

Town of Hamburg  
Planning Board Meeting

August 19, 2009

Minutes

The Town of Hamburg Planning Board met in regular session on Wednesday, August 19, 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 and Steve McCabe.

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

Excused: Rich Taber, Karen Rogers, Attorney McKenna

**Arthur Court Subdivision**

Mr. Reilly stated that this project has been before the Planning Board off and on since 2006 and that the major issues brought up in the public hearings (two were held) and from correspondence received were the location of the proposed detention pond, the setback of the pond from the adjoining properties and the buffering of the adjoining properties. He further stated that the applicant was asked by the Planning Board to investigate whether the detention pond could be moved away from the Richwood Drive properties and how a buffer could be provided for the adjoining properties, noting that there is no requirement in the Town Code for buffering between residential developments.

Andrew Gow, from Nussbaumer & Clarke, appeared on behalf of the proposed project, stating that at the Board's last meeting, the concerns raised by the public were mainly regarding buffering the adjoining residential lots on Richwood Drive. He further stated that, although the rear yard setbacks proposed for the easternmost units far exceed what is required by Code, the applicant is proposing a landscaped berm with evergreens placed in clumps to provide year-round screening. He added that Mrs. Duggan, a resident on Quinby Drive, voiced concern regarding drainage on the south side of the development. He stated that the existing drainage system that runs along the south side of the development will intercept runoff primarily from Mrs. Duggan's property towards the development property because the contours in that area run from south to north. He noted that this may help Mrs. Duggan's drainage problem.

Mr. Gow stated that another issue of concern to the residents was the proximity of the detention basin to the rear yards of the properties on Richwood Drive. He noted that the detention basin has been moved away from the property lines somewhat and is now proposed to be located 32 feet from the property lines.

In response to a question from Mr. Reszka, Mr. Gow stated that the detention basin must be located in the northeast corner of the site because that is the lowest part of the property and in order for all of the runoff to be captured, the basin must be located there.

Mr. Reilly asked Mr. Gow how many, if any, of the existing trees on the east end of the property could be saved. Mr. Gow responded that the developer's intention is to save as much of the woods as possible but noted that a decision must be made as to whether the adjoining residents would be best served by removing the existing vegetation in the twenty feet at the east end of the development site and installing a berm with landscaping or leaving what is there alone. He further stated that the developer will do whatever the Planning Board and neighbors prefer.

Mr. Reilly stated that the public needs to be aware of the fact that most of the trees that exist in the eastern portion of this site are going to be removed if a berm is planted there.

Chairman Koenig stated that one of the items of concern to the Richwood Drive residents who sent the Planning Board a letter regarding this development was that they want the existing trees in the twenty-foot setback area along their rear lot lines undisturbed. He noted that, if a berm with landscaping is installed, the existing twenty-foot area of trees will not be saved. He further stated that another request the neighbors have is that, in addition to saving the twenty feet of trees along their lot lines, they would like a four-foot berm with evergreen trees planted on the west side of the existing stand of trees.

The Board discussed at length what would best serve the Richwood Drive residents – leaving the existing trees in place or planting a berm (which would most likely mean that the existing trees would have to be removed in order to plant the berm). Members agreed that there probably is not enough room in that area to preserve the existing trees and at the same time plant a berm, given the proximity of the detention basin to the property lines. Board members agreed that it seems that the neighbors might be better served by leaving as many of the existing trees in the twenty-foot setback area as possible and, in addition, planting a row of evergreen trees (or plant them in groups) west of this area on the applicant's property.

Mr. Gow stated that what is described above (leaving the twenty-foot setback area as undisturbed as possible and planting groups of evergreen trees west of that area) would be possible. Mr. Reilly noted that the contractor should erect a fence so that those trees are not accidentally taken down during construction. He further stated that a note must be placed on the drawing indicating that the twenty-foot setback area will be demarcated in the field prior to construction and that the twenty-foot area will not be disturbed.

Board members agreed that the berm proposed will not be necessary as a result of the discussion held at this meeting.

In response to a question from Mrs. desJardins, Mr. Gow stated that, because of the way in which the site is graded, most of the grading for the project can be done without interfering with the twenty-foot setback area where the trees are that the neighbors would like the applicant to save.

