

Town of Hamburg
Board of Zoning Appeals Meeting
May 3, 2016
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, May 3, 2016 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Vice-Chairman Shawn Connelly, Commissioner Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Nicole Falkiewicz, Commissioner Joseph Sacco and Commissioner Ric Dimpfl.

Excused: Chairman Brad Rybczynski

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

Commissioner Dimpfl read the Notice of Public Hearing.

Application # 5559 Jeanne Albert – Requesting that the Board of Zoning Appeals consider a re-hearing of an appeal of a determination made by the Supervising Code Enforcement Official that the business located at 5504 South Park Avenue is considered a permitted nonconforming use

Attorney Sam Alba, representing Ms. Albert, submitted paperwork to Board members for their review. He stated that Ms. Albert was never notified about the prior Board meeting date, and she would like to be heard. He stated that the paperwork submitted includes ten (10) pages of indisputable evidence that the wrong standard was applied by Supervising Code Enforcement Officer Allen and that if the correct standard had been applied and due diligence done with the evidence, there is no question that continuous operation of this business had ceased for at least one (1) year.

Attorney Nick DeMarco from Attea & Attea, representing Kevin Dils, stated that it was his understanding that the purpose of this meeting was to determine whether there would be a re-hearing at all. He stated that his position is that there is no merit for a re-hearing, as proper notice was given. He asked that if the Board decides to re-hear this appeal, his firm be given time to review the material submitted by Attorney Alba, as well as present its witnesses.

Attorney Alba stated that it would be a great injustice if the Board does not consider the evidence, and if the Board does not consider the evidence, a business will continue to operate illegally based on a technicality.

Ms. Albert stated that she was not personally notified of the date of the prior meeting. Attorney DeMarco responded that the notice that was given was in conformance with the requirements of the Code.

Vice-Chairman Connolly stated that the Board's position is that it just received a large amount of information from Attorney Alba, and for Board members to give this issue the due diligence it deserves, they would need an appropriate amount of time to review the submitted information.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to reopen the hearing for Application # 5559.

As there were five (5) ayes and one (1) abstention (Mr. Chiacchia), the motion passed.

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to table the matter for Board members to have adequate time to review the submitted materials.

As there were five (5) ayes and one (1) abstention (Mr. Chiacchia), the motion passed.

Application # 5570 Steven Kempsten – Requesting two (2) area variances for a proposed monument sign at 5810 Camp Road

Attorney Jesse Cook, representing the applicant, stated that the applicant requires a variance in order to install a monument sign in front of his business.

In response to a question from Vice-Chairman Connolly, Mr. Steven Kempsten, applicant, stated that he will have to purchase property from New York State in order to be able to put up a sign. He stated that he has nowhere to put the sign except where it is proposed.

Attorney Walling read from a letter written by Attorney Jay Pohlman that indicates that the property in front of the applicant's building has no title and was abandoned by both the New York State Department of Transportation and the Town of Hamburg. He stated that no one owns the property at this time, and Mr. Kempsten will need to go to court to file an Action of Quiet Title to attempt to gain ownership of the property.

Mrs. desJardins stated that the Supervising Code Enforcement Officer does not object to the granting of this variance.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5570 with the following condition:

- The applicant must become the owner of the property on which the proposed sign is placed.

On the question:

Mr. Sacco reviewed the use 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.**

Application # 5571 June Miller – Requesting a Use variance to construct a new farm building at 5292 Bayview Road

June Miller, applicant, stated that she wants to double the space she has in an existing barn on the property in order to place additional plant mixing material there.

In response to a question from Vice-Chairman Connolly, Ms. Miller stated that she last received a use variance in 2009 for additional barn space. She further stated that she has spoken to some of her neighbors, and none has objections.

Ms. Miller stated that the addition to the barn would be very beneficial to her employees.

In response to a question from Vice-Chairman Connolly, Ms. Miller stated that the financial hardship she is experiencing stems from the fact that her employees would be more productive and get their jobs done quicker if the barn addition is built and they can work in there. She further stated that building the barn addition would mean that there would be more room elsewhere for display.

In response to a question from Vice-Chairman Connolly, Ms. Miller stated that the granting of the variance would not alter the character of the neighborhood because it would just be an addition to an existing barn.

Mr. Chiacchia stated that Ms. Miller is a very successful woman, and the barn addition would help her increase her product.

