to residential.

Mr. Morris asked if the new power plant by the mall has barbed wire. Mr. Cole stated he would have to double check. Mr. Morris stated it does have barbed wire. Mr. Cole stated he knows Home Depot on Gateway has barbed wire but that all businesses that have come after that were required to have black plastic coated fencing.

Mr. Morris asked if this fencing is visible from Gateway Blvd. Mr. Cole corrected Mr. Morris stating it is visible from Corridor Park, not Gateway Blvd.

Mr. Cole stated this would set a precedent. Mr. Morris disagreed, stating this is why we have variances. Mr. Smith stated this will degrade the integrity of the code. Mr. Morris disagreed.

Mr. Walters asked if they had approval to put up the barbed wire. Mr. Smith stated no, they did not.

Mr. Romito asked if BZA denies the request today would they have to remove the barbed wire from the existing fence or just the new portion of fence. Mr. Mason stated from what he understood it would be from the entire fence because they never had approval for the barbed wire.

Mr. Cole reiterated what part of the fencing was new and would need to be replaced if approved. Mr. Cole stated the applicant emailed before putting up the fence, asking if they could put up the galvanized fence with barbed wire. Mrs. Jones emailed the applicant back with the section of the code stating it was not allowed. She advised they would need to apply for a variance. Mr. Cole stated they applicant only applied for the variance after they were sited by Code Enforcement.

Mr. Cole stated the applicant had to follow the new code rules for the new section of the building/fencing.

Mr. Romito asked if the fencing isn't visible to the public why can't they remove the new section of fencing and install the approved fencing. Mr. Morris stated the cost is probably why.

Mr. Morris asked if there was code regarding the applicant running a cable through the top instead of having barbed wire. Mr. Cole stated electric isn't approved and that the applicant would have to apply for that. He also stated cable would fall under the same classification as barbed wire, electric fencing, etc. Mr. Morris disagreed.



Mr. Romito stated that nowhere in their request for the variance did the applicant mention the barbed wire was for safety.

Mr. Mason asked if the height of the fence was permitted. Mr. Cole stated there is an elevation change that makes it uneven. Mr. Mason asked if the fence height meets code.

Mr. Morris stated it looks like they took the old gate and moved it.

Mr. Romito asked if there have been any instances of theft. Mr. Cole stated not that staff have been made aware of. Mr. Romito asked what the harm would be in having the applicant remove the barbed wire but allow them to keep the galvanized fencing. Mr. Cole stated this could set a precedent and that any new business would have to apply for a variance. Mr. Romito stated they can argue that this is a special case.

Mr. Morris moved to approve Case No 2023-1 Consideration of a variance application from Marshall Construction Company regarding construction of a fence around the trucking docks with the provision that the barbed wire be removed. Mr. Mason seconded. Roll call vote. 4 ayes. Motion carried.

Mr. Morris moved to adjourn the meeting; seconded by Mr. Mason. Voice vote. Motion carried.

The Board of Zoning Appeals meeting adjourned at 6:40 p.m.

Respectfully submitted by:

Michelle Layman

Planning and Zoning Specialist



CITY OF MONROE
Inter-Office Correspondence

TO: Members of the Monroe Board of Zoning Appeals
FROM: Jameson Cole
Planner

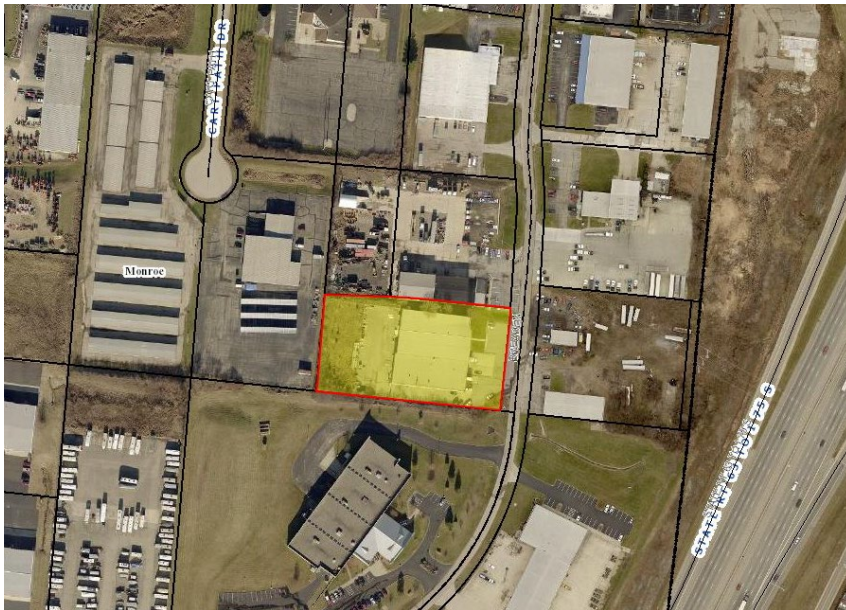
DATE: July 10, 2023

RE: Information Packet for **July 10, 2023** Board of Zoning Appeals Meeting at **6:00 p.m.**

