Penfield Zoning Board of Appeals
Meeting Minutes

The Zoning Board meeting at 6:30 PM local time Tuesday, January 7, 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>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>Nancy Schillaci, Secretary to the Board</td>
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6:30 – 7:00

Dan DeLaus, Chairman introduced new Board Member, Andris Silins and Nancy Schillaci, new Secretary to the Board Members and Peter Weishaar, Legal Counsel. Peter Weishaar asked Andris if he had read materials and reviewed meeting

Applications Withdrawn:
#14Z-0002

Applications Adjourned:
#14Z-0005
Tabled Applications:

#14Z-0006


Request from Nina Livingstone and Lawyer to Table the 472 Harrogate Drive application until February 20, 2014 Zoning Board of Appeals Meeting. (This application was tabled at November 21, 2013 Meeting)

Mike Belgiorno questioned that the Bed & Breakfast may affect the Mediation Business; is there a limit to how many home occupations there can be at a residence? Dan DeLaus stated that there are no limits to Home Occupations. Paperwork from applicant must be submitted by close of business on February 18, 2014. Neighbors were present with their Lawyer, Jeannie.

This application was tabled until February 20th Meeting.

Joseph Grussenmeyer  Approved
Carol Mulcahy  Second Motion
All Board Members  Aye

Went over remaining 4 applications quickly: Checking clarification, setbacks, remediation, and lot coverage.

After Board member asked for pens and pads.
At this time, Supervisor, Tony LaFountain made announcement to the Board that all meetings will be available electronically by February of 2014.

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 January 7, 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.
Application 14Z-0003

Paul Rosa, 830 Beach Avenue, Rochester, New York 14612 requests an Area Variance from Article III-3-37A of the Code to allow an existing pool deck, single family residence and concrete patios with fewer setbacks at 1435 Shoecraft Road. The property is owned by the Rosa Group Family Limited Partnership and zoned R-1-20. SBL #109.07-1-13.

Appearances by:
Bill Levinson, Attorney representing Mr. Rosa and Mr. Rosa’s Daughter, who resides at the residence;
Mr. Arnold Peatro, neighbor.

Presenter’s statements:
Mr. Levinson noted that the pool deck and patios were built in the 1960’s and were compliant at that time. Mr. Morehouse was contacted but records were difficult to access. Mr. Rosa’s daughter stated that it would be very costly to dig up the deck, etc.
Arnold Peatro, neighbor previous owner installed the pool and changed the topography of the land. Arnold stated that the well on his property had been dry for years now it’s wet, due to pool

Board deliberations:
Joseph Grussenmeyer; Deck around the pool is the problem, not the pool, which was compliant at the time of installation. Topography is not the issue. The variance is for the deck and patios

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Approved with Conditions.
Application: #14Z-0004

Richard Altier-Penfield Moseley Retail, LLC, 65 Mitchell Road, Pittsford, New York 14534 requests a Conditional Use Permit under Article III-3-77 and Article X-10-4, an Area Variance from Article III-3-78-C and a Special Permit for outside Storage and Display under Article IV-4-24 of the Code to allow a gasoline service station/convenience store, an existing shed with less setback and outside retail display at 2175 Penfield Road. The property is owned by 2175 Penfield Road LLC and zoned GB. SBL #139.02-1-4.

Appearances by:
Richard Altier, owner.

Presenter’s statements:
Applying for 3 different variances: Mr. Altier would be willing to abide by the Conditional Use Permit and the Area Variance. And he would like a Permanent storage shed, kept in the same area. The storage is needed – the store is very small and extra room is needed for cases of pop. Previous owner selling shed to Mr. Altier for a $1.00. Cars can’t get near it: it has a cement base and would be costly to remove. Shed would also hold seasonal merchandise, for example pumpkins in the fall.

Board deliberations:
Mike Belgiorno asked if the shed was being used currently: Mr. Altier is not using now; is waiting until if/when the Town of Penfield approves.
Findings: Unlisted Action

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Approved with Conditions
Application #14Z-0007

Chris Centola - Costich Engineering, 217 Lake Avenue, Rochester, New York 14608 on behalf of Qdoba Mexican Grill restaurant requests an Area Variance from Article III-3-78-B and Article III-3-78-C of the Code to allow the construction of an addition and patio with less setback and lot coverage exceeding sixty-five (65) percent at 1867 Empire Blvd. The property is owned by Edward R. Kellett Jr & Penfield-Kellett LLC and Zoned GB. SBL #093.11-1-35.

