

**WEST CHESTER TOWNSHIP
BOARD OF ZONING APPEALS
August 12, 2015 – Regular Meeting**

MEMBERS PRESENT: Mr. Hackney, Mr. Moeller, Mr. Lenz, Mr. Cavens, Mr. Whited

MEMBERS ABSENT: Mr. Riddell

STAFF PRESENT: Cathy Walton, Property Advisor
Tim Valentine, Property Advisor
Mike Juengling, Community Development Director

CALL TO ORDER: 6:30 PM

ADJOURNMENT 8:00 PM

Mr. Hackney called the meeting of the West Chester Board of Zoning Appeals to order.

Ms. Walton called the roll.

BZA 15-18A SSP Management Services, Inc.

Ms. Walton was sworn in by Mr. Hackney.

Ms. Walton presented the staff report including a PowerPoint presentation, current zoning in the area, aerials, background of request, staff comments and case history. Ms. Walton stated that the applicant is requesting a variance for the property at Civic Centre Boulevard to allow a ten foot parking setback where twenty-five feet is required. Ms. Walton reviewed the standards for a variance with the board members.

Mr. Moeller questioned whether the number of parking spaces presented met code and if the parking was based on use.

Ms. Walton stated that was correct.

Mr. Lenz clarified that the ten foot setback was also along the Interstate 75 side of the property.

Ms. Walton stated that was correct.

Mr. Cavens clarified the location of the parcel.

Mr. Moeller asked if the number of parking spots shown on the submitted drawing met the required parking for the proposed use.

Ms. Walton stated she believed they were providing more parking than is required.

Applicant: David Wright, The Kleingers Group
6305 Centre Park Drive
West Chester, Ohio 45069

Mr. Wright introduced the representatives present for SSP Management. He indicated they have been talking with potential tenants about the layout of the lots. When working with a potential client specifically on the north lot, they realized there would be some parking issues and that is why they are here tonight.

Mr. Lenz questioned whether there would be a curb around the edge of the parking lot to serve as a wheel stop.

Mr. Wright indicated there would be curbs.

Mr. Hackney asked for clarification on the uses of the proposed buildings.

Mr. Wright confirmed that it is possible that it would be mixed use.

Mr. Moeller clarified that a mixed use could increase the required parking.

Mr. Wright stated they are here tonight to ask for an overall approval rather than on an individual lot basis in order for the developer to be able to develop the entire site as once.

Mr. Lenz asked for clarification on the location of the sidewalks.

Mr. Wright stated the sidewalk follows the proposed public road and he is not sure what the property to the south plans to do with the sidewalk.

Proponent: None

Opponent: None

Neutral: None

Board Deliberation

Mr. Cavens stated that he likes the proposal and that it made sense to get all approvals at one time.

Mr. Whited agreed with Mr. Cavens.

Mr. Lenz stated this case was consistent with the case across the street a few months ago.

Mr. Moeller stated his only concern is a later request for a variance for the number of parking spaces based on the use.

There was discussion regarding parking requirements and existing parking conditions.

Ms. Walton stated that shared parking is permitted in this development.

There was board discussion regarding the sidewalk.

The board asked the applicant to come back to the podium.

**Applicant: David Wright, The Kleingers Group
6305 Centre Park Drive
West Chester, Ohio 45069**

Mr. Lenz asked for clarification on the private/public roadway.

Mr. Wright clarified what part of the roadway was public and what was private.

Mr. Cavens made a motion to approve BZA 15-18A as submitted

Mr. Lenz seconded.

Aye: Mr. Hackney, Mr. Moeller, Mr. Cavens, Mr. Lenz, Mr. Whited

Nay: None

BZA 15-18B SSP Management Services, Inc.

Ms. Walton was sworn in by Mr. Hackney.

Ms. Walton presented the staff report including a PowerPoint presentation, current zoning in the area, aerials, background of request, staff comments and case history. Ms. Walton stated that the applicant is requesting a variance for the property at Civic Centre Boulevard to allow a larger real estate sign than permitted. Ms. Walton reviewed the standards for a variance with the board members.

Mr. Lenz asked for clarification that the new permitted size of thirty-two square feet was permitted to be double faced.

Ms. Walton stated that is correct.

Mr. Hackney clarified that the existing sign is sixty-four square feet on one side.

