

**Karen Underwood-Kramer**  
 Chairperson

**Nancy Bushman**  
 Board Member

**Desmond Maaytah**  
 Board Member

**George Jonson**  
 Board Member

**Michael Samoviski**  
 Board Member

**Roll Call: 2 Public Hearings**

Bushman	Jonson	Maaytah	Underwood-Kramer	SAMOVISKI

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

**Old Business: Agenda Item #1**

**2016-04: Variance Request for 735 S. Erie Blvd - Continued from March Meeting**

A Request by Mr. Allen Loudiy for a minimum lot area zoning variance in order to establish an Automobile Service and Minor Repair Facility, on property zoned B-2 Community Business District, located at 735 South Erie Blvd. 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 – the minimum lot area required is 20,000 square feet - the subject property is approximately 10,860 square feet. (Allen Loudiy, Applicant/Owner).

Staff: Meredith Murphy

Bushman	Jonson	Maaytah	Underwood-Kramer	SAMOVISKI

**New Business: Agenda Item #2**

**2016-10: Variance Request for 906 East Avenue**

A Request by Mr. Ramon Batista for two (2) zoning variances in order to in order to apply for a conditional use to establish an Automobile and Other Vehicle Sales facility on property zoned B-2 Community Business District, located at 906 East Avenue. The requested two (2) zoning variances are to Section 1121.39.27 of the Hamilton Zoning Ordinance are as follows:

- 1) A request to reduce the minimum lot area required for an Automobile and Other Vehicle Sales – the minimum lot area required is 20,000 square feet - the subject property is approximately 12,325 square feet.
- 2) A request to reduce the ten (10) foot minimum setback for vehicles awaiting sale or minor repair from ten (10) feet to five (5) feet.

Staff: Meredith Murphy

Bushman	Jonson	Maaytah	Underwood-Kramer	SAMOVISKI



**Minutes**

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

**January 7, 2016**

<b>Bushman</b>	<b>Jonson</b>	<b>Maaytah</b>	<b>Underwood-Kramer</b>	<b>SAMOVISKI</b>

**Miscellaneous:**

**Adjournment:**





**For the Board of Zoning Appeals Meeting of May 5, 2016**

**To:** Board of Zoning Appeals

**From:** Meredith Murphy

**Subject:** **AGENDA ITEM #1**

**2016-4-Variance Continued from March 3<sup>rd</sup>, 2016 meeting**

Request by Mr. Allen Loudiy for a zoning variance to reduce the minimum lot area required for an Automobile Service and Minor Repair facility from 20,000 square feet to approximately 10,860 square feet, located at 735 S. Erie Boulevard (Allen Loudiy, Applicant/Owner).

Date: April 28, 2016

**Dear BZA Members:**

**Introduction:**

An application was submitted by Mr. Allen Loudiy 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 735 South Erie Boulevard. (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 use requires Conditional Use approval by the City of Hamilton City Council (Section 1121.36.26). Section 1108.00 of the Hamilton zoning ordinance provides the official zoning definition for an Automobile Service and Minor Repair facility.

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

- 1) A request 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 10,860 square feet in area.

**Property Details:**

The property is zoned B-2 Community Business District and is comprised of a single 10,860 square foot lot. The lot is only 54 percent of the required lot size for the proposed Automobile Service and Repair facility. The property has a total of 122 lineal feet of lot frontage along South Erie Boulevard. There is an existing 4,800 square foot building on the property that covers approximately 44 percent of the lot and is only setback approximately 5-10 feet from the front property line.



The properties to the north and south are zoned B-2 Community Business District. Immediately to the east is South Erie Boulevard and further east is property zoned I-1 Light Industrial. To the west, across the public alley is property zoned R-3 One to Four Family Residential District.

### **Background**

The subject property was approved for a Car Wash through the conditional use process on August 5, 2004. In January 2015, the property received a violation letter for operating an automobile sales use without conditional use approval. On September 3, 2015, the application for a conditional use to establish an automobile sales use on the property was denied by the BZA. The property owner then sold the subject property to Mr. Loudiy in November 2015. Mr. Loudiy, has made an application for a variance to reduce the minimum lot size in order to apply for the establishment of an Automobile Service and Minor Repair Facility on the property. The subject property has been in continuous violation since September 2015.

### **Use Specific Standards and Variances:**

If the lot area zoning variance is approved by the BZA, the applicant intends to submit an application for a Conditional Use for an Automobile Service and Minor Repair facility 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 10,860 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 (Section 1170.63) 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 bold italics***) for the one (1) requested zoning variance. Information/commentary provided by the Community Development staff with respect to the application, for the BZA to consider is underlined.

1. **1170.63.1 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.

***The subject parcel has been used for commercial use for many years despite its trapezoidal shape and a building that occupies nearly 50% of the entire lot. Unlike any other property in the B-2 district, said property has been used for nearly 12 years as a car wash/auto detailing facility, a principal permitted use at the time applied for, and granted by the Board of Zoning Appeals, August 6, 2004. Said property is screened from adjoining properties to the west and south by a six foot opaque fence that separates the property from its neighboring properties to the south and west that was required in the granting of the aforesaid conditional use. The permitted use, lot, and building configuration/proportionality, are extraordinary circumstances apply to this property that do not apply generally to other properties in the B-2 district.***

The exceptional circumstances raised by the applicant (lot configuration i.e. shape, existing building) are only an issue because of the requested lot area zoning variance for the proposed conditional use – there are other permitted land uses in the B-2 zoning district that could be pursued by the applicant. The 20,000 square foot minimum lot area requirement does not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the B-2 zoning district.

2. **1170.63.2 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.

***The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the B-2 district by virtue of the code requirement of the 20,000 square foot area standard. Such requirement presents a practical difficulty for the many commercial properties in the B-2 district that lack 20,000 square feet in area. Such standard impedes or prevents full commercial development of the B-2 district and renders a number of commercial properties nonconforming. The granting of the variance in the instant case is necessary for the preservation and enjoyment of the substantial property rights possessed by other properties in the B-2 district that lack only the 20,000 square foot area standard.***

The 20,000 square foot minimum lot area requirement for an Automobile Service and Minor repair facility is the standard for all new uses in the B-2 zoning district. The 20,000 square foot minimum lot area requirement may



preclude the establishment of an Automobile Service and Minor repair facility but does not deprive the owner of pursuing other permitted B-2 zoning district land uses on the property. The 20,000 square foot minimum lot area requirement does not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the B-2 zoning district.

3. **1170.63.3 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.

*The authorization of the variance requested would in no way detrimentally affect adjacent property. The subject property is separated on the west and the south from adjacent properties by a six foot opaque fence previously mentioned, which was erected as required by the City as a condition of the granting of a conditional use in 2004. Said fence is a physical barrier separating the subject property from such adjacent properties, as required by the City. This screening that exists between neighboring properties is enhanced by the planned landscape buffer whereby over 2,000 square feet of concrete is to be replaced by a landscaping that will exceed the southern set back and part of the western set back, doubling the width of the setback. Given the fact that all activities of the permitted use of this parcel will take place inside the building on a parcel that is screened as well as buffered from adjacent property, such a variance will not materially impair the purposes of the zoning ordinance or the public interest.*

The property is only 10,860 square feet for a use that requires 20,000 square feet. The lot is only 54 percent of the required lot size for the proposed Automobile Service and Repair facility. In addition, the building measures approximately 4,800 square feet which leaves approximately 6,060 square feet for vehicle parking. The site plan indicates only seven (7) spaces for vehicle parking for customers and parking for vehicles awaiting repair and/or pick-up after repair. The zoning code requires one (1) space for every 1,000 square feet of building area i.e. 5 spaces are required. There is a strong concern that given the small size of the property and the few parking spaces provided that the proposed Automobile Service and Minor Repair facility could be detrimental to the adjacent properties and impair the purposes of the zoning ordinance to project the public interest.

4. **1170.63.4 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.

***The specific and unique characteristics of the subject property as to its use, screening, buffering, lot shape, and building to vacant land proportionality, renders the variance sought not of so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such conditions and situation.***

The 20,000 square foot minimum lot area requirement for an Automobile Service and Minor repair facility is the standard for all new uses in the B-2 zoning district. The purpose of the 20,000 square foot minimum is to better regulate conditional uses that could negatively impact adjacent properties, or neighboring uses.

### **Options Available to the Board:**

**Deny the Request-** In order to grant a zoning variance, the Hamilton Zoning Ordinance (Section 1170.63) requires that the Board of Zoning Appeals must find that all four of the rationale for requesting a variance (Exceptional Circumstances, Preservation of Property Rights, Absence of Detriment, Not of a General Nature) have been adequately met.

