

Town of Hamburg
Board of Zoning Appeals Meeting
July 5, 2011
Minutes

The Town of Hamburg Board of Zoning Appeals met for a regular meeting on Tuesday, July 5, 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 and Commissioner Paul Eustace.

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

Excused: Commissioner Morlock, Commissioner Sortisio

Mr. Rahill read the Legal Notice of Public Hearing.

Application # 5339 James Conciardo - Requesting an area variance for an addition to an attached garage at 3222 Durham Road.

Mr. James Conciardo, applicant, stated that he would like to build an addition to his garage and is looking for a variance of approximately five (5) feet. He further stated that none of his neighbors seems to have a problem with what he is requesting and noted that his primary concern is that the addition look as nice as the rest of the house does. He stated that the addition would be 17 feet long, 7 feet wide and 8 feet high.

In response to a question from Mr. Connolly, Mr. Conciardo stated that the addition would be somewhat smaller than the pad that currently exists in the area of the addition.

Mr. Rahill read letters of support from John Buckland, 3226 Durham Road and Mary Howe, 3214 Durham Road.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve application # 5339.

On the question, Mr. Connolly reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – this is debatable, but any other option would not be optimal.
2. Undesirable change in neighborhood character or to nearby properties – because the applicant already has a pad and can use that area already, the garage would be an improvement. Also there are many other properties within ten houses on either side that have very similar garages and a few are even larger than what is proposed by the applicant.
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 on balance with all five of the balancing tests, approving the variance would be warranted.

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

Application # 5340 Chipotle Grill – Requesting an area variance for a third detached sign at 4405 Milestrip Road.

Attorney Carl Paparella, representing the applicant, stated that Chipotle Grill is requesting approval for a third detached sign that otherwise complies with the Code (18' tall). He further stated that this site at one time had three (3) detached signs – the Home Depot directory sign, the Blockbuster sign and the Appleby's sign. He noted that Blockbuster has vacated the site and Chipotle would like to re-install that pole sign in its place. He stated that, given the size of the site and the character of the immediate area, he feels this is a modest request in that the sign is rational in size and appropriate for the area.

Attorney Paparella stated that the sign is absolutely critical for garnering visibility for motorists on Milestrip Road, as Chipotle is without any permanent directory space on the existing sign and building onto the Appleby's sign is not practical. He further stated that he believes adding the sign would not create an undesirable change in the community, nor will it have any adverse impacts on adjacent properties.

Attorney Paparella stated that he found five (5) locations that have three (3) detached signs on site. He submitted to Board members photos of these locations. One location was found to not be applicable because a billboard is not considered a detached sign. It was determined that two (2) locations did have three (3) detached signs.

Attorney Paparella confirmed that Chipotle Grill is proposing a single pole sign and that Chipotle Grill will incur the expenses of the approvals for the sign, as well as the manufacturing and installation of the sign. He noted, however, that Chipotle Grill would own the sign but the property owner would have the ability to put another tenant on the proposed sign. It was determined that the sign would stay with the property if Chipotle Grill vacates the site.

Chairman Rybczynski confirmed with Attorney Paparella that Chipotle Grill is the applicant but Chipotle Grill does not own the property. It was determined that DDR owns the property.

In response to a question from Mrs. desJardins, Attorney Paparella stated that Chipotle Grill only proposes to use the top half of the sign and has no intention of installing any messages or logos on the bottom half of the sign.

In response to a question from Attorney Shaw, Attorney Paparella stated that Chipotle Grill does have a written lease for the space they intend to occupy in the plaza. Attorney Paparella further confirmed that the sign would not include flashing or scrolling messages and would be internally illuminated.

Findings:

Mr. Rahill made a MOTION, seconded by Mr. Eustace, to approve application # 5340.

On the question, Mr. Rahill reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – no, it is an existing sign and the applicant wants to attract Thruway traffic.
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 it is a moot point.

