

**Town of Hamburg Planning Board
Meeting - 11-15-2000
Actions Taken**

**Abbott Pines Patio Homes
Best Street - Mike Metzger, Engineer**

Tabled to Work Session 12-6-2000

HSBC Addition - Lake Shore Rd.

**Approved contingent upon
Meeting Engineering requirements**

Camp Road Collision

More landscaping required.

**Becker Subdivision
Lakeview New York**

**Scoping document to be decided
12-6-2000**

Town of Hamburg Planning Board
Minutes - Meeting Nov. 15th, 2000

The Town of Hamburg Planning Board met in regular session in Room 7 of Hamburg Town Hall. Those attending included: Vice-Chairman David Phillips, Secretary Koenig, Paul Eustace, Don Fitzpatrick, Others attending included: Craig Cleveland, Rick Lardo, Attorney Don McKenna, Wendy Salvati, and Terry Dubey, Stenographer. Excused: Richard Crandall, Sasha Yerkovich, and Dick Pohlman

Minutes of the meetings of October 4th and October 18th were approved by and seconded by Mr. Fitzpatrick, seconded by Mr. Eustace. Carried.

Abbott Pines Patio Homes - Metzger Engineering

Mr. Mike Metzger appeared on behalf of a concept plan consisting of 23 acres, R-1 zoning, for 51 patio homes that was originally approved in 1991. This is a different sketch plan from what was originally approved. The average lot size is 90' of frontage and 11,250 s.f. in lot area. This project will be different from a standard subdivision. There will be certain model selections similar in architecture. Sanitary sewer is available. There is a water line that runs down South Abbott Rd. There is a flood plain on the land with a tributary of Rush Creek, which does have some impact on some of the lots. Wetlands are also on site. A meeting was held with Dick Crandall and Drew Reilly to go over the various options. There was a permit to fill 2 of the wetland areas. However, that did not transpire. A biologist has confirmed that the wetlands have remained the same as in 1991.

It was noted that the Conservation Board has assured the Planning Board that the wetlands are there, and must be delineated and surveyed and a new permit to fill is to be obtained. There is to be no access to Lilydale as a result of the rezoning condition. The property is located in a 100 yr. Flood plain based on the FEMA map. Mr. Metzger stated that they are trying to secure an amendment to the map as the line depicted may not be accurate. Robin Hood Drive is 461' in length. They have tried to limit access on South Abbott, and only 1 lot is affected. This project will focus on empty nesters and retired people. The lots are to be kept on a smaller size scale. They would like to preserve the back areas in their natural state. The applicant did consider other alternatives, such as rezoning to R-2, Clustering and PRD. However, he has decided to stay with this layout. Deed restrictions are being considered to maintain the natural preservation of the property as well as a buffer of 25-30'. This property was once a farmland.

Mr. Koenig asked why the applicant would not consider the approved 1991 plan? Response given is that he does not care for the layout. Also, the majority of the Engineering was not salvageable. On the new drawing, one road is 1050' in length while the other is 950'.

Vice-Chairman Phillips stated that the Planning Board has waived the length of the road requirement for one roadway but would never go for 2. The code requires that the maximum length can only be 500'. Also, the Highway Dept. would have a difficult time in plowing this type of roadway. Board members noted that they would like to see 2 access points on South Abbott and feel the roadway should be connected with a loop. The applicant was asked to come up with a design

that would tie the roads together. The applicant was told to take another look at a better design. Mr. Metzger presented another draft drawing and asked for direction. The draft concept was a little more acceptable. Item is to be on the December 6th Work Session.

Motion was made by Mr. Phillips, seconded by Mr. Eustate to Table. Carried.

