

RECORD OF PROCEEDINGS

Minutes of Planning Commission

Held July 15, 2025

Call to Order

Meeting called to order at 6:02 PM.

Caleb Stapleton	Chair	Present
Kevin Howard	Member	Absent
Tom Watts	Member	Present
Gina Delph	Member	Present
Stephen Noel	Member	Present

Staff Members Present: City Planner Nick Sorice, Building and Zoning Administrator Brent Carpenter, Public Information Officer Aaron Vietor, and Police Division Secretary Shawn Sanford

Mr. Watts moved to excuse Mr. Howard's absence; Mr. Noel seconded the motion.

RESULT: Passed (*Yes 4, No 0, Abstained 0*)
MOVER: Tom Watts
AYES: Caleb Stapleton, Tom Watts, Gina Delph, Stephen Noel
NAYS: None
ABSTAIN: None

Approval of Minutes

Planning Commission Meeting Minutes - May 20, 2025

Mrs. Delph moved to approve the May 20, 2025, Planning Commission meeting minutes; Mr. Noel seconded the motion.

RESULT: Passed (*Yes 4, No 0, Abstained 0*)
MOVER: Gina Delph
AYES: Caleb Stapleton, Tom Watts, Gina Delph, Stephen Noel
NAYS: None
ABSTAIN: None

Business

R-02-2025: Zoning District Change of 3305 Main Street from R-2 to B-2

Notary Public Shawn Sanford administered an oath to all present who will be speaking at the meeting.

Staff Report:

City Planner Nick Sorice reported that the applicant is Omar Shaker and the location of this zoning district change is 3305 Main Street, Lot No. 2152. He noted the current zoning district is R-2, a single-family zoning district and the proposed zoning district is B-2, a general business district. He said this is a property in which the structure has not held a former business or usage within the property for more than two years. He noted in the Moraine Codified Ordinances (MCO) Chapter 1191.02(c) it reads: If the nonconforming use of land is discontinued for two or more years, any further use thereof shall be in conformity with all the provisions of this Zoning Code. Mr. Sorice stated that language is from an Ordinance passed April 28, 1994. He said the application for a zoning district change lists tobacco sales as a proposed use. He said in the

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MCO Planning and Zoning Code, B-2 General Business District, under Permitted Uses (a)(22) is where retail tobacco stores is located. He said this formality will be brought before the Planning Commission prior to a 30-day legal notice for a public hearing brought before City Council. He said all legal notices were issued per Moraine Codified Ordinances Chapter 1127. Mr. Sorice reported the Technical Review Committee reviewed the application for a zoning district change on July 3, 2025. He said the following information was reviewed by the Committee. He reported the structure at 3305 Main Street was constructed in 1945 and consists of 416 square feet. He said the building was constructed prior to Moraine being incorporated as a City in 1965 and prior to the establishment of the Zoning Map and Planning and Zoning Code. He said according to the committee review, this property has always been a commercial use. He said records are attached in the packet regarding usage permits on the building and the records hold a historical record of commercial use. He stated that information is something to consider with the rezoning; however, the commission has to abide by the Planning and Zoning Code of a B-2 zoning district for the land use of 3305 Main Street for tobacco sales to take place. He said there are many other uses in a B-2 zoning district listed in the packets. He said the current certificate of occupancy is mercantile or use group M which came from a 2011 certificate of occupancy that was approved as a pre-existing condition. He said the certificate of occupancy remains with the building and is still active. He stated tobacco sales are permitted under a mercantile use group from the Ohio building code as it does pertain to retail.

Mr. Stapleton asked if anyone had questions about the Technical Review Committee report. Seeing none, Mr. Stapleton invited comments from the applicant.

Opponents/Proponents:

Laura Reyes spoke on Mr. Shaker's behalf. She stated that with this property becoming a commercial property again, new job opportunities will be brought to the area, there will be an increase in the City's tax revenue, and the property is on the RTA route and convenient for everyone to get to. She said the property is close to other commercial properties. Ms. Reyes reported the property was previously commercial and is in compliance to be commercial again. She said there will be no increase of noise from the business, and the street is accustomed to the higher flow of traffic. She noted the property has always been commercial and would not accommodate a residential use.

