

Town of Hamburg  
Board of Zoning Appeals  
April 4, 2023  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, April 4, 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 Nicole Falkiewicz and Commissioner Laura Hahn.

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

Excused: Mark Yodar and Chris Smith

Board members recited the Pledge of Allegiance.

Chairman Rybczynski asked for a moment of silence in honor of those who have paid the ultimate sacrifice in defense of our nation, as well as those who serve in our police force and fire departments.

Commissioner Falkiewicz read the Notice of Public Hearing.

**Tabled Application #5965 Brierwood Village** – Requesting six (6) area variances for townhouses at SBL 169.20-1-39 Briercliff Drive (Zoned PUD)

It was determined that this project is still under review by the Planning Board and would remain on the table.

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

It was determined that the Board of Zoning Appeals is the SEQR Lead Agency on this project and it is still under review by the Planning Board.

Chairman Rybczynski made a MOTION, seconded by Ms. Falkiewicz, that the Board of Zoning Appeals remove itself as SEQR Lead Agency on this project.

On the question:

Chairman Rybczynski stated that being SEQR Lead Agency is a bit more than the Board of Zoning Appeals would like to deal with, given recent staff changes.

All members voted in favor of the motion.

**Tabled Application #5967 3800 Hoover Road** – Requesting a use variance to allow

townhouses at 3800 Hoover Road (Zoned WC)

It was determined that the Board of Zoning Appeals is the SEQR Lead Agency on this project and it is still under review by the Planning Board.

Chairman Rybczynski made a MOTION, seconded by Mr. Dimpfl, that the Board of Zoning Appeals remove itself as SEQR Lead Agency on this project.

All members voted in favor of the motion.

**Tabled Application #5976 Kate Geiger – Boston Valley Farms** – Requesting a use variance for a turkey processing building (Zoned R-A)

Kate Geiger, applicant, stated that her accountant prepared a letter detailing her (Ms. Geiger's) financial hardship. She submitted this letter to Board members for their review.

Ms. Geiger stated that currently she is allowed to butcher 250 turkeys without having a license to do so, but because she has more than 250 turkeys she needs that license to butcher them on her farm.

In response to a question from Chairman Rybczynski, Ms. Geiger stated that currently she does not butcher any turkeys on her property.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5976.

On the question:

Ms. Falkiewicz reviewed the use variance criteria as follows:

1. The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence - The applicant has provided competent financial evidence showing that she is consistently losing approximately \$7,000 - \$15,000 annually with not being able to butcher on site.
2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood - It does not apply to a substantial portion of the district or neighborhood.
3. The variance, if granted, will not alter the essential character of the neighborhood - It will not.
4. The alleged hardship is not self-created - It is not.

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

**Application #5978 Laura Grieser** – Requesting an area variance for an attached garage at 4572 Marie Drive. (Zoned R-1)

Laura Grieser, applicant, stated that she would like to construct a side load garage in front of her home and convert a picture window into a front door. She stated that there is nowhere else on her property that she could put a shed, etc. for storage. She further noted that the new double front garage would mirror the existing two-door garage she has.

Ms. Grieser stated that she spoke with four (4) of her neighbors, all of whom signed letters of support.

Mr. Adrian stated that he visited the site and noted that there would be no sight obstruction pulling in and out of the driveway if the the new double front garage is located where the applicant proposes to put it.

A member of the public who resides at 4582 Marie Drive stated that the applicant did not discuss the variance request with her. She questioned the need for the requested variance and stated that the new garage would be right outside her two (2) bedroom windows and would block any type of view. She noted that the houses are close together and no one on this street has obtained a variance like what is being requested. She stated that Ms. Grieser runs a doggy daycare at this house and the dogs are put in the garage and asked if the new garage would become a doggy kennel. She stated that she has called the Building Department several times over the years about the doggy day care and has received no satisfaction and has been told that some of the Building Department staff use Ms. Griesers's doggy daycare. She stated that Ms. Grieser has more space in her yard for a shed than she (the resident at 4582 Marie Drive) does.

