

**PLANNING BOARD MARCH 14, 2024. MEETING MINUTES**

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

**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.

Upon a motion duly made and seconded, the reading of the January 2024 Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Bennett made a **MOTION**, seconded by Mr. Mellerski, to **APPROVE** the January 11, 2024 meeting minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY                    AYE  
BAICH                        AYE  
BENNETT                    AYE  
HEPPNER                    AYE  
KACZOR                      AYE  
LONG                         AYE  
MURRAY                      AYE

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

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

**PUBLIC HEARING 7:00 P.M.**

1. P.B. File #23-2023, Armor Duells Road, "5640 Armor Duells Road", proposed Three-Lot Subdivision, V/L, 16.2 +/-Acres, located on the north side of Armor Duells Road, east of Bussendorfer Road, Zoned R-2. Petitioner is seeking Planning Board Preliminary Plat Plan Approval and a SEQR determination. (SBL#17200-2-15.1)

**APPEARANCE:** Mr. Chris Wood, Carmina – Wood Designs

Mr. Wood presented drawings and explained the proposal to construct a Three-Lot Subdivision in this R-2 Zone to the Board members and those present. He stated that the Town Code allows the construction of five

Single Family homes; however, they are proposing to construct three homes, creating less density. The three homes will have public infrastructure, and the existing residence located on the property will be demolished.

The Chairman asked if any member had questions regarding this project.

Mr. Baich confirmed that Town Engineering was granted on 3/14/2024.

The Chairman explained the public hearing procedures to those present, noting that each person will have 4-minutes to speak.

A Motion was made, seconded and by Unanimous Approval, the Public Hearing is now OPEN.

IN FAVOR:

*Ms. Julie King*  
5710 Armor Duells Road  
Orchard Park, New York 14127

Ms. King stated that after the presentation she feels better about the project. She established that there will be three separate driveways, and the homes will have public water with septic systems.

*Mr. Steve Kluckhorn*  
5618 Armor Duells Road  
Orchard Park, New York 14127

Mr. Kluckhorn supports the project.

*Ms. Katherine Kluckhorn*  
5618 Armor Duells Road  
Orchard Park, New York 14127

Ms. Kluckhorn spoke in favor of the project.

AGAINST: No one spoke.

A Motion was made, seconded and by Unanimous Approval, the Public hearing was CLOSED.

DISCUSSION: no questions.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich, to **GRANT PRELIMINARY PLAN APPROVAL** to this 16.2 +/- acres V/L, 3-lot Subdivision, Zoned R-2, based on the submitted Preliminary Plat Plan and Survey received on 1/23/2024 with the following conditions:

1. All public notices have been filed.
2. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 03/14/24.
3. Pre-Application Findings were made on 8/10/2023.
4. Public Hearing and Subdivision Development fees in accordance with §144 Attachment 1 D (2) shall be paid.
5. Recreation fee in accordance with §144 Attachment 1 C (3) shall be paid.

6. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot per Section 120-3F of the Town Code.

7. Town Engineering Preliminary Plat Plan Approval was granted on 3/14/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

Mr. Heppner made a MOTION, seconded by Mr. Baich to WAIVE the FINAL PLAT PLAN PUBLIC HEARING.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

DISCUSSION: No questions.

Mr. Kaczor made a MOTION, seconded by Mr. Baich, to GRANT FINAL PLAT PLAN APPROVAL to this 16.2 +/- acres V/L, 3-lot Subdivision, Zoned R-2, based on the submitted Plans received 1/23/2024 with the following conditions:

1. All public notices have been filed.
2. This is an Unlisted SEQR Action based on the submitted Short EAF Part 1, and a Negative Declaration was made on 3/14/2024.
3. Pre-Application Findings were made by the Planning Board on 8/10/2023.
4. Preliminary Plat Plan Approval was granted on 3/14/2024.
5. Public Hearing and Subdivision Development fees in accordance with §144 Attachment 1 D (2) shall be paid.
6. Recreation fees in accordance with §144 Attachment 1 C (3) shall be 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 was granted on 3/14/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

- 2. P.B. File #31-2023, Powers Road, "Gengo," proposed 2- Lot Subdivision, V/L 5.0 +/- Acres located on the south side of Powers Road, Zoned R-2. Petitioner is seeking Planning Board Preliminary Plat Plan Approval and a SEQR determination. NOTE: The Zoning Board of Appeals granted an Area Variance on 8/15/2023. (SBL#184.00-2-11.1)

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs  
 Mr. Michael Gengo, Petitioner/Property Owner

Mr. Wood presented and explained the proposed project. He told the Board that there are no wetlands located here.

