

Town of Hamburg
Planning Board Meeting Minutes
January 21, 2009

The Town of Hamburg Planning Board met in regular session on Wednesday, January 21, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Stephen McCabe, Richard Taber, Sasha Yerkovich, Karen Rogers and Peter Reszka.

Others in attendance included Sarah desJardins, Richard Lardo, Attorney Don McKenna and Attorney Cheryl McFaddon Zak.

Excused: David Phillips

Public Hearing – Ridgefield Terrace Subdivision, Phase III

Mr. McCabe read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a Public Hearing regarding Ridgefield Terrace Subdivision Phase III, located off of East Eden Road. The applicant is requesting Planning Board approval of an amended Map Cover that was previously approved by the Planning Board. The public hearing will be held on January 21, 2009 in Room 7B of Hamburg Town Hall at 7:30 PM.”

Mrs. desJardins stated that the Planning Board previously approved this subdivision. At that time, the applicant could not develop one of the lots because sewer service could not be provided to that lot. She further stated that the applicant has resolved this problem with Erie County and would now like to develop this lot.

Attorney McKenna stated that he agrees with the Engineering Department that the applicant should file an affidavit to the revision with the Erie County Clerk’s office.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mr. Reszka made a motion, seconded by Mr. McCabe, to reaffirm the Negative Declaration previously issued by the Planning Board and approve the amended Map Cover, subject to the Engineering Department comment letter dated January 21, 2009. Carried.

Engineering Department comments are attached.

Public Hearing - NDC Apartments, LLC (4678 Big Tree Road)

Mr. McCabe read the following notice of public hearing:

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"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by NDC Homes for property located at 4678 Big Tree Road. The applicant proposes to construct a +/- 5,000 sq.ft. garage associated with an existing apartment complex. In accordance with the Town of Hamburg Site Plan ordinance, a public hearing will be held at 7:30 PM on January 21, 2009 in Room 7B of Hamburg Town Hall."

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to issue a Negative Declaration and grant Conditional Site Plan Approval for this project, subject to the Engineering Department comment letter dated January 21, 2009. Carried.

Engineering Department comments are attached.

Public Hearing - 15 Buffalo Street Partners LLC

Mr. McCabe read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by 15 Buffalo Street Partners LLC for property located on the northeast corner of Route 5 and Big Tree Road. The applicant proposes to construct a 4,000 sq.ft. building on the property. In accordance with the Town of Hamburg Site Plan ordinance, a Public Hearing will be held on January 21, 2009 at 7:30 PM in Room 7 B of Hamburg Town Hall."

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mrs. Yerkovich made a motion, seconded by Mr. Reszka, to issue a Negative Declaration for this proposed project. Carried.

Engineering Department comments are attached.

Public Hearing - E.F. Burke Realty (southwest corner of Bayview Road and South Park Avenue)

Mr. McCabe read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by E.F. Burke Realty to locate a Subway restaurant on property located on the southwest corner of South Park Avenue and Bayview Road. In accordance with the Town of Hamburg Site Plan ordinance, a Public Hearing will be held on January 21, 2009 at 7:30 PM in Room 7 B of Hamburg Town Hall."

Andrew Gow from Nussbaumer & Clarke and Brian Burke, applicant, appeared on behalf of the proposed project. Mr. Gow stated that this property is zoned C-2 and lies in the South Park Avenue Overlay District. He noted that the applicant may need to request a variance from the Zoning Board of Appeals because of the proximity of the existing parking area on the property to South Park Avenue (the Overlay District requires that parking be set back forty feet from South Park Avenue). He submitted a landscape plan to the Planning Board showing where the applicant proposes to plant trees on the property.

Mr. Gow acknowledged that the South Park Avenue/Bayview Road intersection is a busy one and noted that when the applicant built the business park behind this property, a traffic study was performed. He noted that the South Park Avenue/Bayview Road intersection, as well as the South Park Avenue/Southwestern Boulevard intersection, was analyzed and that he has the information from that traffic study regarding this area and what impact this proposal would have on them. He further stated that the New York State Department of Transportation has been contacted (through the SEQR process) for its input and the applicant is awaiting written comments from that entity. He noted that he has been advised verbally that the DOT's main comment is that wherever the proposed curb cut on South Park Avenue is located, it should be right-in right-out only. He added that Mr. Burke has met with the Town's Traffic Safety Advisory Board regarding this proposal.

