

HARRISON TOWNSHIP
Board of Zoning Appeals
Wednesday, December 12, 2018
7:00 p.m.

The meeting of the Harrison Township Board of Zoning Appeals was called to order at 7:00 p.m. on Wednesday, December 12, 2018.

Those present:

Charles Waldron
Patricia Larrick
Don Marlow
Steven Russell
Jerry Barnes

Justin Riley Olszewski,
Zoning Administrator, Development Dept.

Not present:

APPROVAL OF THE MINUTES:

There were no meeting minutes available for approval at this meeting.

OLD BUSINESS

Continuation of Case No. BZA-12-18

Case# BZA-12-18 was initiated by Mr. Stephen Koob, on behalf of Incarnation & Proception Charitable Trust, 3291 Hillpoint Ln., Dayton, Ohio 45414. Staff entered the findings as stated from the staff report from the September meeting and asked if there was any further clarification needed, to which there was not.

The applicant, Stephen Koob, 3291 Hillpoint Ln. was duly sworn and stated that he created a business plan packet which outlines the mission statement, and objectives of the conditional use request to create a location that is appealing to visitors, attract hundreds of visitors daily, distribute pamphlets and booklets and be noticed by vehicles passing by on southbound I-75. He also says that he'd like it to eventually, be qualified as a National Shrine. His goal is to have the shrine officially opened by April 30, 2019. Mr. Koob states that there have been a couple of signs already placed at the location and would eventually like to place a 25 ft. lighted sign and that he has already received a call from someone that would like to donate the statue to the shrine project. He also states that the only utility he thinks there would be a need for would be electricity for illuminating the displays and is currently working with an electrical contractor.

Mr. Koob says that the funding for the shrine development project is being provided by two non-profit organizations, the Incarnation & Proception Charitable Trust and One More Soul. When asked, Mr. Koob indicated that the statue is made of granite, would be life size and weighs approximately two tons. The other surrounding features of the shrine could be signage or pictures along the rosary walk. He also states that he would like to have a kiosk on the property which would have literature about Our Lady of America and other attractions in the Dayton area and eventually he'd want to put some sort of maintenance shed on the property as well. When questioned about security and hours of operation Mr. Koob states there will be video monitoring and that the sight would be well illuminated and that he is currently working with an electrical contractor to address these concerns. When asked about utilities such as water and sewer, Mr. Koob stated there would be no need for those amenities as he did not anticipate any visitor being at the site for more than an hour or so.

After some discussion between the Board and Mr. Koob regarding what sort of information and documentation the Board is looking for in order to approve the Variance request, the board asked Mr. Koob if he would be able to provide further documentation for plans for, and types of additional structures that will be placed, addressing questions regarding utilities implementation, parking plan, how the lighting will be set up, and what security measures will be taken to combat vandalism. Mr. Koob agreed to provide the additional information by the March 11, 2019 BZA meeting.

After further discussion, Mr. Don Marlow made a motion to table BZA Case #12-18 until the March 11, 2019 BZA meeting. Mr. Steven Russell seconded. Motion carried and passed 5-0.

Case No. BZA-13-18

Case# BZA-13-18 was initiated by Ayman Hamdan, 958 Patterson Rd., Dayton, OH 45419. The applicant is requesting a Conditional Use under Article 21, Section 2103(B) to allow an Automobile Full Service Station within the "B-3" Business District. The property is located at 4192 N. Main St., Dayton OH 45405, Harrison Township, Montgomery County, Ohio.

Staff states that the property is located at 4192 N. Main St. and is located along the east side of N. Main St., south of Castlewood Ave. The surrounding zoning is "B-3" Business. The surrounding land use is commercial. Access to the property is off of N. Main St. Article 4, Section 406.05 lists the general "Standards for Conditional Use." Article 21, Section 2104 (A-L) lists required conditions in the "B-3" Business District. The property currently operates in a conforming manner as a carwash and the applicant is seeking to add an automobile full service station component to that use.

