

PLANNING BOARD FEBRUARY MEETING MINUTES

MEMBERS: Harold Fabinsky, Chairman
 Nicholas Baich
 Gregory Bennett
 Henry Heppner
 David Kaczor
 Alex Long
 Philip Murray
 David Mellerski, Alternate

EXCUSED: Thomas Ostrander, Assistant Town Municipal Engineer

OTHERS PRESENT: Gene Majchrzak, Supervisor, Town of Orchard Park
 Remy C. Orffeo, Acting Planning Coordinator
 Richard Mrugalski, Principal Engineer Assistant
 Thomas Minor, Supervising Code Enforcement Officer
 John Bailey, Deputy Town Attorney
 Rose Messina, Secretary

The Chairman 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.

Upon a motion duly made and seconded, the reading of the February 2023 Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Heppner made a motion, seconded by Mr. Baich to accept the February, 2023 meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

The Chairman explained the Public Hearing procedure to those present and noted that each person is allowed (4) four-minutes to speak, "for" or "against" the project. The Affidavit of Publication and Posting, published February 2023 was presented and filed with the Board by the Planning Board Secretary.

PUBLIC HEARING:

1. P.B. File #30-2022, "Moeller" proposed 2-Lot Subdivision, located on the North side of Ellicott Road between 7800 & 7850 Ellicott Road, across the street from Benning Road, 2.31 Acres, Zoned R-1. (A portion of SBL#185.00-4-32.) Petitioner is requesting Planning Board Preliminary Plat Plan Approval. Pre-Application Findings were granted on 11/10/2022.

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs

Mr. Moeller, Petitioner, Developer/Property Owner

Mr. Wood presented the Site Plan to the Board Members and explained Mr. Moeller’s proposed project to develop two (2) Building Lots on 2.31-Acres of property he owns.

The Chairman established that the Town Engineering and Building Department have no issues or comments regarding this project.

The Chairman asked if there is anyone who would like to speak *in favor* of this project.

IN FAVOR:

*Mr. Moeller, Developer/Property Owner
7800 – 7850 Ellicott Road
Orchard Park, New York 14127*

Mr. Moeller stated that he supports the proposed 2-Lot subdivision request as he would like to down-size into a ranch home.

*Mr. Chris Wood, Carmina - Wood Designs
487 Main Street Suite 500
Buffalo, New York 14203*

Mr. Wood told the members that he supports the project.

The Chairman asked if there is anyone who would like to speak *against* this project.

AGAINST: No one spoke.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, to **CLOSE** the public hearing.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO CLOSE THE PUBLIC HEARING IS PASSED.

Mr. Wood spoke further regarding the project and asked that the Final Plat Plan public hearing be waived.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, to **GRANT** Preliminary Plat Plan Approval to this 2.31+/- acres V/L, 2-lot Subdivision, Zoned R-1, based on the submitted Preliminary Plat Plan and Survey received on 2/21/2023 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 03/09/23.
2. Pre-Application Findings were made on 11/10/22.
3. Public Hearing and Subdivision Development fees have been paid prior to Final Plat Plan Approval.

4. Recreation fees in accordance with Section 144-70E of the Town Code shall be paid prior to Final Plat Plan Approval.
5. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot per Section 120-3F of the Town Code.
6. Town Engineering Preliminary Plat Plan Approval was granted on 03/02/2023.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich to **WAIVE THE FINAL PLAT PLAN PUBLIC HEARING.**

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

Mr. Heppner made a **MOTION**, seconded by Mr. Kaczor to **GRANT** Final Plat Plan Approval to this 2.31+/- Acres V/L, 2-lot subdivision based on the submitted Final Plat Plan received 2/21/2023 with the following conditions:

1. This is an Unlisted SEQR action based on the submitted Short EAF and a Negative Declaration was made on 3/09/2023.
2. Pre-Application Findings were made by the Planning Board on 11/10/2022.
3. Preliminary Plat Plan Approval was granted on 3/09/2023.
4. Public Hearing and Subdivision Development fees have been paid.
5. Recreation fees in accordance with Section §144-Attachment1, (Schedule of Zoning Fees) D of the Town Code have been paid.
6. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on the lot per Section 120-3F of the Town Code.
7. Town Engineering Final Plat Plan Approval has been granted on 3/02/2023.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

REGULAR BUSINESS:

1. P.B. File #33-21, 3185 Orchard Park Road, located on the east side of Orchard Park Road, north of Delta Sonic. (Existing building will be demolished), Zoned B-2. (SBL#152.16-4-14) "Jim's Steak-Out" is Seeking Planning Board recommendation to Town Board for a Building Permit and Site Plan Approval to construct a 2,810-sq.ft. Restaurant Building with a Drive-Through, and associated site improvements. Town Board referred to Planning and Conservation Boards on 8/03/2022. Conservation Board approved Landscaping Plan 12/06/2022.