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 10,860 square feet, as follows

1. The BZA finds that the variance application does not satisfy the four (4) standards for the granting of a variance as defined in Section 1170.63 Variance- Findings of the Board.
2. The property is only 10,860 square feet for a use that requires 20,000 square feet. The lot is only 54 percent of the required lot size for the proposed Automobile Service and Repair facility.
3. There is a strong concern that given the small size of the property and the few parking spaces provided that the proposed Automobile Service and Minor Repair facility could be detrimental to the adjacent properties and impair the purposes of the zoning ordinance to protect the public interest.
4. While the subject property is too small for the proposed Automobile Service and Repair use, the denial does not totally deprive the property owner of a reasonable economic use of the property because there are other permitted land uses in the B-2 zoning district.
5. Based on available information of the property and information provided by the applicant as part of the variance application the property is too small for the proposed use.



**Approve the Request-** However, If the Board of Zoning Appeals finds that all four of the rationale for requesting a variance (Exceptional Circumstances, Preservation of Property Rights, Absence of Detriment, Not of a General Nature) have been adequately met beyond reasonable doubt then the Board of Zoning Appeals has the ability to approve the requested one (1) zoning variance and attach any conditions they deem necessary.

**Notification**

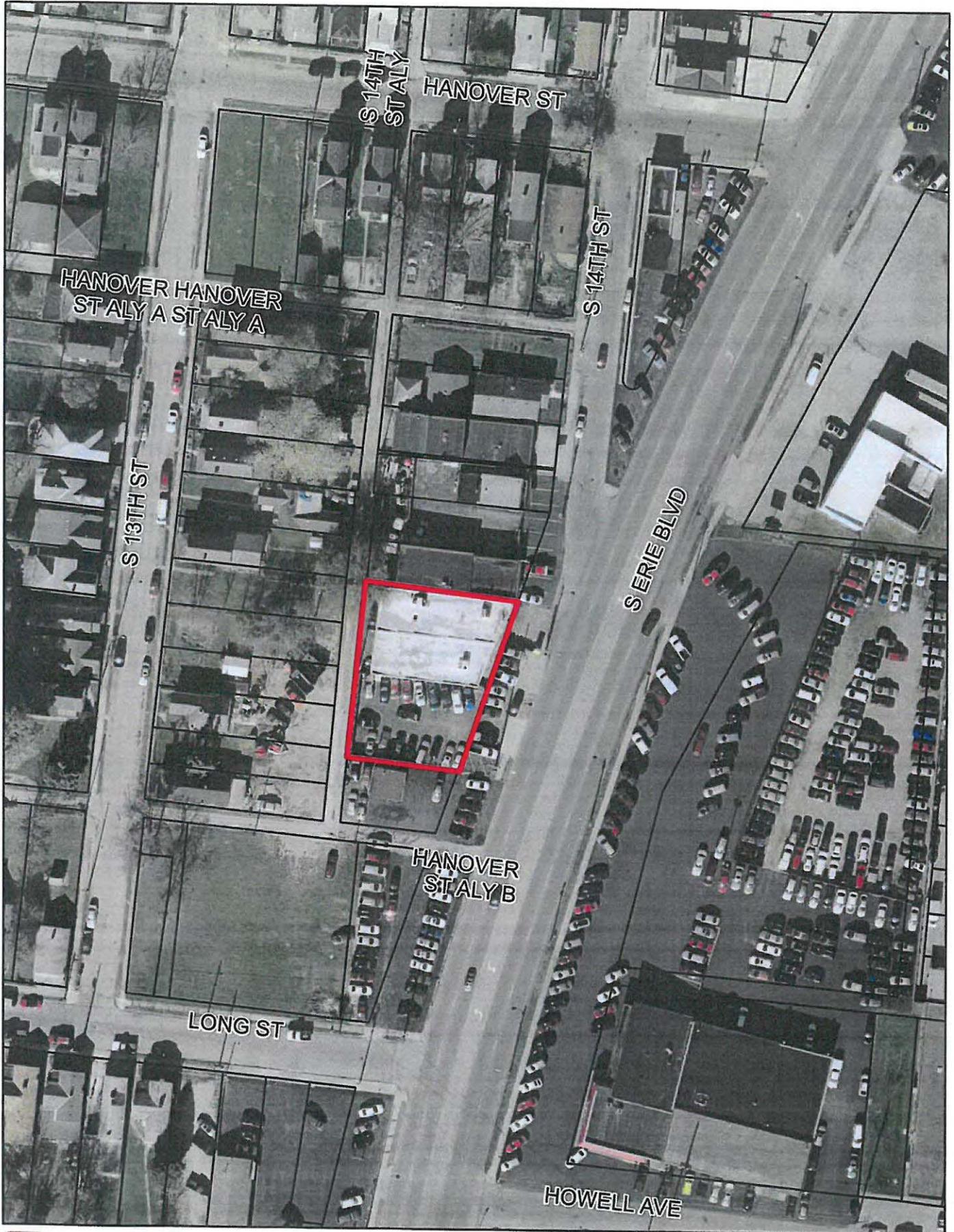
Public Hearing Notices were mailed to eleven (11) property owners within 100 feet of the property in question. At the time this report was written, were two objections expressed from neighboring property owners regarding the proposed zoning variance.

**Attachments:**

- 1) **Exhibit A - Public Hearing Location Map**
- 2) **Exhibit B – Zoning Map**
- 3) **Exhibit C – Variance Application**
- 4) **Exhibit D – Correspondence Regarding Appeal from Jay Bennett**



PUBLIC HEARING NOTIFICATION MAP  
735 S. ERIE BLVD



 735 S. Erie Blvd.

0 37.5 75 150 Feet



Exhibit B

PUBLIC HEARING NOTIFICATION MAP  
735 S. ERIE BLVD



 735 S. Erie Blvd.

0 37.5 75 150 Feet





### BOARD OF ZONING APPEALS APPLICATION

Property Address: 735 S. Erie Boulevard

Lot No(s): 27073

Property Owner: Allen Loudiy

Owner's Mailing Address: 5888 Beacham Dr., Huber Heights, OH 45424

Appellant's Name (If different than owner): \_\_\_\_\_

Appellant's Mailing Address: \_\_\_\_\_

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

Previous Legal Use of Property: Auto Detailing business

Date Previous Use Discontinued: N/A

Proposed New Use of Property: Automotive Service and Minor Repair

**Purpose of Application (Check all that apply):**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requesting a variance other than a sign from the following Sections of the Hamilton Zoning Code (also fill out **Appellant's rationale for requesting a Variance**)  
Section 1121.39.26

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other – Skip to “Other” Section of Application Form

City of Hamilton  
Office: CNS1  
Date: 2/12/2016  
Account: 226680  
Cashier: Consvr  
Time: 2:19:20 PM  
Receipt # 1060034  
Amount: \$200.00  
Check Tendered: \$

**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.

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See attached

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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.

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See attached

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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.

