

PLANNING BOARD NOVEMBER 14, 2024, MEETING MINUTES**MEMBERS:**

Harold Fabinsky, Chairman
Gregory Bennett
David Kaczor
Henry Heppner
Alex Long

EXCUSED:

Phil Murray
Nicholas Baich
David Mellerski
Remy C. Orffeo, Acting Planning Coordinator

OTHERS PRESENT:

John Bailey, Deputy Town Attorney
Thomas Ostrander Assistant Municipal Engineer
Thomas Minor, Supervising Code Enforcement Officer
Anna Worang-Zizzi, Director of Community Development
Rose Messina, Secretary

The Chairman announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:02 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 September Special Meeting and September Regular Meeting Planning Board minutes will be voted upon. The reading of these minutes was unanimously waived, as each Board Member had previously received a copy

Dr. Bennett made a **MOTION**, seconded by Mr. Long, to **APPROVE** the Minutes of the September 4, 2024 Special meeting as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY
BENNETT
KACZOR
HEPPNER
LONG

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

Dr. Bennett made a **MOTION**, seconded by Mr. Long, to **APPROVE** the Minutes of the September 12, 2024 meeting as presented.

THE VOTE ON THE MOTION BEING:

FABINSKY
BENNETT
KACZOR
HEPPNER
LONG

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

REGULAR BUSINESS

1. **P.B. File #29-24, 188 Thorn Avenue, located on the north side of Thorn Avenue, east of Duerr Road, Zoned B-2.** Planning Board to review proposed construction of an 18 parking spot expansion of the parking lot for Thorn Avenue Animal Hospital. (SBL# 172.08-4-12)

APPEARANCE: Mr. Chris Wood, Carmina – Wood Design
Mr. Joseph Clauss, Applicant/Owner

Mr. Wood stated that this project previously appeared before the Board on 8/08/2024 for a Concept Review. He reviewed details as follows:

- Mr. Claus owns the adjacent parcel on the north east side of his Business property, and would like to construct 18-additional parking spaces. This will provide his practice with a total of 30-parking spaces for employees and customers. The parking is located behind their facility and has very little visibility from Thorn Avenue. Currently their over flow parking is located across the street.
- A 6-ft. white fence will be constructed along the east and south side of the proposed parking lot to add screening for the adjacent residents.
- Site lighting is not proposed as the hours of operation are mainly during daylight hours.

Mr. Long established that the residents were contacted regarding the parking expansion and the fence. There were no concerns voiced by the neighbors regarding this project.

Mr. Heppner complimented this project, stating, this is a successful business that achieved safer parking carried out by “good neighbors” working together.

Mr. Heppner made a **MOTION**, seconded by Mr. Bennett, to **AUTHORIZE** the Town Board to **APPROVE** the presented Site Plan and **ISSUE** a Building Permit to construct an eighteen (18) parking spot parking addition based on the Site Plan submitted on 11/6/24:

1. All public notices have been filed.
2. This is an Unlisted Action, based on the Short EAF submitted on 7/25/24 and a Negative Declaration is made.
3. There is no proposed lighting and should lighting be added in the future, the Applicant is directed to return to the Planning Board for review.
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. A 6-ft. white vinyl stockade fence shall be erected as indicated on the plan.
7. Town Engineering approval was granted on 11/7/2024.

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

FABINSKY
BENNETT
KACZOR
HEPPNER
LONG

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

2. **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.** Applicant is requesting a SEQR determination. (SBL#161.03-1-41)

APPEARANCE: Mr. Chris Wood, Carmina – Wood - Design
Mr. Andrew Romanowski, Applicant/Owner
Mr. Sean Hopkins, Attorney

Mr. Hopkins gave a brief history of this project. He stated that a revised project was submitted to address the Boards' concerns voiced at a previous meeting. The number of proposed units is reduced from eighty (80), to fifty-four (54). This is in compliance with the Town Zoning Code. The Landscaping Plan was approved by the Conservation Board on 7/02/2024, and the proposed buildings were moved back, away from the roadway, as requested.

Mr. Kaczor complimented the Applicant on their cooperation.

Chairman Fabinsky asked if anyone had additional questions. There being none, he asked for a member to make a motion.

Mr. Heppner made a **MOTION**, seconded by Dr. Bennett, to recommend that the Planning Board declare the following:

1. This is an Unlisted SEQR Action based on the submitted Long EAF, Part 1, and a Negative Declaration shall be made.

ON THE QUESTION

Attorney Hopkins discussed a correction to the motion. It should read "Unlisted SEQR Action based on the submitted **"Long EAF"**, not short EAF.

Mr. Heppner stated he agrees to the revised motion.

The Board members unanimously voted in favor of the revised motion.

THE VOTE BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

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

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

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

Mr. Hopkins distributed a summary of the project for the Board Member's review.

Chairman Fabinsky stated that at the October meeting this projects' review was tabled so Town Attorney John Bailey could respond to questions the members had.

Attorney Bailey stated that the Board has no action at this point to move forward.

Attorney Sean Hopkins noted that the Site Plan review has not taken place.

