

Karen Underwood-Kramer
Chairperson

Nancy Bushman
Board Member

Desmond Maaytah
Board Member

George Jonson
Board Member

Michael Samoviski
Board Member

Roll Call: 1 Public Hearing

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

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

Old Business: None

New Business:

Agenda Item #1

2016-11: Variance Request for 1150 Hooven Avenue

Request for three (3) variances necessary in order to apply for a Conditional Use Application for an Automobile service and minor repair facility on property zoned I-1 Light Industrial Development located at 1150 Hooven (Max Colonial LLC, Applicant).

Staff: Meredith Murphy

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Minutes

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

April 7, 2016

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

June 2, 2016

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Miscellaneous:

Adjournment:

The City of Hamilton is pleased to provide accommodations to disabled individuals and encourage their participation in city government. Should special accommodations be required, please contact Community Development's office at 513-785-7350 (24) hours before the scheduled meeting.





For the Board of Zoning Appeals Meeting of September 1, 2016

To: Board of Zoning Appeals

From: Meredith Murphy

Subject: **AGENDA ITEM #1**
2016-13-Variance

Request for three (3) variances necessary in order to apply for a Conditional Use Application for an Automobile service and minor repair facility on property zoned I-1 Light Industrial Development located at 1150 Hooven (Max Colonial LLC, Applicant)

Date: August 26, 2016

Dear BZA Members:

Introduction:

An application was submitted by Max Colonial LLC for three (3) zoning variances in order to apply for a Conditional Use to an Automobile Service and Minor Repair facility on the property located at 1150 Hooven Avenue. (Exhibit A). The property is zoned I-1 Light Industrial zoning district (Exhibit B). The I-1 Light Industrial zoning district is regulated by Section 1123.00 of the Hamilton Zoning Ordinance, (HZO). An Automobile Service and Minor Repair facility use is listed as a Conditional Use in Section 1123.38.2 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 for each condition they are unable to meet, 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 1123.38.2). Section 1108.00 of the Hamilton zoning ordinance provides the official zoning definition for an Automobile Service and Minor Repair facility.

The three (3) requested zoning variances to Section 1123.38.2 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 10,018 square feet in area.
2. A request to reduce the minimum lot width required along an arterial street for an Automobile Service and Minor Repair facility – the minimum lot width required is 100 feet - the subject property is approximately 52 feet in length along Hooven Avenue, which is classified as an arterial street.
3. A request to reduce the minimum lot frontage required on a corner for an Automobile Service and Minor Repair facility – the minimum lot frontage required on a corner is 100 feet on each street - the subject property has



approximately 52 feet of frontage on Hooven Ave and 133 feet of frontage on Zimmerman.

Property Details:

The property is zoned I-1 Light Industrial District and is comprised of a single 10,018 square foot lot. The lot is 50% of the required lot size for the proposed Automobile Service and Repair facility. The property has a total of 52 lineal feet of lot frontage along Hooven Avenue, which is about half of the amount of required frontage. There is an existing 1,742 square foot building on the property which is on the Hooven Avenue frontage property line. The properties to the north, east and south are zoned I-1 Light Industrial District. Immediately to the west is the Railroad.

Background

City records indicate that the property was previously a pavement business. In 1981 the property received approval for a variance to combine the existing two parcels into one on the property to allow for the construction of a storage building at 1150 Hooven Avenue. In November of 2015 the previous property owners applied for three Variances and Conditional Use approval to open a Major Automobile Repair facility at this location. The variance request was denied.

Use Specific Standards and Variances:

If the three necessary zoning variances are 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 three zoning variances are necessary prior to proceeding with a Conditional Use application. The three (3) zoning variances from Section 1123.38.2 (also indicated in red below) 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 10,018 square feet in area.
2. A request to reduce the Minimum lot width required along an arterial street for an Automobile Service and Minor Repair facility – the minimum lot width required is 100 feet - the subject property is approximately 52 feet in length along Hooven Avenue, which is classified as an arterial street.
3. A request to reduce the Minimum lot frontage required on a corner for an Automobile Service and Minor Repair facility – the minimum lot frontage required on a corner is 100 feet on each street - the subject property has approximately 52 feet of frontage on Hooven Ave and 133 feet of frontage on Zimmerman.

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 three (3) 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.

This lot has been used as an Auto Repair Shop before and was being used as such when I purchased it.

As stated in the background section the property was previously used for an illegal Major Auto Repair facility. The previous business operator applied for approval for three variances and Conditional Use approval in November 2015 and was denied. The denial letter was mailed to the properties owner at the time. There are no other applications or approvals associated with this request. The exceptional circumstances raised by the applicant, (previous use) is true in that the property was illegally operating a car repair facility, but the city was pursuing legal action with the previous property owner for violation of zoning regulations when they vacated and cleared the property. The three (3) requested variances and the necessary Conditional Use approval are required because this specific use, Automotive Service and Minor Repair, is not outright permitted in the I-1 Light Industrial Zoning District. There are other permitted land uses in the I-1 Light Industrial zoning district that could be pursued by the applicant. The three (3) necessary variances do not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the I-1 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.

When the property was purchased it was being used as an Auto Repair Shop. The reason I purchased the property was because I



wanted to keep it a Auto Repair shop. This is the first time I've been told it's a problem.

The three (3) necessary variances required for an Automobile Service and Minor repair facility to be located at 1150 Hooven are a part of the standards for all new uses in the I-1 zoning district. The 20,000 square foot minimum lot area, and minimum lot width and frontage on a corner requirements may preclude the establishment of an Automobile Service and Minor repair facility but does not deprive the owner of pursuing other permitted I-1 zoning district land uses on the property. The 20,000 square foot minimum lot area, and minimum lot width and frontage on a corner requirements do not deprive the owner of a reasonable economic use of the property given that there are other permitted land uses in the I-1 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 property is used only as an outlet to fix cars to be sold by RZ Auto Sales. It is not used to fix any outside customers vehicles, or as a dealer of any kind.

The property is only 10,018 square feet for a use that requires 20,000 square feet. The lot is only 50 percent of the required lot size for the proposed Automobile Service and Repair facility. In addition, the property has approximately 52 feet of frontage along Hooven Avenue, and is required to have at least 100 feet along Hooven and on both sides on the corner of Zimmerman and Hooven, which it does not. There is a strong concern that given the small size of the property and the properties frontage 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 limited spacing will not interfere with any laws regarding space or sight.

The three (3) necessary variances required for an Automobile Service and Minor repair facility to be located at 1150 Hooven are a part of the standards for all new uses in the I-1 zoning district. The purpose of the



necessary requirement for Automobile Service and Minor repair facilities is to better regulate conditional uses that could negatively impact adjacent properties, or neighboring uses.

Recomendation:

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 deny the three (3) variance requests to reduce the minimum lot area from 20,000 square feet to 10,018 square feet, request to reduce the minimum lot width along an arterial street from 100 feet to 52 feet, request to reduce the minimum lot frontage required on a corner lot from 100 feet on each street to the approximately 52 feet of frontage on Hooven Ave and 133 feet of frontage on Zimmerman and 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 10,018 square feet for a use that requires 20,000 square feet. The lot is only 50 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 and lot frontage 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. While the subject property is too small for the proposed Automobile Service and Repair use, the denial does not deprive totally deprive the property owner of a reasonable economic use of the property because there are other permitted land uses in the I-1 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.

Notification

Public Hearing Notices were mailed to three (3) property owners within 100 feet of the property in question. At the time this report was written, no objections had been expressed from neighboring property owners regarding the proposed zoning variance.

