



# City of Dayton

## Board of Zoning Appeals

**Minute Record**  
March 23, 2021

### 1. BZA CASE # 2021-00039 – 527 Nordale Ave.

A **Use Variance** to construct a 394 square foot second-story addition onto an existing detached garage to occupy as a dwelling unit accessory to existing single-family dwelling at 527 Nordale Ave. in an ER-4 Eclectic Single-family Residential district.

<b>Applicant</b>	Jayson Casey 1846 Bledsoe Dr. Bellbrook, OH 45305
<b>Owner</b>	William Potts 527 Nordale Ave. Dayton, OH 45420
<b>Existing Land Use and Zoning:</b>	ER-4, Eclectic Single-family
<b>Surrounding Land Use and Zoning:</b>	<b>North/South/East/West:</b> ER-4 <b>North one block:</b> MR-5, Mature Single-family
<b>Land Use Committee:</b>	Southeast
<b>Planning District:</b>	Belmont
<b>Planning Staff Contact:</b>	Jen Hanauer

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Ms. Hanauer presented the case. The applicant seeks to add a second-story addition to an existing garage to be used as an Accessory Dwelling Unit (ADU) for the owners' son so that he may provide care for his father. The subject property is shown to have a driveway extending from Nordale back to the existing garage. Two additional accessory structures are located on the property. All together, the three accessory structures are less than 500 square feet, which is significantly below the Zoning Code's maximum. The subject property is located in a neighborhood zoned Eclectic Single-family Residential. Ms. Hanauer made note of the fact that the lot of the subject property as well as others on the block are approximately 50 percent deeper than surrounding lots. The existing garage can be viewed from Nordale, though mostly only if standing directly in front of the driveway.

Ms. Hanauer explained that an ADU must have a bathroom, an area to sleep, and an area to cook a meal. The layout of the proposed ADU shows these areas and, additionally, a living room. The site plan shows an additional off-street parking spaces added along the west side of the garage underneath stairs and a deck that would serve as the entrance to the ADU. The siding would match the existing on the house, per the Zoning Code.

ADUs are not currently permitted in any of Dayton's zoning districts. Ms. Hanauer listed several scenarios in which allowing for an ADU would benefit a neighborhood and its residents, including allowing for incremental population growth, increasing the availability of affordable housing, and enabling multiple generations to live together on one lot with their own separate spaces. In this case, permitting an ADU would allow for living space for a family member of a long-time resident, who could then stay in their home as they deal with medical issues.

The Southeast Priority Land Use Committee was generally in favor of allowing an ADU on this property, especially when considering the depth of the lot. However, there was discussion around concerns for population density, parking, and future use of the ADU should the property change ownership in the future. Several board members pointed to the existence of similar ADUs on the street and the lack of adverse effects on the neighborhood. The board ultimately voted unanimously in favor of recommending approval of the Use Variance. Ms. Hanauer did not receive any direct feedback from the community.

Ms. Hanauer spoke to each of the Standards for a Use Variance, noting that a Use Variance must meet a higher standard than other variances. The conditions of the property at issue are unique and not ordinarily found in the same zone, as at 200 feet in length, the lot is 50 percent deeper than the majority of other lots in the area and so will not contribute to overcrowding of the land or an excessive concentration of the population. The ADU will be built above an existing accessory structure and add an off-street parking space and is therefore unlikely to have any material adverse effects on the rights of adjacent property owners or residents, nor will it have any material adverse effect on the public health, safety, or general welfare. To answer whether the variance will be consistent with the general spirit and intent of the Zoning Code, Ms. Hanauer cited the fourth goal of the City's Comprehensive Plan that states, "A diverse group of people and families live in safe, supportive neighborhoods; care for and respect one another; and succeed in school, the workplace, and life." A Use Variance for an ADU on this property would allow for two long-time residents of the neighborhood to remain in their home by providing living space for a caregiver, in this case their son. Ms. Hanauer states that this is variance is the minimum that will afford relief to the owner as he must arrange for in-home care.

Staff recommends approval of the application as submitted.

