

Town of Hamburg  
Board of Zoning Appeals  
June 15, 2023  
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Thursday, June 15, 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 and Commissioner Chris Smith.

Also in attendance was Code Enforcement Officer Jeff Skrzypek.

Excused: Commissioners Falkiewicz and Hahn

Board members recited the Pledge of Allegiance.

Chairman Rybczynski asked for a moment of silence in honor of those who have given their lives in service of their country.

Commissioner Dimpfl read the Notice of Public Hearing.

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

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

**Tabled #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 the proposal is to demolish the existing building and build an Aspen Dental building in its

place. He stated that the existing building is located ten (10) feet from the east property line and the proposed building would be further away at 15 feet. He noted that the existing paving is 9.89 feet from the west property line and the proposal is to provide paving 13.6 feet from that property line. He stated that the proposed project would reduce the impervious surface on the site. He further stated that the required 40 foot building setbacks from the west and east property lines only leave 29.5 feet to locate a building.

Mr. Molter stated that any new building on this property would most likely require variances for its size.

Mr. Molter stated that a majority of Planning Board members is in favor of this layout and the project has been discussed at several Planning Board meetings. He noted that the existing dilapidated fence along the east property line would be replaced with an 8-foot high polyvinyl fence.

In response to a question from Chairman Rybczynski, Mr. Molter stated that the Planning Board has indicated that it would allow the 8-foot high fence.

### **Findings:**

Mr. Yodar made a MOTION, seconded by Mr. Adrian, to approve Application # 5982.

On the question:

Chairman Rybczynski noted that the Planning Board is reviewing the drainage and cleanliness of the site, as well as the height of the new fence.

Mr. Yodar 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, it will actually approve the neighborhood character.
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**

Chairman Rybczynski noted that this approval is contingent upon the Planning Board's approval of the Site Plan.

**Application #5988 Robert Roesch – Requesting one (1) area variance for a covered porch at 1701 Lakeview Road (Zoned R-2)**

Nicole Roesch stated that they would like to build a patio that would be too close to a neighbor's property. She noted that she had a letter of support from that neighbor.

Chairman Rybczynski read the following letter of support from C. Jake Schneider, 6055 Lakeshore Road:

"I am providing official notification to the Town of Hamburg that I am okay with allowing Robert Roesch, who resides at 1701 Lakeview Road, permission to exceed the setback limitations along my property line for a patio pad that already exists adjacent to the north elevation of their home. This is a one-time approval for the rights to exceed the setback limitations as outline in the Town Code. Please contact me with any questions or new developments pertaining to this notification. Thank you for your assistance."

**Findings:**

Mr. Dimpfl made a MOTION, seconded by Mr. Smith, to approve Application # 5988.

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 a detriment to nearby properties – No.
3. Whether the request is substantial – It could be argued that it may be 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 favors the applicant.

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

**Application #5989 Joseph Levandowski – Requesting one (1) area variances for a fence at 4714 Lilydale Street (Zoned R-1)**

No one appeared on behalf of this application. It was determined that this application would remain on the table.

**Application #5990 Rifeq S. Omar – Requesting four (4) area variances for an attached wall sign at 4890 Lakeshore Road (Zoned NC)**

Rifeq Omar, applicant, stated that there is currently a painting on the side wall of the building that was put there seven (7) months ago. He stated that most people like it and it does help attract customers.

In response to a question from Mr. Adrian, Mr. Skrzypek stated that the applicant was cited for a violation when the painting went on the wall. He further stated that the Building Department did not make the applicant remove the painting because it was part of the siding and did not make him cover it up with a tarp because that would be a possible hazard.

In response to a question from Mr. Adrian, Mr. Omar stated that he was not aware that the painting required a permit.

It was determined that signage is not permitted on that side of the building.

