

Town of Hamburg
Planning Board Meeting
September 2, 2015
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 P.M. on Wednesday, September 2, 2015 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O'Connell, Stephen McCabe, David Bellissimo, Joseph Collins, Augie Geraci, Doug Schawel and William Clark.

Others in attendance included Town Planner Andrew Reilly, Principal Engineer Rick Lardo and Attorney Ryan McCann.

REGULAR MEETING

Popeyes Restaurant (McKinley Parkway)

Ms. Amanda Brewer from APD Engineering, representing the applicant, stated that Popeyes proposes to construct a 2,560 sq.ft. restaurant at 3670 McKinley Parkway. She stated that speed bumps and associated signage have been added to the Site Plan, as requested at the Board's last meeting, and crosswalk signs and a portable "Stop" sign have also been added to the plan.

In response to a question from Mr. Reilly, Ms. Brewer stated that the plaza owner has agreed to the above additions.

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

"In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the Popeye's restaurant project, which involves the construction of a new Popeye's restaurant to be located on the west side of McKinley Parkway in front of the McKinley Plaza. The project meets the criteria established in the SEQR law as a Type II action (617.5 (c) (7) and therefore does not require completion of the SEQR process."

Carried.

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

"Based on the Planning Board's review, input from various Town departments, and having completed the required public hearing on August 19, 2015, the Planning Board hereby issues Conditional Site Plan Approval with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated September 2, 2015.
- The landscaping plan shall be reviewed and approved by the Planning Department.”

Carried.

Engineering Department comments have been filed with the Planning Department.

West Herr Toyota – 4141 Southwestern Boulevard

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that additional landscaping is proposed along the perimeter of the project.

Mr. Bellissimo made the following motion regarding SEQR, seconded by Mr. McCabe:

“In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the revised site plan for the West Herr project, which involves the construction of additional parking to be located at 4141 Southwestern Boulevard, and received input from various Town departments. Based on this review and input, the Planning Board has determined that the revised project is not anticipated to result in any significant adverse environmental impacts and therefore the Negative Declaration that was previously issued is still in effect.”

Carried.

Mr. Bellissimo made the following motion regarding approval, seconded by Mr. McCabe:

“Approval is hereby granted with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated January 21, 2015.”

As there were six (6) ayes and one (1) nay (Chairman O’Connell), the motion carried.

Chairman O’Connell stated that, in his opinion, West Herr did whatever they wanted to, they disregarded everything that the Town stands for, the Planning Department, the Planning Board itself, the Code, and the Town’s laws. He stated that West Herr never came to the Board to explain what they did and why they did it and apologize, and instead sent Mr. Gow. Board members concurred.

Engineering Department comments have been filed with the Planning Department.

James Grandoni Subdivision (Winslow Road)

Andy Gow, representing the applicant, stated that the applicant asked that the project be tabled.

Mr. Bellissimo made a motion, seconded by Chairman O'Connell, to table this project.

Engineering Department comments have been filed with the Planning Department.

Glenn Wetzl – northeast corner of McKinley Parkway and Route 391

Attorney Sean Hopkins, representing the applicant, stated that an updated plan has been submitted that reflects some additional changes that have been made since the previous Planning Board meeting.

Attorney Hopkins stated that approximately three (3) years ago, a different developer proposed a project on this site that included approximately 150 apartments, a large senior housing building and a large church. He stated that the Planning Board concluded that it was not consistent with the Comprehensive Plan primarily because the density of the layout was unacceptable and there was a possible mistake in the Comprehensive Plan relative to some contradictory language that suggested that this might be an appropriate location for a higher density project.

Attorney Hopkins stated that if the previous project is compared to the project proposed by Mr. Wetzl, it appears that Mr. Wetzl's project is a low density project. He noted that the residents would obviously prefer that this site remain vacant, but that is probably not the long-term outcome. He stated that it has been made clear to Mr. Wetzl that if this project does not go forward, something else will.

