Penfield Zoning Board of Appeals
Minutes

The Zoning Board meeting at 6:30 PM local time Thursday, November 20, 2014, in the Auditorium Conference Room to discuss, in a meeting open to the public, tabled matters and other business that may be before it.

I. CALL TO THE ORDER:

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<td>Daniel DeLaus, Chairperson</td>
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<td>Joseph Grussenmeyer</td>
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<td>Carole Mulcahy</td>
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<td>Peter Weishaar, Legal Counsel</td>
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<td>Joseph Platania, Legal Counsel</td>
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<td>Harold Morehouse, Building and Zoning Administrator</td>
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<td>Alison Sublett, Secretary to the Board</td>
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Regarding Minutes from Zoning Board Meeting on October 23, 2014 meeting

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II. PUBLIC HEARING:

The Chairperson briefly explained the procedures that the Zoning Board would follow during the public hearing, also guidelines to applicants and those members of the audience wishing to speak at the public hearing.

The Chairperson further went on to inform the audience that the Board may deliberate on the applications following the hearing and/or at a future work session. Those applicants and interested persons who wished to stay for the remaining portion of the meeting to listen to any deliberation on each matter are then welcome to do so.

The Clerk was directed to read the agenda.

NOTE: The following is meant to outline the major topics for discussion during the Zoning Board public hearings. For more detailed information, the reader should ask to listen to the recorded tape of the July 17, 2014 Zoning Board of Appeals public hearing, which is available at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York 14526 during regular business hours.

Public Hearing Applications:


Appearances by: Virginia Pschierer of 25 Woodlyn Way, Penfield, NY 14526

Presenter’s statements

- Had a pool built over the summer
- Issue with triangular pie-shaped lot, has many trees along one edge of the property and it has always been difficult to know where the edge of our property is due to the little forest there.
- We did the best we could as far as determining where our pool was going to go and then with the thought that there would eventually be a deck that would go behind the pool near our property line.
- We thought we were at least fifteen feet in from the property line when we put the pool in.
- Got the pool permit, did that all and put the pool in.
- Got the deck permit, and our contractor was digging the holes and had the person come out and inspect the holes for their depth and that’s when he said ‘I think you might be too close to the property line, you might be within 10 feet of that setback.’
- I couldn’t find any way of figuring out our property line. We bought the house twenty years ago so the person who did our survey was retired and I don’t think they used CAD so there wasn’t any way of having a record of our survey.
• I just did the best I could with some high school math and the survey map. The best we could as far as the property line goes and I think I have a fairly good idea of where it is.
• There’s a piece of the back corner of the deck that at its worst point crossed the setback by about maybe two or three feet. And then it sort of closes down to sort of a pie-shape or triangular shape so that it’s not encroaching at all anymore.

Board questions:
Carole: Did you finish putting the deck on?
Virginia: Oh no, it’s waiting.
Carole: It’s still waiting, okay. How large is your property?
Virginia: It’s about point four acres.
Carole: What are the dimensions of the deck?
Virginia: I think its thirty-two-let me see [looks in papers]. Thirty-two feet long maybe and five feet wide. And the back part of the deck we’re hoping to have sort of a railing that will allow us to have some privacy and hopefully allow our neighbors to have some privacy too.
Carole: What materials are the deck constructed of?
Virginia: The post are pressure treated wood and then the rest of the deck is composite. And the pressure treated will be wrapped.
Carole: And you said there are a long row of trees, are these trees along where your deck is?
Virginia: Yes.
Carole: So it would be buffering for the neighbors.
Virginia: Yes.
Carole: On your application you thought you were eight feet, you’re actually seven feet. So you need an extra foot variance.
Virginia: Something like that.
Carole: According to our staff that measured.
Virginia: The best I could tell from our property.
Harold: Based on the way that she tried to calculate the measurement it wasn’t an exact science and I told The Board and my information to them is it’s probably seven feet but it’s in between seven and eight feet.
Carole: Okay, so we’ll give her a three feet to make sure that she’s safe, if we give it to her.
Harold: I’m confident that the three feet will cover it. It was a little over two feet, but it’s difficult to find the property line through the trees.
Carole: Is there any reason the deck couldn’t be on the other side of the pool?
Virginia: First of all it would keep us from seeing in the pool from our yard because we’re going to have sort of a backing to the deck, like a railing, so we wouldn’t be able to see into the pool. And the shape of our yard is such that we barely had enough room for our pool as it was so we were trying to get it off to the side so that we could have room for other activities besides just the pool and nothing else in our backyard.
Joe: You put in the poles already, right?
Virginia: The poles are already in, yes.
Joe: That’s the best thing right now.
Virginia: Yes, we’re hoping for Sunday and Monday if we get approval.
Joe: Right, it would be hard to dig it now and cement.
Special conditions required by the Board: None

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2. James A. Boglioli, Esq.-Delta Sonic Car Wash Systems, Inc., 570 Delaware Avenue, Buffalo, NY 14202 requests an Expansion of an existing Conditionally Permitted Use under Article III-3-77-C of the Code to allow New York State Inspection Services at 1841 Empire Blvd. The property is owned by Benderson Development Co Inc. and zoned GB. SBL # 093.15-1-64.1. Application #14Z-0061.

