



Planning Commission

Meeting Minutes

August 20, 2018

7:00 p.m.

New Albany Planning Commission met in regular session in the Council Chambers of Village Hall, 99 W Main Street and was called to order by Planning Commission Chair Neil Kirby by at 7:05 p.m.

| | |
|----------------------------------|---------|
| Neil Kirby | Present |
| Brad Shockey | Absent |
| David Wallace | Present |
| Kasey Kist | Present |
| Hans Schell | Present |
| Sloan Spalding (council liaison) | Absent |

Staff members present: Stephen Mayer, Development Services Manager; Ed Ferris, City Engineer; Mitch Banchefsky, City Attorney and Pam Hickok, Clerk.

Moved by Mr. Wallace, seconded by Mr. Kist to approve the June 4, 2018 minutes. Upon roll call vote: Mr. Kirby, yea; Mr. Kist, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0.

Moved by Mr. Wallace, seconded by Mr. Schell to approve the June 18, 2018 minutes. Upon roll call vote: Mr. Kirby, yea; Mr. Kist, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0.

Mr. Kirby asked for any changes or corrections to the agenda.

Ms. Russell stated no changes.

Mr. Kist asked if it will be common practice to swear in staff.

Mr. Mayer stated that we could move other business before the application if you would like to discuss the memo.

Mr. Kirby stated that he was trying to complete item four on the agenda which may or may not apply to staff. Asked the city attorney if he read the memo correctly and that attorneys don't need to be sworn to the truth.

Mr. Banchefsky stated that lawyers are considered officers of the court, therefore, if we don't tell the truth we could lose our law license and other penalties.

Mr. Wallace stated that sometimes a lawyer is not authorized by the client to make certain statements.

Mr. Kirby swore to truth those wishing to speak before the Commission.

Mr. Kirby's invited the public to speak on non-agenda related items. (no response)

Moved by Mr. Kist, seconded by Mr. Kirby to accept into the record the staff reports and related documents. Upon roll call vote: Mr. Kirby, yea; Mr. Kist, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 4; Nay, 0; Abstain, 0. Motion passed by a 4-0.

CU-52-2018 Conditional Use

Conditional use to allow general office use at 9798 Karmar Ct (PID: 222-000277).

Applicant: Kessler Holdings LLC.

Ms. Russell presented the staff report.

Mr. Kirby thanked staff for the numbers in the staff report. The numbers don't change since the use is comparable to the previous use.

Mr. Kist stated that if we had changed the zoning as discussed a few months ago, they wouldn't have needed to come in for this conditional use.

Ms. Russell stated correct.

Mr. Kist asked what is considered vacant, is there a timeframe.

Mr. Mayer stated that we try to be reasonable. As soon as they submit an application to occupy we would consider that occupied because most times they have some type of minor work to complete. We try to be reasonable to encourage a vacant spaces be filled.

Mr. Schell asked if the tenant is already in the space.

Ms. Russell stated that a building permit was submitted and at that time they were advised that they would need a conditional use.

Mr. Wallace asked what the language in the condition will be used. Is it different kind of business?

Mr. Mayer stated that the intent is a different kind of business would be something other than an office use. This is the same condition that was used for Ralph Fallon application. The discussion or intent was that a continuous office use would be permitted but if a non-office use came in or vacancy.

Mr. Wallace stated that in a few years if the Pork Council moves out and another title agency moves in they would not need to get a conditional use. because the blanket use is permitted.

Mr. Mayer stated yes, that the title agency conditions listed that only another title agency would continue.

Mr. Kist asked if it should be different kind of use and not business.

Mr. Wallace stated that in the staff presentation the word "use" was used which is different than the business.

Mr. Kist stated that business could be the kind of office.

Mr. Mayer stated that staff is comfortable with the office so the condition could read different type of use.

Mr. Wallace stated that we are just adding the conditional use and we are not changing the zoning. With this kind of language we are almost guaranteeing that this will always be office. It will push the owners towards the office use if we make it easy as opposed to having it open for the light industrial.

Mr. Kirby stated that if this hadn't been an existing office I would vote no. As a continuation it is easier because it's not changing the use numbers in Zarley. I share your concern of running out of small LI spaces. Can we tell the next Zarley owner that wants to change from LI to office - no?

Mr. Banchefsky stated that to come up with an arbitrary percentage, it could be challenged.

