

**Town of Hamburg  
Board of Zoning Appeals  
Meeting - September 14, 2010**

The Town of Hamburg Zoning Board met for a regular meeting on Tuesday September 14, 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 **Excused**  
Commissioner Paul Eustace  
Commissioner Chuck Morlock  
Commissioner Jim Sortisio  
Attorney Joseph Shaw  
Attorney Timothy Quinlivan  
Building Inspector Roger Gibson  
Recording Secretary Laurie Wutz

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

Zoning Board of Appeals  
September 14, 2010

**Application #5296** - James & Nicholas Dragonette for an electronic message sign at 4735 Southwestern Blvd. Violates 280-261 I (2) Signs not allowed in C-1 District.

Violates 280-261 F (1) Code 40 sq. ft., actual 72 sq. ft., variance needed 32 sq. ft.

Violates 280-261 I 2 (1) signs shall not be located within 2000 linear feet of any such sign.

Dr. James Dragonette, applicant and Brent Josker of Sign-Rite Signs addressed the Board. Mr. Josker explained that he is overseeing the installation of the proposed sign. He presented a drawing with the dimensions to the Board. There are two businesses that will be sharing the space of the electronic message sign, Dr. Dragonette (Southtowns Chiropractic) and Clear Plan Financial.

The proposed sign will utilize the existing sign by raising it up, with a 21 sq. ft. electronic message sign (4x8 enclosure with 3x7 viewable screen) beneath it (drawing attached). The sign will be internally illuminated. The clearance from the ground to the existing sign is 2', the clearance from the ground to the proposed sign will be 4'.

The distance to the closest electronic message sign is 540', the Town code requires 2000' (a variance of 1460' required).

Mr. Josker explained that with the economy being what it is the Applicant is looking for another means to advertise. The chiropractic business has lots of competition.

Mr. Gugliuzza asked Dr. Dragonette if he notices any difference in business without the sign. Dr. Dragonette responded that there has been a big decrease.

Mr. Rybczynski asked for clarification on the sign size from Mr. Josker. Mr. Josker explained that they are only adding a 21 sq. ft. electronic message sign, everything else is the same as what is currently there.

Mr. Rahill read a letter from W. Jay Milligan stating that he supported the requested variance. The letter also stated that he will be requesting a similar variance in October 2010 (copy attached).

**Findings:** Mr. Shaw stated that he is a former patient and recused himself from any input on this application. Any legal questions would be directed to Mr. Quinlivan.

Mr. Rybczynski stated that because of the C-1 zoning, which does not allow for electronic message signs, a use variance would be required. He read through the criteria for a use variance. The real sticking point is, "can not realize a reasonable return - substantial as shown by competent financial evidence."

Dr. Dragonette stated that most of what he does is work with auto injuries. The laws are changing in respect to treatment, it will now be limited to 8 weeks of treatment. These laws will change within the next few months. It's going to drive a lot of people out of business. The patient base has to grow expeditiously, he is trying to get ahead of the game, to cover the bills, standard of living.

Mr. Gugliuzza asked "have you seen any loss right now, can you prove financial hardship. If he requested something a year down the road would you be out of business". Mr. Gugliuzza stated that his

Zoning Board of Appeals  
September 14, 2010

concern is this, with the other stores that we have granted a variance(Gullos), if the Board had waited for financial proof, the big box stores (Walmart) would have put them out of business, so the Board couldn't wait a year to see what the results would be.

Dr. Dragonette stated that recently his biggest competitor has been Omni Pain Center on Camp Road. Mr. Rybczynski asked if there has been a drop-off in business since the Omni Center opened? Dr. Dragonette stated yes, new and existing patients.

Mr. Gugliuzza stated that "the Board is not bound by precedent". He made reference to the letter from Mr. Milligan, that he wanted the same standard to apply to him. "The Board's standard are each individual case, it's own merit. He can take the case to court if the request is not given to him", but Mr. Gugliuzza stated that "I can prove that we have single handedly gone through every case, and found good cause that's why it was granted. So to say I'm going to get the same things you have is not so. Each case is on individual merit."

Mr. Rybczynski asked Dr. Dragonette if he could give a percentage of loss? Dr. Dragonette stated that he couldn't guess, and he didn't think the Board would want him to. Mr. Gugliuzza added that the bottom line is that you are seeing a percentage of loss, Dr. Dragonette agreed.

Mr. Gugliuzza stated "that the nature of the issue is that it is in a C-1 district. It's not that you haven't lost business or you are losing business, it's about the issue of the district. It wouldn't be an issue if it wasn't C-1. We have very seldom had anyone complain on anything we have done in a C-1 district, we haven't heard from any Town Board members that they're upset with anything we've done in a C-1 district. That's why my concerns, when I ask you about a sign, the size of the sign, our concerns are that if it becomes very loud, outstanding, then we begin to hear from people and from the Board. So that is why I like to keep it within consistency along everybody we gave, which I think that message board re-stated that, then there is a lesser chance of any type of issues. The Town Board makes the laws we don't, everything we do, we try to grant the least amount of variance, cause that's tough to follow as you go along. Whatever we grant here stays with your property. That's why all the questions, all the answers, we have tests that have to be met, balancing criteria, and that's why all this is going on. If something does become a challenge this will become a court document for us to defend what we do down the road."

