P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 1

**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Nicholas Baich

Henry Heppner

Joseph Liberti

Philip Murray

Julia Mombrea, Alternate

**EXCUSED:** Paul Bodden

David Kaczor

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator

Timothy Gallagher, Deputy Town Attorney

Steven Bremer, Supervising Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Rose Messina, Planning Board Secretary

The Chair announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:00 P.M. He stated that if anyone appearing before the Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State law and the Town Code of Ethics.

The Chair asked for a motion regarding the January 9, 2020 meeting minutes.

Mr. Baich made a motion, seconded by Mr. Liberti to accept the January 9, 2020 meeting minutes as presented.

ON THE QUESTION:

Mr. Heppner asked if the Board should add to the motion to, “waive the reading of the minutes”.

The Chair agreed.

Mr. Heppner made a motion, seconded by Mr. Murray, to amend the initial motion to now include “waive the reading of the minutes”.

THE **VOTE** ON THE AMMENDED **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **AMENDED MOTION** IS **PASSED**.

The Chairman stated that the Alternate member, Ms. Mombrea will be voting this evening due to the absence of Mr. Bodden and Mr. Kaczor.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 2

**OLD BUSINESS:**

1. 7:30 P.M. Public Hearing, P.B. File #11-18, Smokes Creek Farms, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run, Zoned R-1. (SBL#’s 173.19-3-2.1 & 173.19-3-1.211) Requesting Preliminary Plat Plan Approval for a proposed twenty-two lot subdivision. Pre-Application Findings were made on 1/09/2020.

Chairman Fabinsky stated that the Public Hearing will be held in two parts; the first part being informational to assure that all present are aware of developments since the last public discussion. The second part of the public hearing will be the normal process of interested parties speaking for or against the project.

The Chair again noted that the project is located on the Smokes Creek corridor which flows northward into the Village of Orchard Park. (A representative from the Village of Orchard Park is in attendance this evening.) The Chair further stated that the Applicants’ engineering firm worked with, the Town’s Engineering Department to address potential flooding impacts.

Assistant Town Engineer, Mr. Thomas Ostrander will monitor the petitioner’s presentation to assure it addresses the identified concerns.

The Chair would like a clear description of;

⦁ What goes on with the stream corridor,

⦁ What will be done to help keep the hydraulics moving as they should,

⦁ Any additional benefits gained by the current plan,

⦁ Any ancillary changes that have occurred since historical water problems that might improve the situation.

Mr. Ostrander explained that submissions from the Applicant’s engineering firm were reviewed, followed by comments from the Town’s Engineering Department. He stated that the Applicants worked to meet the Town’s water control requirements, as our requirements exceed the Federal and State levels for Storm Water Quantity, Quality, Control and Reduction. They also worked to increase the storage capacity in the Flood Plain area to further minimize the amount of potential run-off water.

The Chair asked Mr. Wood to present their proposal.

Mr. Wood presented and distributed copies of the project information to those present. The Chairman stated that anyone wishing to receive the information, that did not this evening, could contact the Planning Office.

Mr. Wood explained the presented Site Plan for the Smokes Creek Farms project. He noted that they are required to have the runoff water at the site be “equal to”, or be “lower than”, the pre-construction statistic. He discussed a “Storm Water Runoff Summary”, prepared by TVGA Consultants, that indicates their currently planned post-construction runoff detention basin is designed to temporarily hold 825% more water during a 100-Year Storm Event. This capacity exceeds the pre-construction runoff basin storage levels. He explained the plans they will implement to create limitations on water flow at the site that includes using the three-lots located in the flood plain, along Jewett-Holmwood Road. He also reported that the improvements made to the “Freeman Pond Spillway” in 2013, and the replacement of the “Forest Drive Bridge” in 2014, substantially reduced flooding between the Highland Avenue and

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 3

Forest Drive areas by increasing the Flood Plain elevations levels. This is noted in the submitted “Hydraulic Summary Report for Northwest Branch Smokes Creek” prepared by Greenman Pedersen, Inc. He feels that with the decrease of runoff water at the site, the “Smokes Creek” project will be a betterment to the area. He concluded his presentation with inviting those present to meet with him, after the public hearing, to discuss and ask questions they may have.

The Chairman asked that Mr. Ostrander offer a summary opinion.