Engineering Comments: 1. A preliminary plat plan for the previously proposed development of this parcel was approved by the Planning Board on 7-17-91. Construction plans for this project were never submitted or approved. 2. Delineate the existing marsh area that was to be protected as per the Town Board's 4-23-90 rezoning of the property. It appears that the proposed southerly access road goes through this marsh area. 3. Delineate the 100 year FEMA flood plain boundary within the subdivision. 4. The storm water detention area is to be incorporated into the adjacent sublots (Nos. 6,7, and 8). The pond is to be maintained by the owners of these adjacent sublots. 5. Show the location of Robin Hood Drive on the east side of South Abbott Road (in Town of Orchard Park). It is noted that that the correct road name is South Abbott Road (not Abbott Road). Also, include a site location map. 6. The site is not located in an existing water district. A water district extension will be required to service the site. The Erie County Water Authority (ECWA) should be contacted to determine if there is adequate pressure and flow to service the site. (7) The existing 8" diameter watermain which runs along the South Abbott Road frontage of the subdivision was recently installed to improve water service to the area. The developer is required to contribute \$11,000 toward the total cost incurred by the Lilydale-Benz-Knab Water District for the construction of this watermain extension. 8. Erie County Sewer District No. 3 (ECSD No. 3) should be contacted to determine if there is currently sufficient capacity in the sanitary sewer system for the anticipated sewage flows. 9. The Erie County Highway Dept. should be contacted for approval to connect the subdivision roads into South Abbott Road. 10. Driveway access should be from the subdivision roads only (no driveways along South Abbott Rd.).

HSBC Addition - Lake Shore Road

The status of this application is as follows: The Planning Board referred the matter to the Zoning Board of Appeals commenting that the parking layout labelled Property 2061TB for a total of 73 spaces was their recommendation, and asked for an interpretation as to whether this plaza has been grandfathered.

The following motion was passed at the Zoning Board level: Motion was made by Mr. Spinner, seconded by Mr. Blauboer that based on our findings, the existing parking configuration was grandfathered by prior action of this Board and that we grant a variance of 9 additional parking spaces to reflect the total of 73 spaces as outlined on the layout labelled Property 2061TB. Carried. (See minutes of 11-9-2000 attached).

Engineering Comments: 1. The site plan review checklist was not complied with in preparing this concept plan. A site plan is required to be prepared and submitted for review. 2. The trash dumpsters are to be placed on a concrete pad and enclosed by fencing. 3. Four (4) feet wide

HSBC (Continued)

sidewalk (instead of the proposed 5 feet) may be used along Orchard Avenue. This will provide additional space between the road and sidewalk. The sidewalk along Orchard Avenue should be connected into the concrete walk along the south side of the Blockbuster building. 4. Concrete curbing should be provided between all on-site paved and lawn/landscaped area, as well as between the landscaped island at the northwest corner of the property and the southwest corner of the Wanakah Pharmacy building (to prevent traffic flow between the two properties). 5. Parking bumpers should be provided for all parking spaces along the north property line. 6. Parking should not be allowed in front of the side entrance door of the Wanakah Pharmacy building. 7. Pavement arrows and striping should be used to delineate ingress and egress portions of each driveway. 8. Site landscaping is to be approved by the Planning Board.

Mr. Battista stated that the only problem he has with the Engineering comments, is Item 6. Planning Board members responded that the way to resolve this issue is to mark one space "no parking" to satisfy the requirement. The parking spaces on the property line are to be relocated. The applicant plans to remove the bumpers and replace with hard curbing. The State Dept. of Transportation is willing to provide a green area with grass near the right of way.

Ms. Salvati noted that when she spoke with Mr. Crandall, he expressed concern of the traffic that would be funneling out to Orchard Avenue and would like some type of traffic analysis. Board members pondered over this idea as to how that analysis is to be handled. Traffic flow will change and more cars will be spilling out to Orchard. However, the parking layout presented should improve traffic flow between Blockbuster and Wilson Farms. It will be better controlled and a safer situation.

Motion was made by Mr. Koenig, seconded by Mr. Eustace to approve the site plan contingent on Engineering requirements. Carried.

Camp Road Collision - landscaping plan

Board members reviewed a landscaping sketch that Mr. Howorka provided to the Planning Dept. After review it was noted that more work is required on this plan and that salt tolerant species should be in place. Also, the Camp Road Overlay was adopted by the Town Board. Therefore, applicant should comply with more.

Becker Subdivision - Scoping

Wendy Salvati informed the board that the Planning Dept. has received a draft scoping outline for the Becker Subdivision. As of now, we have 60 days to finalize the scoping document. Regulations were handed out to each member as they need to prepare a scoping document at the December 6th work session. The Board also decided that they would like to hold a Public Hearing on this issue as there has been so much controversy and that the neighborhood impacted would be most interested.

