

Town of Hamburg
Planning Board Work Session
October 6, 2010
Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, October 6, 2010 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Gerard Koenig, Stephen McCabe, David Bellissimo, Karen Rogers, Brendan Lovullo and Sasha Yerkovich.

Others in attendance included Andrew Reilly, Attorney Cheryl McFaddon-Zak and Sarah desJardins.

Benderson Development – Seven Corners

Chairman Reszka stated that the map of the Southwestern Boulevard Overlay District clearly shows that this entire parcel is located in that Overlay District and noted that Kurt Allen, Building Inspector, has determined that the fifty foot green area requirement of the Overlay District applies to McKinley Parkway as well as Southwestern Boulevard.

Attorney James Boglioli, representing Benderson Development, stated that the proposed sketch plan for the project has been revised, noting that one of the proposed buildings, along with a drive-through, has been eliminated. He further stated that the bank building has been enlarged to 5,700 sq.ft., 67 parking spaces are proposed for that building and he feels that the revised plan addresses the concerns of the Planning Board regarding congestion on the site.

Attorney Boglioli stated that the required green areas along Southwestern Boulevard and McKinley Parkway have been increased to 25 feet. He further noted that the large retail building on the southern side of the site has been decreased in size and the small retail building along McKinley Parkway has been increased slightly. He stated that the loading dock previously proposed behind the large retail building has been removed and that if a tenant is secured for that building that requires a loading dock, Benderson Development will return to the Planning Board to ask for permission to install one.

Attorney Boglioli stated that the landscaping proposed along the southern lot line has been extended towards the Tops building to give the adjacent resident more usable space. He further stated that the previously proposed maple trees along the southern lot line have been replaced with Arborvitae, as requested by the adjacent neighbor to the south. He also noted that 17 Colorado Spruce trees are proposed along the property line shared with the adjacent neighbor, as well as 30 Arborvitae and 365 feet of fencing.

Attorney Boglioli stated that the dumpsters have been moved 75 feet closer to the Tops building and that, as a result, they are now proposed 238 feet away from the adjacent residential property. He further stated that all of Benderson's leases require dumpsters, rather than compactors, and that if a tenant were to request a compactor Benderson would provide that for the tenant.

Attorney Boglioli stated that the proposed dumpsters would service the large retail building, as well as the small building along McKinley Parkway.

In response to a question from Mrs. Rogers, Attorney Boglioli stated that the large building

would be mixed use and could include a restaurant. Mrs. Rogers responded that having a restaurant in that building would make a difference because then the dumpsters would have food in them. Attorney Boglioli stated that the dumpsters as proposed would be located a substantial distance away from the residential property. He further stated that dumpsters are needed to service the site and that a commercial project cannot be done without them.

In response to a question from Mr. Bellissimo, Attorney Boglioli stated that the enclosure around the dumpsters would be code compliant.

Attorney Boglioli stated that on September 29, 2010 a representative of Benderson Development spoke with Mr. Richard Mega from National Fuel. Attorney Boglioli stated that Mr. Mega indicated that National Fuel is not seeking any expansion of its easement and that National Fuel requested a copy of the plan to make sure that the project does not infringe on its easement. Attorney Boglioli further stated that on September 30, 2010 a copy of the plan was provided to National Fuel and to date Benderson has not received any comments from National Fuel. Copies of the above correspondences via email were provided to the Planning Board for the record.

Attorney Boglioli stated that a parking demand analysis was performed for this project that concluded that 443 parking spaces are sufficient for this site and 448 parking spaces are proposed. He further noted that Benderson Development will be seeking a variance for the deficiency in the number of spaces provided.

Attorney Boglioli stated that Benderson will be seeking a waiver from the Planning Board regarding the required fifty-foot green area along Southwestern Boulevard and McKinley Parkway, noting that Benderson is willing to work with the Planning Board to enhance the landscaping in the green area that is provided.

Attorney Boglioli stated that if the Planning Board wants the new sidewalk along McKinley Parkway to extend to the driveway belonging to the Podkulskis, it will be provided.

Jerry Giglio, Chairman of the Traffic Safety Advisory Board, stated that one of his concerns is that, because the existing parking spaces along Southwestern Boulevard on the northern side of the existing Tops building are at a 45 degree angle, he is concerned that vehicles leaving those spaces will tend to use the unsignalized entrance to Southwestern Boulevard that is to be only used for delivery vehicles. He further noted that he does not see any signs proposed to regulate the traffic that will be using the unsignalized entrances/exits and commented that people will use the unsignalized entrances/exits if they can, to avoid waiting at the lights. He stated that he would recommend that "Do Not Enter" signs be installed to dissuade people from using the unsignalized accesses and that the parking spaces in question be re-stripped to 90 degrees.

