



# City of Dayton

## Board of Zoning Appeals

### Minute Record Overview

May 24, 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 April 26, 2022 as submitted. Some cases were heard out of order from the agenda due to applicants running late.

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**1. PLN2022-00123 – A Conditional Use and Variance application to allow the property located at 1800 E Fifth Street to be utilized for live-work on the first floor and multi-family dwellings on the second floor**

Applicant: Ahmed Three LLC  
c/o Salma Ahmed  
365 Lum Crowe Rd  
Roswell, GA 30075

Priority Land Use Board: Northeast  
Decision: Approved as Submitted

Planning District: Historic Inner East

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**2. PLN2022-00129 – Variance application to allow a pre-existing nonconforming billboard to change from a digital screen to static and expand in size within the Urban Business District (UBD) where an off-premise sign is not permitted located at 911 E. Third Street.**

Applicant: Lamar Advertising  
c/o Shane Slaven  
112 Grimes Street  
Dayton, OH 45402

Priority Land Use Board: Downtown  
Decision: Denied

Planning District: Oregon

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**3. PLN2022-00132 – Conditional use Variance application to approve single-family attached dwellings located at 316 – 320 E. Lincoln Street.**

Applicant: Magnetic Home Services LLC  
c/o Jared Korman  
3387 Fishinger Mill Dr.  
Hilliard, Ohio 43026

Priority Land Use Board: Downtown  
Decision: Approved with Conditions

Planning District: South Park

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**4. PLN2022-00133 – Variance application to approve a new single-family detached dwelling located at 225 East Lincoln Street.**

Applicant: Chambers Architecture  
c/o Charles Chambers  
208 Brown Street  
Dayton, Ohio 45402

Priority Land Use Board: Downtown  
Decision: Approved as Submitted

Planning District: South Park

**5. PLN2022-00137 – Conditional Use application to establish a Type “A” Daycare for 7-12 children at 1300 Alcott Avenue**

Applicant: Lisa Fletcher  
1300 Alcott Avenue  
Dayton, Ohio 45406

Priority Land Use Board: North Central

Planning District: Cornell Heights

Decision: Approved as Submitted

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**6. PLN2022-00149 – An appeal of the Zoning Administrator's determination that a junkyard is not permitted in the I-1 Zoning District, has lost its legal nonconforming status as a junkyard, and is not subject to current zoning provisions for the property located at 1801 Valley Street.**

Applicant: Pickrel, Schaeffer, & Ebeling  
c/o Gerald McDonald  
40 N Main Street Ste 2700  
Dayton, Ohio 45423

Priority Land Use Board: Northeast

Planning District: Old North Dayton

Decision: Appeal Denied

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

Minutes approved by the Board of Zoning Appeals on June 28, 2022.

Jeff Green, Secretary  
Board of Zoning Appeals



# City of Dayton

## Board of Zoning Appeals

### Minute Record

May 24, 2022

#### 1. BZA CASE # 2022-00123 – 1800 E Fifth Street

A Conditional Use and Bulk/Area Variance application to allow the property located at 1800 E Fifth Street to be utilized for live-work on the first floor and multi-family dwellings on the second floor within a Mature Single Family Residential (MR-5) Zoning District. The variance application includes a request for relief from total number of required parking spaces.

<b>Applicant</b>	Ahmed Three LLC c/o Salma Ahmed 365 Lum Crowe Rd Roswell, GA 30075
<b>Owner</b>	Ahmed Three LLC 365 Lum Crowe Rd Roswell, GA 30075
<b>Existing Land Use and Zoning:</b>	Vacant Commercial Building; MR-5 Mature Residential
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Sunoco Gas Station; MR-5 Mature Residential <b>South:</b> Single-Family Residential; MR-5 Mature Residential <b>East:</b> Two-Family Residential; MR-5 Mature Residential <b>West:</b> Single-Family Residential; MR-5 Mature Residential;
<b>Land Use Committee:</b>	Northeast
<b>Planning District:</b>	Historic Inner East
<b>Planning Staff Contact:</b>	Jeff Green

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Mr. Green presented the case.

The applicant, Salma Ahmed, is proposing to utilize the property at 1800 E Fifth Street for live-work (offices) on the first floor and multi-family dwellings on the second floor within a Mature Single Family Residential (MR-5) Zoning District.

