

**Town of Hamburg
Board of Zoning Appeals
Meeting - July 6, 2010**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday July 6, 2010 at 7:00 p.m. in Building to discuss the following applications. Those attending included:

Chairman Vincent Gugliuzza
Vice-Chairman Brad Rybczynski **Excused**
Secretary Jack Rahill
Commissioner Shawn Connolly
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
Attorney Joseph Shaw
Attorney Timothy Quinlivan
Building Inspector Roger Gibson
Recording Secretary Laurie Wutz

Secretary Jack Rahill read the following Legal Notice of Public Hearing:

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Application # 5286 - Franciscan Sisters of St. Joseph for an area variance on an oversized sign with illumination at 5251 South Park Avenue.
Violates 280-254 D - code 16 s.f non-illuminated, actual 30 s.f illuminated, variance needed 14s.f. illuminated

Sister Martha of the Franciscan Sisters of St. Joseph came before the Board. She first corrected the address which was on the application 5251 South Park Avenue to 5229 South Park Avenue. She further explained that originally 2 signs were proposed, one at each driveway. The plan was changed to one illuminated sign in front of the building. The height of the sign will total 9' from the ground. The lighting will come from under the top of the sign. The sign needs to be illuminated for readability.

Mr. Gibson from Building Inspection stated that the sign is smaller than a normal size sign allowed in Commercial zoning.

Findings: Mr. Connolly read through the area variance criteria. There would be no other means feasible to the applicant, Mr. Gibson mention the size of the structure is normal, the uniqueness of the area creates the need for the variance. There would be no undesirable change to the area. The request is fairly substantial, but in context of most signs it is not. Any physical or environmental effects, it's not a very busy thoroughfare with a lot of signs on South Park Avenue. It could be argued that the difficulty is self-created that they don't need a sign, but in reality they do need a sign.

Mr. Connolly stated that in his opinion the request was reasonable and realistic. Mr. Connolly made a MOTION to approve Application # 5286 for a 14 s.f. variance on an illuminated sign at 5229 South Park Avenue. Mr. Rahill seconded, all voted in favor. **Granted**

Application # 5287 - Randy & Denise Fenton for 2 area variances on a proposed detached garage at 6633 Taylor Road.

Violates 280-278 B(4) - no detached accessory bldgs. allowed in front yard.

280-278 (4) a: code 850 s.f., actual 1440 s.f., variance needed 590 s.f.

Mr. Fenton came before the Board stating that he has amended the application twice, reducing the building size first to 1144 s. f., and now to 858 s. f. (building size 33' x 26'). The original plan had 4 garage doors, the amended plan has only 3 garage doors. The amended application violates:
280-278 (4) a - code 850s. f., actual 858s. f., variance needed 8 s. f.
280-278 B(4) - no detached accessory bldgs. allowed in front yard.

Mr. Fenton explained that his property does not front Taylor Road, he has an easement along the front yard of the adjacent property owner at 6629 Taylor Road to get to his property. There is no room on either side of the house to get a driveway through in order to put garage in the back of the property. He currently has no access to his back lawn, he uses the Willow Bend driveway.

Mr. Rahill stated that Mr. Fenton's property butts up to Mrs. Wiltsey's property and the garage would be obstructing her view. Mr. Fenton stated it would only obstruct her view of his house, nothing

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else. Mr. Fenton presented pictures of the location of the proposed garage.

Mr. Connolly asked what the square footage of his house was? Mr. Fenton responded that his house is 36 x 36.

Mrs. Wiltsey spoke saying that she came to the meeting expecting that the building would be much bigger, a 4 car garage with 2 stories. She stated, "the day is not far off when my children will have to sell my property, I'm concerned what will happen then." Mr. Gugliuzza stated that the building is not going to be that big, and also stated that she did sign a waiver stating she had no objection to the variance request. Mr. Rahill read into record 2 letters stating that they did not have any objection to the request.

Paul J. Hornberger - 6629 Taylor Road
Rachel Wiltsey - 6641 Taylor Road

Findings: Mr. Gugliuzza stated that the Applicant has amended his application twice dropping the size from 1440 sq. ft., to 1144 sq. ft., to 858 sq. ft. The closest neighbor effected is present and signed a waiver stating she had no objection, along with the letter from the adjacent neighbor to the left.

