

Town of Hamburg
Board of Zoning Appeals Meeting
August 6, 2019
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, August 6, 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 Nicole Falkiewicz, Commissioner Ric Dimpfl, Commissioner Laura Hahn, Commissioner Mark Yoder and Commissioner Jeffrey Adrian.

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 # 5745 Erie County Agricultural Society – Requesting two (2) use variances and two (2) area variances for a proposed new pole sign at the South Park Avenue entrance to the Fairgrounds

Attorney Jeff Palumbo, representing the applicant, stated that the Erie County Agricultural Society is a not-for-profit corporation. He stated that the applicant proposes to erect a new pole sign on South Park Avenue, and the applicant's property encompasses approximately 260 acres. He noted that an economic analysis study was done in 2013 relative to the fairgrounds in the State, and it indicated that in 2013 attendance at the Erie County Fair was just over one million people, 30% of which came from outside Erie County. He further noted that the study found that the spending of the people coming from outside Erie County was approximately \$75,000,000. He stated that having the Fair is a big economic boost for the community.

Attorney Palumbo Section 1409 of the New York State Not for Profit law severely limits the jurisdiction of local municipalities where a County Fair exists to regulate the Fairgrounds. He stated that the study that was done in connection with the amendment of Section 1409 was supported by the New York State Association of Agricultural Fairs and the Commissioner of Agriculture and Markets.

Chairman Rybczynski stated that the Board offers relief from the municipality's laws.

Attorney Palumbo stated that Section 1409 stated that municipalities cannot regulate signage for the Fairgrounds as it would anyone else.

Attorney Palumbo stated that if the Board determines that Section 1409 is not applicable in this case, he asked the Board to consider all of the requested variance as area variances. He stated that the underlying use of the property is for fairgrounds, gaming, etc., and therefore the request for a pole sign is an area variance, and case law supports that.

Attorney Palumbo stated that the existing pole sign on South Park Avenue was erected in 2004 and is outdated. He noted that the sign needs a new life. He noted that the applicant faces daily competition from other gaming establishments.

Mrs. desJardins asked Attorney Palumbo why the applicant does not simply reface the outdated LED portion of the sign. Attorney Palumbo responded that it is not just the LED portion of the sign that needs attention, and the LED portion of the new sign would be larger than what is

existing.

Attorney Palumbo stated that the benefit to the applicant would outweigh the detriment to the health, safety and welfare of the public.

Chairman Rybczynski stated that the Supervising Code Enforcement Official determined that this request is for a use variance. He noted that the Board must operate under the assumption that he is correct unless that decision is specifically challenged by the applicant.

Attorney Palumbo asked Board members to review Section 1409.

Chairman Rybczynski read the following letter received from Ms. Arlene Duggan dated 8-6-2019:

Hamburg Zoning Board

8/6/2019

Take a drive down Camp Rd ...recent signs are all under 8'. Gander RV went up this month. Wendy's is new this year. Arby's was ahead of us all with an 8' sign back when they built the new restaurant. Business is good and they have not suffered financially.

Even Waterstone Grill ..whose sign is older ..responded to a single phone call that their new sign was too glaring and annoying for night time drivers. Within 48 hrs the installer adjusted the brightness. Just one phone call..... businesses are willing to fit in. Brighter is not always better. Pole signs are being phased out as businesses update their images.

Local residents were pleasantly pleased by the look of the 2 signs the Fairground installed on Quinby Dr a few years ago so we know they know how to fit in the community but a huge pole sign is not welcome.

To allow even one exception to the current rules is to invite challenges in the future.

It's good to see the Town is making better decisions based on what's good for us. Please continue.

Arlene Duggan

Quinby Dr.

Chairman Rybczynski stated that Ms. Duggan also wrote a letter to the Town Supervisor with similar sentiments to the above letter.

Findings:

It was determined that this application would be left on the table.

Application # 5755 David Yates – Requesting an area variance for a proposed detached garage at 4936 Brenner Road

David Yates, applicant, stated that he would like to build a detached garage and would like it to be slightly larger than what is allowed. He stated that he needs a larger garage to accommodate additional tools and a shop. He noted that he spoke with his neighbors, and no one had any objections.

In response to a question from Chairman Rybczynski, Mr. Yates stated that his current garage is 320 sq.ft., and that would be demolished if the new garage is constructed.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Falkiewicz, to approve Application # 5755.