Chairman Rybczynski stated that the following was received from Beth Buscaglia, R.A., 5218 Lakeshore Road:

“I understand you are considering a signage variance for the Exotic Clouds shop located at 4890 Lakeshore Road. I am a resident of Lake Shore Road and believe the building’s signage violates the signage standards and should not be granted a variance. The front elevation signage var exceeds the 105 of the area frontage allowed by the Code. The north elevation signage appears to be at least 50% of the wall area. The hand drawn signage certainly is not in keeping with item B of the Signage Code’s statement of purpose, which is ‘to maintain an aesthetic environment’ and item E ‘to minimize the possible adverse effects of signs on nearby public or private property’. the buildings, as signed, certainly detracts from its neighbors, the resident unit to the rear of this building and the childcare center directly across the street. Most significantly the signage violates item F ‘to promote and maintain attractive residential, commercial and industrial districts by preventing the blighting influence of excessive signage’. The signage is not at all in keeping with the character of the NC zoning in this area of Lakeshore Road. Additionally, there is a temporary promotional sign that has been in place for months, which is allowed for only for a limited timeframe. I strongly encourage you to deny this variance request and closely monitor the excessive signage removal.”

Chairman Rybczynski read the following letter from Jim Travis, Sawgrass Court:

“My name is Jim Travis and I reside on Sawgrass Court in Hamburg. I own the building lot adjacent to the smoke shop, which is requesting a variance to continue with the current signage. I have submitted plans to the town to building a 3,500 sq.ft. home on the lot I own adjacent to the building in question. I have already spent over \$400,000 to build a sea wall and reclaim the land lost to erosion from the October storms the last few years. I read that the current signage does not meet the Code and am asking you to NOT grant a variance. I am actually more concerned that the daycare across the street has to subject their children to the constant light blinking and advertisements of vape and CBD products and eventually marijuana. I do not like that type of store to

begin with but understand they have a right to be there but please limit their signage/ advertising to comply with the Town's laws and deny a variance. Thank you.”

It was determined that the only side of the building with a public entrance is the front.

In response to a question from Chairman Rybczynski, Mr. Omar stated that he sells grass and tobacco products but that is not advertised on the signage requested.

**Findings:**

Mr. Adrian made a MOTION, seconded by Mr. Yodar, to deny Application # 5990.

On the question:

Mr. Adrian recommended that the Building Department send the applicant a 30-day limit to have the signage removed to become compliant or send the applicant to court.

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

**Application #5991 Jean Steigert – Requesting two (2) area variance for a shed located at 3879 Columbia Street (Zoned R-2)**

Jean Steigert, applicant, stated that she would like to put a shed up that would be one (1) foot too close to the property line. He noted that the new shed would be going in front of the old one.

Mr. Dimpfl noted that because this shed would only be three (3) feet from the house, it would require a fire wall.

**Findings**

Mr. Smith made a MOTION, seconded by Mr. Yodar, to approve Application # 5991.

On the question:

Mr. Smith 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 – 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 favors the applicant.

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

**Application # 5992 Maria Zientara - Requesting one (1) area variance for an attached garage at 4277 Elmwood Avenue (Zoned R-2)**

Derek Zientara stated that he is Mrs. Zientara's husband and a licensed contractor. He stated that they would like to construct a garage on the front of his home that faces Powers Avenue and change the front of the home so that it faces Elmwood Avenue.

Mr. Skrzypek stated that if the applicant changes the front of the home to face Elmwood, he would still require a side yard setback variance but it would only be 8.5 feet. He stated that the Building Department has to consider Powers Avenue the front yard because that is what is there now.

**Findings**

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to approve Application # 5992.

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 a detriment 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 favors the applicant.

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

Mr. Dimpfl made a MOTION, seconded by Mr. Smith, to approve the minutes of May 3, 2023. All members voted in favor of the motion.

Mr. Dimpfl made a MOTION, seconded by Mr. Adrian, to adjourn the meeting. Chairman Rybczynski stated that the meeting would be adjourned in memory of his wife's uncle who passed away earlier that day. All members voted in favor of the motion.

The meeting was adjourned at 7:30 P.M.

Respectfully submitted,  
Nicole Falkiewicz, Secretary  
Board of Zoning Appeals

DATE: June 21, 2023