

Town of Hamburg
Board of Zoning Appeals
January 3, 2023
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, January 3, 2023 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Brad Rybczynski, Vice-Chairman Ric Dimpfl, Commissioner Jeff Adrian, Commissioner Mark Yodar, Commissioner Nicole Falkiewicz, Commissioner Laura Hahn and Commissioner Chris Smith.

Also in attendance were Board of Zoning of Appeals Attorney Michelle Parker and Code Enforcement Officer Jeff Skrzypek.

Board members recited the Pledge of Allegiance.

Chairman Rybczynski asked for a moment of silence in honor of those service members who have paid the ultimate sacrifice.

Commissioner Falkiewicz read the Notice of Public Hearing.

Chairman Rybczynski made a motion with numerous seconds to appoint Commissioner Dimpfl as Vice-Chairman and Commissioner Falkiewicz as Secretary. Carried.

Application # 5959 Robert Gonser – Requesting two (2) area variances for a proposed residential addition, attached garage and covered porch at 5164 Lakeshore Road (Zoned R-1)

Donna Gonser, applicant, stated that she would like to construct an addition on an existing structure that does not meet the side and front yard setback requirements and therefore is considered non-compliant.

Ms. Gonser stated that the structure is not in very good shape and she would like to improve the exterior.

Dave Woelfling, adjacent property owner, stated that he has reviewed the Gonser's plans and feels that this would be a significant improvement to the neighborhood.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Smith, to approve Application # 5959.

On the question:

Mrs. Hahn reviewed the area variance criteria as follows:

1. Whether the benefit sought 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, but the balancing test is in favor of granting the variance.

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

Application # 5962 Milwaukee THP LLC – Requesting an area variance for an additional monument sign at 6000 South Park Avenue (Zoned C-2)

Attorney James Boglioli, representing the applicant, stated that recently the applicant demolished the former Friendly’s restaurant at this site and is currently constructing a new building there that will be anchored by a Starbucks. He noted that a code-compliant monument sign is proposed located at the South Park Avenue driveway for that building and the variance is required because there would be more than one (1) monument sign on the property. He further stated that there is no more room on the existing pylon sign on the property.

Attorney Boglioli reviewed the area variance criteria as follows:

1. Whether the benefit sought 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 because there are many similar uses along South Park Avenue and the proposed sign would be consistent with other signs in the area.
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 but this criterion in and of itself does not justify denial.

In response to a question from Chairman Rybczynski, Attorney Boglioli stated that the sign would be internally lit.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5962.

On the question:

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought 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, but the balancing test is in favor of granting the variance.

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

Application # 5964 Milwaukee THP LLC – Requesting an area variance for wall signage at 6000 South Park Avenue (Zoned C-2)

Kurt Wright from Sign & Lighting Services, representing the applicant, stated that the applicant would like approval to install additional wall signage on the building that is currently being constructed on this property.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to approve Application # 5964.

On the question:

Ms. Falkiewicz reviewed the area variance criteria as follows:

1. Whether the benefit sought 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 is somewhat 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 either way, but the balancing test is in favor of granting the variance.

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

Application # 5965 DATO Development LLC – Requesting six (6) area variances for a proposed residential project to be located on vacant land west of Briercliff Drive (Zoned PUD)

Attorney Sean Hopkins, representing the applicant, stated that this is a site that has a very lengthy history back to the mid-1980s. He stated that 96 townhome units for sale are proposed on the site. He stated that, in recognition of the fact that over the last approximately 35 years when multi-family projects were proposed they were not particular-

ly well received by the neighbors, the applicant is proposing units for sale although the preference would be to build rental units.

Attorney Hopkins stated that the Town of Hamburg has a rather unique definition of “townhouse” (“a building or dwelling designed for or occupied by no more than one (1) family and attached to other similar buildings or dwellings by not more than two (2) common walls extending from the foundation of the roof providing two (2) direct means of access from the outside. A townhouse is individually owned and owner receives a deed enabling him to sell, mortgage or exchange his dwelling unit independent of owners of any other dwelling unit attached thereto by a common wall”).