Mr. Jerry Dunn of 140 Salem Drive, Springboro, Ohio, said he represents 3315 Main Street. He said he checked and the property at 3305 Main Street has never been commercial but did have a special usage as a barber shop in the 1940's into the 1970's. He noted there is no parking in the front and there is a variance for people in the apartment building to park on that property which takes parking away from the property. The building next door was a grocery store which lost its special usage and is now an apartment building which is not zoned multi-family. He said Family Market down the street is not zoned Business. He said one of the problems is if the City ever wants to make a comprehensive change, a zoned property at that location will cause a problem. He said he is not against anyone owning and running a business, but he feels there is no business in that area that is zoned a business, and the area is all residential. He said the last time the property was a smoke shop, customers parked in the church parking lot and people were leaving debris in the lot. He remarked that a special use is one thing and that use can go away, but once the property is zoned, it is zoned.

A resident of 4701 Miami Shores stated he and his wife owned the former Trading Post near the property many years ago. He said he believes the property is not large enough to handle a smoke shop. He indicated that when the former smoke shop was located at the property, customers used the nearby church for parking. He reported he is against the property being rezoned.

Ms. Reyes spoke regarding the parking issue, and stated that there are 3900 square feet of blacktop. She noted that three vehicles can be parked in front of the building and there is room for six vehicles to be parked behind the building according to the Montgomery County Auditor's website and personal experience.

Mr. Shaker confirmed for Mr. Watts that he purchased the property. He indicated he checked with the City and on the City's website, and the property was zoned as a commercial property or multi-use.

Mr. Watts stated the property was never zoned properly, and he believes that is the fault of the City.

Mr. Shaker stated if the property was zoned properly for commercial they would not be here today. He indicated the building is not meant for anything else but a commercial building.

Mr. Watts indicated in the 1980s the building was sold to the owner of the adjacent apartment building at that time. He explained that the building Mr. Shaker owns now, was granted special usage and was used as a pizza shop. Mr. Watts said because the owner had both properties, the parking abilities were not really an

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issue. He indicated that he thought parking for vehicles was going to be a huge issue, especially with the apartments located next door.

Mr. Shaker and Mr. Watts exchanged thoughts regarding parking.

Mr. Watts asked Mr. Sorice if there were enough parking spaces necessary to accommodate a business according to square footage of said business.

Mr. Sorice indicated that there is adequate parking, however, the building will need to remain as it currently stands and cannot be altered in any way and that is the same with parking. He stated the facility and the occupancy are okay, and the issue is the land that the facility sits on and the two-year discontinuation of business.

Mr. Watts stated that he hopes all goes well with Mr. Shaker's business. He stated if the business is not successful, however, the City has zoned that property as B-2 and the City cannot stop any B-2 approved businesses from opening at that location.

Mr. Sorice said B-2 zoning allows tobacco retail sales. He stated all permitted uses are the same as within a B-1 neighborhood business district, and he listed the uses. He reported there are special uses allowed in a B-2 district and he read the list of approved special uses. He added the B-1 zoning is for neighborhood businesses such as local restaurants, local smaller businesses, retail services, sales, and anything permitted in the R-4 district as well and anything below that including business and professional offices and pretty much a lot of the similar things that were listed as approved in a B2 district. He said due to tobacco sales being on the application, that is why the B-2 zoning was raised up. He asked Mr. Shaker what kind of other tenants have reached out to him about the specific structure.

Mr. Shaker replied someone wanted to open a barber shop, someone wanted to open a hair salon, the gentleman from the smoke shop, and a gentleman who owns a clothing store somewhere in the mall wanted to open up a store there.

Mr. Sorice asked what Mr. Shaker is open to in terms of tenants and if he is aiming at a certain industry? Mr. Shaker said he did not want to do anything besides just invest in the city of Moraine. He noted he is a medical doctor and there are five investors who want to invest in a city like Moraine. He said they feel like there is a lot of opportunity to make money within Moraine.

Mr. Watts asked if Mr. Shaker's group bought the adjacent apartment building?

Mr. Shaker said that was the plan, and then they got into the mess with the zoning. He said they put everything on hold until the zoning is figured out. He remarked the investors were looking at six properties altogether, and then the first one was a problem.

