

Town of Hamburg  
Planning Board Meeting  
April 9, 2020  
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 Thursday, April 9, 2020 via ZOOM. Those attending included Chairman William Clark, Robert Mahoney, Dennis Chapman, Megan Comerford and Kaitlin McCormick.

Others in attendance included Town Planners Sarah desJardins, Andrew Reilly and Matt Bowling, as well as Town Engineer Camie Jarrell and Planning Board Attorney Jennifer Puglisi.

Excused: Al Monaco and Doug Schawel

**WORK SESSION**

**Einstein Construction Group - Requesting Site Plan Approval of a new Sketchers Store in the building owned by Raymour & Flanigan at 3464 McKinley Parkway**

Attorney Sean Hopkins, representing the applicant, stated that the project involves taking 7,500 sq.ft. of vacant space in the existing building and putting a Sketchers shoe store there. He noted that conceptual color elevations were submitted with the Site Plan.

Attorney Hopkins stated that there has been some discussion about the possibility of an outparcel being developed on this property in the future. He noted that currently there is nothing in place, but if something is contemplated the applicant would have to obtain Site Plan Approval from the Planning Board.

In response to a question from Chairman Clark, Attorney Hopkins stated that Sketchers would be putting its typical facade improvements on the building. He noted that changes would probably be made to the signage on the property, and any new signage would comply with the Town Code.

Chairman Clark made a motion, seconded by Mr. Mahoney, to send this project to the Supervising Code Enforcement Official for a Site Plan Waiver because no changes to the outside of the building are proposed and it is a continuation of a retail use. Carried.

**Mario Pellicano - Requesting a Special Use Permit and Site Plan Approval of a craft winery at 6736 Boston State Road**

Mrs. desJardins noted that the applicant previously sent her a written overview of the proposed project, which was forwarded to the Board members.

Mario Pellicano, applicant, stated that his property was the former location of Hamburg Overhead Door and the Vinyl Outlet. He stated that when he purchased the property he found out that those businesses had been operating as non-conforming uses of record. He noted that he attempted to obtain a use variance to allow Apollo ( a drywall business) to

temporarily house its business on his property, but the Hamburg Overhead Door family members who still live in close proximity to his property were very unhappy with his proposal.

Mr. Pellicano stated that he began growing grapes and they have flourished so much that he plans to grow another two (2) acres, and he will attempt to purchase any nearby property that is zoned R-A that comes up for sale in order to continue to grow more and more grapes.

Mr. Pellicano stated that in the summer of 2019 he applied for and was granted a Craft Winery license from New York State as a farm. He noted that the building to be used for the winery would not have to be changed at all and is ready to go. He further stated that there is approximately one (1) acre of asphalt on the property already, so there is plenty of room for parking.

Mr. Pellicano stated that nothing on the site would have to be changed in order to operate the craft winery.

In response to a question from Mr. Reilly, Mr. Pellicano stated that he plans to grow the grapes, make and bottle the wine and have a tasting room that he does not envision would be terribly busy. He further stated that under the New York State Winery license, he can sell glasses of wine, bottles or cases of wine and wine related products, and he can have samplings of wine. He noted that per the license he cannot run a "store".

In response to a question from Mr. Mahoney, Mr. Pellicano stated that approximately 70 parking spaces would be provided.

In response to a question from Mr. Reilly, Mr. Pellicano stated that most of his neighbors live fairly far away, and he does not know what they think of his operation.

In response to a question from Mr. Mahoney, Mr. Pellicano stated that the hours of operation would probably be between 4:00 P.M. and 9:00 P.M. or 10:00 P.M. four (4) days per week. He stated that if things go well, he might expand the hours of operation.

In response to a question from Mr. Bowling, Mr. Pellicano stated that he is not interested in hosting weddings, special events, etc.

Mrs. McCormick asked for photos of the building to be used for the winery.