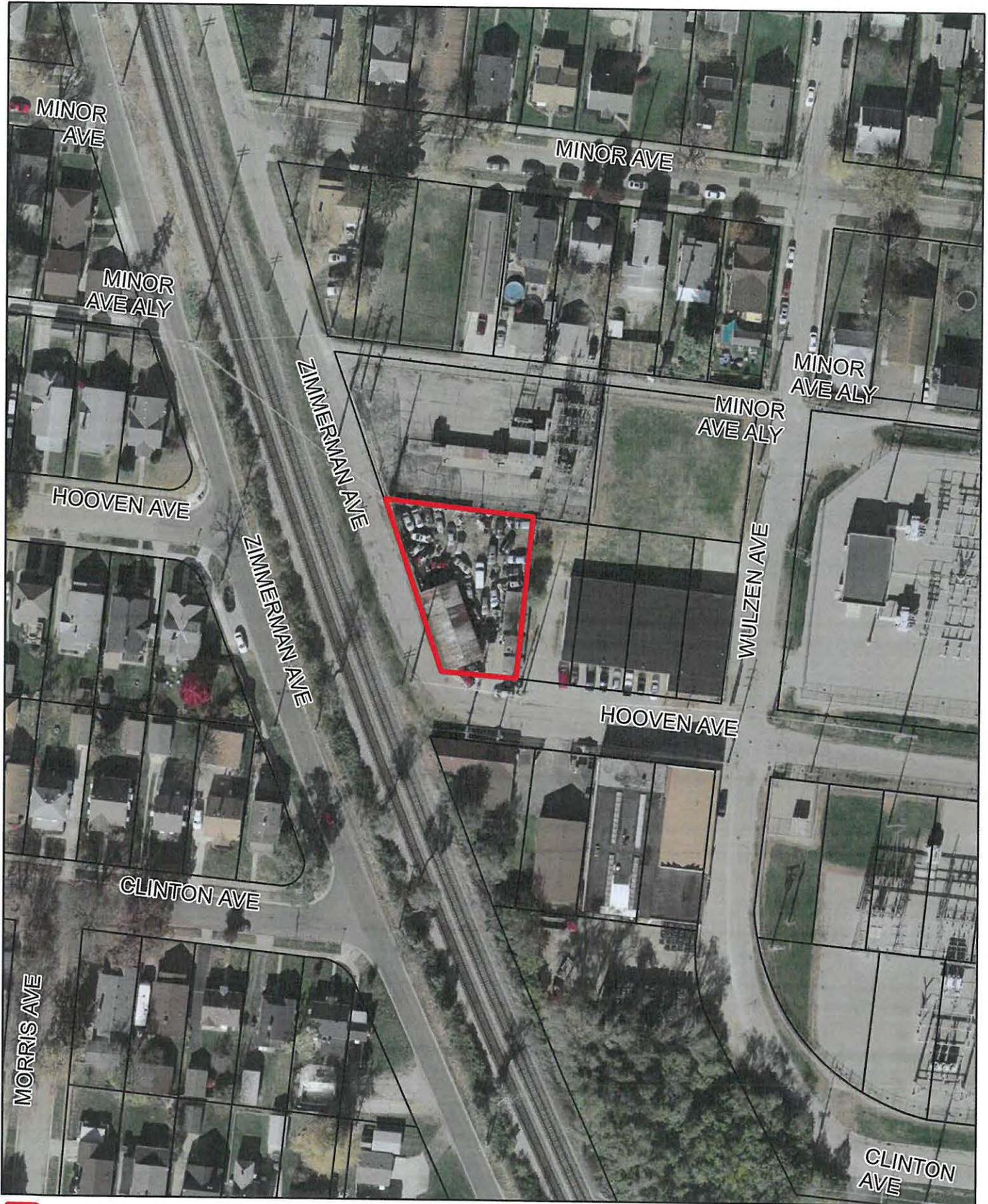


Attachments:

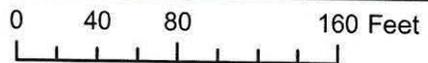
- 1) **Exhibit A - Public Hearing Location Map**
- 2) **Exhibit B – Zoning Map**
- 3) **Exhibit C – Variance Application**



PUBLIC HEARING NOTIFICATION MAP
1150 HOOVEN AVE.



 1150 Hooven Ave.



PUBLIC HEARING NOTIFICATION MAP
1150 HOOVEN AVE.



 1150 Hooven Ave.

0 40 80 160 Feet



BOARD OF ZONING APPEALS APPLICATION

Property Address: 1150 HOOVEN AVE.

Lot No(s): # 28258

Property Owner: MAX COLONIAL LLC

Owner's Mailing Address: 3201 DIXIE HWY HAMILTON, OH 45015

Appellant's Name (If different than owner): _____

Appellant's Mailing Address: _____

Appellant's Email Address: rodolfo_zendejas@yahoo.com

Previous Legal Use of Property: Bodywork for vehicles. Mechanic for vehicles.

Date Previous Use Discontinued: APRIL 2016

Proposed New Use of Property: Mechanical work for vehicles

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 rational for requesting a Variance**)

1123.38.2
1150 HOOVEN AVE is used to repair vehicles for sale for RZ Auto. We bought the property from someone using it as Mechanical Shop.

- Other – Skip to "Other" Section of Application Form

Date: 8/10/2016
 City of Hamilton
 Office: CNST
 Acc: 8/10/2016 1:52 PM
 Cashier: Consvs
 Receipt # 00675640
 Payment Total \$200.00
 Check Number: 2100.00

VARIANCES

Appellant's Rationale for requesting a Variance:

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

①

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.

This lot has been used as an Auto Repair Shop before and was being used as such when I purchased it.

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 in the same vicinity.

When the property was purchased it was being used as an Auto Repair Shop. The reason ~~it~~ purchased the property was because I wanted to keep it a Auto Repair shop. This is the first time I've been told its a problem.

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 used only as an outlet to fix cars to be sold by RZ Auto Sales. It is not used to fix any outside customer vehicles, or as a dealer of any kind.



City of Hamilton
BUTLER COUNTY OHIO

Community Development
345 High Street, Suite 370
Hamilton, Ohio 45011

Planning Commission	
First and Third Monday of every month, except scheduled City Holidays, at 1:30 pm in the City Council Chambers, Municipal Building, 1st Floor, 345 High Street.	
Meeting Date	Application Deadline
1/4/2016	12/14/2015
1/19/2016	12/28/2015
2/1/2016	1/11/2016
2/15/2016	1/25/2016
3/7/2016	2/15/2016
3/21/2016	2/29/2016
4/4/2016	3/14/2016
4/18/2016	3/28/2016
5/2/2016	4/11/2016
5/16/2016	4/25/2016
6/6/2016	5/16/2016
6/20/2016	5/31/2016
7/5/2016	6/13/2016
7/18/2016	6/27/2016
8/1/2016	7/11/2016
8/15/2016	7/25/2016
9/6/2016	8/15/2016
9/19/2016	8/29/2016
10/3/2016	9/12/2016
10/17/2016	9/26/2016
11/7/2016	10/17/2016
11/21/2016	10/31/2016
12/5/2016	11/14/2016
12/19/2016	11/28/2016

Board of Zoning Appeals	
First Thursday of every month, except scheduled City holidays, at 1:30 pm in the City Council Chambers, Municipal Building, 1st Floor, 345 High Street.	
Meeting Date	Application Deadline
11/5/2015	10/22/2015
12/3/2015	11/19/2015
1/7/2016	12/24/2015
2/4/2016	1/21/2016
3/3/2016	2/18/2016
4/7/2016	3/24/2016
5/5/2016	4/21/2016
6/2/2016	5/19/2016
7/7/2016	6/23/2016
8/4/2016	7/21/2016
9/1/2016	8/18/2016
10/6/2016	9/22/2016
11/3/2016	10/20/2016
12/1/2016	11/17/2016

Architectural Design Review Board	
First and Third Tuesday of every month, except scheduled City Holidays, at 4:30 pm in the City Council Chambers, Municipal Building, 1st Floor, 345 High Street.	
Meeting Date	Application Deadline
1/5/2016	12/29/2015
1/19/2016	1/12/2016
2/2/2016	1/26/2016
2/16/2016	2/9/2016
3/1/2016	2/23/2016
3/15/2016	3/8/2016
4/5/2016	3/29/2016
4/19/2016	4/12/2016
5/3/2016	4/26/2016
5/17/2016	5/10/2016
6/7/2016	5/31/2016
6/21/2016	6/14/2016
7/5/2016	6/28/2016
7/19/2016	7/12/2016
8/2/2016	7/26/2016
8/16/2016	8/9/2016
9/6/2016	8/30/2016
9/20/2016	9/13/2016
10/4/2016	9/27/2016
10/18/2016	10/11/2016
11/1/2016	10/25/2016
11/15/2016	11/8/2016
12/6/2016	11/29/2016
12/20/2016	12/13/2016

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, April 7, 2016
1:32 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 Madam Chair Underwood-Kramer.

Members Absent: Mr. Samoviski.

City Staff Present: Mr. John Creech, Ms. Meredith Murphy, Ms. Heather Hodges, 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:

Audience members sworn in by Ms. Kathy Dudley, Assistant Law Director.

Old Business:

Agenda Item #1:

PUBLIC HEARING

STAFF: Mr. John Creech

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).

Mr. Creech advised the Board that Staff received a letter from Mr. Jay Bennett, Attorney for Applicant, requesting that the matter be tabled until the May 5 meeting due to business conflicts and a doctor's appointment.

Mr. Jonson asked if they business was continuing to be operated and Mr. Creech advised that it was.

Mr. Jonson made a Motion to table the item. With a 2nd by Mr. Maaytah and all "ayes" by roll call vote, the Motion passes (4-0).

**New Business: PUBLIC HEARING STAFF: Ms. Meredith Murphy
Agenda Item #2 2016-05: Variance Request for 576 Sharon Lane**

A Request by Mr. Stephen Brunner for one (1) zoning variance in order to construct an accessory building on his property, zoned R-1 Residential District, located at 576 Sharon Lane. The requested zoning variance is to Section 1115.43.1 of the Hamilton Zoning Ordinance is as follows:

- 1) A request to allow a second accessory structure where one accessory building is permitted for each dwelling unit on the same lot. (Stephen Brunner, Applicant/Owner).

