

Town of Hamburg  
Board of Zoning Appeals Meeting  
July 1, 2014  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 1, 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 Building Department has indicated that there is no longer a need for a variance because suitable changes have been made to address some of the previous issues. He stated that the detached garage no longer constitutes a dwelling.

Mr. Sacco made a MOTION, seconded by Mr. Eustace, to receive and file this application. All members voted in favor of the motion.

**Tabled Application # 5485** Patricia Davis Gurevich – Requesting an area variance for a proposed detached garage at 4517 Hidden Hollow Road

Chairman Rybczynski stated that this request was tabled at the Board's June meeting because questions were raised at that time about an apparent structure on the property whose square footage, in combination with the proposed detached garage, would exceed the maximum square footage allowed by Code for accessory structures. He noted that in fact the structure is not located on the applicant's property.

Chairman Rybczynski stated that there also were questions about possible deed restrictions that may or may not be included in the documentation pertaining to this property. He stated that the Zoning Board's legal counsel researched this question and determined that there is no legal guidance or requirement that the Zoning Board consider anything other than what is in the Town Code.

Mr. Chiacchia stated that he feels that because there are many people in Hidden Hollow who oppose this requested variance, the Board should consider these people's concerns. He stated that the applicant can achieve what he wants by different means (build it 18 feet high), the requested oversized garage would infringe on the beautiful homes in this area and change the character of the neighborhood, and the request is substantial and self-created because if the applicant lowered the garage three (3) feet, she would not need a variance.

Mr. Sacco stated that if the applicant decides to attach the garage to the home, it could be 21 feet high and no variance would be required.

Chairman Rybczynski stated that Board members received correspondence dated June 14, 2014 from the Hidden Hollow residents with a lot of information regarding the Town of Hamburg Home Occupation regulations. He noted that at this time there is no request for a Home Occupation from Ms. Gurevich. He stated that he understands that some of her neighbors feel that this is her intent, but she has stated to the Board that she does not run a business out of her home. He stated that parking one's vehicle from work in one's driveway does not constitute a Home Occupation. He stated that unless there is overwhelming evidence of a business being conducted on the property, the Zoning Board cannot consider this contention.

Attorney William Trask, Sr., representing the applicant, stated that the applicant has a very high quality builder who is ready to do this project, and the applicant would not have to ask for a variance if she wanted to attach the garage to her home. He stated that she would like to add the garage so that she has more usable enclosed space, which will benefit the neighborhood. He stated that the garage would not be very visible from the street, and because it would be built on a down slope, it would appear lower from the street. He noted that the applicant feels the garage would be in keeping with the community of Hidden Hollow and feels that there are many larger garages on other people's properties in the development.

Joan Brylski, Hidden Hollow Road, stated that a petition signed by over 20 residents was submitted to the Board in June opposing the proposed garage. She stated that a large majority of the Hidden Hollow residents feel that the proposed garage would be totally out of character with this development and would simply be a storage facility.

Ms. Brylski submitted the following letter from Edward and Marilyn Shimskey, 4530 Hidden Road:

"To whom it may concern: Even though we are located across the street from this address, we would like to voice our opposition to the garage structure being proposed for 4517 Hidden Hollow Road. When we purchased this property three years ago, we were required by our attorney to sign off on the Hidden Hollow Deed Restrictions and were told they were still in effect. This is not a personal bias against these neighbors. We just believe permitting this variance would compromise the residential character of the neighborhood."

Bob Sedia, 4521 Hidden Hollow, stated that he is opposed to the variance. He asked Board members what would constitute "overwhelming evidence" that a business is being conducted out of the applicant's property. Chairman Rybczynski responded that this would be the purview of the Building Department.

Mr. Sedia asked Chairman Rybczynski to confirm that when the residents of Hidden Hollow take legal action, it will have nothing to do with the Town of Hamburg or the Zoning Board of Appeals. Chairman Rybczynski stated that he could not comment on that.

Attorney Walling stated that the question of whether or not deed restrictions exist is a title issue and Mr. Sedia would need to consult with his legal counsel to deal with that issue.

Mr. Sedia stated that he does not feel that this structure would be an improvement to the neighborhood. He stated that there should be some consideration for the feelings of the 22 of 24 residents on this street who oppose the granting of the variance.

Chairman Rybczynski stated that neighborhood opposition to a variance is taken into consideration, and there is a balancing test the Board is mandated to employ. He noted that the residents are not wasting their time, and their concerns are not falling on deaf ears.

