

**Town of Hamburg
Board of Zoning Appeals
Meeting - October 7, 2008**

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

Chairman Vincent Gugluizza
Vice-Chairman Brad Rybczynski
Secretary Jack Rahill **Excused**
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

Acting Secretary Rybczynski 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.

Mr. Gugliuzza stated that the application is being moved off the table since the Town Board has adopted a new sign ordinance concerning electronic message board. The applicant can obtain the needed permit from Building Inspection.

Mr. Shaw explained the application was for a use variance, therefore, to remove it from the table it should be denied. The applicant should be recommended to the Building Inspection Department to obtain necessary permits.

Findings: Mr. Rybczynski made a MOTION to deny Application # 5120 for a use variance. Mr. Eustace seconded, all voted in favor. **Denied**

Tabled Application #5220 - Richard Mead for a proposed subdivision at 4808 Lakeshore Road.

Jay Pohlman, attorney for the applicant again came before the Board to explain that the Mead family has received Planning Board preliminary approval to subdivide their property, and a positive recommendation was sent to the Zoning Board regarding the applicant's request. Mr. Pohlman further explained that currently there are three living units on one parcel, one two family dwelling and a single family dwelling (all units are occupied). Subdividing the lot would split the two family dwelling down the middle (making each home a zero lot line home), giving each unit individual ownership. Each unit would have separate deed and utilities. The driveway will continue to serve as it currently does.

The applicant is requesting a variance for two separate living units on one parcel in a R-2 zone. Currently there are three living units on one parcel.

The Building Inspection Department revised the additional sited violations associated with subdividing the lot (copy attached).

Mr. Pohlman requested the Board to make a decision on the issue of two living units on one parcel, the Building Inspection issue is a side yard variance of .32'. The Planning Board has dealt with the subdivision of the property.

Mr. Gugliuzza inquired as to why the original Zoning Board request was first denied (Application #4370 1/6/98) then approved (Application # 4448 9/1/98). Mr. Pohlman stated that the Board wanted certain requirements which the owner later agreed to make. Copies of Minutes from 1/6/98 and 9/1/98 enclosed.

Ms. McFadden-Zak asked what the hardship was in leaving the property as is? Mr. Pohlman explained that Mr. Meade has since passed away, and the family would like to have the option day sell a portion the property. She also asked why the subdividing was not done originally? Mr. Polhman responded because of financial reasons.

Mr. Gibson questioned about the "As Built" drawings, with regards to the fire wall. Mr. Pohlman stated he gave a copy of them to Kurt Allen, but would get the Zoning Board a copy.

Mr. Gugluizza asked what were the Planning Board's concerns when the application was first submitted for subdividing. The concerns were regarding the tennis court, changes to the buildings, and building flip-flopped.

Mr. Shaw stated that the request is actually a request for a use variance. The Zoning Board judges applications by either a use variance or an area variance. Mr. Pohlman responded that the issue is not that of the typical applicant.

Mr. Connolly asked Mr. Pohlman to expand on the use variance balance test criteria of realizing a reasonable return as shown by competent financial evidence. Mr. Pohlman stated he needed to go back to the Planning Board minutes from 1998 and put everything together along with the Zoning Board minutes, in order to get the full history. Mr. Gugluizza stated that it would be helpful, because there are several new member on the Board. He asked for a motion to table application for one month.

Mr. Connolly made a MOTION to table Application # 5220 for one month in order for the applicant to produce the minutes from the Planning Board from the original requests for this parcel. Mr. Rybczynski seconded, all voted in favor. **Tabled.**

Application # 5223 - Oxy of NY Inc. an addition to two oversized signs at 5245 Camp Rd. Violates 280-261 F (2) sign #1 - existing signage 124 sf, new signage 144 sf, variance needed 20 sf. Sign #2 - existing signage 86.6 sf, new signage 106.6 sf, variance needed 20 sf.

Applicant was not present. Since the last meeting, the Town Board has adopted sign ordinance allowing the electronic message board. A variance of 20 s.f. is still needed for the existing sign.

