Penfield Zoning Board of Appeals
Meeting Minutes

The Zoning Board meeting at 6:30 PM local time Thursday, April 21, 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: Mike Belgiorno

<table>
<thead>
<tr>
<th>ZBA MEMBER</th>
<th>PRESENT</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel DeLaus, Chairperson</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Joseph Grussenmeyer</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Carole Mulcahy</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Mike Belgiorno</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Andris Silins</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDITIONAL STAFF</th>
<th>PRESENT</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peter Weishaar, Legal Counsel</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Joseph Platania, Legal Counsel</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Harold Morehouse, Building and Zoning Administrator</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Katherine Kolich-Munson, Secretary</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Endre Suveges, Building/ Code Compliance Inspector</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

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 April 21, 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.

I. PUBLIC MEETING:

1. Randy Bebout-T.Y. Lin International Engineering, Architecture & Land Surveying, P.C., 255 East Avenue, Rochester, New York 14604 on behalf of Mitch Ide-Dick Ide Honda requests an expansion of an existing Conditional Use Permit under Article III-3-77_a and Article X-10-4 of the Code to allow an addition to the existing building and a Special Permit for Signage under Article VII-7-3 from Article VII-7-13-B and Article VII-7-13-C of the Code to allow greater building mounted signage and more than one (1) building mounted signs at 875 Panorama Trail S. The property is owned by Richard Ide and zoned GB. SBL #138.12-1-7.1. Application #14Z-0018.

Randy Bebout – T.Y. Lin International Engineering, Dick Ide

Mr. Bob Kieffer & Rich Ide, spoke about the signage at 875 Panorama Trail S

- Modification of use and modification of signage
- The applicant would like to change the manner in which care get serviced by using multiple lanes for easier drop off and pick-up for cars being serviced. It would allow for easier access and much safer as well.
- Some of the building facade is going to change in front. Currently, sign says “Honda” and applicant would like to move it closer to Panorama Trail side and then move other sign over to the bay door area. This sign would allow customers to find the service area more easily and allow them to proceed to any of the bay doors for service. Nothing will change as far as the service customers are provided, it will just expand the service area to provide better service.
- Adding 525 ft. will not change the business nor the neighborhood. All changes are for improvement for better customer service and a safer environment for the customer.
- The current signage is from 2002. They currently have two signs hanging on the North side, two on the front, and two on the South side. The applicant would be going from 6 signs to 8 signs.
- Backlights will be utilized just for the hours of operation.
• Mr. Rich Ide spoke regarding signage and customer complaints in regard to the service center. Most of the customers indicated they could not find the area that easily and then once they approached, were not sure where to park. As indicated, the changes that they are proposing are to be orderly and more organized for the customers.
• Chairman DeLaus was questioned and trying to understand the applicants “vision” of their signage use for the service center.
• Board member Silins asked if the bay doors would be glass and if the applicant was going to put signs on the inside.
• Chairman DeLaus asked what the average number of cars being serviced was daily. Response: 100+

PUBLIC COMMENTS:

• Monica, a past customer who purchased two cars from the applicant previously. She expressed how the improvement would be much necessary and helpful to customers, because it is complicated to know where to go for service on cars. Especially for first time visitors.

T.Y. Lin International-Dick Ide

Conditional Use Permit:

The application was approved with conditions:

Vote: Moved by: Belgiono Seconded by: Grussenmeyer

Chairman DeLaus: Aye Grussenmeyer: Aye Mulcahy: Aye
Belgiumo: Aye Silins: Aye

Motion was carried

Signage:

The application was tabled for additional information on the current signage placed on the building.

Vote: Moved by: Belgiono Seconded by: Grussenmeyer

Chairman DeLaus: Aye Grussenmeyer: Aye Mulcahy: Aye
Belgiumo: Aye Silins: Aye

Motion was carried
2. Mabel Chu-Hunt Real Estate ERA, 3300 Monroe Avenue, Rochester, New York 14618 on behalf of Fu Zi Cui requests a Conditional Use Permit under Article III-3-72-E and Article X-10-4 of the Code to allow a Health Spa and Massage business at 1694 Penfield Road. The property is owned by D&L Realty Inc. and zoned LB. SBL #139.05-1-53. Application # 14Z-0006.