Ms. Walton stated that was correct.

Mr. Whited asked if they used only one side of the sign, would they be permitted sixty-four square feet.

Ms. Walton stated the total was not cumulative and that they could have thirty-two square feet on each side.

Mr. Cavens asked if this was site next to Bass Pro.

Ms. Walton stated it was.

Mr. Hackney asked if the property was divided into four separate lots, would they be permitted a sign on each lot.

Ms. Walton stated they would.

Mr. Lenz pointed out that the request is for a real estate sign and not an advertising sign for the business.

**Applicant: David Wright, The Kleingers Group
6305 Centre Park Drive
West Chester, Ohio 45069**

Mr. Wright stated his client is requesting this sign to differentiate this site from the Bass Pro site. He stated this property has highway exposure and due to drivers going a high rate of speed they feel the need for this size sign.

Mr. Moeller asked the applicant if the board was to set a time limit, what kind of time he would like to see.

Mr. Wright deferred the answer to an SSP Management Services employee.

**Applicant: Marie Ellis, SSP Management Services, Inc.
7755 Montgomery Road
Cincinnati, Ohio 45236**

Ms. Ellis stated that given the location, their property is getting mixed up as being a part of the Bass Pro Shops property. She also stated that the sign needs to be large enough to differentiate the properties and get the contact information. She stated they have discussed removing the sign either when they erect a permanent sign or when Bass Pro opens.

Mr. Whited asked when Bass Pro Shops was scheduled to open.

Ms. Ellis stated she wasn't sure but heard it was in late 2016.

Mr. Cavens asked if the board approved the sign and put a condition on that would require it to be removed when Bass Pro Shops opened, if Ms. Ellis would be okay with that.

Ms. Ellis stated that would be fine.

**Applicant: Mike Cassidy, Preferred Resources
5769 Vice Lane
Burlington, KY 41005**

Mr. Cassidy stated he had additional scaled drawings and passed them out to board members. He described the difference in the signs. He stated this size sign is typical for the location and the traffic.

Mr. Whited asked why the sign was being changed from the existing single faced to a double faced sign.

Mr. Cassidy stated the location and height of the sign would allow for people coming and going as well as those on the highway to see the sign.

Mr. Lenz stated he didn't believe the company and contact names were important on the sign as long as the number was visible.

Proponent: None

Opponent: None

Neutral: None

Board Deliberation

Mr. Cavens stated he believes the sign is needed. He stated he drives this every day and has not seen the existing sign.

Mr. Lenz stated the allowable size was just increased by 100% and they are permitted a double faced sign. He is concerned with the magnitude of the variance. He stated the sign is not a business sign for the businesses that are there.

Mr. Cavens stated he believed it was a business sign as Scott Street is the business that is there. He also stated as they subdivide other signs will go up and this one will come down. He stated they have been supporting our community since 2003.

Mr. Lenz stated he was concerned with the fact that there was parking eliminated to put the sign in and also concerned with how temporary the sign would be.

Mr. Cavens stated the board could condition the length of time the sign can be up.

Mr. Moeller stated he has an issue with differentiating allowing Bass Pro Shops to put up a large sign stating they are coming verses a sign saying there are other places coming and you may be interested.

Mr. Cavens stated they are doing the same thing.

Mr. Moeller stated his understanding was that the Bass Pro Shops sign has to come down when they open.

Mr. Hackney clarified the condition of timing for the Bass Pro Shops sign.

Ms. Walton stated that from an enforcement stand point it would be better for the board to condition a time frame rather than the opening of a separate business.

Mr. Whited stated there was also a large sign approved on Liberty Way and they placed a deadline on the removal.

Mr. Cavens suggested approving this variance with a date of late 2016 for removal which would be around the opening of Bass Pro Shops.

Mr. Whited suggested December 21, 2016 as the date.

Mr. Hackney stated he was bothered by the size of the request.

Mr. Cavens stated the sign is not permanent.

There was board discussion regarding temporary signs and job trailers.

Mr. Lenz stated if the purpose of the sign is make people aware the land is available, he believes that can be done with a sign half the size without the company and contact names.

Mr. Cavens reiterated that this sign is temporary and he believes the board should condition a start and stop date.

