

Town of Hamburg  
Planning Board Work Session

September 2, 2009

Minutes

The Town of Hamburg Planning Board met for a Work Session on Wednesday, September 2, 2009 at 7:30 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Gerard Koenig, Steve McCabe, Karen Rogers and Sasha Yerkovich.

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

Excused: Richard Taber, David Phillips, Peter Reszka

**Public Hearing – J.P. Fitzgerald's**

Mr. McCabe read the following notice of public hearing:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a public hearing on a proposal by Robert Brunner, owner of J.P. Fitzgerald's regarding property located at 6200 South Park Avenue. The applicant proposes to install a new entrance onto South Park Avenue, as well as additional parking for the restaurant. In accordance with the Town of Hamburg Site Plan ordinance, a public hearing will be held on September 2, 2009 at 7:30 P.M. in Room 7B of Hamburg Town Hall."

Daryl Martin, architect, appeared on behalf of Robert Brunner, applicant, stating that Mr. Brunner is in the process of purchasing the property and that he would like to remove the existing structure on the property and install a new entrance onto South Park Avenue, as well as 16 new parking spaces. He noted that the restaurant itself is located in the village.

Mr. Reilly stated that the applicant provided photos for the Board's review of how the new entrance would be situated relative to the round about and splitter island installed by the New York State Department of Transportation.

The Board discussed the recommendation received from the Traffic Safety Advisory Board (TSAB) that no left turns be allowed into or out of the new entrance because of the close proximity of the entrance to the round about and splitter island. It was determined that, because a storage lane exists for vehicles heading south and wishing to turn left into the entrance, that should not be a problem. It was also determined that signage could be installed at South Park Avenue for vehicles leaving the entrance that no left turns are allowed there.

Chairman Koenig stated that, in his opinion, there should be room enough for vehicles to turn into and out of the new entrance. Mrs. Rogers concurred but stated that if the TSAB recommends no left turns into the entrance, perhaps that is what the Board should require.

The Board discussed whether screening would be appropriate along the property's north lot line. Mr. Reilly stated that, per Town Code, screening is not required between properties that are commercially zoned.

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

1. Attorney Charles Spinner stated that he is the owner of the property directly to the north of the proposed new entrance and has been there since 1974. Attorney Spinner stated that he is concerned that the proposed roadway will cause his property to be financially devalued. He further stated that he feels the roadway could be heavily used and consequently the fumes, noise and debris from the vehicles and restaurant patrons will be bothersome. He noted that he rents an apartment on the second floor of his building and has lost a tenant because of the rumors of a roadway being built next door. He added that he is concerned about the large number of young people in the parking area on the weekends and the boisterous behavior they exhibit, as well as the bottles and debris left behind. He noted that the area between the proposed roadway and his building is very narrow.

Attorney Spinner stated that there is no demarcation (such as a fence or guard rail) indicating where his property line is and in the winter when there is a lot of snow on the ground he worries that people will trespass onto his property. He further stated that the apron in the State right of way was not installed correctly and that, as a result, vehicles entering the roadway could end up on his property by mistake. He also stated that he is concerned that this new roadway could be used by drivers as a cut-through from Clark Street to South Park Avenue.

Board members discussed the fact that the drawing submitted by the applicant does not agree with the photos provided by Attorney Spinner showing how the apron is constructed.

Attorney Spinner stated that he would like a fence or barrier of some kind indicating where the property line is, especially during the winter months. Board members indicated that they agree that a barrier of some kind would be beneficial to Attorney Spinner.

Attorney Spinner stated that he is worried about people who have been drinking at the restaurant stumbling and falling on his property and possible liability on his part. He further noted that he is concerned that proper drainage and lighting is installed.

Mr. Reilly stated that the difficult issue is the fact that Attorney Spinner's property is zoned commercial but the second story is used for residential purposes, which is considered an existing non-conforming use. He further stated that, although the Code does not require screening between commercially zoned properties and does not address situations such as this where a residential use exists on a commercially zoned property, the Planning Board does try and look out for the interests of the resident.

In response to a question from Mrs. Rogers, Attorney Spinner stated that he has never considered installing a fence on his south property line because there never has been a problem between the two properties regardless of who was occupying the building Mr. Brunner intends to demolish.