Ms. Grieser stated that the previous speaker is a newer neighbor. She stated that previously she had her other neighbors sign off on her dog resort, which is in her basement and not in her garage. She stated that she has only had three (3) dogs of personal friends at her location for the last four (4) years and her basement is not a dog resort anymore. She stated that she has one (1) bedroom upstairs that is dedicated to watching dogs occasionally.

Ms. Grieser stated that the previous speaker does not cut her yard.

Chairman Rybczynski advised Ms. Grieser that the meeting was not about the neighbor's yard.

The previous speaker was shown Ms. Grieser's plans.

### **Findings:**

Chairman Rybczynski stated that Ms. Grieser submitted three (3) letters of support from property owners at the following addresses:

- 4566 Marie Drive
- 4565 Marie Drive
- 4583 Marie Drive

Ms. Hahn made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5978.

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 – The difficulty is self-created, but the balancing test favors the granting of the variance.

As the vote on the motion was four (4) ayes and one (1) nay (Ms. Falkiewicz), the motion carried. **GRANTED**

**Application # 5979 Scott Handschumaker** – Requesting four (4) area variances for a detached garage at 5447 Old Lakeshore Road (Zoned R-1)

Emily Handschumaker, applicant, stated that she would like to replace a garage that collapsed in a major snow storm. She stated that the previous garage was a four-car garage and she would just like to put the new garage in the same place with two (2) feet of depth added and a little bit of added height for a higher pitch to make sure the snow load does not again damage her garage.

In response to a question from Mr. Adrian, Ms. Handschumaker stated that the new garage would load from the rear just like the previous garage did. She confirmed that she needs the extra depth to accommodate her vehicles.

In response to a question from Ms. Falkiewicz, Ms. Handschumaker stated that the second story would be strictly used for storage.

Mr. Rick Schenider, 5555 Truscott Terrace, stated that he looked at the applicant's plans and if the previous garage was not considered grandfathered, he would be against any construction there because it is dangerous. He stated that another neighbor, John McKendry, sent a letter to the Board asking that this application be tabled because he is out of town and is the most affected neighbor. Mr. Schneider stated that he agrees with Mr. McKendry that this application should be table until Mr. McKendry returns. He stated that when Mr. McKendry attempts to drive out of his garage, his visibility is very limited. He stated that the additional two (2) feet the applicant is requesting would make Mr. McKendry's problems even worse. He stated that he is concerned that the garage will be converted to an apartment or bed and breakfast someday. He stated that he is concerned about the added height of the garage because it will go from having 12-foot ceilings to being 24 feet tall and will look like a house. He stated that Mr. McKendry cannot see the street without driving his car into the street.

Chairman Rybczynski stated that Mr. McKendry sent a letter to him and Vice-Chairman Dimpfl dated March 24, 2023 asking for a postponement because he was unable to

attend and is out of town until May 4, 2023.

In response to a question from Chairman Rybczynski, Ms. Handschumaker stated that she really wants to get the garage built because everything that was in the garage is on her front yard and she has nowhere else to put it.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to TABLE Application # 5979.

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

**Application # 5980 Brian Evaldi** – Requesting an area variance for a detached garage at 4988 Tim Tam Trail. (Zoned R-2)

Chairman Rybczynski read a letter submitted by a resident asking that the proposed garage be downsized to a more reasonable size because the request is extreme.

In response to a question from Chairman Rybczynski, Mr. Skrzypak stated that the maximum square footage allowed for accessory structures is 850 sq.ft. because the lot is less than one (1) acre in size.

Brian Evaldi, applicant, stated that the actual enclosed garage space would be 30' X 36' (1,080 sq.ft.) but the proposed lean-to adds an extra 360 sq.ft. He noted that the lean-to is really just a covered patio. He stated that he wants the extra space so that he can park his RV and trailer out of sight of the roadway.