Mr. Heppner established that there will be two separate driveways constructed.

Mr. Ostrander stated that Preliminary Town Engineering Approval has been granted.

Deputy Town Attorney John Bailey discussed a stipulation to have Engineering Final Approval added at the time of the Preliminary Plat Plan approval motion.

A Motion was made, and by Unanimous Approval, the Public Hearing is now OPEN.

IN FAVOR:

*Mr. Michael Gengo, Petitioner*  
*111 Parkledge*  
*Amherst, New York, New York 14127*

Mr. Gengo spoke in favor of his project to construct two homes here.

AGAINST: No one spoke.

A **MOTION** was made, and by **UNANIMOUS APPROVAL**, the Public hearing was **CLOSED**.

DISCUSSION: No questions.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich, to **GRANT PRELIMINARY PLAN APPROVAL** to this 5.0 +/- acres V/L, 2-lot Subdivision, Zoned R-2, based on the submitted Preliminary Plat Plan and Survey received on 11/01/2023 with the following conditions:

- 1. All public notices have been filed.

2. This is an Unlisted SEQR action based on the submitted Short EAF Part 1 and a Negative Declaration is hereby made on 03/09/23.
3. Pre-Application Findings were made on 11/09/2023.
4. Public Hearing and Subdivision Development fees in accordance with §144 Attachment 1 D (2) shall be paid.
5. Recreation fee in accordance with §144 Attachment 1 C (3) shall be paid.
6. One (1) Street Tree per the Conservation Board Street Tree Plan shall be provided on each lot, per Section 120-3F of the Town Code.
7. Town Engineering Preliminary Plat Plan Approval has been granted on 3/14/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

Mr. Bennett made a **MOTION**, seconded by Mr. Kaczor to **WAIVE** the **FINAL PLAT PLAN PUBLIC HEARING**.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

DISCUSSION:

Adding a stipulation to the Final Plat Plan Motion was discussed to reflect that the Septic Plan must be worked-out, and Final Engineering Approval is contingent upon this stipulation. The members discussed this at length.

Mr. Heppner made a **MOTION, seconded by Mr. Kaczor to GRANT FINAL PLAT PLAN APPROVAL** to this 5.0 +/- acres V/L, 2-lot Subdivision, Zoned R-2, based on the submitted Plans received 11/01/2023 with the following conditions:

1. All public notices have been filed.
2. This is an Unlisted SEQR action based on the submitted Short EAF Part 1, and a Negative Declaration was made on 3/14/2024.

3. Pre-Application Findings were made by the Planning Board on 11/9/2023.
4. Preliminary Plat Plan Approval was granted on 3/14/2024.
5. Public Hearing and Subdivision Development fees in accordance with §144 Attachment 1 D (2) shall be paid.
6. Recreation fees in accordance with §144 Attachment 1 C (3) shall be 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 Approval is contingent upon the Septic Plan being worked out. (see below)

A ROLL CALL VOTE WAS TAKEN BY THE SECRETARY. THE VOTE ON THE MOTION BEING:

FABINSKY	NAY
BAICH	NAY
BENNETT	NAY
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	NAY

**THE VOTE ON AN INITIAL MOTION LACKING STIPULATION #8 ABOVE BEING FOUR (4) AGAINST, AND THREE (3) IN FAVOR, THE MOTION LACKING FAILS**

Further discussion by the Board members resulted in the addition of stipulation #8. The **REVISED MOTION** was amended, made, seconded and **UNANIMOUSLY PASSED** with the **STIPULATION** added in as #8 above.

#### **REGULAR BUSINESS:**

1. P.B. File #06-2024, Sturdi-Built Sheds, 2881 Southwestern Boulevard, located on the south side of Southwestern Boulevard, Zoned B-2. Petitioner is requesting Board approval of an Outdoor Display Permit renewal. (SBL#153.06-2-3)

APPEARANCE: Mr. Dave Delagrange, Petitioner

The Petitioner stated that he is seeking a renewal for an Outdoor Shed Display. He told the members that he has maintained this display for 8 years.

