

Town of Hamburg  
Board of Zoning Appeals Meeting  
September 6, 2016  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, September 6, 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 Sarah desJardins, Planning Consultant and 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 Applications # 5580 and # 5581** Patrick Scott – Requesting a use variance and an area variance to allow a pole barn as a principal building at 6079 Old Lakeshore Road

Patrick Scott, applicant, stated that he resides at 6108 Old Lakeshore Road, which is across the street and west of the vacant parcel that is the subject of the variance requests. He stated that he purchased the vacant property seven (7) years ago. He stated that he has modified his plan to place the storage building 50 feet from the front property line, rather than 35 feet.

Mr. Scott reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – He has no other opportunity to construct a garage. There is no place at his primary residence to fit a garage to store equipment because the property is small and narrow.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – This would be an improvement to the neighborhood. When he purchased the property in question, there were two (2) decrepit buildings on it that he demolished. The property now serves as an equipment storage area for him and looks like a used car lot. Placing a garage on the property would be more aesthetically pleasing.
3. Whether the request is substantial – No, because the proposed garage would be 8% larger than what is required and minimally higher.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

Mr. Scott stated that this garage would be used for his storage needs only and would never be rented out. He further stated that if he were to construct a patio home on the property concurrently with the garage, he would not need a use variance.

Mr. Scott reviewed the use variance criteria as follows:

1. Cannot realize a reasonable rate of return-substantial as shown by competent financial evidence – He is not proposing to construct the garage in order to generate revenue. If any of the equipment currently on the property is stolen, it would be a financial hardship for him because he could not replace the equipment and there is no replacement insurance on the equipment. It would cost him approximately \$50,000 to construct the

garage, and if he has to construct a home on the property as well to avoid the necessity of the use variance, the combined cost of the home and garage would not be feasible for him.

2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood – This is a unique situation because he has nowhere at his primary residence to construct the garage, and this vacant land is the closest property he could find to his primary residence. There are garages on other properties in the area.
3. Requested variance will not alter the essential character of the neighborhood – There are already garages across the street.
4. Alleged hardship has not been self-created – No.

Mrs. desJardins stated that Mrs. Barbara Hyde resides across the street from Mr. Scott's vacant land, and her property runs southeast from Lake Erie across Old Lakeshore Road and continues to Schoellkopf Road. She noted that Mrs. Hyde's property on the southeast side of Old Lakeshore Road is adjacent to Mr. Scott's vacant land.

Mr. Chiacchia stated that the applicant's primary residence is very small to put a garage on. He stated that the applicant's vacant property is very well maintained.

Mrs. Barbara Hyde, 6070 Old Lakeshore Road, stated that she has lived at this address for many years and her family bought the current property in 1911. She stated that she is sick at the thought of having a huge metal barn next to her property and so close to her barn, which was there when her family bought the property. She stated that someday she may construct a small home on her property across from her current home (adjacent to the applicant's vacant property), and she would not like to have to look at the applicant's barn from her new home. She stated that the garage does not fit in with the neighborhood and really should be located in the back of a field instead of up near the road. She stated that the garage would tower over her barn and her property, and she worries that she will have trouble selling her property adjacent to the applicant's vacant land if the garage is allowed to be built there.

Mr. Scott stated that Mrs. Hyde's primary residence is across the street from his vacant land, and the garage would not be visible from her home.

Mrs. desJardins stated that Mrs. Hyde's concern is what she would see if she does construct a small home across the street from her existing home.

Mr. Scott stated that there is a fairly thick overgrowth of trees between where the garage would be located and where Mrs. Hyde's home might be. He stated that he will not disturb those trees, and he cannot see Mrs. Hyde's barn from his vacant property, so he doubts she would be able to see his garage from her adjacent property.

In response to a question from Mr. Connolly, Mr. Scott stated that if he built the garage first and then built the patio home, the garage would stay as is. He stated that his parents would like to move to the Hamburg area in two (2) to three (3) years, and at that time they would build a patio home on this vacant property if they are still able.

Mr. Scott stated that the vacant property is plenty large enough for the proposed garage and a patio home of approximately 2,000 sq.ft.

