

CITY OF FISHERS  
BOARD OF ZONING APPEALS - FALL CREEK DIVISION  
Fishers Municipal Center- Nickel Plate Conference Room  
MINUTES  
April 24, 2025

**The Fall Creek Board of Zoning Appeals convened at 6:00 p.m.**

A roll call was taken. Members present: Steve Richards, Chris Huck, Rich Bassett, Joel Fenske. Others present: Rodney Retzner, Lindsey Bennett, Hatem Mekky, Ross Hilleary, Christy Cashin, Kay Prange, Paul Walters and the Attendees on the Sign-in Sheet below.



Sign-In Sheet  
FCBZA 4-24-25 Noct

**Mr. Richards confirmed quorum and called the meeting to order.**

**Minutes from the October 10, 2024 meeting were approved, 4-0. Mr. Bassett made a Motion to approve, seconded by Mr. Fenske.**

**Elections:**

**Mr. Richards opened the meeting to Nominations.**

**Mr. Fenske nominated Steve Richards as President, seconded by Rich Bassett. The nomination passed, 4-0.**

**Mr. Richards nominated Rich Bassett as Vice-President, seconded by Mr. Fenske. The nomination passed, 4-0.**

**Mr. Bassett nominated Joel Fenske as Secretary, seconded by Mr. Richards. The nomination passed, 4-0.**

**PUBLIC HEARINGS:**

**Parcels:** 13-11-33-00-00-011.000

**Address:** 11215 E 121<sup>st</sup> St

**Case:** VA-25-4

**Request:** Consideration of a Land Use Variance from Section 5.7.2.C. of the City's Unified Development Ordinance (UDO) to allow a landscaping company as a home occupation that will store five (5) vehicles and five (5) trailers on the property, where only one (1) home occupation vehicle is allowed.

**Petitioner:** Jeffery Heinzmann

**Planner:** Christy Cashin

**USE VARIANCE:**

Jeffrey Heinzmann of the Heinzmann Law Office presented the two variance requests. Both variances were presented together and discussed together and individually for the full meeting.

Mr. Heinzmann presented that this is similar to VA-19-3 which was approved in 2019. The Petitioner is asking for a 60-ft wide driveway. The Staff – proposed site plan won't work. 5 vehicles and 2 trailers need to be accommodated. Asking for a secondary access curb cut on Hoosier Rd. Storage would move behind the house. The Petitioner is NOT willing to annex.

Nate Nocton, the property owner, explained his perspective on the variance requests from a family home perspective and a business owner perspective.

During the hearing, Petitioner noted that the Property was acquired for residential use but he had been operating the landscape company and storing equipment on the Property for over twelve (12) years. Petitioner also discussed the considerable, and unexpected, growth the landscaping company has experienced and his realization that additional growth of the landscape company will result in the need to move company operations to real estate more suitable for operations. Petitioner also espoused various benefits to the City of Fishers by the landscaping company being operated at the Property; however, Petitioner adamantly opposed annexation of the Property, even though the Property is surrounded by parcels all within the boundaries of the City of Fishers and receives city services, regardless of the Petitioner's denial that such services are utilized.

At hearing, the Board discussed moving the landscaping company to another location, more suitable to such operations. Petitioner acknowledged that the current operations, employees and equipment are the maximum amount that can be operated at the Property; however, Petitioner believes that he can continue operations at the Property and that there are no immediate needs to expand beyond current operations. Further, current revenue would not be able to support such a move at this time such that, without the variance, the Petitioner would be at risk of having to terminate operation of the landscaping company altogether. Public comments received prior to the hearing were in support of the Petitioner and, in fact, lauded the Petitioner and the minimal impact the operations of the landscaping company have had on the surrounding property owners.

Christy Cashin presented the Staff Report presented at hearing and gave no recommendation with respect to approval or denial of the variance request. Staff did, however, recommend various conditions of approval should the Board approve the use variance request. Staff also presented sketches of a wider driveway and extended driveway that would be approved as part of the use variance to allow for maneuverability and operations by the landscape company. However, such sketches did not expand the proposed curb cut, which is the subject of the related variance under VA-25-5, or the proposed curb cut on Hoosier Road, which is the subject of negotiations between the Petitioner and the City of Fishers, unrelated to this variance.

**Public Hearing:**

**Mr. Richards opened the Public Comment portion of the meeting.**

Karissa Mayol (11300 E. 121<sup>st</sup> St.) – Positive recommendation for the business in their neighborhood.

Ed Nocton (7175 U.S. 35)- Nate's father- he knows what he's talking about.

Kirk Richmond (10529 Greenway Dr.)- positive recommendation. Advanced Turf owner.

Shelley Harder (11960 Bird Key Bd.-the City needs to deal with it. A family is involved.

Emily Quan (12296 Sagamore Winds Dr.)- has no issues with this

Don Harder (11960 Bird Key Bd.)- safety seems to be a fair compromise

Mason Armstrong (12025 Hoosier Rd.)- Nate has his full support.

Michael Hoff (12003 Hoosier Rd.)- have some sympathy for the situation.

