

Town of Hamburg  
Planning Board Meeting  
March 7, 2018  
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, March 7, 2018 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O’Connell, Vice-Chairman William Clark, Doug Schawel, Augie Geraci, Dennis Chapman, Robert Mahoney and Al Monaco.

Others in attendance included Town Planners Andrew Reilly and Sarah desJardins and Assistant Municipal Engineer Rick Lardo.

**WORK SESSION**

**Colton RV - Requesting a Special Use Permit to allow outdoor storage of recreational vehicles at 4817 Lake Avenue**

Andrew Woodhouse, architect for the project, stated that the applicant proposes to store recreational vehicles in the fenced-in area in front of the building. He further stated that the Special Use Permit requested is for maintenance of recreational vehicles inside the building and storage of same in the parking lot.

In response to a question from Chairman O’Connell, Mr. Matt Neil, owner of the property, stated that he believed the applicant plans to store between 150 and 100 recreational vehicles in the parking lot.

Several Board members noted that they had been to the site, and the number of recreational vehicles parked in the parking lot was much higher than 150 to 200.

Mr. Neil stated that he will get a more accurate number from the tenant.

Mr. Chapman stated that the parking area has no order to it, and the recreational vehicles are parked all over the lot. He stated that he witnessed a recreational vehicle being worked on in the thoroughfare, and he noted that he would like the area to be more orderly.

Mr. Neil stated that the tenant is considering hiring a “porter”, who is someone who would keep the parking lot neat and orderly.

Mr. Neil confirmed that the applicant has no plans to sell recreational vehicles from this site.

Chairman O’Connell made a motion, seconded by Mr. Clark, to schedule a public hearing to be held on March 21, 2018. Carried.

Engineering Department comments have been filed with the Planning Department.

**Christine Kueker - Requesting a Special Use Permit to operate an automotive repair business at 3261 McKinley Parkway**

Mrs. desJardins stated that Ms. Kueker obtained a use variance from the Board of Zoning Appeals to operate an automotive repair business at this location. She noted that Ms. Kueker pur-

chased the building, which is zoned C-1, assuming that she could repair vehicles there because the building was previously used as an oil change business. She further noted that automotive repair is not a permitted use in the C-1 District, and that is why Ms. Kueker had to request a use variance.

Mr. Reilly stated that because a use variance was granted, the Planning Board will consider this as a request for Site Plan Approval, but it will look at the Special Use Permit criteria when reviewing the request.

Mrs. desJardins noted that when Ms. Kueker presented her case to the Board of Zoning Appeals, there was no opposition, and neighbors seemed happy that she plans to reuse a building that has been vacant for years and improve the site.

In response to a question from Mr. Chapman, Ms. Kueker stated that she does not plan on parking very many cars on the site because she plans on the repairs being minor in nature, so there would be a quick turnover. She further confirmed that no collision work is planned.

Mr. Clark made a motion, seconded by Mr. to schedule a public hearing to be held on March 21, 2018. Carried.

Engineering Department comments have been filed with the Planning Department.

## **REGULAR MEETING**

### **Public Hearing, 7:00 P.M. - Eden Valley Brewing - Requesting Site Plan Approval of a proposal to redevelop a portion of the existing building at 6550 Southwestern Boulevard into a Tim Hortons**

Attorney Sean Hopkins, representing the applicant, stated that the loading dock associated with the past use of the building as a post office will be removed, and that space will be filled in as an addition. He further noted that pavement is being added in the existing White Oak Way right-of-way based on input received from the New York State Department of Transportation (NYSDOT). He stated that the additional pavement will increase the stacking capacity at the intersection.

Attorney Hopkins stated that the site is zoned C-1, and the proposed use is an expressly permitted use in that District. He acknowledged that there has been much debate regarding whether or not this is an allowable use in the C-1 District and noted that Kurt Allen, Supervising Code Enforcement Official, has issued a written ruling that this is a permitted use. He stated that the Planning Board does not have jurisdiction in determining whether or not something is a permitted use.

Attorney Hopkins stated that 43 parking spaces are proposed, and 16 stacking spaces for the accessory drive-thru are proposed. He noted that the drive-thru has been deliberately located along the Southwestern Boulevard frontage.

Attorney Hopkins stated that a detailed amended Site Plan Application has been filed to reflect the filling in of the space currently occupied by the loading dock, a lighting plan that includes LED lights and information on the sound speakers used for the digital ordering system. He noted that the ordering system will automatically adjust to ambient background noise levels.

Attorney Hopkins stated that based on discussions with adjacent property owners, extensive landscaping has been proposed along the common property line, and landscaping has been proposed in the parking area to block the headlights of vehicles exiting the drive-thru from shining onto the adjacent properties.

