

**PLANNING BOARD OCTOBER 10, 2024, MEETING MINUTES**

**MEMBERS:** Harold Fabinsky, Chairman  
Nicholas Baich  
David Kaczor  
Henry Heppner  
David Mellerski

**EXCUSED:** Gregory Bennet  
Alex Long  
Philip Murray  
Remy C. Orffeo, Acting Planning Coordinator  
John Bailey, Deputy Town Attorney  
Thomas Ostrander Assistant Municipal Engineer  
Rose Messina, Secretary

**OTHERS PRESENT:** Anna Worang-Zizzi, Director of Community Development  
Thomas Minor, Supervising Code Enforcement Officer

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 Chairman stated that the August and September Planning Board meeting minutes are not available to vote on this evening. He also stated that Mr. Baich has excused himself from Regular Business Item #3, and that the Alternate Member, Mr. Mellerski, will vote this evening due to the absences of Dr. Bennett, Mr. Long and Mr. Murray.

**PUBLIC HEARING – 7:00 P.M.**

1. **P.B. File #20-23, 4038 California Road, “Maple Grove Apartments”, located on the west side of California Road, south of Ellis Road, Zoned R-4.** Planning Board is holding a required Public Hearing for this proposed 54-Unit Multi-Family project. (SBL# 161.03-1-4)

**APPEARANCE:** Mr. Sean Hopkins, Attorney  
Mr. Chris Wood, Carmina – Wood Designs

Chairman Fabinsky stated that, essentially, this public hearing is for information.

Mr. Hopkins presented and explained a Site Plan for the proposed project, stating that the Applicant plans to construct 5.99 units per acre, following the current R-4 Zoning Code. He explained that they will construct four, two-story units, and one, six-unit building. He also stated that the Applicant relocated the nearest building at the front of the site 195-feet further back from the roadway in response to Mr. Kaczors' request made at a previous meeting.

Mr. Hopkins stated that there is a total of 74% Green Space provided at the site and this exceeds the Town requirement of 20%. He also stated that they plan to offer several amenities for residents that live here, such as a Dog Park. He told the members that the Stormwater Drainage will be contained, and discharged, at the rear of the property. In addition, two enclosed dumpsters will be located here. He further told the members that fire hydrants will be located at the back of the property site, and that a conscience effort was made to reduce lighting spillover from impacting the neighbors. Mr. Hopkins presented a colored example of the proposed elevations for the members' review, noting that he feels Orchard Grove is architecturally a high quality project. He also stated that there are no wetlands here, and that a Traffic Study was submitted to the Town. He asks that the members declare a SEQR Designation.

Mr. Heppner confirmed that the original request was to have 80-units constructed, however, the plan was revised, to comply with the current ordinance that allows a total of 54-units built here. He also established that the grass at the front of the project site will be cut and maintained as lawn.

The colored elevations were viewed by the Board members. It was established that the homes are marketed as privately owned and maintained.

Chairman Fabinsky discussed the natural view shed existing along California Road, stating that he would like it preserved. He also asked if additional screening can be put in to buffer one of the proposed buildings.

Mr. Wood stated that they will keep this natural buffering if possible.

Attorney Hopkins stated that if it becomes necessary, they can re-arrange the site with concentration on buffering at the front.

Mr. Baich congratulated the Applicant for their cooperation and downsizing the project to meet the Town Code.

Mr. Kaczor stated that he appreciates the compromise and negotiations that took place.

Chairman Fabinsky stated that overall, he feels this is a good project, and the extra screening requested will aid in buffering the site.

Mr. Heppner confirmed that the Traffic Impact Study (TIS) submitted took into consideration both the Orchard Grove and Schaefer Road projects located on California Road. It was confirmed that water discharge will be at a controlled rate at this site, and that Smokes Creek is located here.

The Chair opened the public hearing, reminding that individuals may speak in "favor" or "against" the project for a maximum of four-minutes.

Mr. Mellerski stated that the project has shown good attention to detail.

**IN FAVOR:** No one spoke.

**AGAINST:**

*Ms. Marsha Kochan  
4075 California Road  
Orchard Park, New York 14127*

Ms. Kochan stated that she appreciates the reduction in units, but is concerned with the construction of the apartments creating overcrowding situations for California Road, that will create an increase in crime and speeding traffic. She would prefer that Townhomes were constructed here, or Single-Family homes. She also commented on the disturbance of wildlife. She further spoke on the nearby Stadium development that will, also, overcrowd and change the western portion of Orchard Park.

