

**PLANNING BOARD FEBRUARY 8, 2024. MEETING MINUTES**

**MEMBERS:** Harold Fabinsky, Chairman  
Dr. Gregory Bennett  
Alex Long  
Philip Murray  
David Mellerski, Alternate

**EXCUSED:** Henry Heppner, David Kaczor, Nicholas Baich

**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  
Rosemary Messina, Planning 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 members Mr. Heppner, Mr. Baich, and Mr. Kaczor.

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

Mr. Murray made a **MOTION**, seconded by Mr. Long, to **APPROVE** the December 14, 2023 meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

The minutes of the January 2024 meeting are not available and will be voted on at a later date.

**REGULAR BUSINESS:**

**Planning Board to set the following Public Hearing Dates for Minor Subdivisions:**

- **P.B. File # 23-2023, Armor Duells Road**, "5640 Armor Duells Road", 3-Lot Subdivision

Dr. Bennett made a **MOTION**, seconded by Mr. Long, to **AUTHORIZE** the Chairman to set a Preliminary Plat Plan Public Hearing Date for "5640 Armor Duells Road" a proposed 3-Lot Subdivision, when he deems it appropriate.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

- **P.B. File # 04-2018, Scherff Road**, “Brink”, 2-Lot Subdivision

Dr. Bennett made a **MOTION**, seconded by Mr. Mellerski, to **AUTHORIZE** the Chairman to set a Preliminary Plat Plan Public Hearing Date for “Brink” a proposed 2-Lot Subdivision, when he deems it appropriate.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

- **P.B. File # 31-2023, Powers Road**, “Gengo,” 2- Lot Subdivision

Mr. Mellerski made a **MOTION**, seconded by Mr. Long, to **AUTHORIZE** the Chairman to set a Preliminary Plat Plan Public Hearing Date for “Gengo” a proposed 2-Lot Subdivision, when he deems it appropriate.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

1. **P.B. File #15-2023, 3636 South Benzing Road, located on the west side of South Benzing Road, North of an existing Commercial Plaza, Zoned I-1.** Joseph Deck is seeking to construct a 1,600 sq. ft. Warehouse/Shop Building with Outdoor Storage, and is proposing future phases of similar development. (SBL# 161.06-1-8).

**APPEARANCE:** Mr. Douglas Freyes, Carmina – Wood Designs

Mr. Freyes explained to the members that they are proposing a multi-phased project. Initially, they are proposing to construct a 1,600-sq.ft. Warehouse/Shop Building with Outdoor Storage upon this 4.86-acre parcel, Zoned I-1. Future phases will have similar development constructed. He further stated that they received Conservation Board approval on 2/06/2024 for Phase 1, and will construct a buffer at the front of the property. They also meet the Towns’ 20% Green Space requirement.

Building Inspector Thomas Minor discussed the proposed berm and additional screening planned for the

outdoor storage area.

Thomas Ostrander stated that the Engineering Department granted their approval on 2/08/2024.

Mr. Freyes concluded that he feels this is a lovely project.

Mr. Mellerski made a **MOTION**, seconded by Mr. Fabinsky, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 1,600 sq.ft. Warehouse/Shop Building and Contractors staging area (Phase 1), per the plan received on 12/2/2023, 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 5/11/2023 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. Any Outside Storage is to be approved by the Planning Board.
5. The Landscape Plan, received 10/10/2023, meets all Green Space regulations of 20%. In accordance with Section 144-44(c)(1)(a)(2) a Certified Check amounting to 50% of the \$52,345 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$26,172.50) Conservation Board approval was granted on 10/07/2023.
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. Town Engineering approval was granted on 2/08/2024.
9. The Applicant must return to the Planning Board for further Phase Development Approvals.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

2. **P.B. File #35-2023, 5455 Webster Road, located on the south side of Webster Road, west of California Road, Zoned B-2.** Bammel Architects, on behalf of their client, "Simoncelli" is requesting a Building Permit and Site Plan approval to construct a 50'-0" x 42'-0" building addition. (SBL#161.09-5-3.21)

**APPEARANCE:** Mr. Andrew Gow, Nussbaumer & Clarke  
Mr. John Simoncelli, Petitioner, Property Owner

Mr. Gow explained the project to the Board noting that they would like to add a 2,100-sq.ft. one-story extension (50'-0" x 42'-0") on the east side of the existing building. No Variances are anticipated.

Chairman Fabinsky stated that he and Mr. Orffeo had visited this property for an on-site inspection.

Building Inspector Minor stated that there are no issues with this project.

