

PLANNING BOARD SEPTEMBER MEETING MINUTES

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

EXCUSED: Dr. Gregory Bennett

OTHERS PRESENT: Remy C. Orffeo, Acting Planning Coordinator
 Thomas Ostrander, Assistant Town Municipal Engineer
 Thomas Minor, Supervising Code Enforcement Officer
 John Bailey, Deputy Town Attorney
 Anna Worang-Zizzi, 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.

The Chair stated that in the absence of Dr. Bennett, the alternate, Mr. Mellerski will be voting tonight.

Upon motions duly made and seconded, the reading of the August Planning Board Regular Meeting minutes and the August Planning Board Special Meeting minutes were unanimously waived, as each Board Member had previously received copies.

Mr. Heppner made a **MOTION**, seconded by Mr. Kaczor to accept the August 3rd, 2023, Special Meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
MELLERSKI	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. Heppner to accept the August 10th, 2023, Regular Meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
MELLERSKI	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

1. P.B. File #02-2023, 3964 California Road, located on the west side of California Road, south of Southwestern Blvd. Zoned R-4. Joseph DeMarco Jr. is seeking to rezone this property from R-4 and I-1, to entirely I-1 for the purpose of constructing a 60 x 190 +/-sq. ft. Warehouse/Office Building on this site. Planning Board to make a recommendation to Town Board. (SBL #161.03-1-8).

APPEARANCE: Mr. Chris Wood – Architect, Carmina – Wood Architects
Mr. Joseph DeMarco Jr. – Applicant

Mr. Wood explained that this parcel is currently Zoned I-I and R-4, and that they wish to rezone it to entirely I-1. The proposed Building will not be occupied; it is for cold storage only.

The Chair established that an administrative error led to the zoning as it currently stands.

Mr. Baich made a **MOTION**, seconded by Mr. Heppner to **RECOMMEND** the Town Board **APPROVE** the requested Rezoning from R-4 and I-1, to entirely I-1, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is an Unlisted SEQR action based on the submitted Short EAF, Parts One, and Two, and a Negative Declaration is recommended.
3. Fees shall be paid in accordance with Section 144-70C, of the Town Code prior to publication of the Public Hearing Notice.
4. The recommendation is contingent upon the Applicant completing the project as proposed on the Preliminary Development Plans, and shall revert to its original Zoning Classification if the project is not completed, per Section 144-67 of the Town Code.
5. The Rezoning is supported by the Orchard Park Economic Development Committee.
6. The Town Comprehensive Plan, as originally adopted on September 19, 2007 (and with subsequent revisions), has a goal to “encourage the expansion of Business and Industrial uses such as light manufacturing, and other non-polluting industries in locations proximate to necessary transportation, water, and sewer infrastructure”.
7. The Town of Orchard Park, with less than 5% of its land mass Zoned Industrial, is underserved in the amount of currently Zoned Industrial land.
8. The Rezoning will create a single Zoning Classification for the entire parcel.

ON THE MOTION:

Mr. Heppner established that the parcel is currently zoned this way due to an administrative over sight. He supports the requested rezoning.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
MELLERSKI	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE

MURRAY

AYE

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

Mr. DeMarco requested that the Board also consider recommending to the Town Board “Approval” of their Site Plan and Authorization of a Building Permit.

Acting Planning Coordinator, Orffeo noted that this project has Engineering Approval. He advised the Board that it is possible to approve the project *contingent* upon the rezoning being approved by the Town Board. This will save the Applicant time, as the building season will close soon due to the winter months.

Mr. Kaczor made a **MOTION**, second by Mr. Mellerski, to **RECOMMEND** that the Town Board **CONDITIONALLY APPROVE** the presented Site Plan and **AUTHORIZATION** of a Building Permit to construct a 60 x 190 square foot warehouse on the west side of California Road, south of Southwestern Boulevard, presently Zoned R-4, based on the following stipulations and conditions:

1. All public notices have been filed.
2. The Landscape Plan, received 6/9/2023, meets all Green Space regulations. In accordance with Section 144-44(c)(1)(a)(2) a Certified Check amounting to 50% of the \$7,615 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$3,807.50).
3. Engineering Approval was granted on 8/13/2023.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
MELLERSKI	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO CONDITIONALLY APPROVE IS PASSED.

2. P.B. File #16-2023, V/L Windward Road, 4.288 +/- Acres, located on the north side of Windward Road across from 480 Redtail Road, Zoned I-1. Applicant is requesting a Building Permit and Site Plan Approval to construct a 45,000 square foot 1-story Medical Building. (SBL # 152.18-2-6)

APPEARANCE: Mr. Chris Wood – Architect, Carmina – Wood Designs
Mr. Doug Feyes- Design Engineer – Carmina – Wood Designs

Mr. Wood explained the proposed project, and its location in the Sterling Park Business Center.

