

Town of Hamburg
Board of Zoning Appeals Meeting
July 7, 2020
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 7, 2020 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Commissioner Ric Dimpfl, Commissioner Nicole Falkiewicz, Louis M. Chiacchia, Commissioner Laura Hahn, Commissioner Mark Yoder and Commissioner Jeff Adrian.

Others in attendance included ZBA Attorney Michelle Parker and Planning Consultant Sarah desJardins.

Commissioner Chiacchia read the Notice of Public Hearing.

Tabled Application # 5790 Charles Goodier – Requesting three (3) area variances for a proposed detached garage at 393 Willett Road

Charles Goodier, applicant, stated that he would like to demolish an old garage and two (2) metal sheds and then build a larger garage. He stated that the new garage would need variances for its height, area and the fact that there would be a second story.

In response to a question from Ms. Falkiewicz, Mr. Goodier stated that there would be no plumbing in the second story. He noted that the second story would only be six (6) feet high and would be used for storage.

Mr. Goodier stated that he would like to keep the existing garage up until the new one is built so that he can store his woodworking tools.

Chairman Rybczynski stated that typically applicants are asked to take existing garages down before the new one is built. Mr. Goodier responded that the existing garage will be demolished as soon as the new garage is finished.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Adrian, to approve Application # 5790.

On the question:

Mrs. Hahn reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – Possibly.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No it would be an improvement.
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, but the balancing test tilts in favor of approval.

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

Tabled Application # 5791 Michael Lazarski – Requesting an area variance to allow domestic fowl at 3046 Upper Court

Mr. Michael Lazarski, applicant, stated that he would like to have five (5) chickens and no roosters. He submitted letters of support from the following property owners:

- Eric Lesinski, 3050 Upper Court
- David Viglione, 3042 Upper Court
- Theresa Glowacki, 4993 Overlook Point
- Shari Minton, 3047 Upper Court
- Mike O'Brien, 3043 Upper Court

Mr. Lazarski stated that he has a cat, which would cut down on rodents, and the chickens would be in a coop and an enclosed run.

It was noted that the applicant's property is large enough for domestic fowl but is not wide enough.

Mr. Chiacchia stated that the chickens are already on the property. Mr. Lazarski responded that there was a misunderstanding about the fact that a permit is required. He stated that he was never intending to circumvent the approval process.

Mr. Chiacchia stated that he received the correspondence from Ms. Kathy Teson regarding the viruses that chickens can spread, and he is concerned about that.

In response to a question from Mr. Yoder, Mr. Lazarski stated that he tried to contact Ms. Teson a few times but was not successful.

Mr. Lazarski stated that he will not have any animals classified as domestic fowl except for the chickens.

In response to a question from Attorney Parker, Mrs. desJardins stated that domestic fowl is permitted in this zoning district, but the property on which the chickens live must be at least as large as an R-1 property, and the applicant's property is 14 feet too narrow.

In response to a question from Mr. Chiacchia, Mr. Lazarski stated that he wants chickens because he wants to know where his food comes from. He further stated that his daughter is excited to have the chickens.

In response to a question from Attorney Parker, Mr. Lazarski stated that 3042 and 3050 Upper Court are the properties on either side of his, and the Overlook property is directly behind him.

Ms. Kathy Teson, 3026 Cloverbank Road, stated that she owns the property that runs behind the development to the Hamburg baseball diamond, and she is against the variance request. She stated that she is upset that the chickens are already on the applicant's property and is upset that the applicant did not approach her about the chickens. She stated that people over 65 and children under 5 can get viruses from chickens. She stated that she is always home and does not believe the applicant attempted to approach her.

Chairman Rybczynski stated that having chickens in this zoning district is allowed, and he can see how someone would not realize what the parameters are of the approval process.

Findings:

Mr. Yoder stated that the 14 feet the applicant is short is not a substantial amount compared to the entire site and he does have the required square footage for domestic fowl. He noted that

his concern is that the applicant acquired the hens without the required approval, although the area behind his home is not developed. He noted that all animals can carry disease under the right circumstances.

Ms. Falkiewicz made a MOTION, seconded by Mr. Yoder, to approve Application # 5791.

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, letters of support were submitted from adjacent neighbors.
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, but the balancing test tilts in favor of approval.

Ms. Falkiewicz made a motion, seconded by Mr. Yoder, to amend her motion to add the condition that only hens are allowed. Carried.

