

Town of Hamburg
Planning Board Meeting
July 10, 2013
Minutes

The Town of Hamburg Planning Board met for a Work Session at 6:30 P.M., followed by a Regular Meeting at 7:00 P.M. on Wednesday, July 10, 2013 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Stephen McCabe, Doug Schawel, David Bellissimo, Sasha Yerkovich, August Geraci and Dan O'Connell.

Others in attendance included Andrew Reilly and Sarah desJardins, Planning Consultants, Richard Lardo, Assistant Municipal Engineer and Councilwoman Amy Ziegler.

Chairman Reszka stated that the applicant for the Ralph Sardo project, as well as the applicant for the Willow Woods Subdivision project, had asked that the project be left on the table until the Board's next meeting.

WORK SESSION

Daniel Plesac (6595 Gowanda State Road)

Mr. Reilly stated that the applicant proposes to rezone this vacant property from C-1 to NC (Neighborhood Commercial) so he can construct a home on it.

Mr. Dan Plesac, applicant, stated that the nature of the lot does not lend itself to commercial activity and he would like to build a home on the property.

Mr. Reilly stated that a condition of approval of this rezoning would be that the applicant must construct a turn-around driveway so that he would not have to back out of the driveway.

Mrs. Yerkovich made a motion, seconded by Mr. O'Connell, to forward a positive recommendation to the Town Board regarding Dan Plesac's request to rezone the property from C-1 to NC. Carried.

Mrs. Yerkovich amended her previous motion, seconded by Mr. O'Connell, to include the condition that a turn-around driveway be constructed. Carried.

David Brooks (4481 Lakeshore Road)

Mr. Bellissimo stated that he would be recusing himself because he made statements in favor of the proposed sign at the Zoning Board of Appeals meeting.

Chairman Reszka stated that, although Mr. Brooks is his pharmacist, he has been advised by counsel that he does not need to recuse himself because he has no financial interest in the business.

Chairman Reszka stated that the applicant received a variance for an electronic variable message sign from the Zoning Board of Appeals (ZBA), and one of the conditions of approval was that the sign design must be reviewed by the Planning Board. He noted that the Planning Board must review this sign in the context of the Route 5 Overlay District requirement that prohibits such signs, although the Planning Board can waive this requirement.

Mr. Reilly stated that the Town Board is considering abolishing the section of the Town Code that deals with the Route 5 Overlay that states that electronic signboards will be used to report the time and temperature only. He noted that this constitutes regulating content, which is not allowed.

Mr. David Brooks, applicant, stated that the sign would project approximately three (3) feet from the building (as does the existing sign it will replace) but will be one (1) foot higher than the existing sign. He noted that the existing sign has been hit by trucks several times.

Mr. Brooks stated that the reason he wants an electronic variable message sign instead of a back lit sign is that electronic variable message signs are the way of the future and technologically advanced. He further stated that the existing sign has been up for over 25 years and has faded. He noted that the pharmacy will be limited to changing the sign two (2) times per day per the ZBA approval.

Mr. Brooks stated that a nautical theme will be on the sign when the pharmacy is closed.

In response to a question from Chairman Reszka, Paul Fadale from NAS Sign Company stated that this sign will not be any brighter than any florescent sign in the area. He noted that the sign can be dimmed to 30% at dusk, and that can be seasonally changed.

Mrs. Yerkovich stated that she appreciates the applicant's attempt at aesthetics, dimming the sign, etc.

Chairman Reszka stated that he likes the proposed sign and feels it is nicer than the existing signs in the area.

Mrs. Yerkovich made a motion, seconded by Mr. O'Connell, to advise the Supervising Code Enforcement Official that the Planning Board has reviewed this sign's design and sends a positive recommendation. The sign is in keeping with the neighborhood and in fact is an improvement over the many pole signs in the area because scenes will be put on the sign when it is not operational that are in keeping with the lake area theme. Carried.

REGULAR MEETING

Public Hearing - Patricia DiChristopher

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 two-lot subdivision proposed by Patricia DiChristopher to be located on the north side of North Creek Road, west of Burke Road. The public hearing will be held on July 10, 2013 at 7:00 P.M. in Room 7B of Hamburg Town Hall."

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

Chairman Reszka declared the public hearing closed.

