The meeting of the Harrison Township Board of Zoning Appeals was called to order at 7:00 p.m. on Tuesday, October 13, 2020.

Those present:
Charles Waldron
Jerry Barnes
Don Marlow
Steven Russell

Emily Crow,
McBride, Dale, Clarion

Not present:
Patricia Larrick

APPROVAL OF THE MINUTES:
Mr. Steven Russell made a motion to approve the minutes from the May 11 and September 14, 2020 BZA meetings. Mr. Don Marlow seconded. Motion carried and passed 4-0.

NEW BUSINESS
Case No. BZA-07-20
Case #BZA-07-20 was initiated by La Dona Herd, 45 Oxford Ave., Dayton, Ohio. The applicant is requesting a Conditional Use to Article 21, Section 2103(K) to allow a Group Home/Rooming House for youth residence in the “B-3” Business District. The property is located at 3760 Salem Ave. Dayton, Ohio, Harrison Township, Montgomery County.

Staff says the parcel that is property sits on is approximately a third of an acre and that the current use of the site was a daycare facility. She also states that the Zoning Code does not currently have a clear definition for the use that is being requested. The requested use could be classified as a Residential Care Facility for minors, so they would be monitored and have supervising 24/7 and be operated as a residence. The goal would be between 10 to 16 residents. The building currently has 6 existing rooms that could be used as bedroom facilities and the objective would be to have 2 to five residents in each room. There would also be common living areas, classrooms and outdoor spaces for the residents.
Staff then states that there are a couple of conditional uses listed in code for the “B-3” district: a Halfway House and a Rooming House. The staff report outlines the definition of each use and compared that to what the applicant is requesting. Staff states that in her opinion, the “supervised home environment” is more in line with the definition of a halfway house than it is with the definition of a rooming house. Because it is close to a halfway house in its description, it would be regulated by other agencies. The standards for a halfway house require that the applicant identify similar facilities in the vicinity, both within the township and contiguous jurisdictions, and provide that information to the board. She would also need a license, or evidence that she is able to acquire the license to operate the facility.

Staff says that the applicant did submit site plans of the original building, however, they were illegible and therefore copies were not provided to the board.

The township code lists the requirements for halfway houses as:

1. 80 sq. ft. of bedroom area for a single occupancy room, and 60 ft. per occupant if the room is occupied by multiples.
2. 25 ft. of common indoor area for each resident and 60 ft. of outdoor common space.
3. The building would have to pass all of the standard fire safety inspections.

**Recommendations:**

**Option 1:** Conditionally approve the application for a Group Home for Minors on the grounds that the site and building meet the dimensional standards for the B-3 District and the Board finds the proposed use is materially similar to the definition of Halfway House with the exception that the residents are minors and not in residence because of criminal backgrounds, or drug or alcohol dependency with the following conditions.

The applicant:
• Files all required license, and permits from other agencies with the Township.
• Verifies with the Zoning Administrator or Township Administrator that they are providing a minimum of 60 square foot per bedroom per occupant, 25 square feet of common indoor space per resident, and 60 square feet of outdoor space per resident and meet any additional requirements of Children and Family Services for providing residential group housing to minors.
• Verifies that the residents are not permitted to have personal automobiles and the maximum number of employees on the largest shift, as well as the number of any facility vehicles that will be parked on site.

**Option 2:** Continue the hearing in progress to the next meeting before you discuss the application, to allow the applicant and staff time to gather and review the additional information before making your decision on the use.
The applicant, La Dona Herd, 45 Oxford Ave., Dayton, Ohio (3760 Salem Ave) was duly sworn and stated that she is licensed through the state of Ohio and has two other facilities. She contracts with all of the counties in Ohio. She says the residents that she hopes to have will not drive or have cars and will be supervised 24/7. The staff to resident ratio will be 2:5. The building for the proposed use is owned by the applicant and her mom and she has been licensed to operate a daycare center for over 25 years. She states the children come from all counties throughout Ohio and some may be autistic, some may be handi-capable and that the building is handicapped accessible, but she hasn’t previously had any handicapped children. She would have 10-16 children at the facility and there are about 8 rooms total and 5 of those could be classrooms. The facility also has 3 bathrooms. She also states that the residents would be all girls. She also says that as residents leave the facility, others will then come in. She also says that staff would be responsible for getting the residents to outings which may include visits to the park or other family members, the movies or amusement facilities.