Mr. Kaczor stated that the site is well maintained.

Mr. Baich noted that the site is professional and nice looking.

Mr. Baich made a **MOTION**, seconded by Mr. Kaczor to **GRANT** an Outside Display Permit, to allow a total of 12 sheds being displayed, based on the Location Plan received 2/21/2024. The following Conditions and Stipulations are to apply:

1. All public notices have been filed.
2. This is a Type II SEQR action and, therefore, no SEQR Determination is required.
3. There will be no additional Outside Lighting for the display, or temporary structure.

4. Signage for the Outside Display will be limited to one sign during the Outside Display Times. Sign size not to exceed 20-sq.ft. and it must be removed at end of the approval period.
5. The Outside Display is **GRANTED** for **(3) three-years (see below); April through October of 2024; April through October of 2025 and April through October of 2026**, based upon the approval of the Building Inspector.

ON THE QUESTION:

Mr. Bennett discussed amending the motion to three-years. Mr. Baich agreed to amend his motion, Mr. Kaczor second it and this change is stipulated in #5 above.

THE VOTE ON THE AMMENDED MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

2. P.B. File # 36-2023, Birdsong Subdivision, Parts 2, 4, 5, & 7, Zoned R-1. Petitioner is requesting a Rezoning from R-1 to R-1 with Conservation Management Overlay District status (CMO). Planning Board to declare themselves "Lead Agency" for this project. (SBL#173.04-2-25.11)

APPEARANCE: Mr. Jason Burford, Greenman & Pedersen  
Mr. David Capretto, Developer/Owner  
Mr. Sean Hopkins, Attorney

Mr. Hopkins explained that they have eliminated their request to have Part 2, of the Birdsong project rezoned to a "Conservation Management Overlay District" status (CMO). They are now seeking to rezone "Part 5", to "R-1, CMO", to construct 86-Patio homes, upon 63.7 +/- Acres, of which 36-Acres will remain as Open Space.

Further discussion covered these topics:

- Mr. Capretto explained developing a ½ half mile long "state of the art" entranceway into the Birdsong site, showcasing the homes, and the construction timeline.
- It was established that Birdsong "Part 2", will be developed as a traditional subdivision, consisting of 51-Single-Family Building Lots (this is not a CMO).
- The Planning Board is to Declare Lead Agency Status, and asked to Issue a Negative Declaration, for this Type 1 SEQR Action for Birdsong "Phases 2, 4, & 5".
- The Planning Board is also asked to recommend that the Town Board set a date for a public hearing, for the request to rezone Birdsong "Part 5" to a CMO status, and advise their recommendation regarding the rezoning request.
- Birdsong "Part 7" will remain as Green Space with no development taking place here.

- Mr. Orffeo stated that he has no issues with the submitted SEQR, and he acknowledged that this plan is more palatable to the Town than what the previous owner had presented. He also discussed the fact that public hearings help Applicants to have further insight to a project.
- Mr. Kaczor expressed his thoughts regarding a CMO, and the concerns he has. He reaffirmed the process of reviews, and at this point-in-time, he can support a recommendation to support the rezoning. If the rezoning is approved by the Town Board, the project will return to the Planning Board for review and two (2) additional public hearings. At that time he will express his concerns, such as, “where will snow storage be placed”.
- Mr. Heppner discussed Phase 4 and 5. He established that a pumping station will be put in Part 5.
- The wetlands and permanent Greenspace areas were discussed. Mr. Hopkins stated that almost every home has permanent greenspace behind it.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Kaczor, that based on the submitted SEQR Documents, Parts 1, 2, and 3, (as revised), this is a **Type 1 SEQR Action**, and a **Negative Declaration** is hereby made; He also **RECOMMENDS** that the **Planning Board DECLARE itself “Lead Agency”** for this **Type 1 SEQR Action**, based on the submitted Long EAF, and **RECOMMENDS** the **Rezoning of this property from R-1, to R-1 with Conservation Management Overlay District Status (CMO)** to the Town Board.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	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. Fabinsky, to direct the Planning Board Chair to set a Public Hearing Date for Preliminary Plat Plan Approval when he deems it appropriate and; he **RECOMMENDS** that the Town Board, based on the petition and recommendation of the Town of Orchard Park Planning Board, set a Public Hearing for the Rezoning of Part 5, to R-1 (CMO) District.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

Dr. Bennett made a **MOTION**, seconded by Mr. Fabinsky that Phase 2, 4, 5 are a Type 1 Action and a **NEGATIVE DECLARATION** is made.