Chairman Rybczynski made a MOTION, seconded by Mr. Connolly, to amend Mr. Rahill's motion to include the following conditions:

1. Before the signage is installed, Chipotle Grill will produce the lease.
2. Proper New York State Thruway Authority approval will be obtained if needed.
3. The Building Inspection department will make sure that the front setback is in compliance.

All members voted in favor of the motion to amend Mr. Rahill's motion.

All members voted in favor of the motion to approve application # 5340. **GRANTED.**

Application # 5341 Carol Ernst – Requesting an area variance for an addition to an attached garage at 5066 Bradley Lane.

Carol Ernst, applicant, stated that she would like to go from a single car to a two-car garage. She further stated that she is asking for a variance of five (5) feet. She confirmed that she is not encroaching on the other side yard setback in any way.

Chairman Rybczynski stated that when visiting the site he noticed that there are other residents in the area who have built additions that encroach on a side yard. He confirmed with the applicant that there will be no business conducted in the garage.

In response to a question from Mr. Connolly, Mrs. Ernst stated that she has spoken to her neighbors and they have no problem with her plans.

Findings:

Mr. Rahill made a motion, seconded by Mr. Connolly, to approve application # 5341.

On the question, Mr. Rahill stated that this is a justifiable use, there is a lot of precedence in the neighborhood for this type of addition, it adds a safety factor for vehicles and creates no sight problems.

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

Application # 5342 Mindy Cervoni – Requesting an area variance for a front porch at 4717 Pineview Drive

Mindy Cervoni, applicant, stated that she wants to construct a front porch on her home. She further stated that she currently has a 4' X 8' concrete pad in front of the home and the porch would extend two (2) feet out from this concrete pad and would extend the length of the home (30 feet).

In response to a question from Chairman Rybczynski, Mrs. Cervoni, stated that the porch would be covered and the roof would match the existing roof of the home.

Mr. Rahill stated that a porch would be a home improvement. He further stated that he observed no sight line problems.

Mr. Connolly stated that he also visited the site, did not foresee any problems and noticed that there are not many front porches in the neighborhood.

Mr. Rahill read letters of support from Gary Mumm, 4709 Pineview Drive and Jennifer Roberts, 4725 Pineview Drive.

FINDINGS:

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve application # 5342.

On the question, Mr. Connolly reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – because the applicant wishes to construct the front porch in the front yard, it would not be possible to achieve that anywhere else.
2. Undesirable change in neighborhood character or to nearby properties – there are some front porches in the development and they enhance the property.
3. Whether the request is substantial – there will still be thirty feet from the front property line to the house and this is just a 5% variance, which is not substantial.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – yes, but on balance, the balance tips in favor of granting the variance.

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

Application # 5343 Daniel & Deborah Tomaka – Requesting an area variance for a detached garage at 5434 Roberts Road.

Daniel Tomaka, applicant, stated that he would like to replace a newly demolished 500 square foot garage with a new 30' X 40' garage for storage space. He further stated that the purpose of the garage would be for storage of his two (2) automobiles, RV, trailer

and general storage. He noted that the garage would be 12 feet high at the eave and approximately 18' 6" at the ridge.

In response to a question from Chairman Rybczynski, Mr. Tomaka stated that he is a self-employed computer engineer, works out of his house and does not conduct any retail repair. He further stated that no business would be conducted in the garage.

In response to a question from Mr. Connolly, Mr. Tomaka stated that he would like the larger garage because if he stores a 20' to 25' RV in a smaller garage, he would be using half of the building for that purpose and would not have enough room left over to store two (2) cars. He further stated that his primary purpose for the garage is storage of yard equipment and other minor items and a smaller garage would not afford him enough space to store these items, as well as the RV, the trailer and two (2) cars.

Mr. Tomaka stated that pole barn packages come in eight-foot increments on the long wall, so the next size smaller would be 32 feet long instead of 40 feet and he would not be able to accomplish his objective of storing the RV, trailer, vehicles and miscellaneous items.

In response to a question from Chairman Rybczynski, Mr. Tomaka stated that the temporary tent he put up in his yard to store items from the recently demolished garage will be removed once the new garage is constructed.

