

Town of Hamburg
Planning Board Meeting

May 18, 2016

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, May 18, 2016 in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O'Connell, Vice-Chairman David Bellissimo, Doug Schawel, William Clark, Augie Geraci, Al Monaco and Robert Mahoney.

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

WORK SESSION

West Herr Ford – Requesting Site Plan Approval of a proposed parking lot expansion at 4781 Camp Road

Andy Gow from Nussbaumer & Clarke, representing the applicant, stated that the applicant would like to expand the parking area behind the auction house on Camp Road. He stated that the new parking area would be approximately 1.5 – 2 acres in size, and the drainage in that area would be improved as part of the project.

Mr. Gow stated that the parking area is used for the auction cars, as well as for storage of inventory vehicles.

Mr. Lardo stated that since this property was originally approved for development, many things have been changed without approvals, such as adding a dumpster that is not screened and parking within the required 35-foot setback area.

Board members agreed that the front of the site must be cleaned up in the process of receiving approval for the parking lot expansion.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing for this project to be held on June 15, 2016. Carried.

Engineering Department comments have been filed with the Planning Department.

Elizabeth Fadale – Requesting Preliminary Approval of a three-lot subdivision at 6150 Heltz Road

Liz Fadale, applicant, stated that she owns a home on 23 acres on Heltz Road, and she would like to create two (2) new building lots in front of the home.

It was determined that septic systems will be installed for both new building lots. It was further determined that no additional subdivision of this land will be allowed.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing for this project to be held on June 1, 2016. Carried.

Engineering Department comments have been filed with the Planning Department.

Patricia DiChristopher – Requesting Preliminary Approval of a two-lot subdivision on the northwest corner of Burke Road and North Creek Road

Patty DiChristopher, applicant, stated that the proposed new lot is a strange configuration because there are no utilities on North Creek Road, and therefore the purchaser of the new lot would rather run the utilities from Burke Road, where they are presently located, to reduce cost.

In response to a question from Mr. Clark, Ms. DiChristopher stated that there are no wetlands on the new lot.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing for this project to be held on June 1, 2016. Carried.

Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Public Hearing – 7:00 P.M., William Barrett – Requesting Site Plan Approval of an ice-cream business at 4904 Lakeshore Road

Mr. Reilly stated that he has received many phone calls, including one from the Town Clerk, asking why this project is before the Planning Board. He stated that the Supervising Code Enforcement Official, Kurt Allen, has determined that this use does not fall under the Town's Transient Merchant Law because the applicant has a leasing agreement for a period of more than three (3) months.

Mr. Reilly stated that this proposal is being treated as a Change in Use that requires Site Plan Approval.

Bill Barrett, applicant, stated that he would like to put some sort of structure in the parking lot of a property he has owned for 12 years that would offer ice cream. He stated that he has never been able to create a positive net cash flow, and this would allow him to put a seasonal business there that will help him pay the taxes on the property.

Mr. Barrett stated that he believes much of his business would be from foot traffic.

Mr. Barrett stated that he plans to restripe the pavement in the parking lot and remove the asphalt near the road so that he has the required ten feet of green space. He further stated that he has an electrician working on lighting for the parking lot.

Mr. Barrett stated that he has spoken to some of the neighbors, who seem positive about his project.

In response to a question from Mr. Geraci, Mr. Barrett stated that the structure or trailer he puts in would probably be approximately 20 feet long. He further stated that the trailer or structure would be placed where his RV is currently parked. He noted that he will not have a need for a dumpster.

In response to a question from Mr. Mahoney, Mr. Barrett stated that he would have approximately seven (7) employees, probably teenagers, and approximately two (2) would be working at any given time.

Mr. Clark 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 William Barrett to operate an ice cream business on property located at 4904 Lakeshore Road. The public hearing will be held on May 18, 2016 at 7:00 P.M. in Room 7B of Hamburg Town Hall.”

