

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, February 4, 2016
1:35 p.m.**

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

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

Members Absent: Mr. Desmond Maaytah

City Staff Present: Mr. John Creech, Ms. Meredith Murphy, Ms. Kim Kirsch, and Ms. Kathy Dudley (Asst. Law Director).

Madam Chair Underwood-Kramer explained to the Applicant that there are five board positions, but only three (3) members present. There is one vacancy, and one member absent. Therefore, the case can be heard, but the vote has to be unanimous to either be accepted or denied. She said that they can still go ahead with the case if he wishes, and he said that would be fine.

Swearing in of Those Providing Testimony to the BZA: Mr. Creech swore in the audience.

Old Business: None

New Business:

Agenda Item #1 - 2016-02: Variance Request 3185 Dixie Highway

Request by Mr. Rauf Bakkali for one (1) zoning variance to Section 1121.39.26 of the Hamilton Zoning Ordinance in order to apply for a conditional use to establish an Automobile Service and Minor Repair facility to be located at 3185 Dixie Highway. (Rauf Bakkali, Applicant/ Owner).

STAFF: MEREDITH MURPHY

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 (i.e. new and used tire sales/repair) – the minimum lot area required is 20,000 square feet - the subject property is approximately 13,000 square feet. (Rauf Bakkali, Applicant/Owner).

An application was submitted by Mr. Rauf Bakkali for one (1) zoning variance in order to apply for a conditional use to an Automobile Service and Minor Repair facility on the property located at 3185 Dixie Highway. (Exhibit A). The property is zoned B-2 Community Business zoning district (Exhibit B). B-2 Community Business zoning district is regulated by Section 1121.00 of the Hamilton Zoning Ordinance, (HZO).

An Automobile Service and Minor Repair facility use is listed as a Conditional Use in Section 1121.39.26 and has a number of conditions associated with it. If an applicant cannot meet those conditions they must first receive approval of a zoning variance from the Board of Zoning Appeals before applying for a Conditional Use.

An Automobile Service and Minor Repair Facility (i.e. new and used tire sales/repair) use requires Conditional Use approval by the Planning Commission (Section 1121.36.26). Section 1108.00 of the Hamilton zoning ordinance defines "tire service and sales" as Automobile Service and Minor Repair facility.

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

- 1) A request to reduce the minimum lot area required for an Automobile Service and Minor Repair facility (i.e. convenience store/gas station) – the minimum lot area required is 20,000 square feet - the subject property is approximately 13,000 square feet.

Property Details:

The property is zoned B-2 Community Business District. The property is comprised of two (2) lots. The lots are approximately 13,000 square feet in total area. The property has a total of 100 lineal feet of lot frontage along Dixie Highway.

The property to the north and west is zoned BPD Business Planned Development. To the east is property zoned I-1 Light Industrial and parcels located in the City of Fairfield. To the south is property zoned I-1 Light Industrial. According to the application submitted by the applicant, the intent is to use the property as a new and used tire store.

Ms. Murphy summarized the reason for the variance request, went over information that was distributed to the Board prior to the meeting, and added that the subject property received a violation letter from the Health Department at the end of 2015 for opening a business without receiving proper approvals. She further stated that in 2013, they received approval for Conditional Use for Auto Sales, but that has since lapsed, and this is a different request for a different type of business.

Ms. Murphy went over the Application received for a new and used tire store on the property, and she gave specifics of that. She also covered the rationale of the Applicant's in applying for this variance.

Zoning Variance Review

In order to grant a zoning variance, the Hamilton Zoning Ordinance 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 one (1) requested zoning variance. Information/commentary for the BZA to consider is underlined.

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.
Tires Business New and Used.
Staff note: The proposed use only has 13,000 square feet for a use that requires 20,000 square feet.

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.
Tires Business New and Used.
Staff note: The proposed use would be utilizing an existing building on the site. The property is located between a car lot to the north and a temporary employment agency to the south.

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.
Used and New Tires.

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.
Monday to Saturday 10 am to 6 pm daily. I want to open a new and used tire store. It will be of no hindrance to adjoining properties or businesses.

