

**Town of Hamburg
Board of Zoning Appeals
Meeting - December 1, 2009**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday December 1, 2009 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 Tim Quinlivan
Building Inspector Roger Gibson
Recording Secretary Laurie Wutz

Secretary Rybczynski read the following Legal Notice of Public Hearing:

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Application # 5269 - Gullo's for an electronic message sign at 4767 Southwestern Blvd.
Violates 280-261 (1) - Not permitted in C-1 zoning.

Dave Derkacz, Landscape Designer for Gullo's came before the Board to request a variance for an electronic message board at 4767 Southwestern Blvd. He stated that Gullo's, which is owned by a local family, and employs up to 35 people during busy season, sits in between the 2 new garden centers (Walmart and Lowes) on Southwestern Blvd. Their existing sign is in need of an upgrade, and in order to compete with the "big box" stores they feel they need an electronic message sign.

While Gullo's is zoned C-1, which does not allow electronic message boards, Michael's Banquet Hall, also zoned C-1 was granted a variance for an electronic message board several years ago, before the Town code was revised prohibiting the signs in C-1. Nearby properties are zoned C-2 which allow electronic message signs.

Mr. Derkacz stated that the sign would be within the size requirements, and professionally done. It would be located in the same area as the existing sign, and landscaped around it. Mr. Derkacz also pointed out that Lowes and Walmart's signs both required a size variance.

Mr. Rybczynski informed the applicant of the use variance criteria. He stated that the first criteria ("can not realize a reasonable return -substantial as shown by competent financial evidence") is the most difficult to prove.

Mr. Derkacz stated that a decline in business would not be evident until the busy season (May and June). Annuals and perennials are the highest volume of business, Walmart and Lowes can sell those at much lower prices. Mr. Derkacz also stated that they buy their annuals and perennials from local growers, trees and shrubs they buy from both local and national growers. While Walmart and Lowes are industry leaders, they don't sell the complete landscape job, and do not have knowledgeable staff.

Mr. Derkacz stated that Gullo's can not put out the same kind of money to advertize as the bigger stores. They are fearful of the spring, and are trying to be proactive.

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.

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Findings: Mr. Rybczynski stated that he is comfortable with the criteria being met. He stated he could not imagine any argument being made against big box stores hurting local businesses. He felt enough facts presented to fulfill the first criteria. The neighborhood would not be altered, it's an extension of C-2 district which sits next to it. The alleged hardship is not self-created, Gullo's is a locally owned business, it is a clean, well-run anchor of Southwestern Blvd.

Mr. Gugluizza stated that he was on the Board when Russ Gullo originally came before the Board to request an electronic message board and was denied, because there was no law on the books regarding electronic messaging. Prior to that Michael's Banquet Hall was granted a variance. Mr. Gullo simply stated he would come back when there is a law on the books, to his credit he waited. There is a law on the books now, we need to help local businesses, we don't want any more empty buildings. He asked for a motion to approve.

Mr. Rybczynski made a MOTION to approve Application # 5269 for an electronic message sign at 4767 Southwestern Blvd. Mr. Eustace seconded, all voted in favor. **Granted**

Mr. Connolly mad a MOTION to approve the minutes from November 5, 2009, Mr. Sortisio seconded, all voted in favor, motion carried.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Connolly. Motion carried. The meeting adjourned at 7:45 pm. The next Zoning Board of Appeals meeting will be held January 5, 2010.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 12/2/09