Mabel Chu-Hunt – Hunt Real Estate ERA

Ms. Mabel Chu-Hunt & Fu Zi Cui spoke

- Ms. Mable spoke of the Health Spa and the hours of operation will be 10:00 am – 9 pm, 7 days a week. *note: times varied throughout conversations* the service being provided is mainly for massage (spinal).
- The number of anticipated customers will be 2-3 at one time.
- The number of therapists will be around 2-3
- There will be individual rooms for customers, no doors, four room’s total. There will be three individual rooms, to include a room for couples. The property will include a utility room and a shower room.
- Appointments are needed for service.
- The applicant will not be selling/or providing any types of products.
- The board viewed applicant’s paperwork and found some inconsistencies. The owner Fu Zi Cui is not licensed, but the sister is.
- The board all agreed and asked for the applicant to present a certified copy of their license and be sure that all who will be working in the spa, is always listed.
- Cindy Ziu was the translator for applicant. (Mandarin Chinese) Ms. Ziu is a BOCES employee. The board ask Ms. Ziu if the applicant understood what was being discussed and if she agreed with the requests.

PUBLIC COMMENTS:

- Monica, resident of Penfield, expressed her concern of the hours of operation and the Spa will operate as business professionals for massages only.

Health Spa and Massage Business

The application is tabled for additional information from the applicant. DBA filling for the business and names and licenses of each employee and a copy of the document filed with the state.

Vote: Moved by: DeLaus Seconded by: Mulcahy


Motion was carried
Tabled Applications:

1. Paul Colucci-The DiMarco Group, 1950 Brighton-Henrietta Town Line Road, Rochester, New York 14623 requests Area Variances from Article III-3-78-B, Article IV-4-11, Article IV-4-11-F to allow more lot coverage, smaller parking spaces and less parking spaces than required by Code and a Special Permit for Outside Storage and Display under Article IV-4-24 to allow outside storage and display at 1900, 1902, 1970, 1994-C and 1994-B Empire Blvd. The property is owned by The DiMarco Group and zoned GB. SBL #'s 093.02-1-23.11, 093.02-1-23.4, 093.02-1-13, 093.02-1-24.997 and 093.02-1-25.1. Application #14Z-0017.

The Board discussed the following after the public hearing.

Walmart Supercenter

- Board member Belgiorno asked about the three different sized parking spaces at Baytowne and where these spaces would be utilized. Response: there will be an overall parking ratio of 5.0 parking spaces per 1,000 S.F. The variance is to allow some parking space within the Walmart plaza to be 9.5’ X 18’ and 9’ X 18’ where 9’ X 20” parking spaces are required.
- Board member Mulcahy asked about the storage area and suggested instead of granting the applicant the three year storage space, perhaps give them a duration period to see how it works before allowing them the three year term.
- Board member Grussenmeyer spoke about the service center being light projected and the four bay doors proposed. He also asked about the signage going to be used. Hanging signs vs. painted signs (on glass windows) require different codes.

The Board discussed the application and APPROVED.

Vote: Moved by: DeLaus Seconded by: Belgiorno
Chairman DeLaus: Aye Grussenmeyer: Aye Mulcahy: Aye
Belgiorno: Aye Silins: Aye

Motion was carried

The Board APPROVED the meeting minutes of Mar 2014

Vote: Moved by: Grussenmeyer Seconded by: Silins
Chairman DeLaus: Aye Grussenmeyer: Aye Mulcahy: Aye
Belgiorno: Aye Silins: Aye

IV MISCELLANEOUS:
- Deck violation, 12 Beachbrook. Resident would like to enclose back deck recently built, due to mosquitos. Board discussed and the resident may have to come back for a public hearing.
- Phil Palermo need 2½ variance.
- Next meeting will be on May 19, 2014 @ 6:00 pm. We will have 9 applications and 2 tabled items for discussion.