Ms. Miller stated that she spoke with the following neighbors regarding her proposed barn addition:

- Glenn & Patricia Richardson, 5228 Bayview Road
- Charles & Ellen Baer, 5265 Bayview Road
- John & Roberta Schaff, 5273 Bayview Road

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5571.

On the question:

Mr. Chiacchia reviewed the use variance criteria as follows:

1. Cannot realize a reasonable rate of return – substantial as shown by competent financial evidence – Applicant has stated that she has a need for the additional room in order to make it easier for them to put the product out for sale.
2. Alleged hardship is unique and does not apply to a substantial portion of district or neighborhood – There is another building there and she just wants to expand her product and have more space available to increase her product.
3. Requested variance will not alter the essential character of the neighborhood – This will not alter the character of the neighborhood.

4. Alleged hardship has not been self-created – This was not a self-created hardship.

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

Application # 5572 Robert Fuchs – Requesting an area variance to allow the construction of a three-season sun room at 1472 Evergreen Drive

Robert Fuchs, applicant, stated that he would like to build an enclosed sun room. He submitted signed letters from both adjacent property owners indicating that they are not opposed to the granting of the requested variance.

Mr. Fuchs stated that the sun room would be too close to his rear property line, which is why he requires an area variance.

It was determined that the variance requested is 12 feet from the rear property line.

Mr. Chiacchia stated that the land to the rear of the applicant’s property is a Conservation Area that will never be built on. He further stated that he believes that a sun room would increase the value of this property, as well as the applicant’s neighbors’.

Vice-Chairman Connolly read the following letters of support into the record:

“Please be advised that I am the left side owner located at 1468 Evergreen Drive, Lakeview, NY. I do not have a concern for the construction of the three-season sun room proposed by Mr. Fuchs.

Amy Owcarz”

“Please be advised that I am the north side owner located at 1476 Evergreen Drive, Lakeview, NY. I do not have a concern for the construction of the three-season sun room proposed by Mr. Fuchs.

Paul Brostko”

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5572.

On the question:

Mr. Dimpfl reviewed the area variance criteria as follows:

6. Whether the benefit can be achieved by other means feasible to the applicant – No.
7. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the adjacent property owners do not object.
8. Whether the request is substantial – No.
9. Whether the request will have adverse physical or environmental effects – No.
10. Whether the alleged difficulty is self-created – No.

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

Application # 5573 Thomas Spulecki – Requesting two (2) area variances for a second story addition at 19 North Shore Drive

Timothy Finley from the Hoover Beach Homeowners' Association stated that the Association has an application from Mr. Spulecki for a second story addition and a front porch to be constructed on the home at 19 North Shore Drive. He stated that the applicant plans to make this a year-round home once the construction is completed. He further stated that the proposal in no way affects the line of sight because the addition would not extend toward the lake, but rather it would be constructed on the east side of the home.

Mr. Finley stated that the second story addition would conform to the Association's maximum height allowed for homes, as well as the minimum front yard setback. He further stated that the two (2) adjacent neighbors (15 North Shore Drive and 23 North Shore Drive) do not object to the requested variances.

It was determined that three (3) area variances are required (front yard setback, side yard setback and the combined side yards).

Mr. Chiacchia stated that he noticed that several homes in this area have second stories, and this addition would add value to this home.

Vice-Chairman Connolly stated that this section of Hamburg has been before the Zoning Board of Appeals several times, and it is extremely challenging because of the size of the lots and the closeness to the neighbors. He further stated that having a representative of the Homeowners' Association, as well as no objections from the two (2) most affected neighbors should bear a lot of weight.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mrs. Falkiewicz, to approve all three (3) area variances requested in Application # 5573.

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, it will improve the neighborhood.
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 # 5574 Lisa Rogenmoser – Requesting an area variance for a new fence at 5822 Camp Road

Lisa Rogenmoser, applicant, stated that she is the new owner of the former Moonshiner's, and she would like to replace the existing fence in the rear of the building with an eight-foot fence in order to establish a nice atmosphere for her customers. She stated that Steven Kempsten is an adjacent property owner, and the owner of the building on the other side only uses it for storage.

Steven Kempsten stated that he does not object to the granting of the requested variance.

In response to a question from Vice-Chairman Connolly, Ms. Rogenmoser stated that the fence would be wooden, and she plans to stain it.

In response to a question from Mr. Chiacchia, Ms. Rogenmoser stated that she would like a brand new fence to enclose the entire rear yard.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Sacco, to approve Application # 5574.

