

ZONING BOARD OF APPEALS  
TUESDAY, APRIL 15, 2014 @ 7:00P.M.

CALL TO ORDER: 7:10 p.m.

COMMISSIONERS: Chairman - Mr. Lee Todd  
Mr. Ahmad Taylor  
Mr. Sam Anderson, Jr.  
Ms. Patricia Hollis  
Ms. Elcine Kirkendolph  
Mr. Joseph Sinclair  
Mr. Carlos Bueno

CHAIRMAN TODD: I will call the meeting to order. Roll call, please.

MR. SABO: Sinclair?

MR. BUENO: Here.

MR. SABO: Anderson?

MR. ANDERSON: Here.

MR. SABO: Hollis?

MS. HOLLIS: Here.

MR. SABO: Chairman Todd.

MR. TODD: Here.

EXCUSED: Kirkendolph.

ABSENT: Sinclair, Taylor.

ALSO PRESENT: Mr. James Sabo, Professional Planner  
Mr. Gordan Bowdell, Associate Planner

**COMMUNICATIONS:** None.

**ADOPTION OF MINUTES:** March 18, 2014.

COMM. BUENO MADE A MOTION FOR APPROVAL OF THE MINUTES FOR March 18, 2014 AND COMM. HOLLIS SUPPORTED.

CHAIRMAN BUENO: Roll call, please.

VOTE: AYES: Bueno, Hollis, Anderson, Chairman Todd.

NAYS: None.

ABSTAIN: None.

Vote 4-0-0 for approval of the March 18, 2014 Minutes.

**PUBLIC HEARINGS AND SITE PLAN REVIEWS:**

**5.1 PUBLIC HEARING NUMBER: ZBA-13-16 DIMENSIONAL VARIANCE**

Finding of facts presented by Mr. Bowdell.

**Property Description:** 69 E. Walton Blvd. Parcel No.: 14-08-455-025; 14-08-455-026;  
14-08-455-028; 14-08-455-030

Applicant/Property Owner: AutoZone Inc.

**Dimensional Variance Request:**

Section 2.310(B) – Dimension and Design Standards: Required front setback in a C-3 zoning district shall be 10 feet; required rear setback in a C-3 zoning district shall be 20 feet.

**Claimed Practical Difficulty:**

The Applicant stated:

*“The existing building is an existing non-conforming condition with regard to the front and rear building setbacks. The north wall encroaches into the rear building setback; the south building wall encroaches into the front building setback. The proposed building expansion is on the west side of the building, thus no further encroaching into the north (rear) or south (front) building setback is proposed.”*

**Staff Findings:**

1. The property is zoned C-3, Corridor Commercial Mixed Use District.
2. In accordance with Section 2.310(B), the required front setback is 10 feet.
3. In accordance with Section 2.310(B), the required setback is 20 feet.
4. The existing building is “existing non-conforming” as it relates to the front and rear setback
  - a. Although the proposed addition encroaches, it does not encroach past the existing building’s front and rear wall. The applicant’s expansion maintains the “existing non-conformity” of the front and rear yard setback.

**AUTHORIZATION:           Section 6.407 Dimensional Variance**

**Authority** – The Zoning Board of Appeals may grant a dimensional (nonuse) variance to provide relief from a specific standard in this Ordinance relating to an area, a dimension or a construction requirement or limitation, upon the concurring vote of a majority of the members of the Zoning Board of Appeals.

**Practical Difficulty** – A nonuse variance shall not be granted unless the Zoning Board of Appeals finds that there is a practical difficulty in the way of carrying out the strict letter of this ordinance. In determining whether a practical difficulty exists, the Zoning Board of Appeals must find that:

1. Compliance with strict letter of the restrictions governing area, setback, frontage, height, bulk, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.

**May/May not meet this standard. – The restrictions of this ordinance do not prevent the owner from using the property as a permitted purpose. The use of the property for “retail sales” is a permitted use in the C-3 zoning classification. However, conformance to the front and rear setback may cause a conflict with the configuration of the interior layout/design of the building which may be unnecessarily burdensome to the applicant.**

2. A grant of the variance will do substantial justice to the applicant as well as to the other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.

