

Town of Hamburg
Planning Board Meeting

June 20, 2007

The Town of Hamburg Planning Board met in regular session on Wednesday, June 20, 2007 at 7:30 p.m. in Room 7B of the Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Secretary Paul Eustace, Sasha Yerkovich, Steve McCabe, Paul Eustace, Richard Taber, Karen Rogers and David Phillips.

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

Absent: Attorney Michael Fruth

Public Hearing – Benderson Development Retail Project (McKinley Parkway & East Highland Parkway)

Mr. Eustace read the following Legal Notice of Public Hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposed retail development on vacant land located on the southwest corner of McKinley Parkway and East Highland Parkway. The proposed retail development will consist of two one-story buildings totaling 31,312 square feet of retail/restaurant use as well as 143 parking spaces. In accordance with the new Town of Hamburg Site Plan ordinance, the public hearing will be held on June 20, 2007 in Room 7B of the Hamburg Town Hall at 7:30 P.M."

Mr. Tony Battista and Mr. James Rumsey of Benderson Development appeared on behalf of the project. Mr. Battista explained that the proposed project involves the construction of two buildings totaling approximately 31,000 square feet. He further explained that Benderson's intent is to duplicate the element of a boutique-style shopping experience that exists in Benderson's retail plaza on North Buffalo Road in Orchard Park. A restaurant is planned on the eastern end of each building with a patio facing McKinley Parkway for each restaurant. He added that the developer hopes to feed off of and cater to McKinley Mall shoppers. The applicant received a variance from the Zoning Board of Appeals to provide fewer parking spaces than the ordinance requires. He stated that the applicant is seeking input from the public and then approval of the project from the Planning Board.

Mr. Reilly stated that he received a letter from a resident that he will read into the record at the appropriate time during the public input section of the public hearing.

Mr. Reilly noted that the Planning Department did a SEQR Coordinated Review and that the only responses received are one from the Department of Environmental Conservation and one from the Fire Department, which has no concerns at this time but would like to work with the Building Inspector when more detailed plans are available. He further stated that traffic has always been a concern and that a Traffic Study was submitted to Erie County for its review, although the Board has not received comments from the County to date. Mr. Reilly noted that in this area of McKinley Parkway the Level of Service is "F" for making left turns onto McKinley Parkway and that at some point in the future a signal may be warranted at McKinley and Highland.

Mr. Reilly stated that if the Planning Board acts tonight, the Overlay District requirement for 40 feet of green space along McKinley Parkway would have to be waived in order to allow for the patios facing McKinley Parkway.

Chairman Koenig noted that, although sidewalks do not exist in this area, he feels that the Board should require the applicant to install sidewalks from property line to property line. Mr. Battista stated that Benderson would agree to install sidewalks from property line to property line.

Mrs. Rogers asked if the proposed patios would be enclosed. Mr. Battista responded that they would not be enclosed.

In response to a question regarding possible phasing of the project, Mr. Battista stated that the buildings would be built simultaneously.

Chairman Koenig declared the public hearing open. He then asked if anyone in the audience wished to speak for or against the proposal.

Secretary Eustace read into the record a letter received by the Planning Department from Mr. John G. He expressed the following concerns:

1. He currently has difficulty making left turns safely from East Highland onto McKinley and has concerns about the additional traffic generated by this project.
2. He feels that there is a need for a traffic signal at the corner of East Highland and McKinley Parkway.
3. He stated that currently many people enter East Highland and then have to turn around at the dead end to exit the street, which damages his property.
4. He feels that if tenants are not lined up for this project at this time, the project should not be approved.

Anne Copping, 4443 East Highland Avenue, questioned where the entrance planned off of East Highland into the project would be

located in relation to her property. Mr. Battista showed her on the site plan and Aerial photo where the entrance would be located.

Mr. Robert Morford, 2296 Hobblebush, questioned if the Town has any plans to rebuild McKinley Parkway in order to add center turn lanes and curbing. Mr. Reilly responded that he is not aware of any plans at this time and it was added that this is a County road.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. Eustace, to issue a Negative Declaration for the Benderson Development retail project and approve the project with the following conditions:

1. A Negative Declaration is hereby issued.
2. The 40-foot green area requirement of the McKinley Parkway Overlay District shall be waived, as the patios proposed that encroach upon the 40-foot area along McKinley Parkway meet the intent of the overlay requirements.
3. Public sidewalks along McKinley Parkway shall be required.
4. A variance has been obtained by the applicant for a reduction in the number of parking spaces provided. The Building Inspector will monitor the types of businesses that go in the buildings and, as each is proposed, will determine if there are enough undesignated parking spaces left to accommodate that particular use.
5. As each building is constructed, the Planning Department will review and approve the Landscape Plan and elevations of the buildings.
6. Approval is subject to the conditions of the Engineering Department's comment letter.

