

Town of Hamburg
Planning Board Meeting
February 1, 2023 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 PM on Wednesday, February 1, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark, Vice-Chairwoman Kaitlin McCormick, Dennis Chapman, Jeb Bobseine, Margaux Valenti and Cindy Gronachan.

Others in attendance included Town Planners Drew Reilly and Josh Rogers and Town Engineer Camie Jarrell.

WORK SESSION

Hutton St. 21 LLC - Requesting a Special Use Permit for and Site Plan Approval of a car wash facility to be located at 5363 Southwestern Boulevard

Attorney Frank Pavia from Harris Beach, representing the applicant, stated that the proposal is to construct a 4,562 sq.ft. automated car wash on approximately 1.83 acres of land in a C-2 district. He noted that the property is bounded by an existing Mavis Auto Center to the east and residential properties and uses to the west and south. He stated that commercial car washes are allowed in C-2 districts pursuant to the issuance of a Special Use Permit.

Attorney Pavia stated that in December 2022 the applicant was granted two (2) area variances permitting reduced setbacks of 150.8 feet and 48.1 feet respectively from the adjoining parcels to the west and south.

Attorney Pavia stated that pursuant to Section 280-312 B of the Hamburg Zoning Code, the project meets the criteria for issuance of a Special Use Permit. He noted that with the adjacent Mavis Auto Center and the Walmart Super Center across the street, the project is in harmony with the general purpose and intent of Article 46 of the Zoning Code and granting this Special Use Permit will not create a hazard to health, safety or general welfare. He further stated that a site plan design is proposed that would lessen the visual impact of the project while ensuring the safe circulation of vehicles both within the car wash and the interior of the site. He stated that the project will improve the ingress and egress point from Southwestern Boulevard that would be shared with the Mavis Auto Center.

Attorney Pavia stated that the applicant's parcel and the Mavis Auto Center parcel are separate, but some of the existing parking spots on the applicant's parcel serve the Mavis Auto Center.

It was determined that the two (2) parcels' shared property line runs through the existing driveway access.

It was further determined that the Planning Department will research the Mavis Auto Center approval and determine if any conditions were placed on that approval that would affect this project.

Attorney Pavia stated that there is a line of mature trees on the site that would be preserved and enhanced by the planting of additional evergreen trees (5 - 6') on the western and southern boundaries in order to buffer this project from the adjoining residential properties.

Ms. McCormick stated that she has received a lot of complaints and feedback from residents regarding a car wash the Planning Board recently approved regarding the night time lighting. She stated that a five- to six-foot tree is not going to obstruct light flow to a second story residence whose property line is 48 feet away. She stated that she is concerned about how screening and appropriate lighting can be provided that is not providing a view scape for these very close residential structures and properties.

A representative of Stonefield Engineers stated that there is quite an elevation difference between the applicant's property and the adjoining residential property to the west and there would be a five-to six-foot retaining wall that would wrap along the southern and western property lines. He further stated that all of the Code requirements regarding lighting in terms of property line illumination have been met and the applicant would be not be providing any kind of illumination along the adjoining residential properties.

It was determined that the applicant's property is lower than the adjoining residential properties.

Attorney Pavia stated that the design is to have the vacuum spaces in front of the building so as to be as far from the residences as possible.

It was determined that there would be no colored lights associated with this project.

Attorney Pavia stated that the operating hours would be 8:00 AM to 8:00 PM seven (7) days a week.

It was determined that the lighting would come on one (1) hour before operations cease and would stay on all night at security levels or the lights could be turned off one (1) hour after operations.

The representative from Stonefield Engineers stated that the operation would be fully automated and there would be three (3) pay stations customers can go to before entering the tunnel. He noted that the outer lane would be for VIP members who pay a monthly membership fee and there would be an on site supervisor at the pay stations at all times. He stated that there would be one (1) or two (2) key holders on site, as well as an additional supervisor.

It was determined that Attorney Pavia would confirm with the applicant to see if the vacuums could be only operable during the regular car wash hours.

It was determined that the applicant will submit the standard noise study that is done for these types of car washes.