Appearances by: Matthew Oates, Delta Sonic Car Wash Systems, Inc., 570 Delaware Avenue, Buffalo, NY 14202
Dubravko Hodzic, Location Manager, Delta Sonic Car Wash, 1841 Empire Boulevard
Leo Tennity, Delta Sonic Car Wash, 1841 Empire Boulevard

Presenter’s statements:
Matthew:

- We are requesting a Conditional Use Permit to allow for Auto Repair at the Delta Sonic facility.
- The request is to allow us to provide New York State Automobile Inspections.
- The state requires that any facility providing the inspections be a licensed automobile repair shop and able to provide light repairs.
- We are looking to do repairs that will come up during an auto inspection process: a chipped windshield, replacing tires, possibly doing some minor brake work, any headlights, and things of that nature.
- Any larger issues that come up (engine, transmission, with your exhaust, thing of that nature) we are not looking to take of at our facility.
- We do have other repair shops that we can recommend to our customers to get the work done, but we are not looking to be a full-service repair shop that can take of all those problems.
- We’re looking to get the customers in and out in a fairly quick time frame is what we’re still shooting for.
- If we had a facility that’s backed up for five hours while we’re trying to do one repair that doesn’t really go with what we’re trying to provide for our customers.
- The reason we’re looking to do this is that this is something our customers have asked us over the years if this is a service that we provide.
- When you get your oil changed you want to time it with getting your vehicle inspected for that month because you don’t want to have to go to one place to get your oil changed and another place to get your inspection done.
- We also don’t really take appointments so if you’re at the facility you can get it done right away, you don’t have to make an appointment and come back.
- If after work one day at five thirty one day you realize you have an extra hour you can just swing by and get it done and get your inspection complete.
- There’s not any new construction associated with this application. All the work would be done in the existing facility.
- The letter that we submitted went through all the different requirements that the Town has, I’m not going to go through all of them. But we do feel that we meet the standard for getting the permit.
Board questions:

Joe: You’re going to do light repairs on an inspection, but on an inspection only? In other words if I come in with my car and I say I want my windshield fixed and it wasn’t on an inspection?

Matthew: We do some crack repairs on windshields and things like that. But we’re not looking to say you can come in and get your brakes repaired or your muffler repaired. But a cracked windshield is something that we offer for a service, I don’t know if that really falls under repair or really our detailing portion of it. But that is something that we do offer and that we’re looking to offer for customers. But we’re not looking to be a destination repair shop. What the business is oil change, detailing, car wash. You can come and get your general services done. It’s not a place where you make an appointment and say drop your car off at 7 a.m. and maybe two days later pick it back up because there’s a full line of work that has to be done. And it’s a large bill and we have to order parts and things of that nature.

Joe: So I guess the statement that is probably true, and you tell me if it’s true or not, is that you’re going to do no other repairs other than what would be done under New York State Inspection that needed to be repaired.

Matthew: Yes.

Dan: What I would like to know, and I think Joe is driving at is, is it your intent to only do such repairs as are made necessary by the inspection?

Matthew: In general, yes, that’s what we’re looking to do. But if a customer say is there and they’re not there for an inspection but they have a cracked windshield that is a service we’d like to offer. We’d still like to be able to do it while we’re not going to be advertising as a repair shop, we would advertise for automobile inspections. In the same way we really wouldn’t want to turn away a customer if they are say just getting their oil changed and something comes up. When you get your oil changed we go over the car for you as well. We check your fluids, we go over the car, we look at the tires, we offer tire rotation. If someone came in there and say their inspection was in November and it was June but their tires are completely bald and you can actually see the steel that’s in the tires. We’d look at that as a safety issue and we would like to point that out and be able to offer that as something. But we’re not going to say ‘hey come to Delta Sonic and you can get your tires.’ We’re not a Mavis Tire or a Munro Muffler, which is what the Board was wondering [at the Work Session]. I hope I kind of explained correctly.

Mike: Is there a way that you can define for us what repairs you would be allowed to do? Other than say pursuant to an inspection?

Leo: We’d be doing brake work, minor suspension as far as tie rod ends because that’s what controls the tires staying straight, just anything that would require New York State Inspections. Just trying to make the cars safer.

Mike: But you’re not installing mufflers?

Leo: No, we’re not going to be doing exhaust systems?

Leo: No. Like O2 sensors, stuff like that.

Dan: But again just to clarify if somebody comes in and needs an O2 sensor, but doesn’t need an inspection, you would provide the-

Leo: Yes, we would provide the service at that point.
Joe: Well I guess we discuss this with the lawyer. Would this fall under this category? I’m trying to help you, really. If you need something special to do this other than just an inspection sticker maybe we can clarify it here. I don’t want you to have to come back am I right fellas?

Dan: My reading of the advertisement is that its inspection services and associated services, which I took to mean any repairs made necessary as a result of an inspection. It seems like your intent is a little beyond that, which is fine but we just need to make sure that it was advertised properly so that members of the public that may want to come to speak about this were properly notified of that.