There being no one else to speak, Mr. Waldron closed the public speaking portion of the case.

During the Board’s discussion, Board, Mr. Waldron stated that he had some concerns about the proposed facility being in a business district and that if it were more of a residential setting, the proposed use would be a little bit more conducive to the request and feels that the case should be tabled until additional information could be submitted.

After further discussion among the Board, Mr. Marlow made a motion to table Case #BZA-07-20 pending submission of information as listed under Option 2 of the recommendations. Mr. Russell seconded the motion. Motion carried and passed 4-0.

**Case No. BZA-08-20**

Case No. BZA-08-20 was initiated by Dale Gessaman Jr., 6557 N. Main St. The applicant is requesting a Variance to Article 38, Section 3803 (E)(6) to reduce the required side yard setback minimum from three (3) feet to zero (0) feet. The property is located at 6557 N. Main St., Dayton Ohio, Harrison Township, Montgomery County.

Staff says that the site is 1.3 acres, triangular in shape, and situated to the southwest side of N. Main St. The applicant has an existing accessory structure that is currently situated on the property line and possibly over the property line. The garage was constructed in 1998 when the applicant purchased the house, and about 5 years ago the driveways between the two properties were repaved and combined with the agreement of the former owner of the residence of 6537. Two or three years ago, the applicant added a shed/carport on the side of the existing garage and at the time it wasn’t an issue, but more recently the owners of 6537 have questioned whether or not the structure is over the property line, which necessitated the variance request.

**Assessment:**

The triangular shape of the subject property and the original location of the garage and driveway/parking pad at the property line are preexisting conditions.
• The siting of the home creates a limited backyard in which to place accessory structures, the original garage was located as close as possible to the side lot line in alignment with the driveway and parking pad. However, the carport addition was possibly constructed over the shared property line between the two properties and no variance can be approved to allow a building on another’s property. • The neighbor at 6537 N. Main Street does not have any structures in proximity to the property line in question.

• Zero line setbacks are uncommon in the R-2 District as the larger lots tend to allow for significant space for placement of buildings.

• In conversation with the applicant on 10/9/20, he stated that he and the owners of 6537 N. Main Street are willing to replat the parcels so that the garage is fully on the applicant’s property.

Considerations and options for the Board:

1. Hear all testimony and give the applicant the opportunity to withdraw the request and instead take the issue to the county to have the property replated so that the building is fully on his property
2. Approve the Variance as requested
3. Replat the lot but replat it with the building line right at the property line
4. Deny the Variance

The applicant, Mr. Dale Gessaman, 6557 N. Main St., was duly sworn stating the carport & shed is over the property line by about 3 feet and that the shed is very useful to him allowing him to store one of his vehicles and lawn equipment inside, freeing up the big garage for his detailing business. He says that problem with replating the lot is that his neighbor is worried, if she wanted to put up a privacy fence to divide the properties, how that’s going to affect them. Mr. Gessaman says he’s been at the property for 22 years and he and the neighbors had an agreement of putting the pad down and adjoining the driveways. Now that his friend has purchased the neighboring property, there is an issue with the fence and property line. Mr. Gessaman says he would love to keep his shed and carport and will have the lot replated if that is what he needs to do in order to make that happen and make the neighbor happy.

Mr. Waldron explained that with the property line running 3 feet into the shed, granting the variance as requested would not fix the problem. He suggests a conversation with the neighbor, offering to buy the 3ft portion of their property, and then also have that portion of lot replated which would change the property lines. Then he would be able to come back to the board and request the variance. The applicant agreed.

