

**PLANNING BOARD JANUARY 11, 2024, MEETING MINUTES**

**MEMBERS:** Harold Fabinsky, Chairman  
Nicholas Baich  
Dr. Gregory Bennett  
Henry Heppner  
David Kaczor  
Alex Long  
David Mellerski, Alternate

**EXCUSED:** Philip Murray  
Rose Messina, Planning Secretary

**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, Zoning Board 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 Alternate member, Mr. Mellerski, is a voting member this evening, due to the absence of Board member Mr. Murray.

The minutes of the December 2023 meeting are not available and will be voted on at a later date.

1. **P.B. File #41-2023, 3892, Southwestern Boulevard, located on the north side of Southwestern Boulevard, Zoned B-2.** Jack Kuebler is requesting to renew an Outdoor Shed Display. (SBL#161.09-4-25)

**APPEARANCE:** Mr. Jack Kuebler, Petitioner/Property Owner

Mr. Kuebler requests that his Outdoor Shed Display be renewed and increased by two additional sheds. This would bring the total number of sheds located on this property to fourteen. There are currently twelve sheds here.

Mr. Baich established that the outdoor stationary sales office shed is included in this count.

Mr. Kaczor stated that there have been no issues with the Petitioner's Outdoor Shed Display.

Mr. Baich made a **MOTION**, seconded by Mr. Mellerski to **GRANT Outside Display** for two-years, from **April 1st through November 30, 2024, and April 1st through November 30, 2025**, at 3892 Southwestern Boulevard, based on the Sketch Plan received 12/07/23 for **14-sheds** (an increase of two from the previous approval), and the following **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; however, the Applicant may place a temporary 4-ft. x 8-ft. "For Sale" sign upon receiving approval from the Building Inspector. This signage will be displayed concurrently with the sheds.

4. The sheds will be on display from April 1, 2024 to November 30, 2024, and April 1, 2025 to November 30, 2025. One shed (a sales office) will remain on the site, year-round.

THE VOTE ON THE MOTION BEING:

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

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

\*\* **REMOVED:** Granted, November 2023.

- 2. **P.B. File #31-2023, "Gengo, 2-Lot Subdivision", located on V/L, 5.07 +/- Acres, Powers Road, Zoned R2.** Applicant is requesting Planning Board Pre-Application Findings be made. Note: Two Area Variances were granted on 8/15/23 by the Zoning Board of Appeals. (SBL#184.00-2-11.1)
- 3. **P.B. File #44-2023.** Holy Face Ministry, 6131 Newton Road, located on the south side of Newton Road, Zoned A-1. Applicant is requesting Planning Board review and approval of submitted Site Plan. (SBL#184.00-4-13.121)

The Chairman stated that at the January 8, 2024 Conservation Board meeting there was no quorum present for a vote. This item received "conditional approval" for its Landscaping Plan, and that board is awaiting a member, who was excused from the meeting to review the tape recording and then cast their vote.

Mr. Michael Perley Attorney, representing the Town of Orchard Park, requests that the project be referred back to the Conservation Board for their vote with a quorum present.

Mr. Fabinsky, made a **MOTION**, seconded by Mr. Kaczor, that this item be referred back to the Conservation Board for their vote with a quorum present.

THE VOTE ON THE MOTION BEING:

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

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

- 4. **P.B. File #34-2023, Providence Farm, 5701 Burton Road, located on the east side of Burton Road, Zoned A-1/R-2.** "Providence Farm Collective" is requesting to construct a 6,000 +/- sq.ft. Pole Barn, Hub Facility. (SBL#184.15-1-5.13)

**APPEARANCE:** Mr. James Bammel, Bammel Architects

Mr. Bammel presented and discussed the Providence Farm proposal with the members. He concluded that the project is consistent with the *Right to Farm Law, §63-1 - 5*. He, also, requests that the Planning Board waive sending this project to the Town Board for their approval.

Town Deputy Attorney John Bailey responded that he respectfully disagrees with Mr. Bammel’s conclusions.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Kaczor, to **RECOMMEND that the Town Board APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 6,000-sq.ft. Pole Barn, per the plan received on 11/08/2023, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is a Type 2 Action, therefore, a SEQR document is not necessary.
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. Conservation Board approval has been waived for this farming community.
6. Engineering approval was granted on 1/11/2024.