Mr. Rybczynski made a MOTION to approve Application # 5296 for an area variance of 32 sq. ft. Seconded by Mr. Eustace.

Mr. Rybczynski read through the area variance criteria; can not be achieved by any other means - the Applicant needs an additional form of advertising; no undesirable change to the environment; not a substantial request, although it seems to be a significant amount it could be argued that the existing sign is 40 sq. ft., it's not an imposing amount of square footage to begin with, roughly about the size of a piece of plywood, maybe a little bigger; adverse effect, none in terms of size, it won't effect any barn owls or endangered species; self-created? Other competing factors-Omni Center competing quite vigorously for his business.

Mr. Gugliuzza stated that he would like it to be kept to 4'x8' box, nothing larger. He asked that the stipulation be added to the motion.

Zoning Board of Appeals  
September 14, 2010

Mr. Rybczynski made a MOTION to approve Application # 5296 for an area variance of 32 sq. ft., with the stipulation that the box be 4' x 8' nothing larger. Seconded by Mr. Eustace, all voted in favor. **Granted**

With regards to the variance of an electronic message sign within 2000' of another sign (1460' variance needed). Mr. Rybczynski stated "basically we are talking about the size of a television set that's going to move every 7 seconds, it's a 3' x 7' screen, in relation to the size of the screen to put one that close to another, if it was a larger screen or billboard type, or higher up in the air to attract attention from a further distance, there is maneuverability here considering the current situation on Rt. 20." He read through the area variance criteria: benefit can not be achieved by any others means - again it's the same standard used in the previous area variance; undesirable change - no, it's a renewed sign; substantial - relative to the size of the sign, it's 1460', Mr. Rybczynski stated he doesn't believe it's overly substantial; adverse effects - none; self-created it's much different than when the applicant took ownership of the building, with all the competing businesses and road construction

Mr. Rybczynski made a MOTION to approve Application #5296 to allow a electronic message sign within 2000' of another sign, a variance of 1460'. Mr. Eustace seconded, Mr. Morlock opposed. **Granted 5-1**

Mr. Gugliuzza stated that "based on what he has heard - the Omni Pain Center is something he was not aware of, it is cutting into your (Dr. Dragonette) percentage of business, they have their signs out there and make it very nice, in our quest to protect our businesses especially the small businessperson in this town, we have to find ways to aid them. The code is what it is, but we are here to help, we are here to give the minimum relief we can give. If you were trying to sell the building, I would ask that you give us written accounting, financial documents, so that I could see that you could get no other return on it. We have done that in the past with daycare centers and they used to be doctor offices, and want to be daycare centers, they require that, this is a little different in that it's dealing with a patient base instead of a selling the property. Being that a patient base can disappear, we need to act so that you don't become a closed door place. Then we might have to deal with your building being sold for some other reason."

Mr. Gugliuzza made a MOTION to approve Application # 5296 for a use variance to allow an electronic message sign at 4735 Southwestern Blvd. Mr. Eustace seconded, all voted in favor. **Granted**

**Application #5297** - Sharon Remery for a detached garage at 4292 Abbott Pkwy. Violates 280-278 B (2) - Code 5', actual 1.15', variance needed 3.85' (Building Insp. Note: Existing garage is very old and needs to be replaced, owner purchased 5' to the east to line garage up with driveway.)

George Remery came before the Board and confirmed they did purchase 5' of property from the neighbor. He stated that the existing garage is in need of repair, and that he wanted to line the new garage up with the house, currently the way the existing garage sits, he has to park at an angle.

Mr. Rahill stated that he visited the site and 2 or 3 car garages are the norm. And it is desperately needed for these folks to get in and out of the garage. It does not interfere with the neighbors.

Zoning Board of Appeals  
September 14, 2010

Mr. Rybczynski asked if he would be using the existing footprint? Mr. Remery responded no, it would be new. He added that he is not looking to build anything fancy, just wants a place to park the car.

Mr. Gugliuzza asked if the neighbor's property had a fence or if it was grass? Mr. Remery stated it was grass, there's plenty of room, 5' was all he could afford.

Mr. Rybczynski asked if the garage was on the property line before the 5' was purchased? Mr. Remery stated it was very close. Mr. Gibson referred to the survey stating that it was 2' at the rear and 1.8' on the side.

Mr. Gugliuzza stated that was his concern, you can't hang over the property line. Mr. Remery stated if you want me farther from the property line he will do it.

