

Town of Hamburg
Planning Board Meeting Minutes
October 17, 2007

The Town of Hamburg Planning Board met in regular session on Wednesday, October 17, 2007 at 7:30 p.m. in Room 7B of the Hamburg Town Hall. Those attending included Chairman Gerard Koenig, Secretary Paul Eustace, Steve McCabe, Sasha Yerkovich, David Phillips and Richard Taber.

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

Excused: Karen Rogers

Public Hearing, 7:30 PM, Gorczyka Three-Lot Subdivision

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

“Notice is hereby given that the Town of Hamburg Planning Board will hold a Public Hearing on a three-lot subdivision known as the Gorczyka Three-Lot Subdivision to be located on Pleasant Avenue on October 17, 2007 in Room 7 B of Hamburg Town Hall at 7:30 P.M.”

Mr. Thomas Gorczyka, applicant and Attorney Jay Pohlman appeared on behalf of the project.

Attorney Pohlman explained that Mr. Gorczyka resides at 3205 Pleasant Avenue in the Pleasant Avenue subdivision, which is located in the R-A zone and was approved by the Planning Board in 1985. Originally eight lots were proposed, but only five were approved because of the lack of availability of utilities to three of the lots. Subsequently, Mr. Gorczyka built a home on subplot #3 of the Pleasant Avenue subdivision and sold off a portion of the remaining land that encompassed the three unapproved lots, and that lot is designated as subplot #1. Attorney stated that the applicant would like to create an almost four-acre flag lot for his son, designated as subplot #2. Additionally, he would like to create subplot #3, which would be a small piece of property added to the back of Mr. Gorczyka's existing lot.

Attorney Pohlman stated that he notified the owner of subplot #1 of the public hearing to be held tonight and has been speaking with the owner's attorney, Andrew Yusick, who has indicated that the owner of subplot #1 does not have any interest one way or the other relative to this subdivision proposal. He stated

further that the owner of subplot #1 has offered to sell the property back to Mr. Gorczyka, but the price was not acceptable to Mr. Gorczyka.

Mr. Reilly stated that the Planning Department received a letter from Attorney Andrew Yusick indicating that his client is opposed to this subdivision unless utilities are installed by Mr. Gorczka to service his client's building lot.

Attorney Pohlman stated that the property encompassing subplot #1 was sold on an "as is" basis and with no representations about the use or the approved building lot.

Mr. Reilly stated that the applicant is attempting to resolve this issue, which arose because he sold a parcel of land that was not part of an approved subdivision (the proposed subplot #1). Subsequently, the purchaser of the land attempted to obtain a building permit to build a home on the property but was denied because it was an illegally divided lot.

Mr. Reilly noted that subplot #1 is not a legal building lot at this time because since the owner purchased the lot the minimum lot size in the R-A zone has increased and a variance would be necessary in order for the owner to obtain a building permit.

Regarding utilities for subplot #2, Attorney Pohlman stated that the applicant's desire would be to either tie in with a grinder pump or install a septic system. He further stated that the applicant proposes to bring water across the 25 foot easement (subplot #3) from Pleasant Avenue, but the Engineering Department is requiring that the applicant run a water line fronting on Pleasant Avenue to the west that would service and front both subplot #2 and subplot #1.

Attorney Pohlman confirmed that subplot #3 is simply an extension of the applicant's existing property and would be a non-building lot.

Mr. Lardo stated that the Engineering Department determines how lots are serviced by utilities and the properties will not be serviced by utilities the way the applicant is proposing.

Attorney Pohlman asked Mr. Lardo if the Engineering Department would have any problem with a septic system on subplot #2. Mr. Lardo responded that the subplot cannot be serviced by a grinder pump, but that a septic system would be acceptable. Regarding water service, Mr. Lardo stated that the Engineering Department will require a water main extension.

Chairman Koenig stated that if the Planning Board grants Preliminary Approval, the applicant will still have to satisfy the Engineering Department.

Mr. Taber confirmed with Attorney McKenna that this project neither improves the owner of subplot #1's chances of building a lot nor makes his chances of building on his lot worse.

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

1. Mr. Thomas Gorczyka, applicant, stated that he was not aware that he was selling the lot illegally when he sold it 26 years ago and apologized for that.

Chairman Koenig declared the public hearing closed.

Mr. Phillips made a motion, seconded by Mr. Eustace to issue a Negative Declaration, grant Preliminary Approval to this major subdivision subject to the Engineering Department's comment letter dated October 17, 2007 and waive sidewalks. Carried.

Mr. Reilly informed the applicant that the Town currently charges a \$1,000.00 per lot recreation and green space fee for major subdivisions at the time of building application.

Engineering Department comments are attached.

