

Town of Hamburg
Board of Zoning Appeals Meeting
August 2, 2016
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, August 2, 2016 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 Louis M. Chiacchia, Commissioner Bob Ginnetti, Commissioner Nicole Falkiewicz, Commissioner Ric Dimpfl and Commissioner Laura Hahn.

Others in attendance included Attorney Mark Walling, Board of Zoning Appeals Attorney.

Chairman Rybczynski asked for a moment of silence in remembrance of the men and women who have died in service of our country.

Commissioner Chiacchia read the Notice of Public Hearing.

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 install 6.7 feet of fencing along the side of his property. He stated that his neighbor (3671 Fifth Street) has a raised deck that looks down on his (Mr. Voit's) porch.

Mr. Chiacchia stated that he visited the site and noted that the adjacent home is forward of the applicant's home, and the adjacent home's rear deck overlooks the applicant's porch. He stated that the applicant would like more privacy in that area. He stated that he believes that a variance should be granted for an eight-foot high fence, which would be more than sufficient to give the applicant the privacy he seeks.

Tom Pemberton, owner of the adjacent home located at 3671 Fifth Street, stated that he thinks that eight feet is extreme, given that the Town Code stated that fences can only be four (4) feet high in the front of the house. He stated the applicant and the tenant who lives at 3671 Fifth Street have a conflict, and an eight-foot fence would create a walled back yard for his tenant.

Mr. Pemberton stated that he recently put some lattice (7'9") up against his porch to help the privacy problem between his tenant and the applicant. He stated that a six-foot fence would be more reasonable.

In response to a question from Mr. Connolly, Mr. Foit stated that the lattice put up by Mr. Pemberton does not help with the privacy problem because one can see through the holes. He further stated that a six-foot fence would not be adequate because the adjacent porch is raised, and the tenants can look right down on him when he sits on his porch.

Findings:

Mr. Chiacchia made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5582 for an eight-foot fence because the home is set back very far from the road and the applicant needs privacy on his front porch.

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 (Chairman Rybczynski), the motion passed. **APPROVED.**

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

Matthew Wawrzyniec, applicant, submitted letters from some of his neighbors indicating that they are not opposed to him keeping his chickens.

Chairman Rybczynski read the following letter submitted by the applicant:

- “I reside at 4122 Jarvis Street. I strongly feel that Matthew Wawrzyniec be allowed to keep his chickens on his property. The chickens are well cared for, fence in and are not a disturbance to me or my property. He is raising these chickens, not for personal gain, simply to have fresh eggs for himself and his family. I feel that a variance should be permitted, as I myself and my neighbors feel that these chickens don't pose any problems at all! Sincerely, Mary Ellen O'Connor 8-1-16
- To whom it may concern: I am the tenant residing at 4103 Jarvis Street, Blasdell, NY at the property owner by Edward and Carol Durham. The chickens owned by Matt Wawrzyniec at 4109 Jarvis, which is right next door to me, have never disturbed my quality of living by noise, smell or in any other way. Sincerely, Melissa Evans
- To whom it may concern: My name is Violet Kelsey and I am a neighbor of Matthew Wawrzyniec. It has been brought to my attention that someone as raised concerns about his chickens. Mr. Wawrzyniec has had these chickens for at least two years and there has never been a problem with them. In fact, my late husband used to go and visit them every so often. Personally, I cannot hear them and tend to forget that they are even there. Matthew Wawrzyniec should be allowed to keep his chickens, as they do not pose a problem. I hope you too will see that these animals are harmless and permit him to keep them. Thank you for your time. Sincerely, Violet Kelsey 7-25-16

Mr. Connolly stated that the main issue at the Board's last meeting was that this is a request for a use variance, and the Board was hoping the applicant would address all four (4) criteria because all four (4) must be satisfied.

Regarding the first criteria regarding reasonable return, Mr. Wawrzyniec stated that if the use variance is not granted, he would have to move in order to keep the chickens, and the cost to do that would be substantial.

Chairman Rybczynski informed the applicant that “reasonable return” is in reference to the use of his home and/or property and not the keeping of the chickens.

