



City of Dayton

Board of Zoning Appeals

Minute Record Overview

April 26, 2022
4:30 P.M.

Planning Resource Conference Room, City Hall
101 W. Third Street, Dayton, Ohio

Members Present: Mr. David Brand, Mr. Tim Bement, Mr. Anthony Ciani, Ms. Diane Graham, Mr. Patrick Martin, Ms. Jaqueline Patterson, Ms. Lisa Tingle

Members Absent: N/A

Mr. Ciani called the meeting to order at 4:30 P.M. A motion was made and seconded to approve the minutes of the March 22, 2022 as submitted.

1. PLN2022-00085 – Conditional Use request to establish a Type “A” Daycare for 7-12 children at 2142 Elsmere Avenue.

Applicant: Angela Reeves
2142 Elsmere Avenue
Dayton, OH 45406

Priority Land Use Board: North Central

Planning District: Fairview

Decision: Approved as Submitted

2. PLN2022-00094 – Conditional Use request to construct an accessory structure and utilize it as an accessory dwelling unit (ADU) at a property located at 1952 E. 4th Street.

Applicant: Joel Michael
1952 E. 4th St.
Dayton, Ohio 45403

Priority Land Use Board: Northeast

Planning District: Historic Inner East

Decision: Approved with Condition

3. PLN2022-00101 – Conditional Use request to establish a retail convenience store with food storage, preparation, and carryout at 120 S James H McGee Boulevard.

Applicant: Willie & Perlita Parson
2408 Lakeview Avenue
Dayton, OH 45417

Priority Land Use Board: West

Planning District: MacFarlane

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 May 24, 2022.

Jeff Green, Secretary
Board of Zoning Appeals



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1. BZA CASE # 2022-00085 – 4142 Elsmere Avenue

The applicant, Angela Reeves, requests Conditional Use approval in order to establish a Type “A” Daycare for 7-12 children at 2142 Elsmere Avenue (Parcel R72 11502 0034) within the Fairview Planning District. The property is zoned ER-4 Eclectic Single Family.

Applicant	Angela Reeves/Angie’s Early Learning Academy 4142 Elsmere Avenue Dayton, OH 45406
Owner	Angela Reeves 4142 Elsmere Avenue Dayton, OH 45406
Existing Land Use and Zoning:	Family Day Care Home for 1-6 children (type B); ER-4
Surrounding Land Use and Zoning:	North: Multi-Family Dwelling; ER-4 South: Single Family Dwelling; ER-4 East: Single Family Dwelling; ER-4 West: Single Family Dwelling; ER-4
Land Use Committee:	North Central
Planning District:	Fairview
Planning Staff Contact:	Keeghan White

Mr. White presented the case.

The applicant, Angela Reeves, requests to establish a Type “A” Family Day Care Home (Day Care) for 7-12 Children at 2142 Elsmere Avenue (Parcel R72 11502 0034) in an ER-4 Eclectic Single Family Residential District. Type “A” Day Cares are a Conditional Use within the ER-4 Zoning District.

The subject property is located on Elsmere Avenue at the intersection of Wakefield Avenue and has a total square footage of 1,764 according to the Montgomery County Auditor. Single family dwellings mostly surround the property with the exception of a multi-family dwelling to the north. As the property is currently an established Type “B” Family Day Care Home, the property is well-equipped to not only support the current operation but intensify to a Type “A”. The property includes a driveway and has plenty of on-street parking for child drop-off and pick-up which the applicant has stated is usually staggered. To this end, the property meets parking requirements under the Zoning Code. The property also has an enclosed backyard with an eight-foot (8’) privacy fence and covered patio.

The applicant has applied for a Type “A” license to expand the number of children permitted. She has operated a Type B for up to 6 children at the subject property for the past 13 years. The applicant has an existing license by the State of Ohio. Conditional Use is required before the Applicant can increase the number of children from 0-6 to 7-12.

The hours of operation proposed are Monday through Friday from 5:00 am to 5:30 pm. The applicant will be the only employee working but is looking to hire another employee as State of Ohio requires two employees working when there are seven (7) or more children. No more than twelve (12) children will be onsite at any given time.

