

**Town of Hamburg
Board of Zoning Appeals
Meeting - March 3, 2009**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday March 3, 2009 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

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

Acting Secretary Rybczynski read the following Legal Notice of Public Hearing:

Application #5245 - Walmart for a special use permit for outdoor sales at 4255 McKinley Pkwy. Violates 280-310 B 3 (b).

Jason Rizinski, Assistant Manager for Walmart came before the Board to request a special use permit for outdoors sales and sidewalk sales during summer months. It is the same request as previous years. Mr. Rizinski explained that this year they are planning to have a tire display outside the Automotive Dept., which would be brought in at night. Walmart is requesting the permitted use until the end of July, but in previous years they have ended by June.

Roger Gibson from the Building Inspection Dept. explained that two variances are actually required. A special use permit for the outdoor sales (Town Code 280-310), and to reduce the parking spaces (Town Code 280-310 B(3)).

Findings: Mr. Gugliuzza stated that this is the same request that has come before the Board last couple of years for seasonal sales, there have been no complaints, and he finds it to be reasonable. He asked for a motion to approve.

Mr. Rybczynski question whether the tires were part of the plan before, and stated that there have been complaints by the McKinley Pkwy. Taxpayer's Association. Mr. Rizinski stated the tire display was not part of the plan in previous years.

Mr. Sortisio made a MOTION to approve Application #5245 for a special use permit for outdoor sales at 4255 McKinley Pkwy. Mr. Morlock seconded the motion. Mr. Rybczynski denied. Application # 5245 **Granted** 4-1

Application # 5246 - Essex Homes of WNY, Inc. for a rear yard setback at 4685 Mosey Ln. Violates 280-41 (c), code 30', actual 25.83', variance needed 4.17'.

Tim Berger from Essex Homes came before the Board to request a rear yard setback variance. He stated that this is the last lot in this Phase, and the smallest lot. There were four different designs approved, but only one smaller unit that would fit on this lot. There has been no interest in the smaller unit. The variance is for a small corner of the foundation of the home. Mr. Berger commented that the lot to the left goes further back so it is a solid woods in back.

Findings: Mr. Gugliuzza stated that Essex Homes has shown that this is the last lot to be sold. Mr. Rybczynski read through the area variance criteria stating that; the benefit could not be achieved by any other means, there would be no undesirable change, it is not a substantial request, and it is not self-created because there was no interest in the smaller unit.

Mr. Rybczynski made a MOTION to approve Application #5247 for a rear yard setback of 4.17' at 4685 Mosey Lane. Mr. Sortisio seconded, all voted in favor. **Granted**

Application # 5247 - WASABI for a second attached sign at 3701 McKinley Pkwy. Violates 280-261 A, code 1 sign, actual 2 signs, variance needed 1 sign.

John Ching was present to request a sign on the back wall for the WASABI Restaurant. The

restaurant is located on the ring road at the McKinley Mall. The neighboring businesses also have a sign on the back wall. The lighted sign would be visible from McKinley Pkwy.

Findings: Mr. Gugliuzza stated that with the neighboring stores having similar signs there was no reason not to grant the request.

Mr. Rybczynski read through the area variance criteria; the benefit can not be achieved by other means, no undesirable change, not a substantial request, no adverse effects, and the difficulty is not self-created.

Mr. Rybczynski made a MOTION to approve Application #5247 for a second attached sign at 3701 McKinley Pkwy. Mr. Morlock seconded, all voted in favor. **Granted**

Application # 5248 - Commerce Park Dev. J.V. for an attached and detached sign at 3565 Commerce Pl.

Violates 280-261 F (1) detached sign, code 20', actual 11', variance needed 9'

Violates 280-261 2 (a) wall signs (N,S,W), code 18', actual 55', variance needed 37'

Violates 280-261 A, sign located on west elevation does not front a public street nor contain a public entrance.

The application indicated that a sign would be located on the west wall, but would actually be on the east wall.

Kurt Wright representative from Sign & Lighting Services explained each sign needed. The variance for the detached sign (ground sign) is needed for the distance from the side property line. The second variance is for the height of wall signs, which the signs themselves are within the Town Code requirements. The third variance is for a sign not fronting a public street or entrance. He stated that the expected opening date is the first week in April. Pictures of the sign were included with the application. The signs are all standard signs for the Holiday Inn.

The ground sign can not be moved further back because of the side property line which runs at an angle.

The south wall sign will face the Thruway, the north wall sign on the main entrance, and the east wall sign will face Camp Rd.

The height variance is needed because of the height of the building.

Findings: It was Mr. Gugliuzza's position that the project was already approved, the Board should move forward with approving the signage.

