HAMLIN ZONING BOARD OF APPEALS MINUTES
Monday, June 15, 2020
7:30 P.M.

The regular scheduled meeting of the Hamlin Zoning Board of Appeals was held at the Hamlin Town Hall located at 1658 Lake Road, Hamlin and was called to order by the Chairperson, Norman Baase at 7:30 p.m. with the location of the fire exits and AED explained for those present. It will be asked that all cell phones and pagers be turned off for the duration of the meeting.

Roll call: Norman Baase, Rocky Ellsworth, Ed Haight, Jerry Hoffman, Carl Rath.

Present: Zoning Board Attorney Maureen Werner Esq., Dean & Betsy Brightly, Padma Kasthurirangan of Buffalo Renewables, Arthur Giacalone Esq., Town Board Liaison Jennifer Voelkl, Troy Nesbitt, Tricia Nesbitt, Jack Shelvin, Ann Yockel, Charlie Yockel, Michael Black, Shaun Mauger, Marlene Jensen, Rick Jensen, Joshua Vogt, Greg Vogt, Joe Hens of Ingalls Associates, Richard Dorf, Steve Denero, Rebecca Schicker.

Approval of the March 16, 2020 meeting minutes. Additions, deletion, or corrections to tonight's meeting. A motion was made by Jerry Hoffman, seconded by Rocky Ellsworth, to approve the meeting minutes of March 16, 2020 as recorded.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight abstain, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

The Chairperson Norman Baase read the legal notice publication.

PUBLIC HEARING
AREA VARIANCE **DEAN BRIGHTLY/BUFFALO RENEWABLES**
555 REDMAN ROAD

Application of Buffalo Renewables Inc., owner, Dean P. Brightly, seeking a height variance to install a 250- kW wind turbine on a 131' self- supporting monopole tower. Total height is 182'. We request a 132' height variance and a 137' side setback variance from the north property line to be located on residential property located at 555 Redman Road. Tax account# 005.01-1-5.1. This is in the R-VL zone within the AG district.

Chairperson Norman Baase opened the Public Hearing.
Anyone wishing to speak is asked to stand and state their name and address.

Attorney Arthur Giacalone was first on the schedule to speak. His letter that he read aloud for the record is attached.

Dan Courtney of 5672 West Wautoma Beach Road spoke in support of the project and that it should not have a height variance. He spoke on the savings that solar and wind could have on a communities' budget.

Matt MacDonald of 43 Cook Road stated that he has over 20 years' experience as an Audiologist. He read from a prepared statement for the record that is attached.

Troy Nesbitt of 52 Cook Road stated that he is against the wind tower project and agrees with Matt MacDonald that it is a health & safety issue.

Tricia Nesbitt of 52 Cook Road read from a prepared statement for the record that is attached..

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Andy Simpson of 1246 Moscow Road is against the project for the noise it will generate. 555 Redman Road is in the AG part of the farm. There are plenty of homes in that area and he feels it would change the atmosphere of the town. These AG wind towers are industrial structures. Brightly's impact would lower the quality of life within ½ mile or more. A study should be commissioned by the town for the level of ambient noise. This will stick out like a sore thumb.

Jack Shevlin of 768 Redman Road he is opposed to the project for the noise from the turbine. If it posed a health issue for somebody in the area what would we do about it if it was the case.

Chairperson Norm Baase responded he has exactly no comment until they find out how it will affect. If it was proven, it would be an issue to be discussed and talked about.

Chairperson Norman Baase read aloud the letter for the record provided by Kathy Habgood of 142 Cook Road.

Ann Yockel of 856 Redman Road stated that she is a resident of 15 years and is considered new folks. She wants to make sure that people are aware of the report from the audiologist. She is retired from 30 years from MVP Healthcare. She is not comfortable in supporting our neighbors in this endeavor and she is very uncomfortable in what they are being asked to do. She did not prepare for this discussion. This affects my life and my livelihood too. I cannot support the effect on me or my neighbors adversely. I plan on living here for the rest of my life.

Padma Kasthurirangan of Buffalo Renewables stated that the Brightly's hired me for this project. An acoustic report/extract was provided. A tractor makes noise. There are 61400 sets of standards for wind turbines that are based on size, noise and engineering. Many persons hire a third party to test and measure the noise. The extract was submitted and meets the standards. Unless the wind turbine is installed the noise cannot be tested. This is all conjecture, making claims that cannot be proven. It is a farm operation per Ag & Markets. If the town denies it is against the town. If there is no denial Ag & Markets do not get involved. It is approved by NYSERDA. We are waiting for a permit to be re-verified.

Chairperson Norm Baase asked if NYS has analyzed the sound?

