

Town of Hamburg  
Board of Zoning Appeals Meeting  
September 7, 2021  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, September 7, 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 Mark Yodar, Commissioner Laura Hahn and Commissioner Jeff Adrian.

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

Excused: Commissioner Nicole Falkiewicz

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 # 5892 Pellicano Properties, LLC – Requesting a use variance to operate a wine tasting room and retail shop at 5381 Old Lakeshore Road**

Mario Pellicano, applicant, stated that the property in question contains a vacant church and he would like to convert the building to a wine bar/tasting room and specialty food pairing retail shop. He noted that the wine bar would be affiliated with his existing craft winery located on Boston State Road.

In response to a question from Chairman Rybczynski, Mr. Pellicano stated that he has owned the property for approximately three (3) years. He stated that he was out of the country when he purchased it and it was advertised as commercial space. He further stated that after he closed on the property he realized it is actually zoned R-1 and he tried to sell it for residential use but was unsuccessful.

Mr. Pellicano stated that he has had contracts on the property but none was for a residential use. He noted that he wants to do something on this property that will not totally change it. He stated that the curb cuts are already there, as is a sign, and he would remove the steeple, resurface the parking lot, reside the building, etc.

Mr. Pellicano stated that one does not have to turn left out of this property no matter where he or she is headed because it is situated on three (3) roads.

In response to a question from Mr. Dimpfl, Mr. Pellicano stated that if there was going to be live music, it would be acoustic music and would be performed inside the building.

In response to a question from Chairman Rybczynski, Mr. Pellicano stated that the property has been listed for sale as long as he has owned it, but currently it is listed with Hunt Commercial.

Luke Rogers stated that he lives adjacent to this property at 5389 Old Lakeshore Road and does want something to be done with it because there are problems there such as dead trees on the shared property line. He noted that he has young children and is concerned about what might happen to the property. He stated that he would not want live music or people drinking there and noted that there is a shared walkway between Mr. Pellicano's property and his.

In response to a question from Mr. Dimpfl, Mr. Pellicano stated that his only interaction with Mr.

Rogers was when he (Mr. Rogers) was skateboarding and drinking on the property while Mr. Rogers' daughter was riding her bike.

Michael Cyhaniuk, 5401 Old Lakeshore Road, stated that his property also borders Mr. Pellicano's property. He stated that he is concerned about being able to hear any live music and also the two (2) existing driveways on the property onto Old Lakeshore Road and Route 5. He noted that vehicles travel at a high rate of speed in that area and there is a blind spot nearby, which could make it dangerous to get in and out of the site.

Chairman Rybczynski read the following petition from nearby property owners:

"We the undersigned residents of Beachwood Drive (a rare small and cozy lakefront street) are the area most directly affected by the proposal to change the zoning of 5381 Old Lakeshore Road (the former Church of the Holy Communion) from church use to commercial use (application # 5892). When we purchased all of our lakeside properties we did so knowing our street was adjacent to a church not a commercial wine tasting operation. We have concerns about increased traffic, safety of kids, property values, noise and the potential of bringing outsiders into our neighborhood that could potentially be intoxicated. If consideration is going to be given to change the zoning of this property it should be done by way of changing the town code not by spot rezoning."

Chairman Rybczynski stated that the above petition was signed by residents at the following locations:

- 2308 Beachwood Drive
- 2326 Beachwood Drive
- 2340 Beachwood Drive
- 2327 Beachwood Drive
- 5386 Old Lakeshore Road
- 5390 Old Lakeshore Road
- 2331 Beachwood Drive
- 2322 Beachwood Drive
- 2318 Beachwood Drive
- 5401 Old Lakeshore Road

Mr. Dimpfl stated that Mr. Pellicano was not asking that the zoning of the property be changed, but rather he was asking for a use variance. He noted that a rezoning can only be approved by the Town Board.

- Patricia Hafner, 5358 Old Lakeshore Road, stated that she purchased her property thinking that she was in a residential area and she does not want to live across the street from a wine tasting bar. She stated that she has concerns about traffic in the area and thinks that this use would increase traffic on Old Lakeshore Road because patrons will not want to pull out onto Route 5. She stated that she is concerned what would happen if this use goes away and another commercial use goes in there. She stated that she is concerned about live music and worries that it will affect property values.

Chairman Rybczynski stated that the Board of Zoning Appeals does not change the zoning code and the only use that would be allowed there would be a wine tasting bar. He noted that the Board would be offering relief from the R-1 zoning district that would allow the applicant to

do a very specific activity. He noted that the music that Mr. Pellicano plays at his craft winery on Boston State Road is inside and quiet. He stated that if Mr. Pellicano has the same sort of music at the establishment on Old Lakeshore Road, Ms. Hafner probably would not hear it.

Mr. Pellicano stated that this property was used by a church for many years and he feels that the traffic from the wine tasting bar would be less than what it was when the church had prayer meetings on Tuesdays and masses on Saturdays and Sundays. He noted that people would be entering and exiting the site one at a time.