Mr. Ostrander noted that this project will be an overall betterment to the corridor and he explained, in detail, what will occur during a Storm Event with less water to *swoosh*(charge) during a Big Storm Event. He noted that Erie County and the Village of Orchard Park worked on the improvements made to the Freeman Pond Spillway and the Forest Drive Bridge. These improvements have substantially reduced flooding in the area. The proposed Smokes Creek Farms project will slowly detain water on the project site through a bio-detention pond system at a controlled rate. He further noted that an “extra bonus” is that a portion of the water retention gets re-charged back into the ground water during storm events. Mr. Ostrander also mentioned that FEMA issued new Flood Plain maps in June 2019. Therefore, we now have the Flood Plain defined for the 100-Year and 500-Year Storm Events.

Chairman Fabinsky asked for clarification from Mr. Ostrander, regarding the water leaving this property, and the existing potential for flooding.

Mr. Ostrander stated that in “layman terms”, there will be less water leaving this property to *swoosh* (charge) in a Big Storm Event and impact the Stream Corridor downstream. The Applicants are increasing the Flood Plain area by over 50%. They also exceed all requirements set by Federal and State regulations.

The Chairman asked the Board members if they had any questions.

Mr. Murray stated it sounds like with good engineering there will be an improvement. However, he feels the SEQR document should reflect the implications of the water discharged downstream to Smokes Creek. He would like to have this discussed further with public participation of the project, and he feels a Positive Declaration should be made, as it was at the January 2020 Planning Board meeting. Some of the Board members may still feel we should have a Positive Declaration and have the public be a part of the process. He questions how much the improvement will be, and he feels this is all wizardry as to who can tell the future with the proposed improvements. He also feels that improvements made will not eliminate water, and that is his point.

Mr. Wood affirmed with Mr. Murray that they both agree the site currently discharges into Smokes Creek. He then gave the following example for thought:

a. For a 100-Year Storm Event, the discharge from this site into Smokes Creek is recorded at 29.6 cubic feet/second (cfs.);

b. When we are finished with the improvements it will be reduced to 12.8cfs;

c. This is a 57% reduction, which is substantially less water.

Mr. Murray stated that it is wonderful, and it benefits everyone that is downstream. But, our responsibility is to give this project the closest look possible, and the way to give a close look is with a Positive Declaration.

Chairman Fabinsky stated that we are holding a public hearing and if folks have concerns regarding the hydraulic impact it seems the water is reduced significantly. He asked Mr. Ostrander for his opinion.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 4

Mr. Ostrander stated that he reads and checks every calculation contained in the documents submitted. He feels the Applicants are meeting, and exceeding what is required. He reiterated his previous comments, concluding that the water flowing through the Smokes Creek corridor, is detained on the project site at a controlled rate through a bio-detention pond system. A large percentage of the water is absorbed into the ground and the remaining water is more slowly discharged out.

The Chairman established there were no further questions from the Board members, and he restated the invitation to those present to meet with the Applicants after the public hearing. He also noted that this is the first of two public hearings to be held. The Applicant is asking for Preliminary Approval of the proposed Site Plan. There will be a second public hearing held as the project moves through the review process. He asked for a motion to proceed with the public hearing.

Mr. Heppner made a **MOTION**, seconded by Mr. Liberti to **CLOSE** the informational part of the public hearing, and proceed to the second part.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION TO OPEN THE PUBLIC HEARING** IS **PASSED**.

The Chairman called the public hearing open for discussion of the “Smokes Creek Farms’ project, a proposed Twenty-Two Lot Subdivision. The Affidavit of Publication and Posting was published in the “Orchard Park Bee”, and filed by the Planning Board Secretary.

**IN FAVOR:**

*Mr. Chris Wood, Carmina-Wood-Morris*

*487 Main Street Suite 600*

*Buffalo, New York 14203*

Mr. Wood spoke in favor of the project.

*Mr. James Jerge, Developer/Owner of project*

*7645 Quaker Road*

*Orchard Park, New York 14127*

Mr. Jerge spoke in favor of the project, noting that it was initiated over fourteen years ago.

