

**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:**

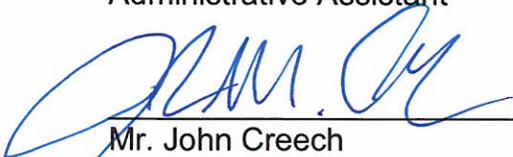
Mr. Creech said that School Board will be appointing a new representative to the Planning Commission and Staff expects an appointment possibly at the next meeting, or the first meeting in February. He stated that there was no meeting held 1/4/16 due to no quorum, so hopefully there will be enough members 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

  
\_\_\_\_\_  
Madam Chair Karen Underwood-Kramer