Attorney Hopkins stated that 21 evergreen trees, seven (7) deciduous trees, 13 ornamental trees, 62 shrubs and 114 perennials and ornamental grasses are proposed. He noted that approximately half the site will be green space, which is approximately 400% more than what is required by Code.

Attorney Hopkins stated that no Board has the ability to regulate hours of operation for a business. He noted, however, that the applicant has had numerous discussion with Tim Hortons and has been given permission to limit the hours of operation. He stated that this Tim Hortons would be closed between the hours of 10:00 P.M. and 5:00 A.M., and the applicant would agree to those hours being a condition of approval, even though it is not a legal requirement.

Regarding the proposed lighting plan, Attorney Hopkins stated that there is no lighting spilling over the common property line shared with the adjacent properties. He further noted that no lighting will spill over onto White Oak Way, Southwestern Boulevard or the adjoining commercial property. He stated that the specifications for the proposed lighting are included in the amended Site Plan Application.

Attorney Hopkins stated that this project is considered an Unlisted Action under SEQR, and there is no presumption that it will have any potentially significant adverse environmental impacts. He noted that this project does not come anywhere close to approaching the threshold of a Type I Action under SEQR.

Attorney Hopkins stated that this is a redevelopment project of a vacant building that is properly zoned, and the proposed use is allowed by the existing zoning classification.

Regarding concerns about traffic impacts, Attorney Hopkins stated that a traffic impact study (TIS) and a signal warrant analysis were prepared by SRF Associates based on input from the NYSDOT. He stated that Southwestern Boulevard is a New York State Highway, and determining traffic impacts at that intersection and on Southwestern Boulevard falls entirely within the purview and the jurisdiction of the NYSDOT. Mr. Ed Rutkowski, licensed engineer from the NYSDOT, reviewed the reports, studies and plan and issued two (2) emails based on his review of the project.

Attorney Hopkins stated that Mr Rutkowski's email of January 17, 2018 indicated that he reviewed the signal warrant analysis, and at this time the NYSDOT will not allow a traffic signal at the intersection of Southwestern Boulevard and White Oak Way. The applicant did agree that after the store has been open for six (6) months, the signal warrant analysis will be updated, and based on that update and other changes that may occur in that vicinity over that period of time, the issue of a signal will be looked at again. He noted that possibly there will be the installation of a traffic signal either at then or some time in the future.

Attorney Hopkins stated that SRF Associates concluded that all turning movements in the intersection of Southwestern Boulevard and White Oak Way will operate at acceptable levels of service during the am weekday peak period. He noted that the TIS does not include vehicles that were already traveling past the business entering the site. He stated that the TIS assumes that anyone who goes to the Tim Hortons during the peak period will be driving out of his or her way to get there. He noted that this was done in order to provide the Planning Board will the most conservative of analyses.

Attorney Hopkins stated that although some residents are concerned because the TIS was performed by a firm hired by the applicant, the applicant has no choice in the matter. He noted that the Town of Hamburg will not pay for a TIS, and the reports were reviewed and approved by an engineer at the NYSDOT.

Attorney Hopkins stated that although there is opposition to the project, community opposition is not a basis for any land use decision, and that is a matter of clear cut case law. He stated that the Planning Board is governed by criteria that are set forth in its Zoning Code, and they have to be the basis for decision making. He listed the criteria for Site Plan Review per Section 280-306 of the Hamburg Town Code as follows:

1. Relationship between proposed uses and existing adequate uses.
2. Maximum safety of vehicular circulation between the site and street network.
3. Adequacy of interior traffic circulation and parking and loading facilities, with particular attention to vehicular and pedestrian safety.
4. Adequacy of landscaping and setbacks in regard to achieving maximum compatibility with and protection of adjacent property and land uses.

Regarding criterium # 1, Attorney Hopkins noted that this property is zoned commercial and has been zoned commercial for a long time, and the applicant has done his best to make sure that this use is compatible in terms of landscaping, fencing, lighting, drainage, reuse of an existing building, adequacy of stacking spaces, etc. He stated that if there is any reasonable additional input the Board would like the applicant to consider, he will do so.

Regarding criterium # 2, Attorney Hopkins stated that the traffic impact study, the signal warrant analysis and the reviews by the NYSDOT demonstrate that the applicant has satisfied this criterium.

Regarding criterium # 3, Attorney Hopkins stated that the sidewalk connection will be added that was requested by the Town and an adequate number of stacking spaces is provided. He stated that the drive-thru was designed to maximize the number of stacking spaces. He noted that access aisles and parking spaces have been provided that comply with the requirements of the Town Code.

Regarding criterium # 4, Attorney Hopkins stated that the applicant has gone beyond the normal requirements in terms of landscaping, and every setback exceeds the requirement.

