

Town of Hamburg
Board of Zoning Appeals Meeting
October 7, 2014
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, October 7, 2014 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Chairman Shawn Connelly, Commissioner Louis Chiacchia, Commissioner Bob Ginnetti, Commissioner Joseph Sacco, Commissioner Richard Dimpfl and Commissioner Paul Eustace.

Others in attendance included Attorney Mark Walling, Sarah desJardins, Planning Consultant and Councilwoman Cheryl Potter-Juda.

Commissioner Eustace read the Notice of Public Hearing.

Application # 5501 West Herr Auto Group – Requesting a use variance for a proposed building addition at 4141 Southwestern Boulevard that exceeds the maximum allowed of 25% for pre-existing non-conforming uses

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that the applicant proposes to expand the existing dealership. He stated that because this business is considered an existing non-conforming use, it can only be expanded by up to 25% without a use variance. He noted that the applicant proposes to double the size of the existing building.

It was determined that this business is considered an existing non-conforming use because it is not located on Camp Road, which is where all automotive sales facilities must be located.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Connolly, to approve Application # 5501.

On the question:

Mr. Sacco reviewed the use variance criteria as follows:

1. Cannot realize a reasonable return, substantial as shown by competent financial evidence – Given the circumstances of the franchise's hand being forced by Toyota, the applicant has little choice.
2. Whether the hardship is unique and does not apply to substantial portion of district or neighborhood – This is a unique hardship due to the request by Toyota to expand, and there is very little development on either side of this property.
3. Requested variance will not alter the essential character of the neighborhood – No.
4. Whether the alleged difficulty is self-created – No.

GRANTED.

Application # 5502 RH LAP, LLC/Lake Avenue Plaza – Requesting an area variance for a proposed remodeled identification sign at 4271 Lake Avenue

Jordan Litwiniak, manager of the plaza at 4271 Lake Avenue, stated that he would like to remodel the existing pylon sign in front of the plaza, because, with all of the improvements recently made to the plaza, his tenant base has grown and the new tenants are requesting that their businesses be advertised on the sign. He stated that he would like to increase the square footage of the sign from 170 to 340.

Mr. Litwiniak stated that the remodeled sign would be the same height as it is currently, but would be wider. He further stated that the sign would continue to be internally illuminated.

In response to a question from Mr. Chiacchia, Mr. Litwiniak stated that there is 2,200 sq.ft. of space available at the plaza.

Mr. Connolly noted that the applicant proposes to essentially double the size of the sign. Mr. Litwiniak responded that because the plaza sits back somewhat, it will make it easier for people to know what businesses are in the plaza.

Mr. Connolly asked Mr. Litwiniak if he has looked into alternative plans if the requested variance is denied. Mr. Litwiniak responded that he has, but alternative plans reduce the space each tenant would have, which is not desirable.

It was determined that the proposed sign would measure 16' X 20'.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Eustace, to approve Application # 5502.

On the question:

Mr. Dimpfl reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, the sign is necessary.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – It could be argued that the request is substantial, but the applicant now has 14 tenants.
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 # 5503 Old Time Baptist Church – Requesting a use variance to allow a second single-family detached dwelling at 6790 Gowanda State Road

Pastor Louis Guadagno, applicant, stated that the church plans to convert the old church building that has been for sale for three (3) years into a single-family dwelling for his family. He stated that the church has not been able to sell the property for numerous reasons, and it has had to maintain the church building, which has been burdensome.

Pastor Guadagno stated that the old church building will be converted to a single-family home for him, and the existing small building on the property would be used to house missionaries or out-of-town guests when they need accommodations for a night or two. He noted that this

would create a situation where two (2) dwellings are on the same property, which requires a use variance.

Pastor Guadagno stated that he plans to make the property look like a residential lot, rather than a church property.

Mrs. desJardins stated over the last few years, she has spoken to several individuals interested in using the church building, but every proposal brought to her office would have required a rezoning of the property or a use variance, neither of which seemed appropriate for this parcel.

Pastor Guadagno stated that Kurt Allen suggested that obtaining this use variance would be the best way to approach this issue.