Carried.

Engineering Department comments are attached.

Public Hearing – Camp Road Development Medical Building

Mr. Eustace read the following Legal Notice of Public Hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposed medical office building to be located on Camp Road between Sowles Road and Howard Road. The proposal includes a 30,000 square foot medical building, as well as 171 parking spaces. In accordance with the new Town of Hamburg Site Plan ordinance, the public hearing will be held on June 20, 2007 in Room 7B of the Hamburg Town Hall at 7:30 P.M."

Mr. Doug Hutter of Zaxis Architectural and Mr. Colby Smith of McGuire Development appeared on behalf of the project.

Chairman Koenig stated that the Board would not be acting on this proposal tonight because subdivision approval is required first and the public hearing on the subdivision request would not be held until July 18, 2007.

Mr. Reilly noted that the project has changed, in that the Carubba Collision planned for the other half of the parcel is no longer being proposed. Therefore, the applicant does not need to subdivide the property before receiving Planning Board approval of the medical office building. He further stated, however, that the SEQR Coordinated Review paperwork was sent out on June 18 and the Board should wait for the thirty day comment period to expire before approving the project. He urged the Board to give the applicant full direction at this meeting, as the applicant is working on final design plans at this time and would like approval as soon as possible.

Mr. Hutter stated that the developer has much of the building leased already and the tenants are anxious to move in to the building as soon as possible. He further stated that if subdividing the land at this time will hold up the approval of the medical office building, the developer would take the subdivision request off the table at this time in order to move forward.

Chairman Koenig stated that the only outstanding issue he sees is the need to wait for the SEQR comment period to end.

Mr. Hutter described the project to the Board and the audience. He noted that the project consists of a one-story 30,000 square foot building for medical offices. One entrance is proposed into the project from Camp Road and 171 parking spaces are proposed, which meets the Town Code requirement. He further noted that sidewalks currently exist along Camp Road.

Mr. Reilly noted that the Board will require that a cross-access agreement be put in place in case the developer gets a compatible user for the other half of the parcel for a cross access connection. Mr. Hutter confirmed that a cross-access agreement will be provided.

Mr. Hutter presented elevations of the building to the Board and noted that the sides and rear of the building will mimic the look of the front of the building.

Mr. Phillips asked about signage and Mr. Hutter responded that a ground-mounted monument sign will be proposed and it will not require a variance.

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

Chairman Koenig declared the public hearing closed.

Mr. Reilly noted for the record that some years ago there was a request to rezone a piece of property behind this parcel that was denied by the Town. This piece of property is part of a permanent green space buffer area that exists between the residential development behind the Camp Road property and the

commercial zone on Camp Road. It was created when the cluster development subdivision was approved and this site contains part of this green space buffer (noted on plan).

Mr. Phillips made a motion, seconded by Mr. McCabe, to table this project until the Board's next meeting. Carried.

Engineering comments are attached.

Camp Road Two-Lot Subdivision

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

Engineering Department comments are attached.

Lucas 14-lot Subdivision

Mr. Frank Russo, developer, appeared on behalf of the project.

Chairman Koenig noted that the Traffic Safety Advisory Board had no adverse comments regarding this subdivision proposal.

Mr. Lardo stated that the storm water detention pond must be shown on the Preliminary Plan. Mr. Russo responded that he would make sure the Preliminary Plan is revised to show detention.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich to set a public hearing for July 18, 2007. Carried.

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

Engineering Department comments are attached.

Sherwood Meadows Townhomes

Mr. Michael Borowiak from Nussbaumer & Clarke, Inc. appeared before the Board on behalf of the project.

Mr. Reilly explained that the applicant is hoping to receive Planning Board Preliminary Approval and a SEQR determination at this meeting. He reminded the members that at its June Work Session the Board had a concern regarding the issue of where the children from this subdivision would attend school. At that time, the Board indicated that a letter from the Frontier School District stating that

the children from this subdivision can attend Frontier schools must be presented to the Board before Preliminary Approval would be granted. He further noted that Mrs. desJardins was asked by the Superintendent of the Frontier School District to attend the Frontier School Board meeting on June 19, 2007 to discuss this issue with the Board.