Mr. Whited reminded the board that by right they could put four individual signs up. He reiterated the purpose of the sign was to pull in good quality tenants which is good for the community. He stated he would rather see one sign than four. He suggested conditioning only one sign being allowed with a specific time frame.

Mr. Cavens suggested conditioning the display to one side.

Mr. Moeller stated he believed they needed to put the name of the company on the sign to keep professionalism.

Mr. Lenz reiterated the size of the requested variance.

There was board discussion regarding the preference of a professionally done sign verses a trailer with a banner.

Mr. Moeller stated he doesn't see a difference between the approval for Bass Pro and this request. He also stated that without signage it would be difficult to differentiate this site from Bass Pro.

Mr. Hackney stated he was in favor of granting a variance but felt this request was too large.

There was board discussion regarding a more acceptable size.

Mr. Cavens made a motion to approve BZA 15-18B with the conditions the sign come down December 31, 2016, the allowable square footage is 85% of the requested amount, the sign be one sided and one sign be permitted for all four lots.

Mr. Moeller seconded the motion.

Aye: Mr. Cavens, Mr. Moeller, Mr. Whited

Nay: Mr. Hackney, Mr. Lenz

BZA 15-17A Morningstar Baptist Church

Mr. Hackney explained that this case was to determine if Res Judicata prevented the board from hearing the merits of the application. He explained the process of this hearing.

Scott Phillips with Frost Brown Todd, legal counsel for West Chester Township, presented the law of Res Judicata.

Mr. Cavens asked for clarification on what constituted a significant difference.

Mr. Phillips stated it would depend on the circumstances and described cases to explain his answer.

Ms. Walton was sworn in and presented a PowerPoint citing the similarities and differences in the two applications filed by Morningstar Baptist Church.

**Applicant: David Gibbs, Gibbs & Associates Law Firm
5700 Gateway Boulevard
Mason, Ohio 45040**

Mr. Gibbs introduced the other attorneys present from his firm. He indicated that they do not disagree with Mr. Phillips definition of Res Judicata but felt like the second application

was arguably different. He presented a binder to each board member and directed them to look at two sections in the binder. Mr. Gibbs presented his argument with case law as to why the second application was different from the first.

Proponent: None

Opponent: None

Neutral: None

Board Deliberation

Mr. Cavens asked Ms. Walton about a statement in the applicant's affidavit.

Mr. Phillips stated there is no legal principle that would allow something that happens off the record to bind Zoning and indicated the affidavit should not be considered.

Mr. Lenz stated he remembered when the case was last heard that the question was raised about the number of students and recalls the number being thirty. He stated he didn't see a significant change in the number except for the college being added. He stated he does not believe the case is substantially different.

Mr. Moeller referred to the criteria presented by the applicant's counsel. He stated he is struggling with the information presented and whether it changes the application.

There was board discussion regarding the number of students presented at the last case.

Mr. Lenz stated this was a serious issue and nothing in the application stands out as being different.

Mr. Cavens stated he believes this is a completely different application. He stated it's different in the fact that they are adding a college, putting a cap on things and doing things differently. He agreed this was a serious issue that needs to be looked at closely.

Mr. Hackney stated that at the time of the previous presentation he believes the college was operating.

Mr. Whited stated the fact that they are asking for the college makes the change an increase in the request.

Mr. Cavens stated sometimes things are turned down for different reasons.

Mr. Lenz stated they have come back with the same application.

Mr. Cavens reiterated he felt the application was different.

Mr. Whited stated if they had come back and said they were going to reduce the students and mitigate the original concerns that would make a substantial change.

Mr. Lenz stated he doesn't believe they should consider whether it's substantial in one direction or another.

Mr. Cavens stated to think out of the box and believes if they look at the case carefully and believe the application is different then they can hear the application and place conditions on it.

Mr. Lenz stated this is not a case to be thinking out of the box and should determine whether the application is different.

Mr. Cavens stated there are enough differences to be viewed either way.

Mr. Whited stated he disagrees with Mr. Cavens and does not see a difference.

Mr. Moeller stated a traffic study and a five year plan does not impact the application.

There was board discussion regarding whether the night classes discussed at the last hearing was the college or other types of classes.

Mr. Whited made a motion to deny BZA 15-17A based on the doctrine of Res Judicata.

Mr. Lenz seconded the motion.

Mr. Cavens stated he did not believe it was wise to vote at this time.