Mr. Mayer stated that we are letting the market drive the area. It sort of addresses the concerns that if we are able to get other cheap office space in New Albany. Staff is more supportive of office in Zarley but the personal services and retail should always come back for review because of the different activity levels.

Mr. Kirby asked if we have the same defensibility for a personal service or retail. Can we treat the different uses differently?

Mr. Mayer stated that the criteria for a condition use includes the intensity of the use, amount of traffic.

Mr. Wallace stated that the percentage is more indefensible but how we want to allocate use in an area is determined by if the facts meet the factors.

Mr. Kist stated that we are the safeguard because we look at them on a case by case basis. This case is a net zero because of the same use.

Mr. Schell stated that if it continues more towards an office park we will need to address the sidewalks, lighting, etc.

Mr. Mayer stated that it could use more improvements. Council will be having a capital retreats workshop and I think this is one of the items on the staffs list.

Mr. Wallace stated that he would prefer that the condition stops at the word vacant.

Mr. Kist asked for a moment to consider any unintended consequences.

Mr. Schell asked how long they have owned the building.

Ms. Russell not sure but they occupy the other half of the building.

Mr. Schell stated that sometimes it can put building owner at a disadvantage.

Mr. Wallace stated that he wants Planning Commission to have a say. To be clear, vacant means it is vacant as soon as the tenant moves out.

Mr. Mayer stated that if one tenant moves out and a new tenant moves in as long as activity is continuing at the building.

Mr. Kirby asked what the timeframe is. He continued that the last conditional use listed the condition with type of business.

Mr. Wallace stated that vacancy is a vague term.

Mr. Kist asked how do you know if a space is occupied. What if they rent it but aren't occupying the space.

Mr. Wallace stated that vacant means unrented.

Mr. Mayer stated that we don't define what vacant. We don't go around and look for vacant properties.

Mr. Wallace confirmed that if they don't need to change anything in the building you may never know that the business changed.

Mr. Mayer stated that we try to be reasonable because we understand what the board's intent is. So if the move out/move in time is reasonable and the use is consistent then as long as it's reasonable and meets the intent of the boards then staff would let it proceed.

Mr. Kist stated that putting a number on the vacancy is almost impossible to enforce.

Mr. Wallace stated that I understand that and my idea for a motion is don't do anything.

Mr. Kist stated that I think we've found a balance with maintaining this 50/50 ratio. I think this language allows it to stay where it's at.

Mr. Wallace stated what happens with the next tenant who wants a conditional use.

Mr. Kist stated that someone would need to show a hardship to allow more office.

Mr. Wallace stated that he would always prefer to hear the case.

Mr. Kist asked what situation that is like for like that you wouldn't grant the conditional use.

Mr. Wallace stated that I'm not going to vote against but I'm not sure about the condition. We can't use vacant due to the previous discussion, we would need to link to the tenant to hear it each time.

Mr. Schell asked staff when the title agency conditional use was approved.

Ms. Russell stated that it was in May 2013.

Mr. Wallace asked to see the condition from the title agency application.

Mr. Kirby read a different kind of business.

Mr. Mayer stated that it the same amount of employees, hours and intensity are similar.

Mr. Schell stated that I think the intent was for the business to continue if the businesses were compatible.

Mr. Wallace stated that he is not sure. I think we were concerned about making it perpetual and wanted a chance to look at it.

Mr. Schell stated that can't we make the language that when the tenant changes they need to come back.

Mr. Wallace stated that the only downside is that it is a couple month delay for the owner and could be a hindrance. That is a tradeoff that we need to think about.

Mr. Kist stated that we agree on the motion but not sure about the condition.

Mr. Kirby asked if "kind of business" implies a different use among conditional uses.

Mr. Mayer stated that a different kind of business would be anything other than office. The intention was to mirror Fallons conditional use which allowed for office to continue.

Mr. Kist asked staff for a recommendation on how to word a motion/condition.

Mr. Mayer stated that I think it is valid to put on a termination point. We want to encourage office use. Staff proposed a change to the zoning to make offices a permitted

use. Staff would be comfortable with no conditions to allow office. I think that the termination points are needed for the personal services. Staff's recommendation is that this is a limited space, no known complaints for the office use. Traffic has been the concern in this area and we have beauty salons, karate lessons, which has been lessened since Tessoro Way was installed. For this one the blanket office use would be alright because it would still allow the industrial user.

Mr. Kist confirmed the number of conditional uses listed in the staff report would include the title agency.