**Appears to meet this standard – The proposed variance appears to do substantial justice to the applicant and appears to be consistent with other property owners in the zoning district. The proposed addition does not further the non-conformity of the existing building; and appears to be more consistent to the existing building.**

3. The plight of the applicant is due to the unique circumstances of the property.  
**Appears to meet this standard** – **The front and rear setbacks of the existing building are non-conforming. The proposed addition does not increase this non-conformity. The proposed addition maintains the existing front and rear setback, however, extends this non-conformity to the west of the property.**
  
4. The problem is not self-created.  
**May/May not meet this standard** - **The problem is self-created from the standpoint that the applicant is seeking a building addition to their property. However, the existing non-conformities that exist at the site are not self-created.**
  
5. The spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.  
**Appears to meet this standard** – **The proposed addition and variance appears to meet the intent of the ordinance and does not have a negative impact on public safety, welfare, or justice.**
  
6. There is compliance with the standards set forth in *Sect 6.401.B*.  
**Appears to meet this standard** – **The proposed addition does not seem to impair light and air to the property, nor does the proposal produce an increase in traffic congestion.**
  
7. Compliance with standards for discretionary decisions contained in *Sec 6.303*.  
**Not Applicable.**

**RECOMMENDATION:** To approve the proposed dimensional variance request (ZBA-14-07) for AutoZone at 69 E. Walton Blvd., as the proposed request appears to meet the standards for practical difficulty from Section 6.407 of the Zoning Ordinance. Front setback variance of 1.88 feet and rear setback variance of 7.86 feet.

Wesley Berlin, 2900 E. Grand River, Howell, Professional Engineer Associates, consultant for AutoZone thanked Mr. Bowdell for the summary. He stated that AutoZone is currently in the process of purchasing the property and improvements to the property will include removing and repaving the old lot and sidewalks, landscaping and improving the storm water and drainage system.

CHAIRMAN TODD DECLARED PUBLIC HEARING OPEN.

Rick Cabasa, Northern Design Company, neighbor to the property, fully supports the plan.

Dan Bennett, 86 E. Colgate, is in full support of the plan but has some concerns regarding the trash from the business. He states that litter from customers from the previous Blockbuster would regularly blow into his backyard. Even though there is a fence, it stops short of his property therefore leaving him with a mess to clean up every day. He asked the board to put a contingency on the request. He would like AutoZone to extend the fence to cover his property from the blowing debris. Mr. Bennett also provided pictures of his property and the trash.

**CHAIRMAN TODD DECLARED PUBLIC HEARING CLOSED.**

Chairman Todd stated that the ZBA could not mitigate this issue and does not have the authority to put a contingency to the approval of the variance. He did recommend to Mr. Bennett that if approved and if any issue arises that a complaint should be submitted to the Building Department. He affirmed that the Building Department is very proactive with complaints.

Chairman Todd stated to Mr. Berlin that all 4 (four) votes would be needed from all present Commissioners in order for the request to be approved. He asked the applicant if he would like to table the request for a later date. The applicant declined and wished to proceed with the vote.

**COMM. HOLLIS MADE A MOTION TO APPROVE THE DIMENSIONAL VARIANCE REQUEST (ZBA-14-07) FOR AUTOZONE AT 69 E. WALTON BLVD., AS THE PROPOSED REQUEST APPEARS TO MEET THE STANDARDS FOR PRACTICAL DIFFICULTY FROM SECTION 6.407 OF THE ZONING ORDINANCE. FRONT SETBACK VARIANCE OF 1.88 FEET AND REAR SETBACK VARIANCE OF 7.86 FEET.**

**COMM. ANDERSON SUPPORTED.**

**CHAIRMAN TODD:** Roll call please.

**VOTE:**           **AYES:**           Hollis, Anderson, Bueno, Chairman Todd.  
                      **NAYS:**           None.  
                      **ABSTAIN:**       None.

Vote 4-0-0 for approval of the dimensional variance.

**NEW BUSINESS:**   None.

**UNFINISHED BUSINESS:** Chairman Todd inquired as to the status on the alternates. Comm. Hollis stated that an alternate was approved by Council but could not provide a name. A name is to be provided for the next meeting.

**PUBLIC COMMENT:** None.

**MISCELLANEOUS:** Chairman Todd requested that the staff email Comm. Taylor and Comm. Sinclair to inform them that their absent at today's meeting was not excused. Commissioners are allotted 3 (three) unexcused absents with the option for Board removal.

MOVED BY COMM. HOLLIS TO ADJOURN.

COMM. BUENO SUPPORTED.

All in Favor: Ayes: All                      Nays: None                      Abstain:                      None

**ADJOURNMENT:** 7:47 p.m.