

Town of Hamburg
Board of Zoning Appeals Meeting
June 6, 2017
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 6, 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 Connelly, 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, Town Planner.

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military.

Commissioner Chiacchia read the Notice of Public Hearing.

Tabled Application # 5612 Joe Nelson – Requesting a use variance and an area variance for signage at 3756 Lakeview Road

Attorney Sean Hopkins, representing the applicant, stated that the request for relief has been classified as a use variance because it involves a pole sign and because it is an off-premise sign. He stated that he does not believe that to be accurate because signage is a permitted use, and what is changing is the physical dimension of the sign.

Attorney Hopkins stated that he does not believe the applicant's sign is objectionable from an aesthetic perspective, and it is located in Erie County's right-of-way, but in 2016 Erie County Department of Public Works issued a permit for the sign. He noted that if Erie County had any issues with the location of the applicant's sign, it would not have issued the permit.

In response to a question from Mr. Connolly, Attorney Hopkins stated that the Hamburg Building Department advised the applicant that a permit was required from Erie County for the sign that was erected in the County right-of-way.

Attorney Hopkins stated that the applicant owns approximately 250 feet of frontage on Lakeview Road, and the sign is appropriate scaled for that particular property.

Attorney Hopkins reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, given that the sign is already there and does not cause any harm to nearby properties.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – The case law that deals with this criterion says the ZBA cannot simply quantify the deviation compared to the zoning code.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – New York State Town Law states that this cannot be the sole basis for a ZBA's decision, and the applicant admits it is self-created.

In response to a question from Mr. Connolly, Attorney Hopkins confirmed that the applicant installed the sign without a Building Permit from the Building Department.

Mrs. desJardins stated that if the applicant had attempted to obtain a Building Permit from the Building Department before erecting the sign, he would not have been given a Building Permit because it is located in Erie County's right-of-way and is a pole sign, which is not permitted.

Attorney Walling stated that that it is his opinion that the requested variance is a use variance because the Town of Hamburg does not permit pole signs anywhere in the Town. Attorney Hopkins responded that case law says otherwise.

In response to a question from Mr. Chiacchia, Attorney Hopkins stated that the applicant would be willing to modify the pole sign to make it a monument sign if the ZBA deems it appropriate.

In response to a question from Chairman Rybczynski, Attorney Hopkins stated that his client did not share with him why he erected the sign without Town approval.

Mr. Chiacchia stated that the sign is very noticeable.

Attorney Hopkins stated that he believes that the applicant's property is very well maintained.

Attorney Hopkins stated that he believes the applicant's sign is consistent with the legislative intent of Town Code section 280-233, paragraphs A through H.

Chairman Rybczynski asked Attorney Hopkins to review the use variance criteria. Attorney Hopkins stated that he could, but he would have to acknowledge the fact that it would be very difficult to meet those criteria, especially criterion # 1 (inability to realize a reasonable rate of return demonstrated by competent financial evidence) and # 4 (whether the hardship was self-created).

Frank Wall, Jr., representing the applicant, stated that he has the authority to speak for the applicant. He stated that the applicant would be willing to modify the pole sign to be a monument sign.

Attorney Hopkins noted that Mr. Wall was hired by the applicant after the sign was erected.

Findings:

Mr. Connolly stated that he would like to make a motion to table this applicant because the applicant's attorney admitted that the applicant is not able to satisfy the use variance criteria and argued that this is not a use variance and based on that, there is no sense in voting on the use variance.

Chairman Rybczynski stated that it has been determined by the Code Enforcement Official that this request is for a use variance, and that determination will not change.

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve the requested area variance associated with Application # 5612 with the following condition:

- The pole sign will be converted to a compliant monument sign and will be approved by the Building Department.

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 – It was stated that this particular area of the property is the only place where the sign would be visible, and the sign location was approved by Erie County.

2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because there are several businesses nearby, and it is in a commercial area.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No, especially because the sign will be converted to a monument sign.
5. Whether the alleged difficulty is self-created – It is self-created, but on balance it favors approval.

