



City of Dayton

Board of Zoning Appeals

Minute Record Overview

January 24, 2022
4:30 P.M.

Planning Resource Conference Room, City Hall
101 W. Third Street, Dayton, Ohio

Members Present: Mr. Tim Bement, Mr. Anthony Ciani, Ms. Jaqueline Patterson, Mr. Patrick Martin, and Ms. Diane Graham

Members Absent: Ms. Lisa Tingle and Mr. David Brand

Mr. Ciani called the meeting to order at 4:30 P.M. A motion was made and seconded to approve the minutes of the December 20th, 2022 with the change that Mr. Martin, who recused himself for case PLN2022-00459, be reflected in the minutes

1. PLN2022-00460 – A Use Variance and Bulk/Area Variance application to allow the property located at 68 Burkhardt Avenue to be utilized as a retail store in a Mature Residential (MR-5) Zoning District. The applicant is also requesting a variance to reduce the amount of required off-street parking.

Applicant: Karma Humphrey
4527 Wilmington Pike #1
Kettering, OH 45440

Priority Land Use Board: Northeast Burkhardt

Decision: Approved with Conditions

2. PLN2022-00489 – A Use Variance request to allow an existing garage to be repurposed as an accessory dwelling unit (ADU) and a Variance request to allow for an off-street parking space to be surfaced with gravel in a Campus-Institutional (CI) zoning district at 342 Wyoming St. (parcel ID R72 02804 0024), a single-family dwelling in the University Park planning district.

Applicant: Jonathan Jones
341 Wyoming St
Dayton OH 45410

Priority Land Use Board: Downtown Planning District: University Park

Decision: Approved with Conditions

3. PLN2023-00091 – A Conditional Use application for the construction of an outdoor utility substation for parcel R72317114 0002 within the Business Park Zoning District (BP) and located in the Little Richmond Planning District. The substation is associated with a solar electricity project encompassing a fenced area of 263 acres within the City of Dayton.

Applicant: Gem City PV I, LLC
7500 College Boulevard Suite 400
Overland Park, KS 66210

Priority Land Use Board: West Planning District: Little Richmond

Decision: Approved as submitted

4. PLN2023-00001 – A Conditional Use request by 1451 Troy Street Investment LLC, to operate a vehicular fueling station with accompanying convenience store for the property located at 1451 Troy street within the I-1 Light Industrial Zoning District.

Applicant: 1451 TROY STREET INVESTMENT
LLC
7030 Poe Ave Bldg A
Dayton, OH 45414

Priority Land Use Board: Northeast
Decision: Denied

Planning District: Old North Dayton

The Board of Zoning Appeals meeting was adjourned at 6:20 P.M.

Minutes approved by the Board of Zoning Appeals on February 28, 2023.

Jeff Green, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record
January 24, 2023

1. BZA CASE# PLN2022-00460 – 68 Burkhardt Ave

A Use Variance and Bulk/Area Variance application to allow the property located at 68 Burkhardt Avenue to be utilized as a retail store in a Mature Residential (MR-5) Zoning District within the Burkhardt Planning District. The applicant is also requesting a variance to reduce the amount of required off-street parking.

Applicant	Karma Humphrey 4527 Wilmington Pike #1 Kettering, OH 45440
Owner	Kenyan Nichols 40 College Street Dayton OH 45402
Existing Land Use and Zoning:	Vacant Property; MR-5 Mature Residential
Surrounding Land Use and Zoning:	North – Residential; MR-5 Mature Residential South – Residential; MR-5 Mature Residential East – Residential; MR-5 Mature Residential West – Vacant Land; MR-5 Mature Residential
Land Use Committee:	Northeast
Planning District:	Burkhardt
Planning Staff Contact:	Jeff Green

Mr. Green presented the case.

The applicant, Karma Humphrey, requests Use Variance and Bulk/Area Variance approval to allow the property located at 68 Burkhardt Avenue to be utilized as a retail store in a Mature Residential (MR-5) Zoning District within the Burkhardt Planning District. The applicant is also requesting a variance to reduce the amount of required off-street parking.

Mr. Green presented an overview of the proposal and the site. Mr. Green provided context on the location, zoning, and character of the surrounding area and street. He shared images of the site plan and subject property. He shared the public comments received regarding the case.

Mr. Green detailed the history of the building and how such an establishment may fit in with the surrounding community and noted some conditions could be placed on the site due to the residential character of the nearby properties. Mr. Green went over the proposed enhancements to the site.

