

**Town of Hamburg
Board of Zoning Appeals
Meeting - August 7, 2007**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday, August 7, 2007 at 7:15 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 **EXCUSED**
Building Inspector Jim Eberhardt
Recording Secretary Laurie Wutz

Secretary Jack Rahill read the following Legal Notice of Public Hearing:

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The following Zoning Board members went into executive session at 7:16 pm:

Peter Blaauboer, Chairman
Jack Rahill, Secretary
Michael Chiaachia, Vice-Chairman
Joseph Shaw, Attorney
James Sortisio, Committee Member
Vincent Gugluizza, Committee Member

Attorney James Kirisits briefed the Board on litigation. No action was taken. No votes were taken.

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

Mr. Salisbury explained that Mr. Suffeieto from ATF (Bureau of Tobacco and Firearms) said he spoke with Mr. Quinlivan regarding the requested documentation verifying the approved status of Mr. Bridges. Mr. Quinlivan was absent from the meeting. Mr. Salisbury also stated that ATF will not submit written documentation to the Board.

Findings: Mr. Shaw suggested denying the application on the grounds that Mr. Salisbury is requesting an approval on a home occupation at a home he doesn't own or occupy. Mr. Connolly pointed out that the Board has requested documentation on 3 occasions.

Mr. Rahill made the MOTION to deny Application 5132, Mr. Chiacchia seconded the motion. All voted in favor. **DENIED**

Tabled 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 reviewed the history of the application by explaining 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.

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Mr. Shaw suggested Mr. Guadagno consult with a lawyer regarding the criteria needed for obtaining a use variance. He also suggested Mr. Guadagno consult with the Building Dept. regarding the separate living units.

Findings: Mr. Guadagno requested the application be tabled for 1 month in order to consult with an attorney. Mr. Rahill made the MOTION to table Application # 5147 for 1 month, Mr. Chiacchia seconded the motion, all voted in favor. **Tabled**

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. Gugliuzza and Mr. Eberhardt met with both parties and measured the distance required for the fence. Both parties were satisfied with their decision.

The 8' fence is to run from the front corner foundation of Mr. Polisoto's home to the existing telephone pole, drop to 6' within 1 fence section to the concrete dock. The chainlink fence is to be removed.

Mr. Polisoto needs to submit the survey to the Building Dept.

Mr. Blaauboer asked for a motion to remove the Application #5148 from the table so both parties would not have to wait for the decision. Mr. Rahill made the MOTION, Mr. Gugliuzza seconded the motion. All voted in favor.

Mr. Blaauboer also asked for a motion to approve Application # 5148 with conditions. Mr. Chiacchia made the MOTION to approve Application # 5148 for a 2' variance on a side yard fence beginning at the front corner of Mr. Polisoto's house extending to the existing telephone pole, dropping to 6' within 1 fence section (traditionally 8') to the concrete dock, and the removal of the existing chainlink fence. The wire fence in front of the house is also to be removed. Mr. Chiacchia made the MOTION, Mr. Gugliuzza seconded the motion, all voted in favor. **GRANTED**

Application # 5154 - Irene and Colin Albig for a 6' fence at 3970 Delmar Ave. Violates 280-277 A (2), code 4', actual 6', variance needed 2'.

Shawn McDonald spoke on behalf of Mr. Albig, and presented the Board with a petition from three neighbors on Delmar Ave. with no objection to the requested fence:

3966 Delmar Ave. - Roger J. Rosplochowski
3967 Delmar Ave. - Larry Long
3975 Delmar Ave. - Jim Lehmann

Mr. McDonald also presented pictures of the neighboring property on the southern boarder, which is a duplex used as rental property. In the past four years, four different families have lived there. The

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photographs showed the backyard of the duplex with toys and other items left laying around. A photo of the house across the street on the corner Delmar Ave. and Bayview Rd. with a 6' fence was also presented. Mr. McDonald expressed Mr. Albig's desire to mirror that fence.

Mr. Chiacchia asked how far would the fence extend in the front yard, the line of sight being a traffic safety issue. The variance needed for the fence would run 40' to 45' from the front corner of the property line to the front of the house from there back they would be allowed the 6' fence.

Findings: Mr. Blaauboer stated that the privacy needs of the applicant far out weigh any major impact that would be rendered by granting the variance. Mr. Connolly made a MOTION to approve Application # 5154 for a 2' variance, Mr. Rahill seconded, all voted in favor. **Granted**

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 s.f., actual 50 s.f., variance needed 10 s.f. Applicant did not appear.

