

**Town of Hamburg
Planning Board Meeting
1-18-95 - Actions Taken**

**Dellaneve Subdivision
Clark Street**

Preliminary approved.

**Richmond 3 lot
Subdivision**

Preliminary approved.

**Bedrock Eatery Drive In
4038 Hoover Road**

Favorable recommendation
forwarded to Z.B.A.

**Woodlawn School
Tom Mosey
3656 Milestrip Rd.**

Site plan approved.

**West Herr Ford
4590 Camp Road**

Site plan approved.

**Berkley Square
Brian Maslowsky
Developer**

Concept acceptable. To proceed
with site plan review.

TOWN CLERK

FEB 24 51 PM '95

FILED IN THE
TOWN CLERK'S OFFICE
HAMBURG, N.Y.

**Town of Hamburg
Planning Board Meeting
January 18, 1995**

The Town of Hamburg Planning Board met in regular session on Wednesday, January 18, 1995 at 7:30 p.m. in Hamburg Town Hall in Room 7. Those attending included: Chairman Richard Crandall, Vice-Chairman David Phillips, Secretary Gerard Koenig, Sue Ganey, Dick Pohlman, Paul Eustace, Don Fitzpatrick. Others attending included: George McKnight, Richard Juda, Attorney, Rick Lardo, and Terry Dubey, Stenographer.

Reorganizational Results for 1995:

**Chairman Richard Crandall
Vice-Chairman David Phillips
Secretary Gerard Koenig**

1. Discussed Change in Mrs. Pumphrey's original 8 lot subdivision on Pleasant Avenue. Mr. McKnight informed the board that Mrs. Pumphrey would like to go with a 3 building lot subdivision and the rest being acreage. At the meeting of 12-21-95, a request was made to waive the map cover. Attorney Dan Gorman advised that under the law, the map cover filing cannot be waived. Matter to be further researched.

Motion was made by Ms. Ganey, seconded by Mr. Fitzpatrick to **Table**. Carried.

2. Request of Ben Bernard - Car Quest - To be located in the former Master Builder's Bldg. The proposed use is for warehousing of automobile parts. There will be no exterior changes to the building. No hazardous waste will be stored on premise. Mr. Pohlman noted that there should be a landscaping plan for the site. Mr. McKnight to research and review former site plan. Applicant to appear at February 1st work session to explain operation.

3. Minutes of December 21st, 1994 tabled.

4. Old Tyme Village - Still waiting for a report from the State Dept. of Transportation.

5. Letter from Debbie Pound to Richard Crandall on erosion of cliff off Old Lake Shore Road. No response has been sent to her from any board.

6. Chairman Richard Crandall welcomed the new Planning Board Attorney, Richard Juda.

Dellaneve 2 Lot Subdivision - Clark Street

Secretary Koenig read the following Legal Notice of Public Hearing:

1-18-95

Dellaneve Subdivision - Clark St.

LEGAL NOTICE
TOWN OF HAMBURG
PLANNING BOARD
DELLANEVE SUBDIVISION

Notice is hereby given that the Planning Board for the Town of Hamburg will hold a Public Hearing at Hamburg Town Hall in Room 7 of Hamburg Town Hall for the purpose of approving a 2 lot subdivision known as Dellaneve Subdivision, located on Clark Street on January 18 at 8:00 pm.

All that tract or parcel of land, situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot No. 44, Township 9, Range 7 of the Holland Land Company's Survey, described as follows:

Beginning at the point of intersection of the southerly line of the Hamburg Armor Road, also known as Clark Street, with the easterly line of lands conveyed to Frederick C. Hornberger and wife by deed recorded in Erie County Clerk's Office in liber 1518 of Deeds page 409, running thence southwesterly along the southerly line of the Hamburg Armor Road, two hundred forty-eight (248) feet to an iron pin; thence westerly and continuing along the southerly line of the Hamburg Armor Road forty-five (45) feet

to a point; thence southerly at an interior angle of 84° 47' with the southerly line of the Hamburg Armor Road, one hundred sixty-one and five hundredths (161.05) feet to a stake; thence southwesterly at an exterior angle of 165° 22' with the last described line eighty-two and eighty-two hundredths (82.82) feet to a stake; thence southerly at an interior angle of 170° 19' with the last described line one hundred twenty-two and seventy-three hundredths (122.73) feet to a stake; thence easterly at right angles with the last described line sixty-five and thirty-five hundredths (65.35) feet to an iron; thence southerly at right angles with the last described line two hundred (200) feet to a stake; thence easterly at right angles with the last described line two hundred (200) feet to a point in the easterly line of lands conveyed to Frederick C. Hornberger and wife as aforesaid; thence northerly along the easterly line of lands conveyed to Frederick C. Hornberger and wife as aforesaid six hundred seventy-eight and thirty hundredths (678.30) feet to the point of beginning.