Mr. Pellicano stated that something needs to be done with this property because people are abusing it because it is vacant. He noted that he had cameras installed on the property and knows who has been abusing the property, partying there, leaving empty beer cans, etc.

**Findings:**

Mr. Yoder stated that he is concerned what will happen if this building remains vacant.

Mrs. Hahn made a motion, seconded by Mr. Yoder, to approve Application # 5892 (a wine tasting bar and associated retail shop). The retail shop cannot exist without the wine tasting bar.

Mrs. Hahn 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 property has been for sale for at least three (3) years and there have been no R-1 uses proposed by any potential purchasers.
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.
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.

As the vote on the motion was five (5) ayes and one (1) nay (Mr. Adrian), the motion carried.

**GRANTED.**

**Application # 5893 DATO Development LLC – Requesting an area variance for a proposed new home at 4738 Carlyes Court**

David Burke from DATO Development LLC stated that he was requesting an area variance of three (3) inches for a new home. He noted that the required setback is 35 feet and the home was placed at 34' 9". He stated that the home has been completed.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5893.

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 – It was not.

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

**Application # 5894 John Smietana – Requesting an area variance for a detached garage at 3675 First Street**

John Smietana, applicant, stated that he would like to construct a new detached garage closer to the property line that what is allowed in order to maximize the space he has in his small back yard.

In response to a question from Mr. Adrian, Mr. Smietana stated that the pad is already poured for the garage. He further stated that there really is no reason he cannot put the garage the required five (5) feet from the property line and noted that the Building Department advised him to try and obtain an area variance to allow it to be closer to the property line.

Mr. Adrian stated that there is nothing preventing the applicant from placing the garage in the correct location.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 5894.

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 five (5) ayes and one (1) nay (Mr. Adrian), the motion carried. **GRANTED.**

**Application # 5895 Karen Dingledey – Requesting an area variance for a shed placed too close to a side property line at 5705 Lakeview Terrace**

**Application # 5896 Karen Dingledey – Requesting an area variance for a fence installed too high at 5705 Lakeview Terrace**

Don Burns, applicant, stated that he and his wife placed a shed three (3) feet too close to the property line. He submitted a letter of support for both the shed and application # 5896 (fence height) from Susan J. Gill, 5697 Lakeview Terrace, Deborah Pound, 5705 Lakeview Terrace and Elizabeth Lee and Stephen Komp, 5696 Lakeview Terrace.

Mr. Burns submitted the following letter from Karen Dingledey and him as follows:

“Dear Mr. Rybczynski:

Thank you for taking our request for our fence and shed variance. Our reason for this request is simple, to create a safe, private and comfortable back yard living space for our family to enjoy.

With regard to #5895, our shed being 12" too close to property line: Due to the size of our lot every inch counts and having that additional space gives us more real estate to dedicate to our garden and daughter's play area. Our neighbor, Deb Pound, has expressed her support of this addition that benefits her as well by providing more privacy on her property. There is plenty of space to walk through between our shed and her fence.

With regard to #5896, we feel it is a reasonable request due to the nature of how our home and properties are situated. Our backyard runs parallel to our neighbor's house at 5701 that gives them a clear view of our living space. We installed the lattice panels to provide additional privacy to obstruct our neighbor's direct view into our yard. Since we've done so, it has stopped our neighbors from purposely opening up their bathroom, peering their heads out the window and smoking cigarettes all day and night. Furthermore, they would also toss their butts into our yard without consideration for littering on our property and the safety of our one year old daughter and pets. We also have two vegetable garden beds in this area where they litter. We have made significant investments into our home and property since we moved in 7 years ago and have plans to do more. By granting this variance, it will enable us to pursue these enhancements and give a much needed boost to the property value for us and for future property owners.

I would also like to take this opportunity to request that the town consider revisions to the current zoning that take into account the nature of these cottage homes. Homeowners deserve the right to a safe and private back yard living space and by updating these regulations will give them the opportunity to do so.

Yours truly,

Karen Dingledey and Don Burns"

It was determined that the applicant received a building permit for the shed and then located it too close to the property line. The error was found when the Building Department did the final inspection.

Chairman Rybczynski asked Mr. Burns why he put the shed three (3) feet too close to the property line after receiving a building permit to put it five (5) feet from the property line. Mr. Burns responded that he failed to double check the location when the shed manufacturer placed it on the property.

Mr. Burns stated that he did not think that the privacy lattice on the fence was part of the overall fence height.

Mr. Burns stated that the adjacent neighbors toss their cigarette butts out the window into his yard and he has photographs to prove it.

Mr. Adrian advised Mr. Burns that he could move the shed in question and attach it to the other existing shed so that it is in compliance with the Town Code. Mr. Burns responded that the previous shed has been removed. Mr. Adrian stated that in that case, there is nothing to prevent Mr. Burns from moving the shed three (3) feet away from the property line.

