



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

2016-15: Variance Request for 3461 Tylersville Road

A Request by ABC Signs for two variance requests to allow an off premise sign and to reduce the minimum setback for a freestanding sign from five (5') feet to zero (0') feet, on property zoned I-1 Light Industrial District, located at 3461 Tylersville Road. (ABC Signs/BDM Storage, Applicant/Owner). **Staff: Meredith Snyder**

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Agenda Item #2

Board of Zoning Appeals Rules of Procedure

Staff: John Creech

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Minutes

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

October 10, 2016

Bushman	Jonson	Maaytah	Underwood-Kramer	Samoviski

Miscellaneous:

Adjournment:





For the Board of Zoning Appeals Meeting of November 3, 2016

To: Board of Zoning Appeals

From: Meredith Snyder

Subject: **AGENDA ITEM #1**

2016-15: Variance Request for 3461 Tylersville Road

A Request by ABC Signs for two variance requests to allow an off premise sign and to reduce the minimum setback for a freestanding sign from five (5') feet to zero (0') feet, on property zoned I-1 Light Industrial District, located at 3461 Tylersville Road. (ABC Signs/BDM Storage, Applicant/Owner).

Date: October 27, 2016

Dear BZA Members:

Introduction:

An application has been submitted by ABC Signs and BDM Storage for a Zoning Variance to allow an off premise sign and to reduce the minimum setback for a freestanding sign from five (5') feet to zero (0') feet, on property zoned I-1 Light Industrial District, located at 3461 Tylersville Road. Section 1138.00 of the Hamilton Zoning Ordinance (HZO) requires a minimum setback for a freestanding sign setback a minimum of five (5') feet from the side property line. The applicants are seeking a variance to the requirements of the zoning ordinance in order to allow a sign near the entrance to the business on neighboring property. The BZA can approve, deny or modify the variance requests for the freestanding sign request.

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

"Due to the odd shape of this property and the frontage to Tylersville Road Public Storage does not have any area to place the monument sign."



The existing driveway for the property comes in off of Tylersville road but the parcel that Public Storage is located on only has road frontage on State route four (4) bypass. The variances are necessary in order for Public storage to have a sign located at their entrance.

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:

“If not for the odd placement of the parcel they would be allowed the monument sign. Being the offsite advertisement is necessary to promote the business. We have obtained the adjoining property owners approval.”

The Public Storage parcel was previously a part of the adjoining parcel, but was re-plated with an easement for drive access from Tylersville road. The variances are necessary in order for Public storage to have a sign located at their entrance.

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:

“Being that the monument is on the adjacent property, with the permission of that property owner, it will not be a detriment to that property owner.”

Other than the property where the off premise signage is to be located, all other adjoining land is undeveloped with the same I-1 Light Industrial District zoning.

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:

“Unfortunately the parcel for 3461 Tylersville does not sit along Tylersville Road. However the access for the facility only comes through a parking lot of the adjoining property on Tylersville Road. There is no other point of access to the parcel.



The applicant is correct in pointing out the access from the road that is not the properties frontage. This is mentioned previously and creates a situation that is not of a general nature.

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) 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

