

**Town of Hamburg
Board of Zoning Appeals
Meeting - August 10, 2010**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday August 10, 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
Commissioner Shawn Connolly
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
Attorney Joseph Shaw
Attorney Timothy Quinlivan
Building Inspector Jim Eberhardt
Recording Secretary Laurie Wutz

Secretary Jack Rahill read the following Legal Notice of Public Hearing:

Zoning Board of Appeals
August 10, 2010

Tabled Application # 5289 - Donald and Ann Argy for an area variance on a single family dwelling at 6286 Old Lakeshore Road Lot # 1.

Violates 280-24 B (4) - code 3 acres, actual 1.75 acres, variance needed 1.25 acres.

Building Insp. Note: No Local, State or Federal historic designation apply: Condition - Must comply with provisions of 280-10 (3) (d) Eighteen Mile Creek Conservation Area.

Mr. Argy, again gave a brief history of the property which was originally owned by Builders Capital. Before Mr. Argy bought the property from Builders Capital, he came before the Zoning Board and obtained a variance to convert the barn into their home, and leave the gate house as is. The development requires that both gate houses (identical one on the adjacent property-meant to be an entrance to the subdivision) had to stay, any changes made to one had to be made to the other, and could not be used as rental income or divided from the parcel. The developer went to jail for fraud, the remaining lots in the development were sold off at auction. The Homeowners Association has a requirement that only one home per parcel is allowed, all of the lots are more than one acre, and any home built had to be at least 2000 square feet.

Mr. Argy further stated that he has received estimates from contractors on converting the barn into a single family home, it's just too costly. It would be a fraction of the cost to tear down the barn and build a house. His property is unique in the fact that Eighteenmile Creek runs through it separating him from the rest of the development. He is not looking to put anything in there that would de-value the rest of the properties, he just wants to get his family in a decent house.

Kevin Malchoff, property owner of Lot # 8, was present to state that he agreed that the Argy's needed more room, but felt that it is very important to each of the 12 property owners that the lots in Lakeshore Woods be used for single family residence only. He also stated that he was sure Mr. Argy had no intention of doing otherwise, but is concerned about down the road if the property was ever sold. (Mr. Rahill read into record a letter Mr. Malchoff sent to the ZBA stating the above.)

Dave Dugan, property owner of Lot #4 expressed the same concerns. He stated that Mr. Argy is a good neighbor and he likes the look and the history of the gate house, and thought that maybe Mr. Argy could add onto the gate house. (Adding onto the gate house is not an option since anything done to one gate house would have to be done to the other, and Mr. Argy has no authority over the other gate house.)

Ben Heeter, property owner of Lot #6 stated that it was not a personal issue, he just wants Mr. Argy to adhere to the Homeowner's Association restrictions.

Chuck Backus of Old Lakeshore Road, was present and stated that it was an interesting situation. As a property owner he would want to build.

Mr. Eberhardt, Building Inspector asked Mr. Argy what he would do with the house up front (gate house)?

Zoning Board of Appeals
August 10, 2010

Mr. Argy responded that he can not use it for rental, it can not be separated from the property, and he can not add onto it because any changes made to one gate house has to be made to the other, he has no authority to make changes to the other gate house. That is why he didn't purchase the property until he was granted the original variance from the ZBA back in 1997, which he thought stayed with the property, he can't change the gate house.

Mr. Quinlivan stated that he received a copy of the Association Declaration dated December 1995, he asked if there were any of the Association members present, and if they were on the board did they knew of any amendments? No response. Mr. Quinlivan stated that there are architectural controls, he read from page 37 of the Declaration stating: "and no other structure can be used as a dwelling", Mr. Quinlivan stated that he couldn't see clearly where it said only one single family home per lot, but it's implied from what he read, the ZBA has no authority to change your bylaws, these run with the land from when they were recorded, there is nothing they could do, or would do to change that. Whatever this Board decided to do, to grant the variance it has to be subject to the deed restrictions and the restrictions of the Association.

Findings: Mr. Rybczynski made a MOTION to approve Application #5289 for a variance on a single family home at 6286 Old Lakeshore Road Lot #1, Mr. Connolly seconded.

Mr. Rybczynski read through the area variance criteria: it's not feasible that the applicant can achieve the benefit by any other means, he is restricted by the deed, the gate house has to mirror the other, can't effect change, there's no room to grow. The applicant has not indicated that he wanted to make change undesirable. He has 3 acres, to other option, it's not a substantial request. There would be no real change visible to neighbors. It's not self-created, the Applicant was under the belief he would be able to make changes to property, he sought a variance to do so before purchasing the property.

