Town of Hamburg
Board of Zoning Appeals Meeting
July 12, 2016
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, July 12, 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 Ric Dimpfl and Commissioner Laura Hahn.

Excused: Chairman Brad Rybczynski

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

Commissioner Chiacchia read the Notice of Public Hearing.

Tabled Application # 5577 Robert Wolfe – Requesting three (3) area variances for a new home on vacant land on Holly Place

Kevin Wolfe, son of the applicant, stated that Robert Wolfe purchased this property in 1971, and the retrieval of County records on this property goes back to 1959. He stated that his family approached the neighbors to let them know of the variances being requested and the home they would like to build on this vacant parcel, and approximately 26 neighbors signed a petition in favor of the requested variances. He stated that the residents on either side of this parcel then contacted the neighbors and told them that the applicant had incorrectly disseminated information to the neighborhood, and some of the people who had previously signed the petition in favor of granting the variances reversed their opinion and signed a petition in opposition to the requested variances.

Mr. Wolfe stated that prior to 1989 Hamburg Town Code allowed parcels in this zoning district to be 11,250 sq.ft.

Mr. Wolfe asked the Vice Chairman to poll the Board members to see if they all had received and read the correspondence he wrote dated May 21, 2016. All Board members indicated that they had received and read Mr. Wolfe's correspondence.

Mr. Wolfe distributed photos of his father's property and the specific property lines, noting that the property owner to the east generally is not infringing on his father's property. He stated, however, that the property owner to the west has a shed approximately 6.5 feet onto his father's property. He distributed an aerial view of his father's property taken by a drone, noting that he was confronted by a woman with dark hair driving a cream colored Chevy Equinox, who stated that she has a lot of good friends in the Town of Hamburg, as well as on the Zoning Board of Appeals (ZBA). He stated that the two (2) people who were operating the drone witnessed what the woman said. He stated that he knows no one on the ZBA, and stated that if any member of the ZBA is familiar with the woman, that member should abstain from voting.

Mr. Wolfe stated that Attorney Jay Pohlman, representing the property owners on either side of his father's property, submitted to the Board a flawed Memorandum of Law. He stated that the property identified as 18320-22 was never sold off, nor was it ever part of any contract. He stated that Attorney Pohlman notes that the average lot in the neighborhood is 19,000 sq. ft., which is not true. He stated that Attorney Pohlman notes "significant concerns" in the letter to

the Board from Kurt Allen, Supervising Code Enforcement Official, but Mr. Allen does not say that in his letter.

Mr. Wolfe stated that Attorney Pohlman noted in the Memorandum of Law that Mr. Wolfe simply filed with the County, and this is not true. He noted that his father did not file with the County. He stated that Attorney Pohlman noted that Mr. Wolfe's parcel is not harmonious with the surrounding neighborhood and will not fit proportionately there, but the new home would be worth $225,000.

Mr. Wolfe stated that the homes in the Waterford Pines Subdivision, located to the north of Holly Place, have between 58 and 62 feet of frontage along the road.

Mrs. desJardins noted that the Waterford Pines Subdivision is considered a cluster subdivision, which allows for smaller lots.

Mr. Wolfe stated that Mr. Allen, in his letter to the Board, noted concerns about the driveway placement, but in the Rolling Ridge Subdivision on Shamrock Court and immediately to the south of that, there are converging driveways, so that situation exists today.

Mr. Wolfe stated that a home close to his father's property recently sold for $125,000 and is assessed at $68,000, and the home just south of the aforementioned property does not have an aesthetically pleasing front yard. He stated that he does not agree that the new home his family proposes would not fit in harmoniously with the area.

Mr. Wolfe stated that the homes on either side of his father's property are assessed at $93,000 and $99,700.

Mr. Wolfe stated that Attorney Pohlman's Memorandum of Law is flawed when it speaks of whether the applicant can benefit from the property by any other means. He stated that his family and the adjoining property owners cannot come to an agreement on a sale price for his father's property.

Mr. Wolfe stated that the proposed home would not be an undesirable change to the neighborhood.

Regarding whether the requested variances are substantial, Mr. Wolfe stated that Attorney Pohlman's Memorandum of Law indicates that it is difficult to qualify substantiality, and he does agree with Attorney Pohlman on that point. He noted that in 2015 the ZBA granted variances for a property very similar to his father's that were very substantial.