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

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

Attorney Jay Pohlman, representing the applicant and the proposed contract purchaser, stated that the prospective purchaser (Mr. Kartsted) proposes to operate his business inside the building while only occasionally going outside. He noted that in a correspondence dated May 17, 2017, he provided additional supporting documentation to Board members for their review.

Chairman Rybczynski read the following communication received by Mrs. desJardins and forwarded to Board members from Mr. Mark Lorquet (Conservation Advisory Board (CAB) member):

“As a member of the CAB, I do not support a request to grant a use variance for the property at the old Village Green Nursery. This area is in the heart of our agricultural area, now called the South Central Overlay District. This is another attack on our agricultural district. The Board is only interested in paving over everything in Town, and it needs to stop. The proposed change for a supposed major league training facility does not fit in this District. There is no agricultural support for this change. The concept is great - I support this but not in the South Central Overlay District. The applicant should look into folding his MLB facility into the new sports complex being proposed in Town, not in our South Central Overlay area. Please forward this to the Zoning Board of Appeals.”

Attorney Pohlman stated that he disagrees with Mr. Lorquet’s assertions. He noted that the property is not conducive to agricultural pursuits because the rear portion of the site consists of protected wetlands. He stated that Mr. Karsted has no intentions of doing anything with the open nature of the balance of the property. He further noted that the building on the property is existing.

Attorney Pohlman stated that there will be nothing outside that will change the agricultural nature of the neighborhood.

In response to a question from Mr. Chiacchia, Attorney Pohlman stated that Mr. Karsted’s business does not involve playing baseball games on site, but rather developing potential professional players in high school or college to develop their particular skill set.

Mr. Connolly noted that according to the information provided by Attorney Pohlman, the property was listed from 1-21-15 through 1-26-17, and the realtor involved provided written testimony by way of a letter indicating that during this period there was very little interest, and no offers were received by the applicant. Mr. Connolly further noted that the applicant provided five (5) different comparisons ranging from \$4.96/sq.ft. for leasing to \$9.50/sq.ft., and the applicant is currently leasing the building to a business for \$5.31/sq.ft.

Mr. Connolly noted that information provided by the applicant indicates that the original listing of the property was on 5-22-12 at \$899,000. He further noted that the price was dropped on 1-1-13 to \$599,000, and the property was finally purchased in June 2013 for \$340,000.

In response to a question from Mr. Connolly, Attorney Pohlman stated that in 2000 the Planning Board granted a Special Use Permit to Michael Jablonski to construct a nursery, and since that time that use has been considered legal nonconforming. He stated that this was not the applicant's fault, and now the applicant is trying to put the building to the best use, given the nature of the building and the restrictions of the current zoning.

Mr. Michael Jablonski, 3134 Old Lakeshore Road, stated that he thinks the baseball player development business is a good use for the building.

Mr. Wayne Bridges stated that he is a part-time property manager of the Rozak farm, located north of the applicant's property. He stated that in the last several years, the farm has experienced vandalism, theft of crops, etc. with the influx of homes going up around it. He stated that approving this business would mean an increase of traffic in the area, and the agriculture-based business currently in the building has no impact whatsoever on the farm. He stated that he agrees with Mr. Lorquet's letter.

Mr. Greg Eaton stated that he purchased property behind the applicant's property in order to build a home and to recreate (snowmobiles, etc.). He stated that he is opposed to this use because he does not want to see activity outside of the building.

In response to a question from Attorney Walling, Attorney Pohlman stated that the primary period of training is between October and March, and no one goes outside during those months. He noted that occasionally the garage doors might be opened in order to get a longer toss to build up a pitcher's arm.

Attorney Pohlman stated that Mr. Karsted will return to the Zoning Board of Appeals if he ever wants to do anything outside.

Mr. Mark Lorquet asked what the applicant will do to protect the remaining wetlands on the property. Chairman Rybczynski responded that Mr. Karsted has stated that there is no plan at this point in time to operate in the rear of the property.

Mr. Don Rozak stated that he owns the property north of the applicant's site, and he is not in favor of the requested variance. He stated that the proposed use does not fit in with the surrounding agricultural area.

In response to a question from Mr. Connolly, Mr. Karsted stated that the maximum number of students he would envision on site would be between 20 and 30. He noted that 90% of the time there would be between 12 and 15 students in the building at any time. He stated that if, in the winter months, the weather breaks, they might go outside and play catch.