Introduction:

An application has been submitted regarding one (1) Zoning Variance to construct a new accessory building at 576 Sharon Lane. This property is approximately .2 acres and is located in an R-1 Single Family Residence District (see attached Zoning map – Exhibit B) and is regulated by Section 1115.00 and Section 1110.00 of the Hamilton Zoning Ordinance (HZO). Mr. Brunner is seeking a variance to the requirements of the zoning ordinance in order to construct a second accessory building. The applicant is requesting relief from Section 1115.43.1 of the Hamilton Zoning Ordinance that regulates the number of accessory structures permitted on a property per dwelling unit.

Section 1115.43.1 states that “only one accessory building or structure is permitted for each dwelling unit on the same lot.” Mr. Brunner is proposing to build a second accessory structure and already has a detached garage on the property measuring fourteen (14) feet by twenty (20) feet totaling two hundred and eighty (280) square feet. The proposed shed will be a total of twelve (12) feet by sixteen (16) feet totaling one hundred and ninety two (192) square feet.

In the application Mr. Brunner writes that “I have one out building in right corner of back yard 1 ½ car garage 14’ by 20’ could not make the garage larger because of sewer line running from house to main, and that he needs more storage because house has crawl space and no basement. This new storage building will be built in left corner of backyard 12’ by 16’.”

Ms. Murphy then shows the dimensions and color of the proposed shed, and the lot plan showing current and the proposed change.

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 below exist beyond a reasonable doubt. Ms. Murphy then shows and summarizes the four circumstances, with the Applicant’s rationale in bold and staff information underlined for the Board’s review.

Recommendation:

Based on a review of the information submitted, there is reason to consider approving the one (1) requested variance with the following conditions:

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

1. The construction drawings for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Departmental Review.
2. All improvements and work indicated on construction plans approved by the City of Hamilton Departmental Review be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Variance.

Notification

Public Hearing Notices were mailed to the owners of fifteen (15) properties within 100' of the property in question, and there were no objections received to the proposed zoning variances.

Ms. Murphy states that Mr. Brunner called the office the morning of the BZA meeting and said that he would be unable to make it. Staff made him aware that if there were questions, it could be tabled or denied since no one was there to speak, and he requested that the matter proceed.

Madam Chair Underwood-Kramer opened the public hearing. There was no one in the audience that wished to speak on the matter, and Mr. Jonson made a Motion to close the Public Hearing. With a 2nd by Ms. Bushman and all "ayes", the Public Hearing was closed.

With no discussion by the Board, Mr. Jonson made a Motion to approve the variance due to Exceptional Circumstances and to Preserve the Property Rights, with conditions as recommended.

With a 2nd by Mr. Maaytah and all "ayes" by roll call vote, the Motion is approved (4-0), and the request is granted.

Agenda Item #3 2016-06: Change of a Non-Conforming Use Request for 1019 Dayton Street

STAFF: Meredith Murphy

Request by Allied Property Mgmt Ltd. for a revision to an Appeal of a Zoning Interpretation by the Zoning Authority of the City of Hamilton submitted by Allied Property Mgmt Ltd. for 1019 Dayton Street.

Introduction:

An application has been submitted regarding revision to an Appeal of a Zoning Interpretation by the Zoning Authority of the City of Hamilton submitted by Allied Property Mgmt Ltd. for 1019 Dayton Street.

1019 Dayton Street is located in an R-4 Multi-Family Residence District and is regulated by Section 1118.00 of the Hamilton Zoning Ordinance, (HZO). The subject property is comprised of a residence and a detached accessory building accessible from the rear alley. The accessory building measures approximately 3,000 square feet. Property is currently zoned R-4 Multi-Family Residence District.

Background Information:

On December 3rd, 2015 the Board of Zoning Appeals reversed a Zoning Interpretation of the Zoning Authority of the City of Hamilton and applied six (6) conditions listed below:

- 1) Uses of the accessory building located at the rear of 1019 Dayton Street be limited to commercial storage only, no active business to be carried out at this location.
- 2) Activities and access to any commercial storage uses within the building to be limited to the hours of 7AM to 7PM.
- 3) Storage uses be confined to the interior of the accessory building – no outdoor storage permitted.
- 4) Activities associated with the commercial storage be confined to the interior of the accessory building.
- 5) If any building improvements or building permits are required for future commercial storage uses, construction plans or drawings for the proposed improvements and work will be revised subject to any future review requirements of the City of Hamilton Interdepartmental Review (IDR) Committee.
- 6) All improvements and any work associated with any requirements of the IDR be installed and maintained in good repair and replaced as necessary to remain in compliance with the BZA conditions of approval.

Appellant Information:

Allied Property Mgmt Ltd. has submitted an appeal to amend the hours that limit the time the building can be accessed from the approved 7AM - 7PM to 7AM - 9PM. The applicant has stated "I am appealing condition number two from prior appeal case number 2015-23 which limited hours of 7am-7pm. I am requesting the hours be extended to 7am-9pm. Because this is not being used for a business, our applicants work during the day and need access beyond 7pm."

Notification:

Public Hearing Notices were mailed to sixteen (16) property owners within 100 feet of the property in question, and there were no objections received to the proposed zoning variances.

Authority over Nonconforming Uses:

Section 1109.50 Non-Conforming Uses grants the BZA the authority to make findings in specific cases regarding non-conforming uses. In permitting or making findings relative to non-conforming uses the BZA may require appropriate conditions and safeguards.

Recommendation:

If the BZA determines that the conditions associated with the non-conforming (commercial storage) use at the rear of 1019 Dayton Street should be amended, the Department of Community Development requests that the BZA consider the following previously approved six (6) conditions of approval with the hours change to number two (2):

1. Uses of the accessory building located at the rear of 1019 Dayton Street be limited to commercial storage only, no active business to be carried out at this location.
2. Activities and access to any commercial storage uses within the building to be limited to the hours of 7AM to 9PM.
3. Storage uses be confined to the interior of the accessory building – no outdoor storage permitted.
4. Activities associated with the commercial storage be confined to the interior of the accessory building.
5. If any building improvements or building permits are required for future commercial storage uses, construction plans or drawings for the proposed improvements and work will be revised subject to any future review requirements of the City of Hamilton Departmental Review.
6. All improvements and any work associated with any requirements of the City of Hamilton Departmental Review be installed and maintained in good repair and replaced as necessary to remain in compliance with the BZA conditions of approval.

Madam Chair Underwood-Kramer opened the public hearing.

Mrs. Becky Crawford with Allied Property Management was present. She said that they have incorporated the six conditions into the commercial lease that they have tenants sign, and there have been no issues.

With nothing further from the audience, there was a roll call vote to close the Public Hearing. With all “ayes”, the Public Hearing was closed.

Mr. Maaytah made a Motion to approve the request as presented and keep the previous conditions as set forth. With a 2nd by Mr. Jonson and all “ayes” by roll call vote, the Motion passes (4-0).

Mr. Creech advised the applicant that he would be sending out official notice of the Board’s decision within 5 days, and the new conditions would become effective then.

Agenda Item #4 2016-07: ADRB Appeal of Decision for 117 Village Street

STAFF: John Creech

An Appeal by William Wilks regarding the refusal of the Architectural Design Review Board (ADRB) on February 2, 2016 to issue a Certificate of Appropriateness (COA) to install vinyl siding on at 117 Village Street. (Community Design Alliance/William Wilks, Applicant/Owner).

Introduction:

An application has been submitted by Community Design Alliance on behalf of the property owner Mr. William Wilks regarding the refusal of the Architectural Design Review Board (ADRB) on March 15, 2016 to issue a Certificate of Appropriateness (COA) for installation of vinyl siding at 117 Village Street. The subject property of 117 Village Street is part of the German Village Historic District and is Zoned "BPD", Business Planned Development Zoning.

Background Information:

On January 20, 2016 an application was received for Certificate of Appropriateness for 117 Village Street for vinyl siding installation. The siding had already been installed prior to the application for a COA. The COA application and supporting materials were provided to the BZA for review (including minutes from the 2/2/16 ADRB meeting), as well as the Historic Design Review Board Polices and Guidelines.

A letter was sent to Mr. Wilks on February 25, 2016 by the ADRB Secretary informing him that the ADRB had denied the proposed vinyl siding at 117 Village Street and indicated that he could either submit a new COA application or appeal the denial to the BZA (copy also included as part of Board packet). An application for appeal to the Board of Zoning Appeals was received and included in the Board packet also for review.

Appellant Information:

Mr. Wilks submitted an application to appeal the February 2, 2016 denial on March 17, 2016 over the decision of the ADRB to not issue a COA for the installation of vinyl siding at 117 Village Street. This application is attached for the Board's review. This appeal application includes information regarding the existing siding condition and materials; however this information was not supplied to the ADRB when they made their decision to deny the COA request on February 2, 2016.

Notification:

Public Hearing Notices were mailed to ten (10) property owners within 100' of the property in question. A letter in support of the appeal was received on April 5, 2016, and provided to the Board for review.

