

Town of Hamburg  
Board of Zoning Appeals Meeting  
June 2, 2015  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 2, 2015 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, Commissioner Paul Eustace and Commissioner Louis M. Chiacchia.

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

Mr. Chiacchia asked for a moment of silence to honor our troops who have paid the ultimate sacrifice.

Commissioner Eustace read the Notice of Public Hearing.

**Tabled Application # 5529** Morgans Natural Foods, Inc. – Requesting a use variance to allow for an open air market at 4923 Lakeshore Road

Mrs. desJardins stated that the applicant indicated that he is still negotiating with the property owner regarding his desire to operate an open air market at this location, and he asked that the Board table this application.

**Findings:**

Chairman Rybczynski stated that this application would remain on the table.

**Application # 5532** Todd Doty – Requesting an area variance for a new detached accessory structure at 3175 South Creek Road

Mr. Todd Doty, applicant, stated that he would like to construct a detached accessory structure that is 850 sq.ft. larger than what is allowed because he would like to store his boat and his daughter's vehicle. He stated that his existing garage is not large enough to store his wife's vehicle, his vehicles and his daughter's vehicle. He noted that he owns approximately three (3) acres of land.

Mr. Sacco stated that he visited the site and wondered where the new building would be located relative to the existing garage on the property. Mr. Doty responded that the new structure would be located approximately 25 feet behind the southwest corner of the existing garage and approximately twelve feet from his west property line. He noted that the new building would be 250 feet from the front property line.

In response to a question from Mr. Connolly, Mr. Doty stated that he had not spoken to the owner of 3191 South Creek Road about his proposal.

Mr. Connolly stated that the building would be very close to the property line shared with 3191 South Creek Road, and it would be a good idea to get input from that property owner.

Mr. Doty stated that currently the adjacent property is used for agriculture, and the new building would not impede any views or uses of the adjacent property.

Randall Sullivan, 3155 South Creek Road, stated that he would be the most affected neighbor, and he supports Mr. Doty's request for a variance.

Mrs. desJardins stated that the applicant needs a variance because in the R-A District, an aggregate square footage of 1,500 is allowed for detached structures. She noted that the applicant has an existing garage totally 1,150 sq.ft., and adding the proposed 1,200 sq.ft. building would bring the aggregate number to 2,350 sq.ft.

Chairman Rybczynski read the following correspondence from Mr. Joseph Lindstrom, 3191 South Creek Road:

"In regards to application # 5532, I am the property owner adjacent to the new structure. I believe it is too close to my property and would like it moved further away from the property line. I would also like for an independent survey company to resurvey the property line. The original property stakes have been previously removed by Mr. Doty. I would like to be sure precisely where my property line is before the construction begins."

Mr. Lindstrom showed Board members where his property lies relative to Mr. Doty's property. He confirmed that he has no structures on the property but does have a driveway to get to the rear of the site. He stated that he wants to make sure that his property line is properly defined because the stakes that were there have been removed. He stated that he wants the stakes put back in so that he knows that the new structure is constructed the correct distance away from his property.

Mr. Doty stated that it is against the law to remove someone else's property stakes. He stated that he knows exactly where his property pins are, and he would be happy to show Mr. Lindstrom where they are. He noted that he did not remove any property stakes.

Mrs. desJardins stated that the Building Department has indicated that if this variance is granted, that office will verify that the new building is the correct distance from any property lines.

Mr. Lindstrom stated that he would be willing to pay a surveyor to determine where his property line is if he is not satisfied with what the Building Department does relative to identifying it.

Chairman Rybczynski stated that the Zoning Board of Appeals will make sure that the Building Department has a discussion with Mr. Lindstrom and verify where the property line is.

Mr. Chiacchia stated that the applicant's existing garage is quite full, and it appears that his two (2) vehicles sit outside all winter.

Mr. Connolly asked Mr. Doty to verify that if the variance is not granted, the cars, boats, etc. that are currently on the property will still be on the property outdoors. Mr. Doty stated that the boat stays in the garage and his wife's vehicle sits outside all winter.

In response to a question from Mr. Chiacchia, Mr. Doty stated that he owns 2.92 acres of land at this location.

Ms. Diane Bleich, 3195 South Creek Road, stated that she feels that the size of the property building is much too large, and she does not understand the need for such a large building. She stated that six (6) years ago she had her property resurveyed because she wanted to replace stakes that had gone missing previously. She noted that since Mr. Doty has moved in the stakes have gone missing again.

Ms. Bleich stated that she is worried that the stakes will be moved again once the Town surveys the applicant's property lines.

Chairman Rybczynski read the following letter from Ms. Bleich regarding this application:

"I oppose the requested area variance for a new (second) detached accessory structure at 3175 South Creek Road based primarily on the substantial size of the structure. This building will be huge, and I question the need for it in a residential area. Considering the 12-foot height, does this allow for a second story to be built? Or for other additions?"

In response to a question from Chairman Rybczynski, Mr. Doty stated that he has no plans to add a second story to the structure, nor does he have plans to construct any more buildings or additions on the property.

In response to a question from Mr. Sacco, Mr. Doty stated that he would like to heat the structure, have electricity and a poured concrete floor to preserve his vehicles.

Mr. Connolly asked Mr. Doty if he has thought about other proposed structure that would be less substantial but still accommodate his needs. Mr. Doty responded that he looked at the size and layout of structure he has now and found that it would not work for what he wants to put in the new structure.

In response to a question from Mr. Connolly, Mr. Doty stated that the existing structure and the new structure together could accommodate his truck, car, boat, four-wheeler and two (2) additional cars.

Mr. Doty confirmed that he does not operate any type of business at this location.

**Findings:**

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5532.

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, because the applicant needs more space for his vehicles, boat, etc.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because one neighbor has a bigger pole barn next door, and that neighbor does not object to this variance request.
3. Whether the request is substantial – It could be considered substantial, but it will be a benefit to the applicant.
4. Whether the request will have adverse physical or environmental effects – No
5. Whether the alleged difficulty is self-created – No.

Mr. Sacco stated that the Town's Building Department will look at the property line issue, and he has complete confidence in that department.

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

**Application # 5533** FedEx – Requesting an area variance for a proposed fence and ZBA approval of the use of barbed wire at 3779 Lakeshore Road

Mr. Dave Seiflein, project superintendent of the FedEx site, stated that the proposed barbed wire fence would be placed around the developed portion of the site. He stated that the fence

would be eight (8) feet high with a one-foot 45 degree barbed wire pedestals with barbed wire on top.

Chairman Rybczynski asked Mr. Seiflein why FedEx feels barbed wire is appropriate. Mr. Seiflein responded that he believes the rationale is that it would add extra security, and it is FedEx's standard detail.

In response to a question from Mr. Chiacchia, Mr. Seiflein stated that approximately 4,500 linear feet of fencing would be installed.

In response to a question from Mr. Sacco, Seiflein stated that he does not believe any shrubbery is proposed on the outside of the fencing. He further stated that there will be 24-hour security on the property.

Mr. Michael Kobiolka, 8025 Boston State Road, stated that he owns the property directly to the north of the FedEx site (3751 Lakeshore Road). He stated that he finds it difficult to comment on this application because the plans were just submitted to the Zoning Board of Appeals this evening.

Mr. Seiflein stated that the plans were submitted with the variance application.

In response to a question from Mr. Kobiolka, Mr. Seiflein stated that the fence is indicated on the submitted site plan, and the closest it would be to Mr. Kobiolka's property would be in the area behind the retaining wall (approximately 500 feet away).

**Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Eustace, to approve Application # 5533.

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, because clearly the applicant needs barbed wire and for barbed wire to be effective, the fence must be higher than the Town Code allows.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, because of the size of this property and the nature of it being a commercial area.
3. Whether the request is substantial – No, considering the magnitude of the acreage and the nature of what the applicant will do at the site.
4. Whether the request will have adverse physical or environmental effects – No, and the closest neighbor reviewed the plans and does not object.
5. Whether the alleged difficulty is self-created – No.

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

Chairman Rybczynski asked Board members if they had reviewed the two (2) communications received recently, along with a memo from Attorney Walling, regarding the necessity of doing SEQR. Board members indicated that they had.

Attorney Walling stated that the Zoning Board of Appeals should not discuss issues that pertain to an application that is not on this evening's agenda.

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of May 12, 2015. All members voted in favor of the motion.

Board members agreed that the July Zoning Board of Appeals meeting will be held on June 30, 2015.

Chairman Rybczynski stated that the meeting would be adjourned in memory of his cousin, Patrick William Thompson, who passed away on June 1, 2015.

Chairman Rybczynski made a MOTION, seconded by Mr. Sacco to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Paul Eustace, Secretary  
Board of Zoning Appeals

DATE: June 15, 2015