

Bexley Board of Zoning and Planning

Planning Staff Report – August 22, 2024



Variance: Accessory Structure in a Side Yard

Special Permit: Permanent Food Truck

Application #: BZAP-24-28

Location: 490-492 Cassady Avenue

Zoning: Mixed Use Commercial (MUC) District

Request:

Variance:

- The applicant is seeking a Variance from Bexley Zoning Code Section 1254.17 to allow an accessory structure to be located in a side yard.

Special Permit:

- The applicant is seeking a Special Permit to allow a food truck to be permanently located in the side yard of the site.

Applicant: Jawad Khan

Owner: Bob Marshall

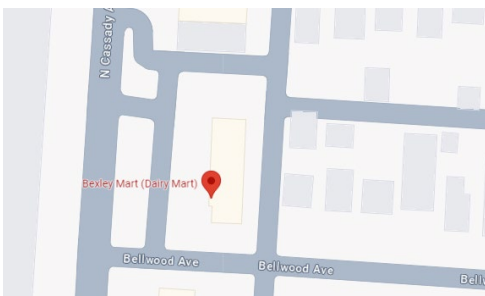
A. STAFF EVALUATION

The proposal is to allow a food truck to be located permanently in the side yard of the site. Since the request is to leave the food truck onsite at all times, it is considered an accessory structure to the main structure/use on the site. Accessory uses are prohibited in side yards, so the applicant requests a variance to allow this location. The BZAP will review the variance request based on the review criteria (1226.11(c)) cited below in this report.

As an accessory structure in the Mixed Use Commercial (MUC) District, the design is subject to the MUC Design Standards (1154.11), as outlined in this application review.

As a permanent location for the food truck, the BZAP is also being asked to consider factors related to issuing a Special Permit, which would typically be administrative for a temporary food truck use. Should the BZAP choose to act on the special permit request, staff recommends including the conditions of approval as listed at the conclusion of this report.

B. BACKGROUND



The site is located at the northeast corner of Cassady Avenue and Bellwood Avenue. The primary use on the site is the Bexley Mart.

Zoning: The project is located in the Mixed Use Commercial District (MUC) (1254.03).

C. CONSIDERATIONS

This primary building/use is a retail convenience store, which is an existing non-conforming use in the MUC District (1254.09). The applicant is requesting to have a permanent location for a food truck on the site. The following are the primary issues related to BZAP review:

Site Impacts

- The applicant is proposing the food truck to be located in the side yard of the site where it will be fully visible from Cassady Avenue and Bellwood Avenue.
- There is no screening proposed for the food truck.
- The proposed food truck location is entirely on private property.
- The applicant has NOT proposed permanent electric/water/gas hook-ups for the food truck to eliminate the need for generators or other noise and pollution creating devices.

Code Aspects

There are several Business Regulation Code sections that can be applied to this request.

- *832.04 Retail Sale of Food Items from Mobile, Non-Permanent, Food Carts:* While food carts can be construed differently from food trucks, in the absence of definitions for either in the code, staff believes this code section is best to address this request. This code section requires that a permit be issued by the city for sales of food in a “mobile, non-permanent” facility, so this does become less clear in the case of a request for a permanent installation.
- *820.07 Sale for Outdoor Consumption Prohibited:* This prohibits the sale of food “between the hours of 11:30 p.m. and 6:00 a.m.” if it is intended to be eaten on the premises outside the building or “on the streets or public ways adjacent thereto.”
- *1262.02 Minimum Number of Spaces Required:* Based on the square footage of the use and the various parking reductions, the applicant is in conformance with the parking code, even when removing this side space for use by a food truck. Though there are currently only 7 striped spaces. the front parking area has a width of 60’ which would allow for additional spaces to be striped where there are ad hoc parking areas on the east part of the front lot. There is also a paved area to the rear of the building, that could provide limited spaces, if coordinated with dumpster collection.

Mixed Use District (MUC) District Design Standards

The proposed development meets the standards of applicability for review under this section (1254.11(e)). The application has been evaluated with regard to the applicable design standards as follows:

MUC District Design Standards	Met / Not Met
(f) A principal building shall be oriented to address and be nearly parallel to a primary street. Nearly parallel means within 15 degrees of being parallel.	n/a
(g) The width of a principal building along a primary building frontage shall be a minimum of sixty (80) percent of the lot width.	n/a
(h) A primary building frontage shall incorporate a primary entrance door	n/a
(i) A building frontage that exceeds a width of 50 feet shall include vertical piers or other vertical visual elements to break the plane of the building frontage. The vertical piers or vertical elements shall be spaced at intervals of 15 feet to 35 feet along the entire building frontage	n/a
(j) For a primary building frontage of a commercial use, a minimum of 60	n/a