There being no one else to speak on behalf of or in opposition to, Mr. Waldron closed the public speaking portion.
After some discussion among the Board, Don Marlow made a motion to deny Case No. BZA-08-20. Steven Russell seconded. Motion carried and passed 4-0.

**Case No. BZA-09-20**

Case No. BZA-09-20 was initiated by Patricia Martin, 6123 Philadelphia Dr. Ms. Martin is requesting a Variance to Article 39, Section 3909.03 to allow a fence to exceed the 6ft. maximum side yard height requirement. The property is located at 6123 Philadelphia Dr., Dayton Ohio, Harrison Township, Montgomery County.

Staff states that property at 6123 Philadelphia Dr. is zoned “R-2” Single Family Residential and is 1.77 acres on two parcels. It is located on the west side of Philadelphia Dr. between Elm Hill Dr. and Burgess Ave. It has approximately 462 feet of frontage along Philadelphia Dr. and is bordered by homes on Burgess Ave., Elm Hill Dr., and Joyceann Dr. In August, the applicant was issued a citation for violation of the zoning code that “no fence shall be permitted in the front yard that interferes with visibility along a driveway”. The applicant’s justification for the structure is the need to block access from 424 Burgess Ave. prevent removal, trimming and disturbance of the applicant’s trees and shrubs by the neighbor residing at that address. Staff states that she drove out to see the structure and that it appears to be not attached to the existing fence, but is on posts with boards across it and estimates the additional structure to be about 4 to 8 ft. tall on top of the 6ft fence. There is also a stipulation in Section 3909.05 that fences “must be constructed of materials that are processed or manufactured and customarily used for permanent fencing”. The upper portion of the structure appears to be constructed of OSB or plywood and would not comply with this requirement.

**Considerations for the Variance:**

**Denial of the Application for Variance**

With findings that the:

- The situation resulted from the action or actions of the property owner (construction of an unauthorized structure on their property line), the applicant, or any other person or party who has had control of the property, not the enforcement of the fence height regulations.

- The strict application of the provisions of this Resolution from which the variance is requested does not constitute an unnecessary hardship upon the property owner represented in the application as the applicant can still have a 6’ privacy fence on the northern property line, and could install a 3.5’ tall fence around the front of the property with a gate to restrict access to the property.

- If granted the variance desired could adversely affect the public health, safety and morals of the community by blocking air and light from the property at 424 Burgess Avenue and blocking visibility from cars traveling on Philadelphia Road. It could also fall into the property of 424 Burgess Avenue because of its location, height and unpermitted or inspected construction.

- If granted the variance desired would compromise the general spirit and intent of this Resolution by allowing an opaque wall with a height in excess of 10’ in a low density residential neighborhood which encroaches more upon the neighboring property owner’s use and
enjoyment of their property (37 feet from the home at 424 Burgess Avenue, 142 feet from the home at 6123 Philadelphia Drive (applicant’s home).

**Option 2: Conditional approval of a Variance**

Issue a conditional approval of a variance to the Fence Height in a side yard at a dimension specified by the Board with the following conditions:

- Any portion of the fence over 6’ in height must be constructed of treated lumber, coated metal, or durable fencing materials and shall be no more than 40% opaque, and must be designed to be structurally integrated with the portion of the fence that is less than 6’ in height.
- The fence height variance will not extend into the front yard which is a 60-foot-deep rectangle extending west from and parallel to the front property line to the front façade of the home.
- The existing violating structure shall be immediately removed.

If the Board finds that the modified approval of a fence height variance:

- Is not necessitated by the action or actions of the property owner, the applicant, or any other person or party who has had control of the property, but rather the strict enforcement of the fence height regulations.
  - The strict application of the provisions of this Resolution from which the variance is requested constitutes an unnecessary hardship upon the property owner represented in the application.
  - The granted variance would not adversely affect the public health, safety, and morals of the community.
  - The granted the variance would not compromise the general spirit and intent of this Resolution.

