

Town of Hamburg  
Board of Zoning Appeals Meeting  
March 7, 2017  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, March 7, 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 Ric Dimpfl, Commissioner Nicole Falkiewicz and Commissioner Laura Hahn.

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

Excused: Commissioner Chiacchia

Chairman Rybczynski asked for a moment of silence to honor our fallen soldiers and armed service members, as well as those service members who have taken their own lives.

Commissioner Dimpfl read the Notice of Public Hearing.

**Tabled Application # 5608** Barclay Damon LLP - Requesting an appeal of a Code interpretation made by the Supervising Code Enforcement Official

Chairman Rybczynski stated that no new information had been received, and therefore the issue would be left on the table.

Attorney Jeff Palumbo from Barclay Damon requested clarification on whether the hearing remains closed.

Chairman Rybczynski stated that there was a misunderstanding at the Board's February meeting. He noted that when Attorney Palumbo asked him on February 7, 2017 whether the hearing was closed, he (Chairman Rybczynski) thought Attorney Palumbo was referring to the public portion of the meeting. He further stated that when the Board has an item on the table, the public hearing remains open.

Attorney Walling stated that the record of this matter is not closed and has never been closed.

Attorney Palumbo asked Attorney Walling if the record of this matter was not closed even though he (Attorney Palumbo) asked the Chairman on February 7, 2017 if the matter was closed. Attorney Walling responded that the Chairman misunderstood Attorney Palumbo's question.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, that the record will remain open until after the Planning Board acts.

All members voted in favor of the motion.

Attorney Walling stated that this matter has not been concluded and that the 62-day time period has not started running yet.

Attorney Palumbo stated that the 62-day time period starts from the original hearing date. Attorney Walling stated that he does not agree with that statement.

Attorney Palumbo stated that this is really just a legal issue. He stated that he just wants an

answer from the Board.

Attorney Walling stated that this legal issue should be decided after the Planning Board acts.

Attorney Palumbo stated that he could not disagree more with Attorney Walling. He asked Attorney Walling how his legal issue about whether or not it is illegal to dictate a form of ownership has anything to do with the approved subdivision.

**Application # 5610** Dave Olejniczak (Creative Modeling Services) - Requesting two area variances for a proposed new dwelling to be located on vacant land, Lynn Drive

Mrs. desJardins stated that the seller of the lot Mr. Olejniczak wishes to build on purchased two (2) lots in this subdivision many years ago. She noted that the seller constructed a home on one (1) of the lots and combined the two (2) lots into one (1). She stated that in 2009 the seller split the property back into two (2) lots, but by that time the Town regulations concerning minimum square footage and minimum road frontage had been increased, thus making the newly created lot nonconforming.

Mrs. desJardins stated that the applicant would like to purchase this lot to construct a home, but the variances are required in order for this lot to be considered buildable.

Mrs. desJardins stated that if this lot is ever to be built on, the requested variances would have to be obtained. She further stated that the applicant is not requesting variances for any setbacks because he can work within the parameters of the required setbacks for the front yard, side yards and rear yard.

In response to a question from Mr. Connolly, Mrs. desJardins stated that when the seller initially purchased the lots, they did conform to the Town Code regulations.

Dave Olejniczak, applicant, stated that he has a contract of sale that is contingent upon him obtaining these variances.

Mr. Olejniczak stated that he plans to construct a 14,000 - 15,000 square foot two-story home on this lot that will be similar to some of the homes in the neighborhood. He further stated that the home will comply with current setback requirements.

Chairman Rybczynski stated that if the variances are granted, this will not be insinuating or implying that any other variances are otherwise allowable.

Ms. Jacqueline Moyer, 3859 Lynn Drive, asked for clarification of the variances being sought.

Mr. John Kelly, 3846 Lynn Drive, questioned whether two-story homes are allowed in this subdivision.

Chairman Rybczynski stated that he does not believe the Town's Zoning Code has ever limited any neighborhood to one-story homes.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5610.

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, the only way a home can be constructed on this property is if these variances are granted.

2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this property is identical to all the properties on both sides of the street.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No, the lot is on a complete street, and this is one of the few lots that have not been built on.
5. Whether the alleged difficulty is self-created – No, because the rules have changed in regards to the original intent of the owner, and when it was first purchased it was in conformance with the Town Code.

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

**Application # 5611** Lakeview Road Trust – Requesting an area variance for side yard setbacks for a proposed new dwelling on vacant property located on Heltz Road

Andy Romanowski, applicant, stated that he has permission from Gail Walter, trustee for the property owners, to act on her behalf in requesting this variance. He stated that he is requesting this variance so that he can build a single-family home on this property with a total side yard setback of 25 feet. He noted that the property is zoned R-A, which requires a total side yard setback of 60 feet, and although he realizes the variance request is substantial, it is important to know the history of this lot.

Mr. Romanowski stated that in April 2015 the Board of Zoning Appeals granted an area variance for this property allowing it to exist with a reduced road frontage of 100 feet. He stated that he is left with an effective building width of 83 feet, and if the required total side yard setbacks were adhered to, the home could only be 23 feet wide.

In response to a question from Mr. Connolly, Mr. Romanowski stated that Lakeview Road Trust does own this property. He further stated that the home would be approximately 2,400 sq.ft. in area.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5611.

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, based on the size of the property and what the applicant is looking to do.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, in this area there is a lot of land, and the construction of this home will not result in an undesirable change to the neighborhood.
3. Whether the request is substantial – Yes.
4. Whether the request will have adverse physical or environmental effects – No, the size of the lot is over one (1) acre and the home would be 2,400 sq.ft., and most homes that size are placed on lots that are 25% the size of this lot.

5. Whether the alleged difficulty is self-created – This could be argued either way, but on balance the variance should be approved.

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

Mr. Ginnetti made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of February 7, 2017. All members voted in favor of the motion.

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

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

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: March 12, 2017