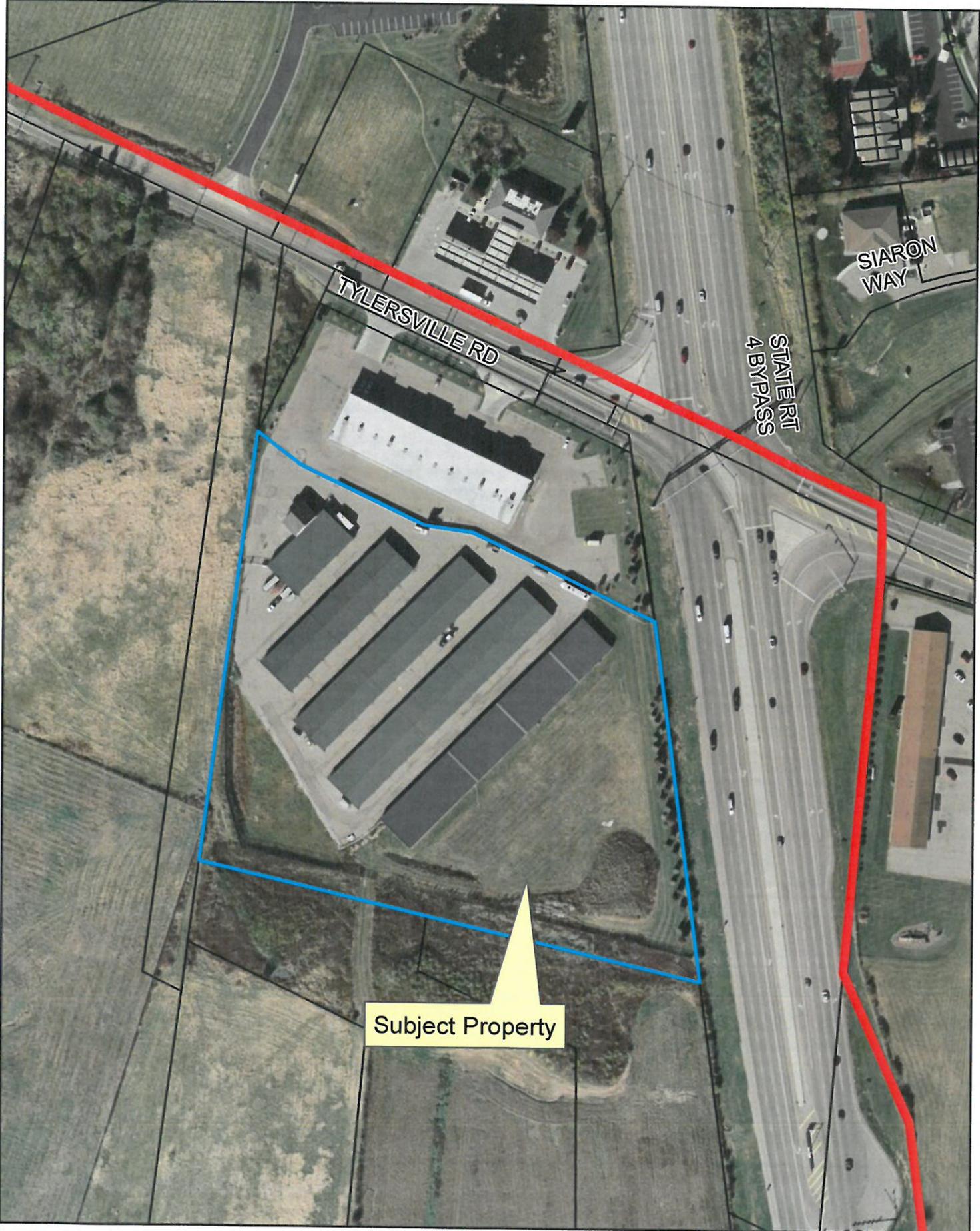
Public Hearing Notices were mailed to the owners of four (4) properties within 100 feet of the property in question. At the time this report was written, there were no objections expressed to the Community Development Department regarding the proposed zoning variances.

Attachments:

