

Town of Hamburg  
Planning Board Meeting

May 4, 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 4, 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 and Al Monaco.

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

Absent: Robert Mahoney

**WORK SESSION**

**William Barrett – Requesting Site Plan Approval of an ice cream business at 4904 Lakeshore Road**

William Barrett, applicant, stated that he purchased the property twelve years ago, and the property has never turned a profit. He stated that he would like to put an ice cream truck or trailer on the property in order to capitalize on the seasonal market, and he hopes to sell Charlap’s ice cream. He noted that his ultimate goal is to have a small, low-cost ice cream location to service the neighborhood that would also allow him to create a little bit more revenue and a few jobs for the next few months. He stated that he hopes to do this on an annual basis.

Mr. Reilly stated that this would not be considered a “transit merchant” because the applicant would be selling the ice cream for more than three (3) consecutive months.

Mr. Barrett stated that a lease will be in place for the use of the truck for four (4) months.

In response to a question from Chairman O’Connell, Mr. Barrett stated that there would be six (6) parking spaces available for customers. He further stated that there are no places on the lake that sell ice cream, and he thinks this would be well received.

In response to a question from Chairman O’Connell, Mr. Barrett stated that he would have no need for a dumpster.

Mr. Bellissimo stated that he would like to see adequate lighting at the site, as well as a fence along the property line. Mr. Barrett stated that fences do not last in this area.

Mr. Bellissimo made a motion, seconded by Mr. Clark, to schedule a public hearing to be held on May 18, 2016 and to authorize the Planning Department to prepare approval resolutions for that evening. Carried.

Engineering Department comments have been filed with the Planning Department.

## **REGULAR MEETING**

### **Public Hearing – 7:00 P.M., Charley Kumet – Requesting Site Plan Approval of a 3,200 sq.ft. pole barn at 5407 Maelou Drive**

Charley Kumet, applicant, stated that he did visit the Tax Assessor to combine the two (2) parcels he owns, as requested by the Planning Board.

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 Charley Kumet to construct a 3,200 sq.ft. pole barn on property located adjacent to 5407 Maelou Drive. The Public Hearing will be held on May 4, 2016 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

Chairman O’Connell declared the public hearing open. No one spoke.

Chairman O’Connell declared the public hearing closed.

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

“In accordance with the New York State SEQR Law, the Town of Hamburg Planning Board has reviewed the Charley Kumet project, which involves the construction of a 3,200 sq.ft. pole barn on property located adjacent to 5407 Maelou Drive, and held the required public hearing on May 4, 2016. The project meets the criteria established in the SEQR law as a Type II action (617.5 (c) (7) and therefore does not require completion of the SEQR process.

The Planning Board hereby grants Conditional Site Plan Approval with the following conditions:

- Approval is contingent upon the Engineering Department comment letter dated May 4, 2016.

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**

Mr. Reilly stated that Keith Marquis, project engineer, informed Mrs. desJardins that he would not be attending the meeting because the confirmation of the wetlands delineation has not been received by the applicant.

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

Engineering Department comments have been filed with the Planning Department.

**David Homes – Requesting an amendment to an approved Site Plan for the Villas at Brierwood on Southwestern Boulevard**

David Stapleton, owner of David Homes and developer of the Villas at Brierwood, stated that the development is well on its way. He stated that the following are issues with the originally approved site plan that he would like to discuss with the Board:

1. Realignment of the next phase roadway
2. The “sidewalk to nowhere” from Southwestern Boulevard into the development

Mr. Stapleton stated that originally there was an intent to keep a treed area through the center of the community in the area of a drainage channel, but since then most of those trees have died. He stated that because most of the trees have died and the buildings to the east would be too close to the waterway, which is recessed, the plan is to slide the road on the east side of those buildings over to the east and realign it coming out to the same spot. He stated that one goal is to preserve any trees that can be saved in that recessed area and/or to plant additional trees in that area. He stated that the other goal would be to evenly space out the buildings, since this would not encroach on the required setback line on the east side of the site from the adjoining property.

In response to a question from Mr. Reilly, Mr. Stapleton stated that there are no homes adjacent to the east side of the Villas at Brierwood property, but rather it is mostly brush.