Chairman Clark made a motion, seconded by Mrs. McCormick, to table this project. Carried.

Chairman Clark informed Mr. Pellicano that a public hearing will be scheduled as soon as possible, and he (Mr. Pellicano) will be notified when the public hearing will be held.

Engineering Department comments have been filed with the Planning Department.

### **St. Francis High School of Athol - Requesting Preliminary Plat Approval of a two-lot subdivision to be located at 4129 Lakeshore Road**

Brother Brian, applicant, stated that the brothers' friary is located across from the football field and shares its address with the school. He stated that he wants a separate address for the friary because its mail goes to the school, so during the holidays or a storm, for example, the residents cannot get their mail because the school is closed. He noted that the post office will not give the brothers a separate address because two (2) addresses are not allowed

on a single parcel, and the residence is on the same parcel as the school. He stated that therefore he is requesting that the residence be split from the school so it is on its own parcel and can get its own address.

Brother Brian stated that he has approval from the Erie County Water Authority and the Erie County Sewer Department to continue to share utilities with the school.

In response to a question from Chairman Clark, Mrs. desJardins stated that no variances would be required in order to subdivide this parcel. She mentioned that a shared access agreement might be necessary because the driveway/parking area spans both new parcels.

It was agreed that if the brothers' residence were to be sold, that parcel would have to have its own sewer and water.

In response to a question from Mrs. Comerford, Brother Brian stated that the property adjacent to the friary has its own access to the public road.

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

Chairman Clark informed Brother Brian that a public hearing will be scheduled as soon as possible, and he (Brother Brian) will be notified when the public hearing will be held.

Engineering Department comments have been filed with the Planning Department.

## **REGULAR MEETING**

### **Alliance Homes - Requesting Preliminary Approval of a proposed two-lot subdivision to be located at S-5100 Bayview Road**

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that the plan has not changed since the Board last met.

Mrs. McCormick made the following motion, seconded by Mr. Chapman:

“In accordance with the New York State SEQRLaw, the Town of Hamburg Planning Board has reviewed the two-lot subdivision proposed by Alliance Homes to be located at S-5100 Bayview Road. Based on the Preliminary Plat, review of the submitted materials and input from other departments, the Planning Board has determined that the proposed subdivision is not anticipated to result in any significant adverse environmental impact and that a Negative Declaration is hereby issued, and the Planning Board Chairman is authorized to sign the EAF, which will act as the Negative Declaration.” Carried.

Chairman Clark made the following motion, seconded by Mr. Chapman:

“The Hamburg Planning Board hereby grants Preliminary Plat Approval for the Alliance Homes Two-Lot Subdivision with the following four (4) conditions:

1. The installation of sidewalks is waived.

2. The filing of a Map Cover is waived.
3. Recreation fees in lieu of land will be required, because the site is not suitable for recreational purposes.
4. In accordance with Chapter 243-4, the extent of clearing for the home shall not be more than 1/4 acre. If at a later time, it is proposed to clear more than 1/4 acre, the applicant would need to return to the Planning Board for re-approval and a tree clearing permit.
5. No work or issuance of building permits shall occur until New York State construction bans have been lifted." Carried.

Engineering Department comments have been filed with the Planning Department.

**JSEK Hamburg, LLC - Requesting a rezoning of a portion of 4535 Southwestern Boulevard from C-1 to C-2 in order to construct a car wash facility**

Attorney Sean Hopkins, representing the applicant, stated that the parcel in question is approximately 1.16 acres in size and is part of a larger office park. He stated that a stand-alone car wash is proposed and C-2 zoning is being requested. He noted that no new curb cut is proposed onto Southwestern Boulevard and the internal access would be from the existing driveway into the office park.