**Mr. Richards closed the Public Hearing.**

**Mr. Richards asked for a Motion. Mr. Bassett made a Motion to approve with the listed conditions, seconded by Mr. Fenske. The Motion was approved, 4-0.**

After hearing the Fall Creek – Board of Zoning Appeals hereby issues the following decision and related findings of fact:

(1) Approval of this variance will not be injurious to the public health, safety, morals, and general welfare of the community, because all current structures are already in existence and the operation of the landscape company out of the Property has been a non-conforming use with no effect on any of these factors.

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, because the landscaping company has already been in operation and any effect on use and value of the adjacent area, if any, has long since been realized. Additionally, the

conditions placed on the approval of this variance with respect to paving, additional storage space for vehicles and screening should increase the value of the adjacent areas.

(3) The need for the variance does arise from some condition peculiar to the property involved, because the Property is a substantially larger lot than most residential properties and allows for the operations of the landscape company and but for the requirements of the UDO the landscaping company would be allowed to continue operations and, without approval, the landscaping company would likely have to terminate operations.

(4) The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought, because the discontinuance of the nonconforming use of the Property, if this variance were not approved, would result in the likely termination of the landscaping company's operations and the operations have already been on the Property as a nonconforming use.

(5) The approval does not interfere substantially with the comprehensive plan, because although the proposed use on a residential lot is not in accordance with such comprehensive plan, such nonconforming use on the Property is not a substantial interference with the plan.

**\*\*\* DECISION OF THE BOARD \*\*\***

IT IS THEREFORE the decision of the Fall Creek – Board of Zoning Appeals that the use variance request and application for **Docket VA-25-4, as filed by Jeffrey Heinzmann, of Heinzmann Law Office LLC, on behalf of property owner, Nathan E. Nocton**, is hereby APPROVED based on the foregoing findings and subject to the following conditions:

1. All driveway, parking and storage areas will be substantial as shown in the sketches proposed by City Staff at hearing, unless the approval of VA-25-5 and success in obtaining an additional curb cut on Hoosier Road result in additional areas for driveway, parking and storage.
2. All driveway, parking and storage areas shall be paved.
3. Any gravel that is currently installed outside of the allowed paved area, shall be removed and returned to grass.
4. No parking or storage will be allowed on grass.
5. The tree line on the southern edge of the property shall be preserved.
6. All vehicular and outdoor storage related to the business shall be stored behind the gate along 121st Street, to include employee vehicles stored on the Property during the day when the landscaping vehicles and trailers on not on the premises (which number of employee vehicles cannot exceed five (5), per the variance request).
7. All outdoor storage must comply with Section 6.10.4. of the City's UDO; specifically, outdoor storage must be screened from Hoosier Road in compliance with Section 6.10.4.D of the City's UDO.
8. The approval of this use variance runs with the current owner of the Property and any change of ownership of the Property will result in immediate revocation of the use variance.
9. An approval letter and relative documentation must be recorded on the Property with the Hamilton County Recorder's Office.

**11215 E. 121<sup>st</sup> Street Development Standard Variance**

**Parcels:** 13-11-33-00-00-011.000

**Address:** 11215 E 121<sup>st</sup> St

**Case:** VA-25-5

**Request:** Consideration of a Development Standard Variance from Section 6.4.3. of the City's Unified Development Ordinance (UDO) to allow a 60 ft wide driveway entrance at back of curb or edge of pavement, where a 34 ft wide driveway entrance is allowed, and a 50 ft wide driveway at back of curb or edge of pavement, where a 24 ft wide driveway is allowed.

**Petitioner:** Jeffery Heinzmann

**Planner:** Christy Cashin

**DEVELOPMENT STANDARDS VARIANCE:**

During the hearing, Petitioner showed pictures of the existing driveway which has been in place since the 1970s and continues as non-conforming to-date. Petitioner also discussed changing conditions with an anticipated roundabout at the intersection of 121st Street and Hoosier Road, and anticipated sidewalks and the effect thereof on the existing driveway. In essence, the existing driveway will no longer be a pullthrough and will require additional parking and surface area to safely maneuver vehicles and trailers and minimize the effect thereof on both the safety and aesthetics of the area. Petitioner additionally argued that the proposed width is based on the width needed to access the existing garage and still be able to access a proposed, extended driveway to extend to the side and behind the existing structures. Petitioner also showed various examples of other residential properties under the jurisdiction of the Board with driveways larger than what is proposed at similarly-sized residential lots, albeit in more rural areas of the township. Petitioner expressed the need for a much wider driveway as the loss of the second access would not allow for adequate maneuverability of vehicles and trailers given the length of such vehicles and associated trailers. During the hearing on the related use variance, Petitioner noted that the Property was acquired for residential use but he had been operating the landscape company and storing equipment on the Property for over twelve (12) years, during which the company has experienced considerable, and unexpected, growth. Petitioner also espoused various benefits to the City of Fishers by the landscaping company being operated at the Property; however, Petitioner adamantly opposed annexation of the Property, even though the Property is surrounded by parcels all within the boundaries of the City of Fishers and receives city services, regardless of the Petitioner's denial that such services are utilized. City Staff recommended against the variance and proposed only allowing what is already allowed under the UDO, with the exception of increasing the driveway curb cut to a thirty-six (36) foot allowing for additional driveway and storage to extend behind the current structures in place in accordance with, and as shown, in an accompanying sketch presented by staff at hearing. These recommendations were based, in large part, on recommendation by the City of Fishers Director of Engineering due to safety concerns with respect to the roundabout to be constructed and the ever-increasing traffic flow in the area. At hearing, the City of Fishers Director of Engineering discussed the need to keep the curb cut width to that suggested by City Staff or the roundabout design would have to change. Further, the City of Fishers Director of Engineering expressed concern that the proposed, the sixty (60) foot width, could possibly confuse pedestrians and drivers causing unintended interaction between the two in the area of that driveway. If the Board were inclined to allow the variance, however, City Staff recommended several conditions be placed on the approval. At hearing, the Board discussed moving the landscaping company to another location, more suitable to such operations. Petitioner acknowledged that the current operations, employees and equipment are the maximum amount that are able to be operated at the Property; however, Petitioner believes that he can continue operations at the Property and that there are no, immediate needs to expand beyond current operations or to expand the driveway or access further other than a related curb cut request to the City and driveway continuing around the Property to such additional curb cut, if approved, none of which is the subject of this variance request. The Board also discussed the safety of the proposed, expanded curb

