

Town of Hamburg
Planning Board Work Session

November 4, 2009

Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, November 4, 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, Stephen McCabe, Richard Taber and Peter Reszka.

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

Excused: Karen Rogers, Sasha Yerkovich, Cheryl McFaddon-Zak

Hasenoehrl Minor Subdivision

Mr. Reilly stated that the applicant submitted a new plan that includes a 100 foot buffer along the rear lot line of both proposed lots, as well as a 50 foot buffer on the north and south sides of each lot. He noted that, if the lots are approved per this plan, just over two acres of land would be preserved in a conservation easement.

Mr. Reilly stated that, in order for this subdivision to be approved, the Planning Board must waive the South Central Overlay requirement of 50% increase in lot size. He further noted that in order to waive this requirement, the Board must determine that the proposed project meets the intent of the Overlay District. He explained that the intent of the Overlay District is to preserve green space and to create lots that do not look like a typical suburban development.

Mr. McCabe asked what the hardship is that Mr. Hasenoehrl is experiencing. He stated that he can sympathize with the fact that the applicant is four tenths of an acre short but he is uncomfortable with the proposal.

Mr. Reilly stated that when the Overlay District was established, the Town of Hamburg found that the residents of this area knew that they wanted to keep the rural character of the area but they did not want to increase the lot size requirements. He further stated that, in response to this neighborhood input, the Town created the South Central Overlay District, which gave the Planning Board the power to increase lot sizes by 50% if subdivisions are proposed that are standard road frontage subdivisions that are not creative in preserving the rural character of the area.

Chairman Koenig stated that if this subdivision is not approved, the applicant has the right to sell the entire parcel to someone who, if he or she wanted to, could build one home on this site and virtually clear the entire property. He further noted that the plan submitted by the applicant would ensure that a large amount of green space on the site would be preserved and stated that he feels this would serve to maintain the rural character of the area.

Mr. Taber stated that he does not feel this proposal meets the intent of the South Central Overlay District. Mr. Phillips agreed, stating that he sees no reason not to impose the 50% increase on this subdivision proposal.

Mr. Reszka stated that he agrees with Chairman Koenig, noting that if the Board approves the subdivision as proposed, it could ensure that a large amount of trees will be saved as opposed to someone buying the whole property, building one home and clear cutting all of the trees on the property. He further stated that he would like to see the applicant reconfigure the conservation easement area so that the two homes could share a driveway that would be located between the two lots and the trees along Smith Road could be preserved so that the homes would not be visible from the road. He noted that, in this way, someone driving along Smith Road would only see one driveway and would not see either home.

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

Engineering Department comments have been filed with the Planning Department.

Old Time Baptist Church

Chairman Koenig stated that representatives of the church have asked that the project be tabled.

It was the consensus of the Board that this project will not be placed on a future Planning Board agenda until the applicants indicates that they are ready to continue with the review process.

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

Engineering Department comments have been filed with the Planning Department.

Hamburg Self-Storage

Mr. Reilly reminded the Board that it approved a site plan for an outdoor storage area in 2008 for this property and noted that the applicant now wishes to expand that outdoor storage area. He further stated that the applicant has been made aware of outstanding issues regarding the previously approved site plan and that, since the Board's last meeting, the applicant has reduced the size of the proposed expansion area.

Mr. Reilly stated that in the next week Mrs. desJardins and Mr. Lardo plan to visit the site and will report their findings to the Board at its next meeting. Mr. Reilly further noted that the applicant has indicated that he has replanted the trees that have died on the berm.

Mr. Reilly stated that at the Board's next meeting the issue of the business being conducted on the site that was never approved (truck rentals) will have to be discussed and resolved.

Chairman Koenig questioned the area in the rear of the site that was not to be disturbed per the previously approved site plan, noting that it now appears that the topsoil has been removed and the applicant plans to grade and seed that area. Mrs. desJardins responded that someone received a permit to remove fill from this site from the Building Inspection Department, which is why the area has been disturbed.