Mr. Wolfe stated that his father's hardship was not self-created, and the granting of the requested variances would not create any adverse physical or environmental effects.

In response to a question from Vice-Chairman Connolly, Mr. Wolfe stated that his father's property is 10,800 sq.ft. in area.

Mr. Chiacchia stated that the ZBA is considering the parcel his father owns and not parcels located in the Waterford Pines Subdivision. Mr. Wolfe responded that his point was that there are lots nearby that are also small.

Mr. Chiacchia stated that the request could be considered a hardship if no one is interested in purchasing the property. He noted that the property was valued at $12,400. Mr. Wolfe responded that the adjacent property owner asked two (2) realtors to value his father's property, and he believes that the estimates ranged from $6,000 to $12,000. He further noted that his family asked four (4) different realtors to value the property, and all four (4) indicated that it is not possible to estimate the value of that property.

Mr. Chiacchia stated that he has visited this property several times and feels that the applicant is trying to put a round peg in a square hole. He noted that many nearby residents changed their opinion of the Wolfe's request when they realized what was being requested, and he feels the proposed home would not fit in with the rest of the neighborhood.

Mr. Wolfe stated that he does not know how anyone who visits the site would know where the property lines are, because the one adjacent property owner has a flower bed and part of a shed on his family's property.

Mr. Wolfe stated that the woman who spoke to the person operating the drone mentioned Mr. Chiacchia's name, and he asked that if Mr. Chiacchia does know the woman, he should abstain from voting. Mr. Chiacchia responded that when he does on-site inspections, he talks to people to get a good understanding of the situation. Mr. Wolfe stated that Mr. Chiacchia did not talk to his family as owners of the property in question.

In response to a question from Ms. Falkiewicz, Mr. Wolfe stated that the aerial photograph he submitted showing his father's property lines was not done by a surveyor. Mrs. Falkiewicz responded that the Board has no way of knowing if the property lines indicated on the aerial photograph are accurate.

Vice-Chairman Connolly stated that it is extremely rare that the ZBA has an actual updated survey of the property to review because of the expense related to having one done. He stated that he believes the Board has enough information, based on the Town's regulations and what is proposed by the applicant, to make a decision.

Mr. Connolly reviewed the two (2) types of variances that can be requested for the benefit of the audience members. He further explained the criteria used by the Board in making its decision regarding each type of variance. He noted that the Board must look at each variance request on its own merits.

Mr. John Patrick Gerkin, adjacent property owner to the west of the Wolfe's property, stated that his wife is the woman referred to by the applicant's son. He asked if all Board members received and read the Memorandum of Law prepared by his attorney, Jay Pohlman. All members confirmed that they had received and read the document.

Mr. Gerkin stated that his wife never spoke with Mr. Chiacchia and also never said that she had the Board "in the palm of her hand". He apologized for his shed being partially on the Wolfe's property. He stated that he knew Mr. Dimpfl in high school and is acquainted with one (1) other Board member, as well as a Board member's father.

Mr. Mark Radder, adjacent property owner to the east of the Wolfe's property, stated that his survey shows the Wolfe's property as a "future street". He further stated that when he was building his home in 1972, Mr. Wolfe told him that he could not sell his strip of land to Mr. Radder because it was a future street. He stated that he is still interested in purchasing the Wolfe's property at fair market value.

In response to a question from Vice-Chairman Connolly, Mr. Wolfe stated that the property has never been marketed to the public.

Vice-Chairman Connolly noted that the fact that this strip of land was once earmarked to be an access road to the subdivision behind Holly Place is not really relevant because the Board must focus on the five (5) area variance criteria only.

Findings:

It was determined that Ms. Hahn and Vice-Chairman Connolly would be abstaining from the vote. Vice-Chairman Connolly explained that Ms. Hahn was not able to receive the information

provided by Attorney Pohlman and Mr. Wolfe because she was just appointed to the Board. He further stated that he would be abstaining because he has been a resident of Best Street for over five (5) years and Bernadette Street for eight (8) years, and so for the last 13 years he has been a direct neighbor of all parties involved and knows people on both sides.

Mr. Chiacchia made a MOTION, seconded by Ms. Falkiewicz, to deny Application # 5577.

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 – regarding the minimum lot size, the lot area is well below what is required and the variance is for 28%. This is not the appropriate house for this area because the lot is too small.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – There would be an undesirable change because both of the adjacent property owners are opposed.
3. Whether the request is substantial – It is substantial. The applicant proposes to build a large home in a very small area. Many nearby residents oppose this request.
4. Whether the request will have adverse physical or environmental effects – Yes, because the property is too small to build a house.
5. Whether the alleged difficulty is self-created – It could be argued either way.

