

Town of Hamburg  
Board of Zoning Appeals Meeting  
June 5, 2018  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 5, 2018 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Vice-Chairman Shawn Connolly, Commissioner Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Attorney Tamara Harbold, Board of Zoning Appeals Attorney and Joe Boncore, Code Enforcement Officer.

Excused: Chairman Brad Rybczynski, Commissioner Nicole Falkiewicz

Vice Chairman Connolly 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 # 5674** 5054 Lake Shore Road, LLC – Requesting a use variance to allow for a second dwelling on property located at 5054 Lake Shore Road

Attorney Nick DeMarco, representing the applicant, stated that his parents are the members of the 5054 Lakeshore Road LLC, and he would be representing them.

In response to a question from Mr. Dimpfl, Attorney DeMarco stated that there is a foreclosure situation going on with this property, and his older brother Jim DeMarco, Jr. plans to purchase the property to alleviate that foreclosure situation.

Attorney DeMarco stated that the building in question on the property has been a carriage house for many years, and the problem was brought to his parents' attention when they attempted to sell the property. He stated that he has lived in the carriage house, and two (2) of his siblings live there now.

Attorney DeMarco stated that his parents must either obtain a use variance or convert the building back to a garage, and that is the financial circumstance they find themselves in.

In response to a question from Vice-Chairman Connolly, Attorney DeMarco stated that the home on this property cannot be sold via traditional financing because currently there is an illegal use on the property.

In response to a question from Vice-Chairman Connolly, Attorney DeMarco stated that if someone wished to purchase the property with cash and no financing was required, it would be possible. He noted, however, that once the buyer became aware that there is an illegal use on the property, he or she would probably have significant reservations about purchasing it because a use variance would be required to continue the building's use as a carriage house.

Attorney DeMarco stated that the building in question was a carriage house for many years, utilities were there and he is confident that the building meets all Code requirements. He welcomed any inspection to ensure that it is safe and Code compliant.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to deny # Application 5674.

On the question:

Mr. Dimpfl reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return – substantial as shown by competent financial evidence – There is a question as to whether the applicant can realize a reasonable rate of return.
2. Alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – The situation is unique in many ways, but it is not unique to a substantial portion of the district or neighborhood.
3. Requested variance will not alter the essential character of the neighborhood – It probably will not alter the essential character of the neighborhood.
4. Alleged hardship has not been self-created – The hardship has been self-created.

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

**Application # 5675** Zachary Miller – Requesting an area variance for a proposed detached accessory building at 4232 Meadowbrook

Mr. Zachary Miller, applicant, stated that he would like to remove an existing garage and construct a larger garage on his property. He noted that he recently purchased the property, and the proposed garage is too large per the Code.

In response to a question from Vice-Chairman Connolly, Mr. Miller stated that he needs the large garage for his full-size pickup truck, a trailer, equipment for the maintenance of the yard and home, etc. He stated that the existing garage to be demolished measures approximately 22' X 22', and it is full now. He noted that he is taking the neighborhood into consideration and feels the garage could be located towards the rear of the adjacent neighbor's home. He stated that he feels the garage could look nice, and he is trying to make his home and yard appealing to the neighborhood.

In response to a question from Vice-Chairman Connolly, Mr. Miller stated that his home is approximately 1,200 sq.ft. Vice-Chairman Connolly responded that this means the new garage would be 400 sq.ft. larger than the home.

Mr. Miller stated that he could choose to construct a large attached garage to avoid the necessity for an area variance, but he is taking cost and aesthetics into consideration.

In response to a question from Mr. Chiacchia, Mr. Miller stated that he has some flexibility to locate the new garage closer to his home than what is proposed in order to move it further away from the adjacent property. He stated that he is more concerned about the building itself than is where it would be located.

In response to a question from Vice-Chairman Connolly, Mr. Miller stated that he has considered the option of building an 850 sq.ft. garage where the existing garage is located, which would double the space he has now, but he wants to be able to store his vehicles and equipment inside and not clutter the property with those things stored outside. He further stated that he currently stores his construction equipment in three (3) separate garages, and he would like to consolidate those things in one garage on his property.

Vice-Chairman Connolly stated that a 1,600 sq.ft. garage in this neighborhood would be extremely unusual, and some homes in this neighborhood do not even have garages.

In response to a question from Vice-Chairman Connolly, Mr. Boncore stated that there is no limit on the size of an attached garage, and it would have to be set back at least ten (10) feet from the side property line.

