

Town of Hamburg  
Planning Board Meeting  
January 18, 2012  
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting on Wednesday, January 18, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Vice-Chairman Sasha Yerkovich, Gerard Koenig, Stephen McCabe, David Bellissimo, Doug Schawel and Dan O'Connell.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo and Councilman Collins.

Chairman Reszka welcomed the two new members, Doug Schawel and Dan O'Connell. He also thanked Karen Rogers for the wonderful job she did during her tenure as Planning Board member.

Chairman Reszka stated that the Board made the appointments of Vice-Chairman and Secretary for 2012 at its January 4, 2012 meeting, but would vote again at this meeting so that the new members could take part in the vote.

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to appoint Sasha Yerkovich as Vice-Chairman and Steve McCabe as Secretary. Carried.

**Public Hearing, 7:00 P.M., Wanakah Pharmacy (4923 Lakeshore Road)**

Mr. Bellissimo made a motion, seconded by Mr. McCabe, to remove this item from the table. Carried.

Mr. McCabe read the following public hearing notice:

"Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on a proposal by the Wanakah Pharmacy located at 4923 Lakeshore Road. The applicant proposes to construct improvements to a parking lot behind the pharmacy building. In accordance with the Town of Hamburg site plan ordinance, a Public Hearing will be held on January 18, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall."

Mike Borowiak from Nussbaumer & Clarke, representing the applicant, stated that a deteriorating gravel parking lot exists behind the building that is accessed currently from Orchard Avenue. He further stated that the property is zoned Neighborhood Commercial along Route 5 and R-2 behind the building. He noted that five (5) feet of green space is proposed between the parking lot to be improved and the existing parking lot to the south of this property. He further stated that ten (10) feet of green space is also proposed along Orchard Avenue.

Mr. Borowiak stated that the applicant attempted to work out a cross-easement agreement with the owner of the parking lot directly to the south but was not successful. He further stated that all of the Engineering Department comments have been addressed.

Mr. Borowiak stated that the applicant would like to improve this parking area in order to better serve his patrons who live to the east of this property who would rather not drive out onto Route 5 to access the pharmacy and who would rather access it from Orchard Avenue. It was further determined that some of the applicant's patrons have been parking in the Wilson Farms parking lot and accessing the pharmacy from there, and the owner of the Wilson Farms will not

allow this to continue.

Mr. Reilly stated that a parking lot is not allowed in an R-2 zone but the Supervising Building Inspector, Kurt Allen, has determined that the parking lot is an existing non-conforming use. He further stated that the Code requires that parking areas be located at least 35 feet from the road and, because the applicant proposes to locate it ten (10) feet from Orchard Avenue, a variance will be required from the Zoning Board of Appeals.

Board members discussed the possibility of the applicant installing a chain across the entrance from Orchard Avenue to deter people from parking in the lot after hours.

Chairman Reszka noted that the applicant has taken great care to avoid the large trees on the property.

In response to a question from Chairman Reszka, Mr. Lardo stated that the applicant has addressed the Engineering Department's comments.

Chairman Reszka read the following letter from Kurt Allen to the Planning Board:

"After reviewing aerial photos of the subject parcel (dated 2008) and recently visiting the site, there is sufficient evidence to conclude that parking behind the pharmacy has been previously established. As a result, parking in this particular location accessory to the pharmacy should be considered as a permitted nonconforming use. This is important to note as it is located in an R-2 Single Family Residence, Detached District. In addition, there is no evidence to suggest that discontinuance ever occurred pertaining to this parking area. Reference Zoning Code Section 280-284 through 280-289. The area of this off-street parking area is, however, not clearly defined. Combined with this fact and that the owner wishes to make certain improvements in terms of hard surface pavement and curbs, all area regulations and requirements associated with off-street parking in the Town Zoning Code should apply. I appreciate the Planning Board's consideration in this regard."

Mr. Reilly stated that because this parking area is considered an existing non-conforming use, no commercial uses will be allowed other than a private parking lot.

Chairman Reszka declared the public hearing open. No one spoke.

Chairman Reszka declared the public hearing closed.

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

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to forward a positive recommendation to the Zoning Board of Appeals regarding the applicant's request for a 25-foot variance to install parking spaces ten (10) feet from the property line in an R-2 zone. The recommendation is based upon the plan dated 1/17/2012. Carried.

Mr. McCabe made a motion, seconded by Mr. Bellissimo, to grant Conditional Site Plan Approval for this project with the following conditions:

- Approval is contingent upon the applicant receiving a variance from the Zoning Board of Appeals to install parking spaces ten (10) feet from the Orchard Avenue right-of-way.
- Approval is contingent upon the Engineering Department comment letter dated 1/18/2012.
- In order to avoid any cut-through traffic, there will be no access from the parking area to Route 5.

- Some attempt will be made (a chain, signage, etc.) to block the entrance to the parking area from Orchard Avenue in order to discourage after hours and overnight parking.

Carried.