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See attached

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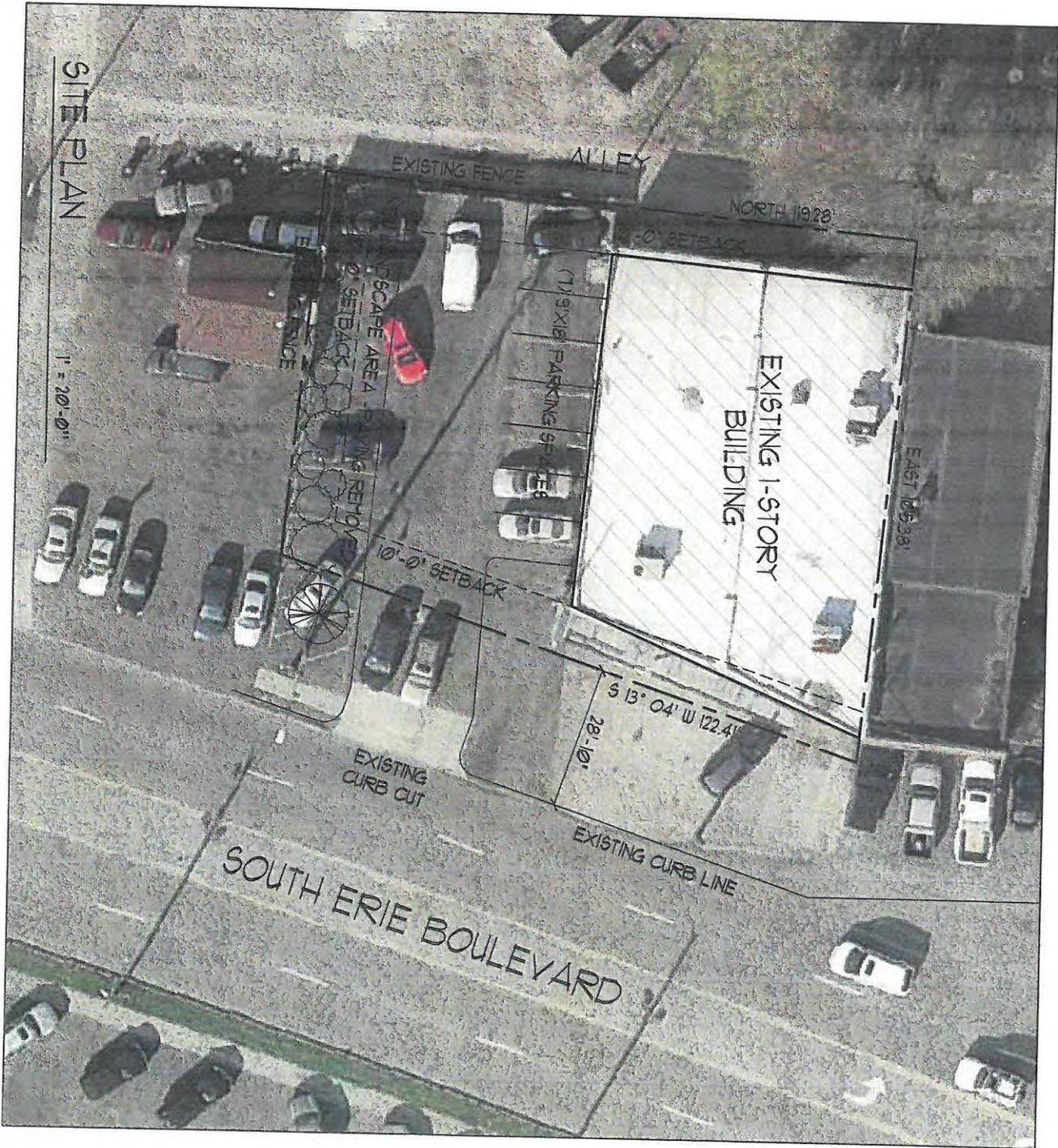


Exceptional Circumstances: The subject parcel has been used for commercial use for many years despite its trapezoidal shape and a building that occupies nearly 50% of the entire lot. Unlike any other property in the B-2 district, said property has been used for nearly 12 years as a car wash/auto detailing facility, a principal permitted use at the time applied for, and granted by the Board of Zoning Appeals, August 6, 2004. Said property is screened from adjoining properties to the west and south by a six foot opaque fence that separates the property from its neighboring properties to the south and west that was required in the granting of the aforesaid conditional use. The permitted use, lot, and building configuration/proportionality, are extraordinary circumstances applying to this property that do not apply generally to other properties in the B-2 district.

Preservation of Property Rights: The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the B-2 district by virtue of the code requirement of the 20,000 square foot area standard. Such requirement presents a practical difficulty for the many commercial properties in the B-2 district that lack 20,000 square feet in area. Such standard impedes or prevents full commercial development of the B-2 district and renders a number of commercial properties nonconforming. The granting of the variance in the instant case is necessary for the preservation and enjoyment of the substantial property rights possessed by other properties in the B-2 district that lack only the 20,000 square foot area standard.

Absence of Detriment: The authorization of the variance requested would in no way detrimentally affect adjacent property. The subject property is separated on the west and the south from adjacent properties by a six foot opaque fence previously mentioned, which was erected as required by the City as a condition of the granting of a conditional use in 2004. Said fence is a physical barrier separating the subject property from such adjacent properties, as required by the City. This screening that exists between the neighboring properties is enhanced by the planned landscape buffer whereby over 2,000 square feet of concrete is to be replaced by a landscaping that will exceed the southern set back and part of the western set back, doubling the width of the set back. Given the fact that all activities of the permitted use of this parcel will take place inside the building on a parcel that is screened as well as buffered from adjacent property, such a variance will not materially impair the purposes of the zoning ordinance or the public interest.

Not of General Nature: The specific and unique characteristics of the subject property as to its use, screening, buffering, lot shape, and building to vacant land proportionality, renders the variance sought not of so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such conditions and situation.



A-1

DATE
February 11, 2006
REVISIONS

PROPOSED AUTOMOBILE REPAIR CENTER  
**735 South Erie Boulevard**  
 HAMILTON, OHIO 45011

**SCOTT WEBB**  
 ARCHITECT

103 West Walnut Street  
 Oxford, Ohio 45056  
 (513) 523-8838  
 www.scottwebbarchitect.com



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**ATTORNEY AT LAW**  
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Telephone 513.523.4104  
Fax 513.523.1525

March 10, 2016

City of Hamilton  
c/o John Creech, AICP  
Dept. of Planning  
One Renaissance Center  
345 High Street  
Hamilton, Ohio 45011

*Re: Board of Zoning Appeals Application for Allen Loudiy*

Dear Mr. Creech:

I am in receipt of your letter of March 9, 2016 regarding the tabling of the BZA hearing for case 2016-04 originally scheduled for March 3, 2016. I requested that it be tabled until the BZA meeting scheduled for May 5, 2016. Your aforesaid letter indicated that such matter was tabled until April 7, 2016. Unfortunately, I will be unable to attend any hearing scheduled for that date.

On April 7, 2016 I have two court appearances that have been scheduled for quite some time. One of the aforesaid court appearances is scheduled for 1:30 p.m., the same time as the BZA hearing. Such court appearance has been scheduled for a matter of months, involves several other attorneys and cannot be rescheduled.

Based upon the foregoing, I would respectfully request that the tabled hearing be scheduled for the next scheduled hearing date of May 5, 2016. Thank you for your consideration.

Very truly yours,

**Jay C. Bennett**

Jay C. Bennett  
Attorney at Law

JCB/da



**For the Board of Zoning Appeals Meeting of May 5, 2016**

**To:** Board of Zoning Appeals

**From:** Meredith Murphy

**Subject:** **AGENDA ITEM #2**

**2016-10: Variance Request for 906 East Avenue**

A Request by Mr. Ramon Batista for two (2) zoning variances in order to apply for a conditional use to establish an Automobile and other Vehicle Sales facility on the subject property, zoned B-2 Community Business District, located at 906 East Avenue. (Ramon Batista, Applicant/Owner).

Date: April 28, 2016

**Dear BZA Members:**

**Introduction:**

An application was submitted by Mr. Ramon Batista for two (2) zoning variances in order to apply for a conditional use to establish an Automobile and other Vehicle Sales facility on the subject property, zoned B-2 Community Business District, located at 906 East Avenue. (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 and other Vehicle Sales facility use is listed as a Conditional Use in Section 1121.39.27 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 and other Vehicle Sales facility use requires Conditional Use approval by the City of Hamilton City Council (Section 1121.36.27). Section 1108.00 of the Hamilton zoning ordinance provides the official zoning definition for an Automobile and other Vehicle Sales facility.

The requested two (2) zoning variances are to Section 1121.39.27 of the Hamilton Zoning Ordinance is as follows:

- 1) A request to reduce the minimum lot area required for an Automobile and other Vehicle Sales – the minimum lot area required is 20,000 square feet - the subject property is approximately 12,325 square feet in area.
- 2) A request to reduce the ten (10) foot minimum setback for vehicles awaiting sale or minor repair from ten (10) feet to five (5) feet.

**Property Details:**

The property is zoned B-2 Community Business District and is comprised of a single 12,325 square foot lot. The lot is only 61.5 percent of the required lot size for the



proposed Automobile and other Vehicle Sales facility. The property has a total of 85 lineal feet of lot frontage along East Avenue and a total of 145 lineal feet of lot frontage along Edison Ave. There is an existing 2,265 square foot building on the property that covers approximately 11 percent of the lot.

The properties to the north and south are zoned B-2 Community Business District. Properties to the east are zoned R-3 One to Four Family Residential District and to the west I-2 Industrial District.

### **Background**

The subject property was originally a gas station from the 1920's. The building is listed on the State of Ohio historic inventory. In the submitted application it states that there was previously an Automobile Sales Use on the property that was abandoned in 2008, however the city does not have any record of this. The applicant purchased the property in June of 2015 and went through the Architectural Design Review Board for approval of exterior changes to the property in September of 2015. The applicant applied for the requested two (2) variances on March 28, 2016 in order to ultimately apply for a Conditional Use from the Hamilton City Council for an Automobile and other Vehicle Sales facility use on the property.

The applicant included the following background information (*in bold italics*) for the two (2) requested zoning variances. This information is included with the entire application and is attached as Exhibit C – Variance Application.

