

Town of Hamburg  
Board of Zoning Appeals Meeting  
August 7, 2018  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, August 7, 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 Chiacchia read the Notice of Public Hearing.

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

Zachary Miller, applicant, stated that he previously requested a variance for a new detached garage, and the application was tabled. He stated that the main concern of the Board at that time was how the proposed garage would affect the most immediate neighbor, so he spoke to his neighbors and they signed letters of support. He submitted letters from July Lamb, 4244 Meadowbrook and George Kales, 4229 Meadowbrook indicating that they are not opposed to the new garage.

Mr. Miller stated that he would like the garage to be where it was originally proposed and the size that was originally proposed (40' X 40').

In response to a question from Ms. Hahn, Mr. Miller stated that the existing garage would be demolished.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5675.

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 – Yes, it could, if the applicant built a smaller structure.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the applicant spoke to his adjacent neighbors, both of whom do not object to the size of the proposed garage.
3. Whether the request is substantial – It is slightly substantial.
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.

As there were six (6) ayes and one (1) nay (Ms. Hahn), the motion passed. **GRANTED.**

**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 at the Board's last meeting, Board members asked Mr. Nowicki to have the Building Department inspect the partially constructed building to make sure it was properly instructed. He stated that Roger Gibson from the Building Department did inspect the building and foundation, and Mr. Gibson suggested that he (Mr. Nowicki) get an architect to document what is existing, but he decided to wait to see if the requested variances are approved before doing that.

Mrs. desJardins stated that Kurt Allen, Supervising Code Enforcement Officer, submitted correspondence to the Board indicating that it should not base its decision on these variance requests on whether or not the building as constructed meets Town Code requirements. She stated that Mr. Allen also indicated that if the variances are approved, the Building Department will make sure the building is Code compliant.

Mr. Chiacchia stated that there are a multiple number of violations, and he is uncomfortable not knowing whether the building is Code compliant at this point.

Mr. Nowicki stated that he did not violate the Code willfully.

**Findings:**

Mr. Chiacchia made a MOTION, seconded by Mrs. Falkiewicz, to deny Application # 5677.

On the question:

Mr. Chiacchia stated that there were multiple violations, and the Building Department did not have a chance to verify the drawings. He suggested that the applicant meet with the Building Department to see what can be rectified to get the building in compliance with the Town Code.

Mr. Chiacchia stated that he feels that the building should not be allowed to stand as it currently is.

Chairman Rybczynski stated that the Supervising Code Enforcement Official, Kurt Allen, indicated in his correspondence to the Board that upon the determination of the Board on this matter, the applicant will be required to provide architectural drawings prepared by a licensed design professional that depict the actual construction of the accessory structure. He noted that Mr. Allen indicated that this necessary requirement will allow the Building Department to review the plans and insure compliance with applicable Building codes.

Chairman Rybczynski stated that if this variance is denied, the applicant will have to start dismantling the building.

As there were four (4) ayes (Mr. Chiacchia, Mrs. Falkiewicz, Ms. Hahn and Mr. Ginnetti) and three (3) nays (Chairman Rybczynski, Mr. Dimpfl and Mr. Gallagher), the motion passed. **DE-NIED.**

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

Mr. Chris Pellicano, brother of the applicant, stated that Mario Pellicano's flight was delayed, and therefore he could not be present. Mr. Pellicano stated that 6736 Boston State Road was commercial property when Mario purchased it, and he plans to lease the commercial buildings in the rear of the property.

In response to a question from Mr. Chiacchia, Mr. Pellicano stated that the home on the property is still under construction, and he has no idea when Mario will move in to the home.

Dr. Merrily Kuhn, 6748 Boston State Road, stated that her property is adjacent to Mr. Pellicano's property. She stated that she owned the property at 6736 Boston State Road, along with her current property, years ago, and to her knowledge it was never anything other than farmland. She asked the Board to keep it farmland.

Dr. Kuhn submitted the following letter from Mr. John Doyle, 6778 Boston State Road:

"Dear Mr. Rybczynski:

My name is John Doyle, along with my wife Kathleen and our two children, I reside at 6778 Boston State Road. We have lived at this residence for 19 years and have watched our end of Boston State Road slowly improve due to the exit of "grandfathered" commercial businesses in our neighborhood (Hamburg Overhead Door move to Herman Hill and the closure of Weller Excavating/Topsoil Mining). We have also observed the town enforcement of residential code violations by Hilty Tree Service at 6514 Boston State Road.