Mr. Stapleton stated that a walking trail has been installed all the way out to Amsdell Road, and the residents seem to really enjoy that.

Regarding the sidewalk issue, Mr. Stapleton stated that when this project was approved, he did not agree with the sidewalks being required and did not think they made sense. He stated that he would like to make a formal request to have the sidewalks removed from the approved site plan.

Mr. Stapleton stated that the residents of the Villas at Brierwood who would be immediately affected by the installation of sidewalks do not want them. He stated that the Safety Committee for the Villas at Brierwood has indicated that it does not want the sidewalks and has no use for them.

Mr. Stapleton stated that if the Planning Board does not vote to remove the sidewalks from the site plan, he would like the opportunity to meet with some of the Board members and residents of the development to discuss why he and the residents feel the sidewalks make no sense.

Mr. Stapleton stated that the area in front of the residential development is slated for commercial development, and he believes that part of the reason for the sidewalks was to service the commercial area that does not exist at this time. He stated that he believes that as the commercial section is built, there will have to be some connectivity to the residential development, and he is aware that the plans for this commercial area

would have to be reviewed by the Planning Board. He stated that there are no sidewalks in this section of Southwestern Boulevard.

Chairman O'Connell stated that when Mr. Stapleton's representative was before the Planning Board on April 6, 2016, he referred to the sidewalks as "sidewalks to nowhere". Chairman O'Connell further stated that at the Board's April 20, 2016 meeting, he (Chairman O'Connell) explained that sidewalks will be installed eventually from the fire department property at Amsdell Road and Southwestern Boulevard to the entrance to the Villas Brierwood.

Mr. Stapleton responded that he does not disagree that sidewalks will be in the area someday, but they are not there now and a sidewalk from the development to Southwestern Boulevard would not serve a purpose at this point in time.

Mr. Stapleton stated that there are some elderly residents in the development, and there is a concern with traffic safety on Southwestern Boulevard in this area.

Mr. Lardo stated that once the last twenty units are built, Mr. Stapleton will no longer be the owner of this property and will not be able to put the sidewalks in without permission from the Homeowners' Association. Chairman O'Connell stated that this concerns him.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing to be held on May 18, 2016. Carried.

Engineering Department comments have been filed with the Planning Department.

**Zak Management (Jeffrey Kryszak) – Requesting rezoning of property located at 4090 Jeffrey Boulevard from M-1 and M-2 to PUD (Planned Unit Development).**

Chairman O'Connell stated that Mr. Geraci would be recusing himself because he lives in the vicinity of this property.

Mr. Reilly stated that this rezoning request was reviewed by the Planning Board on February 3, 2016, and a positive recommendation to the Town Board was issued. He stated that a public hearing was held by the Town Board on March 28, 2016, and issues were raised at that time by some residents. He noted that the Town Board has decided that these issues need to be further reviewed by the Planning Board, and therefore the Town Board has referred this rezoning request back to the Planning Board for additional review and to possibly resolve some of the issues raised.

Attorney Sean Hopkins, representing the applicant (Jeffrey Kryszak), stated that an informational meeting was held on May 3, 2016 with nearby residents, and he is not looking for any action from the Planning Board at this point. He stated that some useful input was received from the neighbors that will be taken under consideration. He stated that the applicant would like to return to the Planning Board at a future date after he has considered the residents' input.

Attorney Hopkins stated that the property is currently zoned M-1 and M-2, and the applicant's business has been there for approximately six (6) years. He stated that the existing outdoor volleyball courts were part of the site plan approved by the Planning Board at that time, and they have been used since then primarily by the applicant's employees. He noted that because the outdoor courts have been so successful, the applicant feels there is a need for a larger indoor recreational facility in the Town of Hamburg.

Attorney Hopkins stated that volleyball is not a part of the applicant's core business, but he does have a passion for volleyball in particular, and he would like to see this become a very publically accessible amenity.