Appearances by:
Chris Centola – Costich Engineering,
Mr. Arnold DiPietro

Presenter’s statements:
Site is vacant – Would like addition on existing building/restaurant: requesting minimal required setbacks. Add 8” along Bay Road approximately 18½ square feet with addition to setbacks-increases coverage. Adding where there’s green space-patio remains the same with new decorative railing; to make patrons safe. Mr. DiPietro made a comment that the Mobil Station had a very high cost on their fuel when they were located at this site and he stated drivers must be careful going in and out. Board member suggested he should attend Planning Board on Thursday to address the traffic flow concerns – he will get right on it.

Board deliberations:
Joseph Grussenmeyer asked if there would be entrance and exit from deck. How would it be used? Mr. Centola stated there might be seasonal dining (if approved). No roof or awning; lighting would be required per Building Code. Dan DeLaus brought up the Dynasty Restaurant to comment how he understands the issues with the shape of the lot. Joseph Grussenmeyer said the building is pre-existing, non-conforming as far as lot coverage and parking. Mr. Centola made a statement that the owner is purchasing driveway along side of property to increase space. Carole asked about counter/service and where the restaurant was from. Chris answered that Qdobe Restaurants are a chain in Colorado. Dan DeLaus lives near the site; would like to see land developed, but was concerned with traffic flow and accessibility. Mr. Centola there is accessibility from Empire and Bay and also access to/from main area of plaza. Wegmans also has 2 entrances/exits from Bay Road.

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Approved with conditions.
Application #14Z-0001

Eric Rozenstraten-LeanBody, 1695 Clover Street, Rochester, New York 14618 requests a Conditional Use Permit under Article III-3-72-B and Article X-10-4 of the Code to allow take-out restaurant at 2505 Browncroft Blvd. The property is owned by Calvary Chapel of Rochester Inc and zoned LB. SBL #123.07-2-47.1

Appearances by:
Eric Rozenstraten- LeanBody

Presenter’s statements:
Apologized for being late for meeting. Meal Plans to help folks lose weight; an option for food service – re-introduce kitchen. Owner, Tim Dougherty is into exercise but believes diet can lead the way to good health. Have good communication with neighbors, Pastor Jeff and the family restaurant in the strip mall. This is a commercial kitchen.

Board deliberations:
Carole Mulcahy asked if LeanBody was affiliated with Calvary Chapel. – NO. Presently located at 35 S Washington in the City of Rochester; would like base at Penfield location because of more space available. Use facility to teach people about the Kitchen/retail. Members order the foods; chefs (3) cook/prepare foods for delivery; (2) salespeople-Business can run efficiently with (5) employees, and approx 30 pp on Sundays to pick up orders. Carole Mulcahy asked about advertising? Currently, “word of mouth” advertising. Mike Belgiorno asked about walk-in customers. Walk-in are welcome but folks need to order food ahead-order Monday, pick up Sunday. Processing 200 pounds of meat products a week. Besides the frozen meat products some retail: shirts, hats, gear and maybe a smoothie bar at a later time. There are approximately 300 clients at this time. Mike asked about hours/closing time? Kitchen normally would be closing at 6:30, once in a while might stay open until 8:30pm - the latest. There is one delivery van for take out: 9-10 hours once or twice a week for delivery. Maybe in the future might incorporate an exercise program.
Regarding signage: would keep sign the same as what is there now. Would like to install a sign on the Creek Street side of the business with colors: blue with white letters-Eric would do the design – no free standing sign. Once approved: Will install 12’ hood, sprinkler system, firewall and will check with the Fire Marshal.
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Approved with Conditions.
Paul Rosa, 830 Beach Avenue Rochester, New York 14612 requests an Area Variance from Article III-3-36-E and Article III-3-37-A of the Code to allow an existing pool deck, single family residence and concrete patios with less setback at 1435 Shoecraft Road. The property is owned by the Rosa Group Family Limited Partnership and zoned R-1-20. SBL #109.07-1-13. Application #14Z-0003.

