

Town of Hamburg
Board of Zoning Appeals
May 2, 2023
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, May 2, 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, Commissioner Laura Hahn, Commissioner Mark Yodar 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 Mr. Gregory Reed, who worked for the Town for quite a while and did a lot of good for the Town.

Commissioner Falkiewicz read the Notice of Public Hearing.

Tabled Application #5965 DATO Development – 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 this project is still under review by the Planning Board and would remain on the table.

Tabled Application #5967 3800 Hoover Road – Requesting a use variance to allow townhouses at 3800 Hoover Road (Zoned WC)

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

Tabled #5979 Scott Handschumaker – Requesting four (4) area variances for a detached garage at 5447 Old Lakeshore Road

Chairman Rybczynski noted that a neighbor asked at the Board's last meeting that this application be tabled until he returned from being out of town. He further stated that no new information had been received and asked Board members if they had visited the site. Members indicated that they had.

Emily Handschumaker, applicant, stated that she got a quote from her builder to construct the garage in a different location. She stated that she was advised that trees, plumbing, asphalt and electrical would have to be moved and it would cost her an additional \$30,000, which would be a hardship for her.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Smith, to approve Application # 5979.

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, the applicant indicated that it would cost a great deal of money to alter the plans.
2. Whether there would be an undesirable change in neighborhood character or a detriment 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 but the balancing test favors the applicant.

Chairman Rybczynski noted that the garage would be located in the footprint of the former garage with just two (2) additional feet.

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

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

No one appeared on behalf of the applicant.

It was determined that this project would remain on the table.

Application #5983 John Haffner – Requesting two (2) area variances for a detached garage at 4024 South Park Avenue (Zoned R-2)

Chairman Rybczynski noted that letters of support were submitted for this application from the following:

- Roy Michenson, 3572 Harrison Street
- Sean McDonald, 4020 South Park Avenue

John Haffner, applicant, stated that he would like to tear down his existing garage and construct a new one. He stated that it would be a single car garage with an attached lean-to and would be smaller than the existing garage.

In response to a question from Mr. Adrian, Mr. Haffner stated that everything would be removed including the existing concrete.

Findings:

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5983.

On the question:

Mr. Adrian reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No, because it is tight between the proposed garage and the house and the proposed garage cannot be located further to the right.
2. Whether there would be an undesirable change in neighborhood character or a detriment to nearby properties – No.
3. Whether the request is substantial – It is not self-created because the proposed garage would be located on an existing pad and the existing garage has been there for many years.
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 #5984 John Banas – Requesting four (4) area variances for Two Family Dwelling at 4263 East Frontier (Zoned R-2)

Chairman Rybczynski read the following correspondence received regarding this application from Michael Sporr 4258 Linwood Avenue:

“As neighbors of this address, we do not want the Building Permit to be granted. This is a quiet neighborhood of single family homes and we do not need a building like the one sought. The permit application exceeds all of the local parameters allowed.”

Chairman Rybczynski read the following correspondence received regarding this

application from Lindsay Jakubowski, 4266 Linwood Avenue:

“My name is Lindsay Jakubowski and my family and I reside at 4266 Linwood Avenue, Blasdell. A few weeks ago we received a letter stating that one of our neighbors was appealing a denial of a building permit to add a second floor apartment on their garage. This is listed as agenda item #7 for Tuesday’s (5/2/23) meeting.

We are very concerned about this appeal possibly going through. We are concerned for a few reasons.

- 1). The letter we received stated that the required lot size for a project such as the one our neighbors are requesting is 14,000 feet and theirs is only 8,000 feet. The lot is a small size and they already have a garage, shed and piles of things taking up their yard.
- 2). Most of the houses in our immediate neighborhood are ranches. We feel building a second floor apartment will take from the character of the neighborhood. We moved in knowing that our neighbors’ houses were similar to ours and we liked that for privacy purposes.
- 3). The most important reason of all to us is our privacy. I am a teacher in the neighborhood school and my husband, 6 year old and I value our privacy. We enjoy spending tons of time in the backyard. To improve our privacy, we installed a vinyl privacy fence two years ago. If this apartment project went through, our privacy, as well as that of our immediate neighbors would be greatly impacted. The garage would allow views into our backyard, over the top of the fence. This is very concerning to us.

We ask that you consider our concerns above and the great deviance from the lot requirement when thinking of approving the appeal of this project. If you have further questions, please feel free to contact me or my husband. Thank you for your time and consideration.”

Mr. Michael Banas, representing the applicant, showed Board members pictures of the neighborhood indicating that the property across from this already has a two-story home on it. He stated that in his opinion what he is proposing would not change the character of the neighborhood.

Mr. Banas stated that he is willing to work with the property owner at 4266 Lynwood Avenue by putting frosted glass block windows on the side of the addition facing Mrs. Jakubowski’s property. He noted that Mrs. Jakubowski recently installed a privacy fence along the property line they share and the proposed addition would match the home.

It was determined that this property’s front yard is considered Power Road.

