

Town of Hamburg
Board of Zoning Appeals Meeting
November 12, 2014
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Wednesday, November 12, 2014 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included 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 and Sarah desJardins, Planning Consultant.

Absent: Chairman Brad Rybczynski

Commissioner Eustace read the Notice of Public Hearing.

Tabled Application # 5503 Old Time Baptist Church – Requesting a use variance to allow a second single-family detached dwelling at 6790 Gowanda State Road

Application # 5508 Old Time Baptist Church – Requesting an area variance for a proposed attached garage at 6790 Gowanda State Road

Vice-Chairman Connolly stated that the two (2) above applications would be discussed simultaneously.

Doug Williams, member of the church, stated that he would be representing the applicant.

Mrs. desJardins stated that Pastor Guadagno spoke to his neighbors, as requested by the Board at its meeting in October, and he obtained letters of support from six (6) neighbors. She further stated that at the Board's request, she obtained both the assessed valuation and the full market value of the property. She noted that the Supervising Code Enforcement Official (Kurt Allen) submitted a definition of a dwelling unit, as requested by the Board at its October meeting.

Mr. Chiacchia stated that it appears that Pastor Guadagno did what the Board requested of him. Mr. Sacco concurred, stating that if there was no kitchen in the second dwelling on the property, no variance would be required.

Mr. Fred Rodems, 6776 Gowanda State Road, stated that Pastor Guadagno has shown him the plans for the property, and he is very much in favor of Pastor Guadagno converting the church building to his residence, and he is not opposed to the requested area variance for the attached garage. He stated that he has a huge problem with allowing two (2) residences on the property because he believes the second structure will be rented. He stated that even though the church has no plans to rent the second dwelling, if the property is sold he is concerned that the new owner would rent that dwelling.

Mr. Williams stated that the church has no intention of renting the second dwelling on the property.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Eustace, to approve Application # 5503.

All members voted in favor of the motion.

Mr. Sacco made a MOTION, seconded by Mr. Eustace, to amend the motion to include the following conditions:

1. The second dwelling will not be used as a rental as long as the church and/or the Guadagnos own the property.
2. If/when the property is sold, the variance will not remain in effect.

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

Regarding application # 5508, Mr. Chiacchia made a MOTION, seconded by Mr. Sacco, to approve Application #5508.

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

On the question:

Mr. Chiacchia reviewed the area variance criteria as follows:

1. Whether the benefit 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 # 5483 Uncle Bob's Self Storage – Requesting an extension of an area variance granted on June 3, 2014 for a proposed self-storage building at 4445 Lake Avenue

Dan Schwanz, representing the applicant, stated that Uncle Bob's is requesting an extension of the previously granted front setback variance because they do not plan to construct the planned addition until late March 2015.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Sacco, to extend the existing area variance for a period of six (6) months.

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

Application # 5505 Eugene & Mary Ford – Requesting an area variance for a proposed addition to a detached garage at 4860 Hickory Road

Gene Ford, applicant, stated that he would like to construct a 15' X 30' addition to the rear of the existing detached garage. He stated that he has a large back yard that abuts a field, and the addition would be very aesthetically pleasing. He noted that he needs the additional space for storage of his personal belongings.

Mr. Chiacchia stated that he does not believe the addition to the garage would adversely affect any neighbors or the neighborhood. Mr. Connolly concurred.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5505.

On the question:

Mr. Ginnetti reviewed the area variance criteria as follows:

1. Whether the benefit 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 # 5506 Ross Cellino – Requesting an area variance for a proposed fence at 5800 Old Lakeshore Road

Ross Cellino, applicant, stated that he would like to erect a six-foot high privacy fence along one side of his property. He stated that this would not be an undesirable change to the neighborhood, and it would not adversely affect the environment. He stated that there are properties along Old Lakeshore Road that have six-foot high fences. He noted that the fence would not be visible to anyone other than his family and the two (2) residences to the south of his property.

Mr. Cellino stated that Mr. Vito Lorenzi, 5789 Old Lakeshore Road, indicated in an email that he does not object to the six-foot high fence. He further stated that Mr. Jack Becker, 5815 Old Lakeshore Road and Mr. Paul Hafner, 5826 Old Lakeshore Road, also indicated in separate emails that they have no objection to the erection of the fence.

Mr. Cellino showed Board members photos of other six-foot high fences that exist on Old Lakeshore Road and Route 5.

In response to a question from Mrs. desJardins, Mr. Cellino stated that he is proposing a white vinyl fence that his grandchildren cannot climb.

Mr. Cellino explained the history of his ownership of the property and the large amount of work that has been done there since 2006. He stated that he hopes to be finished with the work in 2015.