AREA VARIANCE TO ALLOW AN EXISTING POOL DECK, SINGLE FAMILY RESIDENCE AND TWO (2) CONCRETE PATIOS WITH LESS SETBACK.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-36-E and Article III-3-37-A of the Code to allow an existing pool deck single family residence and concrete patios at 1435 Shoecraft 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 January 7, 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 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 approve to classify this application as an unlisted action and no further environmental review will be required.

Moved: Joseph Grussenmeyer
Seconded: Daniel 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 variances of 4.5 feet from the required fifty (50) foot setback from Shoecraft Road and a 9.1 foot variance from the required thirty (30) foot setback from the south property line resulting in a setback of 45.5 foot setback from Shoecraft Road and a 20.9 foot setback from the south property line to allow the existing single family residence; and a seven (7) foot variance from the required ten foot setback from the south property line and a five (5) foot variance from the required ten (10) foot setback from the west property line resulting in a setback of three (3) feet from the south property line and a setback of five (5) feet from the west property line to allow an existing pool deck; and a 26.5 foot variance from the required thirty (30) foot setback from the south property line resulting in a setback of 3.5 feet from the south property line to allow an existing 14 foot by 21 foot concrete patio; and a variance of sixteen (16) feet from the required thirty (30) foot setback from the south property line and a variance of 4.5 feet from the required fifty (50) foot setback from Shoecraft Road resulting in a setback of fourteen (14) feet to the south property line and a setback of 45.5 feet to Shoecraft Road allow an existing 7.5 foot by 11 foot concrete patio at 1435 Shoecraft Road subject to the following conditions:

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

2. The applicant shall be required to comply with the requirements of the Property Maintenance Code of New York State.

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 an undesirable change would not be produced in the character of the neighborhood by the granting of the requested area variance. The Board has been presented evidence that the existing single family residence was constructed on or around 1962 and the existing in ground pool was constructed on or around 1982 based on Assessor and Building Department records. No further records were found for the construction for the existing pool deck, and two (2) concrete patios. The applicant has represented to the Board that the existing pool deck and two (2) patios were constructed prior to their purchase of the property in September of 2003.

The structures the subject of this review by the Board has been located on the property for a number of years and no records of complaints have been discovered regarding the subject structures.

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 other than an area variance. The subject property is unique in the rear of the subject property is the shortest linear dimension (one hundred feet) and the front setback off Garden Hill Lane (fifty feet) and the depth of the residence (twenty eight feet) only allowed 20.9 feet to the rear (south) property line and this did not comply with the dimensional requirements of the Code nor allow for future expansion of the typical amenities associated with a single family residential environment.

3. Whether the requested area variance is substantial.

The Board determined that the requested area variances are substantial except for the two (2) variances granted for relief from the fifty (50) foot setback from Shoecraft Road. The applicant has represented to the Board that the structure the subject of the requested variance were constructed prior to their purchase of the property in 2003 and the cost to removed the portions of the structures in violation of the dimensional requirements of the Code would be excessive and in the case of the single family residence would diminish the value of the property extensively.

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 requested area variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board heard evidence from the adjacent property owner to the west (Arnold DiPietro) that in
1982 when the in ground pool was constructed he has since then experienced significantly higher ground water infiltration to his basement sump. That structure was not the subject of this application and was properly permitted in 1982. Other than this comment provided by the adjacent property owner no further evidence was presented to the Board to indicate any detrimental conditions existed that impacted the adjacent property owners.

5. Whether the alleged difficulty was self-created.

The Board determined that the applicant’s alleged difficulty was not self created. The applicant has represented to the Board that surveying standards have changed since the residence was constructed in 1962, which would not have identified the non-compliance issue for the residence and an instrument survey was not performed in 2003 when this applicant purchased the property. Had the applicant been advised of the non-compliance issues in 2003 the closing would have been subject to the previous owner clearing the non conformities. The applicant has represented to the Board and the Assessor’s Office records concur that the applicant has been the owner of record from 2003 after the subject structure were constructed.

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 December 13, 2013 by the Building and Zoning Office.