RICHARD CRANDALL, Chairman
GERARD KOENIG, Secretary
Planning Board

January 4, 1995

Mr. Mark Dellaneve appeared before the Planning Board on a proposed two lot subdivision to be located on Clark Street. The proposed lot is 100' x 120' for the purpose of building a 1-1/2 story cape comprised of 1570 s.f. for a single family dwelling. The parcel is zoned R-1 and meets all the lot requirements.

Comments from Engineering are as follows: Sanitary sewer and water are available to the parcel. The map cover may be waived.

Chairman Crandall asked 3 times if anyone wished to be heard for or against the subdivision. Hearing no further comments, the hearing was declared closed.

Motion was made by Mr. Phillips, seconded by Ms. Ganey, to issue a Negative Declaration for the project, approve the preliminary, and waive the filing of a map cover. Carried.

Richmond Subdivision - 3 lot Subdivision

Secretary Koenig read the following Legal Notice of Public Hearing:

Richmond Subdivision

**LEGAL NOTICE
TOWN OF HAMBURG
PLANNING BOARD
RICHMOND AVENUE
3 LOT SUBDIVISION**

Notice is hereby given that the Planning Board for the Town of Hamburg will hold a Public Hearing at Hamburg Town Hall in Room 7, at 8:10 pm on January 18, 1995 for the purpose of approving a 3 lot subdivision known as Richmond Avenue Subdivision located at Richmond Avenue.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot Number thirty-three (33), Township ten (10), Range seven (7) of the Buffalo Creek Reservation survey, bounded and described as follows:

BEGINNING at a point in the south line of Richmond Avenue, distant 165' from the intersection of the east line of Horton Avenue with the south line of Richmond Avenue, thence South ninety (90) degrees for 120 feet to a point; thence East ninety (90) degrees for 75 feet to a point; thence North ninety (90) degrees for 120 feet to the south line of Richmond Avenue; thence West ninety (90) degrees, and along the South line of Richmond Avenue 75 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot Number thirty-three (33), Township ten (10), Range seven (7) of the Buffalo Creek Reservation survey, bounded and described as follows:

BEGINNING at a point in the south line of Richmond Avenue, distant 90' from the intersection of the east line of Horton Avenue with the south line of Richmond Avenue, thence South ninety (90) degrees for 120 feet to a point; thence East ninety (90) degrees for 75 feet to a point; thence North ninety (90) degrees for 120 feet to the south line of Richmond Avenue; thence West ninety (90) degrees and along the South line of Richmond Avenue 75 feet to the point and place of beginning.

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot Number thirty-three (33), Township ten (10), Range seven (7) of the Buffalo Creek Reservation survey, bounded and described as follows:

BEGINNING at a point in the north line of Thurston Avenue, distant 90 feet from the intersection of the east line of Horton Avenue with the north line of Thurston Avenue, thence North ninety (90) degrees for 120 feet to a point; thence East ninety (90) degrees for 60 feet to a point; thence South ninety (90) degrees for 120 feet to the north line of Thurston Avenue; thence West ninety (90) degrees, and along the South line of Thurston Avenue 60 feet to the point and place of beginning.

RICHARD CRANDALL, Chairman,
GERARD KOENIG, Secretary,
Planning Board

Mr. Edward Tirpak, represented Mrs. Marie Barrowman on a 3 lot subdivision to be located on Richmond Avenue. Originally this was 7 lots reduced to 2 lots which are 75' x 120' and 1 lot which is 60' x 120', which meets the R-2 zoning. There is a structure overlapping on the one lot line. This structure will be removed as soon as my client can build her unit and move from one place to another. This will take a few months to complete, but the structure will eventually be demolished. Mr. Crandall noted that no final certificate of occupancy can be issued until that structure is torn down.

Comments from departments are as follows: Sanitary sewer and water are available to the parcel. The map cover may be waived. It is our understanding that the existing house located on a proposed lot line is to be demolished. This should be noted as such on the preliminary plat.

Chairman Crandall asked 3 times if anyone wished to be heard for or against the proposal. Hearing no further comments, the hearing was declared closed.

Motion was made by Mr. Phillips, seconded by Mr. Fitzpatrick to issue a Negative Declaration for the project; approve the preliminary with the condition that a final certificate of occupancy not be issued until the existing structure is demolished. Carried.

