

Town of Hamburg  
Board of Zoning Appeals Meeting  
January 5, 2016  
**AMENDED MINUTES**

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, January 5, 2016 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Chairman Shawn Connelly, Commissioner Joseph Sacco, Commissioner Bob Ginnett, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl and Commissioner Louis M. Chiacchia.

Others in attendance included Attorney Mark Walling, Board of Zoning Appeals Attorney and Planning Consultant Sarah desJardins.

Chairman Rybczynski asked for a moment of silence to honor the men and women currently serving in the armed forces.

Chairman Rybczynski made a motion, seconded by Mr. Sacco, to retain Commissioner Connolly as Vice-Chairman and Commissioner Chiacchia as Secretary.

All members voted in favor of the motion.

Commissioner Chiacchia read the Notice of Public Hearing.

**Tabled Application # 5557** Richard Root – Requesting an area variance to construct a new residence on vacant land located directly south of 6334 Old Lakeshore Road

Mrs. desJardins stated that the applicant originally requested two (2) area variances, but one (1) is not necessary anymore because the applicant has decided to construct an attached garage instead of a detached garage.

Chairman Rybczynski stated that the Conservation Advisory Board (CAB) reviewed this application and recommended that the home be constructed at least 50 feet from the top of the bank.

Richard Root, applicant, stated that the home's design has been revised so that the garage will be attached, and he is requesting that he be allowed to construct the home 45 feet from the top of the bank instead of the recommended 50 feet. He noted that his original request was to be able to construct the home 40 feet from the top of the bank, but he has revised the plans, and he is only asking for 45 feet from the top of the bank now.

A member of the audience asked to review the plans for the home.

In response to a question from Mr. Connolly, Mr. Root stated that the property is very panoramic, and this proposed house fits very nicely on the lot.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Connolly, to approve a 15-foot area variance for Application # 5557.

On the question: Mr. Dimpfl reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No.

2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

All members voted in favor of the motion. **GRANTED.**

**Application # 5559** Jean Albert – Appeal of a determination made by Supervising Code Enforcement Official that a business located at 5504 South Park Avenue is considered a permitted non-conforming use.

It was determined that no one was in attendance representing the applicant, but there were approximately ten (10) people in attendance to speak on this application. Chairman Rybczynski stated that he would allow anyone who wanted to speak to do so.

Attorney Kevin Rautenstrauch from Attea & Attea stated that he represents Kevin Dils, whose family owns the property in question and who owns the business on the property. He stated that a lawsuit has been filed in Supreme Court, and the judge advised the plaintiff to appear before the Zoning Board of Appeals before the judge would hear the issue as presented to him.

Mr. Dils stated that his business has been in operation since 1968 and was incorporated in 1969.

Attorney Rautenstrauch stated that Ms. Albert's counsel has asserted that Mr. Dils' business was abandoned three times – in 1997, in the summer of 2015 and in December 2015. He noted, however, that the Building Inspector has indicated that this business is a legal non-conforming use. He stated that since 1969 there has been no discontinuance of the business for more than one (1) year and no removal of equipment.

Chairman Rybczynski stated that Ms. Albert's attorney is relying on two (2) Facebook page posts to prove that the business was discontinued for more than one (1) year. One is a Facebook post indicating that the business was reopening in 2012 after having been closed for the previous few years.

Kim Dils stated that she operates the business's Facebook page.

Attorney Rautenstrauch stated that the confusion stems from the fact that Kevin Dil's father was ill for quite some time and therefore was not operating the business on a day-to-day basis. He stated that Mr. Dils still did repairs for people when asked, however. He noted that when Kevin Dils took over the family business after his father passed away, he had a "grand opening" in 2012.

Attorney Rautenstrauch stated that the corporation was never dissolved, and the business never ceased filing its state and federal income taxes or paying its franchise taxes.

Attorney Walling stated that when an interpretation is being appealed, the Zoning Board of Appeals should not be substituting its judgement for the Supervising Code Enforcement Official Kurt Allen's judgement. He stated that the Board should simply be looking at what Mr. Allen's rationale was, and unless there is some reason to think that there was no rational basis for his decision, there would be no point in overturning it.

It was determined that Ms. Albert owns property contiguous to the Dils' business.