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



3461 Tylersville Road
PUBLIC HEARING MAP

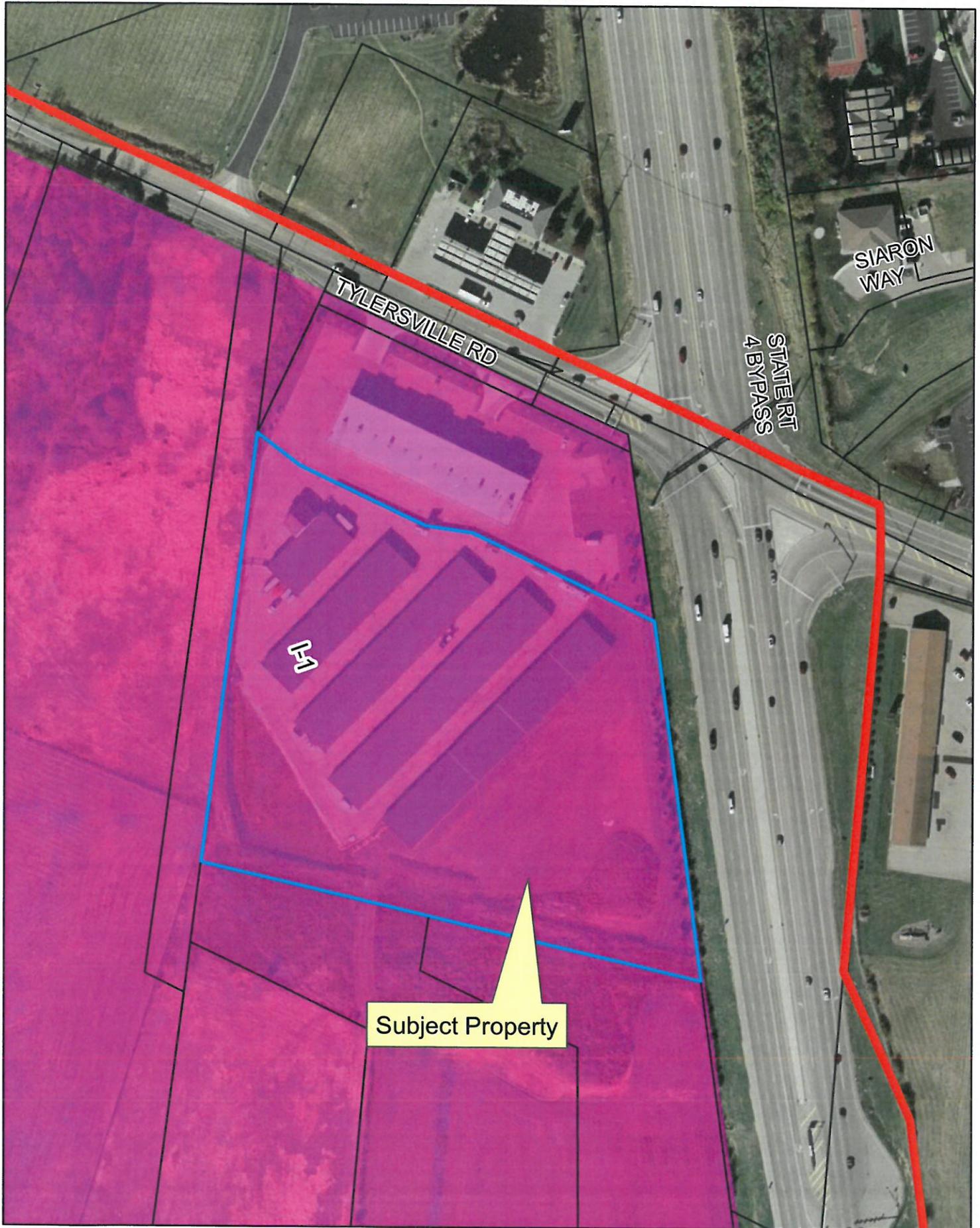


 3461 Tylersville Road

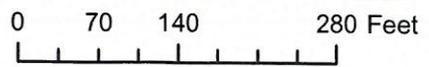
0 70 140 280 Feet



3461 Tylersville Road
PUBLIC HEARING MAP



 3461 Tylersville Road





A163455
A163456

BOARD OF ZONING APPEALS APPLICATION

Property Address: 3461 Tylersville Rd

Lot No(s): _____

Property Owner: BDM Storage LLC

Owner's Mailing Address: 8110 Plainfield Rd Cincinnati, Oh 45236

Appellant's Name (If different than owner): ABC Signs - Nicole Duckworth

Appellant's Mailing Address: 38 W. McMicken Ave, Cincinnati, Oh

Appellant's Email Address: nikki@abcsign.com

Previous Legal Use of Property: _____

Date Previous Use Discontinued: _____

Proposed New Use of Property: _____

Purpose of Application (Check all that apply):

Requesting a variance for signs. Please describe the request below.
due to off-site signage advertisement

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**)

Other – Skip to "Other" Section of Application Form

City of Hamilton
Date: 9/30/2016
Office: CNST
Act: 271612
Fasbier: Consus
Home: 9/30/2016 1:43 PM
Rec'd of 002582
Payment Total: \$200.00
Check / entered : \$275.00

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.**

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.

Due to the odd shape of this property and the frontage to Tylersville Rd Public Storage does not have any area to place the monument sign.

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.

If not for the odd placement of the parcel they would be allowed the monument sign. Being the off site advertisement is necessary to promote the business we have obtained the adjoining property owners approval.

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.

Being that the monument is on the adjacent property, with the permission of that property owner, it will not be a detriment to that property.

Not of General Nature: No grant of variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

Unfortunately the parcel for 3461 Tylersville does not sit along Tylersville Rd. However the access for the facility only comes through a parking lot of the adjoining property on Tylersville Rd. There is not other point of access to the parcel.

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

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

CERTIFICATION:

I certify that all of the information contained in this Application is complete, true and accurate.

Nicole AD
Appellant's Signature

Date

Nicole Duckworth
Appellant's Printed Name

See attached drawings
Property Owner's Signature

Date

Property Owner's Printed Name



For the Board of Zoning Appeals Meeting of November 3, 2016

To: Board of Zoning Appeals

From: John Creech

Subject: **AGENDA ITEM #2**

Board of Zoning Appeals Rules of Procedure

Date: October 28, 2016

Dear BZA Members:

Introduction:

Section 1160.30 of the Hamilton Zoning Ordinance outlines the process for the filing of an Appeal by any person impacted or “aggrieved” by a decision of either the Building and Zoning Administrator or decisions of the Architectural Design Review Board (ADRB). Examples of such appeals include enforcement of zoning setback rules for buildings and driveways – these zoning setback rules are enforced by the Community Development Department for new construction, building additions and driveways. In addition, the zoning code specifies that appeals of ADRB decisions in connection with the issuance or refusal to issue a Certificate of Appropriateness (COA) can also be appealed to the BZA. The Section (1160.30) further states that “Such appeal shall be taken within such time as shall be prescribed by the Board by general rule”. The general rule reference is the timeline or deadline to file an appeal of the decision of the Zoning Administrator or ADRB.