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

- Joe Killian, President of a taxpayers’ group, stated that he does not believe that this project is in conformance with the Route 5 Overlay requirements that all development and redevelopment preserve the character of the hamlet and that development not be of a “drive-thru” nature. He stated that it is a dangerous area, and he feels that if this project is approved, many other people will attempt to put trailers on their property to sell things. He stated that “brick and mortar” is important to a Town and brings taxpayers to the area. He stated that he is concerned about children crossing Route 5. He stated that he would rather see the applicant sell ice cream out of the building on the property.
- Oscar Williams, 4187 Lakeshore Road, stated that he believes that the applicant should sell ice cream out of the existing building on the property. He stated that the applicant will be able to undercut the competition in the area because he will not have to pay taxes on the structure. He stated that he spent a lot of time getting an ice cream business approved by the Town of Hamburg and had to jump through hoops to satisfy the Town, and if he had known that he could simply place a trailer on his property and sell ice cream out of it, he would have done that. He stated that if this project is approved, people will purchase vacant properties and put trailers on them and sell food out of them.

- Jeff David, 3803 Westview, asked if there will be seating for patrons provided. He stated that he is opposed to this project because of the precedent it would set.
- Donald Weiss, 2963 Cloverbank Road, stated that he strongly opposes this project because of the precedent it would set and because if this is allowed, then people from out of town could lease property in Hamburg and then park a food truck there and do business. He read an article he said was from the Buffalo News regarding the adverse consequences of allowing this project to go forward.

Chairman O'Connell reviewed the article referred to by Mr. Weiss and stated that it did not appear to be legitimate. Mr. Weiss responded that the article was a response to an article about an ice cream truck (not the applicant's).

It was determined that the article referred to by Mr. Weiss was actually an online response to a printed article in the Buffalo News.

- Donald Weiss asked if the ice cream truck would be plugged in, or would generators be used. He stated that he is concerned about noise. He stated that this project was discussed at the last Code Review Committee meeting, and he feels some Board members have already made up their minds about it.

Chairman O'Connell stated that this project was not discussed at the last Code Review Meeting. He stated that the Transient Merchant Law was discussed, but this project was not. He noted that the first time he heard about this project was with the other Board members at the Work Session on May 4, 2016.

Mr. Reilly stated that at the last Code Review Meeting, Mr. Allen discussed the Transient Merchant Law, but no specific site was mentioned. He further stated that the Code Review Committee will be looking into the Transient Merchant Law in the future because questions have been raised about it. He stated that if someone wants to move a food truck from place to place, that constitutes a transient merchant.

Mr. Reilly stated that the applicant has not decided whether he will use a truck, trailer or other structure to sell the ice cream. He stated that this would set somewhat of a precedent.

Mr. Reilly stated that Mr. Allen is the only person who can interpret the Town Code, and he (Mr. Allen) has determined that this use does not constitute a transient merchant.

- Donald Weiss stated that because this property is located in the Route 5 Overlay District, it should be reviewed by the Shoreline Revitalization Committee and the Traffic Safety Advisory Board (TSAB). He stated that there are no sidewalks in this area of Lakeshore Road. He stated that parking would be an issue, as would safety of children.

Mr. Reilly stated that Mrs. desJardins sent the information on this project to the TSAB on April 21, 2016 and has received no comments. He further stated that the Shoreline Revitalization Committee has not met in several years, and he is not aware of who is on that Committee.

Mr. Barrett stated that he appreciates the points made by the public. He stated that he purchased the building on this property 12 years ago after failing to be able to purchase Foit's 14 years ago because of Town regulations at that time. He noted that he has lost money on this property for the last 12 years, and he tried to put his wife's yoga studio in the building but was not allowed to because of concerns about the parking on the site. He stated that he purchased an old abandoned building in the Village of Hamburg for his wife's yoga studio and made it successful and created jobs.

Mr. Barrett stated that this project is an opportunity for him to create jobs, offer a service and a neighborhood product. He stated that his would be the only spot on the lake between Buffalo and Eden that sells ice cream. He stated that his customer base would be the immediate neighborhood. He stated that he is trying to create a simple solution that helps his business and his property be sustainable.