**Findings:**

Ms. Hahn made a MOTION, seconded by Mr. Dimpfl, to table # Application 5675.

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

**Application # 5676** Michele Dycha – Requesting an area variance for a proposed mud room at 4053 Highview Parkway

Michele Dycha, applicant, stated that she would like to build a 5' X 8' mudroom, and a two-foot area variance is needed.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Ms. Hahn, to approve # Application 5676.

On the question:

Vice-Chairman 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 what the applicant is looking to do.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, considering that that neighborhood has several non-conforming structures, and several variances have been granted.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – Based on the other properties in the neighborhood, the location of the mud room would not have an adverse physical or environmental effect.
5. Whether the alleged difficulty is self-created –It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5677** Paul & Joanne Nowicki – Requesting four (4) area variances for a structure under construction at 5748 Old Lakeshore Road

Paul Nowicki, applicant, stated that he needed some storage space, so he received a Building Permit for a 20' X 20' structure behind his garage. He stated that the Building Inspector he dealt with indicated that a survey of the property was required. He stated that he showed the Building Inspector a pencil drawing of a 20' X 20' building with a 10-12 pitch roof.

Mr. Nowicki stated that 80% of the building is constructed, and it is not sided yet. He stated that he violated the rules and needs a number of area variances.

In response to a question from Mr. Chiacchia, Mr. Nowicki stated that spoke with his adjacent neighbors, and they are okay with the building. He noted that he tried to locate the building as far away from the adjacent property as possible, and in doing so tucked it in too close to an existing garage on his property.

Mr. Nowicki stated that the purpose of the building is to house the equipment he has in his home's basement.

Vice-Chairman Connolly read the following correspondence from Mr. Kurt Allen, Supervising Code Enforcement Official regarding this application:

"Dear Mr. Rybczynski and fellow Zoning Board commissioners:

For your consideration, as it pertains to the above application, I offer the following information:

Paul Nowicki, property owner, permit applicant, was granted a Building Permit for a 20' X 20' single story tool shed. At the time of application, Mr. Nowicki was made aware of all the applicable area regulations which pertain to his proposed tool shed. It was understood at the time of permit application (9/19/2017) that he had no issues with complying with any area regulations relating to his proposed tool shed. He was granted Building Permit # 2017-0943 to construct a tool shed after producing a property survey and conditioned upon Mr. Nowicki returning with plans for the tool shed as the Town required. Mr. Nowicki never produced the plans as required by this department. Furthermore, Mr. Nowicki commenced construction of the structure, which became a two-story garage, without adhering to the Building Permit requirement of calling in for the required inspections. A Stop Work order was placed on the project on 4/5/2018 when it was discovered the building was in violation of the conditions of the Building Permit. Consequently the Permit has been revoked. Currently, Paul Nowicki remains in violation of Local Law #1-2005 Section 76-10 Action on Permit Application, Section 76-11 Revocation and Section 76-12 Stop Work Order. As he is also in violation of the required area regulations, he seeks to remedy through approval of the four (4) variances requested before the Zoning Board of Appeals. Thank you for your attention in this matter. Respectfully submitted, Kurt Allen, Supervising Code Enforcement Official."

Mr. Nowicki stated that he would never construct a building if he knew he had to produce a plan. He stated that when he left the Building Department in 2017, he thought he was good to go. He stated that he respectfully disagrees with Mr. Allen's letter.

In response to a question from Vice-Chairman Connolly, Mr. Nowicki stated that he was never told that he would have to produce a plan to the Building Department, and if he had been told to he would have produced a plan.

In response to a question from Vice-Chairman Connolly, Mr. Nowicki stated that he began construction on the building in the fall of 2017.

Mr. Nowicki stated that when he applied for the permit, he drew the sketch with a 10-12 pitch roof because he knew he needed storage space upstairs.

Mr. Chiacchia stated that if the requested variances are not granted, the applicant would have to demolish the structure. He asked Mr. Nowicki how much money he has invested in the partially constructed building. Mr. Nowicki responded that he has spent approximately \$12,000 - \$14,000.

Vice-Chairman Connolly asked Mr. Nowicki which of the four (4) requested variances, if any, would preclude him from adjusting the plan as it stands now. Mr. Nowicki stated that the only variance he could adjust would be the aggregate square footage of accessory structures by removing an existing 10' X 12' storage shed.

