

Town of Hamburg
Planning Board Meeting

March 18, 2009

Minutes

The Town of Hamburg Planning Board met in regular session on Wednesday, March 18, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Steve McCabe, Richard Taber, Karen Rogers and Peter Reszka.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo, Attorney Donald McKenna, Attorney Cheryl McFaddon Zak and Councilman Kevin Smardz.

Excused: David Phillips, Sasha Yerkovich

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

Andrew Gow and Michael Borowiak, from Nussbaumer & Clarke, and David Burke, applicant, appeared on behalf of the proposed project.

Mr. Reilly stated that the Planning Department received a letter from the New York State Department of Transportation regarding the proposed access for this project. He stated that the DOT is willing to accept the proposed right-in, right-out entrance on South Park Avenue centered between Bayview Road and Southwestern Boulevard and that the only thing they object to is the entrance for the Town House restaurant being in this location because, as proposed, it is too close to the highway. He noted that "no left turn" signs would have to be installed at the new entrance/exit on South Park Avenue.

Mr. Borowiak stated that it is unclear at this time whether the developer will allow access from the Town House restaurant to the new entrance.

Mr. Reilly noted that the applicant is looking for a recommendation on the variances required, a SEQRA determination and possibly a conditional approval of the site plan.

Mr. Reilly stated that the applicant was asked to submit an enhanced landscape plan, since the parking is proposed closer to the road than what is required by the Town Code. He noted that the enhanced landscape plan submitted is not sufficient and should be further enhanced to screen the proposed parking area from South Park Avenue.

Mr. Reilly stated that he is very concerned about the proposed circulation on the site, noting that two-way traffic would be allowed on the east side of the building and a one-way traffic pattern is proposed on the west side. He further stated that his concern is that, if the drive-up lane is backed up, vehicles would not be able to drive around the cars in the drive-up lane, as the area is not wide enough to allow for that.

In response to a question from Mr. Reilly, Mr. Gow stated that people would order and pick up at the same window. He further stated that there is room on the west side of the building for the

drive-up traffic to stack and that a vehicle entering from Bayview Road would be able to get to the south side of the building by proceeding around the east side and would also be able to exit the site at Bayview Road.

Mr. Reilly stated that a variance is required from the Zoning Board of Appeals because the proposed parking area is set back twelve feet from the South Park Avenue right-of-way, rather than the required 35 feet. He further noted that, because this parcel lies in the South Park Avenue Overlay District, which requires a 40 foot green area along South Park Avenue, the Planning Board would have to waive the 40 foot requirement. He stated that the Planning Board can only waive the 40 foot requirement down to 35 feet, and a variance would be required to allow the parking area to be set back twelve feet from the road.

Mr. Reilly stated that the Planning Board has indicated its concern that this is an extremely tight site from the beginning of the review process and noted that the applicant has done a good job of attempting to fit this project on such a small site. He further stated that it is up to the Planning Board to decide if this project is appropriate for this site or not.

Chairman Koenig stated that he feels better knowing that the NYS Department of Transportation has weighed in on the issue of access.

Chairman Koenig asked Planning Board members to comment on the Board's potential recommendation to the Zoning Board of Appeals regarding the parking setback variance being requested. Mr. McCabe stated that he is not enthused about it, as it would be a very large reduction in what is required. Mrs. Rogers concurred with Mr. McCabe.

Mr. Taber stated that, the first time the Board reviewed this proposal, the first question was (and still is) that the same applicant owns the land surrounding this parcel and, although the Planning Board does not have the right to tell the applicant how to use his land, the question remains as to why he cannot (or will not) add some of the adjacent land to this parcel to make the project work better. Mr. Borowiak responded that there are no plans at this time of any substance to continue that type of discussion, other than to say that this parcel was not part of the original business park.

Mr. Taber stated that he feels some reluctance on the part of Board members to support the variance request and noted that the applicant may end up having to start at the beginning again if the project is not approved.

