



City of Dayton

Board of Zoning Appeals

Minute Record Overview

March 28, 2023
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.

1. PLN2023-00060– Variance application to allow a 4' rear setback where a 10' setback is required as part of the construction of a proposed new 4-story mixed-use building with 102 residential units and 4,750 square feet of retail space on the ground floor located at 116 Webster Street in the Urban Business District (UBD).

Applicant: Allegro Civil Engineers
4322 N. Lincoln Ave, Suite A
Chicago, IL 60618

Priority Land Use Board: Downtown Webster Station

Decision: Approved with Conditions

2. PLN2023-00058– Variance application for the property located at 2017 Webster Street to construct a 72,000 square foot building within the I-1 Light Industrial Zoning District. To construct the proposed building, the applicant is requesting the following variances: 1) relief from the maximum front yard setback requirements for a primary building, 2) parking and loading area in front of the principal building 3) No interior landscaping

Applicant: Ferguson Construction
400 Canal Street
Sidney, OH 45365

Priority Land Use Board: Northeast Planning District: McCook Field

Decision: Approved with Conditions

3. PLN2023-00050 – A use variance application to allow for the reuse of an indoor theater and a variance application to allow for a parking area setback of less than ten feet at 245 Salem Avenue in a Mature Neighborhood Commercial (MNC) and Mature Multi-Family (MMF) zoning district. The proposed use is the preservation of existing buildings for an indoor theater and 40 residential units (including resident amenity space).

Applicant: MA Design c/o Susan Hinz
775 Yard Street., Ste 325
Columbus, OH 43212

Priority Land Use Board: North Central Planning District: Grafton Hill

Decision: Approved with Conditions

The Board of Zoning Appeals meeting was adjourned at 5:43 P.M.

Minutes approved by the Board of Zoning Appeals on April 25, 2023.

Jeff Green, Secretary
Board of Zoning Appeals



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1. BZA CASE# PLN2023-00060 – 116 Webster Street

The applicant, Allegro Civil Engineers, requests Variance approval to allow a four (4) foot rear setback where a ten (10) foot setback is required as part of the construction of a proposed 5-story mixed-use building with 102 residential units and 4,750 square feet of retail space on the ground floor located at 116 Webster Street in the Webster Station Planning District. The property is zoned Urban Business District (UBD).

Applicant	Allegro Civil Engineers 4322 N. Lincoln Ave, Suite A Chicago, IL 60618
Owner	Windsor Companies 71 Seldom Seen Rd Powell, Ohio 45306
Existing Land Use and Zoning:	Vacant commercial structures and land; UBD
Surrounding Land Use and Zoning:	North – Commercial; UBD South – Commercial; UBD East – Commercial; UBD West – Commercial; UBD
Land Use Committee:	Greater Downtown
Planning District:	Webster Station
Planning Staff Contact:	Susan Vincent

Ms. Vincent presented the case.

The applicant, Allegro Civil Engineers, requests variance approval to allow a four (4) foot rear setback where a ten (10) foot setback is required as part of the construction of a proposed 5-story mixed-use building with 102 residential units and 4,750 square feet of retail space on the ground floor within the Urban Business District (UBD) located at 116 Webster Street.

Ms. Vincent presented an overview of the proposal and the site. Ms. Vincent provided context on the location, zoning, and character of the surrounding area and street. She shared images of the site plan, site conditions, and subject property. She shared the public comments received on the case.

Ms. Vincent detailed the primary considerations regarding the rear setback variance and explained the reason why the request is preferred versus permitting a more significant parking variance. She explained the recommended condition of adding a planted tree lawn around the perimeter of the site and removing the inset on-street parking spaces. She expressed the opinion that the proposal is a positive investment for the city and an appropriate use for the site.

Ms. Vincent shared the recommendation that the application be approved with the condition that the current curb-line on 2nd and Taylor Street roadways shall remain in their existing configuration to allow for continuous tree-lawn and street trees around the perimeter of the property.

Ms. Vincent's recommendation was based on her analysis of the Standards for Variances Based on Practical Difficulty. She highlighted 150.120.10(D)(1) (c), (h), and (i) in her presentation to the board.

Public Testimony

The applicant, Allegro Civil Engineers, represented by Brian Emrich, 4322 N. Lincoln Ave, Suite A, Chicago, IL 60618, offered to answer the boards' questions and confirmed the applicant's willingness to meet the recommended condition for approval.

Board Discussion

Mr. Bement asked for clarification on the zoning code requirements for specific materials for new construction and Ms. Vincent shared information about the type of design standards within the code. Mr. Martin shared the opinion that the proposal is a good addition to the city and that the board should support it. Mr. Bement concurred that approving a setback variance is preferred to approving a parking variance.

Board Decision

A motion was made by Mr. Bement and seconded by Mr. Martin and carried to determine that there is preponderance of reliable, probative, and substantial evidence to make the specified findings required under R.C.G.O. §150.120.10 (D)(1) and approve the application for Variance with the following condition:

- Current curb-line on 2nd and Taylor Street roadways shall remain in their existing configuration to allow for continuous tree-lawn and street trees around the perimeter of the property.

