The meeting of the Harrison Township Board of Zoning Appeals was called to order at 7:00 p.m. on Monday, April 8, 2019.

Those present:
Charles Waldron
Don Marlow
Patty Larrick
Steven Russell
Jerry Barnes

Justin Riley Olszewski,
Zoning Administrator, Development Dept.

APPROVAL OF THE MINUTES:
Mr. Steven Russell made a motion to approve the minutes from the Monday, March 11, 2019 BZA meeting. Ms. Patty Larrick seconded. Motion carried and passed 5-0.

NEW BUSINESS
Case No. BZA-03-19
Case# BZA-03-19 was initiated by John Scott, 5440 N. Dixie Dr., Dayton, OH 45414. The applicant is requesting a Conditional Use to Article 32, Section 3303(GG) to allow outdoor storage associated with a permitted use within “CS-2” Commercial Service District. The property is located at 4633 N. Dixie Dr., Dayton, OH 45414, Harrison Township, Montgomery County, Ohio.

Staff states that the property is located at 4633 N. Dixie Dr. The property is located on the west side of N. Dixie Dr., between Coronette and Koehler Aves. The surrounding zoning is “CS-2” Commercial Service District. The surrounding land use is commercial to the north and south, residential to the east, and the City of Dayton to the west. The property’s current land use tax code is “Vacant Residential Land”. Access to the property is a single drive apron off of N. Dixie Dr. Article 4, Section 406.05 lists the general “Standards for Conditional Use”.
Article 332, Section 3304 (A-H) lists required conditions in the “CS-2” Commercial Service District. The applicant is proposing to store dirt, mulch, and top soil associated with the permitted use of a landscaping business at 5440 N. Dixie Dr.

**Discussion:**
There are two sections of the Zoning Resolution we must consider when entertaining a conditional use request in the “CS-2” District. Section 3304 (A-H) “Required Conditions” which enumerates the required conditions for the specific use in the “CS-2” Commercial Service District and Section 406, “Standards for Conditional Use” which enumerates the general standards to consider for any conditional use application. The following is the list of required conditions in the “CS-2” District that must be met in order to obtain a conditional use permit:

**Required Conditions:**

In addition to other applicable requirements contained in this zoning resolution, the following standards shall apply to all uses within the “CS-2” District:

A. Outdoor Storage – Except as hereinafter specified, all outdoor storage shall be prohibited.
   **Applicant is requesting an exemption from this requirement to allow for the outdoor storage of landscaping materials.**

B. Business Activity Enclosed – All business activity shall be conducted wholly within a completely enclosed building.
   **Applicant must address this to the board. If granted, the storage of materials would be permitted, the point-of-sale and/or business transaction would have to be conducted at the principal use location or elsewhere.**

C. Exterior Building Materials – The exterior building wall face oriented towards the front lot line shall be constructed with a minimum of fifty percent (50%) decorative brick or block, stone, wood/vinyl siding or similar building materials. No more than fifty percent (50%) of the exterior building wall face oriented towards the front lot line shall be constructed with a metal sheeting or similar building materials.
   **No buildings or structures proposed. Site already has a principal structure in the form of an advertising sign.**

D. Storage of flammable materials – 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 or conditionally permitted use, and when such storage meets all applicable state and local regulations governing such storage.
Applicant has been in contact with the township fire inspector in regards to compliance with sections 2807 and 2808 of the Ohio Fire Code. Applicant must continue to remain in compliance with said codes. (See attached).

E. Storm Water Control – All uses within the “CS-2” District shall be provided with adequate drainage facilities and a storm water run-off control plan that meets the design requirements of the Montgomery County Engineer’s Office. Applicant must address the ability to meet this requirement to the board. No certificate of zoning compliance will be issued without an approved drainage plan.

F. Lighting – Exterior lighting shall be shaded wherever necessary to avoid casting direct light upon property located in any residential district or upon any public right-of-way. Site is surrounded by similar zoning and does not appear to have any external lighting.

G. Residential Uses Prohibited – No building or structure shall be used for residential purposes, except that a watchman or custodian may reside on the premises. There are currently no habitable structures on the premises and the principal structure is an advertising sign.

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

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. The lot currently confirms to development standards.

B. Adequate utility, drainage and other such necessary facilities have been or will be provided. Applicant must address the ability to meet this requirement to the board. As previously stated, no certificate of zoning compliance will be issued without a drainage plan 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.

The side currently has one curb-cut and drive access on N. Dixie Dr. The Board must determine if this singular access point is sufficient for the volume of activity and impact the proposed use will have.

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.

The applicant must address this to the Board if it applies.

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.

Requirement is not 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.

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 unreasonable hinder or discourage the appropriate development, use and enjoyment of adjacent land, buildings and structures.

The site currently has one non-conforming 6’ chain-link/wire-type fence with a gate. In order to conform to current fence regulations, screen, slats, blinds or other measures of obscuring the view of the property from adjacent properties or the public right of way is required.
H. The Conditional Use desires 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 if the board grants this conditional use, that the following conditions be applied.

