

Town of Hamburg  
Planning Board Meeting  
April 5, 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, April 5, 2023 in Room 7B of Hamburg Town Hall. Those attending included Chairman William Clark,, Margaux Valenti, Dennis Chapman, Jeb Bobseine, Cindy Gronachan and Daniel Szewc.

Others in attendance included Town Planners Drew Reilly and Josh Rogers and Planning Board Attorney Jennifer Puglisi.

Excused: Vice-Chairwoman Kaitlin McCormick

## **WORK SESSION**

### **Benderson Development – Requesting Site Plan Direction on a proposal to demolish the existing vacant Bank of America and construct a new 6,998 sf building at 5334 & 5340 Southwestern Blvd**

It was determined that a Chipotle restaurant with a pick-up window is proposed at the main signalized entrance to Walmart and there are no proposed new entrances onto Southwestern Boulevard. It was further determined that nine (9) stacking spaces are proposed for the pick-up window and 42 parking spaces are proposed, a patio is planned and some of the existing green space between the Key Bank and the Bank of America (to be demolished) will be maintained.

Mr. Matt Oates from Benderson Development explained the plan for vehicle circulation and presented the rendering of the proposed building, noting that 37 seats are planned.

In response to a question from Chairman Clark, Mr. Oates stated that the pick-up window with a drive-thru lane is proposed because people would prefer to pick up food at the window rather than parking and going inside the building. He noted that there is no order window and all ordering is done online.

Mr. Oates stated that Benderson now owns both the Key Bank property and the property where the Chipotle is proposed.

It was noted that if the stacking for Chipotle gets too long, access to Key Bank or Walmart would not be affected.

Mr. Reilly stated that the Conservation Advisory Board (CAB) submitted a letter indicating a concern about the use of pavement and the increase in runoff and a suggestion that pervious pavement and dark-sky compliant LED fixtures be used, existing vegetation be replaced with native species, a berm be constructed to reduce the visual impact and green building practices be encouraged.

Mr. Oates stated that the applicant plans for three (3) or four (4) tenants in the new building. He stated that he will provide a letter describing how the applicant arrived at the number of parking spaces provided given the fact that additional tenants are planned.

In response to a question from Ms. Gronachan, Mr. Oates stated that the applicant does not know who the other tenants would be.

Chairman Clark made a motion, seconded by Mr. Chapman, to schedule a public hearing on this project to be held on May 3, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

**Benderson Development – Requesting Site Plan Approval for a drive-thru in McKinley Commons for a Crumbl Cookie at 4154 McKinley Parkway**

It was determined that this is 2,000 sq.ft. of existing tenant space, but the project requires Planning Board review because a drive-thru is proposed. It was further determined that Crumbl Cookie would like to occupy that space and add a drive-thru in an area where black top and parking already exist.

Mr. Matt Oates from Benderson Development stated that the applicant would like to re-stripe that area for the drive-thru lane, which would contain eight (8) spaces. He further stated that even with the addition of the drive-thru, sufficient parking is provided for the entire site.

Mr. Chapman stated that he is concerned about vehicles leaving the drive-thru and vehicles entering the site from McKinley Parkway converging.

Mr. Oates showed Mr. Chapman the circulation plan for the drive-thru. He noted that the drive-thru would be located where parking is currently located, so it would not be any more dangerous. He further stated that the vehicular traffic pattern would not change.

It was determined that parking lot calculations must be submitted by the applicant for this entire site.

It was determined that there would be no seats in the store area.

It was determined that input will be requested from the Traffic Safety Advisory Board (TSAB).

Chairman Clark made a motion, seconded by Mr. Bobseine, to schedule a public hearing on this project to be held on May 3, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

**Matthew Lanfear (Ten Lives Club) – Requesting consideration of a Site Plan Waiver on a proposal to construct a 6,000 sq ft building addition at 3741 Lakeshore Drive**

It was determined that the applicant asked for this project to be tabled.

Engineering Department comments have been filed with the Planning Department.

**REGULAR MEETING****Public Hearing – 7:00 P.M., Aspen Dental Management Inc. – Requesting Site Plan Approval on a proposal to construct a dental clinic to be located at 3497 McKinley Parkway**

Chairman Clark stated that the applicant proposes to demolish the existing Pizza Hut building on this site and construct an Aspen Dental building. He further noted that there have been complaints about debris on the site and it is his understanding that it has been cleaned up.

