

Town of Hamburg
Board of Zoning Appeals Meeting
February 2, 2021
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, February 2, 2020 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue and via Webex. Those attending included Vice-Chairman Ric Dimpfl, Commissioner Louis M. Chiacchia, Commissioner Nicole Falkiewicz, and Commissioner Mark Yoder. Those attending via Webex included Commissioner Laura Hahn, Commissioner Jeff Adrian and Attorney Michelle Parker.

Also in attendance included Sarah desJardins, Planning Consultant.

Excused: Chairman Brad Rybczynski

Vice-Chairman Dimpfl 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 # 5836 Comfort Inn – Requesting a use variance to reface an existing pole sign at 3615 Commerce Parkway

A representative of Comfort Inn stated that the applicant would like to put a new logo on the existing pole sign advertising the Comfort Inn. He stated that the hotel has suffered losses because the logo is not on the sign currently.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Yodar, to approve Application # 5836.

On the question:

Mrs. Falkiewicz reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return – substantial as shown by competent financial evidence – The applicant explained that the hotel is losing money with not having a physical sign there.
2. The alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – This is correct.
3. The requested variance will not alter the essential character of the neighborhood – It will not.
4. The alleged hardship has not been self-created – It has not.

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

Tabled Application # 5847 Hamburg McKinley Parkway LLC – Requesting a use variance and an area variance for proposed wall signage at 3464 McKinley Parkway

Attorney Sean Hopkins, representing the applicant, stated that Sketchers would like a wall sign on the eastern side of the building. He noted that the Building Department has determined that a use variance is required because the leased premises itself does not have any frontage on McKinley Parkway.

Attorney Hopkins stated that Sketchers' sign that is proposed would be 75 sq.ft. in area, which is substantially smaller than the Raymour & Flanigan Outlet wall signage on that side of the building that received a variance previously.

Attorney Hopkins stated that the proposed wall signage is essential from an economic perspective for the following reasons:

- This store was planned prior to the pandemic and was budgeted accordingly. Since the store has opened, its sales are off by 60 to 70 percent compared to the projections and budgets. Sketchers is in a difficult market and given the Covid-19 restrictions, anything it can do to boost its economic return would be helpful.
- It is thought that once stores get back to normal once the restrictions are lifted, a sizeable portion of retail business that is now online will not return quickly to traditional shopping.
- If the decision to open or not were to be made today, Sketchers might not open, but it has signed a long-term lease.

Attorney Hopkins stated that the proposed signage is not excessively large and having signage on two (2) of the four (4) sides of this large building is appropriate.

Attorney Hopkins stated that the addition of the requested signage would not alter the essential character of the neighborhood and the hardship was not self-created.

Attorney Hopkins stated that this is the first time a Sketchers store that is located on a corner such as this where it was not allowed signage without a use variance on two (2) sides of the building.

Attorney Hopkins reviewed the area variance criteria and explained why the hardship is not self-created, the request is not substantial, the granting of the variance would not alter the essential character of the neighborhood, etc.

Findings:

Mrs. Falkiewicz made a motion, seconded by Mr. Yodar, to approve Application # 5847.

On the question:

Mrs. Falkiewicz reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable rate of return – substantial as shown by competent financial evidence – Attorney Hopkins gave an explanation as to the hardship that the applicant is experiencing due to Covid-19.
2. The alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – This is correct.
3. The requested variance will not alter the essential character of the neighborhood – It will not.
4. The alleged hardship has not been self-created – It has not.

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

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.
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 # 5846 Kavcon Development LLC – Requesting a use variance for proposed wall signage at 5110 Camp Road

No one appeared on behalf of the applicant. It was determined that the application would be left on the table.

Application # 5848 G & I IX Empire McKinley – Requesting five (5) area variances in order to create a new lot for the existing Applebee’s restaurant

Robyn Cierniak from Greenman Pederson Inc. and Attorney Francis Gorman from Harris Beach LLC appeared on behalf of the applicant.

Ms. Cierniak stated that Home Depot anchors the six-acre plaza site at 4405 Milestrip Road and its current lease runs through 2037. She stated that as part of the lease agreement, the lease owns all of the premises minus the footprints of the buildings. She noted that the applicant would like to generate a document to divide out the Appleby’s footprint legally, but that would create a non-conforming lot.

Ms. Cierniak stated that the area variances would be for no front yard setback, no rear yard setback, a lot coverage that exceeds what is allowed, the width of the lot and the size of the lot.

Attorney Gorman gave Board members a history of the Home Depot Plaza since its beginning in 1990. He stated that the legal description for the Home Depot lease is everything on the property except the buildings, so it is not feasible for the applicant to get a larger parcel than just the Appleby’s building because Home Depot would want more in return from the applicant than is reasonable.

Attorney Gorman stated that everything except for the buildings is considered common area already, so the granting of these variances would not change the site at all.

Attorney Gorman stated that retail is taking a hit during the pandemic and the granting of these variances would help the owners refinance the Appleby’s parcel, or the owner of Appleby’s could buy the parcel. He noted that this would make the site more liquid so that there are financial and economic benefits for the applicant if the parcel is subdivided as proposed.

The reciprocal easements and common area agreements that are in place means that people can drive anywhere, so even though the new parcel would be small, for all intents and purposes there would be setbacks and parking requirements would be met.

Attorney Gorman stated that nothing would change visibly if the variances are granted. He noted that if the variances are granted, the applicant would be willing to make a condition of the reciprocal easement agreement that if there is any further development or any change to the site plan whatsoever, the Town would have to approve it.

Attorney Gorman stated that the granting of these variances would be a great benefit to the landowner because they would be able to separately finance the property and perhaps the franchisee or a third party would decide to purchase it.

Attorney Gorman stated that from a tax standpoint, the granting of these variances would be a benefit to the community in terms of mortgage taxes, deed stamps, transfer taxes, etc.

Attorney Gorman stated that the benefit to the applicant would outweigh any detriment to the community.

Attorney Parker asked what impact the granting of these variances would have on the owners of the Appleby's if they attempt to sell the property without any parking. Attorney Gorman stated that there is a reciprocal easement agreement that gives them the right to park anywhere on the property they want. He noted that the Appleby's lease gives them 80 parking spaces.

In response to a question from Attorney Parker, Attorney Gorman stated that what the applicant wishes to do is very common in real estate development.

In response to a question from Mrs. Falkiewicz, Attorney Gorman stated that the reciprocal easement agreement will be in place by the applicant, who owns the property. He stated that therefore the reciprocal easement agreement will always stay and will be recorded like a deed.

Findings:

Mr. Yodar stated that nothing would be really changing as long as condition is attached to the variance that the reciprocal easement agreement must stipulate that nothing further can be done at the site without the Town's permission.

Mrs. Falkiewicz made a motion, seconded by Mrs. Hahn, to deny Application # 5848.

On the question:

Mrs. Falkiewicz reviewed the area variance criteria as follows:

All members voted in favor of the motion to deny. **DENIED.**

Application # 5849 Teresa Riordan – Requesting an area variance for a carport at 5862 Lakeview Terrace

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

Application # 5850 Boston State Holding Co., LLC – Requesting an area variance for an apartment project on vacant land west of Cooper Ridge

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

Mrs. Falkiewicz made a MOTION, seconded by Mr. Chiacchia, to approve the minutes of January 2, 2021. All members voted in favor of the motion.

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

The meeting was adjourned at 7:45 P.M.

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

DATE: February 16, 2021