There being no further business to come before the Board, this meeting was adjourned at 8:15 PM, Thursday, April 21, 2014.
Randy Bebout-T.Y. Lin International Engineering, Architecture & Land Surveying, P.C.,
255 East Avenue, Rochester, New York 14604 on behalf of Mitch Ide-Dick Ide Honda
requests an expansion of an existing Conditional Use Permit under Article III-3-77-C and
Article X-10-4 of the Code to allow an addition to the existing building and a Special
Permit for Signage under Article VII-7-3 from Article VII-7-13-B and Article VII-7-13-C
of the Code to allow greater building mounted signage and more than one (1) building
mounted signs at 875 Panorama Trail S. The property is owned by Richard Ide and zoned

CONDITIONAL USE PERMIT TO ALLOW AN ADDITION TO AN EXISTING
BUILDING AT 875 PANORAMA TRAIL SD

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 an addition to an existing building at 875 Panorama Trail S; 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 April
21, 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 no further environmental review will be required.

Moved: Michael Belgiorno
Seconded: Joseph Grussenmeyer

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 an addition to an existing building at 875 Panorama Trail S, 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 be required to comply with the requirements of the Planning Office.

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

5. The applicant shall comply with the requirements of the Building Code of New York State.

The Board bases its decision on its findings that:

1. The proposed use is an addition to the existing services provide by the applicant at the subject property.
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 Linden Park. 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 proposed addition will provide the ability for service customers to pull into the facility to discuss service needs and requirements for their vehicles. The service advisors will then direct staff to move the vehicle to the appropriate location for service or storage. This will allow the applicant to most economically use the existing parking at the 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 at the subject or adjacent properties.

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.

This application also includes a request to modify the sign package for this use and is tabled for further information and consideration by the 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 Linden Park and the existing clear sight distance at these locations provides adequate clear sight distance for customers and patrons of the property.

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 proposed addition will not create any additional noxious odors 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 is not proposing any modifications to the current hours of operation of the use at the property, which are Monday to Thursday from 7:00 AM to 9:00 PM, Friday 7:00 AM to 6:00 PM and Saturday 8:00 AM to 6:00 PM.

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 March 14, 2014 by the Building and Zoning Office.

2. A Short Environmental Assessment Form dated March 14, 2014 stamped received March 14, 2014 by the Building and Zoning Office.

4. A Monroe County Development Referral Form dated April 5, 2014 received by the Building and Zoning Office.

5. A site plan prepared by T.Y. Linn International dated March 14, 2014 stamped received March 14, 2014 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 an addition to an existing building at 875 Panorama Trail S.

Moved: Michael Belgiorno
Seconded: Joseph Grussenmeyer

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.
SPECIAL PERMIT FOR SIGNAGE TO ALLOW GREATER BUILDING MOUNTED SIGNAGE AND MORE THAN ONE (1) BUILDING MOUNTED SIGNS AT 875 PANORAMA TRAIL S

WHEREAS, an application has been received by the Penfield Zoning Board of Appeals requesting a Special Permit for Signage under Article VII-7-3 from Article VII-7-13-B and Article VII-7-13-C of the Code to allow greater building mounted signage and more than one (1) building mounted signs at 875 Panorama Trail S; 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 April 21, 2014 at 7:00 PM to consider the said application and hear all persons in favor of or opposed to the application; and

NOW, THEREFORE BE IT FURTHER RESOLVED that the Board hereby TABLES the application for a Special Permit for Signage to allow greater building mounted signage and more than one (1) building mounted signs at 875 Panorama Trail S pending the submission of the following:

1. Submission of prior Zoning Board of Appeals approval resolutions allowing the installation of the signage currently installed on the subject building.