Bedrock Eatery Drive In - Former Tackle Shack - 4038 Hoover Road

Excused from Discussion: Richard Juda

Mr. Richard Sikorski appeared before the Planning Board on his proposed hot dog stand which is to be located in the former tackle shack facility located at 4038 Hoover Road. Comments from Engineering is as follows: 1. The flag pole with planter should be relocated out of the parking area. 2. All parking spaces are to be curbed or have parking bumpers. 3. The grass area in front of the building, next to the drive is to be curbed. 4. What is the intended use for the front of the building. The new concrete pavement area across the full building width should not be extended to the edge of pavement. 5. Does the building have sanitary sewer service or is a new lateral proposed?

Building Inspection: 1. Parking area appears to be adequate, based on the gross areas and uses of the proposed building. 2. In order to review and/or comment on the site lighting, more information is required on the size and type of light standards proposed to be used. 3. Based on the proposed plan, questions arise in regard to the purpose of the free standing freezer enclosure and its placement adjacent to the dumpster. It is my belief that the original function of the freezer was storage for fish bait. What will be its new intended use? 4. The owner has applied to the ZBA for variance because the proposed location of the dumpster and cooler shell violates front yard setback requirements. The plan also indicates that the parking area setback also requires a variance. Currently, the ZBA has tabled these applications pending a recommendation from the Planning Board.

Mr. Jeffrey Zak and Mr. Sikorski noted that on the site lighting, there is a utility pole that faces the parking lot which would be used for lighting. The outdoor freezer will be used for incoming deliveries. The required setback is 35', the actual is zero; therefore requiring a variance of 35'. As far as the dumpster is concerned, they are willing to put up a 6' stockade fence around it for screening.

Mr. Donald Weiss of Cloverbank Road took issue with the positioning of the freezer and dumpster and the high traffic area and blockage of the lake area as it is not conducive to design it that way. There is a Hoover Beach lot owned by the Association which adjoins that area. Why is there a need not to attach that to the Tackle Shack and move it back?

Mr. Sikorski responded that he would like to utilize that area of the kitchen for the workers to take their smoking break. It would give me enough room to avoid hanging the freezer over the back of the property for deliveries. There is a swale alongside the property that may not bother anyone, but I couldn't hang that

Planning Board Minutes, Page 5, 1-18-95

Bedrock Eatery (Cont.)

off the edge. It puts a blockage to an unsightly area.

Motion was made by Mr. Phillips, seconded by Mr. Koenig to forward a favorable recommendation to the Zoning Board of Appeals upon completion of a site visit to the area. Although the drawing has to be revised to show parking for the 7 spaces and move it west and line it with the 10 space area, for the required variance of 35'. We are forwarding a favorable recommendation for the freezer that it be on the northeast side of the building to move it as far away from the road as possible with some type of wooden enclosure. This is an effective use of an existing building. This proposal will definitely improve an unsightly area especially since it will be graded and paved. The concrete will be an improvement and will take the drainage flow to the lake. This is a positive use of an existing eyesore. Carried.

Woodlawn School - Office Use -

Mr. Thomas Mosey appeared before the Planning Board with a site plan for office use located at 3656 Milestrip Road. A use variance was granted by the Zoning Board of Appeals. Nothing is being changed, with the exception of the addition of a handicap ramp on the east side of the structure.

Mr. Don Zoyhowski asked if this item was properly advertised in the paper? Response given is that the front page issued a Legal Notice and this item was in the notice. It has been properly advertised.

Motion was made by Mr. Phillips, seconded by Mr. Pohlman to issue a Negative Declaration on the project and approve the site plan for office use. Carried.

West Herr Ford - Former Gold Circle Location - Camp Road

Mr. John Wabich and Tom Blaine appeared before the Planning Board for site plan review of their automotive use located at 4590 Camp Road. The Engineering Dept. has no comments. The Planning Dept. has the following comments on parking. The sales area requires 23 spaces. The service areas require 45 spaces. The parts area requires 10 spaces for a total of 78 spaces. They have provided 81 employee parking spaces; 253 customer parking spaces, and 99 auto display spaces for a total of 433 spaces, which appears to be adequate.

Motion was made by Mr. Eustace, seconded by Mr. Pohlman to issue a Negative Declaration for the project and approve the site plan for the automotive use. Carried.

Renovation and Addition to Sts. Cyril & Methody Macedonian Orthodox Church - 4785 Lake Avenue - Blasdell.