Dubravko: I just want to clarify what Leo just mentioned. The services as per New York State Inspection you would have to connect the vehicle to their system to pass the inspection. At certain times it will cause the emission code that would mean it was an oxygen sensor that he just mentioned, it could be that, those are really minor repairs. If it comes to installing mufflers or any work that would require an actual lift to put the vehicle up in the air, we’re not looking to do that. That would be the work that we would refer to customers to any repair shop for major repair that was required. We’re not looking to do the full repair in the shop. It’s really like [Matt] mentioned already, it’s a simple stop for customers to get it done. Because a lot of these vehicles are newer, a lot these vehicles that come to our facility on Empire Boulevard or here on Penfield Road are really under five years old, a lot of vehicles. So most of them are pretty a simple procedure for the vehicle inspection. You connect the OBD2 sensor to the reader, it goes to the New York State Department of Motor Vehicles and pretty much it’s a simple process just to pass the inspection. The brakes are a really one of the simpler works that would be done on it and it can be done at the time. If the customer comes in and insists that some repairs be done, if it’s something that’s as simple as putting in brakes or an oxygen sensor or wipers that’s something we would probably be able to do and that’s probably the extent we would go with that. We wouldn’t go any major work as far as taking the whole engine apart.

Dan: Do you have lifts at that location?

Dubravko: We have those low-to the-ground lifts that would lift it about [to Leo] what, about a foot off the ground?

Leo: Three feet at the most.

Dubravko: So it’s pretty much designed for a tire replacement, tire rotations, which we already to tire rotations on the facility. So the only really additional work at that point if it was related to tires would be installing the tires. That’s about it, really.

Joe: But you do want to do it-see Danny’s questions was very specific and I guess mine is too. You applied to do inspections

Dubravko: Correct.

Joe: And then you said you’re going to do some of the work associated with that inspection. My question was if someone comes in and wants something that comes under an inspection but doesn’t want an inspection, were you going to do it? And your answer was yes. Because it’s two different things, I mean legally. We’re trying to get you the right permits and the right to do things the way you want to do it.

Matthew: I understand that, I understand the application came in as Motor Vehicle Inspections. With understanding that the board would take under continuing the
application for this evening to allow us to do the inspections then we can continue that process, if the board chose to allow us. And then we’ll make a separate application to be able to do the repairs that we want to be able to do, not associating them with motor vehicle inspections. So that if a customer came in with a bad O2 sensor

Dan: Sure, the answer is sure, we’ll do that. But our counsel may that we’re also advertised properly for those repairs not associated, if does great. So I think as The Board I’d ask you to assume for purposes of questioning that our lawyer going to say that you’re properly advertised for all repairs. So I’d ask the questions now so we avoid coming back we will.

Mike: How many vehicles can you get in at one time?

Dubravko: Three.

Mike: And you envision how many customers? You say you don’t need an appointment, what if ten people came in?

Leo: Then they would obviously go-you know we would give them a wait time just like we do right now. If we have ten oil changes pull up it’s going to be fifteen minutes before I start the next customer, it’s going to be another fifteen minutes before we start.

Mike: So this goes on already to some extent.

Dubravko: The typical repair shop, which I already have experience working in, with the actual inspection services, the inspections should never take more than twenty to thirty minutes depending on the vehicle itself. Because by the New York State requirement they have to take at least one wheel off, inspect the brakes, inspect the tires, and connect the vehicle to the system because it actually gets read by New York State for the emissions. And pretty much it’s a simple straight-forward process. We’re not looking really to extend that time by any means. It’s really like we mentioned a simple stop for customers. Because a lot of our customers come obviously for gas, a car wash, and quick cleaning and we want to get this into a package. Because throughout the years (I’ve been working at Delta Sonic for almost twenty years) we get a lot of questions about this service, we have strayed away for years but we’re trying to make it as simple as possible for customers.

Mike: I guess my other point is this isn’t going to appreciably increase the number of cars that are going to be on site at any one time?

Dan: That’s an important point.

Leo: Maybe ten, twelve cars a week? I mean nothing major to the extent. We’re already doing forty to fifty oil changes per day anyways.

Mike: And you have the capacity to have those cars in a spot that they’re not going to interfere with traffic coming and going and the gas traffic?

Dubravko: Absolutely, because the way the customers come they come from the other side of the building so on the opposite side of the gas station itself. And there’s plenty of room in the back basically for those vehicles to go. But the way the system is set up, like I said the process, we would dedicate a bay just for that process. If it’s inspections, because that does not happen with every vehicle that comes to our service and we can fairly fast track the process through.

