

Town of Hamburg
Planning Board Work Session
January 2, 2008
Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, January 2, 2008 at 7:30 p.m. in Room 7B of the Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Vice Chairman David Phillips, Steve McCabe, Paul Eustace, Richard Taber, Karen Rogers and Sasha Yerkovich.

Others in attendance included Andrew Reilly, Attorney Donald McKenna, Attorney Timothy Quinlivan and Councilman Kevin Smardz.

Excused: Attorney Michael Fruth

Jack Kuebler request for sketch plan direction – McKinley Parkway

Mr. Reilly stated that the property in question (east side of McKinley Parkway, south of Dorchester) was rezoned in 2006 from C-3 and R-2 to HC (Hamburg Commercial) because the applicant requested a commercial zoning and HC is consistent with the Comprehensive Plan regarding that area of McKinley Parkway. Mr. Reilly further stated that at this time the applicant is requesting sketch plan direction regarding a proposed building he would like to build on the property that would require some variances from the Zoning Board of Appeals. The applicant will need a recommendation from the Planning Board regarding the variances he will request.

Mr. Reilly noted that the HC zoning district requires that buildings that are constructed be no larger than 6,000 sq.ft. and the applicant's proposed building is 8,600 sq.ft. in size (+/- 6,000 sq.ft. of retail and the rest warehouse space) and therefore would need a variance. He further noted that the additional variances that would be required are for the side yard parking setback and the rear yard parking setback.

Chairman Koenig asked why the Board would even consider a project that does not meet the building size requirement in the HC zone.

Mr. Reilly also stated that the Building Inspector is questioning whether the use of the building would be allowed in the HC zone and plans to do an official interpretation of the planned use. The Building Inspector is requesting that the applicant submit an exact description of what the building would be used for and then he will issue a formal interpretation of that use.

The applicant, Jack Kuebler, stated that his business is swimming pool sales and service and that he currently operates off site. He further stated that he wants the building to be as large as it is because he feels it would be more aesthetically pleasing than if he built two separate buildings on the site, which he feels would be possible. He noted that the HC zone requires the parcels to have 150 feet of road frontage and his has 209 feet of frontage, which is another reason he feels he should be allowed to build the larger building.

Mr. Reilly noted that there can be no outdoor storage or display of swimming pools if the project moves forward, as that is not allowed in the HC zone. Mr. Kuebler responded that he is aware of the restriction and would not display any swimming pools outside.

Chairman Koenig asked if the number of parking spaces shown on the sketch plan meets the requirements of the HC zone, based on the proposed use. Mr. Reilly responded that it does.

Mr. Taber asked the applicant if he utilizes heavy equipment to install swimming pools and if so, where they would be stored. Mr. Kuebler responded that any machinery he has fits in the back of a van and that he does not install pools, but rather services them. He further stated that he has two service vans that would be kept inside the building.

Chairman Koenig noted that if the applicant requires a dumpster it would have to be shown on the plan and the number of parking spaces would have to be reduced in order to fit it on the property. Mr. Kuebler acknowledged this point.

Mr. Kuebler stated that the business would not be open between Thanksgiving and approximately St. Patrick's Day and therefore would not add to holiday congestion on McKinley Parkway.

Chairman Koenig questioned whether the applicant would be able to place two buildings totaling 10,000 sq.ft. on this parcel (as Mr. Kuebler has stated this) and still meet the zoning requirements of the HC zone. He further stated that it is his opinion that the applicant's proposal is too much on that size lot and that he would not be comfortable sending a positive recommendation to the Zoning Board of Appeals regarding the size of the building.

Mr. Phillips agreed with the Chairman, stating that one of the reasons the zoning district for that area of McKinley Parkway was changed was to restrict the size of buildings.

Mr. Kuebler noted that, in his opinion, this building would be much smaller than most of the existing buildings on McKinley Parkway. He further stated that he feels the building size restriction makes it difficult for property owners to develop their land along that stretch of McKinley Parkway.

Mr. Reilly explained that the Town understands that the lots along this stretch of McKinley Parkway are very different from other areas in the Town due to the depth and location of the properties. He further stated that the Town will support limited retail in this area, although there will be limitations on retail proposals.

Mr. Eustace asked the applicant why he feels he needs a building of this size. Mr. Kuebler responded that he expects the business to grow and anticipates needing the space. He further stated that he thinks he could build separate buildings for retail and warehouse use but it would make more sense to combine the two uses.

In response to a question from Mr. Taber, Mr. Kuebler stated that residential homes exist behind his property, there is a vacant lot to the north and a home to the south of the property.

Mr. Reilly noted that the Town Code requires that a buffer and up to an eight-foot fence be installed to screen this property from the residential properties adjacent to it.

Mrs. Yerkovich stated that she wishes the Planning Board could come up with a compromise in this situation because the applicant's business would not generate excessive traffic and would not be open five months of the year, and the applicant would clean up the site. She asked Mr. Kuebler if he would show the Board what he could do with two buildings on the site rather than one larger one so the Board knows what the alternatives to the one large building would be.

Mr. Phillips reminded the Board that what it does for one applicant it may be expected to do for others. Attorney McKenna responded that no precedent is set by the Board's decisions. Mr. McCabe acknowledged this fact but stated that, in terms of the Board addressing requests in a consistent manner, Mr. Phillips' concern is a valid one.

Mr. Phillips stated that the Town changed the zoning of this property to HC, which specifies a maximum size of building to be constructed. His concern is that the first thing the Planning Board is being asked to do is to approve a building larger than the HC zone allows.

Mr. Taber asked the applicant if a two-story building would be feasible, since that would reduce the footprint of the building. Mr. Kuebler responded that he does not think the neighbors would approve of a taller structure and that they would prefer a one-story building.