A separate document, called the “BZA Rules of Procedure” (attached) specifies the rules and guidelines for the filing of appeals (see highlighted section). In terms of time limits or deadline to file an appeal, there is only a single reference in the Rules of Procedure found in Article VI, Appeals Procedure, Section 1, BZA Rules of Procedure::

(2) There shall be no time limit to file an appeal following a decision of the Building Commissioner. (1160.30)

This essentially means that if a zoning permit is submitted to the city and denied by the Zoning Administrator there is no time limit or deadline that the applicant would have to make an appeal. Because the ADRB COA denial appeal issue is not addressed, it is also unclear what time line or deadline is appropriate for an appeal in certain cases.

The lack of a deadline to appeal in certain cases creates an issue when work is performed without a COA and subsequently denied by the ADRB. An example is a homeowner painting their house without ADRB approval then seeking approval and



being denied – the general rule (as stated in (2) above) does not provide a deadline for the filling of an application for appeal.

Certificate of Appropriateness (COA) Procedure

The Hamilton Zoning Ordinance, Section 1126.00 Architectural Conservation/Historic Districts, specifies the process and procedure for the ADRB to review COA applications from property owners for exterior improvements to buildings and properties within designated historic districts. The issuance of a COA by the ADRB is required before changes can be made to historic buildings and properties. Section 1126.50 states that if the ADRB refuses to issue a COA, the ADRB shall attempt to reconcile an alternative plan with the application is acceptable to both the application and the ADRB. If the ADRB and application or unable to reconcile, the applicant may appeal the decision of the ADRB to the BZA, pursuant to applicable provisions.

Recommendation:

It is recommended that the BZA consider amending the Rules of Procedure to add the following to Article VI, Appeals Procedure, Section 1, BZA Rules of Procedure:

- (3) The time limit to file an appeal following a decision of the ADRB for work already performed shall be thirty (30) calendar days after the decision of the ADRB.

Attachments:

BZA Rules of Procedure



Rules of Procedure

Hamilton, Ohio

Board of Zoning Appeals

June, 1986

Introduction

Section 1160.20 of the Zoning Code of the City of Hamilton provides that the board shall adopt its own rules of procedure.

This was originally done in the 1960's. In June, 1971, the Zoning Code was rewritten and accordingly the rules of procedure were changed to coordinate them with the revised code.

Since 1971, the rules have been amended a number of times to reflect changes in the code or in procedures.

This retyping includes all the changes to date including those recently approved.

Some portions of the code are reincluded in these rules

as well as the board's own specific rules. This was done for coordination and continuity purposes. Code section numbers appearing in parentheses are for reference to related code sections but may include additional board rules.

HAMILTON, OHIO

BOARD OF ZONING APPEALS

RULES OF PROCEDURE

In accordance with Section 1160.20 of the Hamilton Zoning Code, the following rules are hereby adopted to supplement the provisions listed in the Hamilton Zoning Code.

ARTICLE I

JURISDICTION AND FUNCTION

SECTION I - (JURISDICTION)

The Board, in accordance with Section 1170.00 has the following jurisdiction:

(1) Administrative Review and Variances: The Board shall have the power to hear and decide appeals, filed as hereinbefore provided, where it is alleged by the appellant that there is error in any order, requirement, decision, determination, grant or refusal made by the Zoning Inspector or other administrative official in the enforcement and interpretation of the provisions of the ordinance. (1170.10)

(2) Temporary Structures and Uses: The Board may authorize the temporary use of a structure or premise in any district for a purpose or use that does not conform to the regulations prescribed elsewhere in the ordinance for the district in which it is located, provided that such use be of a temporary nature and does not involve the erection of a substantial structure. A Zoning Certificate for such use shall be granted in the form of a temporary and revocable permit, for not more than twelve (12) month period, subject to such conditions as will safeguard the public health, safety, convenience and general welfare. (1170.20)

(3) Interpretation of Zoning Ordinance and Map: Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines as shown on the Zoning Map, the Board, after notice to the owners of the property and after public hearing, shall interpret the map in such a way as to carry out the intent and purpose of the ordinance. In case of any question as to the location of any boundary line between zoning districts or where there is uncertainty as to the meaning and intent of a textual provision, a request for interpretation of the Zoning Map or the textual provision in question may be made to the Board and a determination shall be made by said Board. (1170.30)

(4) Conditional Uses: The Board shall have the powers to hear and decide, in accordance with the provisions of the ordinance, applications for conditional uses. In considering an application for a conditional use, the Board shall request and receive written reports and recommendations from the Building Commissioner and the Planning Director regarding said application. The Board shall give due regard to the nature and condition of all adjacent uses and structures and in authorizing a conditional use may impose such requirements and conditions, in addition to those expressly stipulated in the ordinance, as the Board may deem necessary for the protection of adjacent property and the public interest. (1170.40)

*Last complete revision.

(5) Variations - Literal Enforcement Would Create Undue Hardship: The Board shall have the power to authorize upon appeal in specific cases, filed as hereinbefore pro-vided, such variations from the terms, provisions or requirements of the ordinance as will not be contrary to the public interest; provided, however, that such variations shall be granted only in such cases where, owing to special and unusual conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of the ordinance would result in practical difficulty or undue hardship, so that the spirit of the ordinance shall be upheld, public safety and welfare secured and substantial justice done. (1170.60)

(6) Variance - Conditions Prevailing: Where, by reason of the exceptional narrow-ness, shallowness or unusual shape of a specific piece of property on the effective date of the ordinance, or by reason of exceptional topographic conditions, or other extra-ordinary situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforce-ment of the requirements of the ordinance would involve practical difficulty or would cause unnecessary hardship - unnecessary to carry out the spirit and purpose of the ordinance - the Board shall have power to authorize a variance from the terms of the ordinance, so as to relieve such hardship. In authorizing a variance, the board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of the ordinance and require such evidence and guarantee or bond as it may deem necessary, to enforce compliance with the conditions attached. (1170.62)

(7) Variance - Findings of the Board: No such variance of the provisions or requirements of the ordinance shall be authorized by the Board unless the Board finds, beyond reasonable doubt that all the following facts and conditions exist. (1170.63)

(8) Exceptional Circumstances: That there are exceptional or extraordinary cir-cumstances or conditions applying to the property in question or to the intended use of the property, that do not apply generally to other properties or classes of uses in the same zoning district. (1170.631)

(9) 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. (1170.632)

(10) Absence of Detriment: That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose of the ordinance or the public interest. (1170.633)

(11) Not of 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, or the intended use of said property, for which variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation. (1170.634)

SECTION 2

(1) Historic Design Review Board: The Zoning Board has the responsibility to hear and decide appeals filed in accordance with Section 1160.00, et. seq. and Section 1170.00, et. seq. (1126.50) (Added June, 1986)

Membership

SECTION 1

The Board shall consist of five (5) members appointed by the City Manager for terms of five (5) years. (1160.10)

SECTION 2

Members of the Board shall serve without compensation and shall be citizens of the City.: (1160.10)

SECTION 3

At least one (1) member shall be a member of the City Planning Commission whose member-ship shall terminate simultaneously with his office on the City Planning Commission and a new member of the City Planning Commission shall be appointed by the City Manager to succeed him. (1160.10)

SECTION 4

If any member misses six (6) meetings within one year, the Board shall request his resignation, and a new member shall be appointed by the City Manager as provided by the Zoning Code and herein.

ARTICLE III

OFFICERS

SECTION 1

At the regular January meeting of each year, the Board shall elect one of its members as Chairman and one as Vice-Chairman. If during the term of office any office shall become vacant, the Board shall at the next regular or special meeting elect a successor for the unexpired term. (1160.20)

SECTION 2

The Chairman shall preside at the meetings of the Board, call special meetings, administer oaths and compel the attendance of witnesses, and perform such other duties commonly prescribed to such office. (1160.20)

SECTION 3

The Vice-Chairman shall perform the same duties as the Chairman in his absence.

SECTION 4

In the event the Chairman and Vice-Chairman are absent from a meeting, the three remaining members shall elect a Chairman Pro-Tem who shall perform the same duties as the Chairman for the balance of the meeting.

SECTION 5

The City Building Commissioner shall serve as Executive Secretary of the Board and as directed send all communications, keep all records, and perform such other duties co11DDOnly prescribed to such office. (Part 1160.20)

SECTION 6

The Building Department will provide such secretarial and stenographic assistance and office supplies as are needed by the Board. (1160.20)

ARTICLE IV

MEETINGS

SECTION 1

The regular meetings will be held on the first Thursday of each month in the Council Chambers of the Municipal Building unless changed by the Board or the Chairman. If no appeals have been filed, the Chairman shall determine if a meeting shall be held to consider other business. (1160.40)

SECTION 2

Special meetings may be called by the Chairman of the Board or by any two members of the Board. (1160.20)

SECTION 3

Meetings will be scheduled for 2:00 P.M., except that when in the judgment of the Executive Secretary the number of appeals and business is such as to warrant additional time, the meetings shall be scheduled to accommodate such business and members and other parties shall be notified. (1160.40) (Amended June, 1986)

SECTION 4

If a meeting is called and a quorum is not present or anticipated, the meeting shall adjourn as soon as the roll has been called.

