

**Karen Underwood-Kramer**  
 Board Member

**Nancy Bushman**  
 Board Member

**Desmond Maaytah**  
 Board Member

**George Jonson**  
 Board Member

**Roll Call:**

**1 Public Hearing**

Bushman	Jonson	Maaytah	Underwood-Kramer	

**Appointment of Chairperson:**

**Swearing in of Those Providing Testimony to the BZA:** City Staff

**Old Business:** None

**New Business:**  
**Agenda Item #1**

**2016-02: Variance Request 3185 Dixie Highway**

A Request by Mr. Rauf Bakkali for a minimum lot area zoning variance in order to establish an Automobile Service and Minor Repair Facility (i.e. new and used tire sales/repair), on property zoned B-2 Community Business District, located at 3185 Dixie Highway. The requested zoning variance is for Section 1121.39.26 of the Hamilton Zoning Ordinance as follows:

- 1) A request to reduce the minimum lot area required for an Automobile Service and Minor Repair facility (i.e. new and used tire sales/repair) – the minimum lot area required is 20,000 square feet - the subject property is approximately 13,000 square feet. (Rauf Bakkali, Applicant/Owner).

Staff: Meredith Murphy

Bushman	Jonson	Maaytah	Underwood-Kramer	

**Minutes**

Approval of Meeting Minutes: Written Summary and Audio Recording for the Following Date:

May 7, 2015

Bushman	Jonson	Maaytah	Underwood-Kramer	



**Miscellaneous:**

**Adjournment:**

The City of Hamilton is pleased to provide accommodations to disabled individuals and encourage their participation in city government. Should special accommodations be required, please contact Community Development's office at 513-785-7050 (24) hours before the scheduled meeting.





**To:** Board of Zoning Appeals  
**From:** Meredith Murphy  
**Subject:** **AGENDA ITEM #1**

**2016-2-Variance**

Request by Mr. Rauf Bakkali for one (1) zoning variance to Section 1121.39.26 of the Hamilton Zoning Ordinance in order to apply for a conditional use to establish an Automobile Service and Minor Repair facility to be located at 3185 Dixie Highway. (Rauf Bakkali, Applicant/ Owner).

**Date:** February 4, 2016

**Dear BZA Members:**

**Introduction:**

An application was submitted by Mr. Rauf Bakkali for one (1) zoning variance in order to apply for a conditional use to an Automobile Service and Minor Repair facility on the property located at 3185 Dixie Highway. (Exhibit A). The property is zoned B-2 Community Business zoning district (Exhibit B). B-2 Community Business zoning district is regulated by Section 1121.00 of the Hamilton Zoning Ordinance, (HZO). An Automobile Service and Minor Repair facility use is listed as a Conditional Use in Section 1121.39.26 and has a number of conditions associated with it. If an applicant cannot meet those conditions they must first receive approval of a zoning variance from the Board of Zoning Appeals before applying for a Conditional Use.

An Automobile Service and Minor Repair Facility (i.e. new and used tire sales/repair) use requires Conditional Use approval by the Planning Commission (Section 1121.36.26). Section 1108.00 of the Hamilton zoning ordinance defines "tire service and sales" as Automobile Service and Minor Repair facility.

The one (1) requested zoning variance to Section 1121.39.26 of the Hamilton Zoning Ordinance are as follows:

- 1) A request to reduce the minimum lot area required for an Automobile Service and Minor Repair facility (i.e. convenience store/gas station) – the minimum lot area required is 20,000 square feet - the subject property is approximately 19,000 square feet.

**Property Details:**

The property is zoned B-2 Community Business District. The property is comprised of two (2) lots. The lots are approximately 13,000 square feet in total area. The property has a total of 100 lineal feet of lot frontage along Dixie Highway. The property received a violation letter for operating a business without the proper approvals on December 30, 2015. The property received a conditional use approval in February of 2013 for Auto Sales.



The property to the north and west is zoned BPD Business Planned Development. To the east is property zoned I-1 Light Industrial and parcels located in the City of Fairfield. To the south is property zoned I-1 Light Industrial. According to the application submitted by the applicant, the intent is to use the property as a new and used tire store.

**Use Specific Standards and Variances:**

The applicant intends to submit an application for a Conditional Use for a new and used tire store on the property. Based on the variance application, the applicant has determined that one zoning variance is necessary prior to proceeding with a Conditional Use application. The one (1) zoning variance from Section 1121.39.26 (also indicated in red below) is as follows:

- 1) To reduce the minimum lot area required for an Automobile Service and Minor Repair facility– the minimum lot area required is 20,000 square feet - the subject property is approximately 13,000 square feet.

**Automotive Service and Minor Repair: (OR 2014-8-72)**

As Defined in Section 1108.00 and must comply with the following conditions:

- **Minimum lot area 20,000 square feet.**
- Minimum lot area with accessory Car Wash 40,000 Square Feet.
- Minimum lot width 100 feet and must be located along a street classified as major arterial, minor arterial, or a collector street, in accordance with the City of Hamilton Street Designation.
- Facilities that are located on a corner lot shall have a minimum of 100 feet frontage on each street;
- Any automobile awaiting minor repair may be permitted outside of a building. Automobiles awaiting repair may not be stored on the lot for more than 30 days.
- Automobiles awaiting repair, shall be located on a paved surface and shall be setback a minimum of ten (10) feet from any property line. The area for vehicles shall comply with the side and rear building setback requirements set for the district in which the lot is located or be at least ten (10) feet, whichever is greater. All areas not used for parking of vehicles shall be landscaped according to the requirements of Section 1111.20.
- An accessory automated car wash is permitted within a completely enclosed building and shall have a minimum lot size of 40,000 square feet. The location of access drives shall be placed as far as possible from the intersection.
- Vacuuming or steam cleaning equipment may be located outside a building but shall not be placed closer than fifty (50) feet to any adjoining residential property and at least twenty (20) feet from a public right-of-way.
- Parking and related driveways and paved areas may be erected in a front yard, but not less than 20 feet from any property line.
- The only services permitted to be performed outside of a building shall include but not be limited to the dispensing of fuels, oil, air, and other common vehicular liquids and lubricants and minor repair such as fuse, light bulb, windshield wiper replacement, etc.
- Any repair and services area must be located within an enclosed building.