Chairman Koenig read the following comments received regarding this proposal:

"After much discussion, the consensus of this Board is that the revised plan indicates the proximity of the Bayview Road and Route 20 intersections to the proposed entrance/exit onto South Park Avenue from this project. Plus the traffic congestion in this area makes the entrance/exit very dangerous. Our recommendation is that this project should only have one entrance/exit onto Bayview Road and not allow the entrance/exit onto South Park Avenue. This Board will also consult with the New York State Department of Transportation about this issue."

Mr. Gow agreed that the Department of Transportation must be brought into the discussion and noted that if one is traveling south on South Park Avenue and turns right into this location, there would not be much of a problem in doing so. He stated that he is hopeful that the Town, the applicant and the Department of Transportation can work something out so that one centralized entrance on South Park Avenue can be agreed upon. He noted that the applicant is proposing to close the existing entrance to the site on South Park Avenue, as well as the Town House restaurant curb cut, and construct the centralized entrance approximately equidistant from Bayview Road and Route 20 for the use of Subway and the Town House restaurant.

Mr. McCabe stated that the biggest traffic problem is north-bound traffic on South Park Avenue becoming stacked up trying to turn left into the entrance for the Subway, as well as vehicles exiting the site attempting to turn left on South Park Avenue. Mr. Gow confirmed that the applicant would be willing to restrict the entrance on South Park Avenue to right-in right-out only and install signage to that effect.

Mr. Taber asked Mr. Gow if it would be possible to install a left turn lane on Bayview Road, just west of South Park Avenue, so that vehicles wishing to turn left into the Subway property from

Bayview Road would not end up being stacked up back to the intersection. Mr. Gow responded that in that area of Bayview Road the paved shoulder is quite wide, thereby making it easy for someone to go around a stopped vehicle waiting to turn left into the Subway property. He stated that he does not think a turning lane would be necessary.

Mrs. Rogers stated that she feels that this area is very congested, even when Frontier High School is not letting out, and added that safety is a big concern to her. She suggested using Riley Boulevard as access to the property and noted that she is not comfortable with this project. Mr. Burke responded that the long range plan is to have access points from Riley Boulevard to this location, but without tenants and a full plan in place for the rest of the property, it would be very difficult to justify a drive of that length just for the Subway.

In response to a question from Mrs. Yerkovich, Mr. Burke stated that lunchtime and dinnertime are the busiest hours for a Subway and added that Subway does not have a breakfast menu.

Mrs. desJardins stated that the Planning Department's comments are as follows:

The traffic assessment requested of the applicant at the Board's January work session is important and the information should be provided to the Planning Board for its review. The New York State Department of Transportation's comments are very important and the Planning Department, as well as the applicant, is attempting to get the comments in writing. The revised plan received on January 20, 2009 will be reviewed by the Planning Department, as well as the Engineering Department. Regarding the South Park Overlay District requirements, information must be submitted regarding the proposed ground sign(s), colored elevations of the building must be submitted for the Board's review and the landscape plan must indicate that the green area that the applicant does have along South Park Avenue will be heavily enhanced to make up for the fact that it is too close to the road. In addition, the proposed dumpster is to be shown on both the site plan and the landscape plan.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mrs. desJardins stated that the applicant has indicated that he would like to know how the Board feels about this project and whether or when he can move from the sketch plan phase to the site plan. Chairman Koenig responded that he would like to wait to see what the Department of Transportation's official comments are. Board members agreed that traffic is the only outstanding issue that remains to be settled.

Mr. Reszka made a motion, seconded by Mr. Taber, to table this project. Carried.

Engineering Department comments are attached.

Public Hearing - Proposed Tim Horton's (east side of Camp Road)

Mr. McCabe read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Tim Horton's for property located on the east side of Camp Road, south of Scranton Road. The applicant proposes to construct a +/- 1,200 sq.ft. Tim Horton's restaurant. In accordance with the Town of Hamburg Site Plan ordinance, a Public Hearing will be held on January 21, 2009 at 7:30 PM in Room 7 B of Hamburg Town Hall."

Dan Blamowski from FRA Engineering and Robert Bender from Tim Horton's appeared on behalf of the proposed project. Mr. Bender stated that the proposed Tim Horton's restaurant would have nine seats inside the building and a drive-up window. He further stated that no new curb cuts would be proposed on Camp Road or Scranton Road. He noted that, according to the Town Assessor, there is a subdivided lot in this corner of the existing parking area but that it is not big enough for Tim Horton's needs and that therefore he will be working with Benderson Development Co. (owner of the property) to either subdivide the parcel to accurately reflect the needs of Tim Horton's or to make the entire parking area one large lot. It was determined that, because it will be a land lease, the question of lot lines will not be an issue for the Planning Board.

