

Town of Hamburg  
Board of Zoning Appeals Meeting  
November 17, 2015  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, November 17, 2015 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 Bob Ginnetti, Commissioner Ric Dimpfl and Commissioner Louis M. Chiacchia.

Others in attendance included Attorney Mark Walling.

Excused: Commissioner Joseph Sacco

Chairman Rybczynski asked for a moment of silence to honor our veterans who have paid the ultimate sacrifice and also to remember our member, Commissioner Paul Eustace, who recently passed away.

Chairman Rybczynski stated that Commissioner Chiacchia would be the Board Secretary for the remainder of 2015.

Commissioner Chiacchia read the Notice of Public Hearing.

**Tabled Application # 5549** Sandra Phillippi – Requesting a use variance to keep bees at 5129 Roseview Avenue

Attorney Jay Pohlman, representing the applicant, submitted photographs of the applicant's property and surrounding area for Board members to review. He stated that the applicant has lived in this area for approximately 30 years, and she is a beekeeper, member of the Beekeepers Association and a biology teacher. He stated that she raises honey bees for their honey and the associated positive things honey bees do, and she does not raise them for a profit. He noted that she lives near the Orchard Park and Buffalo borders, which allow bees, but Hamburg only allows bees in the R-A District. He stated that the applicant's property is zoned R-2, which does not allow bees.

Attorney Pohlman stated that the applicant has a double lot, and the bees are kept closest to her immediate neighbors, Mr. and Mrs. Murawski, who are concerned about the bees because they have coy ponds on their property that attract the applicant's bees. He stated that during the November 2014 snow storm, a very tall hedge was lost that was between the applicant's property and the Murawski's property.

Attorney Pohlman stated that honey bees stay as far away from humans as they can, but they do need a lot of water and will gravitate to any nearby water source.

Attorney Pohlman stated that this applicant does not meet all of the criteria for a use variance. He noted that this is not a profit-making venture, and it is something that will not change the nature of the neighborhood. He asked the Board to consider granting a

variance for one (1) year because the applicant has worked hard to come up with a unique approach that could ameliorate the situation with the Murawskis. He stated that the Murawski's coy ponds were installed after the bees arrived, and the applicant has proposed putting in a new ten-foot barrier of bushes along the Murawski's fence in the spring. He noted that the hives would be moved to the opposite side of the applicant's property, and new coy ponds would be built on the applicant's property close to the new location of the hives.

In response to a question from Mr. Chiacchia, Attorney Pohlman stated that the applicant has nine (9) hives in two (2) locations.

In response to a question from Mr. Connolly, Sandra Phillippi, applicant, stated that every hive has between 5,000 and 50,000 bees in it, but only very few fly. She stated that swarming is very controlled. She further stated that she does not know if there are other people who have as many bees as she does.

In response to a question from Chairman Rybczynski, Ms. Phillippi stated that approximately three (3) times per season she has groups come in for tours of her hives.

Mr. Chiacchia stated that when he was on the property, the honey bees did not seem to bother him at all.

Chris Murawski, 5117 Roseview Avenue, stated that he has had a coy pond on his property for ten (10) years, and he cannot enjoy his property in the summer because of the bees being attracted to the coy pond.

Mrs. Tina Kubik, 5116 Roseview Avenue, stated that she was stung by a bee, and she is allergic, and therefore she does not want them in the area.

The homeowner directly east of Ms. Phillippe's home stated that he has never had any problems with her bees.

### **Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Connolly, to deny Application #5549.

On the question:

Mr. Chiacchia stated that the applicant requested a stay of one (1) year.

Chairman Rybczynski stated that the application does not meet any of the use variance criteria.

Mr. Dimpfl stated that a petition was submitted indicating that the signers are in favor of the granting of the use variance, but the petition does not indicate where the people who signed the petition live.

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

### **Application # 5552** Richard Loehr – Requesting an area variance for a new detached garage at 4980 Bayview Road

Richard Loehr, applicant, stated that he would like to construct a new garage on his property to store two (2) cars and two (2) tractors, along with various outdoor items. He

stated that he already has a detached garage on his property, and he plans to purchase a portion of his neighbor's property in order to accommodate the new garage if the variance is granted.

