

**Town of Hamburg
Board of Zoning Appeals
Meeting - March 11, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday March 11, 2008 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

Chairman Peter Blauboer
Vice-Chairman Michael Chiacchia **Excused**
Secretary Jack Rahill **Excused**
Commissioner Shawn Connolly
Commissioner Vincent Gugliuzza
Commissioner Brad Rybczynski
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.

Tabled 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.)

Mr. Rybczynski made a MOTION to remove Application # 5180 from the table. Mr. Sortisio seconded, the motion all voted in favor.

Keith Fisher of Fisher Bus Service came before the Board and presented an aerial photo of the new location for the bus garage which is zoned M-2. Mr. Fisher stated that he has been in business since 1990. In 2001 a new fuel storage tank was install on his current location, and he was not notified of being in violation of the Town code at that time.

Roger Gibson from Building Inspection explained that the local zoning code does not allow for above-ground fuel storage, but New York State Code does, which Mr. Fisher has met those requirements. Mr. Blaauboer explained that the Town code reads "must meet State code".

Mr. Fisher presented the Board with estimates on removing the above-ground tank (\$8,000), and installing an underground tank (\$62,000). Mr. Fisher also pointed out that the tank will not be visible from Southwestern Blvd. or Camp Road.

Findings: Mr. Blaauboer felt that the there is no public safety concerns, and the requirements for granting a variance have been met. The economic hardship is not feasible, there would be no undesirable change or negative impact to the area, and relocating the business to a more appropriate location is a positive benefit for the Town.

Mr. Rybczynski made a MOTION to approve Application # 5180 for an above ground storage tank with the condition that it must comply with New York State Fire Code. Mr. Connolly seconded, all voted in favor. **Granted**

Tabled 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.

Mr. Hilty has retained legal counsel who has requested the application be table for one month in order to have sufficient time to review the application and requirements for a use variance.

Findings: Mr. Connolly made a MOTION to table Application # 5183 for one month. Mr. Rybczynski seconded, all voted in favor. **Tabled**

Application # 5188- Patrick & Joanne Brady for a single family dwelling in R-2 zoning at 4969 Richmond Ave. Violates 280-39(A) 1(a) Lot Area. Code 10,000 S.F., actual 8,007 S.F., variance needed 1,993 S.F. Violates 280-39 (B) (1) Lot Width. Code 70', actual 66.73', variance needed 3.27'. Violates 280-41 Required yards - front. Code 35', actual 31.64', variance 3.36'.

Mr. & Mrs. Brady came before the Board to explain that when they originally bought the house in January 1983, they actually bought 6 lots (size 30 x 120 for a total of 180 x 120), it was with the intention that eventually they would sell a portion of the vacant lots. The lot with their home on is 90 x 120. The Brady's receive 4 separate tax bills, which would make each lot legal non-conforming, because they were created before 1985. They are already buildable lots, so no variance would be needed.

Letter stating no objection was read into record:
Dennis and Dagmar Gaweva - 4959 Richmond Ave.

Present to state objection due to drainage concerns:
Wayne and Carline Wilkie - 4983 Richmond Ave.

Mr. Rybczynski made a MOTION to table Application # 5188 for one month in order for the Brady's to produce a copy of their tax bills as proof of separate lots. Mr. Connolly seconded, all voted in favor. **Tabled.**

Application # 5189 - Ryan Homes for a rear yard variance at 6147 Woodford Dr. Violates 280-282 F(3) Regulations for Cluster Housing-Rear Yard. Code 23', actual 21.69', variance needed 1.31'.

Shawn Benzer from Ryan Homes came before the Board requesting a rear yard variance. Mr. Blaauboer pointed out that Ryan Homes has been warned about selling homes too large for the lot size. Mr. Rybczynski felt that the Board's willingness to accommodate Ryan Homes is being taken for granted. While the request is not substantial (1.31'), Ryan Homes could have adjusted the back of the house by 1.31'.

Mr. Connolly also felt that the Board made it clear to Ryan Homes in the past that they would not continue to grant variances with the similar circumstances. He also pointed out that Mr. Benzer indicated that there were still several lots that would need a variance.

Findings: Mr. Blaauboer felt that if this variance is granted, then the Board should be assured by Ryan Homes that they will not come before them again requesting a similar variance for a lot in this subdivision. Mr. Benzer agreed to the conditions and would provide written assurance that Ryan Homes would comply. Mr. Blaauboer informed Mr. Gibson from Building Inspection that they should not accept any further applications from Ryan Homes for similar variances in this subdivision.