As the vote on the motion was four (4) ayes and two (2) abstentions (Vice-Chairman Connolly and Ms. Hahn), the motion passed. **DENIED.**

Tabled Application # 5577A Robert Riehle – Requesting an area variance for an in ground pool at 2675 North Creek Road

Robert Riehle, applicant, stated that he called the New York State Department of Environmental Conservation (NYSDC) and was informed that constructing a pool in a CEA (Critical Environmental Area) is a Type II Action.

Mrs. desJardins stated that she researched the CEA and learned that it is solely the responsibility of the Town of Hamburg to review and approve or disapprove the construction of a pool in the CEA.

Mr. RIehle stated that along the bank of Eighteen Mile Creek there are many structures that are close to the top of the bank. He noted that he does not think that an in ground pool would have an environmental impact and would not affect his neighborhood.

Vice-Chairman Connolly stated that he feels that this pool would not be an undesirable change the character of the neighborhood and asked Mr. Riehle if he has spoken with the adjacent property owner about his plans. Mr. Riehle responded that he has not.

Vice-Chairman Connolly asked Mr. Riehle if there is a way to move the pool closer to his home. Mr. Riehle responded that the only other place he could put the pool would be in the front yard, which he feels might be an issue for his neighbors.

Vice-Chairman Connolly stated that the requested variance is approximately 39% more than what is allowed, and that is quite substantial. He asked Mr. Riehle if he knew when he purchased the property that there were restrictions on building close to the top of the bank. Mr. Riehle responded in the negative.

In response to a question from Vice-Chairman Connolly, Mrs. desJardins stated that the pool at 2715 North Creek Road referred to by Mr. Riehle at the Board's previous meeting is over 200 feet from the top of the bank.

Mr. Riehle stated that his next door neighbor is currently constructing a second story addition to the home that is very close to the top of the bank. Mrs. desJardins responded that the Building Department measures from the construction to where it becomes very steep, and the property next door to Mr. Riehle does not get steep for quite a long way as one measures from the home.

Mrs. desJardins reminded Board members that a memo was received from the Conservation Advisory Board indicating its concern about this request.

Mr. Riehle stated that the NYSDEC considers this a Type II Action. Mrs. desJardins responded that that is irrelevant because the NYSDEC has no approval power in this instance.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5577A.

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 – There were concerns about whether the NYSDEC should be involved, but those concerns have been addressed.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, the applicant has a neighbor building a second story addition nearby and there are other pools in the area.
3. Whether the request is substantial – This could be argued either way.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – It could be argued either way, but the balancing test is in favor of approval.

As the vote on the motion was four (4) ayes, one (1) nay (Mr. Chiacchia) and one (1) abstention (Ms. Hahn), the motion passed. **GRANTED.**

Application # 5579 Anthony Cavallaro – Requesting two (2) variances for a front garage addition and a rear addition to the home at 4546 Marie Drive

Attorney Jacob Piorkowski from Shaw & Shaw, representing the applicant, stated that the applicant wishes to construct an addition to an existing sunroom and an extension of the garage toward the street.

Attorney Piorkowski stated that he believes these proposed additions will not alter the character of the neighborhood and may in fact improve it. He stated that the applicant has a great relationship in the neighborhood.

Mr. Cavallaro stated that originally the road in front of his home was to be a cul-de-sac, but that never came about. He noted that therefore the right-of-way cuts in to his front yard. He stated that he plans to request an abandonment of that section of right-of-way to give himself more property in the front of his home.

It was determined that the requested front yard setback would not infringe upon the existing right-of-way.

Vice-Chairman Connolly stated that there is a plot of land behind the applicant's home, and the back yard is very quiet.

In response to a question from Vice-Chairman Connolly, Mr. Cavallaro stated that he has spoken with both adjacent neighbors, and neither has any objections to what he would like to do.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve the variance for the minimum front yard setback for Application # 5579.

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.
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 – This could be argued either way.

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

Mr. Ginnetti made a MOTION, seconded by Mr. Dimpfl, to approve the variance for the minimum rear yard setback for Application # 5579.

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.
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 – This could be argued either way.

