

Town of Hamburg
Board of Zoning Appeals Meeting
June 3, 2014
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 3, 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 Bob Ginnetti, Commissioner Joseph Sacco, Commissioner Richard Dimpfl, Commissioner Louis Chiacchia and Commissioner Paul Eustace

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

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

Commissioner Eustace read the Notice of Public Hearing.

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

Chairman Rybczynski stated that the applicant was not present, and therefore the application would remain on the table.

Application # 5482 Daniel & Bernadette Kowal – Requesting an area variance for a proposed new front porch at 5668 Minerva Drive

Daniel Kowal, applicant, stated that he would like to construct a front porch and new staircase on the home.

It was determined that this property is considered to be an existing non-conforming lot, and many of the properties on Minerva Drive are also considered to be existing non-conforming lots.

Chairman Rybczynski stated that a letter of support was received from Sandra and Chester Betker, 5664 Minerva Drive.

Findings:

Chairman Rybczynski stated that he sees no physical or environmental effects from the granting of this variance and there would be no detrimental effect to the neighboring community.

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl to approve Application # 5482.

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, this is a non-conforming area already.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the change would look very much like the other homes in 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 # 5483 Uncle Bob's Self Storage – Requesting an area variance for a proposed self-storage building at 4445 Lake Avenue

Joe Palumbo from Carmina, Wood, Morris, representing the applicant, stated that the applicant proposes to demolish two (2) existing dilapidated self-storage buildings on the property and replace them with one (1) two-story climate controlled indoor self-storage building. He stated that the front yard setback variance is needed because New York State has taken a substantial portion of the Lake Avenue frontage, and the new building would be constructed with the same front yard setback as the two (2) existing buildings to be demolished.

In response to a question from Chairman Rybczynski, Mr. Palumbo stated that the new building would be approximately 40 feet from the road.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5483.

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, the new building will be built in the footprint of the buildings to be removed.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this area is commercial.
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 – It could be argued that it is self-created, but this is commercial property.

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

Application # 5484 Save-A-Lot – Requesting an area variance for an additional wall sign at 4271 Lake Avenue

Suzanne Schmitz, co-owner of the store, stated that she would like to put up a second backlit sign advertising the store that would be placed on the end of the plaza in which the store is located. She noted that she is trying to attract motorists who are exiting the Thruway at Milestrip Road because they may not be aware that the store exists if there is no signage on the end of the building.

Ms. Schmitz stated that she feels that the sign on the end of the plaza would be as important, if not more important, than the sign in the front of the plaza.

Board members discussed previous requests for signage on the end of plazas and large buildings.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5484.

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 – It is possible, but the signage will help the business.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this area is commercial.
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 # 5485 Patricia Davis Gurevich – Requesting an area variance for a proposed detached garage at 4517 Hidden Hollow Road

Paul Wodzinski, contractor, representing the applicant, stated that the applicant would like to construct a detached garage that is three (3) feet taller than what is allowed because she would like the pitch of the garage to match the peak of the existing home.

Mr. Connolly asked Mr. Wodzinski if, other than aesthetics, there is any other reason why the detached garage needs to be too tall. Mr. Wodzinski responded that aesthetics is the only reason. He further stated that the applicant could attach the proposed garage to the home, and in that case no variance would be required.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that the applicant would store personal cars, ATVs, a stump grinder and a snowmobile trailer in the garage. He further stated that the existing garage can hold two (2) vehicles, and the proposed garage would be able to hold four (4) to six (6) vehicles.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that there would be a second story in the detached garage.

Mr. Chiacchia confirmed with Mr. Wodzinski that if the roof is lowered three (3) feet, no variance would be required.

Bob Matson, Hidden Hollow Road, stated that he believes the oversized garage would detract from what the neighborhood was supposed to look like. He stated that it looks like the applicant has a commercial operation on the property. He stated that the neighborhood has a Declaration of Building and Use, and he bought his house because of those restrictions. He stated that the Declaration restricts the parking of RVs, etc. in the driveway.

Chairman Rybczynski stated that it appears that the applicant is attempting to remedy the fact that RVs, etc. are parked on the property by constructing a garage in which to house that type of vehicle.

Mr. Matson stated that he is concerned that this detached garage might detract from the value of the surrounding homes and that it could set a precedent for others to attempt to construct the same type of building.

Chairman Rybczynski informed the audience that the Zoning Board of Appeals does not have any jurisdiction over any deed restrictions that may or may not be associated with the properties in the Hidden Hollow Subdivision.