Dan: So let’s say you have three that you’re working on, how much room do you have for cars that are waiting for an inspection?
Leo: We can probably store six, seven cars inside the shop.
Dan: Inside?
Leo: Inside.
Dubravko: Besides the three that would be already on the bay.
Leo: Besides the three that are waiting. And then we have a big parking-not parking area
but-
Matthew: There’s a stacking the oil, lube and area for detail.
Dubravko: We can put an easy then to fifteen cars behind, easily.
Dan: Outside?
Dubravko: Outside.
Dan: All right, because I was thinking that we could put some sort of limit that we could
require you to put some sort of limit requiring you to say ‘come back in an hour’
but it sounds like-
Dubravko: No, it’s a lot of room in there so hopefully-
Dan: Yeah.
Matthew: And that’s fairly separated from the car wash.
Dan: Okay.
Joe: You buy this machine, right? And obviously it’s got to hook up to Albany.
Matthew: Correct.
Joe: So you said there would be no outside construction, but inside what will you have
to do? Obviously you’ll have to put some kind of cable that attaches to Albany or
some kind of electrical system.
Dubravko: It’s a data network so it’s connected already. We have that already available.
Joe: Okay so you just buy this machine?
Dubravko: Basically just plug it in, everything’s already available so we are not really doing
any changes to the facility when it comes to that part.
Joe: And you’re going to put it on the end bay?
Matthew: It’s all internet-based communicating with Albany.
Dubravko: Yeah even our phone-
Joe: Through internet? It’s already there?
Dubravko: Our phones are already on internet as it is.
Joe: And where in one of those bays? I was there and I think I was talking to you-on the
end bay you’re going to put this?
Dubravko: Correct.
Joe: So it’s going to be against the wall, it’s going to be out of the way. And that’s the
bay that you’re going to use for inspections?
Leo: Correct.
Joe: Let’s talk about advertisement. We just went through sign with you guys earlier
and everything else right? How are you going to advertise that you are now an
inspection station?
Leo: Most of it is word-of-mouth or the internet, on our website.
Joe: So you’re not talking about anything new on your sign?
Leo: No, the only sign that’s going to be-that we got to put on the building is going to be
the registered repair shop from New York State.
Joe: The New York State Sign.
Dubravko: Yeah, that’s the only sign that we’re going to put up there, yep.
Joe: [to Harold] That would go up there and we wouldn’t-
Harold: And we wouldn’t push any type of signage ordinance for that type because it is a requirement from the Department of Motor Vehicles that they have the two medallions, on the for the inspection services and one for the repair services.
Matthew: And it’s also something else that we’re able to check when vehicles come in. I’ve actually done it myself going to the Greece facility. End of the month they’ll come in and be like “Oh while you’re here you’re due for your inspection”. It’s just something they’ll be able to check when they come out to look at the car. Because I can’t tell you how many time I’ve forgotten that.
Joe: I just want to clear up this advertisement because I think we just went through signage with them, right, for their other location.
Dan: Do you anticipate any significant increase in the noise level as a result of this?
Leo: No, because we’re already removing tires with an air gun and everything.
Dan: Okay. What’s the closest house anyways, it’s pretty far away?
Dubravko: That’s pretty far.
Dan: Behind the shop is parkland.
Matthew: The residential zone I believe that is close is actually the parkland right behind the facility.
Harold: Well to the south there is a couple of houses, residences that are located in General Business Zoning District that are down along Smith Road.
Dubravko: I would say at least a hundred yards.

Board Deliberations:
Joe: I want to make perfectly clear if we grant this that they’re allowed to do the repairs associated with the inspections. For all other things also even though they didn’t inspect the car, they can still do those workings or those jobs that we’re talking about. Am I making that clear?
Dan: What I’m wondering is if we didn’t go into so much [to Delta Sonic representatives] your self-limitations intense of there are some repairs, you are going to an inspection and you’re going to find that certain things need to be done. Some of them you guys have clearly stated you’re not doing. Is it possible for you to compile a list of what you will do and we can make that part of the resolution? Or do you want to not limit yourself like that? Or is it easier to say what you won’t do?
Dubravko: Like engine repairs, taking apart the engine, the transmission.
Dan: Just some way so that we know what you’re going to do and that we know what you’re going to do.
Pete: Once you grant them the permission to do that under this provision for auto repair that’s pretty broad.
Dan: Yes, you could do collision work.
Dubravko: We’re not going to do that.
Dan: Well I know that. We just want to get something that’s as clear as we make it.
Leo: Well if a customer comes in and they have a mirror that’s broken off that fails New York State inspection would that be considered collision?
Dan: If you guys said you wanted to do that minor collision or whatever-
Leo: That item would have to be repaired in order pass.
Dan: Would you do that, would you put a new mirror on?
Leo: I would put a new mirror on, or a new headlight or taillight.
Carole: Why can’t you say ‘associated with the inspection’?
Dan: Well he just gave an example of one that it.
Andris: New York State requires a certain punch list, right?
Leo: Correct.
Andris: Is there a way for you to say ‘here’s the punch list, here’s what we won’t be able to repair here”? Is that the easiest way?
Leo: There really isn’t anything on the New York State inspection that we wouldn’t repair.
Mike: The muffler’s one.
Matthew: Pretty much if you said we won’t be doing engine repair, transmission repair and exhaust system repair.
Mike: Brakes?
Matthew: Brakes would but those would be three items that would not be done.
Dan: Those are three pretty broad categories.
Joe: You’re kind of limiting yourself.
Matthew: If something were to change then-
Joe: Then you would have to come back, right. That’s what I’m trying to help you not to do. But if you’re comfortable with what you just said I’m good with that.
Mike: I got a question with the advertising, the application states “to perform New York State Inspection services” how did we get from that to repairs?
Dan: That’s what we were talking about earlier.
Pete: When we were talking about it earlier I was thinking more in terms of incidental repairs. If you were going to do these major things that might run afoul of the way-
Mike: It really doesn’t say unrelated repairs on the advertising.
Dan: On the application it does.
Andris: But on the advertising it doesn’t.
Pete: The conception that’s referenced though is for auto repair.
Dan: And you guys referenced the section in the notice is for auto repair. And if we were to go to that section it would be even broader than the New York State inspection and associated repairs.
Joe: So then the repairs fall under it legally is what you’re saying Pete?
Pete: That’s what we’d argue.
Dan: Well we would win, if somebody sued on that we would win because it references this section and citizens are imputed to know the language of it.
Pete: It’s pretty broad.
Mike: So are the inspections themselves a conditionally permitted use? If you read this section it talks about auto repairs but how do we get to state inspections?
Joe: Because that’s separate but then they refer to the auto repair part.
Pete: Didn’t Harold make it clear that New York State inspection was not something that was granted under the prior approval.
Harold: The previous application that was heard by the Zoning Board was very specific to certain services they were providing at that site. And auto repair services wasn’t something that was contemplated at the time. Doll-up work, cleaning, oil changes, and I’m trying to think there was a third obviously the car washing and the fuel pumping and all like that.
Matthew: The state also requires that you be licensed as a motor vehicle repair shop. So if you’re not licensed as a motor vehicle repair shop, you’re not allowed by New York State to actually conduct inspections.

