

Town of Hamburg
Board of Zoning Appeals Meeting
March 4, 2014
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, March 4, 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 Joseph Sacco, Commissioner Bob Ginnetti, Commissioner Richard Dimpfl and Commissioner Louis Chiacchia.

Others in attendance included Attorney Mark Walling and Planning Consultant Sarah desJardins.

Excused: Commissioner Paul Eustace

Chairman Rybczynski asked for a moment of silence in honor of our fallen troops.

Chairman Rybczynski made a motion, seconded by Mr. Sacco, to appoint Commissioner Connolly Vice-Chairman and Commissioner Eustace Secretary for 2014.

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

Vice-Chairman Connolly read the Notice of Public Hearing.

Tabled Application # 5454 Mark Hummel – Requesting a use variance for a second dwelling unit above a garage at 5923 Elmhurst Road

It was determined that no one was present to represent the applicant.

Chairman Rybczynski read the following letter from the applicant's attorney, Daniel Chiacchia:

"Per our conversation today, please be advised that the living area above the garage at the above referenced address will no longer be occupied until such time that we can resolve any issues related to the Building Code."

Findings:

Chairman Rybczynski stated that this application would be left on the table.

Application # 5457 Kathleen King – Requesting an area variance to extend and enclose the existing carport at 4716 Clifton Parkway

Ken Petersdorf, contractor, representing the applicant, stated that Ms. King would like to enclose the existing carport and turn it into a garage. He noted that the garage would not extend beyond the face of the home, and the side yard setback for the enclosed garage would be the same as it is currently for the carport (7.9 feet).

Chairman Rybczynski established that when the carport was originally built, the required side yard setback was five (5) feet.

Mr. Chiacchia stated that he visited the site and believes that enclosing the carport would not obstruct any vision or view of people in the area pulling out their driveways.

It was determined that the required side yard setback was revised to ten (10) feet in 2003 and that the applicant has owned this property for at least two (2) years.

Mr. Walter Jaros, 4712 Clifton Parkway, stated that Ms. King has owned this property for approximately four (4) years. He stated that he is concerned that the garage will be extended towards the street. He was informed that the garage would be flush with the front of the home.

Findings:

Mr. Connolly made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5457.

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because in this neighborhood, there are several houses that have attached garages. It may in fact be a desirable change.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – None indicated.
5. Whether the alleged difficulty is self-created – This could be argued one way or the other, but on balance it tilts toward approval of this variance.

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

Application # 5458 Eddy & Lewin Homes – Requesting a front yard setback for all 28 proposed lots to be located on vacant land south of Sowles Road, west of Yale Avenue and Harvard Street in the proposed Carnegie Subdivision

Chairman Rybczynski stated that he does not know if the Zoning Board has the authority to basically rezone this property from R-2 to R-3 and noted that the applicant is requesting at least one (1) variance for every single lot. He further stated that it is his recommendation that the Zoning Board let this application go back to the Planning Board for additional review.

Chairman Rybczynski stated that the applicant is not asking for relief from the Town Code, but rather is requesting that the Town Code be changed. He stated that he believes that these requests go well beyond the scope of the Zoning Board of Appeals' powers.

Chairman Rybczynski stated that the Zoning Board of Appeals is a quasi-judicial Board, and it is very restricted as to what it can consider. He noted that the Board has a very strict set of criteria for variances that it must consider, and he stated that he feels that this should be a matter for the Town Board or the Planning Board. He further stated that he does not feel any level of comfort until the Planning Board is finished reviewing this project.

Chairman Rybczynski stated that he would like the Zoning Board Attorney to research whether this is indeed within the purview of the Board or whether it would be usurping another Board's authority.

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that the project has received a Negative Declaration from the Planning Board, and the next step is to receive

Preliminary Plat Approval, which cannot be granted without the requested variances being granted by the Zoning Board of Appeals.

