

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

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 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 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 who have paid the ultimate sacrifice.

Commissioner Chiacchia read the Notice of Public Hearing.

Application # 5875 Joshua Almond – Requesting an area variance for a proposed addition to the existing home at 3433 South Creek Road

Joshua Almond, applicant, stated that he would like to construct an addition to his attached garage.

Megan Almond, applicant, submitted letters of support from the following nearby property owners:

- Phillip Smith, 3434 South Creek Road
- Terrence Greene, 3443 South Creek Road

Findings:

Mrs. Falkiewicz made a motion, seconded by Mr. Yodar, to approve Application # 5875.

On the question:

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 – Yes, but on balance it favors the applicant.

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

Application # 5876 The Water James Milligan Jr. - Requesting a use variance to allow automotive use in the existing building at 4751 Southwestern Boulevard

Ms. Sheryl Zielonka stated that she is one of the executors of Mr. Milligan's estate. She stated that the rear of the existing building at 4751 Southwestern Boulevard has been empty for five (5) years and she now has a company that would like to rent the space to do minor automotive repairs to its own vehicles. She noted that any major repairs would be done at the company's Buffalo shop.

Ms. Zielonka stated that used oil would be stored in a containment tank inside the building and removed monthly. She further stated that there would never be more than four (4) employee cars at the site, and there would be between two (2) and four (4) company trucks for repairs inside the building or to the rear of the building. She noted that the business would not be open to the public for automotive repairs.

Ms. Zielonka stated that this use is no different than what her father did in the building for 30 years.

Mrs. desJardins stated that this project will be reviewed by the Planning Board if a use variance is granted. She noted that the tenant would not be doing automotive repair on any vehicles other than its own.

In response to a question from Mrs. Falkiewicz, Ms. Zielonka stated that she did not have information with her regarding how much money the trust has lost in not being able to lease the building.

In response to a question from Chairman Rybczynski, Ms. Zielonka stated that the building has been listed with two (2) different commercial realtors and the trust has had no interest because the garage bays are very large.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to table Application # 5876.

On the question:

Mrs. Falkiewicz requested that the applicant supply competent financial evidence that there is a loss with the building not being leased.

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

Application # 5877 Marcell Dareus – Requesting two (2) area variances for a proposed detached garage at 5061 Fairgrounds Road

Mr. Brad Raucci, friend of the applicant's, stated that the applicant would like to construct a pole barn to house a trailer, several cars, etc.

In response to a question from Chairman Rybczynski, Mr. Raucci stated that there will be no commercial activity in the new pole barn.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5877.

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 – 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 # 5878 Chad Thomson – Requesting an area variance for a proposed above ground pool at 1434 Evergreen Drive

Danielle Thomson, applicant, stated that they would like to install an above ground pool that would be 2 ½ feet closer to the property line than what is allowed. She noted that a tree fell on their previous pool and it had to be replaced, and they decided on a larger pool. She stated that the pool deck is custom, so if the new pool has to be placed further from the property line it would cost them a large amount of money to redo the pool deck.

In response to a question from Mrs. Falkiewicz, Mrs. Thomson stated that her immediate neighbors are not opposed to the request.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to approve Application # 5878.

On the question:

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

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

Application # 5879 Kim Key West LLC - Requesting three (3) use variances for roof and wall signage at 4514 Camp Road

Rick Johnson from Express Signs, representing the applicant, stated that the applicant would like to reface the existing sign on the front of the building, as well as install signage on the two (2) sides of the building. He noted that the applicant did speak to the nearby property owners and no one objected to the proposed signage.

In response to a question from Mrs. Falkiewicz, Mr. Johnson stated that a monument sign is not an option because it would be too close to the road.

Chairman Rybczynski read correspondence from Brenda Peacock, 3358 Nash Road expressing concern that the signage not be digital or brightly lit.

In response to a question from Chairman Rybczynski, Mr. Johnson stated that the hours of operation of the business would be from 10:00 AM until 11:00 PM.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the requested signage on the east and west sides of the building for Application # 5879.