Mr. Heppner asks that the motion read "Type 1, Negative Declaration". Dr. Bennett agreed to amend his motion.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

The time frame was discussed and Mr. Hopkins and Mr. Orffeo will discuss the Town Board public hearing to be held.

- 3. P.B. File #20-2023, 4038 California Road, "Maple Grove Apartments", located on the west side of California Road, south of Ellis Road, Zoned R-4. Planning Board to adopt a resolution to seek Lead Agency Status for a Coordinated Environmental Review of the project to construct an Apartment Complex consisting of 54-Units. (SBL#161.03-1-41)

APPEARANCE: Mr. Andrew Romanowski, Petitioner/Developer, Alliance Homes  
 Mr. Aron Romanowski, Alliance Homes  
 Mr. Sean Hopkins, Attorney, Hopkins, Sorgi and McCarthy

Mr. Hopkins presented and explained a revised Site Plan for the "Maple Grove Apartments" project that is now proposing to construct a total of 54-Units, with 6-Units per Building, as the original request to construct 80-Units is not compliant with our Town Code. Mr. Hopkins stated that controlling density and increasing the Greenspace at the back of the property is accomplished with the revised plans. He also discussed having this project declared a "Type 1 SEQR Action", and the Board to seek Lead Agency Status.

The members discussed this project at length.

Mr. Kaczor feels the proposed buildings are too close to the street. He feels this will be aesthetically better for the neighborhood.

The Chairman feels mitigation can resolve issues and would like to see more detailed plans, including Colored Elevations.

Mr. Heppner made a **MOTION**, seconded by Mr. Kaczor, to **RECOMMEND** that the Planning Board seek Lead Agency Status for this Unlisted SEQR Action, with a Coordinated Review, for a 54-Unit Residential Community, Zoned R-4, based on the submitted long EAF, Parts 1 & 2, and attachments.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

4. P.B. File #01-2024, 4956 & 4968 Chestnut Ridge Road, V/L north westerly corner of New Armor Duels and Chestnut Ridge Roads, Zoned B-2. Miranda Holdings, Inc. is requesting a "Special Exception Use Permit" to operate a Drive-through Service Facility for a proposed "Tim Hortons". Town Board referred to Planning Board on 3/6/20214. (SBL#'s 172.20-1-17 & 172.20-1-16)

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs  
Mr. Matt Fitzgerald, Phillips Lytle LLP

The Chair invited the Petitioners to proceed with their presentation, noting that this review will be considering the "Special Exception Use Permit", and that "Site Plan Review" will happen at a later date.

Mr. Phillips told the members that he is very familiar with Orchard Park. He stated that there is no other drive-through in this part of Orchard Park, and he feels there is a need for the proposed Tim Hortons. He further stated that there are 27-parking spaces proposed for this site; the same number of spaces that are available at the Tim Hortons located on 20A, (Big Tree Road). In 2018 the Town Code regarding "Special Exception Use Permits" was amended, requiring eleven (11) items of criteria be met for an approval. Mr. Phillips summarized the Petitioner's response to the criteria for a Special Exception Use Permit under Town Code, as submitted to the Town on February 1<sup>st</sup>, 2024, and recorded as follows:

**1. The relation of the proposed project to the long range or Comprehensive Plan of development of the Town.**

*APPLICANT'S RESPONSE: As detailed in the Town of Orchard Park Comprehensive Plan adopted in September 2007 (the "Comprehensive Plan") and the Town of Orchard Park 20162021 Strategic Plan adopted in October 2016 (the "Strategic Plan") both incorporate economic goals for the Town related to retail sector and employment. The Project will not only provide economic and employment opportunities, but will provide a retail service to the community from a company that has proven success. The proposed Project will generate tax income for the Town and local economy which will in turn satisfy the goals of both the Comprehensive Plan and Strategic Plan, In addition, the Applicant has incorporated significant design improvements for the Project throughout the application and AOD process, including revisions to the Traffic Study and Traffic Plan, Engineer's Report, Site Development Plan, Building Design, and Landscape Plan.*

