

Town of Hamburg  
Board of Zoning Appeals Meeting  
September 12, 2017  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, September 12, 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.

Commissioner Chiacchia read the Notice of Public Hearing.

**Tabled Application # 5638** Matthew Matla – Requesting two (2) area variances for a proposed attached garage addition at 3077 Cloverbank Road.

Matthew Matla, applicant, showed Board members his plans for the proposed attached garage addition. He stated that he designed the addition so that no sight lines would be obstructed.

Mr. Robert Laskowski, realtor from Howard Hanna Realty, stated that he has been selling real estate for 18 years, and it is his experience that any time someone puts money into his or her home, it increases that home's value, as well as the value of nearby homes.

In response to a question from Mr. Connolly, Mr. Laskowski stated that there is a possibility that someone's addition could decrease the value of the adjacent homeowner's property that might have open space, shading, etc. that now would be different because that space is taken up. He noted, however, that this would only be the case if there is a fence that needs to be moved or a creek alongside the properties.

Mr. Connolly reviewed the area variance criteria, noting that Mr. Laskowski's comments do not apply to those criteria.

Mr. Matla stated that if he does not build the garage addition, he would be allowed to build a detached garage in front of his existing home as long as it is at least 35 feet from the front property line.

Mr. Chiacchia stated that he does not feel that the applicant is trying to hinder the adjacent property owner's view.

Attorney Jacob Piorkowski from Shaw & Shaw, representing the adjacent property owner (Colleen Gibbons, 3081 Cloverbank Road), stated that he needed some time to consult with his client. Board members agreed to continue with the additional applications and return to this application later in the evening.

Later in the evening, Attorney Piorkowski stated that his client understands the alternative that has been presented by the applicant (building a garage in front of the home at 3077 Cloverbank Road) and feels that obviously that is a worse option that what was being proposed. He presented evidence from Mr. Gerald Pirritano, licensed real estate agent and appraiser, which indicated that the proposed garage addition would create a negative financial impact on his

client's home. He further noted that Mr. Pirritano indicated that the proposed garage addition would impact Ms. Gibbons' privacy and sight lines, as well as affect the marketability of her home.

Attorney Piorkowski stated that Mr. Pirratino indicated that the applicant's proposed garage addition would create a 15% reduction in the market price of Ms. Gibbons' home, which equates to approximately \$53,655.00.

Attorney Piorkowski stated that the proposed garage has a flat roof, and there are no structures in this neighborhood with a flat roof. He noted that a flat roof symbolizes something of a commercial nature and deviates from the character of the neighborhood. He stated that a solution may be asking the applicant to put a pitched roof on the garage addition, which would fit better with the character of the neighborhood and not deviate from the structures around it.

Chairman Rybczynski stated that the Board can make reasonable conditions a part of any approval, but he was not sure what a pitched roof would do to the cost of the project. He noted that there may be concern that requiring a pitched roof may not be considered reasonable.

Mr. Matla stated that when the proposed garage addition was designed, the flat roof design is what he chose. He noted that the garage addition was designed by a professional architect. He stated that he did not want to discuss the design with the adjacent property owner.

In response to a question from Mr. Connolly, Attorney Piorkowski stated that the applicant's request is substantial in terms of the scope of the project and the financial detriment to his client.

In response to a question from Mr. Connolly, Attorney Piorkowski stated that he has no way of knowing if the applicant's project would have environmental effects, but it would have physical effects on his client in terms of privacy, sight lines and the physical appearance of the way the houses in the neighborhood are situated and the sight lines that his client presently enjoys.

In response to a question from Mr. Connolly, Attorney Piorkowski stated that he would argue that the applicant's hardship is self-created because it is a variance request made for convenience and not necessity.

Mr. Matla stated that he was asking for a variance of 3.8 feet. He noted that he is permitted to construct the garage addition ten (10) feet from his property line, but if he located it ten (10) feet from his property line, he would not be able to accommodate everything he would like to. He stated that he did not feel that the extra 3.8 feet would change much, given the fact that the side of the house that is adjacent to the garage has no windows, and the only sight line that this would affect is that from the adjacent home's front porch into his (Mr. Lovell's) back yard.

