

Town of Hamburg
Planning Board Meeting
December 6, 2017
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 P.M. on Wednesday, December 6, 2017 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O'Connell, Vice-Chairman William Clark, Doug Schawel, Dennis Chapman, Robert Mahoney and Augie Geraci.

Absent: Al Monaco

Others in attendance included Planning Consultant Andrew Reilly, Assistant Municipal Engineer Rick Lardo, Planning Board Attorney Mark Walling and Supervising Code Enforcement Official Kurt Allen.

REGULAR MEETING

Public Hearing - 7:00 P.M., Up State Tower - Requesting Site Plan Approval of a cellular tower on property located at 3725 Jeffrey Boulevard

Don Carpenter from Carpenter Consulting Group, representing the applicant, stated that a 165-foot high cellular tower is proposed that would be capable of housing up to five (5) tenants. He noted that the proposed cellular tower would be 407 feet from the nearest residentially zoned property, and therefore just Site Plan Approval would be required.

In response to a question from Mr. Mahoney, Mr. Carpenter stated that there is an existing cellular tower on Jeffrey Boulevard in the Village of Blasdell. He noted that that tower needs to be fully replaced, and the current owner would want his client to pay for that, which is not economically feasible.

Mr. Reilly informed Mr. Carpenter that the applicant must provide proof that the existing tower on Jeffrey Boulevard cannot be used by the applicant.

Mr. Schawel 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 Up State Tower Co. LLC to erect a telecommunications facility on property located at 3725 Jeffrey Boulevard. The Public Hearing will be held on December 6, 2017 at 7:00 p.m. in Room 7B of Hamburg Town Hall."

Chairman O'Connell declared the public hearing open. No one spoke.

Chairman O'Connell declared the public hearing closed.

Mr. Clark made a motion, seconded by Mr. Mahoney, to table this project and authorize the Planning Department to prepare resolutions for the Board's next meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing - 7:00 P.M., West Herr Automotive Group - Requesting Sketch Plan Direction on a proposal to construct a 3,660 sq.ft. aluminum detail shop building addition at 3510 Sowles Road

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that the proposed Site Plan has been revised to include seven (7) 2 ½' caliper Honey Locust trees along Sowles Road. He noted that these trees, when fully grown, have a 20-foot canopy.

Mr. Gow stated that the property consists of two (2) different parcels under different named ownerships that are owned by West Herr, and West Herr has combined these parcels into one (1) ownership.

Mr. Schawel 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 West Herr Automotive Group to construct an automotive detail shop addition at 3510 Sowles Road. The Public Hearing will be held on December 6, 2017 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. No one spoke.

Chairman O’Connell declared the public hearing closed.

Mr. Clark made the following motion regarding SEQR, seconded by Mr. Chapman:

“In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the site plan for the proposed West Herr Automotive Group automotive detail shop addition at 3510 Sowles Road, received input from various Town departments and held the required public hearing on December 6, 2017. Based on this review and input, the Planning Board has determined that the project is not anticipated to result in any significant adverse environmental impacts, and a Negative Declaration is hereby issued.” Carried.

Mr. Clark made the following motion regarding approval, seconded by Mr. Chapman:

“The Planning Board hereby grants Conditional Site Plan Approval with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated December 6, 2017.
- The landscaping plan shall be reviewed and approved by the Planning Department.”

Carried.

Engineering Department comments have been filed with the Planning Department.

Glenn Wetzl - Requesting Site Plan Approval of a senior housing project to be located on Southwestern Boulevard adjacent to Brookview Apartments

Attorney Peter Sorgi from Hopkins, Sorgi & Romanowski appeared on behalf of the applicant.

Mr. Reilly stated that he received a verbal correspondence from a representative of the New York State Department of Transportation indicating that it does not see a problem with this project but wants confirmation that the existing driveway on Southwestern Boulevard will be closed.

Attorney Sorgi stated that the existing curb cut was there when the applicant purchased the property. He noted that it is used for construction, and when construction is done it will be closed.

Mr. Reilly stated that the Traffic Safety Advisory Board reviewed this project, as well as the submitted traffic study, and had no adverse comments.

It was determined that 10% of the apartments in this development will have to be “affordable” as defined by the Town of Hamburg’s Fair Housing Law.