Attorney Hopkins stated that the applicant is requesting that the property be rezoning from a zoning that allow very high intensity uses to a PUD (Planned Unit Development). He stated that the applicant was recently made aware that a PUD zoning requires a minimum of ten (10) acres, and this property is 8.9 acres in size. He noted that the applicant will be contemplating whether to ask for the PUD zoning or ask for a rezoning of just a portion of the property to C-2 because he would rather not have to request a variance from the Zoning Board of Appeals (ZBA). He further noted that the applicant was not made aware of the minimum acreage for a PUD when he first filed the application for rezoning.

Attorney Hopkins stated that the applicant currently employs 50 people and plans to add more employees this year and hopefully next year. He stated that the applicant will probably utilize the entire building rather than leasing out space because his business has been so successful.

Jeffrey Kryszak, applicant, stated that he would like to construct a new indoor recreational facility on the north side of the existing building that would house three (3) sand courts and three (3) multi-use courts that could be used for many other activities like basketball, tennis gymnastics, etc.

Attorney Hopkins stated that plenty of parking would be provided. He noted that 175 spaces currently exist on the site, and 250 spaces could ultimately be provided. He stated that the applicant believes that this number would be adequate, and the applicant would rather not turn grass areas into impervious areas if it is not needed. He stated, however, that if it was determined that additional parking is needed, the applicant would construct more parking.

Attorney Hopkins stated that when the Ravenwood North Industrial Park, of which this property is a part, was approved in 1992, it was stipulated that there was to be no parking on Jeffrey Boulevard or Bayview Road. He further stated that in 1992, no one probably envisioned a recreational use in an industrial park, but the applicant believes it

is an appropriate because this use would be less intensive than what is allowed in the M-1 or M-2 District.

Attorney Hopkins stated that the applicant has proposed to tuck the new building as far as possible into the area furthest from the residences on Bayview Road.

Regarding the neighbors' concerns about noise, Attorney Hopkins stated that the applicant would do everything he can to regulate that.

Regarding the neighbors' concerns about regulating music, Attorney Hopkins stated that the speakers could be oriented towards the industrial park to minimize the effect of the sound on the neighbors. He further noted that the applicant could stipulate that no other form of music could be utilized by visitors to the facility.

Regarding the neighbors' concerns about lighting, Attorney Hopkins stated that any lighting on the site would be dark sky compliant, which means that there would be no light spilling onto adjacent neighbors' properties.

Regarding the neighbors' concerns about screening, Attorney Hopkins stated that the proposed building would be nearly two (2) football fields length away from Bayview Road. He noted, however, that the existing screening near Bayview Road would be enhanced to additionally screen the most affected neighbors on Bayview Road.

Regarding the neighbors' concerns that this project will effectively be a bar and restaurant, Attorney Hopkins stated that this is simply not the case. He stated that one of the amenities an owner of this type of facility must offer is the ability of those participating in a sport to have limited food and beverages after their event is done. He stated that the food and drink area would be more of a concession stand, and alcohol would be served. He noted, however, that when the facility is not in use, the concession stand would not be open for business. He stated that it would be event-driven, meaning that the only time it would be open is when the facility is being utilized. He further stated that there would be no signage indicating that food and drink are served.

Attorney Hopkins stated that because this property belongs to Mr. Kryszak, any liability in connection with the activities of the patrons would ultimately fall back to him.

Regarding the neighbors' concerns about green space on the property, Attorney Hopkins stated that currently 55% of the site is green space, the required percentage of green space is 20%, and at full build out of this project, 44% green space would still remain.

Attorney Hopkins stated that the applicant's key objective is to make sure that everyone involved has all of the relevant information.

In response to a question from Chairman O'Connell, Mr. Kryszak stated that the distance from the existing sand courts to Bayview Road is 480 feet.

In response to a question from Chairman O'Connell, Mr. Kryszak stated that the Town of Hamburg Recreation Department is currently updating the Town's Recreation Master Plan because the Town is short of recreation space. He further stated that this project has support from the athletic directors of the Hamburg and Frontier School Districts, and he is running his activities in West Seneca, Cheektowaga or anywhere he can find space.

Mr. Reilly stated that the Code Review Committee recommended that the applicant ask for a PUD because that this is the most controlled zoning there is, and if the rezoning is approved, the exact plan the applicant presents would be the zoning of the property.