Mrs. desJardins clarified that two (2) area variances were being requested. She noted that the first required variance is for four (4) feet because the proposed addition would be six (6) feet from the property line shared with Ms. Gibbons, and the requirement is ten (10) feet. She stated that the second variance is needed because the two (2) side yard setbacks combined cannot be less than 25 feet, and if the first variance is granted, the combined side yard setback would be 21.2 feet.

In response to a question from Mr. Connolly, Mr. Matla stated that the smallest variance he can ask for that would allow him to get his vehicle and utility trailer into the garage is four (4) feet.

In response to a question from Mr. Connolly, Mr. Matla stated that 3077 Cloverbank Road is his primary residence, and he purchased it last year.

### **Findings:**

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5638.

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 – Yes, but the applicant has considered the area and wants to make the garage conforming to the nearby area.
2. Whether there will be an undesirable change in neighborhood character or to nearby properties – If these variances are denied, the applicant can build a garage in front of his house, which would create a undesirable situation for the neighborhood.
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 on balance it favors the granting of the variance.

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

**Application # 5632** Daniel Mazur – Requesting two (2) area variances for a proposed detached garage at 5144 Lakeshore Road

Attorney Walling stated that Mr. Mazur was granted area variances on July 12, 2017 by a vote of 5-2. He stated that subsequent to that meeting, there was a request by the neighbors who were opposed to the granting of the variances that the Board consider re-hearing this application and reach a different decision on the matter.

Attorney Walling stated that according to New York State Town Law, Section 267-A 12, “a motion for the Zoning Board of Appeals (ZBA) to hold a re-hearing to review any order, decision or determination of the Board not previously re-heard may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such re-hearing to occur. Such re-hearing is subject to the same notice provision as an original hearing. Upon such re-hearing, a Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members of the Board then present, provided the Board finds the rights vested in persons acting in good faith and reliance upon the re-heard order, decision or determination will not be prejudiced thereby.”

Attorney Walling explained that the only way a re-hearing can happen is if a Board member makes a motion for the re-hearing to occur. He noted that all seven (7) Board members would have to vote to re-hear the matter. He stated that if a re-hearing does occur, the only way that the original decision can be changed in any way is if all seven (7) Board members vote for its modification, change or reversal.

Mr. Connolly made a MOTION, seconded by Mr. Chiacchia, to re-hear Application # 5632. As there were two (2) nays (Ms. Hahn and Mr. Ginnetti), the motion failed.

**Application # 5640** Janelle Chlebowy – Requesting an area variance for a shed partially constructed without a permit at 4259 South Park Avenue

Janelle Chlebowy, applicant, stated that she was requesting a three-foot variance for a shed that she is building. She stated that wind comes through her yard and has previously broken four (4) privacy fences at the end of her driveway. She stated that she would like to put a structure where the fences were to blocks the wind coming through her yard and for privacy.

Ms. Chlebowy stated that the property owner most affected has no problems with her putting the shed too close to her side property line.

Mr. Chiacchia stated that he was informed by the Building Department that Ms. Chlebowy began construction of the shed without a Building Permit.

Ms. Chlebowy stated that she did not know she needed a Building Permit to put up a shed.

Mr. Chiacchia stated that he was informed by the Building Department that Ms. Chlebowy called that office previously for permits for a foundation repair and electrical work, and he was also informed that someone did call the Building Department and ask if a Building Permit was required for the shed.

Ms. Chlebowy responded that she did not call the Building Department to ask about a Building Permit for the shed.

In response to a question from Mr. Connolly, Ms. Chlebowy's fiancée stated that he never called the Building Department to ask if a Building Permit was required for the shed.

It was determined that a Stop Work Order was issued by the Building Department because that department received a complaint about the shed.

In response to a question from Chairman Rybczynski, Ms. Chlebowy stated that her property is only 35 feet wide, and she wants the shed to be located at the end of her driveway so that it blocks the wind and provides privacy for her back yard.