Attorney Hopkins stated that because these units would be for sale, each owner would receive a deed for the individual lot and unit and they would be considered “townhouses”. He noted that per the Town Code, this project would also be considered a subdivision.

Attorney Hopkins stated that the exact layout that is being proposed would be allowed as of right without the need for any variances under the following scenarios:

1. If the project involved units for rent
2. If the project involved units for sale and the condominium form of ownership was proposed, which would mean that the Town would collect fewer taxes on the units

Attorney Hopkins stated that the applicant is not proposing to use the condominium form of ownership.

Attorney Hopkins explained the six (6) requested variances as follows:

1. Lot area (Required lot area is 2,000 sq.ft. and the proposed lots would be between 1,156 sq.ft. and 1,401 sq.ft.). The lot sizes could be increased to comply with the Town Code, but the lot lines would have to be extended all the way to the rear of the site, which would interfere with the Heart Trail extension, or all the rear to the front, which would mean the lots would go in to private drives and roadways. Once this project is built, one will not be able to distinguish between different townhomes' lot lines.
2. Front yard setback (Town Code requires 35 feet and the applicant proposes one (1) foot).
3. Side yard setback (10 feet is required and one (1) foot is proposed because the units are attached).
4. Side yard setback for a group of homes (35 feet required and 20 feet proposed).
5. Rear yard setback (20 feet is required and 6.5 feet is proposed).
6. Per the Town Code definition of “townhome”, each townhome is required to have a 250 sq.ft. patio living area. The applicant envisions patios for the units but does not know if they will be as large as 250 sq.ft. There will be ample green space on the site that will be accessible to all future residents of the project and the Heart Trail will be extended on the site.

Attorney Hopkins stated that the applicant views obtaining the requested variances as a concession compared to providing rental units, in which case the applicant would make more money, or for sale condominiums, which would result in the taxing jurisdictions received less tax revenue.

Attorney Hopkins reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No. In the absence of the requested variances, the applicant would have to consider rental units or condominiums.
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 because but for the technical definitions in the Town Code, this project would be allowed as of right if it was for rental units or condominiums.

Attorney Hopkins noted that the Planning Board has been reviewing this project for two (2) years and will be reinitiating the SEQR Coordinated Review shortly due to the reclassification of this project as a townhome subdivision. He stated that therefore the Board of Zoning Appeals cannot act on the requested variances until the Planning Board issues a SEQR determination. He noted that he will return to the Board of Zoning Appeals after the SEQR determination is issued.

In response to a question from Chairman Rybczynski, Anthony Pandolfe from Carmina Wood Design, project engineer, stated that both of the existing sanitary sewer easements on the property would be relocated so that no buildings are constructed on top of them.

Attorney Hopkins stated that the engineers at Carmina Wood Design prepared a comprehensive downstream sanitary sewer capacity analysis that demonstrates that there is adequate downstream sanitary sewer capacity during a wet weather event and the relocation of the sanitary sewer easements have been discussed with and approved by Erie County.

Attorney Hopkins stated that what was envisioned for this site since the 1980s was two (2) three-story apartment buildings with a total of 120 units, which is much denser than what is currently being proposed.

Mr. Dimpfl asked Attorney Hopkins to make sure that the Lake Shore fire company Chief has a copy of the proposed plan.

In response to a question from Mr. Adrian, Mr. Pandolfe stated that every unit has an attached garage and a driveway. He further noted that 48 additional off-street parking spaces are proposed.

In response to a question from Ms. Falkiewicz, Attorney Hopkins stated that eliminating a few units in each building would probably not mean that the variances would not be

required.

Attorney Hopkins noted that the Planning Board has not approved this project.

In response to a question from Mr. Adrian, Attorney Hopkins stated that in 1988 when the Planning Board issued the Findings Statement for the Brierwood PUD, two (2) three-story buildings were shown at this location with a total of 120 units. He further noted that in 2010 a subsidized housing project was proposed on this site totaling approximately 100 units and it was not particularly well received.

