

Town of Hamburg  
Planning Board Meeting

November 18, 2009

Minutes

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

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

Excused: Rich Taber, Attorney Cheryl McFaddon Zak

**Public Hearing – Hamburg Self-Storage (5139 Southwestern Boulevard)**

Mr. McCabe read the following legal notice regarding this public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Michael Schmidt, owner of property located at 5139 Southwestern Boulevard. The applicant proposes to expand an existing outdoor storage facility. In accordance with the Town’s Site Plan ordinance, a public hearing will be held on November 18, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall.”

Mr. Reilly stated that the applicant’s representative has indicated that the applicant does not plan to appear at this public hearing and that he may be making revisions to his proposal.

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

Engineering Department comments have been filed with the Planning Department.

**Public Hearing – Kempston Farm (vacant land, Lakeview Road)**

Mr. McCabe read the following legal notice regarding this public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Kempston Farm regarding vacant land located on the south side of Lakeview Road, east of Smith Road. The applicant proposes to erect temporary structures on the property to house potted plants for the winter. In accordance with the Town’s Site Plan ordinance, a public hearing will be held on November 18, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall.”

Steve Kempston, applicant, appeared on behalf of the proposed project, stating that Mr. Eric Krull was present to answer any questions the Board might have regarding any possible wetlands on the property.

Mr. Reilly stated that at its last meeting the Board asked the applicant to research whether there are any wetlands on the property and noted that the applicant has retained a wetlands specialist (Mr. Krull). Mr. Reilly further stated that he is comfortable that the applicant will work with the U.S. Army Corps of Engineers if it is determined that federal wetlands do exist on the site.

The applicant confirmed that there are no concrete footers associated with the proposed hoop houses and that they are more like tents.

Mr. Kempston confirmed that no retail sales will occur on this property and that no signage will be erected.

Chairman Koenig declared the public hearing open. The following people spoke:

- Betty Newell, Hamburg Chamber of Commerce, stated that she supports the applicant and noted that Mr. Kempston is an important part of the Hamburg Chamber of Commerce Farmers' Market.

Chairman Koenig declared the public hearing closed.

Mr. Krull stated that he and the applicant walked the site and did notice two small wet spots that the U. S. Army Corps of Engineers will check.

Mr. Phillips made a motion, seconded by Mr. Reszka, to issue a Negative Declaration and grant Conditional Site Plan Approval to this project subject to the following conditions:

1. Approval is subject to the Engineering Department comment letter dated November 18, 2009.
2. There will be no retail sales or signage at this site.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Bill Ciaravino (Howard Road)**

Mr. Reilly stated that the applicant's project as proposed would require Site Plan Approval, a variance from the Zoning Board of Appeals for the building setback from Howard Road and a waiver of the South Park Overlay District requirement of a forty feet setback from South Park Avenue from the Planning Board. He further noted that this property is zoned C-2.

Chairman Koenig stated that his first reaction is that the proposed pole barn is much too big and too close to the lot lines. He further stated that the applicant is asking for an awfully big variance.

Bill Ciaravino, applicant, stated that he has been in business since 1992 and that the

purpose of the pole barn is to store his equipment for his business. He further stated that, unfortunately, the lot is not easy to work with.

In response to a question from Mrs. Yerkovich, Mr. Ciaravino stated that he could reduce the length of the building but would not want to reduce the width because he needs the width to fit his equipment and his truck inside.

Mr. Reilly stated that the front yard setback requirement for this area is forty feet and the applicant is proposing 14 feet. He further noted that the South Park Overlay District requires that the forty feet be landscaped.

Mr. Phillips stated that he would support granting a waiver down to thirty feet for the setback from South Park Avenue. Mrs. Yerkovich agreed, noting that the applicant should try to reduce the size of the building, as well as the distance from South Park Avenue.

Mr. Ciaravino indicated that he would be willing to look into the possibility of reducing the size of the proposed pole barn.

Mr. Reilly stated that the Planning Board has never waived the forty foot setback requirement down to 14 feet. He further stated that the size of the building is less important than the distance of the building to South Park Avenue.

Chairman Koenig stated that he wants to know what the proposed pole barn would look like, noting that he is concerned about the aesthetics of the building.

Board members discussed various areas on the property where the pole barn could be placed that might be less obtrusive. It was determined that the applicant will work with his engineer and Mrs. desJardins to investigate different locations and will submit a revised plan before the Board's next meeting.

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

Engineering Department comments have been filed with the Planning Department.

### **Hasenoehrl Minor Subdivision**

Mr. Reilly stated that the Board must decide if it is going to grant a waiver of the South Central Overlay requirement of the 50% increase in lot size and noted that, if the Board does not grant the waiver, the subdivision cannot be approved.

Chairman Koenig noted that the Planning Board received an email correspondence from Mr. James Yaeger stating that he is opposed to this subdivision.