**2. The need for the proposed project at the present time.**

*APPLICANT'S RESPONSE: The Site is currently located on a vacant plot of unused land and has been unused for several years. This Project will redevelop the unused site into a Restaurant service for the Town and its constituents. In addition, the Project will bring forth other economic benefits such as tax payments made to the Town and various employment opportunities for the public. Lastly, the Applicant is proceeding with the Applications to construct the Project because demand for the Tim Horton's franchise exists at this location.*

**3. The compatibility of the proposed project with adjoining land uses and with other proposed development, having particular reference to its probable effect on the value of other land and to the adequacy of features intended to promote public safety and the general purposes of this chapter.**

*APPLICANT'S RESPONSE: As previously explained, pursuant to 2018 amendments to Code Chapter 144, drive-throughs are permitted in the B-2 Commercial District with a Special Permit. See Code Chapter 144, Attachment 8: Schedule of Use Controls: B-2 Commercial; Code § 144-43(A). Because the Project involves the construction of a restaurant with an accessory drive-through window in the B-2 Commercial District, the Town has taken the position that a Special Permit is required. It is well settled that the classification of an activity as a special permit use evidences a legislative determination that the use complies with the general zoning plan of the community and will not detrimentally affect the area. See *Retail Prop. Tr. v. Bd. of Zoning Appeals of the Town of Hempstead*, 98 N.Y.2d 190, 195 (2002); *N. Shore Steak House v. Bd. of Appeals of Inc. Vil. of Thomaston*, 30 N.Y.2d 238, 243-44 (1972); *Kabro Assocs., LLC v. Town of Islip Zoning Bd. of Appeals*, 95 A.D.3d 1118, 1120 (2d Dep't 2012). Consistent with that principle, New York State Town Law § 274-b(1) defines a "special use permit" as "an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." Consequently, the Project's designation as a special use under the Code results in a strong presumption in favor of the use. The proposed Project is compatible with the adjoining land uses. The Site currently sits on a vacant corner lot surrounded by other residential and commercial properties however there will be no adverse effects to the value of other lands for any future and potential development projects. Applicant will also maintain the surrounding landscaping of the Site during both construction and operations. The Project has adequate features, including a well-designed traffic plan to promote an orderly traffic pattern, as well as other design improvements in accordance with the AOD that include a revised site development plan, revised building design elements, and a revised landscape plan which will all promote public safety in the surrounding area. In addition, the NYSDOT has approved the traffic study for the Project and confirmed there would be no impacts to the level of service on the State Highway System. Lastly, the Applicant will also promote public safety during all aspect of construction and operations of the Site.*

**4. The orderly flow of traffic or effect on normal traffic patterns and satisfactory methods of ingress and egress.**

*APPLICANT'S RESPONSE: As provided in Exhibit E, the NYSDOT has reviewed the Project's Traffic Impact Study and provided confirmation that the additional traffic generated by the proposed development of the Project will not have significant impacts to the level of service on the State Highway System (both New Armor Duells Road and Chestnut Ridge Road, which the Project fronts on, are State Roads). A maintenance and protection traffic plan, as well as a truck turn plan and garbage turn plan is provided in Exhibit A (Site Plans) that demonstrates the orderly flow of traffic and proposed traffic patterns that will minimize impacts to the normal traffic patterns and provide for a satisfactory method of ingress and egress for vehicles and truck traffic at the Site.*

**5. The design and suitable location of parking facilities.**

*APPLICANT'S RESPONSE: The Project will have adequate on-Site parking, appropriate space for loading and unloading space for truck deliveries, and adequate separation of pedestrians and vehicular movement. As shown in Exhibit A (Site Plans), the drive-through will be located along the outer boundary of the Project Site providing a significant amount of drive-thru stacking spaces given the size of the Property. Parking facilities are located within the center of the Property to segregate both drive-through traffic customers and those customers that will be using the*