Father Trajko Boseovski, pastor, appeared before the Planning

Macedonian Church (Cont.)

Board on the proposed renovation of the existing premises (the community hall) and an addition to the church on Lake Avenue. The Engineering Dept. had the following comments:

2. Provide a pavement section for the parking lot extension.
2. Specify storm pipe size, slope and material. Additional catch basins are required. A minimum 12" diameter pipe should be used.
3. Provide parking bumpers for north easterly most parking spaces.
4. Show routing of 8" watermain to proposed fire hydrant at the rear of the building.

Motion was made by Ms. Ganey, seconded by Mr. Fitzpatrick to issue a Negative Declaration on the project; approve the site plan for the Macedonian Church contingent upon revisions being made as requested by the Engineering Dept. Carried.

Berkley Square Subdivision - Bayview Road

Messrs. Dave Pettit of Nussbuaumer & Clarke, Attorney Michael Pysz, and Brian Maslowsky appeared before the Planning Board on a concept plan proposed for Berkley Square. Comments from Engineering are as follows: 1. A berm should be required along Bayview Road. 2. A sidewalk should be required along Bayview Road. 3. What is the current status of the traffic signal at Bayview Rd. and South Park Avenue in relation to the EIS for this project? The EIS projected that the traffic to be generated by this portion of the development would warrant the need for a traffic signal at this intersection. If this is the case, the developer should be required to furnish and install the signal, or at least contribute his fair share toward the cost of such.

The proposed concept change is removing the office/retail and commercial portion and replacing it with a 12 dwelling unit building and 8 bldgs. for dwelling units. The total number of parking spaces equate to 116 and there will be 46 garage spaces designated on the drawing. A minor modification has been made on the road which has been moved east by 30'. The reason is for centering it with the park area. This should look more aesthetically pleasing. We have concentrated the apartments in the Bayview area of the project. We have retained the commercial area along the park on both sides of Tisbury Lane.

Mr. Pettit noted that we have tried to take the old drawing and erase what was there with a concentration of development along Bayview. Originally there were 88 apartments, and now there will be 74 units. We are losing the office and commercial space. Originally, there was 270,000 s.f. proposed and we are trying to save 27,000 s.f. We are not increasing the townhouses or the apartments.

Sandy Pcionek asked what type of divider would be placed to keep the apartments separate from the residential area.

Planning Board Minutes, Page 7

At the present time, there is 100' in between buildings. A question was raised as to whether there will be evergreens or a berm to separate the apartments from the association so that the residents will have the privacy they paid for. Response given was that there could be some type of berm or a continuation of the pine trees. Mr. Pettit noted that these details can be worked out in the final engineering plans. The park is owned by the homeowners association. Mr. Pettit stated they are looking for conceptual approval to take the next step in the site plan approval process. This would then include landscaping, etc.

Mr. Maslowsky also noted that the commercial area was never part of the homeowner's association. The following fax was received from Leonard F. Walentynowicz which states:

I write as a follow up to developments and discussions. Apparently, the developer Brian Maslowsky has made a new proposal without indicating he has abandoned his prior proposal. Again, he has failed to supply particulars justifying the change and the nature thereof, including the effect upon the PUD. The Attorney General's office advises that these kinds of changes need clearance from them. Thus, it would be appropriate for you to delay action pending their action. Further, it appears Brian Maslowsky has filed an amendment with the State indicating he has a co-sponsor. You may wish to identify such co-sponsor and whether such action was required by financial concerns, in order to determine whether the proposed changes can be honored. My clients wish for the PUD to succeed but need much more detail than they have received in order to help. We note that the board never issued the written request for detail discussed at the December 21, 1994 meeting, even though we provided written input. We renew our request for the information. We asked for in my fax dated 1-4-95. We conclude by observing that the radical and rapid change of plans reflect a course of unstable conduct that should prompt this board for a lot more information than has been disclosed. Further, this board should give others affected time to review and provide input. My efforts to initiate a constructive dialog with Mr. Pysz, Brian's Attorney so far have been unsuccessful. He intends to proceed to secure board approval with as little information as possible. We hope the board agrees that changing a PUD with an association is quite different from changing the usual residential and commercial development. We await your response.

Mr. Pohlman noted that in Mr. Walentynowicz's fax, he makes reference to a modification or amendment thru the Attorney General's office. Is he correct? Mr. McKnight responded that this is somewhat premature. If the Attorney General is to be involved, they must know what the Planning Board wants rather than have the Attorney General take an action and then learn that the board does not want the change.