On the question:

Mrs. Falkiewicz reviewed the area variance criteria as follows:

1. The applicant cannot realize a reasonable return, provided the lack of return is substantial as demonstrated by competent financial evidence – The applicant did show that the building had been vacant for quite some time and the signage is necessary.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – That is accurate.
3. The use requested use variance if granted 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.**

Application # 5880 Kristin Evangelista – Requesting an area variance for a proposed new home at 4819 Holly Place

Kristin Evangelista, applicant, stated that she would like to construct a new home on this property, which is a corner lot, that would be too close to Shamrock Court. She noted that because this is a corner lot, the home would have to be 35 feet from both Holly Place and Shamrock Court.

In response to a question from Chairman Rybczynski, Ms. Evangelista stated that the home would have two (2) stories.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 5880.

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 granting the variance.

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

Application # 5881 Erica Kennedy – Requesting two (2) area variances to allow domestic fowl at 3598 Pleasant Avenue

Erica Kennedy, applicant, stated that she would like to keep six (6) chickens on her property. She noted that one of her neighbors indicated that he has no objections. She further confirmed that there would be no roosters.

David Kennedy, applicant, stated that there is 450 feet to the nearest home and there are 13 acres adjacent to his property. He noted that they purchased the chickens before they knew that a permit was required. He stated that his property is not quite large enough to keep chickens.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Dimpfl to approve Application # 5881 with the condition that there may be no roosters and no more than six (6) chickens.

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 the balancing test favors the applicant.

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

Application # 5882 Buffa Love - Requesting an area variance for wall signage at 4953 Camp Road

Mr. Jerry Noworyta, representing the applicant, stated that the applicant would like a second sign for her new store in the Colley's plaza.

Patty Watson, applicant, submitted correspondence from Colley's Pools indicating that it has no objection to Ms. Watson's second sign.

Findings:

Mrs. Hahn made a MOTION, seconded by Mrs. Falkiewicz, to approve Application # 5882.

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 – No.

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

Application # 5883 Bloom Creative Arts – Requesting a use variance and two (2) area variances for a proposed day care facility to be located at 3674 Commerce Parkway

Michael Cross from Steadfast Constructive Services, representing the applicant, stated that the applicant would like to add verbiage to a section of the existing pole sign on the property. He stated that additionally a play area is proposed that would be located in the front yard, which is not allowed, and that would not be large enough per Town Code.

Mr. Cross noted that only 20 children are allowed in the play area at one time per New York State and the provided 2,400 sq.ft. of play area would be sufficient.

Mrs. desJardins stated that this project is currently being reviewed by the Planning Board. She further noted that the square footage of required play area in the Town Code was somewhat of an arbitrary number when it was written. She noted that the Town Code requires a much larger play area than New York State does.

In response to a question from Mrs. desJardins, Mr. Cross stated that there is 30 feet of green space between the right-of-way of Commerce Parkway and this site's property line. He noted that the fence for the play area would begin at that 30-foot mark.

Mr. Cross stated that New York State does not have a minimum square footage requirement for play areas.

Board members discussed ways to ensure that if a vehicle leaves Commerce Parkway, it would not be able to enter the fenced in play area and injure children.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Yodar, to table Application # 5883 for more substantial plan for the fencing and additional competent financial evidence.

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

Application # 5884 Bliss Bridal – Requesting two (2) area variances for a proposed parking area for a bridal shop in the existing building at 6592 Gowanda State Road

Russ Bluhm, general contractor for the project, stated that the applicant plans to enlarge the existing driveway on the property. He noted that the parking lot would only be enlarged in the direction of Gowanda State Road.

Findings:

Mr. Yodar made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5884.

On the question:

Mr. Yodar 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 # 5885 Robert Ritter – Requesting an area variance for a proposed detached garage at 3382 Old Lakeshore Road

Robert Ritter, applicant, stated that he would like to construct a pole barn on the property to house a couple of boats and a classic car. He stated that he would eventually like to take down the smaller of the existing accessory structures on the property.