Vice-Chairman Connolly read the following letter from Mrs. Cecelia Adkins, 5790 Old Lakeshore Road (adjacent residence to the north of the applicant's property):

"I am writing to you because I will not be in Hamburg on November 12, 2014 to present in person my disapproval of a variance for a higher fence being requested by Ross Cellino at 5800 Old Lakeshore Road. I own the adjoining property and strongly object to the fence as I believe it defaces my property and takes away from the natural beauty of nature; also it is entirely out of character in this neighborhood. My garage is grandfathered into the current zoning and is two

feet from the property line. Any fence will make my maintenance of the garage impossible. Please do not grant this variance. Sincerely, Cecilia Adkins”.

Vice-Chairman Connolly explained the five (5) criteria that must be assessed in order to make a decision on this variance request.

Dan Mierzwa, nephew of Cecelia Adkins, stated that the fence would be out of character in that neighborhood, and Mrs. Adkins objects to the higher fence because this is a seaway trail area, and this fence would obstruct people's view of Lake Erie. He further stated that he does not believe there is a need for a fence this high, and the fence would be 18” and 24” from the corners of Mrs. Adkins' existing garage, which would make it difficult for her to maintain the garage even if the fence is the required four (4) feet high. He stated that a six-foot high fence would make it even harder for her to maintain the garage. He noted that he is worried that Mrs. Adkins' property value will be affected with the erection of such a high fence.

Carolyn Montgomery, 5784 Old Lakeshore Road, stated that she would be directly affected by the erection of the proposed fence. She stated that her home and Mrs. Adkins' home were constructed on angles so that the homes do not face each other, and both properties are very private. She showed Board members photos from inside her home towards Mr. Cellino's proposed fence and stated that she prefers looking at the trees Mr. Cellino has planted.

Mrs. Montgomery stated that there are very few fences that go all the way to the road in this neighborhood, and those are old. She stated that a white fence in a forested, natural environment would stand out like a sore thumb. She stated that she agrees with Mr. Mierzwa that Mrs. Adkins' garage would be very difficult to maintain if a six-foot high fence is allowed.

Mrs. Montgomery stated that a six-foot high fence would be an affront to the neighborhood, out of character, detract from one of the most desirable areas in the Town of Hamburg and make maintaining a legal structure hazardous and possibly impossible.

Mr. Cellino stated that if the variance is granted for a six-foot high fence, he would agree to stop the fence on either side of Mrs. Adkins' garage so that she can continue to maintain it. He further stated that he wants the fence so that he does not have to look at his neighbors' properties.

Mr. Cellino stated that there are some fences in the area that run along the front property line and therefore block peoples' views of Lake Erie. He noted that his fence would be perpendicular to Old Lakeshore Road and parallel to the property line, and therefore it would not impede anyone's views of Lake Erie.

Vice-Chairman Connolly clarified for the record that any fence can only go to the front property line (right-of-way) because of sight line distance issues.

In response to a question from Vice-Chairman Connolly, Mr. Cellino stated that when he purchased the property, it contained a run-down house that had been vacant for over 20 years. He stated that he improved the quality of the neighborhood by demolishing the vacant house and constructing his home and grounds.

Mr. Mierzwa stated that Mrs. Adkins prefers a natural look to the area.

Vice-Chairman Connolly stated that when there is opposition to a requested variance, the Board tries to see if some mutual agreement can be reached between the applicant and the neighbors. He stated that Mr. Cellino can erect a four-foot fence without a variance, and it sounds like even that height would be objectionable to the neighbors. He asked if there is a way that Mr. Cellino's safety concerns can be met without erecting the six-foot high fence.

Mr. Cellino stated that if Mrs. Adkins would allow him to divert an existing drainage ditch on his property onto her property and gradually grade the land to the lake and plant trees, rather than build a retaining wall that would be dangerous to his grandchildren, (which she has repeatedly not allowed him to do), he would concede the fence because in that situation it would no longer be necessary.

Mrs. Montgomery stated that she objects to a white fence.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5506.

On the question:

Mr. Chiacchia stated that one does not see fences in this area, and he feels that the six-foot high fence would alter the character of the neighborhood. He further stated that several people have expressed opposition to this requested variance.

As there were five (5) ayes and one (1) nay (Mr. Chiacchia), the motion passed. **GRANTED.**

Application # 5507 Cathy Fabiato – Requesting a use variance to allow automotive repair at 3233 Lakeshore Road

Russ Gugino, friend of the applicant, stated that the property in question has been used as an auto repair facility for over 20 years. He stated that the applicant's husband passed away, and Ms. Fabiato has been trying to rent the building ever since, but the zoning district the property is located in does not allow auto repair now, and anyone who is interested in the building wants to do auto repair there.