It was determined that the Hidden Hollow Subdivision does not have a Homeowners' Association.

Joan Brylski, Hidden Hollow, stated that she collected 21 signatures of Hidden Hollow residents who oppose the granting of this variance. She stated that the construction of this garage will change the character of the neighborhood.

Dave Koonz, resident of 4517 Hidden Hollow, stated that he is aware of neighbors' beliefs that he has heavy equipment, but he does not own any heavy equipment. He stated that the equipment he does have has been at this address for four (4) years, and he has never had a complaint. He stated that currently he houses his stump grinder and one (1) car in the attached garage, and he has two (2) jet skis, a four-wheeler, two (2) riding lawnmowers and a few snow blowers that he needs to put in the new garage.

A member of the audience asked if the applicant considered the deed restrictions for the neighborhood when she decided on the proposed detached garage. Chairman Rybczynski stated that what it is the deed is not something the Zoning Board is privy to, nor is the Board directed to consider it in any way.

A member of the audience stated that the proposed garage is not consistent with the deed restrictions of the neighborhood.

Bob Sedia, 4521 Hidden Hollow, stated that the residents of Hidden Hollow would like to know how they can oppose this proposed barn-like structure. Mrs. desJardins stated that the proposed garage meets the requirements of the Town Code except for its height.

In response to a question from Mr. Chiacchia, Mr. Koonz stated that he is in the stump removal business.

Bob Watson, 4538 Hidden Hollow Road, asked Board members not to grant the requested variance.

Chairman Rybczynski stated that the Board received a petition signed by 21 Hidden Hollow residents who are opposed to the granting of the requested variance.

Mr. Koonz stated that if the requested variance is denied and he attaches the garage to the existing home, that will look ridiculous and will be closer to the street.

In response to a question from Mr. Connolly, Mr. Wodzinski stated that the garage could be attached to the house by a few 2 X 4s, in which case a variance would not be required.

Ed Shimskey, 4530 Hidden Hollow Road, asked for clarification regarding how big the garage could be if it is attached to the home.

Findings:

Chairman Rybczynski stated that letters of support were received from Eugene Seidleck, 4520 Hidden Hollow and Matt Domanowski 4509 Hidden Hollow.

Mr. Chiacchia stated that he would like to table this project for one (1) month in order to allow the Zoning Board of Appeals' attorney to research the possible deed restrictions on this property and to make sure the Board makes the correct decision. Mr. Connolly and Mr. Sacco concurred.

Chairman Rybczynski stated that the Board has no jurisdiction regarding the applicant's deed or her deed restrictions.

Attorney Walling stated that he had quickly reviewed the deed restrictions paperwork given to him at the meeting by a member of the audience, and he could not say what the effect might be of the document.

Chairman Rybczynski asked Attorney Walling if the Zoning Board of Appeals is directed in any way by the State to consider what it is in an applicant's deed. Attorney Walling stated that he was unsure as to the answer to that question.

Chairman Rybczynski stated that the prevailing document the Board has to work with is the Town Code.

Attorney Walling stated that if this is a violation of the deed, it will be a problem for the homeowner. He stated that she could have trouble selling the property in the future if it is determined that she did violate a deed restriction. He noted that the applicant would be well advised to speak to her attorney before she builds such a large garage.

It was determined that a shed exists at the back of this property, and the combined square footage of that shed and the proposed detached garage would exceed the limit of 850 sq. ft.

It was determined that the request would be left on the table for review of the potential problem concerning the two (2) accessory structures on the property.

Mr. Sacco made a MOTION, seconded by Mr. Connolly, to table Application # 5485.

Application # 5486 ARR Holdings – Requesting an area variance for a proposed new building lot on vacant land on the northwest corner of Old Lakeview Road and Smith Road

Application # 5487 ARR Holdings – Requesting an area variance for a proposed new building lot on vacant land on the northwest corner of Old Lakeview Road and Smith Road

Chairman Rybczynski stated that the Board would review Applications # 5486 and # 5487 together because they are requests by the same applicant and are very similar.

Attorney Peter Sorgi, representing the applicant, stated that the applicant (Andy Romanowski) owns this 3.5-acre parcel, and the Town Code requires that lots in the R-A zone be at least two (2) acres in area. He stated that Mr. Romanowski proposes to subdivide the parcel into two (2) building lots and is requesting variances to allow the lots to be 1.8 and 1.7 acres in area.

