

Town of Hamburg  
Planning Board Work Session

May 6, 2009

Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, May 6, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, David Phillips, Steve McCabe, Richard Taber, Peter Reszka, Sasha Yerkovich and Karen Rogers.

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

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

Mr. Reilly stated that the applicant received a variance from the Zoning Board of Appeals at its May 4, 2009 meeting and noted that a public hearing should be scheduled for the Planning Board's May 20, 2009 meeting for site plan approval. He further stated that one of the issues the Board will have to discuss with the applicant is the requirement of a ten-foot landscaped buffer along the east property line. He noted that the buffer was a requirement by the Town Board when the property was rezoned to C-2 earlier this year.

Mr. Reilly stated that the ten-foot buffer is to be a no disturbance/no activity area and was a condition of rezoning. He further stated that, in addition to the ten-foot buffer area, the Town Code requires that a fence or a hedge that will reach at least four feet in height be installed along the east property line because the proposed parking area for this building abuts a residential zone.

Mr. Reilly stated that one of the conditions of the variance granted by the Zoning Board of Appeals regarding the applicant installing the parking area closer to McKinley Parkway than the Town Code allows is that the area between McKinley Parkway and the parking area must be heavily landscaped. He further noted that the submitted landscape plan for this project does not meet this condition, as just three trees are proposed along McKinley Parkway. He stated that the landscape plan will have to be enhanced and improved.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to schedule a public hearing for May 20, 2009. Carried.

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

Engineering Department comments have been filed with the Planning Department.

**E.F. Burke (Subway)**

Mr. Reilly reminded the Board that, at its last meeting, no action was taken because only four members were present and one member was not in favor of approving the project. Because four votes are required for a motion to pass and it was evident that there would not be four votes to approve the project, the Board tabled the request. He further stated that the Board would need to make a decision at this meeting on the project, as all members were present.

Mr. Reilly stated that the first decision for the Board to make is a SEQR decision (Negative Declaration or Positive Declaration). He further stated that if the Board issues a Negative Declaration, it would then most likely make a motion to approve the project. However, he noted that if the Board issues a Positive Declaration (because it is uncomfortable with the project from an environmental standpoint or thinks it may have an impact on the environment), the applicant would have the choice to either prepare an Environmental Impact Statement to address the Board's concerns or withdraw the project and amend it to address the Board's concerns.

Michael Borowiak from Nussbaumer & Clarke appeared on behalf of the project, stating that, over the course of the Planning Board's review of this proposal, the applicant has eliminated the existing entrance into the site on South Park Avenue and proposes to relocate it at the midway point between Bayview Road and Southwestern Boulevard on property controlled by the estate of Edward Burke. He noted that this entrance would go along with the property as an ingress/egress easement. He further stated that the applicant has agreed to close the existing curb cut on South Park Avenue that is located north of the Townhouse Restaurant.

Mr. Borowiak noted that no variances are required, as the parking previously proposed along South Park Avenue has been relocated to the south of the building on property controlled by the Burke estate.

Chairman Koenig stated that the Planning Board received a letter regarding this proposal from Attorney James Shaw. As Attorney Shaw was in attendance, Chairman Koenig stated that he could speak.

Attorney Shaw stated that, although a vacant building on a main thoroughfare is not the optimal situation, he feels that a Positive Declaration should be considered by the Board. He noted that his office has been located at 4819 South Park Avenue, near the applicant's property, for twenty years and he has seen numerous accidents on South Park Avenue and/or Bayview Road. He stated that any ingress or egress to South Park Avenue from the applicant's site is problematic due to the heavy traffic in this area. He further stated that the traffic impact is very significant when one considers that a franchise business such as Subway generates a lot of customers. He noted that if one considers the number of employees, the hours of operation and the number of patrons, it would be a significant addition to the traffic burden that already exists in this area.

Attorney Shaw stated that he would like to see the Burke family develop this corner, but he thinks that a better use for the building that would be in conformance with traffic safety needs might be a professional use of some kind.

Attorney Thomas Ansuini also spoke, as the attorney for Attorney Shaw, stating that his office is located in Attorney Shaw's building on South Park Avenue and that his concerns are similar to those of Attorney Shaw. He further stated that his staff and clients use the parking area directly across the street from the subject property and he agrees that the traffic in the area is very heavy. He noted that he feels that a Positive Declaration would be appropriate so that a greater analysis of this problem can be performed.