Attorney Boglioli stated that Benderson is willing to install "Do Not Enter" signs and will investigate whether there is enough clearance between the parking spaces along Southwestern Boulevard and the Tops building to re-stripe those parking spaces to 90 degrees.

Mr. Bellissimo stated that perhaps Tops would agree to designate those parking spaces along Southwestern Boulevard near the Tops building as employee only parking, which would serve to dissuade the general public from using them.

Regarding the location of the dumpsters, Mrs. Rogers suggested that they be placed on the west side of the Tops building, since the loading dock and compactors are located in that area. She noted that she does not believe that the tenants of the large retail building, as well as the smaller building along McKinley Parkway, would walk to the dumpsters if they are located where they are currently proposed. She stated that, as long as tenants would be driving to the dumpsters, they might as well drive to the rear of the Tops building to access their dumpsters.

Attorney Boglioli stated that the plaza tenants would not be driving to the dumpsters. He further stated that if the dumpsters were located behind the Tops building, it would be too far for the tenants to go and noted that the dumpsters might infringe on the detention basin in that area.

Mr. Bellissimo asked if it would be feasible to wrap the dumpsters in some sort of higher density material (concrete block, for example) to reduce the noise and odor coming from them.

It was determined that the new dumpsters would service just the plaza and not Tops.

Mr. Reilly stated that currently the site plan refers to the large building on the southern side of the property as "retail" and noted that Attorney Boglioli indicated in his presentation that a restaurant might go in that building. He noted that the parking requirements for retail and restaurants are very different.

Mr. Reilly stated that if the Planning Board approves this project, it would do so based upon the tenants being retail and if Benderson gets a tenant that is a restaurant, it would have to return to the Planning Board for approval of that sort of use to make sure enough parking spaces are provided for that use and potentially to re-address the dumpster location issue.

Attorney Boglioli stated that he believes that the definition of "community shopping center" includes grocery stores and restaurants.

Mr. Reilly stated that the Code Enforcement Officer has determined that the Tops facility is a stand-alone grocery store and the rest of the project can be considered a local or community shopping center. He further stated that this determination can be appealed to the Zoning Board of Appeals (ZBA). He noted that the Code Enforcement Officer's method of calculating the parking requirements results in the project being under parked by approximately 300 vehicles.

Attorney Boglioli stated that he feels that requiring one space per 100 square feet for grocery stores is excessive based on his experience. He further stated that Benderson has submitted a study indicating that the number of parking spaces proposed is adequate for this project and noted that it will be appealed to the ZBA.

Mr. Reilly stated that the Town is concerned about the fact that, as proposed, this entire project would have the same number of parking spaces as the existing Tops has at this time.

Mr. Koenig stated that he would like the site plan to indicate that if a restaurant tenant is proposed in the future, the applicant will return to the Planning Board for its review and a site plan waiver will not be granted. He noted that the change of use should not fall through the cracks.

Regarding the parking setback requirements, Mr. Reilly stated that the Town realizes that much of the parking on the site is existing, but in redeveloping the whole site the existing non-conforming status may be lost. He noted that the Town Code indicates that when an existing non-conforming site is redeveloped, it must be brought into conformance. He further stated that the applicant will have to appeal that to the ZBA, as well.

Mr. Reilly stated that the Planning Board will be dealing with the aesthetics issues of mitigation and landscaping.

Mr. Bellissimo asked Attorney Boglioli who is responsible for maintaining the area under dumpsters where refuse tends to get left behind after the garbage trucks empty them. Attorney Boglioli responded that Benderson does not have that problem with its other sites and that it hires quality people to keep dumpster areas clean.

Regarding condition #6 of the Town Board's rezoning approval resolution that restricts certain uses in the southeast portion of the site, Chairman Reszka asked Attorney Boglioli, as well as Mr. Rich Podkulski (adjacent resident) to indicate what they believe constitutes the southeast quadrant of the site. Attorney Boglioli and Mr. Podkulski responded in different manners and it was determined that they have differing opinions as to the answer to that question. Attorney Boglioli stated that it constitutes the small corner of the property where McKinley Parkway and the shared property line with the Podkulski's converge. Mr. Podkulski stated that he believes it constitutes the entire southern half of the site, including the area that abuts both his property and the Town-owned land to the west.

Attorney Boglioli stated that if there is any ambiguity regarding what the Town Board conditions of rezoning meant, the Podkulskis would have to take that matter up with the Town, and not with Benderson Development.