Moved to approve the Board’s motion to table the application to modify the existing sign package:
Moved: Carole Mulcahy
Seconded: Michael Belgiorno

Vote of the Board

<table>
<thead>
<tr>
<th>Name</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel DeLaus</td>
<td>AYE</td>
</tr>
<tr>
<td>Michael Belgiorno</td>
<td>AYE</td>
</tr>
<tr>
<td>Joseph Grussenmeyer</td>
<td>AYE</td>
</tr>
<tr>
<td>Carole Mulcahy</td>
<td>AYE</td>
</tr>
<tr>
<td>Andris Silins</td>
<td>AYE</td>
</tr>
</tbody>
</table>

The motion to approve the application was carried.
PENFIELD ZONING BOARD OF APPEALS
April 21, 2014

By application dated January 31, 2014 and application supplements each dated February 13, 2014 (collectively, the “Application”), DiMarco BayTowne Associates, LLC and DiMarco Brandt Point, LLC (collectively, the “Applicant”) applied to the Penfield Zoning Board of Appeals (the “Board”) for the following approvals to allow the Applicant to expand and redevelop certain portions of the existing BayTowne Plaza ("BayTowne," or the “Plaza”) located on Empire Boulevard in the Town of Penfield (the “Town”): (i) area variances from Section 3-78(B) of the Zoning Ordinance of the Town of Penfield (the “Code”) to allow lot coverage greater than sixty (65) percent, as more specifically described on the attached Schedule A; (ii) area variances from Section 4-11(F) of the Code to allow parking ratios of less than 5.4 parking spaces per 1,000 SF of gross building floor area, as more specifically described on the attached Schedule A; (iii) an area variance from Section 4-11 of the Code to allow certain parking spaces within the Plaza to be 9.5’ x 18’ and 9’ x 18’ (as indicated on the Plans) where 9’ x 20’ parking spaces are required (the above (i), (ii), and (iii) are collectively, the “Variances”); and (iv) a special permit under Section 4-24(B)(1) of the Code to allow certain outdoor storage at the Plaza as detailed in the Application and on the Plans (the “Special Permit”). SBL #s: 93.02-1-13; 93.02-1-23.11; 93.02-1-23.4; 93.02-1-24.997; 93.02-1-25.1.

Application #14Z-0017

WHEREAS, the BayTowne expansion and redevelopment project (collectively, the “Project”) consists of construction of an approximately 186,000 +/- SF Walmart Supercenter, reconfiguration of the existing five (5) lots at the Plaza to three (3) lots, development of a Town Centre area and Street of Shops within the Plaza, utility expansions, landscaping improvements, as well as other associated additions and improvements, all as shown on the zoning drawings prepared by Bergmann Associates, PC (collectively, the “Plans”) submitted by the Applicant;

WHEREAS, pursuant to the New York State Environmental Quality Review Act and its implementing regulations (collectively, “SEQRA”) the Project, including the aspects of the Project requiring the requested Variances and Special Permit, was classified as a Type I action. Pursuant to SEQRA Type I action requirements, a coordinated review was required, and, thereafter, the Town Planning Board (the “Planning Board”) was duly declared lead agency for the Project;
WHEREAS, in accordance with New York General Municipal Law Section 239-m, the Project was duly referred to the Monroe County Department of Planning and Development for the required review under such section of the General Municipal Law which resulted in comments issued by the Monroe County Department of Planning and Development under referral #PN09-3Z, dated February 17, 2009;

WHEREAS, on March 26, 2009, the Planning Board, acting as lead agency pursuant to SEQRA, issued a positive declaration indicating the Project may result in a potentially significant adverse impact, and therefore required the preparation of an Environmental Impact Statement (“EIS”);

WHEREAS, on April 9, 2009, the Planning Board received the Applicant’s proposed draft scoping outline, and the Planning Board determined it would conduct a public scoping process on the draft outline, and comments were accepted in writing by the Planning Board via mail, hand delivery, fax, and e-mail to the Planning Department between April 13, 2009 and May 13, 2009 at 5:00 p.m. The Planning Board approved the final scoping outline on May 28, 2009;

