**MEMBERS PRESENT:** Harold Fabinsky, Chairman

Nicholas Baich

Paul Bodden

Henry Heppner

David Kaczor

Philip Murray

**EXCUSED:** Joseph Liberti

Julia Mombrea, Alternate

**OTHERS PRESENT:** Remy C. Orffeo, Acting Planning Coordinator

Steven Bremer, Supervising Code Enforcement Officer

Thomas Ostrander, Assistant Town Municipal Engineer

Timothy Gallagher, Deputy Town Attorney

Rose Messina, Planning Board Secretary

The Chair announced exit procedures in the event of a fire alarm and called the Planning Board meeting to order at 7:00 P.M. in the Orchard Park Community Activity Center. He stated that if anyone appearing before the Board has a family, financial or business relationship with any member of the Board, it is incumbent upon that person to make it known under State law and the Town Code of Ethics.

The Chairman stated that the August 13, 2020 meeting minutes are not available now and will be voted on at a future meeting.

1. P.B. File #23-12 & File #08-2020, Orchard Heights, 5200 Chestnut Ridge Road, Zoned R-3, with SR designation. Review of approved Site Plan regarding dumpsters. Tabled by the Board at the 8/13/2020 meeting.

APPEARANCE: Mr. Sean Hopkins, Hopkins, Sorgi, & McCarthy

Mr. Josh Klotzbach, Hamister Group LLC

The Chairman explained the nonconforming issues at this site are the lighting, and dumpsters. He noted that the lighting issue is resolved. However, the dumpster issues still exist. The Building Inspectors’ Office finds that the dumpsters are not located per the “1991 Approved Site Plan”.

Mr. Hopkins stated that they readily acknowledge that the neighbors have concerns that need to be addressed. He cannot answer why the dumpsters were not located per the 1991 Approved Site Plan. He stated they would like additional time to work on solving the dumpster situation. He also distributed copies of a letter dated 9/1/2020 that Mr. Klotzbach sent to the residents in attendance at the August Planning Board meeting for the Board members’ review. He stated that Mr. Klotzbach is trying to work with everyone. He noted that there were no objections from the residents to emptying the dumpsters after 8:00 A.M.

Mr. Klotzbach feels that working with the refuse contractor “Modern Disposal” is a process that will take some time, as he believed he arranged later pick-ups with less noise, but learned today that is not the case. It was reported by neighbors that dumpster emptying occurred at 6:57 A.M. today. He told the Board that he is also discussing retro-fitting the trucks with rubber belting to soften the banging noises made during the emptying process. He discussed moving the dumpsters to the 1991 approved location and expressed safety concerns for the employees of Orchard Heights that currently take-out the trash on a daily basis. The approved dumpster location is approximately 300-ft. from where the dumpsters are now located. Trash is taken out to the dumpsters 28-times a day by different individuals.

Mr. Kaczor feels the problem can be solved for the Orchard Height’s employees by providing a utility

vehicle to drive the trash to the dumpsters. He noted this is Orchard Heights’ problem; he wants Modern Disposal to be put on notice, or replaced with a new disposal company that will adhere to, “no emptying of dumpsters *prior* to 8 A.M.”

Mr. Klotzbach feels it is not practical to have 28-employees, with different skill levels, taking the trash out on a daily basis using a utility vehicle. Not all the employees will be able to handle operating a utility vehicle, nor even the 300-ft. walk to the dumpsters.

The Chairman stated that the Board’s major concern is the welfare and quality of life of the neighbors.

He pointed out that the Petitioner needs to reach a solution that will aid their staff, but not at the cost of undermining the quality of life for the neighbors.

Mr. Baich discussed the pick-up time, and established that the optimum pick-up time is after 8:00 A.M.

He understands that this is a work-in-progress and he takes Mr. Klotzbach at his word that he is working to legitimately have no dumpsters emptied, prior to 8:00 A.M.

Chairman Fabinsky stated that he feels it is unacceptable to empty the dumpsters prior to 8:00 A.M. He suggests that the contract with Modern Disposal be amended.

Mr. Hopkins agrees that emptying the dumpsters prior to 8:00 A.M. is not acceptable. He further noted that they need additional time to work this out with Modern Disposal’s representatives.

