

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, May 5, 2016
1:31 p.m.**

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

Members Present: Ms. Nancy Bushman, Mr. George Jonson, Mr. Desmond Maaytah, Madam Chair Underwood-Kramer, and Mr. Samoviski.

Members Absent: None

City Staff Present: Mr. John Creech, Mrs. Heather Hodges, Ms. Meredith Murphy, Mr. Ed Wilson, Ms. Kim Kirsch, and Ms. Kathy Dudley.

Madam Chair Underwood-Kramer gave an overview of the procedural process of the meeting.

Swearing in of Those Providing Testimony to the BZA:

Ms. Kathy Dudley swore in members in the audience who were going to testify.

Old Business:

Agenda Item #1 - 2016-04: Variance Request for 735 S. Erie Blvd - (Allen Loudiy, Applicant/Owner (Tabled at March Meeting)

STAFF: Meredith Murphy

Ms. Murphy gave the background and introduction to this appeal. This is 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).

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.

Ms. Murphy then shows the map showing the zoning surrounding the subject property outlined in red, and gives the background of the property.

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 the current applicant, Mr. Loudiy, in November 2015. Mr. Loudiy 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 property has been in continuous violation since September of 2015.

The property is approximately 10,860 square feet. The minimum lot area required is 20,000 square feet for an Automobile Service & Minor Repair facility.

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

- 1) A request to reduce the minimum lot area required for an Automobile Service and Minor Repair facility – the minimum lot area required is 20,000 square feet - the subject property is approximately 10,860 square feet.

An Automobile Service and Minor Repair Facility use requires Conditional Use approval by the Planning Commission (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 are as follows:

- 2) 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.

Zoning Variance Review:

In order to grant a zoning variance, the Hamilton Zoning Ordinance “Section 1170.63 Variances-Findings of the Board” requires that the BZA must find all four of the following facts and conditions exist beyond a reasonable doubt. She then goes over those four findings, as well as the staff information provided for each four.

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 applicant included the following written rationale (*in bold italics*) for the requested zoning variance. Information/commentary for the BZA to consider is underlined.

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.

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.

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 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.

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.

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 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.

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.

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 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.

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.

Ms. Murphy then shows a picture of the application submitted, and the rationale from the Applicant that is for each of the four findings. She shows a site plan that was provided showing the 7 parking spaces complying with the 10' setback, which is one of the conditions for the Conditional Use.

She shows photos that were taken by Staff earlier in the week prior to the meeting on a site visit, showing the building and the parking area to the south.

Notification

Public Hearing Notices were mailed to eleven (11) property owners within 100 feet of the property in question. Two objections were expressed by neighbors to the request.

Ms. Murphy then states the two options available to the Board:

A. 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% 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.

B. Approve the Request

1. 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.

Madam Chair Underwood-Kramer asked the nature of the objections that were received, and Ms. Murphy stated that they were in relation to the previous use and number of cars on the property. She believes that they were from neighbors to the west of the subject property, and they were received over the phone after the first notices were mailed out for the initial meeting.

Madam Chair Underwood-Kramer had a question about the number of designated parking spaces, and Ms. Murphy stated that there are seven spaces next to the building, but there were quite a few more cars there than that when staff made the site visit.

Madam Chair Underwood-Kramer asked if the site plan indicated that they would be taking out some of the extra parking and putting in landscaping and Ms. Murphy said that was correct.

With no further questions for Ms. Murphy, the Public Hearing was opened.

Mr. Jay Bennett, Attorney for Mr. Loudiy, spoke and gave his business address. He brought a large poster size drawing of a site plan with him, and displayed that for the Board for future reference.