1. That a wheel washing system be installed and regularly used to minimize the amount of dirt, debris, and other materials to be tracked or moved into the public right of way by vehicles accessing the site. Please refer to the attached correspondence from the Montgomery County Engineer’s office to the applicant regarding incidents relevant to this request.

2. That every effort be made by the applicant to ensure that all loads to and from this property be adequately secured in compliance with Section 4513.31 of the Ohio Revised Code. Please refer to the attached correspondence with the Montgomery County Sheriff’s Office regarding incidents relevant to this request.

3. That the applicant not contest any motion or activity by the Township, School District, or other permitted entity to contest, petition, or otherwise change the land use tax code from “Vacant Residential Land” to “Commercial” by the Montgomery County Auditor and/or the Board of Revisions.

Additionally, Staff recommends that the Board take all information and testimony into consideration.

The applicant, Mr. John Scott, 5440 N. Dixie Dr., was duly sworn and stated that he started his lawn landscaping business in 1986 and then started demoing houses in 2008. He currently has about 45 full time employees. Mr. Scott says that his lot is primarily used to store dirt and when a house is demolished, he back fills it there. He then states that he tries to ensure that the streets are clean and has invested in a rumble strip which will knock the dirt off of the tires before the trucks go out onto the street. He also says that the truck traffic flow varies daily. Mr. Scott states there will be screen installed along the fence so people will not be able to see inside and that there are no flammable liquids or gases stored on the property.

Opponents

Ms. Judy Arnett, 2100 Rector Ave. was duly sworn and said she lives directly across from where the applicant parks his trucks she feels to board would be making a big mistake by granting this conditional use request.
She also says that the trucks traveling up and down School Dr. produce dust and fumes while her grandchildren are out playing in the yard. She states she’s lived in her home since 1977 and that the applicant’s business make it difficult to sit outside and makes the houses in the area dirty, and make noise all hours of the night. She also feels that the applicant does not clean the road as often as he had stated.

Mr. C. D. Arnett, 2100 Rector Ave. was duly sworn and states he doesn’t understand how the applicant was granted to different zonings for one address. He says one is a daycare and the back end is trucks. He also says the applicant had dirt and trash piled up against the fence at the back end of the property. He also reiterated that Mr. Scott does not clean the streets as he’d previously stated.

Mr. Scott was called back to the podium and stated that he’d purchased a house at 5445 School Dr. that he tore down, and that is the reason that the trucks seen in the photos presented by Mrs. Arnett were traveling School Dr. and his dump truck rarely use School Dr. He also says that the pile of dirt referred to by Mr. Arnett is approximated 50 tons of salt and the salt pile is covered with a tarp.

When asked about the operating hours, Mr. Scott says his two mechanics are usually there from seven in the morning to five in the evening and occasionally on the weekends, and if it snows the crew may come in at two or three in the morning to do snow removal. There is one person that serves as security that resides on the property.

Mrs. Arnett approached the podium and stated that there are people working on the applicant’s trucks late at night and early in the morning and that Mr. Scott saying that the workers don’t come in until seven or seven thirty is not true. She also says that the drivers have told her that Mr. Scott allows people other than his workers to park their trucks on the lot. The being no one else to speak in opposition of, Mr. Waldron closed the public speaking portion.

After additional questions to staff and discussion among the board, Ms. Patty Larrick made a motion to approve BZA Case #03-19 with conditions. Conditions being; a wheel washing system be installed and regularly used, applicant will ensure that all loads are adequately secured, applicant will not contest any motion or activity by the Township, School District, or any other permitted entity to contest, petition or otherwise change the land use tax code, operating hours of 7:00 am-5:00 pm, and not storage of vehicles or hazardous materials. Mr. Don Marlow seconded the motion. Motion carried and passed 4-1.
Case No. BZA-04-19
Case# BZA-04-19 was initiated by Summit Location, P.O. Box 1092, Dayton, OH 45401, on behalf of DRT Investments LLC, 2421 Arbor Glen Ct., Dayton OH 45414. The applicant is requesting a Variance to Article 41, Section 4105.03(B)(1) to allow for the placement of an advertising sign with a total sign area in excess of the calculated maximum. The property is located at 5515 N. Main St., Dayton, OH 45415, Harrison Township, Montgomery County, Ohio.

Staff states that the property is located on the west side of N. Main St., south of Macy St. The property is currently zoned “B-3” Business. The surrounding zoning is “R-2” Single Family Residential to the south, “OR-1” Office/Residential and “B-1” Neighborhood Business to the west, and “B-3” to the north and east. The surrounding land use is commercial to the north, east and west, and residential to the south and west. The property currently operates as the parking lot to the Shiloh Grille, a private club use to the north. Article 219.03 (A) defines an advertising sign as “a sign which directs attention to a use, commodity or service not related to the premises on which the sign is located”. Article 41, Section 4105.03(B)(1) states “Advertising sign area is determined by using the distance to the nearest common wall with an adjoining use or the nearest property line (whichever is closer). Multiply the first fifteen (15) feet or portion thereof times (5); the next ten (10) feet or portion thereof times four (4); and the remainder times three (3) to obtain permitted square footage of the advertising sign”. The parcel is approximately 52’ wide resulting in a maximum permitted sign area of 196 sq. feet (15’x5, 10’x4, 27’x3=196). The plans submitted with the application indicate that the free-standing advertising sign consist of four 8’ x 20’ panels totaling 640 sq. ft. of sign area.