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### **Public Testimony**

The owner, Mrs. Claudia Potts, 527 Nordale Ave., stated that she and her husband are seeking the Use Variance in order to make space for their son to live and take care of Mr. Potts as he battles cancer. Mrs. Potts asserted that her contractor, Jayson, is very experienced.

Jayson Casey, 1846 Bledsoe Dr. in Bellbrook, said that the design and siding will match the existing house and that the additional parking space will keep extra cars from cluttering the street. Mr. Casey said that neighbors on either side of the Potts' property are supportive of the proposed addition. Mr. Ciani asked Mr. Casey what the final height of the accessory structure will be with the addition. Mr. Casey said that the accessory structure will be four to five feet lower than the main house. Mr. Daugherty added that the final height of the accessory structure will be 20 feet, which will be five feet shorter in height than the principle structure.

Mr. Bement asked if there were any additional architectural standards that the accessory structure must meet, aside from the matching siding and the length of the eaves. Ms. Hanauer responded that no, there

are not additional architectural standards, although there would be if the house was located in one of the City's historic districts. Mr. Bement confirmed with the applicant and owner that the color, in addition to the material, of the siding would match the principle structure. Mr. Bement suggested altering the overhang of the eaves to better match the principle structure. Mr. Casey replied that this could be done on the north, west, and south sides of the accessory structure, but after a conversation with Mr. Daugherty, discovered there are only about nine inches of space on the east side before encroaching on the property line. Mr. Bement pointed out that there are no windows on the east side of the structure and asked if a window could be added on the garage level. Ms. Hanauer responded that windows on accessory structures are generally preferred to be facing into the property to provide privacy to the neighboring property owner. Mr. Casey responded that they had not added windows on the east side of the accessory structure because they would face the neighbor's garage and affect their privacy but if absolutely necessary, a window could be added, possibly in the living room.

**Board Discussion**

Mr. Ciani stated that since this case is for a Use Variance, all of the standards must be met. One of the prominent standards is uniqueness, and that quality has been demonstrated in this case.

Ms. Tingle stated that she believes all five of the standards have been met and does not see any problems with the application.

**Board Decision**

A motion was made by Ms. Graham and seconded by Ms. Tingle, and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified findings required under RCGO 150.120.10(D)(2) approve the application as submitted for a Use Variance.

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

Minutes approved by the Board of Zoning Appeals April 27, 2021.

Tony Kroeger, Secretary  
Board of Zoning Appeals

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# City of Dayton

## Board of Zoning Appeals

### Minute Record

March 23, 2021

#### 2. BZA CASE PLN2021-00052; 21 Otterbein Avenue

A **Use Variance** request to re-establish a Motor Vehicle Repair use (due to discontinuance) at 21 Otterbein Avenue within a T Transitional District. Also, these specific Motor Vehicle Repair requirements are not in compliance: Lot size: 0.34-acres (1-acre required), Parking: in front of building (required behind building), Parking setback: 5-ft (10-ft required), Street trees: none proposed (required along Salem & Otterbein Aves), Signage: existing too large (6-ft height & 25-sf area maximum).

<b>Applicant</b>	Omar Abushagra 5275 N Dixie Drive Dayton, OH 45414
<b>Owner</b>	Julia Investments, LLC 5275 N Dixie Drive Dayton, OH 45414
<b>Existing Land Use and Zoning:</b>	Tire Shop; T (Transitional)
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Residential turned commercial/ offices & Gateway open space; T <b>South:</b> Single-family dwellings; ER-4 <b>East:</b> Church & Funeral Home: T <b>West:</b> Single-family dwellings; ER-4
<b>Priority Land Use Board:</b>	North Central
<b>Planning District:</b>	Dayton View Triangle
<b>Planning Staff Contact:</b>	Abigail Free

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Ms. Free presented the case. Ms. Free explained the request for a Use Variance request to re-establish a Motor Vehicle Repair use (due to discontinuance) at 21 Otterbein Avenue within a T Transitional District. Also, these specific Motor Vehicle Repair requirements are not in compliance: Lot size: 0.34-acres (1-acre required), Parking: in front of building (required behind building), Parking setback: 5-ft (10-ft required), Street trees: none proposed (required along Salem & Otterbein Aves), Signage: existing too large (6-ft height & 25-sf area maximum).