Tabled Application #5156 - BG McKinley II, LLC (Fedex Kinkos) for a 3rd attached sign at 3701 McKinley Pkwy. Violates 280-261 A. 3rd sign not permitted. Applicant did not appear.

Application # 5157 -Burke Homes for a code interpretation for duplex/townhome lot area requirements. Zoning code requirements which apply to proposed Oakwood Drive Subdivision project involving zero lot line duplex/townhomes with 100' frontage.

Mr. Gow from Nussbaumer & Clarke, Inc. addressed the Board as directed by the Planning Dept. for a code interpretation. The issue of frontage with zero lot lines is what is being disputed. Mr. Gow read the code regarding zero lot lines: single family homes require 70' frontage plus additional 30' for a second dwelling unit, townhomes require 100' frontage. There have been similar project such as Highland Acres done in the past. There would be no homeowners association.

The Planning Board informed Mr. Gow that the lots are being considered non-conforming. The fact that these are single family homes, the frontage required should be that of a single family home.

Mr. Shaw explained that the Planning Dept. would have to deny the request in order for the Zoning Board to intervene. The Planning Dept did not deny the project.

Mr. Blaauboer felt that this issue is clearly a Planning Board issue.

Findings: Mr. Blaauboer suggested tabling Application # 5157 for 1 month to give time to speak with Drew Reilly from the Planning Dept. Mr. Gugliuzza made the MOTION, Mr. Sortisio seconded the motion, all voted in favor. **Granted**

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Application # 5158 - Kathleen and Lawrence Durski for a detached garage addition at 4293 Fairview Pkwy. Violates 280-278 B(2), code 5', actual 3' variance 2'.

Mr. Durski explained he would like to expand his existing garage.

Mr. Sibiga, adjacent neighbor at 4299 Fairview Pkwy. submitted a letter stating he has no objection to Mr. Durski extending his garage.

Findings: Mr. Blaauboer asked for a motion to approve Application #5158 for a 2' variance for an existing non-conforming detached garage. Mr. Rahill made the MOTION to approve, Mr. Chiacchia seconded the motion. All voted in favor. **GRANTED**

Tabled Application # 5159 - New Era Cap Co. for a special temporary permit for proposed non-conforming use at 4817 Lake Ave. under provisions of code section 280-310 (B) (2).

Ms. McShane from Phillips Lytle, LLP, and Richard Wozniak from Inferno Baseball, Inc., a youth baseball/softball training school, addressed the Board. Inferno would lease the building at 4817 Lake Ave. from New Era Cap Co. The property is currently zoned M-1, both New Era Cap Co, and Inferno would submit applications for a zoning amendment.

Mr. Blaauboer suggested tabling this application in order to give the Code Review Committee a chance to review the zoning of the property.

Mr. Shaw gave no input on the application because of a conflict of interest. Mr. Quinlivan will serve as counsel on this application.

Mr. Rahill made a MOTION to table Application # 5159, Mr. Blaauboer seconded the motion. 5-1 vote in favor. Mr. Gugliuzza voted against. **Tabled**

Application # 5160 - Richard and Claire Safe for a rear yard setback at 4027 Bond St. Violates 280-41, code 30', actual 29' variance needed 1'.

Andy Romanowski from Alliance Homes spoke on behalf of Mr. and Mrs. Safe. The home was built in 2001 and the owners would like to expand the master bedroom and bath. There is another residence behind their home with a 6' stockade fence between the two properties.

Findings: Mr. Connolly made a MOTION to approve Application # 5160 for a rear yard setback variance of 1'. Mr. Chiacchia seconded the motion, all voted in favor. **GRANTED**

A six month extension was granted to Application # 5101, 4600 Southwestern Blvd.

Mr. Rahill made the MOTION to grant the extension, Mr. Chiacchia seconded. All voted in favor. **Granted**

Minutes from the July 2007 meeting were approved on MOTION by Mr. Connolly, seconded by Mr. Chiacchia. Motion carried.

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MOTION to ADJOURN was made by Mr. Chiacchia, seconded by Mr. Sortisio. Motion carried. Meeting adjourned at 9:45 p.m. The next Zoning Board meeting will be held Thursday, September 6, 2007 at 7:30 pm.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 8/9/07