



Board of Zoning Appeals
May 7, 2020 @ 9:00am.
Council Chambers
First Floor, 345 High Street
Hamilton, Ohio 45011

Desmond Maaytah
Acting Chairperson

Samy Broyles

Matthew Couch

Karen Underwood-Kramer

Matt Von Stein

Board Member

Board Member

Board Member

Board Member

**NOTICE CONCERNING THE MAY 7, 2020 BOARD OF ZONING APPEALS MEETING:
REMOTE CONFERENCING / REMOTE ACCESS**

The Board of Zoning Appeals meeting is open to the public. However, due to the State of Emergency related to COVID-19, the Planning Department is encouraging those who are comfortable participating in the public hearing remotely to do so.

The Board of Zoning Appeals meeting will be held simultaneously via Zoom webinar. Per usual procedure and per Ohio's Sunshine Laws and Public Hearing requirements, the meeting shall be recorded by audio.

Anyone can use the website link or dial into the meeting using the following information (see below).

Online:

https://zoom.us/j/366641603?tk=SAWM7eDc4m1gNz4V64fOKUBS1B9nVg2rdK_rPgBcuZk.DQEAAAAAFdqBwxZyaFAzYjIXQVFZR19ya0tmeIFKwJR3AA&uuid=WN_Bbt_n8XoRzmHNkxPu1o3TQ

Webinar ID: 366 641 603

One tap mobile

+13126266799,,93410265331# US (Chicago) +19292056099,,93410265331# US (New York)

Or Telephone:

Dial +1 (312) 626-6799 and when prompted dial the webinar ID:

Webinar ID: 366 641 603

Report continued on the next page





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Desmond Maaytah
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Matthew Couch
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Karen Underwood-Kramer
Board Member

Matt Von Stein
Board Member

Roll Call:

One (1) Public Hearing

Broyles	Couch	Maaytah	Underwood-Kramer	Von Stein	Bowling (Alt.)

Swearing in of Those Providing Testimony to the BZA: Notary Public

New Business:

Agenda Item #1: Variance Request for 60 Sandalwood Terrace

Request by Marty Head. A requested variance from Section 1110.26 for a site located in the R-1 (Single Family Residence District). The submitted request pertains to constructing a new detached garage.

Staff: Daniel Tidyman

Broyles	Couch	Maaytah	Underwood-Kramer	VonStein	Bowling (Alt.)

Minutes:

1. March 5, 2020

Miscellaneous:

- Election of Chair Person and Vice Chair Person for 2020 Operational Year
- Revision to BZA Policies and Guidelines (Minor Edits)

Adjournment

For the Board of Zoning Appeals Meeting of May 7, 2020

Report continued on the next page





To: Board of Zoning Appeals
From: Daniel Tidyman, Associate Planner
Date: May 7, 2020

AGENDA ITEM #1 – New Business

Applicant: Marty Head
Location: 60 Sandalwood Terrace (Parcel # P6411055000068)
Request: To seek a variance from the Residential Design Standards of the Hamilton Zoning Ordinance pertaining to requirements for exterior finishes on accessory structures. The property owner is interested in constructing a new accessory structure that will not have more than 50% of exterior finish that matches the primary finish on the front of the primary structure on the property.

BASIC INFORMATION

Applicant/Property Owner	Marty Head
Architect/Engineer/Consultant	N/A
Size of Property	0.520 Acres
Current Zoning	(R-1) Single Family Residence District
Requests	A Zoning Variance to allow the construction of a new accessory structure with less than 50% of the exterior finish matching the primary finish on the front façade of the house on Sandalwood Terrace.

ADJACENT LAND USE/ZONING INFORMATION

<i>Direction</i>	<i>Land Use</i>	<i>Zoning</i>
North	Single Family Residential	R-1 (Single Family Residence District)
South	Single Family Residential	R-1 (Single Family Residence District)
East	Single Family Residential	R-1 (Single Family Residence District)
West	Single Family Residential	R-1 (Single Family Residence District)

Section A: Introduction and Background

Section A.1: Project Overview

The property owner is interested in demolishing an existing metal exterior accessory structure and constructing a new accessory structure on the property. The purpose of the new structure to store the property owner’s boat. The location of the new structure would be setback behind the house on the property and screened by existing foliage. The front of the new structure will be over 75% brick to match the primary finish of the house.

Section A.2: History

Report continued on the next page





The applicant contacted the Planning Department for information to begin the permitting process for constructing a new 20 ft X 30 ft (600 sq ft) accessory structure. After a pre-application meeting, the applicant and staff came to a compromise that they believe will meet all criteria for a variance. (See Section H)

Section A.3: Existing Site Conditions

The property is located in the Washington neighborhood between Sanders Drive and Hermay Drive. Existing foliage can be found on the 0.52 acre lot. The neighborhood has characteristics of a typical suburban neighborhoods with lot areas ranging from 0.29 acres to 1.08 acres in area. There currently are large trees in the front yard and located to the East of the property that provide screening from the right of way and from neighboring properties. Existing development on the site includes a single-family dwelling and a metal sided and roofed accessory structure.

Section B: Petition Review

The proposal intends to provide storage for the property owner's boat when not in use. With a floor area of 600 sq ft, the brick finish on the front of the dwelling unit on the property is required on all sides of the new structure. The applicant intends to finish more than 75% of the front façade of the structure facing Sandalwood Terrace with brick while finishing the remaining facades with vinyl siding.

In order to construct a detached garage a dwelling of this width and height, the applicant will require variances from the following section of the Hamilton Zoning Ordinance.

1110.26 Accessory Buildings: Accessory buildings over 200-sq. ft. in area must have the same exterior finish material on a minimum of 50% of all sides as the primary exterior material and approximate color as the front of the existing primary building.

The resulting variance requests include:

- **Variance to allow no matching exterior finish on three facades**

Section D: Pertinent Statutes

As it pertains to granting a variance the Hamilton Zoning Ordinance states:

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

Report continued on the next page





- **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.
- **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.
- **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 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.

Section E: Notification

The Planning Department mailed Public Hearing Notices to the owners of ten (10) properties within 100 feet of the subject property per statute requirements. At the time of writing this report, the Planning Department has received a comment from a neighboring property owner. The property owner had no objections to the variance request.

Section F: Recommendations

The Board of Zoning Appeals can approve or deny the appeal request. The Planning Department recommends the following motion to the BZA:

That the BZA approve the appeal request to grant variances pertaining to Section 1110.26, subject to the following conditions:

- 1) Revise any construction drawings for the proposed improvements and work subject to any future review requirements of the City of Hamilton Departmental Review.

Section H: Staff Basis / Comments

Staff finds the proposed variance meets the statutory requirements for granting a variance for the following reasons:

Report continued on the next page





- 1) There are exceptional circumstances given the existing conditions of the property and existing conditions on the site. The applicant is proposing to remove a structure that is non-conforming in exterior finish and roofing while the proposed building will have higher quality finishes. This structure will provide storage and safety for their personal property and would be better aesthetically for the neighborhood.
- 2) The requested variance protects property rights because it allows the property owner to upgrade the accessory structure from a metal building to a vinyl and brick structure large enough for storage of personal property.
- 3) The requested variance would not be detrimental to the property or surrounding area. Replacing the current metal building on the site with an accessory structure with a front façade of over 75% brick is an improvement to the site. The new structure will be screened by foliage and will be behind the primary structure, minimizing its view from surrounding properties. and providing interior space for boat storage would be an improvement to the site and neighborhood.
- 4) This variance request is not of general nature. This is because of the existing non-conforming structure. Replacing the existing metal structure with a more compliant structure is an opportunity to improve the property. This would not require staff to amend the zoning ordinance.
- 5) The Planning Department receives complaints on a monthly basis about trailers, mobile homes, and boats parked on residential property. Granting this variance would prevent any possibility of complaints from neighboring property owners.