### **Findings:**

Chairman Rybczynski stated that when considering a use variance, the Board looks at return on investment on the property and any other feasible means. He noted that the applicant could build a very nice house on the property. He stated that the applicant must prove that this is the only way he can get a return on his investment in the property.

Mr. Connolly stated that the updated criteria for the use variance states the following: "If, on the basis of dollars and cents proof, the ZBA determines that the applicant will be deprived of all economic use or benefit of the property, then the applicant has proven the first part of the unnecessary hardship standard." He noted that based on that criteria, the Board would have to determine that the applicant will be deprived of all use or benefit of the property without the garage.

Mr. Connolly stated that the applicant's hardship is not unique because there are three (3) other cases this evening of the same problem of needing additional space for storage, but the other applicants have residences on their properties.

Attorney Walling stated that the applicant's property is unique because of what is sitting on it and not because of the nature of the real estate itself.

Mr. Ginnetti stated that if the applicant had not demolished the house that was on the property when he purchased it, he would not need a use variance for the garage.

Mr. Chiacchia stated that the applicant could simply cover his belongings on the property with a tarp, which would not be aesthetically pleasing, and that would not be a violation of any Town Code.

Mr. Connolly stated that having a barn structure would not alter the essential character of the neighborhood because there already are three (3) barns in the area and that whole Lakeshore area has many smaller accessory structures that were built many years ago. He stated that the size of the structure could be argued, though.

Mr. Dimpfl stated that the garage would actually improve the look of the property, since the applicant's belongings would be stored inside rather than outside.

Mr. Connolly stated that cases hold that a party that acquires land for a use prohibited by the Zoning ordinance creates his own hardship, even if the applicant did not learn of the prohibition at the time of the purchase. He stated that he does not think the applicant purchased this property knowing that he could not do what he wanted to do on it.

Mr. Connolly stated that he does not think the applicant is attempting to get the use variance based on personal problems, but rather because of the usage of the property he owns.

### **Findings:**

Mrs. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to deny Application # 5580 and # 5581.

On the question:

Mr. Chiacchia asked if the motion could include a condition that a home be constructed on the property within two (2) years. It was determined that this is not something that could be enforced.

As the vote on the motion was three (3) ayes (Mrs. Falkiewicz, Mrs. Hahn and Chairman Rybczynski) and four (4) nays (Mr. Chiacchia, Mr. Dimpfl, Mr. Ginnetti and Mr. Connolly), the motion failed.

Mr. Connolly stated that he is struggling with the first criteria (financial hardship) but feels the applicant did satisfy the other three (3) criteria. He stated that he cannot determine for sure whether or not the applicant's answer on the first criteria should satisfy it.

Board members agreed that they did not need additional time to think about the request and the criteria or to deliberate further.

Mr. Ginnetti made a motion, seconded by Mr. Mrs. Falkiewicz, to reconsider the previous motion.

All members voted in favor of the motion.

Regarding the previous motion by Mrs. Falkiewicz to deny Application # 5580 and # 5581, seconded by Mrs. Hahn, the vote was as follows:

Aye: Chairman Rybczynski, Mrs. Falkiewicz, Mrs. Hahn, Mr. Ginnetti and Mr. Connolly

Nay: Mr. Chiacchia and Mr. Dimpfl

**DENIED.**

**Application # 5589** John Ford – Requesting two (2) area variances for a proposed detached garage at 4646 McKinley Parkway

Christine Ford, applicant, stated that her husband wishes to construct a garage that is larger and higher than what is required because he needs to store a boat, boat trailer and camper.

In response to a question from Mr. Ginnetti, Mrs. Ford stated that her neighbors on both sides are well aware of what her husband proposes to do, and she is not aware that either neighbor objects.

**Findings:**

Mr. Ginnetti made a MOTION, seconded by Mr. Connolly, to approve Application # 5589.

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, it probably will not be visible and the Board did not receive any correspondence from nearby neighbors.
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 is self-created.

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

**Applications # 5590 and #5591** James Carlin – Requesting four (4) area variances in order to create two (2) new building lots on Oakwood Avenue

Mr. David Carlin, son of the applicant, stated that his father purchased these four (4) lots in the early 1960s, and at that time they were considered building lots even though they are 30 feet wide. He stated that his father wishes to combine the four (4) lots to create two (2) building lots for single family homes. He stated that these new building lots would have more depth than some of the existing lots in the area.