3. A Short Environmental Assessment Form dated December 12, 2013 stamped received December 13, 2013 by the Building and Zoning Office.


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

6. A copy of the building permit for the in ground pool stamped paid July 17, 1982 received by the Building and Zoning Office.
Moved to approve the application for area variances:  
\textbf{Joseph Grussenmeyer}  
\textbf{Daniel DeLaus}

Seconded:

\textbf{Joseph Grussenmeyer}  
\textbf{Daniel DeLaus}

Vote of the Board

\begin{itemize}
\item Daniel DeLaus \hspace{2cm} AYE
\item Michael Belgiorno \hspace{2cm} AYE
\item Joseph Grussenmeyer \hspace{2cm} AYE
\item Carole Mulcahy \hspace{2cm} AYE
\item Andris Silins \hspace{2cm} AYE
\end{itemize}

The motion to approve the application was carried.
Richard Altier-Penfield Moseley Retail, LLC, 65 Mitchell Road, Pittsford, New York 14534 requests a Conditional Use Permit under Article III-3-77 and Article X-10-4, an Area Variance from Article III-3-78-C and a Special Permit for outside Storage and Display under Article IV-4-24 of the Code to allow a gasoline service station/convenience store, an existing shed with less setback and outside retail display at 2175 Penfield Road. The property is owned by 2175 Penfield Road LLC and zoned GB. SBL #139.02-1-4. Application #14Z-0004.

CONDITIONAL USE PERMIT TO ALLOW A GASOLINE SERVICE STATION/CONVENIENCE STORE AT 2175 PENFIELD ROAD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Conditional Use Permit under Article III-3-77 and Article X-10-4 of the Code to allow a gasoline service station/convenience store at 2175 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 January 7, 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 to classify this application as an unlisted action and no further environmental review will be required.

Moved: Daniel DeLaus
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 a gasoline service station/convenience store at 2175 Penfield Road, subject to the following conditions:

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

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

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

4. The applicant shall be permitted to conduct business 24 hrs daily.

The Board bases its decision on its findings that:

1. The proposed use is similar to the other uses at the subject property and with the current uses in the neighborhood. Additionally, this property has been operated as a gasoline service station/convenience store since 1982 and the operations are expected to remain the same. This application is under review by this Board because of an ownership change in the business.

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 Penfield Road and Fairport Nine Mile Point Road. The applicant is not proposing any changes to the existing means of ingress and egress for the subject property.

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.

c. Potential impact to both present and future uses.

The applicant has represented to the Board that the proposed use will not interfere with the present or future uses in the neighborhood.

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.

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.

g. Clear sight distance.

The applicant is not proposing any modifications to the existing egress locations onto Penfield Road and Fairport Nine Mile Point Road and the existing clear sight distance at these locations provides adequate clear sight distance for customers and patrons of the plaza.

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 adjacent to the subject property.

i. Proposed generation of noxious odors.

The applicant represented to the Board that the use will not produce any noxious odors.
j. Exterior lighting.

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

k. Proposed hours of operation.

The proposed hours of operation are 24 hrs daily.

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 December 11, 2013 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated December 11, 2013 stamped received December 12, 2013 by the Building and Zoning Office.


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

Motion to approve the application for a Conditional Use Permit to allow a gasoline service station/convenience store at 2175 Penfield Road

Moved: Daniel DeLaus
Seconded: Michael Belgiono

Vote of the Board

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

The motion to approve the application was carried.
SPECIAL PERMIT FOR OUTSIDE STORAGE AND DISPLAY AT 2175 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 a outside storage and display at 2175 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 January 7, 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 to classify this application as an unlisted action and no further environmental review will be required.

Moved: Daniel DeLaus
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 operator to display seasonal goods at the front of the convenience store frontage at 2175 Penfield Road, subject to the following conditions:

1. The applicant shall obtain a Special Permit from the Town Clerk’s Office and pay the appropriate fee.
2. The applicant shall comply with the requirements of the Building and Zoning Administrator and Fire Marshal.

3. 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 items that would be displayed along the store front would be goods that would be customarily used by vehicle owners or items that are sold out of the store.

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 zoned property is more than one thousand feet from the subject property.