*parking facilities at the restaurant. Applicant will coordinate deliveries and garbage pickup during off peak times in order minimize disruption to available parking spots for customers. Therefore, the Project is designed with a suitable location for parking facilities.*

**6. The use of landscaping for screening purposes.**

*APPLICANT'S RESPONSE: The use of landscaping for screening purposes will be incorporated throughout the Project Site, including landscaping to screen the proposed stormwater detention basin. Appropriate landscape plantings will be used along the drive-through, the proposed restaurant building, and throughout the parking lot. As mentioned above, the Town Conservation Board has also approved the proposed landscape plan for the Project. A landscape plan is provided in Exhibit A (Site Plans).*

**7. The intelligent design of free areas for recreational use.**

*APPLICANT'S RESPONSE: The Project does not warrant an incorporation of free areas for recreational use as it will be located on private property rather than public property. See Exhibit A (Site Plans).*

**8. The nearness and impact on schools and other public utilities.**

*APPLICANT'S RESPONSE: The nearest school to the Project is the Orchard Park Central School and Ellicott Elementary School, however, the Project is not in close proximity to the schools and will not create any significant adverse impacts to the schools. In addition, the Project will not create any adverse impacts to the other public utilities. A utility plan is provided in Exhibit A (Site Plans).*

**9. The health and safety of the residents or workers on adjacent properties and in the general neighborhood.**

*APPLICANT'S RESPONSE: During the construction phase of the Project, the Applicant's construction contractor will incorporate various safety measures to secure the Site and prevent unauthorized access. Thereafter, during the operations phase of the Tim Horton's, the Applicant will perform regular maintenance of the Site so as to maintain the aesthetic appearance of the Site. Therefore, the Project will not adversely affect the health and safety of the residents or workers on adjacent properties and in the general neighborhood. A demolition and erosion control plan is provided in Exhibit A (Site Plans).*

**10. Lot areas, type of construction, fire hazards, offensive odors, smoke, fumes, noise and light.**

*APPLICANT'S RESPONSE: The Project is appropriately designed and sized to fit within the designated lots area will comply with the appropriate and applicable Town zoning lot requirements. The Project will not adversely affect the physical and environmental conditions to the neighborhood or Town, including, but not limited to odors, noise, and light. The Project will not produce any fire hazards, smoke, or fumes that will impact the surrounding neighbor. To the extent that there may be some odor and/or noise associated with the construction of the Project, these will be temporary. In addition, other Tim Horton locations in the Town have been operating successfully with no significant noise, odor, or light impacts to the surrounding area.*

*Therefore, the Project will not adversely impact adjacent properties in any foreseeable manor. See Exhibit A (Site Plans).*

## **11. Other pertinent requirements of this chapter.**

*APPLICANT'S RESPONSE: The Applicant will endeavor to provide any other information or documentation that the Town Planning Board Members may deem necessary or appropriate for a full and proper consideration and disposition of the Application.*

In light of these outstanding approvals, we request agenda placement at the earliest possible meetings of (1) the Planning Board for review and recommendation to the Town Board on the Site Plan Application and Special Permit Application, (2) the AOD for approval and issuance of a Certificate of Appropriateness for the AOD Application and (3) the Town Board for referral of the Special Use Application to the Planning Board, and to hold a public hearing on the Special Permit Application.

Mr. Kaczor reported that he performed a *Google search* within a 5-mile radius of Orchard Park, regarding the number of Tim Horton's located here. He found a total of 17, and three are not a drive-through. He also established that this is not Mr. Miranda's only Tim Hortons in Orchard Park. The Petitioner feels that this location is a prime location considering its proximity to NYS Route 219, despite the nearness of other Tim Horton's.

Mr. Phillips spoke further regarding the Public Safety Committee report, traffic, the NYS DOT and the number of spaces allowed for stacking. He also reported that the Conservation Board granted approval for the Landscaping Plan.