On the question:

Mr. Dimpfl reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – This could be argued either way, but in this case what the applicant wants to do fits the property well.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.
3. Whether the request is substantial – This could be argued, but the proposed fence fits well with this property.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

Vice Chairman Connolly noted that the adjacent property owner (Steve Kempsten), who was present at the meeting, voiced his support of the applicant's request. He further stated that the applicant indicated that the property owner on the other side of this property also does not object.

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

Application # 5575 Bradley Roberts – Requesting an area variance for a picnic shelter at 5445 South Park Avenue

Bradley Roberts, applicant, stated that he would like to put up a 20' X 30' picnic shelter on his property. He stated that he owns two (2) contiguous properties and plans to merge them. He noted that both adjacent property owners do not object to the granting of the requested variance.

In response to a question from Vice-Chairman Connolly, Mr. Roberts stated that the two (2) adjacent property owners he spoke to are Josephine Drozd, 5429 South Park Avenue and Jeff Gorcica, 5455 South Park Avenue.

It was determined that a variance is needed because the aggregate square footage of the applicant's accessory buildings is more than what is allowed in this District.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5575 with the following condition:

- The two (2) lots the applicant owns must be merged.

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, because of the size of the property the applicant owns.
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 # 5576 BG Hamburg SJB, LLC – Requesting two (2) area variances for a freestanding sign at 4408 Milestrip Road (BJ's Plaza)

Rick Johnson from Xpress Signs, representing the applicant, stated that the applicant must remove the existing signage for the plaza because it was damaged in a wind storm, and then the sign would be replaced.

Mr. Johnson stated that the new sign would be the same dimensions, material and height as the existing sign.

Mr. Chiacchia asked Mr. Johnson if the new sign could be lowered to a height of 20 feet. Mr. Johnson responded that that would probably not be possible based on the lease requirements of the plaza.

Mr. Chiacchia stated that the height variance is somewhat excessive.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mrs. Falkiewicz, to approve Application # 5576.

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 sign was damaged.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No.

3. Whether the request is substantial – No, the new sign would be the same size as it was before it was damaged.
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 # 5577 Robert Wolfe – Requesting three (3) area variances for a new home on vacant land on Holly Place

Attorney Walter Rooth, representing the applicant, stated that this lot was created in 1971, and the applicant has been paying taxes on it since then.

Attorney Rooth 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 the proposed home to be built on the lot would be worth between \$225,000 and \$250,000, which exceeds the value of a house nearby that just sold.
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, this lot was created in 1971.

Attorney Rooth stated that he believes that this new home would be an improvement to the neighborhood.

Kevin Wolfe, son of the applicant, stated that in 1990 his father planned to construct a subdivision behind Holly Place but changed his mind. He stated that at that time, there was to be a road from the new subdivision to Holly Place between 4941 and 4955 Holly Place, but that road was done away with, and that tract of land has sat since then.

Mr. Wolfe stated that his family attempted to sell this tract of land to the owners of the property on either side of it in 1999. He stated that in April 2016, he spoke to these property owners about his family's desire to request variances to construct a home on this tract of land.

Mr. Wolfe stated that he believes that a new home on this site would complement the area and noted that the homes on either side of this site have lower assessment values than the newly constructed home would have. He stated that the new home would fit proportionally with the existing neighborhood.

Mr. Wolfe stated that the property owners on either side of the tract of land have expressed concerns about water problems they have had, but the water problems have not been caused by his property. He stated that the neighbors' water problems are directly related to the development of the property behind their homes. He stated that if the variances are granted

and the construction can go forward, swales would be required, as well as a drainage plan approved by the Town's Engineering Department.

Mr. Wolfe stated that the property owners on either side of this tract of land cite concerns about the curve on Holly Place directly in front of this tract of land, yet this curve is no different than the curve on Best Street, Meadow, Knab, Lillydale or Waterford Lane.

Mr. Wolfe stated that this hardship was not self-created because the lot was created when it was not sold to the builder of the homes behind Holly Place. He stated that his family believed at that time that they were following correct steps and procedures.

Mr. Wolfe stated that he canvassed the neighborhood in April 2016 and showed the neighbors photos of the proposed home to be constructed, as well as details of the variances requested. He stated that he obtained 26 signatures of neighbors who did not object to the requested variances. He stated that subsequent to this, some neighbors made him aware of an unstamped letter that was placed in their mailboxes signed by the property owners on either side of this tract of land. He stated that this letter contained inaccurate information.

