

Town of Hamburg  
Board of Zoning Appeals Meeting  
September 8, 2011  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Thursday, September 8, 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 Jim Sortisio and Commissioner Paul Eustace.

Others in attendance included Planning Consultant Sarah desJardins.

Excused: Commissioner Morlock

Chairman Rybczynski asked for a moment of silence in honor of Commissioner Chuck Morlock, who recently passed away.

Mr. Rahill read the Legal Notice of Public Hearing.

**Application # 5347 Ronald & Mary Matla** - Requesting an area variance for a detached garage at 3181 Durham Drive

Mr. Ronald Matla, applicant, stated that he would like to construct a 20' X 20' garage to store a classic vehicle, motorcycle, trailer and lawn equipment. He noted that his property is 120' X 115' and that the proposed garage would be six (6) feet from his side lot line. He stated that the garage would not obstruct anyone's view and the electric company's right-of-way and the railroad tracks are behind his property. He noted that he would build a stone driveway to the garage this year and then next year it would be permanent.

Mr. Matla stated that he told both of his neighbors what he is proposing and neither was in attendance, so he assumes they do not object. He further stated that the existing detached garage on his property was there when he purchased the lot.

Mr. Rahill stated that he visited the site and feels this is a meticulously taken care of property.

**Findings:**

Mr. Rahill made a MOTION, seconded by Mr. Eustace, to approve Application # 5347.

On the question:

Chairman Rybczynski stated that this is an improvement to an already well-kept property, there is no adverse environmental impact, no neighbors have testified against this request and there are several existing non-conforming structures on Durham Road.

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

**Application # 5348 Old Navy – Requesting four (4) area variances for proposed signage at 3701 McKinley Parkway**

Mrs. desJardins explained that one (1) attached sign, proposed on the south side of the new Old Navy building, is too high and is not facing a public street, which is required. She further stated that the proposed signage on the west side of the building, over the main entryway, is too high and too large in area.

Paddy Rowell from Flexlume Sign Co. appeared on behalf of the applicant, stating that Old Navy is moving from its current location to the McKinley Mall (construction is underway for the new Old Navy store). He noted that the applicant proposes signage over the main entryway that includes a large “Old Navy” sign on the building, as well as a small oval “Old Navy” logo suspended over the door. He stated that these two signs together cover more area than what is allowed and the letters on the larger sign make the sign too high. He further stated that on the south side of the building, the proposed attached signage does not face a public roadway and is too high.

Mr. Connolly confirmed that the applicant is asking for two (2) variances for two (2) different signs, one facing west and the other facing south.

Mrs. desJardins stated that the large “Old Navy” sign and the small oval logo over the door are considered one sign, per the Building Inspector.

Mr. Rowell stated that the Old Navy store will have one (1) entrance on the west side of the building, as well as an interior entrance. He further stated that the applicant would like the sign on the south-facing wall so that customers driving around the Mall coming from the south will be able to locate the Old Navy store.

Mr. Rowell stated that all of the Old Navy signs are manufactured in Texas.

**Findings:**

Chairman Rybczynski stated that there are four (4) separate issues to address and they should be discussed individually.

It was determined that the two (2) variance requests associated with each proposed sign would be addressed separately.

Regarding the signage proposed on the south side of the building, Mr. Eustace made a MOTION, seconded by Mr. Sortisio, to approve the variances requested.

On the question, Chairman Rybczynski stated that the necessity of this signage is not as obvious as others have been, although if it offers an opportunity for a business that is expanding, providing construction jobs and more retail to have more success, he finds it hard to argue with. He reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – applicant has expressed that this is Old Navy's wish to fully capitalize on its investment.

2. Undesirable change in neighborhood character or to nearby properties – no.
3. Whether the request is substantial – the area of the sign is not an issue and the requested additional height makes sense.
4. Whether request will have adverse physical or environmental effects – no.
5. Whether alleged difficulty is self-created – no.

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

Regarding the signage proposed on the west side of the building, Chairman Rybczynski stated that the request is not substantial, considering the fact that the overall signage will be 120 square feet and the applicant is asking for a variance of 5.8 feet.

