

**Town of Hamburg
Board of Zoning Appeals
Meeting - March 2, 2010**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday March 2, 2010 at 7:00 p.m. in Building to discuss the following applications. Those attending included:

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

Recording Secretary Laurie Wutz read the following Legal Notice of Public Hearing:

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Mr. Gugliuzza explained that the Board needed a quorum in order to make a decision on the following applications. They were hoping a fourth member would be able to make the meeting, but had a family function he needed to attend. The Board would hear the applicants request, and if the fourth Board member does not show, they would close the public session, and hold the business session of the meeting at another time when a quorum is possible. The earliest the business session would be held would be in a couple of weeks.

Application # 5273 -First Wind for a setback variance for a proposed wind turbine at 3150 Lakeshore Rd. Violates 280-343 C (2) (a) (1) - code requires 1.5 times total height from any property line(630') - actual 342' from property line, variance needed 288'.

Virginia Robbins, outside counsel for First Winds was present, along with David Velec of First Winds to explain their variance request. The project includes a total of 4 wind turbines, only one needs a variance because it was moved from the original location due to wind availability. The Planning Board determined that the change was so minor that they did not need to have the site plan re-approved (Planning Board memo attached).

Ms. Robbins presented a map showing the location of the wind turbine, the property line, and the radius indicating the required 1.5 times the height of the turbine in association to the property line (copy attached). Ms. Robbins further explained the neighboring property is part of the Woodlawn Park parcel, it is the northwest portion which is isolated, and joins a wetland area with a tributary out to the lake. A lot of debris is collected in this area, boats try to avoid it. It is very similar in character to the area above it, Buffalo Crushed Stone.

Ms. Robbins used the balancing test stating that moving the turbine due to wind availability is also a benefit to the residential area as well. There would be no undesirable change to the area. The request is not considered to be substantial being that it is 50% less than what is required, under case law less than 50% could be considered not substantial. Lastly, is it self-created? It is a variance which is needed due to the nature of the project and the need for wind.

The attached memo from the Planning Department states that the County requirement of Form 239m has been met and they provided no comments. The project is in compliance with the Town of Hamburg LWRP. The Town of Hamburg's original site plan approval of the turbines was based on the City of Lackawanna's SEQR decision.

Mr. Rybczynski asked Mr. Velec what kind of timeframe he was planning on? Mr. Velec stated that he plans to break ground this summer.

Application # 5274 -Northeast Carstar Collision for a variance on an electronic message sign at 4130 McKinley Pkwy. Violates 280-261 I 2 (i). Code requires 2000 lf from any such sign - actual 1338 lf from another electronic message sign - variance needed 662 lf. Also violates 280-261 F (1) front setback. Code requires 5' - actual 6" - variance needed 4.5'

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Paul Strata of NAS Sign Company spoke on behalf of Jay Fisher owner of Northeast Carstar Collision who was also present.

Mr. Strata first addressed the variance for a setback presenting pictures of the existing ground sign showing that visibility is obstructed by the growing shrubs. The ground sign and shrubs were installed by the owner (Benderson Development) 9 years ago, they have no control over the shrubs. He continued to explain that the building itself is not visible when heading south on McKinley Pkwy., due to the rise on the lawn, and the building being set back. The proposed sign is in line with the other signs located in the neighboring plaza, proposing 8'-10' in height, while others signs are 12' in height. They plan to re-use the bricks from the original sign. The new sign would be moved to the middle of the lawn and closer to the property line and (Photos attached)

With regards to the variance for the electronic message sign, Mr. Strata explained that the nearest electronic message sign is located at Advanced Auto on the corner of Southwestern Blvd., and can not be seen from Carstar. Mr. Strata also pointed out that a variance was granted to Hamburg Self Storage with similar circumstances. Mr. Rybczynski informed Mr. Strata that decisions made by the Zoning Board do not set precedence for future applications.

Mr. Shaw stated that the purpose of the code was to avoid clutter, Mr. Strata's point that the nearest electronic message sign can not be seen from their location is valid.

Mr. Fisher stated that his franchise agreement with Carstar ends in September of this year. He currently has 3 locations, and does not plan to renew his franchise at this time. He is planning to re-introduce his original name "Northeast Collision".

Mr. Gugliuzza asked if there were any other comments or questions from anyone on the Board or the Applicants. Due to the fact that the Board did not have a quorum, the business session of the meeting would have to be rescheduled. The Board agreed to meet on March 16, 2010 at 6:00 pm. Mr. Gugliuzza informed the applicants they did not have to be present, and would be notified of their decision.

