

Town of Hamburg
Board of Zoning Appeals
June 2, 2026
Minutes

The Town of Hamburg Board of Zoning Appeals met for a Regular Meeting on Tuesday, June 2, 2026 at 7:00 P.M. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Ric Dimpfl, Vice-Chairman Nicole Falkiewicz, Commissioner Jeff Adrian, Commissioner Mark Yoder, Commissioner Dennis Chapman, Commissioner Jack Kuebler and alternate Commissioner Catherine Mika filling in for Commissioner Laura Hahn.

Also in attendance were Code Enforcement Officer Jeffrey Skrzypek and Board of Zoning Appeals Attorney Joseph Gogan.

Board members recited the Pledge of Allegiance.

Chairman Dimpfl asked for a moment of silence in honor of our active military and those who have made the ultimate sacrifice.

Chairman Dimpfl pointed out the location of the two (2) fire exits in the room.

Commissioner Hahn read the Notice of Public Hearing.

Application # 6150 Donald Spittler – Requesting one (1) use variance to allow for a tier 3 battery energy storage system at 6433 Railroad Ave (Zoned NC)

Sean Hopkins spoke on behalf of RIC Development LLC. Andrew Welch, Director of Development for RIC Development appeared too. Both men spoke on behalf of the property owner Donald Spittler. Hopkins stated that they are not here to ask for a decision tonight because the project is subject to a state environmental review. On May 20th, the Planning Board did adopt a resolution seeking lead agency status, and that 30 day comment period will not expire until the end of June.

Welch spoke first. RIC Energy is a company that delivers sustainable energy projects to meet the growing needs of communities. They are headquartered in New York. Most of their projects have been in New York. They want to build a battery energy storage system at 6433 Railroad Ave. This land is currently undeveloped, forested, and in between two railroad tracks. It is zoned Neighborhood Commercial and was previously Industrial. The parcel is approximately 2.6 acres. They want to locate two retail energy projects that are each 5 megawatts; the cabinets for each of the batteries are 1 megawatt, so each project has 5 cabinets. This will take up about 14,000 sq. ft. total. Each unit is about the size of a fenced in tennis court. These will be remotely monitored 24 hours a day and have no personnel on site during normal operating hours. This location connects to an existing distribution line. They are hooking into the local distribution in the Town and this will provide within the grid of the Hamburg area.

Hopkins explained that they need a use variance because this property is currently zoned Neighborhood Commercial. It was previously zoned Industrial. This is part of the hardship to the existing property owner. On May 1st the ZBA application was submitted with thorough supporting documentation. The variance they are seeking pertains to section 280-393 of the zoning code that states “tier 3 battery energy storage systems are only permitted in industrial zoned areas through the issuance of a special use permit and subject to the uniform code and site plan requirements.” The Zoning Board is not the only board that will have to approve this; there needs to be approvals from the Planning Board and Building Department. This was presented to the Planning Board on May 20th on an informal basis. They were comfortable with the presentation to the Zoning Board this evening. The SEQR process is underway. As they receive any comments back they will address those in writing and will give copies to the Zoning Board and Planning Board. They have entered into interconnection agreements with National Grid as of September 4, 2025. Those agreements state National Grid has bought into what is being proposed and they are a well-known utility company.

Welch stated the technology they would be using is the Tesla Mega Pack 2XL. This is an iron phosphate battery. Iron phosphate has excellent energy density and the safety record is excellent. It will be monitored and there will be thermal imaging and cameras to make sure nothing is going on in there. It is not one battery that is sitting inside these cabinets—it is actually thousands of cells inside each cabinet. Each individual cell is about 6 in by 6.5 in by 2 in thick. The cell goes into a tray and the trays go into a module, 3 trays per module, and 24 modules per cabinet with containment walls between them. The critical part is the battery management system. This is what monitors the conditions of every single battery at all times. It sends the information over to the monitoring center that Tesla runs. The top of the cabinet has both heating and cooling so the optimal temperature can be kept. These are designed to be 5 megawatts and discharge over a 4 hour period. Every day when the peak load comes, this would come in, and it would provide power into the local grid, and easing the load from having to turn on additional generating assets. There will be less of a need to build more transmission lines, more substations, more conversion and distribution lines because they are meeting that demand at the highest stress period from within, destressing all of those systems. The peak time is anywhere between 2pm and 8pm; from 3-7pm is when the load gets the highest in New York. The rest of the time and overnight the cost of power goes down. We have a lot of nuclear plants and different facilities that don’t want to turn down at night. So when that load goes down and they keep generating, that becomes a way to use that low cost power to charge these batteries, and then deliver that low cost power later on during that peak period.