*Mr. Paul Kwiatkowski*

*15 Timberlake Drive*

*Orchard Park, New York 14127*

Mr. Kwiatkowski stated he is not against or in favor; he has a question regarding the Eagle Ridge Road residences and how close the proposed houses from this subdivision would be. He also feels Jewett-Holmwood needs to be widened.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 5

*Mr. Thomas Johnson, Builder*

*250 Highland Court*

*Orchard Park, New York 14127*

Mr. Johnson spoke in favor of the proposed subdivision, noting that the homes constructed here will be for people that want to downsize.

*Mr. Robert Farwell, Former Orchard Park High School Principal*

*65 Squire Drive*

*Orchard Park, New York 14127*

Mr. Farwell stated that he is very optimistic about the project and supports it.

*Mr. Sean Hopkins, Attorney for Applicant*

*Hopkins & Sorgi*

*550 Main Street – Suite 203*

*Williamsville, New York 14221*

Mr. Hopkins spoke in favor of this project, noting he feels it is well vetted. He also feels the homes will bring a positive benefit to our community. He welcomed those present to meet after the public hearing to ask questions they may have. He asks that a Negative Declaration be made by the Planning Board. If this happens, they will return for a second public hearing where any additional questions may also be addressed.

**IN OPPOSITION:**

*Ms. Terri Hahn*

*36 Hampton Court*

*Orchard Park, New York 14127*

Ms. Hahn stated that she has several questions regarding the upstream Storm Water Control, Wildlife, Jewett-Holmwood Traffic, and the impact on swimming pools.

Chairman Fabinsky asked Ms. Hahn to write her questions down on paper with her contact information.

Mr. Wood stated they will answer Ms. Hahn’s questions this evening after the public hearing adjourns.

*Mr. Scott Hartung*

*169 Highland Avenue*

*Orchard Park, New York 14127*

Mr. Hartung is against the project. He discussed the water issue and feels that no matter what amount of money is spent, there will be flooding. The water will still flow down; and he questions if flood insurance can even be purchased here. He concluded that he wants a guarantee that there will be no flooding.

The Chairman noted that this is a point (flood insurance) that needs further investigation.

Mr. Hopkins noted that they are decreasing the water by holding it at the site.

*Ms. Danielle Schwanekamp*

*15 Woodview Court*

*Orchard Park, New York 14127*

Ms. Schwanekamp is against the project, as she has concerns for the wildlife that will impact the Village

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 6

of Orchard Park. Once the land is cleared for the project, she feels animals such as coyotes, or fox will invade the Village and attack small pets.

Mr. Heppner made a **MOTION**, seconded by Mr. Baich, to **CLOSE** the **PUBLIC HEARING**.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

The people who have questions and concerns should be sure to have your name and contact information written on the sheet of paper that is being passed so we can get answers or best opinions available so we can get back to you. Mr. Wood restated that they plan to remain after the meeting to meet with residents that have questions and concerns.

THE **MOTION TO CLOSE THE PUBLIC HEARING IS UNANIMOUSLY PASSED**.

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. Sean Hopkins, Attorney, Hopkins & Sorgi

Chairman Fabinsky stated that he appreciates the work put into the presentation of the project; it was very thorough. We are looking to move forward on the project, however, there are a number of questions that need to be resolved from the public hearing. In addition, there remains an issue with the SEQRA process. The Chair asked Mr. Orffeo to give an update to the Board regarding the SEQR matter.

Mr. Orffeo stated that on 3/14/19 the Board determined that this was an Unlisted SEQR Action, and they requested to seek Lead Agency Status with a Coordinated Review; however, nothing took place after that.

Chairman Fabinsky stated that we will need to do this (n.b., this was before Mr. Orffeo was appointed Acting Planning Coordinator.) Under these circumstances the SEQRA “30-day rule”, has some flexibility. We can move for a 28-day review which will allow the Applicant to return to the next Planning Board meeting.

Mr. Orffeo further noted that under the SEQRA requirements, Chapter Three, C (3) “Lead Agency”, Designation is Optional for Unlisted Actions, Chapter Three, A (2), notes that it is optional to do a Coordinated Review. Mr. Orffeo feels that, although it is not required, the Board should have a Coordinated Review; 15, 28, or 30-days, whatever the Board would want.

