



City of Dayton

Board of Zoning Appeals

Minute Record
February 22, 2022

1. BZA CASE PLN2022-00019; 707 S Edwin C Moses Blvd

A **Variance** request to exceed maximum permitted solid fence height of 8-feet and increase to 10-feet, to be visible along Albany Street to enclose a new playground area for Kindred Hospital at 707 S Edwin C Moses Blvd within a CI Campus Institutional District.

Applicant:	Alpa Construction c/o Mike Jezyk 6601 S Central Avenue Bedford Park, IL 60638
Owner:	KND Real Estate 29 LLC 680 S Fourth Street Louisville, KY 40202
Existing Land Use and Zoning:	Hospital; CI
Surrounding Land Use and Zoning:	North: Elizabeth Place; CI South: Industrial & Civic uses; EGC, BP, T East: Great Miami River; OS West: Elizabeth Place; CI
Priority Land Use Board:	West
Planning District:	Carillon
Planning Staff Contact:	Abigail Free

Ms. Free presented the case. The case involves a request for a variance to increase the maximum fence height at Kindred Hospital. Kindred Hospital is adding a new psychiatric care unit which requires and outdoor play area to comply with licensing. Hospital construction guidelines require fences to be 10-ft tall for patient safety, privacy, and to reduce the risk of patient elopement. The proposed play area is 32-ft by 27-ft, roughly 864-sf with one exit gate.

Fence regulations allow for a maximum height of 8-ft within the CI Campus Institutional District. A variance is needed to increase the fence from 8-ft to 10-ft. Shade trees and shrubs are also required to visually soften solid privacy fences within the CI district. A landscaping plan has been submitted and meets zoning code standards.

Photos of the subject property and surrounding area were included in the presentation. Views of the grass play area also show an existing exit door from the building which will be within the fenced area and an existing sidewalk which will remain and line up with the exit gate. The site plan, fence section, and landscape plan were presented as well.

The West Land Use Board met on the case and is in support of the increased fence height. No feedback was received by surrounding property owners. Carillon neighborhood is aware of the request and did not have any opposition.

Recommendation

Staff recommended approval as submitted. Without a variance for the fence height, Kindred Hospital would not be licensed for the new psychiatric care unit.

Applicant Testimony

Michael Jezyk, applicant, was present to answer any questions. Mr. Bement asked about the fence detailed section. The section shows the finish side on the inside to avoid being a ladder. Mr. Daugherty, zoning administrator, clarified that typically the finish side is to face outward. He says that a dual finish would be appropriate. Mr. Jezyk is open to a dual finish fence.

Phil Underwood, Kindred Hospital Chief Executive Officer, 707 S Edwin C Moses Blvd was present to answer questions. Mr. Bement commented that the landscaping plan looks good.

Public Testimony

No one was registered to speak.

Board Discussion

Mr. Bement discussed making the stipulation that the fence be finished on both sides. Ms. Patterson agreed that the case is pretty straight forward.

Board Decision

A motion was made by Mr. Bement, seconded by Ms. Graham and carried to table the request for a Variance, 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 applications with conditions:

1. Provide a finished surface, vertical slats on both sides of the fence.

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

Minutes approved by the Board of Zoning Appeals March 22, 2022.
Jeff Green, Secretary Board of Zoning Appeals



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2. BZA CASE PLN2022-00021; 1036 Gateway Drive

A Conditional Use and Bulk/Area Variance application to allow the property located at 1036 Gateway Drive to be utilized for outdoor storage within a Light Industrial (I-1) Zoning District. The variance application includes a request for relief from the required 20% total outside storage area. Per the Montgomery County Auditor, the property is identified via parcel number: R72 17615 0006.

Applicant: Richards Building Supply Co.
c/o William Swanson
12070 W. 159th St.
Homer Glen, IL 60491

Owner: BPMS LLC
5699 Willow Twig
Dayton, OH 45459

Surrounding Land Use and Zoning: **North:** Soccer Field; OS Open Space
South: Vacant Land; OS Open Space
East: Famous Supply; I-1 Light Industrial
West: Home City Ice; I-1 Light Industrial

Land Use Board: Northeast

Planning District: Gateway

Planning Staff Contact: Jeff Green

Mr. Green presented the case.

