



# City of Dayton

## Board of Zoning Appeals

### Minute Record Summary

January 26, 2016  
4:30 P.M.

Training Room, Sixth Floor, City Hall, 101 W. Third Street, Dayton, Ohio

Members Present: Messrs. Ciani, Brand, Bement, Ms. Graham, Ms. Caudill, and Ms. Tingle

Members Absent: Ms. Mays

A motion was made and carried to approve the minutes for the December 22, 2015 meeting as submitted

Ms. Bronson being a notary, swore in all persons who have testimony including staff.

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#### 1. BZA Case # 038-2015 – 840 N. Main Street

A **Variance** application to reduce landscaping requirements associated with BZA Case #023-2007 at 840 N. Main Street (City Lot #21937-39 & 14953-55) in an EGC Eclectic General Commercial District.

**Applicant/Owner:** Ken Smiley  
840 N. Main Street  
Dayton, OH 45405

**Land Use Board:** NorthCentral

**Planning District:** Riverdale

**Planning Staff Contact:** Abigail Free

**Decision:** Approve with conditions

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#### 2. BZA Case # 001-2016 – 4994 Northcutt Place

A **Use Variance** application to permit portion of a multi-unit commercial building to have 2 principal uses, Assembly Hall and Night Club at 4994 Northcutt Place (City Lot #78602) in an SGC Suburban General Commercial District. Note: Night Clubs are not permitted in the SGC District.

**Applicant/Owner:** Kenny Seabrook  
4990 Northcutt Place  
Dayton, OH 45414

**Land Use Board:** Northeast



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**Planning District:** Northridge Estates

**Planning Staff Contact:** Abigail Free

**Decision:** Withdrawn by applicant – no hearing

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### 3. BZA Case # 002-2016 – 600 Patterson Road

A **Conditional Use** application to expand a church parking lot located at 600 Patterson Road (City lots: #60554-58) in an Eclectic Residential (ER-4) Zoning District.

**Applicant:** Cooper's Blacktop  
2165 State Route 48  
Ludlow Falls, OH 45339

**Property Owner:** Dayton Chinese Christian Church  
600 Patterson Road  
Dayton, OH 45419

**Land Use Board:** Southeast

**Planning District:** Patterson Park

**Planning Staff Contact:** Jon White

**Decision:** Approved with conditions

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### Secretary's Report:

Being no additional business before the Board the meeting was adjourned.

Brian Inderrieden, Secretary  
Board of Zoning Appeals



# City of Dayton

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January 26, 2016

#### **BZA Case # 038-2015 – 840 N. Main Street**

A **Variance** application to reduce landscaping requirements associated with BZA Case #023-2007 at 840 N. Main Street (City Lost #21937-39 & 14953-55) in an EGC Eclectic General Commercial District.

**Applicant/Owner:** Ken Smiley  
840 N. Main Street  
Dayton, OH 45405

**Land Use Board:** NorthCentral

**Planning District:** Riverdale

**Planning Staff Contact:** Abigail Free

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#### **Case Testimony**

Ms. Free presented the report to the Board. The Applicant requests a Variance to reduce landscaping requirements associated with BZA Case #023-2007 at 840 N. Main Street (City Lost #21937-39 & 14953-55) in an EGC Eclectic General Commercial District.

This case has been continued from August 2015. A variance was not approved or denied at the August 2015 BZA hearing.

The subject property is located on the eastern side of N. Main Street, just north of I-75 within the Riverdale Planning District. The current use, Ken's Kars, is Motor Vehicle Sales facility and is a permitted use within the EGC Eclectic General Commercial District, however there is not a Certificate of Occupancy.

Before analyzing the current Variance application, a chronology of previous cases involving the subject property discussed. In 2007, the subject property was involved in multiple cases, including City Plan Board, Board of Zoning Appeals and City Commission.

In March 2007, the Applicant applied to rezone the subject property from MGC Mature General Commercial and MR-5 Mature Single-Family Residential to EGC Eclectic General Commercial to allow for motor vehicle sales. The City Plan Board recommended denial of the rezoning.

Also, during the same month, the Applicant requested the vacations of the alley east of N. Main Street, between Lawn and Hershey Streets, and the alley intersecting the previous stated alley to City Lot #14959 (vacating an "L" shape). The City Plan Board tabled this case at the Applicant's request. Currently, the alleys remain.

In May 2007, the City Commission heard an Appeal of the City Plan Board's recommendation for denial of the zoning change. The City Commission voted in favor of the zoning change to EGC Eclectic General Commercial.

In October 2007, the subject property underwent a Major Site Design Review for Ken's Kars Motor Vehicle Sales. The City Plan Board tabled the case and requested that a lighting and signage plan be submitted that conforms to the zoning code. Later that month, the Major Site Design Review was approved with conditions. The conditions included 1) The submitted lighting plan shall conform to R.C.G.O. Section 150.420.3 (C)(2) regarding light trespass over a property line; and 2) If the Ohio Department of Transportation (ODOT) determines that the landscaping shown on the submitted site plan cannot remain in the easement/ right-of-way ODOT has along the site's North main Street frontage, all landscaping as shown on the submitted site plan must be installed on the site behind ODOT's easement/ right-of-way. Also, with the Major Site Design approval, the submitted landscape plan became a binding document requiring the installation of trees and shrubs as depicted.

Finally, in August 2008, lots within the subject property were consolidated through a Record Plan.

It has been over eight years since the cases involving Ken's Kars. Since that time, the Ohio Department of Transportation has been steadily working on the reconstruction of I-75, including it's on/ off ramps accessing downtown Dayton. The right-of-way along N. Main Street has been widened where it intersects I-75, affecting sidewalks and tree lawns.

At this time, approved landscaping requirements have not been installed, preventing the use from getting a Certificate of Occupancy. Because no CO has been issued, Ken's Kars has essentially been operating illegally. With the threat of a Notice of Violation, a new Landscape Plan has been submitted, revising the number and location of specific landscaping requirements. Revisions to the 2007 Landscape Plan must be approved by the Board of Zoning Appeals through a Variance.

The 2007 Landscape Plan shows a total of 25 trees and 99 shrubs. Eighteen trees, spaced 30-ft on center, line the street frontages of N. Main, Lawn, and Hershey Streets. Two interior landscaped islands hold two trees each. Three trees act as a buffer between the Motor Vehicle Sales use and the abutting residential dwelling on Lawn Street. Shrubs are spaced along the perimeter in conjunction with the trees. Additionally, shrubs are placed around the perimeter of the sales building (no trees). Of the 25 trees approved on the Landscape Plan, only 2 are present on site as a buffer the abutting residential dwelling on Lawn Street (2 additional trees in the buffer zone failed to thrive and were removed).

In August 2015, Ken's Kars submitted a revised Landscape Plan reducing the number of street trees and shrubs, and eliminating the interior landscaped islands. Staff recommended approval as submitted,

but the Board discussed the need for additional landscaping along Lawn Street, and decided to table the case and request an updated Landscape Plan. The BZA Secretary has reopened the case for the January 2015 hearing without an updated Landscape Plan.

The Landscape Plan has not been revised since the August 2015 BZA hearing. It includes eight new trees and eight shrubs. Four trees, evenly spaced, line Hershey Street, with two along N. Main Street at the intersection of Hershey Street. Eight shrubs are clustered with the new trees along Hershey Street. Two trees are placed along Lawn Street at the end of the cul-de-sac. The interior landscaped islands (and trees) have been eliminated along with the shrubs surrounding the sales building.

The elimination of most of the trees along N. Main Street is acceptable because the corridor is very wide and operates at a higher speed, which will likely affect the viability of trees within the public right-of-way. Taking into consideration, discussions at the August 2015 hearing, Staff recommends additional trees and shrubs along Lawn Street to create consistency of landscaping features. The spacing and location should mirror what is being proposed along Hershey Street. Staff recommends approval of the variance with the following conditions:

1. Provide trees and shrubs along Lawn Street consistent with the number and amount proposed and existing along Hershey Street. See staff rendering of Landscape Plan.

\*Note: Hershey Street depicts 3 street trees, spaced 30-feet on center, and 9 shrubs along the closest block to N. Main Street.

### **Public Testimony**

Ken Smiley, owner of 840 N. Main Street, indicated that he had spoke to staff and was in agreement with the proposed changes to the landscape plan

The public hearing was closed and the Board discussed the case.

### **Board Action**

The Board members confirmed that the applicant had agreed to install additional landscaping and that they could support the variance.

