



City of Dayton

Board of Zoning Appeals

Minute Record

May 25, 2021

1. BZA CASE PLN2021-00129; 1608 Kuntz Road

A Conditional Use and Variance application to allow a truck terminal with accessory truck repair to locate at 1608 Kuntz Road within a Light Industrial (I-1) Zoning District. The applicant seeks a variance to allow the truck parking area to exceed the gross floor area maximum of 100% and to waive the minimum parcel size.

Applicant:

Thomas E. Dusa
270 Regency Ridge Dr., Suite 203
Dayton, Ohio 45241

Owner:

Odilkhon (Alex) Tashtanov
6012 Buttonbush Drive
Tipp City, Ohio 45371

Existing Land Use and Zoning:

Vacant Land; Light Industrial (I-1)

Surrounding Land Use and Zoning:

North: Industrial (I-1)
South: Industrial (I-1)
East: Industrial (I-1)
West: Industrial (I-2)

Land Use Priority Board:

Northeast

Planning District:

Old North Dayton

Planning Staff Contact:

Jeff Green

Mr. Green presented the case.

The subject property was previously the location of KAP Signs but the business was destroyed during the 2019 tornados. The previous structure has been demolished and the property currently sits vacant. This applicant has previously applied, but was denied, for both a conditional use/variance at the September 2020 BZA meeting and a rezoning from I-1 (Light Industrial) to I-2 (General Industrial) at the December 2020 Plan Board meeting.

- 4) Dumpster enclosure is proposed to be located along the northeast point of the property along Kelly Avenue.
- 5) Reduction of proposed personal vehicle parking spots from 16 in the previous plan to 14 spaces proposed in the current plan.

Analysis

Currently, the subject property is vacant, containing only a grass field and 3 (2 on Kelly Avenue and 1 on Kuntz Road) concrete aprons for ingress/egress. The two concrete aprons on Kelly Avenue are proposed to be removed with the concrete apron on Kuntz Road being proposed to stay and would become one of the two primary ingress/egress points to the property. A new concrete apron along Kelly Avenue is proposed to be installed. Per discussions with the applicant, the trucks would primarily enter/exit through the Kuntz Road access point while those people in personal vehicles would enter/exit through the Kelley Avenue access point.

The plan has principally undergone two major changes compared to the previous iteration seen at the September 2020 BZA meeting: a reduction of truck parking spots from 51 to 10 and developing roughly half of the property in comparison to the previous plan where the entire property would have been utilized.

The proposed 3,420 sq. ft. building (for truck repair and dispatch) would be located at the northwest portion of the subject property, though it should be noted that no elevations were submitted to illustrate building materials or window and door placement. The plan does note that the office building (dispatching) will be a metal frame with brick veneer while the truck repair building will have a gable roof, steel frame, and aluminum skin. 14 employee parking spots would be located directly to the south of the proposed building, this would be a reduction of 2 parking spaces compared with the original plan. A dumpster enclosure is proposed to be located along Kelly Avenue, just behind the proposed street trees. Exterior lighting will be added as a security measure and per the applicant, will meet the required lighting standards, though no lighting plan has been submitted.

A 6'+ aluminum ornamental fence is proposed to be placed along Kuntz Road and Kelly Avenue. The existing chain link fence along the southern property line (along Franklin Equipment) would remain. The proposed ornamental aluminum fence would meet code. A number of street trees are located along the property (10 along Kuntz Road and 11 along Kelly Avenue) with an additional 6 trees and a curb separating the developed area from the undeveloped area. This landscaping and curb would be a clear barrier to prevent further truck parking on the southern (largely undeveloped) portion of the subject property, though no information has been provided detailing the proposed tree species. The southern half of the property would consist of gravel and a detention basin, with no further changes proposed.

The specific conditional use regulations for Truck/Motor Freight Terminals (Section 150.565.76) require that the minimum lot size be three (3) acres and that the area devoted to truck parking shall not exceed 100% of the gross floor area of the principal building. The overall intent of the above section of code is to ensure that truck storage does not become over-sized for the site, which the

Richard L Carr Jr. (110 North Main St, Suite 1000 Dayton, OH 45402) – Stated the applicant must demonstrate unnecessary hardship. Mr. Carr noted that they have submitted a letter stating the specific points in opposition to the request (given to BZA as part of staff packet). Mr. Carr stated he stood by the letter that was submitted by him and that they were in opposition to the request.

