

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

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday July 1, 2008 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

Chairman Vincent Gugliuzza
Vice-Chairman Brad Rybczynski **Excused**
Secretary Jack Rahill
Commissioner Shawn Connolly
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
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:

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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 # 5206 - Essex Homes for a side yard variance on a townhouse at 4671 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')

Tabled 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')

Mark Longo of Block, Colucci & Longo came before the Board representing Essex Homes. The original applications requested a 5' side yard variance, Mr. Longo requested to modify both applications to a reflect the side yard variance needed as 3'.

Mr. Longo pointed out that the lot is an irregular shaped lot, and only the corner of the house encroaches slightly on the required side yard. Mr. Longo also stated that the townhouse chosen is the smallest of the 4 models available. No further variance are expected for this phase of the subdivision.

Findings: In reading through the criteria for an area variance, Mr. Gugliuzza found that the benefits could not be achieved by any other means, there would be no undesirable change to the neighborhood, and there would also be no adverse effects on the environment.

Mr. Sortisio made a MOTION to approve Application # 5206 and Application # 5207 for a 3' side yard variance at 4671 & 4673 Mosey Lane. Mr. Eustace seconded, all voted in favor. **Granted**

Tabled 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 footers poured.

David Stapleton from Vanderbuilt Properties came before the Board and gave a brief history on the application, explaining that the permit issued was mistaken for a building permit, and that is why the foundation was dug and footers 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

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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 (no legal documentation was provided). Mr. Stapleton stated for the record he would give both adjoining property owners access to the private road.

Mr. Stapleton informed the Board he has a meeting scheduled for this Wednesday (July 2, 2008) with the NYSDEC and the Army Corp of Engineers. The NYSDEC is in the process of re-mapping the area for wetland. Mr. Stapleton feels an error was made in the wetlands delineation on this parcel, and the discrepancy will be worked out at their meeting on Wednesday. He requested that the Board only rule on the zoning issue.

Mr. Shaw pointed out that at last month's meeting Mr. Stapleton was requested to submit a title report on the flag strip. No report was submitted.

The following neighbors were present to object to the application:
Barbara O'Neill - 6840 Woodland Drive
Dr. Cyril Bodnar - 6841 Woodland Drive
Bob Williams - 4487 Crestridge Drive

Concerns about work being started without the proper permits, wetland issues with the NYSDEC, and safety issues for neighborhood children were expressed.

Findings: Mr. Gugliuzza stated that given the unique nature of the property the Board could not make a ruling without the requested title report.

Mr. Connolly made a MOTION to table Application # 5208 for another month to give Mr. Stapleton time to submit a title report on the flag strip. Mr. Rahill seconded the motion, all voted in favor. **Tabled**

Tabled 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)

Tabled Application # 5212 - David Peters for a home occupation permit to raise exotic fish at 5681 Southwestern Blvd. Violates 280-17 (B) 7. (Note: Application # 5211 & # 5212 for joint venture)

At least month's meeting 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 applications were tabled in order to give Board members a chance to do an on-site visit.

Mr. Rahill questioned the amount of traffic generated by the business. Mr. McEniry presented a map of his property showing an extra driveway. He also stated that traffic would be minimal, 2 cars at most.

Findings: Mr. Gugliuzza felt that the business would not infringe on neighboring properties and raising fish is well within the code.

Mr. Rahill made a MOTION to approve Application # 5211 and Application # 5212 to raise exotic fish at 5705 Southwestern Blvd. and 5681 Southwestern Blvd. Mr. Connolly seconded. All voted in favor. **Granted**

Application # 5213 - Lori Pelow for a side yard variance on a proposed addition at 3977 Caitlin Terrace. Violates 280-41 B (1) Minimum Side Yard R-2. Code 10', actual 2', variance needed 8'.

Mr. & Mrs. Ken Metzger (formerly Lori Pelow) came before the Board to explain that their family is growing and they need more room. They love the house and the neighborhood, and do not want to move.

The addition would be facing the garage, enlarging the kitchen and adding a walk-in closet at the rear of the addition. A drawing of the addition was presented to the Board.

Two letters stating no objection from their neighbors were read into record:
Lynn Allen - 3965 Caitlin Terr
Jennifer Carson - 3985 Caitlin Terr.

Findings: Mr. Gugliuzza reviewed the criteria for an area variance the benefits could not be achieved by any other means, there would be no undesirable change to the neighborhood, no adverse effect, and the difficulty was not self-created. He asked for a motion to approve.

Mr. Morlock made a MOTION to approve Application # 5213 for a side yard variance of 8'. Mr. Rahill seconded the motion, all voted in favor. **Granted**

Application # 5214 - Donald and Sharon Heppner for a second detached/in-law apartment dwelling at 5964 Lakecrest Drive. Violates 280-31 A (2) Permitted Structures and Uses. Code - Single Family detached dwelling allowed, variance needed to convert second floor area above detached garage - strictly for family member(s) as the condition to the above property.

Mr. Gibson from Building Inspection explain that in 2001 a permit was issued for a detached garage. The garage now has an seconded floor apartment and a rear deck, which were not permitted.

