

Town of Hamburg
Board of Zoning Appeals Meeting
May 2, 2017
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, May 2, 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 Ric Dimpfl, Commissioner Nicole Falkiewicz and Commissioner Laura Hahn.

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

Vice-Chairman Connolly asked for a moment of silence to honor our fallen armed service members.

Commissioner Chiacchia read the Notice of Public Hearing.

Tabled Application # 5612 Joseph Nelson – Requesting one (1) use variance and one (1) area variance for signage at 3756 Lakeview Road

Mrs. desJardins stated that the applicant had requested that this matter be tabled so that he can seek counsel. She stated that he was informed that he must appear at the Board's June 6, 2017 meeting.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to table Application # 5612.

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

Tabled Application # 5613 Once Upon a Child – Requesting an area variance for wall signage at 4271 Lake Avenue

It was determined that this application was tabled previously so that Ms. Kruger could gather financial evidence of her hardship.

Kathy Kruger, applicant, stated that she submitted a letter from her accountant indicating that her actual gross sales during the months of January through March 2017 were 4.5% lower than what she had projected.

Mr. Connolly discussed the use variance criterion that requires that the applicant prove that she cannot realize a reasonable rate of return provided that lack of return is substantial as demonstrated by competent financial evidence. He stated that based on the letter Ms. Kruger submitted, it appears that the first quarter of 2017 compared to the same time period in 2016, she grew the business by 5.5%, although she projected that it would grow at a rate of 10%.

Mr. Connolly asked Mr. Kruger if she feels that a 5.5% increase is not a reasonable return. Ms. Kruger responded that she made 4.5% less than she projected. She further stated that she has only been at this location for less than a year, so therefore she can only give the Board information from the first quarter of 2017.

Ms. Kruger stated that she has done everything she can think of to advertise her business, including Facebook, print, digital social media, etc., and she feels that this proposed sign will definitely draw attention because her business is considered a “destination store”.

Ms. Kruger stated that the plaza in which her store is located was at full capacity when she moved in, and since then it has lost four (4) stores.

Mr. Connolly advised Ms. Kruger that the Board is looking for something that would justify that she cannot realize a reasonable rate of return, and the data she submitted to the Board is showing a 5.5% increase over the previous year.

Ms. Kruger stated that she looks at that information differently, in that it shows a 4.5% decrease in sales over what she had projected for that time period.

Attorney Walling stated that the letter submitted only talks about gross sales and not net profit.

Chairman Rybczynski advised Ms. Kruger that a business that is profitable makes it a gray area when the Board is considering whether a reasonable rate of return can be realized. He noted that a clear-cut delineation must be made between what is reasonable under normal circumstances and what may not be.

Attorney Walling advised Ms. Kruger that it is impossible for the Board to know if she is losing money or not from what she submitted.

Chairman Rybczynski stated that it is also unclear what circumstances are uniquely present in her situation to warrant relief from the Town Code.

Ms. Kruger stated that Save-A-Lot and Mr. Seconds do have signage on this side of the building, so she does not understand why she cannot put her logo up there as well.

Mrs. desJardins stated that as far as she is aware, the Supervising Code Enforcement Official, Kurt Allen, did not personally review the variance request from Save-A-Lot when it was submitted, and for some reason it was classified as an area variance. She noted that Mr. Allen did review Ms. Kruger's application and determined that the request is for a use variance and that the Save-A-Lot request should have been for a use variance, as well.

Chairman Rybczynski stated that the Board has been put in a precarious position because of the oversight on the part of the Building Department. He noted that he tried to reconcile this difference but was not successful because he does not make these determinations.

Mr. Connolly stated that the applicant would have to prove that her situation is unique in order for the Board to allow the additional signage. He asked Ms. Kruger to describe the uniqueness of her situation and explain why she cannot realize a reasonable rate of return. He stated that if she could show the Board the expense part of the equation, as well as the profit, and show a track record of continuing decline, it would help the Board.

Ms. Kruger stated that over the last five (5) years at her previous location, she had consistent growth, but since she has been at her current location, that has not happened. She stated that she has had to add employees, the minimum wage is increasing, she is not readily visible to motorists and the plaza is off the beaten path. She further stated that the new signage would look good.

Mr. Chiacchia stated that the Town of Hamburg has always been friendly to businesses. He noted that this signage could help generate more business for that plaza. He stated that Save-A-Lot was granted the area variance, and this signage would help the other tenants in the plaza having more people visiting the site.

Findings:

Mrs. Falkiewicz asked Ms. Kruger if she has already spent money on the proposed signage. Ms. Kruger responded that she has not spent any money yet but does owe the sign company \$2,000.00.

Mrs. Falkiewicz asked Ms. Kruger if she would be able to provide profit and loss statements for the past quarter.

Attorney Walling advised Ms. Kruger to bring her accountant to the Board's next meeting. He stated that she has tried to deal with this on her own, and her accountant would be able to explain whether she is making money or losing money, which is what the Board needs to hear about.

