

Town of Hamburg  
Planning Board Meeting  
January 20, 2021  
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting at 7:00 P.M. on Wednesday, January 20, 2021 via Webex. Those attending included Chairman William Clark, Vice-Chairman Doug Schawel, Al Monaco, Robert Mahoney, Dennis Chapman, Kaitlin McCormick and Meghan Comerford.

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

**The Broadway Group, LLC – Requesting Site Plan Approval of a new Dollar General store to be located at 6505 Southwestern Boulevard**

In response to a question from Chairman Clark, Attorney Joe Calimeri, representing the applicant, stated that there are a number of reasons why the issue brought up by a resident at the Board's January 6, 2021 meeting regarding the zoning of this area and whether it is accurate should not be considered by the Board as follows:

- The Planning Board does not have jurisdiction over zoning, so even if there was an issue this would not be the appropriate forum.
- The statute of limitations to challenge any change to the zoning ordinance would have been either four (4) months or six (6) years, depending upon the manner in which the zoning code was attacked, and we are decades removed from that.

Attorney Puglisi agreed with Attorney Calimeri, noting that the Planning Board has no jurisdiction to consider zoning that is under the purview of the Town Board. She stated that the proposed use is an allowable use under the zoning code.

Ms. McCormick stated that she spoke with Ed Rutkowski from the New York State Department of Transportation (NYSDOT) and learned that the Planning Board will not get much more input from that department. She noted that the scope of review of the NYSDOT is to comment on the site plan submitted from a traffic safety perspective.

Gordon Stansbury, preparer of an accident analysis for the intersection of Heltz Road and Southwestern Boulevard, stated that he requested accident data from the NYSDOT for the last three (3) years. He noted that during those three (3) years, there were five (5) accidents at the intersection. He stated that one was an overtaking accident, one side swipe accident, one fixed object accident and two (2) deer accidents.

Mr. Stansbury stated that based on the traffic counts that were selected, the intersection accident rate was calculated, which is below the state-wide average for a similar intersection. He stated that therefore this would not be considered a high-accident intersection and there is no indication based on the fact there are no turning-movement related accidents that the angle of the intersection is contributing to any safety concern.

In response to a question from Ms. McCormick, Mr. Stansbury stated that the NYSDOT maintains the accident data base for the state. He noted that any non-reportable, property damage, injury or fatality accidents that have had a police report filed should be in that data base.

In response to a question from Mr. Mahoney, Mr. Stansbury stated that if there is a pedestrian accident involving a vehicle that would be a reported accident and would be in the data base. He noted that there have not been any pedestrian related accidents at the intersection of Heltz Road and Southwestern Boulevard in the last three (3) years.

Ms. Mathias confirmed that the accident history report was submitted to the Planning Department on Friday, January 15, 2021 along with other information.

It was determined that the Board members did not receive the accident history report in the email forwarded from the Planning Department.

Board members reviewed the summary of the accident history report.

Mr. Mahoney stated that he is concerned about bicycle safety as well as pedestrian safety. He asked Ms. Mathias if the developer plans to install a bicycle rack on the site.

Ms. Mathias stated that a bicycle rack would be provided if the Planning Board wants one there.

Attorney Calimeri stated that if the Planning Board decides it does not want to encourage bicyclists, then a bicycle rack will not be provided if that is the wish of the Planning Board.

Mr. Reilly stated that the Board can issue a Negative Declaration, a Positive Declaration or a Conditioned Negative Declaration.

Mr. Mahoney confirmed that the Planning Board determined that this project is an Unlisted Action under SEQR.

In response to a question from Ms. McCormick, Attorney Puglisi stated that if there are impacts in the Part II of the Environmental Assessment Form that are moderate to large, the requirement may not be met to issue a Negative Declaration based on Board members' opinions.

Mr. Reilly stated that the SEQR law states that if a project may have a significant impact on the environment, the Board is obligated to issue a Positive Declaration.