In response to a question from Vice-Chairman Connolly, Mr. Nowicki stated that once the new structure is completed, he will still need the existing 10' X 12' shed.

**Findings:**

Vice-Chairman Connolly stated that one (1) of the criteria is whether the alleged difficulty was self-created. He noted that there is written testimony from the Town that the difficulty was self-created, and oral testimony was offered indicating that it was not self-created, so it is difficult for the Board to make a judgement on that particular criterion. He stated that considering the other criteria, it does not sway one way or the other, which makes it difficult for the Board to make a decision that is fair to the applicant, as well as the Town, with the discrepancy in whether the hardship was self-created. He recommended that the application be tabled in order to determine that discrepancy, which would give the Board some guidance.

Vice-Chairman Connolly made a MOTION, seconded by Mr. Chiacchia, to table Application # 5677.

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

**Application # 5678** Gary Breg – Requesting two (2) area variances for a proposed residential addition at 4374 Robin Lane

A representative of the applicant stated that Mr. Breg would like to construct an addition on the rear of his home, and the property is only 60 feet wide. He stated that the home is approximately 45 feet wide, and therefore two (2) area variances are being requested for the distance of the addition to the side property lines.

Julie Moretta, 4380 Robin Lane, asked how large the addition will be. The applicant's representative stated that the addition will be the same width of the home for a distance of 15 feet. Ms. Moretta asked if any dirt that is dug up will be removed from the property. The applicant's representative responded that only a crawl space is planned, so there will not be much dirt removed.

Vice-Chairman Connolly stated that the Board has granted several variances in the Robin Lane area regarding property owners wishing to expand their homes on small lots. Mr. Chiacchia agreed and added that many of the homes in this area are existing non-conforming.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve # Application 5678.

On the question:

Mr. Dimpfl reviewed the area variance criteria as follows:

Whether the benefit can be achieved by other means feasible to the applicant – No, based on what the applicant is looking to do.

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 could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5679** Andrew Nirelli – Requesting an area variance for a proposed accessory structure at 5139 Glendale Avenue

Andrew Nirelli, applicant, stated that he would like to construct a new garage and remove the existing garage on the property. He stated that a lean-to is proposed attached to the new garage, and therefore the garage and lean-to square footage is more than what is allowed per Code. He noted that the garage itself would conform to the Code, but the additional square footage of the lean-to results in the square footage being more than what is allowed.

Mr. Nirelli stated that he had spoken to his neighbors to the north and south, as well as the neighbor across the street, and none of them expressed any concerns.

In response to a question from Vice-Chairman Connolly, Mr. Nirelli stated that if he had to conform to the Code, he would not be able to have the lean-to attached to the garage, and he'd like that so his family can enjoy their yard. He confirmed that the garage with the lean-to would be 37 feet wide and 28 feet deep.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve # Application 5679.

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 –It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5680** Michael Reed – Requesting an area variance for a proposed attached garage addition at 3227 South Lyth Road

Michael Reed, applicant, stated that he would like to construct an attached garage addition, and it would be slightly less than five (5) from the property line, and the Code requires ten (10) feet. He noted that the owner of the adjacent property the addition would be close to is deceased, and the home is for sale. He stated that that home is 35 feet from the shared property line. He further stated that none of his other neighbors have any objections to his proposed addition.

Mr. Chiacchia stated that most of the homes in the neighborhood have two-car garages, and the applicant currently does not have one.

**Findings:**

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve # Application 5680.

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 could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5681** Alexander Kish – Requesting an area variance for a proposed accessory building at 4153 Beaubain Drive

Alexander Kish, applicant, stated that he would like to build a pole barn on his property, and none of his neighbors object. He stated that he purchased some snowmobiles recently and also owns a boat, lawn mower, etc. and needs the storage space. He noted that he would locate the structure in the rear of the property.

Mr. Kish stated that he is asking for a variance of 4.6 feet so that the pole barn can be 22.6 feet high instead of the required 18 feet. He noted that he needs the extra height in order to fit the boat in.

Mr. Chiacchia noted that the owner of 4161 Beaubain Drive has a very large garage on his property.

Vice-Chairman Connolly stated that the following property owners signed letters of support for this project:

- Alan Platt, 4161 Beaubain Drive
- Mary Ellen Murray, 4169 Beaubain Drive
- Linda Pokigo, 4170 Beaubain Drive
- David Clarkson, 4136 Beaubain Drive
- James Barber, 4141 Beaubain Drive
- Gregory Kish, 5135 Beaubain Drive

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Chiacchia, to approve a variance of 4.6' for Application # 5681.

