

**PLANNING BOARD JUNE 13, 2024, MEETING MINUTES**

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

**EXCUSED:** Philip Murray

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator  
Thomas Ostrander, Assistant Town Municipal Engineer  
Thomas Minor, Supervising Code Enforcement Officer  
John Bailey, Deputy Town Attorney  
Anna Worang-Zizzi, 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 April 2024 Planning Board Meeting minutes was unanimously waived as each Board Member had previously received a copy.

Mr. Kaczor made a MOTION, seconded by Dr. Bennett to Approve the Minutes as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY                    AYE  
BENNETT                    AYE  
LONG                        AYE  
HEPPNER                    AYE  
KACZOR                     AYE  
BIACH                        AYE

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

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

**REGULAR BUSINESS:**

1. **P.B. File #17-24, Keystone Novelties, 3009 Union Road parking lot of Dollar General Store, south east corner of Michael and Union Roads, Zoned B-2.** Keystone Novelties is requesting Planning Board approval for an Outdoor Tent Display to sell fireworks, 6/21/2024 through 7/05/2024 tabled @ April & May meeting. (SBL# 152.12-2-7)

**APPEARANCE:** *William and Charity Chrystler – Keystone Novelties representatives*

The Applicants stated that they had utilized this site in years past, however, they were last approved for a different location and will be returning to this site this year.

The Chair inquired if there were any changes from previous years. The Applicant stated that there were some new products but the tent, signage, etc. was the same. The Chair established that there would be 24 hour supervision at the tent.

Mr. Baich confirmed that there would be a staff member on site from the time the fireworks arrived to the time they left.

Mr. Heppner established that only those fireworks which complied with NYS law would be sold, and that the law would prohibit large explosives.

Building Inspector Thomas Minor commented that materially, this display was the same as in previous years.

**BOARD DISCUSSION**

Mr. Kaczor made a **MOTION**, seconded by the Chair, Regarding Planning Board File #17-24, to **GRANT** an Outside Display, for Keystone Novelties from June 21st through July 5<sup>th</sup>, 2024, to operate a display with fireworks for sale in the parking lot of Dollar General Parking Lot, South East corner of Union & Michael Roads, based on the location plan received 4/06/2024 and the following conditions and 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.
4. Sales to take place in a 40-ft. x 60-ft. tent.
5. Hours of operation are 9 AM to 9PM daily, 9AM to 10:30PM on the 3<sup>rd</sup> and 4<sup>th</sup> of July.
6. If any issues or complaints arise, the Building Inspector is to submit a report to the Planning Board detailing the complaint.

THE VOTE ON THE MOTION BEING:

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

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

2. **P.B. File #11-24, Tops Plaza, 3201 Southwestern Boulevard, "Bobs' Furniture", located in former Stein Mart store, Zoned B-2.** Planning Board to review signage directing customers to the rear entrance for furniture pickup. (SBL# 152.16-7-1.11)

**APPEARANCE:** *Benji Croom – Flexlume representative*

The Applicant explained that they are proposing three (3) signs directing customers to the back of the building to pick up furniture. The goal would be to move them expeditiously through the area which includes a fire lane.

Building Inspector Tom Minor noted that no advertising would be allowed on directional signs. The Applicant agreed. Mr. Minor also discussed parking noting that parking in the fire lane was prohibited. The Applicant was unsure about the placement of the fire lane and parking.

The Chair established that there are currently signs on the building directing drivers to keep the Fire Lane clear.

Mr. Heppner had concerns about the fire lane and parking.

Mr. Kaczor made a **MOTION**, seconded by the Chair, to **GRANT** the sign permit request based on the submitted plan received 6/5/24 and the following conditions apply:

1. This is a Type II SEQR action and therefore no determination of significance is required.
2. Three (3) signs are approved and permitted by Section 144-37B(1).
3. The sign **is not** illuminated based on the submitted sketch plan.
4. The plan provides sign dimensions and further details, the location of the sign is shown on the submitted sketch plan dated 6/5/24.
5. A permit fee shall be paid in accordance with Section 144-70A(1).
6. The permit will be issued after review and inspection by the Building Inspector to insure safety with regard to the fire lane and parking.

THE VOTE ON THE MOTION BEING:

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

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

3. **P.B. File #26-23 Fox Run Senior Living Facility, 1 Fox Run Lane, Zoned B-2.** Applicant is seeking Planning Board approval for Pre-Application findings for three (3) Senior Living apartment additions. (SBL# 172.00-1-1.111) Note: denied Area Variances requested on 11/21/23

**APPEARANCE:** *Patrick Mixdorf – OnePoint  
William Wlodarczyk – CEO, Fox Run*

The Chair established that this project was before the Board this evening for Pre-Application Findings which was an administrative action, and that more detailed presentations would be required at future points in the Planning Process.

Mr. Mixdorf explained that the project would entail adding 61 apartments and 8 patio homes and some small expansions to existing common areas.

Mr. Baich inquired approximately how many buildings would be added. The Applicant explained three apartment buildings would be added, four patio home additions and 5,000 square feet in additions to common areas.

Mr. Kaczor inquired about parking. The Applicant stated that there are currently 384 parking spaces and there will be 325 after. The Code is unclear and allows the Planning Board jurisdiction. Mr. Kaczor inquired about the number of stories proposed. The Applicant stated that under Town Code, their project constituted two and a half stories.

Dr. Bennett inquired about the definition of two and a half stories. The Applicant explained that under Town Code, the third story could only be ½ the square footage of the stories below and could contain living space.

Building Inspector, Tom Minor feels that the Town’s intent is to not have three story buildings, and the Town

will be adjusting Town Code going forward, however, this project is already underway.

Deputy Town Attorney, John Bailey, established that a Variance request for three full stories had been denied by the Zoning Board of Appeals.

Mr. Kaczor inquired about the potential for outside events to use their parking, mentioning a swim program. Mr. Wlodarczyk stated that that particular program was in place while the group’s pool was renovated and would not be returning to their campus. There are limited other such events, including a poorly attended farmer’s market.

The Chair established that there was no applicable use in the schedule for a B-2 Zone as far as parking, however there will be more parking than required in the “Senior Residential” Zone which was established after Fox Run was built.

Acting Planning Coordinator, Remy C. Orffeo, feels that this project violates Code, and that the Board should take a “deep look” at allowing two and a half stories. Mr. Wlodarczyk feels that the Board was enthusiastic when they were seen for Concept Review.

Mr. Ostrander noted that the Applicant had made substantial corrections since his last review letter and had only minor corrections before the Town Engineering department could grant preliminary engineering approval.

Mr. Kaczor made a **MOTION**, seconded by Mr. Baich, to **ACCEPT** the Pre-Application Findings based on the submitted Survey received 3/19/2024 and the Applicant has detailed:

- The total acreage is 7 +/- acres.
  - The desired zoning classification is B-2 Zone.
  - The number of possible stages of completion is one (1).
  - The applicant's position with respect to title is “Owner”
1. All public notices have been filed.
  2. The zoning will remain as is.
  3. Access to surrounding properties is through Big Tree Road AND California Road.
  4. Recreation fees will be provided in accordance with Section 144-70E of the Town Code and shall be paid, or provided, prior to the Final Plat Plan Public Hearing.
  5. Subdivision Development fees, per Section 144-70D of the Town Code, shall be paid prior to the Preliminary Plat Plan Public Hearing.
  6. Public Hearing fees shall be paid prior to the Preliminary Plat Plan Public Hearing.
  7. The Applicant has completed and submitted the Short EAF, for this Unlisted SEQR Action.

THE VOTE ON THE MOTION BEING:

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

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

Mr. Heppner made a **MOTION**, seconded by Mr. Kaczor, to set a Preliminary Plat Plan public hearing when the

Chairman deems it appropriate.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
HEPPNER	AYE
KACZOR	AYE
BAICH	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.** Ellicott Development is seeking a “Special Exception Use Permit” to allow a “Drive-thru Facility” and an “Automotive Service Station” in a B-2 Zone. Note: Variance was granted for driveways on 1/16/24. (SBL#’s 172.05-1-1.1, 172.05-1-36.2)

**APPEARANCE:** Sean Hopkins – Attorney  
 Jeremy Wassel – Ellicott Development

The Chair noted that this Board will make a recommendation to the Town Board. The Town Board will then hold a public hearing at which the public may comment.

Mr. Hopkins stated that the Planning Board had previously sought Lead Agency Status and the 30-day comment period will expire before July’s meeting. The project has been through the Conservation Board as well as the Zoning Board of Appeals. They will require Site Plan Approval in the future.

Mr. Hopkins went through the criteria for a Special Exception Use Permit as detailed on the Special Exception Use Application and as recorded below:

**1. The relation of the proposed project to the long-range or comprehensive plan of the development of the Town.**

Response: 4297 & 4309 Abbott Road has been an underutilized vacant site at a major intersection in the Town of Orchard Park for an extended period of time. The proposed project has been thoughtfully designed to meet the Town's Zoning code and achieve several goals of the comprehensive plan. The proposed project has been designed to ensure it is an appropriate scale, style, streetscape and greenspace for the neighborhood. The building's facade will feature a mix of storefront glass, faux stone veneer and fiber cement siding, peaks, and a canopy with decorative wood truss over the main entrance. Additionally, appropriately sized landscaping buffers are being proposed along the southern property line to provide adequate screening to the adjacent single-family dwelling. See item #6 below for additional information.