Findings: Mr. Rybczynski made a MOTION to deny the variance for the electronic message board. Mr. Connolly seconded, all voted in favor. **Denied**

Mr. Eustace made a MOTION to approve the 20 sf needed for the detached sign (sign #1) with the condition that the sign on the wall which applicant originally stated would be removed (the 19' x 10' sign attached to the building, parallel to the thruway), is removed.
Mr. Rybczynski seconded, all voted in favor. **Granted**

Application # 5224 - Ryan Homes for an extension on a temporary structure (model home) from nine months to twelve months at 6182 Woodford Drive.

Applicant did not appear, application table for one month. Notice to be sent to applicant.

Mr. Rybczynski made MOTION to leave Application #5224 on the table for one month. Mr. Sortisio seconded, all voted in favor. **Tabled**

Application # 5226 - Richard & Susan Schumacher for an in-law apartment at 4700 Bayview Rd. Violates 280-31 A (2), code single family detached dwellings, actual two detached dwellings, variance needed single detached dwelling (in-law apartment).

Richard Schumacher again came before the Board to explain that he would like to add a 12'

addition to an existing carriage house, for his 80 year old mother who currently lives near Syracuse. There would be no kitchen, and the addition would be unoccupied during the winter months.

Mr Schumacher stated he could add onto his home, but his house is so big now, and using the carriage house would give his mother her own living space. He also considered adding a breeze way, connecting the existing carriage house to his home, which could be done with a building permit. The breeze way would have to be 30' x 6', cutting his land in half, and affecting the garden. He did not like the appearance of the breeze way option.

Mr. Gibson explained that a neighbor down the road with a similar situation was approved for an in-law apartment, but that portion of Bayview Road is zoned NC which allows for additional living units. Mr. Schumacher's portion of Bayview Road is zoned R-1 which does not allow for additional living units.

Mr. Gugliuzza expressed concern about allowing in-law apartments, because if the property is sold in the future, the variance would not carry over to the new property owners. There then would be no way to monitor if the property is being used as rental property. Mr. Rybczynski pointed out that there would be no kitchen facilities, therefore it would not be favorable for rental.

Findings: Mr. Rybczynski reviewed the area variance criteria stating that Mr. Schumacher has expressed a desire to have his mother live with him. The breeze way option lends no benefit to the applicant, as well as being an undesirable change to the property. There is no other means feasible to the applicant, and there would be no adverse physical or environmental effects cause by the in-law apartment. He did not feel the difficulty was self-created.

The criteria for a use variance was also reviewed. Mr. Rybczynski noted that the breeze way would be expensive. The request would not alter the character neighborhood, but the hardship is not self-created given that his mother needs a place to live.

Mr. Rybczynski made a MOTION to approve Application # 5226 for an in-law apartment with the restriction that upon the sale of the property, the in-law apartment can not be used as rental property. Mr. Eustace seconded. Roll call vote was taken:

Mr. Gugliuzza - Deny
Mr. Rybczynski - Approve
Mr. Connolly - Deny
Mr. Eustace - Approve
Mr. Morlock - Deny
Mr. Sortisio - Deny

Application # 5226 **Denied** by 4-2 vote

Application # 5228 - Rachael Martin for an accessory use permit to allow overnight parking of an oversized tow truck at 5778 Walden Drive. Violates 280-24 B (2), code-one commercial vehicle less than 3/4 ton, actual-oversized vehicle exceeding 3/4 ton, variance need-to allow oversized vehicle.

Ms. Martin came before the Board with Attorney Jay Pohlman to explain that Ms. Martin is the property owner, and her boyfriend resides at her address. Her boyfriend works for Pinto Towing in Angola. Pinto Towing has the thruway contract between the Angola and Lackawanna exits. The tow

truck is 1.5 ton (no older than 3 years old), and it would be parked at Ms. Martin's home on a part-time basis (either every other weekend or 2-3 week days). There is an average of 2 calls per night.