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 goods will be displayed adjacent to the convenience store and will not interfere with traffic on Penfield Road, Fairport Nine Mile Point Road or the vehicular traffic patterns on the subject property.

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 requested display of goods adjacent to the store front is not new but to continue the approval the previous operator had enjoyed. Additionally, there has been no evidence provided to the Board that the display of the goods has interfered the uses or enjoyment of the adjacent property owners or businesses.

The Board’s decision was based upon the following information:
6. A Special Permit for Outside Storage and Display application form stamped received December 12, 2013 by the Building and Zoning Office.

7. A Short Environmental Assessment Form dated December 11, 2013 stamped received December 12, 2013 by the Building and Zoning Office.


10. 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 2175 Penfield Road

Moved: Daniel DeLaus
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.
AREA VARIANCE TO ALLOW AN SHED WITH LESS SETBACK.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an area variance under Article III-3-78-C of the Code to allow an existing shed with less setback at 2175 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 January 7, 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. 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 to classify this application as a Type II action and no further environmental review will be required.

Moved: Daniel DeLaus
Seconded: Michael Belgiorno

Vote of the Board

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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 an area variances of 14.06 feet from the required twenty (20) foot setback from the west property line resulting in a setback of 5.94 feet from the west property line to allow an existing 14.25 foot by 20.25 foot shed at 2175 Penfield Road subject to the following conditions:
1. The applicant shall be required to comply with the requirements of the Building and Zoning Administrator.

2. The applicant shall be required to comply with the requirements of the Property Maintenance Code of New York State.

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 the requested area variance would not create an undesirable change in the character of the neighborhood. The structure the subject of the requested area variance is located adjacent to the dumpster enclosure that services this property and is buffered by existing mature vegetation to the property at the south property line.

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 other than an area variance. The applicant has represented to the Board that the intended use of the structure would be to provide additional storage for retail products of the business. The existing convenience store does not have any available storage area to inventory goods.

3. Whether the requested area variance is substantial.

The Board determined that the requested area variance is not substantial. The area adjacent to the location of the existing shed is an access road that connects the large plaza to the rear and side of the subject property.

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 requested area variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The applicant has represented to the Board that the shed has been located on the property for a number of years and has not created any adverse impact to the neighboring properties.

5. Whether the alleged difficulty was self-created.
The Board determined that the applicant’s alleged difficulty was self created. The applicant has represented to the Board that the original intended use of the shed was to be a temporary shelter for equipment used to remediate soil contamination on the site. The remediation efforts have ended and the equipment is in the process of being removed from the structure. This operator was given the option to purchase the structure for one (1) dollar and would desire to do so. Additionally, the shed is constructed and on concrete foundation which would be costly to remove.

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. A Conditional Use Permit application form stamped received December 11, 2013 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated December 11, 2013 stamped received December 12, 2013 by the Building and Zoning Office.


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

Motion to approve the application for an area variance to allow an existing shed at 2175 Penfield Road

Moved: Daniel DeLaus
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.
PENFIELD ZONING BOARD OF APPEALS
January 7, 2014

Chris Centola-Costich Engineering, 217 Lake Avenue, Rochester, New York 14608 on behalf of Qdoba Mexican Grill restaurant requests an Area Variance from Article III-3-78-B and Article III-3-78-C of the Code to allow the construction of an addition and patio with less setback and lot coverage exceeding sixty five (65) percent at 1867 Empire Blvd. The property is owned by Edward R Kellett Jr & Penfield-Kellett LLC and Zoned GB. SBL #093.11-1-35. Application #14Z-0007.

AREA VARIANCE TO ALLOW THE CONSTRUCTION OF AN ADDITION AND PATIO WITH LESS SETBACK AT 1867 EMPIRE BLVD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-78-C of the Code to allow an addition and patio with less setback at 1867 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 January 7, 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 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 approve to classify this application as an unlisted action and no further environmental review will be required.