Attorney Hopkins stated that a Traffic Impact Study (TIS) was conducted, and the Planning Board asked him to compare the trip generation in the TIS to the previously approved 10,000 sq.ft. office building. He noted that this comparison was done and found that the number of trips for the car wash during the weekday morning and afternoon peak hours is less than that for the previously approved office building. He further stated that Ed Rutkowski from the New York State Department of Transportation (NYSDOT) submitted a letter to the Planning Department indicating that he has no concerns relative to the planned access and that he had reviewed the TIS.

Attorney Hopkins stated that he secured a correspondence from the owner of the office park regarding the remainder of the site that has not yet been built on. He noted that the owner indicated that he spoke with all of the office park tenants about the proposed rezoning and car wash and that he has no intention of asking for any additional rezonings on the remainder of the site.

Attorney Hopkins stated that the Planning Department conducted the SEQR Coordinated Review and the New York State Department of Environmental Conservation issued a Lead Agency Concurrence letter. He noted that no substantive concerns were raised relative to environmental impacts.

Attorney Hopkins stated that he had proposed a condition of the rezoning that would limit the C-2 uses to only what is being proposed (commercial car wash). He noted that a deed restriction could be recorded to that effect.

Attorney Hopkins noted that the property located adjacent to this site where the car wash is proposed is zoned C-2 and the property located adjacent to the opposite side of the office park is zoned R-3.

In response to a question from Mr. Chapman, Attorney Hopkins explained that the TIS still counts “pass by” trips for purposes of traffic that will be generated on the site, but they are not considered new trips on Southwestern Boulevard. He stated that a “pass by” means that someone is already traveling on Southwestern Boulevard heading to some other destination, but because of the convenience of passing the car wash, he or she chooses to stop there.

Attorney Hopkins stated that 43 stacking spaces are proposed on the site.

In response to a question from Mr. Mahoney, Attorney Hopkins stated that the TIS was conducted on a weekday while school was in session, which is standard methodology. He further stated that built into the TIS is a 1% background growth rate.

Mr. Mahoney stated that once this virus situation is over, people are going to get out and start being more mobile. He noted that there are some day centers in this area and many people use Riley Boulevard. He stated that traffic is his main concern, and he worries about the other projects in the area that are being built.

In response to a question from Mr. Mahoney, Attorney Hopkins stated that another TIS will not be conducted because there will not be need for that. He noted that a NYSDOT Highway Work Permit will be obtained.

Attorney Hopkins stated that in light of the virus situation and the fact that several approvals still need to be obtained, the earliest this project would probably open is Spring 2021.

In response to a question from Mrs. desJardins, Attorney Hopkins stated that if one compares the projected traffic from the car wash to the previously approved office building during the weekday AM peak hour and PM peak hour, one will see that the car wash will generate 17 less vehicles during the AM peak hour and 41 more vehicles during the PM peak hour. He noted that the car wash will generate more vehicles on Saturdays, since office buildings are not normally occupied on weekends.

Attorney Hopkins stated that it should be noted that there is far less traffic traveling on Southwestern Boulevard on a Saturday than there is on a weekday AM or PM peak.

Mr. Reilly stated that rather than limit the allowed use of this site to a car wash, the Planning Board could list the uses allowed in C-2 that it does not want to see on this site, such as a gas station.

Chairman Clark stated that when a recommendation is sent to the Town Board on this proposal, it will be important to relay why the Planning Board came to the conclusion it did.

Board members reviewed the list of allowed C-2 uses and which ones they would want to exclude on this site. The list of C-2 uses the Board would NOT want on this site is as follows:

- Gas stations, auto repair, auto sales
- Eating and drinking establishments, drive-in restaurants
- Warehouses, laundromats and dry cleaning plants
- Boat or marine sales and service
- Custom shops, including but not limited to printing, electrical, heating, plumbing or woodworking shops
- Billiard or pool halls, bowling alleys, skating rinks, dance halls and video game rooms
- Dairies; bottling of nonalcoholic beverages from previously prepared ingredients
- Commercial swimming pools