Chairman Koenig stated that the ideal situation would be for the existing building to be knocked down and encroach further into the applicant's property to build a proper building that allows for the parking area setback to be that which is required. Mr. Borowiak responded that the economics of the project are extremely tight, with just finding a tenant to occupy the building as it exists. He further stated that to knock the building down, start new and add additional property would not be economically feasible.

Chairman Koenig asked if anyone was willing to make a motion to recommend favorably on the applicant's variance request. No one was willing to make the motion.

Mr. Reszka confirmed with Mr. Borowiak that there is no possibility of the applicant considering adding additional land to the parcel and moving the parking area back.

Mr. Borowiak stated that he was under the impression that the only outstanding issue was the access to South Park Avenue and he was not expecting to have additional obstacles, such as the internal traffic flow on the site, brought up at the "eleventh hour".

Mr. Reilly stated, for the record, that Planning Board members have raised these traffic concerns since they first began reviewing the project and have made it clear over and over that they are concerned with access to the site, the internal traffic flow on the site, the location of the proposed parking area so close to South Park Avenue and the overall tightness of the site. He noted that these concerns have brought up at every meeting since the beginning.

Mr. McCabe stated that the drive-up feature of the project contributes a lot to the internal traffic flow concerns that Board members have. Mr. Reilly added that there would only be approximately 18 feet between the drive-up window and the western edge of the pavement to route vehicles around the drive-up lane.

Board members discussed ways to alleviate the potential internal traffic problems with the applicant's representatives.

Chairman Koenig stated that the Planning Board can forward a positive recommendation, a negative recommendation or no recommendation to the Zoning Board of Appeals. Mr. Reilly added that, regardless of the Planning Board's recommendation, the applicant has the right to ask the Zoning Board of Appeals for a variance.

Mr. Reilly stated that the Planning Board could hold off on the site plan approval and send the applicant to the Zoning Board of Appeals, with or without a recommendation on the variance, and see how the Zoning Board of Appeals feels.

Mr. Borowiak asked the Board members if the applicant could get a conditional approval (contingent on receiving the variance) if the Board forwards a positive recommendation to the Zoning Board of Appeals. Chairman Koenig responded that this could be possible. However, no one was willing to make a motion to forward a positive recommendation to the Zoning Board of Appeals.

Mr. McCabe stated that he would support a motion to forward no recommendation to the Zoning Board of Appeals, let that Board weigh the request and see if it has insight the Planning Board members may not have. Mrs. Rogers concurred with Mr. McCabe.

Chairman Koenig stated that, if the Planning Board's motion is to forward no recommendation to the Zoning Board of Appeals, the Planning Board should not follow through with conditional approval of this project until the variance is (or is not) granted.

Mr. Reilly stated that it appears that what the Planning Board is telling the applicant is that he should attempt to get the required variance but should also consider if there is anything that can be done to open up the site in order to alleviate the potential traffic flow concerns the members have. He further stated that it appears that Planning Board members are willing to send the applicant to the Zoning Board of Appeals without a recommendation and that they are not willing at this time to move forward on approving this project.

Mr. Reilly asked the applicant's representatives to find out if Subway has other locations that operate with a single drive-up window, as he is concerned about potential stacking problems.

Mr. Borowiak asked the members if, assuming the applicant goes to the Zoning Board of Appeals with no recommendation from the Planning Board and is able to get the variance, the Planning Board would then support the project and approve it. Chairman Koenig responded that he would be able to support the project if the applicant receives a variance for the parking setback. Mr. McCabe concurred.

Mr. McCabe made a motion, seconded by Mrs. Rogers, to forward no recommendation to the Zoning Board of Appeals regarding a required parking setback variance for the proposed Subway restaurant. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Oakwood Grove Subdivision

Andrew Gow from Nussbaumer & Clarke appeared on behalf of the proposed project, stating that he has submitted the deed and mapping information to the Planning Department showing that subplot #11 was granted access to Lake Avenue. He further stated that the Cultural Resource Investigation was completed and has been signed off on by the New York State Office of Parks, Recreation and Historic Preservation. He noted that the applicant has made all of the applications to Erie County Health Department, Erie County Division of Sewerage Management and Erie County Water Authority, as well as done the reports to prove that there is sewer capacity and proper pressure and flows within the water lines in the project. He further stated that the drainage report has been submitted to the Hamburg Engineering Department that demonstrates the proper release of runoff on the site.