Mr. Kaczor stated that Orchard Heights must implement a system for proper trash removal. He feels using a utility vehicle is a safer way to move the trash to the dumpsters. He also feels there is no real control for maintaining Modern Disposals’ emptying/pick-up time.

Mr. Heppner established that the dumpster pick-ups are made on a daily basis. Mr. Klotzbach arranged to have them occur after 8:00 A.M. However, today, a neighbor reported the truck emptied the dumpsters prior to 7:00 A.M. Mr. Heppner asked Building Inspector Bremer if the Town Code has a size limit for commercial dumpsters. He responded that we do not have a code pertaining to dumpster sizes.

Mr. Bodden stated he recalls this 1991 project and the Boards’ review. The project was almost not approved because it was pushing on the residential properties. He feels that moving the dumpsters to the Board approved location is a minor thing, and he wants the residents accommodated. He also feels that, over time, Modern Disposals’ drivers will be replaced, and any agreement made to not empty the dumpsters prior to 8:00 A.M. will not be a practice that will be readily adhered to. He concluded that he will not vote in favor of keeping the dumpsters where they currently are.

Mr. Kaczor feels that Orchard Heights needs improvement with their refuse plan. The fact that their personnel are not trained to take out the garbage is their problem to solve. Again, he feels it is safer for the personnel to take out the garbage using a utility vehicle. He also does not feel the garbage pick-ups will continue forward to happening after 8:00 A.M. The problem will still be there, and will keep reoccurring.

Mr. Murray questions if the simple solution to the Orchard Heights facility dumpster issue is to add more dumpster units at the site.

Mr. Hopkins stated that he feels the dumpster location is the issue. If moved to where the 1991 Site Plan indicates, the dumpster size is restricted to the space remaining; this will create the need for more dumpster pick-ups.

The members discussed removing a wall to accommodate the current size of the dumpsters. They also discussed using a trash compactor. This, however, would require a docking area.

Mr. Orffeo spoke regarding the 2015 Approved Site Plan, noting that this plan supersedes the 1991 Approved Site Plan. He stated that the current dumpsters at this site are not compliant with the 2015 Site Plan, as there are no dumpsters shown on the approved Site Plan. Therefore, this plan needs to be amended by the Petitioner, and resubmitted for Board review.

Mr. Hopkins commented on this, noting that it was an oversight, and that they would like to resubmit with an amendment to the 2015 Site Plan.

The Chairman asked the Petitioner what their plan is, in terms of getting feedback and advice from the neighbors, and Mr. Hopkins explained that they will take into consideration the comments from the Board, return, and share information with those that want to be involved.

The Chair asked for the residents attending the meeting to provide the Planning Secretary with their name and contact address. The residents spoke expressing their discontentment with the dumpster emptying situation.

Mr. Kaczor stated that he would like an amended plan submitted with the dumpsters located per the approved 1991 Site Plan. In this instance, he does not feel knocking down a wall should be a barrier to make this happen.

The Chairman discussed tabling the review of this item pending the Petitioners resubmittal. He requests contact information of those involved be provided to the Planning Secretary.

In light of residents’ concerns about continuing delays and lack of action, the Chair asked the Building Inspector and Deputy Town Attorney what immediate options the law gives the Planning Board. It was determined that the dumpsters are not in compliance, and Attorney Timothy Gallagher stated that the Board can require the dumpsters be moved to the 1991 approved location.

Mr. Heppner spoke and concluded that relocating the noncompliant dumpsters to their approved 1991 location will solve the neighbor’s issues, and this is the Board’s goal. He further stated that, “Our charge is to protect the interests of all the Citizens of Orchard Park”.

Mr. Hopkins expressed wanting to discuss several ideas regarding the dumpster location. He was told to present his proposals at a separate meeting, as the Board must deal with the problem before them now. Mr. Hopkins stated he will return with the new proposal(s).

Mr. Bodden stated that in 1991, the idea of this whole project was to be cognizant of impacts to the residents. The Board reviewed and approved the plan as submitted finding it acceptable.

Chairman Fabinsky canvassed the Board and established that a reasonable time frame for the Petitioner to respond and move the dumpsters to the 1991 approved location (the location that the Petitioners themselves originally proposed) is two-weeks.