Mr. Green noted that per code, Conditional Use approval is required for multi-family and live-work (offices) in the MR-5 Zoning District. The proposed office area would measure 9x14 (126 sq. ft.) which would (given its small size) help limit the number of patrons that could visit the site at any one time. The existing building was built in 1900 (per the Montgomery County Auditor) but has been left abandoned for some time. The last recorded commercial use was “Sam’s Chili” though that has been out of operation for

several years. When looking at the building, it becomes clear that it was originally designed and utilized for both commercial and residential uses. The proposed uses would be in-line with the intent of the building's design and would constitute (in staff's opinion) an appropriate reuse of the property that would not only be harmonious with that of the neighborhood but also in line with the intent of the zoning code.

Per the plans submitted, the applicant is proposing a number of changes to the site. The building will be repainted (dark gray) with the doors painted red. Currently, a chain link fence surrounds the rear yard of the property. That fence is proposed to be removed with a privacy fence to be placed along the eastern and southern property lines. The rear yard would be paved and striped for a 4-car parking lot and the curb cut would be extended to a width of 240'' (or 20').

The applicant, as part of their application, is also requesting a variance to reduce the amount of required parking spaces from 6 parking spaces to 4 parking spaces. When looking at the site, it becomes apparent that there is not sufficient room for the addition of any further parking spaces. In addition, on-street parking is available along Drummer Avenue which can be used as needed. As such, staff believes that the variance request is appropriate and would not become a burden for the area due to the availability of on street parking and size of the proposed office area.

Mr. Green noted that the public comments received:

- Northeast Priority Land Use Board had recommended the request be approved.

Staff recommends the proposal be approved as submitted.

### **Public Testimony**

No public wished to speak in regard to the application.

### **Board Discussion**

The board discussed the parking lot configuration, ADA parking space, and the proposal in terms of if the owner would be forced to place a business on the site as proposed or if they could just have residential on the bottom floor. Staff advised that the current zoning district would allow for residential to be located on the bottom floor and that due to the amount of space located in the proposed parking area, variances would be required in some capacity should the building be reoccupied.

### **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 application as submitted for a Conditional Use and Variances.

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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# City of Dayton

## Board of Zoning Appeals

Minute Record  
May 24, 2022

### 2. BZA CASE # 2022-00129 – 911 E. Third Street

Variance application by applicant Lamar Advertising, to allow a pre-existing nonconforming billboard (off-premise sign) to change from a digital screen to static and expand in size within the Urban Business District (UBD) where an off-premise sign is not permitted located at 911 E. Third Street.

<b>Applicant</b>	Lamar Advertising c/o Shane Slaven 112 Grimes Street Dayton, OH 45402
<b>Owner</b>	TLC Properties 5551 Corporate Boulevard Baton Rouge, LA 70808
<b>Existing Land Use and Zoning:</b>	Billboard; UBD
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Railroad; UBD <b>South:</b> Railroad; UBD <b>East:</b> Parking Lot; I-2 <b>West:</b> Commercial Building; UBD
<b>Land Use Committee:</b>	Downtown
<b>Planning District:</b>	Oregon
<b>Planning Staff Contact:</b>	Keeghan White

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Mr. White presented the case.

The applicant, Lamar Advertising, requests a Variance to allow for a pre-existing nonconforming billboard (off-premise sign) to change from a digital screen to static and expand in size within the Urban Business District (UBD) where an off-premise sign is not permitted located at 911 E. Third Street.

The digital billboard is located on the western side of N. Keowee Street near the intersection of Keowee Street and E. Third Street, two major arterial roadways located just outside of downtown Dayton. The area contains mainly commercial and industrial uses and is boarded to the north and south by the railroad. The current digital sign has been located at this site since 2007 when it replaced an existing billboard that contained two advertisements side-by-side. The dimensions of the digital billboard are ten and a half feet by twenty-two point eight feet (10.5'x22.8'). Other billboards exist in the area as two are located just south of 911 E. Third Street with another to the west on E. Third Street.