Moved: Joseph Grussenmeyer
Seconded: Michael Belgorno
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 68.8 feet from the required eighty (80) foot setback from Bay Road resulting in a setback of 11.2 feet from Bay Road to allow the construction of an addition to the existing 1 story building at 1867 Empire Blvd and an area variance of 73.5 feet from the required eighty (80) foot setback from Bay Road resulting in a setback of 6.5 feet to Bay Road to allow the construction of a patio at 1867 Empire Blvd 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 be required to comply with the requirements of the Building and Zoning Administrator.

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

4. The applicant shall be required to obtain site plan approval from the Planning Board.

5. The applicant shall be required to comply with the requirements of the Town Engineer.

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 an undesirable change would not be produced in the character of the neighborhood by the granting of the requested area variance. The requested
variances sought by this application are on top of existing variances; and when considered in that vein, the additional amount granted here is relatively small, thus it would not create an undesirable change.

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 other than an area variance. The applicant has represented to the Board that the subject parcel is undevelopable under the current zoning requirements and the only feasible way for the proposed restaurant to develop the parcel is to request the subject variances.

3. Whether the requested area variance is substantial.

The Board determined that the requested area variances are not substantial. The existing building to be improved is currently setback a distance of 6.8 feet from Bay Road.

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 requested area variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The applicant has represented to the Board that the granting of the requested area variances will allow the property to be redeveloped and eliminate any current adverse visual effects occurring on the property and will have no adverse environmental conditions in the neighborhood.

5. Whether the alleged difficulty was self-created.

The Board determined that the applicant’s alleged difficulty was self created. The applicant has represented to the Board that to redevelop the property to the requirements of the applicant, the variances are necessary. However, based on the shape and size of the property and its associated setback requirements, no development could occur without granting of the requested variances.

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 December 13, 2013 by the Building and Zoning Office.

3. A Short Environmental Assessment Form dated December 12, 2013 stamped received December 13, 2013 by the Building and Zoning Office.


5. A memo from the Planning Board supporting the applicant’s requested area variances dated December 17, 2013.

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

Moved to approve the application for area variances: 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 application was carried.
AREA VARIANCE TO ALLOW THE CONSTRUCTION OF AN ADDITION AND PATIO WITH LOT COVERAGE EXCEEDING SIXTY FIVE (65) PERCENT AT 1867 EMPIRE BLVD.

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting an Area Variance from Article III-3-78-B of the Code to allow the construction of an addition and patio with lot coverage exceeding sixty five (65) percent at 1687 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 January 7, 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 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 approve to classify this application as an unlisted action and no further environmental review will be required.

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

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board hereby APPROVES the application for an area variance of nine (9) percent from the maximum allow lot coverage of sixty five (65) percent resulting in lot coverage of seventy four (74) percent to allow the construction of an addition and patio at 1867 Empire Blvd 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 be required to comply with the requirements of the Building and Zoning Administrator.

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

4. The applicant shall be required to obtain site plan approval from the Planning Board.

5. The applicant shall be required to comply with the requirements of the Town Engineer.

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 an undesirable change would not be produced in the character of the neighborhood by the granting of the requested area variance. The applicant has represented to the Board that the owner of the subject property is acquiring additional land that has an existing driveway, which is nearly all paved. Because this is existing and only involving moving a boundary, there will be very little change.

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 other than an area variance. The applicant has represented to the Board that the subject parcel is undevelopable under the current zoning requirements and the only feasible way for the proposed restaurant to develop the parcel is to request the subject variances.

Additionally, the applicant has represented to the Board that additional property would be acquired by the property owner to minimize the impacts the additions would have on lot coverage.

3. Whether the requested area variance is substantial.

The Board determined that the requested area variances are not substantial. The existing lot coverage on the subject property is currently seventy one (71) percent and to mitigate
the change in lot coverage the applicant is proposing extensive planting to be added along
the perimeter of the property and the acquisition of additional land area.

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 requested area variance would not have an adverse effect
or impact on the physical or environmental conditions in the neighborhood. The applicant
has represented to the Board that the granting of the requested area variances will allow
the property to be redeveloped and eliminate any current adverse visual effects occurring
on the property and will have no adverse environmental conditions in the neighborhood.

5. Whether the alleged difficulty was self-created.

The Board determined that the applicant’s alleged difficulty was self created. The
applicant has represented to the Board that to redevelop the property to the requirements
of the applicant, the variances are necessary. However, based on the shape and size of the
property and its associated setback requirements, no development could occur without
granting of the requested variances.