Authority over Appeals Regarding to ADRB:

Section 1160.30 Hearings; Appeals; Notices grants the BZA the authority to hear and decide appeals of ADRB decisions in connection with issuance or refusal to issue a Certificate of Appropriateness for exterior work to buildings in designed historic districts.

Mr. Creech then shows a summary of the new information that was provided as part of the Appeal application showing before and after photos of the house, a copy of the Application of Appeal, and some additional photographs that were received.

Recommendation:

If the BZA approves the Appeal submitted by Mr. Wilks and permits him to install vinyl siding at 117 Village Street, the Department of Community Development requests that the BZA consider the following condition of approval:

1. All improvements and work be performed in workmanship manner and maintained in good repair and replaced as necessary to remain in compliance with the BZA conditions of approval.

Ms. Bushman asked if the determination of asbestos was made after the ADRB meeting, and Mr. Creech verified that it was.

The Public Hearing was opened, and Madam Chair Underwood-Kramer asked if there was anyone in the audience wishing to speak on behalf of the appeal.

Mike Dingeldein was the first to speak. He said that he is helping Mr. Wilks with the Application. He spoke about the study that was done confirming the presence of asbestos in the siding, the exceptional circumstance that it creates, and the remedy suggested for the asbestos. While he admits that the work was done prior to approval by ADRB and that Mr. Wilks is due admonishment by them for that, he says that the abatement costs would likely exceed the entire value of the property. He further stated that he believed that vinyl siding was allowed by the ADRB until about 18 months prior, but that it meets the prior guidelines with regard to thickness. He says that the siding looks good, in spite of the fact that it wasn't done in the right order of approval.

Ms. Bushman asked about the installation of the vinyl siding, and Mr. Dingeldein said that it encapsulates what is there, and doesn't penetrate the asbestos.

Mr. Maaytah asked Mr. Dingeldein if he knew if the original siding was wood, and Mr. Dingeldein responded that it probably was. They then had a brief discussion about the cost and process of removing the vinyl siding that was on it and going back to the original wood siding.

Ann Brown of Village Street (member of German Village Association) spoke next. She said that she thinks the siding looks good and they don't want it removed. They appreciate Mr. Wilks and what he has done for their neighborhood, and she gave several reasons why they appreciate him. She said that she doesn't believe that Mr. Wilks was "thumbing his nose" at the ADRB, and that he has been overwhelmed with Health Department citations. She is in full support of Mr. Wilks and what he has done. She also spoke about the 1913 flood, the effect that it had on the properties in

their area, and what they are working with as a result of that damage to the properties.

Ms. Karen Whalen, 300 Oakwood, spoke next. She first stated that she was the only one there from the ADRB and not sure where all of her help was. She then said that the ADRB is aware of the good things that Mr. Wilks has done in German Village, and aware that he was one of the founders of the ADRB. She said that it's her opinion that the Board believed that Mr. Wilks was aware of the process since he has dealt with them on so many other properties, that he knowingly did not come to the Board and request a COA, and continued the work even after a "stop work order" was issued. "He didn't follow the rules, and everyone is expected to follow the rules".

Mr. Jonson made a Motion to close the Public Hearing. With a 2nd by Ms. Bushman and all "ayes", the public hearing was closed.

Mr. Jonson made a Motion to grant the appeal based on Exceptional Circumstances and Preservation of Property Rights. Madam Chair Underwood stated that she believed that it needs to be highlighted that the reason that the appeal was granted was due to the exceptional circumstance of the asbestos siding on this particular property. With a 2nd by Mr. Maaytah (who agreed with Madam Chair Underwood-Kramer and said that vinyl siding was not going to become standard practice for the historic district) and all "ayes", the request is granted (4-0).

Mr. Creech advised the applicant that he would be sending out official notice of the Board's decision within 5 days.

Agenda Item #5 2016-08: Variance Request for 988 Ridgefield Drive

STAFF: Meredith Murphy

Three (3) zoning variances to erect an oversized accessory building on the property located at 988 Ridgefield Road (1) Variance to erect an accessory structure prior to construction of the primary structure (2) Variance to erect a 3,168 square foot accessory building where the maximum size permitted is 800 square ft. (3) Variance to erect an accessory building 20 ft in height where the maximum height is limited to 15 ft. (Roger Reece, Applicant).

Introduction:

An application has been submitted regarding three (3) zoning variances to erect an oversized accessory building on the property located at 988 Ridgefield Road. This property is approximately 41.5 acres and is located in an R-1 Single Family Residence District. Ms. Murphy displays the Location map showing the city limits, with the property outlined in red.

She states that R-1 residences are regulated by Section 1115.00 and Section 1110.00 of the Hamilton Zoning Ordinance (HZO). The proposed accessory building will be a total of forty four (44) feet by seventy two (72) feet, totaling 3,168 square feet.

The three (3) requested variances are to Section 1115.40 and Section 1115.43.1 of the HZO to allow construction of an accessory building **prior** to construction of the primary structure, allow a height of twenty (20) feet where fifteen (15) is permitted, and a building footprint of 3,168 where a maximum of 800 is permitted.

Section 1115.40 states “Accessory Use and Buildings: Accessory use, building or structure customarily incident to a principal permitted use or conditionally permitted use, located on the same lot therewith”.

Section 1115.43.1 states “Accessory buildings shall have a maximum first floor area of eight hundred (800) square feet.” And “Height: One story to a maximum of fifteen (15) 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.

Ms. Murphy then summarized the four items, the staff information (which was underlined for the Board), and the applicant’s rationale for each item (which was in bold italics).

Notification

Public Hearing Notices were mailed to the owners of twelve (12) properties within 100 feet of the property in question. Staff did receive a number of phone calls, including one the morning of the hearing from Ms. Janet Schaefer (a neighbor to the east of the property) with regard to the height of the proposed building, the size of the building, and whether or not a commercial business would be run out of the proposed structure. She stated she would be at the meeting. Staff also received two letters and phone calls from Mr. Daryl Hacker and Mr. Tom Rentschler (letters given out to the Board at the meeting and attached as part of the minutes).

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

1. The construction drawings for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Departmental Review.
2. All improvements and work indicated on construction plans approved by the City of Hamilton Departmental Review be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Variance.

Ms. Murphy then showed an overall plan displaying the entire property with detail showing the proposed accessory structure and future proposed house, and site plans showing more specific details about the proposed structures.

Madam Chair Underwood-Kramer requested that Ms. Murphy enhance the drawing so that she could see it better, and Ms. Murphy complied with that. Ms. Murphy also gave specifics about the proposed pole barn, the set back requirement for same, and the size of the proposed building with regard to height and actual requirements for same.

There was a brief discussion between Mr. Creech, Ms. Murphy, and the Board regarding the location of the exact proposal, and he showed it on the map.

With no further questions from the Board, the Public Hearing was opened up. Mr. Roger Reece (Applicant) was present. He spoke about the location of the proposed buildings and what neighbors could actually see from their property. He said that it's not for anything commercial, it's all for personal use. He said that they are also putting an 8' porch on it for aesthetics because they want it to look like a park setting and match the rest of the property.

Madam Chair Underwood-Kramer asked if he would have a problem if one of the conditions of approval was that it not be used for commercial use, and he said that he had no problem with that.

Mr. Jonson asked him what he was going to use the barn for, and he said that it was storage of personal property. He said that they have 42 acres, and it takes a lot of things to maintain that. He said that he can also keep the things that he will need when they build the home on the property.

Ms. Bushman asked him to explain his responsibilities for the property, and he went into that. She asked if he was going to have animals on the property, and he said the only animal they have is a poodle.

With no further questions and no one else to speak for or against the appeal, Mr. Jonson made a motion to close the Public Hearing. With a 2nd by Ms. Bushman and all "ayes" by the Board, the Public Hearing was closed.

Ms. Bushman made a Motion to approve the variance, with the condition that no commercial business can be operated out of the property. Mr. Creech said that would be added as Condition #3. With a 2nd by Mr. Maaytah and all "ayes", the variance was approved (4-0) with conditions as stated.

Mr. Creech advised the applicant that he would be sending out official notice of the Board's decision within 5 days.

Agenda Item #6 2016-09: ADRB Appeal of Decision for 244 Main Street

STAFF: John Creech

An Appeal by the StreetSpark Program regarding the refusal of the Architectural Design Review Board (ADRB) on March 15, 2016 to issue a Certificate of Appropriateness (COA) to paint a mural on 224 Main Street. (StreetSpark Program/Community Design Alliance, Applicant/Owner).

Introduction:

An application has been submitted by the StreetSpark Program regarding the refusal of the Architectural Design Review Board (ADRB) on March 15, 2016 to issue a Certificate of Appropriateness (COA) to paint a mural on 224 Main Street.

The application was submitted by Ms. Jennifer Acus-Smith, on behalf of StreetSpark and the property owner the CORE Fund. The denied COA request was for the painting of a mural on the east side of the structure. The subject property of 244 Main Street is part of the Rossville-Main Street Historic District and is Zoned "MS-1", Main Street Core, Form-Based Zoning.

