

Town of Hamburg  
Board of Zoning Appeals Meeting  
September 13, 2018  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Thursday, September 13, 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 # 5689** Mario Pellicano - Requesting a use variance to allow the commercial use of an accessory structure at 6736 Boston State Road

Mario Pellicano, applicant, stated that he had previously presented his situation to the Board and apologized for not being able to attend the Board's August meeting. He stated that he was aware that at the August meeting, some neighbors attended who had concerns about his plans.

Mr. Pellicano stated that he understood that some neighbors were concerned about what would happen if the variance is granted, he sells the property and the next owner does not take as much care as he (Mr. Pellicano) would in making sure the commercial tenant is good for the neighborhood. He stated that he believes that if someone is able financially to buy the home he is remodeling and plans to live in, then that person would not put a disruptive tenant in the commercial buildings on the property.

Mr. Pellicano stated that, although he did not have the proposed lease with him that evening, he does have a provision in that lease, as well as any other leases he might write, that gives him the right to buy the lease out at any time. He noted that this provision would be to protect him in case the tenant turns out to be a bad one.

In response to a question from Mr. Chiacchia, Mr. Pellicano affirmed that he purchased the property for a considerable amount of money and does not intend to move away. He further noted that leasing the commercial buildings would help pay the considerable taxes on the property.

In response to a question from Mr. Chiacchia, Mr. Pellicano stated that when he purchased the property he knew the commercial buildings were there, but he did due diligence by researching the history and finding that Hamburg Overhead Door did appear before the ZBA in December 1992 to apply for a use variance, and he (Mr. Pellicano) could not find anything indicating that the requested use variance was denied. He further stated that his realtor spoke to the Building Department and was told that the buildings could continue to be used for commercial purposes as long as the use was not discontinued for a period of one (1) year. He noted that this information given to his realtor was probably not accurate.

Mr. Chiacchia stated that he spoke to the Building Department and was informed that that department has no record of any use variance being granted for this property.

Mr. Pellicano stated that he would not have purchased this property if he had known that neither a variance nor a special permit exists for the commercial use of the buildings.

Mr. Pellicano stated that the buildings on the property were constructed for commercial use, and there is a truck dock there. He stated that he was told that there used to be 20+ trucks there, as well as at least 30 employees, when the property was used by Hamburg Overhead Door.

Michael Hilty, 6514 Boston State Road, stated that he requested a use variance a number of years ago, and he recently received an anonymous letter that Mr. Pellicano was requesting a use variance as well. He stated that he is in favor of the granting of the requested variance, and if the variance is granted, the Town of Hamburg should reverse every decision made against him (Mr. Hilty) in the past.

Mr. Hilty asked when the last time was that Jeff Kuhn ran his business (Hamburg Overhead Door) at 6736 Boston State Road.

Mr. Pellicano responded that as far as he knows, Hamburg Overhead Door ran its business at 6736 Boston State Road from approximately 1984 until 2011, and in 2011 the property was sold to Scott Ennis from Vinyl Outlet. He noted that Scott Ennis ran that business at 6736 Boston State Road from 2011 until 2017 and still stores product in one of the buildings on this property.

In response to a comment from Mr. Hilty, Chairman Rybczynski stated that it is not the mandate of the Board of Zoning Appeals to judge whether or not there has been continual business run out of this property. He stated that the Board's mandate from the State is to judge the applicant's application based upon criteria provided to it by the State. He further stated that each individual case is judged on its own merits.

Attorney Harbold informed Mr. Hilty that Mr. Pellicano's use variance request is specific to the property located at 6736 Boston State Road. Chairman Rybczynski added that Mr. Hilty's case means nothing to Mr. Pellicano's case.

An attorney representing Tim and Faith Webber, 6751 Boston State Road, stated that Kurt Allen, Supervising Code Enforcement Official, submitted a letter to the Board dated August 3, 2018 that confirmed that there were no prior Special Use Permits or variances granted with respect to this property. She stated that any businesses operating at 6736 Boston State Road were therefore unlawful.

The attorney for the Webbers stated that there is no evidence before the Board as to what business operations were going on during the time that Scott Ennis owned the property. She stated that it appears that a prospective tenant visited the Building Department to see if that use was permitted on at 6736 Boston State Road, rather than the owner of the property. She stated that therefore the hardship of not being aware that no variances were ever granted was created by the applicant.

The attorney for the Webbers stated that the nearby residents should not have to accept a spot zoning situation simply because the purchaser failed to check on whether or not he had the authority to run a business out of this property.

The attorney for the Webbers stated that the previous businesses at this address probably laid low and tried not to create any problems because the owners probably knew there were no approvals given for them to operate there. She noted that if the Board now grants a use variance for a business to be operated at this location, there will not be efforts made to minimize the effect of the business on the surrounding property owners, traffic and the environment.