Padma responded that a wind turbine has to meet all of the criteria to be installed in NYS. All of the test data for a turbine to be placed on a site.

Attorney Arthur Giacalone asked that no one questioned the accuracy of the one- page extract? What Dr. MacDonald used their figures to say how much time. No construction of the existing noise level. What ambient noise level over existing noise? So much greater during the day and objective at night. The WHO and the EPA increase over ambient noise levels. Wished he had a sound expert to provide real information to the board.

Padma responded that the turbine gets put up and then figure out the noise.

Chairperson Norm Baase asked how far was Mr. MacDonald from the site.
Attorney Arthur Giacalone stated 626 Redman Road, closest to the Brightly's. It was 11.5 decibels above the DES amount of increase.

Padma responded that wind speed will increase ambient noise. This turbine is 2-3 meters per second. No one can say that this equipment will make this noise at this time. It is a farm project and in the AG area. A farm by its very nature has sounds and smells. It would be more beneficial closer to the road but they are placing it behind the house to minimize the impact of their neighbors. They are increasing their costs to do this.

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Dean Brightly added that he takes care of his family and would not put up anything that would harm his family or neighbors. Tom Fleckelstein (sp) did investigate and went out and listened. He has personally gone out and seen everything.

Attorney Arthur Giacalone added that agents don't know how much noise it will make at their site. How can Mr. Brightly be sure about the noise and know about ambient sound level. Just because you move into an AG doesn't mean that you should be subjected to noise.

Chairperson Norm Baase asked if the audiologist actually tested on site or used other figures.

Attorney Arthur Giacalone responded I don't know. It was 1223 (approx.) feet away and it is objective at night. It is at least ½ mile away. It is his only documentation survey; he knows about sound and figures. It was performed a full week from June 7-13 using back round sound levels. He took the time to provide the information.
Padma responded that the further away you go it will be lower.

Chairperson Norm Baase stated that before we close the Public Hearing we want to make sure that everyone has had the opportunity to speak again. The clerk went outside and asked those who were still in the parking lot if they wanted to speak again. The persons asked stated no.

Chairperson Norm Baase closed the Public Hearing at 8:48 pm.

A motion was made by Ed Haight, seconded by Carl Rath to table this application until July 20,2020 so that the board may absorb all of the information provided including the sound report.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

PUBLIC HEARING
ARE VARIANCE **SHAUN MAUGER**
5708 WEST WAUTOMA BEACH ROAD

Application of Shaun Mauger, owner, Shaun Mauger, seeking relief from Town Code§520-29D No fence shall be erected in any front yard except for one of open and decorative design and not more than four feet in height. Open design shall mean the area covered by the fence will be a maximum of 50% opaque. Any wire fence in not allowed in a front yard. The applicant is proposing a six- feet in height wood privacy fence on the east side lot line. This is in the S/R zone, with the LWRP, Floodplain and C/O Area. Tax account# 008.16-1-7. These documents have been previously submitted for review.

Mr. Mauger represented himself before the board. He has removed bushes that were 8 -feet tall in the front water-side yard. He would like to replace them with a 6-foot privacy fence. There is already a 6-foot privacy fence on the west side of his yard. The LWRP has deemed it consistent and that it would not detract from neighbors' views.

Chairperson Norm Baase opened the Public Hearing.
It was asked that anyone wishing to speak to please stand and state their name and address.
There was no one present wishing to speak.
Chairperson Norm Baase closed the Public Hearing.

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 of health, safety, and welfare of the neighborhood or community by such grant. The Statute provides that in balancing the interests of the applicant and those of the neighborhood or community, the Zoning Board of appeals must consider the following five (5) factors:

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1. Whether an undesirable change will be produced in the charter of the neighborhood or a detriment to nearby properties will be created by the granting of the Use Variance. Board members commented no.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a Use Variance. Board members commented no.
3. Whether the requested area variance is substantial. The Board members commented no.
4. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood district. Board members commented no.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance. Board members commented no.

These five (5) factors were taken into consideration by the board.

A motion was made by Ed Haight, seconded by Jerry Hoffman to approve the application of Shaun Mauger, owner, Shaun Mauger, seeking relief from Town Code§520-29D No fence shall be erected in any front yard except for one of open and decorative design and not more than four feet in height. Open design shall mean the area covered by the fence will be a maximum of 50% opaque. Any wire fence in not allowed in a front yard. The applicant is proposing a six-feet in height wood privacy fence on the east side lot line. This is in the S/R zone, with the LWRP, Floodplain and C/O Area. Tax account# 008.16-1-7. The following documents have been submitted for review.

