HARRISON TOWNSHIP
Board of Zoning Appeals
Monday, August 12, 2019
7:00 p.m.

The meeting of the Harrison Township Board of Zoning Appeals was called to order at 7:00 p.m. on Monday, August 12, 2019.

Those present:
Patty Larrick
Jerry Barnes
Don Marlow
Steven Russell

Justine Riley Olszewski, Zoning Administrator, Development Dept.

Not present:
Charles Waldron

APPROVAL OF THE MINUTES:
Mr. Steven Russell made a motion to approve the minutes from the Monday, July 8, 2019 BZA meeting. Mr. Don Marlow seconded. Motion carried and passed 4-0.

OLD BUSINESS
Case #BZA-08-19
Case# BZA-08-19 was initiated Mohammad Rihan, 3585 Knollwood Dr., Beavercreek, OH 45432. Case# BZA-08-19 is a continuation from the July 8, 2019 BZA meeting and staff entered the approved minutes as a portion of the findings of this case.
**Discussion:**

These two sections of the Zoning Resolution must be considered when entertaining a conditional use request for auto sales in the “B-4” Business District.

**Section 2204 (M) Automobile Sales, Lease or Rental:**

In addition to other applicable sections of this Zoning Resolution, Automobile Sales, Lease and/or Rental businesses shall comply with the following requirements:

1. All off-street parking and/or outdoor sales display areas shall be separated from the public right-of-way by a landscaped area at least ten (10) feet in width. On streets having an existing curb on the street side, a six (6) inch high curb shall be required only on the inside of the parking/sales area. On streets not having an existing curb on the street side, a six (6) inch high curb shall be required to completely enclose the ten (10) foot separation strip. No vehicles shall be displayed or parked within the ten (10) foot landscaped area.

   **Proposed site plan does not include this, entire existing lot is currently paved.**

2. Within the ten (10) foot landscaped area, all shrubs at the time of planting shall have a minimum height of one (1) foot and a maximum height of three (3) feet and shall be planted so as to completely screen the undersides of vehicles. Grass or other ground cover shall be planted on all portions of the landscaped area not occupied by shrubs. All plantings, including ground cover, shall be kept trimmed and maintained with necessary care to ensure their survival. Any plant material that dies or otherwise becomes unhealthy shall be immediately replaced with like planting material. To ensure traffic visibility, no shrubs shall be permitted to exceed a height of three (3) feet.

   **Site plan does not include this, entire lot is currently paved.**

3. All outdoor display areas for vehicles shall be marked with a yellow or white all weather paint. The minimum size for each outdoor display area stall shall be a minimum of eight and one-half (8.5) feet in width and eighteen (18) feet in depth.

   **Site plan indicated conforming customer parking area, and indicates existence of “sales lot” but no indication of striping or labeling as such. No parking area is labeled as employee parking.**

4. The stalls that comprise the customer off-street parking area shall be marked with a yellow or white all weather paint a minimum of nine (9) feet in width, and a minimum of eighteen (18) feet in depth. All off-street customer parking areas shall be designated “Customer Parking Only”. Designation shall be painted across the customer parking area with a yellow or white all weather paint, using a minimum four (4) inch, Helvetica styled letter.

   **Site plan indicated conforming customer parking area, and indicates existence of “sales lot” but no indication of striping or labeling as such. No parking area is labeled as employee parking.**
5. One elevated display pad shall be permitted per one hundred (100) feet of lot frontage. The elevated display pad shall be a solid, permanent structure and shall not exceed a height of two (2) feet above finished grade. Not required and not submitted with plans.

6. For security, square, tubular steel or wood posts with cable or chain shall be used to prevent unauthorized access to the property. The posts shall be painted and maintained in good condition. No wire type fencing shall be permitted with the front yard setback. Not included on the site plan.

7. All lighting shall be arranged and designated to deflect light away from adjoining properties and public right-of-ways. The use of an energized lamp bulb, where the surface of the bulb is directly visible to persons not located on the premises, is prohibited. Not included on the site plan, building is pre-existing. Condition of external illumination is unknown. R-7 Multi-Family Residential zoning is located to the rear of the property.

