

Town of Hamilton | 38 Milford Street | Hamilton, NY 13346
Zoning Board of Appeals Meeting - May 16, 2023
Town Office, Community Room

Board Members in Attendance: Chair, Harmon Hoff, Harvey Kliman, Lydia Slater, Jeff Schindler, John Pumilio, ZBA Secretary and Clerk Elisa Robertson, CEO Chuck Ladd

Absent: None

Others Present: Kerra Hunter (Dawnette Hunter is on the phone)

Chairman Harmon Hoff makes some opening remarks and begins the meeting at 7:00 PM
He introduces Kerra Hunter who is here representing her mother.

Resolution 2023-1: Motion to approve the Minutes from November 15, 2021.

Motion: Jeff Schindler, Second: Lydia Slater

Vote: Aye- 4 Nay - 0

Adopted: YES

Chairman Hoff had recused himself from that meeting, therefore, did not vote to approve minutes.

The Board discusses a former application from the minutes (Schaeffer, 11/15/2021) that had some action that needed to be done. There was concern that it had not been done. Chuck Ladd the Code Enforcement Officer has been to that property and the deck has been reconstructed to the required size. The issue has been resolved.

Dawnette Hunter, Area variance, Two-Family Home, 1787 Gorton Road, Tax Map # 169.-1-18.112

The applicant wishes to build a two-family home (one structure with two distinct residences in it) on a one-acre lot. There is some discrepancy between the taxable part of the lot (.98) and including the right of way (1.107). However, the lot would not have been allowed to be subdivided if it was smaller than one acre. The placement of the proposed house will comply with all setback requirements. This property is located between Sacco and Gorton Roads, tax map # 169.-1-18.112. The requirements for a two-family home in the AG/Residential district is 1.5 acres according to the Town of Hamilton Zoning Law.

This property has just recently gotten a 911 address, it is 1787 Gorton Road; This address is not on many of the materials because when they were filed the 911 address had not been established.

Miss Hunter owns the property to the north as well, they purchased two separate contiguous properties. Board member Schindler notes that the parcel # for the application ends in 112 and

the parcel highlighted on the last page of the SEQRA form is 113. Fortunately, for these proceedings the SEQRA form is not relevant.

Chairman Hoff turns the discussion over to Ms. Hunter. Ms. Kerra Hunter explains the application to the Board, her mother is on the phone for these proceedings as she was not able to make it from NYC. The survey for the property states that the lot is 1.107 acres.

Ms. Kerra Hunter and Chairman Hoff had a phone conversation and he informed her of the five criteria that the Board uses to make their decisions in these cases. She addresses each one

Standard #1: Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties? The applicants believe that the undesirable change to the neighborhood is negligible. The area between Sacco and Gorton is now just a big open lot. Two lots down, is essentially being used as a dumping ground for vehicle parts and timber. If anything, this would have a positive effect on the surrounding area because it will clearly communicate to anyone dumping; that this is a residential space. This will enhance the value of the area.

Standard #2: Can the benefit sought by the Applicant be achieved by a feasible alternative to the area variance? Based on the plan to accommodate the family this is the most ideal. One thing that they have looked at as an alternative solution... they have had this lot about 4 years. Years ago they discussed with the builder a different type of wall, which would make it be considered a single family home, even though there would be two distinct living environments. That is the only solution that they could come up with.

If the building does not have a firewall installed it would be considered a one family home. It could be a mother-in-law suite. CEO Ladd discusses two forms of egress would make it in essence a large one family house. Chairman Hoff reads the definition of a two-family dwelling. Two Family Dwelling : a building designed as a single structure containing two separate living units, each of which is designed to be occupied by separate permanent residences for one family. This definition is poorly written. Our definition does not mention a firewall. The applicant has a much simpler definition.

Standard #3: Is the requested variance substantial? There is a deficit of .39 acres, the applicant does not feel that this is not a large variance, however, she does not know what is or is not considered large. It is relative.