Gale Kooken (Dayton Phoenix - 1619 Kuntz Rd, Dayton, OH 45404) – In opposition to the request. Has concerns about other truck parking in the area. Advised Dayton-Phoenix invested \$60 million and believes this proposed request, in addition to the other truck terminals, would be detrimental to the area (roads, employee safety etc).

Board Discussion

Mr. Bement shared a concern that there was a lack of details regarding building plans and other missing plans which he considers critical in terms of viewing this case. A discussion was had about the building and overall lack of detail. Mr. Ciani noted that he has not seen evidence that would justify the overall variance in terms of the uniqueness of the property nor that without the variance the property is economically infeasible. Mr. Bement and Ms. Tingle agreed with Mr. Ciani's statements in addition to adding the concern over whether the bottom half of the property could have trucks parked on it in the future. Ms. Patterson believes the application is incomplete without the building elevations, and other plans that were not included as part of the submission.

Board Decision

A motion was made by Mr. Bement and seconded by Ms. Tingle, (specifically point out subsection A and B of the standards for approval) 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)(1) and R.C.G.O. 150.535 and deny the application as submitted for a Conditional Use and Variance.

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

Denied by the Board of Zoning Appeals May 25, 2020

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record

May 25, 2021

2. BZA CASE # 2021-00159 – Wilmington Ave. at Patterson Rd.

A **Bulk Variance** application to construct a 1,600 square foot, one-story, indoor dining establishment to be operated as a Waffle House with variances to: allow for 24-hour operation; increase the front yard setback (35 feet proposed, 20 feet maximum); and reduce parking setbacks (5 feet proposed, 10 feet required) on a .58-acre lot at the southeast corner of Wilmington Avenue and Patterson Road in an ENC Eclectic Neighborhood Commercial zoning district.

Applicant	Waffle House, Inc.; Walter Barineau 5986 Financial Dr. Norcross, GA 30071
Owner	LAM Ohio Holdings, LLC; Paul Lam 922 Kealaolu Ave. Honolulu, HI 96816
Existing Land Use and Zoning:	ENC, Eclectic Neighborhood Commercial
Surrounding Land Use and Zoning:	North/South/East/West: ENC Surrounding the ENC area: ER-4, Eclectic Single-family (Belmont, Patterson Park, Shroyer Park)
Land Use Committee:	Southeast
Planning District:	Belmont
Planning Staff Contact:	Jen Hanauer

Ms. Hanauer presented the case. The applicant is proposing to build an indoor dining facility to operate as a Waffle House. The site was formerly home to a gas station that came down around 2006. The lot, at the southeast corner of Wilmington and Patterson, is in Breitenstrater Square, just west of an existing Fifth Third bank and north of a CVS. Other establishments in the shopping center include Goodwill and a Save-a-Lot grocery. The shopping center is part of an ENC-zoned area that stretches north and south along Wilmington with some EGC further south. The area is surrounded by ER-4. East of Wilmington is Belmont, west of Wilmington and south of Patterson is Patterson Park, and west of Wilmington and north of Patterson is Shroyer Park.

The site contains two easements, one for Fifth Third bank employee parking and the other for the Breitenstrater Square sign, both along the east property line. The proposed building would be 1,600 square feet and stand approximately 18 feet high. The proposed location of the building on the lot would be against the easements along the east property line with the long, glass face of the building facing

Wilmington and the short, front face of the building facing Patterson. The site plan shows the removal of the curb cut closest to the intersection along Wilmington and the addition of a curb cut along Patterson.

As part of the Southeast Dayton Neighborhoods Vision, this corner is listed for potential development and the shopping center as a whole shown with increased landscaping. The requested setback variances would match the existing to the east and south. The store would be operated as a franchise and managed locally. The estimated number of employees is 35-40, including both full- and part-time. The proposed hours of operation are 24 hours, which is the company standard, as exemplified with the unofficial "Waffle House Index" used by FEMA to assess the degree of a natural disaster. The proposed Waffle House for this site reflects what staff is referring to as a "neighborhood-style" Waffle House, meaning that it will be designed to be pedestrian-friendly and blend with the surrounding residential character of the neighborhood, in contrast to the Waffle House locations in southwest Ohio that are typically found right off the highway or in more heavily commercial areas.