Attorney Spinner stated that he is concerned about the proposed location of the dumpster behind his property, noting that currently the dumpster is located further away from his property.

Board members discussed where the dumpster is proposed and whether there is a better location for it so that it is not so close to Attorney Spinner's property.

Chairman Koenig declared the public hearing closed.

Attorney McKenna suggested that the applicant provide a scaled plan showing both the restaurant property and proposed improvements and the improvements on Attorney Spinner's property so that if any disagreements arise there is a record of what is determined. He noted that it would be a good tool to use and should be a matter of record. He further stated that if Attorney Spinner would give a copy of his survey to the applicant's representative, the improvements on his property could be shown on the site plan along with what is proposed on the restaurant property.

The Board discussed at length where the dumpster should be located. Mr. Brunner stated that he does not see any other location for the dumpster than where it is proposed.

Mr. Reilly noted that the parking lot lighting will be shielded and the drainage will be addressed by the Engineering Department. He further stated that the issues remaining that still must be addressed are whether Attorney Spinner's property should be screened from the roadway, where the dumpster should be located and whether left turns should be allowed into and out of the entrance on South Park Avenue.

Mr. Brunner asked Board members if he will be required to install a fence along his north property line, noting that he does not know why he should have a new set of plans drawn showing a fence if he does not know if the Board at its next meeting will decide that he needs to provide one or not. He stated that if he had been told two weeks ago that he must provide a fence, it would have been shown on the current site plan.

Mrs. Yerkovich responded that the Board normally would not ask for a fence between commercial properties but it waits until input is received from the public to see if a potential problem exists.

Mr. Reilly stated that the Board cannot require a fence by Code because both properties are commercially zoned but it can ask that a fence be installed because of a public health and safety concern.

Chairman Koenig stated that, although it is not a requirement, the applicant should consider installing a fence in order to be a good neighbor.

Mrs. Rogers stated that perhaps a fence could be installed between the two properties whose cost could be shared by both property owners.

Chairman Koenig stated that the proposed site plan should be updated to include Attorney Spinner's building and any other improvements on his property. He further stated that the two property owners should meet and agree on whether a fence will be installed and who will bear the cost and the result of that agreement should be indicated on the new site plan for the Board's next meeting.

Mr. Reilly asked the applicant to review the location of the dumpster and see if there is another place it could be located.

Mr. Brunner stated that he thinks that perhaps the Board should wait and see how things play out and see if any problems arise before asking for a fence to be installed, noting that he is not trying to create a burdensome situation for anyone. He stated that if it turns out that problems are arising, he will address that situation at that time.

Attorney Spinner responded that, in his opinion, it would be too late at that point and he would have no recourse to force Mr. Brunner to address the problem. He further stated that he believes that, because Mr. Brunner is changing the situation in the area, he should be responsible for putting the fence in, adding that he would also like a guard rail installed in front of the fence so that it cannot be knocked down.

Attorney Spinner stated that he is concerned about both vehicles and pedestrians being on his property.

Mrs. Yerkovich stated that a compromise should be arrived at between the two parties so that no additional problems arise regarding the issues discussed.

Mr. Brunner stated that he does not know if he has to install a fence or if Attorney Spinner should install the fence but if the Planning Board requires that he install it in order to protect the property line, he will do so.

Board members indicated that they would consider allowing the dumpster to be placed where it is proposed if the applicant agrees to install the fence, especially since the dumpster would be enclosed inside a fence itself.

Mr. McCabe made a motion, seconded by Mrs. Rogers, 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.

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

Engineering Department comments have been filed with the Planning Department.

## **Hasenoehrl Two-Lot Subdivision**

Chairman Koenig confirmed with Mr. Hasenoehrl that he did receive a variance for lot area from the Zoning Board of Appeals on September 1, 2009.

Mr. Reilly stated that this property is located in the South Central Overlay District and that the Town of Hamburg prefers that as many trees be preserved as possible. He further stated that he sketched a plan for Mr. Hasenoehrl showing how certain areas of trees on the property could be preserved and asked Mr. Hasenoehrl to give it to his engineer to incorporate on the subdivision map. He noted that, if these trees are preserved, the property owner of each lot would still have three quarters of an acre to put in a home.