Ms. Free presented maps and photos of the site and surrounding properties. The subject property is an existing Goodyear Tire Shop at the intersection of Salem and Otterbein Avenues. The lot is triangular and irregular in shape which is common along Salem Avenue due to its diagonal configuration. One access drive is along both Otterbein and Salem. There are existing shrubs along the parking within a 5-ft setback and three trees are present. The existing Goodyear sign is on a tall pylon and does not meet current height and area regulations. Large single-family dwellings are adjacent to the property. Additional Transitional

zoning is present along this stretch of Salem Avenue.

The existing building is 2,192 square feet and includes four vehicle bays with lifts, a tire changer, and a sales/ waiting area. There are 15 parking spaces. The existing pylon sign also includes electronic changeable copy. The proposed hours of operation are Monday to Friday 10:00am to 6:00pm and Saturday 10:00a to 3:00pm.

The site was built and operated as a Motor Vehicle Repair and is a non-conforming use (grandfathered in) within the Transitional district. The use suffered discontinuance after being closed for more than 184 days (documentations started October 1, 2018). A foreclosure auction was held in December 2020 where it was advertised as a Commercial Garage.

Motor Vehicle Repair has specific regulations within the zoning code which include lot size, lot width, outdoor storage, access drives, and parking. The site does not meet the minimum lot requirement of 1-acre or lot width of 150-ft along street frontages. Its lot is 0.34-acres and only has 88-ft along Otterbein Avenue. However, the width along Salem is complaint at 13-ft. Outdoor storage of inoperable vehicles or equipment is not permitted and is not being proposed by the owner. However, there have been two inoperable vehicles on site, one without plates and another wither body damage. The owner has stated that he did not authorize the vehicles to be on site, but has not done anything to have them removed.

There is one access drive per street frontage permitted and the existing curb cuts are in compliance. Parking is to be located behind the front line of the building, but the existing conditions have parking within the front along Otterbein and Salem Avenues with a 5-ft landscaping buffer. The building is pushed back to the rear of the site. A 10-ft parking setback is required along street frontage as well as street trees spaced 30-ft on center. Signage must comply with a maximum height of 6-ft and area of 35-square feet. The existing pylon sign is not in compliance, and no new signage has been proposed at this time.

#### **Public Comment Receive Prior to the Hearing**

The North Central Land Use board recommended approval of the use variance citing that the building was constructed for a motor vehicle use and unlikely to be used for anything else. Also, the previous owner maintained the site has had no problems. The Dayton View Triangle Federations is also in support noting that the use will fill a need for the area. However, there were concerns about vehicles parking onsite for long periods of time. The Salem Avenue Peace Corridor is also in support and noted that the Goodyear was an asset the area when in operation, but had some concern over landscaping maintenance. Surrounding residents were a mix of support and opposition with concerns over it becoming a used car lot (which is not permitted) and landscaping maintenance. Also, noted was an increase of traffic along Salem in the last ten years. Citywide Development is in opposition of the use and cited the beautification efforts at the intersection of Catalpa and Salem just one block north and believes the reuse will hinder redevelopment along Salem Avenue.

#### **Recommendation**

Staff believes the use has operated in harmony with the surrounding area as a Motor Veicle Repair in the past and may fill a need and be an asset the area. It is unlikely to have a better use due to the nature of the existing building with vehicle bays and may sit vacant or need to be demolished to become a permitted use. Staff noted that the case meets the standards for a use variance. Staff recommends APPROVAL of the Use Variance with conditions. The standards for a Use Variance can be met. Staff offers the following conditions:

1. Provide 2 ½" caliper street trees, spaced 30-ft on center along Salem Avenue. Consult the City Arborist for approval of tree species. (Some shrubs may be replaced with trees)
  2. Hours of operation be limited to Monday through Saturday 10:00am- 6:00pm.
  3. No outdoor storage of vehicles or materials.
  4. All repair work shall be done inside the building.
  5. Indoor storage shall have a maximum area consistent with one vehicle bay.
  6. All signage to comply with current City standards.
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#### **Applicant Testimony**

Omar Abushagra, the owner, 21 Otterbein Ave. He purchased the property to do business as an auto shop or tire place and intends on doing light auto repair and not engine or transmission work. He seeks to operate as a good, clean business following all the rules and regulations including any required conditions.