All members voted in favor. **Granted**

Application # 5290 - Buffalo Wild Wings for 2nd and 3rd attached signs at 3540 McKinley Pkwy. Violates 280-261 - code 1sign, actual 3 signs, variance needed for 2 signs.

Brook Meyer, Philadelphia Sign Company was present to explain that they are seeking a variance for 2 additional wall signs. He presented the Board members with color photos of the building and location of the signs (the restaurant will be located in the plaza across from the McKinley Mall where Eastern Mountain Sports was located). One sign will be located on the south elevation right above the entrance to the building, and the other on the southeast elevation of the building. They are proposing a cabinet sign which depicts the logo of Buffalo Wild Wings, and is consistent with signage at other locations. Each sign will be 30 square feet, and the signs will be illuminated.

Mr. Meyer presented a letter from the landlord stating that they are aware of the request and fully endorse it, each Board member had a copy (copy attached) Mr. Rahill read into record.

Glenn Remus, Director of Real Estate for Buffalo Wild Wings addressed the Board. He stated that Buffalo Wild Wings has been in the Buffalo area for about 10 years. The restaurant is in a market

Zoning Board of Appeals
August 10, 2010

transformation, new brand, better real estate, and better signage, a much better product. They are hoping to be open in November.

Mr. Meyer added that the building is a tough building to sign, they are not trying to over sign by any means, just trying to identify the entrance, for the south side that does not face McKinley Pkwy. When traveling north bound on McKinley Pkwy., there is some obstruction, so that is the reason for the 3rd sign. Other tenants in that area have 3-4 signs, they will have a total of 3.

Mr. Rahill visited the site and stated that part of the building is obstructed as you are coming down McKinley Pkwy., many other units in that plaza that has 3 signs, it's not a rarity.

Mr. Connolly asked for clarification on whether the request was for two variances or just one? Mr. Eberhardt stated that the application was modified to a variance for one sign.

Findings: Mr. Connolly read through the area variance criteria: Undesirable change? No, there are several business with similar signage, it's the nature of the location. Are there any other means, no there's no other method to achieve their goal. Whether the request is substantial, no one additional sign, the size is within the requirements of the Town. Any adverse effects? No most buildings have signs. Is it self-created? It could be argued, however, knowing the history of that area and the businesses and the difficulty that they have and the significant impact in having adequate signage, it's not an issue.

Mr. Connolly made a MOTION to approve Application # 5290 for one additional sign at 3540 McKinley Pkwy.

Mr. Rybczynski commented that Friendly's received a variance for an additional sign and they are doing very well, Chili's received no variance for additional signage and they closed.

Mr. Morlock seconded, all voted in favor. **Granted**

Application # 5291 - Hamburg Waterfront Studio Apartments for an use variance to allow apartments at 4050 Lakeshore Road.

Violates 280-110 - code does not allow residential uses.

Application # 5292 - Hamburg Waterfront Studio Apartments for an area variance to reduce the number of parking spaces at 4050 Lakeshore Road.

Violates 280-216 (B) - code 132 parking spaces, actual 70 parking spaces, variance needed 62 parking spaces

These two Applications were heard together.

Mr. Eberhardt explained (in reference to the 1st variance request) that originally the building started as a hotel, then it went to senior housing, it was originally zoned properly, then over time the zoning changed. The building sat vacant for more than one year (vacant a total of 9 years), so it converts back to the current zoning, which multi residence doesn't fit.

Zoning Board of Appeals
August 10, 2010

A letter from Kurt Allen, Supervising Building Inspector was presented to the Board explaining that the Town Code Review Committee found merit in this proposal for the redevelopment of this abandoned building. They are determined to initiate an amendment to section 280-110 A (8) (a) to allow for residential occupancy in buildings which former use was residential in nature. (Copy of Letter attached)

With reference to the parking space request, Don Reeves, Developer, explained that at the August 4, 2010 Planning Board meeting it was discussed that the Town is about to change the required number of parking spaces for senior apartments from 2 parking spaces per unit to 1.5 parking spaces, which would leave the Studio Apartments only 20 spaces short rather than 62 spaces.

It was also discussed at the Planning Board meeting that Peg's Place (adjacent restaurant) has agreed to allow the applicant to use some of its parking spaces for the apartment project. Mr. Reeves presented a letter from Robert Johnson, Peg's Place, stating that they will allow the owners of the proposed studio apartments to use 15 parking spaces to satisfy the required amount of spaces. The letter further stated that, "this letter will neither bind nor enter Peg's Place Restaurant into any agreement or requirements of the property at 4050 Lakeshore Road." (copy of Planning Board minutes, and the letter from Robert Johnson attached)

Mr. Rahill read into record a memo from Kurt Allen, Supervising Building Inspector, verifying that Peg's Place has enough parking space to allow the extra 15 spaces to be used by the apartment project (copy attached).