In response to a question from Ms. Gronachan, the representative from Stonefield Engineers stated that a traffic study was prepared and it, along with the drainage calculations, are under New York State Department of Transportation (NYSDOT) review. He stated that he anticipates no impact to the roadway network and 100 trips during the peak hours are anticipated, which would not increase any kind of level of service for the roadway network. He noted that in conjunction with the approval for the Mavis Auto Center project, there was a 10,000 sq.ft. retail permitted on this site that is a much higher traffic generator than a car wash would be.

Ms. McCormick asked if it is possible to rotate the proposed layout to move the project further away from the adjacent residences.

Attorney Pavia responded that doing that would create more setback problems that would require additional variances. He noted that whatever project is proposed on this site would need relief from the rear yard setback requirements.

The representative from Stonefield Engineers stated that Ms. McCormick's idea would also cause circulation problems with the existing driveway shared with the Mavis Auto Center.

Mr. Bobseine asked if the applicant has taken any steps to reduce the project's visibility from the road.

The representative from Stonefield Engineers responded that it would not be possible to build a berm along Southwestern Boulevard because of an existing swale in that area that should be maintained.

Ms. McCormick stated that the applicant should be able to place trees close to the internal routing, which would make the monument sign more visible.

It was determined that five (5) existing parking spots on this spot will be used by the Mavis Auto Center and an agreement will be put in place between the applicant and Mavis.

Board members discussed how someone would exit if he or she gets to the pay station and then decides not to go through the car wash facility.

Chairman Clark made a motion, seconded by Mr. Bobseine, to schedule public hearings for Special Use Permit and Site Plan Approval to be held on March 1, 2023. Carried.

Ms. McCormick made a motion, seconded by Ms. Gronachan, to change the date of the public hearings to March 15, 2023. Carried.

It was determined that the Planning Department would initiate the SEQR Coordinated Review. Engineering Department comments have been filed with the Planning Department.

REGULAR MEETING

Public Hearing - 7:00 P.M., David Manko - Requesting Site Plan Approval of Phase IV of the Mission Hills development located on the east side of Camp Road

Attorney Peter Sorgi, representing the applicant, stated that the project site is 16.4 acres and 11 buildings are proposed comprising 55 units. He stated that since this project was last reviewed by the Planning Board, the number of proposed units has been reduced from 59 to 55.

Attorney Sorgi stated that in 2022 the Planning Board determined that this phase is consistent with the original Findings Statement issued by that Board in 2010.

Mr. Bobseine 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 David Manko to construct Phase IV of the Mission Hills development located

on the east side of Camp Road. The public hearing will be held on February 1, 2023 at 7:00 P.M. in Room 7B of Hamburg Town Hall'.

Chairman Clark declared the public hearing open. The following people spoke:

- Paul McQuillin, Traffic Safety Advisory Board (TSAB) Coordinator, asked if a traffic study was done. He stated that this area is one of the "hot spots" in the Town and the NYSDOT will not install a traffic light at the intersection of Howard Road and Camp Road.

Chairman Clark responded that SEQR was completed in 2010 on the entire project and when Phase IV was proposed with a different number of units than what was previously envisioned, the Planning Board determined that this last phase was in accordance with the original Findings Statement issued in 2010.

Chairman Clark declared the public hearing closed.

In response to a question from Ms. McCormick, David Manko, applicant, stated that Phases I and II are completely constructed, the first ten (10) homes in Phase III have been constructed and the first home in the remainder of Phase III is currently being built. He noted that approximately 55% of the planned residences in Mission Hills have been constructed.

Ms. Valenti stated that it is concerning to her that although they will not be impacted, the wetlands on the site are approximately 20 feet from buildings.

Mr. Manko stated that absolutely no wetlands have been impacted by any phase of this development.

Ms. Jarrell stated that the Engineering Department will want to see construction fencing demarcating the wetlands. She noted that someone from the Engineering Department will be on site when the roads are being constructed.

Ms. Jarrell stated that she noticed that sidewalks are proposed but she did not see any cross walks on the site plan.