The current placement of the sign is irregular as it is located at the northeast corner of 911 E. Third Street and surrounded by vegetation. This location provides a limited visibility, as motorists on N. Keowee Street can only see it while traveling northbound, with some additional visibility from E. Third Street as well. The applicant has sited that in order to make this a viable location, the size of the billboard will need to be increased. As such, the applicant is proposing to remove the digital billboard and replace it with a static billboard that will be twenty-by-twenty feet (20'x20') that will contain only one ad. Compared to the current digital billboard, the new static billboard will add nine and a half feet (9.5') in height and decrease the width by two point eight feet (2.8'). It should also be noted that the footprint of the billboard will not be increased.

Staff believes that the proposed enlargement of the nonconforming billboard is not appropriate or in line with the spirit and intent of the Zoning Code. Billboards are not permitted in the UBD Zoning District and the billboards that have existed before the change to the Zoning Code are considered nonconforming uses. As such, any intensification of an existing billboard should be subject to heightened scrutiny due to the intent of the Zoning Code being to limit the expansion of a use that the City has not deemed appropriate. Compared to other static billboards in the immediate vicinity, the digital billboard has a distinct advantage as it can display six advertisements that can be cycled over a period of time. This would serve to create a further irregularity for a nonconforming use which is in conflict with Section 150.140.5(A) of the Zoning Code which states:

Enlargement, repair, and alterations. "A non-conforming building or structure may be enlarged, maintained, repaired, or structurally altered. However, no such enlargement, maintenance, repair, or structural alteration shall either create any additional nonconformity or increase the degree of the existing nonconformity of all or any part of such building or structure with respect to Zoning Code Requirements. The extension or enlargement of a non-conforming building or structure shall not occupy ground space suitable and otherwise available for meeting the off-street parking requirements of this Zoning Code, if the extension or enlargement creates a non-conforming parking facility."

While a static billboard could be considered less intense than a digital billboard, staff believes that the additional height would create a visual impact—a tradeoff, essentially—that is unfavorable.

### **Public Testimony**

The applicant, Shane Slaven, stated that there is a demand and need for bulletin style billboards downtown and stated that the proposed billboard would not be an irregularity due to the double-stacked billboards around the area. The applicant stated that other applicants in recent years have had larger sign variance requests approved compared to the current project.

Mr. Bement asked the applicant to explain why going from a digital billboard to a static billboard would be beneficial and what the market conditions are for it. The applicant stated that Lamar Advertising receives requests frequently for bulletin advertising space and that they do not have that style of billboard in the downtown area.

### **Board Discussion**

The board discussed the case. Mr. Ciani expressed concern in expanding a nonconforming use. Mr. Brand noted that while there have been other billboards in the area that have been granted variances, it would be hard to support. Ms. Tingle stated that it would not make sense to expand a use that the City does not want to promote.

**Board Decision**

A motion was made by Mr. Brand and seconded by Ms. Tingle 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 and deny the application as submitted for a Variance.

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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# City of Dayton

## Board of Zoning Appeals

### Minute Record

May 24, 2022

#### 3. BZA CASE # 2022-00132 – 316 - 320 E. Lincoln St

The applicant, Magnetic Home Services LLC, requests Conditional Use Approval and associated Variances in order to build three attached single-family dwellings at 316 – 320 E. Lincoln Street within the South Park Planning District. The property is zoned MR-5 Mature Single Family.

**Applicant** Magnetic Home Services LLC  
c/o Jared Korman  
3387 Fishinger Mill Dr.  
Hilliard, Ohio 43026

**Owner** Magnetic Home Services LLC  
c/o Jared Korman  
3387 Fishinger Mill Dr.  
Hilliard, Ohio 43026

**Existing Land Use and Zoning:** Vacant house and lot; MR-5

**Surrounding Land Use and Zoning:** **North:** Single Family Dwelling; MR-5  
**South:** Single Family Dwelling; MR-5  
**East:** Single Family Dwelling; MR-5  
**West:** Single Family Dwelling; MR-5

**Land Use Committee:** Greater Downtown

**Planning District:** South Park

**Planning Staff Contact:** Susan Vincent

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Ms. Vincent presented the case.