Chairman O'Connell stated that he received an email from a nearby neighbor with photos of parties being held on the applicant's property. He stated that he believes these to be photos of a private party held by the applicant.

Mr. Scott Drezek, a resident of Bayview Road, stated that he provided those photos, and they were taken from Facebook.

Mr. Kryszak stated that those are photos of a benefit for one of his volleyball players who had breast cancer and needed financial help.

Chairman O'Connell stated that a few members of the audience would be able to speak, noting that this is not a public hearing. The following people spoke:

- Sharon Ross stated that she has a daughter who lives in the group home located at 4232 Bayview Road, and she is very concerned about the traffic that would be generated by this project. She stated that she is concerned about the 24/7 nature of the venture and the fact that alcohol would be involved.
- Melissa Burroughs, 4165 Glenwillow Drive, stated that she can see the applicant's property from her home, she has two (2) small children and she is concerned about the loss of green space in the area, the safety of the animals, noise and drunk drivers.
- Eric Burroughs, 4165 Glenwillow Drive, stated that he is concerned that traffic from Jeffrey Boulevard to Bayview Road will increase with this project. He stated that he is concerned about noise and asked what the hours of operation would be.
- Chris Chudy stated that he lives on Riggs Street, and he is concerned about drunk drivers on his street and the increase in traffic.
- John Zeitler, 3636 Dartmouth Street, asked if all functions will be outside and if the speakers exist now.
- Fred Wiencek, 4090 Riggs Street, stated that it does not bother him when people are playing volleyball at the applicant's property. He

stated that he does not want drivers who have been drinking flying down his street.

- Scott Drezek, 4218 Bayview Road, stated that he agrees with the above residents and asked how many parking spaces would be provided if this rezoning is approved. He stated that he is concerned about where people would park if the parking lots are full. He stated that he is also concerned about potential noise and would not be in favor of the applicant installing outdoor speakers. He stated that he bought his home understanding that the applicant's property was zoned light industrial, and he is concerned about the zoning changing now.
- James Steffenhagen, 4226 Bayview Road, stated that he is worried about traffic, as well as strangers coming into the neighborhood. He stated that he is worried about tailgating in the parking lots.
- Margaret Rizzo stated that she is a teacher at Frontier High School, and she sees children walking along Bayview, which is not safe.

It was determined that this project will be reviewed again at the Board's meeting on June 15, 2016.

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

Engineering Department comments have been filed with the Planning Department.

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

Keith DeGraff from United Wind, representing the applicant, stated that the applicant received a letter from New York State Department of Agriculture & Markets indicating that the applicant meets the definition of a farm operation.

Mr. DeGraff stated that the Code requires that all wind turbines be setback at least 1.5 times the height of the wind turbine from all property lines, and this proposed wind turbine's setback from the adjoining property would be less than that because the applicant would like the wind turbine outside of the pens.

Mr. Reilly confirmed with the applicant that the applicant is asking for a waiver from the 1.5 times the wind turbine height setback because locating it 1.5 times its height from the adjoining property would adversely impact his agricultural operations.

It was determined that the applicant submitted a letter from the adjoining property owner to the west indicating that he (the adjacent property owner) does not object to the placement of the wind turbine less than 1.5 times its height from his property line.

Board members reviewed the requirements for wind turbines per the Town Code as follows:

- The project is zoned correctly.
- The applicant has submitted the following required information:
  1. Name and address of applicant
  2. Evidence that the applicant is the property owner
  3. Site plan showing location and details of proposed wind turbine, property lot lines, location and dimensions of all existing structures and uses on the site, proposed plan for restoration of the site after construction of the wind turbine, wind loading information and wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows
  4. Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of the components
  5. Specific information about the acoustics and noise generation of the wind turbine
  6. The applicant has contacted Mercy Flight and learned that there is no documentation Mercy Flight can provide, but a representative of Mercy Flight indicated verbally that they cannot predict where an accident will be, and there are obstacles everywhere they have to deal with

**\*\*\* Mr. Reilly asked Mr. DeGraff to provide something in writing from Mercy Flight because Mr. Reilly believes that Mercy Flight requires anything over 100 feet in height to be lit. \*\*\***