Chairman Koenig stated that, while he agrees that left turns into or out of the site would be impossible on South Park Avenue, the New York State Department of Transportation has approved this proposal with a right in/right out scenario and he feels this could work. He further stated that he does not see an impediment to issuing a Negative Declaration, especially since the applicant relocated the parking from along South Park Avenue to south of the building, thereby eliminating the need for a variance.

Mr. McCabe stated that he would have to support a Positive Declaration because of traffic concerns. He further stated that, if a Positive Declaration is issued and an Environmental Impact Statement is prepared, perhaps the traffic study would reveal that the Board's traffic concerns are not valid. He further noted that the misgivings some Board members have had all along regarding this project have always been centered around the issue of traffic.

Mr. Borowiak stated that, as part of the traffic study that was performed on behalf of the Burke Business Park, this site in its most traffic-heavy situation was taken into consideration. He further stated that the New York State Department of Transportation, the County Highway Department and the Town's Traffic Safety Advisory Board have reviewed the project and all have approved it.

Mr. Reilly stated that Mr. Borowiak was not accurate when he stated that the previous traffic study took this type of project in the most traffic-heavy situation on this site into consideration. He noted that the traffic study only included the potential traffic from the existing woodworking business on this site, which is inconsequential, rather than the highest and best use of the site.

Mr. Reszka stated that originally he was in favor of the project because he supports adaptive reuse, although he did have concerns about the fact that there would not be much space near the drive-through window. Recently he visited the site on a Friday afternoon and noticed that there were 17 cars and three buses on Bayview Road attempting to turn onto South Park Avenue. He further stated that it is his opinion that the time of day a Subway would be most busy would be the same time of day with the heaviest traffic and noted that he is concerned about people trying to get in to the site, people trying to leave the site and the internal traffic flow of the site itself. He stated that he would have to support a Positive Declaration.

Mr. Phillips stated that, because he has missed the last few meetings, he would have to recuse himself.

Mr. Taber stated that he feels that a Subway at this location would exacerbate the traffic problems in that area. He noted that he is concerned that northbound traffic turning left onto Bayview Road and then attempting to turn left into the site would cause a traffic back-up there. He stated he would have to support a Positive Declaration.

Mrs. Rogers stated that she has previously stated her concerns about the project and would support a Positive Declaration. She noted that her concerns are for traffic safety and pedestrian safety.

Mrs. Yerkovich stated that she feels that the only way for this project to move forward is for a Positive Declaration to be issued by the Planning Board so that the Board can make a final decision based on actual numbers regarding traffic flow. She further stated that the main issue the Board has been trying to mitigate is traffic safety and noted that, as Mr. McCabe stated, a traffic study might very well prove the applicant's point.

Brian Burke, applicant, stated that he would be willing to not locate a Subway at this location if the Board would approve the site plan as it stands including the proposed curb cuts. Chairman Koenig responded that the Board cannot approve the site plan with the curb cuts without knowing what use is proposed for the site.

Mr. Reilly stated that the Planning Board does not have the power to approve a site plan without an intended use, as the site plan must be specific regarding what the proposed use is.

Mr. Reilly stated that he spoke with Edward Rutkowski from the New York State Department of Transportation twice regarding this proposal, who indicated that the DOT's position is that, if access to South Park Avenue is imperative, the best way to accomplish that is for a right-in/right-out located at the midpoint between Bayview Road and Southwestern Boulevard. Mr. Reilly further stated that the DOT did not necessarily like the idea of access to South Park Avenue but it must grant access to a property owner if the Town allows it.

It was determined that the applicant could also request that the Board table the proposal and then have a traffic study done before a SEQR determination is made.

At this point, the applicant and his representative left the room to discuss his options. They subsequently returned and asked the Board to table the project for the time being.

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

## **OTHER BUSINESS**

### **Appelson's**

It was determined that the Planning Board previously approved a site plan for an addition to the existing building. The Building Inspection Department has indicated that the applicant has not complied with many of the engineering and landscaping requirements of approval and the applicant was given the choice of either complying with the requirements of the site plan approval or asking the Planning Board to waive some or all of them. Board members agreed that the Planning Board cannot waive any of the requirements, as they are items that must be complied with.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to communicate to the Building Inspection Department that the Planning Board cannot waive any of the items that were

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not done. Carried.

Mrs. Rogers made a motion, seconded by Mr. McCabe, to approve the minutes of April 15, 2008. As there were four ayes and three abstentions (Mr. McCabe, Mr. Phillips and Mr. Taber), the motion carried.

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

The meeting was adjourned at 8:45 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board