

Town of Hamburg
Board of Zoning Appeals Meeting
May 4, 2021
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, May 4, 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 # 5849 Teresa Riordan – Requesting an area variance for a new detached carport at 5862 Lakeview Terrace

In response to a question from Chairman Rybczynski, the applicant's son stated that he did not speak with the adjoining property owner since the Board's last meeting. He stated that he did submit photographs showing that there is more than enough room for his mother to back in to the carport without being on the neighbor's property.

Chairman Rybczynski noted that if the applicant backs in to the carport, which would be on her property, she would still have to step out of her vehicle and at that point would be standing on the neighbor's property.

The applicant's son stated that if the variance is granted, his mother's car would be parked far enough from the shared property line that she would not be walking on the neighbor's property.

In response to a question from Mr. Adrian, the applicant's son stated that if he put the carport five (5) feet from the property line, which would not require a variance, the carport would be in the middle of the back yard. He noted that he would like to place the carport one (1) foot from the property line.

Virginia Rador, 5869 Lakeview Terrace, stated that she owns the adjacent property and the applicant has not approached her to discuss the problem. She stated that she would rather have the carport the required distance from her property line rather than one (1) foot. She asked if the carport would drain onto her property, noting that she does not want that to happen.

The applicant's son stated that he will make sure the carport drains onto his mother's property and not the adjacent property.

Findings:

Ms. Hahn made a motion, seconded by Mr. Chiacchia, to approve Application # 5849.

On the question:

Ms. 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 – Possibly, but on balance it tilts to approval.

Mr. Adrian stated that there is nothing to prevent the applicant's son from placing the carport the required five (5) feet from the property line.

Attorney Parker asked Chairman Rybczynski if he wanted to allow the applicant to withdraw and have the request heard when the Board has all seven (7) members. Chairman Rybczynski responded that the motion was properly offered and seconded, and a vote was taken.

As the vote on the motion was three (3) ayes (Ms. Hahn, Mr. Chiacchia and Chairman Rybczynski) and three (3) nays (Mr. Adrian, Mr. Dimpfl and Ms. Falkiewicz), the motion failed.

DENIED.

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

John Lawrence, applicant, stated that he would like to erect an animal pen for two (2) goats and the pen would be too close to both side property lines. He noted that his neighbors have no issues with his proposal.

Chairman Rybczynski read letters of support from the following property owners:

- Lorrie Anne Kostin, 3151 Pleasant Avenue
- Howard J. Domin, 3148 Pleasant Avenue

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5854.

On the question:

Ms. 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 – That could go either way, but on balance it tilts to approval.

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

Tabled 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 West Herr, stated that he spoke with a representative of the New York State Department of Transportation (NYSDOT) who provided a letter indicating that the NYSDOT does not object to the placement of the proposed flag pole.

Mrs. desJardins stated that the NYSDOT did indicate that the flag pole should be moved five (5) feet from the NYSDOT right-of-way and Mr. Wabick agreed to that.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5858.

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, but on balance it tilts to approval.

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

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

It was determined that this application would be left on the table for one (1) more month.

Application # 5855 Pedro Munoz – Requesting an area variance for a proposed front covered porch at 1649 Schoellkopf Road

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

Application # 5864 RTE Realestate LLC – Requesting a use variance to reface an existing pole sign at 4767 Southwestern Boulevard

Findings:

Russ Gullo, applicant, stated that Gullo’s Garden Center would like to replace the digital part of the existing sign because one side is not working. He noted that the sign will look exactly the same.

In response to a question from Chairman Rybczynski, Mr. Gullo stated that it would be cost prohibitive to replace the entire sign, noting that the existing sign cost \$70,000 when it was first erected 15 years ago.

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the use variance for Application # 5864.

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 cost \$70,000 15 years ago and it would cause a financial hardship to replace it now.
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. **GRANTED.**

Application # 5865 Jason Vickerd – Requesting an area variance for a proposed residential addition at 4288 Cherry Place

Jason Vickerd, applicant, stated that he would like to construct an addition on the back of the house that would be eight (8) feet from the existing garage (10 feet is required). He noted that the corner of the addition would actually be approximately nine (9) feet from the garage, but there is an overhang on the house that is closer to the garage than the actual addition would be.

In response to a question from Chairman Rybczynski, Mr. Vickerd stated that without the variance, all of his plans would have to be revised at a considerable cost.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 5865.

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, but on balance it tilts to approval.

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

Application # 5866 5073 Camp LLC – Requesting a use variance to reface an existing pole sign at 5073 Camp Road

Findings:

Chris McCaffrey from Ulrich Sign Company, representing the applicant, stated that Crosby's recently purchased the Lutz Market at this location and would like to add a "Crosby's" panel to the existing pole sign. He noted that the size of the sign would remain the same.

In response to a question from Ms. Falkiewicz, Mr. McCaffrey stated that it is a requirement of the franchise is to have its signage on the existing pole sign.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to approve the use variance for Application # 5866.

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.
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. **GRANTED.**

Application # 5867 Beth Weber – Requesting two (2) area variances for a proposed residential addition at 5964 North Drive

Beth Weber Palmer, applicant, stated that she would like to construct a second story addition on her home and enlarge the garage. She stated that the home with the addition would not be the required 10 feet from one property line and the combined distance of both sides of the home from the property lines would not be the required 25 feet.

In response to a question from Ms. Falkiewicz, Ms. Palmer stated that she has spoken to the neighbors who would be affected and they have no problems with the proposal.

Findings:

Mrs. Hahn made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5867.

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 # 5868 Colleen Battaglia – Requesting an area variance for a proposed residential addition at 5397 Ontario Avenue

Colleen Battaglia, applicant, stated that she would like to construct a three-season room on her home that would be too close to the existing garage. She noted that she plans to put a fire wall up in the garage for fire protection.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5868.

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 – 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 # 5869 Michael Polasik – Requesting an area variance for a proposed residential addition at 2973 Pleasant Avenue

Michael Polasik, applicant, stated that he would like to construct a pole barn and its square footage combined with an existing old barn on the property would be more than what is allowed. He stated that the new pole barn would be to house cars and for storage.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5869.

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 – This could be argued either way, but

on balance it tilts to approval.

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

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of April 6, 2021. 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 7:50 P.M.

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

DATE: May 24, 2021