Establishing a Type “A” Family Day Care Home within an existing single-family neighborhood will not likely alter the neighborhood’s character or decrease property values. On the contrary, it will increase the capacity of an existing business to support the community. The applicant has stated that families in the area are currently on a waitlist to receive childcare and the expansion of the day care would allow for some of those children to be enrolled. Parents dropping off children and playing outside will minimally increase traffic and noise in the area.

Public Testimony

The applicant, Ms. Angela Reeves, spoke to the commendations that the day care has received including a five-star rating from Step Up To Quality (SUTQ), a program administered by the Ohio Department of Education and the Ohio Department of Job and Family Services. Ms. Reeves also spoke to her credentials.

Board Discussion

The board discussed the case. Mr. Tony Ciani asked the board if the application looked clean and was answered in the affirmative.

Board Decision

A motion was made by Ms. Tingle and seconded by Ms. Patterson 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 application as submitted for Conditional Use.

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

Approved by the Board of Zoning Appeals on May 24, 2022.

Jeff Green, Secretary
Board of Zoning Appeals



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2. BZA CASE # 2022-00094 – 1952 E Fourth Street

The applicant, Joel Michael, requests Conditional Use approval to construct an accessory structure and utilize it as an accessory dwelling unit (ADU) at a property located at 1952 E. 4th St. within the MR-5 Mature Single Family Zoning District. The property is located in the Historic Inner East Zoning District and is within the HD-2 Historic Overlay District.

Applicant	Joel Michael 1952 E. 4th St. Dayton, OH 45403
Owner	Joel Michael and Danielle Dumont 6705 N Kerby Ave Portland, Oregon 97217
Existing Land Use and Zoning:	Single-Family Residence; MR-5 Mature Residential (HD-2 Historic Overlay)
Surrounding Land Use and Zoning:	North: Single Family Dwelling; MR-5 Mature Residential South: Single Family Dwelling; MR-5 Mature Residential East: Single Family Dwelling; MR-5 Mature Residential West: Single Family Dwelling; MR-5 Mature Residential
Land Use Committee:	Northeast
Planning District:	Historic Inner East
Planning Staff Contact:	Jeff Green

Mr. Green presented the case.

The applicant, Joel Michael, requests Conditional Use approval to construct an accessory structure and utilize it as an accessory dwelling unit (ADU) at a property located at 1952 E. 4th St. within the MR-5 Mature Single Family Zoning District. The property is located in the Historic Inner East Zoning District and is within the HD-2 Historic Overlay District. The subject property was described in relation to its size, layout, and the zoning district.

Mr. Green noted that per the code, an accessory dwelling unit (ADU) in an MR-5 Zoning District requires Conditional Use approval. As previously noted, ADUs are now conditionally permitted whereas they were not considered an allowable accessory use up until a few months ago. The change to conditionally allow ADUs is to reflect the desire of the city to give a higher degree of flexible housing options to residents where appropriate and so long as certain conditions can be met.

Per the plans submitted, the proposed structure has a footprint of 800 sq. ft. with the first floor being a garage and the second floor being the ADU. Per code, an ADU cannot exceed 900 sq. ft. in size and can be up to 66% of the size of the principal dwelling. The principal dwelling is 1,664 sq. ft. (per county auditor) meaning as proposed, the ADU would meet the total size limitations. The structure is proposed to have a 3 ft. side yard setback and 5 ft. rear yard setback while being 23 ft. from the house, which meets all setback requirements.

The code requires an ADU (and detached garage) must have a similar roof pitch and constructed of similar materials to that of the principal dwelling. As noted in the submitted plans, the proposed structure has a matching roof pitch, trim, and siding which would meet the requirements of the code. Additionally, as the existing single-family dwelling is 2 stories in height, the proposed garage would not be taller than the house meaning the fabric of the neighborhood would not be disrupted should this be constructed.

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 considered. In this case, the proposed ADU would look to fit in well with fabric of the area. The proposed structure will be of similar setback to other garages along the alley and meets all requirements as outlined in the code.

Mr. Green noted that the public comments received:

- Northeast Priority Land Use Board had recommended the request be approved.
- Rosie Miller, Huffman Historic Neighborhood Association, is not opposed to the request.