Mr. Bender stated that a dedicated drive-through lane is proposed (exclusive of the parking area) for 16 vehicles before it gets to the parking area. He further noted that, if the number of vehicles in the drive-through lane exceeds approximately 19, the back end of the property has intentionally been left open (without curbs), which provides an escape lane and also would allow Tim Horton's to work with Benderson, if necessary, to extend the queuing lane to accommodate the larger number of stacked vehicles. He added that he does not think the stacking numbers would ever be that high because people are not willing to wait that long in line.

Chairman Koenig read the Traffic Safety Advisory Board's comments on this project, which are as follows:

"Regarding Tim Horton's, we are requesting that a "No Left Turn" sign be posted at the south entrance/exit from the existing parking lot. This Board also has concerns about stacking from this project's drive-through onto Camp Road."

In response to the above comments, Mr. Bender stated that the longest stacking lane at the busiest Tim Horton's restaurant holds 19 vehicles and there has never been a situation where there have been more than 19 cars in line at one time. He further stated that his research shows that when the number of vehicles in line reaches 12 or 13, typically people start to bypass the drive-through lane.

Mr. Bender stated that Connie Lydon, landscape architect, is working on the landscape plan, which will be submitted to the Planning Department shortly.

Mr. Bender presented to the Board elevations for the proposed signage, as well as for the building, stating that the building's base will be constructed of brick and it will have a hip and gable roof. He also stated that the siding will be a creamy yellow color and that this building is new for Tim Horton's and the architects are still in the process of designing it.

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Mr. Bender stated that it is his understanding that the proposed ground signage meets the Town Code requirements, although he is unsure about whether the proposed wall signage facing Scranton requires a variance or not. It was determined that the Building Inspector will be consulted regarding the proposed wall signs.

Mr. Bender stated that there will be a cross-access agreement in place between Tim Horton's and Benderson so that, if a parking problem arises, Tim Horton's will have the ability for employees to park in the larger vacant parking lot adjacent to the land lease parcel.

In response to a question from Mrs. Rogers, Mr. Bender stated that the Tim Horton's would be open 24 hours a day.

Chairman Koenig stated that the Town received a call from a resident voicing opposition to the construction of another Tim Horton's because of the large number of Tim Horton's already in Hamburg. Mr. Bender responded that he feels just the opposite – that, even though there are other Tim Horton's restaurants in close proximity to this area, there is enough traffic on Camp Road that does not get to the other facilities and that constructing this Tim Horton's might take some of the pressure off of the existing Tim Horton's on Buffalo Street in the Village of Hamburg.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. No one spoke.

Chairman Koenig declared the public hearing closed.

Mr. Lardo stated that, because the area where the "No Left Turn" sign would be installed is owned by Benderson, Benderson would have to agree to allow the sign to be installed.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to issue a Negative Declaration and grant Conditional Site Plan Approval to this project subject to the Engineering Department comment letter dated January 21, 2009. In addition, a letter of intent is to be signed by Benderson and Tim Horton's indicating that a "No Left Turn" sign will be installed along Camp Road. The elevations of the building are to be approved by the Planning Department. Carried.

Engineering Department comments are attached.

The Villages at Mission Hills (east side of Camp Road)

Leanne Voit from Greenman-Pederson and David Manko, applicant, appeared on behalf of the proposed project.

After some discussion, Board members agreed that the Board will utilize the same scoping document for the currently proposed project it prepared when considering the previous proposal for this parcel. It was determined that the applicant will continue working on the Supplemental Environmental Impact Statement (SEIS) utilizing the previously adopted scope.

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Mrs. desJardins stated that the Planning Department recently mailed the SEQR Lead Agency

paperwork to re-establish the Planning Board as Lead Agency to involved/interested agencies and is waiting the required 30 days for responses. She noted that in February the Planning Board can re-establish itself as Lead Agency and issue a Positive Declaration. She further stated that the next step after that will be for the applicant to submit the SEIS to the Planning Board for review.

Ms. Voit stated that, in addition to the items listed in the previously adopted scope, the applicant will discuss the proposed buffers and the new storm water SPDES (State Pollutant Discharge Elimination System) requirements, as well as socio-economic aspects of the project that will be beneficial to the Town.

Mrs. desJardins stated that it has been determined that the proposed single-family homes will be required to be located on individual lots and that subdivision approval will be required.

In response to a question from Chairman Koenig, Ms. Voit stated that, as far as she is aware at this point, locating the homes on individual lots will not mean a reduction in the number of proposed homes.

Mrs. Rogers stated that she would like the applicant to address in the SEIS whether this project would benefit the Town, given the large number of residential housing project geared towards senior citizens being proposed currently in the Town. Ms. Voit agreed to add this issue to the scope.