Mrs. desJardins stated that the Frontier School Board had not been made aware of the fact that the Sherwood Meadows project would be located on property technically in the Hopevale School District and that a request had been made to Frontier for annexation of this property so the children from the subdivision can attend Frontier schools. She further noted that the School Board is concerned about which elementary school the children would attend, as the elementary school closest to the parcel is currently overcrowded.

Mr. Borowiak stated that he had spoken previously and again on June 20 to Mr. Rick Binner, head of Business and Development at Frontier and that Mr. Binner confirmed that there was a lack of communication at Frontier. Mr. Borowiak further noted that he was told that an annexation process has to go through BOCES and that BOCES, Hopevale and the Frontier School District have to come to an agreement that the annexation should be allowed.

Mrs. desJardins stated that the Frontier School Board advised her that a letter from the School Board will be forthcoming to the Planning Board stating Frontier's position on the annexation request.

Mr. Reilly reminded the Board that any approval it might give the applicant at this stage would be preliminary and one of the conditions could be that the question of where the children would go to school would have to be finalized with Frontier before Final Plat Approval would be granted.

Mr. Borowiak noted that the applicant is having some difficulty obtaining a sign-off from the Army Corps of Engineers on the wetland delineation. He further noted that the applicant met with four of the homeowners on Breckenridge and the homeowners do not want a berm installed along the rear of their properties. The homeowners want as much of the existing landscaping as possible left in its existing state. The applicant has agreed to try and save as many trees as possible, as well as to remove existing scrub brush, and will do whatever is necessary to screen both the existing homeowners on Breckenridge and the townhouse owners.

Mr. Lardo discussed the necessity of insuring that there is a formal legal agreement regarding the emergency gated egress to Hopevale and that it is recorded with the property.

Chairman Koenig noted that a letter from the Highway Superintendent regarding this proposal indicates that the Town Highway Department does not see any issues of concern. The Highway Superintendent also suggested that the Town

adopt a procedure to assure that the purchasers understand all of the responsibilities and implications of a Homeowners' Association.

Mr. Phillips made a motion, seconded by Mr. Eustace, to approve the Sherwood Meadows Townhomes project with the following conditions:

1. A Negative Declaration is hereby issued, as the Board has done a SEQR Coordinated Review and has addressed all of the comment letters received.
2. The filing of a map cover is required.
3. In lieu of recreation land, a Recreation Fee of \$1,000.00 per lot shall be provided.
4. The installation of sidewalks will not be required, as the proposed road will be private.
5. A trail system will be provided by the applicant connecting this subdivision to the Town-owned parkland off of Buckingham Road.
6. A gated secondary means of egress will be provided onto the Hopevale property for emergency use only and will be recorded in the deed.
7. During construction, as many trees as possible are to be saved. In addition, the existing vegetation along the back of the existing homes on Breckinridge Road will be enhanced.
8. Preliminary Approval is conditional upon receiving a letter from the Frontier School District regarding annexation of this property to the District.
9. Preliminary Approval is conditional upon the Army Corps of Engineers signing off on the wetland delineation.
10. Approval is subject to the conditions of the Engineering Department's comment letter

Carried.

Engineering Department comments are attached.

Kuebler Rezoning Request – McKinley Parkway

Mr. John Kuebler, applicant, appeared on behalf on the rezoning request.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to issue a positive recommendation to the Town Board on this rezoning request for the following reasons:

1. The request is in conformance with the Comprehensive Plan.
2. It is a very good idea.

Carried.

Holiday Inn Express

Mr. Dana Auman of Silvestri Architects appeared on behalf of the proposed project to be located on Camp Road.

Chairman Koenig asked Mr. Auman if the applicant revised the road configuration to line up with the proposed road for the Benderson project. Mr. Auman responded that the applicant does not want to extend the road to the end of the property because they do not know what Benderson's plans are for its part of the roadway. Therefore, the applicant plans to build 72 feet of the road along the property line and construct a temporary cul-de-sac at the end. Chairman Koenig confirmed with Mr. Auman that nothing the applicant is doing will interfere with the proposed Benderson Development project (Hamburg Crossing).

