

**Town of Hamburg  
Board of Zoning Appeals  
Meeting - June 3, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday June 3, 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  
Commissioner Vincent Gugliuzza  
Commissioner Brad Rybczynski **Excused**  
Commissioner Jim Sortisio  
Attorney Joseph Shaw  
Attorney Cheryl McFadden Zak **Excused**  
Building Inspector Roger Gibson  
Recording Secretary Laurie Wutz

Secretary 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.

**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 sf., 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 # 5201** - Ryan Homes for a rear yard variance for a single family dwelling at 3320 Queens Lane. Violates 280-41 C required yards, code 30', actual 14.21', variance needed 15.79'.

This application was tabled from last month's meeting in order for the Board members to do an on-site inspection of the lot. Mr. Chad Rush, Division Manager for Ryan Homes was present to address any concerns the Board members had. Mr. Rush also reassured the Board that the drainage concerns of the neighbor (John Ward) would be taken care of.

Mr. Blaauboer and Mr. Rahill agreed that the lot was too small for the size home which was to be built, but a smaller house could meet the criteria of the code.

Mr. Chiacchia and Mr. Sortisio agreed that the trees which line the neighboring property would act as a barrier and would not devalue the rear neighbor's property. Mr. Chiacchia also felt that if the lot was left undeveloped it would detract from the neighboring properties.

Neighboring land owner John Ward (3326 Queens Lane) was again present to express his objection to the variance. Mr. Ward feels that the house does not conform to the lot and should not be allowed.

**Findings:** Mr. Blaauboer reviewed the criteria for an area variance. It was determined that the alleged difficulty is self-created and the benefit could be achieved by building a smaller home. While the request is substantial, the change to the character of the neighborhood would be minimal. Mr. Blaauboer was confident that the Engineering Dept. would ensure there would be no drainage issue to the property in the rear.

Mr. Gugluizza made a MOTION to approve Application # 5201 for at 15.79' rear yard variance at 3320 Queens Lane. Mr. Sortisio seconded. **Denied by 3-3 vote.**

Mr. Blaauboer - Deny  
Mr. Chiacchia - Approve  
Mr. Connolly - Deny  
Mr. Gugluizza - Approve  
Mr. Rahill - Deny  
Mr. Sortisio - Approve

**Application # 5206** - Essex Homes for a side yard variance on a townhouse at 4671 Mosey

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Lane. Violates 280-41 B Required yards - Code 10', actual 5', variance needed 5'. (Note: Planning approved R-2 zoning. Special regs. for townhouses 280-283 F (2) required 20')

**Application # 5207** - Essex Homes for a side yard variance on a townhouse at 4673 Mosey Lane. Violates 280-41 B Required Yards - Code 10', actual 5', variance needed 5'. (Note: Planning approved R-2 zoning. Special regs. for townhouses 280-283 F (2) required 20')

No one was present for these applications. Tabled for one month.

**Application # 5208** - Vanderbuilt Properties for a lot width variance at front of property at 6860 Woodland Drive. Violates 280-18 minimum lot size/lot width at front line. Code 100', actual 60', variance needed 40'. (Note: mixed zoning R-1 front lot, R-A rear lot)

Mr. Gibson from Building Inspection informed the Board that a permit was issued for tree clearing only, but a foundation has been dug and poured.

David Stapleton from Vanderbuilt Properties came before the Board to explain that the permit issued was mistaken for a building permit, and that is why the foundation was dug and poured. Mr. Stapleton further explained that the 15 acre parcel, which is located at the end of a dead end road, is largely NYSDEC wetlands (wetlands not properly delineated on site plan). This project was originally started in the fall of 2007 with the intention of being split into two parcels with homes on the front end of the property, due to the rear of the parcel being wetlands. Mr. Stapleton withdrew his application from the Planning Dept. in order to move the project along with a single family dwelling. Erie County Sewer District No. 3 has an easement running through the property.

The lot is a flag shaped lot with 60' road frontage (private driveway). The adjoining parcels along the private driveway which extends 260' from the end of the dead end road, have a recorded ingress and egress right-of-way, allowing them to use the private driveway.

The following neighbors were present to express concern about a subdivision going in:

Mr. & Mrs. Jim Dills - 6811 Woodland Drive  
Barbara O'Neill - 6840 Woodland Drive  
Holly McKnight - 6791 Woodland Drive

Mr. Stapleton clarified that he has no intention of developing a subdivision, but the lot may be subdivided in the future for one additional single family dwelling. He also stated that the entire 15 acre lot is currently being sold to one owner.

Mr. Blaauboer read a memo from the Conservation Advisory Board into record (copy attached). Mr. Stapleton stated that the memo was initiated by the Conservation Board with regards to a subdivision, which Mr. Statpleton has since withdrawn his application for a subdivision from the Planning Dept.

**Findings:** Mr. Blaauboer stated that given the unique nature of the property the Board members

should do an on-site inspection. A Comprehensive Review, as recommended by the Conservation Advisory Board should be done as to what is doable, what is enforceable, and what is required to allow development of this property. Counsel was asked to do research on permitting a private driveway, and legal requirements for the adjoining parcels to have access to the private road.

Counsel requested a title report on the flag strip of land from Mr. Stapleton. Mr. Stapleton left his cell phone number with the Board in case there were any questions.

Mr. Chiacchia made a MOTION to table Application # 5208 for 1 month so Board members can do an on-site inspection, and the research recommended by the Conservation Board can be done. Mr. Connolly seconded the motion, all voted in favor. **Tabled**

**Application # 5209** - Donna Cox for a front yard variance for a proposed front deck at 5494 Ontario Ave. Violates 280-41 A Required Front Yard. Code 35', actual 20', variance needed 15'.

Craig Constable from WNY Installers came before the Board representing Donna Cox. Ms. Cox hired Mr. Constable to make some improvements to her home. Mr. Constable felt that while there weren't any homes nearby with similar front porches, the request was not uncommon. There were no objections from neighbors regarding the variance.

**Findings:** Mr. Blaauboer felt the testimony indicated no undesirable changes to the neighborhood, the request was not substantial, and could not be achieved by any other means.

Mr. Gugliuzza made a MOTION to approve Application # 5209 for a 15' front yard variance for a proposed front deck at 5494 Ontario Ave. Mr. Sortisio seconded, all voted in favor. **Granted**

**Application # 5210** - Robert Rausch for a height variance on an accessory structure at 3518 Lakeview Rd. Violates 280-19D. Code 18', actual 22'6", variance needed 4'6".

Mr. Rausch came before the Board to request a height variance of 4'6" on a accessory structure (garage with 2 10' bays) which is located 80' behind his home. His lot is 1200' deep and slopes downward away from his house. The variance is needed because he is matching the peaks on the accessory structure with the peaks on his home, the building will not be seen from the road. No letters of objection from neighbors were submitted.

**Findings:** It was determined that the benefit could not be achievable by any other means, there would be no undesirable change in the area, and although the request is significant, the distance the structure located from the home, diminishes the substantiality of it.

Mr. Rahill made a MOTION to approve Application # 5210 for a height variance on an accessory structure at 3518 Lakeview Rd. Mr. Chiacchia seconded, all voted in favor. **Granted**

**Application # 5211** - Richard McEniry for a home occupation permit to raise exotic fish at 5705 Southwestern Blvd. Violates 280-17 (B) 7. (Note: Application # 5211 & # 5212 for joint venture)

**Application # 5212** - David Peters for a home occupation permit to raise exotic fish at 5681

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Southwestern Blvd. Violates 280-17 (B) 7. (Note: Application # 5211 & # 5212 for joint venture)

These two applications were amended from a home occupation permit to interpretation of the code on allowable use in a R-A district, at the request of Mr. McEniry and Mr. Peters. The Board unanimously accepted the amended application.

Richard McEniry and David Peters came before the Board to explain their joint venture. Mr. McEniry has been involved in fish breeding and showing for about 40 years. He would like to be able to raise and sell exotic, high-end fish such as Koi, on his property. He currently has one pond on his property, and would be installing approximately 6 additional permanent ponds 50' x 20' approximately 4' deep, with the possibility of 10-12 portable ponds if business grows. The ponds would be fenced with netting over the top to avoid birds eating the fish.

Mr. McEniry owns 2.1 acres which butts up to Mr. Peters' property, 5.1 acres. Mr. Peters already has 2 buildings on his property which would be used for storage during the winter months. There would be very little commercial traffic (supplies would not be delivered to site), and customers would be by appointment only (mostly club members).

Ron Wentland of 5715 Southwestern Blvd was present to express concerns about odor from the fish, and bugs such as mosquitoes caused by the ponds. Mr. Wentland stated he is not objecting to the proposed business, but wants to protect his rights as a neighboring property owner.

**Findings:** Applications Nos. 5211 and 5212 have been amended from home occupation to interpretation of the code in a R-A district, specifically the raising and marketing of exotic fish.

Mr. Blaauboer suggested tabling these two applications for one month to allow for an on-site inspection by Board members, in order to evaluate the impact of the joint venture on the two separate parcels.

Mr. Chiacchia made a MOTION to table Application Nos. 5211 and 5212 for one month to allow for on-site inspections. Mr. Sortisio seconded. All voted in favor. **Tabled.**

Minutes from the May 6, 2008 meeting were approved on MOTION by Mr. Rahill seconded by Mr. Chiacchia. Motion carried.

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

Respectfully Submitted,

Jack Rahill, Secretary  
Board of Zoning Appeals

**Date: 5/8/08**

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