Mrs. desJardins stated that if the applicant is allowed to combine these lots, there would be two (2) 60' X120' lots. She noted that each new lot would be ten (10) feet shy of the required lot width at the building line and slightly smaller in square footage than what is required.

In response to a question from Mr. Connolly, Mr. Carlin stated that his father has not attempted to sell this land in the past.

Chairman Rybczynski read the following email that was received in the Planning Department regarding the requested variances:

“Dear Town of Hamburg Building Board Members:

My name is Grace McKenzie and I am the owner of 4277 Oakwood Ave, adjacent to the lots in question for a variance. I am not able to attend the meeting this evening. This is why I am writing to you.

There are four 30 foot wide lots that are for sale next to my property. The proposal is for two structures to be built on the lots, each building having 60 foot wide area. I know that this is only ten feet less than the regulation, but this structure would be very close to my home. Sarah explained that there needs to be about ten feet between the property line and the structure. So the structure would not be 60 to work with but in reality about 40. That is very small area to work with and would be very close to my home--too close. Other properties in the neighborhood of recent build have complied with the regulations. Would these smaller buildings affect property value? Please feel free to contact me for any information or concerns. Thank you for your time and consideration.

Sincerely, Grace McKenzie”

### **Findings:**

Mr. Connolly made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5590 and #5591.

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.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – No, there are several properties in the area that have nearly identical frontage and size.
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 is difficult to determine, but on balance it is worthy of the variance.

Chairman Rybczynski noted that the applicant has reduced the number of building lots he has from four (4) to two (2), and this is a reasonable request.

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

**Application # 5592** Marrano Marc Equity – Requesting an area variance for a side yard setback for a home currently under construction at 2308 Agassiz Drive

Mr. Eric Honeck and Mr. Jim Marrano, representing Marrano Marc Equity, appeared on behalf of the applicant. Mr. Honeck stated that the fact that the home is being constructed too close to the side property line was first brought to the attention of Marrano’s drafting personnel.

Mr. Marrano stated that this is a case of human error on Marrano’s part. He stated that usually the surveyors check the setbacks in the field, but that was not done. He stated that Marrano has been in business for 60 years, and these are mistakes they usually do not make. He asked that the Board consider the request because the buyers and future homeowners of this home

have been waiting a long time and are expecting their first child in November. He stated that he would like to get the home finished for these buyers before the child is born.

Mr. Marrano stated that from now on the field supervisors will double check the plans before they come out so that this problem does not happen again.

Chairman Rybczynski stated that the Board has not seen Marrano do this very often.

Mrs. desJardins stated that she received two (2) or three (3) phone calls regarding this variance request, and no one objected to the granting of the variance.

In response to a question from Mr. Chiacchia, Mr. Marrano stated that the framing stage was just completed and some rough mechanicals were completed, and then they were issued a Stop Work order. He noted that the project has been delayed two (2) to three (3) weeks.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Ginnetti, to approve Application # 5592.

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 – This was an error on the applicant's part.

Chairman Rybczynski stated that the setback regulations changed in 2005, and the Board does not see this applicant before it very often for mistakes such as this one.

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

**Application # 5593** Donald McKeon – Requesting an area variance for a proposed detached garage at 5896 Old Lakeshore Road

Donald and Becky McKeon, applicants, appeared on their behalf. Mrs. McKuen stated that they would like to build a detached garage on their property, but because they live on the lake there is no room in the rear yard for the garage. She stated that they need the room for extra storage, and they did not know when they purchased the property that they could not place the garage in the front yard so close to the private road.

Mrs. McKeon stated that they spoke with their neighbors, and none has any objections to what they (the McKeons) propose to do.

Mrs. McKeon stated that the septic system holding tank is located in the middle of the front yard, which necessitated the request for the variance because the garage cannot be located as close to the house as they would like.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5593.

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 – No.
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 as a percentage it is substantial, but it is not too much.
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.**

Mr. Dimpfl made a MOTION, seconded by Mr. Ginnetti, to approve the minutes of August 2, 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 8:15 p.m.

Respectfully submitted,

L. Michael Chiacchia, Secretary  
Board of Zoning Appeals

DATE: September 12, 2016