

HARRISON TOWNSHIP
Zoning Commission
Thursday, July 29, 2021
7:00 p.m.

The regularly scheduled meeting of the Harrison Township Zoning Commission was called to order at 7:00 p.m. on Thursday, July 29, 2021.

Those present:

Vary Welch
Mattie White
Tanner Kirk
Andrew Switzer

Emily Crow,
Development Dept. Director

Leonard Kendall (virtual)
McBride, Dale, Clarion

Those not present:

F. J. Thomas

APPROVAL OF THE MINUTES:

There were no minutes to approve as there were technical issues at the previous meeting and the meeting did not get recorded.

NEW BUSINESS

Case No. BZA-03-21

Case No. BZA-03-21 was initiated by Mr. Martin Nizny, 1356 Woodman Dr., Dayton, OH 45432. The applicant is requesting to rezone a parcel of land located on Payne Ave. between Division Ave. and Needmore Rd. (west side of Payne, 175 ft. south of Division Ave.) from R-4, Residential to B-4, Business. Staff (Mr. Kendall) states that the property is 1.02 acres with 224 feet of frontage on the east side of Payne Ave. The land is adjacent to the B-4 zoning district and was recently re-platted as one lot. The site is surrounded by land in Harrison Township and is bordered to the south and east by additional B-4 land, and to the west and north by R-4 (Residential) zoning districts. Staff also states that if the rezoning request is approved by the Zoning Commission, the area rezoned will extend to the center of Payne Ave. The surrounding land to the west is a parking lot of a church. The land south of the lot is a fast-food restaurant with a drive-thru and the Harrison Township Fire Department. The land east of the lot is a post office, a retail store, and another fast-food restaurant with a drive thru. The land to the north of the lot is single family houses.

Staff says Section 2204 lays out the Development Standards for the B-4 District:

- No minimum lot area
- Lot frontage of 80 ft.
- Front yard depth of 25 ft.
- No side yard depth, except when adjacent to a residential or planned residential district. In such case, the side yard shall be not less than one-fourth of the sum of the height and depth of the structure, but in any event, not less than 15 ft.

- No rear yard depth, except a rear yard shall be required adjacent to a residential zoning district or a planned residential district. Such rear yards shall be not less than one-fourth sum of height and width of the structure, but in no case shall be less than twenty ft.
- If a use is to be service from the rear, a yard shall be provided not less than forty feet deep.
- The maximum lot coverage of the parcel is 50 percent.
- The maximum height of a structure if 40 ft.

The application for the rezone did include a site plan showing the depiction of an office/warehouse structure with a paved area that states, “truck staging/parking”. Staff states to the commission that this rezone does not approve any site plan and if the rezone is approved, it would only amend the zoning map for Harrison Township. The requested B-4 zoning is adjacent to the subject property and any proposed development would be required to meet the development standards of the B-4 Zoning District, as well as the entire Zoning Resolution. Staff then states that the Montgomery County Planning Commission did hear the Zoning Case 03-21 on July 8th, and their letter of recommendation is included in the staff report.

Discussion:

Staff says permitted uses in the B-4 zones would be compatible with the surrounding uses and would be required to screen and buffer from any residential uses. If the rezoning application is approved, because the land is vacant, any future development would be required to screen and buffer the use from the adjacent residential zoning districts to prevent any negative impacts to the residential properties. Due to the immediate proximity of the surrounding B-4 Zoning District, township staff would find this rezoning classification acceptable.

Options:

- Recommend approval of the Zone Change from R-4 to B-4
- Recommend denial of the Zone Change from R-4 to B-4

Mr. Welch stated that, when using the post office on Payne Ave., exiting the post office is difficult at times because cars are speeding and it’s almost like a blind spot coming out and someone could get hit. He would like to know if the Zoning Commission will take a look at how the signage is or how the road would be set up, in terms of egress, if the proposed site will be used for trucking. Staff then states that would be something that would be looked at once the site plan comes in when they are ready to build, looking at access management and any clearance of site lines would be a part of the next step of the application. Ms. White then asks if the applicant would be presenting his case to the Zoning Commission and Ms. Crow replied in the affirmative. Ms. White then had a question regarding something from the Staff Report and Ms. Crow indicated that staff is working on getting full size packages to provide to the commission going forward. Mr. Welch then opened the public speaking portion of the meeting.

The applicant, Martin Nizny of 1356 Woodman Dr. addressed the Zoning Commission saying if you look at an arial photo of about 10 or 12 streets, almost none of the lots are more than 175 feet from the street to the rear and these 3 properties are 400 foot deep. He says he purchased the properties and had an engineer cut them down to 175 and sold the houses. He has proposed building and a major prospect on some of the space. Mr. Nizny states there’s a lot of people, like plumbers and electricians the needs a warehouse and there is a need for commercial property. He says he has another strip just like this up on Webster which has 3 tenants and it’s the same type of thing he is requesting for this site.

