

Town of Hamburg  
Board of Zoning Appeals Meeting  
April 6, 2021  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, April 6, 2021 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Chairman Ric Dimpfl, Commissioner Louis M. Chiacchia, Commissioner Nicole Falkiewicz, Commissioner Laura Hahn and Commissioner Jeff Adrian.

Also in attendance were ZBA Attorney Michelle Parker and Sarah desJardins, Planning Consultant

Excused: Commissioner Mark Yodar

Chairman Rybczynski asked for a moment of silence to honor our fallen men and women in the military and the people who have been affected by Covid-19.

Commissioner Chiacchia read the Notice of Public Hearing.

**Tabled Application # 5852 James Lutz – Requesting an area variance for a proposed accessory structure at 3459 Lakeview Road**

It was determined that the Building Department determined that any drainage from the applicant's accessory building would not affect the property located at 3432 Old Lakeview Road.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5852.

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 – 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 – Yes, but on balance it tilts to approval.

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

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

A representative of the applicant stated that he plans to put up a gazebo for his mother to park her car under in the rear yard. He noted that he took down the attached carport that he had previously constructed that was partially on his neighbor's property. He stated that he is able to

place the gazebo two (2) feet from the property line but he would prefer to place it one (1) foot from the property line so that his mother can drive straight in from the existing driveway.

Pete Radar, 5869 Lakeview Terrace, stated that he owns the vacant property adjacent to where the proposed gazebo would be placed. He stated that the applicant does not have enough room behind her home to get to where the gazebo would be located without going onto his property. He stated that he is worried about liability. He noted that the applicant currently parks partially on his property and has placed a 2' X 8' piece of wood on his property next to where she parks her car.

The applicant's representative stated that there is room on the passenger side for the applicant to get out of her car and still be on her own property.

It was determined that without a primary structure, a fence would not be permitted on Mr. Radar's vacant property.

Mr. Adrian stated that the neighbor dispute should be resolved before the Board votes on this request.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to table Application # 5849.

On the question:

Mr. Adrian stated that there needs to be some sort of agreement between the two neighbors to eliminate the dispute. He stated that there is not enough room from the edge of the house and the property line to get a vehicle back and forth through the driveway.

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

**Application # 5854 John Lawrence – Requesting an area variance for an animal pen at 3157 Pleasant Avenue**

It was determined that the applicant asked that his request be tabled to the May 2021 meeting.

**Application # 5856 Kenneth Wasiewicz – Requesting an area variance for a residential addition at 3022 Kirschner Parkway**

Kenneth Wasiewicz, applicant, stated that he would like to construct a small mudroom on the side of his home. He noted that there is plenty of room to get to the garage in the rear of the property.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5856.

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 on balance it tilts to approval.

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

**Application # 5857 Frederick Ramos – Requesting three (3) area variances for an attached garage addition at 4580 Oxford Terrace**

It was determined that the applicant was not in attendance.

**Application # 5858 Southtowns Leasing Prop LP – Requesting two (2) area variances for a proposed flag pole at 5025 Camp Road**

John Wabick, Vice-President of the West Herr Automotive Group, stated that the proposal is to erect a 100-foot high flag pole on the corner of Camp Road and Southwestern Boulevard. He noted that it is a gift of Brad Hafner. He noted that the proposed height is comparable to the existing flagpole at Denny's across the street and the flagpole in the old Five Corners area.

Chairman Rybczynski stated that the applicant must speak with Mr. Ron Frei from the New York State Department of Transportation (NYSDOT) about the proposal because of the proximity of the proposed flagpole to the NYSDOT right-of-way.

Mr. Wabick stated that the flagpole and underground components would be completely on the applicant's property and not in the NYSDOT right-of-way.

Mr. Wabick asked if the Board would consider granting the variances conditioned upon his receiving the okay from the NYSDOT.

Chairman Rybczynski responded that that would not be possible.

In response to a question from Mr. Dimpfl, Mr. Wabick stated that the flagpole would go 8.5' into the ground. He further stated that the existing power lines restrict where the flagpole can be located.

**Findings:**

Chairman Rybczynski stated that Application # 5858 would be left on the table to allow the applicant to get some answers from the NYSDOT and Mr. Gibson to take another look at the request to make sure there are no other issues to be concerned about.