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 could be argued that it is self-

created, but the balancing test is in favor of granting the variance.

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

**Application # 5682** Four Seasons Derby Home, LLC – Requesting two (2) area variances for a proposed detached building at 3775 Bonnie Lane

A representative of the applicant stated that the applicant proposes to build a storage building to house several very valuable antique tractors and cars. He stated that the variances being sought are quite large, but the property is approximately 20 acres in size. He stated that the building would not be visible from the road, and the adjacent property owners do not object.

Board members discussed the presence of wetlands on the property in the area where the storage building is proposed.

In response to a question from Vice-Chairman Connolly, the applicant's representative stated that a smaller structure will not work for the applicant because of the volume of antiques he owns. He further stated that the applicant does not own other properties in the area where he could store the antiques. He noted that the antiques are currently stored in different places.

Mr. Chiacchia stated that this property is quite isolated.

Vice-Chairman Connolly stated that looking at the balancing test, there are certainly a few criteria that seem to have been satisfied, and there are a few that would support denial. He stated that he wanted testimony indicating why the structure must be that large.

The applicant stated that he wishes to put 25 tractors in the building, as well as a car and a truck.

In response to a question from Vice-Chairman Connolly, the applicant's representative stated that there would be no commercial usage of the structure.

In response to a question from Attorney Harbold, the applicant's representative stated that the applicant is not currently paying for storage of the antiques. He noted that some of the collection is in Florida, and some is in a building the applicant owns in Brant.

Vice-Chairman Connolly stated that if the property is ever sold, it would be a prime location for a landscaping business or snowplow operator who could live in the home and store equipment, etc. in the large storage building. He noted that this would be the concern of the Board.

The applicant stated that he plans to leave the property to his grandchildren and does not envision it being sold.

In response to a question from Vice-Chairman Connolly, the applicant stated that he has owned the property for over nine (9) years.

**Findings:**

Vice-Chairman Connolly stated that this is an extremely unique situation because of the variance needed, which is 17,834 sq.ft. He stated that the Board should take into consideration the size of the property, which is over 20 acres, the distance between the applicant's property and the neighbors' and the written authorization and approval of the neighbors and the essential character of that particular development.

Vice-Chairman Connolly stated that if the Board wishes to approve this application, he recommended that a condition of that approval be that there be no commercial usage at all on the property.



Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5682 with the following condition:

- There will be no commercial uses on the property.

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, considering the number of vehicles the applicant wishes to store.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, it will not be visible.
3. Whether the request is substantial – Yes.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created –It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5683** Catherine Wimpy – Requesting an area variance for a fence at 4672 Clark Street

Catherine Wimpy, applicant, stated that she contracted for the fence in question, and she had a similar fence installed along Keems Drive in 2006 that did not require a permit. She stated that the installer of the current fence noted “N/A” in the area where a permit is listed in bold print, but in the fine print it was noted that the homeowner is responsible for any permits and/or variances.

Ms. Wimpy stated that she purchased her current fence from Lowe’s, and both the proposal and the contract indicated that the permit fee was included and collected. She noted that therefore she did not know that she had to obtain a permit for the fence.

Mrs. Wimpy stated that the fence is also too high from her home to the street.

In response to a question from Vice-Chairman Connolly, Ms. Wimpy stated that the fence installation was to begin in October 2017. She stated that Lowe’s dragged its feet, and she had to call several times, and she eventually called the business that installed her previous fence in 2006 to install the current fence. She noted that the fence was finally installed on approximately April 20, 2018.

Mrs. Wimpy stated that she did not know that the fence cannot be six (6) feet high from the home to the street.

Mr. Dimpfl stated that it appears that Lowe’s charged the applicant for the permit but never obtained it for her. He stated that as installed, the fence is a safety hazard for the adjacent property owner, and if Lowe’s had applied for the permit, the Building Department would have advised Lowe’s that the fence cannot be higher than three (3) high from the road to a point 16 feet from the road and then four (4) feet high from that point to the front of the home.

Ms. Wimpy stated that the fence as installed is not an obstruction.

Mr. Dimpfl stated that the fault is not with the applicant, but rather with either Lowe’s or the installer. He reiterated that the safety hazard he referred to has to do with the next door neighbor’s inability to back out of his driveway safely because of the six-foot high fence along the applicant’s property line.