Chairman Koenig reminded the applicant that when the Town Board rezoned this property to HC at the applicant's request, an audience member asked the Board if any outside sales would be allowed on this property. The person was specifically told that outside sales would not be allowed at all.

Mrs. Rogers stated that she would like to see the size of the proposed building reduced.

Engineering Department comments are attached.

Lowe's – Southwestern Boulevard

Mr. Reilly stated that this property has been rezoned by the Town Board, the SEQRA process has been completed and a Findings Statement issued by the Town Board. He further stated that the project requires a Special Use Permit (due to the size of the proposed building), Site Plan Approval and Subdivision Approval.

Mr. Reilly distributed a list of the major conditions associated with the Town Board's rezoning of the property for the Board's review. He stated that the submitted site plan must conform to the rezoning that was granted, as well as the conditions in the Findings Statement that was completed for the SEQR process. He further noted that the Planning Board would need to decide when to hold a joint public hearing for Special Use Permit and Site Plan Approval (and Subdivision).

Mr. Reilly stated that in the Environmental Impact Statement the applicant provided a number of different architectural alternatives for the proposed Lowe's and that the Town Board did not particularly like any of them. Therefore, the applicant needs direction from the Planning Board and Town Board regarding what they would like the building to look like.

Chairman Koenig stated that there was a statement in the Town Board's approval of the rezoning that if the wetlands on the site become a problem, the number of out parcels will be reduced to just one. He further stated that he understands the wetlands on the site may be mitigated by creating wetlands at the Nike Base site and that if this is the proposal, the applicant should get Town Board approval of the mitigation plan.

Attorney Jay Pohlman appeared on behalf of the project. He stated that the applicant wishes to make sure that all of the necessary approvals are received and that all of the Town Code requirements are met. He further noted that the amount of wetlands on the site to be disturbed is less than one tenth of an acre and therefore no mitigation may be required, but if it is required, the applicant is prepared to move forward with the mitigation at the Nike Base.

Chairman Koenig stated that he would not be in favor of installing a fence around the proposed detention pond on the site. Attorney Pohlman agreed that the applicant does not like that idea, either. The Planning Board members agreed that it would not like to see a fence around the pond, although they agreed that if

Lowe's prefers a fence from a liability standpoint, it would consider one. The applicant may want a split rail fence.

In response to a question from Mr. Reilly, Attorney Pohlman confirmed that the applicant is only requesting Site Plan Approval of the Lowe's building and not of either of the out parcels at this time. He further noted that the applicant will be requesting Subdivision Approval, however, so that the out parcels can be separated from the Lowe's parcel. This will be a two-lot subdivision: One lot for Lowe's and one for the out parcel lot (a future split of the out parcel into two lots may happen in the future). At a later date, the applicant will request Site Plan Approval for the proposal(s) on the out parcel(s).

Mr. Reilly confirmed with Attorney Pohlman that the applicant will submit a site plan and landscape plan just for the Lowe's project.

Attorney Pohlman stated that the applicant would like a joint public hearing for the Subdivision, Special Use Permit and Site Plan approvals. The Board agreed that the public hearings could be held on February 20, 2008.

Vice-Chairman Phillips stated that if the Town Board has questions about the architecture, the applicant should meet with that Board to work that out, as the Town Board will have final approval of the look of the building (with input from the Planning Board).

Attorney Pohlman suggested that a committee be created consisting of three Planning Board members, the Town Board liaison to the Planning Board and members of the Town Board to discuss the architecture with the applicant to come to an agreement on what the building should look like. Mr. Reilly agreed to facilitate the meeting.

The following Planning Board members agreed to participate in a meeting to discuss the architecture of the building: Mrs. Rogers, Vice-Chairman Phillips, Chairman Koenig and Mr. Taber.

Attorney Pohlman stated that the project will require a number of variances from the Zoning Board of Appeals and will be requesting a recommendation from the Planning Board regarding these variances.

Mr. Reilly indicated that the applicant should work closely with Attorney McKenna regarding the deed restriction on the +/- 17 acres of open space area and should begin putting together a conservation easement in the name of the Town of Hamburg. Attorney McKenna stated that a conservation easement with no public access should be adequate and that it should be recorded.

Attorney Pohlman stated that one of the conditions of the rezoning approval by

the Town Board was that automotive uses will not be allowed on the out parcels.

He further stated that the applicant can indicate that as a deed restriction during the subdivision approval process.

Russ Porter of Costich Engineering, representing the applicant, stated that the NYS Department of Environmental Conservation has indicated it has concerns regarding the 100-year flood plain on the site and the applicant is working with the DEC on this concern. Attorney Pohlman added that Nussbaumer & Clarke performed an independent review of the hydrology of the site and concluded that the flood plain laws have been adhered to, although the diameter of the existing pipes in the flood plain might have to be enlarged.

Attorney Pohlman stated that the applicant will submit the Subdivision Approval paperwork in time for the Planning Board to review it at its next meeting.

Engineering Department comments are attached.

Regarding the minutes from the Board's December 19, 2007 meeting, Mr. McCabe had a concern regarding the fact that the Board went into Executive Session after the meeting was adjourned. It was decided that the minutes will be revised to reflect that fact.

Vice Chairman Phillips made a motion, seconded by Mr. Eustace, to approve the minutes of December 19, 2007 as amended. Carried.

Chairman Koenig stated that the Planning Board will not reorganize for 2008 until its January 16, 2008 meeting, as the Town Board will not hold its reorganization meeting until January 7, 2008.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Paul Eustace, Secretary

Planning Board