Mr. Wallace moved to approve CU-52-2018 subject to the following condition:

1. The conditional use permit will become void if the property should become vacant or if a new tenant occupies the suite, seconded by Mr. Kirby.

Discussion of the motion: Mr. Kirby asked the staff what the process is for re-consideration if the motion fails.

Mr. Banchefsky stated that the board can re-consider immediately or at the next meeting.

Mr. Kirby explained the procedure for reconsideration.

Upon roll call vote: Mr. Kirby, yea; Mr. Kist, no; Mr. Schell, no; Mr. Wallace, yea. Yea, 2; Nay, 2; Abstain, 0. Motion failed by a 2-2.

Mr. Kist moved to reconsider CU-52-2018, seconded by Mr. Kirby. Upon roll call vote: Mr. Kirby, yea; Mr. Kist, yea; Mr. Schell, yea; Mr. Wallace, yea. Yea, 4; Nay, 0; Abstain, 0. Motion approved by a 4-0.

Mr. Kist moved to approve CU-52-2018 subject to the following condition:

1. The conditional use will become void if the property should become vacant or a different use occupies the suite, seconded by Mr. Schell. Upon roll call vote: Mr. Kirby, yea; Mr. Kist, yea; Mr. Schell, yea; Mr. Wallace, no. Yea, 3; Nay, 1; Abstain, 0. Motion passed by a 3-1.

Mr. Wallace stated that he voted no for the reasons discussed earlier. He believes that this will allow for the office use in perpetuity.

Other Business – 2018 Central Ohio Planning & Zoning Workshop notes

Ms. Russell explained that staff and Mr. Wallace attended the Annual Planning and Zoning workshop in May. The memo included in the packet provided some key points heard during one of the sessions on public board and commissions.

Mr. Mayer stated that we haven't updated the board and commissions rules. The comments came from the Cincinnati area so we need to keep in mind the different

perspective. We ran into a similar situation with the Board of Zoning Appeals when someone appealed the BZA decision. Franklin County judge decided that it wasn't clear if the board took the staff report into consideration when making the decision even though the staff report was accepted at the beginning of the meeting. Staff has adjusted the recommended motions to include "approve based on the findings in the staff report".

Mr. Banchefsky stated that I'm in support of accepting the staff reports with each case.

Mr. Kist stated that items get added during the hearing by the applicant.

Mr. Kirby stated that he tries to be very clear during discussions which document is being used for the approval when additional items are submitted during the hearing.

Mr. Wallace stated that if the staff is making recommendations then they should be sworn in. It also appears that they are much more formal at their hearings.

Mr. Mayer stated that he is looking at the agenda to determine which changes will be in the agenda or in the staff report.

Mr. Kirby asked that acceptance of the staff report should be on the agenda under each hearing.

Mr. Mayer stated that we can also reword item four. I think it's easy enough for the staff to stand up and be sworn in.

Mr. Wallace stated that the acceptance of the staff report and related documents should be right before the vote for any documents that applicants may submit.

Mr. Mayer stated that we could have it at the beginning of the hearing and if additional information is submitted during the hearing an additional motion can be made.

Mr. Mayer reminded the board of the September 5th workshop at 6:30 and tour the business park.

With no further business, Mr. Kirby polled members for comment and hearing none, adjourned the meeting at 8:08 p.m.

Submitted by Pam Hickok

APPENDIX



Planning Commission Staff Report August 20, 2018 Meeting

OHIO PORK COUNCIL CONDITIONAL USE

LOCATION: 9798 Karmar Court, Suite A (PID: 222-000277)
APPLICANT: Kessler Holdings
REQUEST: Conditional Use for General Office Activities
ZONING: LI [Limited Industrial District]
APPLICATION: CU-52-18

Review based on: Application materials received July 30, 2018.

Staff report completed by Jackie Russell, Development Services Coordinator.

I. REQUEST AND BACKGROUND

The applicant requests approval to allow the Ohio Pork Council organization to operate an office at 9798 Karmar Court, Suite A. Codified Ordinance Chapter 1153.03(b)(1) defines this as a general office activity use. General office activities are a conditional use within the Limited Industrial Zoning District. This proposed business has 3 full time employees and a single part time employee.

The previous tenant of the space, Atlas Title Solutions, received approval for a conditional use of general office space on May 20, 2013. The Planning Commission placed a condition on the Atlas Title Solutions approval that the conditional use was only for a title agency, which is why this application is being heard. The previous tenant had the same number of employees and also had daytime hours.