Mr. Pohlman stressed that an inquiry should be made to see

Planning Board Minutes, Page 8

what is really going on. Is there a legal matter that has to be addressed between the developer and the homeowner's association? Is there something pending with the Attorney General's Office? Mr. Maslowsky responded that to his knowledge there is nothing pending. The commercial portion of the project was never part of the homeowner's association. The offering does not cover that part of the project.

Mr. Pohlman asked about the co-sponsor? Is he correct in saying there is an amendment filed? Our approval in terms of site plan review would have to come after we give our approval, not before.

Mr. Maslowsky noted that this property has nothing to do with the Attorney General's office or the association. I am responsible for the project.

Mr. Crandall stated that the Planning Board role is simply site plan review. It would seem to me that if we agree to a change and approve it, and in addition there was some legal question between the developer and the Attorney General's office, that would not impact upon us at all. They would still have to satisfy a legal requirement. They could negate our approval.

Mr. Pohlman asked if they can grant that before we make an approval. The Planning Board role is to approve a change in the site plan. Perhaps there is confusion as to what Mr. Walentynowicz is referring to. He is referring to some discussion with the Attorney General's office. Perhaps the way to solve it is to have our Planning Board Attorney contact the Attorney General's office to find out the facts if a PUD is on file and what are the procedures. The Attorney General's office can regulate a Homeowner's Association but not a PUD. The question is, does the Attorney General's office give the authorization for a change or does the Town have the authorization to grant permission for a change and what about the amendment to the Attorney General's office. Right now, we don't know.

Mr. Pysz noted that this is not a threshold question. We are here asking for conceptual approval. We can proceed on this track, while the concerns about the Attorney General's interests in this matter proceed on a parallel track. To our knowledge, there is no need for Attorney General approval for what we are proposing. If there is, you can bet that the Attorney General will be all over this in short order. We are prepared to face the consequences on that. If we have to get approval from the Attorney General's office, we will do that. To my knowledge, there is no such requirement. While the Attorney General's office does have authority over the homeowners association program, what is being proposed for Planning Board approval has no impact whatsoever on the offering and the association. I don't view this as being a threshold question. If the board's attorney wants to

Berkley Square (Cont.)

take that up with the Attorney General, that should be done.

Chairman Crandall pointed out that the Planning Board still has that opportunity. If we grant conceptual approval, you will have to accept that approval based upon the fact that you must address legal questions which the Attorney General's office may have. This should have no bearing on Planning Board action. We have approved changes in other areas that have homeowner's association. This shouldn't be any different.

Mr. McKnight noted that there have been 3-4 proposed changes to this area of the PUD. Does the board find this layout acceptable schematically so that a detailed drawing can be prepared; and at the same time to resolve the issue, let our Planning Board Attorney make contact with the Attorney General's office. If you like this plan, let the developer begin moving forward.

Mr. Phillips noted that the area is R-2. When this first came to me, I was very happy with the idea. I liked the idea of the New England concept. I see no reason to change what was approved. I don't like the changes in front of me now.

Chairman Crandall commented that an attempt has been made to compromise. This is a rather difficult change which is a marketing change. This has no bearing on the Planning Board. However, the result is such that I don't feel there is an adverse affect of any great extent on the entire project. This is a relatively minor modification as to what was laid out originally.

Mr. Koenig noted that the housing development is a unique situation. You have a mixed use situation that would still require our approval. It was suggested that Brian present an architectural rendering of what the project will look like.

Mr. McKnight commented that initially too much commercial was proposed. Now, we have a lot of plazas in the town that are struggling. I would rather have a smaller commercial area that would be viable, especially with the larger stores only being a mile away. I don't think that the commercial area would survive, especially when you think of the discount stores and the McKinley Mall not too far away. I don't think that amount of commercial would have been viable. I feel that some commercial around the village green with the New England concept should be there.

Motion was made by Mr. Pohlman to grant conceptual approval; to proceed to site design; and that the legal question raised be addressed by the Planning Board Attorney as it relates to the Attorney General's office. Our approval is contingent upon

Planning Board Minutes, Page 10

(Berkley Square Continued)

clarification as to how we are to proceed. Furthermore, the developer should bring in an architectural sketch of the modification; and that there be no additional density. It must be as was originally approved, seconded by Mr. Phillips. Carried.

Motion was made by Mr. Eustace to adjourn, seconded by Mr. Fitzpatrick. Carried. Meeting adjourned at 10:00 p.m.

Respectfully Submitted,


Gerard Koenig, Secretary
Planning Board

Next Meeting Date:

Work Session - 2-1-95 at 7:30 p.m.

Board