Mr. Wolfe stated that the property owners on either side of this tract of land have indicated that a home being built between them will adversely affect their ability to sell their homes. He stated that his family disagrees with this statement and feels that it would actually improve the character of the neighborhood.

Mr. Wolfe stated that his family believes that any changes or reversal of opinion were misconstrued by the property owners on either side of this tract of land and should be found unacceptable and inaccurate. He stated that his family would also like the survey stakes that were placed on the property in 2014 and subsequently removed be replaced.

Mr. Wolfe stated that his family does not believe that the granting of the requested variances would alter the essential character of the neighborhood or result in a potential detriment to the health, safety or general welfare of the community.

Mr. Chiacchia stated that the lots on either side of this tract of land are quite large compared to the applicant's property. He further stated that the requested variances are quite substantial.

Vice-Chairman Connolly reviewed for the public the five (5) criteria the Board must use when reviewing area variance requests.

Vice-Chairman Connolly read the following list of residents who originally signed a letter indicating that they did not object to the proposed variances:

- Brooke DeLucia, 4915 Holly Place
- Joseph Battin, 4899 Holly Place
- Kathleen Battin, 4899 Holly Place
- Lindsey Martello, 4877 Holly Place
- Debra Broncato, 4857 Holly Place
- Sandra Vella, 4831 Holly Place
- Steven Schumer, 4929 Holly Place
- Donna Griffey, 4920 Holly Place
- George Griffey, 4920 Holly Place
- Joanne Szeffler, 4892 Holly Place
- Rebecca Lindell, 4887 Holly Place
- Kevin Birt, 4868 Holly Place
- Lorie Birt, 4868 Holly Place
- Paul G., 4858 Holly Place

- Laurie & Jim O'Connor, 4844 Holly Place
- Neil Gallineau, 4832 Holly Place
- Catherine Mantione, 4816 Holly Place
- James Siebert, 4914 Best Street
- William Nicholson, 4917 Best Street
- Nick Watkins, 4922 Best Street
- Michael Musty, 4940 Best Street
- Diane Buckley, 4876 Best Street
- Priscilla Alice Miller, 4886 Best Street
- Christine Luthringer, 4889 Best Street
- David Carrow, 4896 Best Street
- Barbara Ode, 4968 Best Street

Vice-Chairman Connolly stated that the above mentioned letter was signed by a majority of the residents on April 16, 2016, and a few signed it on April 17, 2016.

Vice-Chairman Connolly read the following letter from the Supervising Code Enforcement Official, Kurt Allen, regarding the requested variances:

“Dear Mr. Rybczynski and fellow Zoning Board Commissioners:

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

1. Vacant lot SBL # 183.20-2-2 was subdivision from lot SBL # 183.20-2-1 (the parcel originally was dedicated to the Rolling Ridge Subdivision) with the required approval of the Town Planning Board in clear violation of Local Law No. 14-1991 Chapter 230: Subdivision of Land. As a result, this lot with all of its nonconformities was created simply by filing with the county clerk.
2. On the assumption all of the area variances were granted, placement and construction of a house on this lot (consistent with the size and scale of those existing homes on Holly Lane) would certainly not be in harmony of the surrounding neighborhood.
3. Placement of a driveway/curb cut has restrictions due to the road outside curve radius and limited frontage. The new driveway would converge with the adjoining driveway to the east. If this were allowed it would no doubt create an awkward if not unsafe condition.

Speaking on behalf of the Town Planning and Code Enforcement Departments, I would think it would be highly imprudent to grant these variances based on the aforementioned and particularly in light of the fact that this nonconforming lot was created in violation of Town Subdivision Law, outside the prescribed Town's review/approval process. Thank you for your attention in this matter.

Respectfully submitted, Kurt Allen, Supervising Code Enforcement Officer”

Attorney Rooth stated that if the variances are granted, the Wolfe family would not sell the property to anyone else.

Attorney Jay Pohlman, attorney representing Mr. & Mrs. Radder and Mr. & Mrs. Gerken, the two (2) property owners on either side of the applicant's property. He stated that neither of his clients removed the applicant's survey stakes, and they have maintained the lawn between them for as long as they have lived on Holly Place.

Attorney Pohlman stated that the applicant's tract of land was never intended to be a building lot, but rather it was originally part of the subdivision now known as Rolling Ridge Subdivision south of Holly Place. He stated that the parcel was to be used for access to the subdivision, but

the subdivision was built from a different direction and this property was then not needed for access.