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

Application # 5580 & # 5581 Patrick Scott – Requesting a use variance and an area variance allowing a pole barn as a principal building at 6079 Old Lakeshore Road

Patrick Scott, applicant, stated that he would like to put up a steel garage, not a pole barn, that would be built on a foundation. He stated that he currently stores a boat, equipment, etc. outside on this vacant property, and he has spoken to his neighbors on all sides, who indicated that they would prefer that he store these items in a building. He stated that there has been some theft in the area, so he would like to the items inside.

Mr. Scott stated that he would like to build the garage large enough so that in the future he can also store a motor home in it if he decides to purchase one.

Regarding the area variance criteria, Mr. Scott stated there would be no undesirable change in the neighborhood, as all of his neighbors are amenable to his project. He stated that he has no other option besides leaving the equipment laying there. He stated that the proposed garage would be approximately 120 square feet larger than what is allowed, and the height would be just three (3) inches higher than what is allowed.

Mr. Scott stated that when he purchased this property with the intent of putting up the garage, he was not aware than a garage cannot be the principal building on a property. He stated that eventually a patio home will be built on this property for his parents, who have recently retired.

Regarding the use variance criteria, Mr. Scott stated that it would be financial hardship for him if his equipment is stolen. He further stated that there would be no alteration to the neighborhood. He stated that this is not a self-created hardship because he was unaware that he had to build a primary residence on the property in order to build the garage.

Mr. Chiacchia stated that the applicant's primary residence is across the street from this vacant property, and there does not seem to be much room there for storage. Mr. Scott responded that the parcel his home is located on is narrow, and he does not have much space to store his equipment or to construct a garage in which to store it.

Findings:

It was determined that the structure proposed by the applicant would be a steel building rather than a pole barn.

Regarding the requested use variance and area variance, Mr. Chiacchia made a MOTION, seconded by Mr. Ginnetti, to table Application # 5580 and # 5581 for further discussion.

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

Application # 5582 Daniel Voit – Requesting an area variance for a proposed fence at 3675 Fifth Street

Daniel Voit, applicant, stated that he would like to erect a privacy fence along the side of his property. He stated that the homes on Fifth Street are extremely close to one another, and his neighbor has a raised deck that looks down on his (Mr. Voit's) porch. He stated that he would like to raise the existing fence to ten (10) feet if he can, but eight (8) feet would be acceptable also.

Mrs. desJardins stated that the Town Code stipulates that a fence can only be four (4) feet high from the street to the front of the home, and from the front of the home toward the rear of the property it can be six (6) feet high.

Vice-Chairman Connolly stated that he visited the site, and what is unique about the back side is that there is a wooden fence that is approximately 9-10 feet high. He confirmed with Mr. Voit that when one faces his property, the proposed fence would be on the right side of the home.

In response to a question from Vice-Chairman Connolly, Mr. Voit stated that the fence would be white and vinyl.

In response to a question from Vice-Chairman Connolly, Mr. Voit stated that one of the adjacent property owners has no objections to the fence, but the property owner on the side of his property where the fence is proposed is not in favor of it.

Vice-Chairman Connolly asked Mr. Voit if he would prefer that the fence be the same size throughout, or would he have a problem with the fence being shorter in the front and taller in the back. Mr. Voit responded that he wants the fence taller in the front because that is where the neighbor's deck is located that is higher than his porch. He further stated that the existing six-foot fence that goes to the back yard would remain that height.

In response to a question from Mr. Dimpfl, Mr. Voit stated that his home sits far back from the road, so a taller fence in his front yard would not be a problem in terms of sight distances at the road.

A member of the audience stated that he is the property owner with the deck that overlooks the applicant's front porch. He stated that he strongly objects to a ten-foot fence going up between his property and Mr. Voit's because he feels it would be an eyesore. He stated that he objects to an eight-foot fence, as well, but would be willing to compromise and would not object to a six-foot fence.

Mr. Voit's wife stated that a six-foot fence would not be tall enough to block their view of the neighbors' deck.

It was determined that the owner of the adjacent property who objected does not reside there, but does have tenants who reside there.

In response to a question from Vice-Chairman Connolly, Mr. Voit stated that a seven-foot fence would be very expensive because fences come in eight-foot sections. He further stated that there are quite a few fences in the area that are eight feet tall.

Findings:

Mr. Ginnetti made a MOTION, seconded by Ms. Falkiewicz, to table Application # 5582 for additional on- site visits.

