

Town of Hamburg
Board of Zoning Appeals Meeting
March 5, 2019
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, March 5, 2019 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, 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.

Excused: Commissioner Louis M. Chiacchia

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military.

Commissioner Falkiewicz read the Notice of Public Hearing.

Tabled 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It was determined that the applicant had withdrawn the request for variances.

Application # 5724 Ronald Rubino – Requesting two (2) area variances for a proposed new dwelling at 5057 Lakeshore Road.

No one appeared on behalf of the applicant, and the request was left on the table.

Application # 5725 Scott & Emily Handschumaker – Requesting an area variance for a proposed fence to be located in the front yard of 5447 Old Lakeshore Road

Emily Handschumaker, applicant, stated that she would like to install a five-foot high fence in her yard for her dogs. She stated that the rear of her home faces her front yard, and that is where she would like the five-foot high fence to go.

Members agreed that there does not seem to be any line of sight issues with the request.

Lynn Rudnicki, 5441 Old Lakeshore Road, stated that her property is adjacent to the applicants', and she feels that this request is substantial because she is not used to fences and does not want one near her property. She stated that the fence would be an undesirable change to the character of the community because it would negatively impact her view of the lake.

Mrs. Rudnicki stated that there is a natural boundary between her property and the applicants' that she and her husband have maintained for years, and that boundary would be affected by the installation of a fence on their shared property line. She further stated that the installation of the fence would lower her property value.

Mrs. Rudnicki stated that she wishes that the applicants had chosen a different property to purchase that is further out in the country.

Chairman Rybczynski reminded the audience that the applicants had the right to install a fence without ZBA approval, and the variance being requested was for one (1) foot higher than what is allowed.

Anthony Rudnicki, 5441 Old Lakeshore Road, stated that the applicant has a dog empire. Chairman Rybczynski responded that there is no limit on the number of dogs one can have.

Mr. Rudnicki stated that it appears that the applicants' home is an extension of their dog empire. He stated that the five-foot fence would obscure his view of the lake and sunsets, and the natural boundary between their properties, which he has maintained for years, would be impacted by the installation of the fence. He referenced the law of adverse possession.

Mr. Rudnicki stated that a five-foot fence would set a precedent for the immediate neighborhood, it would be unsightly and it would lower the property values in the neighborhood. He noted that the fence would cause a destruction in the sense of neighborhood.

Mr. Rudnicki stated that this request has caused him great personal and marital distress because he is bi-polar, and he balances his mental state by gardening and landscaping. He noted that he maintains the natural boundary on the property line he shares with the applicants, and the fence would be detrimental to him.

Mr. Rudnicki stated that the fence would destroy the environment and alter the existing ecosystem.

John McKendry, 5545 Truscott Terrace, stated that he is concerned that the applicants will be running a dog breeding business on the property. He stated that he would like the request tabled until the applicants refine what they want to do on the property.

Rich Steiner, 5555 Truscott Terrace, stated that the applicants purchased the property knowing what the parameters of the Town Code are, and they must produce a good reason why they want the variance in order to obtain it. He stated that he has no objection to the location of the fence but questioned the reasoning for the variance request.

Mrs. Handschumaker stated that they want the five-foot fence because their dogs are four (4) feet tall.

In response to a question from Chairman Rybczynski, Mrs. Handschumaker stated that she has no intention of conducting business at this location.

Mr. Rudnicki stated that Mrs. Handschumaker informed him when she moved in that she purchased the almost two-acre parcel for her dogs.

Board members discussed the legal notion of adverse possession.

Mary Schreiner, 5605 East Lane, stated that she is concerned about sight obstructions at the intersections of Old Lakeshore Road with Truscott Terrace, East Lane and West Lane.

Findings:

Mr. Ginnetti made a MOTION to approve Application # 5725. The motion received no second.

Chairman Rybczynski and Board members reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – An invisible fence would not keep other dogs out and may or may not be reliable. A four-foot fence can be installed without a variance, but it may not be enough to keep the dogs on the property.

2. Whether there would be an undesirable change in neighborhood character or to nearby properties – Fences can be unsightly but may or may not change the neighborhood character.
3. Whether the request is substantial – One (1) foot is not substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes.

Ms. Falkiewicz seconded Mr. Ginnetti's motion to approve Application # 5725.

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, the dogs are large.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the fence will be black chain link.
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 – Yes.

As the vote on the motion was four (4) ayes and two (2) nays (Mr. Dimpfl and Mr. Gallagher), the motion passed. Carried.

Application # 5727 WNY Gasoline LLC – Requesting three (3) use variances and one (1) area variance to reface an existing detached sign at 4973 Clark Street

Mr. Gordy Sandhu, applicant, stated that he and his brother Varinder Gill purchased this property, and the pole sign has been there for 25 years. He stated that they changed the brand of gasoline they sell to Sunoco, and they would like to keep the same sign and change the wording to "Sunoco" and the current price. He noted that there is nowhere on the property that a monument sign could be placed without taking away parking spaces and obstructing sight lines for vehicles.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5727.

On the question:

Chairman Rybczynski stated that the financial hardship to the applicant is that if the variance is not approved, Sunoco would pull its branding from the business. He stated that the sign will not be moved to a different location on the property, and the location of the pole sign was considered extensively a number of years ago when it was first approved.

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

Application # 5728 Steven and Emily Tothero – Requesting an area variance for a residential addition at 3741 West View Avenue

Glenn Christner, architect, appeared on behalf of the applicants. He stated that the property is a corner lot near the Village, and the applicants seek to build a 12' X 20' addition which would

be 13.7 feet from the side property line instead of the required 18 feet.

Letters of support were received from the following nearby residents:

- Justin Witkorowski, 3742 West View Avenue
- Richard & Karen O'Dell, 3746 West View Avenue
- Angel Sutter, 6164 Marian Place

The resident at 3752 West View Avenue stated she had no objection to the requested variance.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 5728.

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.
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 # 5729 Jeremy Rui – Requesting an area variance for a detached garage at 4983 Roseview Avenue

Jeremy Rui, applicant, stated that he has outgrown his existing garage and would like to double the area of the garage. He produced letters of support from the following residents:

- Judith Connor, 4988 Roseview Avenue
- Cindy Hender, 4975 Roseview Avenue

In response to a question from Mrs. Hahn, Mr. Rui stated that the square footage of his house is 1,850.

In response to a question from Chairman Rybczynski, Mr. Rui stated that he plans to keep the existing metal shed on the property.

In response to a question from Mr. Dimpfl, Mr. Rui stated that he plans to store all of his machines, vehicles, a camper, etc. He further stated that no business would be conducted in the garage.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5729.

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, due to the size of the recreational vehicles the applicant wishes to store.
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.

As the vote on the motion was five (5) ayes and one (1) nay (Mrs. Hahn), the motion passed.

GRANTED.

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of February 5, 2019. All members voted in favor of the motion.

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

The meeting was adjourned at 8:00 P.M.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: March 19, 2019