Section I: Attachments

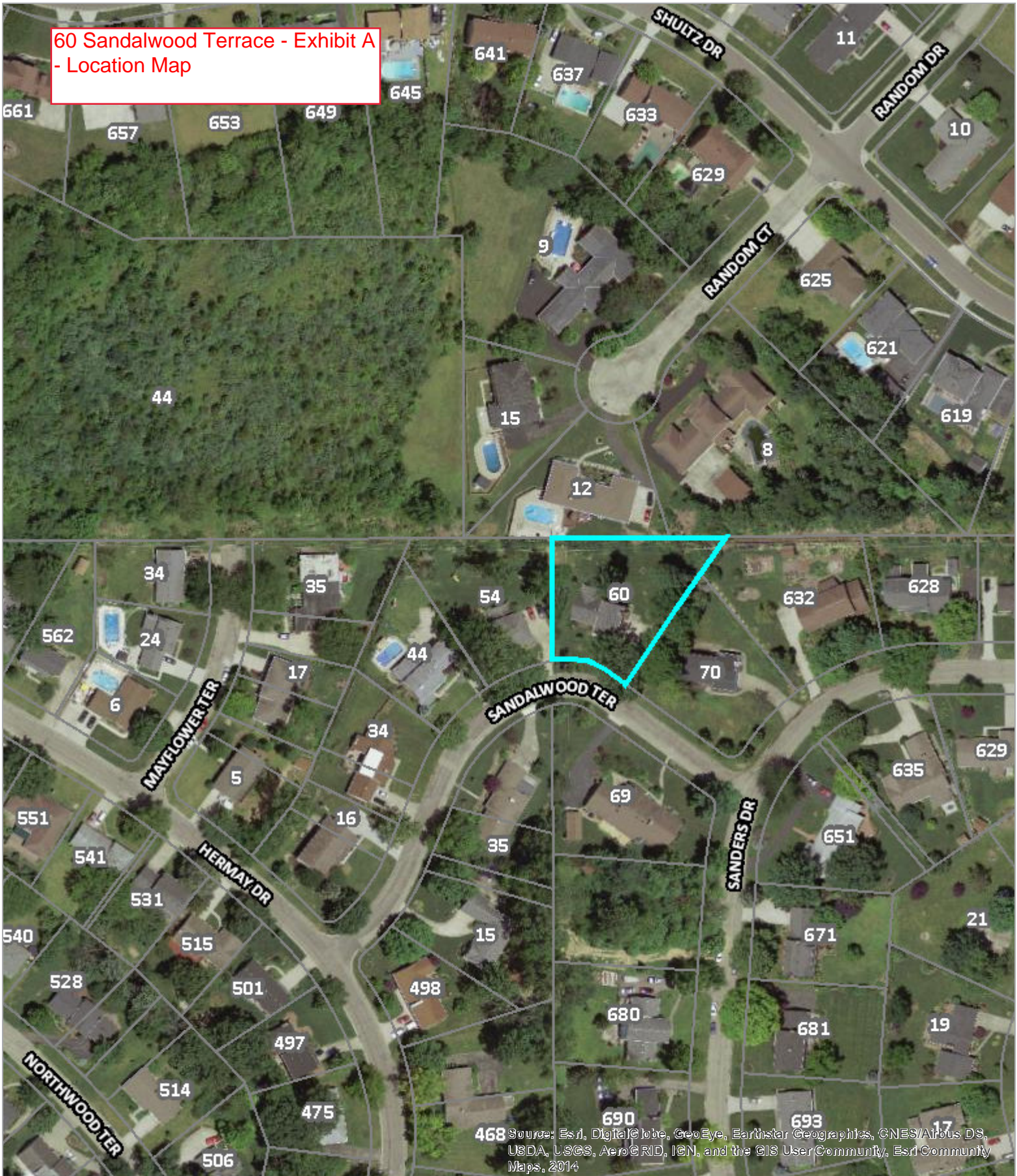
The following attachments are listed in chronological order as they appear in the report.

1. **Exhibit A - Location Map**
2. **Exhibit B - Zoning Map**
3. **Exhibit C - BZA Application**
4. **Exhibit D - Proposed Building Permit Plans**
5. **Exhibit E - Public Hearing Notice letter**

Report continued on the next page



60 Sandalwood Terrace - Exhibit A
- Location Map



468 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Esri Community Maps, 2014



Areas

Override 1

Site Address Points

60 Sandalwood Ter. Map



60 Sandalwood Terrace - Exhibit B - Zoning Map



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Esri Community Maps, 2014



Areas

Override 1

Site Address Points

60 Sandalwood Ter. Map



Location : 60 SANDALWOOD TER

Date : 03/09/2020

Name of Project : HEAD

Permit Type : PLANNING - BZA

Application # : A200817

Project Description: VARIANCE

Approval Date : 03/09/2020

Approval # : A200818

Review # : 1

Applicant : TILFORD HEAD

Phone : (513) 614-7687

Fax :

email :

Owner : CONRAD MARGIE W TR

Phone :

Fax :

email :

Please review the attached plans and return to Construction Services as soon a possible.

REMARKS	Please submit your comments electronically on the Approval Screen in Govern.
---------	--

This routing is for Approval # A200818 Review # 1

HEALTH

PUBLIC WORKS

FIRE

ENVIR. SERVICES

BUILDING

ELECTRIC

GAS / WATER

ZONING



Application Fee:
\$200

A200817
\$200.590

Date: 3/9/2020
Acct: 353197
City of Hamilton
Cashier: Consvs
3/9/2020 3:29 PM
Total: \$200.00
Check Tendered: \$200.00

BOARD OF ZONING APPEALS APPLICATION

Fees:	
All Appeals to BZA	\$200.00
Appeal of ADRB Decision	no charge

Property Address: 60 Sandalwood Terrace

Property Owner: Tilford M Head

Owner's Mailing Address: 60 Sandalwood Terrace

Owner's Phone Contact: 513-614-7687

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

Appellant's Mailing Address: _____

Appellant's Email Address: headtm@hotmail.com

Appellant's Phone Contact: _____

Purpose of Application (Check all that apply):

- Requesting a variance for signs. Please describe the request below (also fill out **Appellant's rational for requesting a Variance**. See: Page 4)

- 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**, Page 4)

1110.26

- Other – Skip to "Other" Section of Application Form (Page 5)

VARIANCES

Appellant's Rationale for requesting a Variance: (See Next Page)



VARIANCES

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. **(What is unique about your case that requires a variance?)**

See Attached

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. **(Why is the variance needed to preserve property rights?)**

See Attached

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. **(How will the variance not be harmful to the property or nearby properties?)**

See Attached

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. **(What makes the variance a non-recurring request or a rare case?)**

See Attached



Application Fee:
\$200

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

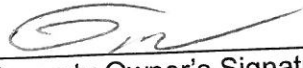
- Substitution of Non-Conforming Use
- Appeal of Decision of Architectural Design Review Board
- Temporary Use
- Appeal of Interpretation

CERTIFICATION:

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

Appellant's Signature Date

Appellant's Printed Name



Property Owner's Signature 3-9-20
Date

Tilford M Head

Property Owner's Printed Name

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. (What is unique about your case that requires a variance?)