Attorney Pohlman stated that his clients asked two (2) different realtors for a valuation for the applicant's property, and one realtor valued it at \$9,000 - \$11,000 and the other valued it at \$10,000 - \$12,000. He stated that he has drafted a contract that would allow the applicants to sell the property to Mr. and Mrs. Radder for \$12,600, which exceeds the lot values on either of the appraisals that were done. He stated that the Radders have signed a purchase offer and offered an earnest money deposit check of \$200.

Attorney Pohlman stated that the courts have indicated that a variance request of greater than 15% is considered substantial, and he noted that the applicant is asking for relief of approximately one-third in two (2) of the requested variances.

Attorney Pohlman stated that the applicant should take the money offered by the Radders and use it to purchase a more suitable lot to build on. Attorney Pohlman stated that a lot should not be created just because it exists in the family, and the Code should be adhered to.

Attorney Pohlman stated that ten (10) of the people who signed the petition circulated by the applicant have signed a second petition stating that they are now opposed after learning the magnitude of the variances being sought. He submitted petitions from 21 Holly Place residents, 19 Best Street residents and 4 Meadow Lane residents indicating the following:

"We the undersigned are opposed to application # 5577 requested by Robert and Madonna Wolfe residing at 6392 New Taylor Road, Orchard Park, N.Y. 14127. We believe that the proposed changes to the Town of Hamburg R-1 Zoning codes and the granting of this variance will cause undesirable changes to the character of our neighborhood."

Attorney Pohlman stated that Kevin Wolfe referred to the assessed value of the homes surrounding this tract of land and not the market value, which is very different.

Attorney Pohlman stated that if a smaller home is constructed in between the Radder and Gerken properties on a lot that is not conforming, this will reduce the value of the Radder and Gerken homes.

Vice-Chairman Connolly stated that of the initial 27 residents who signed the petition not objecting to the granting of the requested variances, 7 subsequently signed the newer petition against the granting of the requested variances. He read the names of those who signed the newer petition objecting to the granting of the requested variances as follows:

- Larry Platz, 4866 Best Street, signed on 4/22/16
- Sharon Platz, 4866 Best Street, signed on 4/22/16
- Louis Pinto, 4907 Best Street, signed on 4/22/16
- Joyce Pinto, 4907 Best Street, signed on 4/22/16
- Ted Nowinski, 4949 Best Street, signed on 4/23/16
- Barbara Ode, 4968 Best Street, signed on 4/24/16
- Mark Radder, 4955 Holly Place, signed on 4/24/16
- Elaine Radder, 4955 Holly Place, signed on 4/24/16
- Gregory Roza, 4948 Best Street, signed on 4/24/16
- Derek Hill, 4932 Best Street, signed on 4/24/16
- Michelle Hill, 4932 Best Street, signed on 4/24/16
- Peter Cottone, 4925 Best Street, signed on 4/24/16
- Fran Cottone, 4925 Best Street, signed on 4/24/16
- Margaret Watkins, 4922 Best Street, signed on 4/24/16
- Gerhard & Rita Hinderberger, 4904 Best Street, signed on 4/24/16

- Jim Siebert, 4914 Best Street, signed on 4/24/16
- Paul Watkins, 4922 Best Street, signed on 4/24/16
- Bonnie Nowinski, 4949 Best Street, signed on 4/24/16
- Kathleen Gerken, 4941 Holly Place, signed on 4/24/16
- John Gerken, 4941 Holly Place, signed on 4/24/16
- Steven Delucia, 4915 Holly Place, signed on 4/24/16
- Brooke Delucia, 4915 Holly Place, signed on 4/24/16
- Joseph Battin, 4899 Holly Place, signed on 4/24/16
- Kathleen Battin, 4899 Holly Place, signed on 4/24/16
- Joanne Szeffler, 4892 Holly Place, signed on 4/24/16
- Michelle Chaffee, 4880 Holly Place, signed on 4/24/16
- Christopher Martello, 4877 Holly Place, signed on 4/24/16
- Jim & Roseann Beiter, 4867 Holly Place, signed on 4/24/16
- Laurie O'Connor, 4844 Holly Place, signed on 4/24/16
- Jim O'Connor, 4844 Holly Place, signed on 4/24/16
- Bob & Joanne Meyer, 4843 Holly Place, signed on 4/24/16
- Neil Gallineau, 4832 Holly Place, signed on 4/24/16
- Bob & Sue Shanks, 4844 Meadow Lane, signed on 4/24/16
- Frederick Best, 4859 Meadow Lane, signed on 4/24/16
- Sheila Hoepfinger, 4876 Meadow Lane, signed on 4/24/16
- Robert Hoepfinger, 4876 Meadow Lane, signed on 4/24/16
- Margaret Martello, 4877 Holly Place, signed on 4/24/16
- William Hixon, 4845 Best Street, signed on 4/27/16
- Marcia Hixon, 4845 Best Street, signed on 4/27/16