Mr. Ostrander stated that Town Engineering approval was granted on 2/02/2024.

Mr. Mellerski stated it is good to see an expansion of an existing business.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Mellerski, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a 50'-0" X 42'-0" sq.ft. Building Addition, per the plans received on 1/23/2024, based on the following conditions and stipulations:

1. All public notices have been filed.
2. This is an Unlisted Action, based on the Short EAF submitted on 12/23/2023 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 Site does meet all Green Space regulations with 64.65% total Greenspace.
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. Town Engineering approval was granted on 2/02/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

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 verification of Planning Board approval of submitted Site Plan. Previous Planning Board Approval was granted on 2/10/22, Previous Conservation Board Approval was granted on 10/5/21, and Town Board Approval was granted on 2/16/22. (SBL#184.00-4-13.121).

**APPEARANCE:** Sean Hopkins, Attorney for the Applicant  
Mr. Andrew Gow, Nussbaumer & Clarke

Mr. Hopkins distributed materials for the Board's review. He explained that an *Article 78* was filed and that a New York State Supreme Court Judge is requiring a thorough review of documentation. Therefore, he is re-submitting the project, explaining its history, and establishing the dates of the approvals and comments that were received. In the interest of thoroughness, every scrap of documentation is reviewed (again), and incorporated into the record. Mr. Hopkins noted that the building was constructed and is finished, as the

Planning Board reviewed and made their recommendations to the Town Board on 2/10/2022. At their meeting of 2/16/22, the Town Board approved a Building Permit and granted Site Plan approval for the Holy Face Ministry project. The Landscaping Plan was, also, accepted by the Conservation Board at their 10/5/2021 meeting. The Erie County Health Department originated its approval for the septic system on 4/18 2021. Mr. Hopkins further noted that additional landscaping was added to the site, beyond what was approved. He discussed the side yard setbacks, noting that the added addition is in compliance with the Town Code. He also stated that the Erie County Planning Departments' comment, (again), is that the proposed action was reviewed and determined to be of local concern.

Building Inspector Tom Minor restated that both the use and addition are in compliance with the Town Code.

Town Deputy Engineer Tom Ostrander stated that engineering has reapproved the submitted Site Plan and he described the water channeling as a betterment to the area. The project has no impact.

Mr. Hopkins discussed a letter from Mr. Pidanick of Nussbaumer & Clarke, noting that the site functions properly. There was an issue in January with the water but as far as he knows that issue has been resolved.

Dr. Bennett established that due to allegations made, the addition is not in use; they have 9-months to appeal this.

Mr. Ostrander explained that all is better with the eco-system balanced. The pond must be at least 3-ft. to sustain aquatic life.

Deputy Attorney John Bailey stated that the Board will allow comments from the floor.

The following attendees present at the meeting spoke:

*Mr. Russell Wierer*  
6149 Newton Road  
Orchard Park, New York 14127

- Trees were removed from a protected area.
- Trees were not put in to break-up the parking lot area, as agreed to.
- Wells went dry for days.
- There is to be a buffer for the adjacent property, and there is none. He feels that four scattered trees is not a buffer.

*Mrs. Amy Wierer*  
6149 Newton Road  
Orchard Park, New York 14127

- Comprehensive Plan indicates that there is to be limited development here.
- The SEQRA document submitted was the Short Form; the Long Form is required.
- Car lights shine into their window all the time, as there is no screening.
- Cars are honking their horns.
- There was no permit obtained for widening the driveway.
- Town Engineering saw that wells were dry – pump out- said water lost.

Mr. Hopkins and Mr. Gow responded that additional landscaping was put in with a berm at the back. One dozen extra pine trees show that they went above and beyond, meeting the Town Code. In addition, this is not a Type 1 Action, therefore, the Long Form is not required. The addition is small when compared to an average house.

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

the Site Plan for a 2,300 sq. ft. addition to the existing building chapel building located on the property at 6131 Newton Road ("Project Site") along with all related improvements depicted on the engineered plans prepared by Nussbaumer & Clarke, Inc. based on the following findings and conditions:

