

Town of Hamburg
Board of Zoning Appeals Meeting
January 6, 2015
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, January 6, 2015 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 Connolly, Commissioner Louis Chiacchia, Commissioner Bob Ginnetti, Commissioner Joseph Sacco, Commissioner Richard Dimpfl and Commissioner Paul Eustace.

Others in attendance included Attorney Mark Walling and Sarah desJardins, Planning Consultant.

Chairman Rybczynski asked for a moment of silence in honor of our fallen troops, as well as for Commissioner Sacco's mother who recently passed away.

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to retain Commissioner Connolly as Vice-Chairman and Commissioner Eustace as Secretary. All members voted in favor of the motion. Carried.

Commissioner Eustace read the Notice of Public Hearing.

Tabled Application # 5507 Cathy Fabiatos – Requesting a use variance to allow automotive repair at 3233 Lakeshore Road

Mrs. desJardins stated that additional information was received from the applicant regarding the variance request, and this information was sent to Board members' homes.

Mr. Russ Gugino, representing the applicant, stated that Ms. Fabiatos' additional information hopefully enhanced her request, and he submitted to the Board a list of the expenses incurred by her over the past ten (10) years. He stated that Ms. Fabiatos has spent \$27,000 over the last four (4) years on the property in terms of taxes, utilities, etc. and has not received any income in terms of rent to offset those expenses.

Mr. Gugino stated that the property has not been rentable because it was built as a gas station 60 years ago and then later used as an automotive repair shop, and the applicant is simply asking that she be allowed to rent the property for automotive repair now.

Cathy Fabiatos, applicant, stated that her realtor has been trying for years to rent the building, and every person interested in the property has wanted to do automotive repair in the building, which is not allowed under the current zoning.

Mr. Gugino stated that this building has always been used for automotive repair, and allowing the applicant to rent it for that purpose now would not change the character of the neighborhood in any way.

In response to a question from Mr. Connolly, Ms. Fabiatos stated that from 2005 until 2010 she did have the building rented to different tenants who used the building for automotive repair and/or detailing. She noted that when the last tenant left in 2010, she did not realize that the use had been grandfathered and that once the building was vacant for one (1) year it lost that grandfathered status.

In response to a question from Mr. Connolly, Ms. Fabiatos stated that her husband, who operated an automotive repair shop in the building, passed away in 2000, and the building was rented off and on until 2010.

Mr. Chiacchia stated that Ms. Fabiatos' realtor is well respected in the area and he (the realtor) has indicated that there isn't anything else that could be done in this building besides automotive repair. Mr. Chiacchia also noted that the property is very well maintained.

In response to a question from Chairman Rybczynski, Ms. Fabiatos stated that the gas pumps and underground tanks were removed under the direction of her husband not long after he purchased the property. She further noted that the soil was removed, the area was aerated and new fill was brought in. She stated that this was all approved by the New York State Department of Environmental Conservation (NYSDEC).

Board members concurred that the property looks to be in good order relative to any environmental hazards or conditions, etc.

Mr. Peter Reszka, 3615 Lake Avenue, stated the following:

"Mr. Chairman & Honorable Board

My name is Peter Reszka and I am here once again to represent myself & my wife Elizabeth. We live immediately south of the applicant at 3615 Lake Avenue. We are immediately impacted by the applicant's request and again encourage you to reject the applicants request for a variance.

Without going into a detailed listing, I would like to remind you of my 7 years of experience and training in Urban Planning, Suburban Planning and the NY State SEQR law. In addition, I was a member of the Board which updated the Comprehensive Plan in 2008. I reference these to remind you that I have the training and background which helps support my remarks.

Normally, we would welcome the building in question being occupied again, removing the blighted building we see every time we open our curtains in the morning. In this case, we cannot. We submit the following for your consideration:

Regarding the applicant's ability to obtain a reasonable return without the variance

The applicant has stressed her efforts to obtain a tenant for the premises across several years. While we do not dispute that fact, we insist that that failure is the direct result of the applicant's lack of care and maintenance of the property. A failure to invest in maintenance and repair is the quickest way to ensure that there is no interest because of the amount of work that needs to be done before starting to conduct business.