Mr. Karsted stated that at this time he has no intention of putting anything in the rear of the property whatsoever.

In response to a question from Mr. Connolly, Mr. Karsted stated that no batting practice occurs outside. He noted that occasionally a coach might hit a ground ball to a student. He further stated that the maximum number of cars anticipated at the business at any one (1) time would be ten.

It was determined that there are between 45 and 50 parking spaces currently at the site.

Mr. Chiacchia stated that he believes Mr. Karsted should be given the opportunity to succeed.

Chairman Rybczynski stated that it is difficult and expensive to construct a baseball diamond.

Findings:

Mr. Connolly made a motion to approve Application # 5618 with the following stipulation:

- No hitting outside the facility is permitted

Chairman Rybczynski stated that Mr. Connolly's stipulation would be limiting the business's day to day activities. He stated that it makes no sense to hit outside and would be a difficult thing to enforce.

Mr. Connolly stated that residents have testified that they fear that there will be outside activities on the property. He further stated that from a liability standpoint, it would be a good idea to stipulate that there be no hitting outside.

Mr. Connolly stated that he would be comfortable with either a stipulation that there be no hitting outside or that there be no outside activity.

Chairman Rybczynski suggested that the variance be granted with the stipulation that no students handle any hitting outside or that there be no batting practice or batting practice facilities outdoors, and if any future expansion to the rear of the building is contemplated, the applicant will return to the ZBA.

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to approve Application # 5618 with the following stipulations:

- No students are permitted to handle any hitting outside.
- No batting practice or batting practice facilities are permitted outdoors
- If any future expansion to the rear of the building is contemplated, the applicant will return to the ZBA.

On the question:

Mr. Connolly reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return as shown by competent financial evidence – Substantial evidence was provided regarding the lease arrangement and the marketing of the property showing that the applicant could not realize a reasonable return without this variance.
2. Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood – It is unique in the sense that there has been an effort made to use this property for agriculture, but that has been proven unsuccessful for a long period of time as shown by a very small portion of the property being used for agriculture.
3. Whether the requested variance will alter the essential character of the neighborhood – There are dozens of athletic fields within a mile of this property, so having this business at this location where 95% of the activity will be indoors should not alter the character of the neighborhood.
4. Whether the alleged hardship has been self-created – The owner went through great lengths to show that he has made every possible effort to do what he needed to within the existing laws, and he has unable to do that.

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

Application # 5619 Timothy Herlehy – Requesting an area variance for an accessory structure begun without a Building Permit at 5309 Roberts Road

Timothy Herlehy, applicant, stated that he constructed a tree house on his property and was not aware that a Building Permit was required. He noted that the project got bigger over time.

Mr. Herlehy stated that originally the tree house was going to be 10' X 12', but since it was begun it has expanded. He stated that the project was started in June, and when the leaves started to fall, he realized that the tree house was very visible to his neighbor. He noted, however, that only that one (1) neighbor can see the tree house.

In response to a question from Mrs. desJardins, Mr. Herlehy stated that work has been stopped by the Building Department.

Mr. Herlehy confirmed that the area variance is required because the tree house is higher than what is permitted. He stated that currently the tree house is four (4) feet too high, but he would like to put a cone on the turret, which would require three (3) more feet of height, and therefore he requested that a seven (7)-foot variance be granted instead of four (4) feet.

Mr. Herlehy stated that he could bring in fill to raise up the ground at the base of the tree house, which would make the structure less high off the ground, and he also could cut the tree house down three (3) feet, but that would threaten the structural integrity of the tree house.

Mr. Herlehy stated that if his neighbor wants, he could plant a tree to help hide the tree house from view.

In response to a question from Mr. Connolly, Mr. Herlehy stated that there is no bathroom in the tree house, nor is there a kitchen, and no one plans to live there.

Mr. Chiacchia stated that he was originally concerned about the structural integrity of the tree house, but he has been advised by the Building Inspector that the structure is sound.

Mr. Herlehy stated that every adjoining property owner except for one (1) signed a letter of support for his requested variance.