Joe: What I’m saying by inference by asking for the inspection you already infer that you want to be a repair shop?

Dan: You can be an inspector and not a repairer?

Matthew: This is how New York State actually licenses motor vehicle repair shops. They don’t license a transmission shop or an engine repair shop. They license motor vehicle repair and the only people who can do motor vehicle inspections are the ones who have that license. You couldn’t say set up a shop, we only do New York State inspections. They also require that you have the ability to do light repair. So they also don’t want places to set ‘we do New York State inspections’, we plug you in and if you’re good, okay, if you’re not good [puts his hands up] don’t look at us.

Dan: The concerns I think we talked about are too many cars waiting, and noise including cars left overnight. It’s not your intent at all to do this?

Leo: No cars are going to be left overnight.

Dan: What I’m wondering is how can we make sure that the Resolution is clear that that does not happen?

Joe: Put it in it: ‘No cars overnight’. We don’t have a problem with that.

Harold: There was some language similar to that that was in the Planning Board Resolution.

Dubravko: To actually have a vehicle stay overnight that would mean that we were doing major work, and we wouldn’t want to get into that.

Dan: Is everybody okay with saying ‘No major repairs’? It’s kind of broad.

Joe: I would rather say that if they get a New York State inspection sticker, it would be an inspection site that they’re allowed to do the repairs on the cars that they inspected and on other cars in that category.

Dan: But that could be major repairs.

Joe: All right, but if they don’t want to do them that’s up to them.

Dan: You’re comfortable with that? With giving them the authority to do it.

Dubravko: We wouldn’t be set up to do it?

Dan: I know that, but that could change tomorrow.

Joe: Because according to New York State you have to have this in order to get that. We have to give them the repair shop sticker but you’re going to sit there and list light repairs: bulb, taillight, mirror-

Mike: But we’re not talking about excluding certain major repairs.

Dan: Which they said they want to exclude.

Joe: Okay, then like you said: engine work, transmission, exhaust.

Matthew: The Valvoline down the street also is a licensed repair shop that does inspections but they don’t do the major repairs either so it pretty for example falls into that category.

Joe: So you had your three things, right. Alison what were the three things that they said?

Alison: They weren’t going to do engine repairs, transmission repairs, or exhaust, they weren’t going to have cars left overnight, they don’t want that responsibility.

Joe: You don’t have a problem with any of that, right?

Dubravko: No.
Special conditions required by the Board: No engine repairs, no transmission repairs, no exhaust repairs and no cars left overnight.

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3. Blue Rhino Propane, 1 Liberty Plaza, Liberty MO  64068 requests a Special Permit for Outside Storage and Display under Article IV-4-24 of the Code to allow the installation of a propane tank exchange cabinet at 2180 Penfield Road. The property is owned by Hess Retail Stores LLC and zoned GB. SBL # 140.01-1-4. Application #14Z-0063.

Appearances by: Ben Brooks, Hess Retail Stores LLC

Presenter’s statements:
- We’re talking about Hess station #32357, the Speedway number is #7669, and it’s located at 2180 Penfield Road in Penfield, New York.
- Requesting relief so that we’re able to compete in the sale of propane at our site for the benefit of our guests.
- We’re looking to place a forty-four inch by twenty-eight and a half inch by sixty-six inch cabinet.
- We’re going to place this on the right side of the building just as you’re looking at the building.
- I believe the drawing that they submitted to you is off. I actually had a conference call about this earlier today. It’s not going to be placed inside the building.
- Where you see, I don’t know if you all have a picture of it currently of the drawing that provides some clarity as to where it’s going to go. [Board members look through submitted documents] So they currently have two pylons positioned right outside of the building [holds up rendered map of property, points to proposed positions of pylons]. That’s actually where the cage is going to go. The pylons are going to go right where the concrete curb meets the asphalt.
- There is an emergency shut-off switch that’s actually forty-five and a half inches from the corner. So if we place that cabinet it’s exactly forty-five inches, the switch is fine on the other side of the cabinet. That’s for the gas fuel pumps.

Board questions:
**Andris:** Do you plan on leaving the ice maker right next to it then?
**Ben:** The ice maker will be slid down a little bit from where it currently is, again this map isn’t drawn to scale. It’ll be slid down so you still have access to emergency shut-off switch that’s there. I’m not sure what the shut offs’ requirement is, but whatever that is what we’ll comply with.

**Andris:** I was going to say do they have any requirements for the switch. If you put the propane cabinet right next to it and its right up next to the edge, are you required to have so many feet around it to access it? If that’s the case and you can’t fit the tank there where would it go?
**Ben:** We could remove the ice merchandise, we have two cabinets there anyway, so we could always get rid of one of them.

**Andris:** So the other cabinet might sit where the ice maker is?
**Ben:** Yes.

**Andris:** Okay. Any kind of logos or graphics or things like that on the side of the cabinet? It [submitted application] didn’t really show. What color is it going to be?
Ben: I can’t really answer that. I know it would probably be the typical logos that Blue Rhino has on most of their cabinets. I don’t believe there would be anything out of what they would normally display on their cabinets.