Background Information:

On December 1, 2015 a presentation was made before the Architectural Design review board over the StreetSpark program. The minutes from that meeting state the following "Mr. Ian MacKenzie-Thurley, Executive Director of Fitton Center, gave a presentation about StreetSpark. Ms. Whalen asked who would be selecting the buildings and if they will be historic. He replied that they are working with a number of departments and businesses, and that some of the buildings will be historic. She then asked if they were historic buildings and would they be coming before the ADRB for any work to be done, and he replied that they would. She lastly asked if there was a plan or endowment to take care of the buildings in the future after they're done, and he replied that they are looking at investing 10% of all budget into a fund for upkeep of the housing."

For their review, the Board was given a copy of the minutes from the 12/1/15 ADRB meeting, all information from the 3/15/16 meeting, (including a draft copy of the minutes from said meeting), and a copy of the Historic Design Review Board Polices and Guidelines.

The application for the COA was denied by the ADRB on March 15, 2016. A letter was sent to StreetSpark on March 17, 2016 by the ADRB Secretary informing the Applicant that the ADRB had denied the proposed mural at 244 Main Street. The options for the applicant were to either submit a new COA application, or appeal the denial to the BZA (also attached for the Board's review). On March 24, 2016 an application for appeal to the Board of Zoning Appeals was received (copy attached for the Board's review).

Mr. Creech then shows an image of what was presented to the ADRB on 3/15/16 and what was denied. He points out that the image that was submitted with the application for the BZA is slightly different than what was submitted, and he gives the differences. The color scheme was approved as a separate application at the March 15th, 2016 meeting by the ADRB.

Notification:

Public Hearing Notices were mailed six (6) property owners within 100 feet of the property in question. There are also three letters in support of the application which were presented to the Board at the beginning of the meeting.

Authority over Appeals Regarding to ADRB:

Section 1160.30 Hearings; Appeals; Notices grants the BZA the authority to hear and decide appeals of ADRB decisions in connection with issuance or refusal to issue a Certificate of Appropriateness for exterior work to buildings in designed historic districts.

Recommendation:

If the BZA approves the Appeal submitting by StreetSpark and permits them to install/paint a mural at 244 Main Street, the Department of Community Development requests that the BZA consider the following condition of approval:

1. All improvements and work be performed in workmanship manner and maintained in good repair and replaced as necessary to remain in compliance with the BZA conditions of approval.

Madam Chair Underwood-Kramer said that she reviewed the Policies and Guidelines and that she cannot find that it with Public Art or Sculptures, and Ms. Dudley and Mr. Creech addressed that.

The Public Hearing was opened, and Madam Chair Underwood-Kramer asked for anyone who wished to speak either on behalf of the appeal.

First was Mr. Ian MacKenzie-Thurley, Executive Director of Fitton Center for the Creative Arts. He gave the Board the background of how the murals were chosen on behalf of StreetSpark and the City of Hamilton.

Ms. Bushman asked if the paintings had to go directly on the building, as she is concerned about the fact that the building had been painted over, restored, and now it's being painted over again, and is that going to destroy the "historical character of the building". He replied that it was never questioned at the ADRB. She asked if she should address it with them, and he replied that she could if she wished. Their question in coming to the Board for this meeting was more about the historical nature of the painting or of the building more than of the choice of art on the subject building. Ms. Bushman asked if the only canvas was the building itself and he replied that she was correct. He said that all of the murals will be directly onto the buildings.

He introduced Jenn Acus-Smith, Director of the StreetSpark program, who introduced herself to the Board. She said that they worked with Mr. Dingeldein and the CORE fund, and the intention was to clean the brick and make sure that it was in good condition (structure was sound), and they added a layer of "parched surface" to the building before the mural was painted.

She went through the process of selection of the murals (blind selection) and the criteria that the committee used in their selection. She said that in terms of this building, the committee felt that an overall pattern was a good fit to the building. There is a window there now, and they are not sure if anything else will be on the side of the building once the renovation is done. There could be a door added, and if so, it would not interrupt the pattern of the design. She spoke about the other designs that were submitted, and gave reasons why the committee believes that the mural should be approved. She said that the committee feels that the process also gives respect to the designers and artists who submitted artwork and trusted the process. She stated that the ADRB said that they were basing their decision “not on the historical colors”, but there wasn’t much other criteria presented outside of subjective opinion. She said that the committee understands that subjective opinion has to be a part of the approval by the ADRB, but they felt that there should have been other reasons given as to why it did not get accepted. She said lastly that they have aligned with the City goals, and they feel like there should be diversity (contemporary, historical, etc).

Madam Chair Underwood-Kramer asked how many designs were submitted for the subject building, and Ms. Acus-Smith replied that she believed that it was approximately 15. Madam Chair Underwood-Kramer then asked her why the top of the building was cut off on the representation photo that was submitted to the BZA Board, and not completing the mural as originally proposed to the ADRB. She replied that those designs were put on the building by Mr. Dingeldein (owner) to more appropriately show how it would be on the building, and to show more realistic lighting conditions. She said that it could go all the way up the entire building, and they had a bit more conversation about that.

Mr. Maaytah asked if the color has changed from the original depiction to the current and she said that it had not, it was the same color scheme. He verified with her that the committee knew which design was chosen to go on that specific building, and she said that they did.

Mr. Jacob Stone spoke next. He stated that his address is 228 N. 7th Street, and he is the City’s liaison to the StreetSpark selection committee. He said that he wanted to add that there has been a budget set up for the future maintenance of each mural that was submitted. He also spoke about the process of the selection of the murals. He said that the committee spent hours discussing the pros and cons of each, starting with narrowing of selections from 5 per building, to 3 per building, to 1 per building. He said that there were 12 arts professionals on the committee, including some from the Cincinnati mural program, who gave input on numerous things to take into consideration for each one. He said that he believes that the mural is light and vibrant and it will accent the exciting changes on Main Street as the CORE Fund moves that way with properties that they are revitalizing.

Madam Chair Underwood-Kramer asked if the CORE fund owns the building at 244 Main, and Mr. Stone said that they were. She then verified that the CORE fund had to approve of the mural being put on the building, and Mr. Stone said that he believed so.

Mr. MacKenzie-Thurley said that the application to the BZA was signed by the owner, Mike Dingeldein. Ms. Bushman and Madam Chair Underwood-Kramer then had a brief discussion about why the murals had to be submitted for approval through the ADRB, and Ms. Dudley advised that any painting on a historic property or one covered by the applicable zoning that goes before the ADRB includes works of art.

Ms. Bushman asked if that was up to the owner or the Board, and Ms. Dudley confirmed that it's the Board, and explained the COA process. Madam Chair Underwood-Kramer asked if the owner submitted that particular mural for approval on that building and Ms. Dudley said that he did. Ms. Dudley explained that by the Guidelines & Procedures of the ADRB, the only time the Board has to give a reason for a denial is if there is an "exceptions to the guidelines", and she read a bit of that specification to the BZA Board. She said that she thinks that the Board's vote reflected that they didn't consider it an exception. The appeal is their denial; that they didn't find an exception based upon it being a work of art.

Mr. Taylor Welch, 228 N. 7th Street, spoke next. He said that he is a resident of Dayton Lane's Historic District, an artist, and an interior designer. He said that he works in the world of interior architecture and says that he fully understands the rules of the ADRB and he thinks that Madam Chair Underwood-Kramer made a very good point about the precedent that is not set in their guidelines when determining public art. He went on to say that he believes that the ADRB's decision was made based on "artistic opinion" as opposed to "historic precedent". He said that he doesn't believe that the artistic opinion of the ADRB necessarily outweighs that of the arts professionals that made up the selection committee. He went on to say that "had the argument been made that this does not follow historic colors", he might feel differently about their decision. However, the mural across the street that they did approve actually has more vibrant colors than the subject of the appeal.

Lastly, he said that we are city that claims to support the arts, new prospective, new visions, and new ideas. He feels that decisions like the one that denied the mural are going to stifle the opinions of artists in the community, and it will discourage progress. He said that he is in support of the StreetSpark mural.

With no one else in the audience wishing to speak on behalf of the appeal, Madam Chair Underwood-Kramer asked for anyone in the audience that wished to speak against the appeal.

Jim Fuhrman, 36 Orchard Drive and President of Historic Hamilton spoke. He stated that he is there to speak on behalf of their Board, and their reaction to the murals. He said that after the contest and the process was laid out, there were many comments about guidelines, whether the murals would be historical in nature, and if they would be

keeping with the historic neighborhood. The thought was to wait and see and give it the benefit of the doubt. When the designs were unveiled, he believes there was general approval of the other two, but the one that is the subject of the meeting is not appropriate and doesn't fit in with the historical nature of the neighborhood. He said that they were all happy that the ADRB had turned it down and that he came in case there was no support of the ADRB denial.

Ms. Bushman asked if the review board considered maybe putting the paints on canvas instead of putting them directly on the building. She said that she is in full support of the StreetSpark program, but she is concerned about maintaining the historical character of this unique historical building. She wonders if there can be some kind of compromise that utilizes canvass instead of painting directly on the building, from a citizen's point of view of someone interested in the restoration of some of the parts of the city. She said that was not considered in the deliberations.