I am contacting you regarding the request of Mr. Mario Pellicano to obtain a use variance to permit the commercial use of one (or multiple) structures located on the property at 6736 Boston State Road.

Unfortunately, my wife and I are away from home, never received a notification of this zone variance request and only heard of this issue through a neighbor via text this morning. We have had no time to gather our thoughts concerning this issue, cannot attend the zone control board meeting tomorrow and can only offer this letter as our input.

We strongly oppose the commercial rezoning of any residential property on Boston State Road. Commercial rezoning would mean that any commercial endeavor could lease space within the building(s) in question. Although it is my understanding that the potential tenant would be using the leased space for storage of vehicles and equipment, what happens if that tenant doesn't lease the property, goes out of business or breaks the lease after 3 months? At that time, due to the commercial zoning, the property could be leased to any tenant for any commercial use. Depending on business, the use of this property could bring significant additional traffic to Boston State Road, resulting in additional public safety issues. Traffic on Boston State Road is already heavy, additional traffic entering and exiting at this location (a 45 mph zone that sees traffic at far higher speeds on a regular basis) is certainly cause for concern.

I also question how the waste lines (sewer and/or floor drains) in the building(s) in question are connected to dispose of liquid waste. Are the waste lines connected into the public sewer system? Does the floor drainage system drain into the ground? Are they piped to 18 Mile Creek? Will this prospective tenant (or any other tenant) be using cleaning chemicals to clean the equipment used in their course of business? If so, how will these chemicals and/or waste be disposed of? Who will monitor the disposal of said chemicals/waste to make sure they don't find their way into the public sewer system, our ground water or 18 Mile Creek?

If the town does approve commercial zoning for one or more buildings on this property, isn't the town setting a precedent that will enable any other resident on Boston State Road or any other road in the town to obtain commercial zoning for any "accessory" building on their property to set up a commercial business? If the town approves the commercial zoning for this property, isn't the town setting itself up for litigation issues by any town resident denied such variance in the past or in the future?

In addition, if the requested variance for commercial use is approved for Mr. Pellicano, I would think the Town of Hamburg is subjecting itself to potential immediate legal action by Hilty Tree

Service. It is my understanding that Hilty attempted to obtain a similar variance from the town to store his equipment in a barn or outbuilding behind the business owner's home located at 6514 Boston State Road. It is my understanding that the commercial zoning variance was disapproved and that Mr. Hilty was fined for continuing to store his equipment on the property. I did not approve of Mr. Hilty's actions and did not support his request for commercial re-zoning. I am simply stating that if I were Mr. Hilty and found out that another property a half mile down the road from mine was approved for commercial rezoning and my request had been denied, I would be suing this town for every dime my attorney could get me.

I would also offer that if this commercial rezoning is approved, what would stop Hilty Tree Service or any other tree service company from leasing space from Mr. Pellicano? We would potentially find ourselves fighting the exact same battle that occurred several years ago... tree service equipment located in a residential area, tree branches being hauled back to the property, cut up for firewood, wood scraps burned on site, resulting in noise pollution from the saws and chipping equipment, smoke pouring across Boston State Road.

I would also like to point out that none of the buildings at 6736 Boston State Road were approved for commercial use when Mr. Pellicano purchased the property. It is my understanding that Mr. Pellicano is now claiming that in order for him to afford retention of this home, he needs the town to approve commercial use of one or more of the accessory buildings so he can lease commercial space. I would suggest that it is irresponsible for Mr. Pellicano to have purchased this home if he didn't have the financial means to purchase it AS IS. It is not the town's responsibility to rezone residential areas to commercial use to enable Mr. Pellicano to retain ownership of this property.

Boston State Road provides a park-like thoroughfare into our community. It is the only major route into our town that is not tainted with businesses. The introduction of commercial ventures along this route would compromise the character of this east entryway into our village.

I apologize that I was unable to attend this meeting. Thank you for taking the time to consider my input in this matter. If you would have any questions, please feel free to contact me.

