

Town of Hamburg  
Board of Zoning Appeals Meeting  
October 1, 2019  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, October 1, 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 Ric Dimpfl, Commissioner Laura Hahn, Commissioner Mark Yoder and Commissioner Jeffrey Adrian.

Others in attendance included Tamara Harbold, Board of Zoning Appeals Attorney and Sarah desJardins, Planning Consultant.

Excused: Commissioner Nicole Falkiewicz

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**

Chairman Rybczynski stated that the item would remain on the table.

**Tabled Application # 5769 Roger Duffett – Requesting a use variance and two (2) area variances to operate a fitness facility at 5640 Maelou Drive**

Attorney Sean Hopkins, representing the applicant, stated that a use variance is being requested to allow 5,000 sq.ft. of the existing building to continue to be used as an athletic fitness facility and to allow the applicant to construct a new 7,000 sq.ft. building on the same property that would be used as an indoor basketball court by the same tenant.

Attorney Hopkins stated that the Building Department did issue a Certificate of Occupancy in 2013 for the existing athletic fitness facility.

Attorney Hopkins stated that the proposed building would be set back 48.5 feet from the front property line, which is 18" less than what is required, and the parking area would be set back 30.5 feet from the front property line, and that is 4.5 feet less than what is required.

Attorney Hopkins stated that in the absence of the requested use variance, the use that has been in the existing building for over five (5) years can no longer occur, and that would result in the applicant losing rent money, having a vacant building and not being able to construct the new building on the site.

Attorney Hopkins stated that none of the uses allowed in the zoning district in which this property is located would be appropriate for this site because it is so small and does not have much depth. He noted that the granting of the requested use variance would not alter the character of the existing neighborhood, and the applicant's hardship is not self-created.

Regarding the requested area variances, Attorney Hopkins stated that there are benefits to the applicant and no detriments to nearby properties. He stated that the proposed building would line up with the existing buildings on the street.

Attorney Hopkins stated that the benefit to the applicant cannot be achieved by other means feasible to him because of the size of the area to be developed and the required dimensions of the basketball court, the requested area variances are not substantial, they would have no adverse physical or environmental impacts and the applicant's hardship is not self-created.

A member of the public asked if there would be adequate parking. Tom McCarthy, owner of the fitness facility, responded that no events would be hosted at the site.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to approve one (1) use variance and two (2) area variances for Application # 5769.

On the question:

Mr. Adrian reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return – substantial as shown by competent financial evidence – This is an existing condition, and the applicant was given a Certificate of Occupancy for the existing fitness facility.
2. The alleged hardship is unique and does not apply to substantial portion of the district or neighborhood – It is unique situation.
3. The requested variance will not alter the essential character of the neighborhood – It will not.
4. Whether the alleged hardship is self-created – It is not.

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

**Application # 5770 Joseph Sibiga – Requesting an area variance for a detached garage addition at 4299 Fairway Parkway**

Joseph Sibiga, applicant, stated that he would like to construct an addition to his existing detached garage and demolish his existing shed.

Mark Masak, 4302 Fairview Parkway, stated that he lives across the street from the applicant and opposes the variance request. He stated that he and his mother, Grace, believe that the addition would be used to expand the applicant's small engine repair business, which he operates out of the existing garage. He stated that the applicant currently stores small engines and equipment behind the garage because they do not fit inside the garage. He stated that the addition will simply allow the applicant to store more equipment there and/or use the garage to work on the equipment.

Mr. Masak stated that he believes that the addition will serve to increase the traffic, noise and fumes in the area due to more people bringing their small engines and equipment to the applicant's residence to be fixed.

Mr. Masak asked that if the area variance is approved, it be conditioned upon the applicant not operating a business out of the garage.

In response to a question from Chairman Rybczynski, Mr. Sibiga stated that he is not operating a business out of his garage, but rather it is his hobby. He further stated that he does not charge anyone anything to repair their equipment.

Mr. Masak showed Board members photos of the applicant allegedly doing business at his property. He stated that it is not just a hobby.

Mr. Adrian stated that he visited the applicant's property when he (Mr. Adrian) was a Building Inspector, and he does not recall seeing anything untoward.

In response to a question from Chairman Rybczynski, Mr. Sibiga stated that friends come every day and sometimes at night.