The public hearing session of the meeting ended at 8:20 pm.

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The Town of Hamburg Zoning Board met for a regular meeting on Tuesday March 16, 2010 at 6:00 p.m. in Building Inspection to discuss the following applications. Those attending included:

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

Vice-Chairman Brad Rybczynski read the following Legal Notice of Public Hearing:

Findings of the Business Session of the March 2, 2010 meeting of the Zoning Board of Appeals are as follows:

Application # 5273 -First Wind for a setback variance for a proposed wind turbine at 3150 Lakeshore Rd. Violates 280-343 C (2) (a) (1) - code requires 1.5 times total height from any property line(630') - actual 342' from property line, variance needed 288'.

Findings:

Mr. Rybczynski started by saying that the wind turbines receive national and international attention for turbine wind farm, it is a valuable asset and it's up to the City of Lackawanna and the Town of Hamburg to cooperate, and try to bring more windmills to the area, and further enhance the ability to generate power.

Reading through the area variance criteria Mr. Rybczynski stated: Spacing doesn't allow for any other means feasible to applicant; there is no undesirable change to neighborhood, it's an industrial area, there are already 8 other windmills on or adjacent to this property already. It's not a residential situation, in Mr. Rybczynski's opinion not substantial; whether request has adverse environmental

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effects, we are looking at location only, nothing on the ground is disturbed, empty State and County owned land adjacent. There are no adverse effects. Whether the difficulty is self-created is kind of moot at this point, with that being said a motion was made.

Mr. Rybczynski made a MOTION to approve Application # 5273 for a 288' setback for a proposed wind turbine at 3150 Lakeshore Rd. Mr. Connolly seconded. All voted in favor **Granted**

Application # 5274 -Northeast Carstar Collision for a variance on an electronic message sign at 4130 McKinley Pkwy. Violates 280-261 I 2 (i). Code requires 2000 lf from any such sign - actual 1338 lf from another electronic message sign - variance needed 662 lf. Also violates 280-261 F (1) front setback. Code requires 5' - actual 6" - variance needed 4.5'

Findings: Mr. Strata was present to testify that they have no leeway with the bushes at all, and snow is also a problem with blocking the sign. By moving the sign over 4.5' makes all the difference in the world as far as visibility.

Mr. Connolly expressed concern for aesthetic reasons that the new sign would not line up with the other signs in the plaza. It was explained that the Northeast Collision entrance is separate from the rest of the plaza, so it would not be noticeable.

Mr. Rybczynski read through the area variance criteria for the electronic message sign: The owner is changing the name and would like to highlight that fact, the electronic message sign is the better option. No undesirable change to neighborhood or near by properties, it's consistent with what is there. The request is not substantial, the other message sign is not visible in the line of sight. There is no adverse effect. Applicant made the argument that it may help to alleviate traffic problems with people trying to find the store. The difficulty is not self-created, the bushes and trees are blocking the view.

Mr. Rybczynski made a MOTION to approve Application #5274 for the 662lf needed for the distance between another electronic message sign at 4130 McKinley Pkwy. Mr. Connolly seconded, all voted in favor. **Granted**

For the Setback variance:

Mr. Rybczynski stated that he did not feel there would be any undesirable change to the neighborhood, it is commercial property. The request while seems substantial in the whole scheme of things really isn't. There would be no adverse effects to the environment, and the alleged difficulty is not self-created, the good Lord makes it rain and trees grow.

Mr. Rybczynski made a Motion to approve Application 5274 for a 4.5' front setback variance.

Mr. Connolly requested to change the variance from 4.5' to a variance of 3.5', it might be a nice compromise, it would not be so close to the road. Our job to make sure the requests are not substantial, this is substantial.

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Mr. Strata stated that he is open to compromise, but it would still block a foot and half of the sign when coming for the south. He felt they needed that to make it work. He would go along with what the Board wanted.

Mr. Rybczynski argued that the property owner (Benderson) is responsible for trimming the bushes, he isn't doing that. The bushes are blocking the sign.

Mr. Connolly stated 3.5' variance would put the sign at 1.5' setback from the road.

Mr. Rybczynski withdrew his motion.

Mr. Connolly made a MOTION to approve Application #5274 for a variance of 3.5' setback at 4130 McKinley Pkwy. Mr. Sortisio seconded, all voted in favor. **Granted**

Mr. Rybczynski made a MOTION to approve the minutes for the February 2, 2010 meeting, Mr. Sortisio seconded, all voted in favor.

The meeting was adjourned. The next Zoning Board of Appeals meeting will be held April 6, 2010.

Date: 3/22/10

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals