

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

2016-14: Variance Request for 140 Wasserman Road

A Request by Ms. Patricia Bishop for a side yard setback variance for the expansion of a driveway into the five (5) feet minimum setback, on property zoned R-1 Single-Family District, located at 140 Wasserman Road. (Ms. Patricia Bishop, Applicant/Owner).

Staff: John Creech

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Minutes

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

September 1, 2016

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Miscellaneous:

Adjournment:





For the Board of Zoning Appeals Meeting of October 6, 2016

To: Board of Zoning Appeals

From: John Creech

Subject: **AGENDA ITEM #1**

2016-14: Variance Request for 140 Wasserman Road

A Request by Ms. Patricia Bishop for a side yard setback variance for the expansion of a driveway into the five (5) feet minimum setback, on property zoned R-1 Single-Family District, located at 140 Wasserman Road. (Ms. Patricia Bishop, Applicant/Owner).

Date: September 27, 2016

Dear BZA Members:

Introduction:

An application has been submitted by Ms. Patricia Bishop of 140 Wasserman Road for a Zoning Variance to allow a driveway that was constructed too close to the side property line in a residential zoning district. The minimum setback for a new driveway is five (5) feet from the side property line. The driveway is located at 140 Wasserman Road and is approximately 25,000 square feet in size and is located in an R-1 Single-Family District (see attached Zoning map – Exhibit B. Section 1115.00 of the Hamilton Zoning Ordinance (HZO) requires new driveways to be setback a minimum of five (5') feet from the side property line. Ms. Bishop is seeking a variance to the requirements of the zoning ordinance in order to allow a recently constructed driveway expansion to remain on the property within the five (5) foot minimum side yard setback.

There is a dispute between the applicant and the abutting neighbor at 130 Wasserman Road that the expanded driveway encroaches over the property line and onto the adjacent property. The BZA can approve, deny or modify the variance request for the driveway setback but cannot approve a driveway encroachment onto adjacent property.

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 requested zoning variance. Information/commentary provided by Community Development Department 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

- A) ***“With the location of the driveway on the lot it did not allow for 5 feet of distance to the side property line.***
- B) ***Widening of driveway on the (north) side would interfere with light pole and run up to the front of the house reducing curb appeal.***
- C) ***Existing driveway did not allow ample parking for my vehicles, family members and guest. Off street parking is all that is available, there is no street parking available for this property.”***

The existing driveway (prior to expansion) was approximately 9’ 8” in width and appears to have been setback approximately nine (9’) feet of the property line, based on the location of the storm water catch basin. Therefore, a moderate expansion of the existing driveway of four (4’) would have been permitted. The driveway was expanded approximately 10 feet in width to a total of 19 feet 8 inches.

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:

- A) ***“Wasserman Rd is of a rural setting yet maintained as an urban subdivision, with off street parking only.***
- B) ***When family members and guest come to visit, they had to park in the driveway and front lawn therefore killing the grass and leaving ruts in the lawn.***
- C) ***This addition makes a nice and much needed, useful addition to the property that added to the curb appeal.***
- D) ***I ask for this zoning variance to allow for the widening of my driveway as I believe it has improved the usefulness of our property and improve our daily lives. It has added access for emergency vehicles and others. I am handicapped, my daughter and grandson live with me. Our parking situation was a daily burden, we were constantly shuffling vehicles when someone comes or goes. We had to back our cars out onto the street so someone can pull in or out, thus blocking the street traffic as we shuffled vehicles around.”***

Wasserman Road is a two-lane street with no on-street parking. Prior to the driveway expansion, vehicles parked in the driveway facing east at 140 Wasserman Road must back out onto the street in order to exit. The width



of the original driveway was 9 feet 8 inches which is too narrow for two vehicles to pass side by side.

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:

- A) ***“The driveway widening has added to the landscape of my property. It does not restrict the view from adjacent neighbor.***
B) ***The driveway does not restrict access to neighbor’s property or reduce the looks of their yard.”***

A number of single-family dwellings along this portion of Wasserman Road appear to have similar driveways; some appear to be located within five feet of the property line. The adjacent property to the south (130 Wasserman Road) appears to have two (2) driveways to accommodate vehicles – one existing and one under construction. Newer homes to the north along Wasserman Road have slightly wider driveways to accommodate vehicles.

The minimum setback requirement of five (5’) feet for new driveways was adopted in 2006. Prior to 2006 driveways were permitted to be installed up to the side property line.

The applicant has been in contact with the City of Hamilton Public Works Department to address the storm water catch basin that was adjusted when the driveway expansion occurred. The change in the height of the catch basin impacted storm water drainage along the front of 140 and 130 Wasserman Road.

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:

- A) ***“Having lived in the country for the most part of my life, I did not know that I had to get a permit or zoning variance. I did not act in neglect or willfully disobey laws or regulations. I would have followed proper steps had I have known. I now wish to make right on what has been done.***
B) ***The location of the house on the property does not allow for extending or widening of the driveway anywhere else.***



- C) No street parking limits my parking space. Parking in the yard creates ruts and kills the grass and takes away from the beauty of the lawn. I work hard to maintain my lawn.***
- D) Backing out onto the street to shuffle cars around creates a safety hazard and nuisance to the general public.”***

After reviewing the application and aerial photos it appears that the request is Not of a General Nature (Section 1170.63.4). The location of the existing house (constructed in 1948) and the existing driveway (prior to expansion) appear to have been constructed on the southern half of the property rather than in the middle of the property. The existing driveway (prior to expansion) also provided vehicular access to detached garage located in the rear yard. The home does not have an attached garage.

Recommendation:

Based on a review of the information submitted, there is reason to consider approving the 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) 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.

