

**Town of Hamburg
Board of Zoning Appeals
Meeting - December 2, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday December 2, 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
Commissioner Shawn Connolly
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
Attorney Joseph Shaw
Attorney Cheryl McFadden Zak
Building Inspector Jeff Adrian
Recording Secretary Laurie Wutz

Secretary Rahill read the following Legal Notice of Public Hearing:

Tabled Application # 5237 - John & Marie Benny for a detached garage addition at 3092 Amsdell Rd. Violates 280-278 (B- 4a) - Detached Accessory Structures, code 850 sf, actual 1918.55 sf, variance needed 1068.55 sf.

Mr. & Mrs. Benny came before the Board stating that their son has moved out and the trailers and other trucks are now gone.

Mr. Gugliuzza stated he had visited the site, and after speaking with the Building Inspection Department is satisfied that the equipment has been removed, and the vehicles that are on the property are legal. The Building Inspector found no violations.

John Sausner and his wife (3098 Amsdell Rd.) were present. Mr. Sausner presented pictures which he stated were taken a few weeks ago, showing plow trucks. He also presented a business card for a landscaping company with the same logo that was on one of the trailers belonging to the son, the card listed no business address. Mr. Sausner stated that as of this morning there were at least 5-6 trucks on the property. Mr. Sausner also stated that he is fine with the addition as long as there is no business being conducted on the premises.

Mr. Gugliuzza asked Mr. Benny if he was doing business at his residence, Mr. Benny answered he was not, but does plow his own driveway. Mr. Gugliuzza assured Mr. Sausner that even if the variance is granted for the addition, if he feels business is being conducted on Mr. Benny's property, he could file a complaint with the Building Inspection Department.

Mr. Benny stated that he has two separate buildings to store his equipment. One in Angola, and one on Pleasant Avenue.

Mr. Benny stated that Building Inspector Wally Bratek was at their home this morning and he said everything was okay.

Findings: Mr. Rybczynski made a motion to approve the application stating that the applicant appears to be making great strides to improve the property. The request seems substantial, but given the size of the property it is not. There would be no undesirable change, it is a positive change. No adverse effects and the difficulty is not self-created. Mr. Connolly seconded.

Mr. Gugliuzza requested that a condition be attached to the variance that no business is to be conducted on the premises. Mr. Rybczynski stated that it is already a condition established by the zoning code, and was uncomfortable with adding the condition to the variance.

Mr. Rybczynski made a motion to strike his first motion, and made a MOTION to approve Application #5237 for a 1068.55 sf variance on a detached accessory structure at 3092 Amsdell Road, with the condition that no business is conducted on the property in that building. Mr. Connolly seconded, all voted in favor. **Granted**

Application # 5238 - Benderson Development for a second detached sign at 3860 McKinley Pkwy. Violates 280-261 F - Code 1 sign, actual 2 signs, variance needed 1 sign.

David Mavis, Representative for Benderson came before the Board to explain that the Shopping Center received site plan approval in June of 2007. The Planning Board at that time recommended 2

signs for the site, one sign on the corner of Highland Pkwy., and one on McKinley Pkwy. The signs would be monument style, and double sided with the tenants names listed. Each sign will be 39 sf and illuminated. The code allows for one sign 100 sf, the two monument style signs together would be less square footage than the one sign allowed by the Town code.

Mr. Gugluizza asked Mr. Adrian if the parcel is in the Overlay District or not. Mr. Adrian was not sure. Mr. Adrian also stated that if the parcel is in the Overlay District, a variance for an illuminated sign would also be needed.

Ms. McFadden-Zak asked Mr. Mavis if there was an alternative plan? Mr. Mavis stated there was not.

Findings: Mr. Gugluizza stated that clarification was needed as to where the Overlay District begins and ends. He also stated that lights are necessary and wants to have concrete answers before granting any variances.