Mr. Rahill read letters of support from Barry Hogan, 5424 Roberts Road, Tara Rumfola, 5454 Roberts Road and William Wagner, 5419 Roberts Road.

Findings:

Mr. Rahill stated that he believes this is a reasonable plan, it is proposed on a dead end street, there are no objections from the neighbors and it is a good use of the property.

Mr. Rahill made a MOTION, seconded by Mr. Eustace, to approve application # 5343.

Chairman Rybczynski stated that two (2) variances are being requested; one for size (350 sq.ft. variance) and one for height (6" variance).

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

Application # 5344 Ann Marie Kish – Requesting an area variance for a side addition at 4613 Kennison Parkway

Ann Marie Kish, applicant, stated that she would like to construct an addition to her home so that her elderly mother can live with her. She further stated that the other reason for the addition is so that, for resale purposes, she will have a bedroom and bathroom on the first floor of the home. She noted that there would be no separate entrance and the addition would be strictly for the bedroom and bathroom.

In response to a question from Mr. Rahill, Ms. Kish stated that her lot is a double lot and is totally fenced.

Ms. Kish stated that she no longer has the option to construct the addition off the back of the house because she had a stamped concrete patio installed in that area before she learned that she would need to bring her mother to live with her. She noted that the patio would have to be ripped out in order to construct the addition off the back of the house.

Constance Gulino, 4608 Kennison Parkway, stated that she is the power of attorney for her mother, Marion Gulino (adjacent homeowner), and she feels that if Ms. Kish is granted this variance it would box her mother's property in too much. She further stated that her mother is adamant that she does not want Ms. Kish to be allowed to build within three or four feet of her property and feels it would be too invasive. She stated that she believes Ms. Kish could build the addition in the rear of the property, as there is ample room there.

In response to a question from Chairman Rybczynski, Ms. Gulino stated that her mother's house is approximately twenty feet from the side yard that is adjacent to Ms. Kish's property. She further stated that there is a very small side yard on the other side of her mother's property.

Ms. Gulino stated that she would have a concern about drainage if this variance is granted.

In response to a question from Mr. Connolly, Ms. Kish stated that she has not had plans drawn up that would comply with the Code. In response to a question from Chairman Rybczynski, Ms. Kish stated that she is not sure that there would be any difficulty in revising the plans so that they comply with the Code. She noted that this proposal is the best alternative for resale of the home, as well as for creating a bedroom and bathroom on the first floor with the bathroom being accessible to the entire first floor. She further stated that she could make the addition smaller, but she is trying to get the best return for her dollar if she decides to sell the home.

Board members were shown a picture of Ms. Kish's back yard to determine the location of the concrete patio.

Findings:

Chairman Rybczynski stated that both sides of this issue present valid arguments and that the Zoning Board of Appeals' job is to balance the two sides out and give due consideration to each.

Chairman Rybczynski stated that the requested variance is for 3.16 feet in order to build an addition that would include a bathroom to be used primarily by the applicant's elderly mother, as well as any other occupants or visitors of the home. He further stated that the plans are fairly simple with considerations for someone with physical limitations, such as a large bathroom and a walk-in closet. He noted that the applicant states that she would not like to incur the cost of removing a concrete patio in her rear yard in order

to construct the addition there. He further noted that the proposed addition is aesthetically pleasing and would have no separate entrance or food preparation area.

Chairman Rybczynski stated that the adjacent neighbor's power of attorney feels that the applicant's addition would box the adjacent neighbor's property in and that a drainage problem might arise.

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – the applicant has testified about the difficulty and costliness of placing the addition in the rear yard because of the existing concrete patio. Installing a handicapped bathroom and walk-in closet anywhere else does not appear to be feasible to the applicant.
2. Undesirable change in neighborhood character or to nearby properties – several residents in this development have expanded their homes or garages encroaching on the side lot lines and many have received variances of five (5) feet or greater.
3. Whether the request is substantial – The adjacent residence is located twenty feet from the shared side lot line and an encroachment of three (3) feet is not substantial.
4. Whether the request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – almost every request is self-created, but bringing her ill mother to live with her was probably not something the applicant planned to have to do. This is the best-case scenario and a minimal request.

