

Town of Hamburg
Board of Zoning Appeals Meeting
April 7, 2015
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, April 7, 2015 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Commissioner Bob Ginnetti, Commissioner Richard Dimpfl, Commissioner Paul Eustace and Commissioner Louis M. Chiacchia.

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

Excused: Vice-Chairman Shawn Connelly and Commissioner Joseph Sacco

Commissioner Eustace read the Notice of Public Hearing.

Chairman Rybczynski asked for a moment of silence to honor our troops overseas.

Tabled 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

Matthew Vanderbrook from Sustainable Energy Development, representing the applicant, stated that he understands that the Town of Hamburg is going through the process of coming up with a residential wind turbine law, and Mr. Jablonski wishes to have his application reviewed by the Zoning Board of Appeals parallel with the Town's actions.

Mr. Vanderbrook stated that the applicant has a strong economic argument for the granting of the variances for the two (2) wind turbines, noting that one (1) would be interconnected to offset electricity usage at the applicant's home and one (1) at his farm. He submitted a financial summary of the project to Board members and explained that between the home and the farm, the applicant uses approximately 36,000 kwh per year. He noted that if the two (2) wind turbines are 140 feet tall, they would generate together approximately 80% of that number. He further stated that if the towers were 120 feet tall, there would be an approximately 10 – 15% reduction in generation.

Mr. Vanderbrook stated that a company called United Wind would be putting up some of the upfront money for these wind turbines. He further stated that over the lifetime of the project, if the wind turbines are 140 feet tall, the applicant could save close to \$30,000 over 20 years.

Mike Jablonski, applicant, stated that his electric bills for the farm are between \$500 and \$600 during the summer months and \$1,000 in the winter months.

Chairman Rybczynski read the following communication from the Code Review Committee:

“As you are aware, the Town of Hamburg regulates commercial wind energy conversion systems (WECS) but does not regulate or allow non-commercial or residential grade wind energy conversion systems. The Code does define a non-commercial WECS, and the Hamburg Code Review Committee has been discussing and working on a regulation for these types of units. At the April 1, 2015 Code Review Meeting, the following was decided:

1. The Committee will be recommending that the Town potentially adopt a law regulating non-commercial or residential grade WECS.

2. The law will include standards for where they will be allowed, minimum acreage requirements, height restrictions, setback requirements, process requirements (SUP), etc.
3. The Town will be using the Commercial Grade WECS Law as a basis for this new Law, and it will include requirements for noise, visibility /aesthetics, lighting, fencing, safety and security, interference with other systems, monitoring, removal of non-functioning systems, fees, and other environmental issues.

The following was also discussed and noted:

- The proposed law will be fully developed over the next month, and then the law will need to go through the local law adoption process (public hearing, county referral, SEQR, and potential revisions due to comments). This process typically takes 3 to 6 months.
- If any applicant proceeds with a use variance before the law is completed, please consider that the issues addressed in the commercial WECS law (noise, aesthetics, setbacks, security/safety, etc.) should be considered in your SEQR analysis. It may make sense that the Zoning Board of Appeals conduct a coordinated SEQR process and receive input from other agencies and Town departments to assist you with the SEQR decision.”

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

TOWN OF HAMBURG

CODE ENFORCEMENT DEPARTMENT

6100 SOUTH PARK AVENUE • HAMBURG, NEW YORK 14075 • (716) 649-6111 Ext. 2210 • FAX: (716) 646-1967

Supervising Code Enforcement Official
Kurt Allen



April 2, 2015

Zoning Board of Appeals
Hamburg Town Hall
6100 South Park Avenue
Hamburg, NY 14075

Attn.: Brad Rybczynski, Zoning Board Chairman

Re: ZBA Applications # 5520 - Use Variance
Residential Wind Generators

Code Enforcement Officers
Timothy Willard
James Eberhardt
Roger Gibson
Jeffrey Adrian
Joseph Boncore

Electric Inspector
Lon Robinson

Senior Clerk Typist
Tracey Haffner

Dear Mr. Rybczynski and Fellow Zoning Board Commissioners:

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

1. The applicant seeks a use variance to allow two wind generators on the premises of 3134 Old Lakeview Road. Presently the Town only allows wind energy conversion systems commercial grade generators (WECS) in general industrial M-3 zoning districts under a special use permit granted by the Planning Board.
2. The Town has just recently received proposals to install similar wind generators in residential districts. In response to these proposals the Code Review Committee identified the urgent need to adopt local law legislation to address all the associated issues in order to appropriately regulate these new WECS installations, particularly in residential settings. The Code Review Committee is actively working toward new regulatory legislation which speaks to all the pertinent issues related to these types of wind generator installations including SEQR analysis through the process.
3. Clearly it would be imprudent to even considering this use variance application for approval based on the following points:
 - The review and approval of this request would never be considered a Type II action and is definitely subject to further SEQR review due to apparent environmental issues involved. Approval of this application without conducting a coordinated SEQR review could be additional risk exposure to an Article 78 proceeding.
 - In response to this specific proposed use, the Town through the Code Review Committee is making a concerted effort to promptly enact the appropriate law to establish an appropriate process to review and approve such an application. It would be incorrect to prematurely act on this application until such legislation has been adopted.

My recommendation would be to deny this use variance request, thus allowing it to be reviewed for approval through a more suitable process once the forthcoming local law has been put in place. Thank you for your attention in this matter.

Respectfully Submitted,

Kurt Allen,
Supervising Code Enforcement Official

"It's Great Living in Hamburg... The Town That Friendship Built"

Chairman Rybczynski stated that the above is Mr. Allen's opinion.

Mr. Jablonski stated that his property is considered a farm, and this would just be an additional piece of equipment. He further stated that power has gotten unreasonable, and he pays the highest rate.

