

Town of Hamburg  
Board of Zoning Appeals Meeting  
January 8, 2019  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, January 8, 2019 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 Joe Boncore, Building Inspector.

Chairman Rybczynski asked for a moment of silence to honor our soldiers who have paid the ultimate sacrifice.

Chairman Rybczynski made a motion, seconded by Mr. Ginnetti, that the Vice-Chairman and Secretary remain the same for 2019. All members voted in favor of the motion.

Commissioner Chiacchia read the Notice of Public Hearing.

**Application # 5720** Camping World – Requesting a use variance and an area variance for a proposed electric fence at 5533 Camp Road

It was determined that because the applicant owns two (2) adjoining properties and the Building Department was not aware of this fact, not all of the property owners who should have been notified were. It was further determined that the applicant would not be heard at this meeting, and the proper property owners will be notified for the Board's meeting in February.

**Application # 5721** James DeMarco – Requesting two (2) area variances for a proposed subdivision at 5054 Lakeshore Road

Mr. Boncore stated that the applicant is asking for approval from the Planning Board to subdivide this property into two (2) parcels, and two (2) area variances are required in order to do that.

**Findings:**

Mr. Dimpfl noted that if the variances are granted, a condition of approval would be that the structure that currently houses two (2) apartments would have to only house one (1) apartment.

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5721.

On the question:

Mr. Ginnetti 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 towards approval.

Mr. Dimpfl stated for the record that the existing garage will only have one (1) apartment.

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

**Application # 5722** James Sickau – Requesting two (2) area variances to combine two (2) parcels to create one (1) lot adjacent to 3985 Buffalo Avenue

It was determined that the applicant was not in attendance. Chairman Rybczynski stated that the applicant would be left on the table.

**Application # 5723** Donald & Ida Aherns – Requesting a use variance to all the reconstruction of a non-conforming residence at 4971 Clark Street

Mr. Boncore stated that the applicant's residence is a non-conforming pre-existing structure.

Attorney Matthew Laufer, representing the applicant, stated that the applicant is in the process of selling this property and is about to close, and because this is a residential structure on a commercially zoned property, the financing company will not allow the parties to close until a variance is received allowing the home to be rebuilt if more than 50% of it is destroyed.

Attorney Laufer stated that the home has been used for residential purposes since 1922, so the hardship was not self-created. He further stated that the variance will not alter the essential character of the community because the applicant's property is mostly surrounded by other residential properties. He noted that if the use variance is not approved, the applicant will not be able to sell this property, and that would be a substantial financial hardship.

In response to a question from Chairman Rybczynski, Attorney Laufer stated that the market does not exist in this area for commercial uses.

Attorney Laufer submitted the following letter from Marie Ely-Leggett, realtor:

"To whom it may concern:

The property located at 4971 Clark Street was listed for sale on November 2, 2018 by myself, Marie Ely-Leggett. We received a contract of sale a few weeks later. The homeowners Donald and Ida (Mary) Ahrens accepted this contract. The buyer will be living in the home. We are in need of a use variance, as the bank will not finance a commercial property. Don and Mary didn't realize their property was zoned commercial.

Mary grew up in the home and mother lived there until her passing in early 2000. This has been used as a residential home since at least 1900. It doesn't make sense being zoned commercial, as you couldn't park more than 2 vehicles. The driveway is single width, without a possibility of expansion. Also, the layout is of a residential home, not a business. I truly appreciate your time and consideration in the matter.

Sincerely,

Marie Ely-Leggett"

Chairman Rybczynski read the following letter from Kurt Allen, Supervising Code Enforcement Official:

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

The subject residential property is located in a C-1 (Local Retain Business District). The residential use of the property is deemed a permitted nonconforming use, as it was established prior to the adoption of its overlay zoning per Town Code Section 280-291. The applicant currently seeks a use variance for relief of the provisions of Zoning Code 280-288 and 280-294 Restoration.

This property (in addition to surrounding residential properties in the Armor locale) has been recommended by the Town Code Review Committee to be rezoned to a zoning which will allow residences within the district. This rezoning process has been initiated, and it is anticipated that it will be finalized and adopted by the Town in the next several months. Once adopted, there would be no need for this variance; however the applicant requires relief now from this Code provision in order to close on the pending property transaction.

I hope this information is useful in making your determination on this applicant. Thank you for your attention to this matter.

Respectfully submitted,

Kurt Allen”

In response to a question from Ms. Falkiewicz, Attorney Laufer stated that the pending contract for the home is for \$136,000, and the applicant has invested approximately \$60,000 in the home to date, not including closing costs of approximately \$12,000.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Ms. Hahn, to approve Application # 5723.

On the question:

Ms. Falkiewicz reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return – substantial as shown by competent financial evidence – The applicant has shown that a substantial amount of money has been put into this property, and approximately \$72,000 would be lost.
2. Alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – The situation is unique because the home is residential in nature, and the family has lived there since the 1920s.
3. Requested variance will not alter the essential character of the neighborhood – It will not alter the essential character of the neighborhood.
4. Alleged hardship has not been self-created – The hardship was not self-created because the zoning has changed over the years since the family has lived there.

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

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of December 4, 2018. All members voted in favor of the motion.

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to adjourn the meeting. All members voted in favor of the motion. The meeting was adjourned at 7:20 P.M.

Respectfully submitted,  
L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: January 21, 2019