Mr. Watts noted that there are some uses in a B-2 that are quite concerning, one being a nightclub.

Mr. Shaker stated it is not his intention to rent the space to someone to open a nightclub in 550 square feet.

Mr. Watts asked Mr. Sorice if he has with him an overview of the Comprehensive Plan.

Mr. Sorice replied that he has a map of that area according to the Comprehensive Plan. He said the map shows everything as R-2 throughout the area. He noted in terms of getting businesses in on Main Street, that has always been talked about. So, it's something to just take with a grain of salt when it comes to that map because that Comprehensive Plan would take away the

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opportunity for multifamily development along Main Street or anything outside of R-2. He said the map is just a guiding document.

Mr. Watts explained that the City, every 10 to 15 years, creates a Comprehensive Plan of what staff would like the City's outward goals to be. He said the property according to the Comprehensive Plan, which is supposed to be the Bible that this board lives and breathes, is supposed to be residential in the future.

Mr. Shaker said any city would like to attract more businesses for job opportunities and more taxes. He stated he does not see that the building could be anything else except a business as it has always been.

Mr. Watts asked if it is possible to get a special use zoning reestablished for that building instead of taking that building to a permanent B-2?

Mr. Sorice said the commission can consider a conditional use temporarily.

Building and Zoning Administrator Brent Carpenter confirmed a conditional use could be granted through BZA.

Mr. Sorice said the City has a section of the code that if this item goes through BZA, Board of Zoning Appeals, the business can be granted a special use, conditional use permit for operating a business on an R-2 piece of land.

Mr. Shaker stated if the previous business was never closed at any point, they would not be here as the permit would continue.

Mr. Sorice clarified that if occupancy changed at any point, the occupant would have to get a special use permit. He said dealing with the land portion, this would have to go through BZA for a non-conforming land use permit for business activity to occur.

Mr. Shaker remarked that if he knew from day one he would have to go through all this, he probably would not have purchased the property. He said he did his due diligence, he contacted the City, and he came to the City along with his agent,,and everybody agreed he was good to go ahead and buy. He said it was a learning experience for everybody as nobody knew anything about that two-year business gap.

Mr. Watts commented that, unfortunately, there are a lot of areas down that part of the street that are not zoned properly either.

Mr. Shaker said the City needs people like himself to come up and zone properties properly so this problem does not continue.

Mr. Watts expressed his concern that Mr. Shaker could buy the adjacent property, have that property rezoned, and then could tear both down and build whatever business Mr. Shaker wants as there is not a lot the City could do to stop it.

Mrs. Delph confirmed with Mr. Sorice that a new business would have to have permission for that business from the City.

Mr. Noel confirmed with Mr. Sorice that with a B-2 rezoning, the location could not be rezoned to anything more restrictive, and If this goes through BZA, Mr. Shaker can cycle through tenants.

Mr. Shaker said they came to the city with the gentleman who was going to rent the building

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and spoke with multiple people that day, and they confirmed that property could be used for that particular business purpose..

Mr. Stapleton asked if anybody else in the audience had any more questions?

Mr. Dunn said he does not understand how somebody can get a variance on somebody else's property for a property they don't own. He said this gentleman owns this building yet there is a variance stating that the property owner has to let the people at the apartment building park on his property. He said he does not understand how this came about.

Mr. Sorice reported he did show Mr. Dunn that there was an easement in 2007 in Montgomery County records.

Mr. Dunn said with that easement in 2007, the same person owned both properties. He asked why then was that property sold without that easement being told to Mr. Shaker?

Mr. Sorice said that is out of the City's control.

Dr. Dunn said he did not know you could turn a grocery store into an apartment. He said the Comprehensive Plan shows a different plan for that area. He said if the City is going to pay somebody for a comprehensive plan, he thinks the City should follow through with that. He said if the City is not going to follow through with that plan, then why is the City spending all the money to have one done?

Mr. Sorice stated if Mr. Shaker goes through a change of occupancy and the occupancy was not mercantile but a different building usage, the commission would have to go through this process of rezoning to whatever the business may need to be such as a B1 or B2 for example. He said with a special use permit for non-conforming land through BZA, hypothetically, the business would have to stay within those uses. He said if there is a change of occupancy on that building, that is where it gets kind of confusing between the land and building, the property would have to go through the whole process all over again and would have to be rezoned. He gave the example if the owner bought both lots and tore down the 3305 building, the owner would have to go through a whole land use change, zoning district change.