Ms. Wimpy stated that she needs the fence to be six (6) feet high because she has six (6) minor children living with her and she wants to protect them from the adjacent property owner's swimming pool.

Mr. Dimpfl stated that Lowe's or the contractor must remove the fence that is too high and make it right. He further stated that the first part of the fence from the road that should be three (3) feet high would not affect the safety of Ms. Wimpy's minors relative to the neighbor's swimming pool.

Ms. Wimpy stated that the Code allows a retaining wall to be built as high as someone wishes it to be. She stated that the telephone pole and the tree near the neighbor's driveway are as much an obstruction and are much higher than the six-foot fence would be.

In response to a question from Vice-Chairman Connolly, Mr. Boncore stated that the Code defines a fence as a fence, wall, hedgerow, shrubs, etc.

It was determined that a retaining wall would be held to the same requirements as a fence.

In response to a question from Mr. Chiacchia, Mr. Boncore stated that the fence installer, Erie Fence Company, is registered as a contractor with the Town of Hamburg contractor.

Mrs. Wimpy's daughter stated that when the fence was being installed, she had no idea about the height restrictions, but she was concerned about how far the fence would go in the direction of the street. She stated that when the fence was installed, it did not extend past a tree on the property so she was not concerned. She noted that the adjacent property owner did ask that her mother have some of the branches of that tree trimmed, which her mother did, to improve the visibility.

Ms. Wimpy's daughter stated that the area around her mother's property is extremely dangerous.

Ms. Wimpy stated that if any portion of the fencing is altered, that will void the warrantee on the fence.

In response to a question from Mr. Chiacchia, Attorney Harold stated that the Town cannot get involved in a property owner's issue, but Ms. Wimpy should probably look into why the contractor did not get the required permit and did not install the fence per the Town Code, thereby creating a safety hazard. She further stated that the Town should be concerned from a safety perspective of the ramifications of a fence that is too high and a safety hazard.

Vice-Chairman Connolly read the following correspondence from Kurt Allen, Supervising Code Enforcement Official, dated June 4, 2018:

"Dear Mr. Rybczynski and fellow Zoning Board Commissioners:

For your consideration as it pertains to the above variance application, I offer the following information:

The construction of the subject fence was completed without the benefit of the required Building Permit. As such, Catherine Wimpy is in violation of Local Law # 1-2005 Section 76-9 Permit Regulations. In addition, placement of the fence requires a variance due to the fact that owner/contractor violated the permit process and now seeks remedy through application for needed area variance. Furthermore, the fence as placed constructed is in violation of Local Law # 1-1996 Section 280-278 D Site Obstruction, as it completely obstructs visibility from the adjoining neighbor's driveway entrance onto Clark Street. Thank you for your attention in this matter."

Vice-Chairman Connolly read the following correspondence received by Tom Murphy, Code Enforcement Officer, regarding the traffic safety on Clark Street:

“As you know, Clark Street has a very heavy traffic flow since the new 219 exit was completed. Living on Clark Street on the only curved section, it is difficult to exit and enter our driveway. Now, because of a newly erected fence, it is virtually impossible to see oncoming traffic flowing into Hamburg from Armor. We are very concerned about the safety of our family, grandchildren and friends when visiting. Thank you for any help you can provide. Sincerely, Peter and Kathy Wittmeyer, 4664 Clark Street.”

Vice-Chairman Connolly stated that the above property owner is located directly west of the applicant.

Ms. Wimpy stated that the existing telephone pole is an obstruction, as is the existing tree. She stated that her fence is lower than both of those things.

Attorney Harbold stated that the fence is something that one cannot see through.

Ms. Wimpy stated that she is never going to get her money back from either Lowe's or the installer for the fencing that would have to be removed if the variance is denied. She further stated that the installer will not remove part of the fence for free. She stated that this would be an economic hardship for her.

Vice-Chairman Connolly stated for the record that Erie Fence Company is not registered with the Town of Hamburg.

#### **Findings:**

Mr. Dimpfl stated that with the safety factor and the way the application reads at the present time, he would make a recommendation that the Board deny. He stated that this situation is not the fault of the applicant, but the fence cannot remain six (6) feet high within the first 16 feet of the road.

Mr. Dimpfl made a MOTION, seconded by Ms. Hahn, to deny Application # 5683.

