

Town of Hamburg
Board of Zoning Appeals Meeting
August 3, 2021
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, August 3, 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.

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

Walter J. Milligan, applicant, stated that Founders Logistics has an interest in leasing the building at this address.

Chairman Rybczynski noted that the applicant submitted a synopsis of the loss of income experienced by the Walter James Milligan Jr. Trust.

In response to a question from Chairman Rybczynski, Mr. Milligan stated that he has been trying to lease the property for approximately three (3) years and Founders Logistics is the first business that has shown any interest. He noted that the rear section of the building is approximately 6,000 sq.ft. in area and cannot easily be separated, so it has been hard to find someone who needs that size space. He stated that this space would be used for minor servicing and inspection of Founders Logistics' vehicles.

The CPA of the trust stated that this building was used by Walter Milligan Sr. as an office and to store antique cars. He noted that when Mr. Milligan passed away, the vehicles were sold and the rear portion of the building has remained empty, which is costing the trust money to maintain, insure and pay taxes on.

In response to a question from Mrs. Falkiewicz, the CPA of the trust stated that it has not tried to market the property for sale yet, but if someone were interested in buying it, the trust would be interested.

Findings:

Mrs. Falkiewicz made a motion, seconded by Mr. Dimpfl, to approve Application # 5876.

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

Mrs. Falkiewicz reviewed the use 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 give Board members a statement from his accountant itemizing how much money has been lost due to the lack of renting the property.

2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – It is unique because of the office space in the front and bays in the rear.
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.**

Tabled 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

Mike Cross, contractor for the project, stated that at its last meeting the Board requested something to protect the area between the children in the play area and the roadway. He noted that he submitted information on large rocks or boulders approximately three (3) to four (4) feet in diameter that could be placed approximately every six (6) feet along the entire outside area of the play area fencing.

Mr. Adrian stated that he wanted the protected barrier plan to be designed by a New York State licensed engineer or architect who would certify that the boulders would stop any vehicle that were to enter the property. He stated that he was not sure that placing the boulders six (6) feet apart would be adequate and noted that the barrier should be substantial like a barricade.

In response to a question from Mr. Adrian, Ms. Coltoniak stated that this business is in compliance with New York State Office of Child and Family Services (OCFS). She noted that OCFS only has a requirement that there be a grassy area for children to play and does not require a fenced-in play area.

Ms. Coltoniak asked Mr. Adrian if the Hamburg Town Code requires substantial barriers for the outside of fenced-in play areas. Mr. Adrian stated that the Code does not require that, but Ms. Coltoniak was asking for relief from the Town Code to place the play area in the front yard.

Ms. Coltoniak stated that she is proposing to locate her business on a dead-end street and a fenced-in play area that OCFS does not require. She asked Mr. Adrian why the Town Code does not allow play areas in the front yard and when that section of the Town Code was last updated.

In response to a question from Chairman Rybczynski, Ms. Coltoniak stated that this business is a 4410 preschool program that is licensed through New York State Department of Education. She noted that a 4410 preschool is a center-based program for children who cannot go to regular day care center.

Mr. Cross stated that if the Board had asked that the plan regarding the boulders be designed by a New York State licensed architect or engineer at its last meeting, he would have submitted that.

Mr. Cross stated that they proposed the boulders as a barrier because they will be placed in a National Fuel right-of-way and he cannot build a permanent wall or bollards on that right-of-way.

Findings:

Mr. Dimpfl stated that his concern is for the safety of the children.

Mr. Adrian suggested that this application be tabled to allow the applicant to provide the Board with an engineer or architect stamped plan showing a proper barrier in the front yard.

Chairman Rybczynski made a MOTION, seconded by Mr. Yoder, to approve the requested area variances for Application # 5883 with the following condition:

- The applicant shall provide the Building Department with a professional engineer or licensed architect stamped plan showing a proper barrier in the front yard before the business opens.

On the question:

Chairman Rybczynski 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.**

Ms. Falkiewicz made a MOTION, seconded by Mr. Adrian, to approve the requested use variance for Application # 5883.

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

On the question:

Mrs. Falkiewicz reviewed the use 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 – This is a request for signage on Camp Road and Commerce Place and this Board has approved re-facing of this existing sign previously.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – It is unique situation since it is on a corner lot.
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.**

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

Architect Brian Lewis, representing the applicant, stated that the plan for the attached garage had been revised to be located two (2) feet further back from the front of the home. He stated that most of the mechanicals for the home are located on the side of the home where the garage is proposed and behind its proposed location. He noted that the cost to relocate these mechanicals would be approximately \$3,000 - \$5,000. He further noted that the storm drain for the sump pump is also located on that side of the home but will be relocated.