Mr. Heppner asked if there is a known tenant, and inquired about the landscaping and tree removal at this site. Mr. Wood stated there is a tenant who is planning on leasing the entire building. He also noted that there are no trees in the proposed foot print of the development area.

The Chair noted that there is a designated “Scenic Byway” area near this site. Mr. Wood stated that they do not own the property to the North of this site which could impact the Scenic Byway.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner to **RECOMMEND** that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 45,000 square foot Medical Building, per the plan received on 8/17/23, 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 5/11/23 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. The Landscape Plan, received 7/18/23, meets all Green Space regulations with 34.8% Total Greenspace. In accordance with Section 144-44(c)(1)(a)(2) a Certified Check amounting to 50% of the \$69,780 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$35,250). Conservation Board approval was granted on 8/1/23.
6. Any future dumpsters shall be screened, in accordance with Section 144-25 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. This Approval is *conditioned* upon Town Engineering Approval.

ON THE QUESTION:

Mr. Heppner inquired about the *conditioned* Town Engineering Approval.

Assistant Town Municipal Engineer, Mr. Ostrander stated that there are very minor revisions needed on the plan, and that the Town Engineering Department is comfortable with granting this Approval.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
LONG	AYE
HEPPNER	AYE
KACZOR	AYE
MELLERSKI	AYE
MURRAY	AYE

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

3. P.B. File #09-2018, 5245 Murphy Road, Natale Development, located on the east side of Murphy Road, Zoned SR (Senior Housing). Planning Board to Declare Lead Agency Status, accept revised Part 3 SEQR Findings, and set Preliminary Public Hearing. (SBL#184.07-1-1.112)

APPEARANCE: Mr. Angelo Natale – Natale Representative
Mr. Bobby Corrao – Natale Representative

Chairman Fabinsky noted that at this meeting the Board is;

- Declaring itself the Lead Agency,
- Accepting the submitted SEQR findings
- Authorizing the Chairman to set a Public Hearing date when he deems it appropriate.

He noted that these are administrative items, and that this is not a Public Hearing for the proposed project. He explained the Planning process further, and noted that the review process includes future opportunities for members of the public to make their views known.

Deputy Town Attorney Bailey concurred with this and advised the Board that, as the action is Administrative, there is no need for a presentation from the Applicant at this time.

Mr. Long made a **MOTION**, seconded by Mr. Kaczor to **RECOMMEND** that:

1. The Planning Board declare itself "*Lead Agency*" for this Type 1 SEQR Action, based on the submitted Long EAF, to construct a two story, 195-unit "Senior Residential Apartment" complex, upon 20 +/- acres in this Senior Residential Zone (SR).
2. Based on the submitted SEQR documents (Parts 1, 2, and 3 – as revised), this is a Type 1 Action and a Negative Declaration is made.
3. I further move to direct the Planning Board Chair to set a Public Hearing for Preliminary Approval when he deems it appropriate.

ON THE QUESTION:

Mr. Heppner reiterated that tonight is not a Public Hearing. He stated that there would be at least one Public Hearing in the future, and likely, there would be two.

The Applicants stated that they feel the motion should not include the description "two-story", however, Chairman Fabinsky feels this is relevant to the Orchard Park Town Code.

Deputy Town Attorney Bailey stated that if the Town Code changes the Applicant may return before the Board.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
LONG	AYE
HEPPNER	AYE
KACZOR	AYE
MELLERSKI	AYE
MURRAY	AYE

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

4. P.B. File #20-2023, 4038 California, located on the west side of California Road, south of Southwestern Boulevard. Planning Board to discuss rezoning of a parcel from R-4, to I-1. (SBL#161.03-1-4)

Mr. Long recused himself from voting in this case.

APPEARANCE: Mr. Duane Platz – Property Owner
Mr. Sean Hopkins – Attorney

The Chairman explained that there is a shortage of "Industrial Zoned" land in Orchard Park which leaves our Town non-competitive with neighboring communities. He noted that a tract of Industrial Land adjacent to Mr. Platzs' property makes it ideal for rezoning his parcel to Industrial (I-1).

Chairman Fabinsky explained that the Board will hear comments from the Town's Acting Planning Coordinator, Remy Orffeo, followed by the Property Owners' representative, Attorney Sean Hopkins. The Chair established that Mr. Orffeo is qualified to give his opinion in this action, based on his years of experience and knowledge in the Planning Field. A state wide competition was held in 2014, where the New York Planning Federation bestowed an "Excellence in Planning" award to Mr. Orffeo.