Chairman Fabinsky stated that in order to recommend a Special Exception Use, there are several points he would like clarification on:

- With regards to the Comprehensive Plan, it is indicated that the Village of Orchard Park is to be the "center of commerce" noting that we do not want to lose the "community center" feeling by spreading out too much.
- Given the number of and proximity of Tim Horton's, he would like to know if there was a standardized way Tim Hortons determines their definition of "need" with respect to proximity and distance.
- This Site is on a NYS DOT Scenic Byway, and the DOT may have requirements governing Architecture as it relates to viewshed.
- This intersection purportedly has a high accident rate, can the Applicant provide more information about the Accident rate compared to other intersections.
- There are additional developments approved on Jewett Holmwood Road, can the Applicant provide information on how that will impact safety of the intersection.
- The DOT is planning to add bike lanes and turning lanes, how will that effect safety at the intersection.

The Chair also commented on the traffic flow stating that he had noted where the driveway to this proposed Tim Horton's would be located, and that if two or three cars were stopped at the intersection on Chestnut Ridge Road, it would effectively block the entrance, potentially causing traffic trying to enter the driveway to back-up onto the road. He stated that he had watched traffic at this section over several days, three times a day, and found this to be a common occurrence.

In response to the Chair's comments, Mr. Phillip's stated that Town Code did not specify the definition of "need" and noted that it is more than 2-miles to the nearest drive through. With regards to comments about the Comprehensive Plan, Mr. Phillips feels that is geared towards retail, not drive-through facilities.

Dr. Bennett stated that he has safety concerns regarding crossing the intersection, noting that there is a sidewalk there which encourages pedestrian crossings, despite the busy nature of the intersection. He also stated that due to proximity to the 219, some commuters speed up as they approach the intersection.

Mr. Murray noted that the last Traffic Impact Study (TIS) was done in 2019, and he feels that the TIS is too old.

Mr. Kaczor expressed his concerns that despite directional signs, drivers may try to take a disallowed left turn, causing accidents. The Chair commented that he feels this is a real risk. Mr. Kaczor noted that other Tim Horton's in nearby towns had traffic studies done, and they now have significant traffic issues. He feels that a TIS tends to support the claims of the Petitioner. The Petitioner feels that the review by the Town's consultant mitigates that risk.

The Petitioner stated that they had hired a company to do two different TIS's, where no issues were found. The Town Board had a consultant review the Traffic Study and found no issues, and the NYS DOT approved the TIS. Mr. Phillips feels that it would be unreasonable to ask for another TIS at this point. He also feels the TIS takes into account future growth.

Mr. Mellerski is in favor of the Special Exception Use. He feels that regard to the Comprehensive Plan's goal of "supporting existing businesses", Mr. Miranda owns another Tim Horton's in town which is well maintained and well respected. With regards to the Comprehensive Plan's goal of "recognizing original assets" this project can be supported, noting that there are several unique nearby features including Chestnut Ridge Park, and the Stadium. Mr. Mellerski noted "need" is difficult to establish, however he feels it would be an improvement to the property.

Dr. Bennett feels he needs more time to go over the data more thoroughly. He feels there may be an oversaturation of the market.

The Chair inquired about any potential "proximity standards" to other stores that may be in effect. The Petitioner stated that the placement of Tim Horton's was approved by the Corporation.

Mr. Baich established that the proposed building would be 32,000 square feet, and that there would be a 12,000 square foot retail space. He discussed the additional parking requirements for retail space. The Petitioner feels that the Code covers this.

Acting Planning Coordinator, Remy C. Orffeo discussed the increase in traffic in the Town. He feels allowing this project will only exasperate existing traffic. He is in agreement with Mr. Kaczor that Traffic Studies can be unreliable. He feels there is a real safety concern locating this business at this corner, and he suggested an alternative way this corner could be developed.

The Chair feels that while there may be no impact on school buildings, there may be impacts on school busing routes and stops and he would like more information. The Petitioner feels as the immediate neighbors are not residential, there is no impact. The Board members state that there are several nearby residences.

With response to the comments on accident rate, safety and the TIS, the Petitioner feels that much of this information is provided and accounted for. The Chair inquired if the TIS included the new planned development of the Birdsong Subdivision and the NYS DOT planned improvements. The Petitioner asserted that in the event the DOT moves forward with their plans, the Petitioner would be required to work with the DOT before they are granted DOT approval. The Petitioner suggested that a recommendation could be made stipulating that the Petitioner get an updated DOT approval, which they will be required to do regardless. The Petitioner feels that all of the information before the Board indicates that this project is not a safety risk.