Mr. Hopkins explained that ultimately the agencies contacted will agree the Planning Board should be the Lead Agency, and they have all seen this project. However, he feels the better course of action is to have a sheet of paper sent to the involved agencies for comments, eliminating the 30-day rule for seeking Lead Agency Status by the Planning Board.

As Deputy Town Attorney Timothy Gallagher had not arrived, Mr. Orffeo was asked by the Chair to weigh-in on Mr. Hopkins’ comment. Mr. Orffeo did not feel the Applicant is impacted with the 30-day rule. The Chairman also agreed, stating that we will go with the Planning Board “Seeking Lead Agency Status”. Mr. Hopkins commented that he is in agreement.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 7

Chairman Fabinsky stated that tonight’s questions were difficult, and some were possible to answer. He noted that the Land Owner has the right to develop their land, as long as there are no significant adverse impacts on the neighbors, or the Town as a whole. It was good to see that many groups of engineers worked together on this project to make the reported improvements. It seems that the Applicants have reduced the potential for flooding during a Storm Event. However, getting answers to loose ends, such as FEMA and insurance, will need to be to be addressed.

**BOARD MEMBER COMMENTS:**

Mr. Baich feels the issues raised by the residents should be addressed.

Mr. Liberti feels this looks like a great project. The biggest thing for him is if there is an adverse impact with water issues. This project may have been proposed almost fourteen-years ago; but, he wants to make sure the Board is doing the right thing. He does not want the Town and Village residents downstream to be impacted. Nor, does he want a home constructed with a basement collapsing. He further noted that this evening is the first time he is seeing the Hydraulic Report.

Mr. Wood noted that the updated Hydraulic Report was submitted to the Town a while back.

Chairman Fabinsky stated he feels the same as Mr. Liberti.

Mr. Heppner stated that at the January 9, 2020 meeting he had expressed more questions than concerns, regarding the Hydraulics for this project. He feels very confident with the engineering proposal and the Town Engineering Department review of the Hydraulics. He is comfortable with this project as all his questions and concerns have been addressed.

Mr. Murray stated that he is interested in public participation to the ultimate extent we can provide it. In January 2020 we made a Positive Declaration with a lot of support; of course, that is not the case at this moment. He prefers a Positive Declaration as it will give us a closer look at this project.

Ms. Mombrea stated that she would like the residents’ questions and concerns addressed. She had no questions for the Applicants.

The Chairman stated that questions from the public will be reviewed and addressed.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Heppner, to **TABLE** the review of this case pending answers to the questions from the public.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

2. P.B. File #35-19, Jack Kuebler, 3892 Southwestern Boulevard, Zoned B-2. Requesting Planning Board review of Outside Display with addition of a take-out Chicken Barbeque.

APPEARANCE: Mr. Jack Kuebler, Petitioner & Property Owner

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 8

Mr. Kuebler explained that he would like to amend his original plan and request, approved by the Board on 12/12/19, for a renewal of his Outdoor Shed Display. He submitted a revised sketch plan for the member’s review indicating that he would like to move the shed display 10-feet back to create space for a “Take-out Chicken Barbeque”. He told the members that this is an annual fund raiser for a scholarship honoring the memory of his nephew who tragically died at Chestnut Ridge Park. He stated that there will be three lanes to assist with traffic flow, and he assured the Board that there is more than adequate stacking space at the site. In addition, there are two curb cuts for vehicle ingress and egress. He told the Board that, on the average, a customer experiences a three to five minute wait for

take-out dinners. There is no schedule for when the Chicken Barbeques will be held as they depend on various factors, such as weather, and if there is extra Chiavetta’s chicken to sell. No food consumption takes place here as there are no tables or chairs. He reported that in 2019 the take-out Chicken Barbeque was offered eleven times, and that he typically sells 240 to 280 dinners at an event.

Mr. Baich stated that the Chicken Barbeque was never approved by the Planning Board, and he feels the submitted “sketch plan” has a lot to be desired, as he finds it confusing.

Mr. Kuebler stated that he was told previously by the Building Inspector’s office that he did not need a permit for the take-out Chicken Barbeque. He believes it may have been Building Inspector Andrew Geist that told him this information nearly two-years ago.

Mr. Kuebler explained his sketch plan to the members, noting that the Chicken Barbeque operates from 3:00 P.M. to 7:00 P.M., and that in one hour he typically has 20 to 30 vehicles purchase the ready-to-go-dinners, with each vehicle being served in under five-minutes.