Attorney Hopkins stated that this project started out with 66 units, frontage lots on McKinley Parkway and Newton Road, and access points on McKinley Parkway and Newton Road. He stated that over time the project has been modified many times to reflect the residents' concerns, and now only one (1) point of access is proposed, on Boston State Road, which has been deemed acceptable to the New York State Department of Transportation. He noted that the project as currently proposed has 45 units, which is a density of 1.5 units per acre.

Attorney Hopkins stated that a letter was received from Erie County Department of Public Works indicated that that department has reviewed the Traffic Study relative to Newton Road and McKinley Parkway and has determined that this project will not cause any potentially significant traffic impacts.

Attorney Hopkins stated that the vegetation along McKinley Parkway, in the eastern portion of the site, and along Newton Road will be preserved. He noted that new plantings are proposed on the intersection of Newton Road and McKinley Parkway, as well as the intersection of McKinley Parkway and Boston State Road, and a new decorative fence with masonry columns is proposed at each intersection.

Attorney Hopkins stated that the current proposal includes 17 acres of permanent green space, which is 50% more than what is required. He stated that in order to protect the Town and nearby property owners and to ensure everyone that there will never be any additional roadway

or driveway connections on to McKinley Parkway, Newton Road, or Boston State Road (other than the planned access), the applicant is willing to keep the frontage zoned R-A. He noted that the applicant has agreed to record a deed restriction on that area and listing the nearby property owners as beneficiaries of that deed restriction.

Attorney Hopkins stated that in recognition of the fact that two (2) ditches traverse the site, the applicant has volunteered to provide three (3) additional voluntary retention areas. He stated that two (2) retention areas would intercept the ditch that crosses Newton Road, and one (1) retention area would intercept the ditch that crosses McKinley Parkway. He stated that the applicant has proposed these additional retention areas to assure the Town and the Johnsons (6411 Boston State Road) that this project will not exacerbate the existing drainage situation, and in fact this project may improve the drainage problems the Johnsons have been experiencing.

Attorney Hopkins stated that concerns have been raised about drainage issues in other areas, but it is important to note that, with the exception of the Johnsons, this project would not have any impact on the surrounding properties because the project site is the low point, and the drainage comes on to the site from off-site locations.

Attorney Hopkins stated that he has had preliminary conversations with the Erie County Department of Public Works about whether the existing ditch that crosses Newton Road and then makes a 90-degree turn can be modified. He noted that this ditch is located off the project site, but if there is anything the applicant can do to encourage the County to improve that situation, he certainly will.

Attorney Hopkins stated that the properties located north and west of this site are zoned R-1, and if this site were zoned R-1 the applicant could propose lots of 15,000 sq.ft. He noted that an R-1 layout would result in a far greater density than the proposal being considered for the site at this time. He further stated that if an R-1 subdivision were located on this site, there could be additional road cuts and far less permanent open space.

Attorney Hopkins stated that this developer (Glenn Wetzl), more than any other developer who has been before this Board since he (Attorney Hopkins) has been in this business, has gone beyond the call of duty to attempt to address the existing drainage condition in the area.

Attorney Hopkins stated that it is important to note that this is privately owned property, although it has a park-like feel and has been vacant for many years, and it is suitable for some sort of development.

Mr. Reilly asked for a view shed analysis at some point in the review process.

Mr. Reilly reminded Board members that if this site is rezoned to PRD (Planned Residential Development), the exact plan that is approved would be the zoning of the property.

Richard Lawrence, 4548 Newton Road, stated that this is still a high-density plan. He stated that the existing drainage problems on Newton Road are created by the existing Stonebridge

Subdivision. He stated that if Mr. Wetzl cannot address the problems created by Stonebridge Subdivision, who is to say he will address the problems with the new project?

Elizabeth Winkowski, 4642 Newton Road, reiterated what Mr. Lawrence said.

Joe Claus, 6313 Kast Place, stated that this request constitutes spot zoning.

Attorney Hopkins stated that this request does not constitute spot zoning.

Mr. Reilly stated that this proposal is not clearly not in conformance with the Comprehensive Plan, but it is also not clearly in conformance either.

Chris Luther, speaking on behalf of her mother, Evelyn Reahr, 4464 Newton Road, asked where snow removal will take place and whether the retention ponds can handle all of the melting snow.

Mike Walsh, 4437 Valleyview, asked what the parcels east of this site are zoned.

Mr. McCabe stated that he would not be in favor of a positive recommendation on this project to the Town Board. His reasons are listed below:

1. It is important to keep the low density of the current zoning. Allowing 45 units would more than triple the density currently permitted in the R-A zone. Cluster development with one-acre lots required by the Comprehensive Plan would be a far better alternative.
2. The proposal does not comply with the Town's Comprehensive Plan. The parcel is specifically listed in the Comprehensive Plan as being part of the Southeastern Overlay District, which was designed "to protect environmental resources including scenic views and vistas."
3. The Planning Board should comply with the recommendation of the Town's Conservation Advisory Board (CAB) that the site not be down zoned to allow it to be developed at a greater density than its current R-A zoning permits. The CAB noted that "this project is completely out of context with the vision for and the development of the area."
4. There are problematic SEQR issues that still need to be resolved based on the New York State Department of Environmental Conservation's June 1, 2015 letter (Army Corps of Engineers permitting for Section 401 Water Quality Permit, sewer extension permit from Erie County and a downstream capacity and I & I mitigation assessment, a SPDES permit for storm water discharges and a cultural resources determination to address the site's current inclusion in an archeologically sensitive area). If the New York State Department of Environmental Conservation had minimal or no comments, the Board would be in a position to make an informed decision.
5. There is no lack of hardship or extenuating circumstances to justify a rezoning. A rezoning represents a changing of the rules, whether for good or bad.

Chairman O'Connell stated that he is not in favor of forwarding a positive recommendation to the Town Board, and he agrees with the points made by Mr. McCabe. He stated that he believes this is a good project but not for this area.

Mr. Bellissimo made a motion, seconded by Mr. Geraci, to send this project to the Town Board without a positive or negative recommendation and let that body make the decision. As there were three (3) ayes (Mr. Bellissimo, Mr. Geraci and Mr. Schawel) and four (4) nays (Chairman O'Connell, Mr. McCabe, Mr. Clark and Mr. Collins), the motion failed.

Mr. Geraci stated that the current owner of this property is bound and determined to sell it. He stated that if this project is not approved, the owner will find a buyer. He noted that perhaps a consortium of people should attempt to purchase the property to keep it from being developed. He stated that he feels the developer has done a lot and feels that this project should go to the Town Board for its decision.

Mr. Bellissimo stated that he did not make a motion to forward a positive recommendation on the project, but rather his motion was to forward the project to the Town Board so it can make the decision. He stated that the drainage problems the nearby residents have exist now, and it appears that the developer would try and eliminate these existing problems. He stated that the developer can only improve the existing problems.

A member of the audience who resides at 4491 Grandview asked who would take care of the retention ponds if they do not work, and whose responsibility it would be.

In response to a question from Mr. Schawel, Mr. Reilly stated that if this site is developed under the R-A zoning, a developer could put homes along Newton Road, McKinley Parkway and Boston State Road, and the developer would not be required to over design the drainage system.

Attorney McCann stated that Mr. McCabe indicated that the Board needs additional information in order to make an informed decision. He noted that the Board must decide if it has enough information to make a decision relative to SEQR.

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

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Mr. Bellissimo made a motion, seconded by Mr. McCabe, to approve the minutes of August 19, 2015. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 8:00 P.M.

Respectfully submitted,
Stephen J. McCabe, Secretary
Planning Board

Date: September 9, 2015