Mr. Michael Schmidt, applicant, stated that when the existing storage area was constructed, a large amount of topsoil and fill was pushed onto the vacant land that was not to be disturbed. He stated that a permit was issued by the Building Inspection Department to remove the large pile of topsoil and fill and in Mr. Schmidt's opinion the property was not disturbed, but rather the fill and topsoil that was pushed onto the property was simply removed. He noted that no trees were taken down.

Chairman Koenig stated that the Engineering Department indicates in its letter of November 4, 2009 that, because more than one acre has been disturbed, a Stormwater Pollution Prevention Plan will be required to be prepared for this site. He asked Mr. Schmidt if he was aware of this and Mr. Schmidt responded that he was aware of this initially and that is part of the reason why he scaled back the project. He further stated that the previously approved storage area and the currently proposed area together are less than one acre in size.

It was determined that Mr. Schmidt's engineer will meet with the Town Engineering Department to discuss this issue.

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

Engineering Department comments have been filed with the Planning Department.

Smith Road Subdivision

Chairman Koenig stated that the applicant has asked that the project be tabled until further notice.

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

Engineering Department comments have been filed with the Planning Department.

Dorchester Patio Homes Development

Mr. Reilly stated that this is a proposal for a cluster development in an R-2 zone. He further stated that the applicant must first present a regular subdivision layout so that the Board can establish the lot count and then show a cluster development. He noted that the Planning Board must approve the use of cluster; it is not allowable by right.

Mr. Reilly stated that the Planning Board must first decide if this proposal would be good

for the Town of Hamburg and if it serves the purposes of cluster development. He noted that, if the Board does allow the cluster development, the project then would proceed to Preliminary Plat Approval, etc.

Mr. Reilly stated that typically a cluster development can be appropriate when the property contains important stands of trees or natural features worth preserving. He further stated that, in this scenario, the applicant would be allowed to get a return on the property, construct smaller lots and still preserve the important natural features on the land.

Mr. Reilly stated that the Board must decide if the cluster development proposed is a much better proposal than a standard subdivision would be on the same property.

The Board discussed the proposed cluster development layout with Mr. Andrew Gow from Nussbaumer & Clarke, who represented the applicant. Mr. Reilly indicated that lots 30 and 31 do not make sense to him and that he would like to see the cul-de-sac shortened, which would give the applicant the opportunity to preserve more green space.

Chairman Koenig stated that the most important thing for the Board to consider is whether or not the applicant is giving up green space that is of any value, noting that the green space on the proposed plan is nothing more than a larger back yard for small lots. Mr. Reilly noted that improvements could be made to the green space to make it worthwhile (constructing a pathway that would lead to a large stand of trees, installing benches around the ponds, etc.).

Mr. Phillips stated that the trees on the property are mainly scrub.

Chairman Koenig stated that the standard R-2 layout includes several flag lots, which the Board probably would not approve, noting that if these lots were removed the applicant could probably do some creative things with the remaining open space.

Mr. Reilly stated that the Board should concentrate on the proposed cluster development because the number of lots the applicant can have may be a moot point if the Board decides this project as proposed does not meet the intent of cluster development.

Mrs. desJardins stated that the Building Inspector has indicated that he is concerned about how one would distinguish between the rear yards of some of the lots and the Homeowners' Association land behind it. Mr. Gow responded that the applicant could install signs at the rear of the lots to alleviate that problem.

Mr. Gow stated that the parcel is very unique in shape and the applicant is doing the best he can with what he has to work with. He further questioned if removing lots from the proposed cluster plan would really make it better.

Mr. McCabe stated that the Board would like as much of the preserved green space to be contiguous as possible and suggested that lots 5, 6, 30 and 31 be removed in order to better achieve that goal.