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

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

The applicant will need to ensure all drainage plans are submitted and approved by the Montgomery County Engineer’s Office.

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.

Two curb cuts from Salem Avenue currently exist on the property.

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

The applicant currently operates an automobile sales use with a valid license per the Ohio
Department of Public Safety.

E. All exterior light for artificial open-air illumination are so shaded as to avoid casting direct light upon any property located in a Residential District. **Any proposed new lighting must conform to this standard.**

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 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 the Board take into consideration all of the factors presented in this material and presentation by staff and applicant.

The applicant, Mohammad Rihan, 3585 Knollwood Dr., was duly sworn and stated he purchased the building almost 10 years ago and he has not been able to put any business in it due to the accident that occurred in the property. He also stated that, although he continues to clean up the property, people are still dumping trash there because it is an unoccupied building. He stated that since the continuance, he has submitted a site plan and will comply with whatever conditions the Board sets forth. Mr. Rihan says although the building does not have power, there is sufficient lighting, and that the lighting will not adversely affect the residential neighborhood at the back of
the property. The applicant says that beside himself, there will be two other employees and the sales lot will have no more than 10-15 cars on the lot at one time. He states there will be no repair work or car washing done on the property, just sales, and that he will comply with the requirement of striping the parking lot and sales lot areas.

There being no other to speak on behalf of or in opposition to, Ms. Larrick closed the public speaking portion of the hearing.

After some discussion amongst the Board, Mr. Steven Russell made a motion to approve Case# BZA-08-09. Mr. Don Marlow seconded the motion. Motion carried and passed 4-0.

**NEW BUSINESS**

**Case# BZA-11-19**

Case# BZA-11-19 was initiated by The Wright Place, 5408 N. Main St., Dayton, OH 45415. The applicant is requesting a Conditional Use permit under Article 21, Section 2103(K) to allow for a residential rooming house in the “B-3” Business District. The property is located at 5408 N. Main St., Harrison Township, Montgomery County, Ohio.

Staff states that the property is located at 5408 N. Main St. The property is located on the east side of N. Main St. across from Erdiel Dr. The property is currently zoned “B-3” Business. The surrounding zoning is “B-3” Business to the north, south and east, and Single Family Residential to the west. The surrounding land use is commercial and residential. The property most recently operated as an HVAC repair business. Access to the property is off of N. Main St. Article 21, Section 2103(K) lists “Rooming House” as a Conditional Use in the “B-3” Zoning District. Article 21, Section 2104 (A-L) lists twelve requirements that must be met in order to obtain a conditional use permit for a rooming house in the “B-3” Business District. Article 4, Section 406.05 lists the general “Standards for Conditional Use”.

**Discussion:**

Below are the applicable criteria for granting a conditional use permit:

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).

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.

C. All business shall be of retail or service character.
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.  
**A-D do not appear to apply to the proposed use.**

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.  
**Applicant must address this to the board.**

F. All premises shall be furnished with all-weather hard surface walks of a 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.  
**Applicant much address this to the board.**

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 non-deteriorating material.

3. Masonry wall  
**There are some plantings along the rear property line, applicant must address this to the board to determine if it is sufficient to meet this requirement.**

H. No noise from any operation conducted on the premises, either continuous, or intermittent, shall violate the provisions of Article 44.  
**Applicant must address this to the board.**

**Standards for Conditional Use 406.05**

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

B. Adequate utility, drainage and other such necessary facilities have been or will be provided.  
**Applicant must address this to the board.**
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 the public streets and alleys.  

Appears to meet this requirement.  

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.  

Applicant must address this to the board.  

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.  

Applicant must address this to the board.  

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.  

Applicant must address this to the board.  

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.  

Applicant must address this to the board.  

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

Applicant must address this to the board.  

Recommendations:  

Staff states that the Board denied an identical application in BZA Case #10-19 for failure to meet 406.05(F). The applicant must demonstrate to the Board how this current application differs from the previously denied application.  