- Wholesale sales and distribution
- Theaters and drive-in theaters , golf driving ranges
- Building materials supply, including incidental millwork
- Public utility storage, service buildings and yards
- Machine and tool sales, rentals and service
- Storage and sales of solid fuel
- The manufacture, compounding and assembly of products from previously prepared materials
- Terminals for local trucking and delivery service
- Towing and recovery impoundment areas
- Permitted uses greater than 100,000 square feet (gross floor dimension)

Chairman Clark polled Board members on their feelings regarding the proposed rezoning as follows:

Mr. Mahoney stated that he is concerned about the potential traffic because he believes that the traffic in this area is going to change after the pandemic is over and as other projects in the area resume construction. He stated that he would recommend against the rezoning.

Mr. Chapman stated that he would rather see the office building that was already approved than a car wash on this site. He is concerned about the traffic, especially when combined with the Wetzl project down the street. He stated that he does not like rezonings and would recommend to the Town Board that the property not be rezoned.

Attorney Hopkins reminded Board members that the car wash would generate less traffic than the approved office building.

Mrs. Comerford stated that she agrees with the above comments. She stated that she does not like this project and does not like the idea of rezoning this site for something that will generate high traffic volumes. She stated that on the morning of January 16, 2020, when the TIS was conducted, there was a significant wind storm so she questions whether it is a true reflection of what the traffic truly looks like. She stated that she believes that there is actually more traffic in the area because of schools, senior center, etc. than the TIS reflects.

Chairman Clark stated that this piece of property is underutilized currently and the building would look much nicer than the property does right now. He noted that the adjacent parcel is zoned C-2. He further noted that perhaps through the Site Plan Approval review process, the owner of the office park might grant some concessions regarding additional buffering between the office park and the R-3 property on the other side of the park. He stated that he would recommend that the property be rezoned because we do not know if that property will ever be used as what it was approved for, and a car wash would be a good use there. He noted that he would rather see the car wash at this location that already has buildings and pavement than on the adjacent C-2 property where trees would have to be cut down and an additional access to Southwestern Boulevard would be necessary, which would be more invasive than what is being proposed.

Mrs. McCormick stated that she tends to agree with Chairman Clark, although she worries that the rezoning would mean that the already narrow band of C-1 in this area would be further reduced. She noted that this is an underutilized parcel and given the amount of available space in Hamburg and in this area, she wonders if any more office buildings will be built in this office park. She stated that she is not too concerned about traffic because the car wash would generate less traffic than the approved office building would.

Board members agreed to wait until a full Board is present to vote on whether to recommend this rezoning.

Mr. Mahoney stated that he feels that another TIS should be conducted when there is an opportunity to do it. He stated that he is not comfortable with the traffic counts.

Chairman Clark stated that if the Town Board feels that another TIS needs to be conducted, that Board can require it.



Mr. Bowling stated that if another TIS is conducted, it would not be until at least Fall 2020 because of the fact that school will most likely not be in session until then.

Attorney Hopkins stated that the applicant would agree to conduct another TIS after the business is open (a predetermined time frame) and if there is any additional mitigation needed, the applicant would be obligated to implement it.

Mrs. desJardins noted that the above was required for the Tim Horton's project in Lakeview.

In response to a question from Mr. Chapman, Attorney Hopkins stated that additional mitigation could include modifying the layout of the site, additional signage, etc.

It was determined that the Board members will relay their opinions and concerns to the Planning Department and the Planning Department will prepare draft resolutions for the Board's next meeting.

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

#### **OTHER BUSINESS**

Mr. Chapman made a motion, seconded by Mrs. McCormick, to approve the minutes from March 4, 2020. Carried.

Mrs. McCormick made a motion, seconded by Mrs. Comerford, to adjourn the meeting. The meeting was adjourned at 8:30 P.M.

Respectfully submitted,  
Kaitlin McCormick, Secretary  
April 17, 2019