SECTION 5

At a special meeting, only that business may be discussed for which the special meeting was called.

SECTION 6 (Amended July, 1976)

(1) Regular Meetings: The Executive Secretary shall post or publish notice of all regular meetings in such fashion that any person may determine the time and place thereof.

(2) Special Meetings: The Executive Secretary shall post or publish notice of all special meetings in such fashion that any person may determine the time, place and purpose thereof.

(3)News Media: In the event any member of the news media so requests, the Executive Secretary shall give to such member at least twenty-four (24) hours advance notice of the time, place and purpose of any special meeting. In the event of an emergency special meeting, the Executive Secretary shall give such notice immediately to any member of the news media so requesting.

(4)Special Notice: Any person may upon request and payment of a reasonable fee, such fee to be the cost thereof as determined by the Department of Finance, obtain reasonable advance notice of all meetings at which any specific type of public business is to be discussed. For this purpose, the Clerk shall keep a list of persons request-ing such notice. Such list shall include information regarding the subject matter of the persons' interests and their payment status. Persons on the list shall be responsible for supplying the Executive Secretary with current addresses. The Executive Secretary shall hereafter give notice of meetings to all persons in good standing on said list in accordance with the requests received.

(5)Executive Sessions: In the event any regular or special meeting will include an executive session (meeting closed to public), all of the above notice requirements shall so state and give the purpose thereof in accordance with Section 121.22 of the Ohio Revised Code.

ARTICLE V

VOTING

SECTION 1

Three (3) members of the five (5) member Board shall constitute a quorum. (1160.20)

SECTION 2

The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Commissioner or to decide in favor of the applicant on any matter upon which the Board is authorized by the Zoning Code to render a decision. (1170.80)

SECTION 3

The majority vote of those members present shall be necessary to carry out all other regular business of this Board.

SECTION 4

The Chairman shall vote in all matters under consideration by the Board.

SECTION 5

No Board member shall participate in the discussion or vote in any matter in which he has a personal interest.

SECTION 6

A record shall be made in the minutes showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact. (1160.20)

ARTICLE VI

APPEALS PROCEDURE

SECTION 1 – (BY WHOM)

- (1) An appeal may be made to the Board by any person aggrieved or by any officer, department, board or bureau of the City of Hamilton affected by a decision of the Building Commissioner or Hamilton Design Review Board. If the appellant is other than an owner or occupant of the premises under consideration, the appellant shall state on the appeal that he is authorized by such owner or occupant to represent them; or if an officer of the City of Hamilton or a representative of a department, board or bureau of the City of Hamilton, he shall state his official capacity on the appeal application. (1160.30)(1126.50) (Amended June, 1986)
- (2) There shall be no time limit to file an appeal following a decision of the Building Commissioner. (1160.30)

SECTION 2 - (APPEAL APPLICATIONS)

- (1) Appeals filed later than fourteen (14) days prior to a regular meeting date may not be heard until the succeeding regular meeting. (1160.30)
- (2) The application for an appeal shall be submitted in such forms as the Board may prescribe and approve. The application shall contain the present use of the building and premises and the proposed use of the building and premises, the appellant's relation to the property, a statement of the reasons the appellant feels that his appeal should be approved, and such other information as may be required by the Board.
- (3) The appellant shall furnish the following with the application: (1170.50)
 - (a) Plot plan, drawn to scale, showing the actual shape and dimensions of lot to be built upon or used, and designating all lot lines; the exact size and location of all existing buildings and accessory buildings, and all proposed additions or new buildings or structures. This may be waived by the Executive Secretary prior to the submission of the appeal when such information is not relevant to the hearing of the appeal.
 - (b) A title containing the name of the appellant, address and lot number of the property concerned in the appeal shall appear on all information furnished with an appeal and the scale of any drawing when required to be drawn to scale shall be noted on the drawing. *
 - (c) A list of all properties within 100 feet of all boundaries of the property in question giving lot numbers, house numbers and streets, owners name and address. (1160.40) The appellant shall indicate on the application that they have secured such list from the County Treasurer's duplicate of property owners in the Butler County Administration Building. (Last sentence added November, 1983.)
 - (d) A fee of \$75.00 shall accompany each appeal or request for a change of non-conforming use. A fee of \$60.00 shall accompany each request for a conditional use. This fee will not be refunded. (1190.02 and 1190.03) (Amended June, 1986)

*Previous paragraph (b) eliminated (June, 1986).