In response to a question from Mr. Sacco, Pastor Guadagno stated that the church would like to keep the property, but if it ever has to sell it, the home would look nice and would be something someone would purchase, which would ensure the church would not lose money.

Pastor Guadagno stated that the church accepted two (2) offers at \$140,000, but it was found that neither prospective owner could use the property the way he wanted to.

In response to a question from Mr. Chiacchia, Pastor Guadagno stated that the remodeled home will look very nice and will not look like a church anymore.

Mr. Chiacchia stated that he is in favor of granting the use variance if the property can be upgraded.

In response to a question from Mr. Connolly, Pastor Guadagno stated that he has not reached out to his neighbors to advise them of his plans for this property.

Mr. Fred Rodems stated that he has resided at 6776 Gowanda State Road for 23 years. He read the following statement:

“As a direct neighbor to the church, I have watched the texture of the property change to become the eyesore it is today. It is not surprising that this property has become unsellable in its present state. So now the church has a new plan to make multiple dwellings on the property, which I believe will be detrimental changes to the neighborhood. If this property now was a blank slate today and a new developer came in with a well-designed good architectural plan, I don't believe you would allow these zoning changes done for a single-family home neighborhood. It is with this in mind that I don't know why you would reward poor stewardship of this property by allowing a second housing unit at the site. Common sense would dictate that turning this huge building into a single-family dwelling is a mirage. It is only a matter of time before it will be subdivided into multiple units. This of course would certainly make it more sellable as a multiple rental property, while making my property more vulnerable to depreciation. In summary, gentlemen, once you let the genie out of the bottle, it is very difficult to put it back. My neighborhood will be left with a pile of ill-suited dwellings with multiple tenants that basically have no skin in the game. Thank you.”

In response to a question from Chairman Rybczynski, Pastor Guadagno stated that his father lived in the second dwelling on the property many years ago. He stated that the church vacated the property three (3) years ago, and he and his family recently moved to the second dwelling in anticipation of the remodeling of the church into his home.

Mr. Connolly stated that when the church requested variances in the last few years, the main problem has been that the neighbors have raised concerns about what the church's plans are. He stated that the applicant should have made the neighbors aware of the church's existing plans to change the property.

Pastor Guadagno stated that the variances requested previously were for a different property, and he did not think the Board would need neighbor input. He further stated that he wants to improve the property and make it fit in with the character of the neighborhood. He stated that he believes that converting the church to a single-family home will improve the area.

Chairman Rybczynski asked for an assessed value of the property.

In response to a question from Mrs. desJardins, Pastor Guadagno stated that he would use the second dwelling as a parsonage. He further stated that if he removes the kitchen from the second dwelling, he would not need a variance to use it for storage, etc.

Pastor Guadagno stated that he will let the neighbors know what the church is proposing to do with the property.

Findings:

Chairman Rybczynski stated that the Old Time Baptist Church has appeared before the Board on many occasions, and there needs to be further examination of what is going on with this property. He noted that there are some issues to deal with on this parcel, based on the satellite view of the property provided to the members.

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to table Application # 5503.

Chairman Rybczynski stated that the following needs to happen before the Board's next meeting:

- Everyone should visit the site.
- The assessed value of the property needs to be obtained.
- The applicant should talk to the neighbors.
- Kurt Allen will be asked to define "dwelling unit".

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

Application # 5504 Attorney Jeffrey Palumbo – Requesting a Temporary Use Permit to use property located at 3520 Abbott Road for temporary employee and overflow parking

Attorney Jeff Palumbo from Damon Morey, representing the applicant, stated that the applicant purchased this property, zoned R-2, and demolished the existing building. He noted that the applicant plans in the future to develop this parcel commercially, although this will require a rezoning. He stated that the applicant's immediate need is for employee parking during the busiest time of the year for the applicant's jewelry store across the street.

Attorney Palumbo stated that the Hamburg Town Code allows a Temporary Use Permit for uses and structures that do not conform with the zoning ordinances for a maximum period of two (2) years, and this is what the applicant is asking for.