THE VOTE ON THE MOTION BEING:

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

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

5. **P.B. File #32-2023, “3580 Southwestern Boulevard LLC”, 3552 Southwestern Boulevard, located on the North West side of Southwestern Boulevard, South of Milestrip Road, Zoned B-2.** Applicant is requesting Planning Board approval of a submitted Site Plan. Town Board referred to Planning Board on 11/6/2023. (SBL#161.07-7-2)

**APPEARANCE:** Attorney Sean Hopkins, Hopkins, Sorgi & McCarthy  
Mr. Andy Gow, Nussbaumer & Clarke

Mr. Hopkins stated that the Applicant would like to construct a 3,000-sq.ft Corporate Office addition to their existing building. Town Engineering granted a “conditional approval”, based on the completion of increased water management at the site.

Mr. Ostrander concurs with this approval and confirmed that the impervious surface has less impact than the previously approved project.

Mr. Heppner stated that this is an administrative correction to the project. He appreciates the Applicant’s cooperation.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, to **RECOMMEND** that the Town Board **APPROVE** Site Plan Approval and **GRANT** a Building Permit for the purpose of constructing a 3,040-sq.ft., two-story Building addition and expanding the West Herr parking lot at 3552 Southwestern Boulevard, based on the following conditions and stipulations:

1. All public notices have been filed.
2. The Applicant merged the parcel with the adjacent parcel and it is now know as 3552 Southwestern Boulevard.
3. Acreage fees were paid in accordance with Section 144 Attachment (C) Schedule of Zoning Fees of the Town Code.
4. This is an Unlisted SEQR Action, based on the Short EAF submitted on 11/20/23 and a Negative Declaration is made.
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 11/20/23, meets all Green Space regulations. 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. (\$34,890) Conservation Board approval was granted on 1/2/24.
8. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
9. The Applicant is to provide the Town of Orchard Park Assessor with an "Independent Appraisal" for the completed project by a Certified Commercial Appraiser.
10. This Approval is contingent, upon an increase in water management for this site, with Town Engineering approval.

**ON THE QUESTION:**

Discussion of the property merger, and requiring a Stipulation from the Town Engineering Department to have the water management increased at this site. The Acting Planning Coordinator will have the motion reflect this in Stipulation #10.

**THE VOTE ON THE MOTION BEING:**

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

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

6. **P.B. FILE #40-2023, 3590 Southwestern Boulevard, located on the northwest side of Southwestern Boulevard, west of Mid County Drive, Zoned B-2.** Apex Energy, is requesting to install Electric Vehicle Chargers (EV Chargers) at Ray Laks Honda. ((SBL#161.07-5-36.12)

**APPEARANCE:** Mr. Zach Shipper, Apex

Mr. Shipper explained that they would like to install (1) Dual Port Level 2 EV charging station, and (1) Direct Current Fast Charger (DCFC) at this location. The use of the chargers will be strictly for the dealership based on requirements from Honda Motor Company.

Mr. Baich established that the charging station will be placed on a utility pole.

Chairman Fabinsky established that only vehicles that are the property of the Honda Motor Company Dealership will use the station. Charging Stations are fairly new, with only several thousand in New York State. Honda Motor Company will not deliver new vehicles to Ray Laks Honda, unless they meet code requirements. It was learned that there are several lengths of charging times available with the station; the plugs are mostly standard with some variation; and that there is very little risk associated with these stations.

Mr. Heppner questions if a permit for existing charging stations is required. He would, also, like a copy of the requirements for, and the names of, the manufacturers of the charging station provided.

Building Inspector Minor stated that he will research this further.

Dr. Bennett discussed the charging process with Mr. Shipper.

Mr. Mellerski discussed the existing charging stations in Western New York, the Triple AAA Building in Amherst, and the Triple AAA Building in Rochester.

Mr. Kaczor discussed adding a stipulation to the motion for existing chargers. He, also, established that this is not a "pay per use" station.

Building Inspector Minor commented that he will be sure the project complies with the State Handicap Accessibility Law.