Attorney Hopkins stated that when Board members compare the four (4) criteria to the proposed plans, documentation, reports and studies that have been submitted, it is clear that the applicant has provided strong justification for the approval of this Site Plan. He further stated that it is clear, based on the evidence submitted (the TIS, signal warrant analysis and reviews by the NYSDOT), that this project will not result in any potentially significant adverse environmental impacts, and the issuance of a Negative Declaration is justified.

Mr. Clark asked what mechanism the nearby residents would have if for some reason the hours of operation are not what the applicant promised or the lighting was not what was proposed.

Attorney Hopkins responded that if the project is not in compliance with the approved Site Plan, or any conditions imposed by the Planning Board, the Town would have enforcement powers. He stated that an updated lighting plan can be submitted demonstrating that the lighting levels would be lowered at night when the location is closed. He stated that the hours of operation and lighting levels can be imposed as Site Plan Approval conditions.

Mr. Clark asked what recourse the nearby residents or the Town would have if, in the future, the applicant does not close the location between 10:00 P.M. and 5:00 A.M. Attorney Hopkins

responded that the applicant is offering up that condition, and if the applicant voluntarily agrees to that condition, which he is, it would be very difficult for him or any future owner of the business to change the hours. He noted that the hours of operation can be put in the form of a deed restriction in the name of the Town of Hamburg that would be recorded against the property, and the applicant would consider doing that.

In response to a question from Mr. Geraci, Attorney Hopkins confirmed that the drive-thru would close at 10:00 P.M.

In response to a question from Mr. Reilly, Attorney Hopkins stated that the lights would be dark sky compliant and shielded.

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 Eden Valley Brewing Co. to redevelop the existing building located at 6550 Southwestern into a Tim Hortons. The Public Hearing will be held on March 7, 2018 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. The following people spoke:

- Attorney Leonard Berkowitz, representing the Miller, Privateer and Schulz families, stated that he does not disagree that the project is a permitted use in the C-1 District, but the drive-in window is what makes this not a permitted use in the C-1 District. He stated that people order and pay for food outside the building. He stated that his position is supported by Section 280-342 (definitions), in which a drive-in restaurant is defined as „a restaurant wherein all patrons thereof are not required to be seated to be served.“ He stated that Tim Hortons is a drive-in restaurant, which is not permitted under the C-1 ordinance. He stated that a drive-in window is not an accessory use, as was determined by the Supervising Code Enforcement Official. He stated that the great percentage of what happens in a Tim Hortons happen outside the building. He stated that per Hamburg Town Code, when a use is first included in any group, such use shall be interpreted as being excluded from any use group with a lower number. He stated that a drive-in restaurant is first identified in the C-2 District and is excluded from those uses in the C-1 District.

Chairman O’Connell stated that the Supervising Code Enforcement Official determined that this is a permitted use, and the Planning Board cannot challenge that determination.

Attorney Berkowitz stated that it is his opinion that the Planning Board has the right to make a determination as to what an appropriate use in an appropriate Zone is. He stated that he disagrees that the Supervising Code Enforcement Official has the final determination.

- Neal Russo, 6519 White Oak Way, stated that the Planning Board received a letter from the Lakeview Fire District with concerns about the many motor vehicle accidents on Southwestern Boulevard from Pleasant Avenue to the Eighteen Mile Creek bridge. He read the letter from the Fire District and noted that one of his main concerns is that patrons of Tim Hortons will drive through Deer Springs subdivision to get to Heltz Road or Southwestern Boulevard. He stated that it would be safer if the Tim Hortons patrons could access the site via Southwestern Boulevard. He stated that he is concerned about the traffic in the area between 5:00 A.M. and 9:00 A.M. He does not think that the project meets the intent of the C-1 District. He feels that there are plenty of Tim Hortons in Hamburg. He is concerned about children playing at the playground in Deer Springs with increased traffic and the number of children riding school buses in the neighborhood. He stated that he does not think this is a permitted use in the C-1