- No junk, inoperative or unlicensed automobiles, except for the inventory of new or used automobiles for sale, or automobiles awaiting repair, shall be permitted outside of any building. Automobiles awaiting repair may not be stored on the lot for more than 30 days.
- The only automobile repair and services permitted to be performed outside of a building shall include but not be limited to the dispensing of fuel, oil, air and other common vehicular liquids and lubricants and minor repair such as fuse, light bulb, windshield wiper replacement, etc.
- Hazardous Materials. All automotive fluids, tires, batteries, and other discarded hazardous materials must be recycled or removed in accordance with local, state and federal standards.
- Indoor Storage. Used or discarded automotive parts or equipment, not including hazardous materials as mentioned above must be stored inside a building.
- Building Openings. There may not be any openings in side walls, rear walls or roofs within 50 feet of a residential district, unless the openings are stationary windows or required fire exits.
- Vehicular access drives shall be limited to no more than one (1) access drive per street frontage, unless otherwise approved by the City Traffic Engineer.
- Proposed building and site shall comply with Section 1111.00 Architectural, Landscaping, Design, Building & Site Development Regulations.

### **Zoning Variance Review**

In order to grant a zoning variance, the Hamilton Zoning Ordinance requires that the BZA must find all four of the following facts and conditions below exist beyond a reasonable doubt. The applicant included the following rationale (*in italics*) for the one (1) requested zoning variance. Information/commentary for the BZA to consider is underlined.

1. **Exceptional Circumstances:** That there are exceptional or extraordinary circumstances or conditions applying only to the property in question that do not apply generally to other properties in the same Zoning District.  
***Tires Business New and Used.***

The proposed use only has 13,000 square feet for a use that requires 20,000 square feet.

2. **Preservation of Property Rights:** That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and the in same vicinity.  
***Tires Business New and Used.***

The proposed use would be utilizing an existing building on the site. The property is located between a car lot to the north and a temp. agency to the south.



3. **Absence of Detriment:** That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this Ordinance of the public interest.

***Used and New Tires.***

4. **Not of a General Nature:** No grant of a variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of general or recurrent nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

***Monday to Saturday 10 am to 6 pm daily. I want to open a new and used tire store. It will be of no hindrance to adjoining properties or businesses.***

**Recommendation:**

**Based on a review of the submitted information, there is reason to consider denying the variance request to reduce the minimum lot area from 20,000 square feet to 13,000 square feet.** A 13,000 square foot lot is only 65% of the minimum required size for the proposed use. The existing building on the property measures approximately 1,850 square feet. The applicant did not supply any additional information as to why the variance should be granted for the 7,000 square feet difference in the regulations and what they are proposing. Based on the above information the property is too small for the proposed use.

**Notification**

Public Hearing Notices were mailed to eight (8) property owners within 100 feet of the property in question. At the time this report was written, were no objections expressed to the proposed zoning variance.

**Attachments:**

- 1) **Exhibit A - Public Hearing Location Map**
- 2) **Exhibit B – Zoning Map**
- 3) **Exhibit C – Variance Application**



**PUBLIC HEARING NOTIFICATION MAP  
3185 DIXIE HIGHWAY**



 3185 Dixie Highway

0 30 60 120 Feet



**PUBLIC HEARING NOTIFICATION MAP  
3185 DIXIE HIGHWAY**



 3185 Dixie Highway

0 30 60 120 Feet





Application # A160005  
Approval # 160006

**BOARD OF ZONING APPEALS APPLICATION**

Property Address: 3185 DIXIE HWY HAMILTON OH

Lot No(s): \_\_\_\_\_

Property Owner: RAUF BAKKALI

Owner's Mailing Address: \_\_\_\_\_

Appellant's Name (If different than owner): OMAR TIAFI

Appellant's Mailing Address: 2093 S ERIE HWY HAMILTON OH

Appellant's Email Address: \_\_\_\_\_

Previous Legal Use of Property: Donuts store

Date Previous Use Discontinued: \_\_\_\_\_

Proposed New Use of Property: NEW & USED TIRES

Purpose of Application (Check all that apply):

Requesting a variance for signs. Please describe the request below.

Put a sign with New Name  
DIXIE NEW & USED TIRES

Requesting a variance other than a sign from the following Sections of the Hamilton Zoning Code (also fill out **Appellant's rational for requesting a Variance**)

1121.39.26  
Min lot area 20,000 sq ft

Other – Skip to "Other" Section of Application Form

City of Hamilton  
Date: 1/20/2016  
Acct #: \_\_\_\_\_  
Name: \_\_\_\_\_  
Receipt #: 06776138  
Payment Total: \$200.00  
1/20/2016 11:56 AM  
Cashier: Consys  
Check Tended: \$200.00

**VARIANCES**

**Appellant's Rationale for requesting a Variance:**

Variance-Findings of the BZA: No variance of the provisions or requirements of the Hamilton Zoning Ordinance shall be authorized by the BZA unless the BZA finds, beyond reasonable doubt, that all of the following facts and conditions exist. **Please address each condition below in the space provided.**

**Exceptional Circumstances:** That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same Zoning District.

TIRES BUSINESS  
New + Used

**Preservation of Property Rights:** That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and in the same vicinity.

TIRES BUSINESS  
New + Used

**Absence of Detriment:** That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this Ordinance of the public interest.

Used + New TIRES

**Not of General Nature:** No grant of variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

Monday to Saturday  
10am to 6pm  
Daily

**OTHER:** Please check the reason for the Application and Explain.

- Substitution of Non-Conforming Use  Temporary Use  
 Appeal of Decision of Architectural Design Review Board  Appeal of Interpretation

I want to open a Used & New  
Tires Store.  
It will be of no hindrance  
to adjoining properties or businesses

**CERTIFICATION:**

I certify that all of the information contained in this Application is complete, true and accurate.

  
Appellant's Signature

01-20-2016  
Date

OMAR TTAFI  
Appellant's Printed Name

  
Property Owner's Signature

01-20-16  
Date

RAVE BAKKALI  
Property Owner's Printed Name

**WRITTEN SUMMARY  
BOARD OF ZONING APPEALS  
MEETING MINUTES  
Thursday, May 7, 2015  
1:30 p.m.**

The Board of Zoning Appeals meeting was called to order by Chairperson, Ms. Karen Underwood-Kramer presiding at 1:30 p.m.

**Members Present:** Mr. Larry Bowling, Mr. George Jonson, Ms. Karen Underwood-Kramer, Mr. Jonathan Bell and Ms. Nancy Bushman

**Members Absent:** None

**City Staff Present:** Mr. John Creech, Ms. Meredith Murphy, Ms. Mansdorfer, Mr. Reister

Ms. Underwood gave an overview of the procedural process of the meeting and.

**SWEARING IN:** Mr. Creech asked members of the audience to rise and be sworn in if they intended to speak during any of the public hearings on the agenda.