**Findings:**

Chairman Rybczynski stated that the Zoning Board of Appeals must decide if Mr. Allen, in his deliberation and decision-making, has used a cogent, reasonable argument and approach to the decision he made. He stated that the Board should not consider the actual decision that was made, but rather the decision-making process used by Mr. Allen.

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to deny the appeal.

All members voted in favor of the motion. **GRANTED.**

**Application # 5560** Erie Metro Federal Credit Union – Requesting several area variances and use variances for a proposed detached sign at 3291 Lakeshore Road

Paul Strada from NAS Sign Company, representing the applicant, stated that the credit union would like to relocate a sign that has been removed from the front of the building to a different spot on the property. He stated that the credit union received variances for that sign from the Zoning Board of Appeals in 2013 that were necessary because it is an electronic messaging sign, it is too high and oversized. He noted that the sign had to be removed due to the remodeling of the building, and the applicant would like to reposition the sign 30 feet north of where it was previously.

Mr. Strada stated that after the sign was installed in 2013, the Town changed the Code to disallow pole signs, so that is an additional variance the applicant now requires in order to be allowed to install the sign in the new location. He stated that the applicant would like to reuse the sign instead of installing a ground sign. He noted that the applicant feels that if the new sign is a ground sign, it would hamper visibility at the intersection.

Mr. Strada stated that the new sign location also requires that the applicant receive a variance because it would be placed within 30 feet of an intersection, which is not allowed by Town Code.

Mr. Strada stated that the benefit sought by the applicant outweighs any negative impact, and the removal of the sign would be a detriment to the operation of the business.

In response to a question from Chairman Rybczynski, Mr. Ramon Gallardo, CEO of the credit union, stated that the income growth has been flat in the last two (2) years because of the economy, but the number of new loans produced has risen. He stated that the signage did help educate people of the credit union's products.

Mr. Gallardo stated that without the signage proposed, he does not think the credit union's business will grow.

Mr. Dimpfl stated that he is concerned that the visibility of the fire apparatus that would be leaving from the Woodlawn Fire Company on the other side of the intersection would be compromised by locating the signage so close to that intersection.

Mr. Strada stated that with the pole sign being elevated, he feels that the visibility would be acceptable for the fire apparatus.

Mr. Chiacchia stated that he does not feel that the pole sign would hinder the visibility of the fire apparatus.

Mr. Gallardo stated that there would be approximately ten (10) feet between the curb and the pole sign, so the fire apparatus driver would have ten (10) feet to creep forward to make sure it is safe to proceed.

Chairman Rybczynski stated that he would like to hear from someone representing the Woodlawn Fire Company regarding the visibility at that intersection.

In response to a question from Mr. Connolly, Mr. Strada stated that the currently proposed sign is the exact sign that was approved in 2014 and taken down during the remodeling process.

Mr. Connolly stated that in regard to the use variance request, he has issues related to the four (4) use variance criteria. He stated that this is not necessarily a unique situation (plenty of businesses can say that signage has improved their income growth).

Mrs. desJardins stated that several of the currently requested variances were granted for this sign previously. She noted that the concern is that since these variances were originally granted for this sign, the Town has changed the Town Code to not allow digital signs in this area and to not allow pole signs anywhere in Town, and Town officials are worried about the safety of placing the sign within 30 feet of the intersection because of visibility issues.

Mr. Chiacchia stated that the original location of the sign was probably closer to the road than the new location.

In response to a question from Mr. Ginnetti, Mr. Strada stated that changing the location of the sign is an aesthetic change more than anything else.

In response to a question from Mr. Sacco, Mr. Strada stated that the sign could be placed back in the original spot, but that is not the applicant's preference.

In response to a question from Mr. Chiacchia, Mr. Strada stated that the sign cannot be relocated further to the south of the original location because there is an existing drive-thru lane there.

**Findings:**

Mrs. desJardins reminded Board members that four (4) use variances and seven (7) area variances were being requested.

Mr. Sacco stated that on one hand, the applicant proposes to simply move an existing sign to a different location, but on the other hand, he is torn.

Chairman Rybczynski stated that the applicant could put the pole sign back where it was.

Mrs. desJardins stated that the new sign ordinance does not allow pole signs anywhere in Town and does not allow digital signs at this location.

Mr. Chiacchia stated that the applicant recently remodeled the building, and putting the sign back where it was would detract from the remodeling efforts.

