

**Town of Hamburg
Board of Zoning Appeals
Meeting - June 5, 2007**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday, June 5, 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 EXCUSED
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:

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 and gave a brief history of the property. The application was tabled at last months meeting in order for additional information to be obtained on the last day of operation from the previous owner. The only official information Mr. Pohlman was able to obtain was the expiration of the liquor license which was within one year of the signing of the contract by Mr. McNeight. That information, in itself does not indicate the last day of operation from the previous owner.

Mr. Pohlman stated that this hardship has not been self-created. Mr. McNeight had poor legal representation at the time of the closing. Neither the real estate agent nor his attorney indicated that the time frame for use variance was in jeopardy. Mr. Pohlman also pointed out that if the former owner had not let so much time lapse, Mr. McNeight would not have to come before the Board.

Mr. Pohlman referred back to the work-up done by Bob Ganey, previously sent to each Board member, which looked at other possibilities for this parcel in a R-A setting. The size of the parcel limits other uses. The rear of the lot is considered to be part of the Federal Wetlands, which also limits the other uses for the property. There were no other offers made on the property prior to Mr. McNeight purchasing the property.

Mr. McNeight was questioned on other possible uses for the property if the use variance was not granted. He stated he has no other intentions for the property, and he already has about \$36,000 of out-of-pocket expenses invested in the property.

Findings: It was the finding of the Board that:

Reasonable return on current use - Testimony was reviewed.

- (1) The best use of the property would be its discontinued current use of the bar/restaurant. No market for residential use. Undeveloped nature on this section of Southwestern Blvd. makes it highly unlikely that other ancillary uses are likely to be successful, such as driving ranges and/or mini driving ranges. The permitted use for R-A was reviewed and all agreed there was no market for a single family home and there is a lack of useable land due to the wetlands.
- (2) Uniqueness of the property - the property is unique in the sense that for many years it has operated as a bar/restaurant. The layout of the building and lack of useable depth of property due to the wetlands lessens the property's consideration for being Utilized for residential use.

- (3) The use variance would not change the character neighborhood.
- (4) Was the hardship self-created? - yes, purchase was made in haste - all agreed

The criteria has been met to allow the use variance. The next step is to ensure that if the use variance is granted on this property, the Town would incur no liability, that the property is tax producing, and that the continued use will not add detriment to the neighborhood. Mr. Blaauboer would like the following conditions to be met for a variance:

- (1) - A 30 day timetable for architectural plans and a site plan to be approved by Planning Dept. (Drew Reilly). Mr. Reilly will then advise Building Inspection.
- (2) - Plans must be issued to Building Inspection before any work can be done.
- (3) - Work to start in 6 months, and work to finish 6 months from start.

Mr. Gugliuzza made a MOTION to approve Application # 5128 for a use variance, with the stated conditions. Mr. Sortisio seconded the motion. All voted in favor. **GRANTED**

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.

Mr. Salisbury originally ran his firearms business out of his home address at 8525 Zimmerman Road. He is licensed by ATF (Bureau of Tobacco and Firearms) and has been conducting business for four years. Mr. Salisbury keeps no stock on hand, it is strictly a mail order business. A customer would place his order, Mr. Salisbury then does a background check through NICS (National Instant Criminal Background Check System). If approval is given the merchandise would then be ordered, and shipped to Mr. Salisbury's address.

Mr. Salisbury is now living in an apartment building which makes shipping merchandise to his address impossible, since someone reliable must be available to sign for the package. Mr. Bridges, a long time friend has offered his address (3736 Sowles Rd.) for shipping purposes. He would become a business partner and Deputy ATF Officer under Mr. Salisbury's license. Mr. Bridges' only obligation would be to receive merchandise. He would not have the authority to do background checks.

Mr. Salisbury states ATF law allows a licensed officer to appoint a deputy under their license. Mr. Quinlivan requested a signed letter from ATF, on ATF letterhead stating that Mr. Bridges is an approved deputy. He also requested a copy of Mr. Salisbury's Firearms license.

Mr. Blaauboer found that the criteria for home occupation has been met (ie. Sale of firearms), but expressed concern regarding the licensing of Mr. Bridges. Mr. Blaauboer asked for a motion to table the application for one month until Mr. Salisbury can provide the Board with documentation from ATF stating Mr. Bridges' approved status as a licensed officer. The Board would then make a ruling.

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Mr. Chiaachia made the MOTION to table Application #5132 for one month so Mr. Salisbury can obtain documentation from ATF regarding the licensing of Mr. Bridges, Mr. Connolly seconded the motion. All voted in favor. Application tabled for one month.

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.

At the May 1, 2007 meeting Mr. Batista 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.

The application was tabled for one month in order to get some input for the Planning Dept. Mr. Blaauboer read a memo received from the Planning Dept. regarding a recommendation made at the March 21, 2007 Planning Board meeting:

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to forward a positive recommendation to the Zoning Board of Appeals regarding the shortage of 36 parking spaces with the understanding that the Building Inspector will monitor the applicant's parking space availability versus building uses.