Mr. Clark made the following motion regarding SEQR, seconded by Mr. Schawel:

“In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the site plan for the proposed Glenn Wetzl senior housing development to be located on vacant land on Southwestern Boulevard, adjacent to the Brookview Apartment development, received input from various Town departments and held the required public hearing on December 6, 2017. Based on this review and input, the Planning Board has determined that the project is not anticipated to result in any significant adverse environmental impacts, and a Negative Declaration is hereby issued and the Planning Board Chair is authorized to sign the EAF.”

Carried.

Mr. Clark made the following motion regarding approval, seconded by Mr. Mahoney:

“The Planning Board hereby grants Conditional Site Plan Approval with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated December 6, 2017.
- The landscaping plan shall be reviewed and approved by the Planning Department.
- The NYSDOT concurs with the addition of this project to the existing curb cut on Southwestern Boulevard.
- The existing construction driveway will be eliminated prior to the completion of construction.”

Carried.

Engineering Department comments have been filed with the Planning Department.

Michael Jablonski - Requesting re-approval of a Special Use Permit to erect a residential wind energy conversion system on property located at 3134 Old Lakeview Road (original approval granted on May 18, 2016)

Chairman O’Connell reviewed the history of this project as follows:

The applicant was approved for a residential wind turbine (agricultural use per New York State Ag & Markets law) at a different location on his property. He then requested a use variance from the Zoning Board of Appeals to allow a second wind turbine and was denied. He then decided to move the previously approved wind turbine from its approved location to a new location, and he did not want it to be considered agricultural. The applicant and United Wind were asked to provide proof that the Town of Hamburg can take the wind turbine down if need be, and an insurance policy was submitted that was not considered acceptable by the Planning Board attorney because the Town of Hamburg was not covered adequately in the event the wind turbine needed to be decommissioned. The applicant does not want to provide a demoli-

tion bond, and he and United Wind have not presented the Planning Board with the requested documentation.

Chairman O'Connell stated that the Planning Board had three (3) options as follows:

1. Approve the project without the requirement of the demolition bond
2. Approve the project with the requirement of the demolition bond
3. Approve the project as an agricultural wind turbine, which would not include the requirement of the demolition bond

Attorney Walling stated that the contract between the applicant and United Wind states that United Wind will bear the cost of removing the wind turbine, but the Town of Hamburg is not a party to that contract. He noted that this is probably why the Town Code includes the requirement of a removal bond.

In response to a question from Chairman O'Connell, Attorney Walling stated that the requirement of a removal bond is to protect the Town of Hamburg and its residents. He further stated that if United Wind went out of business or if the applicant could no longer own the property, the property could be left with a wind turbine on it that no one would have an incentive to remove.

Chairman O'Connell asked Attorney Walling if it would be an undue burden on the applicant and United Wind to add the Town of Hamburg to the insurance policy as was requested. Attorney Walling responded that the insurance policy in place only covers personal injury and damaged property. He noted that the insurance policy is irrelevant to whether the bond is required or not.

Mr. Clark made the following motion, seconded by Mr. Chapman:

"A Residential Wind Energy Conversion System (WECS) Special Use Permit, in accordance with Article LIII of the Hamburg Zoning Code, was previously approved by the Hamburg Planning Board on May 18, 2016 for the construction of a 153.5-foot tall WECS on land owned by Mr. Jablonski located at 3134 Lakeview Road. The Planning Board also determined that the project would not result in any significant adverse environmental impacts, and a Negative Declaration was issued.

An amended SUP application was then received by the Town in July 2017 to change the location of the proposed WECS unit on this property.

The Planning Board has reviewed the amended Residential WECS Special Use Permit application for the new location of the wind turbine on this property, has held the required public hearing and determined, in accordance with Section 280-362 (Requirements for residential WECS), that:

- The WECS equipment, based on submittals by the WECS supplier, is structurally sound and will not have acoustic (sound) impacts to adjoining properties.
- The WECS unit meets the lot area, height, location and setback requirements.
- Adjacent property owners have been contacted.
- The project meets signage, color and finish, lighting, and safety and security requirements of the Code.
- The applicant has provided information to illustrate and ensure that the turbine will not impact wildlife species and habitat, interfere with television, microwave and radio reception, or interfere with navigational systems.

- The applicant has agreed to provide the required certifications and monitoring requirements of the Code.

The Planning Board, in reviewing this proposed Residential WECS Special Use Permit application also makes the following findings, in accordance with Section 280-362 F:

- a. The proposed wind turbine is located in an R-A (Residential-Agricultural) zoning district and is in accordance with the Town of Hamburg Comprehensive Plan. The project is not located in the Local Waterfront Revitalization area.
- b. The proposed relocated single wind turbine will not interfere with the orderly land use and development plans of the Town of Hamburg.
- c. The benefit to the applicant of the single wind turbine exceeds any burdens.
- d. The relocated wind turbine will not be detrimental to the public, health, safety or general welfare of the community.