Chairman Ciani asked for clarification on how long the site has been vacant. Ms. Free stated that Zoning Administrator established that the site has not been in operation since October 2018 and was up at auction in December 2020. So, it has not been in operation for 2 and a half years.

Mr. Martin asked if the trees are necessary due to the site already looking in good shape. He also did not think that 10:00am was not a reasonable time to open. People may want to drop off their car before work on the weekdays. He also did not see the sign needing to be removed since its existing and was not practical. And finally, he did not feel that it was the City's concern that it was mis-marketed as a Commercial Garage. Ms. Free responded that since a use variance is necessary for reuse, there is an opportunity to require that the site comes into compliance with the zoning code regulations instead of just letting it reopen with existing conditions. As for the hours of operation, they were the hours proposed by the Applicant and allowing for a earlier open time may be appropriate.

Mr. Bement asked about the intention of the trees being added to the shrub line. Ms. Free clarified that there are existing trees in the shrub line and the new trees would be added to be consistent with the spacing of the existing trees. Some shrubs may need to be removed and approximately two to three trees would be required to make a consistent look wrapping around Otterbein to Salem Avenue. Mr. Bement also recommended to modify Condition 3 to include materials for sale, due to seeing tire outside on display at other tire shops being an issue. Mr. Bement also asked the owner what plans he has for the exterior of the building since it currently has the Goodyear branding. Mr. Abushagra would like to add new paint to the building.

Mr. Daugherty asked where the tires will be stored on site. Mr. Abushagra said he has no plans for outdoor storage but like the idea proposed by Ms. Free to use one bay for storage. Mr. Daugherty also reiterated that no servicing of vehicle will be done outside the building and the owner agreed.

Mr. Brand asked if the owner is to operate the business or will it be rented. Mr. Abushagra tried to sell the property once he found out the zoning needed changed, but was unable to sell. Then he marketed it for rent hoping a tenant would follow through with the BZA process. His only option now is to manage it himself.

Chairman Ciani asked if the owner had knowledge of the proposed conditions and of there were any objections. Mr. Abushagra does not object but does appreciate the other opinions on the trees on the Salem side and the signage and would like the Board to reconsider on these conditions.

### **Public Testimony**

Kegan Sickels, 1517 Burroughs Drive, also Dayton View Triangle Federation President, brought the case to his board and they were excited for the reuse of the building. They discussed the lack of street trees and the existing signage. They did not have any concern over the existing sign but he was concerned about the requirement for an enclosed dumpster and maintenance of the site.

Nicole Steele, CityWide Development, stated the Phoenix Project has been her project for 18 years. CityWide created the gateway at Salem and Catalpa which once had gas stations on three of the four corners. Similar to the subject property, they started out as chain stores but turned into single ownership. Her main concern is the maintenance of the site and how it will detract from investments north. Best laid plans of not storing tires outside and not enough off street parking and parking on the street are additional concerns. She believes that it was determined to be transitional zoning and allowing its reuse does not follow the intention of transitional zoning. Why have transitional zoning if the previous use is allowed to be reestablished, instead of following through with the site transitioning to something else after the nonconforming use is discontinued.

### **Board Discussion**

Mr. Bement is in support of the request due to the building having its back to the Catalpa intersection and it being specifically built for this type of use. He doesn't have a recollection of the site not having enough parking during previous operation. The parking lot has also been used for overflow for Omega Church. The conditions presented are reasonable but he is open to modifications.

Mr. Ciani sees the property being unique, as its one of the requirements. Also, the property being vacant for two and a half years is not something you want to see. Unless it is demolished, it will likely remain vacant if it can't be reused as the use that is not permitted and is in favor of approval of the application.

