

Town of Hamburg  
Board of Zoning Appeals Special Meeting  
August 16, 2011  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Special Meeting on Tuesday, August 16, 2011 at 7:30 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Commissioner Jack Rahill, Commissioner Jim Sortisio and Commissioner Paul Eustace.

Others in attendance included Attorney Joseph Shaw and Planning Consultant Sarah desJardins.

Excused: Commissioner Morlock, Commissioner Connolly

Mr. Rahill read the Legal Notice of Public Hearing.

**Application # 5345 M/LE Sports** - Requesting a use variance to operate a sports and recreational facility at 3100 Lakeshore Road

In response to a question from Chairman Rybczynski, Mrs. desJardins stated that nothing had been submitted in writing from the applicant or the owner of the property relative to what was asked for at the Board's previous meeting.

Mr. Michael Damico, applicant, stated that the lease between himself and the owner of the property was submitted for legal counsel's review. Attorney Show stated that he did review the lease and that it is binding and well drafted.

Chairman Rybczynski reviewed correspondence from Kurt Allen, Supervising Code Enforcement Official, to the applicant regarding requirements of the Building Inspection Department relative to this project if it moves forward. He further stated that there may have been some confusion about which part and how much of the building the applicant proposes to occupy that led to the correspondence.

Mr. Damico stated that if he receives a variance, he will have to proceed to the Planning Board and Safety Board for further reviews relative to building safety. Mrs. desJardins responded that the Traffic Safety Advisory Board (TSAB) looks at traffic safety and not the safety of the interior of the building.

Chairman Rybczynski stated that the concern he previously had regarding traffic safety has been addressed by the recommendations of the TSAB that a left turn arrow be installed for traffic entering this complex for eastbound traffic driving into Buffalo on Route 5. He further stated that when he toured the building he noticed that it is a clean facility and did not notice any air quality issues (asbestos, insulation, etc.) He noted that he believes the building lends itself well to what the applicant would like to do.

Mrs. desJardins stated that Mr. Allen is not confused regarding how much of the building the applicant proposes to use. She noted that everything Mr. Allen references in his letter to the applicant has to do with the 44,000 square feet the applicant proposes to occupy.

Regarding the indoor air quality of the building, Mr. Rahill asked if there is any residue from the previous use of the building. He noted that this is a large, old building with a lot of heavy old industry in it. Mr. Damico stated that the building passed a County Phase I environmental review, which primarily dealt with whether there were any contaminants left from any other business in the building.

Mike Sweeny, owner of the building, stated that the building has been totally pressure-washed and repainted on the inside. He further stated that the business that was last in the building was Sweeny Steel Service.

Mr. Sweeny stated that there was no manufacturing done in the area of the building that the applicant proposes to utilize. He noted that that area was only used for storage.

Mr. Eustace asked if the County inspected the floors of the building during the environmental review. Mr. Damico responded that the building passed the Phase 1 environmental review and that the floors are 18 inches thick. He further stated that there are no gas tanks on the property that might have leaked into the building.

Mr. Rahill asked Mr. Damico how he plans to market the facility if the variance is approved. Mr. Damico responded that he plans to market the business through his website, as well as with signage.

Mr. Damico stated that presently M/ILE runs 80 softball teams, 64 touch football teams, 30 kickball teams and 16 soccer teams. He further stated that these teams are looking for places to play indoors in the winter and this would be a way to consolidate all these teams in a building with a safe turf.

Kathleen Horohoe, 957 Sturgeon Point Road, read a letter in support of the project (see attached).

Gary Mann, 138 Arthur Avenue, Blasdell, stated that he has been on the Board of Directors of the Hamburg Soccer Club for over twenty years and there are approximately 2,500 children in the Town of Hamburg who play soccer. He further stated that in order for the soccer teams to compete, they need a facility where they can play indoors on a grass or grass-like surface. He noted that M/ILE Sports' charges for the space would be considerably less than what the soccer teams have had to pay other facilities and being able to play in Hamburg would save parents time, gas and money because of the building's location.

Chairman Rybczynski stated that the question is not whether there is a need for this type of facility in Hamburg, noting that this type of facility could also attract economic development. He noted that when the Board is asked to approve a use variance it must, by state law, consider the following criteria:

- Whether the property can realize a reasonable return substantial as shown by competent financial evidence
- Whether the hardship is unique and does not apply to a substantial portion of the district or neighborhood

- Whether the requested variance will alter the essential character of the neighborhood
- Whether the hardship is self-created

Regarding the criteria, Chairman Rybczynski stated that he believes that Mr. Sweeny did not create this hardship of not being able to market his building to an industrial user.