It was determined that when a portion of this site was rezoned from R-2 to C-1 in 2021, the Planning Board issued a report that indicated that when the site is redeveloped, issues like removing the debris and properly screening/buffering the nearby residences must be addressed.

A representative of the applicant stated that the Pizza Hut building and all of the asphalt on site would be demolished, the driveway would be redone and much of the asphalt on the south side of the property would be cut away. He stated that the building would be located seven (7) or eight (8) feet further west than the existing building is, the amount of impervious surface on the site would be removed and a new six-foot vinyl fence would be installed along the east side of the property.

The representative stated that he was before the Board of Zoning Appeals (ZBA) the previous evening seeking variances and one of the concerns brought up was the drainage on the east side of the property. He noted that a swale is proposed in that area to pick up the standing water mentioned by the neighbors and a berm is proposed along the northern side and partially along the eastern side of the property.

The representative stated that trees are proposed around the property and the dumpster area and landscaping is proposed around the building.

The representative showed Board members a rendering of the proposed building.

It was determined that when the Town Board rezoned a portion of this property in 2021, the installation of sidewalks was not a condition of the rezoning, but if this project is approved sidewalks will have to be installed along McKinley Parkway,

In response to a question from Mr. Chapman, the representative stated that three (3) area variances for building setbacks are being sought, as well as an area variance for the parking setback from McKinley Parkway.

It was determined that the ZBA tabled this project until it has been further reviewed by the Planning Board.

It was determined that the TSAB would be asked to review this proposal.

Mr. Chapman stated that he does not feel that the variances should be granted and that the applicant should adhere to the Town's requirements.

In response to a question from Mr. Bobseine, the representative stated that the amount of impervious surface would be reduced from 74.8% to 54.8% because the existing paving would be removed and smaller parking lot would be installed.

It was determined that the applicant will provide the Board will reasoning as to why they are proposing the number of parking spaces they are.

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 Aspen Dental Mgmt. Inc. to construct a dental clinic to be located at 3497 McKinley Parkway. The public hearing will be held on April 5, 2023 at 7:00 PM in Room 7B of Hamburg Town Hall.”

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

- Bill Staedt, 3494 Dickens Road, stated that he and his neighbors were not notified of the public hearing and the first time he saw the plans was on April 4, 2023 at the ZBA meeting. He stated that he is concerned about the drainage along his rear property line shared with this site. He stated that he wants a fence, landscaping and a berm along the shared property line and he wants to know how the proposed swale would work, what it would look like and how it would affect him and his neighbors. He stated that he wants the new fence along his rear property line to be at least eight (8) feet in height. He stated that a sidewalk should be installed along McKinley Parkway. He noted that the property had been cleaned up. He stated that perhaps the applicant should eminent domain the properties behind it so that the lot is large enough for this proposal. He stated that the rear of the proposed building is not aesthetically pleasing and there would probably be a four-foot sidewalk leading from the back door to a parking lot, so that would come even closer to his property line and he asked where the swale would fit in in that scenario.
- A property owner residing at 3498 Dickens Road stated that she has lived at this address for 45 years. She stated that she is concerned about the same things the previous speaker addressed (drainage and the desire for a fence that is at least eight (8) feet in height, as well as trees.)
- Jackie Hamilton, 3486 Dickens Road, stated that she is very concerned about the drainage in this area and showed Board members pictures of the water in the rear of her yard, as well as the dilapidated fence along the property line shared with Pizza Hut. She stated that she is happy to hear that the fence will be replaced and is very worried about the drainage problems in her back yard. She stated that she would be happy with trees planted on the applicant's side of the new fence and indicated that a 6 - 8' fence would be preferable.

Chairman Clark noted that the applicant would not be allowed to make Ms. Hamilton's drainage problems worse with water from the project site, but if the water in her yard is coming from another source, the applicant's project may not help her drainage situation. He further stated that because a swale is proposed along the property line shared with her, planting trees in it might not be wise because they would die or the swale might not work properly.

Mr. Bobseine stated that he would be curious to know if the building could be moved a few more feet away from the residences on Dickens Road.

Chairman Clark declared the public hearing closed.