Mr. Lewis stated that the proposed garage had been moved as far back as possible given the above situation.

Mr. Bob Strell, representing Mr. and Mrs. Ford, adjacent homeowners, stated that the applicant's revised plan was not in the Planning Department when he visited there earlier that day. He stated that his client did not have the opportunity to see the plan in order to comment on it.

Mr. Strell stated that the first conversation he had with Mr. Lewis was a few minutes before this meeting. He stated that he asked Mr. Lewis to consider allowing this applicant to be tabled again so that his client and the applicants can discuss the revision to the proposal and reach some sort of solution.

Mr. Strell stated that his client could not envision whether the revised plan would improve his line of sight without having some chalk lines on the ground so he can see if the revised plan would change things for him significantly.

Mr. Strell requested that the Board table this proposal again so that a possible solution can be arrived at between the neighbors and his client can assess the new proposal.

Mr. Strell stated that if the applicants really want to do this project, they should expect that there will be some anticipated additional costs that would not be incurred if it was being done on another lot.

In response to a question from Chairman Rybczynski, Mr. Ford stated that there is no amenable solution that involves an additional garage in that space that he could think of. He stated that he would like to actually see what the revised location of the garage would look like from his front porch.

Chairman Rybczynski stated that Mr. Ford can envision what the garage being pushed two (2) feet back would look like. He stated that the garage would probably not look much different pushed two (2) feet back than it would if it was flush with the front of the applicant's home.

Mr. Strell stated that the applicant has never reached out to Mr. Ford.

Chairman Rybczynski stated that at its last meeting, the Board asked the applicant to return with a revised plan showing the garage moved back from the front of the home.

In response to a question from Attorney Parker, Mr. Lewis stated that the proposed garage is 24 feet long because the applicant wishes to store a bicycle in addition to the vehicle. He noted that the standard length of 20 feet is tiny and the applicants have children.

Attorney Parker responded that the applicants already have a two-car garage and this new garage is not being contemplated for the children's storage. She stated that this is being contemplated because now it would make this a multi-generational housing as opposed to a single-family home, which is what the subdivision was designed for. She stated that perhaps the way to deal with this is to not have everything the applicant is asking for in order to reach an accommodation with the adjacent neighbor and avoid issues with his sight lines.

In response to a question from Mr. Adrian, Mr. Lewis stated that he did not know what the dimension is from the front of the home to the meter box. He stated that the vent and intake for the furnace, the condenser unit and electrical disconnect box for the A/C and the dryer vent would be moved to make room for the garage.

Chairman Rybczynski stated that there appeared to be more than two (2) feet to work with as long as all of the above was going to be moved anyway.

Mr. Lewis stated that he did not know if it would be possible to move the A/C condenser to the back of the house because of the location of the furnace in the basement.

Attorney Parker stated that extra cost to move the mechanicals back to allow for the garage is cheaper than providing housing in a separate facility.

Mr. Lewis stated that the grandmother already lives in that home and parks her car outside and would like to park it in a garage.

Ms. Falkiewicz stated that the fact that an extended family member is living in the home does not mean that the home is not a single family home.

Mr. Lewis asked what an acceptable distance would be in the neighbor's mind for the garage to be pushed back from the front line of the home. Mr. Strell responded that the Fords would rather not see the garage built, but if it is, the Fords would like to see the garage built back ten (10) feet from the front line of the home.

Findings:

Chairman Rybczynski noted that the applicant is willing to push the garage back two (2) feet and the adjacent neighbor wants it pushed back ten (10) feet.

Mr. Yoder suggested denying the request and having the applicant come back with a new proposal. Chairman Rybczynski stated that the problem with that is that it would cost the applicant another \$200 fee.

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5888 with the condition that the new garage will be set back seven (7) feet from the front of the home. The garage will be no deeper than 24 feet.

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 – This could be argued, but it is not a drastic change.
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.**

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

It was determined that the applicant had withdrawn the request. Chairman Rybczynski stated that it would be left on the table.

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to receive and file this application.

All members voted in favor of the motion.

Application # 5890 Anthony Bernardi – Requesting a use variance for a residence in a commercial District at 5345 Scranton Road

Anthony Bernardi, applicant, stated that he needs a residence in the Town of Hamburg because he is running for office. He stated that he has a residence in Boston, NY.

In response to a question from Chairman Rybczynski, Mr. Bernardi stated that he built an apartment over his business approximately one (1) year ago and it was not on the drawings submitted to the Building Department for the business. He stated that he did show the Building Department a plumbing plan with a kitchen and he did obtain a plumbing permit.

