

Town of Hamburg
Board of Zoning Appeals Meeting
February 3, 2015
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, February 3, 2015 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Vice-Chairman Shawn Connelly, 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.

Excused: Commissioner Chiacchia

Commissioner Eustace read the Notice of Public Hearing.

Application # 5511 Big Tree Volunteer Fireman's Company – Requesting an area variance for a new fire hall to be constructed at 4112 Big Tree Road

It was determined that no one appeared on behalf of the application.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to table Application # 5511.

As the vote was four (4) ayes and one (1) nay (Mr. Sacco), the motion carried.

GRANTED.

Application # 5517 Chuck Backus – Requesting an area variance for an existing residence at 4188 Lakeshore Road

Mr. Chuck Backus, applicant, stated that he would like to construct an exterior patio off the second floor that might provide another means of egress, but it would not be five (5) feet from the side property line. He stated that it would be right on the property line, and therefore a variance is needed of five (5) feet.

Mrs. desJardins stated that the building is already five (5) feet from the side property line, so to construct the patio would bring it right to the property line.

In response to a question from Vice-Chairman Connolly, Mr. Backus stated that a second means of egress for the apartments on the second floor would be a safety advantage. He noted that he would like to add a patio for the apartment residents and also structurally shore up the building and add the second means of egress as well.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5517.

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, the applicant is limited.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, it will not be seen because it is in the rear of the property.
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 either way, but on balance it tilts towards approval.

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

Application # 5518 Larry Best/West Seneca Self-Storage LLC. – Requesting an area variance for a proposed apartment complex to be located at 4188 South Park Avenue

Larry Best, Jr. appeared on behalf of the proposed apartment project. He stated that the request is to allow one (1) of the proposed apartment buildings (Building “B”) to be located 35 feet from the property line, rather than 50 feet, which is what is required.

Mrs. desJardins stated that this project was approved by the Planning Board recently with a stipulation that a variance be obtained for the side yard setback. She further stated that several letters of support were received at the Planning Department regarding this variance request.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5518.

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 – It could, although it would be difficult to achieve what he wants to do, and it appears that the Planning Board approved this layout.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – The owner of the adjacent property is in favor of the variance, and the amount of the variance would not create an undesirable change in the neighborhood.
3. Whether the request is substantial – It could be argued either way.

4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be argued one way or the other, but the positioning of the property would make it very difficult to do anything else.

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

Application # 5519 HEADSPACE – Requesting an area variance for building signage at 4169 McKinley Parkway

It was determined that no one appeared on behalf of the application.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Eustace, to deny Application # 5519.

As the vote on the motion was two (2) ayes (Mr. Sacco and Mr. Eustace) and three (3) nays (Mr. Connolly, Mr. Ginnetti and Mr. Dimpfl), the motion failed.

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to table Application # 5519.

As the vote on the motion was four (4) ayes and one (1) nay (Mr. Sacco), the motion carried. **GRANTED.**

Application # 5520 Gerald & Jane Schmidt – Requesting a use variance to allow a wind turbine at 6284 Smith Road

Mr. Gerald Schmidt, applicant, stated that he has heard no objection to his request to place a wind turbine on his property. He stated that United Wind is the company that will be erecting the wind turbine.

Mr. Schmidt stated that it was his understanding that the Zoning Board of Appeals previously approved a wind turbine on property behind him. It was determined that Mr. Schmidt was wrong in that assumption because the wind turbine he spoke of had not been proposed to the Town of Hamburg yet.

For the record, Mr. Sacco stated that the Zoning Board of Appeals has never approved a wind turbine like this.

Mr. Schmidt stated that his son, who lives on his property, pays the electric bills and is willing to put up the wind turbine to save some money.

Mr. Eustace read the following letter from Supervising Code Enforcement Official Kurt Allen regarding this application:

Dear Mr. Rybczynski and Fellow Zoning Board Commissioners:

For your consideration, as it pertains to above referenced use variance application, I offer the following:

The applicant seeks a use variance for the installation of a 10 KW wind generator some 150 foot plus in height on a residential property in a R-A district. Presently, within Town Zoning Code, wind generators of this size and height are only permitted in a M-3 Industrial district (hence creating the need to obtain a use-variance). Subsequent to receiving this application, our Department has received another application for yet another wind generator of similar scale and size intended to be erected in close proximity to the original wind generator application to be heard at your February 3rd meeting.

Since 2007 when the Town adopted Article L. Commercial Wind Energy Conversion Systems (WECS), the Code Review Committee has had discussion regarding residential wind generators. Unfortunately, the Committee has taken no formal action since as up until just recently there has never been cause. No doubt, now that the Town has received two applications in less than a month, the Code Review Committee in response will be stimulated to address residential wind generators specifically and promptly.

My recommendation to the Zoning Board Appeals is to table this application until the Code Review Committee can review and provide input to assist in your determination in this matter. The Code Review Committee is scheduled to meet on Wednesday, February 4th and residential wind generators will part of their agenda. The information and direction provided from that meeting should prove very useful for your consideration on this particular application.

Thank you for your attention in this matter.

Respectfully Submitted,



Kurt Allen,
Supervising Code Enforcement Official

Vice-Chairman Connolly explained to the audience the purpose of the Code Review Committee. He stated that this Committee would be addressing this application at its meeting the following day (February 4, 2015) and would be providing guidance and input relative to this request for a wind turbine.

Mrs. desJardins stated that the Code Review Committee recognizes that the Town of Hamburg does not have anything in its Town Code that addresses residential wind turbines, and it would probably formulate language to address residential wind turbines promptly. She noted that the Code Review Committee will provide guidance relative to where these wind turbines should be allowed and how they should be regulated.

Mr. Jeff Walker asked if there is a height regulation in Hamburg. Mrs. desJardins stated that homes cannot be higher than 35 feet, but this is a wind turbine request so it does not apply.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to table Application #5520.

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

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

The meeting was adjourned at 7:45 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: February 9, 2015