

Town of Hamburg
Board of Zoning Appeals
September 5, 2023
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, September 5, 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 Nicole Falkiewicz, Commissioner Laura Hahn, Commissioner Jeff Adrian, Commissioner Mark Yoder and Commissioner Chris Smith.

Also in attendance were Code Enforcement Officer Jeff Skrzypek and Attorney Michelle Parker.

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 Falkiewicz read the Notice of Public Hearing.

Tabled Application #5965 DATO Development, LLC – Requesting six (6) area variances for a proposed residential project to be located on vacant land west of Brierrcliff 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 a 7-unit townhouse building at 3800 Hoover Road (Zoned WC)

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

Tabled Application #5998 Patrick Lawler – Requesting one (1) area variance for a rear yard setback at 4997 Daisy Lane (Zoned R-2)

Mr. Patrick Lawler, applicant, stated that he would like to put an addition on the rear of

his home that would be too close to the rear property line. He stated that he owns the property directly behind his property on Cityview Lane and his neighbor's home is approximately 60 feet away from his home. He stated that he will comply with the side yard setback requirement.

Findings

Mrs. Hahn made a MOTION, seconded by Ms. Falkiewicz, to approve Application # 5998.

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 – No.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – No.
5. Whether the alleged difficulty is self-created – Yes, but the balancing test favors the applicant.

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

Application #5999 Richard and Christine Poczalski – Requesting one (1) area variance for a for a side yard setback at 3677 Breckenridge Rd (Zoned R-2)

Mr. Richard Poczalski, applicant, stated that he is installing a generator that has to be a certain distance from his home and a certain distance from the property line. He stated that there is 16 feet between his home and the adjacent home and his contractor has informed him that he is approximately 2.5 feet short of complying with both requirements for separation.

Mr. Poczalski stated that his adjacent neighbor does not object and submitted a letter from him to the ZBA to that effect.

Chairman Rybczynski read the following letter received from Donald and Patricia Piirotta:

“We do not have any objection to our neighbor Richard Poczalski installing an emergency generator on this side of his house at 3677 Breckenridge Road. We understand the clearance will be about three (3) feet over the property line of our house at 3681 Breckenridge Road.”

In response to a question from Chairman Rybczynski, Mr. Poczalski stated that the emergency generator has to go in this location because all of the utilities are located there. He further stated his home is located on a corner, so the other side of his home is considered a front yard and generators are not allowed there.

Mr. Adrian stated that the Town Code being referred to does not pertain to generators, but rather to building structures and accessory structures. He stated that if this variance is granted, perhaps a condition of that approval should be that the Building Department recommend to the Code Review Committee that the verbiage in the Town Code be changed to include “equipment” in the relevant section.

Findings

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 5999.

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 – No.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – 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 #6001 Ralph and Deborah Demarco – Requesting two (2) area variances for a detached garage at 6665 Heltz Rd (Zoned R-A)

Mr. Ralph Demarco, applicant, stated that he would like to construct a detached garage to store his motor home and antique car.

In response to a question from Chairman Rybczynski, Mr. Demarco stated that the garage would be for his personal storage and there would be no living space inside.

In response to a question from Mr. Adrian, Mr. Demarco stated that he does own the property across the street and the Bobcat that is there is his. He stated that he does not intend to store that in the new detached garage because it was only there to remove an existing carport and it will be removed from the property.

Findings

Ms. Falkiewicz made a MOTION, seconded by Mr. Adrian, to approve Application # 6001.

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 – This could be considered substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – No.
5. Whether the alleged difficulty is self-created – Yes because the request is to house the applicants’ toys, but the balancing test favors the applicant.

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

Application #6002 Starbucks – Requesting one (1) area variance for a detached sign at 3670 McKinley Parkway (Zoned C-2)

It was determined that no one appeared on behalf of this request.

Application #6003 Bruce Monckton – Requesting two (2) area variances for a residential lot at 3648 Old Lakeview Road (Zoned R-1, R-A)

Attorney Richard Friedfertig, representing the applicant, stated that Mr. Monckton would like to subdivide this property and was informed by the Planning Board that two (2) variances are needed. He noted that Drew Reilly from Wendel and Tim Willard, acting Supervising Code Enforcement Official, had a difference of opinion as to whether the variances were required and could not come to a consensus so it was determined that the applicant would apply for the variances.

Attorney Friedfertig stated that the new lot would have 25.5 feet of frontage along Lakeview Road, which was legal in 2003 when the lot was created and approved by the Planning Board. He noted, however, that the Town Code has been changed since then and now the required frontage is 30 feet. He stated that it was determined that because this lot is the subject of a two-lot subdivision request, the legal non-conforming status of the road frontage would be voided. He further stated that the road frontage of Mr. Monckton’s current lot (69 feet) was legal in 2003 when it was created, but since then the

Zoning Code has been changed and the required road frontage is 100 feet.

Attorney Friedfertig stated that Mr. Moncton's lot as it exists today was created in 2003 and approved by the Planning Board with the 69 feet of frontage on Old Lakeview Road and 25.5 feet of frontage on Lakeview Road. He noted that the driveway on Lakeview Road would be between 12 and 14 feet wide with a five-foot buffer on either side, so there is sufficient property to do that.

Chairman Rybczynski stated that the Supervisor Code Enforcement Official previously indicated that no variances are needed and the discussion should have ended at that point.

Attorney Friedfertig stated that his client's request for the two-lot subdivision has been tabled and he received an email from Mr. Reilly indicating that the variances must be received in order for the Planning Board to move forward with its review.

Chairman Rybczynski noted that the Planning Board does not decide whether variances are required.

Chairman Rybczynski stated that Mr. Moncton received signatures on a letter of support from property owners at the following addresses:

- Amy MacIntosh, 3537 Lakeview Road
- 3575 Lakeview Road
- 3647 Old Lakeview Road
- 3651 Old Lakeview Road
- 3658 Old Lakeview Road
- 3661 Old Lakeview Road
- 3664 Old Lakeview Road
- 3641 Old Lakeview Road
- 3630 Old Lakeview Road

Attorney Friedfertig stated that the variance requested on Lakeview Road is minimal and the 25.5 feet of frontage was in compliance when the lot was originally created.

A member of the public stated that he lives adjacent to the 25.5 foot strip of land. He stated that if approved for a driveway, it would be extremely close to the two (2) existing driveways on either side. He stated that he thinks that there would only be approximately two (2) feet between his property line and the new driveway. He stated that he does not know where the new property owner would put snow and noted that there is a concern about a home being placed on the new lot regarding water, the location of utilities, etc. He stated that if a driveway is allowed on the 25.5-foot strip of land it would devalue his home and he would be concerned about children's safety.

Board members reviewed the layout of the proposed two-lot subdivision.

Amanda Habermill, 3531 Lakeview Road, stated that when she purchased her property 15 years ago, she knew there was the 25.5- foot strip of land adjacent to her property. She stated that it is a very narrow strip of land and there is very little room between the two properties. She stated that snow removal and safety are a concern, as are the visual aesthetics of the proposed subdivision. She stated that her property would be devalued if a driveway is put in next door.

Ms. Habermill showed Board members pictures of the driveways on either side of the proposed new driveway area, as well as the view from her back yard and driveway of the proposed driveway area.

Mr. Paul Dewalt, 3525 Lakeview Road, stated that people in the area have invested a lot of time and money into their properties and cannot envision granting a driveway into the property. He stated that there is a valid reason why the Zoning Code is written the way it is and it should be adhered to.

A member of the public residing at 3553 Lakeview Road asked to see the proposed subdivision layout. He stated that he does not think there is enough room for a driveway where it is proposed.

A member of the public residing at 3547 Lakeview Road stated that when the subdivision of nine (9) lots along Lakeview Road was approved in 1999, there was to be no further subdivisions.

A member of the public residing at 3547 Lakeview Road stated that all of the people who bought homes along Lakeview Road in this area were told by the owner of Alliance Homes that the property behind them (Mr. Moncton's property) was farm land that would never be built on. He stated that Mr. Moncton has been a good neighbor.

Chairman Rybczynski stated that before a decision can be made, the Planning Board minutes from 1999 must be reviewed relative to the subdivision of the lots along Lakeview Road.

Findings

It was determined that this application would be left on the table.

Chairman Rybczynski stated that research will be done on the Planning Board minutes.

Application #6004 Rylie Podger – Requesting two (2) area variances for domestic fowl at 4671 Carlyes Ct (Zoned R-3)

Ms. Rylie Podger stated that the variances requested are for overall square footage of her property and its width. She stated that she has no neighbors to the rear of her property and the adjacent neighbors own chickens at another location and are used to them. She noted that she would only have female chickens per the Town Code, they

are relatively quiet and are not free range. She further stated that she has a privacy fence.

In response to a question from Ms. Falkiewicz, Ms. Podger stated that her neighborhood does have a Homeowners' Association (HOA) but it is just for mowing the areas around the pond. She further noted that she does not have written correspondence from the HOA that chickens are allowed.

In response to a question from Mr. Smith, Ms. Podger stated that she has only been living in her home for one (1) month.

Findings

Mr. Dimpfl made a MOTION, seconded by Mrs. Hahn, to approve Application # 6004.

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 – This could be argued on one of the variance requests.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – 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 #6000 Perennial Properties LLC – Requesting four (4) area variances for a commercial addition at 6666 Gowanda State Road (Zoned C-1)

Attorney Sean Hopkins, representing the applicant, stated that the proposed project involves a dramatic improvement to the facade of the existing building, as well as 2,052 sq.ft. and 600 sq.ft. additions basically doubling the size of the building. He also noted that 40 parking space are proposed. He stated that unlike most restaurants, this would be a mixed use endeavor because the owner (Ross Warhol) would be living on the premises.

Attorney Hopkins stated that to a large degree there already is pavement on the property in the right-of-ways of both Gowanda State Road and South Creek Road. He further noted that the project would actually increase the front yard setback of the

building from Gowanda State Road.