Chairman Clark made a motion, seconded by Mr. Chapman, to authorize the Planning Department to prepared draft resolutions and table this project to the Board's February 15, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Hamburg Retail LLC - Requesting Sketch Plan Direction on a proposal to construct a nine-unit multi-family project at 4100 St. Francis Drive

Attorney Peter Sorgi, representing the applicant, stated that there is pending use variance application before the ZBA.

Chairman Clark stated that the Town Attorney spoke with the ZBA attorney and Attorney Puglisi and they concurred that the Planning Board should be the Lead Agency pertaining to SEQR. He noted that the ZBA members were advised of this and none objected.

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

“Whereas, the Town of Hamburg received an application from Hamburg Retail, LLC for a use variance from the Zoning Board of Appeals and Site Plan approval from the Hamburg Planning Board, for a project located at 4100 Saint Francis Drive in order to construct a multi-family project that includes nine (9) attached units; and

Whereas, the project appeared before the Hamburg Zoning Board and the Hamburg Planning Board; and

Whereas, that the Hamburg Zoning Board has begun a coordinated SEQR process to establish the Zoning Board as SEQR Lead Agency for the project in accordance with the New York State Environmental Quality Review Act (SEQRA); and

Whereas, the Hamburg Planning Board has received the Zoning Board’s request for SEQR Lead Agency; and

Whereas, the Hamburg Planning Board typically conducts the SEQR process for projects that include site plan approval in the Town of Hamburg and believes it is the appropriate agency to complete the SEQR process for this project to ensure that any cumulative impacts are considered (other waterfront projects are proposed), that all of the respective issues are analyzed including coastal consistency review, traffic and drainage issues, site plan layouts, overlay and design issues, and coordination occurs with the TSAB, CAB, the waterfront committee and the Hamburg Preservation Board, and therefore respectfully requests that the Zoning Board allow the Hamburg Planning Board as an Involved Agency to act as SEQR Lead Agency on this application; and

Whereas, the Hamburg Planning Board would like to receive input on this project from the ZBA and therefore requests that the Zoning Board continue their review of this application. No decision can be made until a SEQR decision is made and in accordance with SEQR provide the Planning Board with your comments.

Now, Therefore, Be It Resolved, that the Hamburg Planning Board, having received a Lead Agency request from the Hamburg ZBA, requests that the Hamburg Planning Board be Lead Agency for this project and that the Zoning Board as an Involved Agency provide their comments to the Planning Board.

Be It Further Resolved, that if the Hamburg Zoning Board agrees with the Planning Board’s request to be Lead Agency, that the Planning Department be authorized to mail this determination to other Involved and Interested Agencies notifying them of the Planning Board’s intention to act as SEQR Lead Agency.”

Carried.

Chairman Clark stated that the Town attorneys have noted that the Town Code should be amended so that before the ZBA appoints itself Lead Agency, it would have to be reviewed by the Planning Board first.

It was determined that input from the Waterfront Advisory Committee, TSAB and Conservation Advisory Board will be needed. It was further determined that a Coastal Consistency Determination will need to be made by the Planning Board with a recommendation from the Waterfront Advisory Committee.

In response to a question from Ms. Valenti, Chris Wood, project engineer, stated that the entire site would be in the brownfield program.

Chairman Clark made a motion, seconded by Mr. Chapman, to table this project to the Board's March 1, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

3800 Hoover Road LLC - Requesting Sketch Plan Direction on a proposal to construct a seven-unit multi-family project at 3800 Hoover Road

In response to a question from Ms. Valenti, Mr. Wood stated that this site is not located in a flood plain.

Chairman Clark stated that the applicant plans to request a two-lot subdivision in order to separate the existing building on the site from the vacant land associated with the proposed project.

Mr. Wood stated that he is not sure that a subdivision will be requested. He noted that the existing building is not proposed to be associated with the new rental project on the site.

Chairman Clark stated that the Hamburg Preservation Board is seeking historic structure status of the existing building on this site.