Mr. and Mrs. Heppner came before the Board to explain that no one is living in the apartment at this time, they originally intended it to be a recreation room and it slowly developed into an apartment. The sewer hook-up (connected into their house sewer line without a permit) and electricity have never been inspected by the Town. The Heppner's stated they were hoping in the future their handicapped son could move into the apartment in order to live nearby. They have no intention of ever dividing the lot for selling. They provided pictures and 8 letters from neighbors with no object:

Aimee LaRosa - 5962 Lakecrest Drive
Michael M. Candaras - 5967 Lakecrest Drive
Michael DiRosa - 5963 Lakecrest Drive
Sharon & Ed Rasinski - 5960 Lakecrest Drive
Lynn & Mark Smerka - 5958 Lakecrest Drive
Sharon A. Taylor - 5965 Lakecrest Drive
Lorine Hoffman - 5961 Lakecrest Drive

Carl Yerkovich, property owner of 2 adjacent vacant parcels (SBL Nos. 180.19-2-1.12 & 180.19-1-3) was unable to attend the meeting, and sent a letter stating his objection. The letter was read into record (copy attached).

Findings: Mr. Gugliuzza stated that any work done without obtaining the proper permits or without being inspected by the Town causes concerns on safety issues. An additional living unit is not permitted in a R-1 zone. The criteria for a use variance was reviewed. The Board found the benefit could have been achieved by adding onto the house, it does create an undesirable change to the neighborhood, the request is substantial, because people value their open space, the character of the neighborhood has been altered and the hardship is self-created, they performed the work without permission.

Mr. Connolly made a MOTION to deny Application # 5214 for a second detached/in-law apartment at 5964 Lakecrest Drive. Mr. Eustace seconded the motion, all voted in favor. **Denied**

Application # 5215 - Conrad and Marlene Sucharski for a side yard setback variance on an existing small lot at 2330 Beachwood Drive. Violates 280-272 (B). Code is 7', actual 3', variance needed 4'.

John from Superior Fence came before the Board to explain that the post holes have been dug due to approval given by Kurt Allen. Work was stopped as soon as notice was received from Building Inspection that a variance was required. The intention of the deck is to cover the small side yard and to make the yard handicapped accessible (the homeowner walks with a cane). There is a retaining wall to prevent erosion.

Findings: Mr. Gugliuzza stated that when he went to the site, he actually stood on one of the posts to be sure that the height of the deck would not infringe on the neighbors privacy, it did not. It was determined that the benefit could not be achieved by any other means, there would be no undesirable change, the request was not substantial, there would be no adverse effects, and the difficulty was not self-created.

Mr. Sortisio made a MOTION to approve Application # 5215 for a variance on a side yard setback at 2330 Beachwood Drive. Mr. Eustace seconded the motion, all voted in favor. **Granted**

Application # 5216 - Ryan Homes for a rear yard variance for a single family dwelling at 3320 Queens Lane. Violates 280-41 C Required Rear Yard. Code 30', actual 23.81', variance needed 6.19'.

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Mark Longo from Block, Colucci & Longo was present representing Ryan Homes. Ryan Homes came before the Board requesting a 15.79' rear yard variance on this same parcel last month and was denied. They have chosen a smaller home for the lot, but it still requires a rear yard variance due to the irregular size of the lot.

Mr. & Mrs. John Ward (3326 Queens Lane) were again present to state their objection. Mr. Ward has offered to buy the lot from Ryan Homes, but they have not returned his call. He feels that Ryan Homes is aware of the building requirements, and they should build the proper size house on the lot, then he would not be able to object. Mr. Ward also stated that he has spoken with an attorney and may take further action, if the variance is granted.

There was a discussion on what it would take to make the Ward's agreeable to the variance. Ryan Homes is willing to work with the Ward's in order to make them happy. A row of evergreen trees planted along the rear property line was agreed upon. Both parties must agree to the type of evergreen trees planted.

Findings: Mr. Gugliuzza stated that the lot is a buildable lot according to the Planning Board approval of the original subdivision. The benefit could not be achieved by other means, because Ryan Homes does not have a smaller model home.

Mr. Sortisio made a MOTION to approve Application # 5216 for a 6.19' rear yard variance, with the stipulation that evergreen trees (6'-7' in height) agreed upon by both Ryan Homes and Mr. & Mrs. Ward, be planted along the rear property line at 3320 Queens Lane. Mr. Eustace seconded the motion, all voted in favor. **Granted**

Minutes from the June 3, 2008 meeting were approved on MOTION by Mr. Connolly seconded by Mr. Rahill. Motion carried.

Mr. Gugliuzza welcomed the new members and thanked the retired members, Mr. Blaaboer and Mr. Chiacchia for their many years of outstanding service. It was suggested that plaques be presented to the retired members in recognition of their service.

MOTION to ADJOURN was made by Mr. Rahill, seconded by Mr. Gugliuzza. Motion carried. Meeting adjourned at 9:30 p.m. The next Zoning Board meeting will be held Thursday, August 7, 2008 at 7:00 pm.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 7/2/08

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