I. BZA-2023-2— Consideration of a variance application by applicant Terence Frank regarding an expansion to a legally nonconforming use

A. Background:

- Terence Frank, on behalf of Corken Steel, located at 341 Breaden Dr, has applied for variance regarding a proposed warehouse expansion to a legally nonconforming use.
- The applicant wishes to expand their existing warehouse.
- The applicant proposes to construct a 12,000 SF addition for the warehousing of equipment and products.
- The property owned by Corken Steel is 1.92 acres and is zoned C-1 Highway Commercial.



Overhead View of Site



Surrounding Zoning



Northbound on North Garver Road



Southbound on North Garver Road

B. Variance Purpose:

- A variance from the requirements of this code may be granted by the BZA when the BZA determines that such a variance will not be contrary to the public interest and that, due to special conditions, practical difficulty or unnecessary hardship exist that prevent strict application of this code.

C. Variance Request:

- To allow the expansion of a Nonconforming Use.
- Section 1207.05(E)(2) outlines this requirement as the following:

Notwithstanding the foregoing provisions to the contrary, a structure containing a nonconforming, nonresidential use, may be increased or improved, regardless of the applicable zoning district, where the owner of such use can demonstrate through application to the BZA that the manner in which the useable area of the nonconforming use will be increased or improved will have minimal adverse impact upon adjacent properties and other permitted land uses in the surrounding neighborhood or can be made compatible with the adjacent properties and the uses in the surrounding neighborhood upon compliance with specified conditions.

The variance request stems from creation of a new zoning map during the 2010-2012 zoning code update. This property is unique to other properties adjacent to and located within the same zoning district because it was one of the few properties during this time to have their zoning designations changed creating the nonconformity.

The variance requested cannot otherwise be resolved by a zoning map amendment;

The variance requested could be resolved by a zoning map amendment.

The zoning map is currently being updated through the City's zoning code update. This property could be rezoned to L-1 Light industrial as it was prior to becoming C-1 Highway commercial.

That there is an existing structure that cannot be reasonably used for a use permitted within the applicable zoning district;

The current existing structure is being utilized by Corken Steel but because of demand they are in need of additional space for their production, storage, and sales of their product.

The hardship condition is not created by actions of the applicant;

During the 2010-2012 zoning code update, the zoning map changed and the parcel in question was rezoned from L-1 Light Industrial to C-1 Highway Commercial.

Corken Steel received their new business permit January 30, 2009.

The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

Granting the variance will not adversely affect the rights of the adjacent property owners because the request is not changing or impacting the use of the site. The only change resulting from this variance is an addition to the current building, which will be brought up to code through parking, landscaping, and stormwater. Code compliance with these items will ensure no property owner's rights are adversely affected.

The granting of the variance will not adversely affect the public health, safety or general welfare;

Granting of this variance will not adversely affect the public health, safety or general welfare because the addition is in the rear of the property, not visible from the road, and will be used for the same purposes as the primary structure.

The variance will be consistent with the general spirit and intent of this code;

The spirit and intent behind nonconforming uses reads as follows:

“Nevertheless, while it is the intent of this code that such nonconformities be allowed to continue until removed, they should not be encouraged to survive, unless otherwise allowed in this chapter or specifically addressed in this code.”

The variance is consistent with the spirit and intent of this code because they are seeking permission from the board to do an expansion of their use which is nonconforming. Through this variance they are to demonstrate that this improvement will have minimal adverse impact upon adjacent properties and other permitted uses.

The variance sought is the minimum that will afford relief to the applicant.

The granting of this variance would provide this applicant the ability to expand their nonconforming use, which is generally not permitted. With the zoning code update changing the zoning map at the end of the year, a zoning map amendment would not have solved the problem. With other nonconforming uses surrounding the site, this would set a precedent for other nonconforming uses to expand in the future.