WHEREAS, in connection with the Project, the Applicant submitted numerous materials, including a Draft EIS, with supplements, dealing with identified environmental issues of the redevelopment plan, including noise, residential real estate values, traffic, water/drainage, lighting and view, impacts on the neighborhood and community, and other issues;

WHEREAS, on September 7, 2010, the Planning Board declared the draft EIS adequate for public review, set a public hearing, and officially opened a public comment period;

WHEREAS, on October 14, 2010, the Planning Board conducted a public hearing with respect to the draft EIS for the Project pursuant to SEQRA at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York, at 7:30 p.m. where the facts supporting the Project were presented and where citizen input was received (the “SEQRA Public Hearing”);

WHEREAS, following the SEQRA Public Hearing and continuing until October 25, 2010 at 5:00 p.m., the Planning Board accepted additional written comments via mail, hand delivery, fax, and e-mail to the Planning Department on the Project in connection with the draft EIS;

WHEREAS, thereafter, at the request of the Planning Board, the Applicant submitted a revised plan for the Project entitled CP-02, which greatly reduced and modified the original plan submitted for the Project;

WHEREAS, on April 26, 2012, the Planning Board adopted and published the final EIS in connection with the Project, which is hereby incorporated by reference;

WHEREAS, on May 15, 2012, the Planning Board adopted its Finding Statement (the “Planning Board Findings Statement”) and determined that of all of the alternatives considered during the lengthy, thorough review process for the Project, Plan CP-02 best provided a balance of all interests and mitigated potential adverse environmental impacts to the maximum extent practicable, as more fully set forth in the Planning Board Findings Statement;
WHEREAS, as indicated above, during the draft EIS stage of the environmental review for the Project, the Planning Board requested an additional alternative for consideration which was ultimately submitted as Plan CP-02 and therefore was not included in the New York General Municipal Law Section 239-m referral to the Monroe County Department of Planning and Development known as PN09-3Z dated February 17, 2009. Although all the agencies included in the Monroe County Development Review Committee are involved agencies under SERQA for the action and were included within a coordinated SEQRA review, the town re-referred the Project and in accordance with New York General Municipal Law Section 239-m, subsequent comments were issued by the Monroe County Department of Planning and Development under referral #PN12-37Z, dated June 21, 2012;

WHEREAS, a public hearing was held by the Town Board, pursuant to Article XIV-14-1 of the Penfield Zoning Ordinance and Section 265 of the New York State Town Law, on August 22, 2012, at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York, at 7:30 p.m., where the facts in support of the requested rezoning for the Project were presented and where public input was received and thereafter the public hearing was closed, except for written comments, and decision was reserved (the “Rezoning Public Hearing”);

WHEREAS, following the Rezoning Public Hearing and continuing until September 14, 2012, the Town Board accepted additional written public comments via mail, hand delivery, fax, and e-mail to the Planning Department and/or the Town Supervisor’s Office on the Project;

WHEREAS, as part of the rezoning granted by the Town Board pursuant to Penfield Town Board Resolution No. 12T-248 dated December 19, 2012 (the “Rezoning Resolution”), the Town Board adopted the Planning Board Findings Statement, subject to additional mitigation measures and other changes required by the Town Board to best provide a balance of all interests and mitigate potential adverse environmental impacts associated with the Project to the maximum extent practicable (the “Town Board Findings Statement”), all as more particularly set forth in the Rezoning Resolution of which the Town Board Findings Statement is a part, and which is hereby incorporated by reference;

WHEREAS, in accordance with New York General Municipal Law Section 239-m, the Application was duly referred to the Monroe County Department of Planning and Development for the required review under such section of the General Municipal Law which resulted in comments issued by the Monroe County Department of Planning and Development under referral #PN14-13ZS, dated February 24, 2014;

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

NOW, THEREFORE, BE IT RESOLVED, based on the above facts and findings, that the Planning Board Findings Statement, as modified by the Town Board Findings Statement, is hereby incorporated herein by reference and adopted by the Board in all respects.
BE IT FURTHER RESOLVED, that the requested Variances, as more particularly described in the attached Schedule A, are hereby GRANTED, and, that the Applicant shall have the right to adjust the open space percentages and parking ratios within the individual lots, all subject to the following conditions:

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

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 obtain a Certificate of Occupancy from the Building and Zoning Office.

