



**BOARD OF ZONING APPEALS**  
**STAFF REPORT**

**TUESDAY, SEPTEMBER 26, 2023**

**CASE NO:** BZA 23-0005  
**PROJECT NAME:** AIRWAY FENCE VARIANCE  
**PROJECT ADDRESS:** 4918 AIRWAY ROAD, RIVERSIDE, OH 45431  
**PARCEL ID:** I39 00114 0045  
**APPLICANT/PROPERTY INFO:** JOSHUA SEIBER, DAILY RELEAF LLC, 5111 N WOLCOTT AVE, CHICAGO, IL 60640  
**OWNER/PROPERTY INFO:** AIRWAY CENTER LLC, 333 RICHMOND RD, STE 350, BEECHWOOD, OH, 44122  
**ZONING DISTRICT:** B-2 GENERAL BUSINESS DISTRICT  
**CURRENT USE:** VACANT COMMERCIAL STRUCTURE

**REQUEST:**

A variance from UDO §1115.01(E)(3)(c) to allow fence to exceed the maximum height of 8 feet.

LOCATION	REQUIREMENT	REQUEST	VARIANCE %
MAX. FENCE HEIGHT	8FEET MAX.	2 FOOT INCREASE	25% INCREASE

**CASE SUMMARY/BACKGROUND:**

The subject site is located in the northern section of the Airway Shopping Center on a 0.77 acre parcel. The site is outside the Source Water Protection Area. There is an existing 6,198 sf vacant commercial structure on the parcel. The applicant is proposing to repurpose the existing building into medical marijuana dispensary facility. The State of Ohio Board of Pharmacy requires a 10-foot fence around the delivery zones per the Ohio Administrative Code §3796:6-3-19(C). The applicant is requesting a variance due this requirement.

**INTERESTED PARTY COMMENTS:**

Staff has received signatures from neighbors in support of the variance application.

**STAFF REVIEW/FINDINGS:**

Staff finds that the requested variance to allow an increase in the *maximum fence height* is adequately justified and meets the standards for approval. Staff recommends **approval** of the requested variance.

- The essential character of the neighborhood will not be altered. The proposed fence will only be erected around the delivery zone.
- The variance is required to meet the State of Ohio Board of Pharmacy requirements.
- The spirit and intent behind the zoning code would be observed.

The question before the Board of Zoning Appeals is:

- **Does the proposal meet the standards for granting the request variances established in UDO §1105.15?**

In order to answer this question, the Board of Zoning Appeals should consider:

- the conditions upon which an application for the variance(s) is based are particular to the subject property with respect to the physical size, shape or other characteristics of the premises, differentiating it from other lots in the same district,
- variance(s) would result in an improvement of the property that is more appropriate and more beneficial to the community than would be the case without granting of the variance(s).
- information in the staff report (standards for approval, attachments, etc.) for each requested variance, and
- testimony and/or evidence provided at the public hearing which directly relates to the variance request.

**ATTACHMENTS:**

- Zoning Map
- Aerial Map
- Site Plan
- Justification Statement Page
- Supplemental Information

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM UDO §1115.01(E)(3)(c):**

The following factors shall be considered by the BZA in determining whether practical difficulty exists sufficient to warrant a variance to increase the maximum fence height; 1115.01(E)(3)(c):

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

Yes, the property owner could still have beneficial use of the property and yield a reasonable return without the variance. However, the applicant would not be able to move forward with the proposed use without the variance.

**2. Whether the variance is substantial;**

No, this is not a substantial variance.

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

No, the essential character of the neighborhood will not be altered, nor will adjacent properties be adversely affected. The proposed fence will only be erected around the delivery zone.

**4. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);**

No, the delivery of governmental services will not be impacted.

**5. Whether the property owner purchased the property with knowledge of the zoning restriction;**

Yes, the property owner had knowledge of the zoning requirements.