E. Department Comments:

- Public Works/Engineering: No comment.
- Police Department: No comment.
- Fire Department: No comment.

F. Public Comments:

- There has been no public comment at this time.

G. Staff Recommendation:

- As a reminder, a variance from the requirements of this Code may be granted by the Board of Zoning Appeals when the Board determines that such a variance will not be contrary to the public interest and that, due to special conditions, practical difficulty or unnecessary hardship exist that prevent strict application of this Code.
- Staff's review and recommendation are based on Code interpretations as well as the potential for precedents that could affect overall enforcement of City standards and regulations. The BZA's approval, denial, or modification is not required to be based on all the above criteria being met. No single factor listed above may control and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Staff **does not make a recommendation** regarding a variance request. The expansion of a legally nonconforming use is permitted by code section 1207.05 (E)(2). The applicant's need for expansion (production, storage, sales) are the result of a profitable business. Use variances are rare, and expanding nonconforming uses are less common. The property is unique because the use was permitted and appropriately zoned prior to the 2010-2012 code update. This property was the only property to have its zoning change when compared to the adjacent properties. The request is considerable as the code reads, and is not the minimum necessary as they could go for a zoning map amendment. As mentioned in the report, conducting a zoning map amendment now could be ineffective as the zoning code and map are being updated.



Application for a Variance

Monroe Development Department
233 South Main Street, Monroe, Ohio 45050
Phone: 513-539-7374
planning@monroeohio.org
www.monroeohio.org

For Staff Use Only

Submittal Date: 6/15/23

Date Application Determined Complete:

Date of BZA Review:

Fee Paid: **RES/AG- \$300 COMM- \$500**

Staff Initials: G

Application/Case Number: 20230291

Variance Review Information

1. The variance review procedure and review requirements are established in Section 1203.08 of the Monroe Planning and Zoning Code.
2. There are separate review criteria for an area/dimensional variance (a request to vary any numerical or dimensional requirement in the code) and for a use variance (a request to have a use approved that is not otherwise allowed in the applicable zoning district. The applicant must demonstrate a practical difficulty for an area/dimensional variance or an unnecessary hardship for a use variance.
3. Approval of a variance does not guarantee any other approvals (e.g., site plan or zoning permit reviews). The applicant shall be responsible for applying for any other necessary permits or reviews.
4. Applicants shall obtain a zoning compliance inspection within one year of a variance approval or the approval shall be voided.
5. The application fee for a variance is \$300 for a residential or agricultural use and \$500 for all other uses, due at the time the application is submitted.

Basic Project and Site Information

Project Address:

County: Butler Warren

Total Lot Area:

County Tax Parcel ID:

Project/Development Name:

Existing Zoning District:

Variance Type: Area/Dimensional Variance Use Variance

Applicant Information

Applicant Name: **TERENCE FRANK, CLARISEY-FRANK ARCHITECTURE LTD**

Contact Person: **SAME**

Contact Address: **PO BOX 36145, CINCINNATI, OH 45236**

Contact Phone Number: **513-891-4556**

Contact Fax Number: **NA**

Contact E-Mail: **TFRANK@CLARISEYFRANK.COM**

Property Owner Name: **CORKEN STEEL PRODUCTS COMPANY**

The applicant may attach a separate sheet of a paper with contact information for additional people, if necessary (e.g., additional owners, registered engineer, landscape architect, etc.). The same contact information shall be provided for each contact name.

Project Address or Tax Parcel ID: 341 BREADEN AVE

Additional Project Information

1) Please describe, in detail, the proposed uses and/or the proposed development.

The existing company, Corken Steel needs a warehouse expansion. They are a wholesale distributor of Heating Ventilation and Air Conditioning (HVAC) equipment and products to HVAC contractors. They do provide a service to those contractors by fabricating ductwork which takes up about a third of the current building. They also do retail sales to the general public of some products and replacement parts etc.

2) Identify what variances are being sought including the applicable code sections, required dimensions, or the established standard.

Approval for warehouse expansion of a nonconforming use per current Planning and Zoning Code. 1207.05(E)(2)

3) What are the characteristics of the property that prevent you from meeting the minimum requirements of the planning and zoning code?

- Lot is too narrow Lot is too small Lot is too shallow The soil or subsurface is unique to the lot
 The shape of the lot Building or lot elevation Topography Other (Describe in #4 below.)

4) Explain how items checked above prevent the reasonable use of the property under the existing requirements.

