

Town of Hamburg
Board of Zoning Appeals Meeting
June 7, 2011
Minutes

The Town of Hamburg Board of Zoning Appeals met for a regular meeting on Tuesday, June 7, 2011 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 Jack Rahill, Commissioner Chuck Morlock, Commissioner Paul Eustace and Commissioner Jim Sortisio.

Others in attendance included Attorney Joseph Shaw, Planning Consultant Sarah desJardins and Supervising Code Enforcement Official Kurt Allen.

Mr. Rahill read the Legal Notice of Public Hearing.

Tabled Application # 5328 Joseph Battin - Requesting an area variance to allow two (2) signs at 6175 South Park Avenue that do not face a public street and are not located over a public entrance.

Dr. Joseph Battin, applicant, stated that he is constructing a new building for his practice in Hamburg and is asking that two (2) attached signs be allowed on the north side of the building. He noted that he would prefer to attach the signs on the building rather than install a free standing sign on the front lawn. In response to a question from Mr. Rahill, he stated that the signs are already on the building.

Dr. Battin stated that the signs are illuminated from the top soffits, will face straight down and be on timers so that they are turned off at a respectable time.

Mr. Allen stated that the signs were put up without obtaining a permit.

Findings:

Mr. Sortisio made a MOTION, seconded by Mr. Eustace, to approve application # 5328.

On the question:

Mr. Sortisio reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no, because a sign on the front lawn would not be very attractive.
2. Undesirable change in neighborhood character or to nearby properties – no.
3. Whether the request is substantial – no.
4. Whether request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – yes, but the benefit outweighs the alternative.

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

Tabled Application # 5330 – Essex Homes – Requesting two (2) area variances for an off-premise sign to be located at 3835 McKinley Parkway.

Tim Berger from Essex Homes stated that Essex Homes had a sign on the southeast corner of Brompton Parkway and McKinley Parkway for approximately five (5) years but were asked by the owner of the property to remove the sign because the property is currently for sale. He further stated that Essex Homes would like to relocate the sign to the northeast corner of the same intersection.

Mr. Berger stated that Essex Homes needs to let potential buyers know where the Villas at Brompton subdivision is located.

In response to a question from Mr. Sortisio, Mr. Berger stated that the sign is more of an off-premise directional sign than an off-premise advertising sign.

Mr. Mitchell Matusick, owner of the property located at 3855 McKinley Parkway, stated that the Essex Homes sign was located on his property but he asked them to remove it because the property is currently for sale and he was concerned that prospective buyers might think that his property is owned by Essex Homes. He further stated that he has no objection to the variance request, as long as the sign is not relocated on his property.

In response to a question from Attorney Shaw, Mr. Berger stated that there are ten lots left for sale in the subdivision. He further confirmed that once the lots have all been sold, the sign will be removed.

Findings:

Mr. Rahill made a MOTION, seconded by Mr. Connolly, to approve application # 5330.

On the question:

Mr. Connolly reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no, it would be difficult to locate the sign elsewhere because people would not be able to identify the location of the subdivision.
2. Undesirable change in neighborhood character or to nearby properties – no, because the sign has been in the vicinity of this property for five years and has never been an issue.
3. Whether the request is substantial – no.
4. Whether request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – yes, but considering the testimony provided and the state of the economy, the request is understandable.

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

Application # 5333 James & Sharon Zaccarine – Requesting three (3) area variances for a proposed detached garage at 3368 Lakeview Road

James Zaccarine, applicant, stated that he would like to build a storage shed on his property.

Mr. Rahill read into the record two (2) letters from adjacent neighbors who do not have an objection to what the applicant proposes. The letters were received from Ronald Fink, 3367 Lakeview Road and Jeremy Essman, 3378 Lakeview Road.

Mr. Allen stated that the area of the property where the structure is proposed could be affected by federal and state wetlands. He further stated that he requests that the applicant have a wetlands delineation done on the property to determine the boundaries of the wetland area.

In response to a question from Mr. Sortisio, Mr. Zaccarine stated that the proposed structure exceeds the maximum height allowed because he would like to pitch the roof so that snow does not build up on it.

Mr. Connolly stated that there are other properties in the immediate vicinity of this property that have detached garages similar to what is proposed by this applicant.