All members voted in favor of the motion to amend the above motion. **GRANTED.**

As the vote on the revised motion was six (6) ayes and one (1) nay (Mr. Chiacchia), the motion carried. **GRANTED.**

Application # 5795 Dan Berarducci – Requesting an area variance for a proposed deck at 5124 Bradford Street

Dan Berarducci, applicant, stated that he would like to put a front porch on his home that would be too close to his front property line.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 5795.

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 – Yes, but the balancing test tilts in favor of approval.

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

Application # 5796 Buffalo-South Motor Inn, Inc. – Requesting an area variance for a proposed monument sign at 4344 Milestrip Road

Andrew Warne from Ulrich Signs, representing the applicant, stated that the applicant would like to remove two (2) existing signs on the property and install an illuminated ground sign that would be located on the property line instead of the required ten (10) feet away from the property line. He noted that the proposed location is the only place the sign can go because of an internal road on the property. He further stated that the sign would be in compliance with the Town Code in every other way and would look much better than what is there now.

Mr. Adrian stated that there is a good amount of land between the proposed sign and the inside of the sidewalk.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Yoder, to approve Application # 5796.

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 – Yes, but the balancing test tilts in favor of approval.

All members voted in favor of the motion. GRANTED.

Application # 5797 Jiffy Lube – Requesting a use variance and an area variance for proposed wall signage at 4950 Southwestern Boulevard

Phil Convertini from Moeler Signs, representing the applicant, stated that the applicant would like to add signage to the Jiffy Lube building. He stated that one (1) of the signs is a non-illuminated Jiffy Lube sign that would go above the garage doors that face Southwestern Boulevard. He noted that the applicant would also like to install four (4) directional signs that would go above the garage door indicating “oil change”, “State inspection”, “tire rotation” and “brakes”. He noted that these signs would be 4” high and between two (2) and three (3) feet long.

Mr. Convertini stated that a small button sign (three (3) feet in diameter) is also proposed on the north side of the building facing KFC.

In response to a question from Mr. Yoder, Mr. Convertini stated that the proposed signage is standard for all Jiffy Lube buildings. He further stated that the five-foot monument sign along Southwestern Boulevard does not give the building sufficient visibility.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5797.

On the question:

Ms. Falkiewicz reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return as demonstrated by competent financial evidence – This is a franchise and Jiffy Lube requires this signage.

2. Whether the alleged hardship is unique – It is.
3. Whether the requested variance, if granted, will alter the character of the neighborhood- No.
4. Whether the alleged hardship is self-created - No.

Chairman Rybczynski stated that although the ZBA is not bound by precedent, it has approved these same types of variances before. He stated that the Board is bound to look at each application equally and offer the same rationale for each.

All members voted in favor of the motion. GRANTED.

Application # 5798 Mark Wylie – Requesting an area variance for a deck at 3578 Abbott Road

It was determined that Mr. Wylie was unable to attend the meeting because he was self-quarantining, but he submitted an email to the Planning Department as follows:

“I, Mark Wylie, started building my deck and didn’t obtain a permit because I was under the assumption that if it wasn’t connected to the house I didn’t need one. When I found out I needed a permit I immediately stopped all work. Unfortunately the deck is 95% complete. The deck is at least 30 feet from the adjacent neighbor. The deck sits off the back of my house and runs square with the house. The deck would not change the character of the neighborhood. I explained all the deck information to my neighbor Kim and her son and explained to them I needed a variance and why. They were okay with it and filled out a letter of approval, which is in my file. Thank you, Mark Wylie.”

Chairman Rybczynski read a second email received from Mr. Wylie as follows:

“The deck corners are approximately 45 feet away from the neighbor’s home. Thank you.”

Kim Koscielniak, 3584 Abbott Road, stated that she has no objection to the applicant’s deck but asked that privacy screening be installed on both the upper and lower decks.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5798 with the following condition:

- Privacy screening must be added to both the top and lower (new) deck that measures a minimum of six (6) feet high from the floor of the deck and extends the length of the deck. The screening material will be left to the applicant.

On the question:

Chairman Rybczynski 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, it will be in the rear yard.
3. Whether the request is substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes, but the balancing test tilts in favor of approval.

All members voted in favor of the motion. GRANTED.