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs
Mr. Doug Feyes, Carmina – Wood Designs

Mr. Wood gave a brief history of past businesses that operated at this property. He told the members that the current building at this site will be demolished and a new 2,810 +/- sq.ft. Building with a Drive-Thru will be constructed, along with parking and necessary site improvements made. In January 2023 the Town Board granted a Special Exception Use Permit to allow a Drive-Thru to operate here for the proposed "Jim's Steak-Out" Restaurant. It was learned that the majority of the Jim's Steak-Out business is processed through drive-thru orders. The queuing space will allow up to 12-vehicles in line, and based on other Jim's Steak-Out locations they feel this is adequate. This project has received all necessary approvals, including our Town Engineering Department's on 3/08/2023.

The Chairman verified that the Building Inspector and Town Engineering Departments had no outstanding issues with this project.

Mr. Long inquired about the adjacent church property and if the project blocks off the two rear access driveways that are currently utilized by the church.

Mr. Wood stated that an easement agreement was signed, and he indicated on the Site Plan the location of the driveway easement between Jim's Steak-Out and the Full Gospel Tabernacle Church.

Mr. Baich established that there will be outside seating with a patio, as well as inside seating at this location. He also discussed the number of Jim's Steak-Out restaurants currently operating in the area.

Mr. Kaczor feels that the information presented substantiates that the Drive-Thru ATM will have a very low impact in the area and no significant effect on any of the traffic issues of the area.

Mr. Heppner feels this is a great project and that the site will be ascetically improved.

Mr. Mellerski discussed the foot print of the proposed building and established that it is not the same as the building that exists. Also, the new building will be placed deeper into the lot.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Heppner to recommend that the Town Board **APPROVE**

the Site Plan and **AUTHORIZE** a Building Permit to construct a 2,810-sq.ft. Building with a Drive-Thru, per the plan received on 10/28/22, 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 submitted on 7/29/22, and a **Negative Declaration** is made.
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. An updated Landscape Plan, received 10/28/22, was approved by the Conservation Board with .13-Acres Green Space. In accordance with Section 144-44(C) (1) (a) (2), a Certified Check amounting to 50% of the \$22,705 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$11,352.50) Conservation Board approval was granted on 12/6/2022.
6. Any future dumpsters shall be screened, in accordance with Section 144-25(C) of the Town Code.
7. The Applicant is to provide the Town of Orchard Park Assessor with an "independent" appraisal for the completed project by a Certified Commercial Appraiser
8. On 1/18/23 The Town Board granted a Special Exception Use permit for a Drive-Through at this restaurant building.
9. Town Engineering Approval was granted on 3/2/2023.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

2. P.B. File #24-2022, Chase Bank, Vacant Out-Parcel property, west side of Top's Fueling Station, east side of Star Buck's, located in the Tops Plaza, 3201 Southwestern Boulevard, Zoned B-2. (SBL#152.16-7-1.1) Applicant is seeking Planning Board recommendation to Town Board for a Building Permit and Site Plan Approval to construct a 3,500-sq.ft. Building with a Drive-Through ATM. Town Board referred to Planning and Conservation Boards on 8/03/2022. Conservation Board approved Landscaping Plan 12/06/22.

APPEARANCE: Mr. Matt Tomlinson, Marathon Engineering
Mr. Jeff Sager, Marathon Engineering

Mr. Tomlinson explained the proposed project, noting that the Town Board granted a Special Exception Use Permit on 1/18/2023 for a Drive-Thru Chase Bank ATM. The Bank will not have drive-up Teller windows. He also described the cross access easements that were agreed upon at this site with the neighboring businesses. He reported that the project has received Town Engineering approval and all necessary County approvals. He further reported that they received Conservation Board approval on 12/06/2023, and increased the Green Space slightly at the site.

The Chairman established that both the Town Engineering and the Building Department have no outstanding issues with this project.

Mr. Murray discussed his concerns and questions he has with the Applicants, regarding liability issues at this site and the lack of direct connectivity to Southwestern Boulevard.

Acting Planning Coordinator Orffeo stated that with regards to Mr. Murray's comments and concerns, he feels this area is similar to the Target property at Quaker Crossing.

Deputy Attorney John Bailey concurs with Mr. Orffeo, noting that this is the same set-up, and having indirect access to Milestrip Road.

Mr. Kaczor commented that the Chase Bank Drive-Thru ATM has been demonstrated as a low impact Drive-Thru with no significant impact on traffic issues in the area.

Mr. Baich made a **MOTION**, second by Mr. Kaczor, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 3,500-sq.ft. Building with a Drive-Thru ATM, per the plan received on 3/07/2023, based upon the following conditions and stipulations:

1. All public notices have been filed.
2. This is an Unlisted SEQR Action, based upon the Short EAF submitted on 11/14/22, and a **Negative** Declaration is made.
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. A Landscape Plan, received 11/14/22, was approved by the Conservation Board with .27-Acres Green Space, (increased from .24-Acres). In accordance with Section 144-44(C) (1) (a) (2), a Certified Check amounting to 50% of the \$39,600 Landscaping Estimate Value shall be deposited with the Town Clerk, (\$19,800). Conservation Board approval was granted on 12/06/2022.
6. All future dumpsters shall be screened, in accordance with Section 144-25(C) of the Town Code.
7. The Applicant is to provide the Town of Orchard Park Assessor with an "independent" appraisal for the completed project by a Certified Commercial Appraiser
8. On 1/18/23 the Town Board granted a "Special Exception" Use Permit for a Drive-Through ATM at this Building.
9. Town Engineering Approval was granted on 3/2/2023

ON THE QUESTION:

Chairman Fabinsky would like the term *square feet* amended to "Acres" in Stipulation #5.