There are a few things that are different about my property and requested variance. First, my lot is wider and larger than most I have seen in this area which offers ample room for the building I am proposing. Also the lot has good coverage and garage will only be visible from road in the front. Second my house is mostly brick, so the cost of building a garage of 50 percent brick will be great increase in cost; when in my opinion having the front brick veneer and sides vinyl siding to match my gables will look just as good and cost substantially less. Third and finally, I bought the property with a large non conforming shed (pictures included). I am replacing that building with a building that will meet every other requirement and will match my house almost exactly.

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. (Why is the variance needed to preserve property rights?)

The variance I am requesting will be for a garage to house my 21 ft. fishing boat. Fishing is my primary hobby and without a detached garage I will have to keep all of my equipment outside. I believe since my lot is large enough I should have the right to build a structure that keeps my equipment safe and out of the elements. I should also have to the right to do it in an economical way if at all possible, as long as I make every attempt to match my house.

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. (How will the variance not be harmful to the property or nearby properties?)

My proposed variance will only be for the exterior finish not being 50 percent real brick. I am willing to use an brick veneer on front of building that is facing road in order to match my house. Everything else will be within the current code. I believe this building will not harm any surrounding properties, in fact it will be very nice a addition to the neighborhood. It will not be close to anyone's property lines and will look much better than a boat sitting on a concrete pad. Note: Directly across the street from me there is a brick house with a garage similar in size to what I am proposing and it is completely vinyl siding, it looks great and is not a detriment to property around it. It is a good example for what I am proposing. Also I will be replacing a large non conforming structure that did not meet any current codes and did not match my house at all.

4. 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.

(What makes the variance a non-recurring request or a rare case?)

This case is rare because most lots are not as wide as mine, and most people do not need a detached garage of this size in the city. The garage I'm proposing is rare in that I need it to completely enjoy my property to its full extent. Lastly this case is rare because the cost associated with a larger garage such as this. Making it 50 percent "real" brick would be much more expensive, than just covering the road facing side in this material. Where as on a smaller building the cost increase might not be near as significant.

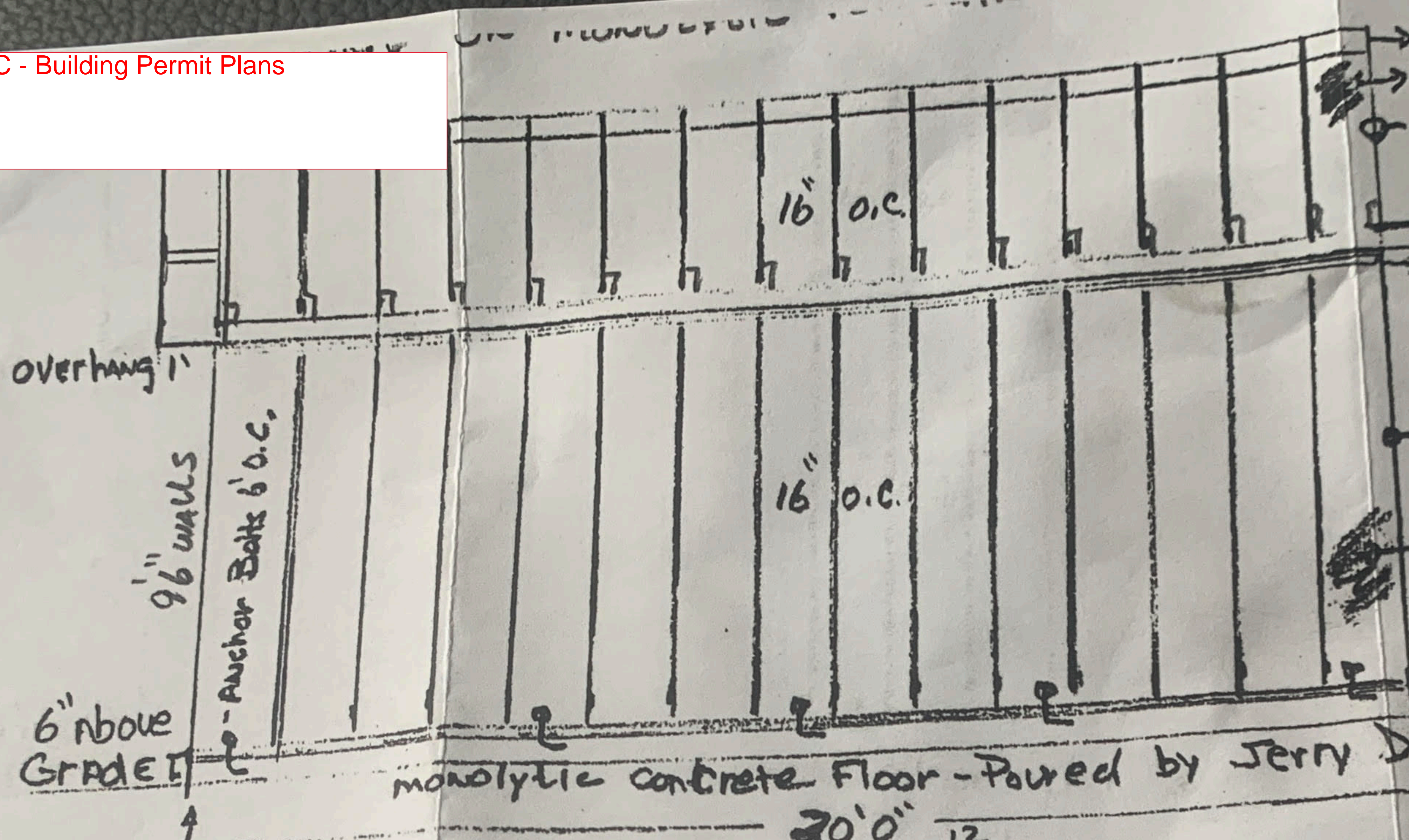
Pictures of structure I'm replacing







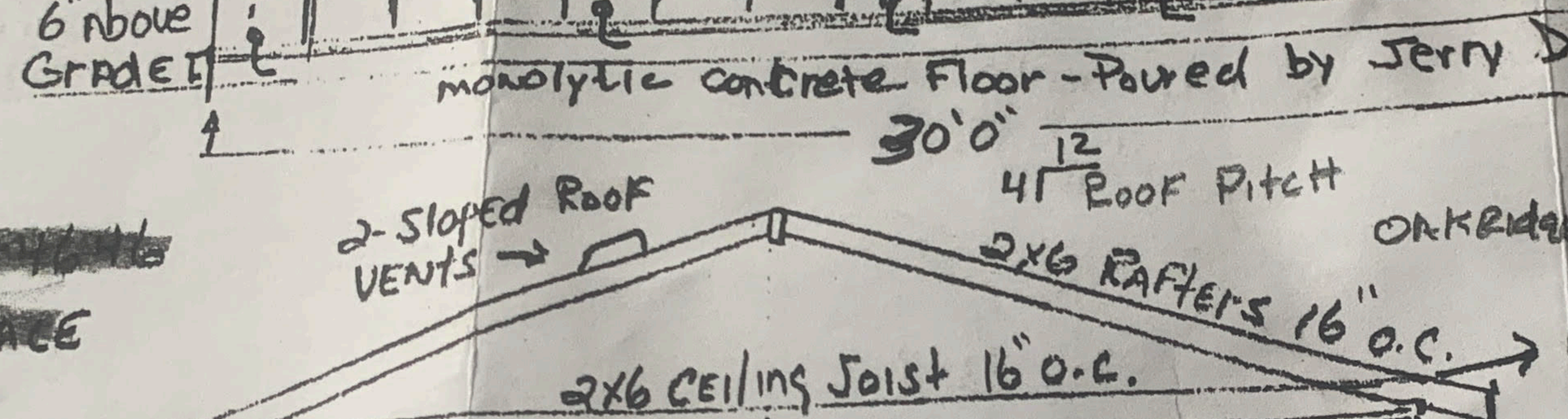
1/4" = 12"



