

Town of Hamburg
Planning Board Meeting Minutes
February 20, 2008

The Town of Hamburg Planning Board met in regular session on Wednesday, February 20, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Secretary Stephen McCabe, Karen Rogers and Peter Reszka.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Attorney Don McKenna and Attorney Timothy Quinlivan.

Excused: Richard Taber, Sasha Yerkovich and David Phillips

Public Hearings – Lowe’s of Hamburg (Subdivision, Special Use Permit and Site Plan Approval)

Chairman Koenig announced that the three published public hearings (Subdivision, Special Use Permit and Site Plan Approval) would be held concurrently.

Mr. McCabe read the following notices of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a Public Hearing on a two-lot subdivision known as Lowe’s of Hamburg Two-Lot Subdivision to be located on vacant land on the north side of Southwestern Boulevard, east of Oregon Place, on February 20, 2008 in Room 7 B of Hamburg Town Hall at 7:30 P.M.”

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Lowe’s of Hamburg, NY to construct a 139,410 sq.ft. Lowe’s store on vacant land located on the north side of Southwestern Boulevard, east of Oregon Place. A Special Use Permit is required because the proposed building is larger than 100,000 sq.ft.

In accordance with the Town of Hamburg site plan ordinance, a Public Hearing will be held on February 20, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by Lowe’s of Hamburg, NY to construct a 139,410 sq.ft. Lowe’s store on vacant land located on the north side of Southwestern Boulevard, east of Oregon Place.

In accordance with the Town of Hamburg site plan ordinance, a Public Hearing will be held on February 20, 2008 at 7:30 p.m. in Room 7B of Hamburg Town Hall.”

Jay Pohlman, attorney, appeared on behalf of the proposed project, along with Ron Bronstein from Paradigm Development, Taylor McDermott from Lowe’s and Russ Porter from Costich Engineering.

Attorney Pohlman stated that Lowe’s is proposing to construct the Lowe’s store on the rear parcel and that the front parcel (approximately 3.5 acres in size) will be reserved for future development (one or two stores). He further noted that Lowe’s proposes to keep a sixteen-acre restricted conservation easement area in a “U” shape around the proposed building. Attorney Pohlman stated that Hamburg’s Code requires that 697 spaces be installed, but Lowe’s feels that number is greater than what is necessary at the site and therefore will petition the Zoning Board of Appeals for a reduction in the number of spaces provided (Lowe’s would like to install 633).

Attorney Pohlman noted that Lowe’s will be appearing before the Zoning Board of Appeals to request a variance for its on-store signage and the number of parking spaces required, as well as for the height of the proposed building.

Attorney Pohlman stated that Lowe’s has attempted to address the concerns of both the Planning Board and Town Board regarding the aesthetics of the building by adding architectural upgrades he feels will please the Board members.

There were no questions from Planning Board members.

Chairman Koenig declared the public hearings open. He then asked if anyone in the audience wished to speak in favor of or in opposition to the proposal. The following people spoke:

1. Donald Weiss, 2963 Cloverbank Road, asked if the height of the building will be reduced. Attorney Pohlman responded that it is Lowe’s intention not to reduce the height of the building, unless a variance is not received. Mr. Weiss asked what the plan is for the 3.5 acres in front of the proposed building. Attorney Pohlman stated that currently that land is scrub brush and Mr. Bronstein stated that, once the business on the property is demolished, it will be graded and seeded. Mr. Weiss stated that he understands that the Planning Board has sent a positive recommendation to the Town Board to allow a reduction in parking spaces for the Lowe’s site, and he wondered if, when the parcel in front is developed, the parking spaces assigned to Lowe’s will also be used by the new development in front. Attorney Pohlman responded that any development on the 3.5-acre parcel will have its own parking that will be separate from

the parking for Lowe's. Mr. Weiss stated that he thinks this project is a positive one and is in favor of it. He further stated that he is concerned that the buffer area will not be maintained and will fill up with garbage, etc. He asked what plans Lowe's has to maintain the buffer area. Attorney Pohlman responded that the buffer area will remain in Lowe's title and Lowe's will provide a conservation easement overlying that acreage to the Town of Hamburg so that it is protected. He further stated that Lowe's intends to maintain a dedicated schedule to insure that the buffer area is policed and cleaned up. Mr. Weiss confirmed with Attorney Pohlman that the +/- 300' buffer area between the building and residences will be left in its natural state.

2. Russ Gullo, 4767 Southwestern Boulevard, asked where new traffic lights will be installed. Mr. Gullo also expressed concern that the 3.5-acre parcel in front of Lowe's be aesthetically maintained and noted that the Tractor Supply green space is not maintained and looks terrible. Mr. Bronstein responded that Lowe's will not tolerate property in front of its building not being maintained.

Chairman Koenig declared the public hearings closed.

Mr. Reszka made a motion, seconded by Mr. McCabe to forward a positive recommendation to the Zoning Board of Appeals regarding the height of the proposed building. Carried.