Mr. Reilly stated that the applicant is looking for a SEQRA determination, as well as Preliminary Plat Approval, which would allow the applicant to put final designs together to be reviewed by the Engineering Department and all other agencies that require approvals.

Chairman Koenig asked if anyone in the audience wished to briefly comment on the project. The following people spoke:

- Rich Pohwat, representing the estate of Rita Pohwat, 4277 Oakwood Avenue, asked if the existing storm sewers that run along the south side of Oakwood Avenue would be able to handle the additional flow, or would they need to be improved. Mr. Gow responded that, as is required for all subdivisions, the developer would be required to hold back the water in a storm situation in a detention pond before releasing it at the same rate it was released from the site before the site was developed. Chairman Koenig added that this will be reviewed by the Engineering Department to make sure that the developer is adhering to the Town Code regarding drainage.

Mr. Pohwat stated that drainage in this area has been a problem for many years. Chairman Koenig responded that the developer of this subdivision is not required to improve existing conditions, but they are not allowed to make existing conditions worse in the area.

Mr. Pohwat asked if this project would be affected by the fact that the Village of Blasdell plans to replace the water lines on Oakwood Avenue. Mr. Lardo responded that this project can proceed without approvals from Blasdell.

Mr. Pohwat asked if he can assume that there will be minimal digging in any of the right-of-ways on Oakwood Avenue. Mr. Gow responded that the road will not need to be crossed, as there is an existing lateral that crosses the road, but a new storm sewer will be installed along the edge of the pavement, which is the only thing they will be doing in the right-of-way.

Mr. Pohwat asked if the installation of the new storm sewer would affect existing driveways on the south side of the road. Mr. Gow responded that the new storm sewer will be installed all the way down to where it connects into the main truck line at the foot of Powers Avenue. Mr. Pohwat confirmed with Mr. Gow that any disturbance within the right-of-way will be replaced in kind. He further stated that if the right-of-way crosses Mr. Pohwat's mother's driveway, it will have to be dug up and will be replaced. Mr. Lardo informed Mr. Pohwat that he can address these types of concerns with the Engineering Department at the time of construction.

- Mr. Rick Pukalo (4302 Oakwood Avenue) asked what the hours of construction would be, as he has small children. Additionally, he asked if Oakwood Avenue will be repaved if, after the infrastructure is installed, the road has been damaged and whether there will be any changes made to Oakwood Avenue as a result of the construction. Mr. Gow responded that there will be no changes made to Oakwood Avenue and the hours of construction would be normal business hours.

Mr. Pukalo asked if this development will affect his taxes or property value. Mr. McCabe responded that this is beyond the Planning Board's purview and it has no say over issues such as these.

Mr. Pukalo asked if the developer plans to save any of the trees. Mr. Gow responded that it is in the owner's best interest to save as many trees as possible, as this makes the lots more desirable. He added that the first few lots on the west end of the development will have to be cleared in the back, as the detention pond will be located there.

Mr. Reilly noted that, if the Planning Board grants Preliminary Approval to this subdivision, the applicant will have to come back to the Board at a later date with plans to develop the one lot that fronts Lake Avenue.

Mr. McCabe made a motion, seconded by Mr. Reszka, to issue a Negative Declaration for this project, based upon a very thorough analysis of potential environmental issues. Further, the Planning Department is authorized to complete the appropriate forms. Carried.

Mr. McCabe made a motion, seconded by Mr. Reszka, to grant Preliminary Plat Approval to the Oakwood Grove Subdivision, subject to the Engineering Department comment letter dated March 18, 2009. Further, the installation of sidewalks is waived. Carried.