Ms. Gronachan reminded the Board and the public that there has been a building on this site for at least 45 years and the nearby residents need to remember that there will be a new building there that will hopefully have a positive impact. She stated that having been on a ZBA in another state, she does believe this property is unique but the size of the building should be looked at

by the ZBA and reducing the size of the building should be considered to minimize the impact of those variances. She stated that just because a property is unique does not mean that any size building should be allowed on it that could create more problems.

Ms. Grohachan stated that she would like the applicant to present a smaller building.

Chairman Clark stated that although the new building is proposed further from the residences than the existing Pizza Hut building, it would be good to improve that distance even more if possible.

The representative stated that the parking lot would be 13 feet from the east property line and the building would be 16 feet from it.

Chairman Clark made a motion, seconded by Ms. Grohachan, to initiate the SEQR Coordinated Review for this project and table it the Planning Board's May 3, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

### **Alchemy Shores – Requesting rezoning of property located at 3780 Hoover Road from M-2 (Light Industrial District) to MU1 (Mixed Use District)**

Chairman Clark stated that a public information session will be schedule to get input from the public on this proposed rezoning before making a recommendation to the Town Board.

Mr. Reilly stated that the Waterfront Revitalization Committee (WRC) filled out the Waterfront Assessment Form on this project and determined it has coastal consistency and will not negatively affect the waterfront.

Mr. TJ MacIntosh, applicant, stated that an 8,500 sq.ft. building currently exists on the property, which is zoned industrial. He stated that landscaped islands in the parking lot have been added to the Site Plan, new landscaping is proposed in the northwest corner of the property to screen the adjacent neighbor and many trees already exist on the perimeter of the property.

Mr. MacIntosh stated that 83 parking spaces are proposed and the maximum capacity of the event space would be 125. He further stated that future development is planned closer to the beach, but at this point he does not know what that would consist of. He stated that it might be a restaurant, dwelling units or office space.

Mr. MacIntosh stated that near the lake there is an existing chain link fence with overgrown bushes around it and noted that the property has been vacant for over a year. He stated that he is in discussions with the New York State Department of Environmental Conservation (DEC) about what he can do in that area near the lake.

Anne MacIntosh, co-owner of Alchemy Wine Bar, 20 Union Street, stated that she and her husband purchased this property on Hoover Road for more space for events. She stated that she is maxed out at the Union Street location and there is definitely a need for additional event space in the Southtowns. She stated that she would use half of the existing building (4,300 sq.ft.) for events such as weddings, bridal showers, baby showers, birthday parties, retirement parties, end of life celebrations, etc.

Mrs. MacIntosh stated that she only plans to use the interior of the building for the events. She further stated that they are not proposing to construct anything in the DEC's Coastal Erosion Hazard Area, although they may decide to install a boardwalk to the water that would be removable and they understand they would need permits from the DEC for that.

Mrs. MacIntosh stated that no permanent structures of any kind would be on the beach, per DEC guidelines. She noted that chairs and recreational beach equipment would be placed there only during the time of the event and then stored on site in the half of the existing building not being used for event space.

Mrs. MacIntosh stated that beach wedding ceremonies would probably only occur on Saturdays. She further stated that the event space might be utilized for a ticketed 7:00 AM sunrise yoga class on the beach and/or for public or private events. She stated that she owns a fleet of mobile wine bars, which are mobile champagne trailers that go to public events like farmers' markets, weddings, etc. She stated that she is considering dedicating one (1) of the mobile wine bars to a space next to the existing building and having plastic tables and chairs for people to use when purchasing drinks at the mobile bar.

Mrs. MacIntosh stated that because it is cold in Buffalo six (6) months out of the year, she sees the outdoor space being seasonal and sees the building being used primarily for event space, but in the event that the building is not booked for event space, she would like to be open to the public to help offset the high mortgage payments she will have.

Chairman Clark stated that the request is to rezone to Mixed Use, which would provide the possibility for many different uses in the "future development" area of this property and the Planning Board will have to address that in its recommendation to the Town Board.

Mr. Reilly noted that the new Mixed Use law has a list of permitted uses, but it also gives the Planning Board the ability to recommend other appropriate uses for the property.