4. The Applicant shall be required to obtain site plan approval and subdivision approval from the Planning Board.

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

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

BE IT FURTHER RESOLVED, that in granting the Variances, the Board considered the following five (5) standards in applying the balancing test, which weigh the benefit to the Applicant against the detriment to the health, safety, and welfare of the neighborhood or community, and the Board 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 Variances.

The Board determined that the Variances would not result in an undesirable change in the character of the neighborhood, and instead would allow for the development of the site in a manner consistent with the Town Comprehensive Plan, the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution, which underwent exhaustive review by the Planning Board and the Town Board, as applicable. The development plan entitled: Overall Site Plan, having drawing number C100, prepared by Bergmann Associates dated January 31, 2014, is consistent with plan CP-400, which is the plan that was determined under the Rezoning Resolution to reduce any potential impacts from the Project, including those relating to the neighborhood and nearby properties, to the maximum extent practicable.

Additionally, the Town Board Findings Statement requires:

The Planning Board and the ZBA, to the extent applicable, shall review the Project in such a way that any new development is located as close to Empire Boulevard and as far away from existing residences as feasible, while ensuring responsible design standards and
effectuating all elements and mitigation measures contemplated herein and in the Findings Statement. It is the intent of the Town Board that the Project, as measured from the pavement to be located behind the new Walmart store, be located as close to 400’ away from the rear property lines of the Jewelberry Drive residences as feasible, while, however, incorporating all of the elements and mitigation measures contemplated in the Findings Statement. Including, but not limited to the following essential features: The proposed parking located within the 400’ setback to Jewelberry Drive shall be land-banked until such time as it is determined necessary to be installed by both the Applicant and the applicable Town body.

The requested Variances provide the opportunity to locate the development as close to Empire Boulevard and as far from the existing residences as feasible. Also, a reduction in overall parking spaces allows the Applicant to provide commercially acceptable standards of parking while simultaneously achieving the requirements of the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution.

The Board notes that with respect to open space, the existing Plaza has an overall open space ratio of 27%, and that the redevelopment of the Plaza in accordance with the Plans will reduce that overall deficiency.

2. Whether the benefit sought by the Applicant can be achieved by some other method feasible for the Applicant to pursue, other than the Variances.

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 requested Variances are largely the product of the requirements placed on the Applicant by the Planning Board and the Town Board under the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution regarding the size and layout of the various components of the Project. To achieve the amount of Plaza square footage desired and also meet the necessary setbacks required under the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution, reductions in open space, the overall parking ratio, and in the sizes of certain parking spaces are required. Further, the overall open space ratio, overall parking ratio, and parking stall sizes meet commercially reasonable industry standards, while promoting safe and adequate on-site vehicular and pedestrian circulation.

3. Whether the requested Variances are substantial.

The requested Variances are not substantial. The parking ratios that the Applicant proposes are within commercially acceptable standards utilized nationwide as the benchmark for parking in commercial retail shopping centers. Reducing the total number of parking spaces, and thus the total size of the parking areas, will reduce the amount of impervious area to be constructed, while still maintaining an adequate number of spaces to service the Plaza. A reduction in the total amount of impervious area allows for the construction of bio-swales,
bio-ponds, and/or other green infrastructure practices to be implemented, all as desired by the Town, thus resulting in the minimum variance necessary for open space.