Mr. Ross Warhol, applicant, stated that he has been a Hamburg resident his whole life, traveled the world and attended culinary school. He stated that this project is his dream restaurant. He noted that there would be a bar and lounge area for patrons before they have their dinner and he would use the existing greenhouse on the site to grow vegetables for the restaurant.

Attorney Hopkins noted that the existing buildings on the site are vacant.

Attorney Hopkins stated that the variances being requested are as follows:

- Front yard setback (Zoning Code requires 40'; 34.48' is proposed - existing building is located 30.18' from the right-of-way)
- Parking setback from Gowanda State Road (Zoning Code requires 35'; 11.05' is proposed - existing parking is located in the right-of-way)
- Parking setback from South Creek Road (Zoning Code requires 35'; 10' is proposed)
- A business that sells alcohol must be at least 500 feet from a residential property. The closest residential property to this establishment would be 68.99 feet (3647 Riverview Drive).

Attorney Hopkins stated that although a variance is needed from South Creek Road for the proposed parking spaces, the distance of the parking spaces from the paved portion of South Creek Road would actually be 40 feet from the paved portion of South Creek Road, noting that the right-of-way is quite large. He stated that the variance needed on Gowanda State Road for parking spaces only pertains to a few spaces that encroach into that setback area and noted that, as with South Creek Road, the right-of-way is quite large and it would not appear that the spaces are right up on the road.

Attorney Hopkins stated that the section of the Zoning Code that refers to the distance an establishment that sells alcohol must be from a residential property is antiquated in his opinion. He stated that it is difficult to find property on which to place a neighborhood restaurant/bar without being in a neighborhood.

Attorney Hopkins stated that Mr. Warhol has established a good relationship with the owner of 3647 Riverview Drive and has indicated that if an issue ever arises he will make sure he addresses it. He noted that Mr. Warhol wants to be a good neighbor.

Attorney Hopkins stated that if the applicant had to comply with the parking setback requirements in the Zoning Code, he would only be able to provide 24 parking spaces, which would not be enough parking to make the project work.

Regarding the sale of alcohol, Attorney Hopkins stated that this establishment is not meant to be a night club or bar, rather a restaurant where patrons can have a drink before and/or during a meal.

Attorney Hopkins stated that the benefits of the project include a tremendous

investment by the applicant, the addition of green space and landscaping and the fact that this vacant property would become a vibrant location.

Attorney Hopkins reviewed the area variance criteria as follows:

1. Whether there would be an undesirable change in neighborhood character or a detriment to nearby properties - No.
2. Whether the benefit sought can be achieved by other means feasible to the applicant - No, because 24 parking spaces would not be enough.
3. Whether the request is substantial - No.
4. Whether the request will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – No, because this is a redevelopment project on a relatively small site and it does qualify as a Type II Action under SEQR.
5. Whether the alleged difficulty is self-created - The applicant does have knowledge of the Zoning Code and the difficulty could be viewed as being self-created, but this is an existing building on a vacant property and three (3) of the four (4) requested, if granted, would actually reduce the degree of nonconformity compared to what is existing.

Mr. Warhol stated that he has owned the property for over two (2) years and has been slowly making improvements to it. He noted that neighbors have been visiting the site and showing their excitement for the restaurant. He stated that none of the neighbors has expressed any concerns regarding the project.

In response to a question from Ms. Falkiewicz, Mr. Warhol stated that he plans to be open from Tuesday through Saturday from 5:00 PM till 10:00 PM and on Sundays for brunch from 11:00 AM till 3:00 PM.

Mr. Steve Dusza, 3655 Riverview Drive, stated that Mr. Warhol has been a good neighbor so far but he is concerned about the size of the proposed additions to the building. He stated that he is concerned about the added parking along South Creek Road, noting that there have been drainage problems in that area over the years. He stated that everything drains downhill from South Creek Road to Riverview Drive. He stated that he is concerned about lighting in the parking lot. He stated that other residents of Riverview Drive have concerns including the owners of 3647 Riverview Drive, who could not attend the meeting.

Chairman Rybczynski read the following correspondence from Deborah Missert and Michael Tomasello, 3647 Riverview Drive:

“In regarding to a meeting to be held on September 5, 2023 at 7:00 PM in Room 7B, my husband and I have serious concerns about the drainage situation on the nursery property, along with what exactly and how we will be affected by this variance. We,

however, are not able to attend this important meeting. Our neighbor, Steve Dusza, has our permission to speak on our behalf. We are just very concerned for the fragile environment we live in being next to Eighteen Mile Creek. Thank you and we look forward to speaking with you in the future.”

Attorney Hopkins stated that there is no drainage system on the applicant’s property now, so the drainage situation will improve with the construction of this project

Findings:

Ms. Falkiewicz made a MOTION, seconded by Mr. Dimpfl, to approve Application # 6000.

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, this project will actually make some of the existing conditions less nonconforming.
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 proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district – 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 Ms. Falkiewicz, to approve the minutes of August 8, 2023. All members voted in favor of the motion.

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

The meeting was adjourned at 8:40 P.M.

Respectfully submitted,
Nicole Falkiewicz, Secretary