II. SITE DESCRIPTION & USE

The site is located on lot 17 within the Zarley Industrial Park. The site is immediately south of Johnstown Road and north of Karmar Court. According to the applicant, there is one other occupant in the building, an electrical contracting company, in suite B. Currently the site has an existing structure with parking areas on both sides of the structure.

The site is zoned LI- Limited Industrial. Permitted uses within LI district include industrial product sales, industrial service, manufacturing and production, warehouse and distribution, research and production, and vehicle service. Conditional uses within the LI district include general office activities, personal service, and retail product sales and service. Adjacent land uses are generally small scale office and warehouse uses.

III. EVALUATION

The general standards for Conditional Uses are contained in Codified Ordinance Section 1115.03. The Planning Commission shall not approve a conditional use unless it shall in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location meets all of the following requirements:

- (a) *The proposed use will be harmonious with and in accordance with the general objectives, or with any specific objective or purpose of the Zoning Ordinance.*

Uses:

- The proposed use will be used for general office space. The applicant has indicated the tenant is Ohio Pork Council.
- The tenant will have three full time employees and one part time employee.
- The proposed tenant space is 2,347 square feet including 1,680 sq. ft. of office space and 667 sq. ft. of storage space. The suite consists of 5 offices, 2 half baths, 1 conference room, 1 small storage area, and waiting/reception area.
- The proposed office hours are Monday through Friday 7am to 3:30pm.

Architecture:

- The applicant is proposing to move into the existing building on the site. There are no exterior building or site modifications proposed as part of the use besides the paving of the parking area.
- According to the Franklin County Auditor the building was constructed in 2003 and is 6,810 square feet.

Parking:

- The building has a total of 28 parking that are available to all the tenants.
- Per Codified Ordinance 1167.05(d)(17) –professional, administrative, and business offices - the required parking is one per 250 square feet of gross floor area. The tenant’s space is 2,347 square feet which requires 9 parking spaces. The parking requirement appears to be met.

Signage:

- The applicant has not proposed any signage as this time. All signage must meet the requirements found in Codified Ordinance Section 1169.

Landscaping:

- The applicant is not proposing any new landscaping at this time.

- (b) *The proposed use will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.*

- The entire lot is approximately one (1) acre, but the area for this conditional use is 2,347 square feet.
- The neighboring properties and uses are generally personal services, office and warehouse uses, as well as some retail.
- Other approved conditional uses include general office activities, personal service, and retail.

- The space at 9798 Karmar Court, Suite A has been used as an office so there will be no change to the essential character of the area.

| Use Type | Square feet | % of of Park | Number of Users |
|-----------------------------------|---------------|--------------|-----------------|
| Personal Service CU | 42,149 | 25.5% | 6 |
| Retail Product Sales CU | 29,818 | 18.0% | 3 |
| Office CU | 10,747 | 6.5% | 3 |
| Subtotal | 82,714 | 50.0% | 12 |
| Religious (Permitted) | 1,324 | 0.8% | 1 |
| | | | |
| LI District Permitted Uses | 81,225 | 49.1% | 11 |

Planning Commission made a note on their last vote, which approved general office use elsewhere within Zarley made note that will look at the ratio of LI Distrist permitted to conditional uses when evaluating conditional use applications. The chart above shows that 3.1% of the park is office, with the approval of this application the amount of office will remain 3.1% since it is an already existing office use.

- (c) *The use will not be hazardous to existing or future neighboring uses.*
- The use will be subject to Codified Ordinance Section 1153.06 which requires that no land or structure within the LI District shall be used or occupied in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable impact on any land which is located in any other zoning district.
 - See letter (f) below for more details.
- (d) *The area will be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.*
- The building is connected to City sewer and water.
 - The proposed commercial development will produce no new students for the school district.
- (e) *The proposed use will not be detrimental to the economic welfare of the community.*
- The proposed use will generate tax income from the jobs.
- (f) *The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.*
- The use will be subject to Codified Ordinance Section 1153.06 which requires that no land or structure within the LI District shall be used or occupied in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable impact on any land which is located in any other zoning district.
 - The applicant has provided narrative statement indicating there will be no affects on surrounding businesses.
- (g) *Vehicular approaches to the property shall be so designated as not to create interference with traffic on surrounding public streets or roads.*