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

Response: This area in the Town has been lacking a high-quality convenience store. The proposed store will provide a wide variety of coffee, beverages, snacks, etc. and will offer an extensive menu of high-quality made-to-order food including pizzas, subs, calzones, and breakfast items. The proposed store will be a welcome service to the neighborhood that will help maintain or improve the quality of life in the community.

**3. The compatibility of the proposed project with adjoining land uses and with other proposed developments, 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.**

Response: The proposed project is located at the southeast corner of Abbott Road and Big Tree Road intersection. Nearby uses to the site include single-family residential dwellings, restaurants, an automotive repair shop, commercial parking lots, vacant land, etc. The proposed convenience store fits into the character of the neighborhood and represents a dramatic improvement compared to the existing site conditions

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

Response: The redevelopment project has been designed with safety in mind. We are proposing one (1) curb cut along Big Tree Road and one (1) curb cut along Abbott Road. Both curb cuts have been located as far away from the intersection as possible. A comprehensive Traffic Impact Study was performed by CESO, dated November 13, 2023 based on input received from the Town. The Traffic Impact Study included the following findings and conclusions:

- A majority of trips generated are pass-by trips [customers already driving by the Project Site]; The proposed driveway locations as depicted on the Site Plan will not result in any adverse traffic impacts; and
- The proposed project will not result in any adverse traffic impacts.

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

Response: The parking for the proposed redevelopment project has been designed to meet the requirements of the Zoning Code. There will be 23 parking spaces, of which 4 spaces will be dedicated to Electric Vehicles charging stations. The parking lot will be well-lit and parking spaces are located in front of the proposed building to ensure customer safety. Additionally, the redevelopment project has been designed to limit any obstructions of sight lines at the Abbott Road and Big Tree Intersection.

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

Response: As shown on the attached Landscaping Plan, the Applicant is proposing to install six (6) deciduous trees, 6 evergreen trees, and a vinyl privacy fence along our southern property line in order to maximize the buffer/screen the adjacent single-family residence at 4317 Abbott Road. Additionally, we are proposing to install a 4' vinyl privacy fence along our proposed eastern property line. The Conservation Board approved the Landscaping Plan during its meeting on March 5, 2024.

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

Response: The redevelopment project does not include any "free areas" for recreational use given its size and the proposed commercial use. The nearest public park, Brush Mountain Park, is located 1.1 miles from the Project Site.

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

Response: The Project Site is located approximately 1.1 miles from Windom Elementary School, approximately 2.1 miles from South Davis Elementary School and approximately 2.3 miles from

Orchard Park Middle School. Given the location of the Project Site and the proposed commercial use of the proposed project, there will be not be any demand for educational services and no other adverse impacts on the schools.

We are proposing to connect the proposed project to the nearby public utilities (i.e. gas, electricity, sewer, water, etc. The project will have minimal utility demand and will not have a substantial impact on public utilities. All utilities on the Project Site will be privately owned and maintained.

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

Response: The project will not have an adverse impact on the health and safety of the residents or workers on adjacent properties or in the general neighborhood.

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

Response: The proposed project will meet all the current building code and zoning requirements and will not create an adverse impact (i.e. fire hazards, offensive odors, smoke, fumes, noise, and light) on the surrounding area. The project will require a Building Permit and this will ensure compliance with applicable building standards.

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

Response: The Applicant has previously submitted engineered plans and supporting documentation demonstrating compliance with applicable technical standards.

The Chair inquired if the report referenced was a Traffic Impact Statement or a Safety Statement, and if the stadium was taken into account. The Applicant stated it was a Traffic Impact Statement. The Applicant stated that it was not possible to account for game day traffic.

Assistant Town Municipal Engineer, Mr. Ostrander confirmed that the report analyzed six intersections.

Mr. Kaczor inquired about existing curb cuts and the drive through queuing. The Applicant stated the existing curb cuts would be closed and the drive through queuing should be minimal.

The Chair established that other Crosby's average 8-pickups per day and there would be room for up to 9-vehicles.

The Board members discussed the proposed charging stations, and the Applicant confirmed they would count as parking spaces.

Mr. Minor stated that in the past, the Planning Board had not interpreted charging station parking spots as contributing to the parking spaces required by Town Code. Additionally, while these spots must be handicap accessible, they are not permitted to "count" as part of the overall required handicap parking spots.

Mr. Baich made a **MOTION**, seconded by Mr. Heppner, to **RECOMMEND** to the Town Board **GRANT** the request for a "Special Exception Use Permit" to allow a "Drive-in Facility" and Automotive Service Station at 4297 & 4309 Abbott Road, Zoned B-2 based on the following:

1. This is an Unlisted SEQR action based on the submitted Short EAF Part 1, and a Negative Declaration shall be made.
2. Public Hearing fees must be paid prior to the public hearing, Section 144-69 of the Town Code.

3. Article VI (Section 144-43(c)(1-11)) has been satisfactorily addressed as follows:
- a. The proposed project is in compliance with the Town's long-range Comprehensive Plan.
  - b. The applicant has demonstrated a need for the project.
  - c. The project is compatible with adjoining land uses and proposed developments, and will not have a negative impact on the adjacent land value or public safety.
  - d. The applicant has demonstrated an orderly flow of traffic ingress and egress.
  - e. The Applicant has provided suitable parking facilities.
  - f. Landscaping as indicated on the proposed plan will provide adequate screening.
  - g. Free area for recreation is not required.
  - h. The nearness and impact on schools and utilities is not an issue.
  - i. The health and safety of adjacent properties is not affected.

THE VOTE ON THE MOTION BEING:

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

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

5. **P.B. File #12-24 (previous P.B. File #15-23) 3636 South Benzing Road, located on the west side of South Benzing Road, North of an existing Commercial Plaza, Zoned I-1**, Joe Deck is requesting approval to eliminate phasing on a previously approved project. (SBL# 161.06-1-8).

**APPEARANCE:** *Chris Wood – Architect*

Mr. Wood explained that Mr. Deck had previously submitted the project as a phased project, it received Engineering Approval, and now he wishes to complete the work in one phase.

Mr. Ostrander confirmed that the Engineering department reviewed the entire project when originally submitted.

Mr. Kaczor confirmed with Mr. Wood that these buildings were small shop type buildings and no mulch, topsoil etc. would be stored outside.

The Chair inquired about the potential for vehicle repairs at this Site. The Applicant stated that that is not the purpose of these buildings.

Dr. Bennett made a **MOTION**, seconded by Mr. Heppner, to **GRANT** the request to eliminate phasing on the previously approved project, allowing the work to be completed in one phase, noting that Engineering Approval

was granted in March 2024.

ON THE QUESTION

Mr. Ostrander established with Mr. Bailey that this was a recommendation to the Town Board to Authorize a Building Permit.

THE VOTE ON THE MOTION BEING:

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

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

- 6. **P.B. File #24-24, 3050 Orchard Park Road, located on the west side of Orchard Park Road, north of Weiss Street, Zoned B-2**, Southtowns Radiology is requesting Outside Display approval to place a trailer at the rear of the business for a PET/CT unit. (SBL# 152.12-3-2.111)

**APPEARANCE:** *Dan Strauch – Southtowns Radiology*

Mr. Strauch explained that Southtowns Radiology would like to park a trailer in the rear of their building to house a PET/CT unit. He feels this unit would help them provide excellent care, noting that it is the only such unit south of Buffalo.

Dr. Bennett had questions relating to the storing of hazardous Bi-products. Mr. Strauch explained that they have provisions to keep the items in a “hot lab” until they are ready for disposal.

Mr. Kaczor inquired about how often the unit is there currently. The Applicant stated that the unit and trailer are there occasionally, and they feel that housing it on a more permanent basis would improve patient care.

The Chair inquired about screening or traffic barriers and the Applicant stated that it would be in the rear of the building and would not be easily visible from the front or the street.

Dr. Bennett made a **MOTION**, seconded by Mr. Kaczor, to **GRANT** an **OUTSIDE DISPLAY**, based on the letter of intent and location map received June 5, 2024, and 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. There will be no banners or additional signage for this facility.
5. The approval is from July 1, 2024 to July 1, 2025. An additional one-year approval will be contingent upon the recommendation of the Building Inspector.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
LONG	AYE
HEPPNER	AYE

KACZOR  
BIACH

AYE  
AYE

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

There being no further business, the Chairman adjourned the meeting at 8:16 P.M.

DATED: 6/24/2024  
REVIEWED: 6/29/2024

Respectfully submitted,  
Anna Worang-Zizzi,  
Recording Secretary

Harold Fabinsky, Planning Board Chairman