#### **Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5640.

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 – 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 # 5641** Marlene Foit – Requesting an area variance for a proposed detached garage at 5694 Sterling Road

Marlene Foit, applicant, stated that this property previously had a 90-foot garage that collapsed in phases, and she would like to replace that garage with a smaller garage. She noted that the new garage would still be larger than what is allowed but smaller than the original garage.

Ms. Foit submitted five (5) letters of support from the following nearby residents:

- Donald & Carol Minnick, Jr. , 5684 Sterling Road
- Paul Randall, 5674 Sterling Road
- Mike Marean, 5691 Sterling Road

- Donald Minnick, 2653 South Place
- Wendy Peterson, 5708 Stillwell Road

In response to a question from Mr. Chiacchia, Ms. Foit stated that the proposed garage was started without a Building Permit because she thought it would be considered grandfathered.

**Findings:**

Mr. Connolly made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5641.

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 the applicant had a 2,100 sq.ft. detached garage, and she would like to replace that with a 1,400 sq.ft. structure.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, for the same reason as # 1. In addition, there are no objections from the applicant's neighbors.
1. Whether the request is substantial – It is substantial at 41% larger than what is allowed by Code, but it should be noted that this structure is 65% smaller than what was there in the past.
3. Whether the request will have adverse physical or environmental effects – No.
4. Whether the alleged difficulty is self-created – No, because the hardship was created by a storm.

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

**Application # 5642** Joshua Lovell – Requesting an area variance for a proposed detached garage at 2224 Lakeview Road.

Joshua Lovell, applicant, stated that he would like to construct a detached garage that would be 245 sq.ft. larger than what is permitted. He stated that the building would be completely surrounded by woods, and his property is five (5) acres in size. He stated that he already purchased the building because he was not aware he would need a variance.

Mr. Lovell stated that he spoke to all of his neighbors who would be able to see the garage, although he did not have letters of support from them. He further stated that he currently does not room to store all of his tools, as he is a general contractor. He noted that both of his garages are full, as is his basement, and he is completely out of room.

Mr. Lovell stated that he would like to place the new garage directly behind the detached garage that currently exists on his property.

It was determined that the proposed garage would be 1,305 sq.ft., and the combined square footage of all accessory structures on the property would be 1,745 sq.ft., and a maximum square footage of 1,500 sq.ft. is permitted.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5642.

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 – 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 on balance it favors the granting of the variance.

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

**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 Mr. Churchill is seeking to operate, on an occasional basis, a tourist home on his property located at 1225 West Arnold Drive. He stated that Mr. Churchill made application to the Planning Board on or about June 30, 2017 for a Special Use Permit to allow the tourist home. He stated that subsequent to that submission, Kurt Allen (Supervising Code Enforcement Official) came to the conclusion that it is not permitted in the R-1 District via a Special Use Permit. He stated that his feeling is that Mr. Allen's legal interpretation is incorrect, and it is the jurisdiction of the Zoning Board of Appeals (ZBA) to resolve these types of disputes.

Attorney Romanowski stated that the Town of Hamburg has "bootstrap" provisions that say "if you can do something in a less intensive district, you can do it in a more intensive district". He stated that permitted uses in the R-E District, which is the next less intensive District in the Town Code, include bed & breakfast establishments and tourist homes with a Special Use Permit. He stated that New York Town Law Section 274 B (1) specifically states that Special Use Permits are not something that is **not** permitted in a District, but in fact specifically stated to be permitted in that District with certain conditions that must be satisfied. He stated that a tourist home is a permitted use in the R-E District.

Attorney Romanowski stated that the Town Code states that anything that is permitted in the R-E District is permitted in the R-1 District with the exception of golf clubs and hospitals. He stated that R-1 does not exclude tourist homes (section 6). He stated that the Town of Hamburg applied this standard one (1) year ago for 4261 Lakeshore Road, where the applicant was allowed to go forward in a R-1 District for a bed & breakfast establishment and was granted that Special Use Permit. He stated that the Town has already recognized that this is the appropriate way for handling this matter.