Sincerely,

[John Doyle](#)

716-392-6928"

In response to a question from Mr. Chiacchia, Dr. Kuhn stated that there were no problems when Hamburg Overhead Door occupied the commercial buildings in the rear of the property. She stated that she is concerned about what would happen if Mr. Pellicano sells the property to a commercial use that is not in keeping with the neighborhood.

Mr. Paul Pellicano, father of Mario Pellicano, stated that Mario is constructing a beautiful home, and therefore he has a lot of reason to make the property look nice. He stated that Dr. Kuhn did not have a problem when her brother owned the property and ran Hamburg Overhead Door out of it, and now she has a problem with what Mario would like to do with the property.

Lisa Golab, 6698 Boston State Road, stated that she and her husband live next door to Mr. Pellicano's property and were not notified of the variance request. She stated that they purchased the property in June 2018 and believe that the notification went to the previous owner of her property. She asked the Board not to vote on the variance request until she and her husband have time to review the request.

Mr. and Mrs. Golab expressed concern about the creek near their property into which runoff from the commercial business might go.

Mr. Golab stated that he would like Mr. Pellicano's property to remain residential, and they are concerned about the possible increase in traffic on an already busy road.

Mrs. Faith Webber, 6751 Boston Road, stated that she and her husband have lived across the street from Mr. Pellicano's property for 42 years, and during that time the properties in this area have been zoned residential. She stated that they did not receive any notification of the use variance request and just heard about it recently, and therefore they did not get time to analyze the request or prepare for the meeting.

Mrs. Webber stated that she and her husband are strongly opposed to the granting of this variance and want this area to remain residential. She stated that allowing commercial use of the applicant's buildings would degrade the value of the surrounding properties and the residential area.

Mrs. desJardins clarified that if this use variance is approved, it will not constitute a change in the zoning of Mr. Pellicano's property. She stated that the granting of a use variance would allow a use on the property that it not permitted in the Residential-Agricultural District.

Mrs. Webber stated that there is no excuse for her not being notified. Mrs. desJardins advised Mrs. Webber that the Town notifies all property owners within 100 feet of the subject property.

In response to a question from Mr. Chiacchia, Mrs. Webber stated that when Hamburg Overhead Door used the buildings behind Mr. Pellicano's home, at times it was difficult to get in and out of her driveway.

Mrs. Webber stated that she does not want any type of industrial or retail use on Mr. Pellicano's property, noting that this area has been residential for over one hundred years.

Jeff Klass, 6741 Boston State Road, stated that he lives directly across the street from Mr. Pellicano's property and wanted to go on the record as being strongly opposed to the granting of the use variance. He stated that when he purchased his home 11 years ago, it was with the understanding that this area is residential. He stated that he has made a significant investment in his property and is concerned that future values would decrease if commercial activity is going on across the street.

### **Findings:**

Mrs. Falkiewicz made a motion, seconded by Mr. Dimpfl, to table this application until the applicant can be at the meeting.

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 4931 Washington Avenue**

Mr. Dave Crawford, applicant, stated that this home is one of three (3) he recently purchased and put a lot of money into, and he plans to rent them out. He stated that he would like to widen the existing attached garage and keep the same front plane, which is the same as the other homes on the street. He stated that he has been advised that if he puts the garage seven (7) feet further back, he will not need a variance, but he feels this would not look as nice.

Mrs. desJardins stated that she received a phone call from someone who lives adjacent to this property, and he was thrilled to see the home being improved.

**Findings:**

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

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, it will actually approved it..
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 # 5693 Don Vail - Requesting an area variance for a detached garage at 5126 Fairgrounds Road**

Mr. Don Vail, applicant, stated that he would like to demolish his existing garage that is quite old and build a new garage that would be shorter in length but approximately 12 feet deeper.

Mrs. desJardins stated that she received a phone call from a nearby property owner who has no objections to Mr. Vail's plans.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5693.

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 – It could be argued that it is substantial.
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 # 5694 GNS Group Ltd - Requesting an area variance for signage at 6000 South Park Avenue**

Mr. Todd Lanthier from GNS Signs, representing the applicant (Planet Fitness), stated that 117 sq.ft. of wall signage is all that is permitted by Code, but this building is set a good distance from the road, and it is a very large storefront. He stated that signage the meets the Code would not be very visible from the road.