Megan Comerford stated that regarding the sixth variance requested regarding patios, she did some research and found that the minimum patio space for a four-person table is 11' X 11' (121 sq.ft.).

Attorney Hopkins stated that the applicant simply does not know what the size of the patios would be at this point.

In response to a question from Ms. Comerford, Attorney Hopkins stated that there is not enough room for every single townhome to be provided with a 250 sq.ft. patio.

Mr. Pandolfe stated that three (3) to four (4) units would not be able to have a 250 sq.ft. patio if all of the rest of the units had one.

In response to a question from Ms. Comerford, Attorney Hopkins stated that a Homeowners' Association will be formed and there will be a disclosure that will be filed with the State and every prospective purchaser will receive a copy.

Findings:

Chairman Rybczynski stated that this application would be left on the table.

Application # 5966 Hamburg Retail LLC – Requesting a use variance to allow a nine-unit townhouse building at 4100 St. Francis Drive (Zoned W-C)

Attorney Sean Hopkins, representing the applicant, stated that the site consists of a vacant contaminated former gas station. He stated that the site was contaminated before the applicant purchased it and the New York State Department of Environmental Conservation (NYSDEC) has asked the applicant to clean it up, which will be the case.

Attorney Hopkins stated that the applicant proposes to construct nine (9) two-story upscale attached townhomes that would be for lease. He noted that the townhomes would take up approximately .7 of the 1.3 acre parcel.

Attorney Hopkins stated that the site is zoned Waterfront Commercial (WC), which does not allow residential uses.

Attorney Hopkins reviewed the use variance criteria as follows:

1. Whether the applicant can realize a reasonable rate of return, provided that the lack of return is substantial as demonstrated by competent financial evidence - Given the fact that this site consists of a contaminated former gas station, none of the allowed uses in the WC district make sense for redevelopment as the site is not on the water although it is close. This site was purchased in 2016 for \$317,000 and since that time it has generated a financial loss every year. The applicant would like to

construct the townhomes to generate some income to help with the cleanup of the site.

2. Whether the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or neighborhood - There is no other existing former gas station that is vacant that has extensive contamination subject to the requirements of the NYSDEC's brownfield program in that particular area.
3. Whether the granting of the requested use variance will alter the essential character of the neighborhood - No, this is actually an improvement. The gas station when in operation was not particularly well maintained or run.
4. Whether the alleged hardship is self-created - No because the WC district is quite restrictive and given this parcel's unique history the zoning does not make sense. Despite the fact that efforts have been made to lease or sell this property continuously over the past six (6) years, those efforts have not been successful because no one seems to want to buy a contaminated brown field and since the Covid pandemic commercial real estate is difficult.

Attorney Hopkins noted that this project has not been reviewed by the Planning Board yet and suggested that the Board of Zoning Appeals adopt a resolution to seek SEQR Lead Agency status. He stated that there is a 30-day comment period in connection with that SEQR coordination and noted, therefore, that the project cannot return to the Board of Zoning Appeals until at least March.

In response to a question from Ms. Hahn, Attorney Hopkins stated that he will present this project to the Shoreline Revitalization Committee for its input.

In response to a question from Leona Rockwood, Conservation Advisory Board member, Attorney Hopkins stated that if any Board in New York State adopts a resolution to seek Lead Agency status, all of the agencies to whom the Lead Agency Solicitation letter is sent have the opportunity to comment. He noted that if any agency objects to the Board being Lead Agency, that dispute is resolved by the NYSDEC.

Findings

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to seek Lead Agency status and initiate the SEQR Coordinated Review, which will include the Waterfront Revitalization Committee.

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

Application # 5967 3800 Hoover Road LLC – Requesting a use variance to allow a seven-unit townhouse building at 3800 Hoover Road (Zoned W-C)

Attorney Sean Hopkins, representing the applicant, stated that this site is approximately 1.6 acres in size and the applicant has no plans to demolish the existing building on it. He stated that the applicant feels that the best use of the building is as a restaurant, but it needs to be successful during the entire year and the Covid pandemic has made the restaurant business in general more challenging.

