

Town of Hamburg
Board of Zoning Appeals Meeting
December 6, 2011
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, December 6, 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 Paul Eustace, Commissioner Jack Rahill and Commissioner Jim Sortisio.

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

Commissioner Rahill read the Legal Notice of Public Hearing.

Application # 5356 Edu-Kids - Requesting an area variance for a proposed detached sign at 4885 Lakeshore Road

Mr. Jeff Fitch from Sign Language, Inc. and Sarah Smith from Edu-Kids appeared on behalf of the applicant. Mr. Fitch stated that the applicant would like to install a larger sign than what is allowed in the NC (Neighborhood Commercial) zone to increase the visibility of the sign for parents picking up their children. He further stated that the proposed sign is in keeping with a nautical theme, which the Town has requested.

In response to a question from Chairman Rybczynski, Mr. Fitch stated that the proposed sign location conforms to all requirements of the Town regarding setbacks.

Findings:

Chairman Rybczynski stated that Edu-Kids has done a wonderful job in terms of meeting the criteria put forth by the Planning Board. He further stated that it came to his attention that the Edu-Kids representatives were under the impression during the lengthy Planning Board approval process that the sign was part of what was approved by the Planning Board. He noted that Edu-Kids would have liked to have the sign up for the ribbon cutting ceremony held on December 1, 2011.

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – for parents approaching the building from the north, it will be helpful to have a bigger sign in terms of visibility.
2. Undesirable change in neighborhood character or to nearby properties – the applicant built a wonderful building where they were asked to put it.
3. Whether the request is substantial – this is a unique circumstance.
4. Whether request will have adverse physical or environmental effects – no.

5. Whether alleged difficulty is self-created – no because Edu-Kids was asked to choose this location after not being allowed by the Town to expand at its previous location.

Chairman Rybczynski made a MOTION, seconded by Mr. Eustace, to approve Application # 5356.

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

Application # 5357 Vanderbilt Properties – Requesting a use variance for a model home at 5665-1-A Southwestern Boulevard

Scott McClintock, representing the applicant, stated that the applicant is requesting a two (2) year extension for the model home beyond the nine (9) month time frame allowed under the Code. He noted that the nine (9) months are up at this time and the applicant would like to extend the time the model home is up and running for a period of two (2) additional years.

Mr. McClintock stated that the applicant's residential project includes one (1) building that houses four (4) different model units (1-A, 1-B, 1-C and 1-D). He further stated that hopefully by two (2) years from now the applicant will either not need the model homes or may wish to relocate them to another part of the development.

Mrs. desJardins stated that the applicant is allowed by Code to have a model home up for a period of nine (9) months without requesting a variance, but if the applicant wishes to keep the model home after the nine (9) month period, a variance must be obtained for an extension.

In response to a question from Attorney Shaw, Mr. McClintock stated that the model homes are not being used for any other business purposes.

Attorney Shaw stated that the Town Code allows the Zoning Board of Appeals to grant whatever extension it feels is appropriate, once a model home has been up for the first nine (9) months.

Findings:

Mr. Connolly stated that, because of the size of the project, he understands the applicant's request to extend the time frame and he has no problem with that. He further stated that he is not comfortable with granting an extension of two (2) years because of the many problems the Town has had with model homes in the past. He noted that he would be comfortable granting an 18-month extension at this time.

Chairman Rybczynski stated that the biggest problem with model homes has not been so much an issue of what is being done in them but rather getting applicants to come back to the Board and apply for extensions at the appropriate time.

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve an 18-month extension through May 2013 for Application # 5357.

On the question:

Mr. Connolly reviewed the area variance criteria:

1. Undesirable change in neighborhood character or to nearby properties – no.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – no.
3. Whether the requested variance is substantial – it could be argued that doubling the normal allowable time is substantial, but based on the testimony offered and the state of the economy it is reasonable.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether the alleged difficulty is self-created – it is self-created, but this does not necessarily preclude the granting of the area variance and on balance the granting of the variance is appropriate.

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

Application # 5358 Vanderbilt Properties – Requesting a use variance for a model home at 5665-1-B Southwestern Boulevard

Scott McClintock, representing the applicant, stated that the applicant is requesting a two (2) year extension for the model home beyond the nine (9) month time frame allowed under the Code. He noted that the nine (9) months are up at this time and the applicant would like to extend the time the model home is up and running for a period of two (2) additional years.

Mr. McClintock stated that the applicant's residential project includes one (1) building that houses four (4) different model units (1-A, 1-B, 1-C and 1-D). He further stated that hopefully by that time the applicant will either not need the model homes or may wish to relocate them to another part of the development.

