

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

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, March 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 Louis M. Chiacchia.

Others in attendance included Attorney Mark Walling, Board of Zoning Appeals Attorney and Sarah desJardins, Planning Consultant.

Excused: Commissioner Eustace

Commissioner Sacco read the Notice of Public Hearing.

Tabled 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

Mark Dean, architect, and Stan Fiegel, Chairman of the Capital Projects Committee for the Fireman's Company, appeared on behalf of the proposed project.

Mr. Dean stated that the Fire Company plans to construct a new fire station, and it is requesting an area variance for the parking area along Bristol Road, which is closer than the required 35 feet from the roadway. He stated that the parking on the site will be segregated so that there will be a visitors' area separate from the firefighters' parking area.

Mr. Dean stated that the site is fairly encumbered with wetlands, which dictated the position of the building. He stated that the amount of wetlands that will be encroached upon will be less than one tenth of one acre, and the only way to accomplish this was to push the building as far towards Bristol Road as possible. He further noted that this means that the visitors' parking area is 19 feet from the right-of-way of Bristol Road, rather than the required 35 feet.

In response to a question from Chairman Rybczynski, Mr. Dean stated that the two (2) existing fire halls owned by the Fire Company are up for sale.

Mrs. desJardins stated that this project has been approved by the Planning Board contingent upon the applicant receiving the two (2) needed variances.

In response to a question from Mr. Sacco, if the requested variances were not granted, the project would continue, but he would have to redesign the parking, which would make it either substantially more inconvenient or invasive into the existing wetland area.

Mrs. desJardins explained to Mr. Dean that in addition to the variance needed for the parking area along Bristol Road, an area variance is needed for the parking area along Bayview Road.

Regarding the parking along Bayview Road that are closer than the required 35 feet from the roadway, Mr. Dean stated that there are four (4) spaces there that are for Fire Chiefs to utilize when they respond to emergencies so that they have quick access to the apparatus bays.

Mr. Fiegel gave Board members a history of how the Fire Company arrived at the decision to sell the existing buildings and construct a new consolidated fire hall.

In response to a question from Mr. Connolly, Mr. Dean stated that if the variances were not granted, they would lose the entire westernmost row of parking along Bristol Road, along with a

few spaces in the row of parking just east of that row. He stated that along Bayview Road they would probably lose two (2) of the spaces reserved for the Fire Chiefs. He further noted that by law they cannot disturb more than one tenth of one acre without going through an exchange-type program. He stated that the building cannot be moved any further north or east without disturbing additional wetland areas.

In response to a question from Mr. Connolly, Mr. Fiegel stated that at Station # 1 there are approximately 106 parking spaces and Station # 2 has fewer spaces than that.

Mr. George Birach, 4118 Bristol Road, stated that he lives directly across from the proposed parking lot on Bristol Road. He stated that he does not have any concern at all about the construction of this building or the fact that the parking area would be 19 feet from Bristol Road.

Mr. Chiacchia stated that courses for firemen are often held at the Fire Hall, so to restrict the number of parking spaces could hinder those operations.

Marcia Amadori Crosby, 4170 Tisbury Lane, stated that the back of her property faces Bayview Road, and she feels that this will affect her property value. She asked Mr. Fiegel why the Fire Company does not utilize the existing building they own by the school.

Mr. Fiegel stated that all options were investigated, and this was the best option for the Fire Company.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5511.

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 – One neighbor did feel this would be undesirable and one neighbor felt it would be an improvement.
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 – Because of the wetlands issue on the property, the applicant is very limited in what they can do, and they are doing the best they can with what they have in front of them.

Chairman Rybczynski stated that although one neighbor commented that this would lower her property values, he is not so sure that would be the case. No competent evidence was presented to back this opinion up.

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

Chairman Rybczynski congratulated the Fire Company on wrapping up almost ten years of very hard work.

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

Paul Fadale from NAS Sign Company, representing the applicant, stated that the proposed additional wall sign would give the applicant's business more visibility for traffic coming from the east.

Chairman Rybczynski asked Mr. Fadale whether this additional sign would really impact the applicant that greatly, given the fact that the existing restaurant to the east of the applicant's building (Jack Devine's) would impede people's view of the building from the east. Mr. Fadale responded that it is the wish of the applicant to have as much visibility as possible because the building is set back a good distance from Route 20. He also stated that the applicant is only allowed 8 sq.ft. on the pylon sign for the group of businesses at that location.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5519.

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. it may even enhance the new business.
3. Whether the request is substantial – It could be argued either way, but it will be beneficial to the new business.
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.**

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

Mr. Ryan Storke and Mr. Alex Fox from CEC Energy appeared on behalf of the applicants. Mr. Storke stated that they propose to erect a 10 KW wind turbine on the applicant's property on Smith Road. He stated that all of the energy created on site would be used on site by the owner. He noted that Mr. Schmidt would lease the wind turbine from United Wind for 20 years, and he would not be responsible for any maintenance and insurance costs during that time.

In response to a question from Chairman Rybczynski, Mr. Storke stated that the wind turbine would be 153.5 feet tall. He further stated that it would be a self-supporting lattice tower on three legs on a foundation.

It was determined that the blades would be ten (10) feet long.

Mr. Mike Jablonski, Old Lakeview Road, stated that Mr. Schmidt's proposed tower, as well as the towers he (Mr. Jablonski) is proposing are very similar to the existing wind turbine near Erie Community College.

Mr. Chiacchia stated that because the applicant would be paying the wind turbine company a certain amount of money every month for twenty years, it would be very difficult to satisfy the use variance criteria. He further stated that the Town of Hamburg Code Review Committee is

currently working on a new residential wind turbine law, and based on what that committee comes up with, this variance request might change from a use variance to an area variance.