Mr. Reeves explained that the Planning Board was very interested in keeping the green space that fronts Lakeshore Rd., as is he.

Dan Barone, Architect for the project presented a site plan to the Board.

Mr. Reeves further stated that he has a studio apartment building in Buffalo. He explained that the units in this proposed apartment building are bigger (almost 300 sq. ft.) than the ones in his building in Buffalo (225 sq. ft.).

Mr. Sortisio asked for clarification on the parking spaces. Mr. Reeves explained that currently according to Town code with the 67 proposed units 134 parking spaces would be required, only 70 exist. The Town is planning on changing the requirements to 1.5 parking spaces per unit, which would require the project to have 101 parking spaces. The adjacent restaurant, Peg's Place, has agreed to let the apartment building use 15 of their parking spaces (Peg's Place is required to have 2 spaces for every 5 seats, 44 parking spaces are required, Peg's Place has 59 existing parking spaces). Mr. Reeves stated they are short 20 parking spaces.

Mr. Gugliuzza confirmed that the Town will be reducing the parking requirements from 2 parking spaces per unit to 1.5 parking space per unit, probably by the end of the year.

Mr. Connolly stated that he was concerned that if Peg's Place changed hands, it happens all the time, and if you don't have those 15 parking spots, then you have more residences than parking spaces.

Zoning Board of Appeals
August 10, 2010

He asked if there is anyway to get closer to the required amount of parking spaces knowing the reality is there that you could lose those 15 spaces from Peg's Place. Mr. Barone felt that there are ways to work with Peg's Place to work out an agreement, he personally wouldn't want to go with an easement, maybe a license or something, he stated that "we are this close and either you look at a vacant building or do something good for the community." Mr. Connolly agreed, just felt that the issue should be addressed, while we have the ability to address it. Mr. Barone stated that the parking lots are so close to each facility they can work it out.

Mr. Connolly asked Mr. Reeves how many employees he would have? One full-time maintenance person, and one rental agent that would be there on a regular basis. Mr. Connolly also asked how many parking spaces his building in Buffalo has? Mr. Reeves responded 180 units, 125 parking units, which is unusual, that is a lot for the City.

Mr. Gugulizza read from the Planning Board minutes (copy enclosed).

Findings: Mr. Rybczynski read through the use variance criteria for Application # 5291: Property has been on the market for 9 years, nothing else to say. No former hotel or senior living facility in the area. Character of the neighborhood will be altered in the positive way. Self-created, the property is what it is, agreement to buy the property, they see a piece of property that needs remediation, it fits the modes operandi on their business platform, they are taking a chance on a piece of property that's been a plight for a while, neighbors are happy.

Mr. Rybczynski made a MOTION to approve Application #5291 for a use variance to allow apartments at 4050 Lakeshore Road. Mr. Sortisio seconded, all voted in favor. **Granted**

Mr. Rybczynski stated that the Application # 5292 deals with parking spaces, the code calls for 2 parking spaces per unit, code requires 132 parking spaces, actual 70, they are looking for a variance of 62 spaces. The Applicant has testified and offered a letter from the neighboring business owner that says they will work with them on parking spaces. Mr. Rybczynski stated he would make a motion to approve with the stipulation that we see something from the owner that explains a little better the agreement they have for the use of these 15 spaces. In other words, they can't get into a spat one day and one says to the other, I'm not letting anyone park in my lot anymore. It has to be something a little more concrete and we'll work with you. So if the applicant can show an agreement, terms, some sort of actual document, that is more fulfilling, we'll work with you.

Mr. Rybczynski made a MOTION to approve, Mr. Eustace seconded.

Mr. Gugulizza on the question stated that Mr. Eberhardt, before issuing the variance to the applicant should bring the Zoning Board something in writing stating that they have the right to use those 15 spots. The letter they presented from Peg's Place stated that they are not bound by the letter. Mr. Rybczynski stated that both parties are gentlemen and he's sure that they can come up with an agreement.

Mr. Gugulizza asked if all are in favor of the motion, Mr. Connolly against. **Granted 6-1**

Zoning Board of Appeals
August 10, 2010

Application # 5293 - Allan & Doris Hopp for a side yard variance for an exterior staircase at 2024 Lakeview Road.

Violates 280-286 (side staircase for second floor) - existing 4'4", new 4'0"

Violates 280-277 A (6) not a permitted obstruction in required open space - code 5'0", actual 3'4", variance needed 1'8".