Chairman Rybczynski noted that the applicant was cited by the Building Department for a non-permitted use.

In response to a question from Chairman Rybczynski, Mr. Bernardi stated that approximately one (1) month ago he applied for the permit and the Supervising Code Enforcement Official, Roger Gibson, indicated that the hand-drawn sketch showing the kitchen had been in the file all along.

Chairman Rybczynski stated that he was told by the Building Department that the plans submitted by the applicant did not indicate a kitchen.

Mr. Bernardi stated that he mortgaged his current home to make this property what it is today and he cannot afford to purchase another home at this time for a residence, not knowing if he will be elected.

In response to a question from Ms. Falkiewicz, Mr. Bernardi confirmed that he did sell a home nearby in early 2020 and received sale proceeds from the sale.

Ms. Falkiewicz stated that Mr. Bernardi asked for a use variance in order to sell the home in 2020 because of the zoning in that area, so he had to know that putting an apartment above this business is not allowed.

In response to a question from Ms. Falkiewicz, Mr. Bernardi stated that there are many offices that have kitchens in them. Ms. Falkiewicz responded that Mr. Bernardi knew that this was not a permitted use because he asked for relief from the Town Code to sell the home that is near this building and zoned in the same way.

Chairman Rybczynski stated that Mr. Bernardi was granted a use variance last year for something that was supposedly unique. He read to Mr. Bernardi the first criterion for a use variance regarding the applicant being unable to realize a reasonable rate of return on the property without the granting of the use variance. He noted that now Mr. Bernardi is indicating that the property next door is also unique.

Chairman Rybczynski asked Mr. Bernardi if the property can achieve a reasonable return for any use that is allowed in that zoning district. Mr. Bernardi responded that he could get what he put into the property back if he sold it, but he does not think he should have to do that.

Chairman Rybczynski asked Mr. Bernardi if there is a unique circumstance around this property. Mr. Bernardi responded that it is not unique.

Chairman Rybczynski stated that Mr. Bernardi's hardship has been self-created and the essential character of the neighborhood would not be altered if the use variance is granted.

Mr. Adrian stated that because the applicant was cited for a violation, this should not even be heard by the Board but rather it should be in front of a judge. He further stated that the original plans did not show the kitchen upstairs. Mr. Bernardi stated that the plans did show a kitchen, a bathroom and a shower.

Chairman Rybczynski stated that the Board needs competent financial evidence and none was provided.

A member of the public stated that the applicant's property is unique because it is close to the railroad tracks and no one is around him that he would interfere with. He stated that the property was falling down and now it is much nicer.

A member of the public stated that he is a Scranton Road property owner and volunteer fireman. He stated that Mr. Bernardi has been nothing but a blessing to the fire company and he would be more than happy to have Mr. Bernardi as a neighbor.

A member of the public stated that his property is across the street from Mr. Bernardi's and Mr. Bernardi has done wonderful things for the community and the neighborhood. He stated that people should be allowed to live in this building.

Findings:

Mrs. Falkiewicz made a motion, seconded by Mr. Dimpfl, to deny Application # 5890.

On the question:

Mrs. Falkiewicz reviewed the use 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 was unable to provide adequate information regarding a reasonable return on the property.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood – The property is not unique.
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 been self-created.

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

Application # 5891 James & Abby Woolingham – Requesting an area variance for an above ground pool at 4312 East Frontier Drive

James Woolingham, applicant, stated that the pool installer put the pool in the wrong place. He stated that he was told by the installer that there would be a \$300 take-down fee to take the pool down and then he would have to pay the installer again to put the pool back up where it is supposed to go.

In response to a question from Chairman Rybczynski, Mr. Woolingham stated that the fault lies with the pool installer.

It was determined that Mrs. Woolingham obtained the permit for the pool and gave it to the installer, Liners Plus.

Mr. Woolingham submitted a letter of support from Nicole Buchanan, 4306 East Frontier Drive.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Adrian, to approve Application # 5891.

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 – Not without additional costs.
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 # 5892 Pellicano Properties, LLC – Requesting a use variance to operate a wine tasting room and retail shop at 5381 Old Lakeshore Road

It was determined that the applicant asked for the variance request to be tabled.

Mr. Michael Cyhaniuk, 5401 Old Lakeshore Road, stated that his property is adjacent to the applicant's. He stated that he is concerned about the possibility of live music from the wine tasting room and the two (2) driveways, one of which is very close to his property.

Chairman Rybczynski stated that this application would remain on the table.

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of August 3, 2021. All members voted in favor of the motion.

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

The meeting was adjourned at 9:00 P.M.

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

DATE: August 23, 2021