Mr. Barrett stated that he is following the rules and guidelines that are in place in the Town of Hamburg to make sure he can remain a taxpayer and still sponsor local teams and still create a positive environment. He stated that he is trying to create an environment where high school kids can have a summer job, learn about business and provide the community with something it does not have today, which is walking ice cream from where they live.

Chairman O'Connell declared the public hearing closed.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to table this project. Carried. Engineering Department comments have been filed with the Planning Department.

Public Hearing – 7:00 P.M., David Homes – Requesting an amendment to the approved Site Plan for the Villas at Brierwood (Southwestern Boulevard)

Kevin Curry, representing the applicant, showed Board members the proposed road realignment within the existing development, as well as where the sidewalk would be if the Planning Board requires it to be constructed.

Mr. Curry stated that the purpose of realigning the road is to save some trees and plant some trees. He stated that the homes on the roadway would have five (5) additional feet of front yard.

Regarding the sidewalk that was approved with the original plan, Mr. Curry stated that the New York State Department of Transportation (NYSDOT) is in the process of reviewing this area of Southwestern Boulevard and has made some preliminary

recommendations regarding improvements to be made. He stated that the applicant would like to coordinate with the NYSDOT's work.

Mr. Curry stated that the applicant fully understands that sidewalks will be installed along the property's entire frontage. He stated that the community does not have sidewalks, and the residents would prefer not to have them along the entrance road, which is what was approved previously. He stated that residents do not want to invite people and/or vehicles in that do not belong there.

In response to a question from Mr. Clark, Mr. Curry stated that there are walking paths that run through the community that are utilized by the residents.

Chairman O'Connell stated that the "sidewalks to nowhere", as this is referred to, will give pedestrians access to Route 5 in the future when sidewalks are constructed along Southwestern Boulevard in this area. He further stated that if the sidewalks are not constructed now, the Planning Board will have no authority to require them when the NYSDOT puts sidewalks in along Southwestern Boulevard.

Chairman O'Connell stated that it is his opinion that the sidewalks required as part of the approved Site Plan for this development in 2011 should still stand. He stated that pedestrian traffic needs to safely get from this development to Route 20.

Mr. Schawel stated that he is not in favor of sidewalks.

Mr. Curry stated that David Homes will construct the sidewalks if the Planning Board requires them.

Chairman O'Connell stated that he would like the Planning Department to write up resolutions for the next meeting that address both the requested road realignment and the required sidewalks at the entrance to the community.

Mr. Clark 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 request by David Homes to amend a previously approved Site Plan for the Villas at Brierwood on Southwestern Boulevard. The Public Hearing will be held on May 18, 2016 at 7:00 p.m. in Room 7B of Hamburg Town Hall".

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

- Larry Preischel, 3010 Pleasant Avenue, stated that the construction of the development seems to be causing drainage problems for his adjacent neighbor, who complains that he (Mr. Preischel) is to blame. He stated that the water should be running to the northeast and then north, but instead it is flowing south and then southwest.

Mr. Lardo advised Mr. Preischel to contact the Building Department regarding the drainage problems.

Chairman O'Connell declared the public hearing closed.

Chairman O'Connell asked Board members to comment on whether the sidewalks previously approved as part of the original Site Plan should still be required.

Mr. Mahoney stated that sidewalks should be required.

Mr. Schawel stated that he would support requiring the sidewalks be constructed now because the applicant agreed to construct them in 2011. He stated that he is against the sidewalks being constructed now because no one knows what will happen with Route 20, and he is concerned about them being constructed so close to the retention pond.

Mr. Bellissimo, Mr. Monaco, Mr. Geraci and Chairman O'Connell agreed that the sidewalks should be constructed at this time.

Mr. Clark stated that he shares some of Mr. Schawel's concerns regarding the layout of the sidewalks, but he agrees that they should be constructed now.

Mr. Reilly advised Mr. Curry that if the Planning Board determines that the sidewalks must be constructed, they would have to be in before a Building Permit is issued for the road realignment.

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

Engineering Department comments have been filed with the Planning Department.

Frank Russo – Requesting Preliminary Approval of a 12-lot subdivision as an extension of Niles Avenue

It was determined that the applicant was not present.

