

**PLANNING COMMISSION MINUTES
October 13, 2021**



TYPE: Regular Meeting
PLACE: City Council Chambers
TIME: 6:00 P.M.

MEMBERS: David McCauley-Myers Jeremy Loukinas
PRESENT: Paul Nenni Roger Daniel Gary Gross
 Todd Moore

STAFF PRESENT: Ashley Combs, Development Services Director
 Devra Wells, Assistant Development Services Director
 Joe Mulligan, Vice Mayor, City Council

OTHERS PRESENT: Don Shepherd Brittany Hembree Cody Hembree Julie Baker
 Kevin Berry

CALL TO ORDER

Chairman Gary Gross called the meeting to order at 6:00 pm and the roll was called by Ms. Combs. Mr. Gross led the Planning Commission in the Pledge of Alliance.

PREVIOUS MEETING MINUTES

Mr. Gross presented the previous meeting minutes for September 8, 2021 Planning Commission meeting and asked if there were any needed corrections. Mr. Moore made a motion to accept the meeting minutes as presented. Mr. McCauley-Myers seconded the motion. The motion for acceptance of the minutes carried unanimously through roll call.

PUBLIC HEARING:

DEVELOPMENT PLAN & MAP AMENDMENT – PROPOSED GAS STATION

Ms. Gross introduced the Development Plan and Map Amendment request by applicant Amarjit Takhar, on behalf of the property owner Healing Word Church. The request is for Preliminary Development Plan approval for a gas station to be constructed on the property located at the Southwest corner of Manchester Road and Dixie Highway, Parcel ID: 07053260230. The property is currently zoned R-2 Low-Density Residential District. Per the Warren County Auditor, the property is a total of 1.78 acres. If approved, as a part of the Planned Development process, the property would be rezoned to “PD Planned Development District” to acknowledge there is a development plan associated with the property.

Ashley Combs, Development Services Director, presented the case using a PowerPoint presentation.

Ms. Combs displayed property photos showing the subject property.

Ms. Combs displayed a zoning map and aerial map of the property.

Ms. Combs explained this case was originally reviewed by the Planning Commission on June 9th and the Commission then voted unanimously to approve the request with the following conditions: landscaping plan submitted that shows adequate screening provided for surrounding properties and that the Engineering Department comments were met (traffic study, etc.). The recommendation of approval was forwarded to the City Council they had the second reading and vote of the proposal at their meeting on August 3rd. Ms. Combs explained that the City Council was going to vote to table the request; however, the applicant stated that they needed an official vote due to the property closing being on August 4th. She noted that the City Council decided to vote to deny the request.

Ms. Combs stated that the representative from the church, Don Shepherd, met with staff and expressed that the church had worked out a deal for more time with the gas station owner. Staff explained to Mr. Shepherd that the process would need to be restarted due to the vote of denial that was made by City Council.

Ms. Combs read that the applicant proposes the same plan as previously heard by the Planning Commission to construct a gas station with five pumps at the southwest corner of Manchester Road and Dixie Highway. Per the Warren County Auditor, the property is a total of 1.78 acres.

Ms. Combs explained that the planned development submittal application required to be at least five acres unless the proposed project is a unique situation. She noted that the project is located at a gateway entrance into the City of Middletown. She explained it is important that the project be reviewed through the Planned Development review process to ensure the project meets City design standards and buffering for the location.

Ms. Combs noted that per Middletown Development Code Table 1204-3 Principally Permitted Uses, gas stations, known as fuel stations in the Middletown Development Code, are permitted in the B-1 Neighborhood Business District, B-2 Community Business District, B-3 General Business District, and BC-I Business Center Interchange Zoning District.

Ms. Combs displayed the following site development standards information:

R-2 Zoning District Setbacks:

Front Yard – 40 feet

Side Yard – 8 feet

Rear Yard – 50 feet

Ms. Combs displayed the project proposed setback information:

Proposed Gas Station Setbacks: Main Building:

Front Yard (Dixie Highway): 122 feet

Front Yard (Manchester Road): 65.16 feet

Rear Yard: 84 feet

Side Yard: 135.92 feet

Gas Pump Setback: 30 feet from Dixie Highway

Ms. Combs explained per Table 1218-1: Number of Off-Street Parking Spaces Required: Fuel stations require one parking space per 300 square feet of indoor floor area plus one parking

space per fuel pump or service bay (service bay may not be counted as a parking space).

Ms. Combs displayed the following proposed parking information:

Proposed Main Building: 3,575 Square Feet = 12 parking spaces required

Five Gas Pumps = 5 parking spaces required

Parking Spaces Proposed = 15 Parking Spaces / 5 Parking Spaces next to pumps

Ms. Combs stated that the project would meet the parking requirement.