Mr. Connolly, who is also a member of the Code Review Committee, stated that the Town does not currently have a residential wind turbine law, and the Code Review Committee has been working on creating a new Town Code that specifically addresses residential wind turbines. He stated that it is extremely difficult to qualify for a use variance, especially regarding the criterion that the applicant must prove that he cannot realize a reasonable rate of return using competent financial evidence.

Mr. Connolly stated that the Code Review Committee has suggested that the Zoning Board of Appeals let it (the Code Review Committee) look at how other municipalities address these requests and come up with proposed guidelines the Town can use when considering these requests. He noted that this would give the applicants a better opportunity to put forth a proposal that might better meet the criteria and would also possibly allow the applicants' requests to be for area variances, rather than use variances.

Mr. Connolly stated that once the Code Review Committee drafts a new residential wind turbine law and it is adopted by the Town Board, this will give the Zoning Board of Appeals and the applicants better guidance regarding what the Town Code says regarding these requests for wind turbines.

Mr. Chiacchia stated that once the Code Review Committee drafts a new law, the Town Board must conduct a public hearing on the new law and receive input from the public, and until the Town Board hears from the public, we will not know whether it is acceptable to the public or not.

Mr. Storke asked what the projected time line would be for the Town to adopt a new residential wind turbine law. Mr. Connolly responded that it is in the preliminary stages, but the Code Review Committee realizes that it must be a high priority and is diligently working towards a draft law. He noted that in his opinion, it will take a number of months to adopt the new law.

Mr. Storke stated that because his company has experience dealing with other towns in New York regarding the installation of wind turbines, he would be happy to assist the Town of Hamburg to expedite the process.

Mr. Gerry Schmidt, applicant, stated that the Zoning Board of Appeals is telling him now the same thing he was told last month when his application was tabled. He asked Mr. Connolly what the result of the Code Review Committee meeting of March 4, 2015 was. Mr. Connolly responded that the result of that meeting was that the committee received guidance from the Town Planner regarding what other municipalities have done to regulate residential wind turbines.

Mrs. desJardins stated that if the new Town law allows residential wind turbines in the R-A District, neither of the wind turbine applications currently being reviewed by the Zoning Board of Appeals would require a use variance. She noted that they still might require area variances, depending upon what specific requirements are part of the new Town law.

Mr. Jablonski stated that wind turbines cannot just go anywhere – they have to meet certain criteria established by NYSERDA. He further stated that leasing the wind turbines is a way for him to afford them.

Chairman Rybczynski advised the applicant, as well as Mr. Jablonski, that they must decide whether they want to build a case based on the use variance criteria and/or wait for the Town Board to adopt a residential wind turbine law.

Mr. Storke stated that he believes that there is substantiated evidence for Mr. Schmidt to qualify for the use variance.

Mr. Connolly stated that if anyone has gotten the impression that the Town is against wind turbines, he apologizes because that is not the reality. He stated that the Town has gone from having no concrete wind turbines or policies for them in Town to having these two (2) requests now. He further stated that there is a process that has to occur, and the Town just started that process within the last month. He noted that the Town will work as fast as possible, but at the same time it will be judicious so that it is done in a thoughtful, well planned, acceptable manner.

Mr. Connolly stated that the Town is open to and would welcome any input the applicants or their representatives want to provide.

Mr. Chiacchia stated that the Zoning Board of Appeals should wait for the Code Review Committee to draft a new law and for the Town Board to adopt that law before acting on these variance requests.

Chairman Rybczynski stated that Applications # 5520 and # 5522 would be tabled.

Ms. Cassandra Cudney stated that she lives across both applicants, and she has no problem with what they would like to do.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to leave Application # 5520 on the table.

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

Applicant # 5521 Hamburg Mitsubishi – Requesting an area variance for a detached sign at 5160 Camp Road

Mr. Robert Phillips, representing the applicant, stated that recently this car dealership was opened at this location, and it has been a car dealership several times in the past. He stated that the pylon sign the business would like to erect was purchased by the company in anticipation of installing it, but when he attempted to get a permit for the sign he learned that it is too tall. (12' maximum is allowed, and the proposed sign is 20' tall.)

Mr. Phillips stated that there are several automotive dealers in the area that have tall signs, and Mitsubishi would like to be on even playing field with these existing dealerships. He further noted that Mitsubishi has requested that this 20' tall sign be installed at this location.

Mr. Phillips stated that if Mitsubishi's sign is 12' tall and the surrounding dealerships' signs are 20' tall, the public may perceive that difference in height as something to do with Mitsubishi's brand, rather than with the Town's zoning regulations.

Mr. Sacco stated that the applicant has done a nice job remodeling the building, and this sign would get them on the same level playing field as the other dealerships in the area.

Mr. Chiacchia stated that he had a hard time finding the business, and thinks that the signage would help in that regard.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti, to approve Application #5521.

On the question:

Mr. Sacco 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, there are already signs on this nature in the vicinity.
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 # 5522 Suitable Energy Developments, Inc. on behalf of Mike Jablonski – Requesting two (2) use variances to allow two (2) wind turbines at 3134 Old Lakeview Road
Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to leave Application # 5522 on the table.

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

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of February 3, 2015 and January 6, 2015.

On the question:

Attorney Walling asked that in the minutes of February 3, 2015, any reference to “windmill” be replaced by the words “wind turbine”.

Chairman Rybczynski made a MOTION, seconded by Mr. Sacco, to amend the above motion to replace the word “windmill” with the words “wind turbine”.

All members voted in favor of the motion to amend.

All members voted in favor of the amended motion.

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti 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: March 17, 2015