In response to a question from Mr. Connolly, Mr. Zaccarine stated that he probably could move the garage five (5) feet further away from the street in order to alleviate the need for the front yard setback variance.

In response to a question from Mr. Connolly, Mr. Zaccarine stated that he anticipates storing his tractors and cars, as well as a few older cars and trucks to restore, in the structure.

David Hibbard, 3330 Lakeview Road, asked if there will be any business conducted out of this garage. Mr. Zaccarine stated that there will not.

Findings:

Mr. Connolly made a motion, seconded by Mr. Eustace, to approve two (2) of the three (3) requested variances for application # 5333. Variances are granted for height (Section 280-19 (D)) and square footage (Section 280-278 B (4) (c)). Approval is contingent upon the following:

1. A wetland delineation will be performed on the property and the applicant will obtain the necessary approvals from the New York State Department of Environmental Conservation.
2. There will be no business conducted on this property.

On the question:

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – the testimony provided has sufficiently addresses this issue.
2. Undesirable change in neighborhood character or to nearby properties – no, because many nearby properties have similar detached garages.
3. Whether the request is substantial – no, because the property owner is willing to work with the Board in terms of moving the garage five (5) feet away from the road.
4. Whether request will have adverse physical or environmental effects – the applicant will have a wetland delineation done per the approval motion.
5. Whether alleged difficulty is self-created – yes, but since all the other criteria have been addressed and the Board is satisfied with the answers that have been provided by the applicant, this is a mute point.

All members voted in favor. **GRANTED.**

Application # 5334 June Miller – Requesting an area variance for a proposed farm storage building at 5292 Bayview Road

Chairman Rybczynski stated that there was some discussion and confusion as to whether this request was for an area variance or a use variance. He further stated that he would rather table the request until the Board's next meeting.

Attorney Shaw stated that his opinion is that the public notice was sufficient, although the Board can table any project if it would be more comfortable doing so.

In response to a question from Chairman Rybczynski, June Miller stated that she would like to begin construction of the storage building around July 1, 2011. Chairman Rybczynski asked Ms. Miller if she would object if her application is tabled until July 5, 2011. Ms. Miller asked if the Board would consider holding a special meeting in two weeks. Chairman Rybczynski responded that the Board is not in the habit of holding special meetings.

In response to a question from Mr. Rahill, Mr. Allen stated that the farm is in an agricultural area but is zoned R-1 (Single Family Residential). He further stated that it is the longest standing non-conforming agricultural property in the Town.

Mr. Rahill read into the record a letter from Ellen and Charles Baer, 5265 Bayview Road, as well as from Patricia Richardson, 5228 Bayview Road, stating that they have no objection to the proposed storage building.

Ms. Miller distributed photos of the proposed storage building to Board members for their review.

Mr. Morlock stated that he sees no reason why the Board could not act on this request. Mr. Rahill concurred.

Sally Hogan, 5395 Oakridge Drive, asked what the dimensions and location of the proposed storage barn would be. Ms. Miller responded that the size of the barn would be 42' X 60' and that it would be closer to Bayview Road than to Oakridge Drive.

Mr. Rahill confirmed with Ms. Miller that the proposed barn would be very similar to the existing barn on the southern end of the property. He noted that the proposed barn would bring a semblance of balance to the property.

In response to a question from Attorney Shaw, Ms. Miller stated that the construction of the proposed barn would not constitute an expansion of the use of the property, as she plans to store existing equipment in the barn and does not plan to sell any additional products.

Board members discussed whether this request is for an area variance or a use variance. Mr. Allen stated that there are no provisions in the Town Code to expand the farming use because the farm is a non-conforming use in the R-1 zone.

Attorney Shaw stated that the request is not for a use variance, but rather a request to expand a non-conforming use (Section 280-286 of the Town Code states that a non-conforming use shall not be enlarged or extended). He further stated that the Board must weigh whether the farm use is growing and expanding or actually changing. He noted that if Ms. Miller was proposing to sell different products, for example, that would be considered a use variance.

Mr. Allen stated that the Town Code is mute regarding non-conforming use situations where the applicant simply wants to add a structure, for example, and not change or expand what is being done on the property.

Attorney Shaw stated that he would be happy to research this issue further and prepare a memo for the Board for its next meeting.