Staff has received a lot of feedback from the community regarding the proposed Waffle House. Both the Belmont-Eastmont-Hearthstone Community Council and the Belmont Business Association have voiced their support of the project. Patterson Park Civic Association did not formalize support or opposition, but many residents have reached out to staff, some in support and others in opposition. At the meeting of the Southeast Priority Land Use Committee, conversation centered around traffic and hours of operation. Wilmington and Patterson is a busy intersection, and some voiced concern about how a Waffle House would contribute to the traffic pattern and overall volume of vehicular traffic. Residents were concerned that patrons of the bars in the area, specifically the Hookah Bazaar on Patterson, may continue their revelry through all hours of the night and affect the neighborhood with noise and litter. DPD's Lt. Keller expressed concern based on his experiences with the former Denny's in Midtown that operated 24 hours. Members of SEPLUC said that problems with nearby drinking establishments do not directly translate to problems with a restaurant that does not serve alcohol, and a 24-hour restaurant in this location would be an amenity, especially for second- and third-shift workers. SEPLUC ultimately voted unanimously in favor of recommending approval of the application to BZA with the suggested condition that "Right Turn Only" signs be added at the curb cuts.

Staff recommends approval of the application for Variances as submitted with the following conditions:

1. Final site plan, including plan for exterior lighting (Section 150.420.3), bicycle parking (Section 150.700.13), and landscaping (Section 150.800), to be reviewed and approved by staff prior to construction per Sections 150.115.15 and 150.325.12 of the Zoning Code.
2. Vehicle parking spaces shall not exceed the maximum of 23, and spaces 1 through 3 on the submitted site plan shall be eliminated.
3. The curb cut along Patterson Road shall be eliminated.
4. A pedestrian path shall be installed leading from the corner of Wilmington Avenue and Patterson Road to the front entrance of the building, utilizing a change in material and/or color across parking areas and drive aisles.

Ms. Hanauer pointed to three sections for Standards for a Variance in the Zoning Code to support her recommendation. Section 150.120.10(D)(1)a asks whether special conditions exist to necessitate a variance, which, due to the property's unusual semi-triangular shape, Ms. Hanauer believes exist. Section 150.120.10(D)(1)c asks whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land. Ms. Hanauer stated that the variances for setbacks are the minimum necessary to allow for adequate parking and sufficient vehicular circulation, and that the proposed setbacks would match the existing setbacks found elsewhere in the shopping center. The

variance for 24-hour operation would not be necessary for the majority of businesses, however, since 24-hour operation is the standard for Waffle House, a Waffle House would not be able to operate on this site without a variance for 24-hour operation. Section 150.120.10(D)(1)i addresses the spirit and intent behind the zoning requirement, which Ms. Hanauer stated the project supports and provided examples from the Zoning Code and CitiPlan2020.

Mr. Brand asked if the plan meets the Zoning Code's parking requirements. Ms. Hanauer responded that yes, in fact the proposed plan exceeds the minimum requirement. The minimum would be 15 spaces for a building this size, and the maximum would be 23. The current plan shows 25 spaces, so Ms. Hanauer has suggested that a condition of approval be to remove spaces 1 through 3 on the current site plan.

Mr. Ciani asked Ms. Hanauer to describe the landscaping plan along Wilmington and Patterson. Ms. Hanauer stated that upon approval, Waffle House would need to submit a landscaping plan that satisfies the requirements in the Zoning Code, which will need to include 7 trees along Wilmington and 6 along Patterson as well as landscaping and bicycle parking near the front entrance and screening around the dumpster enclosure.

Mr. Bement asked Ms. Hanauer to elaborate on the "good neighbor" agreement alluded to in the staff report. Ms. Hanauer said that in the past, when appropriate, the board has made a condition of approval that a business establish a "good neighbor" agreement with the surrounding community to assure residents that the property will be under control and the business held accountable.