Mr. Connolly made a MOTION to table this application for the following reasons:

1. This will allow all of the Board members to do an on-site inspection, which is very important. Since there are two (2) parties that are in disagreement, the more Board members' opinions and on-site inspections there are, the better it is for both parties to feel they got a fair hearing.
2. This will enable the applicant to ask her architect if it is possible to alter the plans so that they will not require a variance or would require a smaller variance that could potentially be a happy medium.
3. This would allow verification that Ms. Gulino is the power of attorney for her mother.

Chairman Rybczynski stated that we have a short construction season and tabling this application would mean the applicant would have to wait an additional thirty days. He further stated that the applicant is only asking to expand her addition a distance of three (3) feet, which he believes is not substantial. He stated that he cannot see denying a three-foot variance.

Chairman Rybczynski stated that the fact that the applicant's mother needs somewhere to stay is somewhat relevant.

Mr. Rahill stated that he endorsed the Chairman's comments, noting that this is a family situation where a daughter is trying to help her mother.

Mr. Eustace stated that this is a difficult case for him, noting that he attempted to locate the home but was unable to do so. He stated that he could not comment one way or the other.

In response to a question from Chairman Rybczynski, Ms. Kish stated that she planned to begin construction as soon as possible, assuming the variance was granted.

Mr. Connolly's motion did not receive a second.

Mr. Rahill made a MOTION, seconded by Chairman Rybczynski, to approve application # 5344. As there were three (3) ayes and one (1) nay (Mr. Connolly), the motion failed.

Mr. Connolly's reasons for not voting to grant the variance are as follows:

1. Whether benefit can be achieved by other means feasible to applicant - Yes.
The benefit sought by the applicant can be achieved by some feasible method other than a variance. The homeowner could do any of the following:
 - a) Reduce the size of the expansion by approximately 3 feet in the direction of neighboring property.
 - b) Reconfigure the size of the expansion to go to the back of her yard instead of go to the side of her yard.
2. Undesirable change in neighborhood character or to nearby properties - Yes.
A detriment to nearby properties could be created by the granting of this variance. An on-site examination of the neighborhood, an on-site examination of the property and testimony provided by the homeowner and representatives of the direct neighbor affected all confirmed that this could be considered a detriment. Factors taken into account to reach this conclusion include:
 - a) The unique nature of the lot being a double lot on a street with almost all single lots.
 - b) The positioning of the current house to the right side of the lot (when facing the house) and the variance requested, making the addition to the house extend even further to the right side of the lot.
 - c) The adjoining neighbor to the right side of the homeowner's lot already has the other adjoining neighbor's property within extremely close proximity to their house.
3. Whether the request is substantial - No.
When I consider the size of the requested variance in relation to the size of the home and the size of the property, I do not feel the request is substantial.
4. Whether the request will have adverse physical or environmental effects - No.
The proposed variance will not have an adverse effect on the environmental conditions of the neighborhood. It may have an adverse effect on the physical

conditions of the directly adjoining neighbor's property. However, I don't feel that it would be an adverse effect on the neighborhood.

5. Whether alleged difficulty is self-created - Yes.

The alleged difficulty was self-created. The homeowner can expand her home to accommodate an additional room without the variance being granted.

My vote to deny was based on the guidelines established in July of 1992 in balancing the benefit to the applicant from the granting of the variance and the detriment to the health, safety, and welfare of the community or neighborhood that would occur if the variance is granted. In my opinion, as the above 5 criteria show, the balance in this case tips in favor of a denial.

OTHER BUSINESS

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve the minutes of June 7, 2011. All members voted in favor.

Mr. Rahill made a MOTION, seconded by Mr. Connolly, to adjourn the meeting. All members voted in favor. The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

DATE: June 13, 2011