P.B. Meeting #11 Regular Meeting #11 Date: December 12, 2019 Page 1

**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Henry Heppner

David Kaczor

Joseph Liberti

Philip Murray

Nicholas Taneff

Nicholas Baich, Alternate

**EXCUSED:** Paul Bodden

**OTHERS PRESENT:** Len Berkowitz, Deputy Town Attorney

Remy C. Orffeo, Acting Planning Coordinator

Steven Bremer, Supervising Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Rose Messina, Planning Board Secretary

The Chair announced fire alarm exit procedures and called the Planning Board meeting to order at 7:00 P.M. by stating 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 alternate, Mr. Baich, will be voting this evening in the absence of Mreppmer. Bodden.

Mr. Murray, made a motion, seconded by Mr. Heppner, to accept the November14, 2019 meeting minutes as presented.

THE **VOTE** ON THE **MOTION** BEING:

FABINSKY AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

TANEFF AYE

BAICH AYE

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

**NEW BUSINESS:**

1) P.B. File #35-19, Jack Kuebler, 3892 Southwestern Boulevard, Zoned B-2. Requesting Planning Board renewal of Outdoor Display of twelve (12) sheds and staged furniture with fencing, for 2020 and 2021.

APPEARANCE: Ms. Julie Kuebler, representing Jack Kuebler

Ms. Kuebler stated that she is seeking a renewal of their permit for an Outdoor Display, and that no changes have been made to the submitted Sketch Plan.

The members established that, periodically, a “Chicken Barbeque take-out” is offered on this site that raises money for a scholarship in memory of a family member. The Board expressed concerns for traffic issues created with this unauthorized activity. The chicken barbeque is to cease, as the permit is only for the sale and outdoor display of twelve (12) sheds.

P.B. Meeting #11 Regular Meeting #11 Date: December 12, 2019 Page 2

It was established that future improvements to the property are not planned at this time.

Mr. Liberti made a **MOTION**, seconded by Mr. Kaczor, to **GRANT** Outside Display for two-years, from April 1st through November 30, 2020, and April 1st through November 30, 2021, at 3892 Southwestern Boulevard, based on the Sketch Plan received 11/13/19, for 12 sheds, 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 “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, 2020 to November 30, 2020 and April 1, 2021 to November 30, 2021. One shed (a sales office) will remain on the site year-round.

5. This property will be strictly for the sale of sheds, and is not to be used for any other business.

ON THE QUESTION:

Mr. Heppner noted that he is not against scholarship fund raising or a benefit type activity. However, he feels there is a legitimate traffic safety concern at this site.

THE VOTE ON THE MOTION BEING:

FABINSKY AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

TANEFF AYE

BAICH AYE

THE **MOTION BEING (7) SEVEN IN FAVOR, THE MOTION IS PASSED**.

2) P.B. File #13-19, Bill Sahlem, 2260 Southwestern Boulevard, proposed Sports Complex, Zoned B-2. Applicant is appearing before the Zoning Board of Appeals on 12/17/19 for a height Variance of 75-ft. Planning Board to make recommendation.

APPEARANCE: Mr. Frank Wailand, Frank Wailand & Associates

Mr. Bill Sahlem, Petitioner & Property Owner

Mr. Wailand told the members that in June 2019 he and Mr. Sahlem met with the Board to discuss the proposed project. He noted that they took into consideration the Board’s comments and revised the proposed plan. He presented a rendering of the proposed three structures at the project site for the Boards’ review. Mr. Wailand explained what each building would be used for. He noted that two buildings will be Code Compliant; however, the third building will be 75-ft. high and require a variance

P.B. Meeting #11 Regular Meeting #11 Date: December 12, 2019 Page 3

from the Zoning Board of Appeals. He explained their plan to minimize the non-compliant buildings’ view with its placement on the property and construction techniques known as a “cut and fill” process.

In addition, berms will be constructed and a large amount of landscaping will be planted for screening its view. It was learned that the site will have a sanitary sewer line and not need a septic system put in.

Mr. Murray spoke of the importance of the SEQR process and established that no SEQR document was submitted. He feels the proposed project will have a negative impact on the neighboring residents.

Mr. Wailand stated that a Long SEQR form is being prepared, and it will be submitted shortly.

The Board members’ questions and further discussion established that:

⦁ A total of 156 parking spaces are proposed for the complex.

⦁ The Petitioner feels it is difficult to ascertain what the capacity of each building will be.

⦁ The Town Ordinance for the height of a building is 35-ft. The Petitioner is requesting to construct a 75-ft. high building – this is double the height of what is allowed by the Town Ordinance.

⦁ The Zoning Board of Appeals will review a request by Mr. Sahlem, at their 12/17/19 meeting, for a Variance for the height of this building. Attorney Len Berkowitz noted that the SEQR Document is required for their meeting.

The Board members discussed the concerns they had; the building height is the main issue.

