

**PLANNING BOARD MARCH MEETING MINUTES**

**MEMBERS:** Harold Fabinsky, Chairman  
Nicholas Baich  
Henry Heppner  
David Kaczor  
Julia Mombrea,  
Philip Murray  
Karen Byrne, Alternate

**EXCUSED:** Joseph Liberti, is on a leave of absence.

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator  
Steven Bremer, Supervising Code Enforcement Officer  
Thomas Ostrander, Assistant Town Municipal Engineer  
John Bailey, Deputy Town Attorney  
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. in the Orchard Park Community Activity Center. 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 noted that this evening we do not have a full Board. Therefore, our Alternate, Ms. Byrne will be a voting member.

The February 11, 2021 meeting minutes are not available, and they will be voted on at another time.

- 1. **7:00 P.M. PUBLIC HEARING, P.B. File #24-2020, V/L Angle Road, 2-Lot Subdivision, 4.54 +/- Acres, located on the east side of Angle Road, north of Milestrip Road, Zoned R-2.** Applicant is seeking Planning Board Preliminary Plat Plan Approval. Pre-Applications Findings were made on 12/10/20. (SBL#153.20-1-25.2)

Chairman Fabinsky stated that the Applicant has asked to be re-scheduled as he is revising his project.

Mr. Fabinsky opened the Public Hearing and closed it.

Mr. Kaczor made a **MOTION** to **TABLE** the Public Hearing, seconded by Mr. Heppner.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

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

The Chair asked for a motion to re-schedule the next public hearing at the discretion of the Chair.

Mr. Baich made a **MOTION**, seconded by Ms. Mombrea, to **AUTHORIZE** the Chairman to set a Public Hearing when he deems appropriate.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

**THE VOTE BEING UNANIMOUS, THE MOTION TO AUTHORIZE THE CHAIRMAN TO SET A PUBLIC HEARING IS PASSED.**

- 2. P.B. File #11-18, "Smokes Creek Farms", proposed twenty-two lot subdivision, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run, Zoned R-1. Applicant to extend decision date on project for sixty-two (62) days to May 10, 2021.

APPEARANCE: Mr. Anthony Pandolfe, Carmina • Wood • Morris, Architects

Acting Planning Coordinator Remy Orffeo stated that Mr. Jerge emailed the Planning Office requesting to extend the decision date for this project. Mr. Jerge is not feeling well, and felt that he should not attend the meeting in person.

Mr. Pandolfe stated that Mr. Hopkins had affirmed with him that they would like the decision date extended.

The Chair affirmed that there is documentation of this in the file.

Mr. Baich made a **MOTION**, seconded by Mr. Heppner, that the Planning Board, per Town Code Section 121-17, **ACCEPTS** the Petitioners' request to extend the decision date in the Final Plat Plan approval process for 62-days to May 10, 2021.

- 1. All public notices have been filed.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA,	AYE
MURRAY	AYE
BYRNE	AYE

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

- 3. P.B. File #36-19, Benderson Development, 3340 – 3350 Southwestern Boulevard ("The Commons/Creek side Plaza") Zoned B-1. Request to construct a stand-alone 1,910 sq. ft. "Mighty Taco" Restaurant with a Drive-thru, with associated site, utility and drainage improvements. (SBL#152.16-6-1.2) NOTE: Town Board granted a Special Exception Use Permit on 3/18/2020; Zoning Board of Appeals granted a Variance to allow parking spaces within 50-feet of the street line on 2/18/2020; Conservation Board

granted Landscaping Plan approval on 1/7/2020. Tabled by Planning Board at February 11, 2021 meeting.

The Chairman noted that Ms. Mombrea will be Abstaining in this case due to a business relationship with the Petitioner.

APPEARANCE: Mr. Doug Hutter, Zaxis Architecture

Mr. Hutter told the members that he is representing the "Mighty Taco Project". He is here this evening seeking the Planning Boards' recommendation to the Town Board for Site Plan Approval and a Building Permit. He noted that the project has already received the following approvals: Town Board granted Special Exception Use Permit; Zoning Board of Appeals granted a Variance; and Conservation Board granted approval for the Landscape Plan.

Mr. Kaczor established that there have been no changes made to the project since the last time the Board reviewed the project.

Mr. Heppner expressed his appreciation to Benderson Development for their response to the plaza issue discussed at the last meeting. He is looking forward to the Mighty Taco project.

Chairman Fabinsky established that the members had no further questions regarding this project.