Mr. Hackney asked Mr. Phillips to come back to the podium and asked if considering the request whether it was the board's job to look strictly at the written application or should they consider what they heard in the last presentation.

Mr. Phillips stated they could take into consideration testimony from the last public hearing. He also stated they could not take into consideration anything outside of the record.

Aye: Mr. Moeller, Mr. Whited, Mr. Lenz

Nay: Mr. Hackney, Mr. Cavens

ADMINISTRATIVE MATTERS

Ms. Walton stated there would be four cases for the September meeting.

Mr. Lenz reminded the board of the training at 5:00 before the September 9, 2015 meeting.

The minutes and resolutions from the June 10, 2015 and July 15, 2015 meetings were approved.

The next meeting will be Wednesday September 9, 2015, at 6:30 pm

The board adjourned the August 12, 2015 meeting at 8:01 pm

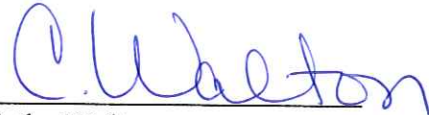
These Minutes do not purport to be the entire record. A complete transcription of these proceedings was taken under supervision of the Secretary from an audiotape and may be obtained upon written request. Any charges for preparing such transcripts shall be borne by the person requesting same and must be prepaid.

BZA Chairman:

BZA Secretary:



Cliff Hackney



Cathy Walton

**WEST CHESTER TOWNSHIP
BOARD OF ZONING APPEALS
RESOLUTION DENYING APPLICATION NO. BZA 15-17**

WHEREAS, Pastor Dan Farrell, for Morning Star Baptist Church (the "Applicant"), on June 10, 2015, filed Application No. 15-17 with the Board of Zoning Appeals under Article 8, subsection 8.054 of the West Chester Township Zoning Resolution, seeking conditional use approval to use the property at 7000 Summerhill Drive, West Chester, Ohio 45069 and containing Parcel # M5610-024-000-066 in Section 23, Town 3, Range 2 (West Chester Township, Butler County, Ohio) (the "Property") as a K-12 Christian School, under direct ministry of Morning Star Baptist Church educating children Mon-Fri; and

WHEREAS, the Applicant previously, on August 13, 2014, filed Application No. 14-15A with the Board of Zoning Appeals under Article 8, subsection 8.054 of the West Chester Township Zoning Resolution, seeking conditional use approval to use the Property as a church school educating children in the scriptures, standard academics, and biblical foundations; and

WHEREAS, Application No. 14-15A was denied by the Board of Zoning Appeals, after a public hearing, and that decision was not appealed by the Applicant; and

WHEREAS, after one continuance granted at the request of the Applicant, the Board of Zoning Appeals held a public hearing on application No. 15-17 on August 12, 2015, notice of which was given to parties in interest in writing and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to date of the hearing in accordance with Section 519.15 of the Ohio Revised Code; and


WHEREAS, prior to hearing the merits of Application No. 15-17, the Board of Zoning Appeals was first required to consider whether or not the Applicant or Application No. 15-17 presented sufficient changed facts or circumstances to overcome the doctrine of *res judicata* arising by virtue of the prior decision denying Application No. 14-15A; and

WHEREAS, the board has considered all of the information and testimony presented at the public hearing and concludes that Application No. 15-17 seeks the same relief from the Board of Zoning Appeals as was previously denied by the Board, and neither the Applicant nor Application No. 15-17 presented sufficient changed facts or circumstances to overcome the doctrine of *res judicata*.

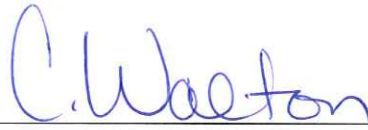
THEREFORE BE IT RESOLVED, that by virtue of the foregoing, the Board of Zoning Appeals determines that the relief sought by Applicant in Application No. 15-17 has already been denied by prior resolution of the Board, and in the absence of sufficient changed facts or circumstances the Board is prevented by the doctrine of *res judicata* from reconsidering the merits of Application No. 15-17; such Application is therefore denied.

BE IT FURTHER RESOLVED, that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Adopted at a regularly scheduled meeting of the West Chester Township Board of Zoning Appeals in session on the 12th day of August, 2015 and journalized on the 9th day of September, 2015.