Chairman Rybczynski asked Ms. Kruger if she would like more time to think about her application. Ms. Kruger responded that she did not want more time, and she asked the Board to vote on her application.

Mr. Connolly suggested that the Board table Application # 5613 to allow the applicant more time to come up with what the Board is looking for.

Ms. Kruger stated that she wanted a vote that evening because she was not willing to spend additional money to obtain this variance.

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to table Application # 5613.

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

Tabled Application # 5614 Paul Hornberger – Requesting an area variance for a second floor addition to an existing detached garage at 6629 Taylor Road

Mrs. desJardins stated that this application was table at the Board's last meeting so that Board members could review the letters from the neighbors Mr. Hornberger referred to at that meeting that were not available to Board members at that time.

Paul Hornberger, applicant, stated that his garage needs a new roof, so he decided to add a second story to it while replacing the roof so he can use the additional space for storage.

Leslie Hornberger stated that her father-in-law also wants to improve the look of his property and clean it up.

In response to a question from Mr. Chiacchia, Mrs. desJardins stated that all of the letters received from neighbors indicated support for the proposal.

In response to a question from Mr. Connolly, Mr. Hornberger stated that two (2) of the existing buildings on the property will be demolished.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5614 with the following condition:

- The two (2) detached sheds will be removed within three (3) months of completion of the new garage.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because of what he wants to do and the amount of storage he needs.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, several adjoining residents are in favor of the requested variance.
3. Whether the request is substantial – No, given the location and size of the property and because the two (2) detached sheds will be removed.
4. Whether the request will have adverse physical or environmental effects – No, in fact this will an improvement to the area.
5. Whether the alleged difficulty is self-created – Yes, but on balance it favors the granting of the variance.

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

Application # 5615 James Betts – Requesting an area variance for a proposed sun room at 2203 Shadow Lane

James Betts, applicant, stated that he would like to enclose an existing 12' X 14' deck for a three-season room.

In response to a question from Mr. Dimpfl, Mr. Betts stated that he has not received any comments from his neighbors.

Mr. Chiacchia stated that this is a new development and the homes are well maintained, and this project would increase the value of the area and would not be visible greatly.

Findings:

Mr. Chiacchia made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5615.

On the question:

Mr. Chiacchia reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, the porch is already there and will just be enclosed.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this will improve the look of the area.
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 – Yes.

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

Application # 5616 Timothy Smith – Requesting an area variance for a proposed detached garage at 4711 Clark Street

Mrs. Smith, applicant, stated that she and her husband have an existing old barn/garage on the property, and they would like to demolish that and construct a new garage that would be the same size as the old one, but they would also like to add an overhang to it for storage of firewood and to use as a covered seating area.

Mr. Chiacchia stated that the existing garage is in terrible shape, and rebuilding would improve the value of the surrounding area.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5616.

On the question:

Mr. Dimpfl 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, the attached garage will be demolished and replaced with a new one.
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 – It may be, but on balance it favors granting the variance.

As the vote on the motion was six (6) ayes and one (1) abstention (Mr. Connolly) the motion passed. **GRANTED.**

Application # 5618 Paul Wodzinski – Requesting a use variance for a proposed baseball player development facility at 3110 Lakeview Road

Paul Wodzinski, applicant, stated that the building on this property was constructed in 2001 for a landscaping company, and in 2010 the building was for sale without any buyer until 2013, when he (Mr. Wodzinski) purchased the property. He noted that he advertised the building for lease at that time and also received Subdivision Approval to subdivide the remainder of the property for residential homes.

Mr. Wodzinski stated that once he advertised the building for lease, it took him seven (7) months to find an occupant, who is currently utilizing the building. He stated that the rent has stayed the same during that time period because the tenant cannot afford to purchase the building from him.

Mr. Wodzinski stated that several businesses have approached him to rent the building, but most were not qualified. He noted, however, that when he received qualified offers to rent the building, he approached the Building Department regarding the specific uses proposed, and in those instances he was told that those uses would never be allowed and that he could not apply for a use variance to the Board of Zoning Appeals.

Mr. Wodzinski stated that he now has a proposed tenant currently operating in Orchard Park who would like to use the building for a baseball training facility, and therefore he is requesting a use variance to allow this use.

Mr. Wodzinski stated that because this property is zoned R-A, there are very few uses that would be allowed by right in this building.

Charlie Karsted, owner of Full Circuit Development, stated that he would like to purchase this property and use the building for the development of baseball players. He stated that he would upgrade the space in the building and install mounds, batting cages, a weight room, etc.

Mr. Karsted stated that his busiest hours are between 2:00 P.M. and 9:00 P.M. on weekdays and early morning and early afternoon on the weekends. He stated that 95% of the time the players would be inside the building, although because this property has some acreage, they might spend some time outside.

In response to a question from Chairman Rybczynski, Mr. Karsted stated that he might construct an addition over the existing 9,000 sq.ft. slab in the future. He further stated that there is space in the back for ball diamonds, etc., but he has no plans at the moment to do something like that. He noted that 80% of the work done with players is done during the winter months, so it would not make sense to be outside then.