Ms. Cathy Fabiato, applicant, stated that since her husband passed away, she has been trying to rent the building and just recently was made aware of the fact that the zoning of the property now does not allow auto repair, and the grandfathered status of the property was lost after the building had been vacant for one (1) year.

Ms. Fabiato stated that this auto repair building was constructed in the 1940s, and she and her husband purchased the building in the late 1980s. She noted that it was always used for auto repair, and after her husband passed away there was a tenant in the building doing auto repair and paying her \$1,500.00 per month rent, but since that tenant left five (5) years ago, she has been unable to rent the building. She stated that at least 20 people in the last year have shown interest in the building, but they all want to do auto repair, which is not allowed.

Ms. Fabiato stated that she understands that the selling of vehicles on the property is not allowed, and she tells all interested tenants this.

Ms. Fabiato stated that the taxes on this property over the years has ranged from \$3,800.00 to \$4,300.00 per year, and the utilities and insurance on a vacant building amount to approximately \$6,000.00 per year.

Ms. Fabiato stated that there is a young man who is very interested in renting the building for auto repair, and she asked the Board to grant her requested use variance.

Mrs. desJardins stated that Ms. Fabiato requested that the property be rezoned to C-2, which would allow auto repair, but the Code Review Committee was uncomfortable with the request because of what might happen if Ms. Fabiato were to sell the property and someone demolished the building and then proposed a use that is not conducive to that area. She noted that a use variance is the only alternative to a rezoning.

Vice Chairman Connolly explained the four (4) criteria that must be met in order to grant a use variance.

Mr. Peter Reszka, 3615 Lake Avenue, made the following statement:

“Mr. Chairman & Honorable Board,

My name is Peter Reszka and I am here to represent myself & my wife Elizabeth. We live immediately south of the applicant at 3615 Lake Avenue. We are immediately impacted by the applicant's request and encourage you to reject the applicants request for a variance. My background includes being a Planning Board member for 7 years, Planning Board Chairman for 3 years, member of the Code Review Committee for 3 years and I was a member of the Board which updated the Comprehensive Plan in 2008. I have also had training in Urban Planning, Suburban Planning and the NY State SEQR law. I reference these because I will be referring to various items and want to inform you that I have a background which helps support our remarks.

Normally, we would welcome the building in question being occupied again, removing the blighted building we see every time we open our curtains in the morning. In this case, we cannot. According to the Erie County Real Estate records, the current owner acquired part ownership of the property on December 29, 2006 and sole ownership on July 15, 2009. These dates are important because during the period of her partial and now complete ownership, numerous complaints have been made regarding the premises to the Building Inspection office of the Town. We know this because we made a portion of those complaints.

We have complained of high grass, junked cars and an attempt in 2013 to sell used vehicles on the premises by placing a "For Sale" sign on the dashboard. As you know, Town Code limits the sale of vehicles to only the Camp Road corridor. I mentioned the attempted sale of used vehicles on the premises. It is important because during her ownership, an illegal car lot operated on the premises for several years. This business was forced to close in late 2010 upon action of the Code Enforcement Officer but only after consuming extensive amounts Code Enforcement Officer time for site visits and legal action.

This list of past infractions on this property and by this owner shows a pattern of refusal to comply with Town regulations and it can rationally be inferred that this behavior would continue. If a variance is granted, even with conditions, we believe that Building Inspection would have to visit the premises numerous times in the future to ensure compliance and rectify violations. We encourage you to contact Building Inspection before any decision on the application is made.

Section 4-7 of the Town of Hamburg 2007 Comprehensive Plan Update specifically refers to the Woodlawn area. It states "This area is a prominent part of the Town and a gateway into the community and should be a major focal point for revitalization. In addition to economic development, the aesthetic quality of the area need as boost through design standards aimed at improving the long term prosperity of the neighborhood." An auto repair shop on the corner of a major intersection would do nothing to enhance the aesthetic quality of the neighborhood.

Traffic studies included in the Comprehensive Plan show that 41,151 vehicles per day pass this location on Route 5 and an additional 4,900 per day on Lake Avenue. Many are stopped by the light at the corner and use that time to look around. For the occupants of many of these vehicles, an automobile repair shop would be their 1st impression of the Town of Hamburg. This is even more serious when Woodlawn Beach is open and draws people from the entire County. The Route 5 Overlay and the Local Waterfront Revitalization Program both affect this area. While the property in question is not in either, their proximity must be kept in mind when reviewing this application. By different means, they both have as a part of their concern the Woodlawn area, both aesthetically and through traffic control and calming.