**“Batista Auto Sales is a small minority-owned business, whose intent is to engage in the sale of cars. This summary is intended to provide supporting evidence that Batista Auto Sales, located at 906 East A venue, Hamilton, Ohio 45011 represents a benefit for the community and the city of Hamilton, Ohio. It does not, however, present any hazard or danger for the community or the citizens of the city.**

**The property at 906 East A venue, Hamilton, Ohio was abandoned and Batista Auto Sales ensures that it will continue to gradually repair the property and the lot. As the process of maintaining the property continues, the location will be well lit in the future during the night and it will be monitored with security cameras.**

**\*\* See Attached Butler County GIS Department sky view photo\*\***

**Batista Auto Sales is regulated by the Ohio Bureau of Motor Vehicles. The business is in compliance with specific requirements and pre-determined hours of operation (which will be Monday-Friday 9:30 am -6 pm and Saturday 10 am -6 pm once the business is operating at 906 East Avenue).**

**Batista Auto Sales will bring forth many benefits to the city of Hamilton such as contributing to the economy of the city. Batista Auto Sales will do so by**



**providing jobs to local citizens of the city, engaging in business with a large variety of suppliers such as auto parts and body shop suppliers, mechanics, as well as supplying the city with tax revenue and many more.”**

**Use Specific Standards and Variances:**

If the lot area and setback of vehicles on display zoning variances are approved by the BZA, the applicant intends to submit an application for a Conditional Use for an Automobile and other Vehicle Sales facility on the property. Based on the variance application, the applicant has determined that two (2) zoning variances are necessary prior to proceeding with a Conditional Use application. The two (2) zoning variances from Section 1121.39.27 (also indicated in red below) are as follows:

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, Building & Site Development Regulations.

**Zoning Variance Review**

In order to grant a zoning variance, the Hamilton Zoning Ordinance (Section 1170.63) 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 bold italics*) for the two (2) requested zoning variances. Information/commentary provided by the Community Development staff with respect to the application, for the BZA to consider is underlined.

1. **1170.63.1 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.

***Variance# 1 (in regards with condition #1) - 20,000 sq feet  
The lot is in a very centric place. The area is well-transited, at the corner of East A venue and Edison A venue. Due to this, the lot is visible from both streets and that represents a major advantage for the business.***

***Variance# 2 (In regards with condition #4) - 10 feet from property lines  
Given that the lot is located in a cornered space, it has 2 sides of the perimeter that are street-bounded.***

The exceptional circumstances raised by the applicant (lot configuration i.e. shape, existing building) are only an issue because of the requested lot area zoning variance for the proposed conditional use – there are other permitted land uses in the B-2 zoning district that could be pursued by the applicant. The 20,000 square foot minimum lot area requirement and ten foot setback from all property lines for display of vehicles does not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the B-2 zoning district.

2. **1170.63.2 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.

***Variance# 1 (in regards with condition #1) - 20,000 sq feet  
The size is a flawless fit with the business plan for Batista Auto Sales. The business plan is for that of a small business and the measure of this lot are perfectly adequate for those purposes.***



***Variance# 2 (In regards with condition #4) - 10 feet from property lines Given the size of the lot, not displaying cars for sale in 10 feet from property lines will jeopardize adequateness of the property as well as defeating the advantages that the property has for this type of business.***

The 20,000 square foot minimum lot area and ten foot setback from all property lines for display of vehicles requirements for an Automobile and other Vehicle Sales facility is the standard for all new uses in the B-2 zoning district. The 20,000 square foot minimum lot area and ten foot setback from all property lines for display of vehicles requirements may preclude the establishment of an Automobile and other Vehicle Sales facility at this location but they do not deprive the owner of pursuing other permitted B-2 zoning district land uses on the property. The 20,000 square foot minimum lot area and ten foot setback from all property lines for display of vehicles requirement does not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the B-2 zoning district.

3. **1170.63.3 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.

***Variance# 1 (in regards with condition #1) - 20,000 sq feet This lot has always functioned in the automobile-related industry. The previous business that operated there was Perfection Auto Sales.***

***Variance# 2 (In regards with condition #4) - 10 feet from property lines Batista Auto Sale will ensure a five (5) feet separation from property lines on both sides. Although that may represent a less productive use of space for car displays, Batista Auto Sale will maintain no more than 23 cars at a given time.***

The property is only 12,325 square feet for a use that requires 20,000 square feet. The lot is only 61.5 percent of the required lot size for the proposed Automobile and other Vehicle Sales facility. In addition, the building measures approximately 2,265 square feet which leaves approximately 10,060 square feet for vehicle parking. There is no site plan to indicate the number of parking spaces that can be accommodated on the lot with the proposed five (5) feet where ten (10) feet is required variance. The zoning code requires one (1) space for every 1,000 square feet of building area i.e. 3 spaces are required. There is a strong concern that given the small size of the property and the few parking spaces that could be accommodated in front of the property that the proposed Automobile and other Vehicle Sales facility could be detrimental to the



adjacent properties and impair the purposes of the zoning ordinance to project the public interest.

4. **1170.63.4 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.

***Variance# 1 (in regards with condition #1) - 20,000 sq feet  
Given the business plan and the amount of resources that Batista Auto Sales has, a bigger lot will require more human resources to provide appropriate coverage of the business in regards to maintenance, security, and quality customer service.***

***Variance# 2 (In regards with condition #4) - 10 feet from property lines  
Please note that the property is not a new construction.***

The 20,000 square foot minimum lot area and ten foot setback from all property lines for display of vehicles requirements for an Automobile and other Vehicle Sales facility is the standard for all new uses in the B-2 zoning district. The purpose of the 20,000 square foot minimum and ten foot setback from all property lines for display of vehicles requirements are to better regulate conditional uses that could negatively impact adjacent properties, or neighboring uses.

#### **Options Available to the Board:**

**Deny the Request-** In order to grant a zoning variance, the Hamilton Zoning Ordinance (Section 1170.63) requires that the Board of Zoning Appeals must find that all four of the rationale for requesting a variance (Exceptional Circumstances, Preservation of Property Rights, Absence of Detriment, Not of a General Nature) have been adequately met.

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 12,325 square feet and a five (5) foot setback where ten (10) foot setback from all property lines is required for display of vehicles, as follows

1. The BZA finds that the variance application does not satisfy the four (4) standards for the granting of a variance as defined in Section 1170.63 Variance- Findings of the Board.
2. The property is only 12,325 square feet for a use that requires 20,000 square feet. The lot is only 61.5 percent of the required lot size for the proposed Automobile and other Vehicle Sales.



3. There is a strong concern that given the small size of the property and the few parking spaces provided that the proposed Automobile and other Vehicle Sales facility could be detrimental to the adjacent properties and impair the purposes of the zoning ordinance to project the public interest.
4. While the subject property is too small for the proposed Automobile and other Vehicle Sales, the denial does not totally deprive the property owner of a reasonable economic use of the property because there are other permitted land uses in the B-2 zoning district.
5. Based on available information of the property and information provided by the applicant as part of the variance application the property is too small for the proposed use.

**Approve the Request-** However, If the Board of Zoning Appeals finds that all four of the rationale for requesting a variance (Exceptional Circumstances, Preservation of Property Rights, Absence of Detriment, Not of a General Nature) have been adequately met beyond reasonable doubt then the Board of Zoning Appeals has the ability to approve the requested two (2) zoning variance and attach any conditions they deem necessary.

**Notification**

Public Hearing Notices were mailed to thirteen (13) property owners within 100 feet of the property in question. At the time this report was written, were no objections expressed from neighboring property owners regarding the proposed zoning variance.

**Attachments:**

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



906 EAST AVENUE  
PUBLIC HEARING MAP



 906 East Avenue

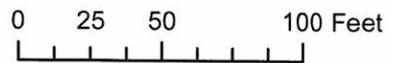
0 25 50 100 Feet



906 EAST AVENUE  
PUBLIC HEARING MAP



 906 East Avenue





**BOARD OF ZONING APPEALS APPLICATION**

Property Address: 906 EAST AVE. HAMILTON, OH 45011

Lot No(s): 073 OR 27605 PARCEL # P6451-010-000-073

Property Owner: RAMON BATISTA

Owner's Mailing Address: 906 EAST AVE. HAMILTON, OH 45011

Appellant's Name (If different than owner): N/A

Appellant's Mailing Address: N/A

Previous Legal Use of Property: AUTO SALES (ABANDONED APPROX 2008)

Date Previous Use Discontinued: APPROX 2008

Proposed New Use of Property: AUTOMOBILE AND OTHER VEHICLE SALES

Purpose of Application (Check all that apply):

Requesting a variance for signs. Please describe the request below.  
REQUESTING VARIANCE FROM SECTION 1121.39.27  
OR 2014-8-71 - VARIANCES REQUESTED ARE  
#1 MINIMUM LOT AREA 20,000 SQ FEET  
#4 DISPLAY OF AUTOMOBILE, ... SHALL BE SETBACK  
MINIMUM OF (5) FEET FROM ANY PROPERTY LINE !!