	percent of the area between the height of two feet and ten feet above grade shall be in clear window glass that permits a full, unobstructed view of the interior to a depth of at least four feet. For the secondary building frontage, the pattern of window glass shall continue from the primary building frontage a minimum distance of ten feet.	
(k)	For any new installation or replacement of upper story windows, the new/replacement windows must be clear/non-tinted glass.	n/a
(l)	At least 25% of the second and third floor building frontages (as measured from floor to ceiling) must be window glass. This requirement may be waived if historic documentation (e.g. historic photos) from when the building was first constructed can be provided that shows a different percentage of window glass was used on the second and third floor building frontages. In such cases, the historic percentage must be maintained.	n/a
(m)	All roof-mounted mechanical equipment shall be screened from public view to the height of the equipment. The design, colors and materials used in screening shall be architecturally compatible with the rooftop and the aesthetic character of the building.	n/a
(n)	Backlit awnings are not permitted.	n/a
(o)	The front yard shall be planted with live vegetation and a shade tree(s) (in addition to any street tree requirements), except for paved areas expressly designed for vehicular and pedestrian use. The minimum number of shade trees required is determined by the formula of one tree per 30 lineal feet, or fraction thereof, of frontage.	n/a
(p)	At the time of planting a new shade tree shall have a minimum two-inch caliper trunk and new shrubs for screening shall have a minimum height of 24-inches, and be maintained at that height or greater.	To be determined – further review may be needed by T+PG
(q)	For all street tree planting beds, a minimum exposed space of 60 square feet shall be provided and edged in granite curbing.	n/a
(r)	All such landscape plantings and features shall be properly maintained, weeded, and watered, and any loss of plant materials shall be replaced in keeping with the approved landscape plan, or within minor modification to the landscape plan according to City Staff approval. The installation and operation of an irrigation system may be required for any planting area. In such cases, the irrigation system must remain operable.	To be determined – further review may be needed by T+PG
(s)	The use of landscape features such as pedestrian furniture, decorative railings, tree guards, trash receptacles, bollards and similar such accessories shall reference the Main Street Design Guidelines.	n/a
(t)	A fence shall be provided along a lot line that borders a residentially zoned or used property at a height of 8 feet, as per the requirements in Section 1264.05 .	n/a
(u)	A surface parking lot or vehicular circulation area shall be screened from all abutting public streets with a minimum 4-foot solid masonry or stone wall; or a minimum 4-foot decorative metal tube or solid metal bar fence (excluding chain link, wire mesh or other similar material), with a minimum 3-foot wide landscaped area along the parking lot side of the fence.	Not met
(v)	Landscaping is needed for surface parking lots in order to further screen parking from the view of public rights-of-way, provide mitigation for stormwater through reducing, slowing and cooling runoff, and to create	Not met

	visual relief from large pavement areas. This landscaping might be in well-designed border plantings that frame the lot or within landscape beds large enough to sustain plant growth.	
(w)	Dumpsters shall be located behind the principal building and be screened from public view on all 4 sides, to the height of the dumpster.	Not met
(x)	Ground-mounted mechanical equipment shall be located behind the principal building and be screened from public view to the height of the equipment	n/a
(y)	The height of any parking lot light pole/fixture shall not exceed 18 feet above grade.	More info needed
(z)	When located within 25 feet of a residential district the height of a light fixture shall not exceed 14 feet above grade.	n/a
(aa)	All lighting must use cut-off type fixtures, to limit glare, and avoid directing light onto neighboring property, streets, or toward the night sky.	More info needed
(bb)	Parking, stacking and circulation aisles are not permitted between the principal building and a street right-of-way line. This standard does not apply to existing buildings unless they are expanded by fifty (50) percent or more gross floor area.	n/a
(cc)	Additional curb cuts are not permitted	Met

Variance Criteria

Under the code, the following establishes the framework for consideration of variance requests:

From (1226.11(b): On a particular property extraordinary circumstances may exist, making a strict enforcement of the applicable requirements of this Code unreasonable, and therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the BZAP or City Council shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

From (1226.11(c): BZAP and City Council shall only approve a request for an area (non-use) variance in cases where the evidence demonstrates that the literal enforcement of this Code will result in practical difficulty and the granting of a variance complies with the purpose and intent of this Code. The following factors shall be considered and weighed by the Board when making a determination upon any (non-use) variance by a preponderance of the evidence:

Area (Non Use) Variance Criteria	
1)	Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
2)	Whether the variance is substantial.
3)	Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.
4)	Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
5)	Whether the property owner purchased the property with knowledge of the zoning restriction
6)	Whether the property owner's predicament feasibly can be obviated through some method other than a variance
7)	Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance

The applicant has not submitted a narrative describing how they feel the proposed project meets this set of criteria, so the Board will have to rely on testimony from the applicant at the hearing in considering the request.

D. STAFF RECOMMENDATION

A decision on the variance request must be determined by the BZAP in accordance with the criteria in the code, so staff does not offer a recommendation on that decision. Staff finds the application is not in conformance with the MUC Design Standards for accessory structures and does **not** recommend issuance of a special permit for operation of a permanent food truck.

Should the Board decide to approve the requested special permit, staff recommends the following conditions:

1. The applicant will install and maintain, in good operating order, electric/water/gas hook-ups as needed for food truck operation. No external generators or other devices that create noise or engine emissions are permitted;
2. Only one food truck is allowed on the premises at any given time, unless additional temporary permitting is received from the city.
3. The applicant will provide screening along the Cassady Avenue and Bellwood Avenue frontages in accordance with the MUD Design Standards.
 - a. Final redesign of any walls or fencing needed for screening be remanded to the Architectural Review Board for approval.
 - b. Final redesign of landscaping needed for screening be remanded to the Tree and Public Gardens Commission for approval.
4. The dumpsters at the rear of the property adjacent to the proposed food truck location be screened in accordance with the MUD Design Standards.
 - a. Final redesign of any walls or fencing needed for screening be remanded to the Architectural Review Board for approval.
5. The food truck will be in the location shown in exhibits submitted for the August 22, 2024, BZAP meeting.