I have provided for your review 2 different images of the property, 1 from 2007 & the other from 2012, Both obtained through Google Earth. These images show that nothing was done to the building to enhance its appearance and entice possible tenants. The parking lot was then and still is in desperate need of repair. Pages 1 & 2 of the picture packet I have handed in show the current condition of the property. The condition of the parking lot can be clearly seen in several of the pictures. You can also see a hole in the wall, light fixtures in disrepair and rusted window and door frames. In addition, the complaints regarding tall grass and junked cars show an additional lack of care. Who would want to lease a run down and unkempt property? The condition of the property was the reason for the lack of interest.

The property in question is zoned M-3 and, as you know, the Code Review Committee and Town Board refused to consider a rezoning to C-2 for commercial uses. This shows that there is a belief that there are sufficient opportunities for the applicant to realize a return on the property

and Route 5 is now an office. In the past it has also been a pool hall.

We also have environmental concerns if this variance is approved. In addition to the visual pollution that unrepaired vehicles would cause to the community as well as to my wife and myself, there is a real danger of vehicle fluids leaching into the soil. The part of the parking area where repaired and unrepaired vehicles would be parked is covered with deteriorated, buckling black top. Portions are merely gravel. All vehicles after a certain age most commonly leak oil or anti freeze. Yes this is an industrial area and has been for many years but adding to anything that already exists is poor environmental stewardship.

According to Corporate Search, Jake & Jill Auto Service LLC has listed the premises as their place of business. Their place of service is listed as 7014 13th Avenue in Brooklyn and filed August 4, 2014 to do business in Erie County. Their business category is Auto Service & without special consideration of any kind. Since the M-3 Zoning stands, all uses allowed in the M-1 and M-2 are also incorporated into those allowed in M-3. Some of the allowed uses without the need for a variance are: offices, printing publishing and engraving, furniture manufacturing and refinishing, truck and taxi dispatch, day care center, doggie day care and small manufacturing of a myriad of items. It is incumbent upon the applicant to prove that the request represents the only reasonable means to use the property profitably. Merely advertising a rundown property is not enough.

The M-3 zoning is not a hindrance for use of this property. Right next door is a building with the same zoning and it is currently occupied. Among other things, it has been a hot dog stand, store for marine items and boats, a replacement window store, a dog grooming place and is now smoke shop. All with no need for a variance of any kind.

Will it alter the character of the neighborhood

The last time we met, much was made about there being another garage in the Woodlawn area that is just as visible as this property and was very unkempt. There is no doubt that this property was an eyesore for quite a while. The picture at the top of page #3 shows the current condition of the property. Since the death of David Kresconko, his son Chris has made extensive efforts to clean up the property. Further efforts are planned for the spring. Much was made of cars being parked there but most of them are for the used car business that operates out of the property. Also, this property is shielded from view until the last minute by the fencing and trees at the property line.

Woodlawn is a neighborhood in transition through redevelopment & repurposing. Pages 3 & 4 of the picture packet show perfect examples of finding other uses for existing properties without the need for a use variance. Expressive Glass was Dickies Donuts, the old OTB was changed to a small plaza and now houses Acquired Attire & Exotic Vapors, the old Woodlawn school is now an office building, Woodlawn Cottage is now an apartment building and the old Scholz's is now the Woodlawn Deli.

Woodlawn is attempting to take advantage of the traffic generated by both route 5 & Woodlawn Beach. Traffic studies included in the Comprehensive Plan show that 41,151 vehicles per day pass this location on Route 5 and an additional 4,900 per day on Lake Avenue. Many are stopped by the light at the corner and use that time to look around. For the occupants of many of these vehicles, an automobile repair shop would be their 1st impression of Woodlawn and discourage them from stopping in the area.