In response to a question from Chairman Reszka, Mrs. desJardins stated that no correspondence had been received regarding this proposal

Mrs. Yerkovich made the following motion, seconded by Mr. O'Connell:

"Based on the review of the EAF and the subdivision submittal form, the Hamburg Planning Board has determined that the proposed Patricia DiChristopher minor subdivision will not have a

significant adverse impact on the environment and therefore the Hamburg Planning Board issues a Negative Declaration. Furthermore, based on the review of the minor subdivision application and input received, the Hamburg Planning Board hereby issues Preliminary Plat Approval for the Patricia DiChristopher minor subdivision with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated July 10, 2013.
2. The filing of a Map Cover is hereby waived.
3. Recreation fees in lieu of land will be required.”

Carried.

Engineering comments have been filed with the Planning Department.

Public Hearing - Elizabeth Fadale

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 two-lot subdivision proposed by Elizabeth Fadale to be located at 2571 Lakeview Road. The public hearing will be held on July 10, 2013 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

Mr. Reilly stated that he would be recusing himself because his firm, of which he is an owner, did provide the survey services for this project.

Mrs. desJardins stated that no correspondence has been received since the Board's last meeting.

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

Chairman Reszka declared the public hearing closed.

Mrs. Yerkovich made the following motion, seconded by Mr. O'Connell:

“Based on the review of the EAF and the subdivision submittal form, the Hamburg Planning Board has determined that the proposed Fadale minor subdivision will not have a significant adverse impact on the environment and therefore the Hamburg Planning Board issues a Negative Declaration. Furthermore, based on the review of the minor subdivision application and input received, the Hamburg Planning Board hereby issues Preliminary Plat Approval for the Fadale minor subdivision with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated July 10, 2013.
2. The filing of a Map Cover is hereby waived.
3. Recreation fees in lieu of land will be required.”

Carried.

Engineering comments have been filed with the Planning Department.

Public Hearing - Nidus Development

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 Nidus Development. The applicant proposes to demolish the existing restaurant on property located at 5793 South Park Avenue and construct a two-story medical office building and an immediate care facility. The Public Hearing will be held on July 10, 2013 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Lowell Dewey from C & S Engineers, representing the applicant, stated that the hard surface on the site will be reduced as a result of this project because green space will be added to the site.

Mr. Dewey presented to the Board a color rendering of a typical building, noting that a pediatric immediate care facility is proposed, along with a medical building for pediatrics, with one owner.

Mr. Dewey stated that he has responded to the Engineering Department comment letter recently received, and he has submitted the plans for the project to the New York State Department of Transportation, Erie County Water Authority and Erie County Department of Environment & Planning.

In response to a question from Mr. Bellissimo, Mr. Dewey stated that two (2) dumpsters are proposed. It was determined that medical waste will not be disposed of in these dumpsters.

In response to a question from Mr. Bellissimo, Mr. Dewey stated that the dumpsters will be enclosed per Town Code requirements. He further noted that a ten-foot buffer is proposed along the site's northern border for the benefit of the adjacent neighbor.

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

Chairman Reszka declared the public hearing closed.

Mrs. desJardins stated that the Planning Department received correspondence from the New York State Department of Environmental Conservation (NYSDEC) regarding the wetlands that exist at the rear of the site.

Mr. Dewey stated that the NYSDEC is requiring that the site be delineated for wetlands, even though it is already developed and the proposal is to demolish the existing buildings. He further noted that the project involves reducing the proximity of the parking area in the rear to the existing wetland area by approximately 20 feet.

Mr. Dewey stated that Wilson Environmental Technologies has indicated where the wetlands are on the site, and will perform a wetland delineation to confirm that.

Mr. Reilly stated that Michael Bartlett from the Hamburg Industrial Development Agency (IDA) requested that the Planning Board issue a SEQRA Negative Declaration for this project at this time because the IDA would be considering the applicant's request for assistance at its July 12, 2013 meeting. He noted that the IDA cannot act without a Negative Declaration being issued by the Planning Board.

Chairman Reszka stated that the decision regarding whether a SEQRA Negative Declaration would be issued at this meeting would not be made based on the fact that there is an IDA meeting that might have to be delayed if a Negative Declaration is not issued at this time.

Members agreed that a SEQRA Negative Declaration could be issued at this meeting.