Mr. Evaldi stated that he went to all of the neighbors around him and they signed letters of support.

Chairman Rybczynski stated that three (3) letters of support were received from residents with the following addresses:

- 4980 Tim Tam Trail
- 4999 Tim Tam Trail
- 5005 Tim Tam Trail

Mr. Evaldi stated that 80% of his lot would still be green space if the garage is constructed.

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5980.

On the question:

Mr. Dimpfl 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 – 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 is not self created.

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

**Application # 5981 Lake Abbott LLC** – Requesting an area variance for an attached sign at 4817 Lake Avenue (Zoned C-2)

Ms. Courtney Sieber, applicant, stated she is requesting permission to place a second wall sign on the building at this address. She stated that the space is currently primarily occupied by Colton RV and they are leasing space in the building to a secondary business, so she would like to have a presence on the building.

**Findings:**

Ms. Falkiewicz made a MOTION, seconded by Mrs. Hahn, to approve Application # 5981.

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 not self-created.
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 the applicant.

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

**Application #5982 ADMI Corp** – Requesting four (4) area variances for a commercial building at 3497 McKinley Parkway (Zoned C-1)

Mr. Josh Molter from Excel Engineering, representing the applicant, stated that Aspen Dental is requesting these area variances for a new 3,500 sq.ft. building to be located at 3497 McKinley Parkway. He stated that the applicant is requesting variances from the setback requirements for the east, west and south sides of the property, as well as the 35-foot front yard setback for parking.

Mr. Molter stated that the new building would be located approximately nine (9) feet further to the west than the existing building is and existing pavement would be

removed from the south and west sides of the property, thereby reducing the amount of impervious surface on the site.

In response to a question from Mr. Dimpfl, Mr. Molter stated that the existing Pizza Hut building would be demolished.

Board members reviewed the proposed plans for the new building.

Mr. Bill Staedt 3494 Dickens Road, stated that he lives directly behind the existing Pizza Hut building. He stated that the existing Pizza Hut building is located ten feet from his property line and the applicant proposes to construct the new building approximately 15 feet from the same property line. He stated that 15 feet would be very close to his property. He stated that he and his neighbors have not seen the proposed plans. He stated that a fence in disrepair exists along his property line with 3497 McKinley Parkway and there is a drainage concern in that area. He stated that he would like the applicant to construct a berm and landscaping and install new fencing along his property line. He stated that if these variances are approved, he would want the Board to impose a condition that a new fence of least eight (8) feet be installed.

Mr. Molter stated that the applicant proposes to install a new vinyl fence along Mr. Staedt's property line to replace the existing chain link fence. He further stated that there is a drainage problem in that area of the site and the applicant plans to build a swale along the back of the new building to drain the water in the area Mr. Staedt referenced.

Mr. Staedt stated that he does not understand why a dental office needs a dumpster.

A member of the public residing at 3486 Dickens Road stated that she also lives behind 3497 McKinley Parkway. She stated that her rear yard is very wet, so drainage is a big concern for her. She stated that her neighbors' yards area also wet and agreed with Mr. Staedt's concern about the standing water in the area of the chain link fence. She stated that she has a tree in her yard that hangs over the Pizza Hut building and the part of it that is over the building was never maintained by the previous property owner.

A member of the public who resides at 3498 Dickens Road stated that drainage is also a concern of hers, as is the desire for a new privacy fence.

### **Findings:**

Chairman Rybczynski stated that this project has not been reviewed by the Planning Board yet.

Chairman Rybczynski made a MOTION, seconded by Ms. Falkiewicz, to leave Application # 5982 on the table.

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

Chairman Rybczynski made a MOTION, seconded by Mr. Adrian, to approve the minutes of March 7, 2023. All members voted in favor of the motion.

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

The meeting was adjourned at 8:00 P.M.

Respectfully submitted,  
Nicole Falkiewicz, Secretary  
Board of Zoning Appeals

DATE: April 7, 2023