**6. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;**

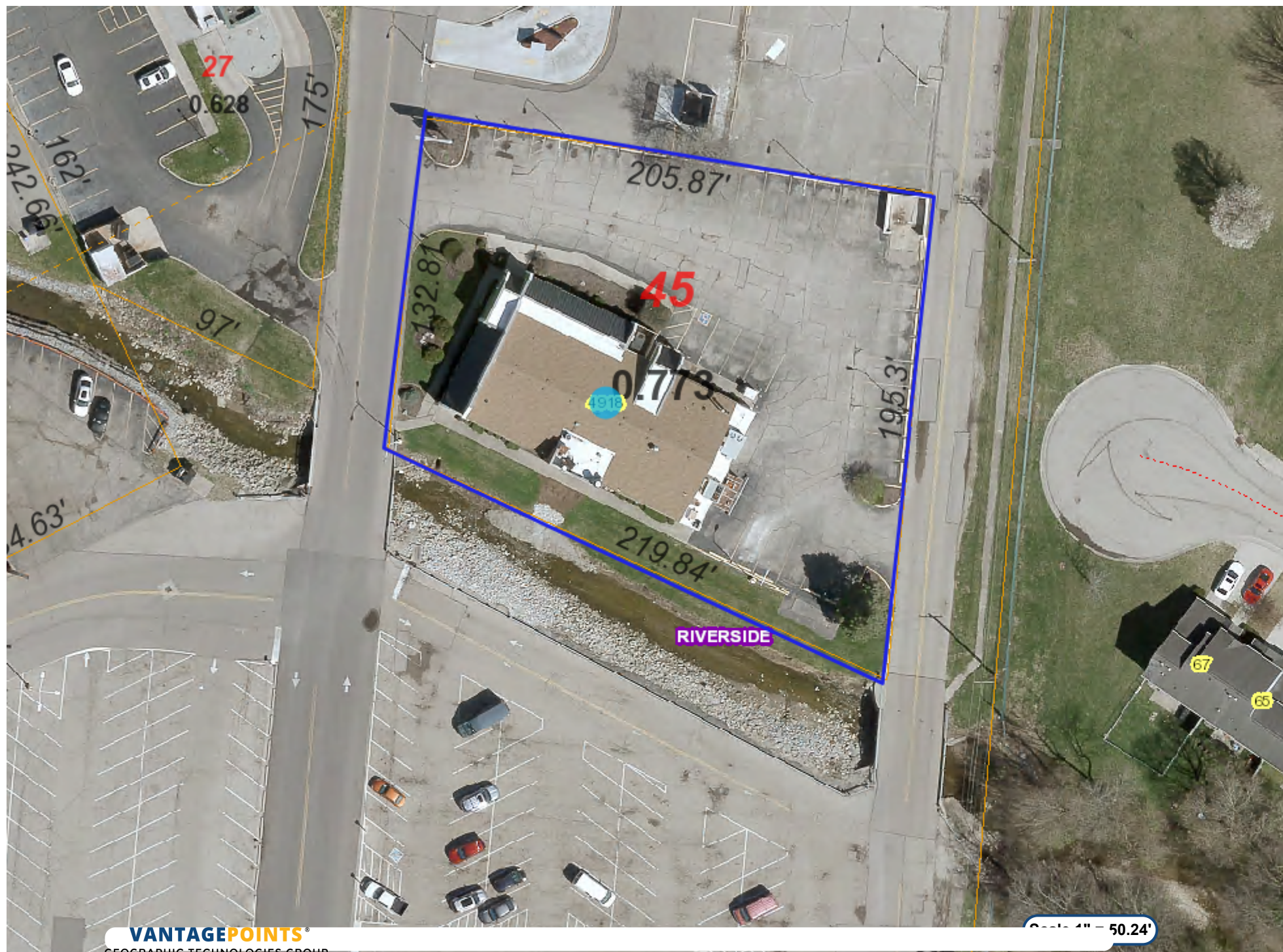
No, a variance is required to comply with the Board of Pharmacy's requirements.