Mr. Karsted stated that typically there would be approximately 20 kids there at a time. He further noted that the location is good because the parents can drop their kids off and go into the Village of Hamburg and occupy themselves.

Attorney Jay Pohlman, representing Mr. Karsted, stated that the existing use of the building is a heavier commercial use with a retail component and outside storage of equipment, mulch, topsoil, barrier blocks, etc. He asked Board members to look at the proposed use as a retraction closer to the existing residential zoning that would be more in conformance with what Lakeview Road is trying to become (more residential and less about heavy commercial uses). He stated that Mr. Allen has reviewed three (3) or four (4) other proposals for the property and has indicated in each instance that the use is not acceptable for that property. He stated that the existing business in the building is not going to last, and the property has gone downhill.

Attorney Pohlman stated that this is a chance to put a use variance in place that replaces one that is a bit more wide open and something the Town might want to come back from. He noted that he believes that this proposed use would fit in nicely with the neighborhood.

Mr. Connolly asked Attorney Pohlman to speak about the first use variance criterion that the applicant must address that he cannot realize a reasonable rate of return as shown by competent financial evidence. Attorney Pohlman responded that the only opportunities the applicant has had since purchasing the property in 2013 have been people interested in heavy uses of the property (a maintenance facility, a builder who wanted to store equipment there, someone who wanted to make the building more commercial, etc.). He stated that now the applicant is taking an undervalued rent for the property compared to what it is worth because the only thing he can do with the building is find another landscaping business to go in there.

Mr. Connolly asked Attorney Pohlman if the applicant can give the Board solid financial evidence to address the first use variance criterion regarding lack of a reasonable return. Attorney Pohlman responded that he has the original deed showing the applicant's acquisition price for the entire property.

Mr. Wodzinski stated that the current tenant in the building pays \$2,500 per month. Attorney Pohlman noted that this amount is approximately one third of what it should be on a square foot basis.

Mr. Wodzinski showed Board members a listing agreement from 2009 that shows that the ten-acre property was listed for \$599,000.

Attorney Pohlman stated that the applicant purchased the original 24-acre parcel for \$340,000 and subsequently sold off three (3) five-acre lots. He noted that one (1) lot is still unsold, and the ten-acre parcel contains the landscaping business in the building Mr. Karsted would like to purchase. He stated that the people who have recently purchased the building lots from the applicant did so knowing that the landscaping business is there, and putting Mr. Karsted's business in that building will increase those homeowners' property values.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that the tenant in the building has been there on a month-to-month basis because the lease is up and the tenant cannot afford any increase in rent.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that the average price per square foot he feels is reasonable would be \$4.50/sq.ft., and his tenant pays approximately \$2.40/sq.ft.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that the Ganey Agency has been trying to sell this property since 2014. He further stated that he has had offers on the building, but Mr. Allen would not let him attempt to obtain a use variance for those uses.

Chairman Rybczynski stated that the applicant has a right to request a variance, and the Board of Zoning Appeals is the body that decides whether to grant the variance or not.

Attorney Pohlman stated that the applicant valued Mr. Allen's opinion and the prospects of being successful in obtaining a use variance knowing what the Board's criteria are and what the Town Code allows.

Attorney Pohlman stated that Mr. Allen has helped the applicant very much by getting him a use that better fits in with the residential neighborhood.

In response to a question from Mr. Connolly, Mr. Karsted stated that if the players did go outside, they would probably use the small area behind the building where the grass is relatively good to stretch their arms out and throw. He noted that if he ever wanted to put a baseball field in for the players, it would have to be on the north side of the existing ditch behind the building. He stated that as it stands at this point in time, he does not envision being able to put a baseball field in at that location unless the Town wanted to be involved.

Chairman Rybczynski stated that he spoke with Mr. Doug Nichols, Chairman of the Conservation Advisory Board, who expressed some concern that the land north of the ditch on this property was previously used to grow cabbage, and the farmers used lead and arsenic as fertilizers. He noted that Mr. Nichols indicated that there may be remnants of those heavy metals on the north side of the ditch, which could be problematic.

Attorney Walling stated that if the applicant ever decided to put a baseball field in that area, a SEQR Review would have to be done.

In response to a question from Mrs. Falkiewicz, Mr. Wodzinski stated that he did not bring solid financial evidence with him to the meeting showing financial hardship from past years, but he would be willing to bring his tax returns to the Board's next meeting to show his financial hardship.

Attorney Pohlman stated that he would like to suggest that this is conditioned upon the removal of the existing Special Use Permit granted for the existing landscaping business.

Attorney Pohlman stated that he will submit competent financial evidence for the Board's next meeting.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Falkiewicz, to table Application # 5618.

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

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of April 4, 2017. All members voted in favor of the motion.

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

The meeting was adjourned at 7:25 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: May 11, 2017