The attorney for the Webbers stated that Mr. Pellicano's idea of what type of business would be appropriate on his property and the surrounding residents' idea of the same may not be aligned,

so it may not satisfy the nearby residents to hear that Mr. Pellicano will decide what is an acceptable business on his property.

Mr. John Doyle, 6778 Boston State Road, stated that when Mr. Pellicano purchased this property, he should have been fully aware that it was not approved for commercial use. He stated that Kurt Allen, Supervising Code Enforcement Official, indicated to him that when Hamburg Overhead Door was operating out of this property, it was done illegally.

Chairman Rybczynski reviewed the use variance criteria for the public's information and asked the members of the public to kindly stick to those criteria when speaking on the requested variance.

Mr. Doyle stated the nearby property owners have no idea what type of commercial business Mr. Pellicano will allow on his property, and therefore they cannot know at this point what type of effect the commercial use would have on the neighborhood. He stated that he understands that Mr. Pellicano plans to be selective in choosing what type of commercial use he allows on his property, but he (Mr. Doyle) worries about what would happen if Mr. Pellicano were to sell the property, since the use variance would run with the property.

Mr. James Kulwicky, 6748 Boston State Road, stated that he has owned his property since 1980, and he is strongly opposed to the granting of the use variance. He stated that he is concerned about what would happen if Mr. Pellicano's property is sold and the variance has been granted. He further stated that he is concerned about the environmental effect of commercial uses being so close to Eighteen Mile Creek.

Mr. Nathan Smith, 6758 Boston State Road, stated that he has lived in the neighborhood since Mr. Kuhn (Hamburg Overhead Door) sold the property to the Vinyl Outlet. He stated that he agrees with both Mr. Doyle and Mr. Kulwicky.

Wally Klubek, 6808 Boston State Road, stated that his back yard is adjacent to the area where the commercial buildings are located on Mr. Pellicano's property, and his main concern is noise. He stated that he agrees with the other residents who spoke before him.

Mr. Pellicano stated that he did do due diligence on the property and could not get an answer, so he researched the property and found the ZBA minutes from 1992 regarding Hamburg Overhead Door. He stated that his licensed realtor then visited the Town and informed him that there was a Special Use Permit granted for the commercial use on the property. He stated that he absolutely did think that commercial uses were allowed on that property or he would not have purchased it. He stated that he did not create this problem; rather it was created in 1992 when the commercial buildings were built without the appropriate approvals. He stated that he did his due diligence before he purchased the property and not after.

Mr. Pellicano stated that he agrees with the nearby residents that they want to keep the neighborhood the way it is, but Boston State Road is a very busy road, 4/10 of an acre away is the Hamburg Brewing Company that generates a lot of traffic and any commercial use of his property would not alter the traffic loads greatly.

Mr. Pellicano stated that he is going to do something with the commercial buildings on his property, and he asked the Board to grant the use variances with exclusions such as no retail allowed, no gas stations, etc. He stated that Apollo Concrete is the business he would like to allow on his property. He stated that no work would be done on his property, and the buildings would only be used for storage.

In response to a question from a member of the public, Chairman Rybczynski stated that whenever a use variance is granted with reasonable restrictions, those restrictions and the variance

run with the property, regardless of who the owner is. He noted that the Board is not in the habit of placing long term restrictions on property because they are hard to enforce.

Mr. Chiacchia stated that the Board should not allow a commercial business in that area because it is a very well kept and exclusive area. If he stated that if the Board allows this, other people might think they can sell their properties to commercial ventures.

A member of the public asked that the Board ask Mr. Allen when Mr. Pellicano inquired about the legality of utilizing the commercial buildings on the property.

### **Findings:**

Mr. Chiacchia made a MOTION, seconded by Mrs. Falkiewicz, to deny Application # 5689.

On the question:

Mr. Chiacchia stated that Mr. Pellicano tried to do good research before purchasing the property, but he failed. He stated that two (2) wrongs do not make a right, and there are many residents opposed to the requested variance. He stated that it is unjustified to have a commercial business in this residential area.

Chairman Rybczynski stated that by the applicant's own admission, there are things he can do in the commercial buildings on the property, and that means that a return can be realized on the property. He stated that because there are viable options that can be taken by the applicant, it is difficult to look at the request any other way.

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

### **Application # 5698 Christopher Boglev – Requesting an area variance for a proposed shed at 5544 Pebble Beach Drive**

Christopher Boglev, applicant, stated that he would like to put up a shed on his property that would be two (2) feet from the side property line instead of the required five (5) feet. He submitted photos of his property, as well as an approval letter from the Homeowners' Association (HOA) for his subdivision.