Staff believes the proposed ADU to meet the intent of the code and fit in harmoniously with the surrounding properties. Therefore, staff recommends the application be approved with the condition that porch and balcony details be approved by City Staff (as required by the Landmarks Commission).

Public Testimony

The applicant, Joel Michael, noted he was the applicant and owner of the subject property and was present to answer any questions.

Mr. Bement questioned the intended use of this structure. Mr. Michael explained the intended use is mostly for the enjoyment of his family and guests but did note that it could be rented out. Mr. Michael also explained the drivable grass which is proposed to be located between the accessory structure and grass for parking purposes. The board discussed the drivable grass.

Board Discussion

Mr. Bement questioned if a condition should be added to not rely on the permeable grass for parking purposes. The board discussed the permeable grass and adding it be a condition that the permeable grass would not be permitted for parking.

Board Decision

A motion was made by Ms. Patterson and seconded by Mr. Martin 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 application as submitted for a Conditional Use with conditions.

1. Porch and balcony details be approved by City staff as required by the Landmarks Commission.

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

Approved by the Board of Zoning Appeals on May 24, 2022.

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3. BZA CASE PLN2022-00101; 120 S James H McGee Blvd

A **Variance** request to exceed the maximum permitted size of an accessory structure 450 square foot addition onto the existing carriage house which will total 1,546 square feet in size if approved. The subject property is located at 36 South June Street in the MR-5 (Mature Single Family) Zoning District, within the HD-2 Historic District Overlay.

Applicant:	Willie & Perlita Parson 408 Lakeview Avenue Dayton, OH 45417
Owner:	Perlita Puerner PO Box 24842 Dayton, OH 45424
Existing Land Use and Zoning:	Previous church; I-1
Surrounding Land Use and Zoning:	North: Vacant land; EGC South: Vacant land & Industrial bldgs; I-1 East: Vacant land; I-1 West: Vacant land; EGC
Priority Land Use Board:	West
Planning District:	MacFarlane
Planning Staff Contact:	Abigail Free

Ms. Free presented the case. The Applicant requests a Conditional Use to establish a retail convenience store with food storage, preparation, and carryout at 120 S James H McGee Blvd within an I-1 Light Industrial District. Within the I-1 district retail establishments are permitted when they are part of a multi-tenant building but are to be reviewed for Conditional Use when proposed as a principal use.

The property's most recent legal use was a church/assembly. Ms. Free showed aerial and zoning maps of the area as well as photos. The property is surrounded by vacant industrial zoned land and vacant commercial zoned land across the street to the north and west. The existing building is 3,036-sf on a total lot size of 0.25-acres. The site has frontage along James H McGee Blvd but can only be accessed by vehicle from the named alley, Cambria Court at the rear of the property.

The proposed retail establishment, Blue Spoon Café, will be relocated from downtown, currently within the Talbot Tower. The convenience store and carryout will include food storage and preparation/grilling and have a fixed menu with daily specials. The current alcohol, cigarette, vendor and food licenses will also be transferred. The proposed hours of operation are Monday through Saturday 8:00am-1:00am and will have 2 employees per shift. Eight parking spaces are proposed along Cambria Court.

The Zoning Administrator provided three reasons refused: 1) Retail establishments as principal uses within I-1 district require Conditional Use approval by the BZA, 2) Parking requires 5-ft side setbacks, and 3) No merchandise area, shelving. Or displays are shown on the floor plan.

Staff analysis noted that within the I-1 district retail establishments are permitted when they are part of a multi-tenant building but are to be reviewed for Conditional Use when proposed as a principal use. Also, the site plan had been revised to show 9-ft side setbacks, thus coming into compliance. As for the interior layout, the exact layout can be reviewed before a new use and occupancy certificate is issued.

There are also specific regulations for retail establishments including: A) Applicants must clearly demonstrate that the use will be compatible with the neighborhood, particularly with regard to traffic circulation, parking, and appearance, B) N/A, C) Parking shall be located behind the front building line, and D) Loading areas shall be sited to minimize the impact on surrounding residential uses.