Mr. McCabe made a motion, seconded by Mrs. Rogers, to table the request for Site Plan Approval. Carried.

Mr. McCabe made a motion, seconded by Mr. Reszka, to table the Special Use Permit request. Carried.

Mr. McCabe made a motion, seconded by Mrs. Rogers, to table the Two-Lot Subdivision request. Carried.

Engineering Department comments are attached.

Omni Pain & Wellness Center – Camp Road

Doug Hutter from Zaxis Architectural appeared on behalf of the proposed project. Mr. Hutter stated that the proposed building is considered Phase II of the Omni Pain & Wellness Center and that the Phase I building is recently up and running. He further stated that the proposed building will match the building recently completed (Phase I), the required number of parking spaces for each

building will be provided and that the two buildings will share one entrance to Camp Road

Mr. Hutter stated that the landscape plan is currently being prepared by Frank Brzezinski, landscape architect and additional information is being compiled regarding the utilities. He noted that this information will be available to the Board by its March work session.

Chairman Koenig noted that the Board has received comments from the Traffic Safety Advisory Board (TSAB) regarding this project. Specifically, the TSAB recommended that the two parking lots be connected in the rear, the driveway to Camp Road be widened and a traffic control plan for the interior of the site be provided. Mr. Hutter responded that stop signs will be installed to control the interior traffic and he will review the traffic flow. He further stated that he has no problem connecting the two parking areas in the rear of the site, although it might make it necessary to reduce the number of provided parking by a few spaces, requiring a variance. Chairman Koenig responded that he feels the Board would be willing to send a positive recommendation to the Zoning Board of Appeals in that case as it would add an extra means of circulation.

Mr. Reilly stated that it will be the decision of the New York State Department of Transportation whether the size of the curb cut is adequate for the project.

Mr. Hutter noted that if, in the future, the Town feels there is not adequate parking at the site, more parking spaces can be added in the rear to alleviate any problems.

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

Engineering Department comments are attached.

Benderson Development – Brierwood Square

Tony Battista and James Rumsey, both of Benderson Development Co. and Chris Wood, civil engineer, appeared on behalf of the proposed project. Mr. Rumsey explained that the parcel in question is the old Brierwood Plaza on Southwestern Boulevard. He further noted that Phase I (Wal-Mart Supercenter) has been approved and is moving forward and Phase II is Benderson's proposed retail strip plaza and four out parcels. Mr. Rumsey stated that there will be two access points on Southwestern Boulevard and one on Rogers Road and that Benderson plans to build the 67,000 sq.ft. strip plaza building initially and then build the out parcels when tenants are ready.

Mr. Battista stated that Benderson Development submitted a letter it received in November 2007 from Erie County indicating the County's approval of the proposed entrance to Rogers Road in November 2007. Mr. Battista also showed the Board members what the rear of the large building along Rogers Road would look like. Mr. Reilly noted that the aesthetics of the rear of the building will be very important to the Town.

Mr. Rumsey stated that pedestrian access will be provided throughout the project. Mr. Battista confirmed that Benderson Development will install sidewalks from the entrance to Rogers Road north to the property line.

Chairman Koenig noted that the Board has received comments from the Traffic Safety Advisory Board (TSAB) regarding this project. Specifically, the TSAB recommended that an internal traffic control plan be submitted. Mr. Battista agreed to provide same.

Mr. Reszka confirmed that if the applicant wishes to install a tenant other than an office in the northernmost building (labeled "office") they will have to return to the Planning Board for approval of the new use.

Mr. Donald Weiss discussed with the applicants his desire to see sidewalks for public use along Rogers Road. Mr. Battista responded that Benderson Development's engineer has advised against installing sidewalks in that area due to liability concerns. Mr. Weiss also discussed the entrance to Rogers Road and whether there would be a turning lane installed there. Chairman Koenig noted that, according to the letter to Benderson Development from the County, the final design of the required widening and left turn lane pavement markings will require review and approval by the County before highway work permits are issued. Mr. Weiss expressed concern regarding posting Rogers Road so that trucks over a certain weight would be prohibited.

Mr. Reilly noted that the point where the larger building comes closest to Rogers Road is 72.1 feet from the right of way. The closest the pavement comes to Rogers Road is 36.1 feet from the right of way (35 feet is required).

Regarding parking spaces, Mr. Reilly stated that as buildings are planned with specific uses in mind, the Building Inspector will review the number of parking spaces required. If a use is proposed that requires more parking spaces than what has been installed by the developer, the building would have to be reduced in size.

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

Engineering Department comments are attached.

Benderson Development – 5334 Southwestern Boulevard

James Rumsey from Benderson Development appeared on behalf of the proposed project.

Mr. Reilly informed the Board that it should make a recommendation on the requested rezoning from R-3 to C-2 before it can act on the site plan approval request.