Application # 5799 Susan Ljungberg – Requesting two (2) area variances for a proposed tool shed at 6366 Old Lakeshore Road

Susan Ljungberg, applicant, stated that her house faces the lake and there is no place to put her proposed shed besides on the road side of her house, which is technically her front yard.

Ms. Ljungberg stated that no neighbors have indicated any opposition to her proposal.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5799.

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 – Yes, but the balancing test tilts in favor of approval.

All members voted in favor of the motion. GRANTED.

Application # 5800 Willow Bend Club, Inc. – Requesting a use variance for a proposed wedding/event venue at 6653 Taylor Road

Attorney Sean Hopkins, representing James Cleary and Attorney Brian Attea, representing Willow Bend Club, Inc. appeared on behalf of the use variance request.

Attorney Hopkins stated that Mr. Cleary has entered into a contract with the applicant to purchase the property and redevelop a portion of the nearly 15-acre site as an events center, primarily targeting weddings on Fridays and Saturdays 26 weeks per year. He noted that there may be weddings on Sundays and other events during the year, but Mr. Cleary is focused on seasonal outdoor weddings.

Attorney Hopkins stated the large amount of permanent open space on the property will not be developed. He noted that Mr. Cleary proposes to construct a new building in almost the same spot as the existing building on the site, and 100 parking spaces would be provided.

Attorney Hopkins stated that the project has been subject to a very extensive review by the Planning Board, which issued a Negative Declaration under SEQRA in June 2020, indicating that the project will not have any significant adverse environmental impacts.

Attorney Hopkins stated that the property is zoned R-A and the permitted uses are fairly limited, and Mr. Cleary's proposed use for the site is not a permitted use.

Attorney Hopkins stated that Mr. Cleary entered into a contract to purchase this property for \$180,000, which is not a very significant purchase price and not what the applicant was hoping

to sell it for. The purchase price represents the minimum amount that Willow Bend can receive to get out of its current financial mess.

Attorney Hopkins reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return as demonstrated by competent financial evidence – Efforts to market this property began two (2) years ago, and there were at least two (2) instances where prospective purchasers entered into contracts to purchase it, but one use was not feasible and the other was not well received by the neighbors. Attorney Hopkins was approached by at least five (5) other potential purchasers, but none of the proposed uses was feasible. Mr. Cleary's use is the most consistent with the historical use of the property and is the one that preserves most of the project site the way it is. Also there is an existing perpetual lease between the owner of this property and the Hamburg Racket Club that has been in existence since 1976 that allows the racket club to use the tennis bubble on the site in perpetuity. This lease must be included with the purchase of the property. The purchase of this property will not result in a reasonable rate of return for the applicant, but rather it will allow the applicant to simply break even. There has been no interest in the uses that are permitted in the R-A District that would allow the applicant to realize a reasonable rate of return.

2. Whether the alleged hardship is unique – It is unique because of the burden of the existing lease with the racket club that the new owner must abide by.

3. Whether the requested variance, if granted, will alter the character of the neighborhood – The Planning Board concluded that this project would be consistent with the community character. This conclusion was based on the building location, grading and drainage, lighting plans, access to the highway, landscaping, etc. Only 2.9 acres of the site would be impacted.

4. Whether the alleged hardship is self-created – This hardship was not self-created. The situation in 1976 was different because the racket club fit in with the swim club, but now swim club's situation has changed and the lease has become a large burden on the property.

Attorney Hopkins stated that a rezoning has not been sought instead of a use variance because the applicant and Mr. Cleary feel that the use variance criteria can be met and because a rezoning would open this property up to more uses.

Attorney Attea stated that Mr. Cleary is one of the first buyers to consider purchasing the property subject to the lease.

Attorney Hopkins stated that Mr. Cleary has agreed to upgrade the existing onsite sanitary sewer system and clean out an existing drainage ditch that has been backflowing onto nearby neighbors' properties.

Attorney Attea stated that Willow Bend was formed in 1954 as a not for profit organization, and no one from Willow Bend will receive a penny from the sale of the property. He noted that if the property is sold to Mr. Cleary, the amount received will be substantially less than what would be needed to cover its debts and obligations.

Mr. Chiacchia stated that he is concerned about the potential traffic generated from this events center. Attorney Hopkins responded that a traffic analysis was generated that concluded that during the peak entering hours the project would generate 51 vehicle trips. He noted that during the peak exiting hours the project would generate 54 vehicle trips.