**OLD BUSINESS:**

**TABLED AGENDA ITEM #1 PUBLIC HEARING STAFF: Mr. John Creech**

**2015-8 Conditional Use Request: Request by Thomas Huffman for a Conditional Use to allow an Automobile Sales to operate on the property located at 317 N Erie Blvd. (Thomas Huffman, Applicants/Owners).**

**Introduction:**

Mr. Creech gave an introduction of the case, starting with the application that was submitted regarding a request for a Conditional Use to allow an Automobile Sales to operate on the property located at 317 N Erie Blvd. within an I-1 zoning district.

Mr. Creech states that this item was heard at a Public Hearing held on April 2, 2015, meeting. At the time, it was tabled by the Board of Zoning Appeals, and the applicant was asked to come back with a detailed site plan and some additional information for the Board to review on how they propose to use the exterior of the property for parking, display of their vehicles, as well as customer parking. Since then, members of the Planning Department have met with the applicant and the business operator on a couple of occasions, provided them with some information, and they did provide a site plan which is included for the BZA's information.

Mr. Creech shows pictures of the zoning map in the area that is zoned I-1 Industrial, and states that, Automobile Sales and Automobile Repair uses are Conditional in that zoning district.

Mr. Creech then shows a slide of the application, and other pictures of the property. In particular, he notes the color key of blue, red, and green on the applicant's site plan that for automobile (dealer) inventory, customer parking, and overflow. He states that although it can't really be seen

on the drawing, the applicant indicated that the maximum number of vehicles to be stored in the back of the property as being 35.

Mr. Creech shows other photos of the property provided by the applicant, and goes over the Application and Review, noting particular points of importance. There are two rows of customer service parking proposed. The Code does require a minimum setback of 10' within the front of the existing building, and they will not be able to comply with the 10' setback. They did indicate on the site plan that all of the parking of vehicles would be on their property outside the public right-of-way.

There was some discussion about the property line and set-back, and Mr. Creech verified it by the drawing.

### **Summary Review of Conditional Use Standards**

Section 1155.10.2 confirms that the BZA has no obligation to approve a Conditional Use. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed.

- A. A review of the nine Conditional Use Review Criteria – General Standards found in Section 1155.30 C provides the Board with the basic facts and circumstances for the review of the proposed conditional use. The proposed use is an Automotive Sales operation with minor repair. The applicant and property owner submitted an application with no supporting information or site plan, except for the proposed hours of operation. After the case was tabled at the April 2, 2015 BZA meeting, the applicant and property owner provided numerous photos of the site and a revised site plan for the subject property that shows defined areas for customer parking, dealer inventory and overflow parking. The applicant also gives a maximum number of cars to be stored in the back as being 35.

Mr. Creech shows the Application & Review, and the 9 Conditional Use Review Criteria.

### **1155.30 - Application and Review**

- **The applicant shall submit an application for a Conditional Use along with applicable fee. The applicant shall submit at least the following supporting information to be considered for a Conditional Use.**
  - B. **A written description of the proposed Conditional Use including nature of the business, hours of operation.** *The Applicant is proposing to establish an Automobile Sales use on the subject property. The Applicant and property owner provided no substantive information on the proposed business other than the background that the business use to operate at a different location on South Erie and moved to the subject property in order to have more space to service the vehicles they sell.*
  - C. **Plans of the proposed site for the Conditional Use indicating the location of all existing and proposed buildings, parking, loading, and driveway areas, traffic access and circulation, open spaces, landscaping, refuse and service areas,**

utilities, signage, yards and setbacks, and such other information as the BZA may require to determine of the effect of the proposed Conditional Use on the surrounding neighborhood.

**C. Conditional Use Review Criteria – General Standards**

**In reviewing an application for a Conditional Use, the BZA shall consider whether there is adequate evidence that the proposed Conditional Use is consistent with the following General Standards:**

**(1) The proposed Conditional Use is to be located in a district wherein such use may be permitted, subject to the requirements of this Section and the Zoning Ordinance.** *An Automobile Sales use is a conditional use in the I-1 Light Industrial Zoning District. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed. However, the applicant provided no information as to demonstrate that the use will not be detrimental.*

**(2) The proposed Conditional Use will not substantially or permanently injure the appropriate use of neighboring property and will serve the public convenience and welfare.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**(3) The proposed Conditional 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.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**(4) The proposed Conditional Use shall be adequately served by essential public facilities and services such as, but not limited to, roads, public safety forces, storm water facilities, water, sanitary sewer, refuse, and schools. If not, the applicant shall be responsible for the extension or establishment of any public facilities and services to effectively service the proposed Conditional Use. A site plan was submitted by the applicant and does not indicate a need for any public improvements on the site.**

**(5) The proposed Conditional Use will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding streets. A site plan was submitted but does not specify the vehicular approaches to the property. Currently it appears that you can drive onto the property at any point of its frontage on North Erie.**

**(6) The proposed Conditional Use will comply with all applicable development standards, except as specifically altered by the BZA in the approved Conditional Use. The Applicant and property owner agree to all applicable development standard, with the exception of the required 10 ft setback from all property lines for the display of vehicles. In the submitted site plan the customer parking and dealer inventory is shown in the 10 ft setback area.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**(7)The proposed Conditional Use will not be hazardous to or have a negative impact on existing or future neighboring uses.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**(8)The proposed Conditional Use will not involve uses, activities, processes, materials, equipment and conditions of operations, including, but not limited to, hours 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, odor or other characteristic not comparable to the uses permitted in the base zoning district.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**(9)The proposed Conditional Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The existing main building footprint measures approximately 5,000 square feet and spans portions of the two (2) lots. No information about the building has been submitted.*
- 3. The submitted site plan shows vehicles parked beyond the minimum 10 foot setback along North Erie.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

**D. Conditional Use Review Criteria – Use Specific Standards and Variances**

**In reviewing an application for a Conditional Use, the BZA shall also consider certain use-specific standards, applicable to certain Conditional Uses, and determine whether there is adequate evidence that the proposed Conditional Use is consistent with the applicable use-specific standards. Any deviation from the use-specific standards will be considered a variance pursuant to Section 1140.64 Variances.** *The applicant is requesting a zoning variance for Automobile Sales use, specifically to the requirement that all cars shall be setback a minimum of 10 feet from any property line. The applicant agrees to meet all other use-specific standards associated with Automotive Sales uses found in Section 1123.36.*

Mr. Creech states that because of the issues listed above there is a concern based on a review of C. Conditional Use Review Criteria – General Standards #2, #3, #6, #7, #8 & #9 above that the proposed conditional use could negatively impact existing or future neighboring uses and there are sufficient grounds to not approve the proposed conditional use for an Automobile Sales shop.

Mr. Creech discussed the site plan, buildings and set-backs. Mr. Creech then went over the Recommendations if the BZA approves the request for Conditional Use.