1. All public notices have been filed.
2. The project was referred to the Erie County Department of Environment and Planning ("ECDEP") on December 15, 2021 pursuant to NYS General Municipal Law Section 239-m since Newton Road is an Erie County Highway.
3. On February 6, 2024, the ECDEP issued a reply stating as follows: "No Recommendation; proposed action has been reviewed and determined to be of local concern."
4. Upon review of the Site Plan and associated documents, including the Short Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQR"), the Planning Board recommends that the Town Board classify the project ("action") as a Type 2 Action pursuant 6 NYCRR 617.5(c)(9) of the SEQR Regulations stating that "construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a Use Variance and consistent with Local Land Use Controls, but not Radio Communication or Microwave Transmission Facilities" is a Type 2 Action.
5. On November 8, 2021, the Erie County Department of Health issued a letter approving the on-site Septic System for the project.
6. A letter with attachment prepared by Robert Pidanick of Nussbaumer & Clarke, Inc. dated January 8, 2024 provides detailed information supporting the professional opinion of the project engineering firm in support of its opinion that the installation of the on-site Stormwater Management System complying with the applicable Stormwater Standards as described in detail in the letter ensures the project will not result in any potentially significant adverse drainage impacts.
7. On March 1, 2022, the Erie County Department of Public Works issued a letter stating as follows: "This Department has received plans and drainage calculations for site modifications at Holy Face Chapel Church located at 6131 Newton Road (CR-110) in the Town of Orchard Park, and find them to be acceptable."
8. The Site Lighting is limited to those fixtures and poles indicated on the Approved Engineered Plans. Light fixtures shall have flat lenses, and all lighting is to be directed downward and toward the site.
9. Specific findings relating to Section 144-44 of the Orchard Park Zoning Code:
  1. All buildings are an integral part of the development and have convenient access to and from adjacent uses and roadways.
  2. Individual buildings are related to each other in design, mass, materials, placement, and connections providing a visually and physically integrated development.
  3. All buildings are arranged to avoid undue exposure to concentrated loading or parking facilities.
  4. All buildings are arranged to be accessible to emergency vehicles.
10. No outside storage or display is permitted.
11. An updated/redated Landscape Plan including demonstrated compliance with all Green Space regulations was submitted and Conservation Board approval was granted on February 6, 2024.

- 12. To the extent that relief may be necessary from set-back or required yard pursuant to the Town of Orchard Park Zoning Code and its Area and Bulk Regulations by virtue of the project approved by this Motion, the Planning Board recommends, pursuant to Section 144-61 of the Zoning Code, that the Town Board approve this project, and specifically the construction of the addition to the existing structure so long as the said addition is otherwise in conformance with the provisions of the Town Code set forth above.
- 13. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
- 14. Town Engineering Department Approval was granted on January 11, 2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

- 4. **P.B. File # 05-2022, 3678 Southwestern Boulevard, Octavus Self Storage, located on the north side of Southwestern Boulevard, across from the "MAC Center", Zoned I-1.** Octavus Storage LLC, is requesting to remodel, refurbish, and construct approximately 600-Self Storage Units. (SBL#161.06-2-15)

**APPEARANCE:** Mr. Douglas Freyes, Carmina – Wood Designs

Mr. Freyes presented and explained the proposed project to the members.

Building Inspector Tom Minor had no outstanding issues with the project.

Assistant Town Engineer Tom Ostrander stated that the project has received Town Engineering approval.

Dr. Bennett discussed the Green Space and limited parking at the project site with Mr. Freyes.

Chairman Fabinsky established that there is 39.8% total green space, located closer to the roadway, with the majority of the Green Space at the back of the site. The project was granted Conservation Board approval on 7/05/2022.

Dr. Bennett made a **MOTION**, seconded by Mr. Mellerski, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct approximately 600-Self Storage Units in 13-Buildings, and a 1,250-sq.ft. New Office Building with Site Improvements, per the plans received on 1/30/24, 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 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 6/22/22, meets all Green Space regulations with 39.8% total Greenspace. In accordance with Section 144-44(c)(1)(a)(2) a Certified Check amounting to 50% of the \$28,925 Landscaping Estimate Value shall be deposited with the Town Clerk. (\$14,462.50) Conservation Board approval was granted on 7/05/2022.
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. Town Engineering approval was granted on 2/08/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

5. **P.B. File #43-2023, 4365 South Taylor Road, 84 Lumber, located at the northeast corner of South Taylor Road and Big Tree Road**, Applicant is requesting Site Plan Approval for pavement extension and landscaping, Zoned I-1. (SBL# 172.08-4-37.11)

**APPEARANCE:** Mr. Rob Pidanick, Nussbaumer & Clarke

Mr. Pidanick distributed information to the Board members and used an easel to present his information. He explained the project, noting that they are looking to construct a pavement extension and put in new landscaping. A future building expansion is also in the planning stages for the future.

Dr. Bennett confirmed that the pavement expansion will not alter runoff water at the site and create drainage issues.

