

**Town of Hamburg  
Board of Zoning Appeals  
Meeting - April 1, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday April 1, 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  
Commissioner Shawn Connolly **Excused**  
Commissioner Vincent Gugliuzza  
Commissioner Brad Rybczynski  
Commissioner Jim Sortisio **Excused**  
Attorney Joseph Shaw  
Attorney Cheryl McFadden Zak  
Building Inspector Roger Gibson  
Recording Secretary Laurie Wutz

Secretary Rahill read the following Legal Notice of Public Hearing:

Board of Zoning Appeals  
April 1, 2008

**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 # 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. Rybczynski made a MOTION to remove Application # 5183 from the table. Mr. Rahill seconded the motion, all voted in favor.

Michael Barone, legal counsel for the applicant addressed the Board and presented the following exhibits into evidence:

**Exhibit 1** - 11 pictures of the Hilty property and from various locations along Boston State Road.

**Exhibit 2** - an affidavit from Philip J. Scheeler, a licensed Real Estate Broker, along with nine property assessments of neighboring properties, which were taken off the Town of Hamburg website. The affidavit states that Mr. Scheeler visited the property, but never entered the premises of 6514 Boston State Road. It is Mr. Scheeler's opinion based his visit and the photos taken by Mr. Barone that there would be a minimal impact on the character and property values of the surrounding properties.

**Exhibit 3** - Contract of Sale of 6514 Boston State Road between Michael Hilty and Laverne and Gail Phillippi signed 8/26/07.

**Exhibit 4** - the definition of Horticulture printed from the Wikipedia website.

Mr. Barone argued that a tree cutting business could fall under the definition of horticulture, which would be a permitted use in a R-A district. Mr. Barone also argued that Mr. Hilty asked the previous owners, Mr. and Mrs. Phillippi, several times whether there were ever problems with the Town regarding the Phillippi's operating their excavating business at that location. If the Phillippi's were permitted to operate a business which was a non-conforming use at the time of the sale of their property, then the non-conforming use would transfer to the new owner (Mr. Hilty) unless there was a discontinuation of operation for one year. He also stated that Mr. Hilty would be willing to remove the logs and piles of wood chips, or any other reasonable request by the Board.

Laverne J. Phillippi and Gail E. Phillippi were present (daughter Melissa also present) on behalf of Mr. Hilty. They owned the property at 6514 Boston State Road for approximately 46 years, and currently reside at 4114 Beaubien Drive. The Phillippi's stated that their excavating business started in 1961, and operated as a corporation until 1993, at which time he did have several employees. They

continued operating as a small business until 1998, which is when Mr. Phillippi retired, and no longer claimed the business on their income tax. Mr. Phillippi continued to do small, side jobs until October 2007. Mr. Phillippi stated he maintained about 6 pieces of equipment on his premises while operating his business. He slowly sold off his equipment, but at the time of the sale of the property (contract of sale signed 8/26/07) he owned two pieces of equipment (backhoe and tractor). He also stated he never had any trouble with the Town or his neighbors regarding the operation of his business.

Roger Gibson from Building Inspection researched permits issued on Boston State Road as far back as 1946. Only two permits were issued for 6514 Boston State Road:

7/3/61- building permit for a porch

9/1/77 - building permit for a garage

Mr. Blaauboer read through the permitted activities for a non-conforming use, and stated that the Phillippi's were never permitted by the Town to operate an excavating business at 6514 Boston State Road. Mr. Blaauboer also pointed out that in order for the Board to consider a use variance, the first criteria (economic hardship) must be met. No factual data showing hardship has been submitted. Mr. Hilty bought a single family dwelling which he is occupying, that is what he paid for.

Mr. Barone referred to the fact that Town code was revised in 1986 and then again in 1998, questioning whether the code permitted such use in a R-A district then or not. He also pointed out that the applicant does not have the financial means to move, or to store his equipment on an alternate site, fulfilling the criteria of economic hardship.

Attorney Tom Ansuini presented a petition signed by 10 neighbors in opposition to the applicants request for a use variance. Mr. Ansuini made reference to the applicant's website advertising business activities such as wood chipping, tree removal, stump grinding, and firewood for sale. While Mr. Hilty maintains no work is done on site, Mr. Ansuini presented pictures showing piles of logs and wood chips, along with several pieces of equipment.

**Findings:** Mr. Blaauboer found that the Town code does not permit the intended use in a R-A district, nor was any evidence presented that the Town code ever permitted such use. The fact that the criteria of economic hardship was not proven, leaves the other criteria of obtaining a use variance irrelevant.