Mr. Green went over the requested variance to reduce the amount of parking to 0 spaces. He noted that on-street parking is sufficient for this area and the intended use was a neighborhood store meaning many of the customers would bike, walk, or also ride a bus. Mr. Green stated that staff would recommend bike parking be added in lieu of vehicle parking as it would make the site multi-modal.

Mr. Green shared stated that staff would recommend approval with 3 condition:

- 1) Trash receptacle with enclosure be added to meet city standards
- 2) 5 bicycle parking spaces meeting city standards be added in lieu of vehicular parking spaces
- 3) Business hours be limited from 9 AM – 9 PM.

Mr. Green’s recommendation was based on his analysis of the Standards for a Use Variance and Bulk/Area Variance.

Public Testimony

Karma Humphrey, 4527 Wilmington Pike Kettering (applicant), explained the proposal and her rationale for the application.

Ms. Graham asked about the street trees. Mr. Green noted that it is shown on the submitted site plan and would be followed.

Mr. Bement asked about the restriction to the hours of operations. Ms. Humphrey clarified they are ok with this restriction.

Board Discussion

Mr. Bement noted he believed the request to be reasonable and the conditions being recommended by staff would make sense.

Board Decision

A motion was made by Ms. Patterson and seconded by Mr. Bement and carried to determine that is clear and convincing evidence to make the specified findings required under R.C.G.O. §150.120.10 (D)(1) and §150.120.10(D)(2) and approve the application as submitted for a Use Variance and Bulk/Area Variance with conditions:

- 1) Trash receptacle with enclosure be added to meet city standards
- 2) 5 bicycle parking spaces meeting city standards be added in lieu of vehicular parking spaces
- 3) Business hours be limited from 9 AM – 9 PM.

Mr. Bement	Yes	Ms. Tingle	Absent
Mr. Brand	Absent	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Yes		

Approved by the Board of Zoning Appeals on February 28, 2023.

Jeff Green, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

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4. BZA CASE # 2022-00489 – 342 Wyoming St.

A **Use Variance** request to allow an existing garage to be repurposed as an accessory dwelling unit (ADU) and a **Variance** request to allow for an off-street parking space to be surfaced with gravel in a Campus-Institutional (CI) zoning district at 342 Wyoming St. (parcel ID R72 02804 0024), a single-family dwelling in the University Park planning district.

Applicant	Jonathan C Jones 1506 Autumn Honey Ct., Apt. C Richmond, VA 23229
Owner	Same as Applicant
Existing Land Use and Zoning:	CI, single-family dwelling
Surrounding Land Use and Zoning:	South/East/West: CI, multi- and single-family dwellings, University of Dayton student housing North: MR-5, multi- and single-family dwellings 1 block West: CI, The Flight 1 block East: OS, Woodland Cemetery
Land Use Committee:	Downtown
Planning District:	University Park
Historic District:	NA
Planning Staff Contact:	Jen Hanauer

Mr. Kroeger presented the case for Ms. Hanauer.

The subject property was built as a single-family home and has an existing garage that is proposed to be converted to an ADU. ADUs have recently been added to the Zoning Code as a Conditional Use in residential districts, but they remain a Use Variance in CI districts, such as this. Mr. Kroeger said that it is not common for a single-family dwelling to be zoned CI. The Flight student housing is being completed just to the west of the subject property on Wyoming. Photos of the subject property show drainage issues in the alley and an existing gravel parking area behind the single-family dwelling adjacent to the west. Mr. Kroeger said that the addition of an ADU does not come with additional parking requirements, but the applicant is proposing to add a gravel parking space that will require a Variance. Mr. Kroeger also said that a more detailed floor plan for the ADU could be a condition of approval.

The Greater Downtown Priority Land Use Board met to discuss the application and voted unanimously to recommend approval. Staff received no comments from neighbors or property owners.

Mr. Kroeger said that ADUs were added to the Zoning Code to allow for more flexibility in housing. He clarified that while ADUs require a Use Variance in CI, ADUs require only a Conditional Use in all residential zones. Mr. Kroeger said that while a Use Variance carries a higher standard, the situation here is unique in its location and proximity to both single-family and CI uses.

Mr. Kroeger asked the board to consider the current condition of the alley and the nearby gravel parking area when making a determination regarding the Variance for the proposed off-street parking space to be paved with gravel. Mr. Kroeger said that staff generally recommends against using gravel for parking surfaces.