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

Application # 5583 Greg Burroughs – Requesting three (3) area variances for a proposed new sublot and home at 6872 Boston State Road

Daryl Martin, architect, representing the applicant, stated that the applicant currently owns this 3.3 acre site and lives in the home that was built in 1998. He stated that the applicant would like to subdivide the property and build a patio home for himself and his wife on the vacant lot and sell the lot containing the existing home to his daughter and her family.

Mr. Martin stated that the lot containing the existing home would be conforming to all Town Codes regarding lots in the R-A District, but the newly created lot for the applicant would not have the required acreage, would be too narrow at the building line, and the existing garage that would go with the patio home would be too close to the new property line shared between the two lots.

Mr. Martin stated that across the street, the properties are zoned R-1, which allows smaller lots than the R-A District does, so the newly created lot would not visually be out of line with the sizes of the lots across the street. He further stated that this proposed subdivision was reviewed by the Planning Board, and that Board recommended that the applicant attempt to get the variances before returning for approval of the subdivision.

Mr. Martin stated that the adjacent neighbor, Mr. Hughes, has indicated to Mrs. desJardins that he does not object to what the Burroughs are proposing.

Vice-Chairman Connolly stated that the following email was received by Mrs. desJardins from Mr. Hughes:

"I live at 6836 Boston State Road and do not object to the three variances as described:

1. Less than two acres to build on
2. Less than 200 feet to build on
3. Distance from existing garage at 6872 Boston State Road"

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve all three (3) variance requests for Application # 5583.

On the question:

Mr. Dimpfl noted that there are properties in this vicinity that are not two (2) acres in area.

Mr. Dimpfl 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 – This could be argued.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be argued either way, but the balancing test favors approval.

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

Application # 5584 Charles and Elizabeth Fadale – Requesting two (2) area variances for a proposed detached structure at 5337 Abel Road

Architect Daryl Martin, representing the applicant, stated that the applicant recently purchased this property that had been abandoned for quite a few years. He stated that renovations are ongoing on the residence, and the applicant has been cleaning up the property and removing old septic tanks that were left there. He stated that the applicant would like to put up an accessory structure, and the largest structure allowed in this District is 1,500 sq.ft. and 18 feet tall.

Mr. Martin stated that the applicant recently purchased a 2,203 sq.ft. structure from property on the corner of Pleasant Avenue and Southwestern Boulevard and would like to relocate it to his property on Abel Road. He stated that the variances requested are for the square footage of the structure, as well as its height.

Mr. Martin stated that the granting of these variances would not result in a detriment to the neighborhood, given the fact that the property next door was just rezoned to Light Industrival for additional storage units.

Mr. Charles Fadale, applicant, stated that there has been talk of him using the structure for business purposes, but he has no intention of doing that. He stated that he owns Transmission Exchange in Lackawanna, and the business has been there since 1959. He stated that the structure would be used solely by him for storage of classic cars and a 22-foot boat.

In response to a question from Mr. Dimpfl, Mr. Fadale stated that no hydraulic lift has been installed in the building, nor are there plans to install one in the future.

Mr. Fadale stated that he got a good deal on the building, and it will not be visible from the road in the location he plans to put it.

Mr. Fadale stated that he has no intention of doing business in the building. He stated that he plans to live in the home on this property, and he is in the process of remodeling it.

It was determined that the Creekview Subdivision is behind this property on the other side of the creek.

In response to a question from Mr. Dimpf, Mr. Martin stated that there were some issues with the NYSEC regarding wetlands on this property when the applicant first purchased the property.

Mr. Fadale stated that he obtained all the required permits to do work on the property and the home.

In response to a question from Mrs. Falkiewicz, Mr. Fadale stated that he already purchased the building from Pleasant Avenue and Southwestern Boulevard.

In response to a question from Vice-Chairman Connolly, Mr. Fadale stated that he did need a variance for property he used to own on Scranton Road.

Vice-Chairman Connolly stated that the applicant is requesting a variance of 33% on the building's square footage and 25% on its height. He noted that these percentages are significant, especially since this is a residential area.

Mr. Fadale stated that the property adjacent to his is now zoned Light Industrial, and there are no other properties close to his.

Carolyn Donavan, 3351 Creekview Drive, stated that when she stands on her deck when the foliage is off the trees, she can see right through to the applicant's property. She stated that she has seen huge construction vehicles and dump trucks on the applicant's property, and there is a lot of noise after dark and on the weekends from these vehicles. She stated that she would be opposed to a structure on that property because she is concerned that the applicant will store this construction equipment in the structure.