**Recommendation**

If the BZA approves the request for a Conditional Use, the Department of Community Development requests that the BZA consider the following conditions of approval:

- 1) **Any construction drawings/documents for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Interdepartmental Review (IDR) Committee.**
- 2) **All improvements and work indicated on construction drawings/documents approved by the IDR be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Conditional Use.**
- 3) **The hours of operation of the proposed Automobile Sales be confirmed by the applicant and approved by the board.**
- 4) **No exterior storage of junk, debris, materials, etc. of any kind etc.**
- 5) **The Applicant complies with the applicable points of Section 1123.36.**

*Mr. Creech stated that there are strong and compelling grounds for the BZA to not approve the proposed conditional use or grant the setback variance because of the issues discussed in the Section C. Conditional Use Review Criteria – General Standards #2, #3, #6, #7, #8 & #9 above.*

#### **Notification**

Mr. Creech stated that Public Hearing Notices were mailed to the owners of ninety seven (97) properties within 500 feet of the property in question. At the time the BZA report was written, were no objections expressed to the proposed conditional use for 317 N. Erie Blvd.

Ms. Underwood-Kramer asked if Mr. Creech had talked to the applicant about landscaping requirements, and Mr. Creech answered that although those are mentioned as being an automatic requirement for any Conditional Use, they are only triggered with a new building, or the expansion of an existing property by more than 50%.

Mr. Bell, Mr. Creech, and Mr. Bowling had a conversation about what is encroaching on the 10', and how it possibly could be solved. One option that was mentioned was to just have a single row of Dealer Inventory instead of two.

Ms. Underwood-Kramer asked if there was any other discussion from the Board. Hearing none, the Public Hearing was opened.

#### **PUBLIC HEARING**

Mr. Thomas Huffman, owner of the property, spoke. He gave his address of 2731 Camden College Road, Camden, OH. He stated that they could do a single row, but for the sake of the business, it's better to have more cars visible. There's certainly plenty of space in the back to park vehicles. He said the cars could even be moved back a little bit more and you just couldn't walk in between in front of the other vehicles. For customer parking in the front here, they are going to be putting up lines here to show people not to park front to back up against that building, but to park sideways parallel with the building. That way, there's flow to Route 4, and there would be enough space for 2, and 2 in front of the smaller building. He said if there was ever an occasion where they would need more, they could go to the back.

Ms. Underwood asked about the hours of operation for the Conditional Use. It was answered that the hours would be 10-7, Monday through Saturday. Mr. Huffman also wanted to add that they did not seek approval prior to moving in, but he was not involved at that time. His dad, now deceased, had been dealing with it. There had been a Real Estate agent involved, and he never advised them that there was an issue. He said the previous owners had been an auto repair business, who was also selling cars, so that was also part of the reason they didn't know there was an issue. He says that the business is very viable, and it would be a blow to them and the city if they are not allowed to continue operating.

Ms. Underwood asked if there were any questions from the Board to the Applicant. There were none. She then asked if there were anyone else that wished to speak on behalf of the appeal. There were none. She asked if there was anyone that wished to speak against and the appeal if and so, for them to please step to the podium.

Mr. Larry Bach, 225 N. 11<sup>th</sup> Street, spoke against. He says that he walks his grandson to school, and the extra traffic from the business in question is very high. He feels that it is a safety hazard. There is also a parking issue with the car haulers and SUV's parking in their residential area, which is limited already. He says there are a lot of children that play on that one way street, and there is already an issue with cars travelling at a high rate of speed, and there is no "children at play" sign. Lots of kids use the cross-walk and there have already been several near misses. He also feels that the area needs landscaped. He's not opposed to people having a business, but it wants to operate in a residential area.

Mr. Huffman replied that he doesn't know where 11<sup>th</sup> Street is, their business has no vehicles parked on 11<sup>th</sup> street, they have no access to 11<sup>th</sup> Street, and perhaps the issues being referenced by Mr. Bach are from a different car dealership in the area. He said they have no way to even get into 11<sup>th</sup> Street. He and Mr. Bach had a discussion about the school crossing at Dayton & Rt. 4. He said that their vehicles are all on Rt. 4, none would be on Dayton Street for any reason. Mr. Huffman feels that their business would have less impact on the school crossing than the prior business would.

With no further questions and no one else to speak either on behalf or against the appeal, there as a Motion to close the Public Hearing, and Roll Call was taken. The Public Hearing was closed, and discussion by the Board took place.

There was a discussion between Mr. Bell, Mr. Bowling, and Ms. Bushman regarding the number of cars in the front of building to a single row, and for customers to park parallel to the building vs. straight in off of Rt. 4. He felt that eliminating the 2<sup>nd</sup> row would clear the right-of-way so that if there was an accident on the street, they could get off the street.

Mr. Bell made a Motion to allow the Conditional Use subject to the conditions per Code in writing and additional information at the Hearing, with a 2<sup>nd</sup> by Larry Bowling. Roll call was taken. With all "ayes", the Motion passes.

Mr. Creech verified that the applicant/owner would be receiving written verification of the Board's approval within 5 days of the hearing, and the approval would be effective at that time. Mr. Huffman verified with the Board that the parking issue they were talking about was the customer parking and the 10' setback, and parallel parking to the building.

**NEW BUSINESS:**

**AGENDA ITEM #2**

**PUBLIC HEARING STAFF: Mr. John Creech**

**2015-11-Conditional Use Review**

**Request by Yantzie Perez for a Conditional Use and two zoning variances to allow Automobile Sales to operate on the property located at 2127 Dixie Highway. (Yantzie Perez/ Robert Kelley, Applicants/Owners)**

Mr. Creech gave the background. The property is at the corner of Dixie & Belle. This is a conditional use and variance request. Ms. Perez is the applicant and Mr. Kelley is the owner. An application has been submitted regarding a request for a Conditional Use to allow an Automobile Sales to operate on the property located at 2127 Dixie Highway within a B-2 zoning district. B-2 Community Business District is regulated by Section 1121.00 of the Hamilton Zoning Ordinance, (HZO). An Automobile Sales shop requires Conditional Use approval by the BZA (1121.39.27). The Conditional Use application was submitted by Yantzie Perez to establish the Automobile Sales shop located at 2127 Dixie Highway as shown on the attached Public Hearing Notification Map (Exhibit A).

The subject property located at 2127 Dixie Highway is currently zoned B-2 Community Business District. An adjacent land use map is attached for clarification. The properties to the north and east are zoned B-2 Community Business. The properties to the west are zoned R-3 One to four family Residence, and the properties to the south are zoned I-2 Industrial and B-2 Community Business. The area that it's located in has mixed uses.