Mrs. desJardins stated that when the applicant first applied for these variances, the proposal was for a new monument sign, but the applicant changed the request to the original pole sign.

Attorney Walling stated that the Board could deny the request and ask the applicant to come back with a better proposal.

Chairman Rybczynski stated that he did not vote to approve the applicant's variance request in 2013, and he feels the applicant could put the sign back where it was. He stated that he is not in favor of the applicant placing the sign within 30 feet of the corner.

Mr. Chiacchia stated that he does not see why the Board would not approve this request.

Board members discussed the different variances being requested at length.

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to table Application # 5560.

All members voted in favor of the motion. **TABLED.**

**Application # 5561** Robert Kirst – Requesting an area variance for a new building lot on vacant land north of 6262 Smith Road

Mr. Robert Kirst, applicant, stated that he would like to sell part of his property and create a new building lot. He stated that he needs a variance because he would like the new lot to only have 140 feet of width at the building line, rather than the required 200 feet. He noted that the new lot would be slightly more than three (3) acres.

Mr. Connolly stated that it appears that the lots across the street from this parcel do not have the required 200 feet of width at the building line. Mr. Kirst stated that they are 100 feet wide, to the best of his knowledge.

Mrs. desJardins stated that Mr. Kirst purchased the lot to be divided from the adjacent neighbor, and the seller did not legally subdivide the property before selling it to Mr. Kirst. She noted that if the seller had sought subdivision approval from the Planning Board, approval probably would not have been granted because anyone who wanted to build would have to go so far back to reach the required 200 feet of width to construct a home.

In response to a question from Chairman Rybczynski, Mr. Kirst stated that he has a tentative contract to sell the new lot pending the receipt of the requested variance from the Zoning Board of Appeals.

Richard Wesolowski, 6235 Smith Road, stated that he has no objections to the requested variance.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve application # 5561.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – Given the shape of the lot, it would be difficult for the applicant to do anything other than what he is proposing.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because there are already several properties across the street with the same frontage.
3. Whether the request is substantial – No, based on the size of the lots surrounding the applicant's residence.
4. Whether the request will have adverse physical or environmental effects – No, and the Board did hear from a direct neighbor that he has no objection.
5. Whether the alleged difficulty is self-created – The difficulty is self-created, but on balance, it favors the applicant.

All members voted in favor of the motion. **GRANTED.**

**Application # 5562** Mark Ellwood – Requesting an area variance for a new detached garage at 3771 Windover Drive

Attorney Sean Hopkins, representing the applicant, submitted letters of support from the two (2) contiguous properties. He noted that the property is zoned R-1 and is 1.6 acres in size. He stated that there is a 2,300 sq.ft. home on the property, as well as a 626 sq.ft. detached garage.

Attorney Hopkins stated that Mr. Ellwood would like to construct a second accessory structure with a size of 1,200 sq.ft. to allow for storage of his fishing boat and trailer, as well as personal equipment.

Attorney Hopkins stated that the maximum allowable accessory structure square footage in this district is 1,000 sq.ft., and the applicant is requesting that the total accessory structure square footage be 1,826 sq.ft., which is 2.5% of the overall site.

Attorney Hopkins stated that he believes that the benefit sought by the applicant outweighs any resulting detriments.

Attorney Hopkins reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because the applicant would have to store the boat and trailer outdoors, which aesthetically speaking would not be harmonious with the character of the area.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – The variance request is for 826 sq. ft., which could be considered substantial, but he does not believe there would be any negative impacts associated with the request.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This cannot be the sole criteria for a decision, and in this instance whether it is self-created would be debatable.

In response to a question from Chairman Rybczynski, Attorney Hopkins stated that the applicant owns a gym, and there would be storage of no business-related items in the new garage. He confirmed that the garage would be for personal use only.

Attorney Hopkins stated that the applicant owns two (2) additional small contiguous parcels of land, so the applicant actually owns a slightly larger amount of land than the parcel where the home is.