**7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.**

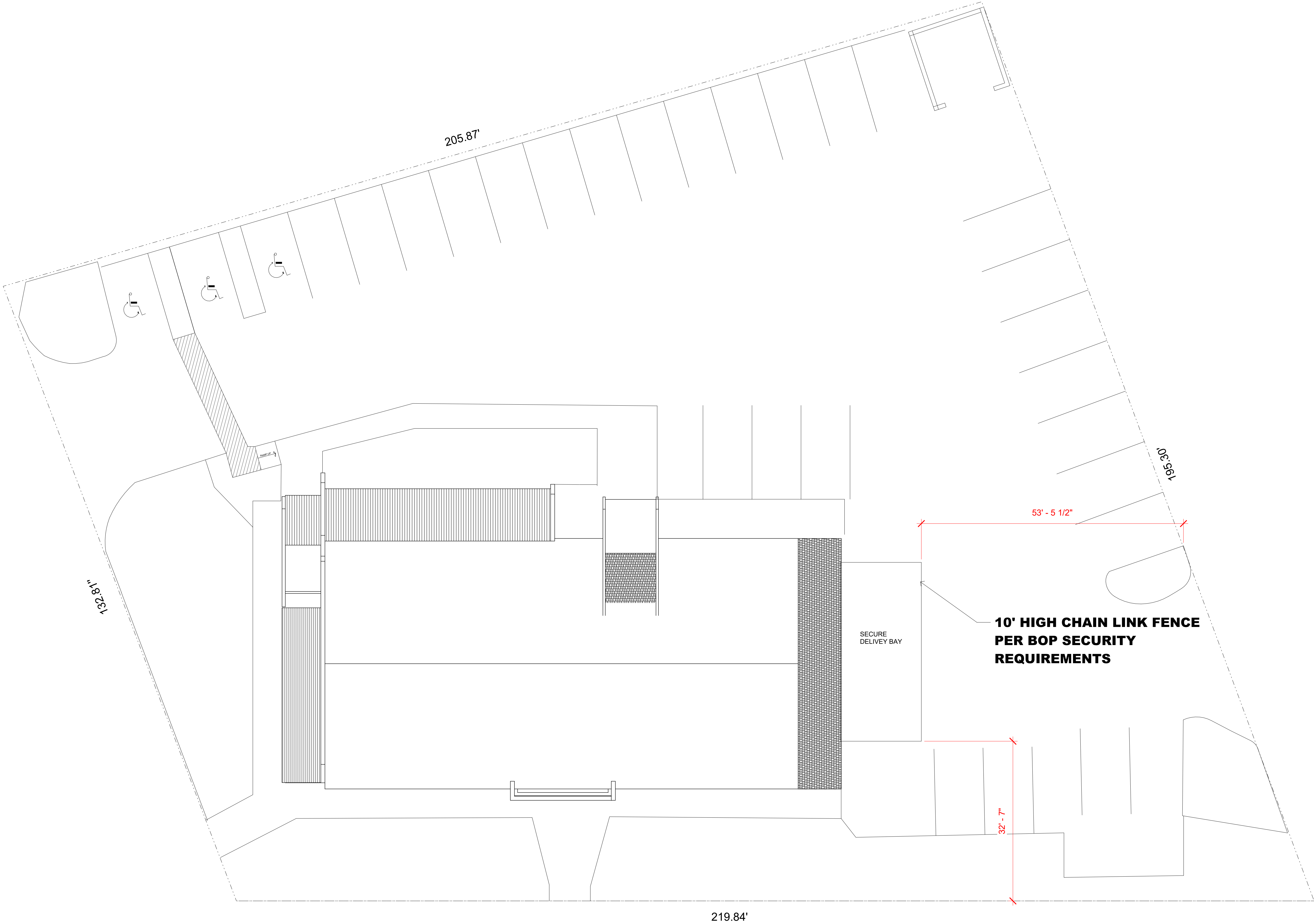
Yes, the spirit and intent behind the zoning requirement would be observed should the variance be granted. The zoning regulations under 1113.07 *Landscaping, screening and buffering standards* were established to screen higher intense uses from less intense uses without obstructing sightlines, light, air flow, etc. The proposed fence will be constructed out of any vehicular use areas and not sightlines. The fence will screen the delivery zone from adjacent the residential and commercial uses while meeting the Board of Pharmacy's requirements.











1 site plan  
1" = 10'-0"

revision schedule		
no.	description	date
1	Revision 1	Date 1

## **Variance Justification:**

In order to justify approval of any variance staff and/or the Board of Zoning Appeals considers the following criteria. Please answer all of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. **Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance.**  
There cannot be any beneficial use as the Board of Pharmacy requires a secured 10' chain link fence with gate and slats for a delivery bay. They will not pass our inspection to operate our business without the 10' requirement.
2. **Whether the variance is substantial.**  
The variance is not substantial. This raises the fence 2' from code and is tucked in the rear of the building.
3. **Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.**  
The neighborhood or adjoining properties will not be affected. This is a small slatted delivery bay tucked in the rear of the building which abuts a delivery/service road to the shopping center to the south.
4. **Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage).**  
It will not. The gate will remain locked but a manager on duty will always be available for open and provide access.
5. **Whether the property owner purchased the property with knowledge of the zoning restriction.**  
The tenant took over the property as-is and upon lease signing wasn't aware of the 10' height requirement that required a variance.
6. **Whether the property owners' predicament feasibly can be obviated through some method other than a variance.**  
As stated in answer #1 it cannot.
7. **Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.**  
This is a small variance of a fence height in the rear of the building. This building has sat vacant for 10 years and applicant is investing money to bring this property in excellent shape and operational.