Mr. Gugluizza made a MOTION to approve Application # 5189 for a rear yard variance of 1.31' with the condition that Ryan Homes provide a written statement that they will not apply for similar variances in this subdivision. Roll call was taken:

Mr. Blaauboer- approve
Mr. Connolly - deny
Mr. Gugluizza - approve
Mr. Rybczynski - approve
Mr. Sortisio - approve
Granted by 4-1 vote.

Application # 5190 - Clifford Alf, Jr. for an attached garage at 3397 Bethford Drive. Violates 280-41 B (1) Required side yard. Code 10', actual 3', variance needed 7' (Building Insp. note: This particular subdivision was constructed under the zoning codes that required two side yards that totaled 15', one min. of 5'. If south side yard receives a variance, the north side yard will also be in violation: Code 10', actual 8.23', variance needed 1.77')

Mr. Alf explain that he bought the house in July 2007 and spent many month repairing the dilapidated property. He has spent a lot of time and money on repairs to the property. The corner of the attached garage would be about 8' from the corner of the neighbor's house.

The Board felt that the Building Inspection note does not apply because the north side is a grandfathered legal side yard, and does not require a variance.

Findings: Mr. Blaauboer stated that the benefit can not be achieved by any other means because there is no other place to put the garage. There would be no undesirable change to the neighborhood, and no adverse effect. The request is not substantial.

Mr. Gugluizza made a MOTION to approve Application # 5190 for a side yard variance of 7' with the condition that the structure (garage) be fireproof. Mr. Connolly seconded, all voted in favor.
Granted

Application # 5191 - Lowe's Home Centers, Inc. for a parking space variance at 4950 Southwestern Blvd. Violates 280-219 (D). Code 697 spaces, actual 633 spaces, variance needed 64 spaces.

Jay Pohlman, legal counsel for Lowe's presented maps for the Board members to view. Mr. Pohlman explained that Lowe's would not need the total number of parking spaces based on the history from other typical stores. Lowe's does not use the parking area for outdoor sales the way other retail stores sometimes do (Walmart). Being allowed to incorporate more green space would be less intrusive

and more appealing to the site and the community.

Mr. Rybczynski commended Lowe's for the time and attention taken to detail. Mr. Blaauboer commented on the excellent job done with the Environmental Impact Study.

Findings: Mr. Blaauboer felt the reduced parking would be more than sufficient and the criteria has been met for the variance. There would be no undesirable change, and by allowing for more green space, would have a positive effect on the physical and environmental space.

Mr. Rybczynski made a MOTION to approve Application # 5191 for a variance of 64 parking spaces. Mr. Gugliuzza seconded, all voted in favor. **Granted**

Application #5192 - Lowe's Home Centers, Inc. for a maximum height of building variance at 4950 Southwestern Blvd. Violates 280-83 (A) Maximum Height of Building in C-2 Zoning. Code 35', actual 45' 4", variance needed 10' 4".

Mr. Pohlman explained the height variance is really only needed for the blue peaks which are unique to Lowe's. The actual building itself is below the height requirement.

Findings: Mr. Blaauboer felt the testimony given relative to the height and modifications made, without infringing on the visual requirements unique to Lowe's would have no adverse effect on the area, and was not a substantial request. The blue peaks are a signature appearance for Lowe's.

Mr. Rybczynski made a MOTION to approve Application # 5192 for a 10' 4" height variance. Mr. Connolly seconded, all voted in favor. **Granted**

Application # 5193 - Lowe's Home Centers, Inc. for oversized/over height attached signs at 4950 Southwestern Blvd. Violates 280-261 B (1)A Business Signs C-2 Zoning. Code 120 S.F., actual 453 S.F., variance needed 333 S.F. Also Violates 280-261 B 2 (A) Height of Attached Signs. Code 18', actual 35', variance needed 17'.

Mr. Pohlman stated that the attached sign will be 1000' away from the road and is in conformance with the size of the building. There would be a traffic signal in front of the Lowe's Home Center.

Findings: The Board felt the request was reasonable, and there would be no undesirable change, or adverse effect to the area. The square footage seems substantial, but given that the building is set 1000' back from the road, and the size of the building the request does not seem unreasonable.

Mr. Gugliuzza made a MOTION to approve Application # 5193 for a variance of 333 S.F. for the area and a variance 17' for the height of a business sign. Mr. Sortisio seconded, all voted in favor. **Granted**

Minutes from the February 5, 2008 meeting were approved on MOTION by Mr. Rybczynski, seconded by Mr. Connolly. Motion carried.

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MOTION to ADJOURN was made by Mr. Connolly, seconded by Mr. Blaauboer. Motion carried. Meeting adjourned at 9:30 p.m. The next Zoning Board meeting will be held Tuesday, April 1, 2008 at 7:00 pm.

Respectfully Submitted,

Date: 3/12/08

Jack Rahill, Secretary
Board of Zoning Appeals