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**)  
1121.39.27 AUTOMOBILE AND OTHER VEHICLE SALES  
(OR 2014-8-71)

Other – Skip to "Other" Section of Application Form

City of Hamilton  
 Office: CNST  
 Date: 3/28/2016  
 Acct: 30727  
 Name: Consvs  
 Receipt: 3/28/2016 11:55 AM  
 Total: \$100.00  
 Cash: \$200.00  
 Tendered:

**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.**

*Please see ATTACHMENT*

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.

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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.

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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.

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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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please See ATTACHMENT*

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

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

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*Ramon Patajo*  
Appellant's Signature

*3/28/16*  
*10/28/15* ~~DD~~

*Ramon Patajo*  
Property Owner's Signature

Date *3/28/16*  
*10/28/15*

**Office Use Only**

Appeal Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_  
 Fee Paid: \_\_\_\_\_  
 Meeting Date: \_\_\_\_\_  APPROVED  DISAPPROVED

## **Attachment A**

### **Variance # 1 (In regards with condition #1) - 20,000 sq feet**

The lot is in a very centric place. The area is well-transited, at the corner of East Avenue and Edison Avenue. Due to this, the lot is visible from both streets and that represents a major advantage for the business.



The size is a flawless fit with the business plan for Batista Auto Sales. The business plan is for that of a small business and the measure of this lot are perfectly adequate for those purposes.

This lot has always functioned in the automobile-related industry. The previous business that operated there was Perfection Auto Sales.

Given the business plan and the amount of resources that Batista Auto Sales has, a bigger lot will require more human resources to provide appropriate coverage of the business in regards to maintenance, security, and quality customer service.



### **Variance # 2 (In regards with condition #4) - 10 feet from property lines**

Given that the lot is located in a cornered space, it has 2 sides of the perimeter that are street-bounded.

Given the size of the lot, not displaying cars for sale in 10 feet from property lines will jeopardize adequateness of the property as well as defeating the advantages that the property has for this type of business.

Batista Auto Sale will ensure a five (5) feet separation from property lines on both sides. Although that may represent a less productive use of space for car displays, Batista Auto Sale will maintain no more than 23 cars at a given time.

Please note that the property is not a new construction.

## Attachment B

Batista Auto Sales is a small minority-owned business, whose intent is to engage in the sale of cars.

This summary is intended to provide supporting evidence that Batista Auto Sales, located at 906 East Avenue, Hamilton, Ohio 45011 represents a benefit for the community and the city of Hamilton, Ohio. It does not, however, present any hazard or danger for the community or the citizens of the city.

The property at 906 East Avenue, Hamilton, Ohio was abandoned and Batista Auto Sales ensures that it will continue to gradually repair the property and the lot. As the process of maintaining the property continues, the location will be well lit in the future during the night and it will be monitored with security cameras.

**\*\* See Attached Butler County GIS Department sky view photo\*\***

Batista Auto Sales is regulated by the Ohio Bureau of Motor Vehicles. The business is in compliance with specific requirements and pre-determined hours of operation (which will be Monday-Friday 9:30 am - 6 pm and Saturday 10 am - 6 pm once the business is operating at 906 East Avenue).

Batista Auto Sales will bring forth many benefits to the city of Hamilton such as contributing to the economy of the city. Batista Auto Sales will do so by providing jobs to local citizens of the city, engaging in business with a large variety of suppliers such as auto parts and body shop suppliers, mechanics, as well as supplying the city with tax revenue and many more.



**ROGER REYNOLDS**  
BUTLER COUNTY AUDITOR/CPA

[www.butlercountyauditor.org](http://www.butlercountyauditor.org)  
139 High Street  
Hamilton, Ohio, 45011  
(513) 867-3154

**Butler County GIS Department**  
P6451-010-000-073  
906 EAST AVE

1 inch = 30 feet  
FOR INFORMATIONAL PURPOSES ONLY NOT INTENDED FOR USE AS A SURVEY



**Attachments C & D**

# MOTOR VEHICLE DEALER LICENSE

THIS IS TO CERTIFY THAT THE FOLLOWING IS HEREBY LICENSED TO ENGAGE IN THE BUSINESS OF SELLING MOTOR VEHICLES AT RETAIL IN THE STATE OF OHIO, SUBJECT TO THE TERMS AND CONDITIONS AS PROVIDED FOR UNDER CHAPTER 4517 OF THE REVISED CODE.

BATISTA AUTO SALE  
319 N ERIE HWY  
HAMILTON

OH 45011

BATISTA AUTO REPAIR LLC

01



PERMIT NUMBER UDO19677  
ISSUE DATE 12/29/14  
EXPIRATION DATE 03/31/16

JOHN R. KASICH  
GOVERNOR

JOHN BORN  
DIRECTOR

REGISTRAR  
OHIO BUREAU OF MOTOR VEHICLES

2160

# MOTOR VEHICLE DEALER LICENSE

THIS IS TO CERTIFY THAT THE FOLLOWING IS HEREBY LICENSED TO ENGAGE IN THE BUSINESS OF SELLING MOTOR VEHICLES AT RETAIL IN THE STATE OF OHIO, SUBJECT TO THE TERMS AND CONDITIONS AS PROVIDED FOR UNDER CHAPTER 4517 OF THE REVISED CODE.

BATISTA AUTO SALE  
317 N ERIE HWY

HAMILTON

OH 45011

BATISTA AUTO REPAIR LLC

01



PERMIT NUMBER	UD019677
ISSUE DATE	06/21/12
EXPIRATION DATE	03/31/14

JOHN R. KASICH  
GOVERNOR

THOMAS P. CHARLES  
DIRECTOR

REGISTRAR  
OHIO BUREAU OF MOTOR VEHICLES

2160

# MOTOR VEHICLE DEALER LICENSE

THIS IS TO CERTIFY THAT THE FOLLOWING IS HEREBY LICENSED TO ENGAGE IN THE BUSINESS OF SELLING MOTOR VEHICLES AT RETAIL IN THE STATE OF OHIO, SUBJECT TO THE TERMS AND CONDITIONS AS PROVIDED FOR UNDER CHAPTER 4517 OF THE REVISED CODE.

BATISTA AUTO SALE  
319 N ERIE HWY  
HAMILTON OH, 45011

DOING BUSINESS AS  
01 BATISTA AUTO REPAIR LLC

PERMIT NUMBER	UD019677
ISSUE DATE	03/22/16
EXPIRATION DATE	03/31/18
PLATE SERIES	2160

JOHN R. KASICH  
GOVERNOR

JOHN BORN  
DIRECTOR

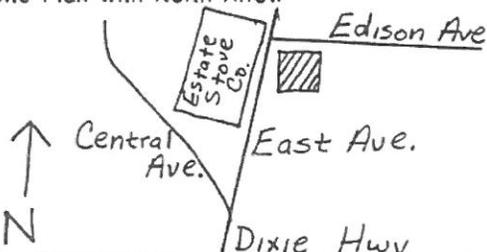
REGISTRAR  
OHIO BUREAU OF MOTOR VEHICLES



