

Town of Hamburg
Board of Zoning Appeals Meeting
January 9, 2018
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, January 9, 2018 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 Nicole Falkiewicz, Commissioner Bob Ginnetti, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Town Attorney Steven Walters.

Excused: Commissioner Louis M. Chiacchia

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

Chairman Rybczynski made a motion, seconded by Mr. Ginnetti, to appoint Mr. Connolly as Vice-Chairman for 2018 and Mr. Chiacchia as Secretary for 2018. As the vote on the motion was five (5) ayes and one (1) abstention (Mr. Connolly), the motion passed.

Commissioner Connolly read the Notice of Public Hearing.

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

It was determined that this application would be left on the table because the applicant was not in attendance.

Application # 5655 Andrew Waterman – Requesting a six-month extension of an area variance that was granted on 12/5/17 for a proposed addition to the existing home at 5052 College Street

Chairman Rybczynski reminded Board members that this variance was approved at the Board's previous meeting. He stated that the applicants are not prepared to obtain a Building Permit within the required time frame because architectural plans are not finalized yet.

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve a six-month extension of the variance granted on 12/5/17.

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 – This could be debated because the structure's size could be reduced, but based on the applicants' needs, this would be difficult.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because there are many non-conforming structures in the neighborhood, and many homeowners have received variances for new structures.

3. Whether the request is substantial – No. Residents of Yale Avenue have submitted letters of support and the addition would be 45 feet from College Street.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes.

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

Application # 5656 Elizabeth & Andrew Donovan – Requesting two (2) area variances for a detached garage at 4798 Bayview Road

Dave Sutton, architect, representing the applicant, stated that a three-car garage exists on the property, but it is quite old, undersized and substandard. He stated that the new three-car garage that will replace it will look much like the existing home on the property. He stated that the property is unique in that it is a corner lot and is quite large, and a 40-foot wide adjacent parcel in the vicinity of the garage is owned by the Town of Hamburg and serves as a nice buffer for the garage.

Mr. Sutton stated that the garage will not be so big as to be a negative impact on nearby properties.

Mr. Sutton stated that the garage will have a covered area attached to it in addition to the three (3) bays, which is why it is larger than what is allowed by Code.

In response to a question from Chairman Rybczynski, Mr. Sutton stated that the covered open area attached to the new garage would be approximately 286 square feet in size.

In response to a question from Chairman Rybczynski, Mr. Sutton stated that there is no intention at this time to convert the covered open area into a fourth garage bay. He noted that if the Board wanted to stipulate that that area can never be converted into a fourth bay, the applicant would agree to that.

Mr. Sutton stated that a height variance is also required because of the proposed square footage of the garage and because the applicant plans to match the existing pitch and the architectural features and overhangs of the existing home on the property.

Mr. Sutton supplied Board members with three (3) letters of support from surrounding property owners as follows:

- Mary Lou Schiener, 4788 Bayview Road
- Thomas Ludlow, 4356 Beetow Drive
- Doug Barone, 4365 Arrowwood Drive

Mr. Sutton reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – The only way the applicant could achieve the desired effect would be to ask the Town of Hamburg if it would be willing to sell the small parcel adjacent to this property so that the applicant's property would then be over one (1) acre in size, and therefore the proposed garage would be in conformance. The Town of Hamburg has no interest in selling the parcel.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because the garage would be substantially buffered and would look much better than the existing garage.

3. Whether the request is substantial – No, because the roof would be a hip roof.
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.

In response to a question from Chairman Rybczynski, Mr. Sutton stated that the attic space in the new garage will have sloped ceilings and is intended for storage and not for occupancy.

Mr. Connolly stated that he feels that the variance for the additional square footage is significant and asked Mr. Sutton why the applicant was not able to work within the Code or at least get closer to the Code requirement to accommodate the square footage requirements. Mr. Sutton responded that the existing garage has one (1) large door and a smaller door, and in order to rebuild a garage that can accommodate three (3) cars and be large enough so that car doors do not hit each other inside the garage, it had to be designed larger than what is required by Code.

Mr. Sutton stated that the covered open area is classified as part of the footprint of the proposed garage, and that adds 286 sq.ft. to its overall size.

In response to a question from Mr. Connolly, Mr. Sutton stated that the existing garage is approximately 14' – 15' high to the peak. He noted that the new garage walls would only be one (1) foot taller than the existing walls, but the roof of the new structure will match the existing house and will have larger overhangs. He further stated that the front of the new garage will be as close as possible to the brick of the existing home.