Ms. Combs displayed example photos of the proposed gas station and noted that the elevations would meet the architectural standards.

Ms. Combs noted that any signage would be reviewed at a later date.

Ms. Combs displayed the 2005 Master Plan area map.

Ms. Combs stated that the subject property is included in the University/Northern Breiel Opportunity Area. She explained that the Master Plan identifies that any uses in the gateway area at Dixie/Manchester should support higher density residential development. High quality building materials and architectural design is essential to create a gateway and sense of place for the surrounding neighborhood. The proposed gas station is located near the mixed-use activity center designation.

Ms. Combs explained that per the Middletown Development Code, Table 1226-1: Notice Requirements, public notice was published a minimum of 30 days prior to the public hearing of Planning Commission. Notice was also provided to all property owners within 200 feet of the subject property and no comments have been received at this time.

Ms. Combs displayed the review criteria for the preliminary development plan review process.

REVIEW CRITERIA FOR THE PD PRELIMINARY DEVELOPMENT PLAN AND ZONING MAP AMENDMENT:

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD preliminary development plan and zoning map amendment:

- A. The proposed development is consistent with the master plan, other adopted City plans, and the stated purposes of this code and Section 1204.07(b)(15);
- B. The proposed development is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- C. The proposed development will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved as well under other zoning districts;
- D. The proposed development will promote the public health, safety, and general welfare;
- E. The proposed development is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and

F. The preliminary development plan has been transmitted to all other agencies and departments charged with responsibility of review.

Ms. Combs concluded the staff report.

Mr. Gross asked if there were any questions for staff. Seeing none, Mr. Gross opened the public hearing and invited anyone to come forward to speak in favor of the project.

Don Shepherd, on behalf of Healing Word Church, was sworn in by Mr. Moore to speak on behalf on the project.

Mr. Shepherd thanked the Planning Commission for their time. Mr. Shepherd explained that he was the appraiser and realtor for the property on behalf of the church. He noted that the property is identified as commercial on the Warren County Auditor's website.

The Commission asked about the zoning being different between the City and the County. Ms. Wells explained that is an issue in the City and that the counties routinely look at sites and update their land use code.

Mr. Mulligan explained the details regarding the denial of the project by the City Council.

Mr. Gross asked about the access road onto Manchester Road and how close the road would be to the homes located in the Sawyer's Mill Subdivision. Mr. Boyd stated that the road would be at least 70 feet from the nearby homes.

Mr. Gross asked if there was anyone present to speak in opposition of the project.

Seeing none, Mr. Gross closed the public hearing and asked for staff recommendation.

Ms. Combs explained she would read the previous approval from the June Planning Commission meeting. Ms. Combs stated based on the staff report provided and compliance with the requirements outlined in the Middletown Development Code for Development Plans, staff recommends APPROVAL for Preliminary Development Plan for a gas station to be constructed on the property located at the Southwest corner of Manchester Road and Dixie Highway, Parcel ID: 07053260230 with the following conditions: landscaping plan submitted that shows adequate screening provided for surrounding properties and that the Engineering Department comments met (traffic study, etc.). If approved, as a part of the Planned Development process, the property would be rezoned to "PD Planned Development District" to acknowledge there is a development plan associated with the property. The map amendment request will be forwarded to City Council for final review and decision.

Mr. Gross asked for a motion. Mr. Daniel made a motion to approve the request with staff's recommendation. Mr. Loukinas seconded the motion. Mr. Moore voted to deny the request. The motion for approval carried through majority vote through roll call.

PUBLIC HEARING:
CONDITIONAL USE - FREEDOM POINT CHURCH

Ms. Gross introduced the request for conditional use approval by applicant Britney Hembree, on behalf of Freedom Point Church, to allow for a church at the property located at 1971 Central Avenue, Middletown, OH 45044. The property is located in the City's B-3 General Business Zoning District where Religious Places of Worship uses are considered a conditional use that require review and approval by the City Planning Commission.

Ms. Combs displayed a photo of the property.

Ms. Combs displayed a zoning map and explained the property is zoned B-3 General Business Zoning.

Ms. Combs stated that the subject properties are zoned B-3 General Business District. Per the Middletown Development Code's Zoning Regulations, the purpose of the B-3 General Business District is to provide for intense commercial and office development in close proximity to the interstate and high-volume streets that can provide needed goods and services to residents of the City, region, and beyond. Such district is most appropriately located adjacent to freeway interchanges and along major streets. Previously the property has been used as a bank and pharmacy.