Chairman Rybczynski stated that turning industrial land into recreational land is a large undertaking in that it could change the fabric of what happens in that industrial part of Town. He further stated that the Board has to also consider whether granting this variance would put a death knell on industry in Hamburg.

Chairman Rybczynski read an article from Business First dated August 16, 2011 (submitted by the applicant) regarding the fact that manufacturing conditions are worsening in this area (see attached).

Mr. Damico stated that if Mr. Sweeny's building lays vacant long enough, it will deteriorate and become an eyesore.

In response to a question from Chairman Rybczynski, Attorney Shaw stated that he would not advise attaching the variance to this particular applicant but a reasonable year limit could be attached to the approval as a condition of the approval. He further stated that the Board could then review the land situation at the end of the year limit.

Mr. Sweeny confirmed that his business closed one and one-half years ago.

Chairman Rybczynski stated that Board members did do an on-site inspection of the property and the lease was provided to the Board's legal counsel, as requested. He further stated that listing information was provided to the Board through Mr. Sweeny's testimony. He stated that the property owner has testified that he cannot realize a reasonable return substantial as shown by competent financial evidence, it appears that the hardship is unique to the area because most of the industrial buildings in the area in the same condition as Mr. Sweeny's are full and the use would not alter the character of the neighborhood.

In response to a question from Mr. Rahill, Chairman Rybczynski stated that the items discussed in Mr. Allen's letter to the applicant will have to be addressed by the applicant before a Certificate of Occupancy is issued for this project.

Mrs. desJardins stated that Mr. Allen sent the applicant the letter so that the applicant will have a definitive idea of what will need to be done to the building in order for the applicant to be able to occupy it.

Chairman Rybczynski stated that Commissioner Connolly could not attend the meeting but he did submit a written outline of his thoughts on this matter for the other Board members' review. In response to a question from the Chairman, Mrs. desJardins stated that she believed that all of Commissioner Connolly's issues had been addressed.

**Findings:**

Chairman Rybczynski stated that the Board has reviewed this request over the course of two meetings and conducted an on-site inspection of the building the applicant wishes to occupy. He further stated that testimony has been received from the owner of the building, the applicant and representatives of thousands of area youth who would like to see this project materialize. He noted that there are places where youth can go to play sports indoors, but these places are either located quite a distance from Hamburg or are not suited to anything other than baseball for young adults.

Chairman Rybczynski stated that testimony has been offered that the financing is in place for this project and that there is quite a bit of interest already. He further stated that the owner of the building has testified that he has attempted, to no avail, to market the building to industrial users for over one year and an article from Business First has been submitted to the Board indicating that manufacturing conditions continue to worsen in New York. He noted that testimony has been given that the building is very clean, its proximity to the road is a positive and there is ample parking and facilities for this use. He further noted that the layout of the building lends itself well to what M/ILE Sports plans to do there.

Chairman Rybczynski stated that he feels this hardship is unique to this property and would not apply to a substantial portion of the district or neighborhood.

Regarding the essential character of the neighborhood, Chairman Rybczynski stated that he does not believe it would be negatively affected because the building will look the same from the outside. He further noted that the traffic generated from this use would be far less than what was generated when the steel industry employed thousands of workers in this area. He stated that the Traffic Safety Advisory Board forwarded recommendations regarding the light at the entrance to this facility, which addressed the Chairman's concerns regarding traffic.

Chairman Rybczynski stated that he does not feel that Mr. Sweeny's hardship was self-created.

Mr. Sortisio stated that he feels that this project is a fantastic endeavor and a good use of an empty building.

Mr. Rahill stated that all of his concerns have been addressed.

Chairman Rybczynski made a MOTION, seconded by Mr. Eustace, to approve Application # 5345 with the following conditions:

- The granting of the use variance is contingent upon the project receiving Site Plan Approval from the Planning Board
- The Board will review the use in ten (10) years, in September 2021, to ensure that the use has been continuing as it has been for those ten years with no adverse effect on the surrounding community's health, welfare and safety. The applicant will not need to re-apply for the use variance at that time.

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

**OTHER BUSINESS**

Mr. Rahill made a MOTION, seconded by Mr. Sortisio, to approve the minutes of August 2, 2011. All members voted in favor.

Board members agreed that the Board's next meeting will be held on September 8, 2011 at 7:00 P.M.

Mr. Rahill made a MOTION, seconded by Mr. Eustace, to adjourn the meeting. All members voted in favor. The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Jack Rahill, Secretary  
Board of Zoning Appeals

DATE: August 19, 2011