Mr. Chiacchia stated that the existing garage on the property is very small.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5562.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because to accommodate what the applicant has to store would be extremely difficult in any other manner than what is proposed.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because the size of the lot compared to the entire neighborhood will not be a detriment.
3. Whether the request is substantial – The request is substantial in relation to what the applicant plans to build and what is allowed.
4. Whether the request will have adverse physical or environmental effects – No, based on several on-site inspections, as well as a general sense of the size of the lots, the distance between the neighbors and particular size of this property and the setback with very few neighbors around. In addition, the nearby neighbors do not object to the granting of the variance.
6. Whether the alleged difficulty is self-created – The difficulty is self-created, but on balance, it favors the applicant.

All members voted in favor of the motion. **GRANTED.**

**Application # 5563** United Wind representing Michael Jablonski – Requesting a use variance for a second wind turbine proposed at 3134 Old Lakeview Road

**Application # 5564** Michael Jablonski – Requesting three (3) area variances for a second wind turbine at 3134 Old Lakeview Road

Attorney Walling stated that he spoke with Planning Board Attorney Ryan McCann, and they agreed that the only logical way to proceed is for the applicant to request a Special Use Permit from the Planning Board for the first proposed wind turbine, and then request a use variance for the second wind turbine. He stated that the applicant in essence is asking the Zoning Board of Appeals to alter a decision that has not yet been made.

Mr. Jablonski stated that he has met all of the Town's requirements regarding submissions relative to his project, and he feels that Kurt Allen (Supervising Code Enforcement Official) has a personal issue with him.

Mr. Jablonski stated that the Planning Board informed him that he must go to the Zoning Board of Appeals before appearing before the Planning Board regarding his wind turbine.

Mrs. desJardins stated that Mr. Jablonski received that directive from the Planning Board because he was asking for two (2) wind turbines, which is not allowed per the Town Code.

Mr. Jablonski stated that the Town Codes stipulates that the Planning Board can waive or modify any of the wind turbine code, yet he was advised that there was nothing that Board could do regarding his request for two (2) wind turbines.

Mrs. desJardins stated that the Planning Board cannot waive the requirement in the Town Code that only one (1) wind turbine is allowed.

Mr. Jablonski stated that not one (1) of the Planning Board members had read the new wind turbine law before meeting with him.

Mr. Chiacchia stated in his opinion, this application should be tabled.

**Findings:**

Mr. Chiacchia made a MOTION, seconded by Mr. Sacco, to TABLE Applications # 5563 and # 5564.

All members voted in favor of the motion. **TABLED.**

**Application # 5565** Tracy Tavakoli – Requesting a use variance to allow a residential/professional office at 4261 Lakeshore Road

Attorney Sean Hopkins, representing the applicant, stated that the applicant's property is zoned R-1 and contains a very large home, a pool, a large horse barn and other various amenities. He noted that in 2012 the Zoning Board of Appeals granted the applicant a variance to allow up to eight (8) horses on the property. He stated that at that time, the applicant was attempting to sell the property for \$1,190,000.00 and noted that the applicant purchased the property in 2001 for \$650,000.00.

Attorney Hopkins stated that unfortunately the property has not sold, and the applicant has reduced the purchase price. He stated that the applicant has entered into an agreement to sell the property for \$850,000.00 to Dr. Jennifer Jennings.

Dr. Jennifer Jennings stated that she has an integrated medicine practice that is cash pay and somewhat holistically oriented. She stated that she does not have a large patient volume. She stated that typically she will see between 20 and 40 patients per day. She noted that this property is very acceptable to her in terms of space, ambiance and peacefulness. She further stated that she does not think that this use on the property would be particularly disturbing to the neighbors or the community, and in fact she believes it would be quite an asset.

In response to a question from Mr. Connolly, Dr. Jennings stated that patient safety is her primary concern, and she has several ideas of how vehicles could enter the property from Lakeshore Road without it being dangerous. She stated that her plan would be for patients to potentially enter one way and exit another, or she might install a looped driveway off of Lakeshore Road so that vehicles would enter and exit making a right turn.

Attorney Hopkins stated that Dr. Jennings hopes to grow her business and foresees approximately 15 to 20 total employees. He noted that the parking would be where the former vegetable garden was so that the residents to the south are not inconvenienced.

Dr. Jennings stated that she would like to offer lectures in the future at this site, as well as support groups and yoga meditation that deal with healing arts. She noted that these events would probably be held a few times a month.

Attorney Hopkins stated that the practice would be open between 7:00 AM and 7:00 PM Monday through Friday and 8:00 AM to 2:00 PM. He noted that there might be some evening classes, as well.