Mr. Heppner made a **MOTION**, seconded by Mr. Kaczor, to recommend to the Town Board that the request to construct a stand-alone, 1,910-sq.ft. "Mighty Taco" Restaurant with a drive-thru and on-site improvements, at 3340-3350 Southwestern Boulevard, located on the north side of Southwestern Boulevard in the Commons/Creekside Plaza, Zoned B-1, be **APPROVED**, based on the following:

1. All public notices have been filed.
2. The Town Board granted a Special Exception Use Permit on 3/18/2020.
3. The Zoning Board of Appeals granted an Area Variance to allow parking spaces within 50-feet of the street line on 2/18/2020.
4. This is a Type 1 SEQR action based on the submitted Full EAF Parts 1 & 2, and a Negative Declaration is recommended.
5. The Site Lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
6. No outside storage or display is permitted.
7. The Landscape Plan, received 1/02/20, meets all Green Space regulations with 22% Green Space. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$4,065 Landscaping Estimate Value shall be deposited with the Town Clerk (\$2,032.50). Conservation Board approval was granted on 1/7/2020.
8. Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
9. A Drive-thru trip generation and queuing study was submitted by SRF Associates on 1/9/2020 and compared the 3340 - 3350 Southwestern Boulevard proposed location with three (3) other local Mighty Tacos. The study indicated that any overflow in the queuing would be handled in the Mighty Taco parking lot and would have no impact on the "The Commons-Creekside Plaza".

10. The Board tabled their review of this project, at the February 11, 2021 Planning meeting, citing existing code violations at another Benderson Development Plaza. The Town Building Inspector reports that demolition and clean-up efforts took place at the site. The members are satisfied with those efforts.
11. Benderson Development, at their expense on behalf of the Town of Orchard Park, is to provide the Town of Orchard Park Assessor with an "independent" appraisal for the completed project by a Certified Commercial Appraiser.
12. Town Engineering Approval was granted on 2/11/2021.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	ABSTAINED
MURRAY	AYE
BYRNE	AYE

**THE VOTE BEING (6) SIX IN FAVOR AND (1) ONE ABSTENTION, THE MOTION IS PASSED.**

4. P.B. File #28-2020 "Eco Serve", 3573 North Buffalo Road, located on the east side of North Buffalo Road south of Milestrip Road, Zoned B-3. Seeking Planning Board recommendation to the Town Board for a Building Permit and Site Plan Approval to construct a Parking Lot Expansion. Town Board referred to Planning & Conservation Board on 2/03/21. (SBL#161.08-2-15.2) Conservation Board approved Landscape Plan at 2/2/2021 meeting.

APPEARANCE: Anthony Pandolfe, Carmina • Wood • Morris, Architects

Mr. Pandolfe gave an over view of the project to the Board, noting that the new parking spaces are located at the rear of the site. On 2/2/2021 the project received Conservation Board approval for the submitted Landscape Plan. Engineering approval was granted on March 9, 2021. The Applicant would like the employees' vehicles and his work trucks parked behind the building.

Ms. Mombrea established that the new parking area is for the employees so customers can park at the front. There is a possibility that Eco Serve may expand their facility in the future.

Mr. Baich affirmed that the area behind the business is where the parking spaces will be constructed, and that the total number of spaces at the site after completion of the project will be 22.

Mr. Kaczor inquired as to what activity occurs at the site. He established that this is a pest control business and that the new parking lot will be constructed for the workers to park their vehicles here and use the company's trucks through-out the work-day. The trucks will remain parked here at night when the business is closed. At the front of the property an office is located in the existing building. If customers need to visit, they can park at the front of the property.

Ms. Mombrea made a **MOTION**, seconded by Mr. Fabinsky, to recommend that the Town Board **GRANT** Site Plan Approval and issue a Building Permit to expand the existing parking lot to 22 spaces total, per the plans received on 2/12/2021, based on the following conditions and stipulations:

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

- 2. The Site Lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
- 3. No outside storage or display is permitted.
- 4. The Landscape Plan, received 1/27/21, meets all Green Space regulations with 58.9% Total Green Space. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$1,500 Landscaping Estimate Value shall be deposited with the Town Clerk (\$750). Conservation Board approval was granted on 2/2/21.
- 5. There are no dumpsters at this site.
- 6. The AOD granted a "Certificate of Appropriateness" on 12/15/2020.
- 7. Town Engineering Approval was granted on 3/09/21.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

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

- 5. P.B. File #01-2020, Bliss Office Building, 4370 South Taylor Road, located on the west side of South Taylor Road, just north of US Route 20A (Big Tree Road), Zoned I-1. (SBL#172.07-1-6.1) Paul Bliss is requesting a Building Permit and Site Plan approval to construct a 2-Story, 12,000 gsf Office Building with 44-parking spaces and on-site utility improvements. Note: Conservation Board approved Landscaping Plan on 3/3/2020. (Town Board referred to Planning Board on 1/15/2020.)