Mr. Heppner stated that under the advisement of our Deputy Town Attorney, the Applicants should return and no action taken.

4. **P.B. File # 38-24, 5200 Chestnut Ridge Road, Orchard Heights Senior Living, located on the west side of Chestnut Ridge Road, south of Ellicott Road, Zoned S-R.** Applicant is seeking Planning Board approval of a new sign. (SBL#184.08-1-1.1) A Variance was granted on 2/16/93.

APPEARANCE: Mr. Benjamin Croom, Flexlume Operations Manager

Mr. Croom distributed information regarding the proposed monument sign for "Orchard Heights Senior Living". The sign will be internally illuminated, and will include the address number on the front and back. This will assist First Responders, Visitors, and Residents to easily find the entranceway during the day and night. It will be placed where the current sign is located, and use the existing electrical receptacle.

Building Inspector Minor reported that he feels the proposed sign is less intrusive.

Dr. Bennett verified that the signage meets the Town Code requirements. The sign is 25-ft. off the roadway and it will not interfere with traffic when lit.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner to **GRANT** the Sign Permit request based on the submitted plan received 10/17/24 and the following conditions:

1. All public notices have been filed.
2. This is a Type II SEQR action and therefore no determination of significance is required.
3. One sign is approved and permitted by Section 144-37B(1).
4. The sign is internally illuminated. The submitted plan provides the sign dimensions and further details. The location of the signage is shown on the submitted sketch plan dated 10/17/24.
5. A permit fee shall be paid in accordance with Section 144-70A(1)

THE VOTE BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

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

5. **P.B. File #42-24, 3669 Southwestern Blvd. Mercy Ambulatory Center, Zoned I-1.** Applicant is seeking Planning Board Approval of directional signage to be located within the campus.

APPEARANCE: Mr. Chad Ratajczak, System Director Facility Planning, Design & Construction

Mr. Ratajczak presented the proposed plans for directional signage at the MAC Center to the Board Members.

He explained that ambulances and oversized vehicles are hitting the overhead canopy at the Emergency Department entrance to the MAC Center. They are seeking to resolve this problem with six (6) new signs, located per the submitted plan.

Chairman Fabinsky established the signage will not be illuminated. In addition the signage is to direct vehicles to not park where the ambulances are.

Mr. Heppner reaffirmed that the drop-off area will remain the same.

Building Inspector Mr. Minor reminded the Applicant that the signs cannot have advertising on them.

Mr. Kaczor stated that he hopes the new signage rectifies this situation.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, to **GRANT** the sign permit request based on the submitted plan received 10/31/24 and the following conditions apply:

1. This is a Type II SEQR action and therefore no determination of significance is required.
2. Six (6) signs are approved and permitted by Section 144-37B(1).
3. The signs are not illuminated based on the submitted sketch plan. If the sign is to be illuminated a Lighting Plan shall be submitted to the Planning Department for approval. The plan provides sign dimensions and further details, the location of the sign is shown on the submitted sketch plan dated 10/31/24.
4. A permit fee shall be paid in accordance with Section 144-70A(1).
5. The signs shall be located in such a way that they do not impede the view of drivers.

THE VOTE BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

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

6. **Code Correction** – Planning Board to make a recommendation to the Town Board on a Code correction.

The Planning Board discussed the proposed code correction and affirmed that the Town Board proceed with the proposed correction, to Section 144-5 Terms defined, and Section 144 attachment 15.

Mr. Long made a **MOTION**, seconded by Mr. Heppner, that the Town Board make a **CORRECTION** to **Section 144-5 Terms defined and Section 144 attachment 15 of the Town Code and RECOMMEND ITS ADOPTION by the Town Board as follows:**

Amend current §144-5 Terms Defined and §144 Attachment 15 Supplemental Height, Lot, Yard and Bulk Regulation

§144-5 Terms Defined

BASEMENT (f/k/a CELLAR)

A story partially underground.

HABITABLE AREA

That space contained within the walls of the principal building that facilitated areas of living, excluding all areas of a porch, mechanical equipment room, garage, attic or unfinished basement.

STORY

That portion of a building between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

STORY, HALF

A story under a sloping roof, having a ceiling height of 7 ½ feet or more not exceeding ½ of the floor area of the uppermost full story in a building. Areas less than five feet in height are not to be considered as habitable space.

*§144 Attachment 15 Supplemental Height, Lot, Yard and Bulk Regulation**Notes:*

**9. If more than ½ of its clear height is below the average level of the adjoining ground then such a basement (see BASEMENT §144-5 Terms Defined) shall not be considered in determining the permissible number of stories.*

** to be added to the "Maximum Height for Building's Heading" on the "Supplemental Height, Lot, Yard and Bulk Table"*

THE VOTE BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

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

7. **P.B. File #34-24, Lexington Heights (Birdsong Parts 4 & 5), located west of Transit Road and North of Jewett Holmwood, Zoned R-1.** Applicant is proposing rezoning From R-1 to R-1 with a Conservation Management Overlay. Planning Board to seek Lead Agency Status.