Discussion

There are two sections of the Zoning Resolution we must consider when entertaining a conditional use request; Section 2104 (A-L) "Required Conditions" which enumerates the

required conditions for the specific use in the “B-3” Business District and Section 406, “Standards for Conditional Use” which enumerates the general standards to consider for any conditional use application. The following is the list of required conditions in the “B-3” Business District that must be met in order to obtain a conditional use permit:

REQUIRED CONDITIONS

No zoning certificate shall be issued for a “B-3” use until the applicant shall have certified to the zoning inspector that:

- A. The business activity will be conducted wholly within a completely enclosed building, except for automobile service stations. (No outdoor dismantling, wrecking, or storage of automotive vehicles, parts, or accessories shall be permitted).

The current car wash use conducts certain portions of its operation outside of the structure. Applicant will have to address this portion to the board.

- B. The business establishment shall not offer goods, service, food, beverages, or make sales directly to customers in automobiles, except for drive-in window for pick-up or delivery and which will be provided with adequate drive-way space on the premises for waiting vehicles.

Does not appear to be applicable.

- C. All business shall be of retail or service character.

Proposed use appears to meet this condition.

- D. No manufacturing, processing, packaging, repair or treatment of goods shall be carried on, except when incidental or accessory to the performance of services or the sale of goods to the public on the premises.

Applicant must address this to the board.

- E. Exterior lighting shall be shaded wherever necessary to avoid casting direct light upon any property located in a Residential District or upon any public street.

Existing lighting appears to meet this requirement, additional lighting will have to meet this requirement. Applicant has not included a site plan indicating any new exterior lighting.

- F. All premises shall be furnished with all-weather hard surface walks of material such as bituminous or portland cement concrete, wood, tile, terrazzo or similar material, and, except for parking areas, the grounds shall be planted and landscaped.

Site is pre-existing and appears to meet this condition.

G. Where the property lines separate a Business District from a Residential District, a visual and mechanical barrier, a minimum of six (6) feet in height, shall be provided along the common lot line, which may consist of any of the following:

1. An evergreen hedge used with a chain link fence. Such hedge shall not be less than three (3) feet in height.
2. A solid fence or a non-deteriorating material.
3. Masonry wall

Site is pre-existing and appears to meet this requirement. Required screening appears to belong to the neighboring multi-family residential unit.

H. No noise from any operation conducted on the premises, either continuous or intermittent, shall violate the provisions of Article 44.

I. No emission to toxic or noxious matter, which is injurious to human health, comfort, or enjoyment of life and property or to animal or plant life shall be permitted. Where such emissions could be produced as a result of accident or equipment malfunction, adequate safeguards considered suitable for safe operation in the business involved shall be taken.

J. The emission of smoke or other air pollutants shall not violate the standards and regulations of the Montgomery County Health Department. Dust and other types of air pollution borne by the wind shall be kept to a minimum by appropriate landscaping, paving, or other acceptable means.

K. There will be no emission of odors or odor-causing substances which can be detected without the use of instruments at or beyond the lot lines.

L. There will be vibrations which can be detected without the use of instruments at or beyond the lot lines

Applicant will have to address sections H-L to the board.

Section 406.05: Standards for Conditional Use

The Board shall not grant a Conditional Use unless it shall, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that support conclusion that:

- A. The proposed Conditional Use will comply with all applicable regulations of this Resolution, including lot size requirements, development standards and use limitations.

Site is pre-existing and appears to meet these conditions

- B. Adequate utility, drainage and other such necessary facilities have been or will be provided.

Site is pre-existing but if parking and paving surfaces are to be altered, a new drainage and storm water control plan will be required prior to the issuance of a certificate of zoning compliance.

- C. Adequate access roads or entrance and exit drives will be provided and will be so designed as to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.

Site is pre-existing and operated in a conforming manner

- D. All necessary permits and license for the use and operation of the Conditional Use have been obtained, or evidence has been submitted that such permits are obtainable for the proposed Conditional Use on the subject property.

Does not appear to be applicable

- E. All exterior lights for artificial open-air illumination are so shaded as to avoid casting direct light upon any property located in a Residential District.

Does not appear to be applicable

- F. The location and size of the Conditional Use, the nature and intensity of the operation involved or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it, shall be such that it will be in harmony with the appropriate and orderly development of the district in which it is located.

The Board must determine from the facts submitted with this case, by township staff and the applicant in addition to any and all testimony given before the board if the proposed use meets this standard.

- G. The location, nature, and height of the buildings, structures, walls, and fences on the site and the nature and extent of landscaping and screening on the site shall be such that the use will not unreasonably hinder or discourage the appropriate development, use and enjoyment of adjacent land, buildings and structures.

The Board must determine from the facts submitted with this case, by township staff and the applicant in addition to any and all testimony given before the board if the proposed use meets this standard.

H. The Conditional Use desired will not adversely affect the public health, safety and morals.

The Board must determine from the facts submitted with this case, by township staff, and the applicant in addition to any and all testimony given before the board if the proposed use meets this standard.

Recommendation:

Staff has one reservation regarding the classification and use of this property:

1. No site or parking plan was submitted with the application and it is unknown if the property can accommodate a simultaneous use of the car wash and an automobile service station without a parking layout or supplemental application material indicating employee parking, customer parking, and vehicles waiting for service. The property is approximately 1.2 acres in size and shares the lot with another business (a tattoo parlor), a cellular data transmission tower, and a planted grass area.

Staff recommends that the Board take all information and testimony into consideration.

The applicant, Mr. Ayman Hamdan, 958 Patterson Rd. and property owner, Mr. Hisham El-Abbadi, were both duly sworn and Mr. Hamdan stated that he'd like to make a correction in that the service station would not be "full service" but "light service". They will only do small simple jobs such as brakes. Staff stated that what the applicant is describing is considered "full service" as defined by the zoning resolution and there is no differentiation between "light service", "medium service", and "full service". The property owner, Mr. El-Abbadi indicated that he has been the owner of the car wash for 16 years, and at the far back of the car wash there is a garage, and one bay has also been turned into a garage so the applicant would be able to use the garages to service the cars from the dealership that he owns. This would still leave two bays for the car wash traffic that he is currently getting. Mr. Hamden then stated that he has a garage at another location that is used for more extensive work such as engines and that no work of that nature would be done at the proposed location. He then stated that the service station would not be open to the public but would like to have the option to service cars other than those from his dealership. When asked about a site plan, the applicant stated that he has a simple sight plan but was not aware that it needed to be submitted with his application, to which staff replied item 1 (c) of the Conditional Use Permit instructions does state that a plot plan needs to be submitted with the application.

Mr. El-Abbadi then says that on occasion, there may be a vehicle from the car wash that may have a mechanical issue on their lot and that Mr. Hamdan would be able to service them rather than calling an outside mechanic or tow truck for simple repairs.

The Board then stated that there was no site plan submitted with the application and needs one submitted, and a determination (in writing) needs to be submitted on whether or not the service station will or will not be open to the public. Until those items are submitted, the Board is unable to make a decision on the application request.

Mr. Daniel Yoder, 4214 Winona Ave. was duly sworn and asked for clarification regarding the outstanding violation on the property. Staff replied the violation is for repair and maintenance of the impervious surface for the tattoo parlor side of the property. The property owner then stated there was a misunderstanding between him and the engineer and was not aware of what “recycled” asphalt was, and is currently working to repave with asphalt or cover it with concrete.

Mr. Yoder then stated that he feels the property is a bit of an eyesore and asked that the Board to consider making sure the violation is corrected before recommending approval of the current Conditional Use application.

Mr. Jerry Hensley, 4220 N. Main St. was duly sworn and stated that he is a neighboring business and has concerns about the proposed business plan and containing or limiting the nature of work that is to be performed at the proposed location. The Board then replied that they asked for the additional documents from the applicant in order to better ensure that those types of issues and concerns are addressed prior to a decision on the case being made.

After some discussion among the Board, Ms. Patty Larrick made a motion to table BZA Case #13-18 until the January 14, 2019 BZA meeting at 7:00 pm. Mr. Steven Russell seconded. Motion carried and passed 5-0.

There being no other business to discuss, Mr. Don Marlow made a motion to adjourn the meeting. Ms. Patty Larrick seconded. Motion carried and passed 5-0.

Respectfully submitted,

Harrison Township
Board of Zoning Appeals

Regina Moore
Administrative Assistant

Charles Waldron, President

Patricia Larrick, Vice President

Steven Russell

Jerry Barnes

Don Marlow

Attested as to Signatures,

Regina Moore
Administrative Assistant