Hamburg Planning Board meeting

November 4, 2009

Mr. Phillips stated that the Board wants a large area of green space preserved if a

cluster development is approved, noting that little pieces of green space here and there do not do anyone any good except for the homeowners who get larger back yards as a result. He further stated that he does not feel that the proposed project meets the intent of cluster development.

Mr. Gow asked Board members if they would like him to revise the cluster development to include a higher degree of amenities. Mr. Phillips responded that it was the intent of cluster development to take a large parcel and let developers build in one area of the site while keeping the rest of the parcel open. He further stated that he does not know how the applicant could design something on this property that would meet the intent of the cluster development.

Chairman Koenig asked Mr. Gow if the applicant is still talking potentially to other property owners in the area that could affect the ultimate layout of the proposal. Mr. Gow replied in the affirmative.

Mr. Gow stated that he will enhance the easterly green space area on the plan and add some amenities there for the Board's next meeting.

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 (southwest corner of Bayview Road and South Park Avenue)

Mr. Reilly stated that the applicant would still like to develop this property and does not have a tenant at this time. He further stated that when the Planning Board reviews a project for which there is no prospective tenant, the Board must consider the worst case scenario which, in this case, would be a fast food restaurant.

Mr. Reilly stated that the biggest issue with this site is traffic and that the applicant submitted a revised traffic study at the Board's last meeting. He further stated that Wendel's Transportation Engineers reviewed the revised traffic study and have recommended that it be updated because two of the three sets of traffic counts upon which the traffic study is based should not be used, as one was taken in the summer (when school is not in session) and the other was taken on a weekend (when school is not in session). In addition, he noted that the third set of traffic counts is outdated.

Andrew Gow from Nussbaumer & Clarke appeared on behalf of the applicant, stating that when the traffic study was conducted for the Burke Business Park, the applicant was able to demonstrate to the New York State Department of Transportation that if a traffic light was warranted at the intersection of Bayview Road and South Park Avenue, it would be installed. He further stated that he feels it is a mute point to talk about traffic at this intersection when, no matter what the applicant does on this site, once the traffic light is warranted it will go in. Mr. Reilly responded that the traffic study done for the Business Park did not take into consideration the possibility of a fast food restaurant on the corner of Bayview Road and South Park Avenue.

Hamburg Planning Board meeting

November 4, 2009

Attorney McKenna stated that he spoke with the applicant's attorney, Jeffrey Palumbo,

earlier in the week and they discussed whether the applicant proposes to re-use the existing building on the site or construct a new building. Mr. Gow explained that the site plan previously submitted for the Subway restaurant is the same site plan the applicant is requesting the Planning Board to approve at this time and he confirmed that the applicant proposes to re-use the existing building on the property and has no plans to construct a new building.

Mr. Gow further clarified that the site plan has not changed (except that a Subway restaurant is no longer proposed) and that the applicant previously made changes to the site plan as a result of the Traffic Safety Advisory Board's and New York State Department of Transportation's comments. He stated that his concern is that if the applicant updates the traffic counts, numbers will change slightly but the applicant's proposed mitigation will be the same and the applicant will be right back at the same place he is at this time.

Mr. Reilly stated that the Planning Board, in approving this proposal, must be able to say, through SEQRA, that there will be no traffic impact as a result of the project and at this point the Board would be uncomfortable doing so.

Attorney McKenna stated that he feels that any traffic study that is done for this area should take the existence of Riley Boulevard into consideration.

Chairman Koenig stated that when the Board previously considered a Subway restaurant on this site, the majority of the Planning Board members were not comfortable with the potential traffic that could be generated by the project and were not in favor of it. He further stated that, given the fact that a fast food restaurant (the worst case scenario with a spec building) could conceivably create more traffic problems than a Subway, he does not see the Board voting any differently on this new proposal.

Mr. Gow stated that the possibility of a fast food restaurant is being discussed only because the Board asked the applicant to present the "worst case scenario", which will produce the data from which the Board will make a decision. He further stated that, although he cannot speculate, he feels that the size of the building would not necessarily warrant a Burger King, for example.