Mr. Wawrzyniec stated that when he moved in to this home, the neighbor to the south had a chicken, the neighbor to the east had a chicken coop and the neighbor to the north had a chicken coop and was planning on getting chickens. He stated that another adjacent neighbor

has a double lot and farms the land. He stated that therefore he was under the impression that having chickens was something that was not an issue in the neighborhood.

Attorney Walling stated that it is somewhat odd that one can reside in the Village of Hamburg and get a permit to have chickens, but if one resides in the Town of Hamburg, it becomes more restrictive.

Mr. Wawrzyniec stated that he would not have purchased his home if he knew it would be such an arduous process to have chickens. He stated that the only way to keep the chickens if the variance is denied would be to move to the Village of Hamburg, which would be a burden for him.

In response to a question from Mr. Dimpfl, Mr. Wawrzyniec stated that he originally got the chickens for a life lesson for his daughter so she could raise and feed them and then see the end result of collecting the eggs and producing sustenance from them.

In response to a question from Mr. Connolly, Mr. Wawrzyniec stated that he has never had a neighbor come to him to complain about the chickens. He further stated that he has owned his home for 2 ½ years and has had the chickens the entire time.

In response to a question from Chairman Rybczynski, Mr. Wawrzyniec stated that he is before the Board because someone called the Town and said that the neighbor to the south of him had purchased another rooster. He stated that when the Building Inspector arrived at the neighbor's property to investigate, his (Mr. Wawrzyniec's) chickens went to the property line to greet him.

Mr. John DiDomenico, 4098 Hudson Street, stated that he and his parents have lived at this address since 1969, and they sit in their back yard in the evenings and do not hear the chickens. He stated that the chickens are not a nuisance to his family.

Findings:

Mr. Dimpfl stated that the applicant has indicated that he would be amenable to keeping a maximum of four (4) chickens. He further stated that the use variance, if approved, would run with the property, and the Board did receive letters of support from nearby residents.

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5586 with the following condition:

- No more than four (4) hens will be allowed at any given time.

On the question:

Mr. Chiacchia stated that the applicant resides in a very heavily populated R-2 District, and this could create future problems, but the Board reviews each case individually.

Chairman Rybczynski stated that the Board is not bound by precedent. He noted that the Board takes each case on its own merits individually as long as it offers the same consideration to each applicant.

Mr. Dimpfl made a motion, seconded by Mr. Chiacchia, to amend the above motion to include the following condition:

- The variance is granted contingent upon ownership of the property by the current owner.

All members voted in favor of the motion.

Chairman Rybczynski stated that he has concerns about the applicant meeting the standards of the use variance. He stated that this is not unique to the property, and there was not much evidence presented indicating that this would be a hardship financially. He stated that he

understands that the family wants the chickens on the property, and he understands the reason the family wants them, but he is having a hard time reconciling this with the criteria.

As the vote on the motion was four (4) ayes and three (3) nays (Ms. Falkiewicz, Ms. Hahn and Chairman Rybczynski), the motion passed. **APPROVED.**

Application # 5587 Cynthia Livsey – Requesting two (2) area variances for a proposed attached garage at 3926 Brian Court

Deborah Pound, architect, representing the applicant, stated that the plan is to renovate this home, tear down the existing detached garage and construct a new attached garage. She stated that the existing detached garage is existing non-conforming because it violates the existing side yard and rear yard setback requirements. She stated that the new attached garage would violate the side yard and rear yard setback requirements, as well.

In response to a question from Mr. Connolly, Ms. Pound stated that the rear of the existing garage is approximately 15 feet from the fence along the rear property line. Mr. Connolly noted that the new garage would allow the applicant approximately 4 ½ more feet in the back yard.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Connolly, to approve Application # 5587.

On the question:

Ms. Falkiewicz 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 – They are simply replacing an existing structure and increasing the value of their home.

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

Application # 5588 Jennifer Riefler – Requesting an area variance for a proposed fence at 6902 Gowanda State Road

It was determined that the applicant requested that the project not be reviewed this evening.

Mr. Dimpfl made a MOTION, seconded by Ms. Falkiewicz, to approve the minutes of July 12, 2016. All members voted in favor of the motion.

Mr. Connolly made a MOTION, seconded by Ms. Hahn, to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary
Board of Zoning Appeals

DATE: August 17, 2016