In response to a question from Mr. Connolly, Mr. Sutton stated that the applicant's property is approximately .86 acre in size.

In response to a question from Mr. Connolly, Mr. Sutton confirmed that the three (3) property owners who submitted letters of support are adjacent to the applicant's property or the Town-owned land.

Findings:

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to approve Application # 5656 with the following conditions:

- The attic space will never be used as living space.
- The 286 sq.ft. covered open area will not be converted to a garage bay.

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 – The applicant did look at other alternatives, but to match the new garage with the existing home on the property and to satisfy his desire to have three (3) bays, this is necessary.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because of the unique nature of the property in that it backs up to Town property, which serves as a buffer to nearby properties, as well as the size of the property (just under one (1) acre) and the written approval from three (3) adjoining neighbors.
3. Whether the request is substantial – It could be argued that the proposed height request and square footage request is substantial, but knowing that a good portion of the square footage request is the covered open area gives that less weight.

4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes.

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

Application # 5657 NVR Inc. Ryan Homes of NY - Requesting an area variance for a home under construction at 6727 Willow Ridge Drive

Mr. Josh Wisinski, project manager with Ryan Homes, stated that building plans were submitted to the Building Department for this new home and a Building Permit was issued. He stated that at some point, the customer asked Ryan Homes to turn the home in order to put a sun room on the back, and Ryan had the property resurveyed and the home staked out in the new location. He stated that after the home was replotted, construction began.

Mr. Wisinski stated that no one realized that there are specific requirements for an exterior side yard setback in the Town Code. He noted that he was advised of this requirement after he submitted the survey of the property showing where the foundation had been put in. He stated that at that point a “stop work” order was imposed by the Building Department.

Chairman Rybczynski asked Mr. Wisinski if the revised plans were submitted to the Building Department at the time the customer asked for the change in location. Mr. Wisinski responded that they were not.

In response to a question from Chairman Rybczynski, Mr. Wisinski stated that no work was done on the home once the “stop work” order was imposed. Chairman Rybczynski advised Mr. Wisinski to place a phone call during the break to make sure his answer to the above question was accurate.

Mr. Wisinski 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, because only a small portion of the home is affected.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes.

Mr. Wisinski stated that the only work that may have gone on at the site would be general upkeep.

In response to a question from Mr. Connolly, Mr. Wisinski stated that this type of error has only occurred once in his career (15 years). Mr. Connolly stated that very few homebuilders have come before the Board for relief, but Ryan Homes has been before the Board at least five (5) times, and it is always a “pointing fingers” game. He wondered if these issues just come up or whether Ryan Homes simply wants to avoid the time and effort it takes to work with the Building Department.

Mr. Wisinski stated that he was not pointing fingers at anyone, and he is simply saying that this is the situation Ryan Homes has put itself in.

Mr. Connolly asked Mr. Wisinski how many homeowners in this development changed their plan. Mr. Wisinski responded that of the 40 sites in the development, approximately six (6) customers have asked for changes to the foundation location.

In response to a question from Mr. Connolly, Mr. Wisinski stated that of the six (6) requested changes, this is the only situation where the Town was not informed of the change being made to the location of the foundation of a home.

Chairman Rybczynski asked Mr. Wisinski what Ryan Homes would do if the variance is not granted. Mr. Wisinski responded that the only option would be to alter the garage in some way, but that would make the appearance worse.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5657.

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 – The only means would be to alter the garage, which is not ideal.
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 – Yes.

Mr. Connolly stated that it is upsetting that Ryan Homes is in front of the Board when it has six (6) other properties in the development whose owners asked for a change in the location of the home, and in those cases it went to the Town for the approval it knows it needs, and in this case it did not. He stated that this behavior is looked upon unfavorably by the Building Department, as well as by the Board of Zoning Appeals. He noted, however, that when looking strictly at the criteria, four (4) out of the five (5) weigh in the applicant's favor.

Chairman Rybczynski stated that he had thought about tabling this matter to make sure no work has been done on the home since the "stop work" order was imposed, but there is a future resident of Hamburg who will be moving in to this home, and that individual should not have to suffer the consequences of a mistake there was not his doing.

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

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of December 5, 2017. All members voted in favor of the motion.

Chairman Rybczynski made a MOTION, with multiple seconds, to adjourn the meeting in memory of Michael Locurto and Richard Dimpfl, Sr. All members voted in favor of the motion.

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: January 29, 2018