- 2) The BZA can only approve a variance on the applicant's property. Any dispute as to whether the driveway encroaches onto adjacent property is between the adjoining property owners.



- 3) All improvements and work by approved by City of Hamilton Public Works Department and 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 ten (10) properties within 100 feet of the property in question. At the time this report was written, there were no objections expressed to the Community Development Department regarding the proposed zoning variance.

Attachments:

- 1) Exhibit A - Public Hearing Location Map
- 2) Exhibit B – Zoning Map
- 3) Exhibit C – Variance Application
- 4) Exhibit D – Before & After Driveway Photos



140 WASSERMAN ROAD
PUBLIC HEARING MAP



WASSERMAN RD

MOLLIE DR

WELLINGTON CT

 140 Wasserman

0 35 70 140 Feet



140 WASSERMAN ROAD
PUBLIC HEARING MAP



 140 Wasserman

0 35 70 140 Feet



VARIANCES

Appellant's Rationale for requesting a Variance:

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

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

(SEE ATTACHMENT)

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.

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.



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

**Patricia L Bishop
140 Wasserman Rd
Hamilton, Ohio 45013
Lot Number 24267
Parcel P641216600003**

1. Exceptional Circumstances:

- a) With the location of the driveway on the lot it did not allow for 5 feet of distance to the side property line.
- b) Widening of driveway on the (north) side would interfere with light pole and run up to the front of the house reducing curb appeal.
- c) Existing driveway did not allow ample parking for my vehicles, family members and guest. Off street parking is all that is available, there is no street parking available for this property.

2. Preservation of Property Rights:

- a) Wasserman Rd is of a rural setting yet maintained as an urban subdivision, with off street parking only.
- b) When family members and guest come to visit, they had to park in the driveway and front lawn therefore killing the grass and leaving ruts in the lawn.
- c) This addition makes a nice and much needed, useful addition to the property that added to the curb appeal.
- d) I ask for this zoning variance to allow for the widening of my driveway as I believe it has improved the usefulness of our property and improve our daily lives. It has added access for emergency vehicles and others. I am handicapped, my daughter and grandson live with me. Our parking situation was a daily burden, we were constantly shuffling vehicles when someone comes or goes. We had to back our cars out onto the street so someone can pull in or out, thus blocking the street traffic as we shuffled vehicles around.

3. Absence of Detriment:

- a) The driveway widening has added to the landscape of my property. It does not restrict the view from adjacent neighbor.
- b) The driveway does not restrict access to neighbors property or reduce the looks of their yard.

**Patricia L Bishop
140 Wasserman Rd
Hamilton, Ohio 45013
Lot Number 24267
Parcel P6412166000003**

4. Not of a General Nature:

a) Having lived in the country for the most part of my life, I did not know that I had to get a permit or zoning variance. I did not act in neglect or willfully disobey laws or regulations. I would have followed proper steps had I have known. I now wish to make right on what has been done.

b) The location of the house on the property does not allow for extending or widening of the driveway anywhere else.

c) No street parking limits my parking space. Parking in the yard creates ruts and kills the grass and takes away from the beauty of the lawn. I work hard to maintain my lawn.

d) Backing out onto the street to shuffle cars around creates a safety hazard and nuisance to the general public.

2013 Google Street View



2016 Photo of the Driveway



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

Madam Chair Underwood-Kramer was not present. The Board of Zoning Appeals meeting was called to order by Acting Chairman Jonson.

Members Present:

Ms. Nancy Bushman, Mr. Desmond Maaytah, and Mr. George Jonson.

Members Absent:

Ms. Karen Underwood-Kramer and Mr. Michael Samoviski

City Staff Present:

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

Acting Chairman Jonson 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 Applicant that was present still wanted to proceed. Acting Chairman Jonson 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 1150 Hooven Avenue

Staff: Ms. Meredith Murphy

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).

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

She then reviews the Introduction, Background, Property Details, and Use Specific Standards and Variances of the item as presented to the Board in their packets.

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 in Board packet). The property is zoned I-1 Light Industrial zoning district (Exhibit B in Board packet). 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.

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.

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.

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 part) 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.

Ms. Murphy then went over the Zoning Variance Review, including staff information and applicant rationale (as provided in the Board packet). She stated that Public Hearing Notices were mailed to three (3) property owners within 100' of the property in question, and there was no feedback received to these notifications.

Recommendation:

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% 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 protect the public interest.
4. While the subject property is too small for the proposed Automobile Service and Repair use, the denial does not totally deprive the property owner of a reasonable economic use of the property because there are other permitted land uses in the 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.

Ms. Murphy concluded her presentation and asked if there were any questions by the Board. Mr. Maaytah asked if there was a site plan submitted, and Ms. Murphy responded that there was not.

Acting Chairman Jonson asked if there was anyone in the audience who wished to speak.

Ms. Brittanna Bonilla, Office manager for the business operating at 1150 Hooven, was on hand to answer questions. After a brief discussion between the Board and Ms. Bonilla, Mr. Creech gave a bit more information to the Board about the other car lot that the applicant has.

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.

Mr. Maaytah expressed concerns that he says are the same as they were in November, and made a Motion to Deny the request, and Ms. Bushman gave a 2nd. Acting Chairman Jonson stated that all items are approximately 50% of what they should be.

With all "ayes" to a roll call vote, the Motion is passed by a vote of 3-0 and the request is denied.

Minutes:

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

April 7, 2016 and June 2, 2016.

Mr. Maaytah made a Motion to accept both sets of minutes as presented. With a 2nd by Ms. Bushman 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

Mr. George Jonson
Acting Chairman

DRAFT