Discussion and Alternatives

Staff indicates that this is not a request to allow the advertising sign, but rather to allow the sign area to exceed the calculated maximum. The Boards alternatives are as follows:

1. Approve the variance as requested and allow an advertising sign in excess of the permitted maximum.
2. Deny the variance as requested. This would still permit the advertising sign, but it would be limited to a total of 196 square feet.

Recommendation:

Staff recommends the board take all information and testimony into consideration.

Mr. Brad Carpenter, on behalf of Summit Locations, P.O. Box 1092, Dayton, Ohio was duly sworn stated that Summit Locations is a new company started approximately six months ago. He also states that the owner of the company got his first billboard in Clark County and now has a total of 550 throughout the state of Ohio. Mr. Carpenter says they are wanting to build an advertising sign that would be primarily used for small businesses and would be used to advertise for local businesses. He says there will be no advertising of anything non-family friendly, drugs, alcohol, or adult content.
The applicant feels that the permitted 196 square footage is not enough for the company to make the billboard sellable and in order be competitive with other sign companies in the area, they would need to have a larger sign. The sign they are looking to place would consist of a 25 ft. pole with a four panel board, each panel being 8 x 20 with LED lighting to illuminate. Mr. Carpenter feels that if only allowed the permitted 196 square feet for the sign, the owner most likely would not build.

Ms. Mary K. C. Soter, 5518 N. Main St, was duly sworn and stated that she owns the law office across the street from the proposed location and asked if DRT Investments was purchasing the Shiloh Athletic Club. Staff stated that DRT Investments is the current owner of record. Ms. Soter then asked what would be put on the sign.

There being no proponents or opponents to speak, Mr. Waldron closed the public speaking portion of the hearing.

After some discussion among the Board, Mr. Don Marlow made a motion to deny BZA Case #04-19. Mr. Jerry Barnes seconded. Motion carried and passed 5-0.

**Case No. BZA-05-19**
Case# BZA 05-19 was initiated by Thomas J. Sterrett, 5724 Frederick Pike, Dayton, OH 45414. The applicant is requesting a Variance to Article 38, Sections 3803(D) to allow for a third accessory structure to be located on the property and 3803(E)(4) to allow said structure to be in excess of 200 square feet in area. The property is located at 5724 Frederick Pike, Harrison Township, Montgomery County, Ohio.

Staff states that the property is located on the east side of Frederick Pike, north of Needmore Rd. The property is currently zoned “R-2” Single Family Residential. The surrounding zoning is “R-2” Single Family Residential. The surrounding land use is residential. The site is currently a residential dwelling with 2 existing detached structures: one “Log Guest House” measuring 528 sq. ft. in area, and one “Log Storage Shed” measuring 648 sq. ft. in area. The parcel is approximately 1.82 acres. Article 38, Section 3803(D) states “There shall be no more than two (2) accessory buildings on a lot in a residential zone”. Article 38, Section 3803(E)(4) states “Detached accessory buildings other than garages shall not exceed two hundred (200) square feet”. The applicant is proposing to build a 1,280 sq. ft. pole barn along the northwest property boundary, in the rear yard. The property is landlocked with a 12’ wide driveway access easement on 5720 Frederick Pike and is not visible from the public right of way.
Discussion and Alternatives

The Board’s alternatives are as follows:

1. Approve the Variance as requested and allow the modifications as stated to the development standards.

2. Deny the Variance as requested.

Recommendation:

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

At 8:23 pm, Mr. Steven Russell recused himself from hearing Case# BZA 05-19.

The applicant, Mr. Thomas Sterrett, 5724 Frederick Pike, was duly sworn and said that he has a few classic vehicles and a wooden boat and that two garages currently on the property do not allow enough room for storing these vehicles. He says that by getting the third accessory structure, he would be able to store these and other items inside.

Proponents:

Mrs. Terry Mogle, 5744 Frederick Pike, was duly sworn saying she lives to the west of Mr. Sterrett and that she has no opposition to what he is proposing.

Mr. Arthur Siwecki, 5550 Frederick Pike, was duly sworn and stated he just purchased his property and that he is fine with the applicant building the shed.

There being none other to speak for or against, Mr. Waldron closed the public speaking portion of the hearing.

After some discussion among the Board, Ms. Patty Larrick made a motion to approve Case# BZA-05-19. Mr. Don Marlow seconded the motion. Motion carried and passed 4-0.

There being no other cases to be heard, Mr. Don Marlow made a motion to adjourn the meeting. Ms. Patty Larrick 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