

Town of Hamburg
Board of Zoning Appeals Meeting
September 9, 2014
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, September 9, 2014 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 Chiacchia, Commissioner Bob Ginnetti, Commissioner Joseph Sacco, Commissioner Richard Dimpfl and Commissioner Paul Eustace.

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

Excused: Chairman Brad Rybczynski

Commissioner Eustace read the Notice of Public Hearing.

Application # 5497 Brian and Gale Durant – Requesting an area variance for a proposed addition to the existing home at 4008 Essex

Leslie Price from Kaz Brothers Construction, representing the applicant, stated that the proposal is to construct a 10' X 10' addition to the existing dining room in the rear of the home. He stated that the homeowners have spoken to the neighbors about the proposal, and to his knowledge there have been no complaints from the neighbors.

Mr. Chiacchia stated that he visited the site and noted that there is a lot of space between this property and the adjacent neighbors. He further stated that many privacy fences exist in this neighborhood, so he does not feel that the granting of this variance would be a problem for any neighbors and would actually enhance the area.

Mr. Sacco concurred with Mr. Chiacchia's comments and noted that no negative correspondence has been received regarding this request.

Findings:

Mr. Sacco made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5497.

On the question:

Mr. Sacco reviewed the area variance criteria as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – No, due to the size of the lot.
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.

GRANTED.

Application # 5498 Bryan Kopinsky – Requesting an area variance for a shed installed without a Building Permit at 5731 Dover Road

Bryan Kopinsky, applicant, stated that he was told that he would not need a Building Permit to place the shed on skids on his property. He stated that his back yard floods, which he was not aware of when he purchased the property, so he cannot place the shed there.

Mr. Kopinsky stated that the shed is currently seven (7) feet from his front property line, and if he places it in a location that does not require a variance, it will either flood or it will take up room in the area of the yard where his children play.

Vice-Chairman Connolly noted that letters of support were received from the following:

- Iliyan Ilive, 5720 Dover Road
- Dave Tuczynski, 5773 Saunders Road
- Kimberly Myers, 5726 Dover Road

In response to a question from Vice-Chairman Connolly, Mr. Kopinsky stated that he does road construction in the City of Buffalo, and he was misled by his coworkers into thinking that he did not need a Building Permit to erect the shed because it is on skids.

Mr. Sacco stated that the shed is quite large, and the requested variance is also quite large.

Vice-Chairman explained to the applicant the criteria the Board must look at when considering a variance request. He asked Mr. Kopinsky to speak on each criterion as follows:

1. Whether the benefit can be achieved by other means feasible to the applicant – Mr. Kopinsky stated that the shed could be placed in the middle of the yard, but a few trees would have to be removed.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – Mr. Kopinsky stated that if it is placed in the middle of the yard, it might be an undesirable change to the nearby properties because it would look “goofy”. The neighbors seem to think it is a nice looking shed.
3. Whether the request is substantial – Mr. Kopinsky stated that he has placed the shed a bit further from the front property line.
4. Whether the request will have adverse physical or environmental effects – Mr. Kopinsky stated that if the shed is placed in the yard where it floods, his belongings would get ruined.
5. Whether the alleged difficulty is self-created – Mr. Kopinsky stated that he does not feel the difficulty is self-created.

Mr. Don Parks stated that he lives two doors down from the applicant’s property, and last year he received a Building Permit to erect a fence on his property and he was told it could be no higher than four feet. He stated that the applicant’s shed is much higher than that and is in the same area. He stated that he is not in favor of the granting of the requested variance.

Mr. Paul Wodzinski, owner of 5719 Dover Road, stated that his property is adjacent to the applicant’s, and he is concerned about the line of sight along the road if the shed is allowed to be kept so close to the applicant’s front property line. He noted that pulling out of his driveway is difficult, and allowing the shed to stay so close to the road might make it harder to get out of his driveway because a driver’s view might be obstructed.

Mr. Chiacchia stated that the back of the shed is 30 feet from the front of the property. He further noted that if the applicant had gone to the Building Department before erecting the shed, he probably would have been told at that time that placing the shed so close to the road is not feasible. He stated that backing out of Mr. Wodzinski's driveway would have a very difficult time getting out if this shed were to remain where it is. He stated that the rear yard did not look wet to him, and he believes that the shed could and should be moved back to a proper distance from the road.