Hopkins stated that usually when he comes before the board it’s very clear—either a use variance governed by Town Law section 267 B2B or an area variance governed by Town Law section 267 B3B. This project is a little bit different because it is governed by a different test. That test was first established all the way back in 1993 in the case called Consolidated Edison Company of New York vs. Hoffman which dealt with cellular technology. The public utility standard is if the company provides an essential service, which this is, we need to show the following criteria: (1) the relief is required to render safe and adequate service (2) there are compelling reasons, economic or otherwise, for needing the variance. This commonly referred

to as the Rosenberg Test. Back then and prior it applied to cell and nuclear, and now it's been expanded. A decision that was issued in the 2024 case of Freepoint Solar LLC vs. the Town of Athens Zoning Board of appeals extended that test to solar projects. Solar projects are not done by public utility companies; they are done by a third party. With this decision and because they are not a "public utility", this standard applies to this project too. These are relatively new projects in New York state so there is not much case law. There is a case that is currently pending where one Town has determined that in their opinion, this standard does not apply. There was also a decision issued by the city of White Plains Zoning Board of Appeals that basically held otherwise, that this standard does apply. The electric industry used to be very highly regulated. It has been changed and restructured. This project is similar to other types of alternative technology; the most recent example would be solar. They think this reasoning definitely applies here. This is also consistent with decisions made at the state level, whether you agree with them or not. In 2019, The Climate Leadership and Community Protection Act was enacted by the state legislature. It is one of the most ambitious climate laws in the nation. It requires New York to reduce energy wide greenhouse gas emissions by 40% by 2030, and no less than 85% by 2050, back to 1990 levels. In order to meet that requirement, there is a need for 6000 megawatts of energy storage by 2030. This will make a small dent but it will serve Hamburg. The two variance criteria for the Rosenberg Test were reviewed as follows: (1) is the facility necessary? Yes, based on the legislation adopted by the state in 2019. Municipalities need to have these facilities in place and they believe this is the ideal site in the Town of Hamburg for many reasons (2) Compelling reasons: these cannot be located just anywhere; they need to be in close proximity to existing utility infrastructure, which this site is. This won't result in many adverse impacts. The project is very small on this site. It should not have any adverse impacts. They have evaluated other sites, but this is the ideal site for Hamburg. There is a need for more power in 2026 for things like electric cars, AI, etc. They also believe they have justification for the use variance under the four traditional criteria as well. (1) The applicant cannot realize a reasonable return provided that return is substantial demonstrated by competent financial evidence (2) The alleged hardship relating to the property is unique as does not apply to a substantial portion of the district or neighborhood (3) the requested use variance will not alter the essential character of the neighborhood (4) the alleged hardship has not been self-created. Hopkins stated that the current property owner is in attendance this evening. The traditional variance criteria were reviewed as follows: (1) The NC Zoning District allows uses such as two family dwellings, commercial up to 2,000 sq. ft., funeral homes, bed and breakfasts, etc. It is their position that none of those uses that are expressly permitted in the now existing zoning district are capable of realizing a financial rate of return. Why? This site does not have frontage, it is located between two rail road tracks, and because of this the allowable uses of the NC district won't work at this location. (2) they think this truly falls into the category of unique especially because of the location between two train tracks which does not permit any viable uses. If you compare this site to the other parcels in the vicinity, there are numerous parcels currently zoned NC with frontage but have not been developed. (3) They have submitted a part one of the full environmental assessment form at the request of the Planning Board. There has been plenty of documentation submitted to support this. (4) The property owner was the owner when the Town decided to change the Zoning from Industrial to NC. They believe they meet the criteria for both the public utility and traditional use variance standards.