## **Attachment E**

# OHIO HISTORIC INVENTORY

Ohio Historical Center  
Columbus, Ohio 43211

No. <b>BUT-9519</b> 2. County <b>Butler</b> 3. Location of Negatives <b>Hamilton Planning Dept.</b>	4. Present Name(s) <b>COFFED</b> 5. Other Name(s) <b>906 East Ave.</b>	1. No. <b>BUT-9519</b> 2. County <b>Butler</b>	
6. Specific Location <b>906 East Ave.</b>	16. Thematic Category <b>transportation</b> 17. Date(s) or Period <b>1925</b> 18. Style or Design <b>Spanish Colonial Revival</b> 19. Architect or Engineer  20. Contractor or Builder  21. Original Use, if apparent <b>Gasoline Station - Flat</b> 22. Present Use <b>Auto Body Shop</b> 23. Ownership Public <input type="checkbox"/> Private <input checked="" type="checkbox"/> 24. Owner's Name & Address, if known  25. Open to Public? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 26. Local Contact Person or Organization <b>Hamilton Planning Dept.</b> 27. Other S 	28. No. of Stories <b>2</b> 29. Basement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 30. Foundation Material <b>concrete</b> 31. Wall Construction <b>frame</b> 32. Roof Type & Material <b>flat/roled asphalt</b> 33. No. of Bays Front <b>3</b> Side <b>4</b> 34. Wall Treatment <b>stucco</b> 35. Plan Shape <b>rect.</b> 36. Changes (Explain in #42) Addition <input type="checkbox"/> Altered <input checked="" type="checkbox"/> Moved <input type="checkbox"/> 37. Condition Interior _____ Exterior <b>poor</b> 38. Preservation Underway? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 39. Endangered? By What? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <b>neglect</b> 40. Visible from Public Road? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> 41. Distance from and Frontage on Road <b>50' - 100'</b>	4. Present Name(s)
7. City or Town If Rural, Township & Vicinity <b>Hamilton</b> 8. Site Plan with North Arrow 	9. Coordinates Lat. _____ Long. _____ U.T.M. Reference <b>11U 1110710 4362330</b> Zone Easting Northing 10. Site Building <input checked="" type="checkbox"/> Structure <input type="checkbox"/> Object <input type="checkbox"/> 11. On National Register? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 12. Is It Eligible? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 13. Part of Estab. Hist. Dist.? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 14. District Potent'l? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 15. Name of Established District  42. Further Description of Important Features In front of this building is a structure which originally housed the gas pumps. It is comprised of two stuccoed piers supporting a hipped roof. In the central bay, front facade of the building is a modern storefront with a slight roof above it. On the second floor in this bay are two 6/1 double hung sash windows with lugsills and shelf lintels. Above these windows is a slight roof, which simulates a red tile roof. This central bay is flanked by one story bays (over)	5. Other Name(s)  906 East Ave.	
43. History and Significance This building is <sup>one</sup> of the few remaining gas stations in Hamilton dating from the 1920's. The automobile had a profound impact on American history and this structure reflects its influence on the local scene.	44. Description of Environment and Outbuildings This building is located just east of The Estate Stove Company.		
45. Sources of Information P.O.	46. Prepared by <b>Susan Enzweiler</b> 47. Organization <b>Miami Purchase Ass'n</b> 48. Date <b>5/84</b> 49. Revision Date(s)		

42. (continued) that were not originally enclosed and may have had patios on top of them. These bays have large, slightly recessed areas on all sides and massive piers on their corners. There are a variety of window styles; most are slightly recessed 6/1 double hung sash with lugsills. Some of the windows are bricked or boarded up. Parapets line the rooftop.

## CERTIFICATE OF APPROPRIATENESS

On this 2nd day of September 2015, The Hamilton Architectural Design Review Board does hereby issue this Certificate of Appropriateness for the property located at 906 East Avenue. The Architectural Design Review Board has examined plans and approves the changes, and/or improvements to be made to the above referenced structure as listed below:

**Approved:**

Trim of the Structure as Rust Color - "Amarreto"

Main Body of the Structure as a Beige Color - "Water Chestnut", (to replace the bright green paint)

As discussed at the Architectural Design Review Board meeting, September 1, 2015

**The said improvements and/or structural changes listed above on this Certificate do not constitute, in themselves, waivers from the City of Hamilton building code, zoning code, or other regulations. Plans for changes to, addition to, and/or signage for property will still require review of the Construction Services Department and acquisition of the appropriate permits.**

It is the opinion of this Board that such proposed changes are in conformance with the character of the State Inventory in the Hamilton Historic District and will not be detrimental to the rehabilitation of this area as prescribed by the City Council of the City of Hamilton, Ohio, in Ordinance Number EOR2005-7-71.

Date of Board approval:

September 1, 2015



Ed Wilson, Secretary  
Architectural Design Review Board

PLEASE POST IN VISIBLE LOCATION

\*\*Certificate expires 6 months after date of issuance shown on line 1\*\*

## CERTIFICATE OF APPROPRIATENESS

On this 2nd day of September 2015, The Hamilton Architectural Design Review Board does hereby issue this Certificate of Appropriateness for the property located at 906 East Avenue. The Architectural Design Review Board has examined plans and approves the changes, and/or improvements to be made to the above referenced structure as listed below:

**Approved:**

Restoration of the missing Garage Door on the right-hand front façade.

And If the left-hand Garage Door has to be replaced - Both Doors need to be of the Same Design and Color.

Color to match the Trim; all as discussed at the Architectural Design Review Board meeting September 1, 2015.

**The said improvements and/or structural changes listed above on this Certificate do not constitute, in themselves, waivers from the City of Hamilton building code, zoning code, or other regulations. Plans for changes to, addition to, and/or signage for property will still require review of the Construction Services Department and acquisition of the appropriate permits.**

It is the opinion of this Board that such proposed changes are in conformance with the character of the State Inventory in the Hamilton Historic District and will not be detrimental to the rehabilitation of this area as prescribed by the City Council of the City of Hamilton, Ohio, in Ordinance Number EOR2005-7-71.

Date of Board approval:

September 1, 2015



Ed Wilson, Secretary  
Architectural Design Review Board

PLEASE POST IN VISIBLE LOCATION

\*\*Certificate expires 6 months after date of issuance shown on line I\*\*

## CERTIFICATE OF APPROPRIATENESS

On this 18th day of September 2015, The Hamilton Architectural Design Review Board does hereby issue this Certificate of Appropriateness for the property located at 906 East Avenue. The Architectural Design Review Board has examined plans and approves the changes, and/or improvements to be made to the above referenced structure as listed below:

**Approved:** Storefront Restoration, using Three (3) panels of glass as the arrangement.

The Middle Panel of Glass as 72 inches width; The Side Panels of Glass as 36 inches in width.

The Height of the Glass Panels is an estimated 59 & 7/8<sup>th</sup> inches high, per Applicant drawing.

Items discussed and approved at the September 15, 2015 Architectural Design Review Board meeting.

**The said improvements and/or structural changes listed above on this Certificate do not constitute, in themselves, waivers from the City of Hamilton building code, zoning code, or other regulations. Plans for changes to, addition to, and/or signage for property will still require review of the Construction Services Department and acquisition of the appropriate permits.**

It is the opinion of this Board that such proposed changes are in conformance with the character of the State Inventory in the Hamilton Historic District and will not be detrimental to the rehabilitation of this area as prescribed by the City Council of the City of Hamilton, Ohio, in Ordinance Number EOR2005-7-71.

Date of Board approval:

