

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

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

Excused: Attorney Michelle Parker

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.

Application # 5844 St. John's Lutheran Church – Board of Zoning Appeals to issue a SEQR Determination (use variance was granted on December 15, 2020)

Mrs. Falkiewicz made a motion, seconded by Mrs. Hahn, to issue a Negative Declaration. All members voted in favor of the motion.

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

Attorney Sean Hopkins, representing the applicant, stated that the Planning Board approved the Site Plan for the proposed Cedar Valley Way apartment development in 2015. He noted that the project layout has been revised, although the same number of apartments is proposed. He stated that the requested variance is needed in order to obtain Site Plan Approval of this revised layout from the Planning Board.

Attorney Hopkins stated that the Town Code requires 30 feet of open space between buildings in a multi-family development such as this and the new proposed layout shows 14 feet. He stated that everything else in the proposed layout complies with the Town Code requirements.

Attorney Hopkins stated that in the absence of this variance being granted, the developer would lose two (2) units. He further noted that the granting of this requested variance would allow the developer to move forward with a layout that is much better than the one approved by the Planning Board in 2015.

Attorney Hopkins stated that the granting of the requested variance would not result in an undesirable change in the character of the neighborhood, there is no alternative that exists that would allow the applicant to receive the benefit being sought without the need for the requested variance, the requested relief is not substantial, there would be no adverse physical or environmental effect to the neighborhood and the hardship has been self-created.

Attorney Hopkins stated that the Planning Board previously issued a SEQR Negative Declaration relative to the overall residential project (single family homes and apartments).

In response to a question from Mr. Adrian, Attorney Hopkins stated that the buildings would be sprinklered in compliance with the New York State Fire Code.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Yodar, to approve Application # 5850

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 – 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 on balance it tilts to approval.

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

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

Mr. Jay Hurzy from Sign & Lighting Services, representing Starbucks, stated that the applicant would like to install a wall sign on the south side of the building because it feels that this will allow cars to safely make a left turn into the site from Camp Road by seeing the building ahead of time.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5846.

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 – Because Starbucks is a franchise, it is required to have certain signage available on the building.
2. The alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – It does not.
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 been self-created because of the way that the building is situated.

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

Application # 5851 Al Conte – Requesting an area variance for an addition to the existing building at 5590 Maelou Drive

Mr. Al Conte, applicant, stated that he plans to construct an addition to the existing building and the existing building is 40 feet from the Maelou Drive right-of-way. He stated that the Town Code requires that the buildings in this area be 50 feet from the right-of-way so he is requesting relief from that requirement.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5851.

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, it is the last property on Maelou Drive.
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 # 5852 James Lutz – Requesting an area variance for a proposed accessory structure at 3459 Lakeview Road

Mr. James Lutz, applicant, stated that he would like to construct an addition to his existing detached garage for storage of classic vehicles. He noted that he does not work on the vehicles in the garage.

In response to a question from Chairman Rybczynski, Mr. Lutz stated that he also had a shed on the property that has been there for twenty years and he plans to move that.

In response to a question from Chairman Rybczynski, Mr. Lutz stated that there would be no commercial activity of any sort in the building.

It was determined that the existing detached garage is considered to be existing non-conforming.

Darolyn Koch, 3432 Old Lakeview Road stated that she opposes the requested variance because water flows from the applicant's property onto hers and it is a problem. She stated that if additional building is allowed on Mr. Lutz's property, a drainage ditch that used to be there must be reinstalled.

Mr. Lutz stated that the drainage ditch the resident spoke of is still there.

In response to a question from Ms. Koch, Mr. Lutz stated that the building addition would be approximately 70 feet from Ms. Koch's property line.

Chairman Rybczynski stated that the Board could ask the Engineering Department to look at Ms. Koch's drainage concerns.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Falkiewicz, to table Application # 5852 in order for the Engineering Department to take a look at the site to see if there is anything that can be done to mitigate drainage issues that may or may not exist.

As there were six (6) ayes and one (1) nay (Mr. Chiacchia), the motion passed. **TABLED.**

Application # 5853 Frederick Rieber – Requesting an area variance for a proposed detached garage at 4625 Clark Street

Mr. Frederick Rieber, applicant, stated that he would like to construct a four-car detached garage and convert the existing attached garage into bedrooms. He stated that the property is over four (4) acres in size, heavily wooded and the house is fairly far from any neighbors.

In response to a question from Chairman Rybczynski, Mr. Rieber stated that there would be no commercial activities in the new garage. He further stated that there would not be a second story and there would be no plumbing.

Mr. Rieber showed Board members where the existing shed on the property is located.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Yodar, to approve Application # 5853.

On the question:

Mrs. Falkiewicz reviewed the area 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 is slightly substantial.
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 Mrs. Hahn, to approve the minutes of February 2, 2021. All members voted in favor of the motion.

Mrs. Hahn made a MOTION, seconded by Mr. Dimpfl, 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: March 25, 2021