

**Town of Hamburg
Board of Zoning Appeals
Meeting - May 1, 2007**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday, May 1, 2007 at 7:30 p.m. in Room 7B to discuss the following applications. Those attending included:

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

Secretary Jack Rahill 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. Applicant did not appear.

Tabled Application 5128 - David McNeight at 6310 Southwestern Blvd. proposes to open bar/restaurant formerly known as "Route20"/"Beefers". Discontinuance of a nonconforming use as the premises have been abandoned over one year. Bar/restaurant is not a permitted use in R-A district as allowed by Code Section 280-17. Requires a use variance.

Jay Pohlman, attorney for Mr. McNeight addressed the Board. He previously sent each Board member a work-up done by Bob Ganey, which looked at what else would be feasible or possible on that parcel in a R-A setting. The size of the parcel limits other uses.

Mr. Blaauboer requested Mr. Pohlman to review the timeframe of the acquisition of the property. Mr. Pohlman stated:

- Contract was signed 7/30/05
- Five days later an addendum was circulated by the foreclosing bank's attorney that added in provisions on failure to close on time.
- Deed and closing document dated 12/19/06 - No penalties were added to sale price.

Mr. Blaauboer inquired about the status of the bar at the time of Mr. McNeight's signing the contract on 7/30/05. Mr. Pohlman was unable to determine if the former bar was in operation at the time of the contract signing. He attempted to get sales tax information, but was unable to acquire it. Mr. Pohlman will attempt to get information on when the liquor license was surrendered, but questioned if it would not be an accurate indication of time of operation. He feels confident that the former bar was in operation in the spring of 2005. Mr. Blaauboer suggested asking the chief of police if they have any personal knowledge of the business closing.

If the delay of the closing was caused by the legal ramifications of attempting to close, and that's the only reason for the delay through no fault of Mr. McNeight, then Mr. Blaauboer stated that he does not see it as legitimate reason to rescind the use variance.

Mr. Blaauboer recommended that Mr. Pohlman try again to get some information on the sales tax and liquor license, and the Board would see if the police have any information on the business. The application would be tabled for one month, if any definitive information is acquired before the next Zoning Board meeting, a special meeting would be called.. Mr. Pohlman will forward any definitive information he acquires to Mr. Blaauboer. All voted in favor to table the application for one month.

Tabled Application #5132 - Gary Bridges for approval on home occupation for specialty sporting goods sales (gun sales) at 3736 Sowles Rd. Code 280-31 B(7) - ZBA approval required Applicant did not appear.

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Application #5133 - Donna Desiderio for a special use permit for distribution of trees, mulch, and topsoil from the property previously known as Stedmans Nursery, at 4090 Southwestern Blvd. Violates Code 280-310 2(A) - temporary use.

Brad Davidsak, attorney for John Krantz, President of Krantz Nursery addressed the Board. Mr. Krantz was unaware of the special use permit when agreeing to lease the property from Desiderio. He has already put a lot of work and expense into the cleaning up the site. The property is currently zoned C-1.

Photos were displayed of the Krantz Nursery in Clarence, and a plan for the property at 4090 Southwestern Blvd. The existing building would be the garden center where the sales office would be located. The nursery would sell bulk and plant material as well as landscape products, plants, and hanging baskets. The facility would be operational from March through December. The lease agreement would be annually. Mr. Krantz stated he planned on leasing at this location on permanent basis.

Mr. Blaauboer explained that a use variance is required not a special permit. Mr. Blaauboer felt it was inappropriate for the Board to consider a special permit for this purpose. The fact that property lost its legal non-conforming use status, makes it necessary for a use variance.

Findings: The issue is Special Permit vs. Use Variance. Mr. Krantz indicated his intention was to establish a long-term business at this site. This would require a use variance, not a special permit. The special permit (intended for a temporary use) does not apply due to the stated intent of the applicant and therefore a use variance is required.

Mr. Blaauboer made a MOTION to deny the special use permit. Mr. Rybcznski seconded. All voted in favor to deny. **Denied**

Application #5134 - McDonalds at 3450 McKinley Pkwy. for an attached sign rear wall. Code violated 280-261 (A), code - not permitted/no public entrance.

Randy Bebout explained that McDonalds is redeveloping the site and did receive site plan approval from the Planning Board back in August 2006. The purpose of this rear wall sign was for rear access from the plaza. That plan fell through so the rear wall sign is not necessary at this time. The application was applied for before the plan for rear access fell through.