Attorney Trask stated that his client is not asking for and does not seek the right to conduct a business at this property. He stated that she does not know where the residents got that idea.

Paul Wodzinski, contractor for the applicant, submitted to Board members sketches of what the garage would look like at a lower elevation.

Patty Gurevich, applicant, stated that when she purchased the home, she could not even fit one (1) vehicle in the attached garage. She noted that she owns four (4) vehicles, jet skis, kayaks, etc. She stated that when she leaves for work in the morning, she has to drive on the grass to get to the street, and her neighbors have to look at the destroyed grass. She stated that she is trying to rectify that situation, and she does not like to have so many belongings outside when they could be stored inside a garage.

Dave Skretny, 4582 Hidden Hollow, stated that he is concerned about the practical aspect of equipment such as stump grinders and trailers being hauled in and out of Hidden Hollow Road. He stated that heavy equipment has been seen outside of the applicant's driveway.

Chairman Rybczynski reiterated to the public that the Zoning Board of Appeals was not there to discuss whether or not the applicant is running a business out of the residence. He stated that the Board was considering allowing a garage to be constructed three (3) feet higher than what the Code allows.

Mr. Connolly informed the members of the public that if the requested variance is denied, the structure that will be constructed can be bigger, closer to the road and less aesthetically pleasing than what is proposed, as long as it is attached to the home. He further explained that what the applicant plans to store in the garage is completely irrelevant to the Board.

Bob Matson, 454 Hidden Hollow, stated that there are no other structures in the neighborhood as large as what is proposed. He stated that the neighborhood deed restrictions state that boat trailers, RVs, etc. cannot be parked on the property.

#### **Findings:**

Chairman Rybczynski stated that although there have been assertions that a business is being run out of this property, the variance request is for three (3) feet. He further noted that the shed in the rear of the site is not on the applicant's property and therefore is not part of the Board's consideration.

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5485

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 – Yes, but the applicant's architect has shown that the garage will be aesthetically pleasing.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the garage will blend in with 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 – Yes, but it will be aesthetically pleasing.

Mr. Chiacchia stated that he feels that because there are many people in Hidden Hollow who oppose this requested variance, the Board should consider these people's concerns. He stated

that the applicant can achieve what she wants by different means (build it 18 feet high), and then she would not need a variance.

As the vote on the motion was five (5) ayes and two (2) nays (Mr. Chiacchia and Mr. Connolly), the motion passed. **GRANTED.**

**Application # 5488** Jeff Nagle – Requesting an area variance for a proposed new lot on vacant land on the south side of Amsdell Road, west of 3145 Amsdell Road

**Application # 5489** Jeff Nagle – Requesting area variances for three (3) proposed new lots on vacant land on the north side of Pleasant Avenue, west of 3148 Pleasant Avenue

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that the proposal is to subdivide a large parcel of land into four (4) building lots. He noted that the parcel is approximately 18 acres in size and has a large amount of wetlands running through the middle of it. He further stated that the property has frontage on Amsdell Road and Pleasant Avenue.

Mr. Gow stated that the lot that fronts Amsdell Road has approximately 94 feet of frontage along the road, and 100 feet is required, but it is 4.7 acres in size. He stated that the other three (3) proposed lots front Pleasant Avenue, and all three (3) do not have the required 200 feet of width at the building line (two (2) lots have 180 feet at the building line and one (1) has 178 feet at the building line). He stated that the applicant wishes for the new building lots to match what is found in the surrounding neighborhood.

Mr. Gow stated that most of the lots in the area are not as wide at the building line as what the applicant is proposing along Pleasant Avenue.

Mr. Gow stated that the 18-acre parcel could be divided in such a way as to provide the required width at the building line, but that would mean that the lots would have to be configured so that some homes would be closer to Pleasant Avenue and the other homes would be behind them, which would not be aesthetically pleasing. He submitted a sketch of a layout that includes five (5) irregularly shaped lots to illustrate how this would look.

Chairman Rybczynski stated that it should be noted that the possibility exists for the applicant to subdivide this parcel into five (5) irregularly shaped lots, but the current proposal is to only create four (4) lots along the road.

In response to a question from Mr. Chiacchia, Mr. Gow stated that roughly 25% of the parcel contains wetlands.

In response to a question from Mr. Connolly, Mr. Jeff Nagle, applicant, stated that he and three (3) family members purchased this property from his father-in-law, who inherited the property. He further stated that he is not in the business of selling lots.

Mr. Chiacchia stated that when he visited the site he noticed that the property is much lower than either Pleasant Avenue or Amsdell Road.