Mr. Bement asked how the omission of the proposed curb cut along Patterson would affect vehicular circulation. Ms. Hanauer explained that there are currently 7 curb cuts for Breitenstrater Square, so with the proposed elimination of the curb cut closest to the Wilmington and Patterson intersection, 6 curb cuts would remain.

Public Testimony

The applicant, Walter Barineau of Waffle House, 5986 Financial Dr. in Norcross, Georgia, spoke about the Waffle House location in Avondale, Georgia, near his own neighborhood and its similarities to the proposed location at Wilmington and Patterson. Waffle House believes this location would be an amenity for the neighborhood and would fill a hole in the market. Mr. Barineau stated that he believes the restaurant will reflect the character of the neighborhood and that it will be a very high first-shift location, an average to high second-shift location, and a below average third-shift location. He believes the 24-hour operation will benefit the local third-shift health workers and nearby light industrial employees from further south on Wilmington. Waffle House is aware of security concerns regarding 24-hour operation, and so employees are trained in de-escalation techniques, cameras are located both inside and outside the restaurant, and the restaurant is well lit. Waffle House also offers half off to police and fire personnel to incentivize shift visits to the restaurant. Having staff on the premises at all times offers another set of eyes on the community around the clock. Mr. Barineau stated that the setback variances are requested so that they can match existing and be harmonious with the other businesses in the shopping center. Waffle House will submit a complete landscaping plan prior to obtaining building permits. Mr. Barineau said that he sees the addition of a curb cut along Patterson as a benefit, but if the board determines that it is not wanted, he is fine with omitting it because there are other entrances and exits. Mr. Barineau is still in the process of confirming the language regarding the easements on the property. Mr. Barineau said that Waffle House is looking forward to being a part of this community and stated that they do very well in the

Dayton metropolitan area. He is encouraged that staff has received so much positive feedback as, unfortunately, often it is only the people with negative things to say who speak up.

Brian Petro, President of the Belmont-Eastmont-Hearthstone Community Council, said that generally the response from their neighborhoods has been positive. Mr. Petro said that a 24-hour restaurant would be good for local industrial workers, nurses, and students who do not have another option in the area. He would also like to see more businesses come into the Belmont area.

Tony Miller, partnership-management-ownership of HRI, 2288 Crenshaw Rd. in Beavercreek, has maintained Breitenstrater Square since 2006 as well as the pylon signage. Mr. Miller is not concerned with being able to maintain the sign, but he is concerned about line-of-sight if the Waffle House sits in front of it. Mr. Miller would like to see that corner developed as it would be good for the shopping center as a whole, however, he is concerned that the proposed building and trees will obscure the shopping center's pylon sign. Mr. Miller would like to know from the applicant how they might work together on a solution for visibility.

Sam Woodson, 710 Berkshire Rd. in Patterson Park, does not believe the 24-hour operation request is reasonable for this area. Mr. Woodson stated that the other Waffle Houses in the Dayton area are not in residential areas, and this proposed Waffle House would be near bars. Mr. Woodson's concerns include increased litter, noise, and being woken up in the middle of the night by drunken bar customers going to the Waffle House at 2:30 a.m. Mr. Woodson also cited issues with the Circle K on Shroyer as a reason to deny the 24-hour operation. Mr. Woodson stated that a location further south on Wilmington closer to the Amazon warehouse would be a more appropriate location.

Doug Smith, 722 Berkshire Rd., would like to voice his very strong opposition to the 24-hour operation of the proposed Waffle House. Mr. Smith said the 24-hour operation will exacerbate the issues Patterson Park residents are having with Hookah Bazaar, including noise and litter. Mr. Smith said that in his view, Waffle House has not demonstrated a need for 24-hour operation.

Mr. Barineau stated he would like to work with Mr. Miller on the issues with the Breitenstrater Square pylon sign and asked Ms. Hanauer to connect them. In regard to litter, Mr. Barineau stated that Waffle House is primarily a sit-down restaurant and does not have a drive-through. While there is some take-out, meals are generally consumed from china inside of the restaurant and as such does not generally contribute to trash outside of the restaurant. Mr. Barineau stated that any litter on the property would be easily policed. He said that part of the reason Waffle House is interested in this location is because the crime statistics are below the average for the Dayton area, and he agrees that 24-hour operation of a restaurant in a high-crime area would be difficult to contend with.

Mr. Martin asked if every other Waffle House in the U.S. is 24 hours, and Mr. Barineau confirmed that yes, every single Waffle House is 24 hours. Mr. Martin also asked if any locations hire third-party security. Mr. Barineau responded that they do when it becomes necessary, but because of the expense, they prefer not to and so select locations where they think it will be unlikely that they will need to.

Board Discussion

Mr. Ciani stated that the elephant in the room is whether or not 24-hour operation is acceptable. Ms. Graham agrees that this is the big question and agrees with residents who stated that this is not an experiment; once Waffle House has approval for 24-hour operation, the barn door is open. She is concerned and lives close by. Ms. Patterson stated that since 24-hour operation is a corporate policy, she

does not see them changing the policy for this location and would instead find another location. Mr. Brand agrees that 24-hour operation is a concern but that this is primarily a commercial area without houses immediately adjacent. He agrees with Ms. Patterson's assessment that if denied 24-hour operation, Waffle House will find another location and the neighborhood would be out an amenity.

Ms. Patterson made a motion based on the conditions recommended to the board in the staff report, which were later updated for the presentation at the hearing. Mr. Brand seconded. Mr. Bement asked if Ms. Patterson would be open to amending her motion to include a "good neighbor" agreement between Waffle House and the neighborhood. Ms. Patterson was amenable to the addition. When asked if he would second the amended motion, Mr. Brand stated that he does not recall a time when the board required a "good neighbor" agreement of an applicant and believes it could be a roadblock. Mr. Brand stated that if other board members agree, that he will sign on. Mr. Kroeger said that the board would need to be clear on what a "good neighbor" agreement would include and that it should be limited so as not to put an undue burden on the applicant. Mr. Ciani asked if the staff would be amenable to creating a "good neighbor" agreement after the fact, but Mr. Martin stated that that sounded like statutory creation and does not believe that the City does that. Mr. Brand said that he withdraws his second. As no one else seconded, the motion failed.

Board Decision

A motion was made by Mr. Brand and seconded by Mr. Bement, 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 as submitted for a Variance with conditions:

1. Final site plan, including plan for exterior lighting (Section 150.420.3), bicycle parking (Section 150.700.13), and landscaping (Section 150.800), to be reviewed and approved by staff prior to construction per Sections 150.115.15 and 150.325.12 of the Zoning Code.
2. Vehicle parking spaces shall not exceed the maximum of 23, and spaces 1 through 3 on the submitted site plan shall be eliminated.
3. The curb cut along Patterson Road shall be eliminated.
4. A pedestrian path shall be installed leading from the corner of Wilmington Avenue and Patterson Road to the front entrance of the building, utilizing a change in material and/or color across parking areas and drive aisles.

Mr. Bement	yes	Ms. Tingle	yes
Mr. Brand	yes	Ms. Patterson	yes
Ms. Graham	no	Mr. Ciani	yes
Mr. Martin	yes		

Approved by the Board of Zoning Appeals on May 25, 2021.

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record
May 25, 2021

3. BZA CASE PLN2021-00171; 1739 Woodman Drive

A **Conditional Use** request to re-establish a vehicle fueling station at 1739 Woodman Drive within an EGC Eclectic General Commercial district. Also, a **Variance** request to reduce the required minimum lot size from 1-acre to 0.222-acres, modify required 10-ft parking/landscape setback and street trees along Woodman Drive, and allow the reuse of the existing sign which does not comply with current sign regulations.

Applicant	Fair Price Oil Co, LLC c/o Sushil Aggarwal PO Box 20068 Dayton, OH 45420
Owner	Same as above
Existing Land Use and Zoning:	Vehicle Fueling Station; EGC
Surrounding Land Use and Zoning:	North: Fast food restaurant; EGC South: Industrial; EGC East: Shopping strip; EGC West: Self Storage; EGC
Priority Land Use Board:	Southeast
Planning District:	Eastmont
Planning Staff Contact:	Abigail Free

Ms. Free presented the case. Ms. Free explained the request for a Conditional Use to re-establish a vehicle fueling station and a Variance request to reduce the required minimum lot size from 1-acre to 0.222-acres, modify required 10-ft parking/landscape setback and street trees along Woodman Drive, and allow the reuse of the existing sign which does not comply with current sign regulations.

Ms. Free presented maps and photos of the site and surrounding properties. The subject property is an existing Swiftly gas station along the west side of Woodman Drive. Surrounding the property is a commercial area with Goodwill on the east, A self storage business on the east (behind the subject property), and an industrial business to the south. The lot is triangular and irregular in shape which is due to the railroad right-of-way changing direction from running

east/west to north/south along Woodman Drive. The subject property abuts the railroad along the west.

In 1975, a gas station was first constructed on the site. Ms. Free showed photos of the site. There are two pumps, an existing freestanding sign, and a small storage structure to be used for a restroom, an office and storage. In 1996, the tanks were replaced. The owner purchased the property in 2015, Swifty closed sometime in 2014. The site suffered discontinuance, thus requiring a new approval to re-establish the gas station use. Hours of operation are Sunday through Saturday 5:00am to 11:00pm. The gas will follow EPA guidelines and be monitored by them. There will be a new retail cabinet in between the pumps and the existing sign with have a new masonry base. New trees are proposed along the railroad right-of-way and two along Woodman Drive along with new low vegetation within a landscape setback.

Fueling stations have specific regulations within the zoning code. Lot size requires 1-acres, only 0.222-acres are existing. All other specific requirements can be met (lot width, no outside storage, parking, and vehicle circulation. However, additional variances are required for site conditions including requirements for a 10-foot parking/ landscaping setback (3 to 4-feet proposed), Street trees, and signage area and height (keeping existing signage proposed – larger than 35-square feet and taller than 6-feet).

Recommendation

The Southeast Land Use board recommended approval of the conditional use and variances and liked that the site will be beautified on all sides. They also recommended that the pumps be required to be full service. Staff doesn't not feel that a full-service station be a requirement, however the applicant is free to operate as such. No feedback from surrounding property owners was received. Staff recommends the Conditional Use and Variances be **approved as submitted** and follow updates in accordance with the submitted color rendered site plan.

Applicant Testimony

Sushil Aggarwal, the property owner, added that they will have the entrance at the north and exit only at the south. He states that he will keep the site clean from debris and trash. The updates will make the place look nice.

Public Testimony

Michael Novean, Burkhardt Engineering, 28 N. Cherry Street, Germantown, OH, helped the owner develop the site to try and meet the zoning requirements as best as possible by providing parking and landscaping improvements despite the site limitations.

Board Discussion

Mr. Ciani asked about proposed number of pumps. Ms. Free clarifies that two are existing and no additional pumps are proposed due to the size of the site. Mr. Daugherty added that if any additional pumps were proposed that a new conditional use approval would be required.

Mr. Bement asked about the underground tanks and if they are a poly material and if they had been inspected. Mr. Aggarwal clarified that they are fiberglass tanks and they will have complete underground line pressure test and everything above the tanks will be replaced and brought up to the EPA standards.

Mr. Bement stated that the site plan was updated well to try and meet current standards. Ms. Tingle agreed.

Board Decision

A motion was made by Mr. Bement 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 R.C.G.O. 150.535 and R.C.G.O. 150.120.10 (D)(1) and approve the Conditional Use and Variances as submitted.

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 June 22, 2021.

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record
May 25, 2021

4. BZA CASE PLN2021-00172; 21 & 27 Drummer Avenue

A **Variance** request to increase the maximum permitted area of the accessory greenhouse structure from 200-sf to 2,268-sf for a community garden at 21 & 27 Drummer Avenue within an MR-5 Mature Single-family district.