He states that the application for variance is "unusually unique" in that the lot is 10,860 sq. feet but contains a building that is almost 5,000 square feet, built in 1948, that is an

Automotive Garage. It is a one story block building with no windows, except for a small office in the front, and it has two large double garage doors. Basically, this building occupies about half the lot and in the past, was used as a "hand wash car wash", which is no longer economically feasible due to automatic car washes. He states that he did some research of the Auto Service places along Erie Avenue, and this garage is larger than some of the lots that house a "Jiffy Lube" or that type of operation. Behind the property is a neighborhood that's zoned Residential, on either side is B-2 Commercial, across the street is Industrial. The building and parking area is already screened from the neighborhood across the alley (he shows where he is talking about on his poster board). He says there is a 6' opaque board fence that has been there since 2004. He says that basically the entire lot is screened off from all the adjoining uses.

He says that his client would like to remove 2,000 square feet of asphalt and put in a vegetative screen (shown by the aerial photo), and that they believe it would be an aesthetic improvement to the area. He says that the size of the garage allows for 12-15 autos to be serviced or parked inside the building. The outside parking, after installing the landscape buffer, would accommodate seven spaces, although five are all that is required. The plan is that all of the parking of the patron's cars, as well as the ones being worked on, would be parked inside the building. The only cars parked outside would be employee's automobiles. He further stated that there would be a significant land use benefit to having this massive garage in that all of the requested use activity, which would mostly be the changing of fluids and windshield wipers, etc., would all be done inside the building and totally self contained. There would be virtually no land use impacts on the surrounding properties. Also, it provides security for the customer's vehicles if they are left overnight, and he believes that is crucial, given the area that it's in, that these be secure.

The proposed number of employees would be 4-6, so there is adequate parking outside for them. That is what would occupy the spaces after the vegetative buffer is created.

The property has one deficiency under the code, and that is lot area and the overall size of this property as it is today; however, there is no land use impact on the surrounding properties because all of the activities of this particular use are performed inside and the only thing that is outside is the cars of the employees', and that whole entire lot is cordoned off by the 6' fence.

He went on to say that basically the lot size isn't really an issue, since his client does everything inside the building, and the entire property is screened from all adjoining properties. He doesn't know what his client would do even if the lot were another 10,000 square feet. To pave it would be useless, since there is no need for any more parking outside the building.

He further states that the code section that requires the lot size to be 20,000 sq. ft. as applied to his client's property is basically arbitrary. He says that it's not Hamilton's fault, but every time the code or map is amended, there is an overlay and there are properties that fall through the cracks, and there isn't any need for the 20,000 sq. ft. and

he thinks that it's largely due to the vast size of the garage. He said that it does provide the opportunity and shelter for his client to basically do everything indoors. He goes on to say that more importantly, taking a human perspective, this allows his client to take a property that's not in the best part of town, make it productive, and employ people. He lastly stated that he's aware that the ultimate arbiter of this issue is City Council, as advised by Planning Commission.

He brought Mr. Jonathan Woche, Land Use Specialist from Land Use firm of McBride Dale Clarion, with him. He was hired to do an analysis of this request for the Board.

Madam Chair Underwood-Kramer asks if the Board has any questions for Mr. Bennett. Mr. Jonson asked him why the cars were parked in front of the building (as seen on the aerial photo). Mr. Bennett says that he's not sure, the photo was taken when Ms. Richardson still owned the property, and there was a problem with her tenant parking in the right-of-way. He points out the employee's parking spaces and the spaces that are no longer there due to the vegetative buffer.

Mr. Jonson asked if there are any plans for car sales on the lot, and Mr. Bennett says there are not.

Madam Chair Underwood-Kramer states that she drove by on the very day of the hearing, and there were quite a few cars parked there (more than 7). She asked if they are cars awaiting repair or employee cars, and he stated that he really didn't know. He said that he thought that they might not have anything to do with the property, but there's really not anything going on that he knows of other than the car detailing (or hand washing). She asked him if the business is going on at this time and he said basically at this time, it's car detailing (hand wash, cleaning it up on the inside). She asked him if the building was being leased to a different tenant doing the car detailing and he said that it was. She asked if Mr. Loudiy was the owner of the building, the owner of the business, or both. Mr. Bennett replied that he was the owner of the building. She verified that Mr. Loudiy will be leasing it to the owner of a business and Mr. Bennett said that was correct. She then confirmed that the tenant will be doing auto servicing, and not auto detailing. Mr. Bennett said it will be servicing (basically what "Jiffy Lube" does). He further stated that auto detailing is hard to maintain when you have businesses like "Mike's Car Wash" that you can go through in 45 seconds. It involves hand washing, and there's just no future in that.