Mr. Lanthier stated that Benderson Development, owner of the building, submitted a letter of support for the requested wall signage, as well as documentation of how hard it would be to see the wall signage if it was only 117 sq.ft. He stated that Planet Fitness needs a larger sign that can be read from the road.

In response to a question from Chairman Rybczynski, Mr. Lanthier stated that the wall signage proposed would be very much in keeping with what is already on the building and is proportional with the storefront.

Mrs. desJardins stated that she received a phone call from the optician whose office is nearby, and he does not object to the size of the proposed signage.

**Findings:**

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5694.

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, due to the size of the building and the offset from the street.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – It could be argued that it is substantial, but it is in line with the other signage in the plaza.
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 # 5696 Kathleen King - Requesting an area variance for a proposed driveway at 4716 Clifton Parkway**

Chairman Rybczynski read the following excerpt from the Town Code regarding access drives, parking areas and walkways:

“...should be located no closer than five (5) feet from any property line unless otherwise approved by the Town Engineer.”

Chairman Rybczynski asked the applicant if she requested approval from the Town Engineer. The applicant's friend stated that he did speak to the Engineering Department and did not get anything in writing from that department indicating that locating the driveway less than five (5) feet from the property line was not approved.

The applicant's friend stated that the Engineering Department advised him to seek a variance.

Mrs. desJardins stated that the Town Engineer informed her that that department would not even consider the request with a letter from the adjoining property owner indicating that he is not opposed to what the applicant wishes to do.

In response to a question from Chairman Rybczynski, Ms. King stated that she has not spoken to the adjacent property owner about this proposal.

Chairman Rybczynski stated that the ZBA grants relief from the Town Code, and the applicant has not been injured by the Code yet because the Engineering Department has not denied her request to locate the driveway closer than five (5) feet from her property line.

Chairman Rybczynski stated that it would be premature to have a discussion about this application until the Town Engineer has told the applicant "no".

Mrs. desJardins clarified that the Engineering Department did not deny the applicant's request, but rather that department advised her friend that it needs a letter from the adjoining property owner before it will consider the request. She noted that the Engineering Department is still waiting for the letter from the adjoining property owner.

Mr. Walter Jaros, 4712 Clifton Parkway, stated that he is the adjoining property owner and asked what the process would be if he does not give the applicant the letter she needs. Chairman Rybczynski stated that if that is the case, the applicant can return to the ZBA and request a variance at that time.

Mrs. desJardins stated that if Mr. Jaros does not give the applicant the letter she needs, the Engineering Department will not deny the request to locate the driveway closer than five (5) feet from the property line, but will instead simply say that it will not consider the request.

Chairman Rybczynski stated that if the Engineering Department refuses to act, and the applicant is unable to move forward and get a Building Permit, the applicant will be aggrieved and can seek a variance.

**Findings:**

The application was left on the table.

**Application # 5697 Woodlawn Fire Department – Requesting a use variance to allow an existing digital sign at 3281 Lakeshore Road**

Mr. Brent Joskar from All American Signs, representing the applicant, stated that the Woodlawn Fire Department applied for a grant from FEMA for a digital sign to raise awareness and increase membership. He stated that he (Mr. Joskar) was contracted to erect the sign with the understanding that the Fire Company would be obtaining the required Building Permits, so he erected the sign. He stated that subsequent to that he was advised that no Building Permit was



obtained for the sign and it is not a permitted use in the zoning district in which the building exists, so the power for the sign was pulled.

Mr. Joskar stated that nothing was done purposefully. He noted that if he knew a variance was required, he would have applied for one initially.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Ms. Hahn, to approve Application # 5697.

On the question:

Mr. Dimpfl reviewed the use variance criteria as follows:

1. Applicant cannot realize a reasonable rate of return – substantial as shown by competent financial evidence – No.
2. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood – Everyone needs more signage.
3. The requested variance will not alter the essential character of the neighborhood – It will not.
4. Whether the alleged difficulty is self-created – No.

Chairman Rybczynski stated that the applicant applied for and received a FEMA grant for \$35,000, and federal money is not easy to come by. He stated that losing that money would be significant to the fire company.

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

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of July 10, 2018. All members voted in favor of the motion.

Chairman Rybczynski stated that the Board would be adjourning in the memory of Ms. Hahn's mother.

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

The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: September 11, 2018