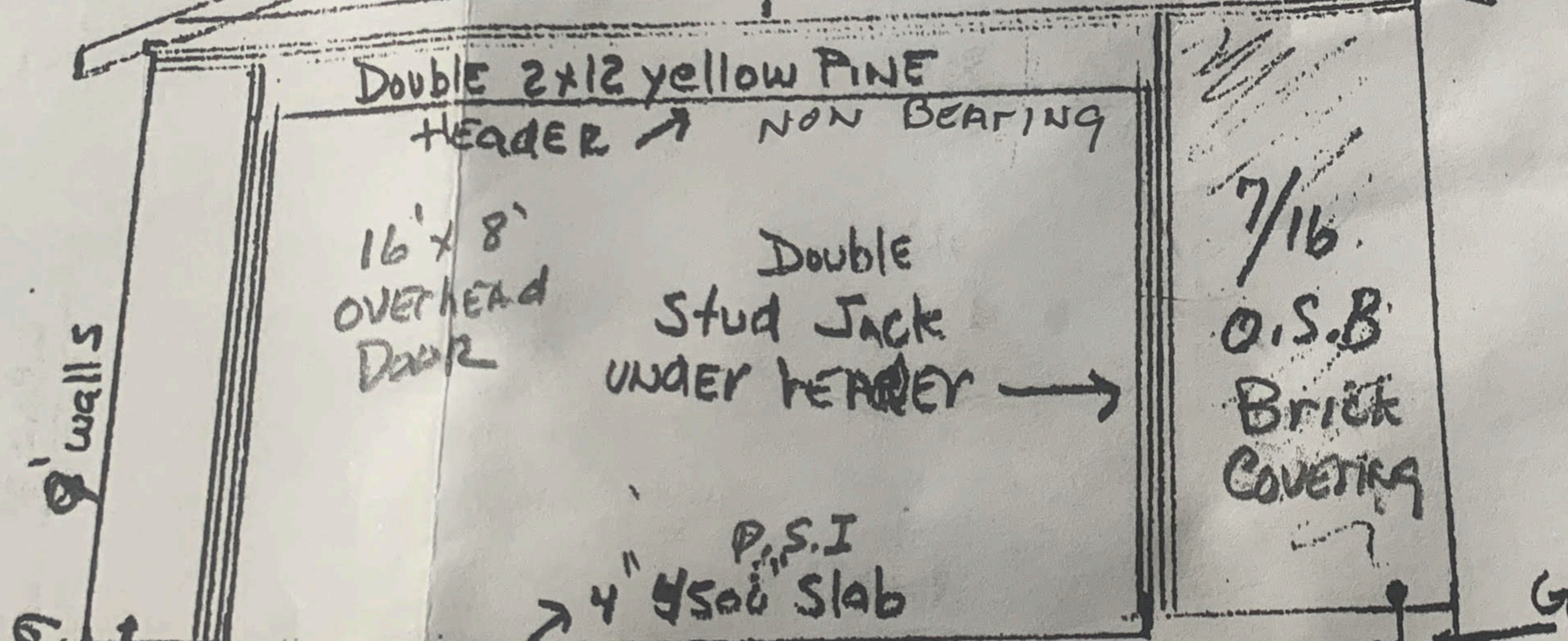
→ 2x6 Ridge Rafter
 → 7/16 O.S.B. Decking - 15" Felt - 220 Shingles
 → 2x6 RAFTER 16" ON CENTER TO STACK OVER STUDS BELOW
 → 2x6 GUTTER RAKE 5" GUTTER
 → DOUBLE 2x4 TOP PLATE
 → SIMPSON H-1 ANCHOR TIES USED ON ALL RAFTER/TRUSSES
 → 2x4 STUDS 9 25/8 16" ON CENTER
 → 7/16 O.S.B. SHEETING ON ALL OF AND ALL WALLS & GABLES
 → D-4 VINYL SIDING OVER
 → 2x4 TREATED SOLE PLATE

FOR: MARTY HEAD

~~375 GROVE TERRACE~~

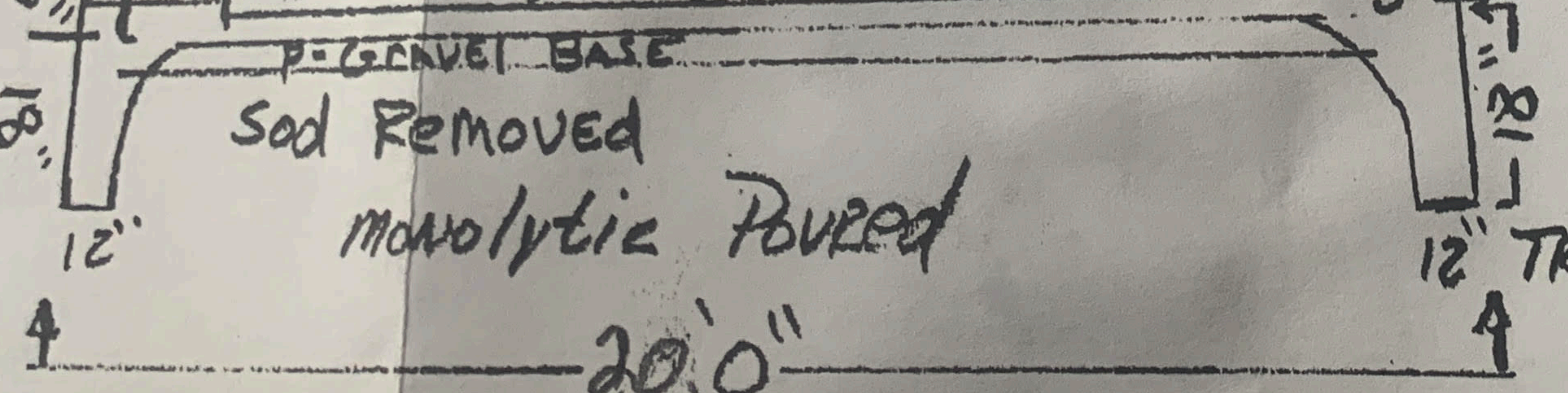


→ 2x6 CEILING JOIST 16" O.C.
 → 1/2" O.S.B. Decking
 → 16/STEEL PL. CLIPS USED
 → ORKIDGE 30 SHINGLES USED 30" FELT PAPER
 → ANCHOR BOLTS TO BE 4' O.C.