Staff recommended approval of the Use Variance as submitted with the following condition:

1. A floor plan showing the requirements for an ADU per Section 150.200.2(B) shall be submitted and approved by Planning staff prior to construction of the ADU.

Staff recommended denial of the Variance to allow for off-street parking to be surfaced with gravel.

Mr. Martin asked if smoke detectors and sprinklers are required. Mr. Bement replied that if there is a sleeping area, smoke detectors would be required. Mr. Martin asked if ADUs are inspected by the City, and Mr. Bement replied that owners must comply with the Residential Code of Ohio.

Mr. Martin asked if there is anything keeping the owner from parking on the grass. Mr. Kroeger replied that no one should park on an unpaved surface and that citations can be issued for doing so. Mr. Martin clarified that if the Variance application is denied, the Applicant cannot simply park on the grass. Mr. Bement said that in this particular case, he would be okay with the gravel, in part because of the drainage issues in the area. Mr. Kroeger clarified that while the Applicant would not be required to add additional parking for the ADU, there is an off-street parking space requirement for single-family dwellings that would be retained by adding a space.

Public Testimony

Mr. Green pointed to the narrative that the Applicant had sent in the event that he could not make it to the meeting in time.

No one from the public requested to speak on the case.

Board Discussion

Mr. Martin said that the board is fine with the ADU, so the question is the parking space. He believes it should be paved appropriately, but given Mr. Bement's expertise on the subject, Mr. Martin will defer to him.

Board Decision

A motion was made by Mr. Bement and seconded by Mr. Martin and carried to determine that there is clear and convincing evidence to make the specified findings required under R.C.G.O. §150.120.10 (D)(1) and §150.120.10(D)(2) and approve the application as submitted for a Use Variance and Bulk/Area

Variance with the following condition:

1. A floor plan showing the requirements for an ADU per Section 150.200.2(B) shall be submitted to and approved by Planning staff prior to construction of the ADU.

Mr. Bement	yes	Ms. Tingle	absent
Mr. Brand	absent	Ms. Patterson	yes
Ms. Graham	yes	Mr. Ciani	yes
Mr. Martin	yes		

Approved by the Board of Zoning Appeals on February 28, 2023.

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Board of Zoning Appeals



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3. BZA CASE # 2022-00491 – Little Richmond Solar Project Substation

A Conditional Use application for the construction of an outdoor utility substation for parcel R72317114 0002 within the Business Park Zoning District (BP) and located in the Little Richmond Planning District. The substation is associated with a solar electricity project encompassing a fenced area of 263 acres within the City of Dayton. Solar panels are a permitted use in the Business Park (BP) zoning district.

Applicant	Gem City PV I, LLC 7500 College Blvd. Suite 400 Overland Park, KS 66210
Owner	Heck Ohio Investment LTD PO Box 10064 Dayton, OH 45402
Existing Land Use and Zoning:	Agricultural; Business Park (BP)
Surrounding Land Use and Zoning:	North: Wooded area/Agricultural; Business Park (BP) South: Vacant Land (in the City of Trotwood); Medium Single Family Residential (City of Trotwood Zoning) East: Agricultural/proposed solar panel area; Business Park (BP) West: Agricultural; Light Industrial (City of Trotwood Zoning)
Land Use Committee:	West
Planning District:	Little Richmond
Planning Staff Contact:	Tony Kroeger

Prior to the beginning of this case, board member Patrick Martin recused himself from the case and left the room.

Tony Kroeger presented the case.

The subject property – along Olive Road, approximately 1,000 feet north of Hoover Avenue – is proposed to contain a utility substation and switching station (also referred to collectively as “**the substation**” here forth). These facilities are associated with a proposed solar electricity project, which includes an area of

263 acres enclosed by a fence that will contain solar panels. The highest point of the facilities will be approximately 60 feet. The operator is to be TED Renewables.

The solar panels are a permitted use in the Business Park (BP) zoning district; therefore, they are not directly part of the Conditional Use request. Rather, the substation/switching station is the subject of the request.

Prior to 2009, solar electricity was not mentioned in the zoning code. In 2009, “solar electricity structures” (along with other solar installation types) were defined in the zoning code, and zoning districts where they could be permitted were established. It was at that time it was determined that solar electricity structures would be permitted with regulations in the BP zoning district. Utility substations, in contrast, have been a conditional use since the adoption of our current zoning code.

There is a portion of the prospective solar panel area that is not zoned BP. That applicant will seek to rezone that area as a future separate request to Plan Board. An approval of this conditional use request would not impact that future rezoning request.