Staff analysis noted that there are not many established uses along James H McGee Blvd to be compatible with, however placing the parking area along the north side of the building could be an alternative to the proposed location along the alley. Parking is proposed behind the front building line. Also, there is no separate loading area propose. Likely loading will be done from the parking lot or the alley during non-peak hours. However, Staff recommends that the dumpster location be moved the to the southeast corner and along the alley.

The West Priority Land Use Board recommended denial based on concerns with the proposed parking location and the vehicular circulation using the alley, which is in bad condition. They also discussed the hours or operation. CityWide Development submitted a letter in opposition citing neighborhood incompatibility, Cambria Court is too narrow for two vehicle to pass and its use as a parking aisle is not appropriate. Ms. Free again noted that an alternative parking area would be along the north side of the building, but noted that the proposed location of the parking area was not a reason refused by the Zoning Administrator.

Recommendation

Ms. Free notes that the standards for a Conditional Use can be met and recommends Approval with Conditions.

Recommended conditions include:

1. Update the site plan to depict accurate existing site conditions.

- a. Add the existing pedestrian circulation to site plan from the sidewalk to the building entrance and replace the handrail for safety purposes.
 - b. Verify all “existing trees to remain” on the site plan and remove those no longer present.
 - c. Remove fencing around the lawn area (from a previous use review).
2. Provide street trees to City standards along S James H McGee Blvd only in front of the lawn area.
 3. Relocate dumpster and enclosure to the south behind the building and shift parking to maintain a 5-ft setback at the north.
 4. Pave, seal and stripe the parking area to City standards.
 5. Limit hours of operation, to be determined by the BZA.
 6. New signage to comply with City standards.

Mr. Daugherty, Zoning Administrator, added that I-1 signage regulations are different than commercial zone regulations.

Questions by the Board

Mr. Ciani asked for clarification on which zoning district the signage would be under. Ms. Free clarified that the signage falls under Industrial zoning. He also asked about correspondence. Ms. Free noted there were two letters in opposition and the West Land Use Board chair was present to speak on the case.

Mr. Bement asked to review the site photos. He was concerned about the ADA requirements and an accessible entrance. An ADA parking space is present. Mr. Bement sees a step up into the building that may need a ramp. He also asked for clarification regarding the relocation to the dumpster. Ms. Free showed a slide that depicts the changes reflected in the recommended conditions.

Mr. Bement asked about the parking lot alternative. Ms. Free noted that she is unsure if parking would fit to standard sizes in the north area of the site, but if the BZA determined the proposed parking was inappropriate that the north area as a parking lot could be investigated further. Mr. Daugherty noted that in his opinion, the proposed parking is not out of compliance. In this instance with the I-1 zoning, the parking along the alley is acceptable. It would not be acceptable in residential zoning. A retail use in industrial zoning districts is not typical. Mr. Bement added that no other uses utilize the alley the alley currently. An alternative to using the alley would be to add a curb cut on James H McGee Blvd which is not recommended due to the center median and the fast speed of the street.

Mr. Brand asked about the history of the building. Mr. Daugherty clarified that it was last operated as a church, but it is no longer the legal use due to discontinuance.

Applicant Testimony

Willie Parson, Applicant, 120 S James H McGee Blvd, believes Ms. Free presented the

information accurately. Mr. Bement asked if the large area labelled storage will be used for retail. Mr. Parson clarified that the customer would enter and pick up items and current not be able to shop within the building.

Ms. Patterson has concerns about access to the site and utilizing the alley for ingress and egress. She believes that it would be difficult when the carryout is busy. Also, utilizing the Fifth Street to the north to get to the alley is cumbersome. She notes more space is recommended and she believes far more parking would be best.

Mr. Parson claims that when it was a church that there was not a problem utilizing the alley for circulation. Also, he attests that he has been in contact with the City to repaved the alley but ultimately he has not control over the alley's condition.

Ms. Patterson argues that there is not enough parking to accommodate the people using the business. Ms. Free clarified that there are parking minimums and maximums for a retail use within the industrial zone. The maximum is 4 spaces per 1,000-sf, making the 12 the maximum number of parking space permitted for the use. The minimum would be 2/1,000-sf which is 6 spaces. The site plan shows 8 spaces and it in compliance.