APPEARANCE: Sean Hopkins, Attorney
 Jason Bufford, Greenman – Pederson Engineering
 David Capretto, Applicant present at meeting

Mr. Hopkins distributed a booklet containing information that highlights the development of the Birdsong Subdivision. (N.B. this booklet will be part of the minutes as an addendum.) He explained that Mr. Capretto is the current Owner of the remaining undeveloped portions, and he would like "Parts 4 & 5" (currently Zoned R-1) rezoned to "R-1 – CMO", which is a Conservation Management Overlay District. Rezoning to a CMO will reduce the number of homes constructed here to one-hundred twenty nine (129). The CMO will be known as "Lexington Heights". Mr. Hopkins stated that the proposed CMO was presented to the existing Birdsong Home Owners Association "HOA" during a meeting held on October 9, 2024. The rezoning request was presented to the Town Board on May 1, 2024. The concerns voiced by the "Birdsong HOA" during the hearing included the proposed three (3) public roadways connecting to the existing Birdsong Subdivision, along with two (2) roadways connecting to Transit Road. Several concerns included construction vehicle access to the site, and connectivity to the existing Birdsong Subdivision. Also discussed was Part VIII, which initially was requested to have the CMO designation; however, the designation was lifted and six-lots (6) will be constructed here. Mr. Hopkins noted that the Applicant is not requesting the issuance of a SEQRA

Determination or a Recommendation on their request for the CMO this evening. He further explained that the project development of the Birdsong Subdivision spans over many years. The attached addendum is the presentation Mr. Hopkins submitted to the Planning Board. Please refer to this for additional information.

Several key points are:

- The Planning Board reviewed and recommended approval of Part 5 CMO on 5/1/24.
The CMO will consist of 86-residential lots upon 63.7-acres of the total overall project site, with 81.9-acres of permanent Open Space. Total greenspace for the entire project is 198-acres. Town Board held public hearings and work sessions. The CMO Application for Parts 4 and 5 was submitted on September 16, 2024. The name of the CMO Community is "Lexington Heights".
- CMO status is requested for both Parts 4 & 5 submitted on 9/16/24.

Their project team attended meeting with HMO on 10/9/24 and gave a presentation regarding the requested CMO to include Part 4 & 5. A comment letter from the Planning Department dated October 8, 2024 was discussed. Mr. Hopkins told the members there is a snow storage area and that Subdivision approval will be required, ensuring their compliance with applicable technical standards for Stormwater Management, Sanitary Sewer, etc.

- Traffic and Construction Access

Construction access limited to Transit Road only.

- Proposed Conditions
 1. Project Sponsor will limit construction access to Transit Road with two ingress/egress accesses.
 2. Name of CMO: "Lexington Heights".
 3. Gated and locked "emergency access only" with no roadway connections to the existing Birdsong Subdivision from Parts 4 & 5.

Mr. Hopkins gave 100% assurance that there will never be public roadways connecting to the Birdsong Subdivision, and that the "emergency access only" connections will be subject to a "Declaration of Restrictions" to be recorded at the Erie County Clerk's Office prohibiting connections between the Lexington Heights CMO and the Birdsong Subdivision at any time in the future. There will be a gated, locked access for water maintenance, subject to Town Engineering's review. The current plan submitted reflects this requirement.

The Chairman suggests the Board table their review as there is a large amount of material to review.

Mr. Fabinsky made a **MOTION**, seconded by Dr. Bennett to **TABLE** their review.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO TABLE PASSES.

The members discussed the project and the proposed homes. It was learned that the "Lexington Heights CMO homes will start at \$800,000. It was also established that there will be no condos built and, all setbacks meet the Town requirement.

Mr. Heppner made a **MOTION**, seconded by Mr. Long that the Planning Board **SEEK LEAD AGENCY STATUS** based on the Full SEQR submitted on 9/18/2024.

THE VOTE ON THE MOTION BEING:

FABINSKY	AYE
BENNETT	AYE
KACZOR	AYE
HEPPNER	AYE
LONG	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, THE MOTION TO TABLE PASSES.

CONCEPT REVIEW

8. **Taylor Road, Zoned R-D.** Pleasant Acres West LLC. is requesting to construct a flex warehouse facility with ingress/egress onto Taylor Road. (SBL#161-19.-2-1)

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

The Applicants presented and explained plans for a flex-warehouse project.

The Board members discussed the current Zoning of this 3.0 +/-Acre Vacant Land and the surrounding areas.

The Chairman noted that there are SEQR issues with this property involving the State designated Route 219/Scenic By -Way, and the wetlands located here.

The Board feels this is a Type 1 SEQR Action, and Mr. Hopkins disagreed with their determination. The history of the parcel was discussed briefly and the members do not feel this property is a good choice for a storage facility. It was noted that they want what is best for the community and that Pleasant –Acres West Subdivision is located nearby. They would like to see a functioning business that benefits the community.

There being no further business, the Chairman adjourned the meeting at 7:58 P.M.

DATED: 12/03/2024
REVIEWED: 12/24/2024

Respectfully submitted,
Rosemary M. Messina
Planning Board Secretary

Hal Fabinsky
Harold Fabinsky, Planning Board Chairman