Builder:
 BARNCRAFT BUILDINGS
 2527 MILLVILLE - SHANDON RD.
 HAMILTON, OH 45013
 738-5654
 C-256-0040

JERRY DEAN CONCRETE FOUNDATION / SLAB



GROUND LINE
 12" IN GROUND
 5" STEEL REINFORCEMENT MUST USED
 12" TRENCH



April 27, 2020

NOTICE OF PUBLIC HEARING

Attention Property Owner:

The City of Hamilton Board of Zoning Appeals will hold a public hearing on **Thursday morning, May 7, 2020 at 9:00 A.M.** via Zoom Webinar at <https://zoom.us/j/366641603>

Webinar ID: 366 641 603

The agenda for this hearing includes the following information:

LOCATION: 60 Sandalwood Terrace, Hamilton OH 45013
APPLICANT: Marty Head
REQUEST: To seek a variance from Section 1110.26 of the Hamilton Zoning Ordinance in order to construct a new accessory structure that does not meet the requirements for exterior finish requirements in the Residential Design Standards.

Accessory Structures (garages, sheds, barns) with a floor area greater than 200 square feet must have an exterior finish that matches the primary finish on the front façade of the primary structure on the property. The primary finish on the front of the applicant's home is brick. The zoning ordinance requires that the applicant finish their new structure with at least 50% brick on all sides.

Mr. Head's proposal includes removing an existing non-conforming accessory structure and installing a new accessory structure in the same location. Mr. Head is proposing to have more than 50% of the front façade of the accessory structure finished with brick with the remaining facades being finished with vinyl siding. A variance to provide relief of matching the remaining facades with brick is required prior to issuing building permits.

You are a property owner within 100 feet of the subject property and as such are required by statute to be notified of this public hearing.

An application for this project as well as the BZA Policies and Guidelines are on file in our office and available for your review. These materials, in addition to future updates and reports completed by staff during the review process, can be found online at: <https://www.hamilton-oh.gov/bza>

The hearing is open to the public. However, due to the State of Emergency related to COVID-19, the Board of Zoning Appeals meeting will be held remotely via webinar or phone call. Those participating via webinar or phone call will still have an opportunity to provide input. Please use a computer or download the Zoom app for smartphones to participate using the following information:

Zoom Webinar Link: <https://zoom.us/j/366641603>
Webinar ID: 366 641 603

Alternately, you can use the call-in information to participate via phone. Dial 1 (312) 626-6799 then when prompted dial **the Webinar ID: 366 641 603**

**Please see Public Hearing Notification Map
included on the second sheet of this notice**



Planning Department

345 High Street, 3rd floor
Hamilton, Ohio 45011

Planning staff is happy to provide additional information to help you participate in the public hearing webinar, so please give us a call at 513-785-7350 for assistance before the meeting.

If you or anyone planning to attend this hearing have a disability for which we need to provide accommodations, please notify staff of your requirements at least three (3) days prior to the public hearing.

If you have any questions or comments concerning this matter, we welcome your calls and emails. Please email us at planning@hamilton-oh.gov or contact Daniel Tidyman at the City of Hamilton Planning Department at (513) 785-7023.

Sincerely,

Daniel C. Tidyman

Daniel Tidyman
Associate Planner I

**Please see Public Hearing Notification Map
included on the second sheet of this notice**



Board of Zoning Appeals
March 5, 2020 @ 9:00am.
Council Chambers
First Floor, 345 High Street
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Desmond Maaytah
Acting Chairperson

Samy Broyles
Board Member

Matthew Couch
Board Member

Karen Underwood-Kramer
Board Member

Von Stein
Board Member

Roll Call:

Two (2) Public Hearings

Broyles x	Couch x	Maaytah x	Underwood-Kramer	VonStein x	Bowling (Alt.)

Swearing in of Those Providing Testimony to the BZA: Notary Public Daniel Tidyman

New Business:

Agenda Item #1: Variance Request for 7280 Gateway Avenue

Request by Tri-Health. Three (3) requested variances from Section 1138.71 for a site located in the B-2 (Community Business District). The submitted request pertains to a new freestanding sign located on a currently vacant parcel of land.

Staff: Daniel Tidyman

Staff Presentation:

Section A: Introduction and Background

Section A.1: Project Overview

Tri-Health is proposing a new freestanding monument sign that will be located at the corner of the property in question. The purpose of the sign is to replace an existing sign on the property that does not meet the needs of wayfinding for patients seeking directions to the nearby Bethesda Tri-Health hospital located on 3215 Hamilton-Mason Road. The purpose of the new sign would be to better direct patients to the hospital that is located about a quarter mile away from the hospital.

Report continued on the next page





Section A.2: Existing Site Conditions

The property is located on the Southeast corner of Hamilton Mason Road and State Route Bypass 4 near the edge of the City Limits and Fairfield Township. Access to the site is located on Gateway Avenue. The site and surrounding area have a similar lower density character to two other hospitals (UC Health and Cincinnati Children's) located nearby major thoroughfares in Butler County.

Section B: Petition Review

The applicant's proposal intends to reduce stress for patients who may be traveling urgently to the nearby hospital. In order to construct the proposed freestanding sign, the applicant must receive the following variances from the HZO:

1138.71 Freestanding Signs C Zoning District Limitations (Area): Single or Multi-tenant non residential uses in the B-2 District are permitted to have a free standing sign with a maximum area of .75 square feet per lineal foot of lot frontage with a maximum area of 120 square feet.

1138.71 Freestanding Signs C Zoning District Limitations (Maximum Height): The maximum allowable height for a non-residential freestanding sign in the B-2 District is eight (8) feet.

1138.71 Freestanding Signs F (Design): Freestanding signs shall be located in a non-paved landscaped area or planter box equal in size to the area of the sign face. Curbing shall surround the freestanding signs located in landscaped areas within parking lots. All wiring including electric service wiring shall be concealed.

The resulting variance requests include:

- ***Additional 19 feet and 9 inches of sign height***
- ***Additional 220 square feet of sign area***
- ***Variance to allow Planning Department discretion from landscaped bed area***

Section C: Pertinent Statutes

As it pertains to granting a variance the Hamilton Zoning Ordinance states:

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

Report continued on the next page





- **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.
- **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.
- **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 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.

Section D: Notification

The Planning Department mailed Public Hearing Notices to the owners of four (4) properties within 100 feet of the subject property per statute requirements. At the time of writing this report, the Planning Department has not received any inquiries pertaining to this request.

Section E: Recommendations

The Board of Zoning Appeals can approve or deny the three (3) variance requests. If the BZA intends to approve of the requests, the Planning Department recommends the following motion:

That the BZA approve the appeal request to grant variances pertaining to Section 1138.71 subject to the following conditions:

- 1) Any construction drawings for the proposed improvements and work are revised subject to any future review requirements of the City of Hamilton Departmental Review.
- 2) All plans submitted for review be compliant with horizontal and vertical clearance requirements per the National Electric Safety Code requirements.
- 3) The applicant will collaborate with Planning Staff and the Municipal Arborist regarding future landscaping around the sign.