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

"Whereas, the Town of Hamburg received an application from 3800 Hoover Road, LLC for a use variance from the Zoning Board of Appeals and Site Plan approval from the Hamburg Planning Board, for a project located at 3800 Hoover Road in order to construct a multi-family project that includes seven (7) attached units; and

Whereas, the project appeared before the Hamburg Zoning Board and the Hamburg Planning Board; and

Whereas, that the Hamburg Zoning Board has begun a coordinated SEQR process to establish the Zoning Board as SEQR Lead Agency for the project in accordance with the New York State Environmental Quality Review Act (SEQRA); and

Whereas, the Hamburg Planning Board has received the Zoning Board's request for SEQR Lead Agency; and

Whereas, the Hamburg Planning Board typically conducts the SEQR process for projects that include site plan approval in the Town of Hamburg and believes it is the appropriate agency to complete the SEQR process for this project to ensure that any cumulative impacts are considered (other waterfront projects are proposed), that all of the respective issues are analyzed including coastal consistency review, traffic and drainage issues, site plan layouts, overlay and design issues, and coordination occurs with the TSAB, CAB, the waterfront committee and the Hamburg Preservation Board, and therefore respectfully requests that the Zoning Board allow the Hamburg Planning Board as an Involved Agency to act as SEQR Lead Agency on this application; and

Whereas, the Hamburg Planning Board would like to receive input on this project from the ZBA and therefore requests that the Zoning Board continue their review of this application. No decision can be made until a SEQR decision is made and in accordance with SEQR provide the Planning Board with your comments.

Now, Therefore, Be It Resolved, that the Hamburg Planning Board, having received a Lead Agency request from the Hamburg ZBA, requests that the Hamburg Planning Board be Lead Agency for this project and that the Zoning Board as an Involved Agency provide their comments to the Planning Board.

Be It Further Resolved, that if the Hamburg Zoning Board agrees with the Planning Board's request to be Lead Agency, that the Planning Department be authorized to mail this determination to other Involved and Interested Agencies notifying them of the Planning Board's intention to act as SEQR Lead Agency."

Carried.

Chairman Clark made a motion, seconded by Mr. Bobseine, to table this project to the Board's March 1, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

Planning Board to issue the Final Scoping Document for the proposed subdivision by David Manko to be located on the west side of Parker Road, south of Big Tree Road

Ms. McCormick stated that the draft Final Scoping Document circulated to Board members by Wendel refers to the draft Environmental Impact Statement (DEIS) and the draft Generic Environmental Impact Statement (DGEIS).

Mr. Reilly responded that "DGIES" should be "DEIS" throughout the entire document.

Chairman Clark made a motion, seconded by Mr. Bobseine, that the Planning Board accept the Final Scoping Document as amended for this proposed project.

Carried.

Frank Russo - Requesting Preliminary Plat Approval of a 14-lot subdivision as an extension of Niles Avenue

Mr. Reilly stated that the Conservation Advisory Board (CAB) initially only made comments on the wetland on the site and not on the trees. He stated that recently members of the CAB walked the site and are concerned about what they believe are significant trees that should be preserved.

Chris Wood, project engineer, stated that he submitted an email from the applicant's wetland/environmental consultant indicating that there are no significant trees on the site. He stated that if there are any significant trees that look like they should remain, the applicant would keep those.

Mr. Wood stated that if any trees are found on the site that the CAB and the applicant feel are significant and they are removed as part of the project, two (2) new trees could be planted by the applicant for every significant tree removed.

Chairman Clark stated that members of the CAB could mark the significant trees, the developer could identify any trees that are marked that he disagrees with and there would have to be some sort of process to referee that dispute.

Mr. Bobseine asked what the definition of "significant" is.

Leona Rockwood, CAB member, stated that members of the CAB walked the site because Mr. Wood stated on January 18, 2023 that all of the trees on the site are dead.

Mr. Wood stated that he did not indicate that all of the trees are dead. He noted that he agreed that there may be significant trees on the site.

Ms. Rockwood stated that the non-jurisdictional wetlands on the site still remain a big issue for the CAB.

Chairman Clark asked Mr. Reilly who, aside from Gardy Low on the CAB, the Town might have who could render an opinion on whether trees are "significant".

Mr. Reilly responded that Mark Lorquet, CAB Chairman, indicated to him that if the applicant and the CAB do not agree on whether certain trees are significant, the CAB would be agreeable to having an independent person walk the site and make that determination.