It was determined that the only use the applicants are requesting that is not on the list of permitted uses in the new Mixed Use zoning district is the outdoor use.

Mr. Bobseine stated that the amount of impervious surface on this property would be increased with this project.

Ms. Grohachan stated that the only concern she has about the outdoor use is how it might affect the neighbors.

In response to a question from Mr. Chapman, Mr. MacIntosh stated that there are five (5) or six (6) homes between this property and the old Dock at the Bay site.

Ms. Valenti stated that the level of trash that ends up in the lake from events is incredibly problematic and she would want the applicants to have a plan for that.

In response to a question from Mr. Chapman, Mrs. MacIntosh stated that she has no use for fireworks.

Chairman Clark made a motion, seconded by Ms. Gronachan, to schedule a public information session to be held on May 3, 2023. Carried.

Engineering Department comments have been filed with the Planning Department.

**Hamburg Retail, LLC - Requesting Sketch Plan Direction on a proposal to construct a 9-unit multi-family project at 4100 St. Francis Drive**

It was determined that this project requires a use variance from the ZBA and the Planning Board plans to be the SEQR Lead Agency. It was further determined that the use variance will not be considered until a SEQR determination is made by the Planning Board.

Attorney Sean Hopkins, representing the applicant, stated that given where this property is located, it falls within the jurisdiction of Town's Waterfront Revitalization Committee (WRC), whose role is important but advisory. He stated that he attended a virtual meeting of that committee on March 30, 2023 and received preliminary input. He stated that he does not think there were any concerns of the WRC regarding this project.

Attorney Hopkins stated that the 30-day comment period for any Involved and/or Interested Agency has expired relative to the SEQR Coordinated Review that was conducted and the only substantive comment received was from the New York State Department of Transportation (DOT), which expressed concern that by adding the townhouse to the rear of the site, a cut-through would be created between St. Francis Drive and Lakeshore Road. He noted that the Site Plan has been revised to include an emergency gate with a Knox Box, so that the only access through that driveway would be for emergency personnel only. He stated that people who live in these townhomes would enter and exit on Lakeshore Road.

Attorney Hopkins stated that if and when the other side of the property is developed, whatever is proposed would have to return to the Planning Board for review.

Attorney Hopkins stated that one of the reasons the applicant is requesting approval for the re-development is that it will allow the applicant to move forward with the clean up of some contamination on the property per input received from the DEC. He noted that the applicant plans to clean up the site and use the tax credits in connection with the new townhomes.

Attorney Hopkins stated that he feels that the issuance of a SEQR Negative Declaration is appropriate for this project because it involves a contaminated previously developed site.

Attorney Hopkins showed Board members the elevations of the proposed building.

Attorney Hopkins stated that the only comment received from the WRC was a request that the architect take a look at the proposed elevation and see if a more nautical theme can be utilized. He noted that he indicated to the WRC that prior to its April meeting, the architect will take a look at that.

Attorney Hopkins stated that 3 3/4 units are in the Route 5 Overlay District and the remainder of the building is not. He noted that at a future meeting he will address the criteria in the Code relative to the Route 5 Overlay District.

It was determined that the townhomes would be for lease.

Board members discussed whether the access should be from Lakeshore Road or St. Francis Drive. It was determined that the DOT has not weighed in yet on which road should be the main access to the townhouse project.

In response to a question from Chairman Clark, Attorney Hopkins stated that removing the existing gas station on the property is not part of the applicant's immediate plans. He noted that the preferred course of action would be for someone to redevelop that building.

Mr. Chapman stated that he would like to see some townhomes that the applicant has built elsewhere.

Chairman Clark stated that the Planning Board will have to have a discussion about whether this project fits in with the character of the community.

Attorney Hopkins noted that he did submit to Board members the power point presentation given to the WRC at its March 30, 2023 meeting.

It was determined that the Planning Board will review the Part 2 and Part 3 of the Environmental Assessment Form at its May 17, 2023 meeting.

Attorney Hopkins stated that the Coastal Consistency Form and the Federal form will be submitted to the WRC and the Planning Board.

Chairman Clark made a motion, seconded by Ms. Gronachan, to table this project to the Planning Board's May 17, 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 7-unit multi-family project at 3800 Hoover Road**

Chairman Clark stated that this project is similar to the previous project in that it is a residential proposal in the Waterfront Commercial district, requires a use variance and the Planning Board will be the SEQR Lead Agency. He noted, however, that it is in a different location with different issues.

