

Town of Hamburg
Planning Board Meeting
August 3, 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, August 3, 2016 in Room 7A of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Daniel O’Connell, Vice-Chairman William Clark, Doug Schawel, Augie Geraci, Al Monaco, Robert Mahoney and Dennis Chapman.

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

Chairman O’Connell stated that, although the public hearing notice for this meeting indicated that it would be held in Room 7B, the meeting was being held in Room 7A due to a conflict.

WORK SESSION

Erin Lyon – Requesting Site Plan Approval of a proposed pet grooming business at 5401 Lakeshore Road

Mrs. desJardins stated that the applicant proposes to open a pet grooming business at this location. She noted that the applicant works alone and does not believe that parking would be a problem.

Board members agreed that this would be a good use of the property.

Mr. Lardo stated that curbing will be required along Lakeshore Road, as well as Pleasant Avenue.

Mr. Clark made a motion, seconded by Mr. Schawel, to schedule a public hearing to be held on August 17, 2016. Carried.

Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Public Hearing – 7:00 P.M., Waterford Pines, LLC – Requesting Preliminary Approval of the previously approved Waterford Pines Cluster Subdivision, Phase II (vacant land as an extension of Waterford Lane)

Kevin Curry from David Homes, representing the applicant, stated that Phase II has been redesigned to eliminate the “closes” proposed and replace them with traditional cul-de-sacs. He stated that the lot count has been reduced, the required green space has been maintained, and the detention ponds will now be owned and maintained by the Homeowners’ Association (HOA).

Attorney Sean Hopkins, representing the applicant, stated that the jurisdictional determination issued by the U.S. Army Corps of Engineers expired, and in late 2015 the applicant received an

updated jurisdictional determination that is valid for a period of five (5) years. He stated that there has been a request from some of the existing homeowners in Phase I to modify the preserve area to provide a small amount of additional space for people to either have a deck, patio, sunroom, etc.

Board members reviewed a plan indicating where the preserve area presently exists and where the applicant is proposing it to be. Attorney Hopkins stated that previously there was discussion that perhaps the applicant needs all of the property owners to agree to the modification to the preserve area, but that is actually not the case. He stated that the HOA is still controlled by the sponsor, and before the Planning Board votes on the amendment to the preserve area, he will provide the Board with legal documentation that the modification is permitted based on the existing HOA documentation.

Attorney Hopkins stated that the applicant feels that a majority of the homeowners are supportive of the modification.

In response to a question from Mr. Geraci, Mr. Curry stated that Phase I consists of 17 lots, and 12 of them are built on, one (1) is under construction and a few more about to be under construction.

Mr. Schawel read the following notice of public hearing:

“Notice is hereby given that the Town of Hamburg Planning Board will conduct a Public Hearing on the Waterford Pines Subdivision. The applicant is requesting approval of the previously approved subdivision. The Public Hearing will be held on May 7, 2014 at 7:00 p.m. in Room 7B of Hamburg Town Hall.”

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

- Daniel Kuczmariski, 4971 Waterford Lane, stated that he purchased his lot because he was told that the brush and trees in the preserve could not be removed. He stated that there are federal wetlands on sub lot 29 and 30. He stated that decreasing the preserve area would mean that he would lose some of his privacy from South Abbott Road and make the noise from the traffic on that road easier for him to hear. He is concerned that the adjacent property owner will clear the additional 17 feet and reduce the buffer between them, as well as reduce the buffer between his property and South Abbott Road. He asked how reducing the preserve area would affect the swale that is located behind his home, and he asked if a similar swale will be placed behind sub lots 29 and 30.

Attorney Hopkins stated that the federal wetlands that the applicant cannot impact will not be touched if the preserve is made smaller.

It was determined that Mr. Curry will investigate sub lots 29 and 30 to see if any additional clearing would be done if the preserve area is reduced in the rear of the lots.