Mrs. desJardins stated that the following residents signed letters indicating that they do not object to the requested variance:

Mary Parson, 5289 Roberts Road

Lizette & Jamie Schultz, 2579 Amsdell Road

Catherine Lee, 5327 Eastwood Road

Robin Nadolny, 2575 Amsdell Road

Gene R., 5289 Roberts Road

Gene R., 5289 Roberts Road, stated that he is the applicant's closest neighbor, and he cannot see the tree house now. He stated that even when he can see it because the leaves are down, he cannot see it that much. He stated that the tree house does not bother him at all.

Catherine Lee, 5327 Eastwood Road, stated that she cannot see the tree house from her back yard. She stated that there are houses that do not look as nice as the applicant's tree house does.

Mr. Richard Ziolo, 2587 Amsdell Road, stated that the tree house stands out, and it is very visible from his yard. He stated that it looms above his back yard, and the tree house's balcony faces his (Mr. Ziolo's) house.

It was determined that the tree house is 378 sq.ft. per the Building Department.

Mr. Ziolo stated that the tree house kept growing and growing. He stated that it looks like a guard house over his property, and he worries that it will affect his property value. He stated that it would not take long to add a gas line and an electric line and for someone to live in the tree house.

Mr. Ziolo stated that it would be a terrible precedent to set for the Zoning Board of Appeals to allow anyone to build a structure without a Building Permit.

Mr. Herlehy stated that even if he reduced the height of the tree house to the permitted height, it could still remain because the height is the only aspect that requires a variance.

Mrs. Herlehy stated that Mr. Ziolo lost a large tree last year, and she would be willing to purchase a new tree for him and also plant some new trees on her property in order to help screen the tree house from Mr. Ziolo.

It was determined that currently the tree house is five (5) feet too high, and the applicant was requesting a variance of seven (7) feet in order to put a cap on the turret.

In response to a question from Mr. Connolly, Mrs. desJardins stated that the size of the tree house does not require a variance.

Mr. Ziolo stated that the applicant's tree house has changed the character of the neighborhood and specifically his property.

Findings:

Mr. Connolly stated that the feelings of the immediate neighbor need to be balanced with the desires of the applicant. He stated that the request is substantial (38.88% above what is allowed), the hardship is clearly self-created and the immediately adjacent neighbor who is most affected feels this is an undesirable change to his neighborhood. He stated that the applicant cannot satisfy those three (3) criteria, and the other two (2) criteria could be debated.

Mr. Connolly stated that perhaps a solution to the above problem would be to impose a stipulation that the tree house height must be decreased so that just a three (3) foot variance is required, which would be a 16% variance. He further stated that a stipulation could also be imposed that the applicant must plant trees to buffer the most affected neighbor.

Mr. Connolly stated that if the above two (2) changes are made, the area variance criteria would be better satisfied, and he would be in favor granting the variance. He stated that without those stipulations, it would be tough for him to support an approval.

Chairman Rybczynski stated that he believes the applicant when he stated that he did not know he needed a Building Permit to construct the tree house.

Mr. Chiacchia stated that if the applicant had visited the Building Department to obtain a Building Permit, he would have known from the start that the tree house could not be higher than 18 feet.

Mr. Connolly made a MOTION to approve Application # 5619 with the following conditions:

- The tree house will not be higher than 21 feet(three-foot variance).
- At least three (3) substantial coniferous trees (6-8') will be planted to create some privacy for the most affected neighbor.

Chairman Rybczynski asked Mr. Connolly to revise the above motion to stipulate that the tree house cannot be higher than 23 feet, which is what the height is currently. Mr. Connolly responded that he was not comfortable allowing the tree house to remain at 23 feet.

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5619 with the following conditions:

- The tree house will not be higher than 23 feet (five-foot variance).
- At least three (3) substantial coniferous trees (6-8') will be planted to create some privacy for the most affected neighbor. The trees must be planted by the end of June 2017.

On the question:

Chairman Rybczynski reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, because his other options are questionable.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the vast majority of the surrounding property owners do not feel this will change the character of their neighborhood.
3. Whether the request is substantial – The Zoning Board of Appeals has approved larger variances.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – It is understandable that the applicant did not think he needed a Building Permit for a tree house.

