

Town of Hamburg
Planning Board Meeting
October 3, 2012
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting on Wednesday, October 3, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Stephen McCabe, Gerard Koenig, Daniel O'Connell, David Bellissimo, Sasha Yerkovich and Doug Schawel.

Others in attendance included Andrew Reilly and Richard Lardo

Suburban Adult Services

Mr. Reilly stated that correspondence was received from the Erie County Department of Environment & Planning indicating that approval of the project is recommended.

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

Mrs. Yerkovich made the following motion, seconded by Mr. Bellissimo:

In regards to SEQR, the Town Board, acting as SEQR Lead Agency, issued a Negative Declaration on August 20, 2012 when it approved the applicant's request to rezone this property. The negative declaration considered the entire project – the rezoning and the proposed development. Since that time, no changes have been made to the proposal or related site plan, both of which are in conformance with the issued Negative Declaration. Therefore, the Planning Board, as an Involved Agency, does not have to make a SEQR decision.

The Hamburg Planning Board hereby issues Site Plan Approval for the 12-unit apartment building proposed by Suburban Adult Services, Inc., based on the site plan dated June 2012 and received by the Planning Department on September 14, 2012, with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated October 3, 2012.
2. This approval is for one (1) apartment building. If/when the applicant wishes to construct a second building, site plan approval will be required at that time for this second building.
3. No further development beyond two (2) buildings will be allowed on this property.
4. A conservation easement shall be provided in the name of the Town of Hamburg in order to permanently protect the existing vegetation within that area as depicted on the Site Layout Plan prepared by William Schutt Associates (Drawing No. C-3 and dated June 2012.), per the condition of Rezoning. The easement shall be reviewed and approved by the Town Attorney or Planning Board Attorney, and recorded in the Erie

County Clerk's office. Signage will be installed indicating the location of the conservation easement area (at least one sign on each corner).

5. No future access will be granted to the surrounding paper streets or to Willet Road.
6. The requirement for the installation of sidewalks is waived.

Carried.

Engineering Department comments have been filed with the Planning Department.

Boston State Holding Co., LLC – Rezoning from R-2 to R-3

Chairman Reszka thanked everyone for the input received. He further stated that, because there are different views on this proposed rezoning and it is a recommendation to the Town Board, he would be making a motion and explaining his reasons for such motion. He stated that if there is a second to his motion, he would ask that person to explain his or her reasoning at that time. He further stated that if there is no second to his motion, someone else would have to make a motion and explain the reasoning behind it.

Chairman Reszka stated that each member would be asked to explain how he or she is voting on the rezoning request so that all of the concerns that have been taken into consideration are documented, and the entire minutes and record of each person's reasoning for his or her position will be forwarded to the Town Board for its review.

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

Chairman Reszka made the following motion:

"I hereby make a motion that the Planning Board sends a positive recommendation to the Town Board regarding the rezoning request for the property in question on Howard Road. In support of this motion, I offer the following:

1. The proposed rezoning is in accordance with the Comprehensive Plan. This area of the Town was designated for consideration for rezoning to R-3, keeping in mind the character and makeup of the surrounding area. To the east and south of the site we have Commercial zoning & commercially developed properties. To the north there is R-4 zoning represented by large trailer courts. To the east, there is R-2 zoning which has been developed as single family housing. This zoning does not prohibit the conversion of any property in the area to two family uses at any time. In addition, this rezoning to R-3 will create a logical progression of zoning in the area.
2. This Board is making a recommendation on the rezoning of a parcel and not approving a site plan. Consideration of a rezoning of the site must be done with not only the proposed site plan in mind but the effects that may occur if the proposed plan is not constructed for whatever reason. Site plans come and go but if rezoned, the R-3 designation will remain. My opinion takes both of these factors in to account.

3. The environmental concerns stated by the residents have already been substantially addressed. There is already an approved site plan for construction of a cluster configuration development of two family housing. In order for this site plan to be approved, the issues of flooding, storm water treatment, storm sewer capacity, sewage capacity, encroachment on the sensitive area around the creek and other environmental factors were addressed. An update of the review may be needed before any development on the site but the major points have been settled.
4. A larger Conservation Area will be created as a result of this rezoning. Currently, a 100 foot Conservation easement exists on the eastern portion from the center of the creek bed, affecting every residential property immediately adjoining the site on the eastern side. This was created in an attempt to protect natural resources and also to create a buffer between the residents on Heatherwood Drive and any development that may occur on the area of the proposed rezoning. If the property is rezoned and this project is built, an additional 50 foot Conservation area would be created on the western side of the creek, preserving additional natural resources and providing a larger buffer for the residents. In the event that this project is not built, a condition of the rezoning should be that a minimum 50 foot buffer is mandatory for any development on the site.
5. There is no encroachment on the existing Conservation Area. As stated previously, the proposed 50 foot buffer is an addition to and not a subtraction from the existing area. While I do not think that the residents in the surrounding area are in complete agreement with this proposed rezoning, it must be stated for the record that the petition presented to this Board was misleading in that it suggested that any rezoning and subsequent construction on the site would encroach on the existing Conservation Area as approved.
6. There will be a minimal increase in traffic on Howard Road due to an R-3 zoning. The recent traffic survey provided by the Town Police shows that usage of Howard Road is moderate and the majority of drivers obey the speed limit. Taking in to account the truncated nature of the study as well as the time of year in which it was completed, traffic volumes generated on the street are not going to be substantially affected by any construction on the site if rezoning to R-3 occurs.
7. The intersection of Camp Road & Howard Road will not be substantially degraded. There is no doubt that this intersection is not as safe as anyone would like. There is no doubt traffic generated by construction on site due to a rezoning to R-3 would add to the traffic volumes. This would also be true to a slightly lesser extent if the currently approved cluster development is constructed. Opposing the rezoning until such time as the State installs a signal at the intersection places an unfair burden on the property owner as there is no guarantee that the signal will ever be installed and if it is, the time table involved.
8. Proper Maintenance of the buildings constructed is not a factor in the rezoning. This is a concern in every neighborhood in the Town. However, we are rezoning a parcel of land and not approving a site plan. Anything constructed on the site would be monitored both during and after construction by the Town Code Enforcement Officer and his staff of Building Inspectors.

9. There is a lack of available R-3 zoned properties in the Town. As show on the map prepared at the request of this Board by the Planning Department, there are few available R-3 zoned parcels remaining in the Town. The Comprehensive Plan states that development should be encouraged in areas of the Town where infrastructure currently exists to both combat suburban sprawl and infill existing areas. All utilities are currently available to this site and appropriate infrastructure exists. There have been several apartment complexes approved by this Board in recent years but the majority have been senior related and there is no guarantee that and approved projects will ever be built.
10. This rezoning will position the Town to meet future residential needs. The current generation has different views on housing than are considered the norm at this time. They have little or no desire to purchase or even become tenants in 2,500 or 3,000 square foot homes. The current trend, which is predicted by most planners to continue into the future, is for significantly smaller residences in areas with a higher population density and requiring little of no maintenance. Apartments and Condominiums are predicted to be in greater demand with a glut of the current housing stock starting as the larger homes would be more difficult to sell.
11. The age, race and income levels of occupants of any structures constructed on this site, regardless of zoning, may not be a part of any consideration in a rezoning request. Any consideration of these factors is discrimination which is expressly prohibited by law.

I offer these as rationale for my opinion that a favorable recommendation on the rezoning request should be forwarded to the Town Board.”

Mr. Bellissimo seconded Chairman Reszka’s motion, stating that he based his opinion on the Town’s Comprehensive Plan. He further stated that a recent correspondence from Attorney Hopkins gives the Board a clear indication of the conservation easement and how it is defined, as well as confirming that this project would not encroach on the existing conservation easement associated with the homes on Heatherwood Road. He stated that the proposed buffer area is larger in some areas than what was previously approved, and the effect of the additional traffic generated by this project would be somewhat minimal. He stated that he does not believe that the applicant would build the project and then sell it, but even if that were to happen, he cannot see the purchaser of the development letting it decay. He stated that the Comprehensive Plan indicates that the Town should balance the growth to provide for all incomes and age levels. He stated that he sees this project as a positive to the community.

Mr. Koenig stated that he believes that the Comprehensive Plan maps indicate that this is a high density area, and R-2 or R-3 zoning would be acceptable. He stated that the proposed conservation easement area is adequate for this development, noting that many nearby residents are worried that green space will be lost when in fact it will be enhanced. He stated that whether this is an R-2 development or R-3 development, when one compares the amount of traffic that is already in the area, the added traffic from the new development would be insignificant. He stated that he supports Chairman Reszka’s motion.

Mr. Schawel stated that he supports the Chairman's motion, noting that the Comprehensive Plan points to this area as a buffer between the commercial zoning and the R-2 zoning. He stated that there is a very adequate buffer between this property consisting of an existing conservation easement area from the rear of the Heatherwood Road lots to the creek, as well as an additional conservation easement area from this same creek to the proposed new lots, noting that the combined conservation area would be from 100' to over 200'. He stated that traffic, although increased, would not be significant in terms of the State and County Highway departments. He stated that the letters and petition received against this proposed rezoning did not address the specific reasons for the zoning change from R-2 to R-3 but rather the arguments revolved around not having any development on this property at all, which would probably be the case no matter what zoning the applicant was requesting.

Mrs. Yerkovich stated that she also supports the Chairman's motion in light of the fact that the neighbors' major concern about the buffer encroachment is actually quite the opposite, since it would be increased with the proposed development. She stated that the property will be developed eventually, noting that a cluster development was previously approved for the site. She stated that this proposal may be the best way to insure that this size of a buffer between the two developments will be in place. She stated that surrounding zoning supports this transition, noting that R-4 zoning exists to the north and commercial zoning to the west. She stated that the Comprehensive Plan absolutely supports this type of development in this area.

Mr. O'Connell stated that up until a very short time ago he was against this proposal. He stated that he read all of the information provided to the Board by the applicant and the neighbors many times and now is in favor of the requested rezoning. He stated that the project is in line with the Town's Comprehensive Plan. He stated that he likes the fact that the proposed development's exit is close to Camp Road because the traffic to the site will not be going through the adjoining neighborhood and therefore will not increase its internal traffic volume. He stated that the buffer between the existing homes on Heatherwood Drive and the new development will be increased, and a smaller number of units is proposed than what was previously approved for this site. He stated that the request does support the surrounding zoning.

Mr. McCabe stated that he could not support a positive recommendation to the Town Board for the Howard Greens rezoning. The following are the three major reasons for his decision:

Number 1: He does not see any urgent need for additional high-density residential housing in this part of Hamburg. In the immediate vicinity of the proposed rezoning, the following recent apartment or high-density residential developments are either built, approved, or well into the design stage:

- Mission Hills, on Camp Road approximately three-quarters of a mile west of the Howard Greens site, has completed only the first of three phases that will total 339 units, according to the FEIS completed for the project.
- South Pointe, an apartment complex approved by this board several years ago on Southwestern Boulevard between the Frontier BOCES building and Autumnview, contains 120 units and has current vacancies.

- This board approved Brook View Luxury Apartments, across from South Pointe and about a quarter-mile south on Southwestern. At full build-out, it will contain 168 apartment units.
- The Waterfront Studio Apartments, approximately 40 units in Athol Springs, was approved by the Board last year and has recently been completed.

Mr. McCabe stated that the above-mentioned developments that are new, under construction, or planned are in addition to existing, older apartment complexes, such as Lake Heights, on the north side of Rodgers Road, and Emerald Greens, across the street from it on the south side of Rodgers; and Maplewood Apartments and Bethel Estates, both on Southwestern across from South Pointe. He stated that he is not convinced there's any immediate or desperate shortage of apartment complexes in this part of Hamburg--let alone one that might justify a rezoning.

Number 2: He can find no evidence of any hardship on the developer's part that might justify a rezoning. He stated that the property is undeveloped and was purchased by the developer with R2 zoning in place. The site has an approved cluster development plan for 23 units that, in his opinion, would do an excellent job of complying with the recommendation from the Comprehensive Plan to strive for "open space protection and maintain community character."

Number 3: He stated that neighbors and nearby residents to the proposed development have been clear in expressing that they do not want the Howard Greens parcel rezoned. He stated that since this plan has been introduced, he has not heard public comments or read correspondence from a single nearby resident expressing support for the proposed apartment project. He stated that, in this regard, the neighbors appear to share a sentiment reflected in the Comprehensive Plan. Two separate surveys conducted during the *2010 Comprehensive Plan Update* process asked Hamburg residents whether they felt their town needed additional residential development, and, if it did, what type of development that should be. Of the seven choices listed, apartments ranked dead last, with scores of "zero" in both surveys (pp. 84 and 86). He stated that he finds it impossible to support this rezoning without ignoring the clear sentiment of not only the proposed project's neighbors but of Hamburg residents in general. He stated that he can think of no benefit that would accrue to the neighbors if this parcel were rezoned from R-2 to R-3.

Chairman Reszka called for a vote on his motion to forward a positive recommendation to the Town Board regarding this rezoning request from R-2 to R-3. As the vote on the motion was six (6) ayes and one (1) nay (Mr. McCabe), the motion carried.

Chairman Reszka made a motion, seconded by Mr. Bellissimo, to recommend to the Town Board that, if this rezoning request is ultimately approved, the following condition be placed on the approval:

A fifty-foot buffer shall be provided, regardless of what project is placed on this property.

Carried.

Mr. Reilly stated that the Town Board will schedule a public hearing on this rezoning request and all property owners within 500 feet of this property will receive a notice by mail indicating the date of the public hearing. He further stated that the minutes from this meeting will be

published after they are approved by the Planning Board and will be put on the Town's website.

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Mr. Bellissimo made a motion, seconded by Mr. Koenig, to approve the minutes of September 19, 2012. Carried.

Chairman Reszka stated that he has asked the Code Review Committee to research whether the Town can refine the existing rules regarding conservation areas to tighten them up and make sure they can be enforced. He further stated that many of the Town's conservation areas have been encroached upon by residents, perhaps unknowingly.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 7:45 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: October 15, 2012