

Town of Hamburg  
Board of Zoning Appeals Meeting  
February 6, 2018  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, February 6, 2018 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 M. Chiacchia, Commissioner Bob Ginnett, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Attorney Tamara Harbold, Board of Zoning Appeals Attorney.

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military.

Commissioner Chiacchia read the Notice of Public Hearing.

**Application # 5658** Christine Kueker – Requesting a use variance to operate an automotive repair business at 3261 McKinley Parkway.

Christine Kueker, applicant, stated that she purchased the property located at 3261 McKinley Parkway. She stated that she obtained several nearby residents' consent to her operating an automotive repair facility in the existing building. She submitted those letters to the Chairman.

Ms. Kueker reviewed the use variance criteria as follows:

1. The applicant cannot realize lack of return, provided that lack of return is substantial as demonstrated by competent financial evidence: The building was an automotive use building previously, and it would be very expensive and difficult to use the building for anything else. The applicant would either have to convert the building to a use permitted in the zone or demolish and rebuild it.
2. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood: The building has been on the market since 2009, it was previously used as an oil change business and it has three (3) automotive bays and six (6) garage doors. It was assumed that this building could be used for automotive repair.
3. The requested use variance will not alter the essential character of the neighborhood: There are gas stations on two (2) of the corners of this intersection, and the building has been vacant since 2009 and vandalized. The building will be fixed up and look better in the neighborhood.
4. The alleged hardship was not self-created: The applicant assumed, when looking at the building, that it could be used for automotive repair and did not realize that C-1 zoning does not allow that type of use.

In response to a question from Mr. Connolly, Ms. Kueker stated that she purchased the building through a realtor and was told the building could be used for automotive repair.

Chairman Rybczynski stated that property owners residing at the following addresses signed letters of support for the applicant:

- 3271 McKinley Parkway
- 4529 Lake Avenue

- 4530 Lake Avenue
- 4537 Lake Avenue
- 4545 Lake Avenue
- 4530 Ardmore Court
- 4548 Ardmore Court

Ms. Kueker submitted evidence of what it would cost to convert the building to a use permitted in the C-1 District, as well as what it would cost to demolish the building and construct a new building.

In response to a question from Attorney Harbold, Ms. Kueker stated that she did not investigate whether there would be environmental effects associated with demolishing the building, given that it was used as an oil change business. She did note that the seller indicated that the site was remediated previously.

In response to a question from Ms. Falkiewicz, Ms. Kueker stated that she was unaware as to whether a Phase I environmental study was done on the site.

Ms. Kueker submitted evidence regarding the cost of the property, including the closing costs, and stated that if a use variance was not granted, she would have a difficult time selling the property in light of the fact that it was on the market for so long before she purchased it.

In response to a question from Mr. Connolly, Ms. Kueker stated that she purchased the property on December 22, 2017. She further stated that she found out in January 2018 that the building was not zoned properly when she visited the Building Department.

In response to a question from Attorney Harbold, Ms. Kueker stated that no neighbors she spoke to objected to her plans for the building.

#### **Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approved Application # 5658.

On the question:

Mr. Connolly reviewed the use variance criteria as follows:

1. Cannot realize a reasonable rate of return provided that lack of return is demonstrated by competent financial evidence - Applicant provided several scenarios she would face if the variance is not granted. It was noted that the property had been vacant for over seven (7) years, and if the building cannot be used for automotive repair, the applicant would have a hard time realizing a reasonable return.
2. The alleged hardship related to the property is unique and does not apply to a substantial portion of the district or neighborhood - Across the street is an automotive business, and there are two (2) others on the other sides of the intersection. Also, the previous use of the building was automotive.
3. The requested use variance, if granted, will not alter the essential character of the neighborhood - The building was used for automotive in the past, and there is automotive use across the street. Also, evidence was provided by several adjoining neighbors who all offered support for the project.
4. The alleged hardship has not been self-created - Testimony was offered that the real estate agent did not inform the applicant, and she was not aware, that automotive use is not a permitted use in this zoning district.

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

**Application # 5659** Capital Telecomm Holdings, LLC – Requesting two (2) area variances for a proposed cellular tower to be erected at 3081 Pleasant Avenue

Attorney Don Cheney, representing the applicant, stated that Hamburg Town Code requires that a cellular tower be placed no closer than the tower height from any structure, as well as from any property line. He stated that the proposed tower would be located 145 feet from the property line shared with the New York State Thruway right-of-way. He further noted that the tower would be located 13 feet from an existing uninhabited pole barn on the property that is used for storage of equipment and 112 feet from another uninhabited barn on the site.

Attorney Cheney stated that if the tower were moved further away from the Thruway to avoid the need for a variance, it would then be more visible from Pleasant Avenue. He noted that the applicant has tried to propose the tower in the spot that makes the most sense from an aesthetic point of view.

Attorney Cheney stated that if a tower like the one proposed did fail, it would simply collapse on itself.

It was determined that Capital Telecomm Holdings owns approximately 200 cellular towers, of which between 20 and 30 are located in New York .

In response to a question from Mr. Connolly regarding the fact that the request is substantial, Attorney Cheney stated that there are several towns with cellular towers next to their Town Halls. He further stated that with regard to whether a request is substantial, the overall impact of the request should be looked at and not just the percentage of deviation from what is required.

It was determined that a very low number of Capital Telecomm Holdings towers have collapsed, and if one does collapse, it is designed to fall within 25 feet of its base.

In response to a question from Mr. Connolly regarding potential environmental hazards, Attorney Cheney stated that the only impacts of the variances if granted would be to the property owners themselves. He further stated that there would really not be any negative environmental impacts from the granting of the requested variances.

In response to a question from Mr. Dimpfl, a representative of Capital Telecomm Holdings stated that the propane tanks that were previously on the property have been removed.

It was determined that the Lakeview Volunteer Fire Company has not been notified of this project by the applicant.

In response to a question from Mr. Connolly, Attorney Cheney pointed out where the closest existing cellular towers are to this property and noted that the height of the towers is determined by the Radio Frequency engineers.

In response to a question from Mr. Connolly, Attorney Cheney stated that the applicant proposes to lease the area for the cellular tower, and the lease would run with the property if the current owner ever sells the property or leaves the area.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5659.

On the question:

Mr. Ginnetti reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because of the product the applicant has.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this is a farm area and no nearby residents seem to object.
3. Whether the request is substantial – No, because of the applicant's product.
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 # 5660** Attorney James Boglioli - Requesting an interpretation of a determination made by the Supervising Code Enforcement Official

It was determined that this application was withdrawn by Attorney Boglioli.

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of January 9, 2018. All members voted in favor of the motion.

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

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: February 10, 2018