

**Town of Hamburg  
Board of Zoning Appeals  
Meeting - February 5, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday February 5, 2008 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

Chairman Peter Blaauboer  
Vice-Chairman Michael Chiacchia  
Secretary Jack Rahill **Excused**  
Commissioner Shawn Connolly  
Commissioner Vincent Gugliuzza  
Commissioner Brad Rybczynski **Excused**  
Commissioner Jim Sortisio  
Attorney Joseph Shaw  
Attorney Cheryl McFadden Zak  
Building Inspector Roger Gibson  
Recording Secretary Laurie Wutz

Commissioner Vincent Gugliuzza read the following Legal Notice of Public Hearing:

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**Tabled Application #5120** - Pegagus Restaurant for an extension of an electronic message sign located at 5748 South Park Avenue.

**Tabled Application # 5155** - Peter Duchmann for a detached electronic message board sign/oversized detached sign at 4207 Southwestern Blvd. Violates 280-252, code-sign not allowed. Variance needed to allow sign. Violates 280-261 F(2), code 40 s.f., actual 50 s.f., variance needed 10 s.f. Applicant requested application to remain tabled.

Application # 5120 and Application # 5155 will remain tabled until the Town Board modifies the code that controls electronic signage. A public hearing is planned in early 2008.

**Application # 5179** - NDC Realty for a side yard setback at 4840-L #9 McKinley Pkwy. Violates Code 28-282 F (2) Side yard SF Dwelling. Code 5 ft., actual 4.83 ft., variance needed .17 ft.

Allen Nigro of NDC Realty presented original site plan showing the correct side yard setback. The foundation contractor missed the pins set by the surveyor when pouring the concrete, making it necessary for a variance for a of .17'.

**Findings:** Mr. Chiacchia made a MOTION to approve Application #5179 for a .17' side yard setback variance. Mr. Connolly seconded the motion, all voted in favor. **Granted**

**Application # 5180** - Keith Fisher for an above ground fuel storage at 5175 Southwestern Blvd. Violates Code 280-126 C (3), not allowed. (Building Inspection note: Fisher Bus Garage Development intends to move existing above ground storage tanks to this parcel in M - 2 zoning.)

Keith Fisher of Fisher Bus Service presented a site Plan and aerial photos of the new location for the bus garage which is zoned M-2. The existing location of the bus garage, which stores fuel in above-ground storage tanks is also zoned M-2. Currently the tanks (10,000 gallons of diesel fuel) comply with the New York State Fire Code, they are double walled, self contained, and meet the requirements for spillage.

The Town code restrictions for M-2 zoning does not allow for above-ground fuel storage.

**Findings:** Mr. Blaauboer suggested tabling the application in order for the Code Review Committee to be notified for clarification. He also felt more testimony was needed from Mr. Fisher regarding the financial hardship involved.

Mr. Chiacchia made a MOTION to table Application # 5180 for one month in order to obtain clarification from the Code Review Committee, and obtain further information from Mr. Fisher. Mr. Connolly seconded, Mr. Gugliuzza voted against. **Tabled**

**Application # 5181** - Wal-Mart Real Estate B. Trust for a special use variance for outdoor sales at 4255 McKinley Pkwy. Violates Code 280-310 B 3 (b) reduction of parking spaces.

Ken Patterson, Walmart Representative came before the Board. The request for a special use variance for the months from March through August is an annual request. There have been no problems in the past, the area is well signed directing traffic, and there are 4 -5 associates outside at all times.

**Findings:** Mr. Chiacchia made a MOTION to approve Application # 5181 for a special use variance for outside sales at 4255 McKinley Pkwy. Mr. Sortisio seconded, all voted in favor. **Granted**

**Application # 5182** - Essex Homes of WNY, Inc. for a rear yard variance (proposed townhome) at 4704 Mosey Lane. Violates 280-41 (C). Code 30 ft., actual 27.5 ft., variance needed 2.5 ft.

Tim Berger of Essex Homes came before the Board requesting a rear yard variance for a home at 4704 Mosey Lane. The home is being built for Camp Good Days and Special Times who will sell the house in order to make a profit for the Camp. Many of the contractors and suppliers donate their time or supplies in order to keep the cost low and net a higher profit for the organization.

There are other unit designs which would not require a variance, but this unit is the most popular, and therefore a easier to sell. The lot is pie shaped making it necessary for a 2.5 ft. rear yard variance. In order to utilize a different lot, the wait would extend the project by up to 3 months.

**Findings:** Mr. Berger was requested to convey to Essex Homes the need to build homes on the proper size lots. Mr. Blaauboer did not feel the request was substantial and that there would not be an adverse effect on the neighborhood.

Mr. Gugliuzza made a MOTION to approve Application # 5182 for a 2.5 ft. rear yard variance at 4704 Mosey Lane. Mr. Sortisio seconded, all voted in favor. **Granted**

**Application # 5183** - Michael Hilty for a use variance to operate a tree service business at 6514 Boston State Road. Violates Code 280-17, not a permitted use.

Michael Hilty, owner of Hilty Tree Service came before the Board. Mr. Hilty explained that the previous owner had a trucking business at this location, so he was not aware that the property was zoned RA, which would not allow him to operate his tree service business. He presented pictures of his property showing two barns which contain his large equipment (2 wood chippers, stump grinder, and a dump truck). He also owns 2 bucket trucks which are not kept in the barns, but are not visible from neighboring properties. There are also 2 storage trailers and one trailer for logs.

Mr. Hilty stated that customers do not come to his home, he does not sell firewood from his home, he does not operate equipment on site, and no business is conducted on his property. Mr. Hilty has three employees which meet in the morning and leave their cars parked on his property during work hours.

Mr. Blaauboer read through the code requirements for a R-A district. He also read the criteria

needed for obtaining a use variance.

Jenny Harris, fiancé of Mr. Hilty stated that not being allowed to operate his tree service would be a hardship. Their business causes no harm to the neighbors.

Several neighbors were present to object to the application:

Dianne Forbush-6554 Boston State Rd.

Debbie Janak of 6532 Boston State Rd. presented pictures of Mr. Hilty's property showing piles of mulch, wood piles, debris, and equipment parked outside the barns. She also presented information from his website, and ads from the local newspaper advertising wood for sale. Mrs. Janak expressed that the noise and stress caused by the applicant because of his tree service business has been difficult to deal with. Mrs. Janak disagrees with Mr. Hilty's statement that the previous owner ran a trucking business.

Dianne Forbush also spoke reading a statement expressing her object. Statement attached.

Attorney Tom Ansuini read the following names and addresses of neighbors who objected to the application:

6511 Boston State Rd - John Bevilacqua

6584 Boston State Rd. - Joe Russo

6523 Boston State Rd. - John Russo

6505 Boston State Rd. - Jeff Russo

6519 Boston State Rd. - Michelle Tuber

Ray Detzel of 6522 Boston State Rd. spoke in favor of the applicant. He disagreed with the complaints about noise and stated that the property looks better now than when the previous owner maintained the property.

**Findings:** Mr. Blaauboer stated that a use variance is extremely difficult to obtain, because of the requirement of providing proof of hardship. He asked for a motion to table the application for 1 month, giving Board members an opportunity to make an on-site inspection, and to give Mr. Hilty time to get legal advice as to whether he wants to pursue further with the application.

Mr. Sortisio made the MOTION to table Application # 5183 for one month, giving Board members time to do an on-site inspection, and giving Mr. Hilty time to get legal advice. Mr. Connolly seconded, Mr. Gugliuzza denied. **Tabled**

**Application # 5184** - Mark Bonafede for a front yard setback at 3245 Woodlawn Ave. Violates 280-48 A, required yards (front yards). Code 35 ft., actual 30.1 ft., variance needed 4.9 ft.

Mark Bonafede stated that the contractor put the foundation too close to the road, it was not intentional. The spot survey indicated that the required front yard setback was short. Mr. Bonafede had several problems with this contractor. The cost in moving the house back was estimated at about \$25,000.

**Findings:** The Board found that while the request was substantial(20% variance), it would be impractical to move the house back.

Mr. Chiacchia made a MOTION to approve Application # 5184 for a front yard setback variance of 4.9 ft at 3245 Woodlawn Ave. Mr. Sortisio seconded, all voted in favor. **Granted**

**Application # 5185** - William and Lynn Windsor for a detached garage at 6765 Southwestern Blvd. Violates Code 280-278 B (4) (c). Code 1500 ft., actual 6000, variance needed 4500 ft.

Mr. Windsor came before the Board requesting a variance for a detached garage at 6765 Southwestern Blvd.(8.76 acres). The detached garage would be metal clad 72 x 50. Mr. Windsor currently has an existing garage which is 2400 sq. ft. He stated that he has two trucks which were restored and one new car that he would be storing in the garage (he has a total of 6 vehicles).

Mr. Connolly asked the applicant if the extreme variance was denied, what would be acceptable to him. Discussion continued on what size would be acceptable. Mr. Gugliuzza felt that giving the size of the lot and the secluded area, the request was not substantial.

**Findings:** Mr. Sortisio made a MOTION to approve Application #5185 for a 2500 ft variance for a detached garage at 6765 Southwestern Blvd. Mr. Blaauboer seconded, Mr. Connolly denied. **Granted.**

**Application # 5186** - Parker Road Development for a temporary use variance for a model home at 4520 Parker Road. Violates Code 280-264 A (2). Code 9 months, requesting 12 month extension.

John Kalstek from Parker Road Development came before the Board requesting a 12 month extension for a temporary use variance on a model home used as an office for the subdivision development on Parker Road. The extension was necessary due to the delay of the patio homes development. At the end of the extension the model home will be sold.

**Findings:** Mr. Connolly made a MOTION to approve Application # 5186 for a 12 month extension on a use variance for a model home at 4520 Parker Road. Mr. Sortisio seconded, Mr. Chiacchia denied. **Granted**

**Application # 5187** - Eddy & Lewin Homes for a variance for total required side yards at 4067 Highview Pkwy. Violates 280-272 B - total required side yards. Code - 17 ft., actual-15 ft., variance needed 2 ft.

Patrick Eddy came before the Board explained that it is the last small lot in an older subdivision. Homes on either side were built by Eddy & Lewin Homes.

**Findings:** Mr. Chiacchia made a MOTION to approve Application # 5187 for a 2 ft. variance for total required side yards at 4067 Highview Pkwy. Mr. Sortisio seconded, all voted in favor. **Granted**

Minutes from the January 8, 2008 meeting were approved on MOTION by Mr. Chiacchia,

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seconded by Mr. Connolly. Motion carried.

MOTION to ADJOURN was made by Mr. Chiacchia, seconded by Mr. Gugliuzza. Motion carried. Meeting adjourned at 10:15 p.m. The next Zoning Board meeting will be held Tuesday, March 11, 2008 at 7:00 pm.

Respectfully Submitted,

**Date: 2/6/08**

Jack Rahill, Secretary  
Board of Zoning Appeals