Standard #4: Will the variance have an adverse impact on the physical or environmental conditions in the neighborhood? The applicant feels that if the variance is granted it will have a positive effect by discouraging dumping. It will result in general upkeep of the area. They are not interested in cutting down mature trees, in fact, they are hoping to add more trees.

Standard #5: Is the difficulty self-created? The alternative according to the applicant is to build a huge house, this is a smaller footprint than a single-family unit. That would be very cost prohibitive. They are looking for a multi-generational living arrangement and still give her

mother some privacy on one side and she would be on the other. According to the applicant the difficulty is not self-created.

She would also like to point out that there is road access on both sides of the property and the current plan has the house at 3,500 square feet with each side being 1750 per unit.

There is discussion among the board about the surrounding properties and what types of homes are on them. After much contemplation it is determined that there is one residence nearby that is a multi-family dwelling. There is another two-family dwelling, but it is just off the tax map that has been provided. It is very nearby.

Board member Kliman clarifies the Zoning Law, a one-acre plot is adequate for a single-family home; for a two-family unit 1.5 acres to build a duplex and additional units can be added if you have an additional 10,000 square feet per unit. He sent an email to other Board members about what could be done if the two lots were combined. There is a discussion by the Board about different options if the lots were combined. This may affect resale and cause complications in the future.

The applicant does not wish to combine the lots. Each lot will be for separate families. The Board understands that and respects that, but they want the applicant to know that if they do not receive the variance that they may have other options. If they did combine lots and put two buildings on it there may be a condition that the two lots may not be able to be subdivided. The question is asked if a mother-in-law suite is part of the structure does that make it a single-family home? Our Zoning Law does not have a provision for ADU's (Accessory Dwelling Units). One question that is asked by CEO Ladd is if there will be separate electric services and heating on each side. Septic and wells can be shared. Our definition of two-family home does not address those issues.

CEO focuses the group's attention back to the current application. That needs to be decided first. The Zoning Board needs to look to the future, not only what this applicant wants to do with the property, but what the implications may be later. There is the option that they build a one-family; considering that they are all related and just have distinct areas for each occupant.

There is some discussion as to the amount of variance. In the past the board has loosely stuck with 10% as being reasonable amount to grant the variance. This is a substantially larger percentage. The property will not be able to be owned by two separate owners but only one owner. One tax role owner.

The applicant wants to be close to her family but have her own privacy. Board member Pumilio states that the family has given this careful thought and that they should consider the application as is. Then if the Board decides not to grant the variance it appears that there may be multiple possible solutions.

There is some discussion of cost and what would be less expensive. It is possible that they may not need a variance at all. They can make a single-family home with a separate living space for

mom without the firewall and foundation. It would have to be designed as such. The variance can be granted and then they decide to change the plan to make it a single-family home. The difference is that it could not be sold separately; however, it couldn't be sold separately anyway.

Some of the criteria the board uses to make its decision is to take into consideration "the benefit to the applicant as weighed against the detriment to the health ,safety, and welfare of the neighborhood or community..." (page 69 Section 10.1-3B).

The Board begins to review the five criteria.

Standard #1: Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties?

One Board member states that here is nothing "undesirable" about this application. There are other two-family dwellings nearby, so therefore does not negatively affect the area. Another Board member counters that if there are duplexes in the area that it devalues the single-family homes in the area. That would make this area a mixed-use area. There is some talk about the upcoming zoning revision and how this may match up with some of the goals in that document. This application would be supported by the comprehensive plan as well. It is argued that by placing a duplex on a one-acre lot that the Board has basically changed the Zoning.

Considering that this would not be the only two-family home on this block it doesn't seem out of character. There would be a nice new home instead of an empty lot or dumping ground.

Standard #2: Can the benefit sought by the Applicant be achieved by a feasible alternative to the area variance? The board has already discussed this at length.

Standard #3: Is the requested variance substantial? The Board agrees that it is substantial. One Board member states that if one looks at this specific spot, it is locked between two roads with only a few lots in that area, it can be its own neighborhood and the variance can be specific to this location because of that. This is a fixed geographic area, so it seems unlikely that this precedent would "spread". The major concern is that a developer would come in and argue that since this was done in one place why not in other places? It could create a domino effect. The Board discusses some other applications that have had some similarities.