Ms. McCormick asked Mr. Wood if he and the developer's wetland/environmental consultant would be willing to meet members of the CAB on site to identify any disputes. Mr. Wood indicated that that would be acceptable.

Ms. Grohachan stated that she believed that this applicant should not be delayed any longer and that something should be worked out regarding whether significant trees exist on the site. She stated that the applicant has done the due diligence and at the Board's last meeting there was nothing mentioned about all the trees on the site being dead.

Board members discussed what they would be voting on. Ms. Gronachan stated that she believed that the Board should vote on the following issues:

1. Clarification on the significance of the trees on the site, have the two (2) sides meet and work that out
2. The wetland issue and whether the project is unique enough to warrant impacting the wetlands on the proposed lots

Ms. McCormick stated that she was undecided as to whether there is a hardship with the wetlands and noted that there would be clear cutting and flag lots.

Ms. McCormick read the relevant portion of the Town's wetland protection law for Board members' clarification as follows:

"It is the intent of the Town of Hamburg through these regulations to help avoid, restrict and minimize damage or loss of wetlands in the Town, ensure that wetland areas are properly identified and meet State and Federal requirements and in some cases place additional design require-

ments for the filling of wetland areas in unavoidable situations. These regulations are necessary due to the importance of these valuable natural resources and protecting public health, safety and welfare. Wetlands provide the following to the Town of Hamburg:

- In their natural state, wetlands serve to control flooding and water pollution, buffer shore lines and stream banks against erosion and maintain supplies of potable ground water.
- Wetlands also provide high quality wildlife habitat and other opportunities for recreation, scientific study and natural resource education.
- Wetlands are subject to significant development constraints because of poorly drained subsoils and the need for constructive drainage and storm water management systems to compensate for the loss of natural wetland functions.
- In a well planned community, wetlands offer the benefits of open space and natural separation of land uses.”

Ms. McCormick noted that the non-jurisdictional wetlands on the site are not accessible for recreation, scientific study or natural resource education.

Ms. McCormick read the design requirements in the Town’s wetland protection law for Board members’ clarification.

Mr. Wood noted that the developer has agreed to do the additional design requirements in the Town’s wetland protection law.

Ms. McCormick read the following excerpt from the Town’s wetland protection law:

“For site plan and subdivision applications that include areas of State or Federal non jurisdictional wetlands or potentially hydric soils, the applicant must to provide to the Town soils information. This information is to include depth to ground water, including signs and modeling and soil types. This extent of this testing will be determined at Sketch Plan or at the first meeting before the Planning Board.”

Ms. McCormick noted that soil borings will include depth to ground water, any signs of modeling and soil types on the soil testing report.

Board members discussed whether this project qualifies as “unique”. Ms. Valenti stated that the applicant has indicated that the wetlands are unavoidable.

Chairman Clark noted that Board members did not need to reiterate anything that has already been said in the several previous meetings the Board has had to review this project.

Chairman Clark made a motion, seconded by Ms. Gronachan, that the Niles Avenue subdivision meets the exception of being unique as identified by the Town’s wetland protection law.

Chairman Clark stated that he believes that this project is unique because Hamburg Town Code identifies reasons why it wants to preserve wetlands and none of those reasons applies to these particular wetlands, which makes these wetlands and this project unique as that term is defined in the Town Code.

Mr. Chapman, Mr. Bobseine, Ms. McCormick and Ms. Gronachan concurred with Chairman Clark.

Ms. Valenti stated that she agreed with Chairman Clark, but does not know that just needing to fill a wetland for the sake of a project makes the situation unique.

Board members agreed that members of the CAB, Mr. Wood and the wetland/environmental consultant will visit the site and determine which trees are significant. It was determined that if the two (2) parties disagree, the dispute will be settled by Chairman Clark. It was further determined that for every significant tree that is removed, two (2) new trees would be planted.

Ms. McCormick stated that she wanted to make sure that whatever the Planning Board recommends regarding trees on this site is consistent with how it has handled other proposed subdivisions.

Mr. Wood stated that the developer should not have to replace trees that have to be selectively removed for the building lots with two (2) new trees. He stated that selective removal of trees that could stay on the site and are not in a building footprint would be replaced at a 2:1 ratio.