The property in question is zoned M-3. As such, all uses allowed in the M-1 and M-2 are also incorporated into those allowed in M-3. Some of the allowed uses without the need for a

variance are: offices, printing publishing and engraving, furniture manufacturing and refinishing, truck and taxi dispatch, day care center, doggie day care and small manufacturing of a myriad of items. Using the criteria mandated for use in review of this request, we submit the following: **Can the benefit can be achieved by other means feasible to the applicant?** Yes, there are a myriad of uses available for this property. We believe that it is incumbent upon the applicant to prove that the request represents the only reasonable means to use the property profitably. Before any variance is granted, the applicant should provide proof that these have been reasonably explored.

Would there be an undesirable change in neighborhood character or to nearby properties? Considering the mandate of the Comprehensive Plan as well as the owner's proven history of flaunting Town regulations this would have to be answered yes. An auto repair shop on a corner that has 45,000 vehicles a day pass by would not only be undesirable for the community but for the Town as a whole.

Will the request will have adverse physical or environmental effects? Yes. In addition to the visual pollution that unrepaired vehicles would cause to the community as well as to my wife and myself, there is a real danger of vehicle fluids leaching into the soil. The part of the parking area where repaired and unrepaired vehicles would be parked is covered with deteriorated, buckling black top. Portions are merely gravel. All vehicles after a certain age most commonly leak oil or anti freeze. Yes this is an industrial area and has been for many years but adding to anything that already exists is poor environmental stewardship.

Is the alleged difficulty is self-created? Yes. The applicant contends that there is no other tenant interested in the property. Any businessman knows that a corner lot with 45,000 possible customers per day is desirable. The building next door at 3231 Lake Shore Road is currently occupied even though it is a less desirable location. Across the years among other things it has been a bakery, doggie day care, hot dog stand and it is now a smoke shop and buys gold. Why? We contend that the lack of appropriate maintenance on the building is the reason for the difficulty and therefore is self-created. Overgrown areas, buckling blacktop, junk cars and cars with "For Sale" signs are the ideal way to keep a property vacant.

If you decide to grant the application, we encourage you to place severe restrictions on that approval. The hours of operation should be stated with reasonable limits placed upon them.. The meaning of automotive repair should be precisely defined. Automobile repair can also include collision repair & body work. The variance should be applied to either this tenant or this owner and should not become a permanent variance on the property. The variance should be renewable bi-annually and only after an inspection by the Code Enforcement Officer and should be immediately revoked upon a refusal to comply with an order to rectify a defect.

Woodlawn has always been seen as an industrial area. This is basically true but in the 38 years we have lived there, we have seen the neighborhood change. Yes, I said neighborhood. It is usually forgotten that there are families that live here, on both sides of the highway. In closing, we ask that you consider what we have provided, review the effect such a variance would have on both us and our community and deny the application.

I would also like to remind the Board that regardless of their decision they must first make a SEQR decision."

Vice-Chairman Connolly advised Mr. Reszka that the criteria he mentioned were for an area variance, and the applicant is seeking a use variance.

Mr. Chiacchia stated that there are very few residential homes on Lakeshore Road in this area. He stated that there are other auto repair shops in that area. He stated that he would be in favor of granting the variance with conditions.

Vice-Chairman Connolly advised Ms. Fabiatos that she must substantially demonstrate

competent financial evidence.

Ms. Fabiatos stated that she has kept this property looking very nice at her own expense, and she also inherited the property across the street and demolished the building at her own expense. She noted that she has done everything she has had to do to take good care of the property, and she urged Mr. Reszka to speak to the Building Department to confirm this.

Mr. Gugino stated that if Mr. Fabiatos had not passed away, there would be no need for a use variance.

Mr. Reszka submitted a list of the complaints that have been received by the Building Department relative to this property up to and including July 2014.

In response to a question from Vice-Chairman Connolly, Ms. Fabiatos stated that the property was in the name of her husband and her father, and her husband passed away in 2000 and her father in 2012. She noted that at that time, she inherited the property.

Mr. Reszka stated that there are many uses for this building, other than auto repair, that the M-3 zoning allows.

Mr. Ross Cellino stated that if the applicant is allowed to rent this building for auto repair, she could use the money received from rent to fix up the property.

Mr. Reszka stated that the allowed use has expired with the building being vacant for over one (1) year.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti, to table Application # 5507.

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

Vice-Chairman Connolly advised the applicant to review the four (4) use variance criteria carefully and present her position on these criteria at the Board's next meeting. He advised the members of the audience who were opposed to do the same thing.

Mr. Sacco made a MOTION, seconded by Mr. Eustace, to approve the minutes of the September and October meetings.

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

Mr. Sacco stated that as he drives through the Town of Hamburg, he has seen some of the projects that have received variances from the Zoning Board of Appeals and feels they have very much enhanced the look of the Town.

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 9:00 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: November 25, 2014