Mr. Lardo stated that the drainage plan would not be affected by the reduction in the area of the preserve.

Mr. Curry stated that Mr. Kaczmariski's concerns about noise and privacy are valid, and he will look at how he can address those concerns. He stated that he will be in contact with Mr. Kuczmariski.

- Allen Robinson, 4967 Waterford Lane, stated that he is also concerned about what would happen to the existing swale on his property. He stated that when he purchased the lot, he was told that nothing can be done in the preserve area in the rear of his property. He stated that there is no benefit to him getting an extra 17 feet of back yard because of the existing swale on the property. He asked how the Town will ensure that a property owner does not clear more than the allowed 17 feet of property. He stated that he is also concerned about the increase in noise from South Abbott Road, as well as the decrease in privacy, if additional land is cleared on nearby properties. He stated that many homeowners in the subdivision have been able to work with the limited property available to them in terms of patios, etc. and he does not know where the push is coming from to increase rear yards and decrease the preserve area. He asked what would happen if some of the residents are in favor of the change and some are against it.
- Joe Kozak, 4988 Waterford Lane, stated that he is in favor of the change to the preserve area because he has ten (10) feet for a back yard. He stated that the property he would gain has already been cleared and he is using it, and this would legitimize that.

Mr. Lardo stated that the drainage easement would not be changed, and residents should be aware that they will not be able to put sheds, etc. on the drainage easement.

Mr. Clark stated that it seems that the only problems stemming from this change would be for the residents who back up to South Abbott Road.

Chairman O'Connell declared the public hearing closed. Carried.

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

Engineering Department comments have been filed with the Planning Department.

Elderwood at Hamburg Skilled Nursing Facility (5775 Maelou Drive) – Requesting Site Plan Approval of a three-story addition for 28 skilled nursing beds

Lowell Dewey from C & S Engineers, representing the applicant, stated that since the last meeting, he spoke with representatives of the Village of Hamburg who expressed concerns about people having to park on both sides of the access drive during events at the facility because the parking lot is full. He stated that the concern is that emergency vehicles cannot get down the access drive during these events.

Mr. Dewey stated that the applicant proposes to install "No Parking" signs on both sides of the access road, and during events staffers would direct people to park temporarily on the grass if necessary. He further stated that two (2) or three (3) spaces can be added by resealing and restriping an area with existing extra wide spaces, and seven (7) additional new spaces are proposed. He noted that the facility administrators feel that the ten (10) new spaces will help.

Mr. Dewey stated that a staging area for construction vehicles has been shown on the Site Plan.

Chairman O'Connell stated that the facility proposed 50 new parking spaces in 2014 in the area where the construction vehicle staging area is proposed now. He stated that he believes that only adding ten (10) parking spots will not alleviate the existing parking problem. Mr. Dewey responded that the 2014 project is likely to happen in the future, but the funding is not available at this time.

In response to a question from Mr. Clark, Mr. Dewey stated that there currently 135 parking spaces at the facility.

Board members agreed that the parking issue is a major problem at this time.

Mr. Lardo asked Mr. Dewey if the applicant has considered using the construction vehicle staging area for new parking after the project is complete. Mr. Dewey responded that it does make sense, and he will talk to the applicant about the idea.

It was determined that the facility owner agreed to leave the staging area in place with stone and use it for additional parking.

Mr. Lardo stated that the staging area must be paved when used for parking.

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

Engineering Department comments have been filed with the Planning Department.

Zak Management –Amended request to rezone of a portion of 4090 Jeffrey Boulevard from M-1 and M-2 to PR (Park/Recreation Lands District)

Attorney Sean Hopkins, representing the applicant, submitted an updated rezoning map survey and noted that the acreage to be rezoned has been scaled back to 4.5 acres from M-2 to PR in order to accommodate any future growth of his primary business on the site.