Mr. Stapleton closed the floor for questions.

Mr. Stapleton said if the commission wants the owners to get a special use permit that is BZA and not Planning Commission. He said if that is the suggestion, then this decision is either a no or the item is tabled.

Mr. Watts said he does not want to push this to a B-2 zoning district. He said the building has always been special usage and that distinction has a lot more civic control.

Mr. Noel said, in defense of somebody who bought something to invest in our City, they are limited in what they can do in a B-2 district right there as far as it currently stands. He said the property is very much a limitation unless one of those other properties becomes up for grabs.

Mr. Watts said once this property goes B-2, the tax status of this property changes substantially as well, and that is not a benefit to the owners. He said using the property as a special usage. Yeah. It's a hassle that he would have to come back here every time a new tenant moves in.

Mr. Stapleton said until the commission can figure out the Comprehensive Plan, he is leaning towards the special usage idea of BZA and just passing that off where it needs to go.

Mrs. Delph said she agrees. She said if the City has invested so much money for the

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comprehensive plan, she thinks the commission should direct its path as close to the plan as possible.

Mr. Stapleton asked if the commission wants to vote on this tonight or wants to table this until BZA has a chance to look at this?

Mr. Noel moved to table this case; Mrs. Delph seconded the motion.

RESULT: Passed (*Yes 4, No 0, Abstained 0*)
MOVER: Stephen Noel
AYES: Caleb Stapleton, Tom Watts, Gina Delph, Stephen Noel
NAYS: None
ABSTAIN: None

Mr. Stapleton clarified that the commission tabled this discussion until after BZA has had a chance to look at this case for a special use permit.

Mr. Sorice said staff can walk Mr. Shaker through those steps on how the BZA process works. He said the paperwork can get started as soon as even tomorrow, and this can be moved to a meeting the first week of August. He confirmed for Mr. Shaker this would be faster than rezoning, and the permit would not have to go through City Council.

Mr. Shaker said he is good with that. He remarked it is not fair that people are looking at a website at a building to purchase and the website states incorrectly that the property is zoned commercial.

Mr. Stapleton confirmed that was the county auditor's website.

Mr. Shaker said he is good with whatever the commission decides. He noted he is asking for help and everyone is all on the same page here.

Mr. Sorice said this is a neutral point right now. The item is being tabled and it can still be untabled. He stated there is a possibility for the business and this could go to BZA next month and then re-evaluate the special conditional use permit and everything for that property.

Other Business

Mr. Watts said in years past when this type of situation came up, the City of Moraine erected a sign in front of said address that gave public notice to a zoning change. He said when you do a rezoning of a piece of property, there is an economic impact on a community. He said the neighbors in said areas sometimes do not read the Moraine report, sometimes do not get into a City facility to see the public notifications, and sometimes do not have avenues to get the Dayton Daily News. He reported that the Street Department would put up a sign regarding a zoning request for property.

Mr. Sorice said BZA does that and with a zoning district change, anyone within a 200-foot radius gets sent a letter with the same legal notice that is posted on the televisions. He discussed ways to rezone Main Street properties.

Mr. Carpenter further explained B-2 zoning for the commission.

Mr. Noel said as a committee, a goal should be to work on the zoning cleanup.

Mr. Stapleton said he would like to schedule a meeting for August 19, 2025, to discuss issues.

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Mr. Watts reminded the commission members of remarks made by Ms. Marcus at and after the last Planning Commission meeting. He said she accused the members of doing things under the table and not above board. He said Ms. Marcus made negative remarks about Mr. Sorice and Mr. Davis. He noted he has yet to hear Ms. Marcus make an apology for those remarks. He said the Law Director has approached Ms. Marcus with findings that were absolutely nothing. He apologized to the board for the remarks made by Ms. Marcus.

Adjournment

Meeting adjourned at 7:20 AM.



ATTEST: City Planner, Nick Sorice



ATTEST: Clerk of Council, Karen Powell