Steel Winds II Wind Energy Facility

Mr. Reilly stated that the applicant asked that this request be tabled to the Board's November 7, 2007 meeting, as the City of Lackawanna did not complete the SEQRA evaluation for this project on October 17, 2007 as anticipated. Therefore, the Hamburg Planning Board cannot act on this request at this time.

Mr. McCabe made a motion, seconded by Mr. Eustace, to table this request until the Board's November 7, 2007 meeting. Carried.

Engineering Department comments are attached.

Lutz's Mobile Convenience Store (5073 Camp Road)

David Lutz, applicant appeared on behalf of the project.

Mr. Reilly stated that a Special Use Permit is required for the proposed new car wash facility and Site Plan Approval is required for the new car wash facility and the addition to the existing convenience store for a Dunkin Donuts store.

Mr. Reilly noted that it is his understanding that the Tim Horton's easement for a drive-thru will be removed from the site plan and Tim Horton's plans to request site plan approval for the new drive-thru configuration. He further stated that if the Board does approve the project, there will be a condition that Tim Horton's must submit a request to the Town for site plan approval of the drive-thru, as that is a very important component of the Lutz's project.

Mr. Lutz reminded the Board that the existing traffic problem is on Tim Horton's property and not his property.

Mr. Phillips made a motion, seconded by Mr. McCabe, to issue a Negative Declaration for the project, as it will not have a significant effect on the environment. Carried.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to approve a Special Use Permit for a new 1,314 sq.ft car wash facility for the following reasons:

1. The project is in harmony with the general purposes and intent of Article 16 of the Hamburg Town Code.
2. The project will not create a hazard to health, safety or the general welfare.
3. The project will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. The area is commercial in nature and is zoned for commercial use.
4. The project will not otherwise be detrimental to the public convenience and welfare.
5. The facility is not located within 200 feet of any residential structures and is not within 500 feet of another commercial car wash facility.
6. The architectural features of the new car wash facility have been found to be in harmony with the surrounding area.
7. The view from Southwestern Boulevard has been mitigated by the addition of landscaping and the architectural feature improvements to the existing structure.

Therefore, the Hamburg Planning Board hereby approves the Special Use Permit for a new car wash facility with the following conditions:

1. Appropriate signage shall be installed to control the internal traffic flow on the site.
2. The building's appearance will conform to the building elevations presented to the Planning Board on September 19, 2007.
3. A follow-up traffic flow inspection and report will be completed by the Town and the applicant six months after the car wash opens to determine if any problems are occurring. If problems are occurring, the applicant shall return to the Planning Board with a mitigation plan to resolve these problems.

Carried.

Mr. Phillips made a motion, seconded by Mr. Eustace, to grant Conditional Site Plan Approval for a new 1,827 sq.ft. car wash facility and a 1,314 sq.ft. addition to an existing convenience store with the following conditions:

1. The site landscaping plan shall be approved by the Planning Department.
2. The proposed drive-thru revision to Tim Horton's shall be either submitted by Tim Horton's, removed from the drawing or a letter shall be provided by Tim Horton's agreeing with the plan.
3. Appropriate signage shall be installed to control the internal and external traffic flow on the site and shall be approved by the Traffic Safety Advisory Board.
4. Signage shall be installed indicating that there will be no parking in front of the convenience store.
5. Sidewalks are not required.
6. Approval is subject to the conditions of the Engineering Department's comment letter dated October 17, 2007.

Carried.

Engineering Department comments are attached.

Fisher Bus Facility (Southwestern Boulevard)

Michael Borowiak of Nussbaumer & Clarke applicant appeared on behalf of the project.

Mr. Reilly stated that he spoke with Erie County Department of Environment & Planning and learned that they have concerns, as does the Hamburg Conservation Advisory Board, regarding the potential hydric soils on the property.

Mr. Borowiak stated that a wetlands delineation field investigation was performed recently that identified some wetlands on the site and the information is being collected and processed at this time.

Mr. Reilly noted that the Planning Department received a letter from the Scranton Fire Company recommending that the repair garage have a sprinkler system installed and that there be a minimum three-hour fire separation between the office and the garage. Mr. Borowiak responded that the building is being designed to be in compliance with the fire code.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to issue a Negative Declaration for this project as it will not have a significant effect on the environment and grant Conditional Site Plan Approval for Fisher Bus with the following conditions:

1. The site landscaping plan shall be approved by the Planning Department.
2. The site access agreement shall be submitted for review and approval by the Planning Department and the Planning Board attorney.
3. The applicant shall obtain other regulatory approvals, including a sign-off or approval by the Army Corps of Engineers of the wetlands delineation.
4. The buffer and non-disturbance areas shall be delineated in the field and protected from disturbance. A follow-up inspection of the buffer area to the residential properties will be completed one year after completion of the project. If found to be disturbed or the vegetation dying, the applicant shall return to the Planning Board with a mitigation plan to be approved by the Planning Board.
5. A follow-up noise and odor inspection and report shall be performed six months after project completion by the applicant (under direction of the

Town). If odors or noise are found to be excessive (impacting residential housing), the applicant shall supply a mitigation plan to the Planning Board for review and approval.