APPEARANCE: Jon Barniak, Carmina • Wood • Morris, Architects

Mr. Barniak presented plans to the members, and gave a brief summary of the proposed project to construct a two-story office building on South Taylor Road. The site is approximately 1.4-acres in size and the total disturbance will be less than one-acre. He noted that a south-branch of Smokes Creek is located on this property. However, the project is located outside the 100-year flood plain. He also noted that at this point the project is conceptual, without a tenant.

The Chairman asked if Mr. Barniak had information on the 500-year flood plain.

Mr. Barniak stated that the project is also outside of the 500-year flood plain.

Chairman Fabinsky noted that the Board had received a correspondence from the adjacent neighbor expressing concerns for a privacy hedge row to help screen the site. Mr. Adam Kern, representing his mother, Mrs. Kern, would like some type of screening put in to buffer her view from the site. Although it is not necessarily required by the Town Code, the Board would like to see the Petitioner to address these concerns and be a good neighbor.

Mr. Barniak stated he would discuss this with his client, Paul Bliss. However he feels confident that they can alleviate this matter, and he assured Chairman Fabinsky this would happen.

Mr. Baich asked if there has been any communications with the neighbor.

Mr. Barniak stated that he personally cannot speak on behalf of that, and his client is not here tonight to comment. However, they will reach out to the neighbor to see what their concerns are and address them.

Mr. Baich feels it would be wise to keep a good relationship with the neighbor. He asked what the construction hours are for the project.

Mr. Barniak stated the construction hours will be the typical construction hours of 7 A.M. through 5 P.M.

Mr. Kaczor noted, as you don't have a tenant yet, and this is conceptual, is this a "spec" home?

Mr. Barniak acknowledged that this project may change.

The Chairman established with Building Inspector Steve Bremer that the parking is adequate for whatever goes into this site. He, also, again, told Mr. Barniak that he wants assurance that there be some kind of a "good neighbor" policy with Mrs. Kern.

Mr. Heppner stated he wants effective communications with the neighbor and perhaps her son. He, also, feels 7:00 A.M. may be too early for construction to start. He feels 8:00 A.M. would be better.

The Chairman stated that the neighbor is looking to have a slight modification to the normal construction hours, and rather than 7:00 A.M., looking to 8:00 A.M. Would that be acceptable to the petitioner?

Mr. Barniak stated that he believes this would be acceptable.

The Chairman stated that we will provide both the names and contact information of both the neighbor and her son, who we believe is acting as her advocate here.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich, to recommend that the Town Board **GRANT** Site Plan Approval and issue a Building Permit to construct a 2-story 12,000 gsf Office Building, with 44-parking spaces and on-site utility improvements, per the plans received on 5/15/2020, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is an Unlisted SEQR Action, based on the Short EAF Part 1, and a Negative Declaration is recommended.
3. The Site Lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
4. No outside storage or display is permitted.
5. The Landscape Plan, received 1/27/21, meets all Green Space regulations with 61.1% Total Green Space. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$16,825 Landscaping Estimate Value shall be deposited with the Town Clerk (\$8,412.50), Conservation Board approval was granted on 3/03/21.
6. Dumpsters as shown shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
8. Town Engineering Approval was granted on 3/09/21.

- 9. Construction hours be 8:00 A.M. to 5:00 P.M.
- 10. The Petitioner review with the neighbor screening, and advise the Board of the outcome of that discussion.

ON THE QUESTION:

Mr. Fabinsky asks for the addition of two stipulations, #9, and #10, the motion was so modified.

The amendments to the motion were accepted by Mr. Kaczor and seconded by Mr. Baich.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	AYE
HEPPNER	AYE
KACZOR	AYE
MOMBREA	AYE
MURRAY	AYE
BYRNE	AYE

**THE VOTE BEING UNANIMOUS, THE MOTION IS PASSED WITH (2) TWO AMENDMENTS.**

- 6. P.B. File #06-2021, 3740 North Buffalo Street (former Legion Post) Zoned B-3, (SBL#161.08-3-35.1)  
Applicant is seeking Board approval of proposed Site Plan and a Building Permit. Architectural Overlay District (AOD) Tabled their review of this project at their 2/18/21 meeting; Conservation Board granted approval of Landscaping Plan on 3/2/21.

The Chairman noted that Mr. Baich will be recusing himself in this case.