The Board determined that the applicant must get a letter from Benderson approving the location of the road for the Holiday Inn Express, as well as the temporary cul-de-sac, as part of it would be on Benderson's property.

Mr. Auman described the project to the Board as a proposed four-story hotel with 84 rooms and 89 parking spaces. He further noted that the required 25 foot buffer along the New York State Thruway has been shown on the site plan.

Mr. Reilly stated that a public hearing must be held on this proposal. He further noted that SEQR was addressed on this parcel when it was rezoned some years ago. An Environmental Impact Statement was done at that time and this project is in conformance with that EIS.

Chairman Koenig noted that the Traffic Advisory Safety Board has indicated that it has no adverse comments regarding this proposal.

Mr. Phillips made a motion, seconded by Mr. McCabe to set a public hearing for July 18, 2007. Carried.

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

Engineering Department comments are attached.

Woods at Versailles

Mr. Chad Rush of Ryan Homes appeared on behalf of the applicant.

Mr. Lardo explained that the original subdivision approval was granted in 1993 and one of the Planning Board's conditions of approval was that as many trees as possible be saved during construction. When the developer built the last phase, the developer cleared more trees than was necessary and the developer agreed that no more excessive clearing would be done. However, the developer has once again clear-cut the property to be developed for homes in the current phase of the subdivision.

Mr. Reilly stated that the Conservation Advisory Board was asked to provide input regarding a possible resolution to this problem and a memo was issued from the CAB to the Planning Board.

Mr. McCabe stated that the Planning Board should commend the Conservation Advisory Board for going above and beyond the call of duty to explore this problem and try to find a resolution to it. Mr. McCabe further stated that he was very impressed with the detail and foundation for what the CAB came up with.

Mr. Koenig asked Mr. Rush if the developer will agree to mitigate the problem in the way the Conservation Advisory Board suggests. Mr. Rush responded that the developer is not willing to plant the number of trees recommended by the CAB.

Mr. Phillips asked Mr. Rush what the applicant thinks is appropriate mitigation. Mr. Rush responded that he would be willing to plant new trees in the rear of some of the properties, which he feels would make the homeowners happy. In addition, he would be willing to plant street trees, as well as pay the higher recreation and green space fee per lot or pay a penalty of some kind.

Mr. Lardo noted that the Conservation Advisory Board's recommendation of planting 41.67 new trees per lot is excessive and that perhaps a compromise could be arrived at. Mr. Reilly stated that the CAB gave the Board the most extreme mitigation possible and that a compromise would be appropriate. He further noted that, because the developer is already required to plant two street trees per lot, it would not be logical to plant additional street trees. However, he stated that he thinks the idea of planting new trees in the backs of the affected lots to enhance the aesthetics of the subdivision is a good one, as is the idea of requiring the developer to pay additional recreation and green space fees so the Town can use that money to enhance green space elsewhere in the Town.

Mr. Taber confirmed that over a period of time the project was planned, the area was clear cut and individuals have bought their homes or lots knowing that the lots had been clear cut. Regardless of this fact, the Planning Board wants trees in the subdivision.

Mr. Lardo noted that existing residents in the area are unhappy that so many trees were removed. These residents want additional trees planted.

Mr. Phillips made a motion, seconded by Mr. Taber, to approve a mitigation plan that will require the developer to provide an additional recreation and green

space fee of \$1,000 per lot and plant as many trees as agreeable to the developer, the residents and the Planning Department. The Planning Department will have final approval regarding the number and location of trees to be planted. Carried.

Engineering Department comments are attached.

Mr. Taber asked how the Planning Board could recommend to the Town Board that the legal department investigate the possibility of requiring that developers post appropriate bonds to ensure strict adherence to the conditions of site plan approvals that are granted. Mr. Reilly responded that the Code Review Committee has discussed this issue and has indicated that that would be a very good idea but that it is difficult to collect on a bond if a developer does not adhere to the conditions imposed in a site plan approval.

Mr. Phillips made a motion, seconded by Mr. Taber, to approve the minutes of May 2, 2007. Carried.

Mr. Phillips made a motion, seconded by Mr. Eustace, to approve the minutes of May 16, 2007. Carried.

Mr. Eustace made a motion, seconded by Mr. McCabe, to adjourn the meeting. The meeting was adjourned at 9:30 P.M.

Respectfully submitted,

Paul Eustace, Secretary

Planning Board