Attorney Romanowski stated that there are a number of bed & breakfast establishments around Hamburg that have been permitted by Special Use Permit.

Attorney Romanowski stated that question for the ZBA is whether or not the code interpretation of Mr. Allen is accurate or the code interpretation as he has interpreted it is accurate.

Chairman Rybczynski referenced Town Code Section 280-326 F ("The length of stay at a bed & breakfast or tourist home establishment shall not exceed seven (7) days") and noted that the advertisement as part of Attorney Romanowski's submission indicates that the home is available to rent on a monthly basis. Attorney Romanowski stated that this was not the issue

before the ZBA, but rather is something the Planning Board would decide as to whether the application complies with the Special Use Permit criteria.

Attorney Romanowski stated that if the Special Use Permit criteria has a one-week limitation for rentals, and his client is granted a Special Use Permit, then his client with limit rentals to a single week.

In response to a question from Mr. Dimpfl, Attorney Romanowski stated that Mr. Churchill and his wife reside at this property in Hamburg between 200 and 225 days per year. He cautioned that this is not a question for the ZBA.

Mr. Chiacchia stated that when he visited the property, he specifically asked for Mr. Churchill, and he was told by the woman who answered the door that Mr. Churchill was not there and that she was renting the property. He stated that it appears that Mr. Churchill does not live on the property. Attorney Romanowski responded that he was not making representation that Mr. Churchill is on the property all of the time.

Attorney Walling stated that this is a matter of statutory interpretation, and he noted that the ZBA does have authority to review the matter and decide whether it agrees with Mr. Allen or Attorney Romanowski.

Kurt Allen, Supervising Code Enforcement Official, distributed to Board members the applicable sections of the Town Code to bring clarification to the interpretation he made. He stated that this issue is the result of a complaint brought against Mr. Churchill and is a pending Court matter because currently the bed & breakfast establishment is operating unlawfully without a Special Use Permit. He noted that Attorney Romanowski seeks to remedy this situation by obtaining a Special Use Permit.

Mr. Allen stated that it is true that permitted use groups do carry over to the subsequent residential zonings. He noted, however, that this does not include use classifications that are eligible for Special Use Permits. He stated that there is a difference between permitted use groups and use classifications that are eligible for Special Use Permits.

Mr. Allen stated that Section 280-17 A (13) lists the uses permitted by Special Use Permit in the R-A District. He stated that Section 280-24 A (6) (b) lists "bed and breakfast establishments and tourist homes" as a use permitted by Special Use Permit in the R-E District. He further stated that Section 280-31 A (6) does not list the uses from the previous zoning classifications (R-A and R-E) as being permitted by Special Use Permit, and he noted that these uses are purposefully absent.

Mr. Allen stated that Section 280-16 B states specifically that "a use group which is not listed in any zoning district shall be interpreted as being excluded from all use groups until this chapter has been amended listing such use as a permitted use in the appropriate district". He stated that this section also supports his interpretation.

Mr. Allen stated that if one accepts the "bootstrap" provision argument brought forth by Attorney Romanowski, then bed & breakfasts and tourist homes would be eligible for a Special Use Permit in all subsequent zoning classifications, including the commercial districts. He noted that he is sure that it was not the intent to have tourist homes in commercial districts where they are not even permitted.

Attorney Romanowski stated that the dispute is whether this is a permitted use or not. He stated that New York State Town Law states that Special Uses are permitted uses, and they are not treated differently. He stated that if a Special Use Permit is required, it does not mean it is not a permitted use.

Attorney Romanowski stated that Section 280-16 A states that if a use is included in a lower group, it is included in subsequent more intense groups. He stated that Mr. Allen did not write the Town Code and cannot now say what the intent of the legislature that wrote the Town Code was.