Mr. Heppner stated that he supports the idea of a memorial scholarship; however, he had not understood there was more than one event taking place over the course of the summer on a spontaneous basis, at this property. He does not object to the event, but h**e** has concerns regarding safety issues. Mr. Heppner noted that, although he had not witnessed this, he was told that there were people and pylons in the road at this site, with cars backing up during the operation of the Chicken Barbeque.

Mr. Kuebler asked Mr. Heppner, “where he had heard this”, and Mr. Heppner told him from several of the Board members. They, also, reported viewing images on “Google Earth” confirming it. Mr. Heppner further confirmed that Building Inspector Stephen Bremer was dispatched to the site. Mr. Bremer stated that he witnessed people standing in the roadway, and vehicles were lined-up on Southwestern Boulevard for the take-out Chicken Barbeque. Mr. Kuebler stated that he, “has never seen that”.

Mr. Heppner feels the barbeques may create a safety concern. He does not want to reject these events but he feels the Board should receive input from the Town’s “Public Safety Committee” and some clear direction from Mr. Kuebler. This is a good first step to alleviate safety concerns.

Mr. Kuebler reported meeting with the Orchard Park Police Chief, providing him with details of the barbeque, and visiting the site together. Afterwards, the Police Chief e-mailed Mr. Kuebler that he had no opposition, or complaints regarding the take-out Chicken Barbeque operating here on file. Mr. Kuebler was asked to provide a copy of this email to the Planning Office. *(It was noted that the Police Chief at that time was also the Chairman for the Public Safety Committee. However, the current Chair for Public Safety is Captain Patrick Fitzgerald.)*

Chairman Fabinsky stated that he feels the Public Safety Committee has a broader constituency than the Chief of Police. The Board would like official correspondence from the Public Safety Committee indicating that that there are no safety issues with the events.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 9

Mr. Heppner stated that an “Outdoor Display” permit was granted for the sheds, and not the take-out Chicken Barbeque events. This is a business; a business with a charitable outcome. He would like to have knowledge of when the events are scheduled, as the spontaneity of these events is a concern for him.

Mr. Murray established that, no one leaves their vehicle, and that the chicken is provided through the vehicles’ window. He feels this is a “drive-thru”, where service occurs with no one getting of their car. He would like Mr. Kuebler to comply with the Town Code, and submit a Long SEQRA form to enable the

Board to take a closer look at this operation. He also feels the submitted drawing needs to be made clearer, and asks that Mr. Kuebler have an engineer prepare the sketch plan.

The Chairman concluded, what he is hearing is that the members do not have enough information on which to base a decision. He told Mr. Kuebler, that essentially, everyone agrees that your cause is a noble one. However, the Board members have concerns for traffic backing-up creating safety issues with vehicles spilling out onto Southwestern Boulevard. They do not want someone sitting in traffic on Southwestern Boulevard to get hit and meet a terrible fate.

The Chairman suggests that Mr. Kuebler speak to the Planning Office and they will provide him with the SEQR form and schedule a meeting with the Public Safety Committee to review this request.

Mr. Kuebler expressed his feelings regarding the process. He stated it has been four-months, where he was told that safety is the main concern. He was guided to this Board, with a revised plan to address safety concerns by tripling the amount of space needed, including providing vehicle access to the back of the lot.

Mr. Heppner stated that safety is the concern. He further stated that Mr. Kuebler denies that there were people in the middle of the road and that of an eyewitness. He feels he cannot approve a project where he is going to be concerned for the safety of the Orchard Park residents.

Mr. Heppner made a **MOTION,** seconded by Mr. Liberti, to **TABLE** this request, and that the Public Safety Committee review and provide a recommendation on the safeness of the events, and that the Applicant submit Part 1 of the Long SEQR form.

ON THE QUESTION:

Mr. Orffeo noted the following correction; *the Police Chief is no longer on the Public Safety Committee, nor is he the Chair.* Mr. Orffeo will send the current Chair, “*Captain Patrick Fitzgerald”* a draft copy of the Planning Board meeting minutes and request that the Public Safety Committee review this event.

Mr. Orffeo asked that the motion include the following: the applicant is to provide “Part 1 of the “Long SEQR Form”.