In response to a question from Mr. Sacco, Mr. Kopinsky stated that if he had to place the shed in the area that floods, he would have to put it on a 12" concrete pad. He further stated that his rear yard may be dry in the summer, but it is very wet in the winter months.

Vice-Chairman Connolly stated that it is very rare for a shed to be allowed in the front yard of any property, let alone that close to the road, that high, and that wide. He stated that there are also safety concerns. He noted that when looking at the balancing test, a strong argument could be made for denial.

Findings:

Mr. Chiacchia made a MOTION to deny Application # 5498. There was no second.

Vice-Chairman Connolly made a MOTION, seconded by Mr. Dimpfl, to table Application # 5498, given the fact that when considering the balancing test, the request would clearly be a denial, based on the shed's proximity to the road, the size of the structure, etc. He stated that the applicant seemed willing to reconsider the shed's location.

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

Application # 5499 Raymond Hess – Requesting an area variance for a proposed accessory structure at 3683 Old Lakeshore Road

Raymond Hess, applicant, stated that he would like to construct a structure to house his boat, truck, tractor, trailer, etc. that currently are sitting outside. He stated that he owns 1.88 acres, which only allows him to build a 1,000 sq.ft. building, and he would like his storage building to be 1,248 sq.ft. in area. He further noted that access to the building would be from Center Lane.

Mr. Hess stated that his neighbors support his request. He further stated that his belongings would be less attractive to people who might want to steal them if they are inside a building rather than outside.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Chiacchia, to approve Application # 5499.

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, because he needs this size structure.
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.

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

Application # 5500 Kathleen Michienzie – Requesting three (3) area variances for a proposed new home at 129 Midshore

Brian Lewis, architect for the applicant, stated that this project started out as a renovation and addition to an existing structure that was in bad shape. He noted that as construction began, it was found that there was really no foundation to speak of under the house, and one (1) of the walls began to collapse while work was being done. He stated that at that point, the south wall was taken down, and the Building Department informed the applicant that the project would have to be considered a new construction project, rather than a renovation and addition.

It was determined that because the project is now considered new construction, current setback requirements must be met, which is why the applicant is requesting the three (3) variances.

Mr. Lewis stated that the applicant has approval from the Homeowners' Association and also has letters of support from Carol Melnick (132 Midshore Drive) and Gloria Burke (125 Midshore Drive).

Mr. Lewis stated that the only alternate means for the applicant to meet the zoning ordinance would be to take out the foundations on the south side of the house and move them over so that they are the required seven (7) feet from the side property line. He stated that granting the requested variances would not create an undesirable change in the character of the neighborhood because the new walls will be placed where the previous wall stood. He stated that whether the requests are substantial is subjective, and the granting of the requested variances would not have any detrimental physical or environmental effects.

In response to a question from Vice-Chairman Connolly, Mr. Lewis stated that when the project was considered a renovation and addition, the house was considered to be grandfathered, but when the project became a new construction project, the Town setback requirements had to be adhered to. He further stated that there never was a period of time where the applicant was not in conformance with the Building Department requirements.

Mr. Chiacchia stated he was concerned about the distance between this house and 131 Midshore Drive, but if the wall between them is fire rated, he will be satisfied.

It was determined that the applicant purchased the property in 2003.

The owner of 131 Midshore Drive stated that he is glad that the new wall closest to his home will be fire rated. He stated that for the most part he is in favor of the granting of the requested variances.

In response to a question from Vice-Chairman Connolly, Mr. Lewis stated that the new house will be higher than the previous house, but not significantly so.

Findings:

Mr. Dimpfl made a MOTION, seconded by Mr. Eustace, to approve Application # 5500.

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 – The applicant attempted to just renovate the home, but found it was not possible.
2. Whether there would be an undesirable change in neighborhood character or to nearby properties – This will be an asset to the neighborhood.
3. Whether the request is substantial – No.
4. Whether the request will have adverse physical or environmental effects – No.
5. Whether the alleged difficulty is self-created – No.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Eustace, to approve the meeting minutes of August 5, 2014. As there were six (6) ayes and one (1) abstention (Vice-Chairman Connolly), the motion carried.

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

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Paul Eustace, Secretary
Board of Zoning Appeals

DATE: October 15, 2014