The existing business is considered a nonconforming use by the current Planning and Zoning Code

5) Explain how the property cannot yield a reasonable return or whether there can be any beneficial use of the property without the variance.

Without the proposed warehouse expansion Corken would have to relocate their business to a larger facility.

Project Address or Tax Parcel ID:

Additional Project Information Continued

6) Will the granting of the variance request(s) be consistent with the surrounding neighborhood and will the variance request(s) negatively impact or impair the essential character of the area?

Yes No Please explain your rationale below.

Yes. Granting the nonconforming use request will be consistent with the surrounding neighbors many of whom are nonconforming uses.
No. Granting the nonconforming use request will not negatively impact or impair the essential character of the neighborhood since again many of the surrounding business are similar uses.

7) To the best of your knowledge, is the difficulty or hardship described in this application self-imposed? Are the circumstances surrounding the request the result of the actions of the owner?

Yes No Please explain your rationale below.

This is an existing business that has been operating at this location since 2011 whose same use doesn't comply the current Planning and Zoning Code.

8) Identify how the proposed variance application will protect the surrounding properties from any negative impacts (e.g., noise, light, traffic, etc.)

There will be no change to the current business operations. The expansion will be behind the existing building and not visible (or only slightly) from Breaden Drive.

Project Address or Tax Parcel ID:

Additional Project Information Continued

9) Are the variance request(s) substantial and the minimum necessary to make possible the reasonable use of the land and/or structures on the property?

Yes No Please explain your rationale below.

Without an approval of nonconforming use the owner cannot expand their business as necessary and will need to relocate

10) Will the granting of the variance impact governmental services such as water, sewer, refuse pickup, safety services, etc.?

Yes No Please explain your rationale below.

The expansion will not require additional utilities than those to the existing building. There will not be any additional employees, just storage space. Corken has private trash/refuse services.

11) Explain how the property owner s predicament cannot be feasibly removed through another method other than a variance.

The expansion is necessary for the business to successfully operate in the current location.

Project Address or Tax Parcel ID:

Additional Project Information Continued

12) Would the spirit and intent behind the code requirement be observed and substantial justice done by the granting of the requested variance(s)?

Yes No Please explain your rationale below.

The expansion does not negatively impact the surrounding neighborhood and is compatible with adjacent properties.

13) Would the granting of the variance(s) requested confer on the applicant any special privilege denied by the code regulation(s) to other lands, structures, or buildings in the same zoning district?

Yes No Please explain your rationale below.

Other surrounding properties with current nonconforming uses can also apply for similar BZA approval as necessary.

Please feel free to add any other information or rationale related to the request in the box below or as an attachment.

Empty box for additional information or rationale.

Project Address or Tax Parcel ID: 341 Breaden Drive

Certification and Signatures

Applicant Signature: I certify that, to the best of my knowledge, the information contained in this form and within any attachments is correct and truthful. I understand that knowingly falsifying this information may be grounds for the denial or revoking of this application and any subsequent zoning permit or other review applications.

Print Name: TERENCE FRANK

Signature: 

Date: 6/14/23

Property Owner Signature: If the property owner is not the named applicant on this form, the property owner shall sign the form below acknowledging that the applicant is an authorized agent of the property owner as it relates to proposed project. If the variance request affects multiple properties, a signature from each property owner is required.

Print Name: Kevin Navin - Corken Steel Products Company

Signature: 

Date: 6-14-23

Note: A letter signed by the property owner, authorizing the applicant to act on their behalf may be submitted in lieu of the property owner's signature on this form.

Submittal Requirement Checklist

Submittals shall include 8 copies (minimum of 11" x 17").

Additional copies may be required based on project specifics.

Digital Submittal Requirements

All document applications shall be submitted in an electronic format compatible (Adobe PDF) with the city's computer systems.

General Information

Variance Application Form

Application fee

Copies of the plans and maps established below at a reasonable scale, as determined by the Development Department, to review the variance request.

Any additional information determined to be necessary by the Development Department.

Variance Site Plan

Date, north arrow, scale, and a legend for all symbols – the plan shall be oriented with north to the top

All existing lot lines and parcel numbers for each lot subject to the variance request and all lots adjacent to the subject lot, including any across a street.

A survey, stamped and signed by a surveyor or engineer licensed in Ohio, documenting the exact boundaries and dimensions of the subject lot.

Boundaries and dimensions of all existing and proposed buildings and structures

All existing and proposed streets, rights-of-way, and related names

Identification of proposed variance (e.g., required setback and proposed setback, or maximum height and proposed height)