In response to a question from Mr. Dimpfl, Mr. Ritter stated that one of his adjacent neighbors indicated that he does not object to the requested variance.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Yodar, to approve Application # 5885.

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 granting the variance.

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

Application # 5886 Janet Smolinski – Requesting an area variance for a proposed detached garage at 4127 South Park Avenue

Janet Smolinski, applicant, stated that she would like to construct a detached garage to replace an existing detached garage that will be demolished. She noted that the new garage would be located in the same location as the old garage.

Ms. Smolinski stated that her surrounding neighbors support her request for the variance.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Yodar, to approve Application # 5886.

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 – No.

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

Application # 5887 Ashley Tabaczynski – Requesting an area variance for a proposed detached garage at 5228 Scranton Road

Ashley Tabaczynski, applicant, stated that she would like to construct a detached garage that would be 24' X 32' in size.

It was confirmed that no there will be no commercial activity in the new garage.

Findings:

Mrs. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5887.

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 # 5888 Thomas Sauer – Requesting an area variance for a proposed attached garage at 2225 Shadow Lane

Brian Lewis, architect, stated that Mrs. Sauer's mother lives with the Sauers and they would like to add a one-bay garage onto the home for the mother's car. He stated that the garage would be too close to the side property line. He further stated that if the variance is granted, there would be 16 feet between the new garage and the adjacent property owner's home.

Bob Strell, commercial real estate consultant, stated that he was representing Brent Ford, adjacent property owner. Mr. Strell submitted copies to Board members of a letter from him, as well as photographs and the applicant's survey.

Mr. Strell stated that the applicant's home already has a two-car garage, as well as a concrete slab to the immediate left of the home if one is facing it, for an extra parking space. He noted that the applicant is requesting a 40% reduction in the distance from the new garage to the property line shared with Mr. Ford. He stated that Mr. Ford's home is only ten (10) feet from the shared property line.

Mr. Strell stated that there are no homes in this subdivision that are located less than the required ten (10) feet from side property lines. He stated that although the applicant may be well intended, this is about the Town Code and what is required. He stated that the applicant has been using the concrete slab to the left of the home for parking for some time.

Mr. Strell stated that this is not so much a hardship to the applicant as it is an inconvenience.

Brent Ford, adjoining property owner, stated that he purchased his property because of the distance between the homes. He noted that if the variance is granted, he will sit on his front porch and look at the side of a garage.

In response to a question from Chairman Rybczynski, Mr. Lewis stated that there would be no windows on the side of the new garage and there would be no second story constructed over it.

In response to a question from Chairman Rybczynski, Mrs. Sauer stated that she would be willing to move the new garage back as long as it works structurally.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to table Application # 5888 for additional plans regarding the proposal to move the garage further back.

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

Application # 5889 Rosanne DiPizzio – Requesting a use variance to allow an automotive repair business on a portion of the property located at 5710 Camp Road

David Lauria stated that he would like to utilize part of 5710 Camp Road, which is owned by Rosanne DiPizzio, for his business with his brother Chuck. He stated that they would like to lease part of the property and open a new tire store. He noted that the property is zoned M-3 and they are requesting a use variance to be able to open their business.

Chuck Lauria stated that the building they would like to lease has bays and an office.

Chairman Rybczynski stated that competent financial evidence was not submitted by the property owner. He further stated that this is a request to grant a use variance for just a portion of a property and he does not recall that ever happening before. He stated that Attorney Parker would research whether a use variance can be granted for a portion of a property.

Chairman Rybczynski asked the applicants to submit competent financial evidence from the property owner.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Yodar, to table Application # 5889 for competent financial evidence and an answer regarding whether a use variance can be granted for just a portion of a property.

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

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

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

The meeting was adjourned at 8:45 P.M.

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

DATE: July 29, 2021