Mr. Chiaachia made a MOTION to deny Application # 5183 for a use variance at 6514 Boston State Road. Mr. Rahill seconded, roll call was taken: **Denied 5-0**

Mr. Blaauboer - deny

Mr. Chiacchia - deny

Mr. Rahill - deny

Mr. Gugluizza - deny

Mr. Rybczynski - deny

**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 provided the Board with the four separate tax bills as requested at the last meeting. They again explained to the Board that when they originally purchased the house in January 1983, they actually bought 6 lots (size 30 x 120 for a total of 180 x 120) the lot their home is on is 90 x 120, it was with the intention that eventually they would sell a portion of the vacant lots. The Brady's receive 4 separate tax bills, making each lot legal non-conforming because they were created before 1985, but because an accessory structure infringes on the extra lot a variance necessary.

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

**Findings:** Mr. Blaauboer felt the request was reasonable, but at the same time significant. There would be no undesirable change to the neighborhood, the benefit could not be achieved by any other means, and the difficulty was not self created. Any new construction on the lot would have to meet the Engineering requirements for drainage, so there would be no adverse effects on the environment.

Mr. Rybczynski felt the significance of the request was tempered by the character of the neighborhood, giving that most lots in the neighborhood were of the same size.

Mr. Rybczynski made a MOTION to approve Application # 5188 for a lot area variance of 1,993 S.F., a lot width variance of 3.27' and required yards variance of 3.36' Mr. Rahill seconded, roll call was taken: **Granted 4-1**

Mr. Blaauboer - approve  
Mr. Chiacchia - deny  
Mr. Rahill - approve  
Mr. Gugluizza - approve  
Mr. Rybczynski - approve

**Application # 5195** - David & Ramona Lloyd for a side yard setback at 4901 Parker Road. Violates Code 280-34 B(1) Total side yards, code 25', actual 17', variance needed 8'.(Homeowner is rebuilding due to house fire, house demolished)

The Lloyd family lost their home due to a house fire on 1/22/08. The original house was built closer to the road, but the family has since decided to move the house toward the back of the property which is more narrow than the front, making a variance necessary.

Three letters from neighbors stating they had no objection to the variance were read into record:  
Margaret Dubrowski - 4889 Parker Road  
Deborah A. Pierce - 4915 Parker Road  
Jim Kellera - 4908 Parker Road

**Findings:** Mr. Rybczynski commended the Lloyd's for cleaning up the property and rebuilding so quickly.

Mr. Rybczynski made a MOTION to approve Application #5195 for a side yard variance of 8". Mr. Gugluizza seconded, all voted in favor. **Granted**

**Application # 5196** - Johanna Stoddard for a two story addition at 5447 Maelou Drive. Violates 280-34 B(1) Minimum side yard, code 10', actual 7', variance needed 3'.

Mr. & Mrs. Stoddard came before the Board in June 2007 requesting a front yard setback at 5447 Maelou Drive. Their original plan was to add onto the front of the house and garage. Mrs. Stoddard was pregnant at the time delaying their start date for construction. Since then the Stoddard's changed the plans adding onto the side of the garage making it a two car garage, and also adding a second floor over the garage. The addition adds 1000 sq. ft. to their home making it four bedrooms, and 2 ½ bath. The addition also increases the resale value and the aesthetic of their home.

**Findings:** Mr. Chiacchia made a MOTION to approve Application # 5196 for a side yard variance of 3' at 5447 Maelou Drive. Mr. Rybczynski seconded, all voted in favor. **Granted**

**Application # 5197** - Raymond & Betty Jean Ballard for an oversized detached garage at 4230 Beetow Drive. Violates 280-33 C, code 1 story, actual 2 story, variance needed, 1 story. Height-code 18', actual 23', variance needed 5'. Also violates 280-78 B(4) a, code 850 sq. ft., actual 1680 sq. ft., variance needed 830 sq. ft.

Mr. Ballard came before the Board to request a standard two car garage with a second floor. Mr. Ballard has a boat and car and needs to second story for storage. There are no homes between Mr. Ballard's home on Beetow Drive and South Park Avenue. Mr. Ballard's property is a treed lot, less than one acre.

Mr. Gary J. Smith of 4238 Beetow Drive signed a statement that he had no objection to the variance.

**Findings:** Mr. Gugliuzza made a MOTION to approve Application # 5197 for an oversized detached garage at 4230 Beetow Drive. Mr. Chiacchia seconded, all voted in favor. **Granted**

### **Extension**

Application # 5129 Holiday Inn Express for a height variance. Information came to the attention of the Board, the Town Board conditions of re-zoning preclude the granting of a height variance, it is therefore not allowed. A rehearing is required. **Denied**

Minutes from the March 11, 2008 meeting were approved on MOTION by Mr. Gugliuzza, seconded by Mr. Blauboer. Motion carried.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Blauboer. Motion carried. Meeting adjourned at 10:00 p.m. The next Zoning Board meeting will be held Tuesday, May 6, 2008 at 7:00 pm.

Respectfully Submitted,

Jack Rahill, Secretary  
Board of Zoning Appeals

**Date: 4/2/08**

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