Notification

Public Hearing Notices were mailed to eight (8) property owners within 100 feet of the property in question. There was one phone call and 1 email received (which was given to the Board for review). A staff site visit was also done two days before this meeting, and pictures were taken. Ms. Murphy goes over what Staff observed when they went out.

Recommendation:

Based on a review of the submitted information, there is reason to consider denying the variance request to reduce the minimum lot area from 20,000 square feet to 13,000 square feet.

A 13,000 square foot lot is only 65% of the minimum required size for the proposed use. The existing building on the property measures approximately 1,850 square feet. The applicant did not supply any additional information as to why the variance should be granted for the 7,000 square feet difference in the regulations and what they are proposing. Based on the above information the property is too small for the proposed use.

Mr. Creech also added that in 2013 there was an Automobile Sales facility (Auto Depot) that was approved with conditions before the new regulations came into play. At that time, the applicant was approved and never met any of the conditions, and the business was never operational more than 6 months. It has been more than 6 months since the business was operational there, so it is no longer "grandfathered in".

The Public Hearing was opened. Mr. Bryan Campbell, 1301 Shuler Avenue, was present and spoke on behalf of the Applicant (on the Applicant's request). He said that the Applicant couldn't understand some of the questions on the application, and so he asked Mr. Campbell to help him. Mr. Campbell said that it's just going to be a small tire business, not an auto repair facility. There will be a total of 2 machines to go inside the building (for tires). He said that they plan on storing the used tires in the three shipping containers in the rear of the business and if it is approved, the Applicant plans on putting a privacy fence up on both sides of the shipping container that is there. He hopes that since it's just for tires and most of the work will be done inside the building, the lot size won't be such an issue.

Madam Chair Underwood asked how they were going to get the vehicles inside the building to work on them. He said that if there wasn't a garage door now, they would put one in. He added that at present, there is a pad on one side towards the back that they can use to jack the cars up. Madam Chair responded that part of the conditions is that all work has to be done inside, and all products and inventory has to be stored inside. Therefore, storage in the containers wouldn't be allowed. She added that this kind of weighs in why the building has to be a certain size with relation to the lot size. Even for a small facility, the building has to house the inventory and vehicles, and the tires have to be inside.

Mr. Campbell said that the owner wouldn't have to store many tires (50-60) because the business isn't very built up yet. He said that the owner has already invested in the business, and they would get rid of the storage containers and do what they need to do. She said that the property would have to be changed before they could even look at it.

With no questions from the Board and no one else from the audience to speak on behalf or against the appeal, Mr. Jonson made a Motion to close the Public Hearing. With a 2nd by Ms. Bushman and a roll call vote of all “ayes”, the Motion passes (3-0).

Madam Chair Underwood-Kramer said that the building and property are too small, even for the additional conditions (inside storage is required and all of the work completely on vehicle has to be inside). She said that at this time, there is no evidence of that being able to occur. She added that in her review, she found difficulty meeting 2 of the 4 requirements (there are no extraordinary circumstances-lot is just too small; and it's not of a general nature).

Mr. Jonson made a Motion to deny the request based on the size of the lot and it is not of a general nature. With a 2nd by Ms. Bushman and a roll call vote of all “ayes” (3-0), the request is denied.

Mr. Creech explained the process of denial to the applicant.

Minutes

Approval of Meeting Minutes: Written Summary and Audio Recording for May 7, 2015. Mr. Jonson made a Motion to approve the Minutes. With a 2nd by Ms. Bushman and all “ayes”, the Motion passes and the minutes are approved.

Miscellaneous:

Mr. Creech introduced Ms. Kathy Dudley, Assistant Law Director, to the Board. He said that she will be attending all future meetings. Secondly, he's hoping that there will be a Planning Commission representative at the March meeting.

Adjourned:

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

Respectfully submitted,

Ms. Kim Kirsch
Administrative Assistant



Mr. John Creech
Secretary



Madam Chair Karen Underwood-Kramer