It was determined that the applicant proposes to construct an attached addition that would consist of a garage and living space above it.

Mr. Skrzypek stated that he spoke at length with the applicant about this proposal and the applicant indicated that a separate kitchen is preferred. He noted that he advised

the applicant that if the request for the two-family is denied, the applicant could still propose an addition to the existing home without the variance for minimum lot size since it would still be considered a single family home.

Mr. Adrian stated that if just an addition is proposed, the blueprints would have to not show a second kitchen.

Findings:

Chairman Rybczynski noted that the applicant indicated that he is willing to make concessions if approved including using glass block windows.

Mr. Adrian made a MOTION, seconded by Mr. Dimpfl, to deny the first requested variance for minimum lot size for a two-family dwelling requested in Application # 5984.

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

Mr. Adrian made a MOTION, seconded by Ms. Falkiewicz, to approve the three (3) remaining requested variances requested in Application # 5984 with the following condition:

- The windows on the second floor facing west shall be obscured.

On the question:

Mr. Adrian reviewed the area variance criteria as follows:

1. Whether the benefit sought can be achieved by other means feasible to the applicant – No, the applicant will be constructing an addition instead of a two-family dwelling.
2. Whether there would be an undesirable change in neighborhood character or a detriment to nearby properties – No, there are several two-family dwellings or additions, whether legal or not, that exceed Town Code limits in that neighborhood.
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 #5985 Denise Smaszcz – Requesting two (2) area variances for a covered porch at 5050 Lynwood Avenue (Zoned R-2)

Chairman Rybczynski read the following communication received regarding this application from Mr. Frank Russo, Jr.:

"I'm the owner of Two Rod Road Realty and the property directly north (Niles Avenue) of the requested variance at 5050 Lynwood Avenue. I have no issue with the side yard setback variance as it does not directly affect my property, but I cannot support the rear yard setback variance. If the rear yard setback variance was granted, it would only leave five (5) feet from my property line.

I have recently received Planning Board approval for a subdivision on the Niles Avenue property. I'm currently speaking with multiple reputable local builders and this would lessen the desirability of my property and be aesthetically objectionable to any potential homeowners in my new subdivision.

In reference to the area variance balancing test, Town Law Section 267B(3)(b), this proposed variance should have a negative response to four (4) of the five (5) criteria.

1. The variance would create an undesirable change to the character of the neighborhood.
3. The variance request is substantial with regards the relief being sought for the rear yard setback.
4. The variance would have an adverse effect on the physical and environmental conditions of the neighborhood.
5. The variance is self-created.

Thank you."

Chairman Rybczynski noted that Mr. Russo also provided map showing where his property is located relative to the applicant's property.

Mr. Charles Lamartine, father of the applicant, stated that the proposal is to reconstruct the shed roof on the side of the existing home into a double gable with a covered porch. He stated that the reason his daughter wants the covered porch is that the double gable will create a better structure when the top roof is rebuilt.

Mr. Lamartine stated that the current pitch of the shed roof is 3:12 and when the snow was heavy this past winter it created some cracking in the ceiling because of that pitch.

In response to a question from Chairman Rybczynski, Mr. Lamartine stated that there is damage to the inside drywall and he believes it is due to the snow load on the side of the house.

Chairman Rybczynski asked Mr. Lamartine if there is any other way to stabilize the home without building out. Mr. Lamartine responded in the negative, noting that the covered porch gables would help to stabilize the home.

Findings:

Mrs. Hahn made a MOTION, seconded by Mr. Yodar, to approve Application # 5985.

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 a detriment 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 – No, considering the damage to the current roof.

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

Application #5986 Ronnie Lee Willett – Requesting an area variance for a fence located at 4718 Lilydale St. (Zoned R-1)

Ronnie Lee Willett, applicant, and Joe Levandowski, 4717 Lilydale Street, appeared on behalf of the application.

Ms. Willett stated that she would like to install an eight-foot high fence because the farm behind her has many greenhouses and equipment and she would like to not have to look at that from her windows or her backyard.

Mr. Lewandowski stated that the adjacent farm has become more and more commercial. He noted that when his home and Ms. Willett's home were built, the farm was small and there were woods between their homes and the farm. He stated that over the years, the farm purchased the wooded area and turned it into a planting field but then the farm stopped farming those fields and began storing equipment there instead.

Mr. Lewandowski stated that the area behind their homes is an unsightly junkyard and he and the applicant must do whatever they can to preserve their properties' value, their privacy and their backyards.

In response to a question from Mr. Adrian, Mr. Skrzypek stated that he does not know what the farm property is zoned. He further stated that an eight-foot high fence is allowed when buffering a residential property from a commercial use.

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5986.

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 a detriment 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 – No.

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

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve the minutes of April 4, 2023. All members voted in favor of the motion.

Chairman Rybczynski stated that it has been said that he indicated that the Board does not want people attending the Board of Zoning Appeals meetings because it makes the meetings go longer. He noted that this is not true and if anyone on the Board hears that again to please let him know.

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: May 4, 2023