Section 4-7 of the Town of Hamburg 2007 Comprehensive Plan Update specifically refers to the Woodlawn area. It states "This area is a prominent part of the Town and a gateway into the community and should be a major focal point for revitalization. In addition to economic development, the aesthetic quality of the area need as boost through design standards aimed at

improving the long term prosperity of the neighborhood." An auto repair shop on the corner of a major intersection would do nothing to enhance the aesthetic quality of the neighborhood.

Is the situation unique and does not apply to a substantial portion of the neighborhood

The situation existing here is not unique either to the Woodlawn area or to the Town of Hamburg as a whole. Attempting to market existing properties for repurposing to new uses is a continuing problem for all property owners but it can be done if there is the will to do so. As I described earlier, the M-3 zoning does not make this property a unique situation since it has not hindered the property right next door from providing its owner a reasonable return.

Is the situation self-created

Our contention is that the current situation in which the owner finds herself is completely self-created.

The applicant contends that there is no other tenant interested in the property. Any businessman knows that a corner lot with 45,000 possible customers per day is desirable. The building next door at 3231 Lake Shore Road is currently occupied even though it is a less desirable location. Across the years among other things it has been a hot dog stand, store for marine products, a bakery, doggie day care and it is now a smoke shop and buys gold. We contend that the lack of appropriate maintenance on the building is the reason for the difficulty and therefore is self-created. Overgrown areas, buckling blacktop, junk cars and cars with "For Sale" signs are the ideal way to keep a property vacant.

About 1/4 of a mile away, still in the Woodlawn area is a former gas station that has been redeveloped - the building is at the corner of Hawley and Route 5 and is now an office. We also have environmental concerns if this variance is approved. In addition to the visual pollution that unrepaired vehicles would cause for the community, as well as to my wife and myself, there is a real danger of vehicles' fluids leaking into the soil. The part of the parking lot where repaired and unrepaired vehicles would be parked is covered with deteriorating and buckling blacktop. Portions are just gravel. All vehicles after a certain age leak oil and anti-freeze. Yes, this is an industrial area and has been for many years. But adding to the existing pollution is poor environmental stewardship.

According to Corporate Search, Jake and Jill Auto Service, LLC is has listed the premises as their place of business. Their place of service is listed as 7014 13th Avenue in Brooklyn, and they filed on August 4, 2014 to do business in Erie County under the category of Auto Service and Repair. Auto service and repair can also include collision repair & body work. If you decide to grant the application, we encourage you to place severe restrictions on that approval. The meaning of automotive repair should be precisely defined. The hours of operation should be stated with reasonable limits placed upon them. The variance should be applied to either this tenant or this owner and should not become a permanent variance on the property. The variance should be renewable bi-annually and only after an inspection by the Code Enforcement Officer and should be immediately revoked upon a refusal to comply with an order to rectify a defect.

I would also like to remind the Board that regardless of their decision they must first make a SEQR decision."

Ms. Fabiatos stated that the building was built in 1938 as an Amoco Station and it has a three-bay garage. She noted that if she could rent the building, she would have the money to fix the crumbling parking lot. She further stated that she has never turned a potential tenant away.

In response to a question from Mr. Chiacchia, Mr. Reszka stated that he has spoken with one nearby business owner, who did not think an automotive repair business would last at this site

for very long.

In response to a question from Chairman Rybczynski, Mrs. desJardins stated that she does not know when the zoning changed on this property to not allow automotive uses. She noted that it was not recent.

Chairman Rybczynski stated that a letter was sent to the applicant from Howard Saperston, Jr. as follows:

“We have been marketing 3233 Hamburg Turnpike corner of Lake off and on since 2009. Every call we have fielded is for auto repair, auto service and/or used car sales. In my opinion that not only is the highest and best use, but also the only use. The lot is too small for a retail outlet or fast food operation.”

