

**MINUTES OF THE COHOES ZONING BOARD OF APPEALS HELD IN THE  
COMMON COUNCIL CHAMBERS OF COHOES CITY HALL ON WEDNESDAY,  
JUNE 22, 2022 AT 6:30 PM**

**MEMBERS PRESENT:** Mr. Greg Mollnow, Chairperson  
Mr. Anthony Kusaywa, Vice Chair  
Mr. Mark Cotch  
Ms. Carolyn Dion  
Ms. Jacqueline DeChiaro

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Joe Seman-Graves, City Planner  
Sharon Butler, Administrative Assistant  
Josh Giller, Assistant Planner

Chairperson Mollnow; called the meeting to order at 6:30PM.  
Roll Call taken; all members present

**CONSIDERATION OF THE MINUTES FROM THE MARCH 23, 2022 MEETING**

Chairperson Mollnow; first order of business, we will review the March 23, 2022, meeting minutes  
Member Cotch; I'll make a motion that we accept the minutes  
Vice Chair Kusaywa; I'll 2nd

All in favor, motion carried unanimously

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Greg Mollnow	X		
Mark Cotch	X		
Anthony Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

**CONSIDERATION OF A USE VARIANCE AT 98 NIVER STREET**

Chairperson Mollnow; the next order of business is the use variance for 98 Niver Street. The applicant is seeking to operate a daycare facility at the existing structure at 98 Niver Street, the property is in the MU-2 zoning district. The applicant is seeking to rent out the space at 98 Niver Street to allow for the operation of a daycare facility. A use variance is required because daycare facilities are not a permitted use in the MU-2 Mixed-Use Waterfront zoning district.

The applicant is requesting a use variance in order to operate a daycare facility

General consideration for a use variance; the appeal under consideration is one for an area variance.

To receive a use variance the applicant will need to satisfy all of the following conditions:

1. The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;

2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created.

Mr. Gallivan approached the board to give an overview of the project and what he was looking to do. Mr. Gallivan gave the board an overview of the property, and what he would like to do. He stated that the property is approximately 8,000 square feet and is office space. He stated that National Daycare approached him inquiring to rent space in the building, he isn't looking to alter the structure but just rent space that is currently available in the building.

Chairperson Mollnow asked the applicant to show on the proposed area where the daycare would be

Mr. Gallivan told the board that there is an outdoor grass area that could be utilized for the daycare to use

Chairperson Mollnow asked the applicant to remain in case board members had any questions. He stated that the first thing was to make sure all the required criteria was being met. Chairperson Mollnow stated that one of the criteria "you cannot realize a reasonable return" and that the applicant did put information in their application and asked the applicant to explain that a little further. In the application the applicant stated that since 2017 August they've been doing public market through commercial real estate you've been unsuccessful in renting it out, want to seek a variance to seek a reasonable return, the current market rate is \$12 a square foot and you are looking to get \$10 a square foot

Mr. Gallivan responded that, that was correct

Chairperson Mollnow asked the office space versus daycare space the price differential is less per square foot?

Mr. Gallivan explained that places that were looking for office space are now cutting back on office space and the daycare facility is offering long term stability and Cohoes needs a daycare facility as there isn't enough daycare facilities in the area and this will have easy access to the corridor and highway

Chairperson Mollnow asked if members of the board had any other questions. Being none he open for public comments

Joe Seman-Graves stated there were no public comments sent in

Chairperson Mollnow with no public comments the public comment period was closed and asked if there were any other comments or questions they wanted to discuss. Being none, Chairperson Mollnow stated that the applicant met the requirements of the use variance that the reasonable return has been proven that he's not going to make upcharge in cost doing this, but is going to lose a little bit of money and it makes sense for his stability to do this. It also doesn't seem like a substantial portion of the neighborhood is being changed and it doesn't affect the character of the neighborhood, there's a little bit that the hardship has been self-created but the positives outweigh the negatives. Chairperson Mollnow made a motion to pass the variance Member Dion 2<sup>nd</sup> the motion—motion carried unanimously

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Chairperson Mollnow	X		
Mark Cotch	X		
Vice Chair Kusaywa	X		

Carolyn Dion	X		
Jacqueline DeChiaro	X		

Chairperson Mollnow the variance passes.

**CONSIDERATION OF TWO (2) AREA VARIANCES AT 640 SARATOGA STREET**

Chairperson Mollnow moving on to the next order of business is the consideration of 2 area variances at 640 Saratoga Street. The applicant is seeking 2 variances; one for minimum lot size requirement for an auto-repair garage in the I-1 Industrial zoning district, it is required to be 20,000 square feet and current lot size is 18,060 square feet about 1,940 square feet relief. The 2<sup>nd</sup> variance minimum lot width for an auto-repair garage in the I-1 Industrial zoning district is 100’, the lot has 106’ width in the front and 75’6” width in the back for an average of 90’8”, seeking a 9’2” relief. The property is currently an empty lot that borders the Town of Colonie. The proposal was reviewed by the Albany County Planning Board on May 19, 2022. The ACPB had three recommendations regarding the project;

The ACPB recommended the applicant receive feedback and permits from the NYSDOT for commercial property development plans involving new or modified access to a state highway, or involve any change of use or expansion of an existing development on a state highway

The ACPB recommended the City look into alternatives that minimize the negative impacts of the auto repair shop to the adjacent single family residential zone in the Town of Colonie, and

The ACPB recommended that a buffer/visual screening should be provided between the commercial use and the residential use.