Chairman Koenig stated that the plan as presented would preserve a lot of green space even though two homes would be built. He further stated that if the Board does not waive the 50% increase in lot size and the applicant sells the entire parcel to one person, that person could clear much more of the green space. Mr. Reszka agreed.

Mr. Reilly clarified that in order to waive the Overlay requirement of a 50% increase in lot size, the Board would have to feel that the applicant offered substantial mitigation to meet the intent of the Overlay requirements. He noted that the applicant has offered to preserve a large amount of the green space on the property, which is his proposal for mitigation.

Mr. McCabe stated that he feels this proposal contradicts the zoning laws, the Town's Master Plan and the sentiments of the neighbors. Mrs. Rogers, Mr. Phillips and Mrs. Yerkovich agreed.

The following members of the audience spoke:

- Jerry Kyser, 5912 Smith Road, stated that he lives across the street from this property and that his biggest issue is the drainage problems that the residents have been having in this area, noting that two homes being built as opposed to one would add to this existing problem.
- Jeremy Lindstrom, 50 Sharon Avenue, stated that, although a Planning Board member stated that he had visited the site and spoken to the neighbors, none of the neighbors have been contacted and all of them are opposed to this proposal. He further stated that he is concerned that the density in the area would be doubled and concerned that the Overlay District requirement would not be enforced.
- Ray Murray, 6161 Smith Road stated that the South Central Overlay District states that there is to be no clear cutting in the area without a site plan and therefore the Chairman's concerns about that are unfounded. He further stated that approving this subdivision as proposed would be considered precedent-setting.

Mr. Reilly stated, for the record, that public opposition to a project does not mean that the Planning Board must deny it. If the Board denies a project, it would be because of issues raised.

Mr. Phillips made a motion, seconded by Mr. McCabe, to deny a waiver of the South Central Overlay District requirement of a 50% increase in lot size for this site. As there were four (4) ayes and two (2) nays (Chairman Koenig and Mr. Reszka), the motion carried.

Mr. Hasenoehrl thanked the Board members for their diligence and integrity and stated that he feels that throughout this process the people who questioned the Board's integrity, as well as his own, were way off base. He further stated that he is very proud of the way the Planning Board members worked, appreciates their efforts and accepts their decision, even though it is not what he wanted.

Engineering Department comments have been filed with the Planning Department.

## **Dorchester Patio Homes Cluster Proposal**

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

Mr. Reilly stated that the Planning Board must approve the use of cluster development if it feels it is warranted. He further stated that cluster development allows for smaller lots, requires 40% green space and the density of the underlying zoning cannot be increased.

Mr. Borowiak stated that the applicant's revised plan eliminates the entrance onto Sheldon Road, which allowed the applicant to eliminate a section of roadway without homes fronting on it as well as accomplish a nice pond in the southwest portion of the site with a walking trail around it.

Mr. Reilly stated that the Planning and Engineering Departments have concerns about only having one entrance to the entire subdivision and noted that an emergency or secondary means of egress would be important.

In response to a question from Mr. Phillips, Mr. Borowiak stated that the 8.9 acres of green space proposed does include the wet pond.

Mr. Phillips stated that he feels this layout does not meet the intent of the cluster development ordinance, especially when the applicant includes the required detention ponds in the green space calculations. He further stated that he feels this layout simply provides large back yards for some of the homes.

Mrs. desJardins confirmed with Mr. Phillips that he is looking for larger, more concentrated areas of green space.

Mr. Reilly stated that the cluster ordinance states that the land required for open space must serve a purpose, such as preserving important features, providing passive recreational opportunities or preserving views. He added that land required for open space should not consist of small, unutilized areas at the rear of lots.

Mr. Borowiak stated that the applicant could consider putting in another basin to serve the purpose of detention somewhere else on the property and still utilize the pond for aesthetic and recreational value. He further stated that the "large back yards" Mr. Phillips refers to would serve as a wooded buffer. Mr. Phillips responded that, although that area would be a wooded buffer, it does not meet the intent of the cluster development.

Board members discussed different ways to enhance and enlarge the green space area to better achieve the objectives of cluster development.

Mr. Phillips stated that, because the property to be developed is not shaped in such a way as to lend itself to cluster development, perhaps the applicant should propose a standard R-2 subdivision. Mr. Borowiak responded that he feels a standard R-2 layout would be boring.

In response to a question from Mr. Reilly, Mr. Borowiak stated that the applicant does plan to build homes that will fit on the fifty-foot wide lots. He further stated that the applicant will submit photos of the five or six different styles of homes he plans to build.

Board members discussed the importance of having a second means of egress to the subdivision and where it might be located. Mr. Lardo stated that his suggestion would be to extend the road in a northerly direction to Brompton, noting that the sewer will have to go north to Brompton anyway. He further stated that a temporary emergency means of egress is not a good idea.

Chairman Koenig stated that he likes the revised cluster layout better than the previously submitted layout. Mrs. Yerkovich agreed.