The applicant, Ms. Patricia Martin, 6123 Philadelphia Dr., was duly sworn and said that she built the house in 2001 and the neighbor has constantly killed her trees and torn down her trees. Ms. Martin reads a statement to the Board which was included in the packet to the board. After reading the statement, she states that her trees were much taller than her fence and showed pictures to the board stating that someone is coming around to the front of her house destroying her ornamental trees. She also says they’ve been putting poison on the tree. The applicant also says that she has an electric gas fireplace at her back door that is all of a sudden started making a lot of noise. She discovered that it had been pulled loose and stuffed with leaves. She also said she had a camera put up earlier in the season and did see someone in her walnut tree cutting it. She states she continually calls the police and the police just tells her to take them to court, but that she has not done that. She thinks that someone is cutting down her trees on her property line to be able to see into the next neighborhood and complain to the Zoning Department about what the neighbor is doing. When asked by the board what the purpose of a fence that high would be, she says that she hoping it would keep them (the neighbors) from cutting down her trees. When asked, Ms. Martin states she does not have any photographic evidence that the neighbors are cutting down her trees. She says this has been going on since February or March.
Ms. Martin states that she needs the fence to be that tall because they are reaching over her (the neighbor’s) fence and cutting her (the applicant’s) trees which are tall. And the barrier would prevent them from doing that and preserve the trees in hopes that they’ll grow back. Ms. Martin also says that she has not had a landscaping company come out to check if there is any evidence of chemical burns or age of the trees causing the damage.

**Opponents:**
Ms. Kathryn Pullen, 424 Burgess Ave., was duly sworn and stated that she is Ms. Martin’s neighbor. On or about August 1st, Ms. Martin erected the plywood structure and that she and Ms. Martin had previously spoken about the structure which runs the entire length of her back yard and inhibiting her family’s enjoyment and poses a danger to her family since it is constructed of plywood. She also states that all of the police reports the applicant filed against her have been closed with no action. Ms. Pullen also says that she, and another witness who could not be present at tonight’s hearing, have seen Ms. Martin cutting down her own trees. Ms. Pullen tells the board that she has not/would not destroy the applicant’s tree and if it weren’t for those trees, she would have no privacy into her back yard. She hopes the board will deny the variance request.

Mr. Clifford Bernard, 769 Westledge Dr., was duly sworn and says that he has known Ms. Pullen for quite some years and has been her lawn man for the past 5 years. Mr. Bernard says that he has not ever entered into the applicant’s yard and has only cut down trees in Ms. Pullen’s yard when she had her shed installed and never cut any trees over the fence.

Staff then reads a statement of opposition that was mailed in to the township office. The statement is from Ms. Betty Fader of 5516 Joyceann Dr. After staff reads the statement, the applicant states that Ms. Fader is way down on the far end and has had to call the police on her numerous times for coming through the gate and cutting down her trees. She had buckets of poison where she was poisoning the trees.

There being no other to speak behalf of or in opposition to, Mr. Waldron closed the public speaking portion of the hearing.

After some discussion among the board, Mr. Don Marlow made a motion to deny Case No. BZA-09-20. Mr. Steven Russell seconded. Motion carried and passed 4-0.

The applicant, Ms. Martin, asked what her next step would be. Mr. Waldron advised that the issue is a neighborhood situation between two individuals, and it not something the board can rule on. He advised that the place she move forward would be legal and that the fence extension would have to be removed. The timeframe for which to have it removed would be determined by the Zoning Director. Mr. Waldron closed the public speaking portion.
There being no further business to discuss, Mr. Marlow made a motion to adjourn. Mr. Russell seconded the motion. Motion carried and passed 4-0.

Respectfully submitted,

[Signature]
Regina Moore
Administrative Assistant

Harrison Township
Board of Zoning Appeals

[Signature]
Charles Waldron, President

[Signature]
Patricia Larrick, Vice President

[Signature]
Steven Russell

[Signature]
Jerry Barnes

[Signature]
Don Marlow

Attested as to Signatures,

Regina Moore
Administrative Assistant