As the vote on the motion was five (5) ayes and two (2) nays (Mr. Connolly and Ms. Falkiewicz) the motion passed. **GRANTED.**

Application # 5620 John & Gail Spiegel – Requesting an area variance for a proposed accessory structure at 3850 Sowles Road

Mr. John Spiegel, applicant, stated that he would like to put an Amish-built shed in the back yard to store his snow blower, lawn equipment, etc. He stated that this would make the property look neater.

Mrs. desJardins stated that she received a phone call from the property owner directly west of the applicant's property, and that property owner stated that she was not opposed to the granting of the requested variance.

In response to a question from Mr. Connolly, Mr. Spiegel stated that he owns three (3) cars, and therefore he needs more space than his detached garage for storage of equipment.

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5620.

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, the applicant needs more storage space.
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.
5. Whether the alleged difficulty is self-created – This could be argued either way, but the balancing test favors approval.

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

Application # 5621 Lakeview Pizza Co., Inc. – Requesting a re-hearing of Application # 5556 because the granted use variance lapsed

Dennis LoTempio, applicant, stated that nothing has changed since he received the use variance in 2016. He stated that he did not realize at the time he received the variance that he had to obtain a Building Permit within six (6) months of the granting of the variance.

Mrs. desJardins stated that the applicant would be appearing before the Planning Board on June 21, 2017 regarding the proposed parking lot construction.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Connolly, to approve Application # 5621.

On the question:

Mr. Ginnetti stated that this is a re-approval of the variance that was previously granted.

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

Application # 5622 William & Jessica Ritz – Requesting an area variance to allow chickens at 1404 Evergreen Drive

Jessica Ritz, applicant, stated that they need an area variance to allow chickens on their property because they do not meet the area requirements for chickens (the property is not 90 feet wide as required). She stated that her family would like to house six (6) hens behind their existing shed.

Attorney Walling read, for the record, a drawing done by one of the Ritz children as follow:

“These are the reasons why we want chickens. They give you fresh eggs. They are very funny. So we can hold them.”

Mrs. Ritz stated that the area where the chickens would be kept is quite far away from any of their neighbors, and the adjoining property owners have no objection to the chickens.

Mrs. desJardins explained that if someone wants to house chickens, he or she must adhere to the bulk area requirements of the R-1 District. She stated that this property is zoned R-2 and is the required width of 70 feet, but 90 feet is required in order to house chickens.

It was determined the Ritz’s property is approximately 90 feet wide in the area where the chickens are proposed to be housed.

Findings:

Mr. Chiacchia made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5622.

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to amend the resolution to include the following stipulation:

- The chickens must remain in the chicken coop at all times.

All members voted in favor of the motion to amend.

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.
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.
5. Whether the alleged difficulty is self-created – It is self-created.

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

Application # 5623 Ken & Marge Anderson - Requesting an area variance for a proposed accessory structure at 2716 North Creek Road

Mr. Ken Anderson, applicant, stated that he owns five (5) acres of land and would like to construct a 36' X 40' pole barn for storage. He stated that he would like the roof lines of the pole barn to match the roof lines of his home, and he would like to make sure the roof does not collapse under snow loads, so he proposes that the pole barn be 3' 10.5" higher than what is permitted.

Mr. Anderson submitted photos of his property for Board members' review.

Mr. Chiacchia stated that there is not one (1) house nearby that would be affected by this pole barn.

Findings:

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to approve Application # 5623.

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the applicant's property affords a lot of privacy, and there are structures that are even bigger than what is proposed on North Creek Road.
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 – This could be argued, but the balancing test favors approval.

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

Application # 5624 Michael Jablonski – Requesting a use variance and two (2) area variances for a second wind turbine to be located at 3134 Old Lakeview Road

Mr. Michael Jablonski, applicant, stated that he would like to have a second wind turbine on his property, which requires a use variance.

It was determined that Mr. Jablonski received approval of one (1) wind turbine in 2016.

Mr. Jablonski stated that he needs two (2) wind turbines to facilitate what his farm needs for energy.