Attorney Hopkins stated that over the past three (3) years, there have been other prospective parties who have expressed interest in purchasing the property, but the applicant has looked at those uses (a restaurant, a wedding venue, etc.) and decided that those uses would be much less compatible with the neighborhood than what is currently proposed.

Attorney Hopkins reviewed the use variance criteria as follows:

1. Applicant cannot realize a reasonable rate of return, in that lack of return is substantial as demonstrated by competent financial evidence – The applicant has submitted an update analysis of her additional expenses since 2012, and she has incurred an

additional \$264,000 in expenses since then. The purchase price of \$850,000.00 is the best offer she has had. Between 2001 and 2012, the property taxes alone were \$190,000.00, and additional property taxes totaled \$64,838.00 since 2012. The applicant's expenses now exceed the selling price. The property was listed at \$1,260,000.00 in 2012, and over time the listing price has been reduced to the point where the applicant has agreed to a price of \$850,000.00.

2. Whether the granting of the use variance will alter the essential character of the neighborhood – It will not, based on Dr. Jennings' thorough explanation of the proposed use. The applicant would be agreeable to a condition that any parking be located where indicated by the applicant at this meeting and 100 feet from any property line.
3. Whether the alleged hardship is unique and does not apply to a substantial portion of the neighborhood or district – The applicant clearly meets this test. This is the largest parcel in this immediate area, and there are no other property owners in this area who can say that they made such a dramatic investment in a piece of property, and now they are stuck so far under water that they have no options. The applicant has been marketing this property for several years and has reduced the price several times.
4. Whether the alleged hardship is self-created – Much has changed since 2001 when the applicant purchased the property (the economic meltdown in 2008). Over a seven (7) or eight (8) year period, there were only 16 homes in all of Erie County that sold for more than \$750,000.00.

In response to a question from Mrs. desJardins, Dr. Jennings stated that she plans to reside in this home.

Mrs. desJardins stated that if this use variance is granted, Dr. Jennings would have to obtain a Change in Use and Site Plan Approval from the Planning Board.

In response to a question from Mr. Connolly, Dr. Jennings stated that currently she has six (6) other employees and may be hiring an additional few other employees. She noted that she does not expect to have more than 20 total employees.

In response to a question from Chairman Rybczynski, Dr. Jennings stated that she does not treat patients with a drug dependency or who have psychological or psychiatric issues, but she does treat some patients with depression and anxiety.

In response to a question from Mr. Connolly, Ms. Tavakoli stated that she has never turned down a showing, and recently she has had many qualified buyers looking. She noted, however, that several potential buyers have approached the Building Department to see if what they would like to do with the property would be allowed and almost all of the ideas have been either for a business or to develop the property residentially, and neither of those activities has been met with positive results. She further stated that people who have looked at the property to use as a single-family home have ultimately decided that it is too much property to maintain.

Attorney Hopkins stated that 25 home lots would fit on this property without a zoning change, but Ms. Tavakoli has made it quite clear that this type of development is not what she would like to see for this property.

Ms. Tavakoli stated that at this point in time she is losing job opportunities because she cannot relocate.

Mr. Connolly stated that as a member of the Town Code Review Committee, he can say that the Committee has been asked to review proposals for this property that were not compatible with the surrounding neighborhood.

Chairman Rybczynski stated that there no longer is a wrought iron fence at the front of the property, which means that if anyone has horses, they could not be contained. He asked Dr. Jennings if she feels the necessity to have horses. She responded that she does not, but she does like the idea of using the stables as an educational area and doing some equine therapy with a few horses.

Chairman Rybczynski stated that any proposal for this site would have to be reviewed by the Planning Board. He stated that he is uncomfortable because the applicant previously indicated that if she could market the property with the ability to have horses, she could sell the property. He noted that he would appreciate it if the Planning Board would review and comment on this proposal.

Attorney Hopkins stated that when the applicant appeared before the Board previously, she did not have a potential buyer, and now she has a credible potential buyer.

Mrs. desJardins stated that the Planning Board will not review this proposal until a use variance is obtained because this is not an allowed use in the District.