Mr. Pohlman presented the Board with three letters from neighbors stating they have no objection to the truck being parked at Ms. Martin's home. Mr. Rybczynski read the letters into record:

Jeff Macartney - 5772 Walden Drive
Bernadette Szematowicz - 5784 Walden Drive
Robert & Mary Ann Murzynowski - 5790 Walden Drive

There was one anonymous complaint made to the Building Inspection Dept.

Mr. Pohlman also informed the Board that Ms. Martin would be agreeable to installing some sort of screening such as, trees or bushes to block the view of the truck from the immediate neighbors.

Mr. Gugliuzza stated that he checked with the Town Highway Department regarding the weight limits on Walden Drive. The 1.5 ton truck would be within the weight limit.

A resident present at the meeting, Mike Chiacchia, asked if any of the Commissioners have done an on-site visit. Mr. Morlock and Mr. Sortisio both stated that they had been to the site.

Mr. Sortisio commented that the driveway looked wide enough.

Findings: Mr. Gugliuzza suggested a temporary permit to see how the neighbors react. Mr. Pohlman stated he had no problem with a temporary permit in order for the Board to monitor the situation. Mr. Shaw suggested tabling the application in order to come up with legitimate conditions for a temporary permit.

Mr. Gibson asked if the truck would be parked on a hard surface. Yes it would.

Mr. Pohlman suggested that Mr. Shaw and he could get together to come up with an agreement suitable for everyone.

Mr. Rybczynski made a MOTION to table Application # 5228 for one month giving legal counsel time to do research, and come up with legitimate terms and conditions for the agreement. Mr. Connolly seconded, all voted in favor. **Tabled**

Application # 5229 - J. Rutowski Properties for an oversized detached sign with electronic message sign at 4923 Lakeshore Rd. Violates 280-261 - 1, Electric message signs not permitted in NC zone. Violates 280-258 Signs permitted-code 10 sf, actual 66.80 sf, variance needed 56.80 sf. (Note existing sign is 48.75 sf).
Violates 280-203 D (10) Route 5 overlay district - code 12', actual 17', variance needed 5'.
(Note permit history - 1999-317 sign permit issued no variance - 1986-401 sign permit issued no variance)

Jay Pohlman, legal counsel for J. Rutowski Properties (Wanakah Pharmacy) stated that the applicant waited until the Town Board adopted the new sign code provisions to apply for the needed variance. Wanakah Pharmacy has been in business for 30 years in the Overlay District. The signage was last changed

in 1999. Mr. Pohlman pointed out that given the location of the Wanakah Pharmacy the new signage would not be out of line. The Overlay District has more restrictive code requirements. Applicant would like to have an electronic message sign, but is understanding of the Town's position on the issue. The applicant is only looking to upgrade.

Ms. McFadden-Zak asked why a larger sign is needed, why not the same size sign? Mr. Pohlman explained that the current sign is an antiquated sign with bulbs that screw in, it looks like it belongs on Happy Days. Given the location with the other area signs, you really need something that will identify where your business located.

The current sign is not in compliance, but Mr. Gibson clarified that the sign was grandfathered in when the Overlay District was established. If the applicant was looking to reface the sign, no variance would be required.

Mr. Pohlman requested the Board to table the application for one month in order to come up with an alternative design for the sign, due to the fact that the current design was established before the new sign code provisions were established. He could also present pictures, along with measurements of the other signs in the area. Mr. Pohlman asked if the Board was strong in their opinion of the new code regarding the LED restrictions. Mr. Gugliuzza responded yes.

Mr. Connolly made a MOTION to table Application # 5229 for one month at the request of the applicant. Mr. Eustace seconded, all voted in favor. **Tabled**

Application # 5230 - Warren Joseph, Sr. for a carport/front shed roof at 3670 Pleasant Ave.
Violates 280-34 A - required yard - front porch roof: code 35', actual 1', variance needed 34'.
Violates 280-34 A - required yard - front shed roof: code 35', actual 22', variance needed 13'.
Violates 280-34 B (1) - required side yard for carport: code 10', actual 7.7', variance needed 2.3'.