Chairman Rybczynski further stated that the applicant received a letter from Michael Kaney, Broker Associate at Ganey (Century 21) as follows:

“Thank you for the opportunity to view your property and offer an opinion of marketability with an opinion of Fair Market Value to follow. Having driven by that corner for the better part of 40 years on a daily basis, my recollection of the corner was a gas station for many years with some different types of automotive sales or repairs in the years after. I have watched the property over the last several years sit dormant and have speculated that it must be limited in its use, as it is zoned industrial. The property is 100' X 150' with an approximately 1890 square foot building, which has utility, but precludes many uses other than its present utilization. It is my opinion that the only way to properly market and advertise would be to be able to use the property as stated above. Please contact me with any questions, clarifications or if I can be of further assistance.”

Chairman Rybczynski noted that the Board had also received tax bills, a narrative and other financial information from the applicant for consideration.

Findings:

Regarding SEQRA (State Environmental Quality Review Act), Chairman Rybczynski summarized the following findings relative to this variance request:

- The underground gasoline tanks that were on the property have been removed.
- The applicant has stated that in the lease agreement, any activities involving battery storage, oil, etc. will be covered in provisions in the lease that they be cared for in a proper and legal manner.
- A clean bill of approval was issued for this property by the NYSDEC (New York State Department of Environmental Conservation) after the tanks were removed.
- There are no watershed concerns in this area.
- No adverse impacts have been identified relative to any vegetation on the site.
- No adverse environmental impacts have been associated with any leaching of oil into the soil, potential runoff, etc.

Mr. Chiacchia made a MOTION, seconded by Mr. Ginnetti, to issue a Negative Declaration.

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

Mr. Chiacchia made a MOTION, seconded by Mr. Eustace, to approve Application # 5507.

Mr. Chiacchia reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return – substantial as shown by competent financial evidence – The applicant has proved that this is a financial hardship on her and has been for several years.
2. Alleged hardship is unique and does not apply to substantial portion of district of neighborhood – This building has been there, and nothing has changed in 60 years.
3. Requested variance will not alter the essential character of the neighborhood - No.
4. Whether the alleged difficulty is self-created – No, the business was stagnant and after a year she had to apply for a use variance.

Mr. Connolly made a MOTION to amend Mr. Chiacchia's motion to include restrictions on the property including no vehicle sales because, although vehicle sales are not allowed in this area, many times automotive repair facilities have vehicles for sale, and restrictions relative to the hours of operation allowed for automotive repair at the site.

Chairman Rybczynski stated that any restrictions placed on this property would have to be enforced by the Building Department. He stated that the variance, if granted, would run with the property and not with the tenant. He noted that automotive repair is adequately defined in the Town Code, and if vehicles were sold on this property the applicant would be cited by the Building Department.

Mr. Chiacchia stated that 7:00 AM to 7:00 PM would be a reasonable allowable time frame to perform automotive repair at the site. Board members discussed the potential problems associated with a restriction on the hours of operation and the definition of "normal business operations".

Mr. Connolly stated that restricting the operating hours for normal business operations to between 7:00 AM and 8:00 PM would be reasonable.

Mr. Connolly stated that perhaps outdoor activity at the site could be restricted to between the hours of 7:00 AM and 9:00 PM. Mr. Sacco stated that he agreed with Mr. Connolly.

It was determined that Mr. Connolly's motion to amend the original motion would include the following restriction:

- Outdoor service work will be limited to between the hours of 7:00 AM and 9:00 PM.

Mr. Eustace seconded this motion.

All members voted in favor of the motion to amend. **APPROVED.**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to further amend the original motion to clarify that if the variance is granted, no automotive sales will be permitted on the property.

All members voted in favor of the motion to amend. **APPROVED.**

All members voted in favor of the original motion as amended. **GRANTED.**

Application # 5513 Colley's Pools and Spas. – Requesting a Temporary Use Permit to allow the use of temporary trailers at 4953 Camp Road

John Kerber and Chris Funk, employees of Colley's Pools and Spas, appeared on behalf of the applicant.

Mr. Kerber stated that the applicant is requesting the approval of three (3) temporary trailers to use in order to operate the business while its retail and office buildings that were damaged in the November snow storm are demolished and new buildings are constructed.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5513.