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Motion was made by Mr. Fitzpatrick, seconded by Mr. Eustace to adjourn the meeting. Carried.
Meeting adjourned at 9:00 p.m.

Respectfully submitted,

Gerard Koenig, Secretary
Planning Board

Application #4625 - Peter Liberatore for a detached sign (McKinley Business Park) located at 3990 McKinley Parkway.

Mr. Peter Liberatore appeared before the Zoning Board for a detached sign request on property at 3990 McKinley Parkway. This was the old racquetball club that is half removed to make way for offices and a parking lot. The proposal violates 280-151F(2) on the size of the sign. The code allows 40 s.f., the request is for 72 s.f. therefore requiring a variance of 32 s.f. The proposed signage will include 4 leader panels.

No one spoke in opposition to the application.

Motion was made by Mr. Rahill, seconded by Mrs. Rybczynski to grant a variance of 32 s.f. on the size of the sign. Carried. All voted in favor. **Granted.**

Application #4626 - Benderson Development for a parking variance and code interpretation located at 4931 Lakeshore Road.

Messrs. Tony Battista and Larry Finberg of Benderson Development appeared before the Zoning Board on the proposed addition for the HSBC bank which is located at 4931 Lakeshore Road. They are before the board for a variance on setback and parking spaces. This is a plaza that has been in existence for many years. Initially, it was known as the Bell's Supermarket. Then, Mr. Pellicano purchased it for the Freshmart supermarket. The HSBC bank was once a Texaco gas station.

Mr. Battista noted that this has been a long process that started with the amendment to allow drive in banks in an N-C district. The proposal has been to the Planning Board many times, and at the last meeting of the Planning Board of 11-2 was referred to the Zoning Board with a favorable recommendation on a parking layout that was worked out labelled Property 2061TB, which shows north and south parking for 73 spaces; that a certain portion of the plaza has been grandfathered, that the applicant has made an effort in redrawing and elimination of the front driveway with two egresses. (See Work Session minutes attached).

Mr. Battista continued that they are seeking recognition of the grandfathering status of the existing site and a variance for the addition that is being contemplated for the HSBC bank. The present plaza is comprised of a Wilson Farms Convenience Store, a Blockbuster and the existing pharmacy as well as the bank. The Wilson Farms is an important part of the community as well as the bank that is required to provide the services to its customers by providing a better drive thru to service their customers in an ever-changing financial market. The proposed addition will provide better office space for the HSBC bank. The drive thru will enter off Orchard Avenue and exit on to Lakewood. There will be two drive thru lanes with an ATM machine. One home is being removed to allow for the drive-thru. We are therefore requesting that we be grandfathered on the existing site. With the bank addition, 3 parking spaces will be lost in the front. According to the code, we will need 6 spaces for the addition. We are asking for a variance of 9 parking spaces.

Application #4626 (Continued)

In meetings with the Planning Board, they were asked to upgrade the site for better traffic flow and to add green space. Substantial changes are being made. They will move the existing parking on the Lake Shore over the property line. Bumpers will be added to the parking spaces. Green space has been added to the area on the corner of the property with curbing. We have discussed the matter with the State DOT and have requested green space on the right of way for at least 10'. The sign will be relocated sideways and setback within 5' of the property line to conform with the code. We are adding large curbed islands to better delineate the driveways, to stop people from cutting thru. We are closing in the curb cuts to 2 instead of 1 big one, and turning the parking to a north and south direction. One of the conditions of the rezoning was that as much green space near the drive thru was required. The Traffic Safety Coordinator, Tim Ellis, was consulted on the traffic for the drive thru. With this new layout, it will isolate the traffic problem. Also, traffic flow depends on the time of day. This should not be a busy drive thru with the exception of Friday nights. The present plaza required 86.8 parking spaces, of which 73 are grandfathered.

Mr. Spinner interjected that before, the plaza was considered okay. Now that 1,000 s.f. is being added, six more spots are required.

Mr. Battista also has made attempts to provide off street parking. They asked for a cross easement agreement with the pharmacy but the owner was not favorable to that idea.