Rich Geisler, 3349 Creekview Drive, stated that he agrees with Ms. Donavan and stated that the backyards on Creekview Drive are a few softball fields away from the applicant's back yard.

Phyllis Olejniczak, 3287 Countryside Lane, stated that she also agrees with Ms. Donavan, and the noise from the construction vehicles is distracting. She stated that she does not want to have to look at a big building on the applicant's property.

Jim G., 3363 Creekview Drive, stated that he is concerned about the hydraulics that were in the applicant's garage at his Heltz Road property. He asked who would make sure that this situation does not happen again at the applicant's Abel Road property.

Vice-Chairman Connolly stated that, although the Board appreciates all input from the neighbors, issues like noise and what the applicant did on his previous property are not relevant to the criteria the Board must consider, and it does not have the authority to monitor things like that.

Vice-Chairman Connolly asked the applicant what his intentions are for this relocated building. Mr. Fadale responded that he would use it for storage of and to work on his classic cars. He stated that there is no commercial activity planned for this building.

Mr. Martin stated that the construction vehicles referred to by the neighbors are temporary and will be removed when the home reconstruction is finished.

Liz Fadale, applicant, stated that they had to have a new septic system installed, so the construction vehicles currently on the property are for that purpose.

Sandra B., 3281 Countryside Lane, stated that the construction vehicles can be heard early Sunday mornings until very late at night. She stated that during the Christmas holiday, there was blasting on the property close to midnight. She stated that the size of the building is too big for this residential area.

Mr. Martin stated that because the adjacent property was recently rezoning to Light Industrial, this area is a mixed use area, rather than a residential area.

Mike Walter, 3269 Countryside Lane, stated that the proposed structure is not something that should be in his neighborhood and is not appropriate. He stated that the applicant's property on Heltz Road that was just sold looked like a junk yard until he cleaned it up. He stated that he does not want to live next to a junk yard, and he does not want to have to take the chance that the applicant will install a paint booth without a permit that expels paint fumes into the air. He is concerned about the applicant doing mechanical work in the building and whether an oil/water separator will be installed. He stated that the applicant has not been a good neighbor since moving to this property.

Mr. Martin stated that this property was abandoned for a long time, and the previous owner was storing abandoned septic tanks on it for years. He stated that the applicant is trying to clean the property up and make it better.

In response to a question from Vice-Chairman Connolly, Mr. Fadale stated that the only reason he is requesting the variances is because he already owns this oversized building, and he did not think there would be any issues with it because of the recent rezoning of the adjacent property to Light Industrial.

Liz Fadale stated that when the adjacent property owner was requesting that the property between him and the Fadales be rezoned from parkland to Light Industrial, none of the Creekview Subdivision residents objected. She stated that she does not know what the problem is with her proposed garage if the neighbors did not object to the rezoning next door.

A member of the audience who lives at 3293 Countryside Lane stated that the proposed building is higher than most of the homes in his subdivision, while the proposed self-storage units next door to the applicant's property are only one-story high.

Vice-Chairman Connolly stated that the Board received three (3) correspondences regarding this variance request as follows:

1. "Dear Steven Walters, it has come to our attention that the homeowner on the corner of Abel Road and Southwestern Boulevard has applied for a variance so he may construct a two-bay pole building on this property. Speculation is that he might want to use this building for a collision and repair commercial business. We strongly oppose the construction of this building and the use of this building for commercial collision and repair work. We moved into the neighborhood with the understanding that it was zoned residential and we very much want it to remain that way. Thank you for your thoughtful consideration in this matter. Robert and Barbara King, 3300 Countryside Lane."

2. "It has come to our attention that the property owner at the corner of Abel Road and Southwestern Boulevard has submitted a proposal to the Hamburg Zoning Board to obtain a zoning variance to construct a two-bay pole building on this property. It has been suggested this building measures approximately 22 to 24 feet high with 12-14 foot overhead doors with the possibility it may be used to do collision, painting and repair work in this building. Although this is speculation at this time, we as homeowners on Countryside Lane are extremely concerned about the environment impact this activity basically in our back yard can have to our property and our fellow neighbors. We are deeply concerned about this use and disposal of toxic chemicals near our property and the impact this could have on the environment and on human and pet issues. We are very troubled by the quality of the pollution from this building that will disrupt the peace and quality of enjoying our back yard and its surroundings. Lastly, we are highly disturbed that any industrial/commercial activity in a residential neighborhood can be extremely detrimental to the property value of our home and our neighborhood. In conclusion, we want to state that we are adamantly opposed to granting a variance to go

forth with the construction of this building on the corner of Abel Road and Southwestern Boulevard. We, as property owners and residents of Hamburg, ask you for your help in denying this variance. Please help keep our residential neighborhood as the way we know it today. It's a great place to live and enjoy. Thank you. Thomas and Phyllis Olejniczak, 3287 Countryside Lane."