On the question:

Mr. Connolly made a MOTION, seconded by Mr. Sacco, to amend the above motion to limit the Temporary Use Permit to 15 months and to clarify that the trailers will be office trailers and not tractor trailers.

All members voted in favor of the motion to amend. **APPROVED.**

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

Application # 5514 Sign Language, Inc. – Requesting an area variance for a proposed detached sign to be erected at 3054 Abbott Road

Jeff Fitch from Sign Language, Inc. and Karen Gustina from Suburban Adult Services, Inc. (SASI) appeared on behalf of the proposal.

Ms. Gustina stated that SASI has constructed two (2) twelve-unit buildings on Abbott Road that sit back quite a distance from the road.

In response to a question from Chairman Rybczynski, Mr. Fitch stated that the sign cannot be located twenty feet from the property line (which is what is required) because the space between the property line and the paved driveway to the apartment buildings is only 14 feet wide, and the sign cannot be located on the roadway.

In response to a question from Mr. Connolly, Ms. Gustina stated that the sign is needed to direct people who are coming to visit residents, since the buildings are so far from the road.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5514.

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 – The applicant does not have the required 20 feet.
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 # 5515 8112 Group LLC – Requesting an area variance for building signage at 3405 Big Tree Road

Paul Strada from NAS Sign Company, representing the applicant, stated that the applicant recently moved in to this location and would like to use an existing 3' X 3' sign cabinet on the building. He noted that the applicant would like to add a new plastic fact to the sign cabinet and fill it.

Mr. Strada stated that this signage would help the applicant identify the products that will be advertised. In response to a question from Chairman Rybczynski, Mr. Strada stated that the sign is internally illuminated.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve Application # 5515.

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, the sign is already in place.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – This is a commercial district, and there are no nearby residential properties that would be affected.
3. Whether the request is substantial – No because this is a fairly small sign on a bigger building.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be argued one way or the other, but on balance it does favor approval of the request.

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

Application # 5516 Lallah Cummings – Requesting an area variance for an addition to an existing home at 3719 Columbia Street

Colleen Gallagher, daughter of the applicant, and her husband Timothy, appeared on behalf of the applicant.

Mr. Gallagher stated that Lallah Cummings recently purchased the property on the Gallagher's behalf. He noted that they would like to build an addition on the home, and he was not aware of the 30' rear yard setback requirement. He further stated that the foundation wall of the addition is 24' from the rear property line.

Chairman Rybczynski stated that the Gallaghers submitted the addresses of neighbors who do not oppose the granting of the variance. The names and addresses are as follows:

Gary Depczynski, 3725 Columbia Street

Mr. and Mrs. Nicholas Cabout, 3707 Columbia Street

Peggy and Vlade Jovanovski, 3722 Dartmouth Street

Chairman Rybczynski asked the Gallaghers why they don't make the addition wider rather than longer. Mr. Gallagher responded that they did not want to cut down any more trees than necessary, and they wanted to do the addition as cost-effective as possible.

Mr. Chiacchia stated that the home next door to the Gallagher's home has a similar addition to what the Gallaghers have planned. He further noted that a Stop Work Order was issued by the Building Department because the construction was begun without a Building Permit.

Mr. Gallagher explained that he began construction of the foundation before his final plans were approved by the Building Department. He stated that he had a Building Permit but not one for the addition specifically.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Connolly, to approve Application # 5516 with the condition that the applicant must demonstrate to the Building Department that the three (3) lots on the property have been merged before a Building Permit is issued.

On the question:

Chairman Rybczynski reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – there is no other way to do this project other than to shorten the addition, which is not palatable to the applicant.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because this area has been greatly rehabbed and is very unique, and this addition will blend in nicely with the neighborhood.
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.**

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve the meeting minutes of December 2, 2014. As there were six (6) ayes and one (1) abstention (Mr. Connolly), the motion passed.

Chairman Rybczynski made a MOTION, seconded by Mr. Sacco to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: January 26, 2015