The meeting of the Harrison Township Board of Zoning Appeals was called to order at 7:00 p.m. on Monday, February 11, 2019.

**Those present:**
Charles Waldron  
Don Marlow  
Steven Russell  
Jerry Barnes  
Justin Riley Olszewski, Zoning Administrator, Development Dept.

**Not present:**
Patty Larrick

**APPROVAL OF THE MINUTES:**
Mr. Don Marlow made a motion to approve the minutes from the Monday, January 14, 2019 BZA meeting. Mr. Steven Russell seconded. Motion carried and passed 4-0.

**OLD BUSINESS**

**Resolution of Agreement Case No. BZA-11-18**
Staff states that this is a resolution to enter into a settlement agreement between the Board of Zoning Appeals and the appellant in Montgomery County Common Pleas Court, Case Number 2018 CV 04562 as stated in Resolution Number 01-2019.

Mr. Don Marlow made a motion to adopt Resolution Number 01-2019. Mr. Steven Russell seconded. Motion carried and passed 4-0.

**NEW BUSINESS**

**Case No. BZA-02-19**
Case# BZA-02-19 was initiated by Steve A. Adams, 2641 Onaota Ave., Dayton, OH 45414. The applicant is requesting a Conditional Use to Article 22, Section 2203(M) to allow outdoor storage within the “B-4” Business District. The property is located at 3206 N. Dixie Dr., Dayton, OH 45414, Harrison Township, Montgomery County, Ohio.
Staff states that the property is located on the north side of Neva Dr. between N. Dixie Dr. and Lodge Ave. The surrounding zoning is “B-4” Business District to the north, west, and south and “I-1” Light Industrial to the east. The surrounding land use is commercial and industrial. Access to the property is off of N. Dixie Dr., Neva Dr., and Lodge Ave. The property consists of a combined single parcel E21-173-03A-0058. Article 4, Section 406.05 lists the general “Standards for Conditional Use”. Article 22, Section 2204(A-K) lists required conditions in the “B-4” Business District. The applicant is proposing to store salvage and other vehicles in association with a legal, non-conforming permitted use at G & R Auto Sales 3206 N. Dixie Dr.

**Discussion**

As stated, the standards for the proposed use are set forth in Article 4, Section 406.05 and Article 22, Section 2204(A-K).

A. Drive-in window for pick-up or delivery shall be located on and accessible only from the premises and shall be provided with adequate drive-way space for waiting vehicles.

**Does not appear to be applicable**

B. All business shall be of retail, service or recreational character. The existing legal non-conforming use as an automobile sales business appears to meet this requirement, the applicant will have to address the board in regards to how the requested outdoor storage will meet this requirement.

C. 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 on the premises. The repair of vehicles and/or treatment of goods could be considered to be incidental to the current use.

D. 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. Site is pre-existing and appears to meet this requirement.

E. 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 area, the grounds shall be planted and landscaped. The existing lot where vehicles are currently stored appears to be a mix asphalt in need of maintenance per the Exterior Property Maintenance Code, gravel, and grass plantings. If approved, the lot would have to be brought into compliance under current standards in order to be considered a conforming use.
F. 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 feet in height.

2. A solid fence of a non-deteriorating material.

3. A Masonry wall.

Property has a fence along Lodge Ave. and technically does not abut a residential district.

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

H. No emission of 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.

I. The emission of smoke or other air pollutants shall not violate the standards and regulations or 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.

J. 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.

K. There will be no vibrations which can be detected without the use of instruments at or beyond the lot lines.

The applicant will have to address to the board the feasibility of compliance with sections G-K
A. The proposed Conditional Use will comply with all applicable regulations of this Resolution, including lot size requirements, development standards and use limitations.

Site now appears to meet this requirement after the re-platting of the 4 parcels.

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

Applicant will be required to submit a storm water control plan to the County Engineer’s office for the surfacing requirements.

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.

Property is pre-existing and has access from 3 different public rights-of-way.

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 will have to address this to the board if the dealership license issued for 3206 N. Dixie extends to the storage/salvage type use for which the outdoor storage use is being proposed.