The property is comprised of two (2) lots. The two (2) lots combined are approximately 9,900 square feet in total area. The existing building footprint measure approximately 3,700 square feet. The two (2) lots have a total of 157 feet in lot frontage along Belle Avenue and 70 feet of lot frontage along Dixie Highway.

Mr. Creech shows the Application, including detailed information about the property, photos of the business, the applicant's State of Ohio license to operate the business, and the site plan. He goes over the different areas of the site plan and explains what each color represents. He shows a letter from the property owner and photos that he took recently showing the business.

**Background**

City records indicate that there was previously an Automotive Sales operation on this property. At some point in 2009 the business closed and a City inspector sent a violation letter to the property owner to take down the sign. From that point the city had no record of a business at this property. The current business has been operating on the site as an auto repair business and as indicated by the applicant began operation without zoning approval in 2012. Upon receiving a zoning complaint about automobiles being sold on the property, the Zoning Inspector investigated the complaint and mailed a zoning violation notice on March 25, 2015. The application for Conditional Use for Automobile Sales was received on April 17, 2015.

Mr. Creech states that this is a Conditional Use application, which means that it's not outright permitted use in that zoning district.

### **1155.10 – Conditional Uses:**

1. The Board of Zoning Appeals (BZA) shall review and decide, in accordance with the provisions of this Ordinance, applications for Conditional Uses. The BZA shall review the particular facts and circumstances of each proposed Conditional Use, and if approving shall find adequate evidence that the proposed conditional use complies with the General Standards applicable to all Conditional Uses found in 1155.30.
2. The BZA has no obligation to approve a Conditional Use. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed.
3. In considering an application for a Conditional Use, the BZA shall give due regard to the nature and condition of all adjacent uses and structures and in authorizing a conditional use may impose such requirements and conditions, in addition to any expressly stipulated in this Ordinance, as the BZA may deem necessary for the protection of adjacent properties and the public interest.

### **C. Conditional Use Review Criteria – General Standards**

**In reviewing an application for a Conditional Use, the BZA shall consider whether there is adequate evidence that the proposed Conditional Use is consistent with the following General Standards:**

- (1) The proposed Conditional Use is to be located in a district wherein such use may be permitted, subject to the requirements of this Section and the Zoning Ordinance.** *An Automobile Sales use is a conditional use in the B-2 Community Business District. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed. The applicant provided ample information about the business. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*
- (2) The proposed Conditional Use will not substantially or permanently injure the appropriate use of neighboring property and will serve the public convenience and welfare.** *The applicant provided ample information about the business and its impact on the surrounding neighborhood. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*
- (3) The proposed Conditional 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 applicant provided ample information about the business and its impact on the surrounding neighborhood. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*
- (4) The proposed Conditional Use shall be adequately served by essential public facilities and services such as, but not limited to, roads, public safety forces, storm water facilities, water, sanitary sewer, refuse, and schools. If not, the applicant shall be responsible for the extension or establishment of any public facilities and services to effectively service the proposed Conditional Use.** *The*

*Applicant provided numerous Site Maps showing the locations of the vehicle display area, the vehicular access point, customer parking, and the layout of the interior of the building.*

- (5) The proposed Conditional Use will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding streets.** *The Applicant provided numerous Site Maps showing the locations of the vehicle display area, the vehicular access point, customer parking, and the layout of the interior of the building.*
- (6) The proposed Conditional Use will comply with all applicable development standards, except as specifically altered by the BZA in the approved Conditional Use.** *The applicant and property owner provided ample information about the business and their willingness to comply with the applicable regulations, except in the two instances they requested a variance from.*
- (7) The proposed Conditional Use will not be hazardous to or have a negative impact on existing or future neighboring uses.** *The applicant provided ample information about the business and its impact on the surrounding neighborhood. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*
- (8) The proposed Conditional Use will not involve uses, activities, processes, materials, equipment and conditions of operations, including, but not limited to, hours 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, odor or other characteristic not comparable to the uses permitted in the base zoning district.** *The applicant provided ample information about the business and its impact on the surrounding neighborhood. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*
- (9) The proposed Conditional Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.** *The applicant provided ample information about the business and its impact on the surrounding neighborhood. This information is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment B.*

#### **D. Conditional Use Review Criteria – Use Specific Standards and Variances**

**In reviewing an application for a Conditional Use, the BZA shall also consider certain use-specific standards, applicable to certain Conditional Uses, and determine whether there is adequate evidence that the proposed Conditional Use is consistent with the applicable use-specific standards. Any deviation from the use-specific standards will be considered a variance pursuant to Section 1140.64 Variances.**

*The applicant is requesting two variances for their Automobile Sales use. The first is to allow an Automotive Sales use with less than 20,000 square feet. The applicant states in they feel the size/layout of the lot are adequate for their use. The second variance is to allow a five (5) foot setback where a ten (10) foot setback is required. The applicant addresses the information regarding both variances in their application. The application is attached to this report (attached as Exhibit C) and was labeled by the applicant as Attachment A. The applicant states and agrees to meet all use-specific*

*standards associated with Automotive Sales uses found in Section 1121.39.27. Section 1121.39.27 states:*

**1121.39.27 Automobile and Other Vehicle Sales: (OR2014-8-71)**

As Defined in Section 1108.00 and must comply with the following conditions:

- Minimum lot area 20,000 square feet.
- Minimum lot width 100 feet and must be located along a street classified as major arterial, minor arterial or a collector street, in accordance with the City of Hamilton Street Designation.
- Any automobile for sale, or automobiles awaiting minor repair, may be permitted outside of a building. Automobiles awaiting repair may not be stored on the lot for more than 30 days.
- Display of automobiles for sale, or awaiting minor repair, shall be located on a paved surface and shall be setback a minimum of ten (10) feet from any property line. The outdoor display area for vehicles shall comply with the side and rear building setback requirements set for the district in which the lot is located or be at least ten (10) feet, whichever is greater. All areas not used for parking or display of vehicles shall be landscaped according to the requirements of Section 1111.20.
- Any repair and services area must be located within an enclosed building.
- No junk, inoperative or unlicensed automobiles, except for the inventory of new or used automobiles for sale, or automobiles awaiting repair, shall be permitted outside of any building. Automobiles awaiting repair may not be stored on the lot for more than 30 days.
- The only automobile repair and services permitted to be performed outside of a building shall include but not be limited to the dispensing of fuel, oil, air, and other common vehicular liquids and lubricants and minor repair such as fuse, light bulb, windshield wiper replacement, etc.
- Hazardous Materials. All automotive fluids, tires, batteries, and other discarded hazardous materials must be recycled or removed in accordance with local, state or federal standards.
- Indoor Storage. Used or discarded automotive parts or equipment, not including hazardous materials as mentioned above must be stored inside a building.
- Building Openings. There may not be any openings in side walls, rear walls or roofs within 50 feet of a residential district, unless the openings are stationary windows or required fire exits.
- Vehicular access drives shall be limited to no more than one (1) access drive per street frontage, unless otherwise approved by the City Traffic Engineer.
- Proposed building and site shall comply with Section 1111.00 Architectural, Landscaping, Design, and Building & Site Development Regulations.