Findings: No testimony was given to allow for consideration for the rear wall sign. There is currently no rear access to McDonalds making a rear wall sign unnecessary. Motion was made by Mr. Connolly to deny the application for a rear wall sign, Mr Sortisio seconded the motion. All voted in favor. **Denied**

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Application #5135 - McDonalds at 3450 McKinley Pkwy. for oversized detached signs. Code violated 280-261 F(2) road sign, code 40 s.f., actual 68.86 s.f., variance needed 28.86 s.f. Code violated 280-261 F for 2 menu boards, code 1, actual 3, variance 2. Code violated 280-261 F (2) for 2 oversized menu boards, code 40 s.f., actual 95.2 s.f. (total of 2 boards), variance needed 55.2 s.f. Code violated 280-252 for banner sign on lamp post, code - not permitted. Code violated 280-235 (D) for oversized directional sign, code 8 s.f., actual 8.5 s.f., variance needed .5 s.f.

Mr Bebout also spoke regarding the road sign and menu boards for McDonalds. Photos and an explanation were given for all the individual signs in question. The site has Planning Board approval.

- The road sign is the same size as currently in place at the South Park Ave. McDonalds.
- The 2 menu boards are for the side by side drive-thru lanes allowing for 2 orders to be taken at the same time. Critical to drive-thru business.
- The oversized directional sign will be adjusted to code. Variance no longer needed.
- Banner is not needed. Variance no longer needed.

Findings: The area variance criteria was reviewed for the road sign:

- Can the benefit be achieved by other means feasible to applicant? No, standard “retro” sign.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? Yes, Mr. Connolly pointed out the sign is a 72% increase from code.
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? Yes.

The criteria was also reviewed for the menu signs:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? Yes
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? Yes.

Mr. Gugliuzza MOTION to grant a variance of 28.86 s.f. for the road sign, and a variance of 55.2 s.f. needed for the two menu boards. Mr. Sortisio seconded the motion. All voted in favor.

Granted

Application #5136 - Linda Ejbisz for an extension of the continuation of a permitted nonconforming use at 4881 Lakeshore Road (Cloverbank Hotel). Code 280-289

Mr. Gilbride, the attorney for Mrs. Ejbisz spoke on her behalf. The Cloverbank Hotel has been in business as a tavern within the Ejbisz family since about 1959. The property is currently for sale with a number of interested parties. A purchase had been agreed to, but the sale fell through leading to the approaching timetable for loss of the “legal non-conforming use”. Mrs. Ejbisz is seeking an

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extension of the continuation of a permitted nonconforming use. Mrs. Ejbisz wants to be proactive and renew the permit before it expires so the new owners will not have a similar problem as Mr. McNeight with the former "Beefers" bar/restaurant. The liquor license was surrendered in February 2007, and the sales tax license was surrendered about two months ago. The actual day to day business ceased in May 2005. It is the intention of Mrs. Ejbisz to market the property as a restaurant, and to preserve the integrity of the building. All accessories of the business are still in tact.

The Board discussed whether they had legal right to renew a permitted use before it expires or not. Based on the testimony given, Mrs. Ejbisz has had no intention of abandoning the use of the restaurant.

Findings: The Board agreed that continued ownership of a liquor license identifying the legal nonconforming property, is sufficient evidence of continuation of use barring any other factors. The nonconforming use does not expire until one year to date of surrender of the liquor license based on the testimony and facts presented in this case.

Mr. Gugliuzza MOTION to extend the continuation of a nonconforming use for the Cloverbank Hotel based on the facts presented in this case. Mr. Chiacchia seconded. All voted in favor. **Granted**

Application #5137 - Lori Lauter at 4263 Victorian Dr. for a proposed attached garage. Code violated 280-283 F (2), code 10', actual 3.30', variance needed 6.70'

Ms. Lauter explained she purchased the townhouse last August and would like to add an attached garage with extra room for storage. The garage would be 14 ft. wide giving extra room for storage. Ms. Lauter's townhouse is one of the few homes on the street without an attached garage. Mr. Smith, Ms. Lauter's contractor showed three photos to Board members:

- The current dwelling
- Homes in the same neighborhood with attached garages
- The side yard property line

Mr. Gibson informed the Board that a side yard requirement for a R-2 district is 5', townhouses require 10'.

Mr. Smith further explained that the garage is only 20 ft. deep which accommodates a 17 ft. car length, and a little extra room for storage.

Findings: The criteria was reviewed for the area variance needed for the garage:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? Yes, but no negative bearing on decision.
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? Not really.

Mr. Rahill made a MOTION to grant a 7 ft. variance for an attached garage at 4263 Victorian Drive. Mr. Rybczynski seconded the motion. All voted in favor. **Granted**

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Application #5138 - Bert's Bikes and Fitness at 4050 Southwestern Blvd. for an additional attached sign. Code violated 280-261 B(a), code - 120 s.f., actual 157 s.f., variance needed 37 s.f.

