

HARRISON TOWNSHIP
Board of Zoning Appeals
Tuesday, June 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 Tuesday, June 12, 2018.

Those present:

Charles Waldron
Jerry Barnes
Don Marlow
Steven Russell

Justin Riley Olszewski,
Zoning Administrator, Development Dept.

Not present:

Patricia Larrick

APPROVAL OF THE MINUTES:

Mr. Jerry Barnes made a motion to approve the minutes dated May 14, 2018. Mr. Don Marlow seconded the motion. Motion carried and passed 4-0.

NEW BUSINESS

Case No. BZA-04-18

Case# BZA-04-18 was initiated by Matthew Oladejo Olasunkami, 46 Shiloh Springs Rd., Dayton, OH 45415. The applicant is requesting a Conditional Use to Article 15, Section 1503(D) to allow for a place of worship to be located in the "R-7" Multi-Family Residential District. The property is located at 35 Bennington Dr., Dayton, OH 45405, Harrison Township, Montgomery County, Ohio.

The property is located at 35 Bennington Dr. The property is located on the north side of Bennington Dr. near the intersection with N. Main St. The surrounding zoning is "B-3" Business District to the east and south, "R-7" Multi-Family Residential to the west, and "B-4" Business to the north. The surrounding land use is commercial to the north, east, and south and residential to the west. Access to the property is off of Bennington Dr. The former use of the property was the Northtown branch of the Dayton Metro Library System. Article 4, Section 406.05 lists the general "Standards for Conditional Use." Applicant is proposing to operate a place of worship names "Christ Apostolic Church Dayton".

Discussion:

Section 406, “Standards for Conditional Use” of the Zoning Resolution enumerated the general standards to consider for any conditional use application.

The following is the list of required conditions that must be met in order to obtain a conditional use permit:

REQUIRED CONDITIONS:

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 in either a conforming or legal non-conforming manner

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

Site is pre-existing and appears to meet these conditions

- 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 the principal structure occupies the entire parcel and has no off-street parking. The applicant has entered into a lease agreement with the southern adjacent property owner to obtain off-street parking for its use which meets all applicable zone standards

- 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.

Condition 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.

Site is pre-existing and appears to meet this condition

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

The applicant, Matthew Oladejo Olasunkami, 46 Shiloh Springs Rd., was duly sworn and stated that he has submitted all of the documentation that the Board has requested and that he already has a contract drawn out with Silver Shield Northtown, LLC in regards to the parking arrangements, and that the contract term is for two (2) years. When asked if he was affiliated with any other church or organization, Mr. Olasunkami states that the church belongs to The Body of Christ Apostolic Church and that they will operate under the bi-laws that control the

Apostolic Church. He then states that the proposed location will be used for church and community activities only and that the church meets on Sunday mornings, Tuesday mornings from 10:00-11:00 for independent prayer, and Monday nights for bible study. When asked about the parking contract he indicated that it is the same company and parking agreement that was in placed with the proposed location operated as a library. Mr. Olasunkami states that he has not yet submitted any applications for signage as he awaiting the BZA decision before doing so.

There being no further questions and no one to speak in opposition of the proposed use, Mr. Waldron, closed the public speaking portion for Case No. BZA-04-18.

After some discussion among the Board members, Mr. Donald Marlow made a motion to approve Case No. BZA-04-18. Mr. Steven Russell seconded. Motion carried and passed 4-0.

Case No. BZA-05-18

Case# BZA-05-18 was initiated by Dixie Mart, 6304 N. Dixie Dr., Dayton, OH 45414. The applicant is requesting a Variance to Article 32, Section 3204 (D) to allow for the outdoor storage of flammable materials, not directly related to a permitted use. The property is located at 6304 N. Dixie Dr., Dayton OH 45414, Harrison Township, Montgomery County, Ohio.

Staff states that the property is located on the north side of Nomad Ave. at N. Dixie Dr. The property is currently zoned "C/S-1" Commercial Service to the north, west, and south and residential to the east. The site is currently operating under a valid Certificate of Zoning Compliance (2006-00334) as a convenience store "to sell cigarettes, wine, beer, groceries" (sic). The official use is defined under Article 2, Section 201.16 "Mini-Market" to sell pre-packaged food and beverage items. The applicant is proposing the installation of an above-ground propane gas dispensary for the purpose of refilling propane cylinders or other containers for "BBQ grilling". Article 32, Section 3204 (D) "Minimum Performance Standards for "C/S-1" District" states "the outdoor storage of flammable liquids, or of materials that produce flammable or explosive vapors or gases may be permitted when such storage is directly related to a permitted use when such storage meets all applicable state and local regulations governing such storage".

Discussion and Alternatives

Staff has the following reservations concerning the granting of this variance:

1. Staff does not believe that the variance requested in the result of a unique circumstance of the property in question, nor an unnecessary hardship placed upon the applicant by the Zoning Resolution as is, in fact, the direct result of an intended action by the property owner and applicant. The property has existed and operated in a conforming manner since 2006.
2. Staff does not believe that the sale of liquid propane is directly related to the

permitted use.

3. Staff believes that the variance requested, as submitted by the applicant, will adversely affect public health and safety. Specifically, the storage of flammable materials is permissible provided it is in compliance with state and local regulations governing its storage. Included in the staff report materials is a report of Code Compliance issued by Harrison Township Fire Inspector Kevin Monroe. In this report, Inspector Monroe enumerated 9 specific items of concern for compliance with state & local regulations. Specifically, Inspector Monroe notes that no such required permits for the installation or operation of the liquid tank have been obtained or applied for, and no code analysis has been performed for complete fire and life safety. Additionally, Inspector Monroe cites regulations pertaining to the proposed physical location of the container which include:
 - a. 10 foot clearance from combustibles including grass, brush, and trash.
 - b. Protection from vehicles in accordance with NFPA 58 (1301:7-7-80 of the Ohio Administrative Code)
 - c. Minimum separation of 25 feet between containers and buildings, public ways, and lot lines of buildable adjoining properties. Points of transfer must be a minimum of 10 feet, horizontal distance from public ways including streets and sidewalks. Proposed location appears to be located directly on the lot line with no measurable distance between the public right-of-way on Nomad Ave. or N. Dixie Dr. The only area that would meet these requirements (see attached map) is the 8ft. by 56 ft. area in the middle of the parking lot.
 - d. Inspector Monroe concludes the following: “It is the opinion from the Harrison Township Fire Department, Bureau of Fire Prevention, that this application for installation of the Propane Tank Filling Station (particularly the proposed location of the fill site) will not meet all code requirements set forth by the Ohio Fire Code, NFPA Standards and the Harrison Township Life Safety Code NFPA 101”.

The Board’s alternatives are as follows:

1. Approve the variance application as requested
2. Approve the variance with alternatives or
3. Deny the variance application as requested

Recommendation:

Staff recommends denial of this variance as requested.

The applicant, HeyYoung White, 10280 Atchison Rd., Centerville, Ohio, was duly sworn and stated that the drawing submitted showing a propane fill tank behind the building is actually a tank at another location and not that of the proposed location and that her company is wanting to place the propane fill tank at the proposed location because it will help Dixie Mart boost retail sales since they are a Mini Mart and would typically be open later than the tradition fill locations such as hardware stores. She then suggested that if the size of the fill tank is an issue, her

company would be willing to place a smaller tank instead. When asked about securing the fill tank, Ms. White indicated that they would be able to enclose the fill tank in a chain link cage and secure it with a lock and that there is a key that turns off the propane so that no one can dispense from the fill tank when the store is closed. She then states that her company would train the Dixie Mart manager and employees on how to use the fill tank and that there is a scale on the tank to ensure accurate filling. When asked by the Board if she meets with the fire departments in other jurisdictions that she proposes to place fill stations in, she indicated that she's only done so with Washington Township.

Opponents Being:

Vickie Morter, 2005 Nomad Ave., Dayton, Ohio, was duly sworn and stated that she lives two doors behind where the proposed fill tank would be located and that she does not feel the fill tank is safe and that she is worried about increased traffic on her street by those going to access the fill tank. She also states that she hears constant gunfire, and that there's high crime and is in opposition of the proposed fill tank.

Dora Fudge, 2005 Nomad Ave., Dayton, Ohio, was duly sworn and said that when cars are speeding into the parking lot when going to the Dixie Mart and she feel that no matter where the fill tank is placed, it's an extreme hazard. She also states that she is unsure if the store employees would be able to use the fill tank properly.

There being no others to speak on behalf or against, Mr. Charlie Waldron closed the public speaking portion.

After some discussion among the Board members, Mr. Jerry Barnes made a motion to deny Case No. BZA-05-18. Mr. Steven Russell seconded the motion. Motion carried and passed 4-0.

Case No. BZA-06-18

Case# BZA-06-18 was initiated by Ruslan Polat, 918 Troy St., Dayton, Ohio 45404. The applicant was not in attendance for the hearing. Mr. Don Marlow made a motion to deny Case No. BZA-06-18 due to failure to attend the hearing. Mr. Steven Russell seconded. Motion carried and passed 4-0.

There being no other cases to be heard, Mr. Jerry Barnes made a motion to adjourn the meeting. Mr. Steven Russell seconded. Motion carried and passed 4-0.

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