Dr. Bennett made a **MOTION**, seconded by Mr. Kaczor, to **APPROVE** the presented **PLOT PLAN** and **AUTHORIZE** a Building Permit, to install a Single Chargepoint Cp6000 off of existing service, for the Honda Motor Dealership use, along with the installation of Chargepoint Express Plus DCFC, for Honda Motor Dealership use, as well as Installation of new 800A service entrance to power DCFC. All chargers located in the parking lot of the Honda Motor Dealership are strictly for use of the business, per the plan received on 12/22/2023, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is a Type 2 SEQR Action, based on the Short EAF and a Negative Declaration was made on 1/11/2024.
3. Use of the chargers will be strictly for the Honda Motor Dealership, based on the requirements from Honda Motor Company.
4. Chargers should be provided in compliance with NYS State Code.
5. Applicant to facilitate a copy of NYS Code to our Building Inspector.
6. Requirements of manufacturers for existing chargers must comply with the NYS Code.

THE VOTE ON THE MOTION BEING:

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

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

- 7. **P.B. File #20-2023, "Maple Grove Apartments", 4038 California Road, located on the west side of California Road, V/L, 8.98 +/- Acres, Zoned R-2.** Proposed residential community with a mix of Townhouses & Apartments. Planning Board to discuss Notification of Lead Agency Status. (SBL#161.03-1-4)

Note: Mr. Long is recusing himself from voting, due to a Business Relationship.

**APPEARANCE:** Attorney Sean Hopkins, Hopkins, Sorgi & McCarthy  
Mr. Andrew Romanowski, Alliance Homes

Mr. Hopkins distributed information regarding this project, with a Site Plan, for the members' review, and explained that they are requesting that the Board commence with the Coordinated Review process. He explained that the project is below the allowable density of 11-units per acre, and that they are proposing 8.9-units per acre.

Chairman Fabinsky asked Building Inspector Tom Minor to comment on this project, noting that he has a different conclusion regarding the number of allowable units per acre.

Building Inspector Tom Minor stated that the "current" Town Code applies to this parcel. He explained that on December 6, 1989 the R-4 Multifamily maximum unit per acre was reduced to 6-units per acre. He further explained that parent parcels are only given historical existing requirements when they are documented as receiving a prior Concept Review. Without documentation of an existing "Concept Approval", the proposed project allows a maximum of 6-units per acre.

Deputy Town Attorney Bailey agrees with Building Inspector Minor.

Mr. Kaczor spoke regarding the Town of Orchard Park desiring the spirit of less density when it created the Town Code and Master Plan.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Kaczor, to **ADJOURN** their review of this project.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
LONG	RECUSED
KACZOR	AYE
MELLERSKI	AYE

THE VOTE ON THE MOTION BEING (6) SIX IN FAVOR AND (1) ONE RECUSAL, THE MOTION TO ADJOURN IS PASSED.

- 8. **Birdsong Subdivision, various files**. David Capretto, owner and developer. Planning Board to set Notification of Lead Agency Status for several Parts; 2, 4, 5 & 8, based on Engineering recommendation.

**APPEARANCE:** Mr. David Capretto, Owner/Developer  
Mr. Sean Hopkins, Attorney

Mr. Hopkins presented and explained changes to the Birdsong Subdivision. He noted that the proposed Conservation Overlay District (CMO) has changed. Parts 3, 4, and 5 will be expanded as a CMO. He also explained their phasing plan, and asked to commence with the Environmental Review process.

Acting Planning Coordinator Orffeo discussed the confusion and changes that occurred with this project over the years. He noted that the Applicant is asking the board to seek Lead Agency Status for the updated plans.

Mr. Kaczor stated that he feels the changes are huge.

Mr. Heppner stated that he appreciates the clarity presented and he feels it makes sense to Seek Lead Agency Status.

Dr. Bennett affirmed that the entire project is involved, not just Part 5.

The members agreed on Seeking Lead Agency Status for the entire updated project.

Dr. Bennett made a **MOTION**, seconded by Mr. Baich, to recommend that the Planning Board **SEEK LEAD AGENCY STATUS for this Type 1 SEQR Action** with a **Coordinated Review** for the **entire updated project**.

THE VOTE ON THE MOTION BEING:

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

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

There being no further business, the Chairman adjourned the meeting at 7:56 P.M.

DATED: 01/30/2024  
REVIEWED: 02/23/2024

Respectfully submitted,  
Rose Messina,  
Recording Secretary

Harold Fabinsky, Planning Board Chairman