Mr. Jonson asked who is operating the business right now, and Mr. Bennett said that he really didn't know. Mr. Jonson asked Mr. Bennett if his client knew, and Mr. Bennett said that he would ask him (Applicant was in the audience). Mr. Bennett came back to the microphone and said that there is a Mr. Asa. He is there doing some car detailing and basically is there at the behest of the owner because the owner is afraid there would be theft or vandalism on the property. He's just trying to make it look like there is someone there and he does a little bit of car detailing, but that's it.

Madam Chair Underwood-Kramer asked if the current tenant would be leaving and Mr. Bennett said yes. She continued by saying that the new tenant would be responsible for running the car servicing business, and part of the concern is that the person that is going to be using the building isn't present for any kind of discussion about conditions on the use (i.e. parking spaces, cars allowed outside, etc).

Mr. Bennett said that he believed that the new tenant would be instructed that all the cars that would be going to be serviced or waiting to be serviced would be pulled inside the building and the employees (none at this point in time except the one) would be instructed to park in the seven spaces that are left. There wouldn't be any other cars there. The patron's cars that are there would be parked inside the building.

She then asked him is if the property owner would be the one responsible for keeping the vegetation looking good (weeded and trimmed) or would the tenant be responsible? Mr. Bennett replied that it would be the owner's responsibility to keep the landscaping looking good and the general upkeep of the property.

Mr. Jonson asked Mr. Bennett if he knew who would be operating the business, and he replied that they do not know. He said that the last tenant was over aggressive and was in there before they went to the Board of Zoning Appeals and incurred violations, and they are not going to do that again. He said there was also a tire store using half the building and the owner told him that he would have to find some other place to operate while this is going on.

Ms. Bushman and Mr. Bennett then had a brief conversation about where the customers will go that are bringing their cars in, and where they will wait while their car is being brought to them after it is finished.

Madam Chair Underwood-Kramer asked if there was a customer waiting area inside the building, and she said there is a small office inside where customers can wait if they choose.

With no further questions for Mr. Bennett, Mr. Wocher then spoke.

Mr. Wocher gave his business information and said that he believed that there was some confusion. He said that they are there to ask for the variance first, and then step two would be the Conditional Use hearing that would go to the Planning Commission and there would be questions about the operation then. He said that they are really focusing on the size of the property and trying to obtain a variance for the size of the property as it relates to the four conditions for granting a variance. He said that the property is located in a B-2 district, and there is no minimum lot size in the B-2 district, but there are use specific standards for an Auto Service and Minor repair facility. He said that there are 18 conditions for that classification and the application appears to comply with 17 of the 18. The 18th standard that they don't comply with is the lot size, a condition that the applicant is not in control of.

He then spoke about the 4 standards that the Board is looking at, starting with Exceptional Circumstances. He said that he believes that the Board can conclude that this is an exceptional circumstance in that the building is a unique shape. It's trapezoidal; it's wider at the north end than the south. The use of the property is unique in that the Board of Zoning Appeals actually granted a Conditional Use for an Auto oriented use on this property in 2004. At that time, the City determined that auto oriented uses were appropriate for the property and site, and attached the condition of the 6' fence. At this time, they are asking to change or shift from one auto oriented use to another auto oriented use. As was mentioned, auto detailing is a use that is becoming obsolete. It's really not a use that has a lot of staying power. It's not able to compete with the auto car washes. The other unique circumstance is the size of the building that is on the property. It reduces the flexibility of the property owner to use it for other uses. He added that he'd like the Board to consider that the unique nature of the building itself. It is designed for auto oriented uses. The garage nature of the building is a unique characteristic that should be considered. He further states that when the Board considers all of those circumstances, they all make the property unique in some manner for that criterion.