Welch stated that this technology has accepted lithium ion batteries as something that is allowed. There is a battery storage facility already in the Village of Blasdell. There are many standards that apply to this projects—National Fire Protection, New York State Fire Code, etc. There has been extensive testing for safety. The Tesla Mega Pack 2XL has about 25,000 units in operation in the US and there have been no failure incidents. Again, there is continuous monitoring to ensure safety as well. FDNY has analyzed and approved this model.

Chairman Dimpfl asked who they intend on consulting for an emergency response plan. Welch stated they are using a company called ESG. The NYS Fire Code requires them to train annually. Commissioner Dimpfl asked them to get a hold of the Town of Hamburg emergency response team. Sean Crotty is in charge of that. Also to let the Lakeview Fire Department knows to set up a drill. Welch stated that the firefighters need to train annually. Hopkins stated that at the Planning Board meeting, John Macon was there from County Emergency Services and he did not seem to have any concerns.

The Board had no further questions.

Findings:

Chairman Dimpfl stated this would be tabled while the Planning Board finishes their review.

TABLED

Application # 6151 Kristine Sands –Requesting two (2) area variances for a proposed shed at 4017 Connors Way (Zoned R-2)

Kristine Sands and her husband spoke on the variance. They are looking for a 7 or 8 foot shed in their backyard. There is only one spot they can put it in. Right now they can't park their car in their garage because it is holding all of their stuff. They would like to put these items in a shed and park the car in the garage because their car was just recently broken into. They have an easement in the backyard behind their pool so this is why they can only place the shed in one spot. It will be close to their fence but there will still be some space. The builders require a certain amount of space away from the fence to be able to build as well.

Commissioner Falkiewicz asked if they spoke with their neighbors to see if they had a problem with it. They said yes they did and they don't have a problem with it.

The Board had no further questions.

Findings:

Ms. Falkiewicz made a motion, seconded by Mr. Adrian, to approve Application # 6151.

Ms. Falkiewicz reviewed the area variance criteria as follows:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – No

- Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – No
- Whether the request is substantial – It is not
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – No
- Whether the alleged difficulty was self-created – That can go either way but the balancing test still favors granting the area variance.

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

Application # 6152 Ira Butler – Requesting three (3) area variance for domestic fowl, location of coop, and size of lot per R1 criteria at 3678 Sixth St (Zoned R-3)

Ira and Jess Butler spoke on this variance. Ira Butler stated that he did not know about the lot size criteria square footage. He got his bird four years ago and they have been with him since then. He was not aware that there was a rule against having pigeons. He is a member of the Buffalo Fancy Pigeon Club. None of his pigeons are racers and they do not free fly because of the hawks and Ford Plant nearby. His birds are fancy birds. They are more show birds. These pigeons have been in the Erie County Fair for the last four years. Last August he started to build a new loft. He did this because there was limited access for a wheelchair to get through when he had visitors over to see the birds. There was no access for any animals to get in.

Chairman Dimpfl asked how many pigeons are on the property right now. Butler stated that there are 32. Chairman Dimpfl asked if he knew this was a violation. Butler stated that now he does. Travis, one of the Building Inspectors, came to the house in April 2026. The first complaint for the pigeons was in November 2025. Butler came into the office in November 2025 and worked with Travis to get a shed permit for a shed and a loft. Then Travis came back in April 2026 because there was another complaint about bird feces in the yard. He remembers that was on a Monday the same day as the town board meeting. The next day Travis called him and let him know that his neighbors complained at that meeting about the birds. He said the birds have been here for four years and there has never been an issue until November 2025. He was not aware of needed a permit for a shed when he bought the house in 2021. He went to town hall and asked if he needed a permit to tear down his back porch. He was told no because there is no electrical. At that time he asked about the shed/loft he built out of pallet wood. This structure was there until August when he broke it down and started to build a new one, not knowing that there were rules about how far it could be from the property lines. When he was aware of this he spoke with Travis again to work on getting it fixed. He pulled it away from the fence and turned it so it was in compliance. Travis found no feces or issues. Chairman Dimpfl and Commissioner Falkiewicz asked him if he was aware that the shed and coop are two separate structures. Butler said yes Travis clarified that in April 2026 and it was his misunderstanding.

