



# City of Dayton

## Board of Zoning Appeals

**Minute Record**  
September 22, 2020

### **I. BZA CASE # 2020-00392 – 1619 Kuntz Road**

A Variance application to allow parking in front of the principal building and to increase the allowable height for an ornamental fence from 42” to 60” at 1619 Kuntz Road in an I-2 General Industrial zoning district.

<b>Applicant</b>	Levin Porter Associates c/o Matt Franklin 3011 Newmark Drive Miamisburg, OH 45342
<b>Owner</b>	Dayton-Phoenix Group 1619 Kuntz Road Dayton, OH 45404
<b>Existing Land Use and Zoning:</b>	Industrial; I-2
<b>Surrounding Land Use and Zoning:</b>	<b>North:</b> Industrial; I-1/WP <b>South:</b> Industrial; I-2 <b>East:</b> Former industrial property; I-1 <b>West:</b> Industrial and open space; I-2/WP
<b>Land Use Committee:</b>	Northeast
<b>Planning District:</b>	Old North Dayton
<b>Planning Staff Contact:</b>	Tony Kroeger

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Mr. Kroeger presented the case.

A variance has been requested that will allow for a parking lot to be installed between the building and the right-of-way at 1619 Kuntz Road. Additionally, an ornamental fence is proposed between the parking lot and the street that will be 60” in height, rather than the zoning code proscribed maximum height of 42”.

The primary land use associated with these accessory uses is a major industrial user known as Dayton Phoenix Group.

While both the parking lot and fence regulations are the desired direction, generally, for these situations, there are a number of intervening circumstances described below.

A change in the layout of the large industrial building has created a situation where parking would be ideally located in front of the building. This is because the offices are being relocated to the front part of the building, which has also resulted in a major improvement to the front-facing façade of the building. Parking in front of the building would not be a unique arrangement for this area. Efforts to mitigate the visual impact are being implemented through the installation of street trees and the use of the preferred fence type, ornamental metal—in addition to the major upgrade of the façade.

The building will look better, new trees and fencing will be installed, and a major industrial user will be supported Based on the required standards for variance, staff recommends approval.

**Staff Recommendation**

Staff **recommends approval** based on the required standards.

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**Public Testimony**

Matt Franklin of Levin Porter Associates, 3011 Newmark Drive spoke about the application. The changes are being brought about by a new layout inside the building. There was once parking in front of the building, historically. Mr. Franklin presented renderings of what the proposed changes would look like. The building suffered significant tornado damage, and this is an opportunity to support the existing property owner and their business.

**Board Discussion:**

The Board felt that it was a clean application that could meet the required standards for variance as outlined in the staff report.

**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. 150.120.10 (D)(1), and approve the application as submitted for the Variance.

Mr. Bement	yes	Ms. Tingle	yes
Mr. Brand	yes	Ms. Patterson	Abstention (technical issues)
Ms. Graham	yes	Mr. Ciani	yes
Mr. Martin	yes		

Approved by the Board of Zoning Appeals on September 22, 2020.



Tony Kroeger, Secretary  
Board of Zoning Appeals

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# City of Dayton

## Board of Zoning Appeals

### Minute Record

September 22, 2020

#### 2. BZA CASE PLN2020-00391; 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:** Susan Vincent

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Ms. Vincent presented the case.

The applicant seeks a Conditional Use and Variance 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 acreage requirement.

The subject property is 2.82 acres located at 1608 Kuntz Road at the corner of Kelly Avenue. It sits within a Light Industrial (I-1) Zoning District in the Old North Dayton planning district. It is surrounded by a mix of industrial uses including an equipment supplier, fence builder, auto parts supplier and a large manufacturing facility. Surrounding zoning districts include General Industry (I-2) to the north east and Light Industry (I-1) to the northeast, south and east. While located outside of the 1-year-time-of-travel boundary of the Wellfield Protection District, the subject property is within the 5-year-time-of-travel boundary.

The applicants seeks to build a new truck terminal with outdoor storage for 51 semi-trucks with accessory dispatch offices and truck repair facilities. The plan includes a 3,420 square foot building, an 8' perimeter fence with gates, perimeter landscaping, 16 vehicle parking spaces, and two driveway aprons. The property will operate 24 hours a day, 7 days a week. Exterior lighting will be provided on poles around the perimeter of the parking lot and on the exterior façade of the buildings. Two of the proposed buildings will be used for truck repair while the third will be dedicated to a dispatch center.