The applicant, Magnetic Home Services, LLC, requests Conditional Use approval for a single-family attached dwelling unit within the Mature Single-Family (MR-5) District and associated variances including: 1) to approve reduced lot widths and lot areas; 2) to approve reduced side yard setbacks from the project boundary (east and west lot lines); 3) to approve the current 2-car detached garage as existing including a zero foot side yard setback and zero inch eave overhangs; and 5) to approve the principal structures (attached dwelling units) and proposed accessory garage as designed including the roof pitch, front stoops, and the front façade at 316 – 320 E. Lincoln Street.

Ms. Vincent provided context on the location, zoning, and character of the surrounding neighborhood and street. She shared images of the plan and elevation for the proposed attached single-family dwelling units, explaining the variances required based on the proposed designs.

In relation to the conditional use, Ms. Vincent shared the opinion that there would be an overall positive impact of the proposal as long as the proposed structures match the prevailing character of the street.

In relation to the minimum lot width, area, and setback variances, Ms. Vincent explained that the inclusion of three units on two lots made these necessary. If the density were reduced, the variances might not be necessary. However, the applicant indicated the need for greater density to make the construction numbers work.

Ms. Vincent explained the variances for the existing and proposed accessory garages. She shared general support for preserving the existing structure but a recommendation to resize the proposed new garage to better match the massing and setback of the existing.

Finally, Ms. Vincent walked through the principal structure design and explained the recommendation that the front façade include more detailing to better fit the surrounding character of the street. Full front porches were proposed as a sufficient design feature to break up the massing.

Ms. Vincent shared the recommendation that the application be approved with three conditions:

1. That the proposed attached single-family dwelling shall include covered front porches along the front façade to break up the massing of the units;
2. That the proposed accessory garages shall be reduced in size to accommodate one (1) car each and shall match the scale and massing of the existing accessory two-car garage; and
3. That a variance to allow the reduction of required parking spaces per unit from two to one be granted.

Ms. Vincent's recommendation was based on her analysis of the Conditional Use Standards and Standards for Variances Based on Practical Difficulty. She highlighted 150.535(a), (c) and (e) and 150.120.10(D)(1)(a), (b), (c), and (h) in her presentation to the board.

#### **Public Testimony**

The applicant, Mr. Jared Korman, shared some background on his current development proposal, extensive investments along this street, and future plan for construction.

#### **Board Discussion**

The board discussed the case. There was discussion about the inclusion of front porches and agreement that they would be appropriate. There was agreement that the tandem garages should remain as proposed due to future development planned for the street.

#### **Board Decision**

A motion was made by Mr. Bement 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. §150.535 and R.C.G.O. §150 approve the application with the following conditions for Conditional Use and Variances:

1. That the proposed attached single-family dwelling shall include covered front porches along the entire front façade to break up the massing of the units as approved by the Zoning Administration.

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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# City of Dayton

## Board of Zoning Appeals

Minute Record  
May 24, 2022

#### 4. BZA CASE # 2022-00133 – 225 E. Lincoln St

The applicant, Chambers Architecture, requests variances to approve a new single-family dwelling as submitted within the South Park Planning District. The property is zoned MR-5 Mature Single Family.

<b>Applicant</b>	Chambers Architecture c/o Charles Chambers 208 Brown Street Dayton, Ohio 45402
<b>Owner</b>	James Gagnet 222 Warren Street Dayton, Ohio 45402
<b>Existing Land Use and Zoning:</b>	Vacant lot; MR-5
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Single-Family Residential; MR-5 <b>South:</b> Single-Family Residential; MR-5 <b>East:</b> Single-Family Residential; MR-5 <b>West:</b> Restaurant; MGC
<b>Land Use Committee:</b>	Greater Downtown
<b>Planning District:</b>	South Park
<b>Planning Staff Contact:</b>	Susan Vincent

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Ms. Vincent presented the case.

The applicant, Chambers Architecture, requests variances to approve 1) a front yard setback of sixteen (16) feet along E. Lincoln Street where the average front yard setback is ten (10) feet and 2) a new single-family dwelling with a height of fifteen (15) feet where a minimum height of twenty (20) feet is required within the Mature Single-Family (MR-5) zoning district at 225 East Lincoln Street.