- Property meets the minimum lot size
- **Proposed wind turbine would not be the required 1.5 times its total height from all property lines**
- Wind turbine would be the required 500 feet from any residential zoning district boundary line
- **Wind turbine would not be the required 1.5 times its total height from any non-residential building or structure (applicant's own buildings)**
- **Wind turbine would not be the required 500 feet from any dwelling (applicant's dwelling)**
- Wind turbine would be the required 1.5 its total height from a public road or railroad
- Wind turbine meets the maximum overall height requirement
- Only one (1) wind turbine is proposed (one (1) per lot is allowed)
- The power produced from the wind turbine would be only be used for on-site consumption
- Wind turbine is proposed in the rear yard, per the Town Code

- All adjacent property owner have been notified
- Wind turbine would not have any advertising placed on it
- Wind turbine would be white galvanized steel
- Applicant submitted an Environmental Assessment Form, as required
- Per Mr. DeGraff, the wind turbine would be equipped with manual and automatic controls to limit the rotational speed of the blade within the design limits of the wind turbine
- Wind turbine blades would have ground clearance of at least 30 feet
- Per Mr. DeGraff, the climbing pegs are removed once the wind turbine is installed up to 15 feet, although it would be a lattice tower
- The wind turbine would be a self-supporting lattice tower (no guy wires)
- Appropriate warning signage shall be placed on the wind turbine tower and electrical equipment.
- Applicant has submitted information showing that the wind turbine would be in conformance with the Town's noise ordinance
- Wind turbine would not have an impact on wildlife species and habitat
- Wind turbine would not adversely affect residential television, microwave or radio reception
- **Applicant is requesting a waiver of the requirement to submit a bond to cover the cost of the removal and site restoration if wind turbine must be removed due to its being unsafe or inoperable, or if the Special Use Permit expires.**
- If the wind turbine has not generated power in six (6) months, it will be deemed inoperable
- There would be no impacts to streams and wetlands
- Applicant has submitted information provided by a structural engineer registered in the State of New York indicating that the wind turbine complies with good engineering practices and the appropriate provisions of the Uniform Construction Code adopted by New York State
- Wind turbine will be inspected annually by a New York State licensed professional engineer approved by the Town of Hamburg or at any other time that the Code Enforcement Officer determines that the wind turbine or components have sustained structural damage **Applicant requests his representative be allowed to do inspections on the tower instead of the Code Enforcement Officer**

Attorney McCann stated that the adjacent property owners have been notified. He further stated that the adjacent property owner to the west (James McLellan, 3092 Old Lakeview Road) allegedly signed a letter indicating that he is aware of and accepts the location of the proposed wind turbine.

Attorney McCann stated that the tower is still proposed closer to Mr. McLellan's property line than what is allowed per the Town Code, and any subsequent owner of the property will be put on notice as to the location of the wind turbine.

Attorney McCann stated that the burden is on the applicant to obtain something in writing from an adjacent property owners essentially signing off on the project, and if the applicant cannot obtain such written correspondence, he cannot go forward with the project.

Mr. Jablonski stated that he always is a good neighbor and has been for the last 25 years.

Board members agreed to authorize the Planning Department to prepare resolutions for the Board's May 18, 2016 meeting.

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

Engineering Department comments have been filed with the Planning Department.

## **OTHER BUSINESS**

It was determined that the Village of Hamburg Trustees referred proposed self-storage buildings on Westview Avenue to the Town Planning Board for its input because a small portion of the project property is located in the Town of Hamburg. It was further determined that the applicant proposes to locate part of the new detention pond on the portion of the site that is located in the Town of Hamburg.

Board members agreed that the opinions of Town residents in the area should be seriously considered when any decisions are made by the Village Trustees.

Mr. Bellissimo made a motion, seconded by Mr. Geraci, to approve the minutes of April 20, 2016. Carried.

Mr. Schawel made a motion, seconded by Mr. Bellissimo, to adjourn the meeting. The meeting was adjourned at 8:50 P.M.

Respectfully submitted,

William Clark, Secretary

Planning Board

Date: May 10, 2016