Ms. Combs explained that churches, known as Religious Places of Worship in the Middletown Development Code, are conditional uses in the B-3 General Business District. The applicant is proposing a church plant of the existing Freedom Point Church that is located in Somerville, Ohio.

Ms. Combs displayed an aerial map and explained: Parking Space Requirement: Religious Places of Worship: One space per four fixed seats in the main assembly room or one space per four persons at maximum capacity, whichever is greater.

Ms. Combs displayed the 2005 Master Plan area map for the Central Avenue Opportunity Area. Ms. Combs stated that per the 2005 Middletown Master Plan, the property is in the Central Avenue Opportunity Area. Per the Master Plan map, the property is located at a gateway intersection and the properties have been identified as "neighborhood preserve and enhance".

Ms. Combs stated that per the Middletown Development Code Chapter 1226: Review Authority and Procedures, Table 1226-1: Notice Requirements, published notice was given 10 days before the Planning Commission public hearing VIA the Middletown Journal and written notice was provided to the applicant as well as all property owners contiguous and directly across the street or public right of-way of the subject property. Ms. Combs stated that no comments had been received at this time regarding the proposal.

Ms. Combs explained that the City's internal Development Committee reviewed the proposal today and recommended denial of the project due to the request not meeting the Conditional Review Criteria (1226.05) outlined in the Middletown Development Code. The Development Committee includes the City Manager and Assistant City Manager, Economic Development

Department, Law Department, Public Works & Engineering Department, Police, Development Services, Building Inspections Division, Planning/Zoning Division, and Code Enforcement Division.

Ms. Combs displayed the review criteria for conditional uses:

PLANNING COMMISSION - CONDITIONAL USE REVIEW CRITERIA:

Decisions on a conditional use application shall be based on consideration of the following review criteria. All conditional uses shall be subject to review under the criteria of this section, as applicable, and may be subject to additional use-specific standards.

The proposed conditional use is established as an allowed conditional use in the applicable zoning district;

The proposed use is consistent with the spirit, purpose and intent of the master plan and the general purpose of this code;

The proposed use complies with any use-specific standards as may be established for the use;

Any building or structure constructed, reconstructed, or altered as part of a conditional use in a residential zoning district shall, to the maximum extent feasible, maintain the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screening, and fencing wherever deemed necessary by the Planning Commission;

The proposed use will comply with all applicable development standards, except as specifically altered by the Planning Commission in the approved conditional use;

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 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 circulation on and access to the property shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;

The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;

The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and

Wherever no specific areas, frontage, height, or setback requirements are specified in provision for a specific conditional use, then such use shall be subject to the site development standards for the applicable zoning district.

ADDITIONAL CRITERIA AND CONDITIONS:

The Planning Commission shall be authorized to waive or modify requirements that apply to the conditional use as may be necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general where the Planning Commission finds that such waiver or modification will further the protection of the general welfare, protect individual property rights, and ensure that the conditional use will meet the intent and purposes of this code. The Planning Commission may also impose additional conditions, guarantees, and safeguards as it deems necessary to protect the general welfare and individual property rights, and to ensure that the conditional use will meet the intent and purposes of this code.

Ms. Combs concluded her staff report.

Mr. Gross asked if there were any questions for staff. Seeing none, Mr. Gross opened the public hearing and invited anyone in favor of the project to come forward and speak.

Code Hembree, applicant with Freedom Point Church, was sworn in by Mr. Moore to speak on behalf of the project. Mr. Hembree explained that they were looking to relocate their church from West Chester. He stated that if approved he wanted the location to become a help center for outreach. He explained he wanted to help Middletown residents.

Kevin Berry, property owner, was sworn in by Mr. Moore to speak in favor of the project. Mr. Berry explained the property has been on the market for sale for more than a year. He explained that the building has been vacant and vandalized and sees homeless traffic. He stated he wanted to see the property used to help others.

Mr. Gross invited anyone forward to speak in opposition of the project. Seeing none, Mr. Gross closed the public hearing and asked for staff recommendation.

Ms. Combs stated that based on the staff report provided and review criteria for a conditional use, staff recommends DENIAL of to allow for a church at the property located at 1971 Central Avenue due to the following review criteria not being met:

2. The proposed use is consistent with the spirit, purpose and intent of the Master Plan and the general purpose of the Middletown Development Code;
6. 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; and
10. The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Mr. Gross asked for a motion.

Mr. Moore made a motion to accept staff's recommendation of denial for the conditional use request. Mr. McCauley-Myers seconded the motion. The motion for denial of the request carried through majority of the roll call. Mr. Daniel voted in favor of the request.