Attorney Sorgi stated that when Mr. Romanowski purchased the property, it was noted that the way the Town defines lot boundaries and the way it is defined in legal descriptions in County Hall are different. He explained that the Town does not include the portion of the property located in the right-of-way in the lot area, and Mr. Romanowski thought he was purchasing a two-acre parcel because the legal description included the portion of the property located in the right-of-way.

Attorney Sorgi stated that not only would the granting of the variances be beneficial to the applicant, they would also benefit the community because the applicant plans to demolish the existing dilapidated structure on the property and replace it with two (2) new high-end homes.

It was determined that the home on the northern lot would front Smith Road, and the home on the southern lot would face Old Lakeshore Road.

Mark Musone, 6359 Smith Road, stated that he is opposed to the granting of the requested variances because the builder is attempting to construct two (2) homes on a parcel that should contain one (1) home. He stated that there is no benefit to the community if the variances are requested. He stated that the builder knew when he purchased the property that it is not large enough for two (2) building lots. He stated that there is no justifiable reason why this builder should be allowed to circumvent the Town Code. He stated that the builder's hardship is self-created, and if he is allowed to build two (2) homes on this property it will change the character of the neighborhood. He stated that this is a substantial request, and there will be adverse physical and environmental effect because so many trees will be removed.

In response to a question from Mr. Sacco, Mr. Romanowski stated that he has a contract to construct a 2,700 sq.ft. home on one (1) of the lots, and he expects that the other home will be the same size. He noted that the home to be constructed on the northern lot will be built where the existing dilapidated house is that is to be removed. He stated that therefore there would not be a lot of clearing to put that home in.

In response to a question from Mr. Connolly, Attorney Sorgi stated that the applicant could make one (1) lot conforming (2 acres) and reduce the other lot to 1.5 acres, but that would not reduce the effect of the two (2) homes. He noted that the applicant does not think that is a better plan.

Jennifer Musone, 6359 Smith Road, stated that perhaps the lots in the area that are not two (2) acres in size were created before the two-acre requirement was put in place by the Town.

Attorney Sorgi stated that 1.8-acre lot is not a small lot. He noted that the applicant would be agreeable to a condition that no further subdividing will be allowed of this parcel.

In response to a question from Mr. Connolly, Attorney Sorgi stated that instead of a dilapidated house on this parcel, there will be two (2) very nice homes built there on 1.7 and 1.8 acres. He stated that there are no wetland issues on the property, and there will be very little clearing on the lot containing the dilapidated house.

In response to a question from Mr. Connolly, Mr. Romanowski stated that he purchased this property less than one (1) year ago. He stated that at that time he did not realize that he would need a variance at some point.

Mr. Connolly stated that the applicant purchases property all the time, and asked how he did not know that there would be this discrepancy in the lot area between the Town definition and the legal description. Attorney Sorgi responded that usually there is not this much room for error.

Mr. Connolly stated that the variance request is for 12.5% combined, and that is not a small amount.

Mr. Connolly asked the applicant if, in retrospect, he should have verified with the Town that these lots are the required size before he purchased the property. Attorney Sorgi responded that most of the properties that the applicant purchases are much larger than this one, and this is a unique situation.

Mr. Romanowski stated that nothing jumped out at him as being unusual when he purchased the property given the size of the properties in the neighborhood and the size of this parcel.

Mr. Musone stated that the benefit to the neighborhood of removing the dilapidated house would happen whether the applicant builds one (1) new home or two (2). He further stated that he was informed by the real estate agent that only one (1) home could be constructed on this parcel.

Findings:

Chairman Rybczynski stated that the applicant and his representatives have testified that it was their impression that this was a four-acre parcel per the title search. He stated that when mistakes like this happen, the Zoning Board can offer relief. He noted that there are other similar sized lots in the area.

Mr. Connolly stated that this is a very tough case. He stated that when one looks at the balancing test carefully in a case like this, there could be an argument one way or the other on many of the criteria.

made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5486.

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, this is a unique piece of property.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No,
3. Whether the request is substantial – It could be argued that the request is substantial.
4. Whether the request will have adverse physical or environmental effects – As indicated, the approval is subject to the NYSDEC signing off on the wetlands issues.
5. Whether the alleged difficulty is self-created – No, because of the unique situation.

Mr. Connolly made a motion, seconded by Mr. Dimpfl, to amend the above motion to include the condition that approval is contingent upon the applicant obtaining all necessary wetland permits.

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

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

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve the meeting minutes of May 6, 2014. All members voted in favor of the motion.

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

The meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Paul Eustace, Secretary

Board of Zoning Appeals

DATE: June 10, 2014