6. Approval is subject to the conditions of the Engineering Department's comment letter dated October 17, 2007.

Carried.

Engineering Department comments are attached.

Verizon Wireless

Mr. Reilly stated that the Planning Department received a letter from the applicant asking to be removed from the agenda because they are in the process of doing their due diligence regarding alternate sites to locate the proposed cell tower.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe, to table this request. Carried.

Engineering Department comments are attached.

Stephen Dolber (5363 Southwestern Boulevard)

Mr. Reilly reminded the Board that this is a request to rezone Mr. Dolber's property across the street from the proposed Wal-Mart from R-2 to C-2 to match the existing zoning in the area.

Mr. Phillips made a motion, seconded by Mr. Eustace to send a positive recommendation to the Town Board regarding this rezoning request for the following reasons:

1. The request does conform with the Town of Hamburg Comprehensive Plan.
2. The request is an effective use of the property.
3. There will be no access to Able Road.

The vote being 6 (six) in favor and one (1) abstention (Mr. McCabe), the motion carried.

Engineering Department comments are attached.

Oakwood Avenue Subdivision

Mr. Reilly stated that in April 2007 the applicant presented a sketch plan showing zero lot-line duplexes. Initially, the Planning and Building Inspection departments determined that this application did not meet the zoning requirements of the Town of Hamburg. The determination was that each zero-lot line dwelling would be treated as a single-family dwelling and would require 10,000 sq.ft. per lot instead of 7,500 sq.ft., which is required for regular duplexes. The applicant objected to this interpretation and asked the Zoning Board of Appeals for clarification of the Code. However, the ZBA tabled this request at its October 2, 2007 meeting and referred it back to the Planning Board because Mr. Reilly submitted a letter to the ZBA stating that, after further review of the regulations, he has found that his interpretation of the Code was wrong and the applicant should be allowed to move forward with the layout presented.

Mr. Reilly stated that the sublots or zero-lot line units will require subdivision approval and the two proposed apartment buildings will require site plan approval. He further noted that some of the concerns that have been raised regarding this project include the site distance for the entrance road onto Lake Avenue.

Michael Borowiak from Nussbaumer & Clarke appeared on behalf of the project. He showed the Board a slightly modified sketch plan, which includes the apartment buildings' entrance onto Lake Avenue being moved to the west in order to line up with the entrance of the plaza across the street. Additionally, provisions have been made for a secondary entrance for the apartment buildings onto Oakwood Avenue, although the applicant would prefer to just have the entrance onto Lake Avenue. He further noted that a water line extension would be required and that an easement may be allowed along the access on Lake Avenue for access to the detention area for the duplexes.

Mr. Lardo stated that detention will be required for both the apartment buildings and the subdivision.

Mr. Reilly stated that once a more detailed sketch plan is submitted, the Planning Department will refer the project to Erie County Department of Environment & Planning and the Village of Blasdell, and a Coordinated Review will be done to notify involved agencies of the project.

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

Engineering Department comments are attached.

OTHER BUSINESS

Mr. Reilly informed the Board that the Planning Department has received correspondence from Mr. Chad Rush of Ryan Homes regarding the Woods at Versailles Subdivision, Part IV. He reminded the Board that the developer previously agreed that during the construction of this phase of the subdivision, no clear-cutting of the property would occur. However, the developer did clear-cut the property and the Board must decide on a plan to mitigate this problem.

Mr. Reilly stated that the correspondence from Mr. Rush details a proposed tree mitigation plan that the developer hopes will resolve the matter. However, Mr. Reilly does not approve of the mitigation plan and would like input from the Planning Board.

It was determined that Mr. Rush will be asked to appear before the Planning Board at its November 7, 2007 meeting.

Mr. Phillips made a motion, seconded by Mr. Taber, to refer Mr. Rush's plan to the Conservation Advisory Board for its review. Carried.

Mr. McCabe made a motion, seconded by Mr. Eustace, to approve the minutes of September 5, 2007. Carried.

Mrs. Yerkovich made a motion, seconded by Mr. Taber, to approve the minutes of September 19, 2007. Carried.

The meeting was adjourned at 8:44 p.m.

Respectfully submitted,

Paul Eustace, Secretary

Planning Board