Chairman Rybczynski stated that his concern is that there is no clear direction within the Town Code and the request is neither an area variance nor a use variance. He questioned what test should be applied when making a decision.

In response to question from Mr. Connolly, Ms. Miller stated that there would be no access from Bayview Road to the new barn.

FINDINGS:

Chairman Rybczynski stated that his level of comfort has not been met and he would like to table the request until the Board's next meeting on July 5, 2011. He further stated that, because the Board does not have clear and distinct guidance from the Town Code, he would like to see something in writing before the Board considers this variance request.

Mr. Morlock stated that he feels that the Chairman's concerns are valid and understands the Chairman's discomfort level, but he is comfortable with Attorney Shaw's explanation that this could be treated as an area variance. He stated that based on that guidance,

he would like to see the Board move forward on this request. He noted that it appears that Mr. Allen and Attorney Shaw feel the Board is on solid ground in treating this as an area variance.

Mr. Connolly stated that he agrees with Mr. Morlock and that he is satisfied with Mr. Allen and Attorney Shaw's explanation and noted that if he thought there was going to be anything that would change between now and the Board's next meeting, he would be in favor of tabling.

Mr. Sortisio stated that he concurs with Mr. Morlock and Mr. Connolly.

Attorney Shaw stated that he would further research this and issue a written memo for the Board's next meeting, if that is the desire of the Board.

Mr. Rahill stated that he did not want to put off a vote on this matter.

Mr. Morlock made a MOTION, seconded by Mr. Rahill, to approve application # 5334, as testimony shows that the use that currently exists on the property is not being expanded, enlarged or changed as a result of the construction of the proposed barn.

On the question:

Mr. Morlock reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no.
2. Undesirable change in neighborhood character or to nearby properties – no, because there are no truly nearby properties and this is a working farm that has been in existence for a very long time.
3. Whether the request is substantial – no.
4. Whether the request will have adverse physical or environmental effects – no, because the working farm/nursery is already there.
5. Whether alleged difficulty is self-created – this is not a criterion the Board can solely use to deny a variance.

Mr. Eustace stated that he does not know what the rush is and he would rather be safe than sorry and table the project until July to allow the attorney to further research this issue.

As there were four (4) ayes and two (2) nays (Chairman Rybczynski and Mr. Eustace), the motion passed. **GRANTED.**

Application # 5335 Christopher Sargeant – Requesting an area variance for a proposed attached garage at 3868 Cornell Street

Christopher Sargeant, applicant, stated that he proposes to construct a 17' X 24' attached garage and is asking for a five (5) foot variance from the side yard requirement of ten (10) feet. He submitted a letter of support from an adjacent neighbor.

Mr. Sargeant submitted photos of the proposed garage for Board members' review, noting that the peak of the roof would be approximately fourteen feet high.

It was determined that several residents in the neighborhood have constructed attached garages similar to that which Mr. Sargeant proposes.

Mr. Morlock asked Mr. Sargeant if he could reduce the width of the garage by five (5) feet. Mr. Sargeant responded that, based on measurements of his vehicle, it would not be possible.

Findings:

Mr. Rahill made a MOTION, seconded by Mr. Sortisio, to approve application # 5335.

On the question:

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no, because the applicant would like a larger garage.
2. Undesirable change in neighborhood character or to nearby properties – no, because many other nearby properties have added attached garages similar to this one.
3. Whether the request is substantial – no.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – this is not a criterion the Board can solely use to deny a variance.

All members voted in favor. **GRANTED.**

Application # 5336 Parker Road Development Company – Requesting a use variance for a model home at 4740-L #34 Parker Road

Mr. Allen stated that in 2009 the applicant received a permit to use a dwelling as a model home but the applicant never requested an extension after nine (9) months, which is required. He noted that the temporary use of a dwelling as a model home is permitted for a period of nine (9) months, after which time an extension must be approved by the Zoning Board of Appeals.

In response to a question from Chairman Rybczynski, Gail Privitera from J & M Homes stated that J & M Homes would like to maintain the model home until all lots are sold, nothing that it may take two (2) years, given the current economy, and 14 lots are left.

Findings:

Chairman Rybczynski stated that he is concerned that the model home has been at this location for two (2) years and no one has requested the required extension. He further

stated that he is sure J & M Construction was aware of the fact that the approval was for nine (9) months and that an extension was required if the model home was to remain.