Chairman Blaauboer noted that with the addition, 3 of the parking spaces are being taken away and the applicant is unable to provide an additional 6 spaces due to the square footage between the addition if we assume that everything is grandfathered. However, the proposed layout is an improvement. This is not a typical parking situation, but rather a difficult location to serve the people of the Lake Shore area. Based on the code, this is a rather sub-standard situation and is a very tight site for what is anticipated. The expansion of the bank is a reasonable request. They need more square footage. At the present time the traffic flow for the bank to get out to the Lake Shore is most difficult and there are no delineated curb cuts. There must be something done to improve it. By eliminating the access to two entrances, it will isolate the drive thru and alleviate some of the problems.

Mr. Doherty expressed concern about traffic coming in off Orchard Avenue. Undoubtedly, there will be an increase in traffic.

Chairman Blaauboer noted that the bank is presently too small, At times, customers are standing outside the door. The square footage is needed for the addition in the Lake Shore area. The purpose of the addition is to create more room for the platform officers. There is just one problem which refers to section Article XX, Section 280-121 - General requirements. (A). After the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified at the time a building or structure is erected or at the time a new use of open land is established. In the case of an enlargement of any existing building, structure or use after the effective date of this chapter, off-

Application #4626 (Continued)

street parking spaces shall be provided as hereinafter specified for the enlarged portion of such building, structure or use. **B.** No existing off-street parking area shall be reduced in capacity so as to be less than required by this law, or, if such parking capacity is already less than herein required, such parking area shall not be further reduced; provided, however, that a reduction in such existing parking area shall be allowed if equivalent parking space is provided for the use involved.

Chairman Blaauboer noted that we are dealing with all the elements. The proposed expansion requires 6 spaces and you can't reduce the number of existing spaces. If you do, you must provide alternate spaces. The Zoning Board however, has to decide whether we can grant a variance to allow the plan to go forward. The N-C zoning is unique in itself.

Mr. Jim Eberhardt noted that there is a problem in the area of the drop-off by the Blockbuster. The plan funnels traffic into that corner. Will this cause more stacking and create more of a problem?

Mr. Stang of Windsor Terrace commented that his children use the Blockbuster and on a Friday night it is difficult getting in and out.

In Executive Session, Chairman Blaauboer stated that one of the issues raised was the fact that the code was explicit about expansion that requires additional parking and you can't reduce the numbers of parking. If you are going to reduce them, you have to grant adequate off site parking to compensate. That is what the code says. The Zoning Board can modify the code to meet the balanced needs of the applicant versus the surrounding neighborhood, and or community. There is no problem as far as our being able to grant a variance if we decide to do so, as long as we exercise that proper balance and consider the impact upon the neighborhood and the benefit derived to grant the variance. How much impact will the lack of 9 parking spaces have upon this substandard lot. It is just not big enough for what they want to do.

Mr. Spinner noted that on the grandfathering, if they did not touch the property, they would not need a variance. Once they modified it, the question is, do they lose that grandfathering with a brand new project. They only need 9 spots.

Chairman Blaauboer responded that there was a court case with this very issue. The courts have taken all kinds of readings as to whether or not you can change the status of a piece of property by making a change in the property. Court cases I looked out relates to the change of use of a property, which is not the same thing. If the courts are following this line, that grandfathering is lost with a change in use, then it does not apply. Grandfathering stays with the property. This is an extension of an existing use.

Attorney Shaw stated that this is the nature of an area variance. This is similar to a non-conforming use. The variance issue is a balancing test. The code is specific, and based on 280-121 it talks about the enlargement of an existing building and that sufficient parking be provided. There

Application #4626 (Continued)

should be enough flexibility to address the problem. If you reduce parking, you should find some alternate parking. However, this is part of the balancing issue and can be the board's decision. You have to follow what you feel is the test by using the findings of fact. This is an in and out situation. It no longer is the Bell's Supermarket whereby one parks for 1 hr. Ingress and egress is a safety concern. The Board can make a decision to grant a variance if the facts are such. It is not tied in for the loss of the grandfathering.