Department comments have been filed with the Planning Department.

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

Terry Myers from LBM Construction appeared on behalf of the proposed project, stating that she researched how much parking an ice cream store would be required to provide (two parking spaces for every five seats) and has indicated on the sketch plan how much seating the applicant proposes and the corresponding number of parking spaces. She further stated that, although the applicant plans for this to be a walk-up window service ice cream store, she indicated inside seating on the sketch plan so she could determine a number of required parking spaces.

Chairman Koenig asked Ms. Myers if the applicant does not intend to have inside seating, but is showing it just to arrive at a required parking space count. Ms. Myers responded that she plans to build the building shell and at this time the applicant has two walk-up windows planned. She further explained that she shows on the sketch plan that, in the very best case scenario, the applicant could only have 24 seats inside, which would require ten parking spaces, and he might have some additional outside seating, so 25 parking spaces are shown in the hopes of ending the discussion regarding how many spaces would be required.

Ms. Myers stated that she has added the applicant's pool supply store to the back of the ice cream store building and confirmed that the sketch plan shows the required number of parking spaces for indoor seating, outdoor seating and the retail business.

Mr. Reilly stated that, because the applicant's sketch plan has changed again and no Town departments have received the plan to review, the only thing the Planning Board can possibly do is make a recommendation on the parking setback variance he needs, adding that Mr. Kuebler had asked him to relay that request to the Board.

Attorney Zak stated that she does not think the Board can make a recommendation on the variance request at this time, as the conditions of rezoning Mr. Kuebler's property to C-2 still have not been met. She stated that she spoke to Town Attorney Farrell at 5:30 PM on March 18, 2009 and was advised that Mr. Kuebler's attorney contacted him and indicated that he wanted a call back, but when Attorney Farrell immediately returned the call, Mr. Kuebler's attorney was unavailable. She further noted that nothing has moved forward regarding the conditions of rezoning and the problem is the same as it was two weeks ago, which is that the applicant has not done what needs to be done in order to get the legal documents in place before this Board can make a recommendation on the variance request.

Attorney Zak stated that the applicant should thank Town Attorney Farrell because he went above and beyond the call of duty in this case and drafted the language of the legal documents

for the applicant's attorney, which he did not have to do but did in an effort to get this issue moving forward. She suggested that the applicant speak to his attorney to find out why this issue is not yet resolved.

Chairman Koenig confirmed with Attorney Zak that, regardless of what the Board members think of the latest sketch plan presented, because of the outstanding legal documents not yet being taken care of, there is not anything the Board can do regarding a recommendation to the Zoning Board of Appeals.

Attorney Zak stated that she appreciates the applicant's frustration, but that the Planning Board is not the correct entity towards which the anger should be directed.

Mrs. desJardins stated that the applicant's other problem is that his plan has changed again and the Planning Department, Engineering Department, etc. have not been given the sketch plan in order to do the required reviews.

Mr. Lardo stated that the project will still need a storm water detention area and noted that it is not illustrated on the sketch plan. Ms. Myers responded that she thinks the applicant will be forced to install underground detention. Board members agreed that this is a critical issue because if above-ground detention is proposed, it may affect how far from McKinley Parkway the proposed parking area will be able to be, as an above-ground detention area would most likely have to be located along McKinley Parkway.

In response to a question from Chairman Koenig, Ms. Myers stated that the pool supply business would receive deliveries of goods through the side doors.

Chairman Koenig noted that it seems that every time Ms. Myers appears in front of the Planning Board the plan is different.

Mrs. desJardins stated that the Planning Department must receive copies of the current sketch plan (or site plan) by Friday, March 27, 2009 in order for the various Town departments to have ample time to review it. It was determined that the applicant might choose to begin work on the site plan in order to save time in the review process.

Ms. Myers stated that, if the Zoning Board of Appeals does not grant the applicant's requested variance, he does have sufficient room to move the project to the east and therefore be in compliance with the Town Code.