Standard #4: Will the variance have an adverse impact on the physical or environmental conditions in the neighborhood? The Board agrees that there would be no significant impact.

Standard #5: Is the difficulty self-created? This is relevant to the decision but will not preclude the granting of an area variance. They do not have to put two families here. Yes, it is a self-created hardship. The applicant has been pigeonholed by the definition of "two family home"; had they used different terms with the builder and or other officials this may not have been labelled that.

The Town is currently rewriting its Zoning Law, it is unclear how this may change things through definitions or tables, the Board must work with the current Zoning Law. This new law should be up for public review soon.

Board member Kliman feels that if this is granted that it would change the character of the neighborhood. He feels that it implies that duplexes could be built on every single one of these lots. The fact that there are already some multi-unit living spaces; be it illegal or not, has no bearing on this. He feels that granting this would have an undesirable effect on the Zoning Code of the Town. His argument is that the underlying creation of a neighborhood is the Zoning.

Board member Pumilio states that granting this would support the Comprehensive Plan of the Town. This is not the criteria that the board will use, however, the character of the community is that there is a multifamily dwelling very nearby. Board member Slater asks if a multigenerational living space is a two-family dwelling. It comes down to what is stated on the application and the construction of the building.

The applicant could bring in anyone to live in the other unit, it would not have to be her mother. The Board should take that into consideration as well. The Board cannot speak to the ownership of the building that is not part of the definition.

The question is: will the Board be willing to grant the variance based on the definition of a two-family dwelling in the Zoning Law? After the discussion if they do not grant it, the applicant will still have other options. The Board has differing opinions about #1, and #3.

Chairman Hoff brings the Board's attention to the law:

Section 10.1-3B. *In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making this determination the Board shall also consider: 1-5*

Chairman Hoff contends that the Health Safety and Welfare of the neighborhood and community is more important than #'s 1-5. They take priority. The law does not require the Board to weigh one or two of the criteria more than the others; but it does require them to focus on the health, safety, and welfare of the community. As a Board they need to substantiate what they do, they cannot make decisions without reasons why they made their decision. The Board revisits the statement regarding health, safety, and welfare of the neighborhood or community. There is some discussion that there is no real concern for these things with the applicant but if in the future it sells to another party and they rent to people with undesirable behaviors, perhaps. This is something that could potentially happen anywhere. Our zoning law does not speak to a two-family home that can be owned by separate owners it does mention condos/multi-family dwellings. Chairman Hoff hopes that the zoning revision committee will look more closely at this. The Board agrees that this application is not detrimental to health, safety, and welfare of the community.

Resolution 2023-2: Motion to open the Public Hearing regarding the application for an Area Variance made by Dawnette Hunter.

Motion: Jeff Schindler, Second: Harvey Kliman

Vote: Aye- 5 Nay - 0

Adopted: YES

Resolution 2023-3: Motion to Close the Public Hearing regarding the application for an Area Variance made by Dawnette Hunter.

Motion: Jeff Schindler, Second: Harvey Kliman

Vote: Aye- 5 Nay - 0

Adopted: YES

Chairman Hoff asks Ms. Hunter if she has anything else to add to the proceedings. She reiterates the reasons why she and her mother believe the area variance should be granted. She thanks the Board for their time. If the variance is granted the Board does have the right to set some conditions.

Though the Board does not and cannot control ownership they can set a condition that the property be owned by one owner. One unit cannot be sold, it can be rented but not sold.

Board member Kliman would like to be on the record with his comment that granting this variance would be wrong for the Zoning. It is too big of a variance to give and in his opinion, it would turn the town's one acre zoning to two family zoning. Because the potential for making money out of putting two units on a one-acre lot is substantial. He would deny the variance because it won't be able to be limited.

Chairman Hoff proposes that that may be good for the whole community. This Community is need of housing. Those issues will be addressed in the updated Zoning Law that is being reviewed now. Mr. Kliman states that while that may be true according to the current Zoning, he feels that granting this would be detrimental.