Mr. Rahill made a MOTION to table Application # 5238 for one month so the Board can get clarification on the district boundaries. Mr. Rybczynski seconded, all voted in favor. **Tabled**

Application # 5239 - Dennis Long for a side and front yard variance at 6400 Center Street. Violates 280-34 B (1) Side Yard Req., code 10' min (25' total), actual 7.87', variance needed 2.13'. Violates 280-34 A Front Yard Req., 35', 18.57' (pre-exist from garage), variance needed 16.43'.

Applicant did not appear. Mr. Adrian informed the Board that the addition to the garage was built before acquiring a permit. The addition was built with no foundation.

Findings: Gugluizza suggested tabling the application given that no one was present to give testimony regarding the addition. Mr. Rybczynski felt that the individual went ahead without a permit or variance, it has happened time and again, it is his opinion that the application should be denied and the applicant would have to come back renew the application process and start over. The Board would be sending a clear message to the applicant that this type of action is not tolerated.

Mr. Gugluizza stated he was concerned with denying an application without anyone present to testify for or against. The Building Inspection Department didn't have any clear information regarding the application. Mr. Adrian stated that the structure was constructed without a permit, when one of the building inspectors discovered the addition the property owner was informed to apply for a permit. It is actually a violation of the law, so it should not have even come before the Zoning Board.

Mr. Rahill stated he counted five separate buildings on the property and that the Board should take a look at what they are dealing with.

Mr. Rubczynski made a MOTION to deny Application # 5239 for a 2.13' side yard variance and a 16.43' front yard variance at 6400 Center Street. Mr. Rahill seconded, roll call vote taken in favor of the motion:

Mr. Connolly - Against

Mr. Eustace - Against
Mr. Rahill - For
Mr. Rybczynski - For
Mr. Gugluizza - Against
Mr. Morlock - For
Mr. Sortisio - For

Application # 5239 Denied by 4-3 vote. Mr. Gugluizza stated for the record that he believes the application should have been tabled.

Application #5240 - Essex Homes for a side yard variance at 4453 Richwood Drive. Violates 280-34 B (1) Side Yard Req., code 25' total, actual 17' 10", variance needed 7' 2".

Tim Berger, Director of Production for Essex Homes addressed the Board. Mr. Berger stated that he has worked closely with the property owners, Mr. & Mrs. Quinn, to reduce the size of the home in order for it to fit on the lot without the need for a variance. The house is a ranch style home (2200 square feet) with a walk-out basement, consistent with the other homes in the subdivision. The lot is a pie-shaped lot, the side yard requirement on the left side complies, it is only the right side yard that the variance is needed. The house could be centered on the lot requiring a 3.5' variance on each side. The owners decided to get a variance of 7.2' on the right side because the neighbors on that side have a fence and felt it would be less intrusive to them than the neighbor on the other side without a fence.

The following neighbors were present to express concerns:

Tom Maher - 4461 Richwood Drive
Tim & Dawn Noe - 4449 Richwood Drive
Rose Staub - 4467 Richwood Drive

Mr. & Mrs. Noe were concerned with the closeness of the house to their property line. They would like to be able to take the fence down when they no longer have dogs, because they like the openness of an unfenced yard. They were also concerned with the size of the home and if it would look like it was shoved into the lot. They also had concerns about the value of their property being affected.

Mr. Maher and Ms. Staub were concerned with how the house would look on the lot.

Tom Gorczyki, Sales Rep for Essex Homes, was present and stated that the 2200 square foot ranch home is consistent with the rest of the homes in the neighborhood.

Findings: The Board agreed that an undesirable change would not be created, while the request is substantial to the neighbors, it is not considered a substantial request to the Board, there would be no adverse effects, and the difficulty is created by the shape of the lot.

Mr. Rybczynski commended the neighbors and Essex Homes for working so well together.

Mr. Morlock recused himself from the vote.

Mr. Sortisio made a MOTION to approve Application # 5240 for a 7'2" side yard variance at 4453 Richwood Drive. Mr. Eustace seconded, all voted in favor **Granted** 6-0 vote

Application # 5241 - Gioacchino and Rosaria Schifano for an in-law apartment at 2254 Lakeview Rd. Violates 280-38 A (1) Permitted Structures - not permitted in R-2 zone.