**Summary Review of Conditional Use Standards**

*Section 1155.10.2 confirms that the BZA has no obligation to approve a Conditional Use. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed.*

*A review of the nine Conditional Use Review Criteria – General Standards found in Section 1155.30 C provides the Board with the basic facts and circumstances for the review of the proposed conditional use. The proposed use is an Automotive Sales operation. The applicant and property owner submitted an application with ample supporting information regarding the nine conditional use review criteria.*

**Recommendation**

Mr. Creech stated that if the BZA approves the request for a Conditional Use, the Department of Community Development requests that the BZA consider the following conditions of approval:

- 6) The hours of operation of the proposed Automobile Sales be confirmed by the applicant and approved by the board.
- 7) No exterior storage of junk, debris, materials, etc. of any kind etc.
- 8) The Applicant complies with the applicable points of Section 1121.39.27, with the exception of the requested variance for a setback of 5 feet where 10 feet is required.

Mr. Creech says that this was advertised as a Public Hearing, and notices were mailed to the owners of forty two (42) properties within 500 feet of the property in question. At the time of the hearing, there were no objections expressed to the proposed conditional use for 2127 Dixie Highway.

Ms. Underwood asks if the Board has any questions for Mr. Creech. Mr. Bell says that the layout shows a "living area". He asks if it's a residence as well. Mr. Creech replied that he thinks a tenant might live there, but suggests confirmation from the applicant. Mr. Jonson had a question about the size of the set-back. Mr. Creech verifies that it is 5' behind the sidewalk. They are asking that the setback be reduced to 5', where 10' is what is normally required.

Ms. Underwood opens the Public Hearing. She asks for anyone wishing to speak on behalf of the appeal.

Yantzie Perez, (Applicant) 6755 Corkwood Knoll, Hamilton, Ohio 45011, spoke. She addressed the question from Mr. Bell. He says that one person that helps with the dealership stays in the living area. The rest of the building is used for storage and garage. Mr. Bell asked if there was a second dealership on the lot. Applicant replied that it is used for storage. There is a repo business, and cars that have been reposed are stored there. Ms. Bushman asked how many cars the lot can hold. She replied that the most is 23. She said they had been there for 3 years. She wasn't aware that an additional City permit was required. She is at the hearing today in good faith. She said that when they entered into talks with the City three years ago, the original plan was that it was going to be a restaurant. The business has one entrance off of Belle Avenue and designated parking. There has been no destruction of the property or business for past three years. Their business is surrounded by same type of industry (car tire business in front), another car business next to this lot. She gave their hours of operation (closed on Sundays). They have intentions to stay long term if approved by Board. She says when they got the space three years ago; it was abandoned and used by drug dealers. They have cleaned it up, it's been painted, and it's well lighted. They are also in the business of trading cars, but not servicing them at all. No junk cars on any side of the lot. They do change the oil in dealer cars that they are selling, but that's all for maintenance they perform. They cannot afford a bigger lot, and that's why they are asking for the variance. Mr. Bell asked where the customer parking is located. She showed it on the map. Ms. Bushman asked if there are "no parking" signs. Mr. Creech said that there is on-street parking on Belle Avenue, but none on Dixie Highway.

There was no one else from the audience who wished to speak on behalf or against the hearing. Mr. Jonson made a Motion to close the Public Hearing, with a second by Mr. Bell. With a roll call vote of "ayes" by all, the Public Hearing was closed.

With no further discussion by the Board, Mr. Bowling made a Motion to approve the Conditional Use allowing the lot size of less than 20,000. Mr. Bell requested additional language that some type of sign be put on the Dixie Highway side indicating that parking is on the Belle Avenue side. Mr. Jonson said that it's already "No Parking". Mr. Creech said the City could work with the business to

put up a “directional” sign (“Customer Parking”). Mr. Bell said that he’s driven that area, and that there’s not a lot of parking around the dealerships in the area. After discussion with the applicant, Mr. Bowling incorporated the additional language regarding a stenciled “No Parking” sign into his Motion. With a 2nd by Mr. Jonson, and approval by all, the Motion passes and the request is approved.

Mr. Creech verified that the applicant/owner would be receiving written verification of the Board’s approval within 5 days of the hearing, and the approval would be effective on that date.

**AGENDA ITEM #3**

**PUBLIC HEARING STAFF: Mr. John Creech**

**2015-12-Conditional Use Review**

**Request by Greg Myers for a Conditional Use and two zoning variances to allow Automobile Sales to operate on the property located at 217 N Erie Blvd. (Greg Myers, Applicants/Owners)**

**Introduction:**

Mr. Creech stated that an application has been submitted regarding a Request for a Conditional Use to allow an Automobile Sales to operate on the property located at 217 N Erie Blvd. within a B-2 zoning district. B-2 Community Business District is regulated by Section 1121.00 of the Hamilton Zoning Ordinance, (HZO). An Automobile Sales establishment requires Conditional Use approval by the BZA (Section 1121.39.27). The Conditional Use application was submitted by Greg Meyers to establish the Automobile Sales use located at 217 N Erie Blvd. as shown on the attached Public Hearing Notification Map (Exhibit A).

The property is comprised of one (1) lot, which is approximately 6,200 square feet in total area. The existing building footprint measures approximately 900 square feet. The lot has a total of 100 feet in lot frontage along Erie Blvd.

The subject property located at 217 N Erie Blvd. is currently zoned B-2 Community Business District. An adjacent land use map is attached for clarification (see attached Zoning Map- Exhibit B). The properties to the northwest are R-3 One to Four Family Residence and the properties to the southwest are zoned B-2 Community Business District. The properties to the northeast and southeast are zoned I-1 Light Industrial District.

**Background**

The site was rezoned from R-3 One to Four Family Residence to B-2 Community Business in March 1997. During that time there was also a request for BZA approval Conditional Use for a used car lot to be located at 217 N. Erie. In 2009 the city sent a letter requesting the applicant take down the premier Auto Mart Sign due to the property being vacant for over 30 days. In July of 2010 city records indicate that there was a Wifi Café business established on the property.

Mr. Creech showed a copy of the application that was submitted by Mr. Myers, including the hours of operation (Monday-Friday, 10-6), and the site plan submitted by Mr. Myers. The site plan was compared to the information on file by the Butler County Engineer’s Office. The right-of-way had been a little different in the past. The property line has been expanded. Minimum lot size requirement is 20,000 sq ft; the property is only 6,200 sq ft., the building is about 900 square ft.