Ms. Karen Whalen (ADRB Member) spoke. She said that the reason the item came before the ADRB was because it's listed on the Ohio State Inventory. She believes that the ADRB felt that it was important to keep the historical prospective of that particular building. There are not many historical buildings left on Main Street, and she thinks they felt it was important to keep the building in its original form. She said that she doesn't think that they voted on the mural itself, that they felt that a mural on this particular building was inappropriate, and the core for it was that it was a historic building and they didn't really want a mural on the side.

Madam Chair Underwood-Kramer asked Ms. Whalen if it was her opinion that the ADRB was in favor of no mural of any type on that building, and she replied that it was the concept that they were talking about. She said that the only reason it came before the ADRB Board was because of the historic nature of the building. She then said that she would like to make some additional comments ("wearing several hats as a member of ADRB" – "please note that she is one of the only ones that ever show up")

1. As a member of the ADRB, she is a supporter of StreetSpark. She thinks it's important to the community, an asset to the community, and she understands what their mission is.
2. Historic Hamilton asked, through a series of e-mails, to be a voting member of the committee. They were denied. They asked again to be a non-voting member of the committee, and they were denied that also. They felt it was important, (because there might be some historic buildings in the mix) to be involved and have some input.
3. As a long time member of Historic Hamilton, she has to ask "why historic buildings"? There are so many buildings in town that could use a camouflage. She noted in other communities that is what is done. She suggested other sites that she feels it might be more appropriate, such as the Clark's building, the old Marshall Electric, and the previous location of Tom's Cigar Store. She said that she wants to encourage the program and thinks that it's appropriate and important, just not on a historic building.

4. As someone who has been involved in Historic Hamilton and knows the controversy that the renovation of the Log Cabin House (at the Monument) caused, she cannot imagine what would happen with something more progressive in the mix.
5. Jane Jacobs (an alternate member of ADRB and property owner of approximately 5 properties in the Rossville district), was not able to be at the meeting due to a personal issue, but she had some comments that she asked Ms. Whalen to pass on, if that was allowed by the BZA members. Given their permission, she went on to read those:

To summarize, she has heard about the process that the selection committee went through for selecting the murals and location, and the ADRB has a process that they also have to go through. She approves of and is very supportive of the murals that were approved, but thinks that the one that was proposed for 244 Main is “mediocre and the community will not look on it as a positive. It is in a prominent place and should have some “bang for the buck”. She went on to state that she has gotten quite a bit of feedback from the Rossville neighborhood, and none of it was positive. “The mural doesn’t have to be historic, doesn’t have to relate to the building in any way, and doesn’t have to be loved by everyone, but it should be better than mediocre”.

Ms. Whalen then offered to answer any questions for the ADRB. Madam Chair Underwood-Kramer said that she just reviewed the minutes from the ADRB meeting because of Ms. Whalen’s comments that “it wasn’t about that particular mural”. Ms. Whalen replied that she doesn’t think that they (ADRB) liked that particular mural.

Madam Chair Underwood-Kramer then read directly from the minutes “Mr. Graham asked if there was any consideration given to a more historically appropriate mural for the age of the building”. She then went on to quote what Ms. Whalen said in that meeting “They weren’t crazy about a mural on the side of that particular building, but they would consider it if it had a different theme than pink and drink cups.” She then continued quoting from the meeting minutes what Ms. Whalen had said “she likes them all, but would prefer to see something more appropriate to the Rossville neighborhood or businesses.” She then quoted what Mr. Alf had said, that he “feels that this particular one will hurt the image of the entire project. He said that he thinks that people are going to laugh at the color of it and that while it doesn’t have to be historical; it needs to be toned down.”

She went on reading from the minutes “Ms. Jacobs said that she loves the other murals, and loves the ideal of it being unexpected, but she really doesn’t love this one. She said that it reminds her of litter. She said that in her opinion, it missed the mark.” Those are direct comments about that particular mural, not necessarily about the appropriateness of a mural on that building. Ms. Whalen reiterated why the ADRB was even involved, and Madam Chair Underwood-Kramer said that she understood. She then asked Ms. Whalen if she thought the denial was because of individual opinions, or through the process. Ms. Whalen replied that she thinks there were individual opinions

about the mural, but she believes that it's her preference and the preference of Historic Hamilton to leave the building as it is, and she speaks for the Board also. Madam Chair Underwood-Kramer said that's not what was quoted at the meeting, and Ms. Whalen said that she is trying to recollect the best she can.

Mr. Maaytah then asked Ms. Whalen if she felt that the current Guidelines & Policies of the ADRB address things like art or murals, because it doesn't appear to him that it's really addressed. She replied that the Board actually had 2 (two) meetings at the end of September and October where the guidelines were reviewed, but they weren't aware at that time that there would be murals on historic buildings, and she feels that it should be undertaken in the future in the event it occurs in the future.

Mr. Creech advised that he believed that in 2011 or 2012, there was a mural on the side of the "Pop Art Revolution" building that was approved by the ADRB, but that was done by Artworks. Mr. Creech and Ms. Whalen then had a discussion about why that building, in particular, was included as "historic", and he gave the history.

Mr. Bloch, 1740 Tatum Lane (ADRB member also) was present. He said that he was not present at the 3/15 meeting. He said that he loves what CORE is doing and he loves StreetSpark, but he doesn't (and the Board doesn't) think this particular design lends itself to the historic venue that Main Street is striving to achieve. He thinks they have done tremendous work on the High Street Project, but he doesn't think this design moves it forward. He said that he would like for the committee to go back to the drawing board. He would like to see old lettering and old advertising for some of the 19th century business that were in town restored on some of the buildings in the area.

Anne Mills, 601 N. Dick Avenue spoke next. She is a property owner in Rossville and a member of the Rossville Historic District. She is in favor of StreetSpark also, but doesn't feel that this mural on the subject building meshes. She thinks that with the buildings that are being restored on Main Street back to their "glory days", to put a contemporary design on a historic building would be confusing as to what the City is trying to do. She's excited about all of the changes, but with the particular building and the age of the building, there should be nothing on it, or wait and see what kind of mural would go on it once all of the changes are made to the building (add'l windows, doors, etc). She said that she's frustrated that the ADRB continually makes decisions and people are supposed to go with them and their guidelines, but if someone says "I want a mural on my building", it's not up to them anymore to look at the colors. "Just because it's art, we can veer outside the color choices that should be on historic buildings". In her opinion, that doesn't seem like what the board was set up to do. She said that she has been to many meetings where the Board makes decisions based on the guidelines that they have (siding on the building, I've already put the new windows in...). It keeps getting overruled and she's beginning to wonder why the Board is in place if the guidelines aren't going to be followed.

Shi O'Neill, 622 Dayton Street, spoke next. She's a member of Historic Hamilton and an alternate for the ADRB. She wasn't present for the vote on the current item, but she

has lived in a historic home on Dayton Street for 20 years. She said that when they moved there in 1996, they were told that because it's a historic building, they couldn't do anything to the outside that wasn't appropriate to the period. Her personal opinion is that nothing should be done to the building that's on a historic inventory that's not appropriate to the period, and she doesn't think that this mural or any mural would meet that guideline. She's an artist also, and said that if she was to paint a mural on the side of her home on Dayton Street, there would be outrage from the neighbors and the City. She feels that the mural should go on a different building. She doesn't want them to get rid of the artwork altogether, just put it on a building that's not on the historic inventory.

Ms. Dudley asked the Board to accept any letters that have submitted either in support or against. With a Motion by Mr. Jonson, a 2nd by Mr. Maaytah, and all "ayes", the letters were accepted.

With a Motion by Mr. Jonson made a Motion to close the Public Hearing, a 2nd by Ms. Bushman and all "ayes", the Motion passes and the Public Hearing was closed.

Mr. Jonson made a Motion to approve the Appeal. He said that while he personally doesn't like the mural and can't understand it, he knows that Mr. Dingeldein and the CORE fund put a lot of time and effort into the Main Street redevelopment and he respects the Arts people and their opinions. He said that he figures if the public doesn't accept it, it will be quickly changed. He went on to say that while it's not something that he would choose, he respects the wishes of the Committee. Mr. Maaytah made a 2nd to approve the appeal. Ms. Bushman said that she doesn't agree. She thinks that it compromises the historical character of the building, and that she thinks it's okay to have art displayed on the building, but in a different format (canvas that doesn't cover up the exterior of the building).

Madam Chair Underwood-Kramer said that she's not going to voice her opinion of the mural, because she doesn't think it makes any difference in this venue; that would be a subjective opinion. Her objective opinion is that if the ADRB disagreed with murals on this building because of its historical significance or because it's on the Ohio Historic Inventory, they should have clearly stipulated that in their guidelines. When the Board began discussing the types of murals that the owner of this property and the artist's selection group decided to put on the building with the owner's permission, she thinks that they became an "Art Review Board", which she does not agree with. At that point in time, the conversation changed. An artist once told her "it's not art if it matches the sofa". She doesn't know if it matches the building or not. If they are allowed to have a mural on the building, it should be the decision of the owner and the artist group to decide what they want to put on the building. She said that it's too subjective for her to get into the color or design.