Truck terminals are a conditional use within Light Industrial Zoning District and must meet the additional standards set forth in Section 150565.76. The applicant's proposed dedicated truck parking area exceeds the maximum allowable area of 3,420 square feet by 32,430 square feet.

The specific conditional use regulations for Truck/Motor Freight Terminals (Section 150.565.76) require that the minimum lot size shall 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. When reviewing the proposed development, not only is the property less than the required three (3) acres at 2.82 acres, the truck storage area is 9.5 times greater than the gross floor area requirement. While one solution may be to propose a reduction to the area devoted to truck storage, the applicant indicates that for the development to be feasible, 51 truck parking spaces must be included. It is staff opinion that the truck storage area is over-sized for this development site and the amount by which the parking area exceeds the allowable area is unreasonable for this zoning district and specific property.

### **Public Comment**

The North East Priority Land Use Board met on Wednesday, September 16 and voted not to support the original site plan but expressed a willingness to revisit their decision if additional details were submitted and shared. CityWide, a community partner involved in planning for the Old North Dayton planning district, shared that the development of the site as a truck terminal is not in line with the visioning and planning conducted for this area. A letter will be submitted to the Board's attention prior to the BZA hearing. No other comments were received from the public.

### **Staff recommendation**

There are many outstanding questions regarding the form, materials, and design of the proposed use. Not only would it be impossible to make a determination in support of the conditional use and variance requested without additional details, this use is not appropriate for the location and the Light Industry Zoning District. Staff recommends DENIAL of the conditional use and variance applications.

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**Public Testimony**

The applicant, Thomas Dusa, was given the opportunity to speak. He reiterated the two variances requested and explained some of the history of the site. His client, the owner, was not aware of the zoning restrictions on the property and is willing to meet all of the zoning code requirements except for the two variances sought.

**Board Discussion**

Mr. Bement shared a concern with the percent coverage of the proposed truck parking area. Ms. Patterson agreed with Mr. Bement’s concern. Mr. Martin believed the proposal is reasonable and that the truck terminal with accessory repair is a reasonable use. He expressed an appreciation for the owner’s willingness to make an investment in the City. Mr. Brand commented that the area overall is not very attractive, with many unattractive industrial uses but that the 10:1 ratio for the lot coverage is a concern. Ms. Tingle shared that the amount of parking at over 35,000 square feet was a concern for her.

**Board Decision**

A motion was made by Mr. Brand and seconded by Mr. Bement, 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	No		

Denied by the Board of Zoning Appeals September 22, 2020

Tony Kroeger, Secretary  
Board of Zoning Appeals





# City of Dayton

## Board of Zoning Appeals

**Minute Record**  
September 22, 2020

**3. BZA CASE # 2020-00381 – 1251 Oakdale Ave.**

A **Variance** request to allow for an 8-foot wood privacy fence along the west property line of the rear yard of 1251 Oakdale Ave. (City Lot #57805) in an ER-4 Eclectic Single-Family Zoning District.

<b>Applicant</b>	Dean Shepherd 1251 Oakdale Ave. Dayton, OH 45420
<b>Owner</b>	Dean Shepherd 1251 Oakdale Ave. Dayton, OH 45420
<b>Existing Land Use and Zoning:</b>	Single-family home; ER-4 Eclectic Single-family District
<b>Surrounding Land Use and Zoning:</b>	<b>North/ South/West/East:</b> Single-family housing; ER-4 <b>East (plus 1 block to Smithville):</b> EMF Eclectic Multi-family, ENC Eclectic Neighborhood Commercial, T Transitional
<b>Land Use Committee:</b>	Southeast
<b>Planning District:</b>	Belmont
<b>Planning Staff Contact:</b>	Jen Lumpkin

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Ms. Lumpkin presented the case.

The applicant is requesting a Variance to allow for an 8-foot wood privacy fence along the west property line of their rear yard. The property is an interior lot in a single-family district southwest of South Smithville Road and Patterson Road.

Owners Dean and Debbie Shepherd currently have 8-foot wood privacy fencing along the north and east property lines of their rear yard. The addition of the proposed fencing would be congruent with the existing fencing.