Attorney Romanowski stated that one (1) year ago the Town of Hamburg Planning Board approved a Special Use Permit for a bed & breakfast establishment in a R-1 District, and his client is looking for the same treatment and the opportunity to go before the Planning Board and have his application for a Special Use Permit heard.

In response to a question from Mr. Connolly, Mr. Allen stated that he cannot address the fact that a Special Use Permit was granted last year for a bed & breakfast in an R-1 District. He stated that if that happened in the past, he would view that as a mistake or oversight, and the Town does not like to replicate them.

In response to a question from Mr. Connolly regarding Section 280-16, Attorney Romanowski stated that paragraph A states "When a use is first included in any use group, such use shall be interpreted as being excluded from any use group with a lower number". He stated that you move up from intensity, the "bootstrap" applies, but when you move down, it does not. He stated that paragraph B would work if the Town did not have a provision that starts off the R-1 District that says that everything permitted in R-E is permitted in R-1.

Attorney Romanowski stated that there is a bed & breakfast in the R-E District two (2) doors down from Mr. Churchill's property that has been permitted.

It was determined that the bed & breakfast establishment Attorney Romanowski referred to is not in the same development as the Churchill property.

Mr. Allen stated that if the R-E District did not specifically spell out that bed & breakfasts and tourist homes are an allowable use with a Special Use Permit but then was absent in the R-1 District, then there might be some substance to Attorney Romanowski's argument. He stated that there is some conflict in the interpretation of Section 280-16, and Attorney Romanowski is asserting the provision in paragraph A while he (Mr. Allen) is asserting the provision in paragraph B.

Mr. Allen stated that if the ZBA accepts Attorney Romanowski's argument, then all the other uses would carry forward into the R-1 and subsequent zoning uses, such as commercial and television transmission facilities, private airports, picnic grounds and nursery and day care centers.

Attorney Romanowski stated that Mr. Allen's example does not apply because section 280-24 (the R-E District) does not say that everything in the R-A applies in the R-E. He stated that he was not suggesting that everything below applies all the way through the Code, but rather that is the case only when the Code says it does.

Mr. Connolly stated that R-A and R-E specifically allow bed & breakfast establishments and tourist homes, and R-1 specifically omits them. Attorney Romanowski responded that that is a drafting error. He further stated that R-1 specifically excludes use groups 4 and 5, but it does not exclude bed & breakfast establishments and tourist homes.

Mr. Connolly stated that the ZBA is being asked to choose between Section 280-16 A and B. Mr. Allen stated that he would agree with that statement, except for the fact that when you look at the permitted uses enumerated in each zoning classification, there is a reason why they are specifically spelled out and why in the R-1 there are uses that require a Special Use Permit from the Planning Board, and this use is specifically absent.

Thomas Wrzosek, 1175 West Arnold, asked if Mr. Churchill be allowed to maintain his bed & breakfast establishment and constant stream of strangers in the meantime while the ZBA decides.

Mr. Allen stated that the issue is a matter currently before the Town Court. Attorney Romanowski stated that there is a trial date at the end of October.

Debbie Kaczmarek, 1185 West Arnold Drive, stated that the development she and Mr. Churchill live in is a private area with a private road maintained by the homeowners. She stated that there is traffic on their road that is not just their family and friends, which what has traditionally been the case. She stated that Mr. Churchill's house that is being rented is very large and accommodates a lot of people, so there have been a lot of cars there and much more traffic and noise than what the residents are used to. She stated that the bed & breakfast establishment is affecting their quality of life.

David Kaczmarek, 1195 West Arnold Drive, stated that perhaps their development should be considered for rezoning.

In response to a question from a member of the public, Mr. Allen stated that if this property is eligible for a Special Use Permit, there are many requirements he would have to adhere to, one of them being that he must be a full time resident of the premises.

#### **Findings:**

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

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, applicant's husband, stated that they would like to build a single-family one-bedroom home on his wife's family homestead.

Chairman Rybczynski confirmed with Mr. Appleby that currently there is a home on the property occupied by the original owner, Sara's mother, who does not want to leave the homestead.