Mr. Eberhardt explained to the Board that the house was moved from North Creek Road to its present location in 1902. The neighbor gave additional property to the Hopp family time at the time to help them comply with the zoning codes. The proposed exterior staircase will actually be encroaching less than the bay window which is currently there (bay window will be replaced with an exterior staircase).

Mr. Hopp explained that his mom passed away last September. The current staircase comes out of the kitchen, its only 30" wide, the first 4 steps do a 90 to go up stairs, you can get a small dresser up the stairs that's all. Anything larger, mattress etc. have to go in through the front window. To eliminate that, adding a 4' addition onto the side of the house that's totally enclosed, going up over the bay window which will be tore off, the new structure going on the second floor, and put stairway up to the second floor. The existing bay window actually extends 4'4", the stair case will only extend 4'. The problem is the bay window is only 3' from the property line so a variance is needed. There will also be a bedroom above the kitchen which will help the appearance.

Mr. Rybczynski asked if there was anywhere else they could put the staircase? Mr. Hopp responded that they looked at a couple of options, the window needs work anyway, this kills 2 birds with one stone.

Mr. Eberhardt stated that code wise Mr. Hopp is fine.

Mr Hopp presented letters from neighbors stating that they had no objection, Mr. Rahill read the letters into record:

Patricia Brunner, 2020 Lakeview Road

Mark Brunner, 2028 Lakeview Road

Mr. Connolly asked if those two neighbors are the ones directly effected? Mr. Hopp responded yes, it is on Mark Brunner's side.

Findings: Mr. Morlock read through the area variance criteria: Whether benefit can be achieved by any other means, no. Undesirable change, no the bay window will be removed there is little or no change. Not a substantial request. No adverse environmental effects. Not self-created, the house is what it is.

Mr. Morlock made a MOTION to approve Applicant # 5293 for a variance of 4.0' for the side staircase, and a 1.8' variance in required open space at 2024 Lakeview Road. Mr. Rybczynski seconded, all voted in favor. **Granted**

Zoning Board of Appeals
August 10, 2010

Application # 5294 - Joseph Battin for an area variance on a parking setback at 6175 South Park Avenue.
Violates 280-229 B (1) - code 35', actual 15', variance needed 20'.

David Burke, Contractor for Mr. Battin come before the Board stating that the Planning Board granted site plan approval, and that the Planning Board sent a positive recommendation to the Zoning Board. Mr. Burke stated that they just need a front setback for parking, they meet all other zoning requirements. Mr. Rahill read the memo from the Planning Board into record (copy attached).

Mr. Burke presented a photograph of the property showing the existing home next to the proposed office. He stated that the new building will be built to the right of the house. The house is currently being rented, but that the house will be vacant during construction, by end of the month.

The new building will be located between Walgreens and Dennis Gaughan's office.

Mr. Connolly asked about the utility setback? Mr. Rybczynski commented that Walgreens had an issue with the utility setback because they were actually located partly in the Village which requires a zero front setback, the Town does not. Battin Opticians will be located in the Town.

Findings: Mr. Rybczynski stated that this piece of property is going to be expanded and developed, keeping with what's the current trend in that area. The applicant presented a building that is aesthetically pleasing, it's one that will help the area, it's a local business, generate more flow of commercial business for the existing businesses that are already there. It does fit in well with the front yard setback consistent with the Village. Village has a 0' front setback. If you kept with the 40' setback it could create a staggered look which may not be as appealing as we would like it to be.

Mr. Rybczynski read through the area variance criteria: Other means feasible, the Applicant testified that is not the case, keeping it aesthetically pleasing. Applicant is keeping with neighboring properties so there is no undesirable change to the neighborhood. Substantial request? In terms of percentages, it is negated by the fact that there are other structures in that area and close proximity to the Village. Any adverse effects, no. Self-created, even if it is the case it is more than balanced out, or out weighed by the other benefits it brings to our Town.

Mr. Rybczynski made a MOTION to approve Application # 5294 for a 20' parking setback at 6175 South Park Avenue. Mr. Connolly seconded.

Mr. Morlock on the question verified that the parking setback code was 35' and the variance needed was 20', giving him the required amount. Mr. Eberhardt stated yes.

All voted in favor. **Granted**

Zoning Board of Appeals
August 10, 2010

Mr. Connolly made a MOTION to approve the minutes from the June 3, 2010 meeting. Mr. Eustace seconded, all voted in favor.

Meeting was adjourned at 8:45 pm. The next Zoning Board of Appeals meeting will be held September 14, 2010.

Date: 8/11/10

Respectfully submitted,

**Jack Rahill, Secretary
Board of Zoning Appeals**