Ms. Vincent provided context on the location, zoning, and character of the surrounding neighborhood and street. She shared images of the plan and elevation for the proposed single-family dwelling, explaining the variances required based on the proposed designs.

In relation to the setback variance, Ms. Vincent explained that granting the request would preserve existing trees and therefore meet the spirit and intent of our zoning code. Ms. Vincent explained her opinion that requiring an additional five feet in height would not change the

overall massing and design of the proposed building. Since these are the only two variances before the board, Ms. Vincent recommended the application be approved as submitted.

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)(a), (b), and (h) in her presentation to the board.

**Public Testimony**

The applicant, Mr. Charles Chambers (208 Brown Street, Dayton, Ohio 45402), shared some background on the neighborhood and its eclectic nature and development over time. He clarified the height measurement for the board.

The owner, Jim Gagnet (222 Warren Street, Dayton, Ohio 45402), spoke about his work in the neighborhood to restore other vacant structures and desire to remain in the neighborhood.

**Board Discussion**

The board discussed the case. Mr. Bement shared his support for the design of the building and appreciation for the context provided by Mr. Chambers. Mr. Brand and Ms. Patterson agreed that the design and style of the neighborhood has been transitioning and that the proposal is appropriate.

**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 and approve the application as submitted for Variances.

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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# City of Dayton

## Board of Zoning Appeals

Minute Record  
May 24, 2022

### 5. BZA CASE # 2022-00137 – 1300 Alcott Avenue

The applicant, Lisa Fletcher, requests Conditional Use Approval in order to establish a Type “A” Daycare for 7-12 children at 1300 Alcott Avenue (Parcel R72 12113 0084) within the Cornell Heights Planning District. The property is zoned ER-4 Eclectic Single Family.

<b>Applicant</b>	Lisa Fletcher 1300 Alcott Avenue Dayton, OH 45406
<b>Owner</b>	Lisa Fletcher 1300 Alcott Avenue Dayton, OH 45406
<b>Existing Land Use and Zoning:</b>	Family Day Care Home for 1-6 children (type B); ER-4
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Single Family Dwelling; ER-4 <b>South:</b> Multi-Family Dwelling; ER-4 <b>East:</b> Single Family Dwelling; ER-4 <b>West:</b> Single Family Dwelling; ER-4
<b>Land Use Committee:</b>	North Central
<b>Planning District:</b>	Cornell Heights
<b>Planning Staff Contact:</b>	Keeghan White

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Mr. White presented the case.

The applicant, Lisa Fletcher, requests to establish a Type “A” Family Day Care Home (Day Care) for 7-12 Children at 1300 Alcott Avenue (Parcel R72 12113 0084) 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 Alcott Avenue at the intersection of Athens Avenue and has a total square footage of 1,219 according to the Montgomery County Auditor. Single family dwellings mostly surround the property with the exception of a multi-family dwelling to the south. 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 four-space parking lot and has plenty of on-street parking for child drop-off and pick-up along Athens Avenue. To this end, the property meets parking requirements under the Zoning Code. The property also has an enclosed backyard with a chain-link fence.

The applicant plans on applying 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 since 2010 and currently has a Ohio Step Up to Quality 5 Star Rating. 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 7:00 am to 5:30 pm. Two employees work at the Day Care. If the application is approved, this number of employees will satisfy State law which 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. Parents dropping off children and playing outside will minimally increase traffic and noise in the area.

**Public Testimony**

The applicant, Ms. Lisa Fletcher, spoke to her credentials as a childcare provider and stated that she has been operating at this location for 12 years. She stated that there is a need in the area for quality childcare and would like to provide that to the community.

**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 Mr. Martin and 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 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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# City of Dayton

## Board of Zoning Appeals

### Minute Record

May 24, 2022

#### 6. BZA CASE # 2022-00149 – 1801 Valley Street

An appeal of the Zoning Administrator's determination that a junkyard is not permitted in the I-1 Zoning District, has lost its legal nonconforming status as a junkyard, and is not subject to current zoning provisions. The subject property is 1801 Valley Street (Parcels R72 16704 0017, R72 16704 0018, and R72 16704 0019 per the Montgomery County Auditor) in an I-1 (Light Industrial) Zoning District.

**Applicant**

Pickrel, Schaeffer, & Ebeling  
c/o Gerald McDonald  
40 N Main Street Ste 2700  
Dayton, OH 45423

**Owner**

Moore Real Estate Holdings LLC  
2601 Yankee Rd  
Middletown, OH 45044

**Existing Land Use and Zoning:**

Vacant Land; I-1 Light Industrial

**Surrounding Land Use and Zoning:**

**North:** Vacant Building; I-1 Light Industrial  
**South:** Single-Family Residential; Auto Repair  
**East:** Collision Center and Single Family Dwelling; I-1 Light Industrial  
**West:** Junkyard and Vacant Land; I-1 Light Industrial and I-2 Heavy Industrial

**Land Use Committee:**

Northeast

**Planning District:**

Old North Dayton

**Planning Staff Contact:**

Jeff Green

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Mr. Green and Mr. Daugherty (Zoning Admin) presented the case.

Mr. Green introduced the case : An **Appeal** of the Zoning Administrator's Determination in which the Zoning Administrator determined that the property at 1801 Valley Street (consisting of parcels R72 16704 0017, R72 16704 0018, and R72 16704 0019), located within the I-1 Light Industrial Zoning District, has lost its legal nonconforming status as a junkyard, is not subject to current zoning provisions, and that junkyard is not permitted use in the I-1 Zoning District. Mr. Green went over the Vicinity and Zoning maps noting the location of the subject property and the reason for the request.

Mr. Green explained the applicants rational for why they believe the Zoning Administration erred in their determination that the subject property lost its legal nonconforming use. Mr. Green went through the

applicable zoning regulations (150.140.4(G)) to determine if a property lost its legal nonconformity and discontinued its use.

Mr. Daugherty, Zoning Administrator, has described the timeline for the property and the evidence to come up with their decision which included: state records, licensing agency records, aerial imagery, local occupancy records, and site inspections by staff. Mr. Daugherty provided a Use History of the property at 1801 Valley Street and explained various aerals, photos, and auditor records which he state shows the property being un-utilized. The Use History and Status of 1801 Valley Street include:

- July 7, 1971. Mahaffey Auto Parts applies for a Zoning/Occupancy permit for a salvage yard at 1801 Valley.
- Per “Chronology of Salvage Yard Operations” provided by the Zoning Administrator, Mahaffey’s remained the main occupant and user of the site until 2011.
- April 25, 2011. “Mahaffey’s Auto Salvage Inc.” dissolved by court order.
- Per City records, no further zoning or occupancy permits have been filed since Mahaffey’s dissolved in 2011.
- Aerial photography of the site shows that from 2000 to October 2015, the subject property has been actively used.
- Starting in 2016, aerals indicate that the subject property had nearly all salvage material removed from the site where it has remained in similar condition to present.
- The property was sold on October 31, 2017, to CB Valley Street Properties LLC and again on April 8, 2021, to its current owner Moore Real Estate Holdings LLC. See attached record from county auditor for full sales history of the site.

The board and Mr. Daugherty had a discussion regarding the timeline and last active licensing for a junkyard/salvage yard that the subject site had.

Mr. Green reviewed the specific standards to determine discontinuance of use from section 150.140.4(G) which staff believes supports the Zoning Administrator’s determination. Such sections from 150.140.4(G) include:

- (G) **Discontinuance of Use.** In the event that operation of a non-conforming use of land, buildings and/or structures is voluntarily discontinued for any period of 184 days or more, such non-conforming use shall not thereafter be reestablished and any subsequent use or occupancy of such land, buildings, and/or structures shall conform to the regulations of the district in which it is located. When evaluating if a use has been discontinued, the following criteria shall be considered:
- (1) Failure to maintain regular business hours, typical or normal for the use (past operations of the use and/or industry standards may be used to determine typical or normal hours);

The subject property does not have (or maintain) regular business hours to support the operation of the junkyard. Photos and aerals show that the property has not been actively used since 2015. While the property was marketed for sale from 2016-2017, an image from July 2019 shows that the property’s “for sale” sign had been removed from its previous placement. Montgomery County auditor records show that the property was sold on October 31, 2017 which was likely the reason for the “for sale” sign to be

removed. After the sale of the property, no active operation appears to have been conducted from the subject property.