Mr. Heppner agreed to the amended motion.

THE **VOTE** ON THE AMMENDED **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION TO TABLE UNTIL THE INFORMATION REQUESTED IS RECEIVED** IS **PASSED**.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 10

**NEW BUSINESS:**

1. P.B. File #04-2020, Marathon Roofing, 3310 N. Benzing Road, located on the west side of N. Benzing Road, south of Lake Avenue, Zoned I-1. (SBL#152.13-3-25) 3310 Benzing Road, LLC is requesting a Building Permit and Site Plan approval to construct a 10,300-sq.ft, single story, metal Warehouse Building addition at the rear of the property. Town Board referred to Planning Board on 2/05/2020.

APPEARANCE: Mr. Chris Streng, Kulbach’s Construction

Mr. Tod Cislo, Marathon Wood Products

Chairman Fabinsky asked Building Inspector Stephen Bremer to briefly bring the Board up-to-speed with the history of this site.

Mr. Bremer stated that in 1996 the Planning Board approved a request to expand the parking lot at this site. This has not taken place, and they are now appearing before the Board requesting to construct a warehouse addition. The project will not have an adverse impact with runoff water or anything more to the site as they are not increasing the impervious surface of the site. He concluded that he had no issues with this project.

The Chair confirmed with Mr. Bremer that this business is not visible from the street, and that the character of the neighborhood would not be changed in this I-1 Zone.

Mr. Cislo presented a brief summary of the proposed project, explaining that the addition will be a pre-engineered metal building that will be placed behind the existing building. .A corridor will attach the two buildings. He also indicated on the Site Plan where snow storage would be kept on the property.

Mr. Baich discussed with Mr. Streng why the project was held back for so long. Mr. Streng explained that various business issues needed to be resolved. He owned a business in Cheektowaga, New York, when he purchased this Orchard Park business, at that time known as “Niagara Sheet Metal”. He relocated his business here and currently has 16-employees. They are successful, and are currently working with the ECID. He takes great pride in his “park-like” property. Mr. Baich concluded that Cheektowaga’s loss is Orchard Park’s gain.

Mr. Liberti discuss the height of the building, and the lighting with Mr. Cislo. Mr. Cislo stated that the new building will be 6-ft. higher and use wall packs to eliminate glare. There are no issues with deliveries made to this facility, and there will be no pole lights added to the site. Mr. Streng stated that they are 400-ft. from their neighbors.

Mr. Heppner established that the property at the back will remain green, and is approximately 400-ft. from the residential homes on Lake Avenue. There is one dumpster, screened per the Town Code, at the front of the property.

The Chair requests that the lighting be directed downward.

Mr. Orffeo stated that he contacted Richard Schechter, Chair of the Conservation Board. This Board does not feel that they need to review this project.

Mr. Heppner made a **MOTION**, seconded by Mr. Liberti, to **RECOMMEND** that the Town Board **AUTHORIZE** a Building Permit to construct a 10,300-sq.ft. Building addition and **APPROVE** the Site Plan received 1/31/2020, based on the following conditions and stipulations:

1. This is an Unlisted SEQR action, based on the submitted Short EAF, Part One, and a Negative Declaration is recommended.

2. The site lighting is limited to those fixtures indicated on the approved site plan. Light fixtures shall have flat lens.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 11

1. No outside storage or display is permitted.

4. Any dumpsters added in the future shall be screened in accordance with Section 144-25 of the Town Code.

5. The Conservation Board Chair determined that, as the addition is to be built on an impervious surface and no greenspace is affected, there is no need for the project to be reviewed by this Board.

6. The Town Engineering Department researched the project and found that approval was granted in 1996; the approval lapsed, but they recommend it proceed directly to the Building Inspector as no complaints have been filed with the Town Engineering Department.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

2. P. B. File #07-2020, V/L Windward Road, 9.2 +/- acres, located in Sterling Park Business Center, north side of Milestrip Road, east of the 219, and south of Lake Avenue, Zoned I-1. (SBL#152.14-5-1). New York Beer Project, LLC/K Squared Properties LLC is requesting a Special Exception Use Permit. Town Board referred to Planning Board on 2/05/2020.