Gioacchino Schifano, Jr. addressed the Board requesting that they be allowed to use the second floor of their barn as an in-law apartment. There are two accessory structures on the property, the second floor of the barn has been converted to an apartment. The structure was built 10 years ago. The survey submitted with the application was from 1987. Mr. Adrian had an aerial photo of the parcel showing the accessory structures.

Mr. Schifano explained briefly the history of the barn, his sister needed the barn for her horses (variance received from Town). One horse died, and the other was sold, so about five to six years ago his father turned the second floor of the barn into an apartment for him. Relatives from Toronto also use it when they visit, it has been vacant for a couple of years. Mr. Schifano recently moved back into the apartment. The apartment has a small kitchenette, plumbing, electric and water. It is fully operational.

Mr. Gugliuzza stated that he checked with the Building Inspection Department and there were no permits issued for any of the work. He also stated that the Town is not aware if code requirements have been met. Mr. Rybczynski stated that it appears the barn was built right on the property line. Mr. Schifano stated that they own the adjoining property.

The main living unit is a triplex, the father lives in one apartment the other two are rentals.

Mr. Gugliuzza stated that in-law apartments are not allowed in R-2 zoning.

Findings: Mr. Gugliuzza stated there are many questions that need to be answered before a decision can be made. He suggested that the Schifano's get together with the Building Inspection Department and determine what requirements are needed. Mr. Gugliuzza asked for a motion to table.

Mr. Rahill made a MOTION to table Application 5241 for an in-law apartment. Mr. Eustace seconded all voted in favor. **Tabled**

Mr. Rybczynski informed the property owners that they need a current survey, site plan with structures included. He also read through the criteria for a use variance.

Application # 5242 - Forni-Juliet Root for a side yard setback on a proposed garage addition at 4920 Lakeshore Rd. Violates 280-63 B (1), code 5', actual 2.68', variance needed 2.32'.

David Root came before the Board on behalf of Forni-Juliet Root. He presented a letter from neighboring property owner George Miceli, 4924 Lake Shore Road, stating he approved of this project as shown on the drawing Mr. Root presented to the Board. Mr. Rahill read the letter into record.

Mr. Root explained that the 2000 square foot building is being remodeled using the existing footprint. The variance is for the front corner which doesn't go back as far as the old structure did.

Findings: Mr. Gugliuzza stated the request was minute, 2.32'. They are using the old footprint,

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there would be no undesirable change, and the difficulty is not self-created because the lots are very small.

Mr. Rybczynski made a MOTION to approve Application 5242 for a 2.32' side yard setback at 4920 Lakeshore Road. Mr. Rahill seconded, all voted in favor. **Granted**

Other Business

Mr. Rybczynski made a MOTION to amend the minutes from the November meeting to state that "Acting Secretary Rybczynski read the following Legal Notice of Public Hearing." Instead of "Secretary Rahill read the following Legal Notice of Public Hearing."

Also the following change on Application # 5220: "Mr. Allen felt that the plans sufficiently showed a wall with 2 hour burn time." Instead of "Mr. Allen felt that the 2 hours burn time was sufficient."

Mr. Rahill seconded, all voted in favor to amend the minutes from the November 2008 meeting. Motion carried.

Mr. Rybczynski made a MOTION to approve the minutes from November 3, 2008. Mr. Eustace seconded, all voted in favor motion carried.

Mr. Gugliuzza informed the Board that he has discussed the issue of extensions with the Code Review Committee, Councilman Best, and Supervisor Walters. The decision was made that extensions will no longer allowed, as per the current Town of Hamburg code. Kurt Allen was also present and will inform the Building Inspection Department.

Regarding the required training, Mr. Gugliuzza informed the member that if their training requirements have not been met, provisions will be made for next year. He is hopeful that the Village will sponsor a 4 hour session on a Saturday morning.

MOTION to ADJOURN was made by Mr. Gugliuzza, seconded by Mr. Rahill . Motion carried. Meeting adjourned at 8:45 pm. The next Zoning Board meeting will be held Tuesday, January 6, 2009.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 11/13/08

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