Mr. Podkulski stated that in July and August he can smell the garbage from the compactors at the Tops building. He further stated that his family is willing to work with Benderson because Tops has been an excellent neighbor and they want to continue the excellent relationship they have with Tops. He noted that he thinks they can come up with a mutually agreeable location for the dumpsters and that the family wants to keep the area as aesthetically pleasing as possible.

Mr. Podkulski stated that if the dumpsters are for non-restaurant tenants, his family has less of a problem with the location of the dumpsters than if the dumpsters would be used for restaurants. He noted that there is an existing rodent problem on the site and his family worries that this would get worse with food scraps being stored in the dumpsters.

Mr. Reilly stated that he will talk to the Town Board about condition #6 of the rezoning approval, show the members the proposed concept plan for this site and make sure it is in keeping with their expectations for this project.

Mr. Podkulski stated that at the Planning Board's September 15, 2010 meeting, Attorney Boglioli incorrectly stated that "as part of the rezoning approval in 2009, Benderson agreed to give the residential neighbor a 66-foot buffer consisting of 16 feet that will be sold to the neighbor when a building permit is obtained for the 30,000 sq.ft. building." Mr. Podkulski stated that at the Town Board meeting of December 14, 2009 it was determined that the property will be offered for sale to the adjoining property owner after a project is proposed and approved by the Town at this location. He noted that the Town Board did not mention that a

Building Permit would have to be obtained by Benderson before the property is offered to his family.

Attorney Boglioli stated that obtaining a Building Permit is the final step in the approval process and that without a Building Permit there is no building.

Mrs. Yerkovich stated that she does not think it is the Planning Board function to attempt to discern the Town Board's intentions regarding the conditions of approval of the rezoning in 2009. She further stated that the Planning Board needs some kind of decision from the Town Board regarding the discrepancies in how the adjoining resident and the applicant are interpreting the Town Board's intentions.

Mr. Podkulski referenced Section 280-303 (A) of the Hamburg Town Code, which states that as part of the site plan review process, and to allow for proper notification of the action, the applicant shall erect a sign, as provided by the Town of Hamburg, on the subject property indicating that the property is being proposed for development and that a site plan is pending with the Town. He asked when this would be done. Mr. Reilly responded that a sign will be erected when Benderson applies for the site plan, noting that the plan before the Planning Board is just a concept plan.

Attorney Boglioli confirmed the following with the Board:

- Generally, the layout of the project is acceptable.
- Benderson will look at different dumpster enclosure options.
- The Town Attorney will review the Code Enforcement Officer's interpretation of the parking requirements.
- The sidewalk along McKinley Parkway will be extended to the Podkulski's driveway.

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

Engineering Department comments have been filed with the Planning Department.

Bill Ciaravino (4214 Howard Road)

Mrs. desJardins reminded the Board that Mr. Ciaravino appeared before them last year to request permission to construct a storage building on his property. She stated that at that time the Board asked Mr. Ciaravino to consider reducing the size of the proposed building and moving it further away from South Park Avenue. She further stated that Mr. Ciaravino has worked very hard to comply with the Board's request and is now proposing a smaller building (34' X 40') that would be twenty feet from South Park Avenue and he also moved the proposed building five (5) feet closer to the existing building on the property and plans to construct a breezeway between the two buildings.

Mr. Ciaravino stated that he needs the storage space and the proposed building is as small as he can propose and still have it meet his needs.

It was determined that a variance would be required for the distance of the proposed building to Howard Road. Additionally, it was determined that the Planning Board would have to waive the South Park Avenue Overlay District requirement that 40 feet of green space be provided along South Park Avenue from 40 feet to 35 feet and then a variance would be required to

reduce the distance of the building to the road from 35 feet to 20 feet.

Mr. Reilly stated that if the Planning Board decides to approve this request with the reduced green area along South Park Avenue, the landscaping in that area would have to be enhanced to make up for the reduced amount of green space.

Mr. McCabe informed the applicant that the Board will be very concerned about how the building would look, as this is in a prominent area of Town and would be close to South Park Avenue. Mr. Ciaravino agreed to provide the Board with renderings of what the building would look like, as well as ideas for enhanced landscaping, at its next meeting.

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

Engineering Department comments have been filed with the Planning Department.

Mr. Koenig made a motion, seconded by Mr. McCabe, to approve the minutes of September 15, 2010. Carried.

Mr. McCabe made a motion, seconded by Mrs. Yerkovich, to adjourn the meeting. The meeting was adjourned at 8:30 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board