Ms. Tingle is also in favor. She is unsure about the tree requirement, but the other conditions are appropriate. Ms. Graham reiterated Mr. Martins comment about the hours and they should be modified to 8:00am as a start time. Mr. Brand is also in support of the application and should require the trees and is impartial about the sign.

Mr. Martin followed up that he had reconsidered the trees and believes they are a reasonable requirement. He also questioned the reuse of the sign. Would Goodyear allow the owner to keep the existing sign with their branding, or will the owner be required to remove it? If it must be removed then the sign could become more compliant with the current size requirements.

Mr. Bement sees the trees being in conflict with the height of the current sign. Any trees may block the existing sign as they mature and lowering it would be more affective. The changeable copy sign is also in violation of current regulations.

Mr. Bement began a motion and included some modifications to Conditions 1, 2, 3, and 5. Condition 5 sparked discussion about how much of the building should be used for storage. One bay didn't seem like enough. Two bays or limiting storage to the vehicle bays was presented. Mr. Ciani suggested that Condition 3 may make Condition 5 irrelevant and was removed.

### **Board Decision**

A motion was made by Mr. Bement and seconded by Ms. Patterson and carried to determine that there is not a preponderance of reliable, probative and substantial evidence to make the specified findings

required under R.C.G.O. 150.120.10 (D)(2) and approve the Use Variance with the following conditions:

1. Provide 2 ½" caliper street trees, spaced 30-ft on center along Salem Ave within the existing shrub line. Consult the City Arborist for approval of tree species.
2. Hours of operation be limited to Monday through Saturday 7:00am- 6:00pm.
3. No outdoor storage of vehicles, retail items or materials.
4. All repair work shall be done inside the building.
5. All signage to comply with current City standards.

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

Minutes approved by the Board of Zoning Appeals April 27, 2021.

Tony Kroeger, Secretary  
Board of Zoning Appeals

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# City of Dayton

## Board of Zoning Appeals

**Minute Record**  
March 23, 2021

### 3. BZA CASE # 2020-00054; 184 Salem Avenue

An Appeal of a Zoning Administration determination that a zoning application at 184 Salem Avenue (R72 07408 0024) for 100 foster care children constitutes a Residential Facility, while the Applicant contends that it is a Congregate Care Facility. The underlying zoning district is MNC Mature Neighborhood Commercial, in which a Residential Group Home is not a permitted use and a Congregate Care Facility is a Conditional Use. The property is also located in Planned Development-150.

**Applicant:** Griffin Academy LLC  
3901 E. Third Street  
Dayton, OH 45403

**Owner:** 4 The Kids LLC  
3901 E. Third Street  
Dayton, OH 45403

**Existing Land Use and Zoning:** Vacant building; MNC/PD-150

**Surrounding Land Use and Zoning:** North: Senior Resource Connection; MNC  
South: surface parking lot; MR-5/PD-150  
East: auto sales/repair; MNC  
West: Residential; MR-5 PD-109

**Land Use Board :** NorthCentral

**Planning District:** Dayton View

**Planning Staff Contact:** Tony Kroeger

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Mr. Kroeger presented the staff report via power point presentation. He explained the requested, described the site, made a staff recommendation and presented the board alternatives. The associated report is below.

### STATUTORY AUTHORITY

150.120.1 Appeals to the Board of Zoning Appeals

(A) An appeal from a decision of the Zoning Administrator with respect to the interpretation or application of this Zoning Code, except for decisions regarding site design plans, may be taken to the Board of Zoning Appeals (BZA) by any person aggrieved, or by any officer, department, board, bureau, or any governmental agency or body affected by the decision of the Zoning Administrator.