Attorney Hopkins stated that seven (7) upscale townhome units for lease are proposed on the site. He noted that the property was purchased in 2018 and is zoned WC, which does not allow residential uses. Although this property does have access to Lake Erie, the applicant has made efforts to lease it since the previous restaurant failed and to date only one (1) party was interested that wanted to use the building as a restaurant but the party never went through with the deal.

Attorney Hopkins reviewed the use variance criteria as follows:

1. Whether the applicant can realize a reasonable rate of return, provided that the lack of return is substantial as demonstrated by competent financial evidence - This property was purchased in 2018 for \$850,000 and there has been a very substantial financial loss with respect to the site. In 2022 there was a loss of \$58,382, in 2021 the loss was \$489,000, in 2020 the loss was \$18,947, in 2019 the loss was \$325 and the only year this property generated any income was 2018 when the restaurant was open and it generated \$2,118.
2. Whether the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or neighborhood - This property, while prime and being on the lake, consists of a vacant restaurant building that has been used several times and never has been able to overcome economic challenges.
3. Whether the granting of the requested use variance will alter the essential character of the neighborhood - The applicant acknowledges that there are very nice residential homes nearby, but the project is compatible because it consists of very upscale residential units.
4. Whether the alleged hardship is self-created - No because the applicant did attempt to operate the building successfully as a restaurant, but that did not work out. If the use variance is granted, it will allow the applicant to generate some income to help keep this property in a holding pattern so it can decide what to do with the rest of it in the future.

Attorney Hopkins stated that this project must be reviewed by the Shoreline Revitalization Committee and the Coordinated SEQR review is also required. He further noted that the Town of Hamburg has adopted a local historic preservation law and there is some discussion of possibly designating the building on this site as a local landmark. He noted that the applicant does not have a position on that and has not seen the application.

Attorney Hopkins noted that this project will require Site Plan review by the Planning Board.

In response to a question from Chairman Rybczynski, Attorney Hopkins stated that if the applicant attempts to get a loan from a bank for this project, there may be a requirement that the property be subdivided so that the existing building is on a separate parcel. He further noted that any subdivisions require approval from the Planning Board.

Ms. Hahn stated that she is on the Hamburg Preservation Commission.

Jack Edson, Chairman of the Hamburg Preservation Commission, stated that the commission was established 1 1/2 years ago. He noted that it is the commission's intention to designate the Bayview Hotel at 3800 Hoover Road as the Town's first historic landmark and commission members delivered the initial letter and report about the historical value of the Bayview Hotel on December 29, 2022. He stated that the commission welcomes the opportunity to discuss the landmark designation with the applicant.

Jeff Kryszak, whose girlfriend owns the residential home adjacent south of this site, stated that there is a significant amount of erosion going on between the two (2) properties right now that has not been addressed. He stated that her residence and break wall are currently in jeopardy.

Francine Dwyer stated that she lives two (2) doors down from this property and the property lines of the properties in that area go right to the water line. She stated that much care would have to be taken to ensure that the residents of the townhomes understand that they would not have access to the beach in front of the nearby homes.

The owner of 3792 Hoover Road stated that it seems to him that the applicant is trying to cram a lot of homes in one (1) small spot. He further stated that he is concerned that a large amount of people will be trying to access beach they do not own.

In response to a question from the public, Attorney Hopkins stated that the townhomes would generally be 25 - 30 feet wide.

Findings

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, to seek Lead Agency status and initiate the SEQR Coordinated Review, which will include all interested parties.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Yoder, to approve the minutes of December 6, 2022. All members voted in favor of the motion.

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

The meeting was adjourned at 8:20 P.M.

Respectfully submitted,
Nicole Falkiewicz, Secretary
Board of Zoning Appeals

DATE: January 19, 2023