3. "Dear Hamburg Town Building Inspections and Code Enforcement Officer, we have been made aware that the property owner at the corner of Abel Road and Southwestern Boulevard has submitted a proposal to the Hamburg Town Zoning Board to obtain a zoning variance to construct a two-pole building on this property. It has been suggested this building measures approximately 22 to 24 feet high with 12-14 foot overhead doors with the possibility that it may be used to do collision, painting and repair work. Although this is speculation at this time, we as homeowners on Countryside Lane are extremely concerned about the quality of life impact this activity can have on our property and our fellow neighbors. We are extremely concerned about this use and disposal of toxic chemicals near our property and the impact this could have on the environment and on human and pet health issues. It has been suggested that wetlands have already been damaged. We have endured noise pollution from the industrial machinery and have heard some type of blasting in the Fall, Winter and Spring both very late at night and very early on Sunday morning, and we are very troubled that this building will permanently result in disrupting the peace and quality of life that we should be able to enjoy in our backyard and throughout our neighborhood. Lastly, we are highly disturbed that any industrial/commercial activity will be extremely detrimental to the property value of our home and neighborhood. In closing, we would like it known that we are vehemently opposed to granting a variance to go forth with the construction of this building on the property on the corner of Abel Road and Southwestern Boulevard and ask for your help in denying this request for a variance. Please help us keep our residential neighborhood as the way we know it today. Sincerely, Joan M. Orr and Sandra A. Perzinsky, 3281 Countryside Lane."

Vice-Chairman Connolly confirmed that the owners of 3281 Countryside Lane, 3287 Countryside Lane and 3300 Countryside Lane were present.

Liz Fadale stated that their next step would be to request that the rear portion of their three-acre parcel be rezoned to Light Industrial, and then they would be able to put up whatever size building they want.

Findings:

Mr. Ginnetti made a MOTION, seconded by Mr. Chiacchia, to deny both variance requests for Application # 5584.

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 – Because this is a residential zone, the applicant should construct a garage that is 1,500 sq.ft. in area. The proposed building is excessive in size.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – This property is not located in a neighborhood, but it is zoned residential.
3. Whether the request is substantial – It is substantial.
4. Whether the request will have adverse physical or environmental effects – No.

5. Whether the alleged difficulty is self-created – It is self-created because the applicant purchased the building knowing it was too large.

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

Application # 5585 John Cleary – Requesting an area variance for a proposed ministorage building at 5255 Southwestern Boulevard

John Cleary, applicant, stated that he plans to clean up the corner of Southwestern Boulevard and Abel Road. He stated that the Town of Hamburg agreed to alienate the vacant parcel adjacent to his business so that he could purchase it from the Town. He noted that the parcel was originally parkland associated with the adjacent Country Woods Subdivision.

Mr. Cleary showed Board members a landscaping plan for 350-400 feet of frontage along Southwestern Boulevard and Abel Road.

Mr. Cleary stated that he would like to construct another self-storage building that would be eight (8) feet tall. He stated that he would put up a six-foot stockade fence along the property line shared with the adjacent property owner (Mr. & Mrs. Fadale), and he would plant Arborvitaes along the back side of the new building.

Mr Cleary stated that he understands that the requested variance is very substantial, but he has a plan so that the drainage and lighting will not be an issue to the adjacent resident.

Mrs. desJardins stated that this project was reviewed by the Planning Board, and that Board recommended that the applicant attempt to get the required variance before returning to the Board for further review.

Mr. Cleary stated that he spoke to the residents in the Country Woods Subdivision whose properties back up to his, and all of them were in favor of him cleaning up the corner and did not object to the construction of the additional self-storage building.

In response to a question from Vice-Chairman Connolly, Mr. Cleary stated that in 25 years he has never had a complaint about people going to the self-storage units at odd hours.