Attorney McKenna reminded Board members that the Board cannot approve or disapprove a project based on whether it feels there is a need for the proposed use.

Ms. Voit stated that the applicant may require a variance from the Zoning Board of Appeals for the number of proposed parking spaces for the apartments. It was determined that the Planning Department will research this and report to the Planning Board at its next meeting.

Chairman Koenig read the Traffic Safety Advisory Board's comments regarding this project, which are as follows:

"The response letter to this Board's concerns submitted by Leanne Voit of Greenman-Pederson and David L. Manko of Manko Development suggested that the Fire Chief's Association be contacted about the proposed emergency exit and its feasibility. This Board will be waiting for the developer's traffic study and input from the New York State Department of Transportation before commenting any further on this project."

Mr. Manko indicated that he planned to meet with the Fire Chief on January 22, 2009.

Mrs. Yerkovich made a motion, seconded by Mr. Reszka, to table this project. Carried.

Engineering Department comments are attached.

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John Kuebler (vacant land, east side of McKinley Parkway, south of Dorchester)

John Kuebler, applicant, and Terry Myers from LBM Construction appeared on behalf of the proposed project. Ms. Myers stated that the sketch plan has been revised to include an area behind the building that is now labeled "outside display". She further stated that the building and parking has been moved twenty (20) feet closer to McKinley Parkway and the applicant intends to request a variance from the Zoning Board of Appeals to provide twenty (20) feet of green space along McKinley Parkway instead of forty (40) feet, which is the requirement of the McKinley Parkway Overlay District.

Ms. Myers stated that the applicant can provide the required number of parking spaces on the site (16) but does not feel he needs that many spaces. She indicated that the applicant would be asking for a reduction in the number of spaces he provides initially with the understanding that, when the adjacent property is developed and the required cross access is installed, the rest of the parking spaces would also be installed. She noted that the applicant would like to install 11 spaces initially.

The Board discussed the number of parking spaces the applicant's business would require and it was determined that the Building Inspector will make that determination.

Ms. Myers stated that a solid vinyl fence is shown on the sketch plan running the length of the rear property line, as well as street trees and additional landscaping in the front of the building.

In response to a question from Mr. Taber, Ms. Myers stated that the applicant would like the fence to be six feet in height. She further noted that the property generally rises in elevation from west to east. Mr. Taber stated that he is concerned that the neighbors on Allendale who back up to this property are not adversely affected by this project.

Ms. Myers showed the Board members a rendering of the proposed building, noting that the applicant is attempting to maintain a residential look. She stated that a shingle roof is proposed, as well as siding of a natural color, stone in the front and residential-type windows with shutters.

Mrs. desJardins stated that copies of the sketch plan submitted at the meeting should be submitted to the Planning Department for review by that department and the Engineering Department.

Mr. Kuebler was advised that he can have the site plan prepared at this time, if he chooses, but he was cautioned that if he does not receive a variance from the Zoning Board of Appeals, he will have to revise the site plan accordingly.

Mrs. desJardins stated that the Board should not forward a recommendation to the Zoning Board of Appeals until the sketch plan submitted has been reviewed by the Planning and Engineering departments. It was determined that the Board can forward a recommendation at its February 4, 2009 meeting if it so chooses, as well as possibly schedule a public hearing for this proposal.

Mr. McCabe made a motion, seconded by Mr. Taber, to table this project. Carried.

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Engineering Department comments are attached.

Autumnview Healthcare Facility (4650 Southwestern Boulevard)

Leanne Voit from Greenman-Pederson, as well as Jim McGuire and Colby Smith from the McGuire Group appeared on behalf of the proposed project. Ms. Voit showed Board members preliminary grading and landscaping plans for this project, which the Board had previously requested. She stated that she just received a copy of the letter sent to the Board by the Fire Department and will review it and meet with the appropriate individuals to attempt to address the Fire Department's concerns.

Regarding the preliminary grading plan, Ms. Voit stated that the applicant proposes to clear approximately 30 feet of property off of the proposed addition for construction purposes. She noted that the applicant has to be concerned about sidewalk elevations for the residents of the facility, as well as employees, because a safe slope must be maintained given the grade change in the area to be cleared. She further stated that the applicant plans to maintain as much of the existing trees and brush on the site as possible.

Regarding the preliminary landscaping plan, Ms. Voit stated that approximately ten spruce trees (15 – 20 feet tall) are currently located in the center of the area where the addition is proposed. She noted that the applicant plans to relocate these trees at the rear of the disturbed area where the topography change is the greatest and where the closest neighbors can receive the greatest benefit in terms of screening. She further stated that the applicant plans to place approximately 30 to 34 new trees (six feet tall) throughout the area between the proposed addition and the rear property line that would be interspersed in between the relocated spruce trees previously discussed to provide additional screening to the neighbors.