## District.

- Mark Privateer, 6533 Hackberry Drive, stated that this project is not consistent with the Town's Comprehensive Plan, and allowing the Tim Hortons to operate at this location will change and disturb the quality of life and character of Lakeview. He fears that the Tim Hortons will decrease the value of his home. He is concerned about the safety of the residents of the subdivision.
- Chuck Fischer, 6554 Hackberry Drive, stated that he objects to the location of a Tim Hortons at the proposed location. He stated that the Planning Board is accountable to the residents in the room, and the Planning Board is to be guided by the Town's Comprehensive Plan. He stated that Lakeview is supposed to be rural, and this would be locating a Tim Hortons abutting a residential area that has many children nearby. He stated that this project does not meet the intent of the C-1 District. He stated that his primary concern is public safety and the amount of anticipated traffic, and it is irresponsible to locate a Tim Hortons at this location. He stated that drivers will choose to exit the Tim Hortons through the subdivision rather than try to turn left onto Southwestern Boulevard.
- Mike Duszkievicz, 6504 Hackberry Drive, stated that his major concern is the effect of the Tim Hortons on safety and quality of life. He stated that there are many children in the subdivision who play in the streets, yards and driveways, and no one knows for sure whether patrons will exit via the subdivision. He is concerned about the increased traffic produced by the Tim Hortons.
- Jerry Miller, 6525 Hackberry Drive, stated that he does not agree with the determination of the Supervising Code Enforcement Official that this is a permitted use. He stated that the drive-thru is the principal use. He stated that he is concerned about safety issues and the increased traffic that will be generated by the Tim Hortons. He stated that the residents of the subdivision should not have to compete with the patrons of Tim Hortons to get into the neighborhood.
- Shawn Keen, 2314 Winterberry Drive, stated that he is a resident of Deer Springs and the President of Lakeview Soccer, and 26% of the children who belong to Lakeview Soccer live in the Deer Springs subdivision. He stated that safety of the children is his biggest concern, along with the increased traffic. He asked if anyone has contacted Town Recreation Department for its input. He stated that turning left onto Southwestern Boulevard from White Oak Way is very difficult and unsafe.
- Brady Susi, 2346 Winterberry Drive, stated that he is concerned about the increased traffic and the safety of the children.
- David Leyh, 6530 Hackberry Drive, submitted a petition against the project. He stated that he is concerned about making a left hand turn from White Oak Way onto Southwestern Boulevard if this project is approved, and he is concerned about increased traffic in the subdivision. He stated that he is worried about the hidden health hazards from roadway pollution, especially in the morning peak hours.
- Ed Kresconko, 6548 Hackberry Drive, stated that he is concerned about the increase in traffic.
- David Evtimovski, 6545 Hackberry Drive, stated that he is concerned about property values, traffic and safety. He stated that the proposed project will be terrible for the community.

- Mark Cavacoli, 6253 Heltz Road, stated that he served as Town Councilman for 24 consecutive years and helped the Town put together two (2) Comprehensive Plans. He stated that he believes that the neighbors have valid concerns regarding the determination of the accessory use, and he encouraged the Planning Board to further investigate and clarify that accessory use within a C-1 District. He stated that he has watched the community go from rural to being very busy, and the Deer Springs subdivision and its traffic has totally altered the area where he lives. He stated that the Comprehensive Plan indicates that Lakeview is a rural area, and Southwestern Boulevard is a very busy road. He encouraged the Planning Board to listen to the residents and the Comprehensive Plan.
- Claudia Yates, 5630 Versailles Road, stated that she is concerned about the traffic and the changes made to Southwestern Boulevard. She stated that there are many accidents on Southwestern Boulevard.
- Kathleen Privateer, 6533 Hackberry Drive, stated that it is not that difficult to get through the Deer Springs subdivision.
- Greg Czajkowski, 6481 White Oak Way, stated that the Tim Hortons should be put next to Walmart.
- John LaBelle, 6559 Hackberry Drive, stated that Deer Springs is a healthy active community. He stated that both of his sons are deaf, and they cannot hear the traffic.
- Tracey Landhal, 6515 White Oak Way, stated that she is concerned about the traffic and enjoys the rural nature of the area. She stated that children play in the street. She asked the Planning Board to maintain the Lakeview community and stated that she does not want Lakeview to turn into another Amherst.

Chairman O'Connell declared the public hearing closed.

Members of the public were given copies of the Supervising Code Enforcement Officer's determination that this is a permitted use.

Chairman O'Connell stated that he would like comments from Marty Denecke, Hamburg Recreation Department, regarding organized sports activities at the playground in the Deer Springs subdivision.

Mr. Reilly stated that the Planning Board must make a SEQR decision on this project.

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

Engineering Department comments have been filed with the Planning Department.

### **3580 Southwestern Boulevard, LLC - Requesting Planning Board approval of a revised previously approved Site Plan regarding a proposed parking lot expansion at 4795, 4803 and 4811 Camp Road**

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that after this project was approved by the Planning Board several months ago, the applicant received comments from the NYSDOT regarding the entrance to the property. He noted that the configuration of the entrances and the bio-retention pond have changed as a result of the NYSDOT comments.

Mr. Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing to be held on March 21, 2018 and direct the Planning Consultant to prepare approval resolutions. Carried.

Engineering Department comments have been filed with the Planning Department.

**OTHER BUSINESS**

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

Respectfully submitted,  
Doug Schawel, Secretary  
March 20, 2018