Vice-Chairman Connolly asked Mr. Cleary if he considered alternatives to positioning the proposed building so close to the adjacent residential property. Mr. Cleary responded that his only other option would be to level the vacant parcel, stone it and park something on it.

Mr. Charles Fadale stated that he is opposed to the proposed building going in so close to his home. He stated that he tried to purchase the vacant parcel for $1,000 more than Mr. Cleary purchased it for, but the Town would not sell it to him. He stated that he would have kept the land as green space and paid taxes on it.

In response to a question from Vice-Chairman Connolly, Mr. Cleary stated that the proposed self-storage building would be 160 feet long.

Mr. Fadale suggested that the building be located more in the applicant's rear yard so as to keep it away from Mr. Fadale's home. Mr. Cleary stated that if he moved the building towards the rear of the property, it would infringe upon the existing wetlands on the property.

Findings:

Mr. Dimpfl made a MOTION, seconded by Vice-Chairman Connolly, to approve Application # 5585.

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, this will have a positive impact on the neighborhood.
3. Whether the request is substantial – It is substantial.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – This could be argued, but the balancing test favors approval.

Vice-Chairman Connolly stated that he is a member of the Code Review Committee, and he can attest to the fact that there was a lot of due diligence over the last several years by various departments within the Town. He stated that the Code Review Committee made every effort to try and make this a project that was acceptable and would work. He stated that this was a very tough decision because there is a neighbor who is certainly close by, but on balance, despite taking the objections from the adjacent property owner into consideration, it does favor the applicant.

As there were five (5) ayes and one (1) opposed (Ms. Hahn), the motion passed. **GRANTED.**

Application # 5586 Matthew Wawrzyniec – Requesting a use variance to allow applicant to keep chickens on property located at 4109 Jarvis Street

Matthew Wawrzyniec, applicant, stated that when his family moved to this home, the property owner to the south had previously had a chicken, the property owner to the north had just installed a chicken coop, and the property owner behind his home had also previously had chickens. He stated that they purchased chickens 2 ½ years ago, and he had no idea he even needed a permit to get them because it was commonplace in the neighborhood. He stated that since then, his family has had four (4) hens that reside in a chicken coop attached to a small greenhouse.

In response to a question from Vice-Chairman Connolly, Mr. Wawrzyniec stated that the property owners on both sides of his home, as well as the property owner behind his home, do not object to him keeping chickens.

Regarding the use variance criteria, Mr. Wawrzyniec stated that the chickens do not bring him financial gain, and if he has extra eggs he gives them to his neighbors. He further stated that having chickens is unique to his neighborhood because he is the only one who has chickens. He stated that having chickens will not alter the essential character of the neighborhood since his adjacent neighbors have had chickens in the past. He stated that the hardship is not self-created because when he moved in he was not aware that chickens are not allowed, nor did he know that there is a permitting process.

In response to a question from Mr. Dimpfl, Mr. Wawrzyniec stated that the property owner behind him owns and farms a double lot.

In response to a question from Mr. Chiacchia, Mr. Wawrzynic stated that there was no chicken coop on the property when he moved in.

Mr. Chiacchia stated that the chicken coop structure is in violation of Town Code because it is too close to the north and east property lines. Mr. Wawrzyniec responded that he has proposed to move the building so that it is the required ten (10) feet from his property line. He further stated that he was under the impression that because the structure is mobile, it would not be classified as an accessory structure.

In response to a question from Mr. Chiacchia, Mr. Wawrzyniec stted that does not plan to increase the number of chickens he has, but he would like to replace them as they age out.

Mr. Wawrzyniec stated that there was a complaint lodged with the Building Department about the property adjacent to his, and when the Inspector visited the adjacent property, his chickens ran out to greet the Inspector. He stated that this is how he came to have to ask for a use variance.

Vice-Chairman Connolly stated that this is fairly unique to the Board and the use variance criteria are very strict, so this is something the Board may have to take a look at further.

Findings:

Vice-Chairman Connolly stated that this is a very unique case before the Board, and it raises a few issues that have never been confronted by this Board before. He stated that in fairness to the applicant, as well as the Board, and especially since it is a use variance request, he feels the application should be tabled.

Vice-Chairman Connolly made a MOTION, seconded by Ms. Falkiewicz, to table Application # 5586.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve the minutes of June 7, 2016. All members voted in favor of the motion.

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

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: July 27, 2016