The Southeast Priority Land Use Committee agreed that the variance could be granted based on the continuity with the existing fence and voted to recommend approval of the Variance to the Board of Zoning Appeals.

In discussion with staff, the Shepherds' neighbor to the west, Suzanne Wagner of 1247 Oakdale Ave., expressed that while she supports the variance, she is very concerned that the Shepherds construct their



fence on their property. Disagreements between the Shepherds and Ms. Wagner coupled with a previous misunderstanding of where the property line is located have made Ms. Wagner weary of additional construction on the west side of the Shepherds rear yard.

Ms. Graham asked Ms. Lumpkin and Mr. Daugherty what the rationale is behind the top two feet of fence being 50 percent transparent. Mr. Daugherty said it is to avoid the closed-in effect in one's backyard and to give it a more open appearance. Mr. Kroeger agreed adding that it reads like a compromise. Ms. Lumpkin added that the Shepherds rear yard sits two feet higher than that of their neighbors to the east and west, providing perhaps another justification for allowing the variance.

### **Staff Recommendation**

Staff recommends approval of the Variance with the following condition:

1. The fence shall be constructed entirely on the applicant's property.

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### **Public Testimony**

The applicant, Dean Shepherd of 1251 Oakdale Ave., and his wife Deborah spoke about the application. They asked for the variance for reasons already stated. With a shorter fence, you can see their heads over the top. They already have the tall fence on the other two sides, so this would match. It would provide the privacy they would like around their pool. The structures on neighboring properties to the north are in poor repair, and a privacy fence would screen some of that.

Adjacent property owner, Suzanne Wagner of 1247 Oakdale Ave., spoke in support of the variance. Before confirming her support, Ms. Wagner had four questions she wanted answered by board members or City staff. Her first question was if the City would use the surveyor's pins to determine the property line between her home and the Shepherds' and not the stakes that had been placed. Mr. Daugherty responded that the City will require a permit for the fence and in review of the submittal for that permit will require that the applicant produce a property survey and that the placement of the fence be based upon that survey. The fence must be on the applicant's property. Ms. Wagner's second question was who from the City will be making sure that the pins define the property and not stakes that don't have pins. Mr. Daugherty responded that it would be him. Ms. Wagner's third question was how the Shepherds' fence will be handled around the two items—a cement pad and a pool drain pipe—that extend onto her property. Mr. Daugherty responded that he was not familiar with what she was describing, so he could not say at that point. Ms. Wagner's fourth question was who at the City will be ensuring that the fence will not be taken around those two items, which would put the fence on her property. Mr. Daugherty said that essentially the applicants will be responsible for that by providing the survey, and then the City will review that and make certain that the placement of the fence will be in accordance with that survey and will be inside their property line. With the assurance that the fence will be on the Shepherds' property and not encroach on her own, Ms. Wagner confirmed her support for the variance. She added that because of the previously permitted deck that adds some height to those walking in the Shepherds' backyard, without the variance, she would not have any privacy.

### **Board Discussion**

Mr. Martin asked Mr. Daugherty how the City verifies that the fence is in the correct location. Mr. Daugherty replied that in the normal course of permitting, the City's policy is not necessarily to have the

applicant provide a survey each time that they put up a fence. Instead, the City provides a parcel map and make it abundantly clear to the applicant that it is their responsibility to ensure that the fence is placed on their property. For every 10 fences, Mr. Daugherty estimates that nine of them are done without a property survey without incident. The City cannot and does not require a survey, but they make certain that the property owner is aware that they are responsible for putting the fence on their property. He added that it is a civil matter between the property owners when there is a dispute.

Mr. Bement noted that the staff recommendation included a condition that the fence be constructed entirely on the applicant's property, but he feels that in this instance the board should be more stringent and require that an independent surveyor should identify the pin locations and the fence placement and make that the responsibility of the applicant in terms of the cost. Ms. Patterson agreed that is a reasonable solution considering all that has transpired [referencing case #PLN2020-00299 in which the Shepherds sought a variance for their pool deck setback and were opposed by Ms. Wagner]. Additional board members 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 RCGO 150.120.10(D)(1) and approve the application as submitted for Variance subject to the following condition:

1. The fence shall be constructed entirely on the applicant's property, and that shall be verified by an independent surveyor employed by the applicant.

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 September 22, 2020.



Tony Kroeger, Secretary  
Board of Zoning Appeals

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