Mr. Connolly stated that the concerns of the Code Review Committee are parking and traffic and asked Mrs. desJardins what the Planning Board's review would consist of. Mrs. desJardins responded that the Planning Board would review any and all concerns raised by the Zoning Board of Appeals and would probably send this proposal to the Town Traffic Safety Advisory Board for its input.

Mr. John Costianes, 4303 Lakeshore Road, stated that businesses never intend to stay small. He asked Dr. Jennings if she would turn someone away who needed help with a drug addiction. Dr. Jennings responded that she would not turn someone like that away, but she would make it clear that she does not write prescriptions for narcotics, and that is not her specialty.

Mr. Costianes stated that he is concerned about signage and the character of the neighborhood, and he wondered how long Dr. Jennings plans to live on the premises.

Dr. Fitzpatrick, 4289 Lakeshore Road, stated that Dr. Jennings' proposed use is a commercial enterprise. He stated that this is a residential area, and the proposed use would take away the ambient nature of the neighborhood. He stated that the applicant spends a large amount of money to maintain her property, but it is not maintained well. He noted that the fences are falling down. He stated that allowing a commercial enterprise on the applicant's property will lower his property's value. He stated that the commercial business will change the character of the surrounding area with the large number of employees and patients.

Mrs. Fitzpatrick, 4289 Lakeshore Road, stated that when the applicant purchased the property, she knew how big it was and that it would be a lot to maintain. She stated that she believes that the applicant could have sold the property long ago if she did not ask so much for it.

Mr. Richard MacVitty, 3246 Durham Road, stated that he does not object to what Dr. Jennings proposes, as long as the property is maintained. He stated that this business might raise the value of the surrounding properties.

Mrs. Costianes stated that the applicant's property has not sold because it been marketed at a price that is too high. She stated that she believes that the applicant's hardship is self-created. She stated that if the variance is granted, she and her neighbors will lose value on their properties, as well as their peace of mind.

Dr. Fitzpatrick stated that he is concerned that if a use variance is granted for a business use, the variance will remain with the property forever, even if Dr. Jennings leaves.

Mr. Connolly asked Ms. Tavakoli if the property has been appraised during the time she has owned it. Ms. Tavakoli responded that she has relied on her professional realtor to put a value on the property.

**Findings:**

Mr. Sacco stated that he does not feel it would be feasible to limit the number of physicians who can be employed by Dr. Jennings. He stated that Board members are not in a position to tell someone how to run her business. He stated that the Board should either grant the variance or deny it, rather than considering granting it with stipulations.

Mr. Connolly made a MOTION, seconded by Mr. Sacco, to deny Application # 5565.

On the question:

Mr. Chiacchia stated that the applicant has lost a lot of money on this property, and now she has a viable prospective purchaser who could run a business that would provide a service for members of the Town and surrounding area. He stated that he does not believe that if the number of employees goes from ten (10) to twenty (20) it would adversely affect the neighborhood.

Mr. Connolly thanked Attorney Hopkins for putting together a presentation that was excellent in terms of it being as good as it could be, and he appreciates the applicant's time and effort over the last several years in trying to sell the property, especially considering how hard it is to sell a property like hers. He stated that the Board's role is to look at the four (4) use variance criteria and make sure that all four (4) criteria are met, and in his analysis, two (2) of the four (4) are not met.

Mr. Connolly reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence – The applicant has proven that point, and it is clear.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – The applicant did a very good job showing that this is a very unique piece of property, and most of the surrounding properties would not be in this circumstance.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood – Having a business in a residential area that is surrounded by residences would alter the essential character of the neighborhood, as evidenced by the comments made by several nearby residents at this meeting, as well as at previous meetings.
4. The alleged hardship has not been self-created – The alleged hardship is self-created because for 13 years the property has been on the market. A property should not take 13 years to sell if it is priced correctly.

As the vote on the motion was five (5) ayes (Mr. Connolly, Mr. Ginnetti, Mrs. Falkeiwicz, Chairman Rybczynski and Mr. Sacco) and two (2) nays (Mr. Chiacchia and Mr. Dimpfl), the motion to deny carried. **DENIED.**

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve the minutes of November 17, 2015.

All members voted in favor of the motion.

Mr. Chiacchia made a MOTION, seconded by Mrs. Falkiewicz, to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 10:20 p.m.

Respectfully submitted,

Paul Eustace, Secretary  
Board of Zoning Appeals

DATE: March 1, 2016