An appeal shall be considered filed when the fee is paid and one copy of the application is completed, signed and left at the office of the Building Commissioner in the Building Department along with all papers and information as required in the application.

(4) Instruction sheets shall be prepared and approved by the Board to give instructions to appellants filing appeals.

SECTION 3 - (ACTION ON APPLICATION)

(1) If the appellant, Building Commissioner or other interested party desires to subpoena witnesses, they shall make a request of the Board Chairman to subpoena such witness. Such requests shall be filled at the Building Department office at least five (5) days before the scheduled hearing. The appellant or other interested party making such request shall pay all costs incurred to subpoena any witness. (1160.20)

(2) The Building Commissioner shall prepare a report to the Board describing the situation and the violations involved. (1160.30)

(3) The Building Commissioner shall transmit to the Board, approximately one week prior to the meeting or as soon thereafter as possible, the appeal application and all the papers or information required or necessary for proper hearing of the appeal, and copies as required shall be sent to all board members. (1160.30)

(4) The Executive Secretary shall notify the appellant and all owners of property with 100 feet of the property in question, in accordance with the list furnished by the appellant, as to the date, time, place and purpose of the hearing. (1160.40)

(Amended June, 1986)

SECTION 4 - (HEARINGS)

(1) All hearings shall be open to the public. (1160.20)

(2) The Board shall keep a record of its proceedings. Findings of fact shall be included in the minutes of each case of a requested variation or appeal, and the reasons for approving or denying such variation or appeal shall be specified. All records of proceedings, findings, determinations and actions of the board shall be filed immediately in the Building Department office and shall be a public record. (Part 1160.20)

(3) The Building Commissioner will present and explain the case, setting forth the reasons for his action.

(4) Following the Building Commissioner's presentation, the appellant may appear and be heard or may have any person appear and be heard either in person or by duly authorized agent or attorney. The Board shall have the right to refuse to hear an appeal unless the appellant or his agent is present. (1160.40)

(5) The Board will then hear any other interested parties. (1160.40)

(6) All persons shall have the right to question any witness.

(7) The Board will render a decision as soon as practical after conclusion of the hearing. (1160.40)

(8) At the request of the appellant or the Building Commissioner and/or on the motion of the Board, the hearing may be tabled for further evidence or information.

SECTION 5 - (FOLLOWING BEARING) (1170.80)

(1) The Executive Secretary shall inform the appellant by letter, as soon as possible following the hearing, of the decision of the Board. The Board's decision shall not become final until the expiration of five (5) days from the date such decision is made, unless the Board shall certify otherwise.

(2) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than six (6) months unless a building permit for such erection or alteration is obtained and the work is started within such period, or where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board. In considering an extension, the Board shall determine if there have been any changes in the law or condition upon which the appeal was granted and may require a new appeal be filed. (1170.80)

(3) No appeal on which a decision has been rendered by the Board shall be reheard nor shall a new appeal be accepted by the Board until the passage of one (1) year from the date of hearing of the original appeal except under the following rules and procedures:

An appellant who desires a rehearing shall submit a written application to the board indicating the basis for same under one of the three following reasons:

(a) A change of the zoning ordinance in the area of the appellant's original appeal.

(b) Presentation of additional substantive information not furnished to the Board at the original hearing.

(c) A substantial change in the nature of the use of properties within the area in which the property subject of the original appeal is located.

An appellant requesting such a rehearing shall submit the reason or reasons which such an appellant deems to be grounds sufficient for a rehearing and the Board, with-out hearing additional oral argument, shall determine if the appeal warrants rehearing. If a rehearing is determined to be justified the appellant shall be so notified by the Secretary of the Board and the appellant shall then follow the normal procedure for a hearing before the Board. If the Board determines from the written application of the appellant that a rehearing is not justified, the Secretary of the Board shall forthwith notify the appellant of the Board's decision. (Paragraph (3) amended November, 1982)

ARTICLE VII

GENERAL RULES

SECTION I - (CHANGE OF NON-CONFORMING USE)

Section 1109.54 provides that the Board of Zoning Appeals may make general rules permitting non-conforming uses to be changed to other non-conforming uses.

Accordingly, the following changes in non-conforming uses are to be permitted:

(1) From a zoning standpoint, beauty shops and barber shops shall be considered one and the same and a change from one such non-conforming use to another such non-conforming use will be considered equally appropriate to the district and will not require specific approval by the board. (July 1, 1976)

SECTION 2 - (INSUFFICIENT LOT SIZES)

The Board grants authority to the Construction Services Division to issue building permits for lots which do not have the required minimum lot area providing they are lots which are newly created by lot splits by the Planning Commission from substandard lots of record existing on June 9, 1971 as provided in Section 1131.10 and providing the area of the resulting lots do not decrease. (July, 1980)

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, October 6, 2016
1:30 p.m.**

The Board of Zoning Appeals meeting was called to order by Madam Chair Underwood-Kramer at 1:30 p.m.