(2) Failure to maintain equipment, supplies, or stock-in-trade which would be used for the active operation of the use;

The last clear example of junkyard/salvage yard “stock” was in 2015 photographs (aerials and Google Street View images). Between 2016-present, no active junkyard/salvage yard operations or “stock” have been shown on site as indicated by the aerial photographs and Google Street View Images.

(5) Failure to maintain required local, state, or federal licenses or other approvals that would be required for the active operation of the use;

There has been a failure to maintain both state and local licenses for the subject property. The City of Dayton (per Section 112.201 of the Dayton Code of Ordinances) requires a license for each salvage yard. No city license has been found for the site/operator, currently or in past years.

The state also requires a license for salvage work. While there is currently an active license (issued in 7/14/2020 and expiring 7/31/2022) for the current operator, it is important to remember this case is about whether the legal nonconforming use had ceased and voluntarily discontinued prior to the current ownership. To that end, the last legal operator “Mahaffey’s Auto Salvage Inc.” was dissolved by court order on 4/25/2011. Staff is not aware of any other active salvage license between 4/25/2011 and 07/14/2020 for the site or its operators.

(6) Failure to maintain building, signage, or site in a manner that would be necessary for the active operation of the use.

Prior to the new owner, no active signage for the site has been seen showing regular business information (business name, hours, phone number, etc). In 2019, the 3 primary signs for 1801 Valley are shown to be heavily degraded and showed serious signs of disrepair and abandonment. 2017 photos show the only “new” signage being a “for sale” sign that was likely removed from the property after its sale in October 2017. The two other signs on the property, facing east and west Valley Street respectively, had not appeared to have been repaired or changed in any way since at least 2007.

Other signage indicative of regular business operations, which was previously present from 2007 to September 2017, looks to have been completely removed as indicated in the July 2019 Google Street View image.

Mr. Green went over section 150.120.7(E) which went over the standards to appeal the zoning administrators determination and summed up the staff’s case to support the determination of the zoning administrator.

**Public Testimony**

Jerry McDonald, applicant, 2700 Stratacache Tower (Dayton OH) – Noted his applicant went for an occupancy permit when the property was purchased in 2021 which he believes started and did not wait for a violation. Went over the history of the property and noted the property was still being actively utilized as a junkyard when no license was issued for the site from 2012-2015. Noted the property was listed for sale and cleaned up where Cohen Brothers bought it and stated they were in the salvage yard business.

Mr. McDonald noted that on pictures showed that there was activity present on site for a junkyard and went over the definition for a junkyard per the code. Further stated that there is a signed affidavit from Kenneth Cohen stating he purchased the property and used it as a junkyard. Again recounted the history of the property and emphasized that the junkyard has been in continuous operation after it was purchased by Cohen Brothers and just because there was not a huge amount of junk vehicles present, does not mean that the junkyard operation ceased and that aerials show that pockets of junk were present on site. Closed by going over the standards and noting the history and continued use which does not support the loss of the legal non-forming status.

The board and the applicant discussed the aerials from 2015-2020 and licensing.

Jerry Bowling III, 522 Herbert St, Present as leader of Bear, Valleycrest, and Valley Pike Community Advisory Group. Described what is going on around the site in regard to environmental concerns from the neighborhood. Stated opposition to the appeal

Matthey Tepper, 702 Troy St (Dayton), President of the Old North Dayton Association. In opposition to the appeal. Submitted letter of opposition. Noted a lack of activity on site since 2011.

Jerry McDonald closed with their belief that the property never lost its legal non-conforming status and believes the standards support this.

The board and applicant discussed the period of time from 2011 to 2015 when Mahaffey's, the previous license holder, dissolved. A discussion was had regarding that timeframe and the definition of a junkyard.

**Board Discussion**

The board discussed the case and had a discussion revolving around the licensing issues that arose from the dissolution of Mahaffey's.

**Board Decision**

A motion was made by Ms. Patterson 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. 150.120.7 (Decision of the BZA Appeals or Variances) and R.C.G.O. 150.140.4 (G) (Discontinuance of Use) and affirm the determination of the Zoning Administrator, finding that the Zoning Administrator did not err in his determination, and that the appeal is denied.

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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