Engineering Department comments have been filed with the Planning Department.

**Public Hearing, 7:00 P.M., Scranton Road Minor Subdivision (5517 Scranton Road)**

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to remove this item from the table. Carried.

Mr. McCabe read the following public hearing notice:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a Public Hearing on a two-lot subdivision known as the Scranton Road Two-Lot Subdivision to be located at 5517 Scranton Road on January 18, 2012 in Room 7 B of Hamburg Town Hall at 7:00 P.M.”

Attorney Robert Battista, representing the applicant, stated that his client wishes to subdivide an existing lot into two (2) separate lots. He noted that the property to be divided currently has a home on it and the applicants wish to create a second lot and sell it sometime in the future.

Mr. Reilly stated that this request meets all Town zoning requirements and that the property is zoned R-3, which allows single family homes, duplexes and apartments. He noted that if the Planning Board approves this subdivision, it will be approving it for a single-family home only.

Chairman Reszka declared the public hearing open. No one spoke.

Chairman Reszka declared the public hearing closed.

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

Mrs. Yerkovich made a motion, seconded by Mr. Koenig, to grant Preliminary Approval for this subdivision with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated January 18, 2012.
- The filing of a Map Cover is waived.
- The installation of sidewalks is waived.

Carried.

Engineering Department comments have been filed with the Planning Department.

## Yoviene Subdivision

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to remove this item from the table. Carried.

Mr. Reilly reminded the Board that at the public hearing held for this proposed subdivision there were several issues raised by the Planning Board, as well as members of the public. He noted that the applicant's representative has been addressing the issues raised at the public hearing and would update the Board regarding the research that has been done so far.

Mike Borowiak from Nussbaumer & Clarke, representing the applicant, stated that comments were received from the public, as well as from the New York State Department of Environmental Conservation (NYSDEC) and Erie County Department of Environment & Planning (ECDEP). He reviewed the comments received as follows:

- There is a concern that there is a municipal waste dump on the property. The applicant has been advised to have an environmental study done regarding this concern and the applicant has indicated that there was a dump on the southern portion of this site. A report was prepared approximately 15 years ago to address this issue and the applicant will attempt to find it in his archives. If he cannot, a new study will be performed.
- There was a comment that farm ponds were once located on this property. The applicant has no evidence of this.
- The NYSDEC has indicated that the wetland HB-7 that exists on the site may have grown in size since originally mapped. The applicant has contracted with Wilson Environmental Technologies (WET) to delineate the wetlands as they presently exist on site. WET found a federal wetland area that Nussbaumer & Clarke has located on the site and is finishing up the investigation to identify the State wetland on the property. All of the wetlands shown on the preliminary plan have been physically field-located. These wetland areas will not be disturbed.
- WET will handle any permitting issues with the United States Army Corps of Engineers (USACOE) that may be required.
- Engineering design plans have been submitted to the ECDEP and the Hamburg Engineering Department for sanitary sewer extensions.
- The applicant hired a certified consultant to provide downstream capacity monitoring and analysis, which has been completed and will be made part of the Engineer's Report to Erie County and the Town Engineering Department for review.
- The applicant has been directed to hire a consultant to do a Phase I archaeological site investigation.
- There is no proposed disturbance within 50 feet of a protected stream.
- The project has been designed in accordance with NYSDEC storm water regulations.
- ECDEP has indicated that the Town should consider requiring the applicant to interconnect the proposed roadway with existing streets. That option was seriously considered in the initial planning stages, but it is not possible to make the connection without disturbing the wetland area that abuts the property to the west.
- The applicant's representative will work with the Town of Hamburg to complete an agricultural data statement.

- Plans for the connection to Taylor Road were submitted to the Erie County Highway Department in November 2011 for review and comment.
- The site distances at the proposed entrance were verified by Nussbaumer & Clarke traffic engineers to be in excess of 500 feet in each direction. That section of Taylor Road has a posted speed limit of 30 mph.

Mr. Lardo stated that the proposed name of the subdivision must be changed because it was used for another subdivision in the 1950s.

Bob Mahoney, 6649 Taylor Road, asked what the time line might be for the approval of this subdivision.

Roseann Mumbach, 6662 Taylor Road, stated that she has problems with water coming into her yard and is concerned about the drainage from this subdivision. She also has concerns about the sewer lines on Taylor Road, noting that she has had water back up into her laundry tub when it rains very hard and has been told that the problem stems from the sewer lines.

Jeff Yoke, 6658 Taylor Road, stated that the project site drains into his and the Mumbach's yards and his back yard becomes a swamp when it rains.

Mr. Borowiak responded that the applicant is not allowed to create a design that increases the impact of surface water drainage onto other properties. He further stated that the applicant is required to contain whatever water is on his site, put it into a system and then release it safely.

Regarding the sewer lines on Taylor Road, Mr. Borowiak stated that the required study has been completed by the applicant's consultant and that, to the best of his knowledge, there are no capacity issues in the sewer lines.