Mr. Gugliuzaa asked Mr. Morlock to read through the area variance criteria: Can the benefit be achieved by other means, Mr. Morlock visited the site and is not sure what would be considered the front yard, it an odd piece of property, special circumstances. Undesirable change, the garage can hardly be seen by anyone except perhaps people at Willow Bend and the neighbor present and she stated she had no objection. Eight feet is not a substantial request. Any adverse physical or environmental effects doesn't apply. It is not self-created.

Mr. Morlock made a MOTION to approve Application # 5287 for an 8' variance on a detached accessory garage allowed in the front yard. Mr. Eustace seconded, all voted in favor. **Granted**

Application # 5288 - Keith Fisher for an inground pool at 5300 Lakeshore Road.
Violates 280-278 B(4) - limitations on obstructions in required open space.
232-1 (swimming pool code) - not allowed in front yard.
232-14 (location and area covered) - code 10', actual 7', variance needed 3'.

Mr. Fisher came before the Board explaining that the only issue is the pool being in the front yard. The 3' side yard variance is required because of gardens on the other side of the yard. Mr. Fisher presented a letter from the neighbor most effected stating he had no objection to the variance. Mr. Rahill read the letter into record.

Anthony Muscarella - 5308 Lakehsore Road.

Mr. Rahill stated he was out there, it seems to be more the back yard, the front yard is the Lake (the front of the house faces the Lake) this between the road and the house, he knew of no reason the variance shouldn't be allowed.

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Mr. Sortisio asked Mr. Fisher what size the pool will be? Mr. Fisher stated that it will be 18' x 38' (a free-form style - 22' at the widest part). Mr. Gugliuzza commented that was a standard size.

Findings: Mr. Connolly read through the area variance criteria: Can not be achieved by any other means, on inspection it was found to be extremely secluded. No undesirable change, the pool would be difficult to put in the back yard. Not substantial, it's 3' on the side yard and the adjoining neighbor is okay with it. No adverse effects, the pool won't be visible. He doesn't need a pool so it would be self-created.

Mr. Connolly made a MOTION to approve Application # 5288 for a 3' variance and allowing a swimming pool in the front yard. Mr. Eustace seconded, all voted in favor. **Granted**

Application # 5289 - Donald and Ann Argy for an area variance on a single family dwelling at 6286 Old Lakeshore Road Lot # 1.

Violates 280-24 B (4) - code 3 acres, actual 1.75 acres, variance needed 1.25 acres.

Building Insp. Note: No Local, State or Federal historic designation apply: Condition - Must comply with provisions of 280-10 (3) (d) Eighteen Mile Creek Conservation Area.

Mr. Gugliuzza asked Mr. Gibson if there was any history on this property or any information that would be helpful. Mr. Gibson explained that the property is part of a private subdivision, Lakeshore Woods. There is a small gate house at the entrance and the barn and 2 car garage. There has been some history, with similar applications as this one.

Mr. Argy, explained that originally the property was owned by Builders Capital, who obtained a variance for a subdivision. Before he bought the property from Builders Capital, Mr. Argy came before the Zoning Board and obtained a variance to turn the barn into their home, and leave the gate house as is. The development required that both gate houses (identical one on the adjacent property-meant to be an entrance to the subdivision-built in 1890-1100 s.f.) had to stay, any changes made to one had to be made to the other, and could not be used as rental income or divided from the parcel. The developer went to jail for fraud, the development was sold off at auction, and there has been some beautiful homes built in the back. In talking to some of the other homeowners, there is concern that if you grant me the variance to tear the barn down and build a home that maybe another homeowner from the other properties might try to get a variance to have more than one home on the parcel. The Homeowners Association does have a requirement that only one home per parcel, all of the properties are more than one acre, and any home built had to be 2000 square feet plus.

The reason why they are in front of the Board today is that over the years they have tried to get contractors to give an estimate on converting the barn into a single family home. No one wants to touch it, one estimate was over \$1 million. Mr. Argy has been told that it is just too risky, you don't know what you will find once you start, it's cheaper to remove the barn and start over. The barn is 3600 sq. ft. and cost upward of \$40,000 to remove. Mr. Argy currently lives in the gatehouse and now has 6 boys, the living arrangements are cramped.

If the Board allows him to proceed the new home would be around 2600 sq. ft., he would maintain the look of the gatehouse (Great Gatsby style), because the gatehouse has to stay.

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The adjacent property with the other gatehouse house was once owned by Kurt Allen. Mr. Allen wanted to tear down the gatehouse and build a single family home, but was denied. Only deed restrictions Mr. Argy was aware of was that the gatehouse has to remain.