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

“The Planning Board hereby issues a Negative Declaration for the Nidus Development project for the following reasons:

1. The project will update an existing restaurant facility (demolition) with two medical buildings. The existing disturbed areas will remain the same.
2. Impervious surfaces will actually be reduced, reducing the quantity of runoff, and features will be added to improve the quality of the runoff.
3. The rear of the site contains a State designated wetland, but the applicant will not be expanding the paved areas into this wetland area. The NYSDEC has requested that a delineation be done. Any conditions placed by the NYSDEC must be met by the applicant.
4. As the disturbed footprint will not change, there will be no impacts to plants or wildlife.
5. Traffic generation will be similar to existing conditions and the existing entrance provides adequate sight and stopping distances.
6. The aesthetics of the site will not be adversely impacted and will arguably be improved through the construction and the improved landscape plan.
7. The site is zoned currently for this use, the plan meets zoning requirements and the project is in accordance with the Town’s Comprehensive Plan and will not negatively impact the character of this area.
8. There are adequate infrastructure capacities in the area.
9. New building construction requirements will greatly improve energy efficiency of the site.
10. Community services will not be adversely impacted by this project.

Carried.

It was determined that the applicant will propose an “elevated lit sign. Mr. Reilly advised the applicant that pylon signs are not permitted in the South Park Overlay District.

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

Engineering comments have been filed with the Planning Department.

Public Hearing - Benderson Development Tim Horton’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 Benderson Development. The applicant proposes to construct a new Tim Horton’s restaurant on vacant land located in the Tops Plaza on the west side of McKinley Parkway. The Public Hearing will be held on July 10, 2013 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Bob Bender from Tim Horton’s stated that the project involves the construction of a 1,953 sq.ft. building on a pad site that was previously approved by the Planning Board for a larger retail building. He stated that this proposal would reduce the impervious area on this site because of the smaller building.

Mr. Bender stated that he provided to the Planning Department a study performed by SRF on the proposed drive-ups to make sure that the anticipated traffic will be accommodated at this facility. He noted that peak hours would be between 6:00 AM and 9:00 AM, when 33% of Tim

Horton's business takes place. He stated that this would be very complimentary to the hours of the Tops in the plaza, as well as any future retail that might be added to the plaza.

Mr. Bender stated that during peak hours, Tim Horton's typical stacking is 12 cars, which this project provides for around the building. He further stated that this building would have a double drive-up order system, which puts two (2) crews inside the building working the two (2) order points. He stated that this system would serve to further reduce the waiting times.

Mr. Bender stated that the study showed that occasionally a Tim Horton's will have up to 15 cars stacked in the drive-through lanes, and this proposal provides for 16 stacked cars at any peak time.

Mr. Bender stated that there are multiple Tim Horton's sites exists in Hamburg, so he does not believe this site will be any more of a draw of traffic than exists in the area now. He noted that this fact makes him even more comfortable with the stacking provided.

Mr. Bender stated that if this Tim Horton's were to create a traffic problem in this area, it would not be good for Benderson's tenants in the plaza, nor would it be good for the Tim Horton's business.

Mr. Bender stated that if in the future there was a traffic problem at the plaza because of the Tim Horton's, it would be in everyone's best interest to correct it and it would be corrected.

In response to a question from Mr. McCabe, Mr. Bender stated that the 12-car stacking number reflects 12 cars through the designated ordering area. He noted that the two (2) ordering points are reduced to one (1) lane for pick up.

In response to a question from Chairman Reszka, Mr. Bender stated that by rotating the building 90 degrees, the drive-up could not function.

Board members discussed the ramifications of rotating the building 90 degrees.

Mr. O'Connell stated that he feels that the layout of the building as proposed works better than rotating it 90 degrees, noting that if the building is rotated, customers exiting the drive-through would have to make a "U" turn to return to the exit onto McKinley Parkway. He stated that rotating the building would create an unsafe situation, especially with walk-up traffic.

Mrs. Yerkovich agreed with Mr. O'Connell.

Mr. Bender stated that the Tim Horton's on Elmwood Avenue in Buffalo has the double drive-up system and it works very well. He noted that the stack back to the road is 10 and the store is bigger than what is proposed here.

Mr. Bender presented building elevations, noting that the side of the building that would face McKinley Parkway has been upgraded to include architectural elements so that it does not look like a long blank wall.

Mr. Bender confirmed that plantings will be installed between the building and McKinley Parkway, and the dumpster enclosure areas will be enhanced with landscaping.

In response to a question from Mr. Lardo regarding signage, Mr. Bender stated that Tim Horton's will have a panel on the existing monument sign at the entrance from McKinley Parkway.

In response to a question from Chairman Reszka, Mr. Jerry Giglio, Traffic Safety Advisory Board (TSAB) Coordinator, stated that the TSAB's recommendations are included in its meeting minutes from June 13, 2013 and it stands by those recommendations.

In response to a question from Mr. O'Connell, Mr. Bender stated that the store would receive deliveries twice per week and the delivery truck would park near the dumpsters. He further stated that deliveries would occur during off-peak hours.

Chairman Reszka declared the public hearing open. The following people spoke:

- Lalaine Podkulski, 4332 McKinley Parkway, stated that she and her family are in support of the proposed Tim Horton's building. She stated that her only concern has to do with traffic.
- Richard Podkulski stated that the proposal is a very good use for this site. He noted that his family is concerned about the possible stacking of vehicles at the McKinley Parkway exit, as well as the overall traffic entering and exiting the plaza from McKinley Parkway. He stated that 90% of the vehicles exiting the plaza at that location do not adhere to the "No Right on Red" sign. He stated that when his family attempts to make a "U" turn on McKinley Parkway heading north in order to get to their driveway (south of the plaza), they often are cut off by vehicles exiting the plaza that are turning right on red even though it is not permitted. Further, if vehicles are waiting to make a left turn into the former Walmart store (heading south), his family cannot see past those vehicles to make the "U" turn necessary to get back to their driveway.

Mr. Podkulski stated that he is concerned that the addition of the Tim Horton's will mean that more vehicles will be attempting to exit the plaza via the curb cut at the southern end of the site. He noted that this is a right-in only entrance and is not to be used as an exit.

Chairman Reszka stated that people not adhering to traffic signs is an enforcement issue. He further stated that the Planning Board has no control over traffic signs or traffic lights, and the Podkulski's concerns are not relevant to the Tim Horton's project.

Mr. Podkulski responded that it is relevant because the new store will increase the volume of traffic entering and exiting at the McKinley Parkway location.

Chairman Reszka stated that if the southern right-in only entrance is being used as an exit, it must be ensured that it cannot be used to exit the plaza.

Attorney James Boglioli, representing Benderson Development, stated that the southernmost curb cut to the plaza from McKinley Parkway meets all County, Town and State requirements. He further stated that Benderson Development cannot control people going against the grain and exiting the plaza at that location. He noted that Benderson is in complete compliance with the conditions of rezoning previously imposed by the Town Board, and this is a situation where the entrance is designed correctly but drivers are not obeying that design.

Mrs. Yerkovich asked Attorney Boglioli if Benderson has any responsibility for enforcement of that condition once it is granted. Attorney Boglioli responded that Benderson has no way of enforcing it, and that the Hamburg Police should enforce it. He further stated that the entrance is meant to only be used by trucks entering the plaza from the north to get to the back of the site.

Mrs. Yerkovich advised Attorney Boglioli that Benderson could be a friend to the Town and make an attempt to add more signage, look at the situation, etc. and adjust something because it is not working. Attorney Boglioli agreed to investigate further.

Chairman Reszka declared the public hearing closed.

Mr. O'Connell stated that he observed the Tim Horton's on Elmwood Avenue with a double drive-through during the morning peak hours and noted that it seemed to work well.

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In response to a question from Mr. Bellissimo, Mr. Giglio stated that he felt that rotating the building was a doable situation. He further stated that his concern with this layout is that, although stacking for 12 cars would be provided, at the order point there would only be stacking for two (2) cars. He noted that this would increase the probability of that traffic extending out into a lane of traffic, thereby causing congestion. He stated that this scenario, along with the proximity of the entrance to the plaza itself, increases the problem.

Board members agreed that the Planning Department will prepare SEQRA and possible approval resolutions for the Board to consider at its next meeting.

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

Engineering comments have been filed with the Planning Department.

Public Hearing - John Russo (6553 Boston State Road)

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 for a Special Use Permit and Site Plan Approval of a proposal by John Russo to establish a new Craft Farm Brewery to be located at 6553 Boston State Road. The Public Hearing will be held on July 10, 2013 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Mrs. desJardins stated that the applicant submitted letters of support from all neighbors within 500 feet of the proposed craft brewery, as required by the Town Code.

John Russo, applicant, stated that he visited every neighbor, and not only were they all supportive, they all thought this is a great idea and a great use of the building.

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

Chairman Reszka declared the public hearing closed.

Mr. Russo stated that there is ample parking on the site.

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

“Based on the review of the proposed Hamburg Brewing Company project on Boston State Road, the Planning Board finds that the project meets the following requirements for a craft brewery as stated in Article XLVI of the Town Code:

1. The project meets the definition of a Craft Farm Brewery.
2. The site, when both parcels are considered together, meets the minimum acreage requirement of 15 acres with a minimum of seven (7) acres dedicated to farming of crops.
3. The brewery is to be located in an existing building, and the parking for the site exists. There are no adjacent residential uses that need to be screened.
4. The permit includes restricting the hours of operation to between 7:00 AM and 10:00 PM.
5. All manufacturing activities and storage will take place within enclosed buildings.
6. Residents within 500 feet of the site have signed off on the project.
7. The company will be obtaining a New York State Farm Brewery license.

The project also meets the four (4) general criteria for a Special Use Permit as follows:

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1. The project is in harmony with the general purposes and intent of Chapter 280 and the Craft Brewery Law.
2. The project will not create a hazard to health, safety or the general welfare.
3. It does not alter the essential character of the neighborhood.
4. It will not be detrimental to the public convenience or welfare.

Therefore, the Planning Board issues a Special Use Permit for the operation of a Craft Brewery and allows associated uses at 6553 Boston State Road and adjoining lands with the following conditions:

1. A site plan must be approved by the Engineering Department.
2. The applicant will return to the Planning Board one (1) year after beginning operation to determine if any problems require modifications to the site plan.”

Carried.

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to grant Site Plan Approval for this Craft Brewery with the following condition:

1. A site plan must be approved by the Engineering Department.

Carried.

Engineering comments have been filed with the Planning Department.

Proposed Code changes and zoning map revisions

Mr. Reilly stated that Board members were emailed the proposed changes to the Town Code and revisions to the Zoning Map.

Mr. Reilly stated that the proposal is to rezone several properties to PR (Parks/Recreation). He stated that the reason for this is that these properties will forever remain as parks or recreation areas and should be zoned as such.

Mr. Reilly reviewed the proposed changes to the Town Code dealing with content of signage, plowing, signage in the Neighborhood Commercial District, screening of dumpsters, and certification of landscaping after it is installed.

Mrs. Yerkovich made a motion, seconded by Mr. Bellissimo, to recommend to the Town Board that the proposed revisions to the Zoning Map be made.

On the question:

It was determined that Mr. Schawel, Mr. McCabe and Mr. Geraci did not receive the email containing the proposed changes to the Town Code. Mrs. desJardins agreed to email the proposed changes to them.

Chairman Reszka made a motion to table the existing motion.

OTHER BUSINESS

Chairman Reszka stated that when the Tops plaza redevelopment was approved by the

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Planning Board in 2011, one of the conditions of approval was that when the building to be located in the southeast corner of the site is planned, the Planning Board will review its design to make sure it meets all of the requirements.

Mrs. desJardins stated that Kurt Allen, Supervising Code Enforcement Official, advised her that this proposed building does meet all requirements of the plaza redevelopment approval.

Attorney James Boglioli, representing Benderson Development, stated that the proposed building's design is consistent with what was previously approved. He further stated that Benderson does have tenants for the building at this time.

Attorney Boglioli stated that the building will be slightly smaller than what was approved for that area, and the result will be that the new building will be 18 feet further away from the plaza's southern boundary. He further stated that the architecture of the new building is consistent with what was shown to the Board in 2011.

Attorney Boglioli stated that there will be no loading dock behind the new building, but a loading door will be provided.

Mr. McCabe made a motion, seconded by Mr. Geraci, to approve the minutes of June 19, 2013. As there were five (5) ayes and two (2) abstentions (Mr. Bellissimo and Mrs. Yerkovich), the motion carried.

Mr. McCabe made a motion, seconded by Mr. Bellissimo, to approve the minutes of June 5, 2013. Carried.

Mr. Schawel made a motion, seconded by Mr. O'Connell, to adjourn the meeting. The meeting was adjourned at 8:15 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: July 17, 2013