THE VOTE ON THE MOTION, AS AMMENDED, BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE

MURRAY

AYE

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

NEW BUSINESS:

1. P.B. File #05-2023, Big Tree Road Vacant Land, located on the south side of Big Tree Road, (Route 20A), west of Shadow Lane, Zoned R-3. NYSEG Corporation, "Big Tree Substation", proposed fence project. (SBL#172.05-9-3)

APPEARANCE: Mr. Jim Haney, Permitting Specialist
Ms. Mary Steblein, PE, CPESC, LaBella Associates

The Applicants explained that the need for fencing at this new substation is for the security of their storage area. She told the members that the project started in 2020 and that they are almost finished.

Chairman Fabinsky stated that the Planning Board can recommend approval to the Town Board. However, he feels the Conservation Board must review the Landscaping Plan.

The Board members concurred with Chairman Fabinsky that the landscaping is very important at this site. They also established that the existing fencing will remain. However, the members feel that the existing fence condition is "pretty beat", and they feel any currently damaged or otherwise distasteful section of fence must be repaired to be as if "newly" constructed.

Richard Mrugalski, Principal Engineer Assistant, discussed a section of fencing that will remain and asked to have plantings here, and also, around the substation.

Mr. Heppner made a **MOTION**, seconded by Mr. Fabinsky, to recommend that the Town Board **APPROVE** the presented Site Plan received on 1/23/2023, and **AUTHORIZE** a Building Permit for a six-foot tall chain link fence based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is a Type II SEQR Action and no determination by the Planning Board is required.
3. Chapter 144-28 (A) (3) – *Essential Service Facilities* of the Town Code are required to have adequate fences, barriers and other safety devices shall be provided and shall be landscaped in accordance with the provisions of §144-25.
4. No outside storage or Display is permitted
5. Planning Board to determine Landscaping Plan, if any, to be submitted; Planning Board is requiring a Landscape Plan be submitted to the Conservation Board for review and approval.
6. The Petitioner will insure that any currently damaged or otherwise distasteful section of fence will be repaired to be "as newly constructed".

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

2. P.B. File #07-2023, 4109 North Buffalo, located on the east side of N. Buffalo Road, south of Sunset Lane, Zoned B3. (SBL#161.14-2-10) Dennis Salemi, of "Research & Design" is requesting approval for an Outside Display renewal.

APPEARANCE: Ms. Christina Caruso, Representing Research & Design
Mr. Marc Conway, Representing Research & Design

Ms. Caruso explained that Research & Design would like to renew and increase their permit for an "Outdoor Tent Display" from 6, to 8-times a year, having a 20 x 40-foot tent used at their sale events. However, at their July Sales Event they would like to erect an additional 20 x 60-foot tent to help provide more customer shopping space. In addition, their permit currently is granted for a period of two-years, and Ms. Caruso would like to have this extended to five (5) years.

Chairman Fabinsky discussed resolving an electrical hazard at the site with Building Inspector Minor.

Mr. Kaczor stated that this is a significant change, and he does not support increasing the permit renewal to five-years. He is, however, comfortable with the renewal for 2-years, where the Building Inspector determines if the second year is approved. He noted that the Board wants Research and Design to be successful, however, he has concerns for traffic and parking. He would like to be sure the property can handle the increase of the event from 6-times a year, to 8-times a year.

Mr. Heppner stated that he always encourages business, however he agrees with Mr. Kaczor. He also noted that a two-year approval is typically their standard approval.

Mr. Heppner made a **MOTION**, seconded by Mr. Fabinsky, to **GRANT** an Outside Display Permit, for "Research & Design", based on the following:

1. All public notices have been filed.
2. This is a Type II SEQR action and therefore no SEQR determination is required.
3. The submitted letter of intent and location plan indicate there will be; a 20 x 40-ft. tent, and that a 20 x 60-ft. tent will be added only for the "Summer Sales" event held at the end of July.
4. The 20 x 40-ft. tent will be located in front of the Barn for 7 of the sales events held throughout the year. However, at the end of July, the additional tent (20-ft. x 60-ft.) will be located in the back of 4125 North Buffalo Road, along with the 20 x 40-ft. tent for their "July Summer Sales" event.
5. All signage must be approved by the Building Inspector.
6. If any issues or complaints arise, the Building Inspector is to submit a report to the Planning Board detailing the complaint.
7. Approval is granted for two (2) years with the second year based on approval from the Building Inspector.
8. Approval is contingent upon the necessary electrical work being carried out.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE

KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

There being no further business, the Chairman adjourned the meeting at 7:55 P.M.

DATED: 3/21/2023

REVIEWED: 4/01/2023

Respectfully submitted,
Rose Messina
Recording Secretary

Harold Fabinsky, Planning Board Chairman