Mr. Rybczynski ran through the area variance criteria for each variance finding; the benefit can not be achieved by other means as they need to advertise, there would be no undesirable changes to the neighborhood since there are many hotels in the area, the requests are not substantial given the building has been approved and the size of the building, no adverse effect, and the difficulty is not self-created.

Mr. Rybczynski made a MOTION to approve Application #5248 for a 9' variance on the distance of the detached sign at 3565 Commerce Pl. Mr. Connolly seconded, all voted in favor. **Granted**

Mr. Rybczynski made a MOTION to approve Application #5248 for a 37' variance on wall signs facing north and south at 3565 Commerce Pl. Mr. Sortisio seconded, all voted in favor. **Granted**

Mr. Rybczynski made a MOTION to approve Application #5248 for a sign located on the east elevation which does not front a public street nor contain a public entrance. Mr. Morlock seconded, all voted in favor. **Granted**

Application # 5249 - Burger King for an attached sign on the rear of the building at 4175 McKinley Pkwy. Violates 280-261 A (business signs in C districts), code 1 sign each side building fronting a public street or containing a public entrance, Variance needed for attached sign to rear of building not fronting a public street or containing a public entrance.

Daniel Blamowski from FRA Engineering came before the Board and presented pictures of the surrounding area and the back of the Burger King Restaurant where the sign would be located. He presented a map of the NYSDOT reconstruction project at the 7 corners intersection. The driveway which leads into the parking lot from Southwestern Blvd. is currently in front of the Swiss Chalet Restaurant, the project would move the driveway approximately 260' closer to the intersection. A row of pine trees also blocks the view of the restaurant. Vehicles driving westbound on Southwestern Blvd. would have no way of knowing that Burger King is there. The overall footage of the sign meets the Town Code.

Findings: Mr. Gugliuzza stated that a sign on the rear of the building would inform those traveling westbound on Southwestern Blvd that Burger King exists, and there was no reason not to approve the application.

Mr. Rybczynski agreed, the pictures show there is a visibility issue. He read through the area variance criteria; there is no other means to achieve the benefit, there would be no undesirable change to the area, the request is not substantial, the sign meets code requirements for size, there are no adverse effects, and it is not self created, the DOT is changing the road.

Mr. Rybczynski made a MOTION to approve Application #5249 for a variance on an attached sign to the rear of the building not fronting a public street, or containing a public entrance. Mr. Connolly seconded, all voted in favor. **Granted**

Application # 5250 - Zak Management LLC for a temporary office at 5424 Abel Rd. Violates 280-310 B (1) (a) - requesting additional office space for temporary term.

Ralph Yorio, Manager of Operations for K-Tech came before the Board. K-Tech does light assembly of mechanical and electronic devices, business has grown substantially in the last 6 months, and they are out of office space. Mr. Yorio stated that given the current state of the economy, it is hard to predict if business growth will continue or not. They would like to have a temporary office (no larger than 50 x 10) to give some time to evaluate the future growth of the business.

Mr. Gugliuzza asked Mr. Yorio how long he was looking to have the temporary building? Mr.

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Yorio stated that they may be able to determine in as little as 6 months, but would take it for the allowed time. All fire code requirements would be met.

Mr. Rybczynski asked Mr. Gibson if there was a required distance between the two buildings? Not as long as the buildings are not blocking each other and building exits are not blocked.

Findings: Mr. Shaw recused himself from the application due to prior history with the applicant.

Mr. Gugliuzza stated that the Board should be consistent with the granting of applications on temporary structures, and would like to keep it at a one year permit, even though the code allows for 2 years. Mr. Rybczynski stated that in the past extensions on permits were granted, the Board is no longer granting extensions, the applicant would have to reapply. Mr. Gugliuzza questioned Mr. Gibson on other applicants, if they reapplied or sought extensions. Mr. Gibson stated that other applicants reapplied, extensions were not granted.

Mr. Rybczynski read through the area variance criteria; due to the state of the economy other means are not feasible for the applicant, there would be no undesirable change to the area, the request is not substantial because it is not a big building, there would be no adverse effect, and the difficulty is not self-created.

Mr. Rybczynski made a MOTION to approve Application # 5250 for a temporary office at 5424 Able Rd. Mr. Sortisio seconded, all voted in favor. **Granted.**

Mr. Rybczynski made a MOTION to approve the minutes from February 3, 2009. Mr. Connolly seconded, all voted in favor motion carried.

MOTION to ADJOURN was made by Mr. Gugliuzza, seconded by Mr. Connolly . Motion carried. Meeting adjourned at 8:20 pm. The next Zoning Board meeting will be held Tuesday, April 7, 2009.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 3/4/09

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