Following the discussion, a motion was made by Ms. Caudill, 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 Variance subject to the following conditions:

- 1) That the applicant provide trees and shrubs along Lawn Street and Hershey Street in accordance with the attached modified site plan (labeled Staff Recommendation)

Mr. Bement	Yes	Ms. Tingle	Yes
Mr. Brand	Yes	Ms. Caudill	Yes
Ms. Mays	absent	Mr. Ciani	Yes
Ms. Graham	Yes		

Approved by the Board of Zoning Appeals January 26, 2015



Brian Inderrieden, Secretary  
Board of Zoning Appeals

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**BZA CASE #001-2016; 4994 Northcutt Place**

A **Use Variance** application to permit portion of a multi-unit commercial building to have 2 principal uses, Assembly Hall and Night Club at 4994 Northcutt Place (City Lot #78602) in an SGC Suburban General Commercial District. Note: Night Clubs are not permitted in the SGC District.

**Applicant/Owner:** Kenny Seabrook  
4990 Northcutt Place  
Dayton, OH 45414

The case was withdrawn by the applicant – This case was not heard

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**BZA CASE #002-2016; 600 Patterson Road**

A **Conditional Use** application to expand a church parking lot located at 600 Patterson Road (City lots: #60554-58) in an Eclectic Residential (ER-4) Zoning District.

**Applicant:** Cooper's Blacktop  
2165 State Route 48  
Ludlow Falls, OH 45339

**Property Owner:** Dayton Chinese Christian Church

600 Patterson Road  
Dayton, OH 45419

**Priority Board/ Land Use Committee:** Southeast

**Planning District:** Patterson Park

**Planning Staff Contact:** Jon White

### **Case Testimony**

(Ms Graham recused herself from hearing the case. She indicated that she lived directly across the street from the subject property) Mr. White presented the staff report. The applicant requests a Conditional Use permit to allow for an extension of an existing parking lot by adding 4,220 square feet of new pavement. Eight (8) new spaces will be added on top of an existing green space, located in the existing parking lot. In addition to the parking lot expansion, the existing ingress/ egress along Patterson Road on the northeast section of the site will be removed, and a new 7' deep tree lawn will be installed between the new parking spaces and the existing sidewalk. Churches in ER-4 districts are a conditional use and any new expansion or improvement, including pavement, require a Board of Zoning Appeals hearing.

The subject property is located on the south side Patterson Road, just east of Shroyer Road. The property is surrounded by multi-family housing to the north, a small neighborhood park immediately to the west, and single-family housing to the east and south.

### Staff Recommendation

Staff supports the Conditional Use application for the parking lot expansion. Site improvements including the removal of an existing ingress/ egress curb cut along Patterson Road should improve safety entering and exiting the site. A new 7' wide front yard and street trees will help atone for the loss of green space on the site and increase in pavement.

Staff recommends approval of the Conditional Use **with conditions**.

Recommended conditions:

1. Remove the eastern vehicular ingress/ egress and replace with curb and walk per city standards.
2. Provide a minimum 7' wide front yard along Patterson Road.
  - a. 18 inch poured in place barrier curb shall be installed along perimeter of new lot.
  - b. Street trees shall be provided along Patterson Road per Section 150.800 inclusive.

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**Public Testimony**

There was no testimony taken.

**Board Action**

The Board believed that the proposed changes will be an improvement to the Church.

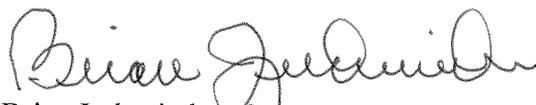
**Board Decision:**

A motion was made by Mr. Bement, seconded by Mr. Brand, 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 approve the Conditional Use application as submitted subject to the following conditions:

1. That the applicant remove the easternmost curb cut on Patterson Road and replace with curb and walk per City Standards.
2. That the applicant provide a continuous seven ft. wide front yard along Patterson Road excluding ingress egress point
3. That a 18 inch poured in place barrier curb be installed along perimeter of new parking lot, and that 2.5 inch caliper Street Trees be installed along Patterson Road according to code.

Mr. Bement	Yes	Ms. Tingle	Yes
Mr. Brand	Yes	Ms. Caudill	Yes
Ms. Mays	absent	Mr. Ciani	Yes
Ms. Graham	recused		

Approved by the Board of Zoning Appeals December 22, 2015



Brian Inderrieden, Secretary  
Board of Zoning Appeals

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Being no additional business before the Board the meeting was adjourned.