Mr. Gow stated that the requested variances are area variances, rather than use variances. Chairman Rybczynski responded that he is not sure they are not use variances, noting that the applicant is essentially proposing to change the Code because every lot in the subdivision would be non-conforming if all the requested variances are granted. He further stated that the applicant is not asking for relief from the Code; rather, he is essentially asking to change the Code.

Chairman Rybczynski stated that the applicant has the ability to reduce the number of proposed lots to fit in to the space the applicant has to work with.

Mr. Gow stated that the project can be built with the same number of lots, regardless of whether variances are granted. He further stated that the Planning Board recommended the granting of the requested variances by resolution.

Mr. Gow showed Board members both the originally proposed subdivision layout and the newly proposed layout with changes. He stated that the existing Harvard and Yale paper streets (created in 1905), as well as the existing utilities, run through this property. He noted that most of the lots in the area are smaller than the proposed lots in this subdivision, but the applicant is not proposing the smaller lots because of that fact. He stated that the applicant is proposing the smaller lots because the Planning Board was concerned about buffering the westernmost lots from the existing commercial businesses on Camp Road, and the applicant found that it would be possible to shorten the proposed road by 50 feet on either side. He stated that this would serve to provide a larger buffer to those westernmost lots.

In response to a question from Mr. Connolly, Mr. Gow stated that during the planning process, the applicant saw an opportunity to change the layout simply by shortening the road and making the westernmost lots a little bit deeper.

In response to a question from Mr. Connolly, Mr. Gow stated that the Planning Board was initially concerned about buffering the westernmost lots, and the applicant subsequently came up with the idea to shorten the road.

Mr. Gow stated that the lots all have to be 118 feet deep because of the location of the existing paper streets, and the lots' frontages all meet Town Code requirements.

In response to a question from Mr. Chiacchia, Mr. Gow stated that if the applicant were asked to lose one (1) lot to reduce the number of variances needed, he would simply go back to the originally proposed layout. Mr. Tom Lewin, applicant, stated that in order to better buffer the westernmost lots from the commercial activity, four (4) lots would have to be removed. He further stated that the project would not be feasible in that situation.

Mr. Gow stated that if the new homes can be placed ten (10) feet closer to the new road than what is required, it will give these lots deeper back yards and keep them a bit further from the existing homes the new lots will back up to.

It was determined that both the original layout and the new layout requiring the variances would yield 27 lots.

A gentleman residing on Princeton asked why the applicant is worried about buffering the new homes from commercial activity and not concerned about buffering the existing homes in the area from the new lots. He stated that he is concerned about the drainage in the area. He stated that fire trucks have problems locating homes on the streets in this area because not all of them are connected.

Eileen Collins, 3641 Sowles Road, stated that she does not want the subdivision to connect to Sowles Road because the traffic is already too congested on that roadway.

Chairman Rybczynski informed the residents of this area in attendance that the Zoning Board of Appeals can only deal with the requested variances. He noted that the Planning Board has been reviewing this project, and that Board will have to answer the Site Plan related questions the residents have regarding their drainage and traffic concerns.

Members of the public again expressed concerns regarding traffic, drainage, etc. that would result from the construction of this proposed subdivision.

Chairman Rybczynski stated that the applicants would like to do business in Hamburg, and they have the right to do so. He noted that the concerned residents should share their concerns with the Planning Board at its next meeting. He again stated that the Zoning Board of Appeals can discuss the residents' concerns if they have to do with the size of the proposed lots or the proposed setback of the homes from the road.

Debra Hackett stated that she lives at the end of Yale and asked if Yale would be extended through to Bradford Street. Mr. Gow responded that Yale will not be connected to Bradford Street.

Chairman Rybczynski stated that the granting of this large number of variances would affect such a wide swath of development, and he has never seen anything quite as aggressive in altering the zoning of an area.

Mr. Gow stated that the applicant does not gain much by shortening the road or moving the homes closer to the road, but the proposed layout is a better project for all parties involved.

Mr. Lewin asked Chairman Rybczynski where he should go to seek relief, if not to the Zoning Board of Appeals. Chairman Rybczynski responded that he would like the Zoning Board Attorney to research what precedent exists across the State for granting this large number of variances. He noted that he is concerned that the Zoning Board of Appeals may be overstepping its bounds.