Chairman Fabinsky also asked Mr. Orffeo if the Town had rezoned parcels in the past, where the Owners objected, or where Developers had already submitted their plans.

Mr. Orffeo responded that this has happened in both situations. He stated that, in his opinion, the Town is faced with choices; one being that they try to offset the cost of residential housing. Studies show that, over a period of time, it costs more to provide services and take care of residential housing than what the Town collects in taxes. Conversely, the opposite is true with Industrial Zoned/Commercial Property, as there are more taxes taken in than what the Town spends in providing services. So there is a balance, if you are a current resident of Orchard Park you would like to see the balance tilted more towards Industrial/Commercial because that is going to help you with the tax burden. Obviously, in New York State, we are enamored with all sorts of taxes, and that is an important consideration. This parcel fits the criteria rather well. The other attractive consideration with this parcel is that it forms a dividing line on California Road between the Residential properties, both from 20A, down to Ellis Road and Ellis Road down to California Road. It almost creates two zones; a Residential Zone, and if the rezoning is approved, an Industrial/Development Research area. This is an important consideration to the Town.

Mr. Orffeo further stated that the rezoning of the property might lead to an Article 78. Recently, there was a news article that talked about this in Grand Island, New York. He noted that in some states, such as Texas, they have specific laws that give the vested rights to the Developer, allowing the Developer to proceed with the project under the zoning rules that existed when the project application was submitted, even if the Town changed the Zoning Code. Mr. Orffeo went on to explain that in New York State it is entirely different, as there is no specific law. So a Court Decision, based on common law documents and prior case law only gives vested rights after substantial work has occurred. This parcel meets the criteria of being able to have the zoning changed.

Attorney Sean Hopkins stated that Mr. Platz performed his due diligence when he purchased this property in 1998. He confirmed the zoning of the parcel was R-4 and proceeded with all the necessary studies, (post project). On 6/15/2023 the Town initiated a rezoning for this parcel, and on August 2, 2023 the Town Board referred this property for review to the Planning Board for a recommendation regarding its rezoning to Industrial (I-1). Mr. Hopkins discussed Mr. Platz's fundamental rights as the Owner of this parcel. He requests that the Board make a negative recommendation to the Town Board for the proposed I-1 rezoning.

Chairman Fabinsky reflected on the information that was provided regarding tax revenue and the cost of services for both zoning classifications. He asked the members to respond to the Town Board's request.

Mr. Kaczor, a member of the Economic Committee, concurs with Mr. Orffeo. He explained that economically he feels we cannot move forward as a town.

Mr. Heppner explained that he feels the neighborhood should remain residential. He also feels the "Wings" property serves as a buffer between industrial and residential.

Mr. Mellerski stated he has limited experience. He recognizes our Industrial needs and he commented on the nearby neighbors further south of the site. He, too, feels the "Wings" property serves as a buffer between industrial and residential.

Mr. Long is recused from voting in this case.

Attorney John Bailey explained the four options that the Board has in this matter.

Mr. Kaczor made a **MOTION**, seconded by Mr. Fabinsky, to **RECOMMEND** that the Town Board **APPROVE** the rezoning of 4038 California Road, west side of California Road, south of Southwestern Boulevard, V/L from R-4 to I-1, based on the following:

1. This is an Unlisted SEQR action based on the submitted Long EAF, Parts One, Two and Three, and a Negative Declaration is made.
2. The Planning Board has received responses to questions one through eleven per Town Code Article VI(c).
3. The Town Comprehensive Plan as originally adopted on September 19, 2007 (and with subsequent revisions) has a goal to “encourage the expansion of Business and Industrial uses such as Research and Development, light manufacturing, and other non-polluting industries in locations proximate to necessary transportation, water, and sewer infrastructure”, and to “buffer new Commercial and Industrial Land uses from Residential areas with proper landscaping and screening.”
4. The Town of Orchard Park, with less than 5% of its land mass zoned Industrial/Research and Development, is underserved in the amount of currently Zoned Industrial/Research and Development land.

ON THE QUESTION:

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
HEPPNER	NO
KACZOR	AYE
MELLERSKI	NO
MURRAY	AYE
LONG	RECUSED

THE VOTE ON THE MOTION BEING FOUR (4) IN FAVOR, TWO (2) OPPOSED, AND ONE (1) RECUSAL, THE MOTION IS PASSED.

There being no further business, the Chairman adjourned the meeting at 8:12 P.M.

DATED: 10/11/2023
REVIEWED: 10/26/2023

Respectfully submitted,
Anna Worang-Zizzi,
Recording Secretary

Harold Fabinsky, Planning Board Chairman