Mr. Creech stated that the applicant began operating the current Automobile Sales use on the property sometime prior to January 2015. Upon receiving a zoning complaint about automobiles being sold on the property, the Zoning Inspector investigated the complaint and mailed a zoning violation notice on January 28, 2015. The application for Conditional Use for Automobile Sales was received on March 23, 2015.

Mr. Creech stated that Section 1155.00 regulates Conditional Uses. The following are the criteria, responses, and rationale for each:

### **C. Conditional Use Review Criteria – General Standards**

**In reviewing an application for a Conditional Use, the BZA shall consider whether there is adequate evidence that the proposed Conditional Use is consistent with the following General Standards:**

- (1) The proposed Conditional Use is to be located in a district wherein such use may be permitted, subject to the requirements of this Section and the Zoning Ordinance.**
- (2) The proposed Conditional Use will not substantially or permanently injure the appropriate use of neighboring property and will serve the public convenience and welfare.**

*There are a number of concerns about the proposed conditional use:*

- 1. The Automobile Sales use was established on the property without Conditional Use approval.*
- 2. The property is only 6,200 sq ft, where the minimum lot size for Automobile Sales use is 20,000 sq. ft.*
- 3. The site plan submitted by the Applicant shows automobiles that encroach in the public ROW and others that are within the 10 feet of the front property line setback. A site visit and photographs of the property indicate that there are vehicles parked in front of the building – contrary to the site plan. In addition, the public ROW is located close to the front of the building and any vehicles parked in this area encroach in the public ROW along North Erie Boulevard.*
- 4. The concerns (1-3 above) associated with the Automobile Sales use could substantially or permanently injure the appropriate use of neighboring property.*

- (3) The proposed Conditional 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.**

*See response to #2*

- (4) The proposed Conditional Use shall be adequately served by essential public facilities and services such as, but not limited to, roads, public safety forces, storm water facilities, water, sanitary sewer, refuse, and schools. If not, the applicant shall be responsible for the extension or establishment of any public facilities and services to effectively service the proposed Conditional Use. The Applicant provided a site plan showing 17 parking spaces and a fence along the north and west sides of the property. No additional information was provided.**

**(5) The proposed Conditional Use will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding streets.** *The submitted site plan shows two driveways and a five (5') foot wide public sidewalk adjacent to the curb of North Erie Boulevard. One driveway appears to be shared with an adjacent property also owned by the Applicant that faces North 11<sup>th</sup> Street. . It is unclear if the applicant intends to create these defined driveways and public sidewalk. Currently, there is no clearly defined driveway or sidewalk on the property. It is possible to drive onto the property at any point of its frontage on North Erie. In addition, as stated above the submitted site plan did not indicate what parts of the property would be used for public/customer parking or vehicle display.*

**(6)The proposed Conditional Use will comply with all applicable development standards, except as specifically altered by the BZA in the approved Conditional Use.**

*See response to #2*

**(7)The proposed Conditional Use will not be hazardous to or have a negative impact on existing or future neighboring uses.**

*See response to #2*

**(8)The proposed Conditional Use will not involve uses, activities, processes, materials, equipment and conditions of operations, including, but not limited to, hours 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, odor or other characteristic not comparable to the uses permitted in the base zoning district.**

*See response to #2*

**(9) The proposed Conditional Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

*See response to #2*

#### **D. Conditional Use Review Criteria – Use Specific Standards and Variances**

**In reviewing an application for a Conditional Use, the BZA shall also consider certain use-specific standards, applicable to certain Conditional Uses, and determine whether there is adequate evidence that the proposed Conditional Use is consistent with the applicable use-specific standards. Any deviation from the use-specific standards will be considered a variance pursuant to Section 1140.64 Variances.** *The applicant did not request any of the necessary zoning variances needed for this request, including a variance to the minimum lot size of 20,000 sq. ft. and a variance to the 10 ft setback from all property lines for all automobiles. The Applicant was informed on two (2) separate occasions of the need for the two variances i.e. minimum lot size and minimum setback.*

#### **Summary Review of Conditional Use Standards**

*Section 1155.10.2 confirms that the BZA has no obligation to approve a Conditional Use. The Hamilton Zoning Ordinance assumes that the uses listed as conditional are not outright appropriate*

*unless an applicant demonstrates to the BZA that the use will not be detrimental to the public health, safety, or general welfare of the City or the neighborhood in which the Conditional Use is proposed.*

*A review of the nine Conditional Use Review Criteria – General Standards found in Section 1155.30 C provides the Board with the basic facts and circumstances for the review of the proposed conditional use. The proposed use is an Automotive Sales operation. The Applicant has submitted an application and site plan. However, the site plan appears to conflict with the use of the property and the property/North Erie Boulevard ROW.*

*Because of the issues listed above there is a concern based on a review of C. Conditional Use Review Criteria – General Standards #2, #3, #6, #7, #8 & #9 above that the proposed conditional use could negatively impact existing or future neighboring uses and there are sufficient grounds to not approve the proposed conditional use for an Automobile Sales establishment.*

### **Recommendation**

*Mr. Creech stated that there are strong and compelling reasons for the BZA to not approve the proposed Conditional Use or grant the lot area variance and variance to the 10 ft setback from all property lines for all cars because of the items identified and discussed in the Section C. Conditional Use Review Criteria – General Standards #2, #3, #6, #7, #8 & #9 above.*

Mr. Creech stated that if the BZA decides to approve the request for a Conditional Use, the Department of Community Development requests that the BZA consider the following conditions of approval:

- 1) Any construction drawings/documents for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Interdepartmental Review (IDR) Committee.**
- 2) All improvements and work indicated on construction drawings/documents approved by the IDR be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Conditional Use.**
- 3) The hours of operation of the proposed Automobile Sales be limited to Monday thru Friday 10:00 am to 6:00 pm, as stated by the Applicant.**
- 4) No exterior storage of junk, debris, materials, etc. of any kind etc.**
- 5) All cars shall be setback a minimum of 10 feet from any property line.**
- 6) The Applicant complies with the applicable points of Section 1121.39.27**
- 7) The Applicant install sidewalk across frontage 217 North Erie Boulevard in accordance with requirements of City of Hamilton Public Works Department.**
- 8) The Applicant installs a single driveway/apron, etc. in accordance with requirements of City of Hamilton Public Works Department.**

Ms. Underwood asked Mr. Creech what the City does when vehicles are parked in the right-of-way. Mr. Creech replied that it's his belief that if the car is on the sidewalk, a police officer could mark it

and if it wasn't moved in a certain amount of time, it could be towed away. If the right-of-way is not clearly defined, he believes that we would have to provide the Police Department with notification of where the right-of-way is for it to be marked and towed. Ms. Underwood wanted to clarify that the Board of Zoning has no jurisdiction to approve vehicles within the public right-of-way, only the property beyond the public right-of-way and the setback beyond that line.