Mr. Reilly stated that if the Board decides to authorize the use of cluster development on this site, it will have to determine how homeowners will know where their back yards end and the common green space areas begin. He further noted that a conservation easement would have to be given to the Town of Hamburg in order to preserve the common green space.

Mr. Reszka asked if it would be feasible to move lots 41 through 33 further to the west, which would serve to enlarge the green space in the southeast corner of the property. Mr. Borowiak stated that this could be looked at, although the applicant would have to lose some lots as a result.

Mr. McCabe stated that the green space behind lots five (5) and six (6) and behind lots one (1) and two (2) are fragmented.

Mr. Phillips reiterated his position that this proposal does not meet the intent of the cluster development law. He further stated that the law's intent was to allow an applicant to build on two thirds of a large piece of property and leave the other third as open space and that the open space was not supposed to be so fragmented.

It was determined that the Board will discuss this further at its next meeting.

Mr. Rick Krautsack, 4005 Allendale, stated that he likes the look of this proposal.

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

Engineering Department comments have been filed with the Planning Department.

### **Burke Realty**

Attorney Jeffrey Palumbo appeared on behalf of the proposal, stating that the applicant has done everything the Board has asked him to do, he has submitted an updated traffic study and he hopes that the Board will make a determination regarding his request for Site Plan Approval of this property. He further stated that the applicant does not know what will eventually go in to the building but feels that whatever ends up going in the building will not have a significant impact on the traffic in the area.

The Board discussed the question of whether or not a traffic signal was ever mentioned at the intersection of Bayview Road and South Park Avenue. Attorney Palumbo stated that the traffic study done when the Burke Business Park was approved did address a signal at this intersection.

Mr. Reilly stated that when the Subway was proposed on this site earlier this year, the New York State Department of Transportation (DOT) stated that a Traffic Impact Study was not reviewed by that department and that if the applicant has to have a curb cut on South Park Avenue, the curb cut as indicated on the site plan would be an approvable design.

Mr. Reilly read from the Findings from the Environmental Impact Study done for the Burke Business Park regarding the intersection of Bayview Road and South Park Avenue as follows:

“This intersection is currently being approved under New York State DOT contract. If full build out conditions meet the volume of delay warrants for a new traffic signal at this intersection, the developer will be responsible to install a new traffic signal. Otherwise the existing stop sign will remain in place to control traffic movements.”

Mr. Reilly stated that apparently, at that time, the DOT did not foresee a traffic signal being warranted but that if it ever is warranted the developer would have to pay for its installation.

Mr. Reilly confirmed that the revised traffic study submitted to the Planning Board is current.

Mrs. Yerkovich stated that it appears that there is a traffic study and back up information that indicates that, although it may not be desirable, the traffic at this intersection is workable. She further stated that the goal would be not to put in a fast food restaurant at this location.

Mr. Dennis Chapman, 3715 Woodhaven, stated that he is concerned about vehicles stopped on Bayview Road waiting to turn onto South Park Avenue if a traffic signal is installed at that intersection. Board members stated that there will not be a traffic signal at that intersection in the near future.

Mr. Phillips made a motion, seconded by Mr. Reszka, to issue a Negative Declaration and grant Conditional Site Plan Approval to this proposal with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated November 18, 2009.
2. The site is approved with a pick-up window only; no ordering window will be allowed.
3. The word “Subway” is to be removed from the site plan.

Carried.

Mr. Reilly stated, for the record, that the biggest issue the Planning Board has had from the beginning of this discussion with the applicant about this site has been traffic. He further stated that the Board’s decision is based on additional information the Board received dated November 13, 2009.

Engineering Department comments have been filed with the Planning Department.

## **Avanti Mansion**

Mr. Reilly stated that there has been a slight modification made to the approved site plan. He further stated, for the record, that any Planning Board approval of these revisions would be subject to all of the Engineering issues that still need to be resolved.

Mr. Phillips made a motion, seconded by Mr. McCabe, to approve the minor modifications to the Avanti Mansion site plan subject to the Engineering Department comment letter dated November 18, 2009. Carried.

Engineering Department comments have been filed with the Planning Department.

## **OTHER BUSINESS**

Mr. Reilly stated that Mr. Kuebler has added two more boats to the landscape plan for his site on McKinley Parkway and he (Mr. Reilly) wants the Board to be aware of this. The Board members concurred that they do not have a problem with this, as long as Mr. Reilly approves the landscape plan.

It was determined that the applicant must submit a revised landscape plan to the Building Inspection Department showing the three (3) proposed boats.

Mr. Reilly stated that the Planning Department has received the Final Supplemental Environmental Impact Statement (FSEIS) for the proposed Villages at Mission Hills project and that each Board member will have a copy to review over the next two weeks. He further stated that the Board will discuss the document at its next meeting.

Regarding the November 4, 2009 minutes, Attorney McKenna stated that the word "mute" is misspelled and should be spelled "moot".

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to approve the minutes as amended of November 4, 2009. Carried.

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

The meeting was adjourned at 9:45 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board