Ms. McCormick stated she is concerned that given the size of the proposed lots, depending on how many trees are being removed and what standard the Board is talking about with "significance", the Planning Board will be put in a position where there are more trees it is requiring to be planted than there will be space to put them. She noted that currently the Town has no mechanism through which it can fund tree planting elsewhere. She stated that she is concerned that the Planning Board would be putting in place a condition that is not enforceable.

In response to a comment from Ms. Gronachan, Chairman Clark stated that the Town does not have a tree fund.

Ms. McCormick suggested recommending a fixed number of certain types of trees with a more robust caliper size with strategic placements, as well as leaving some sort of vegetative buffer at the back of the lots. She noted that this would be something the Building Department could enforce and the CAB could check up on. She stated that the Planning Board could also require that documentation be provided from the developer indicating that the trees on the site are surviving after two (2) to three (3) years.

Chairman Clark suggested that 84 new native mature trees be required (six (6) per lot) selected from the Town's tree list and a ten-foot buffer be required at the rear of the three (3) flag lots that would not have conservation easements behind them.

Board members discussed what caliper the required trees should be.

Ms. Gronachan stated that she does not want to add a burden to the developer that was not there to begin with.

Ms. McCormick reviewed the most recent memo from the CAB and it was determined that the concerns had been addressed.

Ms. Valenti noted that although this project will not be able to control the existing flooding that is experienced in the area, it will, because of the changes in topography, lessen the loading of water onto the neighboring properties.

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

“Whereas, the Town of Hamburg received a Subdivision application from Frank Russo for the development of a 14-lot subdivision on Niles Avenue (a previously approved subdivision of 11 lots); and

Whereas, the Hamburg Planning Board reviewed the application and revisions to the application at meetings from October of 2022 to February of 2023; and

Whereas, The Hamburg Planning Board has reviewed the project and determined that the project will not adversely affect the natural resources of the State and/or the health, safety and welfare of the public and is consistent with social and economic considerations and a Negative Declaration was issued by the Planning Board; and

Whereas, the Hamburg Planning Board held the required public hearing on 11/16/22 and received comments from the public; and

Whereas, the Hamburg Planning Board has reviewed the project against the requirements of the Subdivision, Zoning and Wetlands Protection laws and found the project to be in accordance with those laws, noting that the non-jurisdictional wetlands on the site are not quality wetlands and that the uniqueness of the site does not allow for their avoidance.

Now, Therefore, Be It Resolved, that the Hamburg Planning Board hereby issues Preliminary Subdivision Approval with the following conditions:

- Approval is contingent upon the Engineering Department comment letter.
- Recreation fees in lieu of land will be required, as there is no appropriate place to locate a new facility.
- The construction of sidewalks shall not be waived and they will be constructed on the entirety of Niles Avenue as illustrated on the approved plans.
- Deed restrictions shall be put in place on the rear of the deep lots to restrict development on those lots;
- The storm water management area will be placed on its own lot (owned by a Homeowners Association) and it will be restricted as permanent open space and the applicant will provide the appropriate drainage easement to the Town for emergency repairs;
- The detention basin will be oversized as proposed by the applicant and approved by the Town Engineer in order to accommodate the removal of non-jurisdictional wetlands and to address existing wet conditions;
- Planting of a native mixture of 70 trees of a minimum of 2.5-inch-caliper or equivalent of coniferous trees will be required, with survivability in accordance with Town law.
- Planting of a native mixture of 14 trees of a minimum of 4-inch-caliper, or equivalent of coniferous trees will be required, with survivability in accordance with Town law.
- A ten-foot vegetative buffer conservation easement will be placed on the east ends of lots 4, 6, and 7.
- The developer will make every effort to preserve existing significant trees.”

Carried.

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Chairman Clark made a motion, seconded by Ms. McCormick, to approve the minutes of January 4, 2023. As the vote on the motion was five (5) ayes and one (1) abstention (Ms. Gronachan), the motion carried.

Chairman Clark made a motion, seconded by Mr. Chapman, to adjourn the meeting. Carried.

The meeting was adjourned at 8:50 P.M.

Respectfully submitted,
Jeb Bobseine, Secretary

Date: February 15, 2022