Chairman Rybczynski stated that Mr. Allen has the right to express his opinion like anyone else, but the Zoning Board of Appeals acts according to the will and direction of the law.

Findings:

Chairman Rybczynski stated that he would like Mr. Allen to attend the Board's May 12, 2015 meeting to explain his point of view regarding the requested variances. He stated that he was disappointed that Mr. Allen was not in attendance to discuss this issue.

Chairman Rybczynski asked Mrs. desJardins to see if she can find another individual who could offer the Board an unbiased opinion on the question of the SEQR determination. He stated that Mr. Allen has a good reputation and is trying to protect the Town, but he also has "skin in the game" being on the Code Review Committee. He noted that he would like to avoid the appearance of impropriety.

Mrs. desJardins stated that the Code Review Committee does have a draft residential wind turbine law written that will be reviewed by the Town's Planning Board on May 6, 2015. She further stated that subsequent to the Planning Board review, the draft law will be the subject of a public hearing by the Town Board.

Mr. Jablonski stated that the employees in the Building Inspection Department do not understand wind turbines. Mrs. desJardins responded that those employees are not aware of the NYSERTA and federal guidelines for wind turbines because the Town has never had a residential wind turbine law, nor does it have any wind turbines at this time.

Mrs. desJardins stated that the Town must decide where in the Town it wants to allow wind turbines, where it does not want to allow them, how tall then can be, etc.

Chairman Rybczynski stated that he is frustrated that the Town is not prepared for wind turbines.

Chairman Rybczynski stated that Mr. Allen refers to an Article 78 proceedings in his memo, and he (Chairman Rybczynski) views that as a threat, which he does not appreciate. He noted that he has not had one (1) decision made by his Board challenged in court, and he does not plan on it ever happens.

Mr. Chiacchia stated that the Board was lacking two (2) members, and he feels that it is important to know their feelings about this matter, especially since Mr. Connolly is a member of the Code Review Committee. He further stated that he feels the Zoning Board of Appeals should let the Code Review Committee do its job. He noted that perhaps Hamburg should look into what other towns are doing that are confronted with applications for wind turbines.

Chairman Rybczynski stated that this application will be left on the table, and Mr. Allen will be asked to attend the Board's next meeting on May 12, 2015.

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to table Application # 5522.

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

Application # 5523 Gail Walter – Requesting two (2) area variances for a proposed new building lot on Heltz Road (vacant land, north side of Heltz Road, west of 6720 Heltz Road)

Application # 5524 Gail Walter – Requesting two (2) area variances for a proposed new building lot on Heltz Road (vacant land, south side of Heltz Road)

The Board discussed the above two (2) applications simultaneously.

Mrs. desJardins explained that in 2008, Ms. Walter requested approval of a two-lot subdivision to be located on both sides of Heltz Road. She noted that both lots have the same SBL number because they were previously one (1) parcel, but it was split when Heltz Road was constructed. She stated that the Planning Board indicated in 2008 that if she could get variances for the size and width of the lots from the Zoning Board of Appeals, she could return to the Planning Board for approval of the subdivision. She stated that Ms. Walter never requested the required variances from the Zoning Board of Appeals in 2008, and now that she has buyers for the lots, she is requesting the required variances.

Mrs. desJardins stated that the variances are necessary, as is the approval of the subdivision, so that a separate SBL number can be assigned to each of these lots.

Ms. Gail Walter, applicant, stated that when Heltz Road went in, this property was split, and to make it usable it must be subdivided.

Mrs. desJardins stated that Ms. Walter did not own the property when Heltz Road was constructed. Ms. Walter stated that she purchased the property in 2006.

Mrs. desJardins stated that one (1) lot is .72 acres in size and the other is 1.1 acres in size, and two (2) acres is required. She further stated that the lot width at the building line should be 200 feet, and both of these lots are 83 feet wide at the building line.

Mr. Chiacchia stated that the requested variances are very substantial.

Anthony Stelmach, 1994 Lakeview Road, stated that he owns the property next door, and he asked if the lots are big enough for septic systems.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5523.

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 – Yes.
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.**

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5524.

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 – Yes.
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 # 5525 James Sreniawski – Requesting an area variance for a proposed in ground pool at 4753 Mosey Lane

Mr. Karen Sreniawski, applicant, stated that she and her husband moved to this location two (2) months ago, and at that time Essex Homes did not fully disclose the location of the easements on this property. She stated that they would like to install a swimming pool for health reasons, and there is not enough room on the property to do it without being granted a variance.

In response to a question from Chairman Rybczynski, Mrs. Sreniawski stated that if the requested variance is granted, the pool would be located five (5) feet from the side property line. She further explained that reducing the size of the pool would not mean that it would be further from the property line that what is proposed.

Mr. Chiacchia stated that he visited the site, and he feels that the applicants were not made aware of the easements on the property, and if they had been informed they might not have purchased it.

Mr. Dimpfl confirmed that the lot adjacent to this property is vacant.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5525.

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.**

Chairman Rybczynski stated that he hopes the residents that have been adversely affected by Essex Homes not disclosing the location of easements do something about it.

Application # 5526 Carlene & Wayne Wilkie – Requesting an area variance for a new detached garage at 4983 Richmond Avenue

Mrs. Carlene Wilkie, applicant, stated that they would like to construct a larger garage than the one they currently have on their property because she cannot pull her vehicle into the existing garage. She noted that the existing garage was there when they purchased the property and it is not a straight shot to the garage from the street.

Mr. Chiacchia stated that the applicant did submit letters from both adjacent neighbors indicating that they are not opposed to the granting of the variance.

Findings:

Chairman Rybczynski made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5526.

On the question:

Chairman Rybczynski 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.**

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve the minutes of March 3, 2015.

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 8:30 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: April 25, 2015