Mr. Adrian advised Mr. Burns that he should have simply moved the shed and removed the two (2) feet of lattice on the fence so that he would not have to request the area variances.

Mr. Burns stated that the privacy of his family is worth fighting for. He noted that these cottage homes were built before any reasonable zoning laws were in place. He further stated that the

cottage homes in this area are very close together and the adjacent home's windows look out onto his back yard.

Chairman Rybczynski advised Mr. Burns to visit the Building Department or the Police Department if he has problems with the adjacent property owners.

Mike Frew, 2130 Derby Road, Eden, NY, stated that he owns the adjacent home Mr. Burns spoke about and his mother-in-law and brother-in-law live there. He stated that he objects to the eight-foot high fence because it is less than three (3) feet from his home.

Chairman Rybczynski advised Mr. Frew that the Board can only deal with the height of the fence and not the location because the location is not in violation.

Mr. Frew stated that the lattice on the top of the fence obstructs over half of the view from and restricts the amount of natural light and air into the windows in his house. He noted that the homes in this area are very small and are on very small lots. He showed Board members photographs of what his mother-in-law sees when looking out of her windows.

Mr. Burns showed Board members photographs of his yard and what the adjacent neighbor sees of it. He noted that his vegetable garden is below the adjacent neighbor's bathroom window and cigarette butts are thrown into the garden from that window. He stated that he feels that the extra two (2) feet of fencing has solved his problem and he feels it is reasonable.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to deny Application # 5895.

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

Mr. Adrian made a MOTION, seconded by Mr. Yoder, to deny Application # 5896.

As the vote on the motion was five (5) ayes and one (1) nay (Mrs. Hahn), the motion carried. **DENIED.**

**Application # 5897 Apex Car Wash – Requesting an area variance for building signage at 5809 Camp Road**

Tyler Schmitz, applicant, stated that he would like a second sign in front of the new car wash building that would indicate that the car wash is touch-free.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5897.

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 – It was self-created, but the balancing test is in favor of the variance.

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

**Application # 5898 Jacob Schum – Requesting a use variance to allow a personal trainer business at 5795 Dover Road**

Jake Schum, applicant, stated that he runs a personal training business out of his home, which requires a Home Business Permit. He stated that he had the existing garage built in 2018 to rehabilitate a back injury at home. He noted that 90% of the people he works with are children, he works with 1-3 children at a time and there is no signage for the business. He stated that he is done at 11:00 AM on Fridays and does not engage in the business on the weekends. He further noted that he does not have loud music playing while training and there is plenty of room for parking on his driveway.

Mr. Schum submitted a letter of support from Gloria Tilley, 5783 Dover Road as follows:

“My name is Gloria Tilley. I live at 5783 Dover Road, next door to Jake Schum. We have no concerns with the personal training occurring at 5795 Dover Road. He and his clients are respectful of the quiet neighborhood we enjoy. We wish Jake the best on his new endeavor. Please grant him the variance he has requested.”

Chairman Rybczynski advised Mr. Schum of the first criterion the Board must review when considering a use variance (cannot realize a reasonable rate of return on the property with the variance). He stated that the Building Department has determined that aerobic exercise studios are expressly prohibited as a Home Business.

Mr. Schum stated that his are not group classes. He noted that classes are 30-60 minutes with initial warm-up, power racks and weights, exercises, etc. He stated that he typically has a few children in the morning and a few in the afternoon.

In response to a question from Mr. Adrian, Mr. Schum stated that he raises the overhead rear garage door approximately three (3) feet in the fall and spring.

It was determined that the applicant's property is approximately 1.25 acres in size.

In response to a question from Mr. Yoder, Mr. Schum stated that he does not plan to increase the number of people he trains and he has no employees.

Al Schum, applicant's father, stated that his son works with a handful of children at any time and he has a very large property with plenty of off-street parking. He stated that his son is very respectful of his neighbors and has no plans to increase his clientele.

Mr. Al Schum stated that it would be cost prohibitive if his son had to move his business out of his home and establish a store front. He noted that his son charges very little and is doing this more because of his love of what he does. He stated that the nature of the neighbor will not change with this business being operated there.

**Findings:**

Chairman Rybczynski stated that he does not often disagree with the Building Department, but there is nothing that the applicant has stated that would indicate that this is an aerobic exercise studio.

Mr. Adrian stated that he agreed with the Chairman's above comments.

Attorney Parker suggested that the Board make a determination as to whether or not this proposed use violates Town Code Section 280-270.1 F (6) and is in conformity with the standards in Section 280-270.1 (B)

Mr. Adrian made a motion, seconded by Mr. Dimpfl, that as stated by Attorney Parker, the Board of Zoning Appeals has interpreted that Mr. Schum's proposed small personal training business in his garage is not a violation of Town Code Section 270-1 F (6) and is in conformance with the standards set forth in Section 280-270.1 (B).

All members voted in favor of the motion.

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

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

The meeting was adjourned at 8:40 P.M.

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

DATE: September 15, 2021