Vice-Chairman Connolly asked Attorney Pohlman if he had any documentation of the legal cases he (Attorney Pohlman) was referring to when previously discussing percentages as they pertain to variance requests. Attorney Pohlman responded that he will submit a memorandum of law to the Board.

Vice-Chairman Connolly stated that the area variance request for the minimum lot size is a 28% request, the request for the lot width at the building line is a 33% request and the request for the reduction in the side yard setback is a 20% request.

Attorney Rooth stated that the tract of land in question is not a paper street, noting that the lot was created in 1971 by the County.

Attorney Pohlman stated that giving a piece of property an SBL number does not make it a building lot.

Mrs. desJardins showed Board members a copy of the Preliminary Approval sheet from 1997 for the subdivision behind Holly Place, of which this tract of land was a part. She noted that at some point subsequent to 1997, it was determined that this tract of land would not be included in the subdivision.

Vice-Chairman Connolly asked Mr. Wolfe to provide a time line for this property regarding what happened when and how this tract of land became what it is now. Attorney Pohlman stated that he will also research this and address it in his memorandum of law.

Mr. Kevin Wolfe stated that the required minimum lot size before 1989 was 11,250 sq.ft., and then it was changed to the current 15,000 sq.ft.

Mr. Wolfe stated that on April 7, 2015, the Board of Zoning Appeals approved variance for Ms. Gail Walter for property on Heltz Road that required variances for lot size and width at the

building line. Mrs. desJardins responded that each case must be viewed separately, and as she recalled, the application Mr. Wolfe referred to dealt with property that had many lots the same size in the vicinity.

Mrs. desJardins stated that the main issue is that subdivision approval was never granted by the Planning Board to create a building lot at this location. Mr. Wolfe responded that the lot was given an SBL number by the County. Mrs. desJardins stated that giving a piece of land an SBL number does not mean it is a legal building lot.

In response to a question from Mr. Chiacchia, a member of the Wolfe family stated that the new home would be approximately 1,529 sq.ft. in area.

Vice-Chairman Connolly stated that Board cannot look at past cases as precedent, and each case is looked at individually, regardless of the time or location.

Discussion ensued about whether this tract of land is considered a "paper street."

Louis Pinto, 4907 Best Street, stated that he is concerned about the size of the house, as well as the size of the lot. He stated that there are not many 60' wide lots in this area.

It was determined that there is one (1) more lot in the neighborhood that has not been built on.

Findings:

Vice-Chairman Connolly stated that there seemed to be a fair amount of questions that were unanswered, as well as misinformation or lack of concrete answers that would lead the Board to make sure it has all of the information necessary. He stated that tabling this application would allow the parties the opportunity to possibly seek settlement or further input from the residents so that the Board can make a better decision. He further stated that all Board members who had not done an on-site inspection should do so.

Mr. Ginnetti made a MOTION, seconded by Mr. Mrs. Falkiewicz, to table all three (3) requested area variances for Application # 5577.

On the question:

Mr. Ginnetti stated that he believes there is more information Board members need to review regarding this application, and members need time to digest everything they heard at this meeting.

Vice-Chairman Connolly stated that based on the signatures received by the Board, it is clear that some residents signed one form and then changed their minds and signed another. He stated that there was a bit of confusion and the topic is a sensitive one, so taking the time to get all the answers Board members need makes a lot of sense.

Attorney Walling stated that the applicant should get members more information in writing in advance regarding whether this tract of land is a paper street.

Vice-Chairman Connolly asked the applicant for a summary of what was discussed at this meeting.

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

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of May 3, 2016. As the vote on the motion was four (4) ayes and two (2) abstentions (Vice-Chairman Connolly and Mr. Sacco), the motion passed.

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to adjourn the meeting. All members

voted in favor of the motion.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: May 24, 2016