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

Approved by the Board of Zoning Appeals on April 25, 2023.

Jeff Green, Secretary
Board of Zoning Appeals



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2. BZA CASE# PLN2023-00058; 2017 Webster Street

A Variance application for the property located at 2017 Webster Street to construct a 72,000 square foot building within the I-1 Light Industrial Zoning District. To construct the proposed building, the applicant is requesting the following variances: 1) relief from the maximum front yard setback requirements for a primary building, 2) parking and loading area in front of the principal building 3) No interior landscaping.

Applicant	Ferguson Construction 400 Canal Street Sidney, OH 45365
Owner	Norwood Medical LLC 2122 Winners Circle Dayton OH 45402
Existing Land Use and Zoning:	Vacant Property; SGC (Suburban General Commercial)
Surrounding Land Use and Zoning:	North – Industrial Building; I-1 Light Industrial South – Industrial Building; I-1 Light Industrial East – Industrial Building; I-2 General Industrial West – Riverfront; OS Open Space
Land Use Committee:	Northeast
Planning District:	McCook Field
Planning Staff Contact:	Jeff Green

Mr. Green presented the case.

The applicant, Ferguson Construction, requests Variances for the property located at 2017 Webster Street to construct a 72,000 square foot building within the I-1 Light Industrial Zoning District and McCook Field Planning District. To construct the proposed building, the applicant is requesting the following variances: 1) relief from the maximum front yard setback requirements for a primary building, 2) parking and loading area in front of the principal building 3) No interior landscaping.

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 board heard a similar request by the same applicant two years ago which was approved at the time. He further explained that the variances being requested are commonly found along this section of Webster Street. Mr. Green shared that the subject area is made up of several parcels which should probably be consolidated when feasible.

Mr. Green stated that the request appears to be entirely reasonable when viewing other nearby properties with similar conditions and would fit in well. Mr. Green went over the standards for approval, highlighting “d” and “i” noting that staff believes the standards could be met and recommended the application be approved on the condition the parcels making up the subject area be consolidated into one property.

Public Testimony

Jeff King (Ferguson Construction), 2201 Embury Park Rd (Dayton OH), identified himself as the applicant and was present to answer any questions the board had.

Tom Duncan, 2122 Winners Circle (Dayton OH), identified himself as a representative for the owner. Mr. Duncan identified this is an expansion with 130 new jobs for this site.

Board Discussion

The board believed the request to be appropriate for the site.

Board Decision

A motion was made by Mr. Martin and seconded by Ms. Patterson and carried to determine that there is a preponderance of reliable, probative, and substantial evidence to make the specified findings required under R.C.G.O. 150.120.10(D)(1) and approve the application for Variance with the following conditions:

- 1) The owner applies for record plan approval to Plan Board to reconfigure the site into 1 city lot.

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

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3. BZA CASE# PLN2023-00050; 245 Salem Avenue, Longfellow Commons

A use variance application to allow for an indoor theater in a former theater/auditorium and a variance application to allow for a parking area setback of less than ten feet at 245 Salem Avenue in a Mature Neighborhood Commercial (MNC) and Mature Multi-Family (MMF) zoning district. The proposed use is the preservation of existing buildings for an indoor theater and 40 residential units (including resident amenity space).

Applicant

MA Design
c/o Susan Hinz
775 Yard Street, Ste 325
Columbus, OH

Owner

United Church Homes
170 E. Center Street
Marion, OH 43302

Existing Land Use and Zoning:

Vacant buildings and parking; MMF and MNC

Land Use Committee:

North Central

Planning District:

Grafton Hill

Planning Staff Contact:

Tony Kroeger

Mr. Kroeger presented the case.

Variations are requested for parking setbacks from the right-of-way as well as a use variance to allow for an indoor theater in a former gymnasium/theater space.

The proposed development is 40 multi-family residential units, as part of an adaptive reuse historic preservation project. The housing is targeted for individuals of age 55 and above. The theater is proposed to have 206 seats.

There are no new buildings proposed for this use. The site is part of the Grafton Hill Historic District, which has an HD-1 historic designation that governs only major modifications to historic properties. All of the existing buildings are proposed to remain. The rehab would be completed to Secretary of Interior Standards, as the project is in receipt of historic tax credits.

Longfellow School was built in phases, the oldest part in 1882. Additions continued through the 1960s. The National Register nomination for Grafton Hill describes the property as follows:

The Longfellow School [was] built in 1882 as the 11th District School and changed to Longfellow in 1904. Originally, the school served the children of the whole Dayton View area. A late Victorian structure, it is of brick construction, four stories in height, with an irregular floor plan, decorative cornice detailing and large rectangular windows with decorative stone incised surrounds.

During the flood of 1913, Longfellow School was used as a rescue/relief station.

The property was sold by Dayton Public Schools in 2020 and is now owned by UCH Longfellow I LLC/United Church Homes.

The school has been vacant since 2017.

There may be a future phase for this development that would include new construction, but the first priority is the preservation of the existing structures.

