

Town of Hamburg
Board of Zoning Appeals Meeting
October 3, 2017
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, October 3, 2017 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 Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Attorney Mark Walling, Board of Zoning Appeals Attorney and Sarah desJardins, Planning Consultant.

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military, as well as those affected by the tragedy in Las Vegas.

Commissioner Chiacchia read the Notice of Public Hearing.

Tabled Application # 5643 Michael Churchill – Requesting an interpretation of the Supervising Code Enforcement Official’s determination regarding Section 280-31 A (6) of the Hamburg Town Code.

Attorney Mark Romanowski from Hopkins, Sorgi & Romanowski, representing the applicant, stated that he submitted a correspondence that day to the Board responding to some of the questions that were raised at the September 12, 2017 meeting in furtherance of the request for an interpretation of the Board that a tourist home is a permitted use via a Special Use Permit in the R-1 District. He stated that the Hamburg Town Code does recognize the “bootstrapping” mechanism throughout, and there are several examples of where its existence is acknowledged, as well as areas where the Town Code cuts it off.

Attorney Romanowski stated that a tourist home first comes about in the R-E District and then moves its way up. He noted that the R-E District cuts off hospitals and golf courses, and as one moves up the zoning classifications the NC cuts off cluster housing, C-1 cuts off residential housing, etc.

Attorney Romanowski stated that the Hamburg Town Code is structured such that if something is permitted in a lower District, unless it is excluded, it is permitted. He further stated that this is consistent with New York State Town Law, which specifically states that Special Uses, when they are identified, are considered permitted uses in a District.

In response to a question from Mr. Chiacchia, Attorney Romanowski stated that the private road in the development where Mr. Churchill lives is owned by Mr. Churchill, and the adjacent property owners have access rights over that road.

Findings:

Mr. Connolly made a MOTION, seconded by Ms. Falkiewicz, to affirm the interpretation of the Supervising Code Enforcement Official’s regarding Section 280-31 A (6) of the Hamburg Town Code.

Mr. Connolly stated that a great presentation from Mr. Churchill’s attorney was given, and comments were received from the public. He stated that Board members found themselves in a difficult position because they are not attorneys, and there were a lot of legal questions they

were not entirely equipped to answer. He stated that therefore Board members relied on Mr. Churchill's attorney, as well as the Zoning Board of Appeals attorney, to provide input subsequent to the 9/12/17 meeting. He stated that based on the testimony provided at the 9/12/17 meeting and weighing both arguments, it is an extremely difficult decision, but because the Supervising Code Enforcement Official is very familiar with the Town's rules and regulations, and the Board received a legal opinion from its attorney, the interpretation should be upheld. All members voted in favor of the motion.

Tabled Application # 5644 Sara Appleby – Requesting a use variance and five (5) area variances for a proposed new dwelling to be constructed at 6769 Boston State Road.

John Appleby, the applicant's husband, stated that relative to the requested use variance, the criterion he had some problems addressing at the September 12, 2017 meeting was the one dealing with lack of financial return on the property. He stated that he did some research and supplied Board members with additional information regarding whether the property could be farmed.

Mr. Appleby stated that he researched the financial impact of raising bees, selling firewood, producing maple syrup from the trees on the property, etc. and found that none of these is an option. He noted that he simply could not make enough money to even pay the taxes on the property.

Mr. Appleby stated that it also would not be financially feasible to split the property and build a home on the portion that is located in Orchard Park because it is so swampy.

Regarding the uniqueness of the property, Mr. Appleby stated that the property has been in existence as it is since the 1920s, and it has 25 feet of frontage on Boston State Road. He stated that it is an odd shaped lot and is split by the Hamburg/Orchard Park boundary.

Mr. Appleby stated that he does not feel that the construction of a small home would change the essential character of the neighborhood because there is a two-family home being constructed across the street that received a use variance in 2016.

Regarding whether the alleged difficulty is self-created, Mr. Appleby stated that the property cannot be farmed.

In response to a question from Mr. Connolly, Mr. Appleby stated that they do not want to sell the property because they want to stay close to family. He stated that the property could be sold, but that would not accomplish the goal of trying to take care of the family. He stated that paperwork was submitted to the Board showing that they met with an apiary to see what they could earn from honey, and they did research on what they could earn making maple syrup from the 54 maple trees on the property, gardening and selling produce with a roadside stand and selling firewood.

Mr. Brent Webber, 6767 Boston State Road, stated that he does not have an objection to the Applebys building a home as proposed. He stated that he sees no negative impact to the neighborhood with the construction of the second dwelling on the property.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Ms. Hahn, to approve the use variance for Application # 5644.

On the question:

Ms. Falkiewicz reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable return, provided the lack of return is substantial and demonstrated competent financial evidence – The evidence provided by the applicant shows that there is no viable way to farm this land and make money.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – This is a very unique piece of property.
3. The requested variance, if granted, will not alter the essential character of the neighborhood – It will not.
4. The alleged hardship has not been self-created – It has not.