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.

Board must determine this from all facts and testimony given if the proposed use will meet this requirement.

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.
Board must determine this from all facts and testimony given if the proposed use will meet this requirement.

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

Board must determine this from all facts and testimony given if the proposed use will meet this requirement.

Staff recommends that the Board take all of this information and testimony into consideration, and also stated that in discussions with the applicant, there was some contention as to whether or not the existing site was completely gravel. Staff maintains that the section in question appears to have been asphalt at one time and is currently in disrepair.

The applicant, Mr. Steve Adams, 2641 Onaota Ave., was duly sworn and apologized to the Board for his misunderstanding and absence from the January meeting. He states that per the Boards request from the October 2018 BZA meeting, he has had the property re-surveyed and replotted into one parcel and that the towing company has been removed from the property. Mr. Adams also stated that he did not receive the reploting confirmation from Montgomery County until January 15, 2019 so he would not have had all of the necessary paperwork needed for the January meeting.

He then states that the photograph showing where the vehicles are parked is not his property and is across the street from him. Mr. Adams says the property in discussion has never been blacktopped but has been graveled. He states that there a spots where there is grass growing through the gravel but it has never been blacktopped. When asked by the Board, how much of the existing site is currently covered in asphalt, Mr. Adams replied that just the front half is asphalt and that the remainder is either gravel or sod. He also stated that he did not intend to store any vehicles on the sodded area.

The Board inquired as to what type of business is currently at this location to which Mr. Adams replied that it multi-use which consists of a barbershop, he rents to a social group, some personal storage for himself, and the car lot which is operated by Jim Lockhart. When the Board asked if the car lot would be applying for a salvage license, the applicant stated that he was not sure, and inquired if outdoor storage would be permitted. Staff indicated that is the determination the Board is here to make today.

Mr. Adams stated to the Board that he has put up privacy fencing and that the stored vehicle cannot be seen from the road unless the gate is open, and he would be willing to put up additional fencing should the Board request it.
The applicant then states that he was under the impression from the first hearing that if he did the two things asked of him by the Board, that the Conditional Use would be granted. He also says having to asphalt the area in question would be very costly and was of the understanding that gravel was satisfactory for that area. He then stated that should the Conditional Use request for outdoor storage not be granted, he may possibly lose a tenant in the car lot.

Ms. Debbie Hill, Centerville, Ohio, was duly sworn and stated that she is the applicant’s sister and said that when they were here last fall, she was under the impression that the outdoor storage was grandfathered in and that it was a technicality that it wasn’t a part of the same parcel.

Ms. Donna Mullinax, Woodmore Ave., was duly sworn and stated that she was looking for clarification on what part is grandfathered in and what part is the Conditional Use being asked for. She also stated that they have been getting rent from the car lot, not knowing that the outdoor storage wasn’t permitted, they could lose him as a tenant if not granted which would hurt them financially.

Mr. Adams then stated he wishes he had been given more information at the original hearing and that he’s put out a lot of money on the two conditions that he thought were the only conditions needing to be met in order for the Conditional Use to be granted. He said he feels there are now different obstacles being presented, that had he known about earlier, he may not have paid for the lots to be combined and replotted. The Board feels that all information was presented to the applicant at the original hearing.

There being no one to speak in opposition, Mr. Charlie Waldron closed the public speaking portion of the meeting.

After some discussion among the Board, Mr. Jerry Barnes made a motion to deny BZA Case Number 02-19. Mr. Don Marlow disagreed with the motion to deny and the motion was not seconded. Mr. Waldron stated that the Board should go over the case findings of fact before making a motion.

After going over the findings of fact, Mr. Don Marlow made a motion to indefinitely table BZA Case Number 02-19. Mr. Steven Russell seconded. Motion carried and passed 4-0.
There being no further business to discuss, 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

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Regina Moore
Administrative Assistant

Charles Waldron, President

Patricia Larrick, Vice President

Steven Russell

Jerry Barnes

Don Marlow

Attested as to Signatures,

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Regina Moore
Administrative Assistant