A review of the submitted site plan was completed by Planning Division staff and the Deputy Director of the Department of Planning, Neighborhoods, and Development. This led to the variances being requested. At that meeting, Planning staff and the Deputy Director agreed that mitigating the parking lot at Central and Superior with additional screening—such as what has been proposed—would be a benefit to the plan.

Parking setback variance request:

A new drive aisle is proposed near Central Avenue that will be within 10 feet of the right of way. This prompted the original request for variance. Also worth noting is that surface parking areas currently exist at a few locations on the overall site: near the corner of Plymouth Avenue and Central Avenue, near the corner of Superior Avenue and Central Avenue, and centrally along the north property line.

One item that has been discussed through the variance process is the parking area at the corner of Superior Avenue and Central Avenue. Based on aerial photography, it appears that that parking lot has existed at that location for at least 35 years—although it may not have received proper permits at that time. Through this variance process, some input from property owners has expressed a desire that the parking area at Central Avenue and Superior Avenue should be removed and restored to a lawn area. While one might conclude that a parking lot that has been allowed to exist for 35 years should be allowed to continue due to it being an existing condition, the applicant has proposed a solution that removes asphalt between the parking area and the sidewalk – to screen the parking lot – and between the parking lot and the rear of the existing building (at the base of a blank brick wall). So, while the variance request was originally discussed for only the new parking aisle at Central Avenue and Plymouth Avenue, which will encroach into the required 10-foot setback, staff recommends that the Board of Zoning Appeals approves the setback variance for the entire perimeter of the site, including the existing parking lots, with the condition that the parking lots be implemented as proposed-- including the new proposed screening at the Central Avenue

and Superior Avenue parking lot. This would resolve any unclarity about what may be allowed. Staff believes that the applicant has voluntarily proposed a reasonable solution to an unattractive parking area that may not have received proper permits and allows the continuance of an existing use that has persisted for over three decades.

Theater use variance request:

Allowing the use of the former school theater/auditorium as a theater would appear to be a reasonable request. Per the zoning code, there is enough parking proposed for this site to accommodate the use. Based on the required standards, staff recommends approval of the requested use variance. That recommendation is supported by this being a facility that was built for this kind of use, and alternate land uses in this historic facility are not practical and would result in extreme hardship. It, along with the housing, preserves structures that are very much in need of it.

The North Central Priority Land Use Board met on March 15, 2023, voting to recommend that the BZA approve the applicant's proposal as submitted by a five to zero vote, including the retention of the parking area at Central Avenue and Superior Avenue.

While staff received or was copied in on some discussion about this request, only one comment was asked to be shared with the Board—the property owner at 116-118 Central Avenue expressed support for the development and inquired about how soon it could start.

Mr. Kroeger reviewed the required standards for use variance and variance. Based on those standards, staff recommended approval with the following condition:

- Parking for the proposed uses (Phase 1) shall be implemented as shown on the submitted plans including an evergreen vegetative screen between the parking area and sidewalk at the Central and Superior parking area. Screening shall be a minimum of two feet tall at installation, planted in a manner to effectively form a continuous visual screen.

Mr. Bement asked about vegetation around the perimeter of the site. Mr. Kroeger noted that street trees are to be provided and referred to the applicant.

Public Testimony

Susan Hinz, the applicant of MA Design at 775 Yard Street, Columbus, OH, spoke about the application. She said that the new drive at Central and Plymouth would be impacted by topography and grading, as it anticipates a Phase II building.

Ms. Patterson asked about the proposed theater and how it would impact parking. Ms. Hinz said that sufficient parking is provided, and no variances are required. She discussed the capacity of the theater.

Kelly Bush, Grafton Hill Neighborhood President, of 144 Central Avenue spoke next. She read a statement that said the neighborhood is highly in support of the applicant. They do not wish to impede on the development and its historic tax credits. She talked about previous concerns about

on-street parking, but that concern has been addressed. The other concern was the parking lot at Central and Superior. While it would be preferred that it goes away, she also expressed that the proposed parking lot design be required.

Dan Barton of 338 Central Avenue spoke next. He expressed support from the perspective of the Grafton Hill Neighborhood Development Corporation. He hoped that this is a catalyst for future development.

Amy Walbridge of the City of Dayton Division of Development spoke next. She reviewed the development process that has led to this hearing and its prospective impact, in support of the application.

Board Discussion

Mr. Bement noted the work with staff and the neighborhood to mitigate concerns. The board believed the request to be appropriate for the site, noting that it meets the statutory requirements for approval.

Board Decision

- A motion was made by Ms. Tingle and seconded by Ms. Graham and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified findings required under R.C.G.O. §150.120.10 (D)(1) and clear and convincing evidence to make the specified findings required under R.C.G.O. §150.120.10 (D)(2) and approve the application as submitted for Variance and Use Variance with a condition:
 - Parking for the proposed uses (Phase 1) shall be implemented as shown on the submitted plans including an evergreen vegetative screen between the parking area and sidewalk at the Central and Superior parking area. Screening shall be a minimum of two feet tall at installation, planted in a manner to effectively form a continuous visual screen.

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

Approved by the Board of Zoning Appeals on April 25, 2023.

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