Michael Jablonski – Requesting a Special Use Permit to erect a residential wind energy conversion system on property located at 3134 Old Lakeview Road

Mr. Reilly verified with the applicant that moving the wind turbine elsewhere on the property would adversely impact his agricultural operations.

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

“Based on the information submitted on behalf of Michael Jablonski for a residential Wind Energy Conversion System (WECS) Special Use Permit in accordance with Article LII of the Hamburg Zoning Code, as well as the Environmental Assessment Form (EAF), the Planning Board has determined that the proposal to erect a 153.5-foot tall WECS on land located at 3134 Old Lakeview Road will not result in any significant adverse environmental impact and a Negative Declaration is hereby issued.

The Planning Board, in reviewing this proposed Residential WECS Special Use Permit application, has determined, in accordance with Section 280-362 (Requirements for residential WECS), that:

- The residential WECS application is complete, with the exceptions/waivers as noted below.
- The WECS equipment, based on submittals by the WECS supplier, is structurally sound and will not have acoustic (sound) impacts to adjoining properties.
- The WECS unit meets the lot area, height, location and setback requirements except as waived or given a variance as noted below.
- Adjacent property owners have been contacted.
- The project meets signage, color and finish, lighting, and safety and security requirements of the Code.
- The applicant has provided information to illustrate and ensure that the turbine will not impact wildlife species and habitat, interfere with television, microwave and radio reception, or interfere with navigational systems.
- The applicant has agreed to provide the required certifications and monitoring requirements of the Code.

The Planning Board, in reviewing this proposed Residential WECS Special Use Permit application also makes the following findings, in accordance with Section 280-362 F:

- a. The proposed wind turbine is located in an R-A, Residential- Agricultural zoning district and is in accordance with the Town of Hamburg Comprehensive Plan. The project is not located in the Local Waterfront Revitalization area.
- b. The proposed single wind turbine is located on a large agriculturally related site and will not interfere with the orderly land use and development plans of the Town of Hamburg.
- c. The wind turbine will benefit the applicant, reducing his electrical cost, which exceeds the burdens (aesthetic, noise, etc.) of the project.
- d. The wind turbine, as shown on the submitted plan, will not be detrimental to the public, health, safety, or general welfare of the community.
- e. The proposed wind turbine complies with all of the required provisions of the Zoning Code, with the following waivers issued by the Planning Board because the proposal is for Agricultural purposes within a State Agricultural district:

1. The bond to cover the cost of the removal and site restoration if the wind turbine must be removed due to its being unsafe or inoperable will not be required (280-362 B. (c) (4)).
2. A waiver of the setback requirement from the adjoining property (3092 Old Lakeview Road) is granted based on the applicant submitting a letter from the landowner acknowledging the proposed location of the wind turbine without any objections thereto. (2) (f).
3. A waiver of the setback requirements from non-residential buildings and structures, 280-362 C. (c) (1) and dwellings, 280-362 C. (c) (2) is granted. These structures are all located on the applicant's property and strict enforcement (even though the Code says that they cannot be waived) of these requirements would adversely impact an agricultural operation in a NYS Agricultural district.

Therefore, based on the SEQR Negative Declaration and the information submitted, the Planning Board approves the issuance of a residential WECS Special Use Permit with the following conditions:

1. Clearing will not occur outside the clearing areas as shown on the plan.
2. The wind turbine will be maintained in good order and repair.
3. The applicant will provide correspondence from Mercy Flight indicating whether the wind turbine must be lit.
4. Once constructed, United Wind will conduct semi-annual inspections of the wind turbine and provide documentation certifying that the wind turbine is in full compliance with the applicable requirements.
5. As part of the Building Permit process, a spot survey shall be provided by the applicant to assure the Town that the tower is located as approved by the Planning Board, and all applicable certifications shall be supplied.

OTHER BUSINESS

Mr. Bellissimo made a motion, seconded by Mr. Geraci, to approve the minutes of May 4, 2016. Carried.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to adjourn the meeting. The meeting was adjourned at 8:35 P.M.

Respectfully submitted,

William Clark, Secretary

Planning Board

Date: May 30, 2016