- The business is proposed to be located on lot 17 within the Zarley Industrial Park. This site is the second building on the right in the Karmar Court
- previous tenant had the same use, in the Zarley Industrial Park, so the traffic should be the same or similar as what it is now.
- The intersection of Zarley Street and U.S. 62 was modified to prohibit left hand turns during certain hours. An EMH&T traffic study, dated April 18, 2012, submitted with JD Equipment (CU-02-12) application confirms turning movements must be limited at Zarley Street and U.S. 62. This EMH&T traffic analysis confirms and reinforces the need to alleviate these problems. Turning movements are currently restricted during certain hours.
- A road connection to Forest Drive was constructed by the city in 2016 to alleviate these problems by providing an additional entrance into the Zarley Industrial Park.

IV. RECOMMENDATION

The purpose and function of the Zarley Industrial Park has changed significantly since 2012. The Planning Commission has approved nine conditional uses for personal service, retail product sales and general office uses. According to city records there has been up to 14 businesses who received approved conditional uses in the industrial park. The number of tenant spaces in the industrial park is attractive to small businesses. The city of New Albany seeks to encourage small business growth within the city, and by the sheer number of approved applications the industrial park is beginning to function more as a business park. Staff is supportive of this continued evolution of the Zarley Industrial Park since it encourages small business growth within the city limits. The city has invested in the area via the new road segment, Via Tessoro. However, it is important to preserve the Limited Industrial zoning in this area for the possibility of a future need to attract more industrial type uses here.

The overall proposal appears to be generally consistent with the code requirements for conditional uses. There are currently several other companies with approved conditional uses at the Zarley Industrial Park. The former tenant of 9798 Karmar Court, Atlas Title Solutions, received a conditional use approval for general office use. The applicant is projecting a total of 4 employees, 3 full-time and one part-time. This application must be reviewed since the condition on the Atlas Title Solutions approval stated that the approval was only for the title agency. The conditional use of the does not appear to negatively affect the schools, nor will it create any dangerous, injurious, noxious or other objectionable impacts on the land. The proposed applicant will not result in a change of function or use in the tenant space.

Staff recommends approval provided that the Planning Commission finds the proposal meets sufficient basis for approval.

V. ACTION

The Commission shall approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved with supplementary conditions, the Planning Commission shall direct staff to issue a zoning permit listing the specific conditions listed by the Planning Commission for approval.

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application CU-52-18 to allow general office activity uses at 9798 Karmar Court, Suite A with the following conditions:

- 1) The conditional use permit will become void if the property should become vacant or a different kind of business occupies this suite.



Source: Google Maps



Memorandum

TO: Planning Commission

FROM: Jackie Russell, Development Services Coordinator

DATE: August 3, 2018

RE: Procedural Changes from the APA Planning & Zoning Workshop

On May 18, 2018 staff from the City of New Albany, and Planning Commission member Dave Wallace attended the Planning and Zoning Workshop conducted by the Ohio Chapter of the American Planning Association. This memo contains notes for your information and consideration from one of the sessions offered was titled "Legally Sound Zoning from Application to Decision." The session was led by attorneys from the Cincinnati area, one having served on a public board and as a law director for a small community.

Throughout the conversation the mediators made some important notes, which pertain to our processes. One of the topics was the topic of who should be sworn-in for purposes of the record. The mediators made two important mentions: one is that staff should be sworn-in and the other is that attorneys do not need to be sworn-in. In a case in Cincinnati, the trial court rejected the administrative record and conducted a full trial because key information was provided by a staff member who had not been sworn-in. The mediators also made it clear that if a recommendation is to be made by staff, they should be sworn-in. The law director is excluded from the group of staff that must be sworn-in. Additionally, it was indicated that attorneys that present to our public boards do not need to be sworn-in.

The other pertinent topic discussed in the workshop session was the idea of when is the appropriate time to accept documents into the record. Currently in our process staff reports and other documents are accepted into the record as a group prior to the cases being heard. It was indicated that some municipalities accept documents on a case-by-case basis prior to hearing the staff report by staff. Other municipalities accept it on a case-by-case basis as a part of a motion, or as a separate motion before the final vote of the case.

Several other issues were discussed with no apparent consensus. The panel discussed whether commission deliberations could be held in private; how to deal with cases lasting over several meetings where board members are present for some meetings and absent for others; and whether only attorneys can cross-