Andris: Any signage above the cabinets, on the side of the building mounted, any safety signs, any that sort of thing required?

Ben: Whatever the requirement is I’m sure they would put up. Again I’m not actually sure on that. But no additional Blue Rhino signage on the store.

Andris: In terms of protection for pedestrians will this structure obstruct views for cars coming up and actually blocking pedestrians from coming off the sidewalk and stuff like that?

Ben: It will get places right up against the building I’m not sure the setback requirement for between the building and the cabinet. But it will be placed as far back as possible. Right now I believe there’s some bushes and dirt in there right now.

Andris: In terms of filling the cabinets, would the trucks pull up right to the front of the building? Has that been worked out yet as far as how they would obstruct flow of traffic and things like that?

Ben: I don’t know. Typically when we have our Pepsi vendors or our Coke vendors there they pull up on the outside of the parking lot and then they wheel the product up. My guess is we would do the same thing with the propane. The thing we don’t want to do is block our guests from being able to park in front of our stores.

Andris: The propane cabinet would stay locked and someone would have to come outside?

Ben: Correct.

Dan: That’s a very busy location.

Ben: It’s very busy, it’s one of our busiest stores.

Dan: Which is good. Are you fully confident that this addition here isn’t going to cause any problems traffic-wise? Have you decided that’s the best place, that there aren’t any obstructions?

Ben: Absolutely, I think when we put the Burger King in last year that probably caused more obstructions than this thing would possibly cause. And we’re performing very well with that.

Dan: Harold, have we typically asked for input from the Fire Marshal on the location or the Town Engineer? If we haven’t we haven’t and I’m not looking to treat these guys any differently.

Harold: Generally speaking the propane exchange tank industry are very comfortable with the Fire Codes that exist both in the state and nationally. And for their own liability protection they comply with all the aspects of that would be coming out of the Fire Code which the Fire Marshal would be expecting.

Dan: And that’ll be a condition of any approval?

Harold: Right.

Mike: Harold, we have a number of these Blue Rhino cabinets around town. Has there been any problems with them?

Harold: Not to my knowledge, no.

Special conditions required by the Board: None
Meeting adjourned 7:54 p.m.

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**AREA VARIANCE TO ALLOW THE CONSTRUCTION OF A POOL DECK WITH LESS SETBACK AT 25 WOODLYN WAY.**

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-37-A of the Code to allow the construction of a pool deck with less setback at 25 Woodlyn Way; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on November 20, 2014 at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as a Type II action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment. Therefore, the submission of a draft Environmental Impact Statement will not be required.
Motion to classify this application as a Type II action and no further environmental review will be required.

Moved: Carole Mulcahy
Seconded: Dan DeLaus

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of three (3) feet from the required ten (10) foot side setback resulting in a setback of seven (7) feet from the north property line to allow the construction of a pool deck with less setback at 25 Woodlyn Way, subject to the following conditions:

1. The applicant shall be required to comply with the Residential Code of New York State and the Property Maintenance Code of New York State.

2. The applicant shall be required to comply with the requirements of the Building and Zoning Administrator.

The Board considered the following five (5) standards in applying the balancing test, which weighs the benefit to the applicant to the detriment to the health, safety and welfare of the neighborhood or community and bases its decision on the following findings as to each of the five (5) standards:

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created, by the granting of the area variance.

The Board determined that there will not be an undesirable change produced in the character of the neighborhood. The applicant has represented to the Board that similar structures have been constructed in the neighborhood and this proposed pool deck would be consistent with the other structures in the neighborhood.
2. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance.

The Board determined that the benefit sought by the applicant could not be achieved by some other method feasible for the applicant to pursue. The applicant has represented to the Board that the pool deck was issued a permit and framing of the structure started. An inspector from the office advised the side setback was not compliant and to remove the existing construction would be costly.

Additionally, the applicant could have constructed the pool deck on the opposite side of the pool but that alternative would have blocked the line of sight from the residence to the pool which the applicant felt was desirable for safety reasons.

3. Whether the requested area variance is substantial.

The applicant has represented that the requested area variance is not substantial. Although the requested relief is three (3) feet the approximate square foot area that would not be in compliance with the required ten (10) foot side setback is 15 square feet.

4. Whether the proposed area variance will have an adverse effect or impact on physical or environmental conditions in the neighborhood or district.

The Board determined that the proposed variance would not have an adverse effect or impact on physical or environmental conditions in the neighborhood or district. The area alongside the pool deck is heavily buffered by mature trees and this area drains to a catch basin at the rear corner of the property.

5. Whether the alleged difficulty was self-created.

The Board determined that the alleged difficulty was self-created. The applicant at the time of the installation of the existing pool did not know the exact location of the property line due to the mature trees running the length of the north property line. The rear of the subject property is extremely small and the applicant desired to provide a pool in addition to play area in the yard.

The Board is directed by statutory requirements to grant the minimum variance necessary. The approved setback shall not be modified at any time in the future without approval from the Board.

The Board’s decision was based upon the following information:
1. An Area Variance application form stamped received October 13, 2014 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated October 13, 2014 stamped received October 13, 2014 by the Building and Zoning Office.


5. Building plans of the proposed pool deck prepared by the applicant stamped received October 13, 2014 by the Building and Zoning Office.