Mr. Boglev stated that he had two (2) large pine trees that had to be removed in the area where the shed is proposed, and he would like to locate the shed closer to the property line than what is allowed so it does not impede his view from his dining room window. He stated that he plans to plant arborvitaes around the shed so that it blocks his adjacent neighbor's view of it.

In response to a question from Mrs. desJardins, Mr. Boglev stated that he does not have enough room on the other side of his property to locate a shed, and the rear of his property is wet.

Laurie Pascarella, adjacent property owner, stated that she was shocked when the applicant removed the large pine trees between their properties. She stated that the shed as proposed would be located two (2) feet from her concrete patio, and there are no sheds in the area because when she moved in she was told that they are not allowed in the neighborhood. She stated that she does not a shed that close to her patio.

Mrs. Pascarella noted that the applicant is the president of the HOA.

Mrs. Pascarella submitted letters from the following nearby property owners expressing their objection to the granting of the variance:

- Jon Gaspar, 5507 Pebble Beach Drive

- Michael Coene, 5492 Pebble Beach Drive
- Gary Rager, 5464 Pebble Beach Drive
- Shawn Hoffstetter, 5484 Pebble Beach Drive

Mr. Boglev stated that Mrs. Pascarella built a patio closer than the required five (5) feet from the property line they share. He noted that her concrete patio is 3” off the property line.

Mrs. desJardins stated that no concrete can be located closer than five (5) feet from a side property line.

**Findings:**

Chairman Rybczynski stated that he would be recusing himself from the deliberations because he knows the applicant, as well as the neighbors.

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5698.

On the question:

Mrs. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – He could put the shed elsewhere on the property, but then it would block the view of the golf course.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No because additional landscaping will be added where the trees that were taken down were.
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.

As there were five (5) ayes, one (1) nay (Mr. Gallagher) and one (1) abstention (Chairman Rybczynski), the motion passed. **GRANTED.**

**Application # 5699 Thomas Polisoto – Requesting an area variance for an addition/re-build at 45 Wanakah Heights**

Thomas Polisoto, applicant, stated that he is planning to build pier supports on the rear of the remodeled home that would protrude two (2) additional feet into the rear yard. He stated that this was on the plans when the Board approved area variances for the home in 2017.

Mr. Polisoto stated that there would be more space between this home and the adjacent home than there is between other homes in Wanakah Heights.

Mr. Polisoto stated that what concerns him the most is the structural integrity of the wall.

A member of the public stated that this would be the only two-story home in Wanakah Heights, and she is not happy with that.

Mr. Blase Evancho, 44 Wanakah Heights, stated that he is very concerned about the two-story home the applicant is constructing, noting that he will not be able to ever see the sun.

**Findings:**

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5699.

On the question:

Mrs. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought 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 # 5700 Ryan & Ashley Churchman – Requesting an area variance for a proposed detached garage at 3730 Horton Avenue**

Ryan Churchman, applicant, stated that he has a 650 sq.ft. detached garage that was built before he purchased the property, and he would like to demolish that and build a new garage. He stated that the total square footage of the new garage and an existing shed on the property exceeds the maximum allowed per Town Code. He stated that he has a lot of items he needs to store.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5700.

On the question:

Mr. Dimpfl reviewed the area variance criteria as follows:

1. Whether the benefit sought 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 because the applicant plans to demolish the existing garage.
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 # 5702 Randy & Margaret Blenski – Requesting a use variance to alter a single-family home to create a two-family dwelling at 4407 Parker Road**

Mrs. desJardins stated that the applicant had withdrawn the request for a use variance.

**Application # 5703 James & Maria Kern – Requesting an area variance for a proposed new detached garage at 5730 Old Lakeshore Road**

Mr. Chris Tucker, builder, stated that the applicants' existing garage was built in 1920, and the applicants would like to replace it with a new garage in the same location. He stated that the new garage would be the same distance from the side property line as the existing garage (2.47 feet), which is less than the required five (5) feet.

In response to a question from Chairman Rybczynski, Mr. Tucker stated that the new garage would be constructed in the same footprint as the existing garage.

Maria Kern, applicant, submitted letters of support from the following nearby property owners:

- Douglas Williams, 5734 Old Lakeshore Road
- Nicholas Acanfora, 5727 Old Lakeshore Road
- Leona Rockwood, 5724 Old Lakeshore Road

Mr. Tucker stated that the new garage would not adversely affect any neighbors, nor would it affect traffic.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mrs. Falkiewicz,, to approve Application # 5703.

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.**

Mr. Ginnetti made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of August 7, 2018. All members voted in favor of the motion.

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

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: September 24, 2018