Mr. Richard Melson of 2211 Needmore Rd. addressed the Zoning Commission saying that he is the preacher at the church next door which is west of where the applicant wants to build, and he's had a chance to talk with Mr. Nizny and is very glad that he has acquired the property. Mr. Melson says he has no opposition the proposed change request as long as the intended business use is not to sell alcohol or other distilled spirits, marijuana or illegal narcotics, nor have any business designed to promote immoral or illicit activity. Mr. Melson then states that when he came to look at the documents, he thought he saw a retention pond on the proposed site plan and just wants to make sure that if the site plan is approved, that the proposed retention pond be enclosed for the safety of the children that attend his church. Mr. Switzer states that the site plan that was included with the packet should not be interpreted as anything that has been applied for, and there is no guarantee that the retention pond would be where it is on the site plan.

Mr. Tim Winterbotham of 2305 Division Ave. addressed the Zoning Commission offering condolences on the passing of Mr. Ron Casey and also stating that Mr. Dave Woods was also a friend of his. Mr. Winterbotham states that he is in opposition of the proposed change request and feels there's already a traffic issue and he's not sure how Mr. Ninzy's plans are going to allow for trucks to get in and out without further impeding the traffic flow. Mr. Winterbotham also stated that he also has concerns about property maintenance and depleting property values. He also says that he is also speaking on behalf of Mr. James Moran of 2301 Division and Mr. Jamie Highland of 2300 Division Ave., both of whom were not able to be in attendance. The neighbor's also have some concerns regarding Mr. Ninzy placing a "now leasing" sign prior to the approval of the requested change. Mr. Winterbotham then gives the Zoning Commission some pictures to look at for consideration along with a list of neighbors that asked that he speak on their behalf.

Mr. Welch informs Mr. Winterbotham that his concerns are duly noted, however, his best avenue to address those concerns would be to speak to the Board of Trustees at their next meeting, and that the Zoning Commission is not the body that could do anything in regard to the overall concerns that he has. He states that the Zoning Commission's duty is to look at the code change request and make a determination, but final approval of the request is made by the Board of Trustees. Ms. White then asks if he would be able to go to the board of appeals prior to the trustees. Ms. Crow states if the Zoning Commission decides to not approve the case, the case would still go before the trustees at 7:00 pm on August 2, 2021, just without the commission's recommendation. She then states that the Zoning Commission could address the board at that meeting with their oppositions and the board will take that information into consideration before they make their decision.

Mr. Winterbotham then states that he agrees with the comments made regarding lack of communication (prior to recording beginning) citing the meeting having to be rescheduled from July 15th, and no communication of that other than a note on the door. Ms. White then thanks Mr. Winterbotham for his report and information and appreciates that fact that he cited evidence which can be confirmed or not confirmed. She states this information is going to be very important as it travels up to the next level of government in the township.

There being no other to speak, Mr. Switzer made a motion to close the public speaking portion of the hearing. Mr. Tanner Kirk seconded. Motion carried and Mr. Welch closed the public speaking portion.

During discussion among the commission members, Ms. White stated that she has concerns about rezoning because there have been cases past where rezoning has been approved and the applicants have not adhered to the contingencies set forth. She says that the Zoning Commission is supposed to preserve the quality of living in Harrison Township and feels that Mr. Winterbotham cited some evidence that very poignant.

Mr. Welch asks staff a question regarding the retention pond on the site plan. Emily states that this is a conceptual diagram and Mr. Switzer says the proposed diagram is not set in stone. Ms. White asks about the resident's concerns about the traffic flow. Ms. Crow says that transportation planning is definitely something that will be looked at. Mr. Switzer feel that the change request comes down to a balance between increased property values and the concerns of the residents in the area with a business in their back yards with regards of screening/buffering to separate the business from the residential area. After some additional discussion, Mr. Andrew Switzer made a motion to deny Case No. ZC-03-21. Ms. Mattie White seconded the motion. Motion carried and passed 4-0.

Mr. Kendall then stated that he thinks it would be smart for the Zoning Commission to state why the Zoning Commission is voting to deny. Ms. White then stated the commission has never had to give a rationale for their vote before and feels that would be out of order because there was discussion prior to the vote. Mr. Welch agrees stating that if the Trustees want to attend a meeting and ask them why, then that would be the forum in which they would give a response to the reason for denial.

There being no other business to discuss, Ms. White made a motion to adjourn. Mr. Kirk seconded. Motion carried 4-0.

Respectfully submitted,

Harrison Township
Zoning Commission

Regina Moore,
Administrative Assistant
Development Department

Vary Welch, President

FJ Thomas, Vice President

Mattie White

Andrew Switzer

Tanner Kirk

Attested as to Signatures,

Regina Moore,
Administrative Assistant
Development Department