The current land use for the substation is agricultural land. This location was chosen for the substation due to its proximity and access to a 69 kV transmission line on the parcel.

In addition to BZA approval of the substation, permits and oversight will occur through AES as well as being governed by National Electrical Code.

The plan for the substation and other site elements appears to meet zoning code standards. The associated panels will have to do so as well or seek a variance. The both the substation and switching station facilities will each be surrounded by a chain link fence and barbed wire, which are requirements typical for major utility facilities, due to National Energy Code regulations. In this instance, the fence will be setback approximately 100 feet from Olive Road, which will reduce the visual impact along with the proposed screening, which is in the form of evergreen arborvitae trees. Note that the fence will tightly surround the facilities – there is not fence proposed around the entire perimeter of this parcel, including along Olive Road.

The proposed substation is necessary for the rest of the project – the panels -- to serve any purpose. While the facilities will be visible from the right-of-way and there is no practical way for a utility substation to look appealing, the impact is mitigated by the relative absence of surrounding active land uses. The closest land use that is not agricultural is the property immediately to the south, which consists of pavement area formerly used as a parking lot, and a concrete slab which used to have a building on it.

The West Priority Land Use Board met on January 19, 2023, voting to recommend that the BZA approve the applicant’s proposal by a 5 to 1 vote.

Letters of support for the overall project have been received from the University of Dayton, the City of Dayton Environmental Advisory Board (EAB), and Green Energy Ohio.

Public Testimony

Robert Ballinger, an attorney at Coolidge Wall at 33 West First Street, Suite 200, Dayton, Ohio, and speaking as part of the applicant team, presented on behalf of the project. He noted that the solar energy structures are a permitted use, which the substation is a conditional use. However, the solar energy structures require the substation if they are to be of any use. They view the substation as more of an

accessory use. He showed maps and images of the site, discussing screening, the existing transmission line, and the visual impact of the substation.

Ian Edwards of TED Renewables at 7500 College Blvd., Suite 400, in Overland Park, KS, spoke next as part of the applicant team. He discussed the structure of TED Renewables and their parent companies. He also talked about the project itself – it includes land agreements on 600 acres, but solar project area of about 260 acres. He talked about the timeline for the project, which includes a goal of starting construction in the second quarter of 2024. He shared the benefits of solar energy. He discussed the expected benefits to the community – including clean energy to over 13,000 homes in the Dayton area. Finally, he talked about community outreach efforts, including an upcoming open house with the community.

Mr. Bement asked about what the maximum buildout would be, since they have 600 acres under option. Mr. Edwards described that is about flexibility – the amount of acreage with solar would not increase.

Mr. Bement asked solar capacity and transmission. Mr. Edwards said that through this project, all of the electricity will flow into the Dayton area grid.

Board Discussion

Mr. Ciani asked for the board’s opinion on the request. Mr. Bement felt that it is well thought-out and noted the use of screening to mitigate visual impact. The board agreed. Mr. Ciani asked if there were recommended conditions from staff. Staff said that there were none.

Board Decision

A motion was made by Mr. Bement and seconded by Ms. Patterson and carried to determine that there is adequate evidence to make the specified findings required under R.C.G.O. §150.535 and approve the application as submitted for Conditional Use.

Mr. Bement	Yes	Ms. Tingle	Absent
Mr. Brand	Absent	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Abstain		

Minutes approved by the Board of Zoning Appeals on February 28, 2023.

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4. BZA CASE# PLN2023-00001; 1451 Troy Street

A Conditional Use request by 1451 Troy Street Investment LLC, to operate a vehicular fueling station (gas station) with accompanying convenience store for the property located at 1451 Troy Street within the I-1 Light Industrial Zoning District.

Applicant	1451 Troy Street Investment LLC 7030 Poe St Dayton, OH 45414
Owner	1451 Troy Street Investment LLC 7030 Poe St Dayton, OH 45414
Existing Land Use and Zoning:	Vacant Property; I-1 Light Industrial
Surrounding Land Use and Zoning:	North – PNC Bank; I-1 Light Industrial South – Restaurant/Health Center; EGC Eclectic General Commercial East – Oberer Flowers; EGC Eclectic General Commercial West – Office Building; I-1 Light Industrial
Land Use Committee:	Northeast
Planning District:	Old North Dayton
Planning Staff Contact:	Jeff Green

Mr. Green presented the case.

The applicant, 1451 Troy Street Investment LLC, requests Conditional Use approval to operate a vehicular fueling station (gas station) with accompanying convenience store for the property located at 1451 Troy Street within the I-1 Light Industrial Zoning District.

