

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

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday, July 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
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 #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 explained that Mr. Suffeleto from ATF (Bureau of Tobacco and Firearms) spoke with someone on the Town Board regarding the status of Mr. Bridges. Mr. Blaauboer suggested tabling the application for another month in order to give Mr. Salisbury additional time to acquire written documentation from Mr. Suffeleto.

Mr. Salisbury was given one month to provide the Board with written documentation from ATF verifying Mr. Bridges' approved status as an ATF officer, and to provide the Board with a copy of his current ATF license.

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'.

Mr. Blaauboer explained that in 1997 the Town Board passed the overlay district in an effort to redefine the Camp Road area. The overlay district was created with the special objective placed on the redevelopment of existing properties to agree with the concepts of the hospitality district. The area on Camp Road from the thruway north to Southwestern Blvd. has been defined as part of the entertainment/hospitality district.

Mr. Desmond presented the Board with a list of local businesses in the overlay district along with the height measurements, and photos of their company sign. World Gym at 5110 Camp Road. was the only business with a 12 ft sign. The Board was also presented with a letter from World Gym (Mark Messina, President) stating that the sign is difficult for customers to see because it is so much lower than the other signs. Mr. Rahill read Mr. Messina's letter into record. Mr. Guglizzua disagreed with Mr. Messina's statement that the sign is too difficult to see, and that his business would benefit from a taller sign.

Mr. Desmond has spoken with the neighboring business (Enterprise) about sharing a sign, but they are not interested. A monument sign was discussed, but Mr. Desmond felt it would not be as visible as neighboring businesses' signs. Mr. Blaauboer pointed out that Mr. Desmond's property is the first visible property (on the same side as Leisure Land) coming from the Village, a 12' sign would not be obstructed by other businesses with taller signs.

Mr. Blaauboer read through the Town Code 280-190 B 7 - Site Designs Conditions:
Signage shall not include pylon signs or any form of flashing lights. Signage shall

be designed at ground level, typically not exceeding 12 feet in height, and should contain components such as brick.

There was a lengthy discussion regarding the code and types of signs acceptable to the hospitality district.

Findings: Mr. Rahill recused himself from voting on this application because of personal involvement with the owners.

Mr. Blaauboer read through Code 280-185 Camp Road Overlay District (adopted Nov. 2000).

Mr. Chiacchia suggested a 15' sign which would require only a 3' variance. Mr. Desmond was agreeable to a 15' sign.

The issue of acceptable types of signage in the overlay district would be dealt with through Building Inspection. The only issue before the Board on Application # 5144 was for height.

Mr. Chiacchia made a MOTION to approve Application 5144 with a 3' variance on a detached sign. Mr. Connolly seconded the motion. Mr. Rahill abstained from voting, four Board members voted in favor, Mr. Blaauboer and Mr. Gugliuzza voted against. **Granted.**

Application #5147 - Old Time Baptist Church for approval on a multiple dwelling unit. Code - 1 single family unit, actual 3 units within one residence, variance 1 unit (2 family dwelling units pre-existing nonconforming, 2 family dwelling was created in 1974 B.P. #1974-602. Note: utilities are separate to three units.

Louis Guadagno from the Old Time Baptist Church explained that the property is owned by the church and the house is used by the Pastor and his family. The Pastor, the Pastor's son and his family, and the Pastor's daughter and her family live in the existing 2 family dwelling. The Pastor, his grandson and his daughter each suffer with health problems, living under the same roof allows them to help each other. More room would allow for more privacy.

Plans were shown to the Board members. The addition would have a separate kitchen which defines an additional living unit. The occupants would stay the same. All units are accessible from each other.

There were no comments from neighbors.

Findings: Mr. Blaauboer explained that a pre-existing nonconforming 2 family dwelling, requesting a third dwelling unit would require a use variance. In order for an use variance to be granted the applicant must have proof of hardship. The hardship must be monetary, proven by the fact that the property is unuseable in the manner in which the code permits.

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Mr. Blaauboer suggested that the Guadagino family review their plans and determine if they really need an additional kitchen, which determines the 3rd family dwelling. The code may allow for an expansion to a pre-existing nonconforming 2 family dwelling. The Board would review the code to determine if an expansion could be considered. Mr. Blaauboer asked for a motion to table for 1 month to give the family time to reconsider, and the Board time to review the code.

Mr. Rybczynski made the MOTION to table Application # 5147 for one month for review. Mr. Gugliuzza seconded the motion. All voted in favor. **Tabled**

Application #5148 - Thomas and Elizabeth Polisoto for approval on an 8' fence at 2318 Beachwood Drive. Violates 280-277 A(2). Code 6', actual 8', variance needed 2'.

Mr. and Mrs. Polisoto are requesting an 8' stockade fence in order to obtain privacy for both their neighbor and themselves. Currently there is an 4' chain link fence along the property line. Mr. Polisoto presented pictures with different views of the fence, property line, and the height of the neighboring home.

Mr. and Mrs. LaMastra of 2312 Beachwood Drive stated that their family has no objection to the fence as long as their view of the lake is not obstructed.

Findings: The fence is to be 8' to a point and tapered to 6' toward both the front and back yard in order to avoid blocking the LaMastra's view of the lake. The fence will start at the front corner of the house, continue along the property line beyond the hot tub. The Board recommends that the Building Inspection Dept. be responsible for exact measurements of the fence. The chain link fence is to be removed.

Mr. Sortisio made the MOTION to table Application # 5148 for one month in order for the Building Inspection Dept. to get accurate measurements for the length of the fence. Mr. Gugliuzza seconded the motion. All voted in favor. **TABLED**

Application #5149 - West Herr Toyota for a temporary special permit for a temporary structure at 4141 Southwestern Blvd. Code Section 280-310 B (2).

John Wabick, V.P. for West Herr Automotive Group explained that the New York State Transportation Dept. (NYSDOT) is in the process of widening Southwestern Blvd. taking approximately 1.4 acres away from the West Herr Toyota site. Toyota Motors requires a total of 8.5 acres for their facility. Toyota also requests that the building be 40,000 sq. ft., the building currently is 20,000 sq. ft.

The loss of acreage caused by the road construction puts the site in jeopardy of relocation, which is why a permit for a temporary building has been requested. West Herr is currently in the process of trying to acquire land from Erie Community College (minimum of 2 acres), which would

help to eliminate the need to relocate. The State has offered West Herr Toyota a sum of money for the 1.47 acres they acquired, but currently West Herr is in the process of appealing the amount.

The long-term hope is for Toyota to remain at the current location, but there are many unresolved issues at this point. The dealership has been very busy and a larger building is necessary. West Herr is not in the position to invest more money into a location which would not be suitable due to the loss of acreage.

Findings: Mr. Rybczynski made a MOTION to approve Application # 5149 for a temporary building at 4141 Southwestern Blvd. for a term of two years. Mr. Connolly seconded the motion. All voted in favor. **GRANTED**

Application #5150 - John Drewiega for approval on an accessory structure at 5027 Stewart Pkwy. Violates 280-278 B(3). Code 10', actual 6', variance needed 4'.

Mr. Drewiega addressed the Board regarding closing in a sun porch behind his house, which is 6' from the garage. The garage will be fire proofed.

Letters from 2 neighbors were presented and read into record:

Bruce Porter, 5031 Stewart Pkwy. - No objection

Laura Kowal, 4953 Kennison Pkwy. - No objection

Findings: Mr. Chiacchia made a MOTION to approve Application # 5150 for a 4' variance between the house and garage, with the understanding that the garage will be fire proofed. Mr. Rybczynski seconded. All voted in favor. **GRANTED**

Application #5151 - Edward & Bernice Rueger for a lot area variance at 2628 Oakwood Ave. Violates 280-39 A (1) (a). Code 10,000 s.f., actual 7,700 s.f., variance needed 2,300 s.f. Note: New construction request for original front yard setback of 24' and will be in line with the neighbors. If board sees fit; small lot exemption codes would conform to the neighborhood harmony.

John Hatch addressed the Board. The lot in question belongs to his wife's parents. Edward Rueger passed away, and the house has since burned down and been demolished. The lot has been vacant for about 2 years. Mrs. Rueger would like to rebuild a small two bedroom ranch (1200 sq. ft.).

Findings: Mr. Rahill made the MOTION to approve Application # 5151 for a lot area variance of 2,300 s.f. Mr. Gugliuzza seconded the motion. All voted in favor. **GRANTED**

Application # 5152 - Ryan Homes for a rear yard setback at 6125 Woodford Dr. Violates 280-282 F (3) Regulations for cluster housing rear yard. Code 28.75, actual 21.00, variance needed 7.75.

Chad Rush, Division Manager for Ryan Homes addressed the Board regarding Sublot No. 14 in Wellington Woods Subdivision. He submitted a letter stating the actions taken to alleviate the previously discussed (March 2007) rear yard setback issues in the subdivision. Mr. Rush reviewed the steps taken:

1. Sold existing model home.
2. Introduced 3 new homes into the community that would never require a variance.
3. Began the construction of a new model home on Lot No. 33 that would minimize any variance request.

Of the past 4 homes sold, this lot is the only lot requiring a variance. The owners, Mr. and Mrs. O'Conner, have already sold their existing home and have no place else to go.

Mr. Blaauboer explained that the Board's objection was to dozens of lots requiring a variance, and inquired as to how many lots would still need a variance given the measures that were taken to correct the situation. Mr. Rush estimated about 10 - 15 lots could still require a variance, out of a total of 54 lots. The variances would range anywhere from 1.5' to 7.3'.

Mr. and Mrs. O'Connor expressed their appreciation to the Board for consideration of their application.

Findings: Mr. Blaauboer noted that this variance stands on its own merits and any future variances considered will be based on their own individual merits. Mr. Rybczynski made the MOTION to approve Application # 5152 for a rear yard variance. Mr. Rahill seconded the motion. All voted in favor. **GRANTED**

Application # 5153 - Michael & Patricia Zbock for a in-law apartment above an attached garage at 3825 North Creek Rd. Violates 280-17 A (1). Code Single family dwelling, actual 2 family dwelling, variance needed 1 dwelling unit.

Mr. and Mrs. Zbock would like to add an attached 3 car garage with an in-law apartment, which they would live in. Their son and his children would then move into the main house. Mr. and Mrs. Zbock no longer need a large home to live in, and would like to help out their son. It would not be used as rental property.

Findings: Mr. Rybczynski made the MOTION to approve Application # 5153 for a variance for 1 dwelling unit with the intention the in-law apartment will not become income property. If the family situation changes the property would revert back to a single family dwelling. Mr. Guglizza seconded the motion. All voted in favor. **GRANTED**

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

MOTION to ADJOURN was made by Mr. Blaauboer, seconded by Mr. Chiacchia. Motion carried. Meeting adjourned at 11:00 p.m. The next Zoning Board meeting will be held Tuesday, August 7, 2007 at 7:30 pm.

Respectfully Submitted,

Board of Zoning Appeals
July 5, 2007

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 7/6/07