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 – Yes, the applicant can reduce the height of the fence to comply with the Town Code.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – Possibly not, but the safety situation is an issue.
3. Whether the request is substantial – No, but the safety situation is an issue.
4. Whether the request will have adverse physical or environmental effects – Yes, from a safety factor.
5. Whether the alleged difficulty is self-created –It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5684** Edward Hoak – Requesting an area variance for a proposed addition to Hoak’s Restaurant at 4100 Lakeshore Road

Glenn Christner, architect, representing the applicant, stated that Hoak’s would like to construct a 440 sq.ft. two-story addition to the southeastern side of the building. He stated that the addition is proposed in the area where the outdoor dining is, and the existing fire escape would be enclosed. He stated that the required front yard setback is 30 feet in this District, and the applicant is requesting a variance to provide a front yard setback of six (6) feet.

Mr. Christner stated that the New York State Department of Transportation, through eminent domain, enlarged the right-of-way in this area so that the northeast corner of the existing building is right on the right-of-way line. He noted that the addition would be six (6) feet farther from the right-of-way than the existing building is.

Mr. Christner stated that the area of the addition is already used for outdoor dining.

In response to a question from Vice-Chairman Connolly, Mr. Christner stated that the plan is to expand the existing bar area and enclose the existing fire escape stairway. Doing the addition any other way would mean relocating the existing outdoor bar area.

A member of the audience stated that this project is located in the shoreline overlay district, and it is required by law that it be presented to the Conservation Board and the Shoreline Revitalization Committee for their recommendation. He asked if those committees had been notified of the project.

Vice-Chairman Connolly stated that the Shoreline Revitalization Committee approved the project.

The member of the audience stated that the Shoreline Revitalization Committee requires a nautical theme and has certain specifications.

Mr. Christner stated that he met with the owner of the restaurant, the Planning Consultant and Mr. Allen, Supervising Code Enforcement Official, and he was told at that time that this project would need to be reviewed by the committees referred to by the member of the audience.

**Findings:**

Vice-Chairman Connolly stated that Sarah desJardins, Planning Consultant, was contacted, and she confirmed that the Shoreline Revitalization Committee and the Conservation Advisory Board have been contacted for input on this proposed project.

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5684.

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 –No, because the NYSDOT increased the right-of-way width through eminent domain.

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

**Application # 5685** Michael & Shannon Galley – Requesting an area variance for a proposed pole barn at 4586 Kennison Parkway

Michael Galley, applicant, stated that he would like to construct a pole barn to house his recently purchased travel trailer. He further stated that his family has several outdoor activity things like bikes, etc.

Mr. Galley stated that he spoke to all of his surrounding neighbors, none of whom object to his project.

In response to a question from Vice-Chairman Connolly, Mr. Galley stated that he looked at other options, but given the size of the travel trailer and the need for additional storage, this is the size he will need. He further stated that his home is approximately 2,800 sq.ft. in size.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5685.

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 –It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

**Application # 5686** Glenn Hanneman – Requesting an area variance for a driveway at 6605 East Eden Road

Nancy Hanneman, mother of the applicant and owner of 6615 East Eden Road, stated that her family did not know until recently that her son's southerly property line actually runs partially through her driveway so that her driveway is partially on her son's property. She stated that her home has been in the family since the late 1800s, and it has been handed down from one family member to another without a survey. She stated that she and her husband have been discussing estate planning and would like to rectify this situation so that the driveway is completely on her property.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Ms. Hahn, to approve Application # 5686.

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, because of the way the properties are laid out.

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. **APPROVED.**

**Application # 5687** Keith & Cynthia Beck – Requesting an area variance for a proposed detached garage at 3037 Bender Court

Keith Beck, applicant, stated that he would like to construct a garage in his back yard that is larger than what is allowed. He stated that one of his permanent sheds and a treehouse will be removed (144 sq.ft.).

In response to a question from Vice-Chairman Connolly, Mr. Beck stated that he spoke to both adjacent property owners, who do not object to the garage.

**Findings:**

Ms. Hahn made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5687.

On the question:

Ms. Hahn reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – The applicant could go smaller, but he has the room.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because it will be located in the rear yard.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No.
6. Whether the alleged difficulty is self-created – It could be argued that it is self-created, but the balancing test is in favor of granting the variance.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Chhiacchia, to approve the minutes of May 1, 2018. 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 9:30 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: June 12, 2018