Paul Fadale of N.A.S. Quick Sign explained the need for the attached sign. The sign was purchased to advertise new merchandise, Star Motorcycles. The sign would be attached between the Motorsports sign and the Bikes & Fitness sign facing the parking lot. Board members could not recall if a variance was previously granted for existing signs.

Findings: The criteria was reviewed for the additional sign:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? Yes
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? Yes.

Mr. Gugliuzza MOTION to grant a 37 s.f. variance for Bert's Bikes. Mr. Sortisio seconded the motion. All voted in favor. **Granted**

Application #5139 - David Pedone at 4163 South Park Ave. for an accessory structure. Code violated 280-278 - B(1) structure exceeds 30% of required rear yard, code - 480 s.f. (30%), actual - 624 s.f., variance needed 144 s.f.
Code violated 280-278 B(4) structure exceed 50% of dwelling s.f., code - 548 s.f. (50%), actual 624 s.f., variance needed 75 s.f.
Code violated 280-278 B(3) side yard limitations, code - 5', actual 1.55', variance needed 3.45'.

Mr. Pedone explained that he has a over-abundance of stuff and would like to store it in a garage. The present garage is deteriorating and needs to be taken down. The new garage will replace it.

Mr. Rahill stated that he was at the site and found that in this section of South Park these structures are the norm, there are many non-conforming structures.

Findings: Findings: The criteria was also reviewed for the area variance needed for the garage:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? No
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? No

Mr. Rahill made the MOTION to grant the 3.45' side yard variance and the 75 s.f. variance for the area. Mr. Connolly seconded. All voted in favor. **Granted**

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Application #5140 - Benderson Development for parking lot variance on a proposed shopping plaza at 3854 McKinley Pkwy. Code violated 280-219 D, code 209 spaces, actual 143 spaces, variance needed 66 spaces.

Mr. Batista and Mr. Rumssey approached the Board for a parking space variance for a proposed shopping plaza (strip mall) to be located at 3854 McKinley Pkwy. The plaza would be similar to the new plaza "Village" in Orchard Park. There are no tenants yet, but the intention is to have restaurants on the end of either plaza. Mr. Batista stated they are trying to plan ahead to avoid future problems.

Mr. Blaauboer wanted to table the application for one month for input from the Planning Board. Mr. Rybczynski made the MOTION, Mr. Chiacchia seconded the motion. All voted in favor.

Application #5141 - Toys "R" Us for a second attached sign at 3464 McKinley Pkwy. Code violated 280-260 signs permitted, code 1 sign allowed, actual 2 signs, variance needed for 1 sign.

Mr. Vaughan from Toys R Us addressed the Board requesting a variance for an additional sign. The store will be expanding to include a Babies R Us. The store will remain essentially the same.

Findings: The criteria was reviewed for the new sign:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? No
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? No

Mr. Chiacchia made the MOTION to approve the variance for an additional sign at Toys R Us located at 3464 McKinley Pkwy. Mr. Rybczynski seconded. All voted in favor. **Granted**

Application #5142 - Louis Billittier for a proposed side yard exterior addition at 3015 Walbridge Dr. Code violated 280-274 A(2), code 30', actual 8', variance needed 22'.

Mr. Auman requested a side yard variance for an addition to the home located at 3015 Walbridge Dr. The 1850 s.q. addition will be a one story master suite and two bedrooms. Aerial photos and a drawing was presented to the Board to where the addition would be located, and also show that the site lines will not be obstructed.

There were no letters or comments from neighbors.

Findings: The criteria was reviewed for the side yard variance:

- Can the benefit be achieved by other means feasible to applicant? No.
- Is there any undesirable change in neighborhood character or to nearby properties? No.
- Is the request substantial? Yes
- Will request have an adverse physical or environmental effect? No.
- Is the difficulty self-created? Yes.

Mr. Rahill made the MOTION to grant the side yard variance of 22'. Mr. Blaauboer seconded,

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all voted in favor. **Granted**

A six month extension was granted to Walmart for a height variance, Application # 5108.

A six month extension was also granted to Walmart for signage variance, Application # 5109.

Six voted in favor. Mr. Rybczynski voted no.

Minutes from the April 2007 meeting were approved on MOTION by Mr. Rybczynski, seconded by Mr. Rahill. Motion carried.

MOTION to ADJOURN was made by Mr. Blaauboer, seconded by Mr. Chiacchia.. Motion carried. Meeting adjourned at 10:45 p.m. The next Zoning Board meeting will be held June 5, 2007.

Peter Blaauboer, Chairman
Jack Rahill, Secretary
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Date: 5/4/07