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

Engineering Department comments have been filed with the Planning Department.

Avanti Mansion

Laurie Clark appeared on behalf of the proposed project.

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Chairman Koenig stated that, along with the proposed new building, he expects that a paved parking lot will be installed. Ms. Clark responded that this will indeed be provided.

Chairman Koenig informed Ms. Clark that when a site plan is submitted, it must show the size of the building, a paved parking area, number of seats, etc. Ms. Clark acknowledged this and stated that she has met with the Building Inspector and has been given the number of parking spaces that will be required. She further stated that, according to the Building Department, because the area currently used for events is considered seasonal and is not enclosed, no additional parking spaces are required for it. She stated that the Building Department indicated that the existing parking provided at the site is sufficient for this seasonal area.

Mrs. desJardins asked Ms. Clark if there is a possibility that two events could be going on at the same time (one under the seasonal tent and one in the proposed building). Ms. Clark responded that there is a possibility that one event could be scheduled for the afternoon, for example, and one event could be scheduled for the evening. However, she stated that, based on the last five years' activity, it is possible but not likely that two major events would be scheduled for the same time. She further stated that, even if two major events do take place at the same time, the existing parking area is sufficient to handle the tent event and the new proposed parking area would handle the indoor event.

Mr. Lardo stated that, along with the proposed paved parking area, drainage of the parking area will have to be considered.

Ms. Clark was advised that site plans must be submitted in a timely manner in order for the Board to consider approving the project at April's regular meeting.

Board members agreed that they like the proposal think the building is attractive and that the applicant should begin work on the site plan. The proposed paved surfaces and drainage were noted as the most important issues to be addressed at this time.

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

Engineering Department comments have been filed with the Planning Department.

Old Time Baptist Church

Lowell Dewey from C & S Engineers and David Koppelman from KSA Architects & Planners appeared on behalf of the proposed project.

Mr. Dewey stated that the site is approximately 3 ½ acres in size and the proposal is to build a 23,000 sq.ft. single-story church facility with approximately 118 parking spaces.

Mr. Dewey noted that there is an approximately 17-foot grade change across the site from south to north and that, because of this, the storm water detention would be located in the northwest corner of the parcel. He further stated that, because the site is so far from a public sewer, a septic system is planned on the west side of the parcel, near Hickox Road. He noted that the church has a large budget for landscaping and that the parking lots would be lighted with downward-facing fixtures.

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Mr. Dewey stated that one access point is proposed onto Gowanda State Road, although the church is considering adding a second access point onto Hickox Road at the eastern end of the parcel.

The Board discussed the fact that the sketch plan as presented does not meet the Town Code requirement for the setback from Hickox Road (forty feet). Mr. Koppelman stated that the church is considering deeding the property the pastor owns adjacent to the subject site (immediately north of the vacant parcel) to the church, thereby allowing the building to be moved further north away from Hickox Road and meeting the Town Code.

Board members were shown a rendering of the proposed building.

Mr. Reilly stated that the Planning Department received correspondence from the Fire Department indicating that it has several concerns regarding the project including access to and from the site, access around the north and west of the site and water supply. He advised the applicant's representatives to contact the Fire Department and the Building Inspector about these concerns.

Mr. Dewey noted that fire hydrants are located on both roads opposite the site and that the proposed building would be sprinklered.

In response to a question from Mr. McCabe, Mr. Dewey stated that a percolation test has not yet been performed in the area where the septic system is proposed, but that a percolation test will be done in two areas on the site.

In response to a question from Mr. Reilly, Mr. Dewey stated that the church will be used for weddings, receptions, etc. He noted that there will be a worship space, a multi-purpose area (gymnasium/fellowship hall), an education area and an administration area.

Chairman Koenig asked if anyone in the audience wished to comment or ask a question. The following people spoke:

- Keith Funke, 6968 Gowanda State Road, stated that he is one of the most affected neighbors of this project and has concerns about an easement to the church that exists on his driveway. He asked if the church has any plans to use that driveway as an additional access. Mr. Reilly stated that this is an easement between the two property owners and the Planning Board has no control over that. He recommended that Mr. Funke review the easement with his attorney to see what rights the church has. A representative of the church stated that it is not the church's intention to use the Funke's driveway.