It was determined that if this project is approved, the applicant will probably be required by Erie County to make improvements to the sewers in the area.

John Mumbach, 6662 Taylor Road, asked if the applicant proposes to construct homes on the area where the dump was. Mr. Reilly responded that the applicant is not proposing to affect that area at all.

Alfred Zobilesky, 6490 Taylor Road, stated that he grew up in this area and asked whether, if the Town receives the unused portion of this site as a gift, Mr. Yoviene will guarantee that the ground where the dump was will be stable and properly capped.

Mr. Reilly stated that the Town Board may not want to take ownership of the unused land.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to table this project. Carried.

### **Crown Court, LLC (vacant land in front of Wal-Mart)**

Mr. Bellissimo made a motion, seconded by Mrs. Yerkovich, to remove this item from the table. Carried.

Mike Borowiak from Nussbaumer & Clarke, representing the applicant, stated that the proposal is to build a 9,500 sq.ft. building as an outparcel of the Wal-mart Supercenter on Southwestern Boulevard. He further stated that access to the site from the Wal-mart parking lot has been relocated so as to line up with an existing drive aisle in the parking lot. He noted that all of the existing infrastructure within the plaza will be utilized.

In response to a question from Mr. Reilly, Mr. Borowiak stated that elevations of the building (all four sides) will be submitted to the Planning Board for its review.

Mr. Reilly stated that he would like to see additional landscaping shown in the area of the

depressed swale for storm water in front of the building.

Mrs. desJardins stated that, per the Southwestern Boulevard Overlay District requirements, a landscaping plan must be submitted prepared by a Registered Landscape Architect and one (1) street tree must be shown for every thirty feet of road frontage along Southwestern Boulevard.

Chairman Reszka asked that additional landscaping be shown in the area of the proposed dumpster.

In response to a question from Chairman Reszka, Mr. Borowiak stated that he believes that the applicant plans to have signage on the building.

Mr. Bellissimo made a motion, seconded by Mr. Koenig, to schedule a public hearing to be held on February 15, 2012. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Bayview Road/Route 5 Business Park Pre-Permitted Site Incentive Concept Application**

Paul Neureuter, President of the Krog Corporation stated that his company has been selected by the Hamburg New York Land Development Corporation (HNYLDC) to be the designated developer of the Lake Erie Commerce Center.

Mr. Reilly reviewed the Draft Supplemental Generic Environmental Impact Statement (DSGEIS) and the Pre-Permitted Site Incentive process. He further stated that he would like the Town to authorize him to make the DSGEIS available to the public, distribute it to the involved and interested agencies and hold public hearings on the document.

Mr. Reilly stated that after comments are received on the document, the Planning Board will determine which comments are substantive and how they must be addressed.

Mr. Reilly stated that he found in his research that this property is not an Important Bird Area (IBA), as previously thought.

Mr. Reilly stated that the biggest issue to be addressed is traffic, noting that if the proposed development generates peak trips of more than 100 – 125 car trips per hour, the intersections fail. He further stated that in that event, the mitigation proposed years ago when this business park was approved would have to be implemented, which would be to establish a new lighted intersection at Route 5 (a total realignment).

Mr. Reilly stated that if a proposed project will generate, for example, 60 vehicle trips per hour a driveway onto Bayview Road will be allowed.

Mr. Reilly stated that in reading the intent of the Route 5 Overlay District regarding architectural standards, it is clear that the intent is not to require industrial uses to have nautical themes.

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to recommend that the Town Board accept the DSGEIS as ready for public review. Carried.

**OTHER BUSINESS**

In response to a question from Chairman Reszka regarding the Long's Floor Care project, Mrs. desJardins reported that the Building Inspection Department has placed a Stop Work Order on the project because work was begun without a Site Work Permit. She further stated that the approved Site Plan indicated that 44 feet of trees that were to be cleared for the driveway and swales on either side, but more than 44 feet of trees were cleared.

Mrs. desJardins stated that along with not obtaining a Site Work Permit, the applicant did not adhere to the condition of approval that he was to flag the area of trees to be left so that the excavator would know exactly which area of trees was to be cleared.

Chairman Reszka stated that he was advised by Planning Board Attorney Cheryl McFadden Zak that the Planning Board cannot revoke the applicant's approval per the Town Code.

Mrs. Yerkovich stated that putting economic penalties in place when an applicant violates a Planning Board resolution would be appropriate.

Mr. McCabe suggested withholding the applicant's Certificate of Occupancy because he did not comply with the approved Site Plan.

It was determined that the applicant will be required to return to the Planning Board to discuss this issue.

Mr. Koenig made a motion, seconded by Mr. Bellissimo, to approve the minutes of January 4, 2011. As there were four (4) ayes and three (3) abstentions (Mrs. Yerkovich, Mr. O'Connell and Mr. Schawel), the motion carried.

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to adjourn the meeting. The meeting was adjourned at 8:40 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: January 11, 2011