September 15, 2015



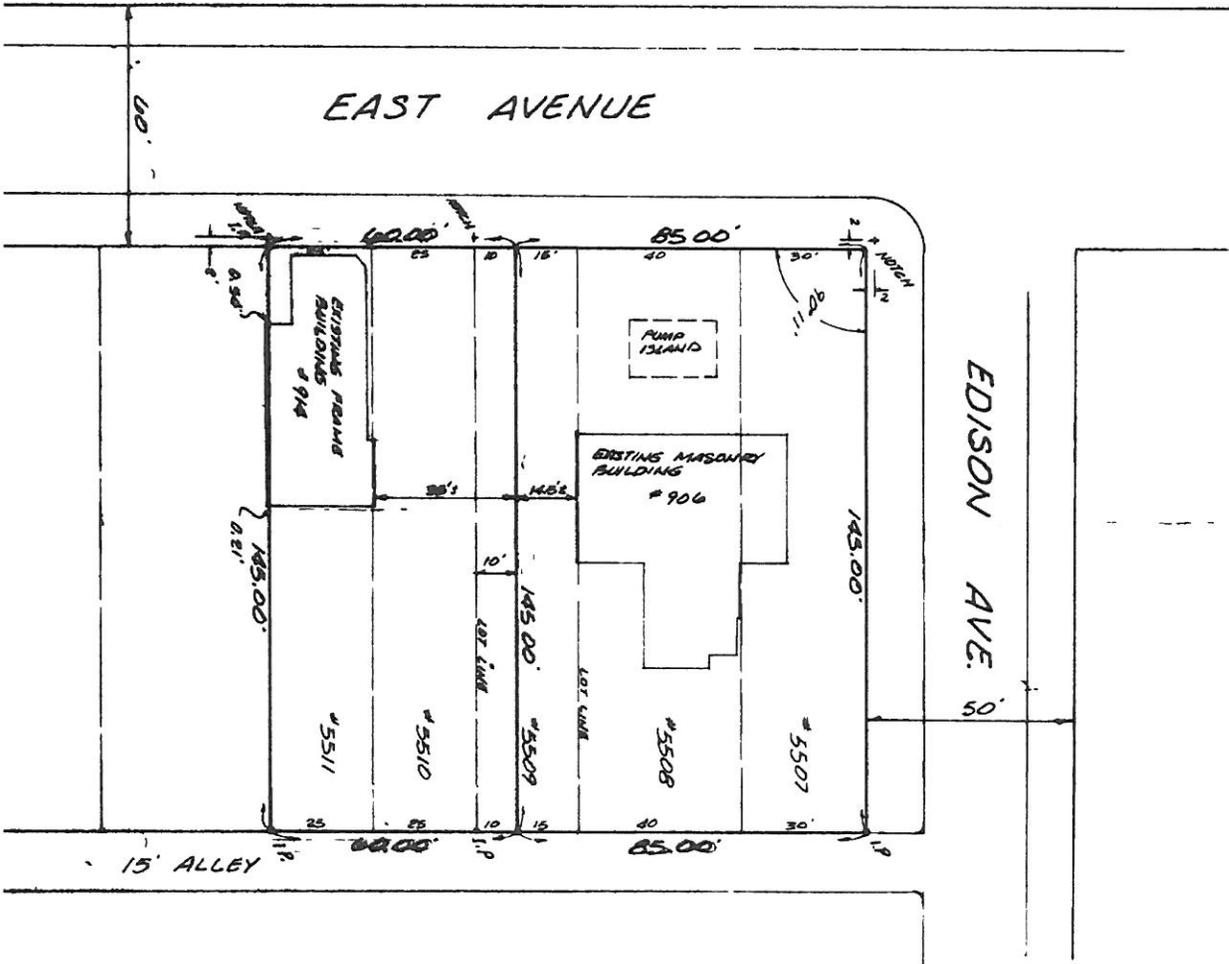
*Edward Wilson*

Ed Wilson, Secretary  
Architectural Design Review Board

PLEASE POST IN VISIBLE LOCATION

\*\*Certificate expires 6 months after date of issuance shown on line 1\*\*

## **Attachment F**



# HAMILTON FIFTH WARD

010.000  
See Page 04.00  
HAMILTON CORP  
FIFTH WARD



PT 20032 SEE PG 003.000

VACATED ORD 2188  
12/19/23  
HAMILTON CORP  
FIFTH WARD  
See Page 009.00

See Page 048.00  
HAMILTON CORP  
FIFTH WARD

See Page 016.00  
HAMILTON CORP  
FIFTH WARD

See Page 017.00  
HAMILTON CORP  
FIFTH WARD

49.49  
12.28  
0.48

10.71

VACATED  
236.12

300.5

102

319.50

LONG ST

HAMILTON AVE

EDISON AVE

EAST AVE

S 11TH ST

S 12TH ST

Scale: 1"=50'  
Revised Date: 12/3/14  
Taxing District(s): P6451

EDISON-AVE



60

EAST-AVE

30

See Page 017.00  
HAMILTON CORP  
FIFTH WARD

**Attachment G- Pictures of Property**











**WRITTEN SUMMARY  
BOARD OF ZONING APPEALS  
MEETING MINUTES  
Thursday, January 7, 2016  
1:35 p.m.**

The Board of Zoning Appeals meeting was called to order by Madam Chair, Ms. Karen Underwood-Kramer presiding.

**Members Present:** Ms. Nancy Bushman, Mr. George Jonson, Mr. Desmond Maaytah, and Ms. Karen Underwood-Kramer.

**Members Absent:** None

**City Staff Present:** Mr. John Creech, Ms. Meredith Murphy, Ms. Kim Kirsch, and Mr. Steve Tooman.

**Appointment of Chairperson:**

Mr. Jonson made a Motion that Karen Underwood-Kramer be appointed as Chairwoman. With a 2<sup>nd</sup> by Ms. Bushman and all "Ayes" by Roll Call vote of 4-0, the Motion passes.

**Old Business:** None

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

Mr. Creech swore in the audience members wishing to speak.

Madam Chair Underwood-Kramer gave an overview of the procedural process of the meeting. She further explained that with 4 of the 5 members present, they will need 3 of the members to approve an item for it to pass.

**New Business:**

**AGENDA ITEM #1 PUBLIC HEARING STAFF: Ms. Meredith Murphy**

**2016-01: Variance Request 701 High Street**

**A Request by Andrew Rosenthal for three (3) zoning variances in order to construct a new Gas Station, where one currently exists, to be located at 701 High Street. The three (3) requested zoning variances are for Section 1129.28, Section 11129.431, and Section 1138.71.C of the Hamilton Zoning Ordinance.**

**Introduction:**

An application was submitted by Mr. Andrew Rosenthal on behalf of Certified Oil for three (3) zoning variances in order to construct a new Gas Station on the property located at 701 High Street (Exhibit A). The property is zoned DT-3 Downtown East High Street District (Exhibit B). DT-3 Downtown East High Street District is a form based code district and is regulated by Section 1129.00 of the Hamilton Zoning Ordinance

(HZO). The pumping of gasoline accessory to convenience store is listed as permitted use in DT-3 Downtown East High Street District in Section 1129.30, however construction of a new building in any Form Based Code zoning district must comply with certain design standards listed in Section 1129.00. If an applicant cannot meet those design standards they must receive approval of a zoning variance from the Board of Zoning Appeals before they can receive a Building Permit.

The three (3) requested zoning variances are for Section 1129.28, Section 11129.431, and Section 1138.71.C of the Hamilton Zoning Ordinance are as follows:

- 1) A request to alter the street access requirements found in Section 1129.28 to allow access onto the property from a Primary Street (High Street) and Secondary Street (Seventh Street) where Alley access is available (to the rear).
- 2) A request to alter the design guidelines found in Section 11129.431 to allow the construction of a new Gas Station at 701 High Street.
- 3) A request to reduce the minimum five (5) foot setback from any property line for all monument signs found in Section 1138.71.C.

**Property Details:**

The property is zoned DT-3 Downtown East High Street District. The size of the property was recently expanded due to street work done by the city along the access road to the south of the property. The lot is approximately 20,300 square feet in total area. The property has a total of 120 lineal feet of lot frontage along High Street, 169 lineal feet of lot frontage along South Seventh Street, and 120 feet of lineal frontage along the access road to the south. The properties to the north, west, and east are zoned DT-3 Downtown East High Street District. To the south is the existing rail road and I-1 Light Industrial District zoning.

According to the plan submitted as part of the zoning variance application, the intent is to redevelop the property as a 3,543 square foot convenience store and gas station with five (5) gas pumps. The existing building measures approximately 2,000 square feet with 3 gas pumps.

Ms. Murphy shows maps to the members of the Board, with the existing layout outlined in red. She points out the specific area that the Applicant owns, and the zoning around it (Dt-3 with some industrial), and a picture of the current gas station. She shows information of previous and existing gas station property size, number of entrances, size of the building, existing canopy size, number of pumps, signage information, and parking space information. She shows the Board a copy of the Application with the Applicant's rationale that was included in the Staff Report. She shows drawings of the proposed new gas station (included in packet), shows details of proposed elevation, proposed dumpster location, proposed pump locations, and proposed landscaping plans. She then highlights a drawing showing the re-plat of the corner of 7<sup>th</sup> and High. Lastly, she shows a close-up of the proposed monument style sign, a layout, and the materials provided by the applicant included in the drawings.

### **Notification**

Public Hearing Notices were mailed to the owners of seven (7) properties within 100 feet of the property in question. At the time of the meeting, there were no objections expressed to the proposed zoning variances.

### **Recommendation:**

Based on a review of the preliminary site plan and additional information submitted, there is reason to consider approving the three (3) requested variances with the following conditions:

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) Proposed building will match the materials and information provided by the applicant (Exhibit C).
- 3) All improvements and work indicated on construction drawings/documents approved by the as part of the Variances be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Variances - (includes building, canopy, dumpster enclosure, landscaping, pavement surfaces, retaining walls and striping).
- 4) No exterior storage/sales of merchandise or materials other than the ice and propane sales as shown on the plans.
- 5) All building, wall and any other signage (permanent or temporary) will comply with Section 1138.00 Hamilton Sign Ordinance with the exception of the requested sign setback variance.
- 6) Portions of the retaining wall that are visible from the public right-of-way to be colored/stained or stamped to match the color/theme of the building.
- 7) That the brick shown at the base of the canopy columns be extended to wrap the entire columns.
- 8) That the brick on the west (7<sup>th</sup> street) elevation be extended to cover the entire lower level.
- 9) All proposed landscaping match the minimum landscaping requirements in section 1111.00 of the Hamilton Zoning Ordinance.

Ms. Bushman asked if the Applicant is aware of the recommendations of Staff, and Ms. Murphy said that she has discussed it with one of the architects working on the project.

Ms. Bushman asked about the placement of the sign advertising the gas prices, and if it will be visible from both streets. Ms. Murphy replied that it looks like it will be parallel with 7<sup>th</sup> Street and it could be seen from both streets.

Ms. Bushman then asked about the lighting for the gas station, and Ms. Murphy said that would be something that the Applicant would answer. Mr. Creech inserted that the

information would be picked up at a later stage, but the general standard is that any canopy type lighting is directed onto the property. Ms. Murphy indicated that the Applicant did provide an example of the lighting on the building.

Madam Chair Underwood-Kramer asked for clarification with regard to #2 of the variance request, and Ms. Murphy replied that it has to do with the Form based code guidelines and gave an explanation of those.

Mr. Creech explained that the building they are proposing is classified as a “Store Front Building”, which falls under the purview of Form Based Zoning code, and he gave more information about those codes.

Madam Chair Underwood-Kramer verified that the only design standard they are not complying with is the set-backs, and Mr. Creech said that was accurate.

Madam Chair Underwood-Kramer then opened up the hearing to the Public.

Mr. Andrew Rosenthal, 875 Montrose Avenue, Columbus, Ohio, is the Applicant. He said that they are Architects of record for the project, representing Certified Oil. He said that with regard to the question concerning the lighting, it would be from the canopy. He went on to say that the intention on Certified Oil’s part is to take what they have and upgrade it, and try to make a more functional, safer, better, traffic flow in and out of the property.

Madam Chair Underwood-Kramer asked the Applicant if he’s aware of the extension of the brick requirements that’s being suggested by the Planning Director, and he said that he was.

Madam Chair Underwood-Kramer asked if there was anyone that had additional information to present.

Nick Lacaillade, 195 S. Parkview, Columbus, Ohio, spoke next. He said with regard to the sign, it had to be located where it is due to the property line and for visibility for passing vehicles.

Madam Chair Underwood-Kramer then asked for anyone who had questions to please step to the podium.

Steve Osborn, 1635 Woodland Greens, Springboro, Ohio spoke. He said that he owns the property adjacent to Certified (Jocko’s and Mexican Restaurant). He said that he has met with the City Manager and some city employees. He said that he was surprised by the Form Based zoning Code restrictions. He went over some future plans for the property that he owns, and said that when they approached the “City”, he was informed that if they made any changes to the property (a new building), they would close off all access to High Street and the building would have to be on the front of the property. He said that he believes that what he sees now is an exception being made,

and he'd like to know if it's because of the type of building (gas station), the location (corner lot) or what the reason for the exception is. He said that he agrees with what Certified wants to do, but wants to know if the precedence is being set that the Form Based zoning is being given up, and questioned if he will be given the same consideration if he needs a variance request in the future for his property.

Madam Chair Underwood-Kramer replied that the Board is made up of volunteers, and they have no occupational interest with the City. She said that they look at each case on an individual basis, and will continue to do so. She added that they do not write zoning code, that is the job of the City of Hamilton. She offered to give him the contact information for Mr. Creech or Mr. Scharf, and said that she cannot speak for the intentions of the City of Hamilton. Mr. Osborn asked if there was anyone present that could say why the City was making an exception, and actually seem to be supporting the variance request.

Mr. Creech replied that although the Applicant may not remember, the Department of Planning actually had the same type of meeting with him last year that they had with the current Applicants about their request. Mr. Osborn said that when he approached the City, they were a little more "negative on his approach". He said that it seems that this request seems to have the Board's support. Madam Chair Underwood-Kramer replied that they had made no decision yet, and he said that "we will see how it plays out". She told him that they had a report from the Planning Department, but the Board was there to listen to all information given and then make a decision at the end of the process.

He asked if he could get with someone in Zoning at some point to get an explanation. He said that he's not saying that the Board has already made up their minds; he's saying that the "zoning people of Hamilton" seem to be comfortable with this variance for the Form Based Zoning. Madam Chair Underwood-Kramer and Mr. Osborn had a bit more conversation about the procedure of the Board in making a decision either way, and she said that the Board takes the discussion from the audience members into consideration when making their decision. Mr. Jonson stated that any decision that the Board makes on one case does not set precedent on any future applications. Mr. Tooman reiterated that it's a "case by case" situation, and the Board can't render an advisory opinion when they don't have a case yet.

Mr. Creech gave his recollection of the meeting and information gathered for Mr. Osborn the prior year, and said that they hadn't heard back from him. Mr. Osborn didn't have the same recollection of the events. Madam Chair Underwood-Kramer suggested that a "face-to-face" meeting with the City might be the best way to address the issues with his property.

With nothing further from the audience, Mr. Jonson made a Motion to close the Public Hearing. With a 2<sup>nd</sup> by Mr. Maaytah and roll call responses of all "ayes" (4-0), the Motion passes.

Mr. Maaytah asked Mr. Creech to explain “Form Based Zoning”. Mr. Creech replied that the whole point of it is really to push the buildings closer to the street to allow for things such as pedestrian type amenities, sidewalks, more glass in the front of the buildings, and to make it more inviting. He said that prior to it being adopted, there were just zoning districts that dictated the actual uses on the properties, but no standards with relation to location of the building on the lot, how much glass, etc. He went into a little more detail about the process with regard to when Form Based Zoning was adopted in downtown High Street and Main Street, and concerns about certain types of businesses when the conversion was made from Permitted Uses to Form Based Zoning. Mr. Maaytah asked if part of the intention of the Form Based Zoning was to have parking in the rear of the businesses, and Mr. Creech replied that was correct.

Mr. Creech and the Board then had a bit more discussion about the access road to the rear of the businesses on the south side of High Street between 7<sup>th</sup> and East, and the new Zoning requirements for the entire city for a gas station. Mr. Creech said in this particular case, because it’s Form Based Zone area, gas stations are not Conditional Uses. If they were permitted before, they are permitted now.

Madam Chair Underwood-Kramer then asked Mr. Creech some information about the facts and conditions cited for granting a variance request, and he gave her the requested information. Mr. Maaytah then asked Mr. Creech about #1 of the variance request “A request to alter the street access requirements”, and if that should be coming from the alley and Mr. Creech replied to that question.

Madam Chair Underwood-Kramer asked Mr. Creech about the Form Based Zoning requirement and how it might apply to an automobile repair service or a tire store, (businesses conducive to automobile traffic vs. pedestrian traffic), and Mr. Creech replied that it would have to be an exception. Ms. Murphy then spoke about the research that she and Mr. Creech did for the Applicants of the Form Based Zoning, and examples from other areas where Form Based code is prevalently used. She said that she and Mr. Creech did provide a few examples to the Applicants when they initially met with them, and the Applicants choose the layout and to pursue the variances to the code.

Mr. Jonson made a Motion to grant the three (3) variances requested by the Applicants (subject to conditions set forth in the recommendations from the Planning Department) because there are exceptional Circumstances or extraordinary circumstances or conditions that apply only to this property; that it’s necessary for the preservation and enjoyment of substantial property rights that the owners presently have; and there is an absence of Detriment and 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.

With a 2<sup>nd</sup> by Ms. Bushman and roll call responses of all “Ayes”, the Motion passes 4-0.

Mr. Creech advises the Applicant that decisions of the Board become effective 5 days after the Board's meeting, and he will be mailing them an official letter of the findings.

Mr. Rosenthal addresses the Board and said that he sits on a Board of Zoning Appeals in Columbus and the process that we have in place has been very friendly, easy to navigate, the Staff was very helpful, and it makes it easy to reinvest in the community.

**Minutes**

Approval of Meeting Minutes - Written Summary and Audio Recording for July 2, 2015. Madam Chair Underwood-Kramer noted one change that needed to be made on the name of an audience member from Greg Hoover to Brad Hoover. With that change being made, Mr. Jonson made a Motion to Accept the Minutes. With a 2<sup>nd</sup> by Mr. Maaytah and roll call response of all "Ayes" (4-0), the Motion passes.

With regard to the minutes from the following dates, written summary and audio recording:

September 3, 2015, October 1, 2015, and November 5, 2015, Mr. Jonson made a Motion to accept all minutes. With a 2<sup>nd</sup> by Ms. Bushman and roll call responses of all "Ayes" (4-0), the Motion passes and the minutes are approved.

**Miscellaneous:**

Mr. Creech said that School Board will be appointing a new representative to the Planning Commission and Staff expects an appointment possibly at the next meeting, or the first meeting in February. He stated that there was no meeting held 1/4/16 due to no quorum, so hopefully there will be enough members at the next meeting. Madam Chair Underwood-Kramer asked if it always the School Board's appointee, or can the Planning Commission just appoint someone, and Mr. Creech replied that with the School Board Appointment, that would be one more person available.

**Adjourned:**

With nothing further to discuss, a Motion to adjourn was made by Mr. Jonson, with a 2<sup>nd</sup> by Mr. Maaytah. 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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Madam Chair Karen Underwood-Kramer