6. Testimony provided by the applicant and interested parties at the public hearing.

Moved to approve the application for area variance for less setback: Carole Mulcahy
Seconded: Andris Silins

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE

The motion to approve the application was carried.
PENFIELD ZONING BOARD OF APPEALS

November 20, 2014

James A. Boglioli, Esq.-Delta Sonic Car Wash Systems, Inc., 570 Delaware Avenue, Buffalo, NY 14202 requests an Expansion of an existing Conditionally Permitted Use under Article III-3-77-C and Article X-10-4 of the Code to allow New York State Inspection Services at 1841 Empire Blvd. The property is owned by Benderson Development Co Inc. and zoned GB. SBL #093.15-1-64.1. Application #14Z-0061.

CONDITIONAL USE PERMIT TO ALLOW AN EXPANSION OF AN EXISTING CONDITIONALLY PERMITTED USE TO ALLOW NEW YORK STATE INSPECTIONS SERVICES AT 1841 EMPIRE BLVD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Conditional Use Permit under Article III-3-77-C and Article X-10-4 of the Code to allow New York State Inspection Services at 1841 Empire Blvd; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on November 20, 2014, at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as an unlisted action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment and therefore, the submission of a draft Environmental Impact Statement will not be required.
Motion to approve the classification of this application as an unlisted action and issue a negative declaration, requiring no further environmental review.

Moved: Joseph Grussenmeyer
Seconded: Michael Belgiorno

Vote of the Board

Daniel DeLaus AYE
Michael Belgiorno AYE
Joseph Grussenmeyer AYE
Carole Mulcahy AYE
Andris Silins AYE

The motion to approve the State Environmental Quality Review Act (SEQRA) determination was carried.

NOW, THEREFORE BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for a Conditional Use Permit to allow New York State Inspection Services at 1841 Empire Blvd, subject to the following conditions:

1. The applicant shall be permitted to perform NYS Motor Vehicle Safety Inspections, minor/light repairs associated with the vehicle inspections, which includes tire replacement, windshield wiper replacement, headlight replacement and minor repairs to vehicle safety features. The applicant specifically represented to the Board that engine, transmission, exhaust or collision repairs would not be performed at the subject location, and such repairs shall not be permitted by this expanded conditional use permit unless approved by the Board.

2. The applicant shall obtain a Special Permit from the Town Clerk’s Office and pay the appropriate fee.

3. The applicant shall comply with the requirements of the Building and Zoning Administrator and Fire Marshal.

4. The applicant shall be required to comply with the Fire Code of New York State, the Property Maintenance Code of New York State and Article IV-4-28 of Chapter 29 of the Town.

5. All vehicles at the subject property shall be stored within the building when the facilities are not open for business. However, licensed vehicles at the subject property
for minor repairs may be left outside for a period not to exceed seventy two (72) hours. At no time shall any unlicensed or dismantled automobiles, trucks, tractors, trailers or accessories thereof be outside of the building. At no time shall any vehicle for sale be displayed inside or outside of a building.

The Board bases its decision on its findings that:

1. The proposed use is similar to the other uses in the subject neighborhood.

2. As required by Article X-10-4 for issuance of a Conditional Use Permit, there is no detriment to the adjacent properties that will be produced by the approval of this application because:
   
a. Means of ingress and egress.

   The applicant has represented to the Board that the subject property has an existing means of egress and ingress onto Empire Blvd. The applicant is not proposing any changes to the existing means of ingress and egress for the subject property due to the needs of this additional service.

b. Adequacy of parking facilities.

   The applicant has represented to the Board that the parking facility is adequate to accommodate this proposed use at the subject property. The existing facility has accommodations to service up to six (6) vehicles inside the existing facility and additional space for up to ten (10) vehicles outside the service bay doors. The applicant also represented to the Board that they had no intentions for vehicles undergoing service would be left on site overnight.

c. Potential impact to both present and future uses.

   The applicant has represented to the Board that the use will not interfere with the present or future uses at the subject property or in the general vicinity of the property but would be complementary to the existing services offered at the subject location.

d. Compatibility with the general area in which it is to be located.

   The proposed use is similar to other uses in the area and will complement the existing businesses in the area.

e. Type and amount of signage.

   The applicant has represented to the Board that they will be complying with the requirements of the Sign Ordinance for the signage at the property and do not intent to
place any additional signage at the subject location other than the signage required by NYD DMV identifying the subject property as an Official NYS Motor Vehicle Inspection Station and a Registered NYS Motor Vehicle Repair Shop.

f. Potential noise level.

The applicant has represented that the proposed use will not create any nuisance to the adjacent neighbors or businesses in the area. The proposed NYS Inspection Service will be conducted indoors and should not create any additional noise that would be a nuisance to the adjacent neighbors.

g. Clear sight distance.

The applicant is not proposing any modifications to the existing egress locations onto Empire Blvd and the existing clear sight distance at this location provides adequate clear sight distance for customers and patrons of the business.

h. Existing and proposed buffering.

The applicant has represented to the Board that the property is buffered by existing landscaping and additional buffering would not be needed from the businesses or residences adjacent to the subject property.

i. Proposed generation of noxious odors.

The applicant represented to the Board that the no noxious odors would be produced at the subject property.

j. Exterior lighting.

The applicant will not be adding any additional lighting to the subject property.

k. Proposed hours of operation.

The applicant has represented to the Board that the hours of operation would not change due to the addition of the NYS Inspection Service.