Mr. Reilly stated that a percolation test should be performed on the two lots to be sold. Mr. Hasenoehrl agreed to ask Nussbaumer & Clarke to visit the site and determine if the soil is percable. He further noted that, per the Town Code, a perc test is required for proposed lots in the South Central Overlay District.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to schedule a public hearing on this proposal for September 16, 2009. Carried.

Engineering Department comments have been filed with the Planning Department.

## **K-Technologies**

Mr. Reilly stated that the applicant plans to purchase the vacant building located on the corner of Jeffrey Boulevard and Bayview Road and that the applicant needs more parking spaces than what exists currently. He further stated that this property was part of the Ravenwood North Industrial Park, which was the subject of an Environmental Impact Statement (EIS) several years ago. He noted that when the EIS was done, one of the stipulations in the Findings Statement was that there would only be one access to Bayview Road, which was never installed and is not located where the applicant currently proposes the curb cut. He stated that the Planning Board would have to recommend to the Town Board that it pass a resolution stating that the applicant's proposed curb cut onto Bayview Road is acceptable to the Town of Hamburg.

Mr. Reilly asked the applicant (Jeff Kryszak) if the proposed parking area along Bayview Road is essential, noting that although it meets the Code it appears quite close to the road. Mr. Kryszak responded that those parking spaces are important for him to better market the part of the building nearest Bayview Road, noting that he does not intend to use the entire building for his business.

Mr. Reilly stated that he will place this issue on the Town Board's September 14, 2009 agenda so that that Board can determine if the proposed curb cut onto Bayview Road is acceptable.

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Mr. McCabe made a motion, seconded by Mrs. Yerkovich, to schedule a public hearing

on this proposal for September 16, 2009. Carried.

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

Engineering Department comments have been filed with the Planning Department.

### **Tim Horton's**

Mr. Reilly stated that the applicant proposes to demolish the existing vacant building and construct a Tim Horton's restaurant, noting that the property is located both in the Town of Hamburg and the Village of Blasdell. He further stated that he feels that the Town of Hamburg should annex the portion in the Town to the Village of Blasdell because the portion in the Town is zoned residential and if it is annexed to the Village, the Village would be able to set the zoning for it.

Mr. Reilly stated that the Village of Blasdell will be the deciding body regarding this proposal and that the Town of Hamburg Planning Board is being asked to review the proposed site plan for the project and provide input to the Village of Blasdell.

Mr. Reilly stated that he is concerned about how the incoming lane would work as shown on the site plan. Mrs. Yerkovich agreed, stating that she would hate to add any congestion to South Park Avenue.

Mr. Reilly stated that, because this restaurant would be located in a village, he would like to see walkability in this area and asked the applicant to consider installing benches on the site so that a village atmosphere is maintained.

Mr. Reilly stated that the Planning Board can forward its formal recommend on this project to the Village of Blasdell at its next meeting.

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

Engineering Department comments have been filed with the Planning Department.

### **Battery Post**

Mr. Reilly stated that the applicant proposes to construct an addition to the existing building, noting that the Engineering Department is checking to be sure that the site is in conformance with the previously approved plan.

Board members discussed the fact that it appears that the applicant installed millings instead of asphalt when constructing the previously approved parking lot expansion. Board members agreed that they would like to know which part of the parking area is to be used for parking and which is to be used for storage of golf carts.

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Mr. Reilly stated that he would like to see a less confusing site plan with what is proposed blown up so that it is easier to read.

Mrs. Yerkovich made a motion, seconded by Mrs. Rogers, to schedule a public hearing on this proposal for September 16, 2009. Carried.

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

Engineering Department comments have been filed with the Planning Department.

### **Sargeant Minor Subdivision**

Mr. Reilly stated that the property to be divided is located on the southeast corner of Sowles Road and Fairgrounds Road, noting that both of the proposed lots are in conformance with the Town Code.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe, to schedule a public hearing on this proposal for September 16, 2009. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Mrs. Yerkovich made a motion, seconded by Mr. McCabe, to approve the minutes of August 19, 2009. Carried.

The meeting was adjourned at 9:10 P.M.

Respectfully submitted,  
Stephen J. McCabe, Secretary  
Planning Board