Mrs. desJardins stated that the applicant is allowed by Code to have a model home up for a period of nine (9) months without requesting a variance, but if the applicant wishes to keep the model home after the nine (9) month period, a variance must be obtained for an extension of time.

In response to a question from Attorney Shaw, Mr. McClintock stated that the model homes are not being used for any other business purposes.

Attorney Shaw stated that the Town Code allows the Zoning Board of Appeals to grant whatever extension it feels is appropriate, once a model home has been up for the first nine (9) months.

Mr. Sortisio made a MOTION, seconded by Mr. Eustace, to approve an 18-month extension through May 2013 for Application # 5358.

On the question:

Mr. Connolly reviewed the area variance criteria:

1. Undesirable change in neighborhood character or to nearby properties – no.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – no.
3. Whether the requested variance is substantial – it could be argued that doubling the normal allowable time is substantial but, based on the testimony offered and the state of the economy, it is reasonable.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether the alleged difficulty is self-created – it is self-created, but this does not necessarily preclude the granting of the area variance and on balance the granting of the variance is appropriate.

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

Application # 5359 Vanderbilt Properties – Requesting a use variance for a model home at 5665-1-C Southwestern Boulevard

Scott McClintock, representing the applicant, stated that the applicant is requesting a two (2) year extension for the model home beyond the nine (9) month time frame allowed under the Code. He noted that the nine (9) months are up at this time and the applicant would like to extend the time the model home is up and running for a period of two (2) additional years.

Mr. McClintock stated that the applicant's residential project includes one (1) building that houses four (4) different model units (1-A, 1-B, 1-C and 1-D). He further stated that hopefully by that time the applicant will either not need the model homes or may wish to relocate them to another part of the development.

Mrs. desJardins stated that the applicant is allowed by Code to have a model home up for a period of nine (9) months without requesting a variance, but if the applicant wishes to keep the model home after the nine (9) month period, a variance must be obtained for an extension of time.

In response to a question from Attorney Shaw, Mr. McClintock stated that the model homes are not being used for any other business purposes.

Attorney Shaw stated that the Town Code allows the Zoning Board of Appeals to grant whatever extension it feels is appropriate, once a model home has been up for the first nine (9) months.

Mr. Rahill made a MOTION, seconded by Mr. Sortisio, to approve an 18-month extension through May 2013 for Application # 5359.

On the question:

Mr. Connolly reviewed the area variance criteria:

1. Undesirable change in neighborhood character or to nearby properties – no.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – no.
3. Whether the requested variance is substantial – it could be argued that doubling the normal allowable time is substantial but, based on the testimony offered and the state of the economy, it is reasonable.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether the alleged difficulty is self-created – it is self-created, but this does not necessarily preclude the granting of the area variance and on balance the granting of the variance is appropriate.

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

Application # 5359 Vanderbilt Properties – Requesting a use variance for a model home at 5665-1-C Southwestern Boulevard

Scott McClintock, representing the applicant, stated that the applicant is requesting a two (2) year extension for the model home beyond the nine (9) month time frame allowed under the Code. He noted that the nine (9) months are up at this time and the applicant would like to extend the time the model home is up and running for a period of two (2) additional years.

Mr. McClintock stated that the applicant's residential project includes one (1) building that houses four (4) different model units (1-A, 1-B, 1-C and 1-D). He further stated that hopefully by that time the applicant will either not need the model homes or may wish to relocate them to another part of the development.

Mrs. desJardins stated that the applicant is allowed by Code to have a model home up for a period of nine (9) months without requesting a variance, but if the applicant wishes to keep the model home after the nine (9) month period, a variance must be obtained for an extension of time.

In response to a question from Attorney Shaw, Mr. McClintock stated that the model homes are not being used for any other business purposes.

Attorney Shaw stated that the Town Code allows the Zoning Board of Appeals to grant whatever extension it feels is appropriate, once a model home has been up for the first nine (9) months.

Mr. Sortisio made a MOTION, seconded by Mr. Connolly, to approve an 18-month extension through May 2013 for Application # 5360.

On the question:

Mr. Connolly reviewed the area variance criteria:

1. Undesirable change in neighborhood character or to nearby properties – no.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – no.
3. Whether the requested variance is substantial – it could be argued that doubling the normal allowable time is substantial but, based on the testimony offered and the state of the economy, it is reasonable.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether the alleged difficulty is self-created – it is self-created, but this does not necessarily preclude the granting of the area variance and on balance the granting of the variance is appropriate.

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

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve the minutes of November 1, 2011. All members voted in favor.

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to adjourn the meeting. All members voted in favor. The meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

DATE: December 9, 2011