Chairman Koenig stated that another request of the neighbors from Richwood Drive is for an eight-foot high fence to be installed, noting that he would not be in favor of that because the Town Code does not require that residential uses be screened from other residential uses.

Mr. Phillips made a motion, seconded by Mr. McCabe, to issue a Negative Declaration for this project, as it meets all of the requirements for a Negative Declaration. Carried.

Mr. Philips made a motion, seconded by Mr. Reszka, to grant Preliminary Plat Approval for this subdivision with the following conditions:

1. The requirement that dead-end streets be no longer than 500 feet (Section 230-22(H)) is waived.
2. Recreation fees in lieu of land will be required.
3. Sidewalks will be required.
4. The landscape plan will be amended as discussed at this meeting.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Autumnview Health Care Facility**

Colby Smith, from the McGuire Group, appeared on behalf of the proposed project.

Mr. Reilly stated that the Planning Board has discussed this proposal for several months and at its last meeting authorized the Planning Department to prepare SEQRA and approval resolutions. He further noted that the last issue to be resolved had to do with concerns raised at the Work Session by Mrs. Philbin (4002 Nottingham Terrace) regarding landscaping and buffering. He stated that the applicant has submitted a letter to the Planning Board responding to Mrs. Philbin's letter.

Mr. Reilly stated that the Landscape Architects at Wendel reviewed this site, noting that this is a difficult area given the topography of the site and the fact that the Healthcare Facility is so much higher than the adjoining residences. He further stated that the Landscape Architects at Wendel recommended that the applicant consider filling in the plantings with a tree such as the "Fastigiata", which is a densely-branched deciduous tree that grows very quickly and comes in ten-foot sizes. He noted that this species of tree would fill in an area more quickly. Regarding potential foot traffic across Mrs. Philbin's property, Mr. Reilly stated that something would have to be agreed upon between the applicant and the residents.

It was determined that it would not be possible to plant trees close to the Healthcare Facility's windows to block the view of its residents from the adjoining residences on Nottingham Terrace because of the fact that water lines, sidewalks, etc. will be located in that area.

In response to a question from Chairman Koenig, Mr. Smith stated that the agreement that is currently in place with the Nottingham Terrace residents states that eight (8) trees were to be placed in the buffer area in conjunction with the previous addition to the Healthcare Facility. He further stated that those trees were planted previously. He noted that, in conjunction with the

current proposal for an addition, the applicant proposes to plant an additional twelve (12) trees and that the applicant has no problem substituting the type of tree Mr. Reilly referenced, as long as they are not extremely expensive and are available.

Mr. Reilly stated that the applicant has agreed to fix the existing light fixture(s) that are bothersome to the neighbors and that the new lighting installed will be shielded.

Mr. Reilly stated that the Planning Board has received input from its Committees and Boards, as well as from agencies, and the Conservation Board has recommended a Negative Declaration.

Mr. Phillips made a motion, seconded by Mr. Mrs. Yerkovich, to issue a Negative Declaration for this project. Carried.

Mr. Phillips made a motion, seconded by Mr. Reszka to grant Conditional Site Plan Approval for the Autumnview Healthcare Facility addition with the following conditions:

1. Approval is contingent on the Engineering Department comment letter dated August 19, 2009.
2. The applicant will plant an additional twelve (12) trees for screening.
3. All lighting will be shielded down toward the site.
4. The applicant will pursue additional options for new trees as outlined in this meeting's discussion.
5. The applicant will submit a new landscape plan showing that the parking area will be screened from the adjoining residences.

Carried.

Engineering Department comments have been filed with the Planning Department.

### **Old Time Baptist Church**

Chairman Koenig stated that the applicant has asked the Planning Board to table this proposal.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe to table the project. Carried.

Engineering Department comments have been filed with the Planning Department.

### **EduKids**

Mr. Reilly stated that EduKids proposes to rezone its property on which its existing facility is located from R-1 to R-3 in order to construct a new building. He further stated that the Planning Board is expected to forward a recommendation to the Town Board regarding this request.

Mr. Reilly stated some of the nearby residents were given the impression that EduKids informed the Planning Board that it met with a large group of neighbors and received positive input from them. He noted that representative from EduKids did not attend the Board's Work Session and that perhaps he was misunderstood.