Attorney Sean Hopkins, representing the applicant, stated that this site is a portion of 3800 Hoover Road (.94 acres of the 2-acre site) and the former Dock at the Bay restaurant is located on the portion that is not part of the project. He stated that the Dock at the Bay building is currently being reviewed by the Historic Preservation Committee and a public hearing has not yet been held on the potential nomination of that building as the first local landmark pursuant to the Historic Preservation law.

Attorney Hopkins stated that since this project was last reviewed by the Planning Board, an internal property line has been shown on the Site Plan, meaning that the applicant is not proposing anything on the parcel containing the former Dock at the Bay building. He noted that the applicant's hope is to lease that building to a restaurant.

Attorney Hopkins stated that creating the internal property line will require a Minor Subdivision approval from the Planning Board.

Attorney Hopkins stated that the remainder of the site would consist of a two-story seven-unit townhome building for lease.

Attorney Hopkins stated that this project was presented to the WRC on March 30, 2023 and additional input was received as follows:



- The WRC would like the applicant to take a look at the architectural elevations and see if some nautical elements can be included.
- The WRC asked the applicant to consider whether this could be some type of mixed-use project, which would most likely require a bigger building and finding a retail tenant.
- The WRC asked if consideration could be given to reducing the number of curb cuts and pushing the townhomes back further from Hoover Road.
- The WRC questioned if public access to the lake would be provided from this site.

Attorney Hopkins noted that the beachfront at this site is fairly limited and with the exception of one (1) area there really is no “beach”. He stated, however, that if it was part of the Town’s long term planning objectives to establish some public access there, the applicant would be willing to engage in discussions about preserving that right for the future. He stated that there are residential properties to the south of this site and the applicant is not proposing public access to the water.

Attorney Hopkins stated that the applicant will take the WRC’s comments into consideration and resubmit to that committee in time for its April meeting.

Attorney Hopkins stated that the applicant is exploring the idea of locating the parking for the townhomes behind the buildings instead of in front and additional landscaping.

Attorney Hopkins stated that he feels that the issuance of a SEQR Negative Declaration is appropriate for this project. He noted that documentation has been submitted showing that this development is not proposed in the regulated floodway or 100-year floodplain associated with Lake Erie. He noted that it would be a good re-use of the site and is fairly low intensity.

Chairman Clark asked Attorney Puglisi if there is any way, during the Minor Subdivision review process, that the Planning Board can create a mechanism to prevent something like what happened with the grain elevator in Buffalo from happening to the former Dock at the Bay building.

Attorney Hopkins stated that there is provision in the Hamburg Town Code that states that while a designation is pending, demolition is prohibited.

Chairman Clark stated that he is concerned that if the building is designated as a landmark and is damaged in a storm later because of neglect of the building on the part of the owner, the building will be demolished down. He noted that he wants to avoid that scenario.

Chairman Clark stated that the applicant is asking the Town to convert an area that used to be used for beach volleyball into a residential use, which would limit the public’s access to the water instead of expanding it.

In response to a question from Mr. Reilly, Attorney Hopkins agreed to confirm that the site is not archeologically sensitive.

Attorney Hopkins noted that he did submit to Board members the power point presentation given to the WRC at its March 30, 2023 meeting.

It was determined that the Planning Board will review the Part 2 and Part 3 of the Environmental Assessment Form at its May 17, 2023 meeting.

Attorney Hopkins stated that the Coastal Consistency Form and the Federal form will be submitted to the WRC and the Planning Board.

Chairman Clark made a motion, seconded by Ms. Grohachan, to table this project to the Planning Board's May 17, 2023 meeting. Carried.

Engineering Department comments have been filed with the Planning Department.

**DATO Development – Requesting Preliminary Plat Approval of a 96-unit townhome subdivision on vacant land west of Briercliff Drive**

Attorney Sean Hopkins, representing the applicant, stated that public hearings were held on this proposal on January 4, 2023 and February 15, 2023. He noted that on February 15, 2023 the Planning Board asked the project team to take a look at the wide assortment of input that was received.