Attorney Palumbo stated that the requested use is temporary, and no permanent structure will be erected. He noted that just a temporary 22-space parking area is proposed, and therefore normal setback requirements are not applicable. He further stated that his client does not want to install a paved parking lot and then rip it up in a year and a half. He stated that the parking would be stone, and landscaping could be installed.

In response to a question from Mr. Eustace, Attorney Palumbo stated that temporary lighting could be installed if the Board so desires.

In response to a question from Mr. Chiacchia, Attorney Palumbo stated that he does not know how many trees are on the property, nor does he know how many would be taken down to construct the temporary parking lot.

Mr. Chiacchia asked how the applicant will ensure that only employees will park in the temporary parking lot. He further stated that this is an accident waiting to happen because people will cross Abbott Road in front of the parking lot, which is very dangerous, and there is no way to verify that only employees will be using the parking lot. Attorney Palumbo responded that when the employees use the parking lot, it will be full, so there would be no room for anyone else to park there.

Attorney Palumbo stated that the employees will be instructed to cross Abbott Road where it is safe, at the crosswalk.

Mr. Chiacchia stated that a stoned parking lot does not make sense in the winter time because the stone over time will pile up because of the snow plows. He noted that it is worrisome that the parking lot would be too close to Abbott Road and Stewart Road and that parking lots are not allowed as a principal use on a property.

Chairman Rybczynski stated that he has not seen a request for a Temporary Use Permit that is as involved as this request.

Attorney Palumbo stated that if this request is granted, the applicant will not return asking for an extension of the Temporary Use Permit.

Attorney Palumbo stated that the temporary parking will only be used six (6) times per year.

Mr. Connolly asked Attorney Palumbo what percentage of the time during a year are there so many vehicles in the primary parking lot that the requested temporary parking lot would be needed. Attorney Palumbo responded that the applicant anticipates that the temporary parking lot would be needed no more than 12 times per year.

In response to a question from Mr. Connolly, Attorney Palumbo stated that the applicant's long-term plan is to install additional parking on a parcel east of the jewelry store. He further stated that a stone connection could be installed from the parking lot to the corner where a cross walk exists.

It was determined that there are no sidewalks on Abbott Road in this area.

Mr. Chiacchia stated that the Town Code requires that all parking lots be paved, curbed and lit.

Mrs. desJardins stated that if the requested variance is granted, the applicant will have to deal with the Town Engineering Department regarding its requirements that all parking lots be paved, lit, drained and curbed.

In response to a question from Mr. Connolly, Mrs. desJardins confirmed that a parking lot may not be constructed without the Town's approval.

Attorney Palumbo stated that the applicant will do whatever he has to do to get the parking lot constructed in time for the holiday season.

Findings:

Mr. Chiacchia stated that there is so much wrong with this proposal that he does not feel the request should be granted.

Mr. Connolly stated that he agrees with much of what Mr. Chiacchia said, but looking at the totality of the project and looking at the amount of time the parking lot would be used and that it would only be used by employees, he feels that it the request could be granted with stipulations.

Mr. Connolly stated that the following should be conditions of approval:

- A walkway must be constructed from the parking lot directly to the crosswalk at the corner of Milestrip Road and Abbott Road.
- Signage must indicate that the parking is for employees of Reed's/Jens Jewelers only.
- The parking lot must be lit.
- Approval should only be for 18 months.

Chairman Rybczynski stated that he would have a very difficult time with the granting of this request because of the safety concerns it would create and how close to the road it would be. He stated that he would also be concerned about drainage of the site.

Mr. Sacco stated that the store has gotten by without this extra parking space in the past.

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5504 and grant a Temporary Use Permit with the following conditions:

- A walkway must be constructed from the parking lot along Abbott Road directly to the crosswalk at the corner of Milestrip Road and Abbott Road.
- Signage must indicate that the parking is for employees of Reed's/Jens Jewelers only.
- The parking lot must be lit.
- Approval should only be for 18 months.

As there were five (5) ayes and two (2) nays (Mr. Chiacchia and Chairman Rybczynski), the motion carried.

It was determined that the November Zoning Board of Appeals meeting will be held on November 12, 2014.

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

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: October 21, 2014