

**Town of Hamburg
Board of Zoning Appeals
Meeting - January 5, 2010**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday January 5, 2010 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

Chairman Vincent Gugliuzza
Vice-Chairman Brad Rybczynski
Secretary Jack Rahill
Commissioner Shawn Connolly
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
Attorney Joseph Shaw
Attorney Tim Quinlivan
Building Inspector Roger Gibson
Recording Secretary Laurie Wutz

Secretary Rahill read the following Legal Notice of Public Hearing:

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Application # 5270 - Hamburg Self-Storage, LLC for a variance to allow an electronic message sign within 2,000 ft of another at 5139 Southwestern Blvd.

Violates 280-261 I(9) - Code requires 2,000 Lin. Ft., Actual 1,088 Lin Ft., Variance 912 Lin. Ft.

Roger Gibson, Building Inspector, informed the Board that the proposed sign is 50 sq. ft., the existing sign is 82 sq. ft. He also informed the Board that in 1999 the previous owner was granted a variance for a 90 sq. ft. sign.

Mike Schmidt, owner of Self Storage stated he hopes that the new sign will increase his business, which was down last year. His existing sign is okay, but the sign people convinced him business would improve with an electronic sign. Mr. Schmidt presented a picture of an electronic sign, but stated that his sign would most likely be smaller due to the cost. He would stay within code, but would like a little more latitude for size, he would like to keep as many options open as he can. He is willing to work with the Board, he just wants a nice sign to help increase business.

S.T. Service has an electronic message sign, and is within the 2000 linear feet, but their sign faces Camp Road not Southwestern Blvd. You can not see the sign from Hamburg Self-Storage.

Mr. Gugliuzza informed Mr. Schmidt that he has other smaller signs which need to be removed, if the variance is granted that sign would be the only sign allowed.

Mr. Schmidt requested the Board to grant him a 72 sq. ft. overall sign with the electronic portion being no bigger than 32 sq. ft.(code allows for 40 sq. ft.) (4'x10' top portion - 4'x8' bottom portion) which is considerably less than what he has now. Mr. Schmidt stated again he may not go that big due to cost, but would like to keep his options open.

Mr. Morlock and Mr. Sortisio expressed concern that it is a substantial request. Mr. Sortisio was also concerned about being inundated with requests for electronic signs.

Mr. Rybczynski stated that each application stands on its own merit, granting a request does not set any precedent.

Findings: Mr. Rybczynski stated in his opinion that while the request seems substantial the electronic message signs will face two different roads, the benefit can not be achieved by other means, there would be no effect on the neighborhood because it is commercial property, and it's not substantial enough to deny given that the signs face different roads.

Mr. Morlock stated that the Board is bound to be consistent with the way they make their decisions. The Board may be putting itself in a position down the road where they can't be consistent.

In response to Mr. Morlock's statement Mr. Qunilivan stated, "to clarify, each decision is separate and unique into its self because each piece of property is unique and has unique characteristics so your decisions are not precedential. The way you analyze criteria and apply facts to the criteria is something you want consistency with, because if you want to assess decisions using the same criteria but use a different type of analysis then you're showing that your analysis changes from time to time, and

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that is something you should avoid. So the decisions are not precedential, but the process you undertake, Mr. Morlock interjected, you should arrive by the same path - Mr. Quinlivan, right. Mr. Quinlivan continued, it doesn't mean that if you grant a 912 linear feet variance for this application, and someone comes to you for 800 linear feet, that you have to grant it, because again every property is unique there are five factors to weigh, it is up to the Board to weigh them all."

Mr. Rybczynski made a MOTION to approve Application # 5270 for variance of 912 Linear feet for a 32 sq. ft. electronic message sign (72 sq. ft. overall sign size) at 5139 Southwestern Blvd., releasing any previous variance granted to this parcel. Mr. Eustace seconded, all voted in favor. **Granted**

Other Business:

Mr. Quinlivan requested the following amendment be made to the December 1, 2009 minutes:

"The last paragraph before the Findings to read as follows: The Board members questioned the Board's counsel regarding the intent of the code and applying the criteria for a use variance. In response to a question by Mr. Rybczynski, Mr. Quinlivan stated that since the Town had specifically passed a code section permitting electronic signs for specific zoning areas only, it is implicit that it did not intend to allow electronic signs in C-1. Mr. Shaw stated that the Board is obliged to act as the trier of fact and had an obligation to review the applicable facts and determine whether they satisfy each of the requirements for a use variance. In response to a question by Mr. Connolly, Mr. Quinlivan stated that audited financial statements are the strongest evidence of whether the applicant can realize a reasonable return, but that there is no requirement as to what constitutes competent financial evidence, and it was up to the Board to decide whether the evidence presented satisfies the criteria. Mr. Quinlivan advised that the more conservative the Board is in assessing the evidence presented, the more it will protect itself from an allegation that it acted arbitrarily and did not follow the applicable criteria. Mr. Quinlivan further stated that whatever evidence the Board accepts tonight as satisfying the use variance criteria will impact how future use variance applications are reviewed and assessed by the Board."

Mr. Gugliuzza reminded the Board of the yearly education requirements, and stated that he will try to arrange it so the Board can all attend on an evening that they would regularly meet so everyone can fulfill the requirements at once.

Mr. Rybczynski made a MOTION to approve the minutes from December 1, 2009 with the above amendment, Mr. Eustace seconded, all voted in favor, motion carried.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Sortisio. Motion carried. The meeting adjourned at 7:35 pm.

Mr. Rybczynski made a MOTION to re-open the meeting, Mr. Connolly seconded, all voted in favor.

Mr. Gugliuzza received a letter from the Law Firm of Chiacchia & Fleming, LLP (dated 11/12/09) regarding a previous application from Dennis Long.

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Mr. Connolly made a MOTION to receive and file the letter, Mr. Rybczynski seconded, all voted in favor.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Eustace. Motion carried. The meeting adjourned at 7:45 pm. The next Zoning Board of Appeals meeting will be held February 2, 2010.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 1/6/10