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, the neighbors do not object, and it will fit into the neighborhood.
3. Whether the requested variance is substantial – This could be argued either way.
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 # 5756 KFC – Requesting four (4) area variances for signage at a new KFC to be located in front of Lowe’s (4950 Southwestern Boulevard)

A representative from Premier Sign Systems, representing the applicant, stated that variances are needed for the proposed wall signage on the sides of the building that do not face a public road or contain a public entrance.

Mrs. desJardins stated that three (3) sides of the building do not face a public road or contain a public entrance.

It was determined that the proposed signage is standard on all KFC restaurant buildings.

A member of the public asked how the traffic will be handled. Chairman Rybczynski stated that traffic is not related to what the Board is considering.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Ms. Hahn, to approve Application # 5756 with the following condition:

Documentation pertaining to the requested variances shall be submitted before permits are granted for the signage.

On the question:

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No, this is what KFC requires.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the requested variance 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 # 5757 Lisa Peinkofer – Requesting an area variance for a proposed fence at 4255 Arthur Court

Lisa Peinkofer, applicant, stated that she would like to build an eight-foot high fence because her deck is two (2) feet off the ground already. She noted that she is the third townhouse in a four-unit building, and the fencing would only be eight (8) feet long on each side.

It was determined that the Homeowners' Association has approved the oversized fence.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5757.

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 requested variance 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 # 5758 Chris Gooding – Requesting an area variance for a proposed front porch at 6137 Hewson Road

Jeff Tissack, contractor, representing the applicant, stated that the applicant would like to construct a front porch coming out 6 ½ feet from the front and running the length of the house.

Letters from the following residents were submitted in support of the applicant's request:

- Kelly and Shawn Spicer, 6129 Hewson Road
- Kathleen Miller, 6138 Hewson Road

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approved Application # 5758 with the following condition:

- The space will not be converted to habitable space.

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 # 5759 Emily Park – Requesting an area variance for a proposed front porch at 5076 Morgan Parkway

Emily Park, applicant, stated that she would like to add a small front porch (8' X 8').

Letters of support were submitted from the following residents:

- Robert McClure, 5077 Morgan Parkway
- William Kane, 5073 Morgan Parkway
- Tim Willard, 5084 Morgan Parkway
- Samantha Stuart, 5082 Morgan Parkway

Mr. Chiacchia stated that there are several homes in the area with porches like the one the applicant is proposing.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Ms. Hahn, to approve Application # 5759.

On the question:

Ms. 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 # 5760 Jeremy Rui – Requesting two (2) area variances for a proposed detached garage at 4983 Roseview Avenue

Jeremy Rui, applicant, stated that he received a variance earlier this year for a proposed detached garage, and he has learned that in order to install a 14-foot door, he would need 2 1/2 more feet, and he also learned that a 32' X 52' kit is cheaper than a 34' X 50'. He noted that he is now requesting two (2) additional variances.

In response to a question from Ms. Falkiewicz, Mr. Rui stated that he plans to demolish the existing detached garage on the property, but he is not planning to get rid of the existing shed.

Mr. Rui stated that he could construct a 34' X 50' garage and just request a height variance and keep the shed on the property, rather than constructing the garage that would be larger and taller while removing the shed.

Mr. Chiacchia stated that the oversize garage would be an asset so that the applicant could park his RV inside.

Findings:

Ms. Falkiewicz made a MOTION regarding Application # 5760, seconded by Mr. Yoder, to approve a variance for the requested height but not the extra square footage if the applicant intends on keeping the existing shed on the property.

On the question:

It was clarified that the request for the height would be approved, but the request for the additional square footage would only be approved if the existing shed is removed.

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No, as far as the requested height is concerned.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – The height request is not substantial, but if the shed is not removed, the request for the additional square footage would be considered substantial.
4. Whether the request will have adverse physical or environmental effects – No.

5. Whether the alleged difficulty is self-created – It is self-created, but on balance it tilts to approval of the height variance if the shed is not removed.

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

Application # 5761 Sylvia Vasconellos – Requesting two (2) area variances for a proposed detached garage at 3633 Fourth Street

Sylvia Vasconellos, applicant, stated that she would like to construct an addition to her existing garage that would be too close to the rear yard and larger than what is allowed by the Town Code.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5761.

On the question:

Ms. 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 # 5762 Lauren Dolce – Requesting an area variance for a proposed attached garage at 3690 Salisbury Avenue

Lauren Dolce, applicant, stated that she would like to construct an attached garage that would be too close to the side property line.

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Hahn, to approve Application # 5762.

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 – Yes.
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. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of July 2, 2019. As the motion was six (6) ayes and one (1) abstention (Mr. Adrian), the motion carried.

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

The meeting was adjourned at 8:05 P.M.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: September 9, 2019