**Findings:**

Mr. Ginnett made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5552.

On the question:

Mr. Ginnett reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – Yes, but he plans to purchase additional property.
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 is, but the applicant has too much stuff.

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

**Application # 5553** EduKids – Requesting an area variance for a parking lot extension at 4889 Lakeshore Road

Attorney Jeff Palumbo from Barclay Damon, representing the applicant, stated that the applicant is proposing an addition to the existing parking area for the child care business. He stated that eight (8) additional spaces are proposed, and the eastern three (3) spaces are within 35 feet of Orchard Avenue, which requires an area variance.

Helene Hays, 5053 Glendale Avenue, was concerned as to whether this project would affect her property.

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve application # 5553.

On the question:

Mr. Connolly reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No because of the snow removal and the high traffic volume on Route 5.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the most affected nearby resident indicated that she is comfortable with this proposal.

3. Whether the request is substantial – No, considering the size of the property.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be viewed either way, but on balance it tilts towards approval.

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

**Application # 5554** Assurance Recovery LLC – Requesting a use variance to allow a barbed wire fence at 5821 Southwestern Boulevard

The applicant stated that he owns a business that repossesses vehicles, and the banks involved require that the area where the vehicles are stored be enclosed by a barbed wire fence.

Mr. Chiacchia stated that cellular towers required barbed wire fencing, as well.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve application # 5554.

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, because the bank requires the barbed wire.
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, because the fence is at the rear of the property.
5. Whether the alleged difficulty is self-created – No.

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

**Application # 5555** Flaming Eagle, Inc. – Requesting a use variance to allow a commercial use on a residentially- zoned property at 6685 Southwestern Boulevard

The applicant stated that this property currently has an abandoned gas station on it, and he has been trying to sell the property for at least two (2) years with no interest. He stated that he has a prospective purchaser who would like to fix the building up and use it for his business selling metal roofing.

It was determined that this property is zoned residential and the gas station use was grandfathered, but the business has not been in operation for over one (1) year, so the

gas station use has lost the grandfathered status. It was further determined that a use variance is required for any commercial use proposed on this property because of the residential zoning classification of the property.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Chiacchia, to approve application # 5555.

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

**Application # 5556** Lakeview Pizza Company, Inc. – Requesting a use variance to construct a parking lot on a residentially zoned property at 5946 Lakeshore Road

Dennis LoTempio, applicant, stated that the store at this location needs more parking spaces, and he proposes to construct additional parking to the west of the store on property he recently purchased. He stated that when the business is busy, customers have to back out onto Route 5, and also his employees have nowhere to park on the property.

In response to a question from Mr. Chiacchia, Mr. LoTempio stated that he plans to move the existing dumpster to the new parking area.

It was determined that a use variance is required because the property is zoned residential (the existing business on the property is considered a legal non-conforming use).

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve application # 5556.

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

**Application # 5557** Richard Root – Requesting an area variance to construct a new residence on vacant land directly south of 6334 Old Lakeshore Road

**Application # 5558** Richard Root – Requesting an area variance to construct a new detached garage on vacant land directly south of 6334 Old Lakeshore Road

David Root, brother of the applicant, stated that Richard would like to construct a new home on this property and needs a variance for the distance from the top of the bank of Eighteen Mile Creek to the proposed home, as well as for the height of the property detached garage.

**Findings:**

Board members agreed that they would feel more comfortable having this request to build closer to the top of the bank that what is allowed reviewed by the Conservation Advisory Board. The applicant was advised to meet with that Board and then return to the Zoning Board of Appeals.

Mr. Root agreed to the above.

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to table application # 5557 and #5558 for Conservation Advisory Board review.

Mr. Dimpfl made a MOTION, seconded by Mr. Connolly, to approve the minutes of October 6, 2015.

All members voted in favor of the motion.

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

The meeting was adjourned at 8:30 p.m. in memory of Commissioner Paul Eustace.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: November 25, 2015