Mr. Rahill read 3 letters from neighbors into record stating they had no objection:

Cynthia S. Piccirilli - 4291 Abbott Pkwy.

Pasqualina DeAngelis - 4298 Abbott Pkwy.

Richard E. Steinwandel, Jr. - 4288 Abbott Pkwy.

**Findings:** Mr. Rybczynski made a MOTION to approve Application # 5297 for a side yard setback at 4292 Abbott Pkwy. Mr. Rahill seconded.

Mr. Morlock read through the area variance criteria: benefit to be achieved by any others means? Presently there is a garage there, near or at the property line; undesirable change - no already on property line before the additional 5' purchase; adverse environmental effects - only to Al Gore;

Mr. Gugliuzza stated that the overhang can not go over the property line, he was concerned with the run-off

Mr. Rybczynski suggested amending the motion to include a stipulation that the overhang can not be greater than 6" including the gutter.

Mr. Rybczynski made a MOTION to approve Application # 5297 for a side yard setback at 4292 Abbott Pkwy, with the stipulation that the overhang be no greater than 6". Mr. Rahill seconded. All voted in favor. **Granted**

**Application #5298** - Kevin Melisz for a front yard setback at 6571 Versailles Road. Violates 280-34 A - Code 35', actual 19.11', variance needed 15.89' (Building Insp. Note: house is already under minimum at 27.11')

Kevin Melisz presented the Board with a sketch of his home with the proposed front porch. Mr. Melisz explained that he is planning on adding on a front porch instead of just a stoop which is what they currently have. The 2<sup>nd</sup> story is only partial, he would expand that to a full 2<sup>nd</sup> story (sketch attached).

Zoning Board of Appeals  
September 14, 2010

Mr. Rahill stated that “situation with the side yard being and the side rear total, it is land locked, there is nothing else that can be done there.” Mr. Gugliuzza asked if there were any sight issues with the road, Mr. Rahill responded no, not really, it’s close.”

Mr. Rahill read into record a letter stating no objection:  
John Melisz - 6585 Versailles Road (Applicant’s father)

John Melisz stated that “it is only me and on the other side of him he owns the lot that goes to the corner of Lakeview Road and Versailles. There is really nobody there.”

Mr. Eustace stated that it was a “big improvement”.

Mr. Morlock stated that “it’s close to the road”.

**Findings:** Mr. Sortisio read through the area variance criteria: whether benefit can be achieved by other means feasible to the applicant, he is putting the second floor on, adding the porch, it will add to the look, so no; undesirable change in the neighborhood, no it’s improving the look; whether request is substantial, a 15' variance is substantial, but to finish the project, add the porch and second floor you need the variance; whether request will have adverse physical or environmental effects, no; whether alleged difficulty is self-created, it is but it warrants it with the second floor and the porch.

Mr. Gugliuzza added that the house is already non-conforming.

Mr. Sortisio made a MOTION to approve Application # 5298 for a front yard setback at 6571 Versailles Road. Mr. Eustace seconded, all voted in favor. **Granted**

**Application #5299** - Richard Hillman for a side yard setback, rear yard setback, and total side yards variance at 44 Wanakah Hts.

Violates 280-34 B (1) - Code 10', actual 1.58', variance needed 8.42'

Violates 280-34 C - Code 30', actual 6.58', variance needed 23.42'

Total 2 side yards - code 25', actual 14.48', variance needed 10.52'

Applicant was not present. Mr. Gugliuzza asked for a motion to table this application for one month.

Mr. Rahill made a MOTION to table Application # 5299 for one month. Mr. Eustace seconded, all voted in favor. **Tabled**

**Application # 5300** - Kenneth & Sharon Eckhert for a required yards variance at 6254 Old Lakeshore Road.

Violates 280-27 B - Code 35', actual 30', variance needed 5'

Rick Snyder, the contractor for the Eckhert’s was present. He explained that the Eckhert’s want to build an addition onto the side of their house, they were concerned about obstructing their neighbor’s view. Mr. Snyder showed an original survey to the Board members.

Mr. Morlock stated that he drove up and down Old Lakeshore Road for 45 minutes and could not

Zoning Board of Appeals  
September 14, 2010

find the house. Laurie Wutz, Recording Secretary explained that there was a typo in the public notice, but that a corrected agenda was sent to each Board member, and that the correct neighbors were notified. Mr. Morlock stated that he did not receive the corrected agenda. Mr. Gugliuzza felt that the application should be tabled since the public notice was published with the wrong address.

Mr. Rahill made a MOTION to table Application # 5300 for one month. Mr. Sortisio seconded, all voted in favor. **Tabled**

### **Other Business**

Mr. Gugliuzza informed the Board members that the November 3, 2010 meeting will begin at 7:30 p.m. not 7:00 p.m.

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

Meeting was adjourned at 8:20 pm. The next Zoning Board of Appeals meeting will be held October 5, 2010.

**Date: 9/15/10**

**Respectfully submitted,**

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