Chairman Fabinsky does not support the project due to the height of the one structure exceeding the Town Code by double the amount allowed.

Mr. Heppner would like to review a SEQR document for this project, and does not support the proposed non-conforming building height.

Mr. Kaczor stated that he feels the proposed project is a good fit here. If an EIS is submitted he may support this project. He needs to know that the project will not have a negative impact on the area.

Mr. Liberti feels this is a unique project that the Town may need. He is undecided about the height issue. This is a stylish building, but he is not sure how the area will look with a building exceeding our Town Code.

Mr. Heppner made a **MOTION**, seconded Mr. Kaczor, to recommend that we have **NO RECOMMENDATION** to the Zoning Board of Appeals at this time.

FABINSKY NO

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY NO

TANEFF NO

BAICH AYE

**THE VOTE PASSED WITH (4) FOUR AYES AND (3) THREE NAYS.**

P.B. Meeting #11 Regular Meeting #1 Date: December 12, 2019 Page 4

3) P.B. File #13-10, “The Reserve” Conservation Management Overlay (CMO), V/L, 122.0 +/- Acres, located on the east side of Freeman Road, north of Jewett Holmwood Road, Zoned CMO, R-1. Planning Board to make a SEQR Determination. (Planning Board declared themselves Lead Agency on 9/12/19; Pre-Application Findings were granted on 8/09/18 for updated plan with 93-Sub-Lots; Town Board rezoned property to CMO on 9/05/12.)

APPEARANCE: Mr. Thomas Johnson, Tom Johnson Homes

Mr. Thomas Johnson, (Son) Tom Johnson Realty

Mr. Ken Zollitsch, GPI

Mr. Johnson (Senior) stated that this project site was rezoned to a Conservation Management Overlay District (CMO). The property consists of 122.0+/- acres and he would like to construct 93-Single Family upscale homes here. He told the members that a Hydraulics Study was performed, and improvements were made to the area. Since the rebuilding of the bridge on Forest Drive, and the dam at Freeman’s Pond, there has been no flooding in the last 15-years. He feels the Hydraulic Study provides an accurate assessment of water flow. He explained that the targeted market group for the type of homes he will be building are people that want to down-size. He asks that the Board make a SEQR Determination so the project can move forward.

Chairman Fabinsky stated that the potential for water problems downstream is a critical factor. The Board would like additional SEQR information provided.

Acting Planning Coordinator Remy Orffeo noted that on August 9, 2018 the Board approved a motion that the Petitioner submit a Full EAF, with Part 3 addressing issues such as Wildlife, Wetlands, Impact on Services, Construction Impact on the Neighborhood, Storm Water Drainage, Watershed Details, and Traffic, for this ***“****Type 1 SEQR Action****”***. He stated that the SEQR was incorrectly listed, as this is an “**Unlisted SEQR Action”.** A Scoping Session is not required for an Unlisted SEQR Action. He further noted that we have not received Part 3 from the Petitioner, and that there are questions in Part 2 for the Town to fill in that he has not been able to address. He told the Petitioner that he also wants Part 3 to include “Connectivity”, the “Stonehenge Subdivision”, and the “Water Table” with additional information. (Mr. Orffeo will provide a list of the items to address in Part 3 to the Petitioner.) He further explained that a completed SEQR must be submitted before the Board can take action towards making a Negative or Positive Declaration.

Mr. Zollitsch told the Board that they have submitted many of these items, and that the missing ones will be provided to the Board.

Mr. Orffeo stated he would like a summary report included in Part 3 to assist individuals that may have questions regarding the project.

Mr. Zollitsch stated that this will not be a problem.

The Chairman asked the Board if they had questions, and the following were discussed:

⦁ Mr. Taneff established the date of the Traffic Study is not known, and that Mr. Zollitsch feels it is several years old.

Mr. Zollitsch stated he would advise the Board of the Traffic Studys’ date.

⦁ Mr. Murray stated that he wanted to be clear in his mind regarding the presented plan and the SEQR process. He confirmed that we are at the beginning stages of the SEQR and are working on the assessment.

P.B. Meeting #11 Regular Meeting #1 Date: December 12, 2019 Page 5

Mr. Zollitsch explained that the presented plan for 93-Lots received Pre-Application Findings on August 9, 2018 and that nothing has changed. The only SEQR approval this site received was for the rezoning classification to a CMO. There has been no SEQR approvals for the presented project.

Mr. Orffeo stated that Petitioner is starting over. There were no prior SEQR approvals, and we are here for Pre-Application Findings. What we are working on now is what the Board wants included in Part 3 of the SEQR document.

⦁ Mr. Heppner, also, wants the Traffic Study date to be advised, as he feels this needs to be a timely document. He discussed the difference in acreage shown on the initial plan with 95.3-acres, and 122.0-acres shown on the current plan. It was established that acreage was purchased and added to the property.