Jess Butler stated that this is their first home and they didn't know. She said that when they were told they needed the permits they came and got them. She stated that they thought they could not have chickens because it says no poultry, and they did not know pigeons were considered poultry. They do not sell the feathers or keep the eggs to raise the birds. They do not race the birds or use them for meat—they are show birds. They are both part of the pigeon club and Butler is the president. Their goal is to get the birds back in the schools. They are planning a show at the Blasdell Fire hall. She stated that they do not breed the birds or allow them to have babies. She uses the eggs and their feces as compost for her garden. The compost bin is rodent proof. They have other rodent deterrents. She stated that inspectors have been out to her house without prior notice and it has been completely clean every time.

Commissioner Falkiewicz asked how many pigeons they started with before they knew they could not have them. Ira Butler stated that they started with 6. Commissioner Falkiewicz asked over how long of a period. Butler stated 4 years. Commissioner Falkiewicz noted that in four years 6 pigeons turned to 32, and they didn't think that would be a problem. Butler stated that it was not an issue when he has 29 birds, but again they were unaware that the Town Code has limits to how many pigeons they could have. Butler understands that he didn't ask permission. He just acquired 6 more birds in the beginning of the year after a member of the Pigeon Club passed. These are included in the total of 32 birds. Commissioner Falkiewicz said that they already knew it was a violation and they still acquired more. Butler stated that they did not know the number of birds they had was a violation until April 2026 and they acquired the 6 additional birds in the beginning of the year. In November 2025 they spoke with Building Inspection about a violation for where they placed the shed/coop and not having a building permit. In April 2026 Building Inspection became aware about the amount of birds and that is when that violation happened.

Code Enforcement Officer Jeff Skrzypek stated that in November 2025 the site visit was for the shed being built without a permit. A permit was obtained and the shed was moved where it had to be. That violation was closed as a shed. It was not until April 2026 that Building Inspection became aware about the birds. Commissioner Adrian asked how this was initiated. Skrzypek stated that it was from a complaint. Commissioner Falkiewicz asked if there were any open violations. Skrzypek stated that technically they have not seen the birds outside. Travis looked for bird seed and bird feces on the ground and he did not find anything. There was a complaint about the rats. Originally they thought the birds were Parrots, but then they found out they are pigeons when they started talking.

Commissioner Chapman asked if he has any chickens. Butler said no. Commissioner Chapman asked if he has ever been cited for anything. Butler said no. Commissioner Chapman asked Skrzypek to clarify that everything was fine until April. Skrzypek said yes, April 2026 is when they learned about the pigeons. Butler was told he either has to get rid of them or try for a variance.

Commissioner Yoder asked about the nature of the complaint. Skrzypek stated it was for rats and a disorderly yard causing rats. Chairman Dimpfl asked how many times building inspection

went out. Skrzypek stated that he believes Travis went there twice. Commissioner Yoder asked if there was any evidence of rats.

Ira Butler stated that on the previous Sunday a man named Jeff came to house stating he was an inspector and showed a picture of his driveway with a stone pile. Butler had the stone removed in April, so the photo was old. Chairman Dimpfl asked if this man showed any ID. Butler stated no. The Board said that anyone who comes should show ID and anyone from the Town would come during working hours during the week.

Dave Skowronski, 3677 Fifth St, spoke on the variance. He has a problem with the birds because they are known to attract rodents, and they already have a rat problem in Blasdel. He stated that Butler is not neighborly. He blasts music all day long. Commissioner Chapman said that is not relevant to this variance. Skowronski stated that it is relevant because a study from Michigan University found that loud music and bass causes stress in birds and negatively affects their health. He also believes they are breeding the birds. He thinks he should buy a farm if he wants to raise animals. He said if Butler talked to his neighbors instead of blasting music that this could have went away and they could have looked the other way. Commissioner Yoder asked if he had anything to add about the rats. Skowronski stated that there is a bad rat and skunk problem. The rodents will look for seed, water, and shelter.