Attorney Hopkins stated that this site has a very lengthy history going back to 1988, which is when the Hamburg Town Board approved the PUD zoning that remains in place today and issued Findings that had eleven separate criteria that he addressed in November 2022.

Attorney Hopkins stated that when this project was first presented, it consisted of 96 units in two-story attached townhomes and falls within the definition set forth in Section 283-42 of the zoning code of "townhome subdivision" because the units would be for sale, would be located on individual lots and would not utilize the condominium form of ownership. He stated that therefore this project requires Subdivision Approval instead of Site Plan Approval.

Attorney Hopkins stated that in 1988 what was depicted on this site was approximately 120 apartments. He noted that in 2010 the Burke family entered into a contract to sell this land to a developer who proposed to construct a project consisting of 72 units of subsidized apartments for rent, which was not well received by the neighborhood or the Planning Board and ultimately withdrawn.

Attorney Hopkins stated that when the current project was contemplated, the Burke family made a very conscious decision that, despite the fact that the site is zoned PUD and that zoning would expressly allow apartments for rent and it would be entirely consistent with the project's history, apartments would not be favorably received and as such proceeded with a project that consists of units for sale.

Attorney Hopkins stated that based upon the wide assortment of input received relative to permanent open space, traffic, the location of the existing sanitary sewer easement, community character, setbacks, etc., the applicant has spent two (2) months looking at several different layouts and settled on the one that is less intensive than any previously presented.

Attorney Hopkins stated the updated project reduces the number of units on the 9.37- acre site from 96 to 57. He further stated that in order to address the issue of permanent open space for the overall "quarry" portion of the PUD, the amount of permanent open space on this site would increase from 1.15 acres to 5 acres. He noted that more than half of this site under the current plan would be permanent open space including 2.24 acres of recreational space and only .6 acre of recreational space is required per Town Code for a project with 57 units.

Attorney Hopkins stated that the westernmost connection to the site from Briercliff Drive has been eliminated and will be filled in with a two-unit home, which is entirely consistent with the remainder of that street frontage. He noted that, given the substantial reduction in the project density and modifications to the project layout, two (2) driveways are not needed.

Attorney Hopkins stated that the number of visitor parking spaces has been reduced from 48 to 45 and are located so as to minimize the amount of impervious surface and maximum the amount of permanent open space.

Attorney Hopkins stated that although approval was granted from Erie County Department of Sewerage Management to relocate the existing sanitary sewer easement that bisects the site, the applicant has decided not to touch that easement and will leave it in place. He noted that this would reduce the amount of construction on this site and under the current layout the easement can be left in place.

Attorney Hopkins stated that the proposed rear yard setbacks of the townhomes to the rear yards of the existing homes on Briercliff Drive have been drastically reduced.

Attorney Hopkins stated that the applicant has made a deliberate effort to design this project in accordance with the emergency access standards set forth in Appendix D of the New York State Fire Code. He noted that two (2) Code-compliant T-Turnarounds are provided for fire trucks and snow plows, etc. and the private roadway would be able to accommodate a fire truck in either direction.

Attorney Hopkins stated that the benefits that result from this updated layout are as follows:

- The applicant now have satisfied the permanent open space requirement for the overall “quarry” portion of the PUD (areas I, J and K).
- In January 2022 the Planning Board asked the applicant to provide it with an analysis of the overall residential units in the “quarry” portion of the development on the original plans. In 1988 338 units were proposed for this area and with the applicant’s original plan the total units in this area would have been 231. With the updated layout with the reduced density, the total number of units in the “quarry” portion of the PUD would be 191, which is 246 units less than what was expressly permitted in 1988.

Attorney Hopkins stated that this project is not inconsistent with the eleven Findings issued by the Town Board on November 16, 1988 and the Planning Board will hopefully feel comfortable in the near future issuing a SEQR determination.

Attorney Hopkins stated that at the public hearing on February 15, 2023, there were several claims that the project team has not been willing to meet with the neighborhood. He stated that that simply is not accurate because subsequent to that meeting Mr. Burke personally sent a letter to the officers of the Homeowners’ Association (HOA) and they politely declined meeting. He stated that the project team is more than willing to discuss the project with the neighbors.

Attorney Hopkins stated that the applicant took the neighbors’ input very seriously and it is show in the substantial modifications made to the project.