Mr. Rumsey explained that the sketch plan for the proposed bank has been revised somewhat based on comments made at the Board's previous meeting. Specifically, access to the Wal-Mart parcel has been expanded and one of the access points to Southwestern Boulevard has been eliminated. He stated that the sketch plan does not provide the required 50 feet of green space along Southwestern Boulevard; rather, a 35-foot green area is proposed, which would require a variance from the Zoning Board of Appeals.

Mr. Reilly stated that if the Planning Board makes a favorable recommendation to the Zoning Board of Appeals regarding the green area along Southwestern Boulevard, the applicant would have to provide landscaping mitigation above and beyond what the Town Code requires.

Mr. Rumsey noted that, although the Planning Board had asked Benderson Development to consider providing a cross-access to the property east of this parcel, it would not be possible at this time due to a significant grade change between the two properties. Mr. Reilly responded that the applicant should indicate a dashed line on the site plan where a cross-access could be located if ever found necessary.

Chairman Koenig noted that the Board has received comments from the Traffic Safety Advisory Board (TSAB) regarding this project. Specifically, the TSAB recommended that no driveways be allowed onto Southwestern Boulevard; rather, existing driveways should be utilized. Chairman Koenig stated that he is a member of the TSAB and does not agree with that recommendation. Mr. McCabe noted that there is currently a deceleration lane on Southwestern Boulevard in that area.

Mr. Reilly stated that his opinion is that if the Board allows the one driveway onto Southwestern Boulevard, appropriate signage should be installed at the driveway entrance.

John Tarnish, TSAB member, who was not in attendance at the TSAB meeting regarding this proposal, asked if the NYSDOT has weighed in on whether an entrance at this location is prudent. Mr. Reilly responded in the negative. Mr. Tarnish stated that he is not in favor of two entrances onto Southwestern Boulevard, but does not have a problem with one if it is designed correctly.

The Board discussed the requested rezoning of this parcel from R-3 to C-2. Mr. Donald Weiss asked whether the Board can restrict the types of uses that would be allowed on the property if it is rezoned to C-2. Mr. Reilly responded that the Board could restrict automotive uses if it wishes, so that if in the future the bank leaves the property and a new user wishes to occupy the site.

Mr. Reszka made a motion, seconded by Mr. McCabe, to forward a positive recommendation to the Town Board regarding the applicant's request to rezone this property located at 5334 Southwestern Boulevard from R-3 to C-2 and that this is a good use of the property. Additionally, the Board resolved that automotive uses should be restricted. Carried.

Mr. Rumsey indicated that the applicant plans to submit a full site plan for this project by the Board's work session so that a public hearing can be scheduled at that time for March 19, 2008, assuming the Town Board rezones this property.

Mr. Reilly reminded Mr. Rumsey that the cross-access agreement with Wal-Mart will be required.

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

Engineering Department comments are attached

Villas at Brierwood

Michael Metzger, engineer, appeared on behalf of the project. He stated that when the original landscape plan was approved, a grading plan had not been prepared. At that time it was understood that the center green area and the north end of the west side of the development were to be left in their natural state. However, once the grading plan was done, the applicant felt they had to level the existing vegetation in the center area. Since appearing at the Board's February 6, 2008 meeting Mr. Metzger stated that they took another look at the design of the center area and now feel it is possible to generally stay out of the area and preserve it.

Regarding the northern portion of the west side of the development, Mr. Metzger stated that they will, in fact, be preserving the fifty-foot buffer area associated with the original landscape plan, as well as expanding that buffer area they had committed to leave untouched.

Mr. McCabe stated that leaving the center area of the development in its natural state was touted in both the DEIS and FEIS as one of the appealing features of the project. He further stated that he feels that what Mr. Metzger presented is a

good solution to the problem.

Mr. Donald Weiss stated that his concern is that if the Town deems an area “untouchable” and the applicant pushes dirt within six feet of the area or brings a heavy earth-moving vehicle over the roots of the trees in the area, the area will effectively be touched. Mr. Reilly responded that the center area will not be a conservation easement to the Town, but rather an internal feature of the project. The Town can only control activity such as Mr. Weiss spoke of up to the point of construction.

It was the consensus of the Planning Board members that the landscape plan as presented meets the original intent of the approval.

OTHER BUSINESS

The Planning Board discussed the meeting to be held between residents and the Town regarding the clearing of trees without a permit in the Woods at Versailles subdivision.

The Planning Board reviewed and acknowledged receipt of the following correspondence:

1. William Dunlap & Jennifer Noble-Dunlap to the Chairman of the Planning Board regarding a letter they sent to the New York State Attorney General’s office regarding the Woods at Versailles subdivision.
2. Thomas Krol to New York State Attorney General’s office regarding the Woods at Versailles subdivision.

The Planning Board reviewed and discussed a letter received from Charles Alessi regarding Carubba Collision on Camp Road.

Mr. McCabe made a motion, seconded by Mrs. Rogers, to approve the minutes of February 6, 2008 as amended. Carried.

Mrs. Rogers made a motion, seconded by Mr. McCabe, to adjourn the meeting. Carried.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board