Report continued on the next page





Section F: Staff Basis / Comments

Staff finds the proposed variance meets the statutory requirements for granting a variance for the following reasons:

- 1) There are exceptional circumstances given that the zoning district the sign would be located in has a different character than other properties zoning B-2 within the City. The property in question is located on the edge of the City limits with a lower use density that can be found with other butler county hospitals near major thoroughfares such as Cincinnati Children's in Liberty Township or UC Health in West Chester.
- 2) A literal interpretation of the zoning ordinance would infringe on the property rights of the applicants right to provide wayfinding for patients in emergency or life threatening situations.
- 3) The requested variance would not be detrimental to the property or surrounding area. The sign would be located in a much less dense area compared to Fort Hamilton Hospital which is located between two neighborhoods (Prospect Hill and Highland Park) of higher density. This sign would be similar to the Cincinnati Children's Hospital sign located on I-129 and the UC Health Sign located near I-75.
- 4) This variance request is a non-recurring request given the surrounding area's character being different from the current zoning district. This is a rare situation to accommodate for the hospital better serving patients. Staff does not expect this to be a common situation which would require revisions to the zoning ordinance.
- 5) Staff is requesting discretion to approve of the future landscaped bed. The applicant is early in the process to acquiring the property

Public Hearing:

Steve Mombach, TriHealth, was in attendance to discuss the project. He noted that signage is critical to get people to the Emergency Room in a timely manner.

Motion to close: Von Stein
Second: Broyles
Motion passes unanimously.

Discussion: BZA stated they agree with staff findings.

Motion: Motion to approve as presented.

Report continued on the next page





Motion by: Couch
Second: Von Stein
Motion passes unanimously.

Agenda Item #2: ADRB Decision Appeal for 29 N D Street

Request by EDB Property Group LLC. The request pertains to an appeal to the decision made by the Architectural Design Review Board to deny a COA request for window replacement, cornerstone façade improvements, and LED Signage.

Staff: Daniel Tidyman

Staff Presentation:

Section A: Introduction and Background

Section A.1 Petition Overview

EDB Property Group LLC is applying to seek an appeal to the Board of Zoning Appeals regarding a decision made by the Architectural Design Review Board (ADRB) to deny three (3) requests from the property owner of 29 N D Street. The ADRB decision was the denial of a Certificate of Appropriateness (COA) application for the replacement of wood windows with vinyl windows, new stone façade and accents on the building, and two new LED wall signs. The details of the ADRB request from the applicant are:

- Window Replacement
 - Remove existing olive-colored wood windows, primarily double hung design.
 - Replace with white Sprouse Vinyl Picture Windows of same size and location
 - Existing glass block windows to remain
- Stone façade improvement
 - Approximately 4' of Roma Corner Stone on front façade
 - Color: Gray Mix
 - Similar to finish found on Fleurish Home (135 Main Street)
- LED Wall Signage
 - Two Locations
 - Front Façade (South East): Approximately 27 square feet
 - Side Façade (South West): Approximately 40 square feet

Section A.2 Existing Site Conditions & Historic Designation

The building located at 29 N D Street is the site of a former professional office and is located in the Rossville-Main Historic District. Per the State of Ohio Inventory Sheet, the building was built in the 1860's with a modest Greek Revival Style all brick façade. Prior to the applicant's improvements in 2019, the façade of the building was painted a sage green with trim/windows/lentils painted an olive green. The property is located between Park Avenue and

Report continued on the next page





Main Street. The property has alley access in the rear and shares an access drive with All Points Title and Closing LLC.

Section A.3 History

The applicant acquired the property via Sheriff's Sale in March 2019. At that time, the building was painted a sage green color, had wood finished (majority of which were double hung) windows, and had decorative wood features around the front door. In September 2019, Staff was notified that the property completed exterior work without a COA and sent a stop work letter to the property owner dated October 2, 2019. At that time, the only work completed was the painting of the façade and gutter repair.

After receiving the stop-work order, the property owner continued work without a COA. On October 23 2019, a site visit from Staff captured photos of window replacement on the building. On December 6 2019, a site visit from Staff found continued work without a COA including the stone work on the front façade which covered up a portion of the brick façade, stone window lentils, and decorative wood features around the front door of the building.

The applicant submitted a COA application in December 11, 2019 for work that had already been completed as well as for LED wall signage and a like-for-like roof replacement. Staff approved a COA administratively for the soffit/gutter repair, new exterior paint, and the new roof. On January 21 2020, the ADRB denied the COA application for the remaining three exterior requests. ADRB provided the following reasoning for the denial. (See Section C.3 ADRB Justification for denial)

Section B: Appeal to the Board of Zoning Appeals:

On January 23 2020, the property owner submitted a Board of Zoning Appeals (BZA) application to appeal the denial from the ADRB. The applicant states that the building was in a dilapidated condition at the time it was purchased. The work that was completed was intended to stop deterioration and improve the property to fit the surrounding area, citing surrounding buildings that have vinyl windows and other non-historic alterations. The application also indicated that the statements from the ADRB board members during the meeting were inconsistent with one another.

The applicant is requesting that the BZA review the ADRB's decision to deny the Certificate of Appropriateness. When reviewing the appeal, the Board of Zoning Appeals should evaluate the information provided to the ADRB and determine whether the ADRB appropriately utilized the ADRB Guidelines to make their determination of denial.

According to Section 1170.80, the Board of Zoning Appeals "may reverse or affirm, wholly or partly or may modify the order, requirement, decision or determination appealed from to the extent and manner that the Board may decide to be fitting and proper on the premises, and to that end the Board shall have all the powers of the City Manager or Designee from whom the appeal is taken."

Report continued on the next page





Section C: Overview of Appeal Considerations

Section C.1 – Architectural Design Review Board Purpose and Statutes

Section 1126.00 of the Hamilton Zoning Code regulates “Architectural Conservation/Historic Districts” and establishes the Architectural Design Review Board. The purpose of section 1126.00 is stated as, “to protect the economic, cultural, and educational welfare of the citizens of the City of Hamilton by preserving and protecting significant architectural and/or historic structures, sites, monuments, streetscapes and neighborhoods by the establishment of restrictions on construction, erection, alteration, painting, design, color, removal, moving or demolition of buildings and structures, and the construction, erection, mounting, painting, design, color, moving, demolition, or revision of signage in the any hereinafter designated Architectural Conservation/Historic District.”

Section 1126.50 provides guidance for the ADRB to make COA decisions. “In determining whether or not the Architectural Design Review Board will approve the issuance of a Certificate of Appropriateness, said Board shall consider whether the proposed change will adversely affect or destroy any significant exterior architectural and/or historical feature of the structure, site, monument, streetscape or neighborhood, whether such change is inappropriate or inconsistent with the purpose of Section 1126.00, et seq., and whether it will adversely affect or destroy the general architectural and/or historical significance of the Architectural Conservation/Historic District. In addition to the foregoing, the Architectural Design Review Board will apply the specific design standards for each separate Architectural Conservation/Historic District when reviewing, all projects in that district, in determining whether to approve or disapprove the issuance of Certificate of Appropriateness.”

Section C.2 – Justification from Applicant

The applicant’s justification for the improvements were that they purchased the property through Butler County Sheriff Sale and were not aware that the property was located within a historic district until received a stop work letter. The applicant has explained that the windows were in a condition that was beyond repair which is why they were replaced. At the January 21, 2020 meeting, the applicant submitted an estimate for window replacement from Pella Windows and a notarized statement dated on January 17, 2020 from a representative of Butler Glass stating that the windows were beyond repair due to rot and were unrepairable which required replacement.

In addition, the applicant stated that the reasoning for the window material and cornerstone was because the materials can be found on other buildings in the district. The applicant cited neighboring properties, Realty First and All Points Title that have vinyl windows. The applicant also questioned the approval of recent renovations for the garage door on the front façade for Two Little Buds on 17 N D Street.

Section C.3 ADRB Decision & Justification

During the January 21 2020 meeting, ADRB members approved of a motion to deny the stone façade improvements and LED Signage while providing a compromise regarding the windows.