Cliff Hackney
BZA Chairman



Cathy Walton
BZA Secretary

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**WEST CHESTER TOWNSHIP BOARD OF ZONING APPEALS
RESOLUTION GRANTING
APPLICATION NO. BZA 15-18B**

WHEREAS, SSP Management Services, Inc. , on July 15, 2015 filed Application No. 15-18B with the Board of Zoning Appeals under Article 8, subsection 8.04 of the West Chester Township Zoning Resolution, seeking a variance to allow a four hundred square foot real estate sign as applied to the property on Civic Centre Boulevard, West Chester Ohio 45069 and containing Parcel # M5610-032-000-126 in Section 33, Town 3, Range 2; (West Chester Township, Butler County, Ohio); and

WHEREAS, a public hearing was held on said application on August 12, 2015 notice of which was given to parties in interest in writing and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to date of the hearing in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS, Article 8 et. seq. of the Zoning Resolution empowers the Board to authorize upon appeal in specific cases, variances from the terms and conditions of the Zoning Resolution as will not be contrary to the public interest, and that are consistent with the criteria provided within the Zoning Resolution; and

WHEREAS, the board has considered all of the information and testimony presented at the public hearing and concludes that the requested variance from the terms and conditions of the Zoning Resolution will not be contrary to the public interest and are consistent with the standard for variances set forth in the Zoning Resolution, paying particular attention to Section 8.053

THEREFORE BE IT RESOLVED, that by virtue of the foregoing, the Board of Zoning Appeals does hereby grant the request to allow a real estate sign to exceed the maximum allowable size with the following conditions:

1. The sign must be removed no later than December 31, 2016
2. The allowable size can be 85% of the requested size (or 340SF)
3. The sign can only be one sided.
4. Only one sign is permitted for all four lots.

BE IT FURTHER RESOLVED, that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Adopted at a regularly scheduled meeting of the West Chester Township Board of Zoning Appeals in session on the 12th day of August, 2015 and journalized on the 9th day of September, 2015.



Cliff Hackney
BZA Chairman



Cathy Walton
BZA Secretary

**WEST CHESTER TOWNSHIP BOARD OF ZONING APPEALS
RESOLUTION GRANTING
APPLICATION NO. BZA 15-18A**

WHEREAS, SSP Management Services, Inc., on July 15, 2015 filed Application No. 15-18A with the Board of Zoning Appeals under Article 8, subsection 8.04 of the West Chester Township Zoning Resolution, seeking a variance to allow a ten foot pavement setback as applied to the property on Civic Centre Boulevard, West Chester Ohio 45069 and containing Parcel # M5610-032-000-126 in Section 33, Town 3, Range 2; (West Chester Township, Butler County, Ohio); and

WHEREAS, a public hearing was held on said application on August 12, 2015 notice of which was given to parties in interest in writing and also by publication in a newspaper of general circulation in the Township at least ten (10) days prior to date of the hearing in accordance with Section 519.15 of the Ohio Revised Code; and

WHEREAS, Article 8 et. seq. of the Zoning Resolution empowers the Board to authorize upon appeal in specific cases, variances from the terms and conditions of the Zoning Resolution as will not be contrary to the public interest, and that are consistent with the criteria provided within the Zoning Resolution; and

WHEREAS, the board has considered all of the information and testimony presented at the public hearing and concludes that the requested variance from the terms and conditions of the Zoning Resolution will not be contrary to the public interest and are consistent with the standard for variances set forth in the Zoning Resolution, paying particular attention to Section 8.053

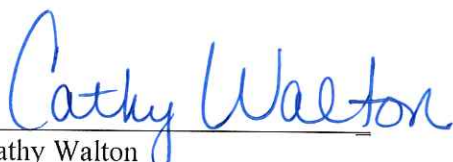
THEREFORE BE IT RESOLVED, that by virtue of the foregoing, the Board of Zoning Appeals does hereby grant the request to allow ten foot parking setback where twenty-five feet is required.

BE IT FURTHER RESOLVED, that all plats, plans, applications and other data submitted be and are hereby made a part of this Resolution.

Adopted at a regularly scheduled meeting of the West Chester Township Board of Zoning Appeals in session on the 12th day of August, 2015 and journalized on the 9th day of September, 2015.



Dick Lenz
BZA Vice-Chairman



Cathy Walton
BZA Secretary