Mr. Phillips made a motion, seconded by Mr. Eustace, to table this project Carried.

Findings: The criteria for the Zoning Board has been met. Mr. Rahill made a MOTION to approve Application # 5140 for the parking space variance of 66 spaces. Seconded by Mr. Gugluizza, all voted in favor. **GRANTED**

Application #5143 - Rose Garden Est. of Hamburg for parking space variance for a proposed office park at 4535 Southwestern Blvd. Violates 280-219 (H), code 671 spaces, actual 615 spaces, variance needed 56 spaces.

Roy Jordan of North Forest Office Providers requested a parking space variance for fewer spaces than required by code. The proposed office park does not need the required 671 parking spaces, and the Planning Board recommended that they leave the green space. Mr. Blaauboer read a memo received from the Planning Dept. regarding a recommendation made at the April 18, 2007 Planning Board meeting:

Mr. Phillips made a motion, seconded by Mr. McCabe, to forward a positive recommendation to the Zoning Board of Appeals regarding the parking variance the applicant will be requesting for approximately 55 parking spaces. Given the amount of green space to remain on the parcel, the Board would rather save this green space than require the applicant to install more parking spaces that are not necessary. Carried.

Findings: Mr. Chiaachia made a MOTION to approve the parking space variance for Application # 5143. Mr. Connolly seconded the motion. All voted in favor. **GRANTED**

Tabled Application #5144 - DESMOND/DOWNING, LLC for an over-height detached sign at 5160 Camp Rd. Violates 280-190 B (7) site conditions/Camp Rd. Overlay District, code 12', actual 18', variance needed 6'.

The applicant requested to be tabled until next month's meeting. Mr. Blaauboer asked for members to do an on-site inspection, and to review the Town code relative to the Camp Road Overlay District. Mr. Blaauboer also requested members to take a look at the issue of existing signage on Camp Road, and how it may or may not impact the applicants request. Mr. Rahill made the MOTION to table application #5144 for one month, Mr. Sortisio seconded. All voted in favor. **GRANTED**

Application #5145 - Ryan Homes for rear yard variance/proposed patio home at 6149 Woodford Dr. Violates 280-282 F(3) Regulations for cluster housing rear yard. Code 28.75, actual 21.00, variance needed 7.75.

Ron Kozlowski from Ryan Homes appeared before the Board for a rear yard variance in the Wellington Woods Subdivision. Mr. Blaauboer explained that Ryan Homes came before the Board at the March 6, 2007 (January 4, 2007) meeting to request a variance under the same circumstances. The lot size is too small for the style house desired by the buyer. Ryan Homes has several styles that would fit on the smaller lots. It would be up to Ryan Homes to let the buyer know that the larger homes are not a suitable option on the smaller lot.

The Board expressed at the March (January) meeting and again at this meeting, that they have no intention of granting blanket variances or piece-meal variances for each lot which is too small for the style of house chosen to build.

Mr. Connolly stated that one of the reasons he voted against the application in March (January) was because homeowners usually want to add a deck or patio of some sort which would require an additional variance. It would be setting an undesirable precedence in the subdivision.

Findings: Mr. Blaauboer stated that he believes this application has no merit and asked for a motion to deny. Mr. Rahill made the MOTION to deny Application #5145 for a rear yard variance, Mr. Connolly seconded the motion. All voted to deny. **DENIED**

Application #5146 - Johanna Stoddard for a front yard setback at 5447 Maelou Dr. Violates 280-34 (A) , code 35', actual 30.09', variance 4.91'.

Mr. & Mrs. Stoddard, the homeowners, and Darrell Martin, the architect for the Stoddards explained that they wanted to add onto the front of the garage, and add onto the front of the house to cover a cement slab porch. The purpose of the addition is so that a car could be pulled into the garage and to gain access into the house from the garage. A variance is needed for the front yard because of the angling of the lot and the squaring of the house creating a hardship for the expansion of the side yard.

Findings: Mr. Connolly made the MOTION to approve the front yard variance of 4.91' for

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Application # 5146. Mr. Rahill seconded, all voted in favor. **Granted**

A six month extension was granted to Application # 5007, 5128 Lakeshore Road. The application was issued in August of 2005, and the owner is downsizing the original project due to financial restraints.

Mr. Blaauboer made the MOTION grant the extension, Mr. Connolly seconded. All voted in favor. **Granted**

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

MOTION to ADJOURN was made by Mr. Blaauboer, seconded by Mr. Chiacchia.. Motion carried. Meeting adjourned at 9:50 p.m. The next Zoning Board meeting will be held Thursday, July 5, 2007.

Peter Blaauboer, Chairman
Jack Rahill, Secretary
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Date: 6/7/07