APPEARANCE: Mr. & Mrs. Kevin Krupski, Owners

The Krupski’s (Kevin & Kelly) explained their project to the Board noting, that in 2015 they founded their first brewery location in Lockport, New York, known as “New York Beer Project”. Over time, a second location followed in Victor, New York. “New York Beer Project” does good things within the community, and is a community gathering spot. They would like to construct a third “New York Beer Project”, in Orchard Park, New York. Their facility manufactures beer, which is a conforming use, allowed in our I-1 Zone. However, they would like to keep the elements that make them popular in their other locations, and are here to request a “Special Exception Use Permit” to allow a restaurant. Orchard Park’s Town Code does not allow a restaurant in the I-1 Zone. Ms. Krupski explained events they typically plan through the year with community participation. They use outdoor areas for the gathering of people and use a tent for their events.

Ms. Mombrea discussed their proposed hours of operation with the Applicants. Ms. Krupski stated that they are open Monday, thru Thursday, from noon to, at 11 P.M. On Friday’s and Saturdays they are open noon until 1:00 A.M. Sunday’s, they are open from 10:A.M., until 10:00 P.M.

Mr. Krupski told the Board that this is not a “wild place”. It is a family restaurant with a license to sell liquor and they employee approximately 150-partime workers in each of their restaurants.

Mr. Murray discussed “spot zoning” briefly with Mr. Krupski, and he asked for clarification as to where the project site is located within the Sterling Park Business Center.

Mr. Krupski explained that the location of the project site is in the North Western section of Sterling

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 12

Park, bordered on one side by the 219 Expressway, on the corner of Windward Road.

Mr. Baich discussed the neighbors located near the project site on Lake Avenue, and asked if the petitioner had spoken to any of them. Mr. Krupski stated that they had not, as they were firstly seeking the Special Exception Use Permit, since buying the property is contingent upon receiving this.

Mr. Bremer discussed spot zoning and concluded that this is not “spot zoning”, as they are seeking the Special Exception Use to have the restaurant, which is an acceptable use that is allowable along with the manufacturing.

Mr. Heppner established that there are no odors carried through to the outside from the business operation. He then asked if the special events are loud, with live bands, or things of that sort that would create a disturbance to the neighbors.

Ms. Krupski discussed particulars of the operation and the food service. She did not feel their events would violate the Town’s Noise Ordinances. Noise is well contained inside the facility. Banquets are part of their business, with a maximum of 200-people allowed. There are 300+ parking spaces provided for customers. On a “slow” Tuesday, there could be 200-people visiting the site.

Chairman Fabinsky established that they do not have a distributer for their beer. It is purchased at the brewery. He feels this is a fascinating idea with a great potential for Orchard Park.

Mr. Liberti discussed retail gift items for sale. It was learned that there is very little stock, and that they do have tee-shirts for sale.

Mr. Liberti made a **MOTION**, seconded by Mr. Fabinsky to **RECOMMEND** to the Town Board that the request for a **“Special Exception Use Permit”** to construct a 2-story 28,000 +/- total sq. ft. Facility, with an 8,000-sq.ft. Covered Porch, at Vacant Land, located on Windward Road, in the Sterling Park Business Center, Zoned I-1, per the Town Schedule Of Use Controls be **APPROVED**, based on the following:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a negative Declaration shall be made.

2. Public Hearing fees must be paid prior to the public hearing, Section 144-69 of the Town Code.

3. Article VI (Section 144-43(c)(1-11)) has been satisfactorily addressed as follows:

a. The proposed project is in compliance with the Town's long-range Comprehensive Plan.

b. The applicant has demonstrated a need for the project.

c. The project is compatible with adjoining land uses and proposed developments, and will not have a negative impact on the adjacent land value or public safety.

d. The applicant has demonstrated an orderly flow of traffic ingress and egress.

e. The applicant has provided suitable parking facilities.

f. Free area for recreation is not required.

g. The nearness and impact on schools and utilities is not an issue.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 13

h. The health and safety of adjacent properties is not affected.

4. This recommendation is contingent upon the applicant completing the project as proposed on the preliminary development plans received on **01/31/2020** and receiving an Area Variance from the Zoning Board of Appeals. The project shall revert to its original Zoning Classification if the project is not completed per Section 144-67 of the Town Code.