Attorney Hopkins stated that there is case law that is clearly on point that time and time again states that unequivocally a municipality does not have the power to regulate hours of operation. He stated that the most seminal case is called Old Country Burgers vs. the Town Board of the Town of Oyster. He noted that a municipality cannot regulate the business aspect of a proposed use.

Attorney Hopkins stated that there has been considerable discussion about the proposed concession area, which would only be open when the recreational facility would be open. He stated that the applicant is fine with a condition that expressly states that. He stated that there is also case law directly on point from the Court of Appeals, New York State's highest court that says quite clearly that municipalities cannot regulate the sale of alcoholic beverages. He noted that this power rests exclusively with the State Liquor Authority.

Attorney Hopkins stated that the applicant will need to get a liquor license from the New York State Liquor Authority, and when that process is complete he will provide a copy of that license to the Town of Hamburg. He noted that that is a very stringent review process.

Chairman O'Connell stated that the benefit event the applicant held over the previous weekend, which he received an Event Permit for, has nothing to do with this rezoning request. He stated that it was a permitted use and was completely legal.

Attorney Hopkins stated that the Supervising Code Enforcement Official, Kurt Allen, has previously issued a written determination that the existing use is legal. He further stated that

prior to the benefit event the previous weekend, the Building Department visited the applicant's site, completed an inspection and found the use in compliance.

Mr. Chapman stated that if this property is rezoned to PR and the applicant sells the property, the Town would have to rezone it back to industrial. Attorney Hopkins responded that that is not what the applicant envisions, and he plans to spend millions of dollars on this recreational use, but if a decision was to sell the property decades from now to someone who wanted to use it for an industrial use, it would have to be rezoned.

Mr. Chapman asked Mr. Kryszak if there would be a fee for groups like the Boys & Girls Club or Scouts to use the facility. Mr. Kryszak responded that if it is a community activity, he would like to help the community, as he has volunteered things for the last several years.

Mr. Chapman asked if the applicant plans to apply for a restaurant license. Attorney Hopkins responded that that use would be regulated by the Erie County Health Department. He stated that the applicant is fine with a condition that no signage be placed on the building advertising the concession aspect of the recreational use.

In response to a question from Mr. Chapman, Attorney Hopkins stated that the sale of alcohol would be permitted in connection with special events subject to whatever licensing requirements would be applied by the New York State Liquor Authority.

Mr. Chapman stated that one has to define what the premises are when one applies for a liquor license and asked if the applicant plans on including the outside area as part of the premises. Attorney Hopkins stated that he is not an expert in that area, and when Mr. Kryszak gets to that juncture, he will hire either an attorney or a consultant who handles those licensing requirements.

Mr. Chapman stated that he is concerned that if the applicant does include the outside area as part of the premises, alcohol will be allowed to be consumed outside at an event.

In response to a question from Chairman O'Connell, Attorney Hopkins stated that the area designated as the premises would have to be roped off. Attorney McCann added that the area would have to be approved by the New York State Liquor Authority and would also have to be enclosed.

Attorney Hopkins stated that if the rezoning is ultimately approved, the applicant would have to return to the Planning Board for a Special Use Permit and Site Plan Approval.

Mr. Mahoney stated that he visited the site several times, and his concern is that when the residents of the area moved there, they did not envision a recreational use at this location. He stated that he is concerned about the alcohol.

Attorney Hopkins stated that if one looks at similar recreational facilities throughout Western New York and New York State, they always have concessions and almost always involve the sale of alcohol. He stated that this is not anything new. He further stated that if someone does violate the license received from the New York State Liquor Authority, they come down hard and can close the business.

Mr. Mahoney stated that Attorney Hopkins is right, but he (Attorney Hopkins) is referencing existing recreational facilities. He stated that this recreational facility was not there when the nearby residents bought their homes.

Attorney Hopkins stated that the building has been proposed in a location that maximizes the distance from nearby residential uses. He stated that he agrees with Mr. Mahoney that when the residents bought their homes they did not envision a recreational use on this site, but this

property is zoned industrial, and when one looks at the permitted uses in the industrial zone, they can be much more intensive than what the applicant proposes.