Chairman Koenig stated that, unless the Planning Board is told something different, it has to consider a fast food restaurant, which is the worst case scenario.

Mr. Reilly stated that the Planning Board could approve a project at this location with the condition that no fast food restaurants would be allowed.

Mr. Reszka stated that he has concerns about the proposed drive-up window and feels it is in the wrong location because traffic could conceivably back up into Bayview Road and cause an accident.

It was determined that no additional public hearing will be necessary, as the site plan has not changed. It was further determined that the Board will discuss this again at its next meeting and feels strongly that the applicant must resolve the Board's traffic

Hamburg Planning Board meeting
concerns before the Board will act on this proposal.

November 4, 2009

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

Engineering Department comments have been filed with the Planning Department.

Kempston Farm

Mr. Reilly stated that the applicants own property on the corner of Lakeview Road and Smith Road. He further stated that they started to bring some of the product from the Cooper Ridge Nursery to this site and were stopped by the Building Inspection Department because they did not have a permit. He stated that Planning Board approval of a site plan is required because the applicant plans to erect hoop houses to store the product over the winter.

Mr. Reilly stated, for the record, that there will be no retail sales at this site. He further stated that the Building Inspector has determined that the proposed use (storage of plant material) is allowable in the RA zone.

Mr. Reilly stated that, according to the Soil Survey of Erie County, there are hydric soils on this property, which means that federal wetlands probably exist there. He advised the applicants to contact the U.S. Army Corps of Engineers because fines are imposed if someone fills in federal wetlands. However, he further stated that there are exemptions for agricultural uses and the applicant should find out if his activities fall into that category.

Mr. Reilly stated that if approval is granted, it would be just for agricultural storage and for growing plants.

It was determined that the hoop houses are temporary structures and the Planning Board would be approving the use for the property.

Chairman Koenig stated that a public hearing can be held in two weeks, but if the applicant has not provided the Board with correspondence from the U.S. Army Corps of Engineers regarding the possible federal wetlands on the site, the project will probably be tabled.

Mr. Phillips made a motion, seconded by Mr. Taber, to schedule a public hearing for November 18, 2009. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Bill Ciaravino (Howard Road)

Mr. Reilly stated that the applicant's property is located on the east side of South Park Avenue, just south of Southwestern Boulevard and that the applicant proposes to

Hamburg Planning Board meeting November 4, 2009

construct a pole barn to the west of the existing building on the site.

Mr. Reilly stated that this property is located in the South Park Avenue Overlay District and as such all buildings are required to be located at least forty feet from the South Park Avenue right-of-way, which means that the applicant would need a substantial variance because the proposed pole barn is located too close to South Park Avenue. He questioned whether the proposed structure would be aesthetically pleasing and how the pole barn could fit in such a small space.

Mr. Reilly stated that it is his understanding that the pole barn would be used for the storage of the applicant's cleaning business equipment and supplies.

It was determined that the applicant would also need a front yard variance, as the proposed pole barn is too close to Howard Road.

Mrs. desJardins stated that the applicant is also asking for approval of a small addition on the east side of the existing building on the site.

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

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Avanti Mansion

Mrs. desJardins stated that the applicant would like to make some minor changes to the site plan that was approved by the Planning Board earlier this year – the building has been rotated slightly and a few more parking spaces are proposed.

Mrs. desJardins stated that she advised the applicant that the Planning Board will consider a revised site plan and, if it chooses to do so, would approve that plan as long as the Engineering Department indicates that it approves of the plan now presented.

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

Mr. Taber made a motion, seconded by Mr. McCabe, to approve the minutes of October 21, 2009. Carried.

Mr. Phillips made a motion, seconded by Mr. Taber, to adjourn the meeting. The meeting was adjourned at 8:50 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board