- Letter of Intent
- Area Variance Application
- Instrument Survey
- Photo of Property
- LWRP – Consistent – Will not detract from neighbor's view.
- This is a Type II SEQR

Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA

CEHA PERMIT **RACHEL & MICHAEL BLACK**
6348 SHORE ACRES DRIVE

Application of Rachel & Michael Black, owners, Rachel & Michael Black seeking a Coastal Erosion Hazard Area Permit to add a new portion of white vinyl fencing to the existing fence in the CEHA area. This is in the CEHA area, LWRP, & Floodplain. Tax account# 008.45-1-15. The following documents have been submitted for review:

- Letter of Intent
- Coastal Erosion Management Permit Application
- Site Plan for Location
- LWRP
- Photo of Property
- Fence Specs

Michael Black represented himself before the board. There is already an existing white vinyl picket fence in the rear road side yard. He would like to add to it for the safety of his children playing in the yard and not going near the lake.

A motion was made by Ed Haight, seconded by Rocky Ellsworth to approve the application of Rachel & Michael Black, owners, Rachel & Michael Black seeking a Coastal Erosion Hazard Area Permit to add a new portion of white vinyl fencing to the existing fence in the CEHA area. This is in the CEHA area, LWRP, & Floodplain. Tax account# 008.45-1-15. The following documents have been submitted for review:

- Letter of Intent
- Coastal Erosion Management Permit Application

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- Site Plan for Location
- LWRP – Consistent
- Photo of Property
- Fence Specs

Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA

COASTAL EROSION HAZARD AREA PERMIT **SCOTT HEPLER ULTIMATE DOCK SYSTEMS**
MARLENE & RICHARD JENSEN
7016 BENEDICT BEACH RTOAD

Application of Scott Hepler representing Ultimate Dock Systems, owners, Richard & Marlene Jensen seeking a Coastal Erosion Hazard Area Permit to build an 8' x 30' dock in Lake Ontario located at 7016 Benedict Beach Road. This is also proposed to include a 12' x 20' concrete component of the dock. The following documents are submitted for review:

- Letter of Intent
- New CEHA Permit Application showing changes to job scope
- Permit Application from 2017
- LWRP – consistent – no new patios are allowed in the NPFA

Scott Hepler of Ultimate Dock Systems represented the applicant before the board. The DEC permit for this project had expired and Mr. Hepler made changes to the scope of the project and for that reason a DEC extension permit was not required. This dock will now be 8-feet wide by 30-feet long. There will be a 12-foot by 20-foot concrete component of the dock. There will be stairs from the dock for water and land access.

A motion was made by Ed Haight, seconded by Carl Rath to approve the application of Scott Hepler representing Ultimate Dock Systems, owners, Richard & Marlene Jensen seeking a Coastal Erosion Hazard Area Permit to build an 8' x 30' dock in Lake Ontario located at 7016 Benedict Beach Road. This is also proposed to include a 12' x 20' to be a component of the dock. The components will be steel and concrete.
The following documents have been submitted for review,

- Letter of Intent
- New CEHA Permit Application showing changes to job scope
- Permit Application from 2017
- LWRP – consistent – no new patios are allowed in the NPFA

Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA

AREA VARIANCE **RICHARD DORF**
7330 SANDY SHORE DRIVE

Application of Richard Dorf, owner, Richard Dorf seeking relief from Town Code§520-21C(2)(a) which states that the minimum rear (roadside) setback is 35 feet. He is asking for a 6- foot variance to have a garage with a 29- foot rear setback. This is in the S/R zone and LWRP. Tax account# 007.09-1-11. The following documents have been submitted for review:

- Letter of Intent
- Area Variance Permit Application
- Instrument Survey
- Garage Building Plans

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Richard Dorf represented himself before the board. He is proposing to build a garage on the rear roadside area of his property. He is requesting a 6 ½ foot variance to have the structure 29-feet from the road.

A motion was made by Carl Rath, seconded by Rocky Ellsworth to schedule a Public Hearing on July 20, 2020 at 7:30pm for the application of Richard Dorf, owner, Richard Dorf seeking relief from Town Code§520-21C(2)(a) which states that the minimum rear (roadside) setback is 35 feet. He is asking for a 6- foot variance to have a garage with a 29- foot rear setback. This is in the S/R zone and LWRP. Tax account# 007.09-1-11. The board will be onsite on Saturday, July 18, 2020 after 10:30am to view the project and the variance required.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA
AREA VARIANCE **REBECCA SCHICKER**
9625 BEACHWOOD PARK

Application of Rebecca Schicker, owner, Rebecca Schicker seeking multiple variances to build a shed located at 9625 Beachwood Park. This is in the S/R zone and LWRP. Tax account# 001.16-4-11. The following documents have been submitted for review:

- Letter of Intent
- Photo of Shed
- Area Variance Permit Application

Rebecca Schicker and Steve Denero represented themselves before the board. They have started construction on a shed located at the rear end of their driveway. They will need multiple variances to continue.