3. Not detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or detrimental or injurious to the property and improvements in the neighborhood, or to the general welfare of the town.

The proposed use is consistent with the conditionally permitted uses for the zoning district.
Pursuant to Article X-10-4-B, this Conditional Use Permit shall become void one (1) year after this approval unless the permitted activity has commenced, or otherwise specified.

Pursuant to Article X-10-4-C, this Board may revoke any Conditional Use Permit for non-compliance of conditions set forth in this approval, after first holding a public hearing and giving notice of such hearing as provided in Article XIV-14-11.

The Board’s decision was based upon the following information:

1. A Conditional Use Permit application form stamped received October 16, 2014 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated October 16, 2014 stamped received October 16, 2014 by the Building and Zoning Office.


8. A Monroe County Development Referral Form received by the Building and Zoning Office.

9. Testimony provided by the applicant and interested parties at the public hearing.
Motion to approve the application for a Conditional Use Permit to allow New York State Inspection Services at 1841 Empire Blvd.

Moved: 
Seconded: 

Vote of the Board

Daniel DeLaus 
Michael Belgiorno 
Joseph Grussenmeyer 
Carole Mulcahy 
Andris Silins 

Moved: Joseph Grussenmeyer
Seconded: Carole Mulcahy

The motion to approve the application was carried.
PENFIELD ZONING BOARD OF APPEALS  
November 20, 2014

Blue Rhino Propane, 1 Liberty Plaza, Liberty, MO 64068 requests a Special Permit for Outside Storage and Display under Article IV-4-24 of the Code to allow the installation of a propane tank exchange cabinet at 2180 Penfield Road. The property is owned by Hess Retail Stores LLC and zoned GB. SBL #140.01-1-4. Application #14Z-0063.

SPECIAL PERMIT FOR OUTSIDE STORAGE AND DISPLAY TO ALLOW THE INSTALLATION OF A PROPANE TANK EXCHANGE CABINET AT 2180 PENFIELD ROAD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Special Permit for Outside Storage and Display under Article IV-4-24 of the Code to allow the installation of a propane tank exchange cabinet at 2180 Penfield Road; and

WHEREAS, the Zoning Board of Appeals of said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York on November 20, 2014, at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

WHEREAS, the Zoning Board of Appeals, acting as lead agency pursuant to the State Environmental Quality Review Act (SEQRA) has classified this proposal as an unlisted action. Furthermore, the Zoning Board of Appeals has determined that this proposal will not have a significant effect on the environment and therefore, the submission of a draft Environmental Impact Statement will not be required.
Motion to classify this application as an unlisted action and issue a negative declaration, requiring no further environmental review.

Moved: Andris Silins  
Seconded: Michael Belgiorno

Vote of the Board

Daniel DeLaus  AYE  
Michael Belgiorno  AYE  
Joseph Grussenmeyer  AYE  
Carole Mulcahy  AYE  
Andris Silins  AYE

The motion to approve the State Environmental Quality Review Act (SEQRA) determination was carried.

NOW, THEREFORE BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for a Special Permit for Outside Storage and Display to allow the installation of a propane tank exchange cabinet at 2180 Penfield Road (Hess), subject to the following conditions:

1. The applicant shall be required to obtain a building permit from the Building and Zoning Office and pay the appropriate fee.

2. The applicant shall obtain a Special Permit from the Town Clerk’s Office and pay the appropriate fee.

3. The applicant shall comply with the requirements of the Building and Zoning Administrator and Fire Marshal.

4. The applicant shall comply with the requirements of the Fire Code of New York State and the Property Maintenance Code of New York State.

The Board bases its decision on its findings that:

1. Such storage and display is an accessory use to the main business conducted or to be conducted on the premises.

The applicant has represented to the Board that the propane tank exchange service is complementary to the existing services offered at the subject property which include gasoline, diesel, and convenience retail goods.
2. In a LB, FC, B-NR, or GB district, such storage and display is not within one hundred (100) feet of the line of a residential zoning district. In an LI district, such storage or display shall not occur within one hundred fifty (150) feet of the line of any residential zoning district.

The applicant has represented to the Board that the closest residential zoning district is approximately 1000 feet to the south.

3. Such storage and display is not at such distance from any public highway as to interfere with the safe use of such traffic.

The applicant has represented to the Board that the propane tank exchange cabinet will be located along the right front of the existing retail store and this area is setback from the public highway and would not interfere with the use of the roadways.

4. Such storage and display does not unreasonably interfere with the quiet enjoyment of property by adjacent property owners.

The applicant has represented to the Board that the propane tank exchange cabinet will be located along the right front of the existing retail store and this area would not conflict with the existing traffic flows around the fuel pump islands, parking, drive thru restaurant or the pedestrian walkways.

The Board’s decision was based upon the following information:

1. A Special Permit for Outside Storage and Display application form stamped received November 7, 2014 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated November 7, 2014 stamped received November 7, 2014 by the Building and Zoning Office.


5. A drawing of the proposed location for the propane tank exchange cabinet.

6. Testimony provided by the applicant and interested parties at the public hearing.
Motion to approve the application for a Special Permit for Outside Storage and Display at 2180 Penfield Road

Moved: Andris Silins
Seconded: Michael Belgiorno

Vote of the Board

Daniel DeLaus: AYE
Michael Belgiorno: AYE
Joseph Grussenmeyer: AYE
Carole Mulcahy: AYE
Andris Silins: AYE

The motion to approve the application was carried.