Secondly, the Staff reviewed Preservation of Property Rights and whether the variance is necessary to preserve the right of the applicant, the applicant owns a building that is designed for an auto oriented use. Staff came to the conclusion that there is reasonable economic use for the site because other uses are listed in the district; however, the Board is asked to consider the reasonability and feasibility of that. The reasonability of having to use this specifically designed building for a non oriented auto use puts a significant economic detriment on the owner.

The size of the property is not really within Mr. Loudiy's control. It's a situation that he was given, and he's not creating a situation to try and obviate or avoid the zoning regulation, he's dealing with a condition that he has. Combining that, the existing use, and the predominance of auto uses along Erie Boulevard, it leads him to believe that denial of the variance would deprive the Applicant of the rights that are enjoyed by other property owners (i.e. the right to use the property for what it is designed for). He said that they are asking the Board to grant the variance to allow them to take the next step and go to the Planning Commission and show conformance with the Conditional Use standards. They feel that they have met the Preservation of Property Rights criteria.

With regard to Absence of Detriment, he said that there really hasn't been a detriment identified to granting the variance. There has been a concern raised about lack of parking. The City's requirement is five (5) spaces for the site, the Applicant exceeds that. The Applicant is improving the property by installing landscaping. The plan would be to make improvements. The photograph that is shown today doesn't represent what is proposed as far as landscaping and the modification of the parking configuration. There is an alley to the west which separates the residential zoning. There is an existing screen fence. He went on to say that there is really no impact by granting the variance on the surrounding properties, and he gave the specifics of those properties.

He said that the lot size isn't changing, the request is just modifying it from one auto use to another and he can't see that there have been any detrimental impacts identified.

With regard to the purpose of the zoning, Mr. Wocher quotes a part of the B-2 Zoning District "to permit and to encourage a wide variety of consumer goods and services" and then goes on to say "it's intended that the B-2 district serve a larger population and where located along major thoroughfares, to accommodate primarily automobile oriented establishments". He states that he doesn't see how approving the variance is in conflict with this, and cause an absence of detriment.

With regard to parking, he said that although Staff has expressed a concern, they more than meet the requirements for number spaces, and a fair amount of parking will be inside the store.

He further said that if the Board looks at impacts from the proposed use if the lot size is approved, the activity will take place inside the building (similar to the detailing situation presently), so there will be no detriment in his opinion.

Lastly, with regard to "of a general nature", he said that he thinks it's pretty close to the first standard. He went on to say that if the Board looks at the shape and type of the building, the surrounding characteristics as predominately auto oriented uses, the existing buffering in place, that is a unique situation and not general to all B-2 District lots, not a condition that is shared by all lots in a B-2 district. In summary, they feel that Staff hasn't determined a detrimental impact that would result in the Board coming to a conclusion to deny the request, and he feels that they have provided support for the four (4) standards that would allow them to take the next step and go to the Planning Commission for the Conditional Use. He then cites Section 1153.30 (D) of the Zoning Code and the role of the Planning Commission on Conditional Uses. He says that Planning Condition can waive or modify conditions of use specific standards. Therefore, there is an expectation that these types of standards can be altered or waived by the zoning code itself. He says that he believes that by that statement, the Board of Zoning Appeals Board can also do the same thing and move it forward. He says that his last statement is that failure to grant the variance results in a lack of investment by the Applicant (his client). It requires the continuing of an obsolete use that really has no foreseeable future (auto detailing) and the denial of the variance would not result in a benefit to the City or community and would be, in fact, just leaving the property as it is and would stall the investment.

Madam Chair Underwood-Kramer asked if there were any more questions for Mr. Wocher. Mr. Jonson asked Mr. Wocher if he knew how long Mr. Loudiy has owned the property and he said he did not, except to the extent that Mr. Bennett indicated (sometime in 2015).