Mr. Appleby stated that Sara's mother has lived on the property since she was three (3) years old, the current home was built in 1959 and she has lived in that home ever since. He stated that the home is 1,200 sq.ft. in size, and Sara's mother does not like long term guests.

In response to a question from Mrs. desJardins, Mr. Appleby stated that his wife's family's property straddles the Hamburg/Orchard Park line.

Mr. Allen stated that the applicant does meet the size area requirements.

Mr. Chiacchia stated that this is a very unique property.

In response to a question from Chairman Rybczynski, Mr. Appleby stated that Sara's mother is 85 years old, and all of the long-term health care options are expensive. He stated that he and Sara would like to be on the property to provide Sara's mother with long-term care, and they already take care of the property. He stated that they want to be on the property full time.

Mr. Appleby stated that they live in the Village of Hamburg, and during the November 2014 storm, it took them five (5) days to get in to Sara's mother's property.

Mr. Appleby stated that they have tried to purchase nearby homes, but have not been successful in finding anyone willing to sell. He stated that they looked into building a home on

the portion of the property that is located in Orchard Park, but it is too wet to build on. He stated that the spot they have chosen on which to build is the only spot on the property that would work.

Mr. Appleby stated that when Sara's mother does pass away, his daughter has expressed an interest in taking over the house, which would then ensure that he and Sara will have long-term care from their daughter when the time comes.

Mr. Appleby stated that this property is unique and has been in the family for over 100 years, and they have no intention of renting either of the homes out or operating an air b & b.

Mr. Appleby stated that if the variance is granted, they would construct the house and then construct a barn that would house their horse, which would come live on the property.

In response to a question from Chairman Rybczynski, Mr. Appleby stated that he does not anticipate any commercial farming operations on the property.

Chairman Rybczynski stated that the biggest stumbling block for applicants asking for a use variance is usually the first criteria relative to not being able to realize a reasonable rate of return on the property without the variance being granted. He advised Mr. Appleby to direct his attention to whether or not this property could be used for agricultural use given its size, amount of arable land there actually is, how much the land could be rented out for, etc.

Mr. Appleby stated that the property is heavily wooded and very wet.

Mr. Connolly stated that the applicant has done a phenomenal job presenting evidence, but a use variance is unique and extremely stringent, and it is rare that a use variance is granted unless all four (4) criteria are specifically met. He stated that the financial hardship criterium is the one that the Board will struggle with because everyone would want another home on their property if the situation as the applicant describes presented itself. He noted, however, that the Board cannot grant a use variance without the applicant satisfying the first criterium regarding not being able to realize a reasonable rate of return on the property without the variance.

Mr. Connolly stated that sometimes it can make sense for an applicant to consider requesting that the application be tabled to allow the applicant the opportunity to find out what he or she needs to address all four (4) criteria.

Mr. Appleby stated that Sara's father originally intended for someone in the family to build a home off of Dorst Drive, which this property has access to, but the land is simply too wet.

Regarding not being able to realize a reasonable rate of return on the property, Mr. Appleby stated that they cannot sell the property because there is a life estate on it.

Chairman Rybczynski advised Mr. Appleby that he should think about what it would cost them to realize a reasonable rate of return on the property by farming it.

Board members discussed the definition of "farming" in the Town Code.

Chairman Rybczynski advised Mr. Appleby that the Board needs information regarding what impediments they (the applicants) have to realizing a reasonable return on their investment in the property. He stated that the applicants must show that they cannot use the property for its stated purpose (R-A) and realize a return.

The property owner of 5180 Dorst Drive stated that she can attest to the fact that the Applebys did attempt to purchase adjacent properties. She stated that she understands what the Applebys want to do. She stated that there are flooding problems on Dorst Drive, and the Appleby's property in Orchard Park poses a flooding issue for the homes on Dorst Drive. She stated that she is concerned about another home being built on the Appleby's property, but

knowing where it is proposed gives her a great deal of relief. She stated that the flooding in her area has been getting worse, and she wants to make sure that the Town of Hamburg makes sure that the drainage is properly handled.