cut and the effect thereof on the currently-proposed roundabout. The City of Fishers Director of Engineering responded that drainage, design and safety would be affected but that some expansion beyond the allowance of the UDO restrictions could be allowed without substantial, adverse effect. Public comments received prior to the meeting were in support of the Petitioner and stated that the request seemed reasonable based on the land being taken for the roundabout and the loss of Petitioner's current drive-through driveway. Specifically, the neighbor directly to the south of the Property, and the adjacent landowner arguably most effected by the variance request, gave full support to Petitioner's request. Public comments additionally lauded the Petitioner and the minimal impact the operations of the landscaping company have had on the surrounding property owners. There were no negative comments received either prior to hearing or at hearing from the public.

**Mr. Richards made a Motion to approve with the following conditions, seconded by Mr. Fenske. The Motion was approved, 3-0-1, with Mr. Bassett abstaining from the vote.**

After the public hearing, the City of Fishers – Board of Zoning Appeals hereby issues the following decision and related findings of fact:

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community, because the proposed expansion of the driveway would be made subject to the final approval of the City of Fishers Director of Engineering and would not be allowed to expand beyond such approved widths, taking into consideration, among other factors, the public health and safety in the area.
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, because the expanded driveway would replace an already nonconforming driveway in place and the driveway, as expanded would be required to be paved, thereby enhancing the aesthetics in the area.
- (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the Property, because the proposed roundabout at the intersection of 121st Street and Hoosier Road has the effect of taking away the existing driveway, resulting in the need for the expanded driveway requested here in order for the Property owner to continue the use of the Property in the manner to which he has become accustomed.

**\*\*\* DECISION OF THE BOARD \*\*\***

IT IS THEREFORE the decision of the Fall Creek Township Board of Zoning Appeals that the variance request and application for **Docket VA-24-20, as filed by Jeffrey Heinzmann, of Heinzmann Law Office LLC, on behalf of property owner, Nathan E. Nocton**, is hereby APPROVED based on the foregoing findings and subject to the following conditions:

1. The proposed driveway entrance and driveway expansion are approved up to a maximum of 60 feet wide driveway entrance on 121st Street and an accompanying 50 feet wide driveway but limited to final widths as approved by the City of Fishers Director of Engineering and final curb cut approval for the driveway entrance by resolution of the Fishers Board of Public Works & Safety, which board supervises the streets, alleys, sewers, public grounds, and other property of the City, pursuant to I.C. §36-9-6-2 and regulates the use of right-of-way through, under, or over public ways, pursuant to I.C §36-9-2-6 and which approves any open cut on certain roads, pursuant to Fishers Code of Ordinance §94.11, including 121st street.
2. All driveway, parking and storage areas will be substantial as shown in the sketches proposed by City Staff at hearing, including any expansion as shown by sketches presented by the Petitioner modified as approved by the City of Fishers Director of Engineering.
3. All driveway, parking and storage areas, including additional driveway areas that may result as a result of the separate approval of an additional curb cut on Hoosier Road shall be paved.
4. Any gravel that is currently installed outside of the allowed paved area, shall be removed and returned to grass.

5. The tree line on the southern edge of the property shall be preserved.
6. The Approval Letter and relative documentation be recorded on the property with the Hamilton County Recorder's Office.

**New Business:**

Ross Hilleary presented the 2025 Rules and Procedures update for the FCBZA.

**Mr. Richards made a Motion to approve, seconded by Mr. Fenske. The Motion was approved, 3-0-1. Mr. Bassett abstained since the roundabout is an active Engineering project for the City.**

As there was no other business, the meeting was adjourned at 8:00 p.m.

Respectfully Submitted by:

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Kay Prange, Recording Secretary