Deputy Assistant Engineer Tom Ostrander reported that this issue was reviewed.

The Chairman asked that greenery at the front of the property will add to the character of the property. He would like to see plantings at least 6-feet tall that are deer resistant.

Assistant Town Engineer Tom Ostrander stated that the project has received Town Engineering approval.

Mr. Pidanick stated that the overall Green Space provided here is approximately 23%.

Dr, Bennett suggests several islands be constructed in the front parking lot to break up the pavement.

Mr. Pidanick stated that they will consider this.

The Chair established that there are no further questions from the Board,

Mr. Long made a **MOTION**, seconded by Mr. Fabinsky, to recommend that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct a pavement extension per the plans received on 12/01/2023, based on the following conditions and stipulations:



1. All public notices have been filed.
2. This is an Unlisted SEQR Action, and no declaration is required.
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. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
6. The Applicant is to provide the Town of Orchard Park Assessor with an "independent" appraisal for the completed project by a Certified Commercial Appraiser.
7. Add Greenspace at front to soften and offset the site using islands at the front of their parking lot.

**ON THE QUESTION:**

Dr. Bennett spoke of adding Stipulation #7, that additional islands be added at the front of the Parking Lot to soften the site.

Both Mr. Long and Mr. Fabinsky accept the revised motion.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

6. **P.B. File #34-2019, Quaker Lake Terrace, proposed 18-Lot Subdivision, Vacant Land, 36.40 +/- acres, Zoned R-1.** Board to authorize Chairman to set "Final Plat Plan Public Hearing" when he deems it appropriate, and action on Tree Clearing request, due to Wetlands Permit.

**APPEARANCE:** Mr. Douglas Freyes, Carmina – Wood Designs

Chairman Fabinsky discussed crafting a motion regarding trees that are to be moved, relative to the Bat migration that occurs here. He questioned if there is a survey indicating the number of trees in the existing tree line.

Assistant Town Engineer Tom Ostrander discussed the NYS DEC requirement and provision, (1) that the home footprint fall within the trees as it is mating season for the bats, and the trees are to remain, (2) in addition this is a Town Road, and a bond will be procured to fund the destruction of the roadway from the construction vehicles, (3) Mr. Peter Liberatore supports the idea of a trail.

Mr. Mellerski made a **MOTION**, seconded by Mr. Fabinsky, as follows:

1. I move to **GRANT** the Applicant's request to remove trees by April 1<sup>st</sup> in the Right-of-Way, Storm Water Management Area, and where Utilities/ Infrastructure are proposed, due to conditions of the project's USACOE Wetlands Permit and NYSDEC Restrictions, due to the Long Ear Bat, both of which require the clearing to be done by April 1<sup>st</sup>.

- 2. Regarding Planning Board Subdivision File #34-2019, I move to **AUTHORIZE** the Chairman to set a **FINAL PLAT PLAN PUBLIC HEARING DATE** for “QUAKER LAKE TERRACE 18-LOT SUBDIVISION” WHEN HE DEEMS IT APPROPRIATE.
- 3. There is to be an absolutely minimum disturbance to the existing trees.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
MURRAY	AYE
MELLERSKI	AYE

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

**CONCEPT REVIEW** – (No action will be taken)

- 1. **P.B. File #42-2023, Eagle Ridge Recreation Association, 7425 Jewett Holmwood, south side of Jewett Holmwood Road, west of Timberlake Drive, Zoned R-1.** (SBL# 173.20-1-20) Board to review Special Use Permit.

**APPEARANCE:** Andrea Gervais, Secretary. Representing Eagle Ridge Recreation Association

Ms. Gervais, stated that she is seeking a modification to their “Special Exception Use Permit”, granted in 1970, to increase the permitted number of member families from 150, to 215. This increase will help offset operating costs, such as labor and materials. They hope to have the club remain affordable, accessible, and sustainable. They can accommodate the proposed additional member families without any structural modifications to the premises. Ms. Gervais discussed avoiding overcrowding of the site by encouraging members to walk together and not use their vehicles. She noted that she shares a list with the members indicating who walks so they may walk together and have less vehicles at the site.

The Board members’ questions included discussing the yearly events planned at this site.

The Chairman directed Ms. Gervais to work with Deputy Town Attorney John Bailey.

There being no further business, the Chairman adjourned the meeting at 8:33 P.M.

DATED: 4/4/2024  
REVIEWED: 4/10/2024

Respectfully submitted,  
Rose Messina,  
Recording Secretary

Harold Fabinsky, Planning Board Chairman