**Findings:**

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to table this application.

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

**Application # 5645** Michael Myers – Requesting an area variance for a proposed addition to an existing building at 6301 Moncton Drive

Mr. Russel Rich stated that he and his brother Howard own this property with their cousin, Michael Myers. He stated that the property is very large, and he paid a wetland consultant to delineate the existing wetlands on the property. He stated that because of where the wetlands are, they are very limited as to the location of the addition they propose.

Mr. Rich stated that he and his cousins have been displaced from a storage building where they store their cars, trailers, campers, etc., so they would like to build an addition to their existing building on Moncton Drive to store those items.

Mr. Rich stated that the proposed addition would be 30' X 40', but it would be four (4) feet too close to a side property line. He noted that they own approximately six (6) acres.

Mr. John Brokx stated that he owns property adjacent to the Rich's property. He stated that he has no opposition to the applicants constructing the building. He stated that he constructed his building approximately 2 1/2 years ago. He stated that he believes that the side yard Mr. Rich referred to is actually the front property line, because the front property line is Moncton Drive. He stated that the other buildings along Moncton Drive are set back at least 40 feet, which is consistent with Moncton Drive being the front property line.

Mr. Brokx confirmed that he just wants his rights preserved.

Mr. Rich stated that once Moncton Drive was ended, property owners whose land is adjacent to it have been confused as to where the front and side property lines actually are.

Mr. Allen stated that he did review this variance request, and he concurs that the variance being requested is for a side yard. He stated that the front yard requirement is irrelevant to this side yard setback application. He stated that the applicant's building will not encroach on the front yard setback.

Mr. Brokx stated that, based upon Mr. Allen's interpretation, he might reconsider his support for the granting of this variance.

Mr. Brokx stated that there is a drainage problem in this area, and he asked that it be rectified. Chairman Rybczynski stated that any conditions the Board attaches to the granting of a variance must be reasonable, and Mr. Brokx's request might be considered excessive.

Mr. Rich stated that they will attempt to alleviate the drainage problem Mr. Brokx. was referring to.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5645.

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, because the neighbors are working well together.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No, because the applicant and the adjacent property owner are working the draining issues out.
5. Whether the alleged difficulty is self-created – No.

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

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

It was determined that the applicant was not present.

Chairman Rybczynski stated that this application would be left on the table.

**Application # 5647** Dominic Salemi – Requesting two (2) area variances for a proposed detached garage at 3554 Pleasant Avenue

Mr. Dominic Salemi, applicant, stated that he would like to construct a detached garage in the rear of his property, and he is asking that he be allowed to build a larger and taller garage than what is allowed because he plans to purchase an RV that he would like to store in the garage.

Mr. Salemi submitted photos of his property, noting that the two (2) adjacent property owners, as well as the property owner behind him, do not object to the granting of these variances.

Joseph Martino, 3550 Pleasant Avenue, stated that the proposed garage would be closest to his property in the rear. He stated that he objects to the granting of these variances because his home is 500 feet off the road for privacy, and he is worried about noise, the aesthetics of the building and water runoff. He stated that there is a drainage problem in this area, and his property often floods. He stated that he is worried that the applicant will wash cars in the new garage, which will make the drainage problems even worse because his property is lower than Mr. Salemi's property. He stated that the proposed garage would have a large footprint. He stated that he is worried that auto body work will be done in the garage by either Mr. Salemi or the next owner of the property.

It was determined that the garage would be 1,500 sq.ft. in size.

Mr. Martino asked why the garage is not being proposed closer to the applicant's home. Mr. Salemi responded that he wants the garage in the rear of his property so that it does not break up his yard.

Chairman Rybczynski stated that the location of the applicant's proposed garage is not the subject of the variance requests.

In response to a question from Chairman Rybczynski, Mr. Salemi stated that he owns a tractor, jet skis, two (2) antique cars, and two (2) other cars, and he would rather store them on his own property.