A motion was made by Rocky Ellsworth, seconded by Ed Haight to schedule a Public Hearing for July 20, 2020 at 7:30 pm for the Application of Rebecca Schicker, owner, Rebecca Schicker seeking multiple variances to build a shed located at 9625 Beachwood Park. This is in the S/R zone and LWRP. Tax account# 001.16-4-11. The board will be onsite on Saturday, July 18, 2020 after 10:30am to view the project and the variances required.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA
AREA VARIANCE **JOSHUA VOGT**
3869 ROOSEVELT HIGHWAY

Application of Joshua Vogt, owner, Joshua Vogt, seeking relief from Town Code§527-27C to erect a garage 10.5 feet from the side lot line where the code requires a 15 -foot side setback. This is in the R-VL zone and in the Ag district. Tax account# 020.030-01-003.260. The following documents have been submitted for review:

- Letter of Intent
- Area Variance Application
- Instrument Survey Map
- Photo of property

Joshua Vogt represented himself before the board. He is asking for a 4.5- foot side setback variance to place his proposed garage 10.5 feet from the side lot line. This will be attached to the existing garage.

A motion was made by Carl Rath, seconded by Rocky Ellsworth to schedule a Public Hearing on July 20, 2020 at 7:30 pm for the application of Joshua Vogt, owner, Joshua Vogt, seeking relief from Town Code§527-27C to erect a garage 10.5 feet from the side lot line where the code requires a 15 -foot side setback. A 4'5-foot variance is requested. This is in the R-VL zone and in the Ag district. Tax account# 020.030-01-003.260. The board will be onsite on Saturday, July 18, 2020 after 10:30am to view the project and the variances required.

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Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

AGENDA

AREA VARIANCE **HELIOS ENERGY LLC/ EUGENE DOLLARD**
980 REDMAN ROAD

Application of Helios Energy LLC, owner, Eugene Dollard seeking a height variance for a 7-foot fence to be installed around a solar facility proposed to be called Helios Hamlin Solar farm and to be located at 980 Redman Road. Town Code§520-29B states that no fence shall erected in any rear yard higher than 6-feet above the highest point of ground directly below the fence. Town Code§520-29C states that no fence shall be erected in any side yard higher than 6-feet above the highest point of ground directly below the fence. This is in the R-VL zone. Tax account# 012.02-1-3. The following documents have been submitted for review:

- Letter of Intent
- Site Plans
- Area Variance Application

Joe Hens of Ingalls represented the owner before the board. They are asking for a 1-foot height variance to have a 7-foot high fence to be located at the proposed solar facility at 980 Redman Road.

A motion was made by Ed Haight, seconded by Carl Rath to schedule a Public Hearing on July 20, 2020 at 7:30 pm for the application of Helios Energy LLC, owner, Eugene Dollard seeking a height variance for a 7-foot fence to be installed around a solar facility proposed to be called Helios Hamlin Solar farm and to be located at 980 Redman Road. Town Code§520-29B states that no fence shall erected in any rear yard higher than 6-feet above the highest point of ground directly below the fence. Town Code§520-29C states that no fence shall be erected in any side yard higher than 6-feet above the highest point of ground directly below the fence. This is in the R-VL zone. Tax account# 012.02-1-3.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

DISCUSSION

Maureen L. Werner Esq. - Legal Department – No new news
Cheryl J. Pacelli - Building Department – Issued 54 permits last month
Jennifer Voelkl -Town Board – The ad for a new Assessor has been posted as Dan Stanford has resigned.
ZB Wksp will resume on July 18, 2020 at 7:00pm. Agenda – Camping Trailers.
The Public Hearing for the Lakefront Sewer Project should be scheduled soon.
Highway is working on the Redman Road water line project.

ADJOURNMENT

A motion to adjourn barring no further business was made by Ed Haight, seconded by Rocky Ellsworth.
Members polled: Norman Baase aye, Rocky Ellsworth aye, Ed Haight aye, Jerry Hoffman aye, Carl Rath aye. All in favor. Motion carried.

Minutes Respectfully Submitted by:

Cheryl J. Pacelli
Clerk to the Zoning Board of Appeals

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The next scheduled meeting of the Hamlin Zoning Board of Appeals will be held on Monday, July 20, 2020 at the Hamlin Town Hall located at 1658 Lake Road, Hamlin. The deadline for all applications and fees is July 7, 2020 at 12 noon.

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