Mr. Don Marlow recused himself from hearing Case# BZA-11-19.
The applicant, Mr. Mark Ewart, 5408 N. Main St., Dayton, OH was duly sworn and said that he is frustrated to have to reapply when the Board had the opportunity to embrace a truly positive venture that would have helped children that are in need. He feels that the actions of the Board and celebratory high-fives in the parking lot from the neighbors was inappropriate and he was disgusted by what took place. He states that because of those actions, the previous applicant, Mr. McDonald, has withdrawn but that will not stop him. Mr. Ewart said that when he went to speak with the neighbors that attended the previous meeting, he took his phone in to record the conversation and was disgusted by their language and the reference to the possible tenants of the proposed rooming house as “those people”. He states that the neighbor refused to speak with him to address his concerns and that he (Mr. Ewart) never once raised his voice and spoke respectfully. The applicant then stated that he found out that what Mr. McDonald was proposing to do at last month’s hearing is a permitted use at this location and that the Board did not have the authority to approve the requested use because an Adult Residential Facility is already a permitted use as long as the residents have a recognized handicap. Mr. Ewart also says that an Air BnB is also a permitted use at this location and that he has already submitted an application for that should this case be denied. He says should the Board approve the Conditional Use, he will try to find a new operator to run the adult residential facility. He says that if the Conditional Use is denied, there will be no say over who the adult residents will be as long as he is following the rules, which he will. When asked by the Board, what type of barrier would be placed along the rear of the property, Mr. Ewart says there is currently a six (6) foot chain link fence with a gate that will be removed and replaced with a six (6) foot privacy fence. The applicant says there in no lighting at the rear of the property except for one pole in the back corner that faces his building, however it is currently not in use. Mr. Ewart states that the residents of the proposed facility would be between the ages of 12-18 with one staff person on site.

Ms. Kiarra Straight, 500 Golfview Ave. was duly sworn and said that she be the person running the adult residential facility and that the staff to resident ration would be 1:5 and would not be co-ed. She then states that during the day, the residents would be in school, after school there will be chores in the residential facility, studying, preparing meals, a CPR class and some volunteer opportunities within the community. She also says that the residents will have a 9:00 pm curfew.

Opponents:

Mr. Bill Rosenbeck, 2276 Berry Creek Dr. was duly sworn and stated that he owns a property directly across the street and the notice he’d received said zoning for a rooming house and questions whether or not a rooming house belongs in a business district. He then asked what the regulations for a rooming house are. Mr. Rosenbeck feels that the rooming house would bring problems to the business district.

Mr. Keith Rihm, 3729 El Paso Ave. was duly sworn and said that he too has a problem with the word “rooming house” and feel that with the recent tornado, the township has a good opportunity to put a new face on the Main St. area and that the property in question would be fine for any other business, but not a rooming house.
Ms. Strait approached the podium again and reiterated that she does have her own residential group home and does not see how implementing an adult residential facility would prohibit the revitalization of N. Main St.

**Proponents:**
Ms. Monica Camp, 3313 Highcrest Ct. was duly sworn and said that she has worked in the disability field for over 10 years, and that in her neighborhood there are three group homes and she has never had an issue with the residents. She feels that the apprehension of the surrounding neighbors is of the unknown.

Mr. Ewart re-approached the podium and stated that when the application was present last month, there would have been an adoption agency also and because the application was denied, there will not be. He says when he purchased the property, the idea was to find an office type business to put in there, and had the application from last month been approved, the adoption agency portion would be the business that would be seen from N. Main and the residential facility portion would have operated in the rear. He then says if not approved for the group home to operate in the rear tonight, he will move forward with the Air BnB in the rear and the front would still be an adult residential facility.

Staff then read relevant excerpts from a letter submitted by Mr. Don Malone, 5402/5404 N. Main St., Dayton, OH, which states that Mr. Malone has owned a business in Harrison Township for 39 years, paid his taxes faithfully, kept up his property, and feels that his business has been an asset to the community. Mr. Malone, as well as some other businessmen in the area, feel that a rooming house would be detrimental to his business and the building that he owns. The letter goes on to say that Mr. Malone feels that he will lose his co-worker and renter should the Board approve the Conditional Use application.

There being no other to speak on behalf or in opposition, Ms. Larrick closed the public speaking portion of the hearing.