Mr. Schawel stated that this property is already zoned for uses that would create a lot more noise and traffic than what is proposed by the applicant. He stated that a truck terminal could go on this property and it would be zoned correctly for that use.

Mr. Mahoney stated that he agrees with Mr. Schawel, but one cannot predict noise.

In response to a question from Mr. Chapman, Attorney Hopkins stated that originally the request was to rezone the property to PUD (Planned Unit Development), but it was later determined that ten (10) acres is required for a PUD, and the property is not ten (10) acres in size. He stated that a commercial zoning was not preferred because there are many commercial uses that would not be palatable to the Town, and therefore a wide assortment of conditions would be required. He noted that the Supervising Code Enforcement Official, Kurt Allen, made the applicant aware of the fact that there is a zoning classification for this exact use, and for that reason the request was amended to PR zoning.

Attorney Hopkins stated that the reason the applicant is not requesting that the entire site be rezoned is that this would create a nonconformity in terms of the zoning code, and the applicant's lender is not comfortable with that. He stated that the applicant would like to leave room on the property for expansion of his primary business.

Attorney McCann stated that based upon his research, the Town cannot propose conditions to control the internal operations or details of a business. He stated that conditions can be imposed that control the use of the land.

Mr. Clark made a motion, seconded by Mr. Schawel, to recommend a SEQR Negative Declaration on this rezoning. As the vote on the motion was four (4) ayes and two (2) nays (Mr. Chapman and Mr. Mahoney), the motion carried.

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

"In accordance with Section 280-340 B of the Hamburg Town Code, the Zak Management rezoning was referred to the Planning Board for review, comment and recommendation to the Town Board.

On February 3, 2016, the Planning Board forwarded a positive recommendation to the Town Board, and the Town Board held a public hearing on March 28, 2016.

At the public hearing, the Town Board received numerous comments and concerns on the rezoning application, so the Town Board referred the application back to the Planning Board for further review, investigation and comment.

The Planning Board reviewed the project at meetings of May 4, 2016 and July 6, 2016, and subsequently the Applicant requested that the project be tabled and amended the rezoning request. The Town Board entertained this amended rezoning request and referred it back to the Planning Board at its July 18, 2016 meeting.

The Planning Board continued its review on July 20, 2016 and August 3, 2016.

Based on the Planning Board's review of the application materials, the comments received from the public, input from the Town departments, Boards and various Agencies, and input from the Applicant, the Planning Board offers the following in accordance with Section 280-340 B:

1. The rezoning of a portion of the site would allow the owner to expand upon the recreational activities already occurring at the site. The PR District allows the uses proposed.
2. The rezoning to the PR district is similar to the PR zoning that exists in the northern area of the Ravenwood North Industrial Park. In general the zoning fits into this area.
3. This area of the Town is a mixed use area that includes industrial and commercial uses, as well as residential homes. The proposed rezoning and use proposed at the rear of the site fits into the overall character of the area.
4. The rezoning of the site would allow the owner/applicant to develop the site with additional outdoor recreation uses and include a new indoor recreation facility. The Hamburg community as a whole could benefit from the building of this facility because schools and other community groups such as the boy/girl scouts would be able to utilize the facilities.
5. Much of the controversy and concerns of the neighbors deal with the following issues:
 - a. The selling and consumption of alcohol on the site and the impact this might have on nearby residential homes.
 - b. Increased traffic.
 - c. Increased noise, lighting and other disturbances.
 - d. Activities occurring on the site until 3 to 4 in the morning.
 - e. Potential safety issues relating to traffic combined with the consumption of alcoholic beverages.
 - f. The proposal does not fit the character of the area.
 - g. The above issues causing a devaluing of the existing home values.
 - h. Inadequate parking (causing problems in residential areas).
6. The Applicant has provided a noise study to the Town.
7. The Applicant has provided some traffic information and the Town obtained some traffic counts in the area. The additional traffic that would be caused by the new use would not exceed those projected for the Industrial Park and would represent a small increase to the traffic in the area. The use though could provide peak traffic at "off hours". This would not coincide with the peak hours of the Business Park and the local roads but would add traffic at times when the traffic levels are reduced.
8. Based on the drawings and site visits, the development proposed for the site will not be directly seen from the residential area.
9. The Comprehensive Plan depicts this area as Industrial and the Plan recommends that this area be protected and buffered from additional residential development. It also acknowledges that the "Smokestack" industries of the past are being replaced with less invasive uses.
10. The proposal does not interfere with the existing Industrial (Business) uses on the site.