Board member Jeff Schindler says that he can see both sides of this issue; both are equally valid. Then again it is not detrimental to the health, safety, and Welfare of the community.

Board member Kliman counters with the idea that the community consists of the Comprehensive Plan and the Zoning that goes along with it. CEO Ladd states that he thinks this application may be good for the area right now, but in the future, it may be a different scenario. That's why the ZBA must think about all these factors when making decisions.

Board member Slater feels that the whole thing is semantics, this is a non-problem that became a problem because of a definition. She agrees with Mr. Kliman about the two-family home but she doesn't feel that that is what this is. CEO Ladd Points out that the drawing is a of a two-family home.

Chairman Hoff affirms that if this variance is granted the Hunters could sell it in the future, there would be one owner and two different families occupying it. This decision would have to stand. The way he feels is that this situation would not affect the health, safety, and welfare of the community and it wouldn't be an undesirable change. It would be good for this neighborhood, for it is a unique neighborhood. He thinks for the overall community it would be good to have more housing.

This is a tough decision for the Board. It is a balancing act. The CEO states that the worst-case scenario should be taken into consideration when making decisions. It might not be the case now or what is proposed but what it can become.

Board member Harvey Kliman contends that if the town had wanted to allow two-family homes on one acre it would be in the law. CEO Ladd agrees. Board member John Pumilio does not believe that if they grant this variance that it will set a precedence for the rest of the Town. He believes that this neighborhood is geographically unique enough that it will not spread to the rest of the town. He supports the variance due to the larger issue of the Comprehensive Plan. They are trying to preserve the rural character and one of the things they thought they would do; is to have density of development in certain areas. This is a prime place to do that development.

CEO Ladd also reminds the Board of the size of the variance. They need to remember that if another application comes in with a similar size variance that they would have to be more willing to entertain it. The decision made here can be far reaching.

Chairman Hoff speaks to NY state ZBA's and as they see here no one factor trumps the other factors; except for health, safety, and welfare; that is the overarching one. They can grant variances if they explain why. The Board in the past has used 10% as their guide for granting a variance, however there is no statute or any training to back that up.

Board member Jeff Schindler poses a hypothetical situation to play devil's advocate using the number of one-acre plots in the town. There is a short debate following this example. One side argues that two family homes in this neighborhood may be attractive to families or even developers. The other perspective is that there is nothing inherently wrong with having two family homes here, however that is not what is in the current Zoning Law.

Board member Pumilio states that he appreciates Board member Kliman's thoroughness and well thought out perspective on things even though they rarely agree. It makes him think. Board member Pumilio thinks that the strict interpretation of the law should not overshadow the larger requirement of health, safety, and welfare of the neighborhood. There is a discussion as to neighborhood versus community.

The reason why the one acre/one residence rule came into effect is to allow for water and sewer and in this case, it is not an issue. A one- or two-foot variance in one neighborhood may be very impactful but not in another. A major point is that each application is to be judged on its own criteria and its own application, with consideration that the Board has made these concessions before but that they do not have to do it again. It would be important, if this

variance is accepted that there be language in the decision as to why it was granted in this specific case. All of the houses in this area have their driveways on Gorton Road. There needs to be one deed for one tax map, therefore one owner.

Resolution 2023-4: Motion to grant the area variance to allow a two-family dwelling on parcel # 169.-1-18.112 as proposed to us by the Hunter Family.

Motion: John Pumilio, Second: Lydia Slater

Vote: Aye- 4 Nay – 1

Roll Call Vote

Chairman Hoff – AYE

Jeff Schindler – AYE

Lydia Slater – AYE

Harvey Kliman – NAY

John Pumilio – AYE

Adopted: YES

The Board appreciates the attendance of CEO Ladd.

Resolution 2023-5: Motion to adjourn meeting at 8:50 PM.

Motion: Jeff Schindler, Second: Lydia Slater

Vote: Aye- 5 Nay - 0

Adopted: YES

Respectfully submitted by
Elisa Robertson
Deputy Clerk