Applicant	Cross Over Community Development c/o Catherine Bitwayiki 326 Gunkel Avenue Dayton, OH 45410
Owner	Same as above
Existing Land Use and Zoning:	Vacant residential; MR-5
Surrounding Land Use and Zoning:	North: Single-family Dwellings; MR-5 South: Single-family Dwellings; MR-5 East: Single-family Dwellings; MR-5 West: Single-family Dwellings; MR-5
Priority Land Use Board:	Northeast
Planning District:	Historic Inner East
Planning Staff Contact:	Abigail Free

Ms. Free presented the case. Ms. Free explained the request for a Variance to increase the maximum permitted area of the accessory greenhouse structure from 200-sf to 2,268-sf for a community garden at 21 & 27 Drummer Avenue within an MR-5 Mature Single-family district.

Ms. Free presented maps and photos of the site and surrounding properties. The subject property includes two vacant residential sized lots. A third vacant lot lies to the north. The community garden was started in 2017 after being purchased from the Land Bank. The garden provides educational activities for immigrants and water is accessible on site. A high tunnel style greenhouse is proposed with an area of 2,268-square feet with a height similar to a one-story dwelling. The greenhouse will be located on the lot for 21 Drummer Ave and be setback 12-ft from the alley. A USDA grant will fund the purchase and construction of the greenhouse and will allow the non-profit to extend their growing season to year-round.

The greenhouse was determined to be an accessory structure for the community garden and is

subject to a maximum area of 200-square feet, thus requiring a variance. The greenhouse will be the only structure on site and has been located to visually look centered on the vacant land and separated from the dwellings. Without the variance, the funding for the greenhouse will be lost and they will not be able to provide year-round education.

Recommendation

The North Central Land Use board recommended approval of the variance. No feedback from surrounding property owners was received. Having no other structures proposed with the community garden, limiting the size to only 200-sf would not allow for growing and education to happen on site year-round. The proposed size will fit in the with existing scale of the structures on Drummer Avenue. Planning staff recommend that the variance for the proposed high tunnel size be **approved as submitted.**

Applicant Testimony

Catherine Bitwayiki, property owner, discussed the property. She stated that in 2017 she partnered with OSU extension and Central State to learn modern agriculture practices along with training for immigrants. The greenhouse is important because certain vegetables they want to grow need consecutive growing time, some as long as three years. The grant allows for a film or a polycarbonate. However, the grant but will not cover the construction full amount, but it did specify the size of the greenhouse to be funded. The grant also requires growing in the ground as opposed to hanging. She also proposes a new fence around the site which will be consistent with zoning requirements. She added that the neighbors are friendly and have not had any issues with growing.

Public Testimony

None

Board Discussion

Mr. Martin asked if the size of the structure will recharacterize the site making the greenhouse the primary use and the garden as accessory. Mr. Daugherty stated the structure could now be the predominant element and determined that review by the Board would be required. Will the greenhouse create any unintended consequences? Mr. Daugherty added that only time will tell but the intended use is a community garden. Mr. Brand asked if the structure is consistent with the area and referenced another greenhouse near him that has not been well maintained.

Mr. Bement asked about the materials proposed for construction. Mr. Daugherty clarified that it is a metal structure with polycarbonate wall panels. Ms. Bitwayiki stated it will be metal with the option for film or polycarbonate. He also asked if there will be any heat sources during the winter. She added that it will be up to the finding, but would prefer heating the structure. Ms. Tingle asked if there is access to electricity. Ms. Bitwayiki stated there is an option for electricity to be hooked up and it is close by. Mr. Bement asked about a phased development of the site and if they plan to sell produce? She stated they hope the garden will be profitable and that the immigrants training will help them to start their own income generating urban gardens as a

model for other vacant lots. They also hope to be able to provide exotic vegetables for Dayton, which can only be found currently at Jungle Jim's (in Cincinnati area).

Mr. Martin believes it is a good use for the property and is supported by the federal government and the neighborhood. Ms. Patterson agreed and added that with a greenhouse they won't have to turn over growing beds and can allow growing to extend. Mr. Brand added his support of the variance but he is concerned about the definition as an accessory structure and believes it is the primary structure and also if the structure conforms to the architecture of the area. Mr. Daugherty said the established use is a community garden. The new structure is significant in size but is tied to a principal use and wanted the Board to review it.

Board Decision

A motion was made by Mr. Martin 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 R.C.G.O. 150.120.10 (D)(1) and approve the Variance as submitted.

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 June 22, 2021.

Tony Kroeger, Secretary
Board of Zoning Appeals