Chairman Dimpfl stated that the Erie County Health Department takes rats very seriously and that Skowronski should contact them. Skowronski stated that his dogs eat the rats and then he has to take them to the vet and that costs him a lot of money just for a visit.

Kate Spolviak, 3684 Sixth St Upper, spoke on the variance. She is the direct neighbors of the Butlers. Her main concerns are the bird poop in the yard which attracts rats, the negative effects of loud music on the birds and residents, and the negative effects of the barrel fires they burn. During her research she found that pigeons reproduce very fast. A mated pair can lay eggs every 4-6 weeks and are capable of breeding year round. Some of the Butler's birds are kept in the coop structure in their back yard and some are kept in the garage overnight in cages. An article from the University of Berkley states rats are attracted to the smell of pigeon eggs, baby pigeons and their droppings. Rats carry diseases and spread over 35 pathogens. Rats are also known to cause property damage. The loud music the Butler play prevents neighbors from enjoying their yard; it negatively affects the birds too. An article from Colby College states loud music causes stress in birds and will negatively affect their immune system and life span. Butler also regularly burns fires in barrels which is against the New York State Department of Environmental Conservation rules and Town of Hamburg Code. Before all of this, the neighbors have a repertoire with the Butlers, and Ira Butler mentioned that he burns the rats he catches in the fires. That has a foul odor and is a fire hazard. The bird poop is about 6-8 ft. away from the fire barrel. She passed around photos for the board to look at.

Tom Pemberton, 3671 Fifth St, spoke on the variance. He quoted the Hamburg Town Code 67 (7) "It's unlawful to harbor, keep, or maintain poultry in the Town of Hamburg in any property outside of RA". Pemberton provided a petition signed by Woodlawn residents against the coop. He went around on a Sunday night after dinner to gather these signatures from neighbors. The

problem they have is the rats. He has called the county and they put bait boxes out, and they checked it a month or two later, and none of the rats took the bait. Neighbors have seen rats running across Butler's lot to feed on multiple occasions. Once rats find feed it's very hard to get rid of them.

Daniel Voit, 3765 Fifth Street, spoke on the variance. His dog killed two rats and brought them in the house. He mentioned that Butler built a one car garage without a permit and wants to know why the building inspectors did not do anything. It is a coop but it is the size of a one car garage. He believes Butler is making a mess of the neighborhood.

Denise Reiford, 3684 Sixth St, spoke on the variance. She lives right next to the Butlers. The Butlers believe that she is the one who wrote the complaint but she said she did not. They are retaliating against her. She mentioned a study from Cornell University that shows the negative impact loud music has on birds. The fires he burns in the barrels have an awful smell and it is right by the bird coop. She stated that scented candles are fatal to pigeons so she believes those fumes are much worse and must be fatal as well. One of the neighbors informed her that Butler had the fire barrels for one of the fires near her house. There is a camper near there as well with propane tanks. The fire and propane tanks are within 4ft of her home. She does not feel safe. She is concerned about her dog coming in contact with rats. The shed that he was given a permit for sits 2 inches from her property line and 6 inches from his garage. There is a shed, there is a garage, there is a camper that does not move, there is a storage trailer, and a trailer that he pulls behind his car. She is saying this because he already has plenty of storage and does not need another shed.

Ira Butler spoke again. He stated for the record that he has never burned a rat in his fires. He has never burned a dead bird. He only burns wood. He does not burn during burn bans.

Jess Butler stated for the record that all of the pigeons are seen by an avian vet in Clarence and get proper care.

Commissioner Yoder asked why they play the loud music if they are pigeon enthusiasts and care about their birds. Jess Butler stated that her birds are very happy and their vet will attest to that. She believes they can find a study for anything. Homer pigeons live under bridges with cars constantly going past. She said birds are loud in general. She does not wish to talk about the volume of the music further, they have an attorney handling that, and they thought they were just here tonight for the birds.