APPEARANCE: Brian Attea, Attorney  
 Ms. Caryn Dujanovid Rowell, Owner/Petitioner  
 Mr. Brad Rowell/Partner  
 Mr. Tom Bestpitch

Ms. Dujanovid Rowell told the members that she owns two restaurants in New York State, one is in Hamburg and the other is in Ellicottville. She would like to open a facility in the Town of Orchard Park and operate a Brewery, Restaurant, and a contemporary Event Hall for Receptions. She told the members that the Conservation Board approved their Landscape Plan and that they will appear before the Architectural Review Board (AOD) in April with an updated plan. They recently purchased the former Legion Post site, and are appearing before the Board to answer questions the Planning members may have. She distributed site plans for the members' review.

Ms. Byrne discussed the parking at the site with Ms. Dujanovid Rowell. It was learned that 45-parking spaces will remain at the site, and that the parking agreements the Legion Post had with adjacent locations will be "married" into this project. This includes parking allowed at the Dental Office across the street and at the Church parking lot behind the site with a nice walk-way to the facility. They also have an agreement with "Buffalo Medical Group" if they need additional parking.

The Chairman established that Building Inspector Bremer did not have any issues with parking spaces for this site.

Ms. Mombrea asked what the general hours of operation for the facility will be.

Ms. Dujanovid Rowell stated that the schedule is not set yet, but she feels the facility will be open for normal lunch and dinner hours. She further stated that they operate a family-friendly facility and in consideration of the surrounding community, there will be no loud music playing.

Mr. Kaczor stated that, as a member of the "Orchard Park Economic Board", he is very excited to see this project come to Orchard Park. He also noted that he is a founding member of the Architectural Overlay District Board, and he briefly discussed what the AOD's purpose is. He asks that Ms. Dujanovid Rowell be flexible, and willing to work with the AOD, in creating something that is truly a treasure. He sees this as a positive asset to the Town.

Ms. Dujanovid Rowell stated that they like to preserve history, blend into the community and help elevate the surrounding area. She thanked Mr. Kaczor for all his positive comments regarding their existing establishments.

The Chair stated that this building has been here since 1830 and was the home of Erastus Webster, who was in President Lincoln's Cabinet. He feels it is good to see this building preserved, instead of demolished.

Ms. Dujanovid Rowell stated that they are very excited to bring the building back to its true beauty.

Mr. Heppner asked for clarification regarding the overflow parking. He established that Ms. Dujanovid Rowell feels they have planned for all scenarios.

Mr. Murray spoke of the patron safety while walking to the site and crossing a roadway from the over flow areas.

Ms. Dujanovid Rowell stated that the only instance would be crossing, at the light, from the Dentist's Office.

Ms. Byrne established that 45-parking spaces will exist at the site.

Mr. Fabinsky made a **MOTION**, seconded by Heppner that the Planning Board **APPROVES** the "Redevelopment of the former American Legion Post" structure to include construction of a 2,950 +/- gsf Atrium, a new 4,100 gsf Brewery Building and miscellaneous Site Improvements, including an Outdoor Patio and Deck, with Landscape improvements based on submissions received on 3/5/21 as follows:

1. All public notices have been filed.
2. This is an Unlisted SEQR Action, based on the Short EAF Part 1, and a Negative Declaration is recommended.
3. The Site Lighting is limited to those fixtures and poles indicated on the approved Site Plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
4. No outside storage or display is permitted.
5. The Landscape Plan, received 3/5/21, meets all Green Space regulations with 19.7% Total Green Space. In accordance with Section 144-44(c)(1)(a)(2), a Certified Check amounting to 50% of the \$14,328.50 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$7,164.25) Conservation Board approval was granted on 3/2/21.
6. Dumpsters as shown, shall be screened, along with any additional dumpsters, in accordance with Section 144-25 of the Town Code.
7. The Architectural Overlay District tabled their review of this item at their 2/18/21 meeting, but they will be appearing before them again.

8. Town Engineering has no issues with the project, nor has the Building Inspector.

ON THE QUESTION:

Mr. Orffeo explained that Item #5 has correct dates shown for *approval* and an updated *Landscape Plan*.

**THE VOTE ON THE MOTION BEING:**

FABINSKY	AYE
BAICH	RECUSED
HEPPNER	AYE
KACZOR	AYE
MOMBREA,	AYE
MURRAY	AYE
BYRNE	AYE

**THE VOTE BEING (6) SIX IN FAVOR AND (1) RECUSAL, THE MOTION IS PASSED.**

There being no further business, the Acting Chairman adjourned the meeting at 7:47 P.M.

DATED: 4/05/21

REVIEWED: 4/12/21

Respectfully submitted,  
Rosemary M. Messina  
Planning Board Secretary

Harold Fabinsky  
Planning Board Chairman