After some further discussion among the Board, Mr. Jerry Barnes made a motion to deny Case# BZA-11-19. The motion was not seconded. Mr. Steven Russell then made a motion to approve Case# BZA-11-19 with conditions. Condition being none of the residents be sexual offenders. Ms. Patty Larrick seconded the motion. Motion carried and passed 2-1.

**Case# BZA-12-19**
Case# BZA-12-19 was initiated by VanCon General Contractors, for Keowee Auto Sales, 4111 N. Dixie Dr., Dayton, OH 45414. The applicant is requesting the expansion or alteration of a legal non-conforming use under Article 36, Section 3605.04. The property is located at 4111 N. Dixie Dr., Harrison Township, Montgomery County, Ohio.
Staff states that the property is located at 4111 N. Dixie Dr. The property is located on the west side of N. Dixie Dr., at the northwest corner of Neff Rd. The property is currently zoned “CS-2” Commercial Service District. The surrounding zoning is “CS-2” Commercial Service to the north, east, and south, and the City of Dayton to the west. The surrounding land use is commercial. The property has operated as a legal non-conforming automobile sales use for many decades until the building was destroyed in the Memorial Day 2019 tornadoes.

Access to the property is off of both N. Dixie Dr. and Neff Rd. The applicant is permitted to rebuild a legal non-conforming use as it was on the date of the loss, but is proposing to expand to a larger building on the lot. The proposed new building would be of conforming size in the “CS-2” zone.

**Discussion:**

The Board of Zoning Appeals may permit a non-conforming building or structure to be extended, expanded, enlarged, or increased in intensity subject to the following conditions:

A. A non-conforming use may be extended throughout any part of such building or other structure that was lawfully and manifestly designed or arranged for such use on the effective date of this resolution.  
**Applicant meets this requirement.**

B. The Board may permit either an expansion of a non-conforming building or structure, or a substitution of a non-conforming use in such a building or structure, but not both.  
**Applicant meets this requirement.**

C. A building or structure that is devoted to a non-conforming use may be extended or enlarged upon the lot occupied by such building on the effective date of this Resolution or on an adjoining lot, provided such lot was under the same ownership as the lot in question on the effective date of this Resolution. Such building may be enlarged or extended to an extent not exceeding twenty-five (25) percent of the gross floor area of such structure or building lawfully existing at the time of the adoption of this Resolution.  
**Applicant meets this requirement.**

D. The extension or enlargement of a building or structure may not occupy ground space suitable and otherwise available for meeting the off-street parking requirements of this Resolution.  
**Proposed expansion would remove some parking but not to a non-conforming standard.**

E. A non-conforming use of land may not be extended, enlarged, or increased in intensity.
Not applicable.

F. Nothing contained in this section shall in any way prohibit a non-conforming use from acquiring additional off-street parking space.

Not applicable.

In granting an extension or enlargement, the Board may impose such reasonable safeguards and restrictions upon the premises benefited by the extension or enlargement as may be necessary to reduce or minimize any potentially injurious effect of such extension or enlargement upon other property in the neighborhood, and to carry out the general purpose and intent of this chapter.

Recommendation:

Staff recommends the board take all evidence into consideration when making their decision to approve or deny the request for expansion of this use.

Ms. Kara Burkhardt, 5335 Far Hills Ave, Suite 305, was duly sworn and stated that she is the civil engineer that help Mr. Skapik put together the plans for expansion. She states the business was destroyed by the tornado and the owner would like to rebuild with the expansion to enhance the employee amenities and the services that he provided for the auto sales business. She then stated that there will be no changes to the business or the lot.

Mr. Casey Skapik, 4111 N. Dixie Dr., was duly sworn and stated that the previous building was 27 x 59 (1640) and he is looking to expand to 43 x 59. He is requesting the expansion to add more office space and additional service bay to the back of the lot.

There being no other proponents or opponents, Ms. Patty Larrick closed the public speaking portion of the hearing.

After final discussions among the Board, Mr. Don Marlow made a motion to approve Case# BZA-12-19. Mr. Steven Russell seconded the motion. Motion carried and passed 4-0.
There being no further business to discuss, Mr. Don Marlow 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