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

Ms. Falkiewicz made a MOTION, seconded by Ms. Dimpfl, to approve the five (5) area variances for Application # 5644.

On the question:

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – It cannot.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No, and the adjacent property owner testified that he is not opposed to the proposal.
5. Whether the alleged difficulty is self-created – That could go either way, but the criteria have been met.

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

Tabled Application # 5646 Michael Jablonski – Requesting two (2) area variances for a proposed wind turbine at 3134 Old Lakeview Road

Michael Jablonski, applicant, stated that he is proposing to move the previously approved wind turbine to a location 395 feet from his home, which requires an area variance because the Town Code requires that wind turbines be located at least 500 feet from residential structures. He stated that even if the wind turbine fell down, it would not come close to his home.

Chairman Rybczynski stated that Mr. Jablonski submitted information that addresses what a wind lease is, how it benefits customers, how the contract works, etc.

Mr. Jablonski stated that wind lease customers do not make money, but rather their power costs are reduced.

Mr. Jablonski stated that he could move the wind turbine further away from his home, but then it would be more visible.

Mr. Connolly asked if Mr. Jablonski is able to erect two (2) wind turbines without an area variance. Attorney Walling stated that he probably would not be able to erect two (2) at this time without variances.

Mr. Connolly stated that the requested variances could be considered substantial.

Chairman Rybczynski stated that the only person who would be affected by the granting of the variances would be the applicant.

In response to a question from Chairman Rybczynski, Mr. Jablonski stated that the wind turbine would be 153 feet high. He stated that the wind turbine would be within the requirements of the State regarding distance to a residential structure.

In response to a question from Mr. Connolly, Mr. Jablonski stated that there is no other way he can achieve his goal without the granting of the variance. He stated that he could move it back, but that would create wind draft from one wind turbine to the other.

Chairman Rybczynski stated that Mr. Jablonski has stated that he needs two (2) wind turbines to effectively offset his costs in order to stay in business. He stated that Mr. Jablonski is asking for the current variances for one (1) wind turbine in order to prepare for the possibility of a second one. He stated that there is no guarantee that a second wind turbine will be permitted.

Mr. Jablonski listed the bills he pays monthly for water and to run his farm. Mr. Connolly stated that the financials have absolutely nothing to do with this particular request because it is for area variances and not a use variance.

Mr. Connolly stated that the Board must focus on the five (5) criteria for area variances in this instance.

Mr. Ginnetti made a MOTION, seconded by Ms. Hahn, to approve Application # 5646.

On the question:

Mr. Ginnetti reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – It is not financially feasible any other way.
2. Whether there would be an undesirable change produced in the neighborhood character or to nearby properties – No.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

As the vote on the motion was four (4) ayes (Mr. Ginnetti, Ms. Hahn, Mr. Dimpfl and Chairman Rybczynski) and three (3) nays (Mr. Connolly, Ms. Falkiewicz and Mr. Chiacchia), the motion passed. **GRANTED.**

Application # 5649 Verizon Wireless – Requesting a use variance for attached wall signage at 6050 South Park Avenue

It was determined that the applicant had asked that the request be tabled to the Board's next meeting.

Mr. Connolly made a MOTION, seconded by Ms. Falkiewicz, to table this request.

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

Application # 5650 Glenn Wetzl – Requesting an area variance for a proposed senior housing project on the south side of Southwestern Boulevard, east of Brookview Apartments

Attorney Sean Hopkins, representing the applicant, stated that Mr. Wetzl previously developed the Brookview Apartments on Southwestern Boulevard, which is nearly complete. He stated that Mr. Wetzl would now like to develop the property in front of the apartments and is proposing a senior housing project consisting of four (4) 29-unit buildings, and an area variance is being requested for one (1) of the buildings.

Attorney Hopkins stated that one (1) of the proposed buildings would be 30.59 feet from a property line, and the Town Code requires that all apartment buildings be located at least 50 feet from all property lines. He noted that the remaining proposed buildings do comply with the required setbacks, and Mr. Wetzl owns the property on both sides of the property line that the proposed building is too close to. He noted that the property line had to be created as result of financing requirements.

Attorney Hopkins reviewed the area variance criteria as follows:

- Whether the benefit can be achieved by other means feasible to the applicant – There is no alternative that would allow Mr. Wetzl to receive the benefit he seeks.
- Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
- Whether the request is substantial – No.
- Whether the request will have adverse physical or environmental effects – No.
- Whether the alleged difficulty is self-created – The property line had to be created as result of financing requirements, but even if the difficulty was self-created, that cannot be the basis for the Board's decision.

It was determined that Mr. Wetzl is the most affected adjacent property owner.

Mr. Connolly made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5650.

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No because of the size and location of the structure, as well as Mr. Wetzl being the closest neighbor.
3. Whether the request is substantial – No, when one looks at the entirety of the project.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This be argued, but on balance the criteria are in favor of approval.

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

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of September 12, 2017. All members voted in favor of the motion.

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: October 16, 2017