Front of Subject Site



Adjacent Businesses in Airway Shopping Center



Adjacent Businesses along Airway Road



Adjacent Residential Properties



Variance Area



Variance Area View 2





Variance Area View #



## Ohio Administrative Code

### Rule 3796:6-3-16 Monitoring, surveillance, and security requirements.

Effective: July 11, 2022

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(A) All licensed dispensaries shall maintain security policies and procedures that include, but are not limited to:

- (1) A security plan with protocols for patient, caregiver, and employee safety and management and security of medical marijuana and currency;
- (2) Restricted access to the areas in the dispensary that contain medical marijuana to authorized employees;
- (3) Identification of authorized employees through means including current employee identification card in the employee's immediate possession whenever the employee is present at the dispensary;
- (4) Controlled access and prevention of loitering both inside and outside of the facility;
- (5) Conducting electronic monitoring;
- (6) Use of a panic button; and
- (7) Prepares for, protects against, and addresses how to handle any crisis that affects the security or operation of a dispensary in the event of strike, fire, flood or other natural disaster, or other situations of local, state or national emergency.

(B) All licensed dispensaries shall implement security measures to protect the premises, patients, caregivers and employees, including the following measures:

- (1) The dispensary department shall be accessible to patients and caregivers, dispensary employees, service professionals conducting business with the dispensary and who are escorted and supervised by a dispensary employee, and other persons authorized by Chapter 3796. of the Revised Code and



this division. To prevent unauthorized access to the dispensary department, establish a locked door or barrier between the facility's entrance and the dispensary department.

(2) Post a sign at all entry ways into any area of the dispensary containing medical marijuana, including a room with an approved vault, which sign shall be a minimum of twelve inches in height and twelve inches in width and shall state: "Do Not Enter - Restricted Access Area - Access Restricted to Authorized Employees Only." In lettering no smaller than one-half inch in height.

(3) Maintenance of a supply of medical marijuana that is not more than the quantity required for normal, efficient operation;

(4) Prevent individuals from remaining on the premises if they are not engaging in authorized activities under Chapter 3796. of the Revised Code or this division;

(5) Develop a policy that addresses the maximum capacity and patient flow in the waiting rooms, dispensary department, and patient care areas;

(6) Dispose of medical marijuana in accordance with this division;

(7) During hours of operation, store all medical marijuana in established restricted access areas accessible only to authorized employees. The minimum number of dispensary employees necessary for efficient operations shall be in the restricted access area;

(8) Keep all safes, vaults and any other equipment or medical marijuana storage areas securely locked and protected from unauthorized entry. The vault shall have dual authentication or biometric access with a unique code for each employee. A safe exclusively used for storage of currency, with separate access controls, shall be maintained in the product vault;

(9) Keep a daily log of dispensary employees with access to the safe or vault and knowledge of the access code or combination, and records of all employee access to any restricted access areas;

(10) Keep all locks and security equipment in good working order. All security equipment must be inspected and tested at regular intervals, not to exceed thirty calendar days from the previous





inspection and test to ensure the systems remain functional. A dispensary must maintain a log documenting such inspections and tests;

(11) Prohibit keys, if applicable, from being left in locks or stored or placed in a location accessible to persons other than specifically authorized personnel;

(12) Prohibit accessibility of security measures, including combination numbers, passwords or electronic or biometric security systems to persons other than persons specifically authorized in accordance with this division;

(13) Ensure that trees, bushes and other foliage outside of the dispensary do not allow for a person to conceal themselves from sight;

(14) Develop emergency policies and procedures for securing all product and currency following any instance of diversion, theft or loss of medical marijuana, and conduct an assessment to determine whether additional safeguards are necessary;

(15) Employ dedicated on-site security personnel during all operational hours who shall only perform tasks related to security operations and have foundational training specific to security; and

(16) Develop sufficient additional safeguards in response to any special security concerns, or as required by the state board of pharmacy.

(C) The state board of pharmacy may request or approve alternate security provisions that it determines are an adequate substitute for a security measure specified in this rule. Any additional protections may be considered by the state board of pharmacy in evaluating overall security measures.

(D) When physical security controls become inadequate because of such items as a significant increase in the quantity of medical marijuana, the physical controls shall be expanded and extended accordingly.

(E) All licensed dispensaries shall have a security system that is operational at all times and that uses