*Ms. Mary Ann Ingelfinger  
5647 Ellis Road  
Orchard Park, New York 14127*

Ms. Ingelfinger noted that, originally, California Road was traveled by rural and farm traffic. The expansion of homes over time has brought speeding traffic.

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

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

Board Discussion was held.

Mr. Hopkins requested to be placed on the Planning Board agenda for November. Discussion concluded that the timing of the SEQR determination will play a role in this. Mr. Hopkins was asked to submit a Long EAF for this project.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, to require a second public hearing, and to allow the Chairman to set the Public Hearing when he sees fit, with the following stipulations:

1. A SEQR determination shall be made prior to the second Public Hearing after a careful review of the submitted Long EAF and comments made at this hearing.
2. Public Hearing and Recreation Fees shall be paid prior to the second Public Hearing in accordance with Section 144-70E of the Town Code.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

2. **P.B. File #20-24, Webster Road, located on the south side of Webster Road, west of North Buffalo Street, proposed 5- Lot, 1.17+/- acre Subdivision, Zoned R-3.** Applicant is seeking Planning Board Final Plat Approval. (SBL#161.00-3-28.1) Pre-Application Findings were made on 8/8/24. Preliminary Plan approval was granted on 9/12/24.

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs

Mr. Wood presented and explained the proposed Sit Plans for a five-lot subdivision, noting that each lot exceeds the minimum frontage and size. He also stated that the driveways constructed for each lot will access Webster Road.

Mr. Kaczor stated that the majority of required information has been provided.

Director of Community Development, Anna Worang-Zizzi, told the members that the project received Final Town Engineering approval on 10/08/2024.

**IN FAVOR:** No one spoke.

**AGAINST:** No one spoke.

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

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

Being no further questions, the Chair called for a motion.

Mr. Baich made a **MOTION**, seconded by Mr. Mellerski to **GRANT FINAL PLAN APPROVAL** to this 1.17 +/- acres V/L, 5-Lot Subdivision, Zoned R-3, based on the submitted Plans received 4/30/24 with the following conditions:

1. All public notices have been filed.
2. This is an Unlisted SEQR action based on the submitted Short EAF and a Negative Declaration was made on 9/12/24.
3. Pre-Application Findings were made by the Planning Board on 8/8/24.
4. Preliminary Plat Plan Approval was granted on 9/12/24.
5. Public Hearing and Subdivision Development fees have been paid.
6. Recreation fees in accordance with Section 144-70E of the Town Code have been paid.
7. 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.
8. Town Engineering Final Plat Plan Approval has been granted on 10/8/24.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

Mr. Wood asks that the map covers be signed by Chairman Fabinsky at the end of tonight’s meeting.

**REGULAR BUSINESS:**

1. **P.B. File #07-08 (#50-07), Forest Creek Part 2B, Vacant Land located off of Norwood Lane, Zoned R-1.** Planning Board to review two (2) proposed “Non-conforming Lots” in this proposed subdivision.  
**APPEARANCE:** Mr. Ken Zollitsch – GPI, and Mr. Sean Hopkins – Attorney

Mr. Zollitsch stated that the Applicant had adjusted the radius of the road and the Applicant believes that these lots should be considered conforming. There are three (3) lots.

Tom Ostrander, Assistant Municipal Engineer stated that it is the Town Engineering Department's position that this proposal is not a betterment and the lot line between lot #10 and lot #11 should be moved.

Chairman Fabinsky noted that originally there were five non-conforming lots, and that this Board had granted forgiveness on three other lots.

The Applicant stated that due to the altering of the radius of the road, these lot lines are now more "radial". He feels that they comply with the Town Code, in that they are not significantly non-radial.

Ms. Worang-Zizzi, Director of Community Development, inquired if the Applicant was requesting forgiveness for the radius of the road, rather than the non-conformity of the lots.

Mr. Hopkins stated that he is requesting forgiveness for the radius of the road.

Mr. Ostrander affirmed that this change in the road will not impact traffic.

The Board members discussed placement of the lot lines on a drawing submitted by the Applicant and found a location for the dividing lot line which was slightly more non-radial, but would create more regular shaped lots. They felt the line was still not significantly radial.

