

**City of Schenectady
Board of Zoning Appeals
Meeting Minutes
May 6, 2020**

I. CALL TO ORDER

Mr. Gleason called the meeting to order at 6:32 p.m.

Due to the closure of City Hall because of the Covid-19 Virus, the meeting was conducted online via WebEx.

After calling the meeting to order Mr. Gleason explained to the members of the public present how the consideration of the applications would proceed. He stated that the applicants would have an opportunity to make their presentation to the Board, followed by any members of the public who would like to speak in favor of the application. Next any members of the public in opposition to the application would be invited to speak, followed by any further discussion or questions the Board Members wished to put forth prior to the vote. He added that after the initial presentation of the proposal the applicant would not be given another opportunity to comment unless directly questioned by a Board Member.

II. ATTENDANCE

PRESENT: James Gleason, Chair; David Connelly; Mary D'Alessandro-Gilmore; Brendan Keller; Helene Lester; Krystina Smith; Avi Epstein, Neighborhood Stabilization Coordinator; Jennifer Mills, Secretary

ABSENT: Fred Clark

III. CONFLICT OF INTEREST CHECK

None.

IV. APPROVAL OF MEETING MINUTES

Motion by Mr. Connelly, seconded by Mr. Keller, to approve the Minutes of the April 1, 2020 meeting as submitted.

Motion carried unanimously.

V. NEW BUSINESS - APPLICATIONS

A. JAMES CZUB & GLORIA CZUB request a use variance for 1545 Broadway (49.37-1-21) located in the C-2 Mixed Use Commercial Zoning District, to allow for the sale of motor vehicles which is prohibited pursuant to Schedule B of the Zoning Ordinance.

James Czub and Charlie Morris, Mr. Czub's son-in-law, appeared before the Board. Jonathan Amsler, the prospective buyer of the property, was also present at the meeting.

Mr. Gleason asked the Board Members if they had received and reviewed the additional information that was submitted by Mr. Czub, and if they had any questions for the applicant. He asked Mr. Czub if he would like to add any additional comments. Mr. Czub declined, stating that he believed that he had submitted all of the additional information that had been requested by the Board. Mr. Amsler stated that he hoped to be given the opportunity to move his business to the site and improve it.

Ms. D'Alessandro-Gilmore asked Mr. Amsler if the sale of the property is contingent on a final inspection. Mr. Amsler stated that it is, although his father is a contractor and he had asked him to make a preliminary inspection of the property prior to making an offer for purchase. He noted that the preliminary inspection had found no outstanding concerns.

Mr. Keller stated that after reviewing the information provided, he was still having a difficult time understanding how the hardship would not be considered self-created. He explained that although the argument had been made that a business could not be sustained on the property offering only auto repair services there are other allowable uses for the property without the need for a variance. Mr. Morris stated that he had done significant research into the profitability of the building by figuring the available work space in relation to the number of hours of service provided and the rate charged for that service, in addition to the purchase of the advanced technological equipment required for auto repair. He explained that he had concluded that the overhead for the auto repair business would prove to not be sustainable in the long run. Mr. Keller asked if he had considered the other allowable uses for the site. Mr. Morris stated that he had, but in the several years that Mr. Czub had been marketing the property he has had no offers from developers who were willing to clear the property and use it for another purpose, and the existing building would most likely be usable only for auto repairs. Mr. Amsler commented that at his current location he offers auto sales and repairs and almost 75% of his repair business comes from past sales customers. Ms. D'Alessandro-Gilmore asked Mr. Czub if he is currently still operating his business. Mr. Czub replied that he is.

PUBLIC COMMENTS IN FAVOR

None.

PUBLIC COMMENTS IN OPPOSITION

None.

CONTINUED DISCUSSION

Mr. Connelly stated that he is satisfied with the additional information provided by Mr. Czub, as requested by the Board at the April meeting. He added that he believes that the applicant has proven to the best of his ability

that the property could not realize a reasonable return within the allowed uses, and that he would not like to see the property fall vacant and unused if this is the case and a variance were not to be granted.

Mr. Keller stated that he is not convinced that a profitable auto repair business or other allowed use could not be operated on the site. Ms. D'Alessandro-Gilmore asked Mr. Epstein if the Board could condition the approval on the sale of the property to Mr. Amsler. Mr. Epstein confirmed that they could and noted that any new business on the property would have to go before the Planning Commission for site plan review.

Ms. Smith commented that she agreed that the conditions are important. She explained that she still has reservations regarding the property realizing a reasonable return within the allowed uses, and whether or not the hardship is self-created. She stated that while it is unlikely that a developer might want to purchase the site for an allowed use it is not out of the question if the property were to be marketed in this way. She thanked the applicants for submitting all of the additional requested information but stated that she does not feel that the application meets the required legal standard to justify the need for a variance.

Mr. Gleason allowed Mr. Morris an opportunity to make additional comments. Mr. Morris stated that if the property were marketable for other uses, they would not have had to appear before the Board. He stated that he has been in the auto business for many years, operating dealerships encompassing auto sales and repair, and he believes that the technological advances in the repair business have left operators like Mr. Czub unable to sustain profitable business as they may have in the past, thus imposing upon Mr. Czub a hardship that is not self-created but instead a result of technological advances and changing customer demands. He added that Mr. Amsler's business will only be a positive addition to the surrounding neighborhood, and thus to the City as a whole.

SEQR RESOLUTION

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to declare the project a Type 2 SEQR action, with no significant impacts on the environment.

Motion carried unanimously.

USE VARIANCE APPROVAL

Motion by Mr. Connelly, seconded by Ms. D'Alessandro-Gilmore, to approve the Use Variance based on the following findings of fact:

1. The applicant cannot realize a reasonable return with the allowed uses.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood.

3. The requested use variance will not alter the essential character of the neighborhood.
4. The alleged hardship has not been self-created.

And with the following conditions:

1. The sale of the property to Mr. Amsler will be completed.
2. Prior to beginning operation, any new business planned for the property must apply for review before the City Planning Commission and be granted Site Plan Approval.

Motion carried, with Mr. Keller and Ms. Smith opposed.

VII. MOTION TO ADJOURN

Motion by Mr. Connelly, seconded by Mr. Keller, to adjourn the meeting.

Motion carried unanimously.

The meeting was adjourned at 6:58 p.m.