After canvassing the Board, the Chairman advised that the Board finds that the dumpsters need to be moved to the location for which they were originally approved in 1991. This is to be done within two weeks.

Mr. Klotzbach will advise Orchard Heights and Modern Disposal of the Board’s decision. The dumpsters will be removed and placed at the 1991 approved location.

Building Inspector Steven Bremer requests that the Petitioner submit updated 2015 plans.

Mr. Kaczor made a **MOTION**, seconded by Mr. Heppner, that the location of the dumpsters is not what was approved by the Board, and they recommend the following:

1. All public notices have been filed.

2. Moving the dumpsters to the 1991 approved location.

3. Any future plans must consider the impact on the neighbors.

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

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

MURRAY AYE

THE **VOTE** BEING **SIX (6) IN FAVOR,** THE **MOTION IS PASSED**.

2. P.B. Board File #10-2020, J.D. Mobile Kitchens, 3964 California Road, Zoned I-1. Joseph DeMarco Jr. is requesting to remove their existing kitchen area and build a larger one, increasing walking space within the kitchen.

APPEARANCE: Joseph DeMarco, Jr., Owner

Chairman Fabinsky reported that he, Acting Planning Coordinator Orffeo, and Building Inspector Bremmer made an onsite-visit to view what is planned for the kitchen expansion.

Mr. DeMarco stated that the kitchen is currently an 8-ft. x 8-ft. wide room, with space for only one kitchen worker. The proposed expansion is 32-ft. x 24-ft. The existing kitchen will be removed and replaced with an updated kitchen. A step-up, and step down situation will be eliminated, making traffic flow smoother and safer.

Mr. Baich established that the newer kitchen will be safer and the Building Inspector has been at this site.

Mr. Murray discussed his desire for a more detailed plan. He also discussed a plan in the file dated 2014, and verified it is the same plan submitted on 8/2/2020. Mr. DeMarco noted that they had not moved forward with their plan until now.

Mr. Bodden made a **MOTION**, seconded Mr. Fabinsky, to recommend that the Planning Board **GRANT** the request for a Building Permit to build a larger kitchen area, per the plans received on 8/02/2020, based on the following conditions and stipulations:

1. All public notices have been filed.

2. This is an Unlisted SEQR Action, based on the Short EAF Parts 1 and 2, and a Negative Declaration is recommended.

3. A more detailed plan is to be submitted to the Building Inspector.

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

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

MURRAY ABSTAINED (until the new plans are submitted)

THE **VOTE** BEING FIVE **(5) IN FAVOR, (1) ONE ABSTENTION,** THE **MOTION IS PASSED**.

3. P.B. File #11-18, “Smokes Creek Farms”, proposed twenty-two lot subdivision, Vacant Land located on the south side of Jewett-Holmwood Road, east of Deer Run, Zoned R-1. Board to review request for Final Plat Plan Approval. Tabled by the Board at the 8/13/2020 meeting.

APPEARANCE: Mr. Sean Hopkins, Attorney - Hopkins, Sorgi, & McCarthy

Mr. James Jerge, Developer/Owner

The Chair explained that the Erie County Health Department is experiencing delays for approvals due to COVID-19. We need Health Department approval to go forward as a Board. New York State Town law provides an option for a 62-dayextension to allow this material to come in.

Mr. Hopkins stated that by mutual consent they agree to the extension, starting from today; hopefully, the Health Department approval will come through prior to 12/15/2020.

Mr. Fabinsky made a **MOTION**, seconded by Mr. Baich, that the Planning Board, per Town Code Section 121-17, **ACCEPTS** the Petitioners’ request for a 62-day extension in the Final Plat Plan approval process, and,

1. All public notices have been filed.

ON THE QUESTION:

Mr. Murray had an inquiry answered regarding Part 3 of the SEQR form.

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

FABINSKY AYE

BAICH AYE

BODDEN AYE

HEPPNER AYE

KACZOR AYE

MURRAY AYE

THE **VOTE** BEING **SIX IN FAVOR (6)**, THE **MOTION** IS **PASSED**.

There being no further business, the Chairman adjourned the meeting at 8:09 P.M.

DATED: 9/30/2020

REVIEWED: 10/5/2020

Respectfully submitted,

Rosemary M. Messina

Harold T. Fabinsky, Planning Board Chairman Planning Board Secretary