Mr. Creech stated that Public Hearing Notices were mailed to the owners of eighty seven (87) properties within 500 feet of the property in question.

With nothing further, Ms. Underwood opened the Public Hearing. She asks for anyone wishing to speak on behalf of the appeal.

Mr. Greg Myers, 945 Heaton Street, Hamilton, (also owner of 217 N. Erie), spoke. He also owns another car dealership at 816 S. Erie (since 1997). He went through the improvements that he's made to that property, as well as a property that he owns on N. 11<sup>th</sup> Street. He says that there have been no accidents there from the anyone pulling in or out of the car dealership. He apologizes for the time delay in getting the information in, but he was in a "life threatening" motorcycle accident and not in good health for quite some time. With regard to the right-of-way, he states that he actually purchased the property from the State of Ohio because he couldn't a sign permit from the City of Hamilton unless he owned the property (there had previously been a beverage sign where Sunrise Donuts used to be). He says there are 15-17 cars on lot, not alot volume of vehicles in and out; it has been a profitable business to him. He did have an issue with water run-off, but got that situation resolved. There has never been an issue with children crossing in the crosswalk, the cars on the lot are for sale only, there is no repair work done to them. There is a privacy fence in the rear that blocks it from the residential area. In the past, there had been a tax service there for 8 months to a year, but besides that, it's been a car dealership. The area in the front that is supposed to be for customer parking in front is currently being used for display purposes (not a 10' setback). He apologized for not having that on the print. He says that they only usually have 1 to 2 customers at a time, so they don't need that large of an area. He reiterated what properties he owns, and says that he has made them free from any issues.

Ms. Underwood asked him if he was the owner of the business, or just of the property, and if he was on site. He said that he does not own the business. Ms. Underwood verified that it meant that there would be another person who would be subject to the conditions who actually owns the business. He said yes, that is true. Mr. Bell asked if he owned the properties directly behind it also, and he replied that he did. Ms. Underwood asked about a property that shows on the map as having cars parked on it. He replied that it's 218 N. 11<sup>th</sup> Street, a house that had been vacant for some time. He replied that he bought the house and leveled it and now uses it for a lot, as well as one next to it. Ms. Underwood asked what is using that lot for. He said its additional parking, or someplace that the residents of the immediate area can use.

Ms. Underwood also asked about the property that Mr. Myers says that he purchased that is considered the right-of-way from the State of Ohio. He replied that he did, and she tells him that it's not reflected in the documents from the City at all. He says that he's not sure why it hasn't been recorded. She verified with Mr. Creech that the sign is in the public right-of-way. She says if he purchased it, it would not be. Mr. Creech agrees, and discusses the placement of the sign. She verifies that there is still public right-of-way where the vehicles are parked, even though Mr. Myers has purchased the additional right-of-way where it cut through the middle of the building. She and Mr. Myers discuss what he purchased in 1997 (the Erie Canal Property). He says that the property line actually went through the building at one time. He's not sure if it's recorded properly or not at

all. Ms. Underwood responded that she believes that what he purchased does not include the property in front of the building (the public right-of-way). She says that we cannot give permission to anyone to park in the Public Right-of-way. Mr. Jonson asked him where he would display cars if he didn't get the waiver for the 10' set back. He replied that he believes there would be more than one (1) spot within the 10' set back. Mr. Bell said that he believes that possibly on 10 or 11 parking spots would be within the set back. Mr. Myers said that there has never been a problem in the past (when the tax service was there), so he's not sure why it is an issue now. Mr. Underwood went back and looked at the site plan. She stated that she believed 12 cars could be parked, even if the variance is not granted, and that if the variance is granted, it would only go from 12 cars to 13 cars. Without being able to grant the variance in front of the property, he wouldn't be able to do 17 cars. She wanted to reiterate that the parking directly on Rt. 4 is not going to be allowed anymore, and he indicated that he understood that. She said that the site plan doesn't indicate customer parking, which would be 1 or 2 cars, so that would take the inventory parking down to 10 or so. Mr. Myers said that he believes that it is understood.

Ms. Underwood then asked for anyone else speaking on behalf of the appeal, and there were none. She then asked for anyone speaking against the appeal to approach.

Mr. Larry Bach, 225 N. 11<sup>th</sup> Street spoke. He says that this business is an eye sore, and the property value has gone down because of this business. He said that there is something going on in the garage in the back, and that truck haulers are there all the time. He said they had to endure the building of derby cars all summer all hours of the night, with bright lights coming into the house. He went into other problems with the neighborhood, some of which are related to the business in question and some that are not. He says that he has an issue with the area in general, and he believes other people in the neighborhood do as well. Ms. Underwood advised him that the Board can only deal with the property in question. He says that he understands that. He says to try to walk in the area is hard enough as it is, but with cars parked in the right-of-way, it's even worse.

Ms. Underwood asked Mr. Myers if he would like to respond. His response was that while he appreciates Mr. Bach's frustration, he doesn't believe that most of the issues are even with his dealership, and that he's more than willing to work with him in regard to the complaints voiced.

A Roll Call vote was taken to close the public hearing. All were in favor.

Ms. Underwood asked if there was any further discussion for the Board. Mr. Bowling stated that he's inclined to deny the request but if it is approved, it should be to limit the cars and the cars would have to park parallel. Mr. Bell made a Motion to deny the request based on insufficient square footage of the lot, that the proposed use would have a negative impact on the neighborhood, and General Standards #2, #3, #6, #7, #8 and #9, with a 2<sup>nd</sup> by Ms. Bushman.

A Roll Call vote was taken, and all votes were a "yes" for the denial. Mr. Creech advised that he would mail a letter to the applicant, and that the decision of the Board is effective 5 days after the date of this meeting.

A Motion to approve minutes from meeting of January 8, 2015 and April 2, 2015 was made by Mr. Bowling, with a 2<sup>nd</sup> by Mr. Bell. All were in favor, the Motion carries.

**ADJOURNED**

With nothing further to discuss, a Motion to adjourn was made by Mr. Bowling, with a 2<sup>nd</sup> by Mr. Jonson. All were in favor, the meeting was adjourned.

Respectfully submitted,

Ms. Kim Kirsch  
Administrative Assistant

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Mr. John Creech  
Secretary

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Ms. Karen Underwood-Kramer  
Chairperson

DRAFT