#### **150.120.7 Decision of the BZA (Appeals or Variances)**

The procedures for rendering a decision on appeals or variances are as follows:

(A) Where it is alleged there is an error in any order, requirement, decision, interpretation or determination (all hereinafter referred to collectively as “decision”) made under this Zoning Code by the Zoning Administrator, except for decisions regarding site design plans that are to be appealed to the Plan Board, the Board of Zoning Appeals may reverse or affirm, wholly or in part, the decision being appealed. The BZA may affirm, reverse or remand, in whole or part, a denial by the Landmark Commission as regulated by Section 150.345.21. In making its decision to reverse or affirm, the BZA may direct the issuance of a permit or certificate.

### **PLANNING STAFF ANALYSIS**

The subject property is located at 184 Salem Avenue. It formerly contained the Richard Allen Academy charter school. Previously, it contained offices for the United Way. In association with the use of this building, the applicant proposes parking in the lot to the south, across Edgewood Avenue. It is a 64,888 square foot building, completed in 1955.

The property is also in Planned Development-150. That Planned Development, while originally envisioning a school at this site, maintains the same list of permitted and conditional use as the underlying zoning district. So, from a use classification perspective, there is not an impact.

The applicant has submitted an Appeal for a facility described in the application as “a facility that provides for the needs of disabled individuals (foster care children) as an ODJFS licensed Children’s Residential Center for 100 youth. Independent Living Services will consist of residential dwelling units, common social, recreational, dining and food preparation facility. Facility will provide personal and medical assistance including nursing care.” The applicant concludes that the use is a Congregate Care Facility, and therefore has applied for such. A Congregate Care Facility is a Conditional Use in the underlying zoning district, Mature Neighborhood Commercial.

However, based on the submitted information regarding the proposed land use, the Zoning Administrator issued a Zoning Administration Refusal, stating that the proposed use constitutes a Residential Facility. A Residential Facility is neither a Permitted nor Conditional Use in the underlying zoning district.

The zoning code stated purpose of the MNC District is as follows:

**150.325.1 Purposes.**

The Commercial districts (MNC, ENC, SNC, MGC, EGC, SGC) and their regulations are established in order to achieve the following purposes:

- (A) To provide for orderly growth and development in the City of Dayton.
- (B) To provide sufficient areas, in appropriate and convenient locations, for business activities and the exchange of goods and services.
- (C) To reflect and reinforce the existing density and pattern of development while accommodating the need for future growth.
- (D) To provide certainty to property owners, developers and neighbors about the limits of what is allowed in a Commercial district.

The zoning code definitions (**150.200**) for Congregate Care Facilities and Residential Facilities are as follows:

**Congregate care facility.** A residential facility that provides for the needs of individuals who are elderly or disabled. The facility shall consist of residential dwelling units or rooms designed specifically for the elderly or disabled, and may have common social, recreational, dining and/or food preparation facilities. The facility may be for independent living and/or may provide the residents with a range of personal and medical assistance including nursing care.

**Residential facility.** A facility that provides room, board, personal care, supervision, habilitation services and mental health services to developmentally disabled persons and/or foster children, as defined in this Zoning Code, in a family setting. These facilities shall be licensed by a state or federal agency. Facilities providing the services and functions of Emergency Housing, Protective Care Facilities, or Transitional Housing as defined in this code shall not be considered Residential Facilities. There are three size categories of residential facilities:

- (a) A residential facility that provides the services listed above for five (5) or fewer developmentally disabled persons and/or foster children.
- (b) A residential facility that provides the services listed above for six (6) to eight (8) developmentally disabled persons and/or foster children.
- (c) A residential facility that provides the services listed above for nine (9) to sixteen (16) developmentally disabled persons and/or foster children.

The applicant, believing that the use is a Congregate Care Facility, submitted to the Department of Planning and Community Development an application for a conditional use. However, a corresponding Zoning Administration Refusal is a required component of the application, and such an associated Refusal does not exist because Zoning Administration has determined that the use is a Residential Facility--not a Congregate Care Facility.