Madam Chair Underwood-Kramer spoke about the Conditional Use specification, and said that she believes that the Board is not as concerned about the number of parking spaces permitted, but more about the number of vehicles being parked in a very small

space. In other words, the concern is for the type of business that he's asking for and the lot size (taking into account the larger property size and the larger number of vehicles parked in that area that can then encroach on neighboring businesses). The issues isn't the 5 spaces vs. 7, it's having 15 cars packed into a lot where only 7 should be. She spoke a bit more about the Conditional Use (should the variance be granted), the square footage of the lot, the landscaping, and the permitted use. Mr. Wocher responded that he feels that it's a unique situation that the Board is being asked to weigh in on a potential Conditional Use using variance standards to evaluate it, further reiterated his stance on the request, and expounded on the options that they could possibly come to an agreement on with regard to those conditions.

With nothing further, Mr. Jonson made a Motion to Close the Public Hearing. With a 2nd by Mr. Samoviski and all "ayes" by roll call (5-0), the Public Hearing was closed.

Mr. Creech asked Madam Chair Underwood-Kramer if he could add three things in answer to testimony that had been given, and she told him to go ahead. He stated the following:

1. Because the case went back to 2005, Staff had looked into previous uses for the property. It was mentioned that the building was built specifically for an auto repair. Mr. Creech says that the information that Staff found was that it has been converted to that, but initially it was an appliance retail and repair facility.
2. As far as the customer parking issue, there isn't a parking standard for automobile sales or repair use, and the standard for retail sales is being used. It's based on the size of the building, and the Applicant meets that. Presumably, that parking is used for both customers and employees under that formula. In this case, because they have a large building, that's why they have the 20,000 sq. ft. requirement (in answer to the question regarding cars being brought in or picked up).
3. The 10' requirement is not a concession, it's actually a requirement (reference set back). If the Applicant wanted to reduce that, it would actually have to be approved through the BZA through the variance process.

Mr. Jonson stated that the facility had previously been Foley Radio & TV.

Madam Chair Underwood-Kramer asked if there were any further comments or questions, and there were none.

Mr. Jonson made a Motion that the Board recess for the purpose of deliberating on the variance request. With a 2nd by Mr. Maaytah and all "ayes", the Board recessed at 2:29 p.m.

The Board returned at 2:40 pm. Mr. Maaytah made a Motion to Approve the request as presented with the additions of the following conditions:

1. Maintain the landscaping in good order.
2. All repairs on vehicles to be done completely inside the building.

3. All cars to be parked in designated parking spaces outside.
4. No parking in the right-of-way by customers or employees.
5. No cars be listed "for sale" on the property.

With a roll call vote of "yes" by all, the Motion passes 5-0.

Mr. Creech verified that the request was approved with conditions given (he repeated those), and that the decisions of the Board become effective 5 days after the meeting, and that he would be sending the Applicant a letter indicating the Board's approval and the next steps for going through the approval process.

New Business: Agenda Item #2 - 2016-10: Variance Request for 906 East Avenue

STAFF: MEREDITH MURPHY

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).

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 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.
- 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.

Ms. Murphy goes over the request by the Applicant, shows an aerial map with the subject property outlined in red, the zoning map of surrounding properties, and the following property details:

- 1) The property is zoned B-2 Community Business District and is comprised of a single 12,325 square foot lot.
- 2) The lot is only 61.5% 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.
- 3) There is an existing 2,265 square foot building on the property that covers approximately 11% of the lot.
- 4) The subject property was originally a gas station from the 1920's and is listed on the State of Ohio historic inventory.

- 5) 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.
- 6) 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.
- 7) 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.

She then went over the Specific Standards and Variances provided to the Board in their packet for review:

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.
- 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.

Ms. Murphy then displayed the four standards that need to be met to in order for the Board of Zoning to grant a zoning variance to Hamilton Zoning Ordinance "Section 1170.63 Variances, the Applicant's rationale for same, and the Staff information and commentary on each of the standards.