Mr. Funke stated that when the church holds its annual revival in August, it is absolute mayhem. He stated that the neighbors have not complained much about the disturbance the revival causes, but the noise, the children smoking in his trees, the garbage, etc. is very annoying to him and his wife. He further stated that some of the church members use and block his driveway during the revivals and several minor accidents have occurred while people are attempting to enter or exit his driveway. He noted that he is worried about being sued if a church member is injured on his property.

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A representative of the church stated that they would be happy to meet with the neighbors to discuss any issues they have. He further stated that the annual meeting held on the site is an annual Sunday to Sunday event and apologized for the church if anything has happened at the meetings to upset the neighbors.

Mr. Funke asked if the out-of-town people who usually attend the annual outdoor revival would continue to come with their campers, etc. and if so, would they park in the parking areas or on the roadways. The church representative responded that this would not change anything one way or the other.

- Jennifer Funke, 6968 Gowanda State Road, stated that she is concerned about another facility being built in the area whose traffic, combined with the traffic already generated by Braymiller's, could cause problems.

Mrs. Funke asked if there would be enough parking provided if the worship space is being utilized and a reception or other function is going on simultaneously. She was told that there are only so many people the church can put in the auditorium for a special function.

In response to a question from Mr. Reilly, the church representative stated that the annual revival is a one week event in the evenings, primarily, and that in the past a Special Use Permit has been obtained by the church from the Zoning Board of Appeals for the event. He further stated that, because the fellowship hall is proposed, a large part of the revival would be held indoors instead of under a tent, which would help with the neighbors' concerns.

Mr. Reilly responded that, although the church has obtained permission from the Zoning Board of Appeals or the Building Inspector for the annual event in the past, this permit may not be the same once a building is constructed on the site.

In response to a question from Mrs. desJardins, the church representative stated that the annual event is held during the third full week of August. Mr. Reilly suggested that the church meet with the affected neighbors to attempt to allay their concerns.

- Rickie Los, 3480 Hickox Road, stated that he is the adjacent property owner to the west of this site and he agrees with the concerns of the Funkes. He stated that he has additional concerns regarding potential wetlands on the site and asked that a wetlands delineation be performed on the church property. He further noted that he is concerned about wetlands on adjacent properties, as they should not be disturbed.

Mr. Los confirmed that the total proposed building square footage would be approximately 28,000 sq.ft. and asked that the amount of impervious surface vs. green space on the site if developed as proposed be calculated. It was determined that the first phase encompasses approximately 23,400 sq.ft. and the future phase encompasses approximately 3,900 sq.ft. It was further determined that the number of parking spaces proposed takes into consideration full build out and that the applicant used the number of seats in the worship area to determine the number of proposed spaces.

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Mr. Los stated that he is also concerned that the applicant may not provide sufficient parking spaces to accommodate the large number of members and asked if overflow parking is planned so that church members do not park on Hickox Road or on his property. He further noted that he is concerned that his well is located in proximity to the proposed septic system. Mr. Dewey responded that someone from his office will go to

Mr. Los's site and locate his well, and noted that the septic system will have to be installed at least 100 feet from Mr. Los's well.

Mr. Los asked if the woods he shares with the western end of the church property will be placed in some kind of permanent buffer zone so it is never disturbed. He further asked if this property is properly zoned for a church. Mr. Reilly responded that, by law, churches can be placed in any zone, although all zoning requirements must be met.

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

Engineering Department comments have been filed with the Planning Department.

Mr. McCabe made a motion, seconded by Mr. Taber, to approve the minutes of March 4, 2009. Carried.

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

The meeting was adjourned at 9:00 P.M.

Respectfully submitted,
Stephen J. McCabe, Secretary
Planning Board