There are a number of items in the definition for Residential Facility that have led Zoning Administration to make this determination. First that the Residential Care Facility definition specifically calls out the residency of foster children. The Congregate Care Facility definition does not. Furthermore, many other elements in the Residential Care Facility definition are consistent with the submitted description of the use, such as:

Program Services in Submitted Materials	Corresponding Element of Residential Facility Definition
Case Management Services	“habilitation services and mental health services”
Vocational Training	“personal care, supervision”
Room and board facilities	“room, board”
Crisis management/conflict resolution	“personal care, supervision” / “habilitation services and mental health services”
GED/College prep courses	“personal care, supervision”
Stress, anger, behavior management	“personal care, supervision” / “habilitation services and mental health services”
Characteristics of Operations	Corresponding Element of Residential Facility Definition
Licensed through ODJFS	“Licensed by state agency”
Comprehensive services for foster care youth between 15 and 17	“Foster children as defined in the zoning code”
Building will house up to 100 males	“Room, board” / “personal care” / “supervision”

The Residential Facility definition in the zoning code has been modified at times in the past, through Zoning Code Text Amendments, to clarify what it encompasses. Most recently, in 2019, the definition of Residential Facility was modified to read as it currently reads. In 2019, the phrase “*and/or foster children, as defined in this Zoning Code*” was added to the definition of Residential Facility to give a clear indication that applications for land uses that accommodate foster children are to be classified in this category of Residential Facility, not a different classification such as Congregate Care Facility. Additionally, for further clarification, “*and/or foster children*” was added to each of the classifications of this type of use.

The current definition for Foster Child is below:

**Foster child.** “Foster child” means a person under twenty-one (21) years of age who is placed in a dwelling unit or a residential facility by an institution or agency, licensed or approved by an appropriate State-regulating agency to place foster children.

The definition for Residential Facility includes three classifications, depending on the number of residents. There is not a classification that includes 100 individuals. The Zoning Code, therefore, encourages Residential Facilities to be smaller in nature, due to the potential land use impact of these facilities. Although Residential Facilities are not permitted in this specific zoning district, they are permitted in many areas throughout the City. Those districts are indicated in the following table:

	5 or fewer	6 to 8	9 to 16
SR-1 (single family res.)	Permitted	Permitted	(not permitted)
SR-2 (single family res.)	Permitted	Permitted	(not permitted)

ER-3 (single family res.)	Permitted	Permitted	(not permitted)
ER-4 (single family res.)	Permitted	Permitted	(not permitted)
MR-5 (single family res.)	Permitted	Permitted	(not permitted)
SMF (multi-family res.)	Permitted	Permitted	Permitted
EMF (multi-family res.)	Permitted	Permitted	Permitted
MMF (multi-family res.)	Permitted	Permitted	Permitted
T (Transitional)	Permitted	Permitted	Conditional
MX (Mixed-Use)	Permitted	Permitted	Conditional
CI (Campus-Institutional)	Permitted	Permitted	Permitted*
* = Conditional if within 150' of district boundary			

Residential facilities of eight or fewer residents are permitted by right in over 18,000 acres of the city. For nine to sixteen residents, they are permitted or conditional uses in over 3,000 acres of the City. In the city of Dayton, there is ample land that is zoned for facilities that house foster children, and the zoning code is very intentional in how they are allowed, and the scale of the facilities that the City desires.

Staff of the Department of Planning and Community Development is in agreement with Zoning Administration that the proposed use is a Residential Facility. Staff recommends approval based on the definitions set forth in the City of Dayton Zoning Code, notably that the Residential Facility definition specifically refers to housing for foster children, and also the Zoning Administration documentation of the similarities between the submitted materials and the description of a Residential Facility.

Mr. Martin sought clarification on the situation, noting how the request does not cleanly fit into either definition. Amy Blankenship of the Department of Law explained that the Zoning Administrator, Carl Daugherty, is responsible for finding the closest fit, and that he found the closest fit to be a residential facility.

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### Public Testimony

Theresa Darr, CEO of the Griffin Academy at 3901 East Third Street, gave initial input. She said that this amounts to redlining, and should be considered a congregate care facility.