Mr. Connolly stated that he would like the following information about the existing neighborhood adjacent to this property:

- The average square footage of the homes
- The average lot size
- The setback of the existing homes vs. what is proposed by the applicant

Mr. Gow stated that the average lot size in the existing neighborhood is 62' X 118'.

Mr. Lewin stated that the homes he is proposing to build would probably be 2,000 sq.ft. if they are two-story and 1,300 sq.ft. if they are ranches. He further stated that the homes would probably sell for at least \$200,000.

Findings:

Chairman Rybczynski stated that in regards to applications # 5458 through # 5474, it appears that the Zoning Board members would like more information and clarity. Board members concurred.

Chairman Rybczynski stated that the above-referenced applications would be left on the table for discussion at the Board's next meeting.

Mr. Connolly clarified that the Board had enough dialog and discussion, and has enough information in front of it, to make a decision at the next meeting with guidance from the Zoning Board of Appeals' attorney.

Application # 5475 Ryan Homes – Requesting an area variance for a rear yard setback for a partially home at 4058 Connors Way

Attorney Corey Auerbach from Damon Morey, representing the applicant, stated that a mistake was made in this subdivision, which is under construction currently. He stated that an ambiguous survey was submitted to the Building Department for this new home as part of the Building Permit process. He further stated that that survey, which has since been corrected, did not reflect the rear yard setback, and as a result a Building Permit was issued in error, and a foundation was poured and a house framed. He noted that at this point, it was found that the house is 5.65 feet too close to the rear lot line.

Attorney Auerbach stated that he does not believe that the granting of this requested variance would alter the essential character of the neighborhood or result in a potential detriment to the health, safety and general welfare of the community. He noted that the adjacent property owners on either side of the property have indicated that they do not have an objection to the granting of this variance.

Attorney Auerbach stated that the adjacent land to the west was formerly a paper street that has been designated as open space on the subdivision map.

Attorney Auerbach stated that the only alternative available to the applicant (removing the foundation and rebuilding the home in the correct location) is not feasible financially. In response to a question from Mr. Connolly, Attorney Auerbach stated that if the foundation had to be removed, it is unclear whether Ryan Homes or the prospective homeowner would have to finance that.

Attorney Auerbach stated that if one balances the criteria used to consider this variance, the benefit to the applicant of the granting of this variance far outweighs the minor negative detriment to the health, safety and general welfare of the community.

In response to a question from Mr. Connolly, Attorney Auerbach stated that Greenman-Pederson, Inc. is responsible for the erroneous survey.

Chairman Rybczynski read the following correspondence from Kurt Allen, Supervising Code Enforcement Official:

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

1. Building Permit # 2014-00130 was granted to Ryan Homes to construct a single family home. The permit was inadvertently issued without a proposed plot survey. When we received a spot survey (showing final foundation location), the rear setback dimension was not indicated. It was at that point under our questioning we found the rear yard setback was in violation.
2. The owner should be made aware that any future additions or decks attached to the house will further be in violation and would only be allowable with approval of an additional variance.

Thank you for your attention in this matter. Respectfully submitted, Kurt Allen”.

Chairman Rybczynski read a letter of support from Christina Walton, adjacent property owner.

Mr. Sacco stated that it is important for the owner of this new home to understand that no decks, additions, etc. can be constructed on the back of the home without an additional variance.

Chairman Rybczynski stated that even if this home was built without requiring a variance, the new homeowner would have to be granted a variance for anything to be constructed in the rear yard, because the home would have been placed right on the rear setback line.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5475.

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, because in this neighborhood, the homes are all new.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – None indicated.
5. Whether the alleged difficulty is self-created – This could be argued one way or the other, but errors were made by two different entities.

Mr. Sacco stated that he is glad the applicant was forthright in admitting that a mistake was made.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Connolly, to approve the meeting minutes of December 10, 2013. All members voted in favor of the motion.

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

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: March 17, 2014