Mr. Green presented an overview of the proposal and the site. Mr. Green provided context on the location, zoning, and character of the surrounding area and street. He shared the public comments received regarding the case.

Mr. Green noted that the request originally included variances, but the applicant has revised the proposal to better meet the intent of the code. He explained the changes to the plan and how it had evolved over time based on staff and resident feedback. Mr. Green shared the most recent plans and elevations for the proposed project.

Mr. Green emphasized that the proposed request would meet all supplemental standards and the use is appropriate given the commercial/industrial nature of the surrounding properties and Troy/Stanley Street. Mr. Green went over the standards for conditional use, emphasizing 150.535(A) noting that the proposed use would be harmonious with the prevailing and intended character of the general vicinity.

Mr. Green stated that staff would recommend the proposed Conditional Use be approved with the following plans:

- Site Plan – Dated 1-23-23
- Landscaping Plan – Dated 1-23-23
- Building Elevations – Dated 1-19-23
- Canopy Plans – Dated 1-19-23

Public Testimony

Larry Keith, 4775 Burdsall Road (Williamburg OH), identified himself as the applicant's architect. Mr. Keith explained the project and how the plan was developed and the issues that were addressed after receiving feedback.

Mr. Martin asked whether a specific species of tree was permissible. Mr. Kroeger stated it was not on the zoning codes prohibited tree list.

Randy Takhar, 7030 Poe Ave (Dayton OH 45414), owner of the site. Spoke on the truck parking on the site and other uses that illegally occupied the site. He noted that if approved the active business would likely not allow for people to illegally utilize the site.

Matthey Tepper, 702 Troy St (Dayton), identified himself as president of the Old North Dayton Neighborhood Association. Explained the neighborhood was opposed to the request due to the site plan not being harmonious with the neighborhood. Neighborhood believes traffic problems will persist and truck traffic will be a problem. Neighborhood also believes the property was purposefully put into a state of neglect when the Grocery land was present. Mr. Tepper stated he requests the board not approve the proposal.

Matthew Arnovitz, 753 Ashton Circle (Dayton), identified that he owns the property directly to the west. Clarified why they requested fencing along the property line and the type of fencing they would like. Noted they did not like the it being a vacant lot.

Nathan Shields, 1121 Troy St (Dayton), Opposed to the request. Believes to many gas stations exist in the area in the and that the proposed business could create traffic issues.

Gregory Hopkins, 1323 W 3rd St (Dayton), representing Community Health Center's of Greater Dayton who owns the property right across the street. In opposition to the request and believes there does not need to be another gas station in area. Supports the neighborhood association and neighbors in opposition. Mr. Hopkins stated that he believes the proposed use will not meet the Conditional Use standards for approval.

Jerry Bowling III, 522 Herbert St (Dayton), representing the McCook Field Neighborhood Association and opposed to the request. Believes there to be sufficient amount of gas stations for the area.

Board Discussion

Mr. Ciani went over the request and noted the board prides itself on making defensible decisions with this proposal not requiring any variances and meeting the supplemental standards. Mr. Martin noted that because there are no variances it is permitted, and the applicant had made changes to the plan to remove the originally required variances. Mr. Green noted that the proposed use requires Conditional Use approval and is not just permitted because no variances are needed. Mr. Kroger further explained the difference and what the board would consider.

Mr. Bement questioned the applicant as to the mixture of semis and vehicular pumps. Mr. Keith noted he did not anticipate a lot of truck traffic. Mr. Bement questioned if a traffic study was required or completed. Mr. Green clarified that a traffic study is not required for this proposal nor has one been completed to his knowledge.

Ms. Patterson noted she has some traffic concerns coming in off Stanley and Troy Streets to and from the business.

Mr. Martin made a motion to approve the request with the condition that the site plans presented tonight, as staff noted, be the plans approved. The motion died due to a lack of a second.

Board Decision

A motion was made by Ms. Patterson and seconded by Mr. Bement and carried to determine that there is not adequate evidence to make the specified findings required under R.C.G.O. 150.535, specifying that standard 150.535 B could not be met, and deny the application as submitted for a Conditional Use.

Mr. Bement	Yes	Ms. Tingle	Absent
Mr. Brand	Absent	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	No
Mr. Martin	No		

Approved by the Board of Zoning Appeals on February 28, 2023.

Jeff Green, Secretary
Board of Zoning Appeals