Ms. Bushman stated her opinion on the issue, and stated that even though they gave their opinion, but she didn't believe that they gave a reason why they denied it. She and Madam Chair Underwood-Kramer then had a brief discussion about the issue and what

the minutes said. Ms. Dudley clarified the vote of the ADRB to deny the mural, and the fact that there was no reason given for the denial.

Mr. Maaytah said that he agrees with Madam Chair Underwood-Kramer that the ADRB Policies and Guidelines don't specifically discuss murals, and it appeared from the minutes that the Board was okay with the mural on the building, they just didn't want this one. He believes that it was an arbitrary decision, and doesn't believe that the Board is set up that way.

Madam Chair Underwood-Kramer said that they have to put their personal opinions aside and be as fair as possible. With no further discussion, a roll call vote was taken on the Motion to Approve the Appeal. With a vote of 3-1 (Bushman voted "no"), the Motion passed, and the appeal was granted.

Mr. Creech advised the applicant that he would be sending out official notice of the Board's decision within 5 days.

Minutes:

Approval of Meeting Minutes-Written Summary and Audio Recording for December 3, 2015. Mr. Jonson made a Motion to Accept the Minutes. With a 2nd by Mr. Maaytah and roll call response of all "Ayes" (4-0), the Motion passes.

Adjourned:

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

Respectfully submitted,

Ms. Kim Kirsch
Administrative Assistant

Mr. John Creech
Secretary

Madam Chair Karen Underwood-Kramer

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, June 2, 2016
1:30 p.m.**

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

Members Present:

Ms. Nancy Bushman, Mr. Desmond Maaytah, and Madam Chair Karen Underwood-Kramer.

Members Absent:

Mr. George Jonson and Mr. Michael Samoviski

City Staff Present:

Mr. John Creech, Mrs. Heather Hodges, Ms. Meredith Murphy, Ms. Kim Kirsch, and Ms. Kathy Dudley.

Madam Chair Underwood-Kramer explained that since there are only three members of a five member Board present, the vote of the members has to be unanimous for a request to pass. The Applicant can ask that the item be tabled until the next meeting, or it can be heard today. The Applicants that were present still wanted to proceed. Madam Chair Underwood-Kramer then gave an overview of the procedural process of the meeting.

Swearing in of Those Providing Testimony to the BZA:

Ms. Dudley swore in members in the audience who were going to testify, and verified that they have all signed in.

Old Business:

None

New Business:

Agenda Item #1 – 2016-11: Variance Request for 309 North Second Street

STAFF: Meredith Murphy

A Request by Mr. Mike Dingeldein of Community Design Alliance on behalf of the owners Mr. and Ms. Mackenzie-Thurley for a side yard and a rear yard setback variance in order to construct an accessory structure (garage), on property zoned BPD Business Planned Development District, located at 309 North Second Street. (Mr. Dingeldein of Community Design Alliance/Mr. and Ms. Mackenzie-Thurley, Applicant/Owner).

Ms. Murphy gave the specifics of the current agenda item and showed the aerial view of the property in question (outlined in red), and the Zoning map of the adjacent properties.

She states that the proposed property is in a historic district, and it has received approval for the design and character from the ADRB.

Introduction

An application has been submitted regarding two (2) Zoning Variances to construct an accessory structure (garage), located at 309 North Second Street. This property is approximately 5,600 square feet in size and is located in a BPD Business Planned Development District (Zoning map shown to the Board) and is regulated by Section 1115.00 and Section 1122.00 of the Hamilton Zoning Ordinance (HZO).

Mr. Dingeldein is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building (garage) on the property to be located to the south west (rear) of the existing house. The proposed garage will be a total of twenty four (24) feet eight (8) inches by twenty four (24) feet two (2) inches totaling five hundred and ninety six (596) square feet. The following are the two (2) sections to which the applicants are requesting relief; Section 1115.43.1 regulates side yard and rear yard setbacks for Accessory structures on residential properties.

Section 1115.43.1 states that "Minimum setbacks for accessory buildings in all zoning districts shall be 5-ft. from rear and side property lines. Detached garages larger than 200-sq.ft. will be setback a minimum of 10-ft from the edge of any alley in order to allow vehicles the space to enter and exit the building without encroaching onto someone else's property." Mr. Dingeldein is proposing to build an accessory building on this property with a two foot three inches (2' 3") side yard setback where a five feet (5') side yard setback is required and a three foot (3') rear yard setback where a ten foot (10') rear yard setback is required. The applicant provided plans and supporting material for the requested variances, which is attached as Exhibit C for the Board's review – Variance Application & Supporting Material as well as excerpts listed below.

Ms. Murphy then went over the four exceptional facts/conditions that exist: (1) Exceptional Circumstances (2) Preservation of Property Rights (3) Absence of Detriment and (4) Not of a General Nature. She showed the applicant's rationale for the requested variances, and information/commentary for the BZA to consider.

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 below exist beyond a reasonable doubt. The applicant included the following written rationale (*in bold italics*) for the two (2) requested zoning variances. Information/commentary 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 applicant stated that ***“The request to place the newly built garage along the property line in the back alley is an exceptional circumstance due to the fact it is replacing an existing garage in that location. There has been a garage in that location along the property line for years prior and did not impede upon traffic through the alley.”*** After reviewing the application, there appears to be Exceptional Circumstances (Section 1170.63.1) associated with this request. The lot is approximately 5,600 square feet and the proposed accessory structure would be five hundred and ninety six (596) square feet. Aside from the two requested variances, the applicant meets all other zoning regulations. The request also previously received Architectural Design Review Board approval for the design of the structure.

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 applicant stated that ***“This is replacing an existing building that did not previously encroach upon neighbors or their property rights. Neighbors will still have access to the right of way in the alley. The new garage is an improvement, not only functionally but also visually to the alley.”*** After reviewing the application it appears that the request is a Preservation of Property rights (Section 1170.63.2). As the application states, the requested structure is replacing an previous garage at this location and is an investment in the Restoration of the property.

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 applicant stated that ***“This is replacing an existing garage. The existing location does not affect traffic flow through the alley or limit/impede neighbors from using the public right of way. A new garage is an improvement from the existing structure. The colors will coordinate with the house, as opposed to the old white siding garage. A newly built structure will improve the area.”*** After reviewing the application, it appears that the request has an Absence of Detriment (Section 1170.63.3). As the application stated, the proposed structure would not create any new conditions that were not previously in place with the old garage. This is the last house served by the dead end alley.

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 applicant stated that “***This property is one that is exceptional in that it had an existing detached structure. Replacing of an existing structure will not set a precedent for construction of new garages on the property line. It is merely improving upon what is existing.***” After reviewing the application, it appears that the request is Not of a General Nature (Section 1170.63.4). As previously stated, the requested variance would be replacing an previous garage located on the property and would match the existing character of the surrounding properties.

Ms. Murphy also showed the site plans, including the garage and the elevations.

Notification

Ms. Murphy stated that Public Hearing Notices were mailed to the owners of six (6) properties within 100 feet of the property in question. At the time of the BZA Meeting, there were no objections expressed to the proposed zoning variances.

Ms. Murphy then went over the recommendations by the Department of Community Development.

Recommendation

Based on a review of the information submitted, there is reason to consider approving the two (2) requested variances with the following conditions:

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

- 1) The construction drawings for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Interdepartmental Review (IDR) Committee.
- 2) All improvements and work indicated on construction plans approved by the IDR be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Variance.

Findings for Granting of Variance:

1. Exceptional Circumstances: There are exceptional or extraordinary circumstances or conditions applying to the subject property that do not apply generally to other properties in the same Zoning District.
2. Preservation of Property Rights: Such a 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.

3. Absence of Detriment: By authorizing this variance there will not be substantial detriment to adjacent property, and the variance will not materially impair the purposes of this Ordinance of the public interest.
4. Not of General Nature: By the granting of this variance there is no condition or situation of the specific piece of property for which the variance is sought that is so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

Ms. Bushman had several questions, including whether or not the alley was supposed to be a dead-end, and how cars were supposed to turn around, and Ms. Murphy answered those. Ms. Bushman also asked the size of the previous garage, and Ms. Murphy indicated that she believed that question would be best answered by the Applicant.

With no further questions by the Board, the Public Hearing was opened for comments.

First to speak was Mr. Steven Gebhart of CDA. He said that he was at the meeting in place of Mr. Dingeldein. He reiterated some of the information that Ms. Murphy had already given with regard to the previous garage, the specifics of the proposed extensions to the garage, the reason that they feel that it is an “exceptional circumstance”, that they don’t believe that it infringes on the neighbor’s rights, and he expounded on those a each item.

With no one else wishing to speak on the item, Mr. Maaytah made a Motion to close the Public Hearing. With a 2nd by Ms. Bushman and all “ayes” to a roll call vote, the Public Hearing was closed.