Chairman Rybczynski read the following correspondence from Andrew Reilly, Town Planner:

"I received a telephone call from Matt M. from NYSERDA (New York State Energy Research & Development Authority) today relating to the Jablonski wind turbine project. The following is a summary of that conversation:

1. He introduced himself and stated that he was asked to call me concerning this project because the Town is looking for a letter from NYSERDA. He wanted to know more about the project and our need for a letter.
2. I explained who I was and my understanding of the project - two (2) wind turbines proposed, the Town only allows one (1). The Town approved the first wind turbine primarily based on the fact that it was agricultural-related and was protected under New York State Ag laws. The second wind turbine is now before the Town for a use variance and approvals from the PB. The Town understands that the second wind turbine is not agriculturally related. I had suggested that the applicant, to help with his case before the ZBA and the PB, get a letter from NYSERDA helping to show the need for the second wind turbine.
3. He was understanding of this and has dealt with the situation with other applicants before. He then stated that he agreed that the first wind turbine was for agricultural business on the site. He then described that the second wind turbine was to be "net-metered" to the house. He did ask me if there was a business in the house, and I stated that I did not know. He will need to review the file to get additional information to be able to write a letter as to the need for the wind turbine. I stated that I believe that it is important to know that the size and capacity of the turbine is needed for the house and that it was not being built to just primarily sell power to the grid. What percent of the power generated is "used" for the "house needs".

We will review the file and see if he can provide a letter concerning this matter."

Mr. Jablonski's representative stated that the person Mr. Reilly talked to at NYSERA was named Mark Mayhew.

Chairman Rybczynski asked Mr. Jablonski how much power he uses and how much will two (2) wind turbines potentially create. Mr. Jablonski's representative responded that the two (2) wind turbines would produce 80% of Mr. Jablonski's usage.

Mr. Jablonski's representative stated that United Wind guarantees Mr. Jablonski approximately 13,000 KWH per turbine.

In response to a question from Mr. Chiacchia, Mr. Jablonski's representative stated that when more than 100% of the power used by Mr. Jablonski has been generated, he would get credit for that on his electric bill. He stated that in essence, Mr. Jablonski's meter would be spun backwards in that instance. He further stated that it is on an annualized basis.

Mr. Jablonski stated that he is not making money, but rather trying to reduce his energy costs.

In response to a question from Mr. Chiacchia, Mr. Jablonski stated that he has been waiting for three (3) years to turn over his fields until he can construct the two (2) wind turbines. He stated that he does not want to turn the fields over knowing that construction will be going on there.

Mr. Chiacchia stated that the Town allows one (1) wind turbine per property, and he does not see why the applicant wants two (2).

Mr. Jablonski stated that the Town allows one (1) wind turbine on properties that are at least ten (10) acres in size. He noted that he owns 30+ acres.

Mr. Jablonski stated that Mr. Reilly informed him that because he is considered agricultural, the Town would follow all agricultural rules. Mrs. desJardins responded that this was true for the first wind turbine that was approved in 2016. She noted that the Planning Board relaxed some of the Town's requirements because the first wind turbine was to be used for agricultural purposes.

Chairman Rybczynski stated that the applicant has provided competent financial evidence of the hardship previously. He confirmed with the applicant that his is one of the last farms in the area.

In response to a question from Chairman Rybczynski, Mr. Jablonski stated that a junkyard exists on one (1) side of his property, and high voltage lines exist on the other side. He stated that there is a garden center across the street and Eighteen Mile Creek behind him. He stated that the wind turbines will not detract from the neighborhood, and his neighbors are looking forward to them being erected. He stated that his hardship was not self-created because NYSEG decided to put a demand meter on his property once he went over a certain amount of kilowatt hours of usage.

Mr. Connolly stated that he understands that by having the second wind turbine, it will save the applicant money. He stated that the applicant must prove that he cannot realize a reasonable rate of return, and he has been at this location for 20+ years.

Mr. Connolly stated that he feels that this is going to improve the applicant's financial situation, but it is not as if the applicant needs the use variance in order to continue his farming operations. Mr. Jablonski responded that without the two (2) wind turbines, he will not be able to run his business as efficiently.

Mr. Jablonski stated that his electric bills have gone from \$220 per month to \$810 per month in six (6) years.