Report continued on the next page





Staff provided information regarding the fact that much of the work on surrounding buildings may have occurred prior to the local historic district expansion ten years ago and other work has also received a stop-work order and COA denial, with the same conditions provided the applicant.

Therefore, in accordance with the Hamilton Zoning Ordinance, the ADRB attempted to reconcile an alternative plan with the applicant that would be acceptable to both the applicant and the ADRB. At the January 21 2020 meeting, the ADRB suggested the following alternatives:

- In an effort to focus on the windows most visible from the right-of-way, the board passed a motion to requiring the applicant remove the windows on the front façade facing N D Street, two windows on the north façade side front of the building facing Park Avenue, and the one window on the south façade facing Main Street. ADRB stated that the applicant can apply for a COA for replacement windows that are paintable.
 - The windows not included in the motion were permitted to remain.
- Utilize 25% of existing window space similar to a nearby food service establishment, Roll on In, at 102 Main Street to use LED signage as an exempt window sign.

Without being able to identify an alternative plan that worked for the applicant, on January 21, 2020, the ADRB denied the applicant's request for a Certificate of Appropriateness pertaining to cornerstone improvements and LED Signage. The ADRB also passed a motion as one of the alternatives above for the windows. All three (3) items were voted on separately and approved unanimously.

The justification for the ADRB's decision includes:

Window replacement:

- The requested windows do not follow the ADRB Guidelines for window replacement. The new windows differ in color, style, and material than the wood windows. Additionally, the ADRB's precedent has been to approve paintable replacement windows and the vinyl replacement windows are not paintable.
- The ADRB gave the applicant the same denial conditions that CORE was given for 16 N Street and 244 Main Street when they replaced wood windows with vinyl windows, which allowed them two (2) years to remove and replace the windows or until they receive a change of occupancy, whichever is earlier.

Stone Façade Improvement:

- The stone that was installed covered up intact historical features such as original brick, window lentils, and decorative wood around the front entrance to the building.
- The board stated that the stone should be removed, original features restored, and where necessary, like-for-like work be completed where original features could not be restored.

Report continued on the next page





LED Signage:

- The ADRB Guidelines state, “Not recommended: Flashing Lights, Strobe Lights or other similar treatments and LED screens, projectors and related equipment and LED programmable signs. They will be evaluated on a case-by-case basis, based on context.”
- The board recommended an alternative form of exempt signage by using up to 25% of glass transparency from the front façade with LED signage in the windows.

Section D: Recommendations

The Board of Zoning Appeals can approve or deny the appeal for the property located on 29 N D Street.

If the Board of Zoning Appeals intends to deny this appeal, the Planning Department has prepared the following motion:

- That the appeal application did meet the conditions set forth in Section 1126.50 and the ADRB Policies and Guidelines. Therefore, the Board of Zoning Appeals affirms the Architectural Design Review Board’s Certificate of Appropriateness denial.

If the Board of Zoning Appeals intends to uphold this appeal, the Planning Department has prepared the following motion:

- That the appeal application did meet the conditions set forth in Section 1126.50 and the ADRB Policies and Guidelines. Therefore, the Board of Zoning Appeals reverses the Architectural Design Review Board’s Certificate of Appropriateness denial.

Section F: Staff Basis / Comments

The Planning Department recommends that the Board of Zoning Appeals affirm the decision made by the Architectural Design Review Board for the following reasons:

1. The ADRB utilized the Hamilton Zoning Ordinance’s Section 1126.50 and ADRB Policies and Guidelines to make their decision. According to the ADRB’s Policies and Procedures, “The Board reserves the right to develop/rewrite specific policies and/or stands for decision making.”
 - a. Windows: The new windows do not conform to the ADRB guidelines for windows. The ADRB guidelines state that if an applicant demonstrates that a window is beyond repair, that the Board can approve replacement windows. “If approved, replacement windows will conform to the following:
 - i. The replacement window must match the existing window style.
 - ii. The replacement window must match the existing window design.
 - iii. The replacement window should match the existing window in material composition.”
 - b. LED Signage:
 - i. The ADRB Guidelines state:
 1. “Not recommended: Flashing Lights, Strobe Lights or other similar treatments and LED screens, projectors and related

Report continued on the next page





- equipment and LED programmable signs. They will be evaluated on a case-by-case basis, based on context.”
- ii. Staff does not believe that sufficient context was provided to approve 29 N D Street as a special case that would be appropriate for signage that is typically not recommended by the ADRB.
- c. Stone Façade
- i. There are no specific regulations about adding stone façade work to a building. However, according to Section 1126 of the Hamilton Zoning Ordinance, ADRB has oversight over all exterior alterations to buildings. The stonework covers up historic, intact building materials and alters the exterior appearance of a historic building. Staff supports ADRB’s decision to deny the COA application for stonework on 29 N D Street as there was insufficient explanation of why the physical alteration was compatible with the property.
 1. Section 1126.51 states: “That the proposed change is compatible with the subject property and/or a majority of properties in the immediate surrounding area in terms of: height, proportion of a facade, openings within a facade, relationships of solids to voids in a facade, entrances to sidewalks, materials, textures, color, architectural details, roof shapes, landscaping, continuity and scale.”
 2. Prior to denying the COA, the ADRB attempted identify an alternative proposal that would work for the applicant but was unable to do so, as is required as part of their process. (See Section C.3 ADRB Decision & Justification)

Section H: Notification

The Planning Department mailed Public Hearing Notices to the owners of 13 properties within 100 feet of the subject property per statute requirements.

As of the writing of this report, the Planning Department received no phone calls or inquiries pertaining to the appeal of the decision made to deny the Conditional Demolition by the ADRB.

Public Hearing:

BZA asked questions about what kind of windows to ADRB allow. Staff stated that the ADRB has been approving wood windows and wood-composite windows that are paintable. BZA also asked about vinyl windows surrounding the subject property and staff stated that the vinyl windows in surrounding buildings were likely put in prior to the local expansion of the Rossville Historic District and 244 Main and 16 N D have to remove the vinyl windows that CORE put in, per the ADRB’s COA denial of these windows.

Dr. Cruz stated that windows and stone exist in buildings around the Rossville Historic District and have been put into the district recently. He cited cost for the reason he cannot replace the windows with wood windows. He stated that there are LED signs adjacent to

Report continued on the next page





the historic district as well. He stated that the neighboring businesses are supportive of the changes that Dr. Cruz has made to the building, especially given the poor condition the building was in prior to his purchase of the property.

Dr. Cruz stated he does not agree with the compromise ADRB suggested for the windows because if he kept some of the windows and replaced other windows, there would be three different kinds of windows in the building.

BZA asked why he continued to do work after the stop-work order. Dr. Cruz stated that he had no justification to do work without the Certificate of Appropriateness approval.

Dr. Cruz stated that he is not introducing anything new to the district and cited the rehabilitation on the former Tom's Cigar property as a total redesign of a historic property with similar stone material added to the façade. Dr. Cruz stated that he changed the windows from double hung to picture windows because picture windows are more appropriate for a business/office use.

BZA reviewed pictures of other windows found on Main Street that Dr. Cruz provided. BZA stated that the white windows that Dr. Cruz put on the building are a very noticeable visual change in the building's appearance and none of the other windows in the pictures Dr. Cruz shared look like the white windows in 29 N D Street.