ON THE QUESTION:

Mr. Heppner confirmed that the only ingress/egress is through Windward Road.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY NAY

THE **VOTE** BEING **FIVE IN FAVOR** and **ONE AGAINST,** THE **MOTION** IS **PASSED**.

3. P.B. File#09-2020, Kettles Corner, 3719 Abbott Road, located on the east side of Abbott Road, north of Route 20, Zoned B-2. Applicant is requesting a two-year renewal for an Outside Display Permit for a weekly “Car Kruise” show on Mondays in their parking lot.

APPEARANCE: Joelle Janish, Owner

The Chairman affirmed that the Building Inspector has no issues with this renewal request.

Ms. Janish told the members that she is the owner of Kettle’s, and is requesting a two-year renewal with a change in the hours of operation for the event.

Mr. Baich verified that the time of the event is now open from 5:30 P.M. to 8:30 P.M., and that the request is for approval of two-years.

Mr. Orffeo told the Board that the Police Chief reports no problems with this event.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Baich, to **GRANT** Outside Display, for a Monday 5:30 P.M. to 8:30 P.M., weekly Classic Car meet, May 11th through August 31st, 2020, and May 3rd through August 30th, 2021, in the parking lot of Kettles Corner, 3719 Abbott Road, based on the location plan received 2/27/2020, and the following conditions and stipulations are to apply:

1. This is a Type II SEQR action and therefore no SEQR determination is required.

2. There will be no additional outside lighting for the display or temporary structure.

3. There will be no banners or additional signage for this facility.

4. Security and sanitation facilities shall be provided by the Petitioner.

5. Granted for two years 2020 and 2021, based on Police Chief’s approval for a second year, (2021)

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 14

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

BAICH AYE

HEPPNER AYE

LIBERTI AYE

MOMBREA AYE

MURRAY AYE

THE **VOTE** BEING **UNANIMOUS,** THE **MOTION** IS **PASSED**.

**CONCEPT REVIEW:**

1. P.B. File #08-2020, Orchard Heights, 5200 Chestnut Ridge Road, Zoned R-3, with SR designation. Applicant to discuss Phase 2.

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ Morris

Mr. Josh Klotzbach, Hamister Group

Mr. Wood gave a brief presentation, noting that Phase 2 proposes the construction of a two-story building with thirty-two Independent Living Apartment units. The building will be divided into two separate 16-unit wings, and connect to the existing Orchard Heights Senior Living facility. Garage parking will be in the basement level and accessed from the existing driveway onsite. Construction will also include onsite utility improvements and a total of 18-open parking spaces. The proposed construction was included in the previous design plan of the expansion of the Assisted Living Facility, as “future expansion” of the facility.

Mr. Baich verified the number of units proposed and their location.

Chairman Fabinsky would like an aerial photo submitted. He also verified that the buildings will be two-stories in height, and that the total Green Space at the site after construction of Phase 2 will be 58%.

Mr. Wood indicated on the Site Plan were various rooms will be located.

Mr. Heppner stated he would like the same level of open communication that existed during Phase 1 for the neighboring “Eagle Ridge”. He also established that the building will match the architectural elements of the building constructed in Phase 1.

The Chair canvassed the Board as follows:

⦁ Ms. Mombrea would like to know if there is a demand for additional Senior Residential apartments.

⦁ Mr. Murray established that the entire parcel is zoned Senior Residential.

⦁ Mr. Baich feels they are price right and are at market rates.

⦁ Mr. Liberti established that the facility is at full capacity, and that there is a waiting list, creating the need for the additional apartments. These are rentals and not owned. There are meals plans and each apartment has a kitchen.

⦁ Mr. Heppner has no questions he appreciates that the Applicant will be open with the neighbors.

P.B. Meeting #03 Regular Meeting #03 Date: March 12, 2020 Page 15

Chairman Fabinsky feel it is nice that people want to stay in Orchard Park.

Mr. Ostrander stated that the Storm Water Design was already designed during Phase 1 of the project.

The Chairman stated that the members are positive regarding this project.

There being no further business, the Chairman adjourned the meeting at 9:15 P.M.

DATED: 4/29/2020

REVIEWED: 5/04/2020

Respectfully submitted,

Rosemary M. Messina

Planning Board Secretary

Harold T. Fabinsky, Planning Board Chairman