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 December 13, 2013 by the
   Building and Zoning Office.

2. A letter of intent dated December 13, 2013 stamped received December 13, 2013 by
   the Building and Zoning Office.

3. A Short Environmental Assessment Form dated December 12, 2013 stamped received
   December 13, 2013 by the Building and Zoning Office.

4. A site plan prepared by Mark Costich, P.E-Costich Engineering dated October 25,
   2013 stamped received December 13, 2013 by the Building and Zoning Office.

5. A memo from the Planning Board supporting the applicant’s requested area variances
dated December 17, 2013.

6. Testimony provided by the applicant and interested parties at the public hearing.
Moved to approve the application for area variances:  
Joseph Grussenmeyer  
Seconded:  
Michael Belgiorno  

Vote of the Board  

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The motion to approve the application was carried.
Eric Rozenstraten-Project LeanBody, 1695 Clover Street, Rochester, New York 14618 requests a Conditional Use Permit under Article III-3-72-B and Article X-10-4 of the Code to allow take-out restaurant at 2505 Browncroft Blvd. The property is owned by Calvary Chapel of Rochester Inc and zoned LB. SBL #123.07-2-47.1. Application #14Z-0001.

CONDITIONAL USE PERMIT TO ALLOW A TAKE-OUT RESTAURANT (PROJECT LEANBODY) AT 2505 BROWNCROFT BLVD

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Conditional Use Permit under Article III-3-72-B and Article X-10-4 of the Code to allow an take-out restaurant (Project LeanBody) at 2505 Browncroft 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 January 7, 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 to classify this application as an unlisted action and no further environmental review will be required.

Moved: Carole Mulcahy
Seconded: Daniel DeLaus
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 a take-out restaurant (Project LeanBody) at 2505 Browncroft Blvd, subject to the following conditions:

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

2. The applicant shall be required to obtain a building permit from the Building and Zoning 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 Building Code of New York State.

5. The applicant shall be permitted to conduct business between the hours of 6:00 AM to 11:00 PM Sunday through Saturday.

The Board bases its decision on its findings that:

1. The proposed use is similar to the other uses at the subject property and with the current uses at the shopping plaza.

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 Browncroft Blvd and Blossom Road. The applicant is not proposing any changes to the existing means of ingress and egress for the subject property.

b. Adequacy of parking facilities.

The applicant has represented to the Board that the parking facility is adequate to accommodate this proposed use and the existing tenants at the subject property. The existing tenants of the subject property have different peak use times that will allow sharing of the common parking spaces. Additionally, the applicant has represented to the Board that the subject business is primarily delivers the prepared foods to customers and does not expect a significant number of customers to walk in for counter service and therefore the expected need for parking will be for the 7-8 employees.

c. Potential impact to both present and future uses.

The applicant has represented to the Board that the proposed use will not interfere with the present or future uses at the subject property.

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 primary sign on the façade of the building and will evaluate the need for a second sign and seek approval from this Board.

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.

g. Clear sight distance.

The applicant is not proposing any modifications to the existing egress locations onto Browncroft Blvd and Blossom Road and the existing clear sight distance at these locations provides adequate clear sight distance for customers and patrons of the plaza.

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 and residences adjacent to the subject property.

i. Proposed generation of noxious odors.

The applicant represented to the Board that the cooking equipment that will use at the proposed take-out restaurant will require the use of traditional hood ventilation equipment and will be installed and maintained to the standard of the Building Code of New York State.

j. Exterior lighting.

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

k. Proposed hours of operation.

The proposed hours of operation are 6:00 AM to 11:00 PM Sunday through Saturday.

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 December 13, 2013 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated December 12, 2013 stamped received December 13, 2013 by the Building and Zoning Office.

3. A lease agreement from Pastor Geoff Brede (Calvary Chapel of Rochester Inc) stamped received December 13, 2013 by the Building and Zoning Office.


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

Motion to approve the application for a Conditional Use Permit to allow a take-out restaurant (Project LeanBody) at 2505 Browncroft Blvd

Moved: Carole Mulcahy  
Seconded: Daniel DeLaus

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.