Therefore, based on the previously issued SEQR Negative Declaration (the Planning Board has determined that the previously issued Negative Declaration still is valid) and the information submitted, the Planning Board re-approves the issuance of a residential WECS Special Use Permit for the new location of the WECS unit with the following conditions:

1. Clearing will not occur outside the clearing areas as shown on the plan.
2. The wind turbine will be maintained in good order and repair.
3. The applicant will provide correspondence from Mercy Flight indicating whether the wind turbine must be lit.
4. Once constructed, United Wind will conduct annual inspections of the wind turbine and provide documentation certifying that the wind turbine is in full compliance with the applicable requirements.
5. As part of the Building Permit process, a spot survey shall be provided by the applicant to assure the Town that the tower is located as approved by the Planning Board, and all applicable certifications shall be supplied.
6. The Planning Board in accordance with Section 280-362 H. waives the following requirements of Article LIII:
 - Section 280-362 C. (17) (a): "A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration." (the Bond is being waived because the WECS units will be owned by United Wind, which is, by contract, required to remove any non-operational WECS from the property)."

As the vote on the motion was four (4) ayes (Mr. Clark, Mr. Chapman, Mr. Mahoney and Mr. Geraci) and two (2) nays (Chairman O'Connell and Mr. Schawel), the motion carried.

Engineering Department comments have been filed with the Planning Department.

Planning Board review of proposed Town Code amendments

Mr. Reilly explained the miscellaneous Code revisions proposed.

Regarding the revision to the Code relative to bed & breakfast establishments, tourist homes and air bnbs, Mr. Allen stated that currently these establishments are restricted to R-A and R-E zoning districts, and bed & breakfasts must be supervised by a full-time resident.

In response to a question from Mr. Mahoney, Mr. Allen stated that the Code revision would include air bnbs in the provisions regarding tourist homes.

Mr. Allen stated that these establishments need to be regulated because of the potential for property owners experiencing their neighbors' homes used by different people coming and going.

Mr. Allen stated that currently air bnbs are not defined in the Code, and the revision to the Code will allow for that.

In response to a question from Mr. Geraci, Mr. Allen stated that currently the only restrictions on parking RVs on one's property is that they have to be placed on a paved surface.

Regarding the residential wind energy conversion systems (wind turbines), Mr. Reilly stated that currently only one (1) residential wind turbine is allowed per lot. He stated that he wrote a revision to the Code that allows two (2) residential wind turbines if a property owner has 20 acres of land or more, and it increases the minimum height of the wind turbines. He noted that the Code Review Committee recommended against that revision to the law because that Committee is concerned about the proliferation of residential wind turbines in Hamburg. He stated that the Town Board is still interested in proceeding with the Code revision.

Mr. Reilly stated that he has recommended adding the following clarifications to the amended Code:

- "It must be clearly understood that by definition of a residential wind energy conversion system, these types of systems are not allowed on vacant land."
- "A second wind turbine will only be considered on a property that includes at least two (2) allowable uses on a site that would warrant the construction of two (2) wind turbines."

A lengthy discussion followed regarding the above.

In response to a comment from Mr. Chapman, Mr. Allen stated that his correspondence to the Planning Board regarding the proposed amendment to the Code allowing two (2) wind turbines reflects the consensus of why the Code Review Committee rejected this proposed amendment.

Mr. Allen asked Board members to read his correspondence and noted that the Code Review Committee spent a lot of time on the original legislation regarding residential wind turbines, which was a response to one (1) application. He stated that the key issue is aesthetics, and the Code Review Committee views these structures like they view cellular towers, which have the same visual impacts.

Councilman Best made some remarks on the above issue.

Mr. Allen stated that Mr. Reilly's proposed clarifications to the Code were written after he (Mr. Allen) wrote his correspondence. He noted that he agrees with Mr. Reilly's clarifications.

Chairman O'Connell stated that the Planning Board will hold a Special Meeting on Friday, December 15, 2017 at 6:00 P.M. to further discuss the proposed Code amendments and provide recommendations to the Town Board.

OTHER BUSINESS

Mr. Schawel made a motion, seconded by Mr. Mahoney, to approve the minutes of November 15, 2017. Carried.

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

Respectfully submitted,
Doug Schawel, Secretary
December 12, 2017