Public Hearing Notices were mailed to thirteen (13) property owners within 100 feet of the property in question, and there were no objections expressed from neighboring property owners regarding the proposed zoning variance.

Ms. Murphy shows the supporting documentation, and well as photos that were taken on a site visit the same week as the meeting.

Ms. Murphy then states the two options available to the Board:

A. 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 protect 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.

B. Approve the Request

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.

With no questions from the Board to Ms. Murphy, the Public Hearing was opened.

Mr. Ramon Batista, 1023 Edison Avenue, spoke. He said that he really didn't have anything to add to Ms. Murphy's report, but he gave a few plans for the landscaping and parking.

Madam Chair Underwood-Kramer said that there is no site plan for the landscaping, and Mr. Creech talked to him about that.

Ms. Bushman asked Mr. Batista how many cars he planned on showing, and he replied that his plan was for about 23 at the most, and the two of them had a brief discussion about cars that are on the current lot and his plans for the current lot, if the request is approved.

Mr. Maaytah said that the site plan doesn't show any designated spaces. Madam Chair Underwood-Kramer asked the Applicant if the 23 cars included customer cars, and he said no, that those would be on the right side of the building or in the front. They had a brief discussion about his plans for the lot and he said that there would be no employees, just him and his wife.

Mr. Mahmoud Abusway, 25 Easton Manor, spoke. He also owns property on East Avenue, and he spoke about his property and how it would be impacted if this request was approved. He showed a shared driveway on one of the maps displayed, and talked about how the business is impacting his property (he had previously been denied an application for a car lot on his property). He said that he's neither for nor against the request, he just wants to know how it's going to affect his property if it's granted.

Madam Chair Underwood-Kramer told Mr. Abusway that he had some very valid points. She then went through the rest of the process if the request is granted, and when the discussion about curb cuts, landscaping, etc would take place.

Mr. Samoviski and Madam Chair Underwood-Kramer had a brief discussion about what was going on at the business currently (if it's allowed) and if the cars, in essence, should not be on the lot at the present time.

Mr. Batista replied to the neighbor's comments and addressed the Board about why he thinks the Board should approve his request.

Mr. Samoviski made a Motion to Close the Public Hearing. With a 2nd by Mr. Jonson and all "ayes", the Public Hearing was closed.

Mr. Jonson made a Motion to Deny the Request for the reason that the four conditions haven't been met and a lack of information. Ms. Bushman said that she agreed with Mr. Jonson that there was not enough information to approve it. With a 2nd by Mr. Samoviski and all "ayes" by the Board (5-0), the request was denied.

Mr. Creech verified that the request was denied that the decisions of the Board become effective 5 days after the meeting, and that he would be sending the Applicant a letter indicating the Board's denial.

Minutes

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

January 7, 2016

Mr. Jonson made a Motion to Approve the Minutes. With a 2nd by Ms. Bushman and all "ayes" (5-0), the minutes were approved.

Adjourned:

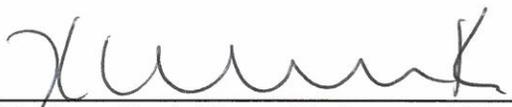
With nothing further, Madam Chair Underwood-Kramer made a Motion to adjourn. With a 2nd by Mr. Maaytah and all "ayes", the Motion passes and the meeting is adjourned.

Respectfully submitted,

Ms. Kim Kirsch
Administrative Assistant



Mr. John Creech
Secretary



Madam Chair Karen Underwood-Kramer

BOARD OF ZONING APPEALS (BZA)
City of Hamilton
Council Chambers

MEETING DATE: 5/5/16

MEETING TIME: 1:30 PM

Please sign in and provide requested information. Thank you for your participation.

Name	Agency	Address	Phone	Email
JAY BENNETT	ATTY	SUITE # 505 KRAUFELD RD	523-7104 513	jeb@w24@yahoo.com
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