Mr. Joseph presented pictures to the Board of his property and explained what he was hoping to accomplish. He would like to put a roof over the front of his shed which sets 22' from the road. Mr. Joseph heats with wood and would like the roof so he had a covered area to chop wood.

He is also looking to extend the roof over his front door, and add a carport to cover the three car driveway. He would tie two roofs together with the roof of his house, by matching the roof line and tiles. The carport would be open, no walls, and extend out to the retaining wall. The carport would eliminate a lot of shoveling in the winter.

There were no letters from neighbors, but Mr. Joseph stated he has spoken with three of his neighbors who had no objection.

Findings: Mr. Gugliuzza stated that each variance should be considered individually. Mr. Rybczynski stated he is uncomfortable with the distance the car port comes out. It is a substantial request.

Mr. Morlock made a MOTION to approve the front yard variance of 28' at 3670 Pleasant Ave. Mr. Sortisio seconded. **Granted** by 4-2 vote Mr. Gugliuzza and Mr. Rybczynski Denied

Mr. Morlock made a MOTION to approve 2.3' variance for the carport at 3670 Pleasant Ave. with the condition that the front line of the carport stops at the front of the house. Mr. Rybczynski seconded all voted in favor. **Granted**

Mr. Morlock made a MOTION to approve the 13' side yard variance for the shed at 3670 Pleasant Ave. Mr. Sortisio seconded all voted in favor. **Granted**

Application # 5231 - Michael McMillen for a detached garage at 2266 Penhurst Place. Violates 280-278 B (4) limitations on obstructions in required open space code 850', actual 960', variance needed 110'.

Applicant withdrew application.

Application # 5232 - Mark Trammell for a parking space variance at 4225 Big Tree Rd. Violates 280-122 B parking requirements - code 580 spaces, actual 488 spaces, variance needed 92 spaces.

Application # 5233 - Mark Trammell for a rear setback variance on a proposed garage at 4225 Big Tree Rd. Violates 230-20 A - code 50', actual 10', variance needed 40'.

Application # 5234 - MHT Holdings for a front setback variance on a proposed garage at 4225 Big Tree Rd. Violates 280-120 A (3) - code 50', actual 40', variance needed 10'.

Mark Trammell came before the Board regarding Application Nos. 5232, 5233, and 5234, which were heard together. Mr. Trammell apologized for failure to get the project (affordable housing development) started. He has concerns regarding the mortgage lender, Citi Bank, but has ordered a market study. Mr. Trammell stated he is thankful for the Town's patience and is definitely still trying to get the project underway.

Original variances were granted in June 2005, and kept active through May 2008 through extension requests. New applications are necessary because of the time lapse in requesting for an extension.

Mr. Trammell presented the same site plan from the original variance request. There have been no changes from the original applications. The housing development would allow for senior housing on one side, and family housing on the other. Phase one totaled 164 units, with a total of 290 units at completion. There is no start date for the project.

Findings: Mr. Gugliuzza stated that applications were previously approved for low income housing, and nothing has changed from the original request. He asked for a motion to approve.

Mr. Gugliuzza made a MOTION to approve Application #5232 for 92 parking spaces, Application # 5233 for a variance for a 40' rear setback, and Application #5234 for a front setback of 10' at 4225 Big Tree Road. Mr. Rybczynski seconded, all voted in favor. **Granted**

Other Business

Mr. Gugliuzza informed Board members about training sessions offered, which were sent to Board

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members along with a copy of the September minutes and the October agenda. He will get clarification on training requirements for Board members.

Mr. Shaw handed out a confidential memo from the Town Attorney, Ken Farrell with regards to some Zoning Board procedures. He asked members to review the memo for discussion at the next meeting.

Several members had conflicts with the November meeting date. Mr. Gugliuzza will inform members as to the date change of for the November meeting.

Mr. Rybczynski made a MOTION to approve the minutes from September 2, 2008. Mr. Connolly seconded, all voted in favor motion carried.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Eustace . Motion carried. Meeting adjourned at 10:15 pm. The next Zoning Board meeting will be held Monday, November 3, 2008.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 10/7/08