Attorney Hopkins stated that Taylor Road is a County road, and Erie County Department of Public Works expressed no concerns about traffic. He noted that the site distances where the driveway meets Taylor Road meet all acceptable national standards.

Mrs. desJardins stated that the Planning Board is comfortable with the potential traffic generated from this use.

In response to a question from Mr. Dimpfl, Mr. Cleary stated that the average number of people at outdoor weddings is around 150. Attorney Hopkins added that the building is being designed to hold no more than 200 people.

Attorney Attea stated that when Willow Bend was in full swing and was hosting swim events and social events, the traffic generated from those events was higher than what is being proposed by Mr. Cleary.

In response to a question from Chairman Rybczynski, Mr. Cleary stated that most people do not get married in the winter time.

In response to a question from Chairman Rybczynski, Attorney Hopkins stated that there will be no liquor license for the facility, but rather the catering services will have liquor licenses.

Mr. Kurt Allen, 2909 South Creek Road, stated that he is working with Mr. Cleary on this project and is a former member of Willow Bend. He stated that the site has become a major attractive nuisance to the public because of its long-term abandonment. He stated that this proposed use is most consistent with the previous use as a club, other than the commercial aspect of it.

Findings:

Mrs. Hahn made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5800.

On the question:

Mrs. Hahn reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return as demonstrated by competent financial evidence – The applicant marketed the property for two (2) years and was unable to find a purchaser.
2. Whether the alleged hardship is unique – It is because of the zoning of the property and the existence of the lease.
3. Whether the requested variance, if granted, will alter the character of the neighborhood - No.
4. Whether the alleged hardship is self-created - No.

All members voted in favor of the motion. GRANTED.

Application # 5801 John Keem – Requesting an area variance for a proposed deck at 4750 Clifton Parkway

It was determined that no one appeared on behalf of the application, and it was left on the table.

Application # 5802 Robert Hammond – Requesting an area variance for a proposed deck at 3162 Warwick Terrace

Robert Hammond, applicant, stated that he would like to construct a rear deck on his home. He submitted a letter of support from his adjacent neighbor, Steven Romans (3158 Warwick Terrace).

Mr. Hammond stated that the deck would be as close to the side property line as the existing home is because it would just go straight back from the home.

Findings:

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5802.

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 – It could be considered substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes, but the balancing test tilts in favor of approval.

All members voted in favor of the motion. GRANTED.

Application # 5803 Patrick Scott – Requesting an area variance for a proposed detached garage at 6079 Old Lakeshore Road

Patrick Scott, applicant, stated that he received a variance to construct a 30' X 52' barn on property he owns across the street from his primary residence. He stated that he now feels that he needs a larger barn and would like to increase the size to 40' X 60' because he wants to add a third bay for a motor home he is in the process of purchasing.

Mr. Scott stated that he has a tenant in the existing home on the property and would rather not store the motor home in the rear of the home that is being rented.

Mr. Scott stated that there is no other way he can accomplish what he'd like to do besides construct the larger barn and noted that the property where his home is is too small to accommodate the barn. He stated that the barn would not change the character of the neighborhood because many properties in the area have barns.

Mr. Scott stated that the property where the barn would go is five (5) acres in size and therefore the barn's size would not be substantial.

In response to a question from Ms. Falkiewicz, Mr. Scott stated that the motor home has not yet been purchased and he is not out any money at this point. He stated that he wants to have a motor home that is large enough to stay in and plans to purchase a 40-foot long one.

In response to a question from Ms. Falkiewicz, Mr. Scott stated that his neighbor, Mrs. Hayes, previously opposed his variance request for an oversized barn, but now she is not opposed because it will be placed further back on his property. He stated that all of his neighbors are in support.

In response to a question from Mr. Chiacchia, Mr. Scott stated that the property goes back 1,500 feet.

Mr. Adrian advised Mr. Scott that the barn would have to be set back from side property lines either 15 feet or the height of the barn, whichever is greater.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5803.

On the question:

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – It may be somewhat substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – Yes, but the balancing test tilts in favor of approval.

As the vote on the motion was six (6) ayes and one (1) nay (Ms. Falkiewicz), the motion carried. GRANTED.

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve the minutes of June 2, 2020. All members voted in favor of the motion.

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

The meeting was adjourned at 8:50 P.M.

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

DATE: July 21, 2020