In response to a question from Mr. Connolly, Mr. Salemi stated that he does not want to build a 22' X 40' garage because of the size of the RV he plans to purchase and the cars he plans to store. He stated that he would like a 20' X 20' space in the garage to be able to do things in it.

It was determined that Mr. Martino's home is located 50 feet from the property line shared with Mr. Salemi.

Jeff Logsdon, 3550 Pleasant Avenue, stated that he has no problem with what Mr. Salemi proposes.

Andy Takacs, 3594 Pleasant Avenue, stated that his property backs up to Mr. Salemi's property, and he has a ditch on his property that takes all of the water to the rear of his property. He stated that some flooding does occur at the rear of the properties, but he is working with the Village and the Town of Hamburg to rectify that.

Mr. Connolly stated that, knowing that some of the other criteria had been already debated, there is no doubt in his mind that the request for an additional 660 sq.ft. is substantial. He asked Mr. Salemi if he would be open to discussing a smaller garage.

Mr. Salemi responded that it is not like he wants extra space for nothing. He stated that he has been paying to store his items, and he does not want them on his front lawn. He stated that his property is wide open.

Mr. Connolly stated that 1,500 sq.ft. is the size of many houses.

Mr. Chiacchia stated that the drainage concerns brought up should be addressed to the Engineering Department.

Mr. Connolly stated that the drainage concerns are related to the criterium that addresses whether the granting of the variance will create an undesirable change in neighborhood character or to nearby properties.

### **Findings:**

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – Yes, because an 880 sq.ft. structure could satisfy the applicant's needs.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – Yes, because testimony was received from one neighbor who felt that the structure would create an undesirable change.
3. Whether the request is substantial – Yes, it would be over a 60% increase in what is allowed.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – The difficulty is self-created.

Mr. Connolly stated that if the Board is to do its job and only look at the criteria, the variance should be denied.

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 the applicant plans to purchase an RV and has two (2) 20-foot long cars, etc.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No. The Board received negative testimony from one (1) neighbor whose main concern was drainage, and the drainage issue will be there whether the

garage is built or not. It appears that a fix is being worked out to help the drainage problem in that area. Other nearby residents have no issue with what the applicant proposes to do.

3. Whether the request is substantial – No, because the garage is going on a 1.25 acre parcel.
4. Whether the request will have adverse physical or environmental effects – No, because the drainage problems in that area are not caused by the applicant's proposed garage and can be fixed by the installation of a pipe.
5. Whether the alleged difficulty is self-created – The vast majority of applications the Board gets are self-created.

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5647.

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

**Application # 5648** Mouseland LLC – Requesting an area variance for the parking setback at 4670 Camp Road

Mr. Michael Deni, 3572 Heatherwood, stated that he is in the process of requesting a Special Use Permit from the Planning Board to operate a motor vehicle sales business at 4670 Camp Road. He stated that the Engineering Department stipulated that the parking setback be the required 35 feet from the Right-of-Way (ROW), which would mean he would have to remove approximately 25 feet of existing pavement that has been there since the building was constructed.

Mr. Deni stated that if he removed the 25 feet of pavement, it would be very detrimental to the purpose for which he bought the building, which is selling vehicles. He stated that the ROW in front of his property is excessively large and is larger than the properties further north on Camp Road.

Mrs. desJardins stated that as one goes towards Southwestern Boulevard on Camp Road, the ROW is not parallel to Camp Road, for some reason, and gets wider.

In response to a question from Chairman Rybczynski, Mr. Deni stated that the approximate distance from the existing pavement to the ROW is 55 feet. Mrs. desJardins stated that this distance is actually greater than 55 feet.

Mr. Deni stated that he would like to add just a sliver of pavement to the existing pavement to make it parallel to Camp Road.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5648.

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 – Yes, but it would be at a substantial loss to his business.

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 on balance it favors the granting of the variance.

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

Board members agreed that the November meeting will be held on November 9, 2017.

Mr. Dimpfl made a MOTION, seconded by Mr. Connolly, to approve the minutes of July 11, 2017 and August 1, 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 10:45 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: September 29, 2017