The applicant went to the planning board on June 13<sup>th</sup> requesting a site plan review and special use permit for the proposal. The site plan application and special use application was tabled at that time pending planning board review and response to a number of concerns presented by the public including stormwater retention, noise, odor, lighting, etc.

The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered;

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
3. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
6. Whether the alleged difficulty was self-created.

Chairperson Mollnow asked if the applicant was present

Mr. Lynn Sipperly approached the board and stated that he was representing the applicant. Mr. Sipperly gave an overview of the project, stating the lot size, the size of the building that the applicant wanted to have constructed – 30x50 feet with frontage being 106 feet and rear 75.6 feet which is less than required, he also stated that the lot size is a little over 18,000 square feet and the requirement is 20,000 square feet. The building would have 3 service bays, a front office; reception area and access to the garage is on the side. It will sit back 31 feet from Saratoga

Street, will be fenced with a 6' high fence on both sides (north & south). The repair station would be light repairs only; no engine work or body work would take place, customers would be seen by appointment so there wouldn't be a lot of people waiting, there are 9 parking spaces and 1 handicap space, the rear is a gravel area where additional parking can take place. The Town of Colonie has mixed use in that area also, the use that his client want would be compatible with the neighborhood. The garage doors would be closed during operation, so there would be little to no noise, the property would be about 35% developed leaving about 65% undeveloped, there is no sidewalk but the applicant is proposing to install a sidewalk in front of the building and fencing to screen the parcel. Mr. Sipperly also explained the drainage and culverts in the area stating the grade of the property and water would shed to the back stream on National Grid property, they are proposing to install a small retention pond on the north side of the building. The fence would be a solid 6' high fence. Mr. Sipperly stated that they thought that the area variances being requested are reasonable to develop this facility that his client wants.

Chairperson Mollnow asked if any members of the board had any questions

Vice Chair Kusaywa asked about hours of operation

Mr. Sipperly stated it would be Monday through Friday 8AM to 6PM, Saturday 8AM to 1PM and closed on Sunday

Chairperson Mollnow asked Joe Seman-Graves if there was anyway to police the hours of operation

Joe Seman-Graves stated it would be code enforcement, but also if planning passed it there would be a stipulation that the hours would have to be adhered to, as well as the garage doors being closed

Chairperson Mollnow asked if board members had any other questions, being none he opened it up to public comments.

Joe Seman-Graves read comment sent in by Ms. Sawyer via email

Matt Sterling 104 Cohoes Road approached the board and expressed his concerns about drainage issues, his property floods and he has to clear out the culverts, noise with tow trucks, applicant not having oil/water separator, how they would keep garage doors closed especially in the summer, there is no repair facility in the neighborhood as he checked with the Town of Colonie, having this type of business across from his home will diminish the value of his home, and expressed concern over the hours of operation especially the Saturday hours.

Chairperson Mollnow asked if there were any other public comments. Being none he closed the public comment session. He asked if any members of the board had any questions or anything to discuss.

Member DeChiaro stated that she believes the application does change the character of the neighborhood. She questioned the applicant keeping the doors closed especially in July and August, therefore infringing on neighbors enjoying their yards, the noise and increased traffic she believes will create problems.

Chairperson Mollnow stated he believes it is a self-created issue trying to put a garage on a piece of property that is not zoned to have it. He asked if Member DeChiaro wanted to make a motion Member DeChiaro made a motion to deny the application 2<sup>nd</sup> by Chairperson Mollnow

Chairperson Mollnow explained to the applicant that 3 of the 4 uses that are supposed to be considered do not meet the requirements. He stated that if there is a property next door that is being used as a garage illegally than that should be taken care of. He drove by the site and there was 5 or 6 cars parked in the driveway but he does not know if it was for garage use or

something else. But he agrees with Member DeChiaro that it is not the right fit for the community.

Mr. Sipperly asked if he could approach the board again. He stated that if the residents are concerned about noise the applicant would do everything he can to lessen the noise, traffic won't be substantial at all, it is a 3-bay garage, the business would be good neighbors and the hours of operation won't be any different than posted. He stated that he felt it would be more fair if the board allowed this use then see if there are any problems with the business and the City has the option of imposing restrictions. As far as the property to the south, they have 5 or 6 cars there all the time and it would be the same on this site.

Chairperson Mollnow explain that if the board did move to approve this variance that would be that it didn't have to be this garage, you could put a Jiffy Lube in there and it would run the same way. As zoning we allow specific uses on a site, so by allowing a garage run by a family versus a Jiffy Lube or an Insta Oil it would be the same variance that we would have to approve. So with that we try not to pin ourselves by saying this is because of this specific reason but we try to get the global picture and how long this is going to be, once a use is approved it is approved forever, you can't take it back.

Chairperson Mollnow; with that we will go back to Jackie's motion unless you changed your mind?

Member DeChiaro stated she did not

Chairperson Mollnow I will still 2<sup>nd</sup> the motion Motion carried unanimously to DENY the application.

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Greg Mollnow	X		
Mark Cotch	X		
Anthony Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

Chairperson Mollnow asked if there was anything else to discuss, being no topics he called the meeting to adjourn at 7:04PM