Mr. Reilly stated that EduKids has been at its current location for 18 years and would like to demolish the existing structure and build another larger one. He stated that the property is zoned R-1 and is a non-conforming use and therefore the property must be rezoned to R-3 (day care centers are allowed in this zone) if the applicant is to build a new building. He further stated that if the Planning Board decides to recommend favorably on this rezoning request, he would recommend that the Board place a condition on the rezoning that, if in the future this building is sold, no multi-family housing will be allowed. The building could be used for another day care center, a single family home or a duplex.

It was determined that the existing building has a 3,000 sq.ft. foot print (3,000 sq.ft. on two floors) and that the proposed building would be a single story 6,000 sq.ft. structure.

Chairman Koenig noted that the Planning Board received a letter from a nearby resident, Mr. Ronald Biersbach, who expressed concern regarding the size of the proposed building and the fact that he was not contacted by the day care center for his input.

Nancy Ware, representing EduKids, gave Board members a brief history of the building, noting that the existing structure has many difficulties and it would be very costly to build an addition on the building because of all of the problems it has.

Mr. McCabe stated that he did an on-site inspection of the property and found that the plan as proposed would be a beautiful improvement. He further stated that he understands the applicant's concerns regarding the limitations of the existing building and has a good feel for the neighborhood and feels that placing restrictions on what could go on the property if EduKids vacates the building would make the neighbors feel more comfortable with the plan.

Mrs. Yerkovich asked Mr. McCabe if he feels that the proposed increase in the size of the building is appropriate for the neighborhood. Mr. McCabe responded that the property abuts the church parking lot, which he feels would not pose a problem.

In response to a question from Mrs. Yerkovich, Ms. Ware stated that she would have no problem if the Town placed a restriction on the property that no multi-family uses would be allowed.

Mr. Biersbach, owner of the residence across the street from the day care center, asked if the applicant anticipates increasing the number of clients at the facility if the rezoning is approved. Ms. Ware responded that she anticipates an increase of approximately six children.

It was determined that approximately fifty (50) children currently attend the day care center and that the applicant plans to maintain a chain link fence around the play yard.

Mr. Biersbach asked if the construction of the new building would reduce the size of the existing play yard on the site. Ms. Ware responded in the affirmative. Mr. Biersbach noted that his

property is across the street from the play yard and, in his opinion, the children who attend this day care center now are squeezed into this area as it is and if the play area is reduced in size, it would make matters worse. He further stated that the play area is being used constantly, until 6:00 P.M.

Ms. Ware stated that she feels that the day care center is the perfect neighbor because no one is on the site after 6:00 P.M. on weekdays or on the weekends.

Chairman Koenig informed the public in attendance that the Town Board will hold a public hearing on this proposed rezoning and that at that time the neighbors will be able to voice their opinions.

Mr. Phillips made a motion, seconded by Mr. Reszka, to forward a positive recommendation to the Town Board regarding the applicant's request for rezoning from R-1 to R-3 with the following condition:

1. If, in the future, EduKids goes out of business or sells the property, no multi-family housing shall be allowed on the property. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Southwestern Boulevard rezoning**

Mr. Reilly stated that the Town Board is requesting input from the Planning Board regarding certain properties located on Southwestern Boulevard, most of whose owners have petitioned the Town to rezone them from residential to commercial zoning. He further stated that four or five property owners signed the petition, but the Town is considering rezoning seven properties in this area, which includes the properties between the new Lowe's site and Dogwood Lane.

Mr. Reilly stated that this is not a rezoning application, but rather it is a petition by residents to have the Town consider rezoning a particular area of the Town. He further noted that the Town can consider the rezoning because it has merit under the Comprehensive Plan.

Attorney McFaddon-Zak stated that she will have to recuse herself in this matter.

Mr. Reilly stated that if the Town moves forward with this rezoning, the owners of the affected properties would be notified, as well as the adjoining property owners, for their input. He further stated that he recommends that, if the Town decides to pursue the rezoning of this area, C-1 be considered. He further stated that C-2 zoning would not be appropriate due to the size of the parcels and the fact that the parcels across the street are zoned C-1.

Board members had a lengthy discussion regarding one of the parcels being considered that adjoins the rear yards of the residences on Dogwood Lane and whether all of the parcel should be rezoned or just the front part. The Board also discussed how the residences on Dogwood Lane would be buffered from the commercial uses along Southwestern Boulevard, assuming the Town Board decides to rezone these properties.