⦁ Mr. Kaczor, having knowledge of the project when he was a Councilman on the Town Board, and being involved in the development of the CMO Town Ordinance, discussed the projects’ history. He concluded that he feels this is a good project, and he told the Petitioner that the Board must feel comfortable with the drainage and water concerns here.

⦁ Mr. Liberti stated that he likes the project, and feels there is a huge demand for downsizing. However, he has concerns for water at the site and traffic.

⦁ Mr. Baich questions what the remaining green space percentage will be at the project site.

Mr. Johnson (Senior) stated that the homes will average 2,000 to 3,000 sq. ft. in size and be one, or 1-1/2-stories high.

Mr. Zollitsch told the members that approximately 45-acres (one-third) of the 122.0-acres will be disturbed; the remaining two-thirds will not be developed. The CMO law requires the developer to donate 50-acres of land to the Town.

⦁ Chairman Fabinsky likes the project, however he feels detail needs to be provided for the SEQR process relating to what happens to the water.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Liberti to **TABLE** with the condition that the additional information as outline by the Planning Board Coordinator be provided to this Board.

THE VOTE ON THE MOTION BEING:

FABINSKY AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

TANEFF AYE

BAICH AYE

THE **MOTION BEING (7) SEVEN IN FAVOR, THE MOTION IS PASSED**.

**CONCEPT REVIEW:**

1. P.B. File #31-19, “Heathwood Assisted Living”, V/L Webster & North Buffalo Roads. Zoned B-3. Planning Board to make recommendation to Zoning Board of Appeals regarding number of stories.

APPEARANCE: No one is present.

P.B. Meeting #11 Regular Meeting #1 Date: December 12, 2019 Page 6

Chairman Fabinsky stated that it should be known that, firstly, a petition signed by neighbors has been submitted to the Town opposing approval to allow a structure to exceed the maximum height allowed by Town Code. There have been additional communications electronically raising different points; again, in opposition, with nothing received in support of this project. The material that has come to the Planning Office is from immediate neighbors and people who feel their life style and the use of their property will be strongly impacted by visual change.

Acting Planning Coordinator Remy Orffeo stated that the Petitioner declined to do a presentation, as the Board was just making a recommendation to the Zoning Board of Appeals (ZBA). If they are denied by the ZBA, the next step would be to apply to the Town Board for a rezoning request.

The Chair noted that this is a transaction that can be done without the Petitioner. He asked if there is any Board discussion.

Several members voiced their feelings regarding the Petitioner not attending the meeting.

The members discussed the negative impact the proposed structure will have on the character of the neighborhood, along with other concerns the neighbors had expressed in their submissions.

Mr. Murray stated he feels that without the Petitioner present there is no data to make any kind of evaluation of this project.

Chairman Fabinsky stated that he feels the Board should make a motion recommending the Zoning Board of Appeals not approve the request for the Use Variance. He further states that there comes a point when the Town Code should have some meaning.

Mr. Kaczor would like the motion to have specific items listed in it for the ZBA members to understand why the Planning Board does not support the granting of the Use Variance request.

Mr. Baich agrees with Mr. Kaczor. He further feels the Petitioner should have presented the case to the Board.

Acting Planning Coordinator Orffeo stated that the Zoning Board of Appeals should not be giving Variances to go against the Town Code.

Mr. Liberti agrees with Mr. Kaczor, it will change the character of the residential neighborhood and have a negative impact.

Mr. Murray stated he feels that (without the Petitioner present) there is no data to make any kind of calculation of the value of the project at all.

The members’ discussion concluded that they want to make a recommendation to the ZBA.

Mr. Kaczor made a **MOTION**, seconded by Mr. Fabinsky, to **RECOMMEND** that the ZBA **DENY** a request for a Use Variance for this particular piece of property, to construct a 3-story Building, based on the fact that there is not proper information provided to this Board to make a yes or no decision, and for the following reasons:

a. A 3-Story Building Violates the Town Code.

b. The property’s proximity to the Architectural Overlay District (AOD) is visually intrusive.

P.B. Meeting #11 Regular Meeting #1 Date: December 12, 2019 Page 7

c. There will be a negative impact on the Community.

d. There is no evidence of a hardship to the Petitioner or a benefit to the Town

e. The essential character of the neighborhood will be substantially altered.

f. There is no data to make any kind of assessment or the value of the project.

A roll call vote was taken with the following result;

THE VOTE ON THE MOTION BEING:

FABINSKY AYE

HEPPNER AYE

KACZOR AYE

LIBERTI AYE

MURRAY AYE

TANEFF AYE

BAICH AYE

THE **MOTIONBEING (7) SEVEN IN FAVOR, THE MOTION IS PASSED**.

There being no further business, the Chairman adjourned the meeting at 8:20 P.M.

DATED: 2/05/20

REVIEWED: 2/11/20

Respectfully submitted,

Harold T. Fabinsky, Rosemary M. Messina

Planning Board Chairman Planning Board Secretary