The applicant is requesting Conditional Use approval to allow for outside storage to occur at the rear of the subject property as an extension of the existing business (SIBCO Building Products). Per the applicant, asphalt shingles will primarily be the material being stored outside. In addition, the applicant is also requesting a bulk/area variance to increase the total allowable outdoor storage area from 20% to 49.5% as indicated on the site plan.

The current site conditions of the subject property were noted which included the size of the property, size of the structure, and proximity to the river.

Per the plans submitted, the applicant proposes to utilize up to 9,796 sq. ft. for outside storage which will be located in the rear of the property. In the I-1 zoning district, outside storage requires Conditional Use approval. The applicant, in the original submittal, had also proposed outside storage in the side yard but has since revised their submittal to better meet the requirements of the zoning code. In reviewing the request for a conditional use, the overall impact of the request and how harmonious it will be with that of surrounding properties should be taken into account. In this case, this industrial zoned property is being utilized as a building products wholesale establishment with the requested outside storage being a reasonable addition that should not significantly impact the existing operations nor is it likely to become a nuisance to the area.

The proposed improvements to the site were discussed focusing specifically on the landscape buffering and proposed outside storage area.

Mr. Green noted that the variance to increase the maximum allowable storage area from 20% to 49.5%. While seemingly significant, when noting the location and additional screening measures proposed, the impact of such a variance would seem to be reasonable particularly as the rear of the property is wooded. Furthermore, when looking at the business to the east, such a request would not be out of character for the area.

The Northeast Land Use Board had some concerns regarding the outside storage proposal and its potential impact on the water source, particularly if another type of material were to go that would be considered incompatible with the business and overall considered a hazardous substance. Mr. Green pointed out that Section 150.340.6 would seem to cover those concerns.

Mr. Green noted the appropriateness of the request and keeping within the spirit and intent of the zoning code.

Public Comment

The Northeast Priority Land Use met on February 15, 2022 and voted unanimously that the proposal be approved.

Staff has received the following public comments:

- Gary Lytle (owner of subject property) – Supportive of the request.
- Home City Ice – 1020 Gateway (Phone Call) – Noted the business is a good neighbor and not opposed to the request

Staff recommendation

Staff recommends the requested conditional use and variance request for outside storage (as noted on the site plan) be approved as submitted.

Board Questions for Staff

The board wanted clarification on the street trees along nearby properties.

Mr. Green noted the street trees shown on the aerial of the property directly to the east but noted those have been largely removed due to the 2019 tornado.

Public Testimony

Bill Seech (1036 Gateway, Dayton OH), representative of the applicant, was given the opportunity to speak first. Was present to answer any questions.

The board asked about the items to be stored outside. Mr. Seech clarified that asphalt shingles would be the item stored outside and explained how they would be stored. Mr. Bement asked about potentially adding street trees. Mr. Seech stated he did not have an issue with adding trees.

Amy Hansley, 1036 Gateway Dayton OH, Richards Building Supply handed the board Exhibit A which was a letter of support from Action Sports Park in regard to the proposal. Ms. Hansley also noted that the city has promised streetlights which could interfere with any street trees put in. A discussion took place between the street trees and potential streetlights between the board and Ms. Hansley.

Gary Lytle, 5699 Willow Twig Dayton OH, owner of the property. Explained the history of the business and property. Supportive of the request.

Fred England, 2525 E 5th St Dayton OH, wanted to clarify the concerns noted from some members of the Northeast priority Land Use Board and wanted to reiterate was still supportive of the request.

Board Discussion

Mr. Bement wanted clarification on the protections of hazardous materials that the city has in terms of code. Mr. Green noted that section 150.340.6 should cover those concerns.

The board discussed the potential for street trees along the property in relation to the potential implementation of street lights as well.

Board Decision

A motion was made by Mr. Bement 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. 150.535 and R.C.G.O. §150.120.10 (D)(1) to approve with conditions the application for a Conditional Use and Variance.

- 1. Street trees be added in coordination with the placement of streetlights

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

Approved by the Board of Zoning Appeals March 22, 2022

Jeff Green, Secretary
Board of Zoning Appeals