Mr. Heppner made a **MOTION**, seconded by Mr. Mellerski, regarding Planning Board File #07-08, to recognize that lots #10 and #11 should be recognized as conforming and despite the minimal mathematical irregular radius, the lots are suitable for building, subject to the Applicant submitting a revised plan which complies with the modification as requested by the Engineering Department.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

2. **P.B. File #25-24, V/L Lake Avenue, located on the north side of "Sterling 45 Medical Building", and on the south side of Lake Avenue.** Applicant is seeking Planning Board recommendation to Rezone a .99 acre portion of this 3.43 +/- acre parcel from R-3 to I-1 to allow an 8- parking space parking addition for an approved Medical Building (access through Windward Road). (SBL# 152.14-2-24.11 & 152.14-2-24.12)

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs

The Chairman established that there is no direct access to Lake Avenue from this property. He acknowledged the corridor for the Utilities and stated that he realizes landscaping cannot be planted here. He feels the area should be left alone to grow wild and re-establish itself.

Mr. Ostrander feels a stockade fence should be erected only on the north side. The Applicant will need to return to the Board for its review and approval.

Mr. Wood agrees with this request.

Mr. Wood and Mr. Heppner discussed clearing the property to construct the parking lot area. It was established that the "blue box" area on the Landscaping Plan is the only area to be cleared, as this is the parking lot.

Mr. Heppner made a **MOTION**, seconded by Mr. Fabinsky, to **RECOMMEND** the Town Board **APPROVE** the request to rezone .99 +/- Acres V/L from R-1 to I-1 Residential, to allow an 83-parking space parking addition, 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, 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. Access to the parking area shall be through Windward Road, and there shall be no access through Lake Avenue.
6. The Planning Board recommends the Town Board set a Public Hearing date for this rezoning.
7. Applicant to be granted Conditional Approval to clear-cut the site as needed in the blue box marked area on the Landscaping Plan for the pro-posed Parking Addition.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

3. **P.B. File #27-24, 3740 North Buffalo Street, Wayland Brewery, previously the American Legion, Zoned B-3.** Applicant is seeking Planning Board approval of a proposed fence. AOD approval was granted on 8/21/2024. (SBL#161.08-3-34.1)

Mr. Baich excused himself from voting in this case.

**APPEARANCE:** Ms. Caryn Dujanovich, Owner

Ms. Dujanovich stated that the fence will provide additional privacy on the front patio for their neighbors and customers. The fencing will be made of very attractive cedar.

Chairman Fabinsky established that the fencing is Cedar Planks that can be seen through, and not a solid or lattice type fence.

Mr. Mellerski stated that he feels the design concept presented is attractive.

Mr. Heppner discussed having vegetation instead of a fence.

Ms. Dujanovich stated that their guests prefer privacy with a more solid feel. However she will put plants out where the fencing is.

Mr. Heppner complimented Wayland Beer for being great to work with on their past requests before the Planning Board.

Mr. Heppner made a **MOTION**, seconded by Mr. Mellerski to **GRANT** the request for a fence as proposed in the plan submitted on 7/17/24.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

- 4. **P.B. File #04-24, Crosby’s, 4297 & 4309 Abbott Road, located on the south east corner of Abbott & Big Tree Roads, Route 20A, across from “Danny’s South”, Zoned B-2.** Planning Board to re-examine SEQR determination. (SBL#’s 172.05-1-1.1, 172.05-1-36.2) An Area Variance was granted for this project on 1/16/2024 by the Zoning Board of Appeals.

APPEARANCE: Sean Hopkins – Attorney  
Chris Wood – Architect

Mr. Hopkins stated that he believed the reason this item was before the Board tonight was a piece of Code which states that states that automotive repair stations and drive-through’s should be considered automatic TYPE 1 SEQR actions. He stated that that piece of Code was struck down in an unrelated court case.

Ms. Worang-Zizzi stated that she had spoken to Mr. Bailey, Deputy Town Attorney on the matter.

Mr. Hopkins requested that, in the absence of Mr. Bailey, the Board table this review until Mr. Bailey is present to make his position clear.

The Board was in Agreement

A **MOTION** was duly made and seconded to **TABLE** the review.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
KACZOR	AYE
HEPPNER	AYE
MELLERSKI	AYE

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

There being no further business, the Chairman adjourned the meeting at 8:19 P.M.

DATED: 10/23/24  
REVIEWED:

Respectfully submitted,  
Rosemary M. Messina  
Planning Board Secretary

Harold Fabinsky, Planning Board Chairman