The Applicant proposes the construction of certain parking spaces to be 9.5’ x 18’ and 9’ x 18’ where 9’ x 20’ parking spaces are required by Code. This small reduction in parking space size allows for the total number of parking spaces proposed to be increased, thereby minimizing the size of the requested variance for the overall parking ratio, while still providing adequately sized parking spaces to be used by patrons of the Plaza. The sizes of the proposed parking stalls are consistent with commercial retail plazas, and have been situated so that the spaces with the highest likely turnover (closest to the Walmart storefront) are the largest (9.5’ x 18’), and the most remote spaces are the smallest.

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

The Board determined that the proposed Variances would not have an adverse effect or impact on physical or environmental conditions in the neighborhood or district, as more fully set forth in the response to Standard 1 above. The Variances will have a positive effect on the physical and environmental conditions of the neighborhood. The proposed Plaza redevelopment is designed to create the commercial and economic benefits sought by the Town, while mitigating any potential environmental impacts to the maximum extent practicable, all as determined and required under the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution.

5. Whether the alleged difficulty was self-created.

The Board determined that the difficulty requiring the requested Variances was not self-created. As set forth above, the need for the Variances is directly related to the mitigation measures sought under the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution, including those relating to the proximity of the development to nearby residential areas, the amount of impervious surfaces and green infrastructure, and buffering the Plaza from adjacent properties. Through the rezoning process, the Applicant demonstrated the ability to provide a plan that met the Code’s parking and open space requirements; however, the plans identified by the Town Board and Planning Board as most desirable, the CP-02 and CP-400 plans (which form the basis for the current Plans submitted with the Application), include features necessitating the requested variances.

As set forth in the Planning Board Findings Statement:

The CP-02 plan permits the economic development deemed important to the Town, provides maximum separation and natural buffering between existing residential neighborhoods and future commercial activities, and incorporates adequate mitigation to minimize or eliminate the potential adverse environmental impacts identified to the maximum extent practical.

The Plans offered as part of the Application meet the requirements of the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution (see
the Statement of Compliance submitted with the Application), thus necessitating the requested variances.

**BE IT FURTHER RESOLVED,** that the requested Special Permit for outdoor storage is hereby GRANTED, subject to the following conditions:

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

2. The Applicant shall be required to obtain a Special Permit from the Building and Zoning Office and pay the appropriate fee.

3. The Special Permit for Outside Storage and Display shall be valid for a period of three (3) years from the date of the Certificate of Occupancy of the proposed Walmart. The applicant shall be required to re-apply for an extension of the permit by this Board.

4. The Applicant shall obtain a Certificate of Occupancy from the Building and Zoning Office.

5. The Applicant shall be required to obtain site plan approval and subdivision approval from the Planning Board.

6. The Applicant shall be required to comply with the requirements of the Town Engineer.

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

**BE IT FURTHER RESOLVED,** that in granting the Special Permit, the Board considered the following four (4) special permit standards, and the Board bases its decision on the following findings as to each of the four (4) standards:

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

   The Board determined that the proposed outdoor storage and display areas would be limited to certain areas within the proposed Walmart Supercenter development as shown on the Plans submitted with the Application, and such storage and display would be merely accessory and incidental to the overall Walmart Supercenter use and business purposes proposed as part of the Project.

2. That, in a B-NR, LB or GB district, such storage and display is not within one hundred (100) feet of the line of a residential zoning district.

   As shown on the Plans, the storage and display areas are to be located well over 100’ feet from the line of any residential zoning district. Further, as required under the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution,
which underwent exhaustive review by the Planning Board and the Town Board, as applicable, the Project includes a large earthen berm with an 8’ post and panel decorative fence on top to separate the Plaza, including the outdoor storage and display areas, from all nearby residences and mitigate any potential visual and noise impacts of the Plaza to the maximum extent practicable.

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

As shown on the Plans, the proposed outdoor storage and display areas are to be located approximately 1,000’ from Empire Boulevard and approximately 150’ from Brandt Point Drive. Thus, the Board determined that there would be no potential for such storage and display to interfere with the safe use of any area roads.