Ms. Bushman made a Motion to approve the request with Conditions as recommended. With a 2nd by Mr. Maaytah and all “ayes” to a roll call vote, the Motion is passed by a vote of 3-0.

Mr. Creech verified that the request was approved with conditions given, that the decisions of the Board become effective 5 days after the meeting, and that he would be sending the Applicant and agent a letter indicating the Board’s approval.

Agenda Item #2 – 2016-10: Variance Request for 1001 New London Road
STAFF: Meredith Murphy

A Request by Mr. Jesse McKeehen on behalf of the owner Mr. Stephen Jones for four (4) zoning variances in order to construct an accessory structure on the subject property, zoned R-1 Single Family Residence District, located at 1001 New London Road. (Mr. Jesse McKeehen/Mr. Stephen Jones, Applicant/Owner).

Ms. Murphy gave the specifics of the current agenda item, and gave a brief summary of the four variances sought, including the requirements for each. She then showed the

aerial view of the property in question (outlined in red), and the Zoning map of the adjacent properties (currently zoned R-1).

Introduction

An application has been submitted regarding four (4) Zoning Variances to construct a new accessory building at 1001 New London Road. This property is approximately one acre in size, is located in an R-1 Single Family Residence District (see attached Zoning map – Exhibit B) and is regulated by Section 1115.00 and Section 1110.00 of the Hamilton Zoning Ordinance (HZO). Mr. McKeehen is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building.

The following are the four (4) sections to which the applicants are requesting relief:

Section 1110.26 regulates the exterior finish of an accessory structure, Section 1110.31 regulates the roofing material of an accessory structure and Section 1115.43.1 regulates the maximum number of accessory structures and the maximum first floor area.

Mr. Jones is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building to be located to the south west of his existing house. The proposed accessory building will be a total of twenty eight (28) feet by thirty two (32) feet with a six (6) feet by sixteen (16) porch totaling nine hundred and ninety two (992) square feet.

Section 1110.26 states that “Accessory buildings over 200-sq. ft. in area must have the same exterior finish material on a minimum of fifty (50) % of all sides as the primary exterior material and approximate color as the front of the existing primary building.” Mr. Jones is proposing steel siding on the proposed structure. Mr. Jones home is brick and vinyl, therefore a zoning variance is needed.

Section 1110.31 states that “Roof pitch and compatible style shall be consistent on all roof surfaces of the primary building and on any accessory building over 200-sq. ft. in area.” Mr. Jones is proposing a steel roof on the proposed structure. Mr. Jones’ home has a shingled roof; therefore a zoning variance is needed.

Section 1115.43.1 states that “Only one accessory building is permitted for each dwelling unit on the same lot. Accessory buildings shall have a maximum first floor area of eight hundred (800) square feet.” Mr. Jones is proposing to build a second accessory building on his property, where only one is permitted, with a nine hundred and ninety two (992 sq. ft) floor area, which is one hundred and ninety two (192) feet over the eight hundred (800) square foot maximum size.

Mr. Jones provided the following description of his request:

“This letter is in reference of the property at 1001 New London road for a variance request, explanation of hardship, and interpretation of conformity to

the surrounding community of a proposed detached garage. My property currently has two older sheds that sit at the west side of the property. One shed being a 10'x12', and the other is a 12'x16' shed. The smaller shed is fairly old and deteriorating, so my plans are to remove the smaller shed. My request is to keep the larger 192 sq.ft. shed for my lawn equipment, and propose to build a new 28'x32' garage with a small 6'x16' porch area (992 sq.ft.) for my boat and trailer to be brought out of public view helping maintain the beauty of the property and neighboring homes. In this request, it would require a variance of multiple aspects to build the garage due to the square footage regulations, number of maximum accessory structures requirement, and exterior requirements.”

The full letter is included for the Board’s review as Exhibit C – Variance Application & Supporting Material as well as excerpts listed below.

Ms. Murphy then stated that 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 below exist beyond a reasonable doubt, and she went over those.

Zoning Variance Review

The applicant included the following written rationale (*in bold italics*) for the four (4) requested zoning variances. Information/commentary 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 applicant stated that ***“My home’s exterior is that of brick and vinyl. My proposal would be for to have a garage built with steel sides and roofing. With the high cost of such materials, the garage would then be unaffordable to build with brick and vinyl. The steel used in today’s industry is longer lasting than that of vinyl or shingles, and would provide a long lasting exterior paneling that would have great longevity and remain its original look longer as well as impacting the property and community in a positive way. The steel color combination would be that to match the home (white and red), and the style and design would be contiguous with the surrounding areas detached buildings.”***

After reviewing the application, there appears to be Exceptional Circumstances (Section 1170.63.1) associated with this request. The lot is approximately one (1) acre in size, larger than a typical R-1 zoned property, and the proposed accessory structure would be seventy six (76) feet off the northern property line along Ross- Hanover Road and ninety two feet off the

south eastern property line along New London Road. It is also setback six (6) feet from the neighboring property line, where five (5) feet is required.

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 applicant stated that “***With having over an acre of property in the sub-urban to rural area, the existing and proposed buildings would be conforming to all other zoning code for accessory structures: as well as remain appropriately sized for the property that it sits on.***”

After reviewing the application, it appears that the request is a Preservation of Property rights (Section 1170.63.2). As the applicant states, his property is an acre, which is larger than a typical R-1 zoned lot in the City and he is not able to construct this accessory structure without the four (4) requested variances.

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 applicant stated that “***My request is to keep the larger 192 sq.ft. shed for my lawn equipment, and propose to build a new 28'x32' garage with a small 6'x16' porch area (992 sq.ft.) for my boat and trailer to be brought out of public view helping maintain the beauty of the property and neighboring homes.***”

After reviewing the application, it appears that the request has an Absence of Detriment (Section 1170.63.3). As the applicant stated, the proposed accessory structure would enable him to store excess equipment in order to remove them from the view of neighbors and the two public roads that run along side of the property.

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 applicant stated that “***My request as stated above would be to keep the small 192 square foot shed for gardening tools and lawn equipment, and also be able to have the newly proposed 992 square foot garage for my vehicles, boats, and trailers. With having over an acre of property in the sub-urban to rural area, the existing and proposed buildings would***

be conforming to all other zoning code for accessory structures: as well as remain appropriately sized for the property that it sits on.”

After reviewing the application, it appears that the request is Not of a General Nature (Section 1170.63.4). As previously stated, the property is 1 acre (43,560 feet) and is not typical of the R-1 single family lots in the City of Hamilton, which are typically 10,00 – 12,000 square feet.

Ms. Murphy then showed a floor plan and a lot plan that was submitted by the Applicant, (including site elevation), and an example of different buildings that are being proposed.

Notification

Ms. Murphy stated that Public Hearing Notices were mailed to the owners of eleven (11) 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.

Ms. Murphy concluded her presentation, and asked for any questions by the Board. There being none, Madam Chair Underwood-Kramer called for any audience members wishing to speak on behalf of the appeal.

Mr. John Palmer, 1363 Ross-Hanover Road, spoke first. He gave the location of the proposed structure with relation to his house and the neighbor's house, and said that he is in support of what the Applicant is proposing.

Mr. Jesse McKeehan, 10271 Morrow-Cozedale Road, spoke second. He said that the Staff report was pretty thorough. He would like to reiterate that his client's house is predominately brick and vinyl. The vinyl doesn't have great durability, and the steel will be more cost effective and last longer. He said that it is also contiguous with the surrounding area and neighborhood, and gave other reasons why he believes that it's a good idea.

Ms. Judy Jones, 1001 New London Road (property owner), spoke last. She brought pictures of where their boats and trailers are sitting out in the yard now, and said that she doesn't like how they look sitting out in the yard.

She talked about what they use the two small sheds for that she has, along with what she wants to do with the proposed new structure. She said that they picked out colorings to match their house.

Madam Chair Underwood-Kramer asked Ms. Jones why they didn't just build a larger building to keep everything in, and Ms. Jones gave her reasons for that choice (smaller ones for lawn mowers/lawn equipment and the big one for the boat and boat accessories).

With no one else wishing to speak, Ms. Bushman made a Motion to close the Public Hearing. With a 2nd by Mr. Maaytah and all “ayes” to a roll call vote, the Public Hearing was closed.

Mr. Maaytah made a Motion to approve the request with conditions as recommended (in the Staff report) and gave his reasons for said approval. With a 2nd by Ms. Bushman and all “ayes”, the Motion passes and the request is approved (3-0).

Mr. Creech verified that the request was approved, 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.

Minutes

Approval of Meeting Minutes - Written Summary and Audio Recording for the following dates:

February 4, 2016; March 3, 2016; and May 5, 2016.

Ms. Bushman made a Motion to accept all sets of minutes as presented. With a 2nd by Mr. Maaytah and all “ayes”, the Motion passes and the minutes are approved.

Adjourned

With nothing further, Mr. Maaytah made a Motion to adjourn. With “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