Mr. Brand asked if Mr. Parson is the property owner or just the business owner. Mr. Parson stated he and his wife own the property and will operate the business. Mr. Brand asked about the drive-through mentioned in the application. Mr. Parson stated that is a future goal. Mr. Kroeger clarified that a drive-through would require BZA approval if proposed in the future. Ms. Free added that no drive-through is shown on the site plan and therefore is not part of the approval for this use.

Mr. Ciani asked about the hours and operation. Mr. Parson noted on the application hours as 8:00am to 1:00am. He chose these hours to be compatible with other similar businesses in the surrounding area.

Mr. Daugherty clarified that a drive-through use is not within the use table for Industrial zones, so it would not be permitted at this site.

Public Testimony

Peter Benkendorf, 114 W First Street Unit B Talbot Tower, spoke in support of the Applicant. He has known Mr. Parson for 3.5 years and is also a tenant in Talbot Tower along with the applicant. He hopes that the land that Mr. Parson proposes as a retail use will be approved and that we can find a way to make it work. He believes that Mr. Parson's carryout will benefit the community.

Susan Spiegel, 2267 Jaime Rose Way, Representing FLOC (For the love of children), also located in the Talbot Tower. She volunteers with FLOC and met Mr. Parson as a tenant. She explained that Mr. Parson had the idea to set up vending machines within the Talbot Tower and all the proceeds go to FLOC. She adds that he is very hard working and dedicated to the community. She believes his proposed convenient store will carry items that the community will

want to purchase and can attest that he is a operates his store in Talbot Tower well and that he is an asset to the downtown community. She believes that the convenience store will be a great addition to the neighborhood.

Joe Shaw, 128 Horace Street, representing the West Priority Land Use Board, stated that the main reason for recommending denial was the proposed parking and traffic circulation as shown on the site plan. He added that they discussed possible alternatives, such as a curb cut along James H McGee Blvd and moving the parking to the north of the building so as not to use the alley to access parking spaces. They also discussed the operating hours to 1:00am.

Mr. Martin asked why they were concerned with 1:00am, as there are no residences around the site. Mr. Shaw clarified that it was discussed to try and understand what type of clientele would use the store at that hour. However, he added that they did not have the information about the other businesses in the area with similar hours.

Closing Testimony

None

Board Discussion

Mr. Brand is concerned with the parking reversing into alley and he doesn't think it is the best location but doesn't feel that anything can really be required due to it not being a zoning code problem. Mr. Bement added that he doesn't think the parking can fit to the north of the building based on the required setbacks, and parking space and aisle widths. Mr. Bement agrees with all of the recommended conditions except for the hours of operation; however, he does not feel that the main entrance in the rear is appealing for customers. He would like it to have a better street/retail presence along James H McGee even though the location would not allow for it. Mr. Bement did not have a concern for the hours of operation and sees that with the hours proposed the store can competed with others in the area.

Ms. Graham asked if the Applicant is okay with the proposed conditions. Mr. Parson agreed that he is okay with them. Ms. Patterson clarified that there is a Dollar General nearby at the corner of W Third Street and James H McGee that provides necessities to the area.

Board Decision

A motion was made by Ms. Graham seconded by Mr. Martin and carried to Approve with Conditions the request for Conditional Use. The following conditions are required with the approval:

1. Update the site plan to depict accurate existing site conditions.
 - a. Add the existing pedestrian circulation to site plan from the sidewalk to the building entrance and replace the handrail for safety purposes.
 - b. Verify all "existing trees to remain" on the site plan and remove those no longer present.
 - c. Remove fencing around the lawn area (from a previous use review).

2. Provide street trees to City standards along S James H McGee Blvd only in front of the lawn area.
3. Relocate dumpster and enclosure to the south behind the building and shift parking to maintain a 5-ft setback at the north.
4. Pave, seal and stripe the parking area to City standards.
- ~~5. Limit hours of operation, to be determined by the BZA.~~
6. New signage to comply with City standards.

Mr. Bement	Yes	Ms. Tingle	No
Mr. Brand	Yes	Ms. Patterson	No
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Yes		

Minutes approved by the Board of Zoning Appeals May 24, 2022
Jeff Green, Secretary Board of Zoning Appeals