Eric Blaine of Gregory M. Gantt Co. LPA at 130 West Second Street Ste 310, Dayton, Ohio spoke in support of the appeal. He said that this is a clear error of interpretation, and it better fits the definition of congregate care facility. He said that the facility will provide services for children with disabilities, and that this would be the primary consideration for admission. He provided the list of qualifying disabilities. He noted that congregate care facilities do not have a size restriction in the zoning code. The property has been vacant for three and a half years. The effect of the determination is redlining, he said. He added that the rooms will be designed for the children as place that can provide care for them. He asked the board to reverse the determination of the zoning administrator and to allow it to proceed as a Conditional Use.

Mr. Ciani asked if all children will be disabled, or just a portion. Mr. Blaine said the intent is to serve disabled children. Mr. Brand asked if that is the policy of the proposed facility, that one

must be disabled for admittance. Ms. Darr affirmed that if a child does not have a qualifying disability, they will not be admitted.

Mr. Daugherty noted that the zoning code was recently amended to clarify how to permit uses that provide service for foster children, and that a previous Board of Zoning Appeals case where Ms. Darr was the applicant actually prompted that change. In that instance, the applicant argued that the facility was a residential group home, he said.

Mr. Darr countered that this proposed facility is very different than that proposed facility. This is a children's residential facility, not a residential group home.

Mr. Daugherty noted that there is overlapping terminology, however, the proposed use more closely aligns with a residential facility.

There was a discussion about licensure, and how a congregate care facility does not require such, while a residential facility does.

Mr. Blaine then read the zoning code definition for Congregate Care Facility, and concluded that the proposed facility meets that definition.

Rick Holmes of the Architectural Group at 135 North Main Street said that he has been working on this building for several years. It is well-suited for the proposed use, he explained. He said that he reached out for a meeting about this to staff, but the meeting did not occur. Mr. Daugherty then noted that request came after the filing for an appeal, questioning the appropriateness of such a meeting.

Mr. Blaine said that this is a unique property that will serve disabled foster children by providing needed services. He asked the board to reverse the zoning administrator.

At this time, Mr. Kroeger noted that Ms. Graham had left the meeting.

Fred Holley of 563 Superior Avenue, Dayton, OH, said that after listening to testimony on both sides, he supported the determination of the zoning administrator, and that it is pretty clear it does not fit the definition for a congregate care facility.

Cheryl Bates of 221 Belmonte Park East, Dayton, OH, who is the president of the Grafton Hill Community Development Corporation, said that she reviewed the documents pertinent to the case and supports the determination of the zoning administrator. She noted that while the proposed use may not fit cleanly into either definition, she supports the decision of the zoning administrator.

Steven Makovec of 6533 Pond Ridge Drive, Centerville, OH, who is president of the Jane Reese Neighborhood Association, had concerns about the scale of the facility and stated that given the options, he supports the determination of the zoning administrator. The neighborhood wants to be welcoming and supportive of residential uses in the general area, however.

At this point, Ms. Blankenship, of the Department of Law, inquired about the state licensure of the proposed use. Ms. Darr explained that Griffin Academy has applied to be a “children’s residential facility” but that license is on hold until it has zoning approval.

John Edinger of 227 Belmonte Park East, Dayton, OH, spoke about the appeal by supporting the determination of the zoning administrator.

Mr. Bement asked for examples of similarly-sized facilities of this nature. Ms. Darr said that there are examples on the Ohio Department of Jobs and Family Services website.

Mr. Blaine noted that while the request is for up to 100 children, one would hope the need would not be that great. He said that this is a prime location. He felt that the zoning determination was arbitrary and asked the board to allow the conditional use request to proceed.

**Board Discussion**

Mr. Martin asked staff if they knew what the recommendation would be if this were a conditional use. Mr. Kroeger answered that there cannot be such an answer to a hypothetical case. Ms. Blankenship, noting the introduction of new information throughout the course of the proceedings, suggested to the board that they many wish to table the case. It is a nuanced case that may warrant further review. Board members felt that tabling the case would be prudent.

**Board Decision:**

A motion was made by Ms. Patterson and seconded by Mr. Tingle, and carried to determine to table the appeal request to the April, 27, 2021 to allow for the additional information to be submitted for further consideration.

Minutes approved by the Board of Zoning Appeals April 27, 2021.

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