The Planning Board recommends that the rezoning be approved based on the above information and the following reasons and conditions:

1. The food and beverage area is to be an accessory use to the "recreation facility".

2. No signage will be placed on the building advertising the sale of food or alcohol.
3. The food and drink area will only be open when the recreational facility is open.
4. The project will require a State Liquor Authority License and the operation must be in accordance with that license.
5. The site plan must be accompanied by a parking study that illustrates that required/needed parking is provided on the site.”

As the vote on the motion was four (4) ayes, two (2) nays (Mr. Chapman and Mr. Mahoney) and one (1) abstention (Mr. Geraci), the motion carried.

5272 South Park Avenue LLC – Requesting rezoning of property located at 5272 South Park Avenue from R-3 to PUD (Planned Unit Development)

Attorney Sean Hopkins, representing the applicant, stated that the applicant is requesting that just less than 19 acres of land be rezoned to PUD. He stated that the project is a mixed use redevelopment. He stated that the plan before the Town at this time is a concept plan and, given that there are various elements to it, the applicant understands that if the property is rezoned, the applicant may have to return to the Planning Board in the future if the plan changes. He stated that the proposed townhomes along Sowles Road would be the first stage of the project, as that is allowed under the existing zoning.

Attorney Hopkins stated that the applicant is requesting that the Planning Board recommend that the Town Board commence the SEQR review process.

Mr. Clark made a motion, seconded by Mr. Schawel, to recommend that the Town Board commence the SEQR review process. Carried.

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 a revised Site Plan showing the sidewalk in the location discussed at the Board’s previous meeting. He stated that the applicant has agreed to locate the sidewalk where the Planning Board wants it.

Mr. Curry stated that there was some confusion as to who stated that the sidewalk would be installed if the Planning Board wanted it installed. He noted that after doing some research, he found that David Stapleton submitted a letter to the Planning Board in which he (Mr. Stapleton) did state that he would install the sidewalk, and at that same time he authorized Mr. Curry to represent that.

Mr. Clark made a motion, seconded by Mr. Chapman, to grant approval for the amended Site Plan dated April 1, 2015 and revised August 3, 2016 with the following conditions:

1. Approval is contingent upon the Engineering Department comment letter dated August 3, 2016.
2. The sidewalk must be constructed before the Chairman is authorized to sign the Site Plan.

Carried.

Engineering Department comments have been filed with the Planning Department.

Planning Board to review proposes amendments to the Town Code

The Planning Board determined that it does not have any comments or concerns regarding the proposed amendments to the Town Code.

OTHER BUSINESS

Mr. Clark made a motion, seconded by Mr. Schawel, to schedule a public hearing for the Burroughs Two-Lot Subdivision at 6872 Boston State Road to be held on August 17, 2016. Carried.

Chairman O'Connell made a motion, seconded by Mr. Geraci, to approve the minutes of July 20, 2016. Carried.

Mr. Schawel made a motion, seconded by Mr. Geraci, to adjourn the meeting. The meeting was adjourned at 8:30 P.M.

Respectfully submitted,

Doug Schawel, Secretary

Planning Board

Date: August 9, 2016