Members Present:

Ms. Nancy Bushman, Mr. George Jonson, Mr. Desmond Maaytah, Madam Chair Karen Underwood-Kramer and Mr. Michael Samoviski.

Members Absent:

None

City Staff Present:

Mr. John Creech, Ms. Kathy Dudley, Mrs. Heather Hodges, and Ms. Kim Kirsch. Mr. Allen Messer (Public Works) was also present to answer questions.

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

Swearing in of Those Providing Testimony to the BZA:

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

Old Business:

None

New Business:

Agenda Item #1 - 2016-14: Variance Request for 140 Wasserman Road

Staff: Mr. John Creech

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.

Mr. Creech stated that 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. He stated that the minimum

setback for a new driveway is five (5) feet from the side property line per Section 1115.00 of the Hamilton Zoning Ordinance.

The dispute between the applicant and the abutting neighbor at 130 Wasserman Road is that the expanded driveway encroaches over the property line and onto the adjacent property. In addition, the expansion on the driveway caused a change to the storm water flow, resulting in a back up of water onto the Applicant's property.

Mr. Creech then gave a few more specifics of the current item and gave details of the items that were handed out just prior to the meeting.

Mr. Creech then stated that the BZA can approve, deny or modify the variance request for the driveway setback.

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 that all four of the following facts and conditions below exist beyond a reasonable doubt:

Exceptional Circumstances, Preservation of Property Rights, Absence of Detriment, and Not of a General Nature.

Mr. Creech addressed each of these conditions, gave the staff findings and some additional information for each.

Madam Chair Underwood-Kramer verified with Mr. Creech that the only thing the Board can do is with regard to what is up to the legal property line, nothing that involves a survey, and nothing with regard to the driveway encroachment onto adjacent property. She further verified that the issue with the catch basin is an issue with Public Works, and the Board does not need to address anything with regard to that either.

There were then photographs shown of the property which were taken in 2013, and then current pictures.

There was then a brief discussion between the Board and Mr. Creech regarding the survey, property lines, easements, issues with the catch basin, and drainage on to the property at 140 Wasserman.

Mr. Creech concluded his presentation to the Board by stating that the item was advertised as a Public Hearing.

Madam Chair Underwood-Kramer asked if there was anyone in the audience who wished to speak.

First was Ms. Patricia Bishop, 140 Wasserman Road. She said that she has always lived in the country, she didn't know that she had to get any permits, and she didn't know that the new driveway was on the neighbor's property line at all. She said that prior to the addition of the new driveway, she maintained the grass up to the fence line, and the neighbor maintained everything from the fence line over.

She gave the reasons for the additional driveway and said that she has been trying to work on the catch basin issue with Public Works. She said that she would like to get her own survey done, and that she will what is right with regard to anything that is on the neighbor's property.

Next to speak was Elmer Bishop, 1188 Shuler Avenue. He said that he helped Ms. Bishop with the driveway, and he also was not aware of the ordinances. He said that it's Ms. Bishop's wish to get the variance up to the property line.

Madam Chair Underwood-Kramer than asked if there was anyone that wished to speak against the appeal.

Lisa Roberts, 130 Wasserman Road, spoke. She said that had there not been the issue with the storm water flow, they would not know there was an issue with regard to the property line. She said that she's just asking for anything that extends onto their property to be removed, and that she believes that once the extra part of the driveway on their property is removed, the issue with the catch basin will resolve itself.

Ms. Underwood-Kramer asked her if she was opposed to the variance up to the legal property line, and she said that she is not; she just wants anything of the neighbor's that is on her property to be removed.

With no one else in the audience wishing to speak, Mr. Jonson made a Motion to close the Public Hearing. With a 2nd by Mr. Samoviski and all "ayes", the Public Hearing is closed.

Mr. Jonson made a Motion to grant the variance and gave his reasons with regard to each condition. With a 2nd by Mr. Samoviski and all "ayes", the Motion is passed with a vote of 5-0.

Mr. Creech advised Ms. Bishop that her variance is approved up to the property line, that the Board's decision becomes effective 5 days after the date of the meeting, and that she will receive a letter confirming the Board's decision within 5 days.

Minutes:

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

September 1, 2016.

Mr. Jonson made a Motion to accept the 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. Jonson made a Motion to adjourn. With a 2nd by Mr. Samoviski, the meeting is adjourned.

Respectfully submitted,

Ms. Kim Kirsch
Administrative Assistant

Mr. John Creech
Secretary

Karen Underwood-Kramer
Madam Chair