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

Given the location of the proposed outdoor storage and display areas, the Board determined that such storage and display uses would not unreasonably interfere with the quiet enjoyment of property by adjacent property owners, and instead would allow for the Project designed to create the commercial and economic benefits sought by the Town in a manner consistent with the Town Comprehensive Plan, the Planning Board Findings Statement, the Town Board Findings Statement, and the Rezoning Resolution, while mitigating any potential environmental impacts to the maximum extent practicable. The development plan entitled: Overall Site Plan, having drawing number C100, prepared by Bergmann Associates dated January 31, 2014, is consistent with plan CP-400, which is the plan that was determined under the Rezoning Resolution to adequately reduce any potential impacts from the Project, including those relating to the neighborhood and nearby properties. Additionally, see drawing C121-123 for proposed Grading Plans depicting a berm and 8’ post and panel fence as a buffer between the proposed commercial development and the existing residential properties. The Project will mitigate potential visual and noise impacts to the maximum extent practicable, including those associated with the outdoor storage and display uses.

BE IT FURTHER RESOLVED, that the Board has reviewed the Planning Board Findings Statement, as modified by the Town Board Findings Statement, in the context of the Variances and the Special Permit, and finds that no further modifications of the Planning Board Findings Statement, as modified by the Town Board Findings Statement, are required as a result thereof.

BE IT FURTHER RESOLVED, if any term, condition, or provision of this Resolution, or the application thereof shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Resolution, or the application of such term, condition, or provision, other than those to which it is held invalid or unenforceable, shall not be affected.
thereby, and each remaining term, condition, and provision of this Resolution shall continue in full force and effect to the fullest extent permitted by law so long as the Resolution, in its remaining form, realizes the overall intent of its findings, terms, and conditions as determined by the Board, in its sole discretion under the law.

**BE IT FURTHER RESOLVED**, that the Board has duly considered all the documents and information generated as part of its review of the Application, including, but not limited to the following:

1. The Application, the Plans, and other submissions from the Applicant and reviewing agencies.


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

**BE IT FURTHER RESOLVED**, that the Town Clerk be and is hereby authorized and directed to give the necessary notice of this Resolution to the departments, agencies, and offices having jurisdiction in this matter and to file and publish the same as prescribed by law and cause the same to be entered into the minutes of these proceedings.

Moved: Daniel DeLaus  
Seconded: Michael Belgiero

Vote of the Board

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Daniel DeLaus</td>
<td>AYE</td>
</tr>
<tr>
<td>Michael Belgiano</td>
<td>AYE</td>
</tr>
<tr>
<td>Joseph Grussenmeyer</td>
<td>AYE</td>
</tr>
<tr>
<td>Carole Mulcahy</td>
<td>AYE</td>
</tr>
<tr>
<td>Andris Silins</td>
<td>AYE</td>
</tr>
</tbody>
</table>

The motion to approve the Application was carried.
**Schedule A**  
**Description of the Variances**

1.) Variances to allow lot coverage greater than sixty (65) percent as follows:
   
   (i) DiMarco BayTowne Associates Lot: 73.5 percent lot coverage

   (ii) DiMarco Family Empire Lot: 75.9 percent lot coverage

   (The above Variances, together with the other open space provided at the Plaza, result in an overall lot coverage of 66.5 percent at the Plaza as set forth on the Plans.)

2.) Variances to allow parking ratios less than the required parking ratio of 5.4 parking spaces per 1,000 SF of gross building floor area as follows:

   (i) DiMarco BayTowne Associates Lot: 4.68 spaces per 1,000 SF

   (ii) DiMarco Brandt Point Lot: 4.10 spaces per 1,000 SF

   (The above Variances, together with the other parking provided at the Plaza, result in an overall parking ratio of 5.0 parking spaces per 1,000 SF of gross building floor area at the Plaza as set forth on the Plans.)

3.) Variance to allow certain parking spaces within the Plaza to be 9.5’ x 18’ and 9’ x 18’ (as indicated on the Plans) where 9’ x 20’ parking spaces are required.