Attorney Hopkins stated that the townhome subdivision requirement that 250 sq.ft. of patio space per unit be provided is met with the redesigned layout. He further stated that a landscaping plan, lighting plan, storm water management plan, etc. will be submitted in the future.

In response to a question from Chairman Clark, Attorney Hopkins stated that in 1988 the green space requirement for the “quarry” portion of the PUD, which encompassed 107.43 acres, was 25% (27.08 acres).

Chairman Clark stated that he would like to see a map showing where the open space was designated in 1988 vs where it is today. He stated that the applicant could submit the map and so could the Briercliff HOA if it so desires and the maps could be compared.

Attorney Hopkins agreed to supply the Planning Board with the map referred to by Chairman Clark.

Attorney Hopkins stated that there are six (6) parcels within the “quarry” area of the PUD as follows:

1. 0 Briercliff Drive (owned by the Briercliff HOA) constituting 5.11 acres
2. 0 Briercliff Drive (owned by the Briercliff HOA) constituting 10.53 acres
3. 0 Briercliff Drive (owned by the Briercliff HOA) constituting 3.38 acres
4. 0 Christopher Drive (owned by the Briercliff HOA) constituting .43 acres
5. 0 Christopher Drive (owned by the Briercliff HOA) constituting .36 acres
6. 0 Cloverbank Road (owned by Burke Development LLC) constituting 3.1 acres

Attorney Hopkins stated that it is his understanding that Burke Development LLC owns 0 Cloverbank Road because the Briercliff HOA did not want to acquire title. He noted that this parcel is permanent open space so it will not be developed. He further stated that if the HOA ever wanted to acquire the title, it could. He stated that the same offer holds true for the open space proposed in connection with this project, although a new HOA will be formed for this development because the units will be owner-occupied.

In response to a question from Mr. Bobseine, Attorney Hopkins stated that the closest distance from the railroad ROW to a rear lot line would be approximately 50 feet. He stated that as one goes east that distance gets greater.

Attorney Hopkins stated that there are residential uses today on Briercliff Drive that are closer to the railroad ROW than what the applicant is proposing.

Chairman Clark noted that setbacks from railroad tracks are federally regulated.

In response to a question from Ms. Valenti, Attorney Hopkins stated that a variance application is pending before the ZBA relative to this project. He noted that the following variances were needed:

- Area variance for the size of the lots - This variance may still be needed but there has been an increase in the lot sizes with the revised layout.
- Area variance for the front yard setbacks of the townhomes

- Area variance for the side yard setbacks of the interior units
- Area variance for the side yard setbacks of the groups of homes - This variance may not be needed.
- Area variance for the reduced patio area sizes - This variance is no longer needed.
- Area variance for the rear yard setbacks of the townhomes - This variance may not be needed.

Attorney Hopkins stated that if these units were apartments or condominiums, none of the above variances would be needed.

Chairman Clark made a motion, seconded by Mr Bobseine, to table this project to the Planning Board's May 17, 2023 meeting and authorize the planning consultants to prepare the SEQR Part 2. Carried.

Engineering Department comments have been filed with the Planning Department.

#### **6. A.L. Asphalt - SEQR Status Update**

Attorney Puglisi stated that a revised draft Environmental Impact Statement (DEIS) was submitted for this project on April 4, 2023 and is undergoing review by the Town's consultants. She stated that the Planning Board has 30 days from the submittal date to accept the DEIS or decide on the next steps. She noted that this project should be placed on the Planning Board's April 19, 2023 agenda for discussion.

Attorney Puglisi stated that because there is a potential for litigation, she asked that the Planning Board go into executive session to discuss this further.

Chairman Clark made a motion, seconded by Mr. Chapman, to place this project on the April 19, 2023 meeting agenda for discussion and the May 3, 2023 meeting agenda for a vote on the DEIS. As the vote was five (5) ayes and one abstention (Ms. Valenti), the motion carried.

The Planning Board went into executive session to talk to its attorney about mitigation.

After the Planning Board returned from executive session, Chairman Clark made a motion, seconded by Mr. Chapman, to adjourn the meeting. Carried.

The meeting was adjourned at 9:55 PM.

Respectfully submitted,  
Jeb Bobseine, Secretary

Date: April 10, 2023