Attorney Calimeri stated that when the Broadway Group presents information for proposed Dollar General site plans, as well as for SEQR review, it does so to answer all of the questions raised about the project. He noted that the general format for the Broadway Group is to make sure that Board members are not making an arbitrary and capricious decision and that there is substance behind their decision if they elect to issue a Positive Declaration and making sure that the Positive Declaration is not used to be obstructionist or put up road blocks.

Attorney Calimeri stated that over 35 Dollar General projects have been proposed by the Broadway Group in Western New York and there was only one (1) Positive Declaration issued.

Chairman Clark stated the Board appreciates all of the hard work that has been put into this project by the developer.

Chairman Clark asked Board members to weigh in on the question of whether a Negative or Positive Declaration should be issued.

Ms. McCormick stated that the developer has addressed many of her concerns, but she still is concerned about the driveway on Heltz Road, lights shining into adjacent properties and it minimizing the ability to preserve the character of the area, as well as her belief that some of the traffic related questions were not answered with appropriate documentation. She stated that she would have to support a Positive Declaration because of the above concerns.

Mr. Mahoney stated that he is concerned about traffic and the safety issues for pedestrians.

Mr. Chapman stated that he would support a Negative Declaration because he does not think that there is enough evidence to convince him that any further information is necessary. He stated that he thinks the developer did a nice job with the building. He stated that he does not think the project should be held up based on the concern about pedestrian safety when he does not know that people will walk to this site.

Mrs. Comerford stated that she would support a Positive Declaration because of her concern about the traffic and the location of the driveway.

Mr. Schawel stated that he would support a Negative Declaration because there is not anything glaring that would necessitate the Positive Declaration. He stated that he agrees with the other Board members' concerns, but those concerns would probably be the same no matter what project was proposed there. He noted that the zoning would have to be changed in order to alleviate the concerns raised by Board members.

Mr. Monaco stated that the developer has bent over backwards to address the Board's various concerns. He stated that if this project was proposed in a different location, it would probably be approved quite easily. He noted that he is still concerned about the safety of pedestrians and the traffic, and he would support a Positive Declaration.

Chairman Clark stated that the biggest concern for him is pedestrian traffic. He stated that a general store of any kind will attract pedestrians in a different way than a golf cart business or a butcher shop would. He found the information presented about gap times and how long it would take to cross Southwestern Boulevard very compelling and interesting, but he has a hard time reconciling that information with the fact that early on in the review process the Planning Board wanted cross walks and the NYSDOT did not want to encourage pedestrians. He noted that the NYSDOT did not want cross walks but then gave the applicant information showing that it would be safe for pedestrians to cross Southwestern Boulevard.

Chairman Clark stated that putting a driveway for a general store facing someone's home is difficult, although the zoning allows for it. He stated that if this project was proposed on the other side of Southwestern Boulevard, it would be a completely different situation where there would not be a driveway across from someone's home and people trying to cross Southwestern Boulevard where there is no cross walk.

Chairman Clark made the following motion, seconded by Ms. McCormick:

"Whereas, the Town of Hamburg Planning Board received a Site Plan application from The Broadway Group LLC for the construction of a Dollar General store and related accessory uses on Southwestern Boulevard and its intersection with Heltz Road; and

Whereas, the Hamburg Planning Board reviewed the application and revisions to the application at meetings of August 2020 to January 2021; and

Whereas, in accordance with Part 617 of the Implementing Regulations pertaining to Article 8 State Environmental Quality Review Act (SEQR) of the Environmental Conservation Law, the Hamburg Planning Board initiated the SEQR Coordinated Review process for this Unlisted Action to establish the Planning Board as the Lead Agency; and

Whereas, the Hamburg Planning Board has received input from various Involved and Interested Agencies and Town departments and held the public hearing on the Site Plan Application on December 16, 2020 and left the hearing open until January 6, 2021; and

Whereas, the Hamburg Planning Board has reviewed the EAF submitted by the applicant, comments and input from the Planning Department, Planning Board members and other in-

involved agencies and the public and information submitted by the applicant on the project and revisions to the project, has reviewed the Town's zoning code and Comprehensive Plan; and