Ira Butler stated that he is a firm believer in everything natural to eliminate and deter everything. They keep on solar animal deterrents to keep bees, skunks, cardinals, etc. out of the yard. They face in towards their property. During the day it makes a buzzing sound that you can hear if you have a hearing aid in. At night it has a blinking light. Jess has an extensive garden and they do everything they can to keep rats out.

Commissioner Adrian asked Jeff Skrzypek if they obtained a permit for the shed that is alongside the property line. Skrzypek said yes, they have to replace the existing shed and move it over. They are in the process of doing that. Commissioner Adrian asked if anything else was in

court. Skrzypek said no. They are in the process of moving the existing side shed and building a rear shed.

Ira Butler stated that he does not plan on taking a year to move the shed even though that is the time frame listed on the permit. Again, he was not aware that he needed a permit when he put this shed up on the side. The code states that the distance from the property lines must be 3-5 feet for drainage. He is going to leave 4 feet from the neighbor's property. He is also going to put down gravel so his camper is no longer sitting on grass. There is a contractor scheduled for the following week.

The Board had no further questions.

Findings:

Ms. Falkiewicz made a motion, seconded by Mr. Yoder, to deny Application # 6152.

Ms. Falkiewicz reviewed the area variance criteria as follows:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – Yes, there has been photographic evidence
- Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – No
- Whether the request is substantial – No
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – Yes, it has already with rodents and foul odor
- Whether the alleged difficulty was self-created – Yes, they began collecting pigeons without proper permits and building structures without permits

Commissioner Chapman stated that looking at why they were there tonight for the variances only; he sees no reason to deny this. The problem with rats was there long before the Butlers moved in. There is no evidence that the rat problem was caused by these people. Two visits by a building inspector found no evidence of anything that would cause rats and rodents to gather there. The fires and burning are not a concern for this board, they are here for variances. He believes that much of what they heard tonight was just neighbors not liking each other. He does not know if the music comments were relevant. They were here to judge three area variances—not the rat problem, not the burning of the fires, etc.

As the vote on the motion was six (6) ayes and one (1) nay (Mr. Chapman), the motion carried.

DENIED

Application # 6153 Robert Langheier –Requesting two (2) area variance for a proposed detached garage at 2745 South Creek Rd (Zoned RA)

Robert Langheier spoke on this variance. He wants to make the garage about 80 sq. ft. bigger than what code allows for an acre. The back of the pole barn would be about 13-14 ft. away from the property line. He does not have enough space to build the pole barn he wants if he builds the full 10 ft. away from his garage. If he builds 6 ft. away from his garage he has enough space. He needs the pole barn so he can have a workshop and so he can keep everything out of the snow.

Commissioner Adrian asked Langheier to explain to the board that he is at the end of South Creek Rd and that he has no neighbors. Langeier said there is a farm across the street. He does have a neighbor on the same side of the street about 800 ft. before his house. The rest is county park land.

Commissioner Chapman asked if this was for a personal workshop and no commercial work. Langheier said it will mostly be for storage and eventually he wants a lift in the middle just for his personal vehicles.

The Board had no further questions.

Findings:

Mr. Adrian made a motion, seconded by Mr. Yoder, to approve Application # 6153.

On the question:

Mr. Adrian reviewed the area variance criteria as follows:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties – No
- Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance – No
- Whether the request is substantial – It is not
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – No
- Whether the alleged difficulty was self-created – Yes, but he believes the balancing test is in favor of granting the variance

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

Mr. Chapman made a motion, seconded by Ms. Mika, to approve the minutes of May 2026. All members voted in favor of the motion.

Mr. Adrian proposed updates to the Town of Hamburg Use Variance Application, to include number 5 on the checklist, a requirement that the applicant must show they cannot realize a reasonable return as shown by competent evidence provided by an accountant/bookkeeper.

He asks that no application be accepted by the Building Department without all items checked off of the checklist. The Board voted in favor of this resolution.

Ms. Falkiewicz made a motion, seconded by Mr. Yoder, to adjourn the meeting. All members voted in favor of the motion.

The meeting was adjourned at 8:40 PM.

Respectfully submitted,
Laura Hahn, Secretary
Board of Zoning Appeals
Date: June 24, 2026