

Town of Hamburg
Board of Zoning Appeals Meeting
July 10, 2018
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 10, 2018 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Commissioner Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl, Commissioner Laura Hahn and Commissioner Ray Gallagher.

Others in attendance included Attorney Tamara Harbold, 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 Falkiewicz made a motion with multiple seconds to appoint Commissioner Dimpfl as Vice-Chairman of the Board. All members voted in favor of the motion.

Commissioner Chiacchia read the Notice of Public Hearing.

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

Mrs. desJardins stated that the applicant had asked that the request be tabled to the Board's next meeting.

Findings:

The application was left on the table.

Tabled 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 in September 2017 he visited the Building Department to get a permit for a new building. He stated that at the time he told the inspector he dealt with that he wanted to build a 20' X 20' storage building, and he was given a permit with the understanding that he would have the building inspected when he was finished.

Mr. Nowicki stated that he made a few mistakes as the homeowner, and the inspector made a mistake in not requiring that he submit a plan of the structure. He noted that he has thousands of dollars invested in a building that does not meet the Code requirements.

Mr. Nowicki stated that the purpose of the building was to store lawn equipment, snow blowers, etc. and also to store items that are currently in the basement of his home that get wet when the basement floods. He stated that this is why he wanted a two-story building.

Mr. Nowicki stated that he disagrees with the correspondence received by the Board from the Supervising Code Enforcement Official.

In response to a question from Mrs. Hahn, Mr. Nowicki stated that he originally indicated to the Building Department that the building would cost \$8,000, but that number turned out to be \$15,000.

Mr. Nowicki stated that he is asking for mercy at this point.

Mr. Chiacchia stated that Mr. Nowicki informed the Building Department that the structure was to be a tool shed, and in his (Mr. Chiacchia's) opinion, what was built cannot be considered a tool shed. Mr. Nowicki stated that he did not indicate that the building would be a tool shed.

In response to a question from Mrs. Falkiewicz, Mr. Nowicki stated that he told the Building Department the building would have a pitched roof, and he meant for the building to have two (2) stories from the beginning.

Mr. Chiacchia stated that no inspections have been done on the building, and it is not known if the building is built to Town specifications. Mr. Nowicki stated that he has no problem having the building inspected by the Building Department.

Findings:

The application was left on the table.

Application # 5689 Mario Pellicano - Requesting a use variance to allow the commercial use of an accessory structure at 6736 Boston State Road

Chairman Rybczynski stated that this application would be tabled at the request of the Building Department to allow further research regarding past variances on this property.

Mario Pellicano, applicant, stated that it costs him approximately \$51,000 per year to keep the big commercial buildings with loading docks on his property. He stated that he has had the property, which consists of a home and the commercial buildings, listed for a year. He stated that he has not been able to rent the commercial buildings because only certain uses are allowed in this zoning district.

Mr. Pellicano stated that when he purchased the property in February 2017, he found that the owner of Hamburg Overhead Door owned the property and ran the business out of there from 1984 until 2011. He further noted that the owner of Hamburg Overhead Door then sold the property to the owner of The Vinyl Outlet, who ran that business out of the property and who still has items in one of the commercial buildings on the property.

Mr. Pellicano stated that there are several properties in Hamburg that contain residential and commercial uses. He stated that until a prospective renter for the commercial buildings was informed by the Building Department that the use is not permitted on this property, he (Mr. Pellicano) did not know that they could not be used for commercial purposes.

Mr. Pellicano stated that this is a unique neighborhood in that there are residential and commercial uses.

In response to a question from Mrs. desJardins, Mr. Pellicano stated that he plans to move in to the home and has decided to take it off the market.

In response to a question from Mr. Chiacchia, Mr. Pellicano stated that he does have a business interested in leasing the commercial buildings, but he is trying to decide if the use is appropriate since he plans to live in the home. He noted that he has a lease with a painting contractor, but he has not signed the lease yet. He stated that the lease contains many rules he would want the company to adhere to, such as not parking any vehicles where they can be seen from the road, no smoking, no fumes, etc. He also noted that the painting contractor would not have a showroom.

Mr. Pellicano stated that the neighbors are used to having Hamburg Overhead Door on this property for many years.

Dr. Merrily Kuhn, 6748 Boston State Road, stated that she objects to the granting of the requested variance, and she does not want any business to occur on the applicant's property. She stated that she did not object when the property was being used by Hamburg Overhead Door because the owner of that business was her brother. She stated that she does not want cars going in and out of the applicant's property all day.

Dr. Kuhn stated that she is not concerned so much with what the applicant might do with the commercial buildings, but rather what a subsequent owner of the property might do.

Dr. Kuhn submitted correspondence from Donna Kuhn, 6693 Boston State Road, which Chairman Rybczynski read as follows:

"To whom it may concern:

We do not want commercial zoning at 6736 Boston State Road, Hamburg, NY 14075 property. Thank you."

Mr. Pellicano stated that there are many uses allowed in this zoning district he could have on his property that would produce far more traffic than what he would like to do. He further stated that he has to find a use for those buildings because he plans to live on the property. He stated that the buildings are too nice to let deteriorate, and he cannot pay \$51,000 per year to just keep them standing there.

Mr. Pellicano noted that it is ironic that the only people opposed to his variance request built the commercial buildings in question.

In response to a question from Mrs. Falkiewicz, Mr. Pellicano stated that the lease he has with the painting contractor is for three (3) years, and he does have the option to buy the contractor out of the lease in two (2) years if he does not want them there anymore.

Findings:

The application was left on the table.

Application # 5690 Bernard & Jacqueline Dowdall - Requesting an area variance for a proposed fence at 5489 Southwestern Boulevard

Ms. Sherry Dodge, 4719 Morgan Parkway, stated that she will be leasing the space on this property for a doggie daycare business. She stated that she would like to install an eight-foot fence rather than a six-foot high one because she feels the added height will be safer for the dogs.

Mr. George Pavlov, 5487 Southwestern Boulevard, asked to be shown where the fence would be located relative to his property.

In response to a question from Mr. Chiacchia, Ms. Dodge stated that the business will close at 6:00 P.M. She noted that there might be training going on after 6:00 P.M., but the dogs will be with their owners and the trainer.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Ms. Hahn, to approve Application # 5690.

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 – The applicant could erect a six-foot high fence, but that would endanger the animals that might jump the fence.
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 tilts to approval.

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

Application # 5691 Michael Sullivan - Requesting an area variance for a proposed front porch at 4693 Pineview Drive

Michael Sullivan, applicant, stated that he would like to construct a porch across the front of his home. He submitted correspondence from four (4) nearby property owners who do not oppose his requested variance as follows:

- Keith Ryan, 4681 Pineview Drive
- Darren Labedz, 4701 Pineview Drive
- Ronald Krawiec, 4682 Pineview Drive
- Michael Springer, 4716 Pineview Drive

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5691.

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 tilts to approval.

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

Application # 5692 Crawford Lafayette Barton LLC - Requesting an area variance for a proposed attached garage at 3941 Washington Avenue

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5692.

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

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of June 6, 2018. All members voted in favor of the motion.

Chairman Rybczynski thanked Shawn Connolly for his over ten years of service to the Board of Zoning Appeals and wished him well in his endeavors. He noted that he wanted the Board's appreciation to be on the record.

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

The meeting was adjourned at 8:10 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: July 23, 2018