In response to a question from Mr. Chiacchia, Mr. Nagle stated that there are no public sewers in this area.

Mr. Gow stated that most likely no one would notice the 20 feet deficiency in lot width at the building line.

Carol Armstrong, 3121 Pleasant Avenue, stated that she lives directly across the street from the proposed lots, and she is concerned that approving the requested variances will change the

character of the neighborhood. She stated that she believes that the proposed lots should provide the required 200 feet of frontage at the building line, just like she did when she built her home in 1996. She asked what the square footage of the homes would be.

Board members showed Mrs. Armstrong the sketch provided by Mr. Gow that shows how five (5) homes on very irregular lots could be constructed on this vacant land without a variance.

Howard Doman, 3148 Pleasant Avenue, stated that he owns a farm nearby and believes that five (5) lots cannot be constructed on this property because of the wetlands. He stated that he has cows on his farm, and another farmer in the area has pigs. He asked what these new homeowners will do when they realize that.

Board members showed Mr. Doman the sketch provided by Mr. Gow that shows how five (5) homes on very irregular lots could be constructed on this vacant land without a variance.

William Craver, 3072 Pleasant Avenue, stated that the applicant's property is very low, and there are two (2) creeks running through it. He asked where the drainage in the area will go if these homes are constructed.

Bob Chapman, 3115 Amsdell Road, stated that the applicant's property is swamp land. He asked how a home can be built on land that is so wet.

Mr. Gow stated that the Planning Board will be reviewing this subdivision and a public hearing will be held. He further stated that the applicant hired a wetland biologist to mark the boundary of the existing federal wetlands, and those boundaries are clearly depicted on the submitted Preliminary Plat.

Mr. Connolly stated that as the proposed subdivision is laid out, there is plenty of room for a home to be built on each proposed lot and not infringe on the existing federal wetlands.

Paul Flowers, 3133 Pleasant Avenue, stated that he is concerned about what the construction of these homes will do to the existing drainage in the area. He stated that the applicant should have to follow the R-A regulations. He asked who the owner(s) of the property is.

Mr. Nagle stated that he owns the property with his wife, his sister-in-law and his brother-in-law.

Mr. Flowers stated that he would like an environmental study of this area. He stated that if enough homes are constructed on Pleasant Avenue and a sewer line is installed, he does not want to have to pay the sewer tax.

Mrs. desJardins stated that the concerns about drainage, wildlife, etc. raised at this meeting are legitimate and should be addressed to the Planning Board.

Mr. Connolly stated that if the variances are denied, the applicant will probably proceed with a plan that provides five (5) irregularly shaped lots.

Chairman Rybczynski reviewed the area variance criteria for the benefit of the members of the public.

Lisa Morley, 3071 Pleasant Avenue, stated that she was not allowed by the Town to build a deck on her home because it was too close to the road. She stated that if she was not allowed to build that deck, this applicant should not be able to get a variance to do what he is proposing.

Chairman Rybczynski suggested that Ms. Morley either contact the members of the Town Board to get resolution of her problem or apply for a variance to construct her deck.

### **Findings:**

Chairman Rybczynski stated that it was learned that the minimum square footage for a home in the R-A district is 900 sq.ft. for a single story home and 1,200 sq.ft. for a two-story home.

Mr. Chiacchia made a MOTION, seconded by Mr. Eustace, to approve Application # 5488.

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.

As the vote on the motion was six (6) ayes and one (1) nay (Mr. Sacco), the motion passed.

**GRANTED.**

Regarding Application # 5489, Mr. Connolly suggested that this application be tabled to allow the nearby residents a better opportunity to provide additional feedback and opinion.

Mr. Ginnetti made a MOTION, seconded by Mr. Eustace, to approve Application # 5489.

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 – Yes, but the alternative would not be aesthetically pleasing.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – There will be a change to the neighborhood, but there always is when someone constructs a new home.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – That is not up to this Board.
5. Whether the alleged difficulty is self-created – Regarding wetlands, that is not up to this Board.

Mr. Chiacchia stated that the applicant could create five (5) lots but would rather only create four (4) lots that are more conforming to the surrounding area.

As the vote on the motion was six (5) ayes and two (2) nays (Mr. Connolly and Mr. Sacco), the motion passed. **GRANTED.**

Mr. Dimpfl made a MOTION, seconded by Mr. Sacco, to approve the meeting minutes of June 3, 2014. All members voted in favor of the motion.

Mr. Sacco made a MOTION, seconded by Mr. Ginnetti 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: July 15, 2014