In response to a question from Mr. Chiacchia, Mr. Jablonski stated that he has not looked into any other forms of green energy.

Mr. Jablonski's representative stated that three (3) years ago, he presented Mr. Jablonski with the solar and the wind options, and Mr. Jablonski chose the wind option. He further stated that there is no solar company that is still in business that can beat wind.

In response to a question from Chairman Rybczynski, Mr. Jablonski stated that the two (2) required area variances are required because the proposed wind turbine would be too close to his own house and his own barn.

Mr. Jablonski's representative stated that the applicant needs two (2) wind turbines because a property owner cannot interconnect two (2) wind turbines to one (1) meter and get money from NYSERDA and because there is no other turbine in New York State that is certified by NYSERDA to install that can receive funding.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5624.

On the question:

Chairman Rybczynski reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return as shown by competent financial evidence – The applicant has testified that if there is not some relief from the financial burden of the electric bills, two (2) barns will continue to be shut off, and sooner or later the applicant will not be able to operate his reindeer operations.
2. Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood – It is unique because this is the last farm on this stretch of Old Lakeview Road, and it is a family farm.
3. Whether the requested variance will alter the essential character of the neighborhood – Erecting a windmill will not alter the essential character of this neighborhood, especially on a farm.
4. Whether the alleged hardship has been self-created – The applicant testified that the power company increased his costs.

Chairman Rybczynski 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.
3. Whether the request is substantial – One windmill will generate 40% of the applicant's power, and two (2) windmills will generate 80% of the applicant's power. This is not substantial when the applicant is looking to offset his power completely and mitigate his costs through the leasing of windmills.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

As the vote was three (3) ayes (Chairman Rybczynski, Mr. Ginnetti and Ms. Hahn) and four (4) nays (Mr. Connolly, Mr. Chiacchia, Ms. Falkiewicz and Mr. Dimpfl), the motion did not pass.

DENIED.

Application # 5625 David Mariani – Requesting an area variance for a proposed detached garage at 4232 Highland Parkway

Mr. David Mariani, applicant, stated that he would like to construct a detached garage, and three (3) of his neighbors signed letters of support for the granting of his variance. He stated that he plans to demolish the existing garage, which partially collapsed last year.

In response to a question from Mr. Connolly, Mr. Devlin stated that the existing garage is 928 sq.ft., and he needs the space to store a large tractor, lawn mower, etc. He noted that the new garage would be only slightly larger than the existing one on the property.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5625.

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 – No.
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.
5. Whether the alleged difficulty is self-created – No.

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

Application # 5626 Arlene & James Devlin - Requesting an area variance for a proposed covered front porch at 2335 Beachwood Drive

Mr. James Devlin, applicant, stated that the covered front porch he would like to construct would be too close to his front property line. He stated that the porch would be five (5) feet from the front property line but would still be 20 feet from the road.

In response to a question from Mr. Connolly, Mr. Devlin stated the he did speak to his neighbors, and none had an objection to his proposal.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5626.

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.
3. Whether the request is substantial – This could be argued either way.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be argued, but the balancing test favors approval.

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

Application # 5627 Elizabeth Kozina – Requesting two (2) area variances for a proposed two-car attached garage at 5050 Bradley Lane

Mr. Ken Clapper, architect, representing the applicant, stated that the applicant proposes to demolish the existing attached one-car garage on the property and construct an attached two-car garage in its place. He noted that a side yard setback variance is being requested, as well as a front yard setback variance because the existing home is closer to the front property line than what is required, and the new garage would not be any closer to the front property line than the existing home.

Chairman Rybczynski noted that there are several legal non-conforming structures in the neighborhood.

In response to a question from Mr. Connolly, Ms. Elizabeth Kozina, applicant, stated that she spoke to a few of her neighbors, and none had any objections.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5627.

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, there are a lot of homes with two-car garages in 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 – No.

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

Application # 5628 Daniel Sroda – Requesting an area variance for a proposed detached garage at 5391 Ontario Avenue

Mr. Daniel Sroda, applicant, stated that he would like to construct a detached garage that is larger than what is permitted for accessory structures. He noted that he plans to dispose of the existing old shed on the property.