In response to a question from Mr. McCabe, Ms. Voit stated that, to the best of her knowledge, there have been no problems with the neighbors encroaching on the healthcare facility's property with sheds, etc. in the area of the proposed addition.

In response to a question from Mr. Reszka, Ms. Voit stated that the difference between the proposed grading for the addition and the grading at the property line is approximately 14 feet but, because the elevation increases across the adjacent properties, each neighbor is at a different elevation and therefore would experience different grading differences. She noted that, even taking into account the elevation changes, relocating the tall spruce trees should serve to screen the neighbors.

Board members agreed that the Fire Department comment letter must be addressed by the applicant.

A member of the audience asked Ms. Voit if the applicant plans to replace the replanted trees if they do not survive. Mr. McGuire responded that this is question that cannot be answered.

Mrs. Yerkovich stated that the Planning Board does have the right to ask such a question and can stipulate that if relocated trees die, they will be replaced by the developer. She asked Mr. McGuire what his intent would be if the relocated trees do die. Mr. McGuire responded that he would replace them with the largest available tree that could be planted at that time.

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Mrs. Yerkovich stated that the Planning Board's experience has been that transplanted trees do not usually live.

Attorney McKenna referenced item #2 in the Engineering Department comment letter dated January 21, 2009, noting that the buffer requirements will be very important.

Mrs. Rogers stated that she visited Nottingham Terrace and stood in a resident's yard and can certainly understand the neighbors' concerns about this facility and the lack of screening.

Mr. McGuire stated that, over the course of time, some of the residents of Nottingham Terrace have taken the liberty of nearly doubling the size of their yards by cutting down trees and brush on Autumnview's property and putting up sheds, play sets, etc. He further stated that he spent a considerable amount of money fighting a squatters' rights lawsuit from three of the neighbors and a settlement was reached. He stated that landscaping was enhanced and trees were added by Autumnview at that time and the neighbors were given three years to remove their structures from Autumnview's property. He noted that, had the neighbors not cleared the brush and trees, it would have been a dramatically different visual presentation of the building from the perspective of their back yards.

Mary Philbin, 4002 Nottingham Terrace, stated that 2004 Planning Board minutes indicate that there was to be a buffer between the healthcare facility and the rear yards of the residents on Nottingham Terrace. She further stated that the law suit referenced by Mr. McGuire was brought by the developer against the neighbors.

Chairman Koenig stated that it is his understanding that there was to be a buffer associated with the previous addition to the facility, apparently it was removed and if it does not exist, he does not know who is responsible for replacing it. He further stated that, because the buffer was associated with a previous project, it has no relevance on this proposal.

Mrs. Yerkovich stated that the Board should have cause for concern that it does everything possible to ensure that an approved buffer is installed and also that no one encroaches on the healthcare facility's property. She further stated that she does not want anything to fall through the cracks this time and wants all parties to understand where buffers are to be located and not located.

Mr. Taber stated that, as with all projects that come before the Planning Board, all due diligence will be given to the neighbors' concerns regardless of history.

Chairman Koenig asked Ms. Voit if this project in any way disturbs any existing buffer on the property. Ms. Voit responded that there is no existing buffer on place on the property.

Attorney McKenna stated that he believes that if the Planning Board wishes to correct a problem that has arisen due to a previously approved project on this property (same applicant), it does have the jurisdiction to do so. Mrs. desJardins stated that she believes that Mr. Reilly agrees with this assertion.

Attorney McKenna requested that he be provided with a copy of the previous settlement between Autumnview and the residents on Nottingham Terrace.

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Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to table this project. Carried.

Engineering Department comments are attached.

Mrs. desJardins asked the Board not to approve the minutes of January 7, 2009 because members had just received copies that day.

Attorney McFaddon stated that after the Board's last meeting, she spoke to Town Attorney Farrell about a potential conflict of interest she may have, given the fact that her father is a corporate associate with Nussbaumer & Clarke. She further stated that Attorney Farrell's suggestion is she should notify the Planning Board of this fact at the beginning of each calendar year. In addition, she should personally remove herself if Nussbaumer & Clarke itself is ever an applicant before the Planning Board or if there becomes any issue with questioning or a conflict involving Nussbaumer & Clarke's work.

Mr. Taber made a motion, seconded by Mr. Reszka, to adjourn the meeting. Carried.

The meeting was adjourned at 9:10 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board