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to grant a three-month extension for the model home.

On the question:

Mr. Connolly stated that three months is a reasonable extension of time, since three months from now is when the applicants would be requesting the third nine-month extension if they were following the Town's requirements. He further stated that if, after three months, the applicants would like to request a nine-month extension, they will be free to do so.

Mr. Allen stated that if a three-month extension is granted, the applicants will be notified that when the three-month time frame has elapsed, they will be required to request another nine-month extension. He further stated that if they do not request the extension after the three-month time frame, they will be notified by the Building Inspection Department and it will become a violation.

All members voted in favor. **GRANTED.**

Mr. Connolly made a MOTION, seconded by Mr. Sortisio, to reconsider application # 5336.

All members voted in favor.

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to amend the original motion to clarify that September 15, 2011 is the deadline date and the extension will no longer be effective after that date.

All members voted in favor.

Application # 5337 Hamburg Lodging, Inc. – Requesting two (2) area variances for a detached sign at 5440 Camp Road

Mr. Allen stated that when Hamburg Lodging submitted this application for a variance, the Building Inspection Department contacted the New York State Department of Transportation (NYSDOT) to get input from that department on this variance request.

Mr. Allen noted that he spoke with Brian Skok and was informed that NYSDOT has no objection to the location of this proposed sign.

Sam Pinelli from Hamburg Lodging stated that the new sign would advertise the Super Eight motel and would be illuminated. He further stated that if the Board would prefer a ground sign, he would be amenable to that.

It was determined that the property is located in the Camp Road Overlay District and that a ground sign is required, should not be higher than twelve feet and should contain components such as brick.

Findings:

Chairman Rybczynski stated that, because there are two (2) hotels on the property, additional signage that is not intrusive seems from a marketing standpoint to be warranted. He further stated that NYSDOT does not object to this proposed signage.

Mr. Morlock made a MOTION, seconded by Mr. Eustace, to approve application # 5337.

On the question:

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no.
2. Undesirable change in neighborhood character or to nearby properties – no, because the property is located in the Camp Road Overlay District Regional/Hospitality Area.
3. Whether the request is substantial – no, because the applicant is amenable to working with the Town regarding location, height, etc.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – this is not a criterion the Board can solely use to deny a variance.

Application # 5338 Jimmy Wanaka Properties, LLC - Requesting an area variance for a reduced number of parking spaces at 2293 Pleasant Avenue

Mrs. desJardins stated that the Planning Board forwarded a positive recommendation to the Zoning Board of Appeals regarding this parking variance request.

Jim Healy, applicant, stated that the approximately number of seats in the restaurant will be sixty.

It was determined that 19 parking spaces are provided and 24 spaces are required. It was further determined that the applicant will be providing more parking spaces than what was provided when the restaurant was previously in operation.

Chairman Rybczynski stated that some of the 19 provided spaces would have to be taken up by employees of the restaurant, which would further reduce the number of spaces allocated to customers.

Mr. Rahill stated that the new owners have done a marvelous job renovating the building.

Mr. Rahill read a letter from Judy Palmer, 5791 Walden in support of the project.

Findings:

Chairman Rybczynski stated that he is happy to see that the restaurant will be re-opened.

Mr. Rahill made a MOTION, seconded by Mr. Morlock, to approve application # 5338.

On the question:

Chairman Rybczynski stated that the applicants propose to provide 40% more parking spaces than exist there now and the property has been cleaned up. He further stated that it is an obvious improvement.

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no, because it is an existing structure.
2. Undesirable change in neighborhood character or to nearby properties – no, because the restaurant has been there for many years and the neighbors seem pleased that it will re-open.
3. Whether the request is substantial – no, because this is an improvement.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – this is not a criterion the Board can solely use to deny a variance.

All members voted in favor. **GRANTED.**

OTHER BUSINESS

Regarding the minutes of May 3, 2011, Mr. Connolly stated that they incorrectly credit him with seconding a motion but he was not in attendance.

Chairman Rybczynski made a MOTION, seconded by Mr. Rahill, to approve the minutes as amended of May 3, 2011. All voted in favor.

Mr. Morlock made a MOTION, seconded by Mr. Connolly, to adjourn the meeting. All members voted in favor. The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

DATE: June 13, 2011