Mr. Kaczor clarified that his concerns related to other Tim Horton’s in nearby towns who had TIS but are now experiencing significant issues. The Petitioner feels that there is nothing more they can submit to prove the safety of the project. The Petitioner requests that the Board make a recommendation to the Town Board either for or against the Special Exception Use Permit.

Mr. Heppner made a **MOTION**, seconded by Dr. Bennett, to **RESERVE** their decision. It was noted that the Application was complete.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BAICH	AYE
BENNETT	AYE
HEPPNER	AYE
KACZOR	AYE
LONG	AYE
MURRAY	AYE

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

CONCEPT REVIEW:

1. P.B. File #02-2024, 200 Sterling Drive, located in the Sterling Park Industrial Center on the north side of Mile-strip Road, south of Red Tail Drive, Zoned I-1. Community Healthcare Trust is requesting Site Plan Approval and a Building Permit to expand parking. (SBL#152.19-1-23)

APPEARANCE: Mr. Chris Wood, Carmina – Wood Designs

Mr. Wood presented and explained the Community Healthcare Trust project to construct 32- additional-parking spaces on the east side of the medical office building. He stated that the expansion is necessary due to a parking space shortage that currently exists for their operation. This shortage of spaces will become further increased by a future new tenant moving into the building. He explained that parking standards have changed since this medical office building was built. They are now required to have one space per 150 GSF. He also noted that the Orchard Park Zoning Code was revised to allow Front Yard Parking in an I-1 Zone. If they are allowed to expand, this will help alleviate the parking space shortage. He also discussed the storm water de-tails, noting that there are no state wetlands located on the site. However, there are Federal wetlands potentially located in the SW corner. The project is not located in the 100-year floodplain. He also stated that they received Conservation Board approval on 3/05/2024 for their proposed Landscaping Plan.

2. P.B. File #26-2023, Fox Run, One Fox Drive, located on south east side corner of Big Tree Road (Route 20A) and California Drive, Zoned B-2. Proposed expansion within their complex.

APPEARANCE: Peter Baldwin, One Point Consulting  
Cole Papasergi, Marathon Engineering

Mr. Baldwin presented and explained the proposed expansion of Fox Run, a “Senior Living Community”, located on 50.6+/- acres, corner of Big Tree Road (Route 20A) and California Drive, Zoned B-2 commercial. He explained the need for the expansion. He also noted that the Conservation Board approved their Landscaping Plan on 6/4/2024. It was established that there are 384-parking spaces, and after the project, the parking will be reduced to 325-parking spaces. The Applicant feels confident that their parking will be adequate, based on

“banked” Greenspace that can be converted into parking, if needed. Town staff confirmed that the parking requirements for this project will be established by the Planning Board, as the B-2 District code does not include parking requirements for a Senior Living Community. The height of the proposed buildings was discussed at length.

3. P.B. File #02-2024, Ellicott Development, 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.

Ellicott Development is requesting Site Plan Approval and a Building Permit to construct a proposed Convenience Store and Fueling Facility. (SBL#’s 172.05-1-1.1, 172.05-1-36.2)

APPEARANCE: Mr. Sean Hopkins, Attorney  
Mr. Jeremy Wessel, Ellicott Development

Mr. Hopkins distributed information for the members’ review, and explained that Ellicott Development is requesting to construct a single story Convenience Store with a Fueling Facility. He confirmed the location noting that the building will be approximately 4,109 +/- sq.ft. in size with a pick-up window and fueling canopy for six (6) dispensers. Additional site work will include the construction of 23-parking spaces, of which 4-spaces will be dedicated to electric vehicle charging stations. In addition, new curb cuts are planned along Abbott and Big Tree Roads, with a vinyl privacy fence erected along the eastern and southern property lines. They are requesting two (2) Special-Use Permits for the proposed redevelopment to allow a “Drive-in service facility” and an “Automotive Service Station” in a B-2 Commercial Zoning District. The documents distributed contained their response to the 11-questions the Town needs answered, prior to their decision to the Town Board.

There being no further business, the Chairman adjourned the meeting at 9:49 P.M.

DATED: 7/01/2024  
REVIEWED: 7/06/2024

Respectfully submitted,  
Rose Messina,  
Recording Secretary

Harold Fabinsky, Planning Board Chairman