Whereas, no objections were made to the Hamburg Planning Board acting as SEQR Lead Agency and the Planning Board therefore has been established as SEQR Lead Agency; and

Whereas, in accordance with Part 617 of the Implementing Regulations pertaining to Article 8 State Environmental Quality Review Act (SEQR) of the Environmental Conservation Law, the Hamburg Planning Board has completed Part II of the EAF and utilized information submitted by the applicant as expanded Part III information and reviewed the criteria for determining significance in accordance with Part 617.7 of SEQR and has determined the following:

1. The proposed action, although zoned correctly, may not meet the additional requirements listed in the Southern Hamburg Overlay District and the intent of the C-2 zoning district and may not be in accordance with the Town's Comprehensive Plan.
2. The development of the Dollar General at this site will potentially adversely impact the surrounding area with noise and light pollution.
3. The project is in an area of no sewer infrastructure and the soils are poor with high groundwater conditions.
4. The proposed project has the potential to have a significant adverse impact on the character and quality of the existing area and neighborhood.
5. The proposed project may create a safety issue due to traffic and pedestrian safety issues; and

Whereas, the Hamburg Planning Board in accordance with the State Environmental Quality Review Act (SEQR) has determined that the proposed approval of a site plan and construction of a Dollar General may include the potential for at least one (1) significant adverse environmental impact.

Now, Therefore, Be it Resolved that the Hamburg Planning Board hereby issues a Positive Declaration and authorizes the Planning Board Chairman to sign the EAF, which will act as the Positive Declaration; and

Be It Further Resolved that the Hamburg Planning Board will begin the EIS process once the applicant submits the draft scoping document."

As the vote was five (5) ayes and two (2) nays (Mr. Schawel and Mr. Chapman), the motion carried.

Chairman Clark stated that he does not think there is anything the applicants could have done differently and they went above and beyond anything that was requested of them. He stated that this is a very difficult site and thanked the applicants for their effort. He noted that the Planning Board appreciates the cooperation received from the applicants and is thankful for it.

Ms. Mathias stated that she is disappointed with the Board's determination of a Positive Declaration and noted that the applicants made multiple concessions to help alleviate the Board's concerns over the course of the many meetings. She stated that she is disappointed that she did not resolve those concerns to the satisfaction of the Planning Board despite the expert advice and input that was provided.

Ms. Mathias stated that she looks forward to receiving the Positive Declaration documentation, moving forward to the next step and working with the Board to bring a successful conclusion to the project.

In response to a question from Attorney Calimeri, Mr. Reilly stated that the EIS should be very targeted. He stated that the draft scoping document should be very specific and the Planning Board will relay to the applicant, after receiving input from the public, the specific items to be included in the document.

Engineering Department comments have been filed with the Planning Department.

## **OTHER BUSINESS**

Chairman Clark stated that there has been much discussion about the Amazon project and erroneous information had been given that had not been clarified. He noted that this project will not be reviewed by the Planning Board because it is located in the Pre-Permitted district.

Mr. Reilly stated that the Town went through a two-year process of establishing the Pre-Permitted district and the requirements a project must meet in order to be allowed to not go through the Planning Board review process. He stated that the Amazon project is being reviewed to make sure it is in accordance with the Findings and the pre-permitting of that site. He noted that if the Town determines that it is in accordance with those requirements, it will not appear before the Planning Board.

Mr. Reilly stated that the Town is considering establishing Incentive Zoning for the McKinley Mall area and the property near the new I-90 Camp Road interchange in order to help with redeveloping those areas.

Ms. McCormick made a motion, seconded by Mr. Mahoney, to approve the minutes of January 6, 2021. Carried.

Ms. McCormick made a motion, seconded by Mr. Schawel, to approve the minutes of December 30, 2020. Carried.

Board members agreed to begin the February 3, 2021 at 6:15 PM. in order to accommodate the number of new projects coming to the Planning Board for review.

Mr. Schawel made a motion, seconded by Mr. Mahoney, to adjourn the meeting. The meeting was adjourned at 8:20 P.M.

Respectfully submitted,  
Megan Comerford, Secretary

January 26, 2020