Mr. Spinner noted that we have been asked to make an interpretation of the code and a finding for an expansion of an existing use. They are grandfathered and need a variance of 9 spaces. The balancing test is part of the Zoning Board rules to vary from the code. We have to weigh the impact on the community and the needs of the applicant. That is the intent of this section. State law encourages us to make a decision. This is an improvement to the community on the traffic flow and safety of the residents and the people who use that plaza. The applicant has gone in a positive direction and not in a negative manner.

Chairman Blaauboer noted that on the parking for this plaza, this is not a place where you park for 2 hrs. If you visit the drug store, it is usually for only 10 minutes. This is the nature of the parking. Part of the problem with urban sprawl is the intensity of too much blacktop. We have a legitimate argument that this is a fast moving clientele. We can reduce the parking without it having a negative impact on the traffic safety. There has been a request for more green space, better traffic control, and the flow will be better organized. These are all positive factors. They are taking an eyesore and making it better. It is important to recognize that this is a critical service to the community and the ability of the bank to provide better service. We have discussed the impact on Orchard Avenue, and with the current traffic on Orchard, it is not that much different. We recognize the fact that traffic on Orchard Avenue will increase. Traffic Safety has already looked at this. We therefore can assume that this is within the parameters that is acceptable to traffic safety.

Mr. Rahill noted as to how the language of the variance should be interpreted. With respect to the Planning Board meeting minutes of 11-2-2000.

Chairman Blaauboer responded that there is a history of this property dating back to 1962 in which all kinds of decisions were made and in retrospect in trying to figure out what they were talking about, we could not understand what the point of the decision was. Tonight, we will make the points clear and delineate what we mean by grandfathering. We are going to delineate the findings that we believe that exist and have met relative to this application and will make the decision accordingly. We don't want someone 25 years from now asking what did the board mean. On the issue of grandfathering, the question has been raised as to whether or not the buildings and the parking are a legal, non-conforming structure, legal non-conforming parking, in that if they are legal non-conforming, does the issue get reopened when there is an expansion of use. If you are expanding the use, do you have to reopen the question as to whether or not the whole property is non-conforming and we have to review the entire procedure? Our findings are NO. You don't have to do that. We have an existing use that is being expanded. Therefore, any legal non-conforming

Application #4626 (Cont.)

use is an expansion only of legal, non-conforming use. It is the same use but being expanded by increased footage of one of the buildings of one of the users. That means, YES, the property is grandfathered.

Chairman Blaauboer noted that now we have to deal with the expansion of the non-conforming use which is creating a further reduction in parking and is not creating the additional parking. We have the authority to balance the needs of this applicant against the overall needs of the community and the impact upon that community to determine whether or not we wish to grant a variance to allow them to expand it as they wish and reduce the parking necessary by such expansion. Therefore, the issue will be if we grant a variance we will in affect allow the reduction in parking to 73. **Finding:** Understanding that such a finding is based upon our balancing, the impact on the reduced parking to the overall improvement of the property, improvement of traffic safety, improvement of green space, improvement of traffic flow and the ability of the user (the bank) to provide the needed service for that portion of the community, namely the Lake Shore area.

Finding: The final issue is the nature of the parking itself lends itself to allow us to be flexible because a lot of the parking will be short term. Therefore, the standards can be considered too rigid and we don't have to be enforcing at such a rigid level.

Finding: Again, although the expansion of the bank could be construed to be a self-created hardship, the expansion of the bank is also including a service to the community. With the balancing act, it is a service to the community. If we don't grant the variance, the bank will continue to service at a sub-standard level, and we will be left with unsafe travel in and around that plaza. The Planning Board has reviewed the final layout on 11-2-2000.

Motion was made by Mr. Spinner, seconded by Mr. Blaauboer that based on our findings the existing parking configuration was grandfathered by prior action of this Board and that we grant a variance of 9 additional parking spaces to reflect the total of 73 spaces as outlined on the layout labelled Property 2061TB. Carried. All voted in favor. **Granted.**

Extensions: Application 4426 (Swiss Chalet) sign located at 4175 McKinley Parkway. Motion was made by Mr. Blaauboer, seconded by Mr. Rahill to grant an extension of 6 months. Carried. All voted in favor.