Mr. Connolly made a MOTION, seconded by Mr. Rahill, to approve the variances requested.

On the question, Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – the proposed signage is the corporate logo and it is assumed that all the signage is the same size.
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 – this is a mute point.

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

**Application # 5349 Parise Mechanical, Inc. – Requesting five (5) area variances for two (2) existing non-conforming detached single-family dwellings at 3650 Lakeview Avenue**

Chairman Rybczynski stated that he had conversations with counsel (Attorney Joseph Shaw) and this request is recognized as being somewhat odd. He stated that he does not see the need for action since the property is considered to be legal non-conforming presently.

Eric Lawler and James Kilmer, prospective purchasers of the property, appeared on behalf of the variance request. Mr. Kilmer stated that his lender will not approve his mortgage unless he can prove that, in the event of a catastrophic loss, he can retain the existing non-conforming designation for the property. He further noted that the Building Inspection Department advised him to seek a variance that would, in effect, allow him to rebuild both structures in their current footprints in the case of a catastrophic loss.

Mrs. desJardins explained that normally if a home that is considered existing non-conforming because it was built before the current zoning requirements were put in place burns down, the new home constructed on the property would have to adhere to

the current zoning regulations of the Town and would lose its legal non-conforming designation.

In response to a question from Mr. Rahill, Mr. Kilmer stated that one home on the property was built in 1925 and the other was built in approximately 1945 and that one home is 900 square feet and the other is 1,244 square feet.

In response to a question from Chairman Rybczynski, Mr. Kilmer stated that he has checked with several banks and they all have the same requirements regarding the legal non-conforming use status of the property.

Mr. Kilmer stated that Parise Mechanical, Inc., owner of the property, will not be able to sell this property to anyone who requires a mortgage if this variance is not granted, since all of the banks are requiring the same thing.

Chairman Rybczynski stated that the applicant is requesting a variance for something that already exists (a legal non-conforming use designation) and that if one or both of the homes on the property did burn down, Mr. Kilmer would still have to return to the Zoning Board of Appeals to request the same variance to rebuild the home(s) in the same footprint.

Mr. Kilmer responded that the Building Inspection Department indicated to him that if the variance is granted, it remains with the property in perpetuity.

Chairman Rybczynski stated that this is an interesting and creative way to attempt to solve a problem and he struggles with the fact that the variance requested already exists.

Mrs. desJardins stated that if the variances are granted and one or both homes on the property do suffer catastrophic loss, the home(s) would have to be rebuilt on the exact footprint on which they currently exist.

Lori Czop, representing Parise Mechanical, stated that Parise Mechanical purchased the property and fixed up the two (2) homes and is now attempting to sell the property.

### **Findings:**

Chairman Rybczynski stated that the concept of this variance request is simple; the property is already legal non-conforming. He noted that Parise Mechanical, Inc. has purchased the property and improved it greatly and if Parise Mechanical, Inc. is unable to sell the property, it would be a loss to the company.

Chairman Rybczynski reviewed the area variance criteria:

1. Whether benefit can be achieved by other means feasible to applicant – the applicant has no other alternative, if the property is to be sold, unless someone purchases the property with cash, which is highly unlikely.
2. Undesirable change in neighborhood character or to nearby properties – the property has been improved and is a positive change to the neighborhood.

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 – this is a mute point.

Chairman Rybczynski stated that he does not see any other solution to the buyers' problem, nor does he see a down side to helping them.

Mr. Sortisio made a MOTION, seconded by Mr. Eustace, to approve Application #5349. All members voted in favor of the motion. **GRANTED.**

**Application # 5350 24 Carat Gold – Requesting an area variance for two (2) attached signs at 3747 Lakeshore Road**

It was determined that the applicant withdrew the application for a variance.

Mr. Eustace made a MOTION, seconded by Mr. Sortisio, to approve the minutes of August 16, 2011. All members voted in favor.

Mr. Rahill made a MOTION, seconded by Mr. Eustace, to adjourn the meeting. All members voted in favor. The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Jack Rahill, Secretary  
Board of Zoning Appeals

DATE: September 16, 2011