Mr. Gugliuzza asked what would happen with the gatehouse if allowed to build a house. Mr. Argy replied that the gatehouse would remain, his mother is getting on in years and she may use it. Mr. Gugliuzza explained the concern of the Board with granting a second home on one parcel is that one would become rental income, it's very difficult to monitor.

Ryan Mills, President of the Homeowner's Association and property owner of Lot # 3 spoke. He stated that the Association has bylaws and covenants, specifically section 10-08 provides for single family resident purposes only. If the variance was granted, Mr. Mills would like there to be a condition on it that would not allow for rental purposes and only be single family residents. Mr. Mills also quoted the Town Code 260-7 (b), which does not allow for rental purposes.

Mr. Connolly asked for clarification on the acreage. Most lots in the Lakeshore Woods Subdivision are over one acre, Mr. Argy's lot is 1.75 acres. The minimum acreage for 2 single family dwellings is 3 acres. If granted the variance Mr. Argy's 1.75 acre lot would maintain 2 single family dwellings. Mr. Argy stated that he was granted a variance in 1997 to turn the barn into a single family dwelling, but he never obtained the building permit. Mr. Gibson had a copy of the Zoning Board of Appeals from 1994 and 1997, he presented them to Mr. Gugliuzza. Mr. Mills had no record of the variance granted to Mr. Argy.

It was Mr. Mills understanding that there needs to be a 3 acre parcel for multiple structure, there is however, an Architectural Committee which would need to approve any plans.

Mr. Argy was under the impression the variance which was granted to him in 1997 was still good. Mr. Shaw told him he may find that the variance has lapsed, because he never obtained his building permit.

Mr. Argy's Pastor, Monsignor John Zitler spoke on behalf of Mr. Argy, stating that the family deserves descent housing. There are 8 people living in a 1100 s.f. house, they need a larger house. They were under the impression their variance was still good, it is cost prohibitive to convert the barn into a single family home. The barn is an eye sore now, the neighbors will be glad to see it go, it's a great piece of property, has nice history to it. They deserve descent housing.

Ben Heater of the Homeowner's Association seconded the concerns of Mr. Mills regarding the single family dwelling restriction. There are still 4 vacant lots undeveloped, it would be plausible for developers to find out about the variance allowing more than one home and try to subdivide even farther than the four homes that are approved to be built there. He would like keep the nature of the property as was intended.

Mr. Gugliuzza asked Mr. Heater what he would find to be an acceptable decision? Mr. Heater responded that he had no problem with building a single family home there, even a larger single family dwelling. If the gatehouse was to be removed or converted into an office that would be acceptable. It is

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not his intention to stifle his growth or development, it's more the intention to keep the nature of the property.

Mr. Gugliuzza asked what would be the problem with removing the gatehouse? Mr. Argy answered that it would have been done a long time ago, the development was built on the fact that the gatehouses stay the way they are.

Msgr. Zilter suggested that it be used as a guest house. Mr. Shaw stated that it could be, the main concern with it being used as anything other than a gatehouse in the traditional sense, is that the homeowner has control over the place, has pride and takes care of the place as opposed to a tenant who may not.

Mr. Gugliuzza stated that he was reading through the minutes Mr. Gibson had given him, and asked Mr. Argy if it was in his deed not to tear down the gatehouse? Mr. Argy responded yes, it was.

Mr. Rahill asked Mr. Argy if he was proposing to build now? Mr. Argy stated that he can't right now, he was not aware that the last variance expired. His attorney told him that the variance would remain with the land as long as he owned the property.

Mr. Gugliuzza asked for the Application to be table for one month, so Mr. Argy can get a copy of the deed to the Board attorneys to review. Mr. Quinlivan requested an updated copy of the Homeowner's Association Bylaws. Mr. Miller responded sure.

Mr. Connolly made a MOTION to table Application #5289 for one month. Mr. Eustace seconded, all voted in favor. **Tabled**

Other Business:

Mr. Quilivan stated that he has been in contact with Town Attorney, Ken Farrell regarding the 4 hour requirement for the Board members. He stated that he proposed getting a qualified expert to provide the necessary training on zoning board issues. Mr. Quinlivan and Mr. Shaw are finalizing a proposed syllabus and will submit it to Mr. Farrell.

Mr. Rahill made a MOTION to approve the minutes from the June 3, 2010, Mr. Morlock seconded, all voted in favor.

Mr. Connolly made a MOTION to ADJOURN, Mr. Rahill seconded, all voted in favor. Meeting adjourned at 8:30 pm. The next Zoning Board of Appeals will be held on August 3, 2010.

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Date: 7/7/10

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals