

**Town of Hamburg
Board of Zoning Appeals
Meeting - September 4, 2007**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday, September 4, 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 Gugluizza
Commissioner Jim Sortisio **EXCUSED**
Commissioner Shawn Connolly **EXCUSED**
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:

Board of Zoning Appeals
September 4, 2007

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 #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.

Applicant did not appear. Mr. Blaauboer asked for a motion to send a letter to the applicant regarding status of application. Mr. Chiacchia made the MOTION to send notification to applicant, Mr. Rahill seconded, all voted in favor.

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 requested application to remain tabled.

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. Mr. Blaauboer asked for a motion to send a letter to the applicant regarding status of application. Mr. Rybczynski made the MOTION to send notification to applicant, Mr. Chiacchia seconded, all voted in favor.

Tabled 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.

Kurt Allen from Building Inspection submitted a letter stating his interpretation of the code regarding zero lot lines (280-39 A). Mr. Rahill read the letter into record. Mr. Gow from Nussbaumer & Clarke, Inc. disagreed with Mr. Allen because there are other subdivisions with identical structures and lot sizes which were approved by the Planning Dept., Highland Acres Subdivision approved in 2003 and Brompton Heights Subdivision.

Mr. Gow feels that if the Planning Dept. wishes to interpret the code differently now, then they should amend the zoning and treat future projects accordingly. The fact that other subdivisions identical to this one were approved by the Planning Dept., and the language of the code is not clear, then the Oakwood Drive Subdivision project should also be approved. The Planning Dept. gave no reasoning for interpreting the code differently now.

Mr. Rybczynski asked Mr. Gow about the types of established homes in the neighborhood. Mr. Gow stated that the neighborhood is a mix of single and double family homes. Property values of the existing homes would not be lowered due to the project.

Mr. Blaauboer stated that if Planning and Building Inspection agree that the project should not be allowed, that he couldn't disagree with them.

Several Board members expressed interest in knowing why the Planning Dept. is now requesting interpretation of the code, after identical projects were allowed in the past. Mr. Rybczynski felt the developer should be given a clear reason why the project should not be approved.

Findings: Mr. Rybczynski made the MOTION to respectfully request Building Inspection and the Planning Dept. to clarify the reason this application was sent to the ZBA for interpretation., Mr. Gugliuzza seconded the motion, all voted in favor.

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, came before the Board last month. The application was tabled in order to give the Code Review Committee a chance to review the zoning of the property.

Mr. Blaauboer, also a member of the Code Review Committee, stated that it is very likely that the zoning will be amended to be compatible with the neighboring properties.

Findings: Mr. Guugliuzza made a MOTION to approve Application #5159 for a special temporary permit. Mr. Chiacchia seconded, all voted in favor. **Granted**

Application #5161 - Daryl Duink for a detached sign at 3142 Hickox Road. Violates 280-253(B), code is 6 sq. ft , actual is 15 sq.ft. variance of 9 sq.ft.

Mr. Duink addressed the Board explaining that his farm market business started in November 2006. His market sells pork, lamb, beef, etc. He has been working with the State Agricultural Markets, and has left several messages for Mr. Allen which were not returned. Mr. Duink did not know he needed a permit for the sign, which is already in place.

Mr. Rahill stated that he drove past the property and found no problems with the sign.

Findings: Mr. Rybczynski made a MOTION to approve application #5161 for a 9 ft. variance for a detached sign. Mr. Rahill seconded, all voted in favor. **Granted**

Application #5162 - Gary Bridges for approval for a home occupation for specialty sporting goods sales (gun sales) at 3736 Sowles Rd. Violates Code 280-31 B(7) - ZBA approval required

Mr. Bridges resides at 3736 Sowles Road and previously appeared before the Board requesting approval for a home occupation in order for his friend Mr. Salisbury, who is an ATF (Bureau of Tobacco and Firearms) officer, to run firearms mail order business out of his home. The application was

denied because Mr. Salisbury does not reside at the residence (3736 Sowles), and he could not provide a valid ATF license or documentation from ATF stating that Mr. Bridges would be an approved officer under Mr. Salisbury license.

Mr. Bridges has filed for his own ATF license, he presented the Board with a business certification, a tax identification number, and a copy of his ATF license application to sell firearms. The business would be strictly a mail order business, no inventory will be kept on hand.

Findings: Mr. Gugliuzza made a MOTION to approve Application #5162 for a home occupation, subject to Mr. Bridges receiving his ATF license. Mr. Rahill seconded, all voted in favor.
Granted

Application #5163 - Charles Fadale for approval to divide an existing lot for a single family dwelling at 6385 Heltz Road.. Violates 280-18 (A) Lot 1 code is 2 acres, actual is 1.42 acres variance of .58 acres. Lot 2 code is 2 acres, actual is 1.39 acres variance of .61 acres.

Elizabeth Fadale and Daryl Martin (brother of Ms. Fadale) addressed the Board. Mr. Martin explained that remodeling was more expensive than the owner originally expected, and that dividing the property would allow them to recover some of the expenses.

Ms. Fadale presented minutes from previous Zoning Board meetings where subdividing lots on Heltz Rd. was allowed, Applications # 4862-63 dated January 1, 2004 and Application # 4301 dated April 1, 1997.

Mr. Blaauboer read into record a memo from Sarah desJardins, of the Planning Dept. explaining why they unanimously gave a negative recommendation to the Zoning Board on subdividing this lot:

1. The request is not in compliance with the Comprehensive Plan.
2. The request would negatively affect the character of the neighborhood.
3. The request would be creating two non-conforming lot.

Sasha Yerkovich spoke on behalf of the Planning Board explaining that they are trying to protect the R-A zoning.

There were no letters from neighboring parcels presented to the Board.

Findings: Mr. Blaauboer stated the history of the area shows some subdividing of lots has been granted to allow for sub-standard lots on occasion. Each application must stand on its own merit. The fact that it has been granted before does not mean it will be granted at each request. Mr. Blaauboer read through the criteria for an area variance. Dividing the lot would have an impact on density, creating density similar to R-1, changing the character of the neighborhood.

Mr. Gugluizza also reviewed the area variance and could find arguments both for and against dividing the lot. He also stated he would voted with the majority of the Board.

Mr. Blaauboer asked for a motion to deny based the on the fact that the request is for a substantial variance, and dividing the lot would create an undesirable change to the character of the neighborhood due to increased density.

Mr. Rahill made a **MOTION** to deny Application # 5163 for approval to divide an existing single lot into 2 nonconforming lots. Mr. Gugluizza seconded, all voted in favor. **Denied**

Application #5164 - David Schoenle for a front porch at 3957 Tudor Place. Violates 280-41 (A). Code is 35 ft., actual is 22 ft., variance of 13'.

Mr. Schoenle presented letters from 2 neighbors who had no objection to his request for a porch. Mr. Rahill read the letters into record:

Judith and Thomas Stotz - 4515 Buckingham Lane
Robert Wojnar - 3965 Tudor Place.

Mr. Schoenle also presented pictures of neighboring homes with identical porches.

Findings: Mr. Rahill made a **MOTION** to approve Application #5164 for a 13' variance. Mr. Rybczynski seconded the motion, all voted in favor. **Granted**

Tabled Application #5165 - Ryan Homes for a patio home at 6131 Woodford Dr. Violates 280-282 F (3) Regulations for cluster housing rear yard. Code 28.75, actual 20.66, variance needed 8.01. Applicant did not appear.

Application #5166 - Linda Crosta for an attached garage and detached garage at 5093 Bradford Street. Violates 280-274 A (2)(a) Code is 18 ft., actual is 7.13, variance of 10.87 ft. for the attached garage. Violates 280-278 B (4)(a) Code is 850 sq. ft., actual is 1100 sq. ft., variance of 250 sq. ft. for the detached garage.

Ms. Crosta explained she would like to move the existing detached garage to the back of her property to use as storage, and add a smaller attached garage to the house. An addition of 250 sq. ft. would be made to the detached garage. Pictures and a site plan were presented to the Board showing her property and the location of the detached and attached garages. The property behind Ms. Crosta's home is land locked.

The two letters from neighbors stating they have no objection were read into record:

Louis DiFlavio - 5087 Bradford St.
M. Jennifer Liberti - 5101 Bradford St.

Findings: Mr. Blaauboer felt the additions would be have no impact on the neighborhood or

traffic safety. Mr. Rahill made a MOTION to approve Application #5166 for a 10.87 ft. variance for an attached garage, and a 250 sq. ft. variance for the detached garage. Mr. Gugliuzza seconded, all voted in favor. **Granted**

Application #5167 - Carl Yerkovich to install a perimeter fence on vacant property on Lakeview Road. Violates 280-31 A & B (1)

Sasha Yerkovich spoke on behalf of her brother-in-law, who has owned the property for about 6 -7 years and resides in California. Mr. Yerkovich would like to fence in a vacant parcel (43 acres) on Lakeview Road for liability reasons. A total of approximately 54 parcels back up to the vacant land. The land has been posted with "No Trespassing" signs for years, yet Mr. Yerkovich has found hunting stands, ATV trails, and adjacent property owners are encroaching on his property.

Ms. Yerkovich explained that a 4' chainlink fence would be installed around the perimeter of the parcel. Several of Mr. Yerkovich family members live in the area, and would maintain the fence for him.

The following residents attended the meeting to object to the installation of a fence around the parcel:

Charles Orzechowski - 6108 Hewson Rd.
Ronald DeMarino - 6114 Hewson Rd.
Phillip Krasinski - 5988 Hewson Rd.
Craig Harder - 6084 Hewson Rd.
Todd Barady - 5982 Hewson Rd.
Ed Mercado - 6042 Hewson Rd.
Kelly Ballagh - 5958 Hewson Rd.
Thomas Heltz - 5060 Hewson Rd.
Anthony Notto - 6012 Hewson Rd.
Michael Kait - 6034 Hewson Rd.
Marilyn Braunscheidel - 1608 Lakeview Rd.
Robert Warren - 1600 Lakeview Rd.
Frank Fabian - 1622 Lakeview Rd.
Brett Witkowski - 1680 Lakeview Rd.

The residents expressed the following reasons for their objection:

Maintenance of the property/fence
There has been no hunting on the property
There has been no one riding ATVs on the property
There has been no partying going on by teenagers
The wooded area is very dense, limiting the ability for ATVs and teenagers to trespass
Property values would decrease
Adjoining property owners take pride in their property and don't want to maintain the fence from their side
Mr. Witkowski at 1680 Lakeview Rd. would end up with the fence running across his side yard and back yard
Kids having to retrieve balls and other toys could get hurt climbing over fence
Neighbors all know each other and would not allow unauthorized used of property

Preserve the view and natural setting of the area

Ms. Yerkovich addressed the Board after listening to the objections and felt the residents present were not the ones trespassing. The intention of the fence is not to preserve the green space, but to protect Mr. Yerkovich's property line. Mr. Yerkovich preserved the green space by purchasing the property, he is not planning on building on it. The property has been posted for years and still there are people trespassing.

Findings: Mr. Blaauboer pointed out to the residents that the view of the land does not belong to the property they bought.

Mr. Blaauboer also pointed out that to allow a structure (fence) on property that doesn't have a residence is very hard to justify due to difficulty to maintain.

Mr. Rybczynski added that no evidence was presented to confirm complaints of hunters, ATV riders, or partying going on.

Mr. Chiacchia made a MOTION to deny Application #5167 to install a fence around the perimeter of vacant property on Lakeview Rd. Mr. Gugluizza seconded, all voted in favor. **Denied**

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

MOTION to ADJOURN was made by Mr. Chiacchia, seconded by Mr. Blaauboer. Motion carried. Meeting adjourned at 10:45 p.m. The next Zoning Board meeting will be held Tuesday, October 2, 2007 at 7:30 pm.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 9/6/07

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