PUBLIC HEARING:
TEXT AMENDMENTS – MIDDLETOWN DEVELOPMENT CODE

Ms. Gross introduced the request for consideration of text amendments to the Middletown Development Code pertaining to Chapter 1204: Zoning Districts and Use Regulations and Chapter 1226: Review Authority and Procedures. Planning Commission's recommendation will be forwarded to City Council for final review and decision.

Ms. Combs explained that the text amendment requests would be voted on separately.

Ms. Combs stated that the first text amendment request pertained to Chapter 1204: Zoning Districts and Use Regulations, 1204.10: Site Development Standards.

Ms. Combs stated that staff requests to change the required site development standards for single-family homes in the R-3 Medium Density Residential Zoning District and the R-4 Attached Residential Zoning District. The R-3 and R-4 Zoning Districts are the highest density housing and the majority of the existing homes and lots in these zoning districts do not meet the City's minimum site development standards.

Ms. Combs explained the City is working to acquire properties through the Land Bank and foreclosure proceedings. Many of the homes are located within the R-3 and R-4 Zoning Districts. The City is working on an infill lot program that will recruit home builders to construct new single-family homes on the City-owned vacant infill lots. However, the current site development standards make it very difficult to construct on these infill lots without numerous variances approved by the Board of Zoning Appeals. The proposed amendments to the site development standards will make the properties located within the R-3 and R-4 Zoning Districts "conforming" lots where as they are considered "non-conforming" now.

Ms. Combs displayed the current text in the Middletown Development Code.

Ms. Combs displayed the proposed changes in highlighted yellow text.

Ms. Combs concluded her staff report for the text amendments to the Site Development Standards Chapter.

The Planning Commission discussed the proposed changes and expressed their concerns that they needed to better understand the City's plans for the future infill development that the proposed changes impact.

Ms. Combs introduced the proposed text amendments to Chapter 1226: Review Authority and Procedures, 1226.10: Variances.

Ms. Combs stated that staff requests the removal of "Use Variance" as a type of variance and any reference to "use variances" in the Middletown Development Code.

Ms. Combs explained changing the use of a property is very impactful to its future development and surrounding properties. In 2018 staff removed "use adjustments" from the Code for the same reason. Removing "use variances" from the Middletown Development Code will allow for the consistency between our Comprehensive Plan and the land-use decisions made by Board of Zoning Appeals, Planning Commission, and City Council.

Ms. Combs displayed the proposed changes to the text in highlighted yellow text.

Mr. Moore expressed his concerns for the proposed changes and cited the Ohio Supreme Court case *Duncan vs. Midfield*. The Planning Commission discussed their concerns and issues regarding not allowing the use variance review process and how the removal of the process is business unfriendly and causes a lengthier review process for a new business through the rezoning process.

Mr. Gross opened the public hearing and invited anyone forward who wanted to speak for the text amendments. Seeing none, Mr. Gross asked anyone to come forward who wanted to speak in opposition of the requests. Seeing none, Mr. Gross closed the public hearing.

Mr. Gross asked for staff's recommendation.

Ms. Combs stated that based on the staff report provided and review criteria for a text amendment, staff recommends APPROVAL of text amendments to the Middletown Development Code pertaining to:

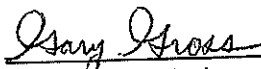
1. Amendments to Chapter 1204: Zoning Districts (Site Development Standards)
2. Amendments Use Regulations and Chapter 1226: Review Authority and Procedures (Use Variance)

Mr. Gross asked for a motion on Text Amendment Case #2-21 request #1 pertaining to the text amendments to the site development standards. Mr. Moore made a motion to table Text Amendment Case #2-21 request #1. Mr. Loukinas seconded the motion. The motion to table the request carried unanimously through roll call. Ms. Combs encouraged the Planning Commission to send any questions or concerns to staff VIA email in preparation of the next Planning Commission meeting to rehear the text amendment request.

Mr. Gross asked for a motion on Text Amendments Case #2-21 request #2 pertaining to text amendments to remove the use variance process from the Middletown Development Code. Mr. Daniel made a motion to deny the staff recommendation to remove the use variance process. Mr. Loukinas seconded the motion for denial of the request. The motion for denial carried unanimously through roll call. Ms. Combs stated that Planning Commission's recommendation would be forwarded to City Council for final review and decision.

ADJOURNMENT

With there being no further business to discuss, a motion was made unanimously by all Planning Commission members to adjourn at 7:40 PM.



Gary Gross, Chairman



Ashley Combs, Development Services Director

*The full meeting recording is available at the Planning & Zoning Department.