Dr. Cruz began discussing the possibility of changing the white vinyl windows to another color vinyl window and BZA stated that they cannot negotiate a different approval. BZA can only review ADRB's decision and support it or deny it. Staff discussed possible next steps with Dr. Cruz after BZA's decision, including going back to ADRB with a new proposal. Dr. Cruz stated that he intended to go to Court of Common Pleas as the next step if BZA does not reverse ADRB's decision.

Motion to close: Broyles
Second: Couch
Motion passes unanimously.

Discussion:

BZA stated they do not like it when a property owner has invested in Hamilton and then issues are found related to City regulations that require work to be removed. BZA stated they were glad to see ADRB attempt to work with the applicant on this case.

Motion: Motion to deny the appeal because the ADRB utilized Section 1126 of the Hamilton Zoning Ordinance and the ADRB Guidelines to make the decision.
Motion by: Von Stein
Second: Couch

Motion passes unanimously.

Report continued on the next page





Minutes:

1. February 6, 2020
 - a. Motion to approve: Von Stein
 - b. Second: Broyles

Miscellaneous:

- Election of Chair Person and Vice Chair Person for 2020 Operational Year
 - Motion to table: Broyles
 - Second: Von Stein
- Welcoming new BZA member Matt Von Stein

Adjournment

Motion to adjourn: Von Stein
Second: Couch
10:04 am

Daniel Tidyman
Secretary

Desmond Maaytah
Acting Chairperson

Report continued on the next page



Proposed BZA Rules and
Procedure Revisions.

Rules of Procedure
Hamilton, Ohio
Board of Zoning Appeals
May April, 2019

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 included 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: 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 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 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 a 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) Variances: The Board shall have the power to authorize upon appeal in specific cases, filed as hereinbefore provided, such variances from the terms, provisions or requirements of the ordinance as will not be contrary to the public interest; provided, however, that such variances 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)

- (5) Use Variance: Except as herein provided under conditional uses in accordance with Section 1155.00, **no use variance** from the District Regulations of this Ordinance will be permitted. (REVISED OR2015-9-80)
- (6) Variance - Conditions Prevailing: Where, by reason of the exceptional narrowness, 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 extraordinary 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 enforcement of the requirements of the ordinance would involve practical difficulty or would cause unnecessary hardship (unnecessary to carry out the spirit and purpose of this 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 in the public interest. In authorizing a variance, with attached conditions, the Board shall 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 circumstances or conditions applying to the property in question or to the intended use of the property, that do not apply generally to other properties in the same zoning district. (1170.63.1)
- (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. (1170.63.2)
- (10) Absence of Detriment: That the authorization 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. (1170.63.3)
- (11) Not of General Nature: No granting of a 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. (1170.63.4)

SECTION 2

- (1) Architectural Design Review Board: The 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)

ARTICLE II 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 membership shall terminate simultaneously with his office on the City Planning Commission. A member of the City Planning Commission or an identified representative of the City Planning Commission shall be appointed by the Planning Commission in accordance with their Rules of Procedure. (1160.10)

SECTION 4

If any member misses six (6) meetings within one year, the Board shall request their 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 Chair and one as Vice- Chair. If during the term of office any seat on the Board 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 Chair shall preside at the meetings of the Board, call special meetings, administer oaths (if a law representative is not present), compel the attendance of witnesses, and perform such other duties commonly prescribed to such office. (1160.20)

SECTION 3

The Vice- Chair shall perform the same duties as the Chair in their absence.

SECTION 4

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

SECTION 5

An appointed City Employee shall serve as Secretary of the Board and as directed, shall send all communications, keep all records, and perform such other duties commonly prescribed to such office. (Part 1160.20)

SECTION 6

The Planning Department will provide such secretarial and stenographic assistance and office supplies as are needed by the Board.

ARTICLE IV MEETINGS

SECTION 1

The regular meetings will be held **at a consistent time each month voted by the board at the first meeting of the year.** ~~first on the Wednesday of each month~~ in the Council Chambers of the Municipal Building unless changed by the Board or the Chair. If no appeals have been filed, the Chair shall determine if a meeting shall be held to consider other business.

SECTION 2

Meetings will be scheduled **at a consistent time,** 9:00 A.M., except that when in the judgment of the Secretary of the Board the number of appeals and business is such as to warrant additional time, In that event, the meetings shall be scheduled to accommodate such business, and members and other parties shall be notified. (1160.40)

SECTION 3

Special meetings may be called by the Chair of the Board or by any two members of the Board.

SECTION 4

There will be no meeting if a quorum is not met.

SECTION 5

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

SECTION 6

- (1) Regular Meetings: The Secretary of the Board shall post or publish notice of all regular meetings accordance with applicable law.
- (2) Special Meetings: The Secretary of the Board shall post or publish notice of all special meetings in accordance with applicable law.
- (3) News Media: In the event any member of the news media so requests, the Secretary of the Board 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 Secretary of the Board 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 requesting 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 Secretary of the Board with current addresses. The Secretary of the Board 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~~ **the meeting will be held** 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 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 Chair 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 they have 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 Planning Department, or the Architectural 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 they are 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, they shall state their official capacity on the appeal application. (1160.30)(1126.50)

- (2) There shall be no time limit to file an appeal following a decision of the Zoning Authority. (1160.30)
- (3) The time limit to file an appeal following a decision of the ADRB for work already performed shall be sixty (60) calendar days after the decision of the ADRB. (Amended November, 2016)

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 their 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 Secretary of the Board 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, or owner (if different from appellant), address, and lot number of the property concerned in the appeal shall appear on all information furnished with an appeal. A scale of any drawing (when required to be drawn to scale) shall be noted on the drawing.
 - (c) A fee of \$200.00 shall accompany each appeal or request. 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 Planning Department along with all papers and information as required in the application. An application shall be prepared and approved by the Board to give instructions to appellants filing appeals.

SECTION 3 - (ACTION ON APPLICATION)

- (1) If the appellant, Secretary of the Board or other interested party desires to subpoena witnesses, they shall make a request of the Board Chair to subpoena

such witness. Such requests shall be filed at the Planning Department office at least five (5) working 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 Secretary of the Board shall prepare a report to the Board describing the situation and the violations involved. (1160.30)
- (3) The Secretary of the Board 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. Copies, as required, shall be sent to all board members. (1160.30)
- (4) The Secretary of the Board shall notify the appellant and all owners of property within 100 feet of the property in question the date, time, place and purpose of the hearing. (1160.40)

SECTION 4 - (HEARINGS)

- (1) All hearings shall be open to the public. (1160.20)
- (2) A separate public hearing will be conducted on each application appeal.
- (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 Planning Department office and shall be a public record. (Part 1160.20)
- (3) The Secretary of the Board or member of city staff will present and explain the case, setting forth the reasons for this action.
- (4) Following the Secretary of the Board or member of city staff'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) The Board 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 Secretary of the Board and/or on the motion of the Board, the hearing may be tabled for further evidence or information.

SECTION 5 - (FOLLOWING HEARING) (1170.80)

- (1) The Secretary of the Board 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 **business** (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; or
- (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, without 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. 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.

Appeals: Appeal to the Court Those aggrieved by the decision of the Board of Zoning Appeals may appeal such decision to the Butler County Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code. Appeals shall be filed to the Butler County Court of Common Pleas. The time limit to file an appeal following a decision of the BZA shall be sixty (60) calendar days after the decision of the BZA becomes final.

ARTICLE VII GENERAL RULES

SECTION 1 - (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 Planning Department to issue zoning 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)