Board members concurred that they are uncomfortable recommending to the Town Board on this issue until they know how all of the affected property owners feel. It was determined that a meeting will be scheduled with one or two members of the Planning Board, a member of the Town Board and the owners of the properties so that the Planning Board knows how the property owners feel and how the properties on Dogwood Lane would be buffered.

Chairman Koenig stated that he would be available, depending upon when the meeting is scheduled. Mr. Phillips stated that he would also be available.

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

### **J. P. Fitzgerald's**

Chairman Koenig stated that the Planning Board received a letter from Attorney Charles Spinner regarding this proposal but that Attorney Spinner could not attend the meeting.

Mr. Reilly stated that the applicant provided a design plan showing the existing round-about and splitter island on South Park Avenue, as well as the entrance to the restaurant.

Chairman Koenig reported that the Traffic Safety Advisory Board (TSAB) has recommended that, if this project is approved, the entrance onto South Park Avenue be right-in, right-out only. However, he noted that the TSAB did not state that the entrance has to be constructed in such a way that would make it impossible for left turns to be made into or out of the driveway. He stated that perhaps signage could be posted indicating that vehicles should not turn left into or out of the driveway.

Bob Brunner, owner of the restaurant, stated that when he visited the site with the Building Inspector they determined that it would be safe to make a left into the driveway from the north because there is a turning lane opposite the driveway. Therefore, vehicles would have the ability to wait in the turning lane until they are able to make the left turn into the driveway.

Chairman Koenig stated that the TSAB feels that, because of the proximity of the round-about, more than likely there will not be many gaps in the oncoming north-bound traffic and that vehicles in the turning lane might get stacked up.

Board members discussed Attorney Spinner's letter and whether screening is appropriate between the proposed entrance and the property to the north, owned by Attorney Spinner (both properties are zoned commercial).

It was determined that the second floor of Attorney Spinner's building is used for residential apartments and Attorney Spinner is concerned because in the past patrons of the restaurant have trespassed on his property.

Mr. Phillips made a motion, seconded by Mrs. Yerkovich, to schedule a public hearing on this proposal for September 2, 2009. Carried.

It was agreed that Attorney Spinner will be invited to the Board's next meeting to provide his input regarding this project.

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

Engineering Department comments have been filed with the Planning Department.

### **Bob Hasenoehrl Minor Subdivision**

Mr. Hasenoehrl showed Board members the survey of his property, indicating how he would like to subdivide it into two parcels. He further noted that he would require a variance from the Zoning Board of Appeals because neither parcel would meet the R-A zoning requirement for area (two acres is required).

Mr. Reszka stated that he visited the site, noting that the area is semi-rural and that he spoke with a few of the neighbors who were not opposed to Mr. Hasenoehrl's proposal, as long as what is built is compatible with the existing homes in the area. He further stated that the land behind this property looks to be a staging area for the farmer who owns it.

Mr. Hasenoehrl stated that he attempted to purchase a small amount of the farmer's land behind his property so that the proposed lots would conform to the two-acre requirement but was not successful. He further stated that most of the nearby parcels look to be the same size as his proposed lots.

In response to a question from Mrs. Yerkovich regarding whether she feels the Zoning Board of Appeals would approve Mr. Hasenoehrl's variance request, Attorney McFaddon Zak stated that she cannot speak for the Zoning Board of Appeals.

Board members agreed to forward a recommendation to the Zoning Board of Appeals and, assuming the applicant receives the variance, hold a public hearing in September.

Mr. Phillips made a motion, seconded by Mr. Reszka, to forward a positive recommendation to the Zoning Board of Appeals regarding Mr. Hasenoehrl's request for an area variance for the two proposed lots for the following reasons:

1. The proposed lots would be the same size as the rest of the lots on the same side of Smith Road.
2. It fits in with the character of the neighborhood.

Carried.

Regarding the minutes of August 5, 2009, Attorney McFaddon-Zak asked that the fact that she does not speak on behalf of the Zoning Board of Appeals be added to the minutes.

Mr. Phillips made a motion, seconded by Mr. Reszka, to approve the minutes of August 5, 2009 as amended. As there were four (4) ayes and one (1) abstention (Mrs. Yerkovich), the motion carried.

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

The meeting was adjourned at 8:50 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board