Mr. Ray Reuther, 3714 Fuller, stated that he visits the applicant every evening at 7:00 P.M. He stated that he and his neighbors take their lawn mowers to the applicant to get fixed and never pay him anything.

Grace Masak stated that she is home all day and notices that the applicant brings equipment from other businesses to his property and then fixes them. She stated that she has seen money change hands.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5770 with the following condition:

- Absolutely no business may take place out of the home or within the detached garage, and in the event that any business does take place there, the Certificate of Compliance will be pulled and the garage will not be able to be used at all.

On the question:

Board members discussed the definition of "doing business". Attorney Harbold stated that the IRS definition of "business" is when one's hobby turns into something that one starts generating a profit".

Chairman Rybczynski stated that his concern that if someone complains about the activity in the garage and a violation is found, the ZBA cannot prescribe the penalty.

Mr. Adrian reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No, it is for storage.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, there is plenty of room in the rear yard.
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 # 5771 Gary & Linda Fullone – Requesting an area variance for a proposed deck at 3663 Marlowe Avenue**

Gary Fullone, applicant, stated that he would like to put a front deck on his house that would be too close to the front property line, but it would not be any closer than the home two doors down that has a front deck on it. He noted that 21 homes in his neighborhood are at least as close to the front property line that his deck would be.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Ms. Hahn, to approve Application # 5771.

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 # 5772 Erie Wind, LLC – Requesting an amendment of an existing variance for a wind turbine at 3150 Lakeshore Road (previous variance granted in March 2010)**

Attorney Jeff Davis from Barclay Damon, representing the applicant, stated that the existing wind turbines along Lake Erie constitute the Steel Winds II project that was approved by the Town a number of years ago. He stated that four (4) of the turbines are located in the Town of Hamburg.

Attorney Davis stated that the turbines were built with Clipper technology, but Clipper went bankrupt and can no longer support the equipment. He stated that parts cannot be located and the blades and gear boxes can no longer be replaced, so the owner of the facility is proposing to replace the tops of the existing turbines so that they can continue to produce electricity.

Attorney Davis stated that there is no exact replacement part for the tops of the turbines, so the replacement will be slightly taller than what is existing, depending upon whether a Vestis model (46' taller to the top of the blade) or a GE model (36' taller to the top of the blade) is decided upon.

Attorney Davis stated that applications have been made to the City of Lackawanna, (where the majority of the turbines are located), the Town of Hamburg, the Erie County Industrial Development Agency (ECIDA) and the Hamburg Industrial Development Agency HIDA). He noted that the applications to the ECIDA and HIDA are to modify the existing PILOT (Payment in Lieu of Taxes) agreements that are in place for the turbines.

Attorney Davis stated that turbine #10, which is 420' tall, would be extended to either 456' or 466', depending on whether the Vestis or GE model is used. He stated that in 2010 a variance was granted allowing it to be located where it is, which is closer to the southern property line than what is allowed by Code. He noted that the base of the tower would remain, but the setback would be increased due to the length of the replacement blades. He stated that the turbine must be set back at least 1 ½ times its height.

Attorney Davis stated that a SEQR determination must be made before a variance can be granted, and the ECIDA has requested Lead Agency Status for SEQR purposes. He asked Board members to consent to the ECIDA being Lead Agency for SEQR purposes. He stated that he will return to the Board in November for consideration of the requested area variances.

Chairman Rybczynski stated that he is somewhat dismayed that the HIDA did not contact the ZBA and Planning Boards to indicate what its pleasure is in this matter. He stated that it is somewhat irregular for the ZBA to be asked to make a decision regarding SEQR before other Boards.

In response to a question from Chairman Rybczynski, Attorney Davis stated that it takes approximately one (1) year to manufacture the new equipment, so construction on this project would not commence until 2021. He noted that in order to be placed in the queue for the manufacturing of the equipment, a down payment must be made and all approvals must be granted by the end of November 2019.

Attorney Davis stated that the ECIDA hopes to issue a SEQR determination by the end of October, and he anticipates returning to the ZBA for review of the requested area variance in November.

**Findings:**

Chairman Rybczynski made a MOTION, seconded by Ms. Hahn, to designate the ECIDA as Lead Agency under SEQR.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve the minutes of September 10, 2019. All members voted in favor of the motion.

It was determined that the next meeting will be held on November 7, 2019.

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

The meeting was adjourned at 8:20 P.M.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: October 20, 2019