

Town of Hamburg
Board of Zoning Appeals Meeting
June 1, 2021
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 1, 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 Mark Yodar, Commissioner Laura Hahn and Commissioner Jeff Adrian.

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

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

Frederick Ramos, applicant, stated that he would like to construct a 24' X 28' addition to his existing garage. He noted that the addition would be 30' high. He stated that he needs the extra room to store his vehicles and motorcycles.

In response to a question from Chairman Rybczynski, Mr. Ramos stated that he would not be doing any commercial work in the garage.

Mr. Chiacchia stated that he visited the site and understands why the applicant needs to space to store his vehicles. He stated that the garage addition would not affect any neighbors.

Mrs. desJardins stated that this property is located on a corner so it technically has two (2) front yards, which is why the front yard setback variance is required.

Findings:

Ms. Hahn made a motion, seconded by Mr. Dimpfl, to approve Application # 5857.

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 – Possibly.
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 favors the applicant.

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

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

Russ Bluhm from Bluhm Restoration, representing the applicant, stated that Mr. Munoz would like to add a covered front porch to his home. He noted that the porch would be 30' long and 7' deep.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Yodar, to approve Application # 5855.

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 the balancing test is in favor of the variance.

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

Application # 5870 Gerald & Nora Whalen – Requesting an area variance for a proposed residential addition at 6325 Boston State Road

Chairman Rybczynski noted that letters of support were received from Frederick Wilson, Jr., 6309 Boston State Road and Barbara Brauch, 6330 McKinley Parkway.

Attorney Walter Rooth, representing the applicant, stated that the applicant's home has been there for 50 to 60 years and is already in violation because of its age. He noted that the master bedroom addition would not be any closer to the road than the existing home currently is.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5870.

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, but the balancing test is in favor of granting the variance.

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

Application # 5871 Aaron Taylor – Requesting an area variance for a proposed front porch at 4547 Duane Court

Thomas Taylor, representing his son, stated that the proposal is to construct a 21' front porch on the existing home. He noted that the porch would be too close to the road.

Mr. Chiacchia stated that he visited the site and there are several homes in the neighborhood that have had front porches added to them.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5871.

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 the balancing test is in favor of the variance.

As the vote on the motion was six (6) ayes and one (1) abstention (Mr. Chiacchia). The motion passed. **GRANTED.**

Application # 5872 – Vanderbilt Properties – Requesting two (2) area variances for a proposed new home on vacant land, Pleasant Avenue**Application # 5873 – Vanderbilt Properties – Requesting two (2) area variances for a proposed new home on vacant land, Pleasant Avenue**

Chairman Rybczynski stated that the above applications would be discussed together.

William Tuyn from David Homes, representing the applicant, stated that the Villas at Brierwood was approved by the Planning Board as a PUD (Planned Unit Development) and at that time, the Planning Board approval also included two (2) small building lots on Pleasant Avenue.

Mr. Tuyn stated that at the time of approval, the Planning Board did not specify setback requirements for these two (2) building lots. He noted that they are shallow and relatively wide.

Mr. Tuyn stated that the Town Code indicates that if building lots in a PUD do not have required setbacks, then the setback requirements of the surrounding zoning is applied. He noted that the surrounding zoning is RA (Residential Agricultural), which requires at least two-acre lots and a 50' front yard setback. He stated that the Building Department therefore determined that the R-2 District setbacks would be applied, since the lots are closest in size to R-2 lots.

Mr. Tuyn stated that the lots conform to the R-2 zoning in terms of square footage, but they are quite irregularly shaped and very shallow. He noted that David Homes would like to construct a

home on each lot and is requesting a front yard setback of 30' instead of the required 35' and a rear yard setback of 20' instead of the required 30' for each lot.

Mr. Tuyn stated that the adjoining homes are 31' and 24' from the front property line.

In response to a question from Mr. Dimpfl, Mr. Tuyn stated that the plan at the moment is for both homes to be ranches and they would be approximately 1,500 sq.ft.

Mr. Bruce Reid, 3030 Pleasant Avenue, stated that many homes have been built in this area and not a single one has requested a variance. He stated that the applicant bought the property, knew the rules and gambled. He asked why zoning laws exist if they are not followed.

Chairman Rybczynski stated that the Board of Zoning Appeals exists to give relief from the zoning laws.

Mr. Reid stated that relief from the Code is not warranted in this case.

Mr. Jon Davis, adjacent property owner, stated that what is considered reasonable to the community that lives in the area feels like a death of a thousand cuts over twenty years. He stated that the problem began when the Villas at Brierwood was approved in 2007. He stated that he feels largely the same way Mr. Reid does, but he does not have any specific issue with what David Homes is requesting at this time.

In response to a question from Attorney Parker, Mr. Tuyn stated that the two (2) property owners would not be a part of the existing Villas at Brierwood Homeowners' Association.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Yodar, to approve Application # 5872 with the following condition:

- The home must be single-story.

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, but the balancing test is in favor of granting the variance.

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

Ms. Falkiewicz made a MOTION, seconded by Mr. Yodar, to approve Application # 5873 with the following condition:

- The home must be single-story.

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, but the balancing test is in favor of granting the variance.

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

Application # 5874 Joseph Zarbo – Requesting an area variance for a proposed detached pavilion at 4780 Milestrip Road

Mr. Joseph Zarbo, applicant, stated that he has a stamped concrete pad and would like to put a roof on it with posts and no walls.

In response to a question from Mr. Dimpfl, Mr. Zarbo stated that his is the home in the rear of the property and there is no one nearby who would be affected by the covered patio.

It was determined that the applicant has several buildings on the property whose square footage exceeds what is allowed by Code.

Mr. Chiacchia stated that he visited the site and noted that the covered patio would not impact anyone nearby.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl to approve Application # 5874 with the following condition:

- The patio can never be enclosed.

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 it will enhance the property for the applicant’s personal use.

As the vote on the motion was six (6) ayes and one (1) nay (Mrs. Hahn), the motion passed. **GRANTED.**

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of May 4, 2021. All members voted in favor of the motion.

Chairman Rybczynski stated that the meeting would be adjourned in memory of his godmother, Irene Rachlinski, and his cousin, Bonnie Burek, both of whom recently passed away, as well as all of those who have served our nation and paid the ultimate sacrifice.

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

The meeting was adjourned at 7:40 P.M.

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

DATE: May 24, 2021