In response to a question from Chairman Rybczynski, Mr. Sroda stated that he needs the extra square footage because he has three (3) Camaros, two (2) trucks, three (3) snowmobiles, two (2) jet skis, an ATV, a motorcycle, snow plow and a riding lawn mower.

It was determined that the applicant submitted several letters of support from his surrounding neighbors.

In response to a question from Mr. Connolly, Mr. Sroda stated that the owner of 3965 Grant Street whose property is directly behind his did sign a letter of support.

Findings:

Mr. Connolly made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5628.

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 – He could build a smaller accessory structure.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – Based on the letters submitted, it should not have an undesirable change to the neighborhood.
3. Whether the request is substantial – Considering the size of some of the accessory structures in the neighborhood, it is not substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – It is self-created.

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

Application # 5629 Russell Licata – Requesting a use variance to operate a truck repair business at 3737 Lakeshore Road

Mr. Dan Baccari, architect, representing the applicant, stated that the applicant is requesting a use variance so that he can utilize a portion of the building located at 3737 Lakeshore Road for automotive service. He stated that the property is zoned M-3, and when he contacted the Supervising Code Enforcement Official (Kurt Allen) about the proposed use, Mr. Allen thought automotive service was an allowable use in that District. He stated that Mr. Allen subsequently found that automotive use is not a permitted use in the M-3 District.

Mr. Baccari stated that very near this property is the new FedEx facility, which has an automotive use component to it, and across the street from 3737 Lakeshore Road there are existing automotive uses.

Mr. Chiacchia stated that truck manufacturing is allowed in the M-3 District, but truck repair is not.

It was determined that the Town will be looking at adding automotive use to the list of permitted uses in the M-3 District, but the applicant did not want to wait until that process is completed.

Mr. Baccari stated that the tenant currently using the back of the building is a gymnastics studio.

Mr. Baccari stated that granting this use variance would not result in a change in the character of the surrounding neighborhood.

In response to a question from Mr. Connolly, Mr. Russell Licata, applicant, stated that

Findings:

Chairman Rybczynski stated that this application would remain on the table.

Application # 5630 4945 Lake Avenue LLC – Requesting a use variance to operate a personal fitness business at 4945 Lake Avenue

Attorney Jay Pohlman, representing Wayne Taneff (owner of the property), stated that Mr. Taneff runs his car business in the front of the building. He stated that Mr. Taneff would like to lease the rear of the building to Britt Fitness, which is a personal training operation. He noted that the fitness classes run early in the morning and after work, and all training is indoors.

Attorney Pohlman stated that since Mr. Taneff purchased the property in September 2016, he has tried to find a tenant whose business is permitted in the M-2 District.

Attorney Pohlman stated that the proposed use for this building would be less intrusive than what is permitted by Code in this District.

It was determined that there are more than enough parking spaces for the fitness business on the property.

In response to a question from Mr. Connolly, Attorney Pohlman stated that the two (2) businesses in the building would probably not be operating at the same time of day.

In response to a question from Mr. Connolly, Mr. Wayne Taneff, applicant, stated that besides putting advertisements in the Penny Saver, he has worked with two (2) commercial real estate brokers trying to find a tenant, although he did not sign a contract with either realtor because that would have been too costly for him.

In response to a question from Mr. Connolly, Mr. Taneff stated that one (1) of the realtors did bring him a potential tenant, but the tenant was too small.

In response to a question from Mrs. desJardins, Mr. Taneff stated that Britt Fitness answered an ad he placed on Craig's List.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5630.

On the question:

Mr. Connolly reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return as shown by competent financial evidence – Evidence was presented that the facility was marketed, and knowing the history of this area and the financial evidence that was submitted verbally as well as in writing, this criterion is satisfied.
2. Alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood – The zoning of this area is unique in nature, and getting a tenant in this area was not feasible prior.
3. Whether the requested variance will alter the essential character of the neighborhood – There are businesses up and down Lake Avenue in this area, and another business that will be enclosed will not alter the essential character of the neighborhood.
4. Whether the alleged hardship has been self-created – The applicant did every in his power to market the space and this is the only remedy that can be seen at this point.

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

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of May 3, 2017. All members voted in favor of the motion.

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

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: July 5, 2016