**Application # 5859 Denis and Linda Geganfurtner – Requesting an area variance for an above ground swimming pool at 3662 Wexford Lane**

Denis Geganfurtner, applicant, stated that he would like to replace an above ground pool that is 3'5" from the rear property line with a new above ground pool that would be in the same location. He stated that he cannot place the new pool further from the rear property line because of the existing deck.

**Findings:**

Mrs. Hahn made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5859.

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.**

**Application # 5860 Sowles Road Joint Venture – Requesting a use variance and an area variance to reface an existing pole sign at 4995 Southwestern Boulevard**

Mr. John Wabick, Vice-President of the West Herr Automotive Group, stated that the the applicant would like to replace an existing pole sign with a comparable existing pole sign. He stated that the applicant removed the digital component of the existing sign and will not be replaced. He noted that the new sign would be identical to the sign that is being removed. He further stated that the existing sign is 20 years old and the base is rotted.

In response to a question from Mr. Chiacchia, Mr. Wabick stated that General Motors requires him to have a sign of this size.

In response to a question from Chairman Rybczynski, Mr. Wabick stated that because of the five lanes of traffic in front of this property and the snow that would be thrown onto the property, the fear is that a monument sign would get buried in the snow and it would be very difficult to keep it cleared. He further stated that the structure of a monument sign is all plastic and the salt hitting the plastic from snow plows would conceivably damage it often.

Ms. Falkiewicz stated that a monument sign in that location could cause problems for motorists attempting to turn out of Tim Hortons.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the use variance for Application # 5860.

On the question:

Ms. 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 indicated that this sign is required under a franchise agreement with General Motors and a monument sign might not last as long as a pole sign.
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.

All members voted in favor of the motion.

Ms. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to approve the area variance for Application # 5859.

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 on balance it tilts to approval.

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

**Application # 5861 Nicole and Thomas Nasca – Requesting an area variance for an above ground pool at 5669 Apollo Drive**

Mr. Tom Maleca, applicant, stated that he and his wife wanted to install an above ground pool last year and he searched the Town’s website for the location requirements. He stated that the Town’s website indicates that the pool must be at least five (5) feet from the side property line and three (3) feet from the rear. He stated that he purchased the pool after reviewing the requirement online, but when he went to the Building Department to get a permit, he was informed that the requirements have recently changed and now the pool must be at least ten (10) feet from both the rear and side property lines. He stated that he would like to put the pool five (5) feet from both the rear and side property lines.

Mr. Maleca noted that there is a six-foot high privacy fence surrounding his yard.

**Findings:**

Mrs. Hahn made a MOTION, seconded by Mr. Adrian, to approve Application # 5861.

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.**

**Application # 5862 Daryl Martin, architect – Requesting an area variance for proposed parking spaces for a proposed new development on vacant land, Riley Boulevard**

Daryl Martin, architect, stated that Apollo Concrete Coating would like to construct a new building on Riley Boulevard. He stated that the lot is curved and portions of a few of the proposed parking spaces would infringe on the minimum required 35-foot setback. He stated that the applicant would very much like to have those parking spaces where they are proposed for customers and employees.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5862.

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, due to the shape of the lot.
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 – No, and on balance it tilts to approval.

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

**Application # 5863 Ronald Benderson – Requesting an area variance for building signage at 6050 South Park Avenue**

A representative of NAS Sign Company stated that the applicant plans to install Gabe's in this vacant building in Town Hall Plaza and is requesting an extra 42 square foot of building signage for the front of the building. He noted that this is a new national brand that will be coming to Hamburg and Gabe's would like to be recognized in New York as an established brand.

The representative stated some of the existing building signage in this plaza is equal to or greater than what Gabe's is requesting. He further noted that this will be an anchor tenant in the plaza.

In response to a question from Chairman Rybczynski, the representative confirmed that part of the additional square footage of the sign includes the bottom portion of the sign that lists what Gabe's offers. He further confirmed that this would be the only building signage installed and lettering will be added to the existing Town Hall Plaza pole sign at the road.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5863.

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.**

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve the minutes of March 2, 2021. All members voted in favor of the motion.

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

The meeting was adjourned at 8:00 P.M.

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

DATE: April 11, 2021